

**COMPLAINT INVESTIGATION  
CLARK COUNTY SCHOOL DISTRICT  
(#CL102020)  
Report Issued on December 8, 2020**

**INTRODUCTION**

On October 20, 2020, the Nevada Superintendent of Public Instruction received a State Complaint dated October 12, 2020 from a Parent<sup>1</sup> on behalf of an adult daughter alleging violations by the Clark County School District (CCSD) in the student's special education program. The allegations in the Complaint were that the CCSD failed to implement the student's Individualized Education Program (IEP) from the date school closed due to the COVID-19 pandemic in March 2020 until the end of the 2019/2020 school year and from the commencement of the 2020/2021 school year to the date of the Complaint with regard to providing the work environments (job sites) for the student and the direct instruction, supervision, and monitoring in order for the student to acquire the appropriate skills for a successful transition from school to a work environment. In recognition of the pandemic, the Parent offered three proposed resolutions: reopen the job program and provide the training and direct supervision in the student's IEP with safety measures; provide direct instruction in the home with a daily in-home aide; or extend the student's services until the end of the school year the student turns 23, or 24 if the student does not return to in-person instruction by January 17, 2021.

In the State Complaint, the Parent asserted that the parents were the legal guardians and biological parents of the 19-year-old student. Since the student had reached the age of majority in the State of Nevada, in order for the Nevada Department of Education (NDE) to release any personally identifiable information to the filing Parent, including this Complaint Investigation Report, the NDE requested a copy of the referenced legal guardianship document. 34 C.F.R. §300.622; NAC §388.289. The Parent timely submitted the Letters of Guardianship filed in the Nevada District Court of Clark County establishing the Parents were Co-Guardians of the Person and Estate of the student. (In addition, as of January 22, 2018, the student's mother was approved to represent the educational interests of the student receiving special education services at the age of majority. (Notice of Determination - CCSD, January 22, 2018)

In the October 20, 2020 issue letter to the CCSD, the NDE requested additional documents and information in order to investigate the State Complaint. The CCSD was notified in that same correspondence that if the CCSD disputed the allegations of noncompliance in the Complaint, the submitted documents and information must include a denial of the alleged noncompliance; a brief statement of the factual basis for the denial; and specifically reference the documentation provided to the NDE that factually supported the denial and that a failure to do so by November 13, 2020 or an extended timeline authorized by the NDE, would be considered a concession of noncompliance for purposes of this State Complaint. The CCSD did timely respond and dispute the allegations of noncompliance in the Complaint in their entirety and specifically referenced the indexed and well-organized documents relevant to that denial.

The State Complaint, the CCSD's denial of all claims, and all documents submitted by the CCSD in response to the issues in the Complaint were reviewed and considered in their entirety in the investigation of this Complaint. The Findings of Fact cite the source of the information determined necessary to resolve the issues in this Complaint and the original source document, where available, was relied upon.

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<sup>1</sup> While the Complaint referenced both of the adult student's Parents, the Complaint was only signed/filed by one Parent.

## COMPLAINT ISSUE

The allegations in the Complaint that are under the jurisdiction of the NDE to investigate through the special education complaint process raise the following issue for investigation in the 2019/2020 and 2020/2021 school years from school closure in March 2020 to the end of the school year and from the commencement of the 2020/2021 school year to the date of the Complaint, October 12, 2020:

### Issue:

Whether the CCSD complied with the IDEA and NAC, Chapter 388, with regard to implementing the student's IEP(s) in effect in the 2019/2020 school year from school closure due to the COVID-19 pandemic in March 2020 to the end of the 2019/2020 school year and in the 2020/2021 school year, specifically with regard to providing:

- a. the work environment(s)/job site(s) for the student; and
- b. the direct instruction, supervision and monitoring in order for the student to acquire the appropriate skills for a successful transition from school to a work environment.

