

**State of Michigan
State Board of Education**

**RESOLUTION ESTABLISHING THE STATE BOARD OF EDUCATION'S
POSITION IN *GARY B., et al. v. GRETCHEN WHITMER, et al.***

WHEREAS, on April 23, 2020, the United States Court of Appeals for the Sixth Circuit issued an opinion in *Gary B., et al. v. Gretchen Whitmer, et al.*, No. 18-1855, in which the panel majority held that the United States Constitution provides a fundamental right to a basic minimum education; and

WHEREAS, on May 6, 2020, without an affirmative vote by the majority of the members of the State Board of Education authorizing their action, Board Members Tom McMillin and Nikki Snyder, sued in their official capacity as Board Members in *Gary B.*, filed a petition for rehearing en banc in *Gary B.*, asking the full Sixth Circuit Court of Appeals to rehear the case and reject the panel majority's conclusion finding a fundamental right to a basic minimum education; and

WHEREAS, pursuant to MCL § 388.1004, the Board speaks with one voice and transacts its business through affirmative votes by a majority of the members serving on the Board.

NOW, THEREFORE BE IT RESOLVED, that the State Board of Education:

(1) supports the Sixth Circuit Court of Appeals panel majority's conclusion that the United States Constitution provides a fundamental right to a basic minimum education;

(2) does not support or authorize the filing of a petition for en banc rehearing of the panel majority's April 23, 2020 decision; and

(3) designates President Casandra Ulbrich with assistance of Vice President Pamela Pugh to discuss the *Gary B., et al. v. Gretchen Whitmer, et al.* case with the Michigan Department of Attorney General; authorizes President Casandra Ulbrich to request, on behalf of the Board, guidance and advice from the Attorney General's office relating to the *Gary B.* case; and designates President Casandra Ulbrich to authorize filings by the Attorney General's office on behalf of the Board consistent with supporting a fundamental right to a basic minimum education.

Adopted May 12, 2020