## FINDINGS OF FACT

### General

1. The student is a 19-year-old student with a disability who will turn 20 in January 2021 who is enrolled in the CCSD for the 2019/2020 and 2020/2021 school years. The 2020/2021 school year commenced on August 24, 2020 and is scheduled to end on May 20, 2021. (Student Period Attendance Detail, 2020/2021 CCSD School Calendars for Students)
2. On March 15, 2020, Governor Sisolak announced that due to the COVID-19 pandemic school buildings statewide would be closed to students beginning March 16, 2020, at least through April 6, 2020. This Emergency Directive was extended several times and on April 28, 2020, the Governor ordered all kindergarten through 12th grade school buildings to remain closed for onsite education for the remainder of the 2019-2020 school year. (March 15, 2020 Declaration of Emergency Directive; Declaration of Emergency Directive 005; Declaration of Emergency Directive 014, Executive Order 015)
3. On Friday, March 20, 2020, the CCSD Superintendent released guidelines for distance learning and attendance for all students. March 30, 2020 is ten school days after school closure on March 16, 2020; however, on-line web learning was available on the CCSD's website for all students on March 23, 2020. The 2019/2020 school year ended May 20, 2020, 37 school days thereafter.
4. On June 9, 2020, Governor Sisolak issued Declaration of Emergency Directive 022 requiring school districts and charter schools to develop plans for reopening school buildings, providing instruction, and related activities for the 2020/2021 school year based on the June 9, 2020 framework issued by the NDE, *Nevada's Path Forward: A Framework for a Safe, Efficient, and Equitable Return to School Buildings*, and subsequent NDE guidance issued June 24, 2020. Recognizing that the circumstances regarding COVID-19 were fluid and social distancing protocols and other health and safety requirements were subject to change, the reopening plans were required to contemplate instruction offered through: in-person instruction following social distancing protocols; distance education; or a combination of distance education and in-person instruction (hybrid learning). (Declaration of Emergency Directive 022, *Nevada's Path Forward*:

*A Framework for a Safe, Efficient, and Equitable Return to School Buildings*; NDE June 24, 2020 Guidance)

5. Prior to the commencement of the 2020/2021 school year, the CCSD submitted its reopening plan to the NDE that had been approved by the CCSD Board of School Trustees: *Reopening Our Schools Implementation Guide*. It was the determination of the CCSD Board of School Trustees that all of the CCSD schools would open for the 2020/2021 school year in a full-time distance education instructional model with the ability to transition to hybrid learning or face-to-face learning as public health conditions changed. (CCSD *Reopening Our Schools Implementation Guide*, July 27, 2020)
6. On November 12, 2020, the CCSD presented a plan to the CCSD Board of Trustees to transition to the hybrid instructional model, face-to-face instruction for two days a week and distance learning three days a week. This plan would have transitioned students to the provisionally Board-approved hybrid instructional model for most schools, with a phased-in timeline for students, and a possible transition to full-time face-to-face instruction for certain schools commencing January 4, 2021. “Following the recommendation of the Board President and the Superintendent, with consideration given to Governor Steve Sisolak’s recent Stay at Home 2.0 order and the raising numbers of COVID-19 cases, the Board of School Trustees did not take action on this item.”<sup>2</sup> (CCSD November 9, 2020 *Plan to Transition to the Hybrid Instructional Model*; November 12, 2020, *CCSD Board of Trustees Meeting Recap*, *CCSD Implementation Guide*)

### **May 13, 2019 IEP**

7. The student had a May 13, 2019 annual IEP in effect from May 13, 2019 to May 12, 2020 with five annual goals in: reading; writing; communication; social/behavioral; and vocational. The student’s present levels of academic achievement and functional performance included that the student needs guidance and prompts; does not work independently; and gets distracted and needs reminders to stay focused on work tasks. The student’s Parents participated in the development of the student’s May 13, 2019 IEP and agreed with the components of the IEP. (May 13, 2019 IEP)
8. The student’s course of study for the 2019/2020 school year was an occupational course of study as well as functional academics. The coordinated activities for transition services included that the CCSD would provide community based independent and community living instruction in shopping and instruction and practice in consumer skills at the grocery store. The assessment results in the present levels of academic achievement and functional performance noted that the student had been assisting in washing/folding and delivering laundry, vacuuming, taking care of trash and wiping tables in the cafeteria. The results also indicated that the student has been doing a variety of tasks such as wrapping items and prepping the area and collecting items of a specific color for placement

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<sup>2</sup> Subsequent to this determination, Governor Sisolak issued Declaration of Emergency Directive 035 to be in effect for three weeks from the effective date of November 24, 2020 with increased restrictions as mitigation measures. The Directive cited the escalation of COVID-19 cases, including: Nevada’s hospitalization rate for suspected and confirmed COVID-19 cases has trended upward since October 5, 2020; the number of new COVID-19 cases per day has reached record levels in Nevada with nearly a quarter (24%) of all positive cases identified since the beginning of this emergency having occurred in November as of November 22, 2020; COVID-19 is now the number two cause of death in Nevada, second only to heart disease; the record-setting number of new COVID-19 cases and the continued upward trend threatens to overwhelm the healthcare system; and the continued upward trend in COVID-19 cases poses a substantial threat to the public health. The Directive did not change the restrictions on education already in effect, but did impact gatherings and specific businesses and activities and mandated face coverings when around individuals outside their household. [https://gov.nv.gov/News/Emergency\\_Orders/2020/2020-11-24\\_-\\_COVID19\\_Emergency\\_Declaration\\_Directive\\_035/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-11-24_-_COVID19_Emergency_Declaration_Directive_035/)

on the shelves at Goodwill for the school's community-based instruction activities. (May 13, 2019 IEP)

9. The student's specialized designed instruction in the May 13, 2019 IEP from March 16, 2020 through April 30, 2020 included functional academic skills 120 minutes per week in the community and vocational skills 120 minutes per week in the community for that same time period, for a total of 240 minutes per week of community-based instruction. In addition to the specially designed instruction in the community, the student's specially designed instruction provided 1410 minutes per week in the classroom: 705 minutes per week of functional academic skills in the location of self-contained and 705 minutes per week of vocational skills in the location of special education. The student's supplementary aids and services included an adult to assist with completing assignments and oral dictation to an adult. (May 13, 2019 IEP)
10. After school closure on March 16, 2020, the student's Parent reported the student's teachers held weekly classes until the end of the school year. In response to the NDE's request for documentation of the provision of the direct instruction, supervision, and monitoring in the student's IEP(s) related to the student's acquisition of skills for transition from school to a work environment during the time period of this Complaint, the CCSD only provided several student work samples and lesson plans commencing August 24, 2020 for the 2020/2021 school year. (Complaint, CCSD Response)
11. Based on the three quarterly Progress Reports for the May 13, 2019 IEP issued March 6, 2020, prior to school closure, the student made satisfactory progress toward the annual goals at each quarter. The comments with regard to the student's progress noted only the student's continued work toward the goals and, at the time of the March 6, 2020 Progress Report, the student had not met any of the annual goals. (May 13, 2019 IEP, October 1, 2019, March 6, 2020 Progress Reports)

#### **May 1, 2020 IEP**

12. The student's annual May 1, 2020 IEP was developed on April 30, 2020, and had an anticipated duration of services to September 30, 2020. The student was determined not to require extended school year services. The student's Parents participated in the development of this annual IEP and agreed with the components. (May 1, 2020 IEP)
13. The student's course of study in the 2020/2021 school year is functional academics with an emphasis on daily living, social and vocational. This annual IEP included three annual goals in vocational; communication; and independent life skills and included a new present level of functional performance that the student needed extensive supports with regard to community participation, such as understanding community signs, crossing the street, and paying for purchases. A new statement of effect on the student's involvement and progress in general education curriculum was also added to the IEP that the student required direct instruction, supervision and monitoring in order to acquire the appropriate skills necessary for a successful transition from school to a work environment and to be able to function in the student's community. These new statements were retained in the student's October 1, 2020 IEP revision. (May 1, 2020 IEP, October 1, 2020 IEP)
14. The coordinated activities for transition services in the student's May 1, 2020 IEP included that the CCSD would provide opportunities to complete functional academics as instruction; the school would provide opportunities for community-based instruction activities as community experiences; the school and the CCSD would provide opportunities to follow directions from a number of supervisors and respond to questions when asked; and the school and the CCSD would provide

opportunities to complete various jobs within the classroom school campus and through community-based instruction lessons and activities. (May 1, 2020 IEP)

15. The student's specialized designed instruction for the time period of May 1, 2020 to July 31, 2020 provided 10 minutes per week of: "Distance learning due to Covid-19 services have changed to virtual or phone assistance or email." For the time period August 1, 2020 to September 30, 2020, the student's specially designed instruction provided 555 minutes per week of functional academic skills in the location of self-contained; 400 minutes per week of vocational skills in the location of community worksite and 425 minutes per week in the location of self-contained; and 120 minutes per week of functional academic skills in the location of community work site. This equals 1500 minutes per week of specially designed instruction or 25 hours a week. (May 1, 2020 IEP)
16. The May 20, 2020 Progress Report for the May 1, 2020 IEP reported the student made satisfactory progress toward the annual goals. The comments with regard to the student's progress noted only the student was offered or provided Google classroom, email, Google Meets and phone support via distance education because of the COVID-19 pandemic that closed all schools. (May 1, 2020 IEP, May 20, 2020 Progress Report)

### **October 1, 2020 IEP**

17. The student's May 1, 2020 IEP was revised on October 1, 2020 with the anticipated duration of services until April 30, 2021. The stated reasons for the amendments were the Parent request/revising to address distance education. The Parents' concerns included that with school closures the student was not getting direct services. The student's Parents participated in the revision of the student's IEP and disagreed with all or part of the IEP. (October 1, 2020 IEP)
18. The student's October 1, 2020 IEP included a social emotional/behavioral teacher observation from August 2020 - October 2020 with the following assessment results regarding the student's participation in distance learning: good attendance; participates when called upon and shows a cheerful and positive disposition; can navigate through the various platforms being used in the virtual classroom; advocating skills have shown improvement; will ask for assistance from teachers and is able to voice likes and dislikes; when asked to present, can do so and does so confidently; answers questions appropriately and contributes to the class discussions. The parental input on October 1, 2020 was that the Parent's spouse was providing the student prompts and information for everything the student is doing at home during class time. (October 1, 2020 IEP)
19. The student's October 1, 2020 revised IEP included the same three goals and short-term objectives from the May 1, 2020 annual IEP in vocational, communication, and independent life skill areas and the same coordinated activities in the Statement of Transition Services. (October 1, 2020)
20. The student's specialized designed instruction for the time period October 1, 2020 to April 30, 2021 was functional academic (synchronous)<sup>3</sup> with the frequency of services 150 minutes per week with the location of services self-contained/distance learning; vocational skills (synchronous) with the frequency of services 300 minutes per week with the location of services with the location of

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<sup>3</sup> CCSD defined the term "synchronous instruction" as: "Learning is happening in real time for all students. This includes video conferencing lessons, live webinars, interactive live chat discussions, virtual, and face to face instruction." The term "asynchronous instruction" is defined as: "Learning does not occur at the same time for students. This includes recorded video content and other digital media and content for students to work through independently." (*Reopening Our Schools Implementation Guide*, CCSD, Working Document, September 24, 2020)

services self-contained/distance learning; functional academics (asynchronous) with the frequency of services 525 minutes per week with the location of services self-contained/distance learning; and vocational skills (asynchronous) with the frequency of services 525 minutes per week with the location of services self-contained/distance learning. A total of 450 minutes of synchronous instruction, 7.5 hours, and 1050 minutes of asynchronous instruction, 17.5 hours, for a total of 25 hours a week of instruction. (October 1, 2020 IEP)

21. Commencing August 24, 2020, the student has been engaged in distance learning, with synchronous instruction, including group instruction and break-out sessions, and asynchronous instruction. The Parent's stated concerns regarding the student's engagement in distance learning are that:
  - a. The instructional material is educational in nature instead of hands-on job related;
  - b. The student is unable to meaningfully participate in the sessions;
  - c. The student is not receiving the needed direct instruction supervision and monitoring to be successful in this distance learning environment and is not benefitting from this form of instruction. The Parent attributes the student's ability to participate and navigate the tools provided to the support of the student's parents. (Student Lesson Plans, Student Work Products, Complaint)
  
22. The October 9, 2020 Progress Report reported the student made satisfactory progress toward the annual goals. The Progress Report included the following comments:
  - a. With regard to the vocational goal, the student was doing very well with great attendance and the ability to transition between meeting rooms with assistance and participated appropriately in class.
  - b. With regard to the communication goal: The student was able to participate in class; answered appropriately when asked questions and remained on topic; and during presentations was able to communicate approximately and with enthusiasm.
  - c. With regard to the independent life skills goal: The student improved in communicating with teachers and staff; asked for help appropriately; and was able to communicate likes and dislikes. (October 9, Progress Report)

### **Community Based Instruction**

23. During a typical school year, the student worked at several different job sites such as a greenhouse, Project 150, Three Square, Goodwill, Walmart, Kohls and a nursing home and was able to participate with support and assistance given step-by-step. (May 1, 2020 IEP, October 1, 2020 IEP)
  
24. In school year 2019/2020, prior to school closure due to the pandemic, on most school days the student's classroom schedule commenced at 7:00 AM with a morning routine and then, commencing by 9:00 AM, the student was scheduled at various worksites (Calendar of Transition Activities, School Year 2019/2020)
  
25. The student is enrolled in the CCSD's program Post-secondary Opportunities for Students in Transition (POST). The POST program is designed to provide community-based instruction to students in a work-center setting. The primary goal of the POST program is for individuals to demonstrate competence in the areas of employment, socialization, and daily living skills as independently as possible. The POST program is 5.5 hours a day. (May 1, 2020 IEP, October 1, 2020 IEP, CCSD Transition Services – POST Brochure)

26. The student has also been enrolled in the Vocational Rehabilitation Pre-Employment Transition Services (Pre-ETS) since September 17, 2020. The focus of Pre-ETS is: instruction in self-advocacy; job exploration counseling; post-secondary exploration; work-place readiness training and work-based learning experience. (Pre-ETS Brochure and Consent Form, CCSD Response)

### **COVID and Work Sites**

27. Due to the COVID-19 pandemic, the various agencies/organizations that offered work sites to this student and other students for community-based instruction through the CCSD POST program suspended the relationship with the CCSD POST program and, as of November 6, 2020, the organizations have not offered a time-certain plan to re-establish the community-based instruction for students in the POST program in their agencies/organizations. The CCSD did attempt to restart community-based instruction in the 2020/2021 school year through initiating communications with the various community-based work sites in that regard. For example:
- a. The nursing home work site that the student worked at excluded students and other visitors in the facility starting in the Spring of 2020. As of October 28, 2020, the nursing home remained under strict orders to have no visitors or students and had no idea how long that would remain in place. (October 28, 2020 Email communication to CCSD, Nursing Home Director of Human Resources/Staffing)
  - b. Opportunity Village responded regarding the possibility of restarting community-based instruction in the 2020/2021 school year that they were still “in a place of no volunteers due to COVID” and the hope that they could reconnect and get the CCSD group going as things cleared up. (May 6, 2020 and July 27, 2020 Email Communications between CCSD and Manager, Volunteer Engagement, Opportunity Village)
  - c. Three Square responded regarding the 2020/2021 school year volunteer schedule that as of July 1, 2020, the community-based instruction program was being placed on hold until further notice and they were unable to schedule the CCSD group to volunteer with them. (June 30, 2020 and July 1, 2020 Email Communications between CCSD and Three Square Volunteer Engagement Manager)
  - d. Project 150 responded that they would not be taking school groups for the 2020/2021 school year and that, for the foreseeable future, they were limiting the number of volunteers in their building. (May, 2020 Email Communications between CCSD and Project 150 Community Outreach Manager)
28. The Bureau of Vocational Rehabilitation is offering the Pre-ETS program virtually and the student participates in the virtual lessons. (Samples of Pre-ETS lessons, CCSD Response)

### **CCSD Distance Education Guidance**

29. Distance Education Guidance for Students with Disabilities: “The District is required to provide a Free Appropriate Public Education (FAPE) for students with disabilities. Special education and related services for students with disabilities in accordance with the student’s IEP.... The following guidance is intended to highlight special education procedures associated with the implementation of distance education. If specific procedures are not indicated in these documents, refer to standard special education procedures.” (*Reopening Our Schools Implementation Guide*, CCSD, Working Document, September 24, 2020, pg. 22. Hereinafter, *CCSD Implementation Guide*.)

30. Delivery of Equitable Access to Educational Opportunities: “During distance education, school staff will consider alternative ways to provide equitable access and appropriate educational opportunities for students with disabilities, including exploring all available supplementary aids and services through online and/or virtual platforms, and/or other activities, such as paper correspondence....” (*CCSD Implementation Guide*, pg. 22)
31. “Instructional schedules for students with IEPs must meet the instructional requirements and structures established in each student’s IEP, including co-taught classroom instruction.” (*CCSD Implementation Guide*, pg. 22)
32. Services for Students with Disabilities in Distance Education: “CCSD must consider, and where possible, make efforts to provide special education and related services to students with disabilities in accordance with the student’s Individualized Education Program (IEP) and for students entitled to free appropriate public education (FAPE) under Section 504, consistent with the accommodation plan developed to meet the requirements of Section 504. Due to school closures and social distancing, it is noted that all services may not be able to be provided in the same manner that are typically provided. School teams and parents are encouraged to work collaboratively and creatively to consider how to support components of a student’s IEP or Section 504 Accommodation Plan. \*Please refer to the *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary, and Secondary Schools While Serving Children with Disabilities*.” (*CCSD -School Closures Related to COVID-19-School Guidance for Individualized Education Programs and Section 504 Accommodation Plans*, Updated April 20, 2020. Hereinafter, *School Guidance*)

## CONCLUSIONS OF LAW

### Issue:

Whether the CCSD complied with the IDEA and NAC, Chapter 388, with regard to implementing the student’s IEP(s) in effect in the 2019/2020 school year from school closure due to the COVID-19 pandemic in March 2020 to the end of the 2019/2020 school year and in the 2020/2021 school year, specifically with regard to providing:

- a. the work environment(s)/job site(s) for the student; and
- b. the direct instruction, supervision and monitoring in order for the student to acquire the appropriate skills for a successful transition from school to a work environment.

COVID-19 has caused an unprecedented national health and safety crisis of enormous proportions that has impacted on-site instruction at school for all students for an extended period of time and caused inestimable stress to all involved. However, this recognition and the fact that the circumstances were caused by unavoidable external events does not alter each student with a disability’s right to a FAPE, including the requirement that the provision of a FAPE necessitates that special education and related services and supplemental aids and services are provided in conformity with an IEP. 34 C.F.R. §§300.17(d), 300.101; NAC §388.281(6)(e). (*Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities*, (March 21, 2020); NDE March 2020 Guidance<sup>4</sup> -*COVID-19 and Students with Disabilities; COVID-19 Questions & Answers*:

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<sup>4</sup> Policy rulings by the United States Department of Education or the NDE interpreting IDEA are informal guidance only and are merely persuasive authority. It should be noted that although courts are not bound by agency interpretations of statutes and regulations, they generally give them deferential consideration.

*Implementation of IDEA Part B Provision of Services*, (OSEP September 28, 2020; Cited in NDE Guidance-*COVID-19 and Students with Disabilities* (November 10, 2020))<sup>5</sup>

IEPs are clearly binding under the IDEA and a school is obligated to provide services "in conformity with" student's IEPs. *Van Duyn v. Baker School Dist.*, 502 F. 3d 811 (9th Cir<sup>6</sup>. 2007)<sup>7</sup> (*Van Duyn*); 34 C.F.R. §§300.17(d), 300.101; NAC §388.281(6)(e). Even if unavoidable circumstances prevented the CCSD from providing the community-based instruction and the specially designed instruction in the student's IEP(s) in-person, neither the IDEA nor the NAC provide an exception to the implementation of a student's IEP for school closures caused by pandemics, governmental directives, or the actions of other involved public or private agencies/organization. The CCSD remained responsible under the IDEA for implementing the student's IEP despite the lack of access to school buildings and community-based agencies/organizations, even if by alternate methods of delivery.

However, a finding of noncompliance through the state complaint process for the failure of a local educational agency (LEA) to implement a student's IEP does not end the inquiry. Whether the failure to provide the services in a student's IEP is a minor failure or a material failure (*Van Duyn*) is relevant to the determination whether a student-specific corrective action is required to address the needs of the student. 34 C.F.R. §300.151(b).

"A material failure occurs when the services a school provides to a disabled child fall significantly short of the services required by the child's IEP." "[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. However, the child's educational progress, or lack of it, may be probative of whether there has been a significant shortfall in the services provided." (*Van Duyn*) This materiality standard was considered in the determination whether a student-specific corrective action was required to address the needs of the student.

Does the fact that the closure of school buildings was systemwide and affected all students' access to in-person instruction, diminish the impact of a failure to provide the services in a student's IEP? Addressing a claim for "stay put" under the IDEA, 34 C.F.R. §300.518, in the context of the State of Hawaii's systemwide furloughs, the Ninth Circuit Court of Appeals determined: "When Congress enacted the IDEA, Congress did not intend for the IDEA to apply to system wide administrative decisions. Hawaii's furloughs affect all public schools and all students, disabled and non-disabled alike. An across the board reduction of school days such as the one here does not conflict with Congress's intent of protecting disabled children from being singled out. In comparison to cases in which a child is singled out in relation to her peers, the furlough days do not remove the plaintiffs from the regular classroom setting any more than they do the other children. Disabled children are not singled out for furlough days." The Court clarified, however, that the conclusion did not ". . . leave the parents of disabled children with no means of redress. N.D.'s claim is more properly characterized as a "material failure to implement the IEP." (*Van Duyn v. Baker Sch. Dist. 5J*,

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<sup>5</sup> The OSEP memorandum is publicly available at:

<https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf>

The NDE Guidance is available at: [http://www.doe.nv.gov/home/COVID\\_Resources/](http://www.doe.nv.gov/home/COVID_Resources/)

<sup>6</sup> The State of Nevada is in the United States Court of Appeals, Ninth Circuit.

<sup>7</sup> The United States District Court, District of Nevada, recently cited the N.D. case in an order denying a Motion for Preliminary Injunction based on the CCSD's decision to reopen public schools only "in a digital format": "It is true that the scenarios are not perfectly analogous: the length of the student's deprivation of services is much longer here. . . . Hawaii presents a clearly applicable point of law to CCSD's current policy: the existing system-wide changes apply to both "disabled and nondisabled children alike." *Id.* at 1108. In fact, the school district's response to a pandemic is arguably greater reason for the Ninth Circuit's rule than a school district's response to financial difficulties. *C.M., individually and as parent to D.M., et al., v. Jesus Jara, et al.*, Case No. 2:20-CV-1562 JCM - BNW, (U.S.D.C. NV (November 19, 2020).

502 F.3d 811 (9th Cir. 2007)) A school district's failure to provide the number of minutes and type of instruction guaranteed in an IEP could support a claim of material failure to implement an IEP. *N.D. v. Hawaii Dept. of Education*, (9th Cir. 2010) 600 F.3d 1104.

Likewise, in this case, the delivery of the student's special education and services through distance learning rather than community and in-person classroom settings in the face of COVID-19 was caused by a systemwide determination, as was the closure of work sites to community-based instruction. The focus in this State Complaint is to determine whether the CCSD provided the services determined by the student's IEP Team as necessary to provide the student educational benefit and if not, whether a student-specific corrective action is required to address the needs of the student. 34 C.F.R. §300.151(b).

The student in this case is a 19-year-old student with a disability who will turn 20 in January 2021 and requires direct instruction, supervision, and monitoring in order to acquire the appropriate skills necessary for a successful transition from school to a work environment and to be able to function in the community. The student's course of study for the 2019/2020 school year was occupational with functional academics and, for the 2020/2021 school year, the student's course of study was functional academics with an emphasis on daily living, social and vocational. (Finding of Fact (FOF), FOFs #1, #8, #13, #18)

“It is each student's IEP that establishes the specially designed instruction and other services and supports that are individually designed to provide educational benefit to the student with a disability. While it is recognized that COVID-19 may affect how a student's instruction, services and supports set forth in the student's IEP are provided, any alternative delivery plan is subordinate to, and does not substitute for the IEP Team's determination of FAPE.” NDE Guidance-*COVID-19 and Students with Disabilities* (November 10, 2020).

In this case, there are two annual IEPs in effect during the time period of this Complaint (FOFs #7, #12) and an IEP revision in effect commencing October 1, 2020 (FOF #17) to address the provision of instruction to the student through distance learning. One aspect of the student's May 1, 2020 annual IEP was due to distance learning as well and reduced the student's specially designed instruction to 10 minutes per week at the end of the 2019/2020 school year. (FOF #15) As such, it is the student's May 13, 2019 IEP developed pre-COVID-19 and the in-person instruction in the student's May 1, 2020 IEP in effect from May 1, 2020 through September 30, 2020 that are relied upon in this investigation as the IEP Team's determination of the specially designed instruction and other services individually designed to provide educational benefit to the student.

### **Community-based Instruction – 2019/2020 School Year from School Closure and the 2020/2021 School Year**

Both of the student's annual IEPs in effect from March 16, 2020 to the date of this Complaint included the provision of specially designed instruction through extensive community-based instruction in a work environment/job site:

- a. For the 2019/2020 school year from March 16, 2020 through April 30, 2020, the coordinated activities for the student's transition services included that the CCSD would provide community based independent and community living instruction in shopping and instruction and practice in consumer skills at the grocery store. (FOF #8)
- b. The coordinated activities for the student's transition services in the student's May 1, 2020 IEP for the remainder of the 2019/2020 school year and the student's 2020/2021 school year through April 30, 2021 included that the CCSD would provide opportunities to complete functional academics as instruction; the school would provide opportunities for community based instruction activities as community experiences; the school and the CCSD would provide opportunities to follow directions from a number of supervisors and

respond to questions when asked; and the school and the CCSD would provide opportunities to complete various jobs within the classroom school campus and through community-based instruction lessons and activities. (FOFs #14, #19)

Due to the COVID-19 pandemic, the various agencies/organizations that offered work sites to this student and other students for community-based instruction through the CCSD POST program suspended the relationship with the CCSD POST program. (FOF #27) Given the closure of school buildings commencing March 16, 2020 and the lack of access to community work sites due to the COVID-19 pandemic, the CCSD was unable to implement the student's specially designed instruction that provided community-based instruction in a workplace setting up to the date of this Complaint. (FOFs #8, #9, #14, #15, #19, #23 - #27)

The student was not "singled out" in this regard. This lack of access to work environments/job sites impacted the community-based instruction for all students in a work-center setting in the POST program. (FOFs #25 - #27) However, as previously discussed, regardless of the causation of an unprecedented national emergency and the fact that it was beyond the control of the CCSD, the CCSD remained responsible for implementing the student's IEP, even if by alternate methods of delivery, and did not in this regard. Therefore, it is determined that from March 16, 2020 through the end of the 2019/2020 school year and in the 2020/2021 school year to the date of the Complaint, October 12, 2020, the CCSD failed to implement the student's IEP with regard to providing the student the community-based specially designed instruction in a work environment/job site. (See discussion below on the applicable period of noncompliance.)

#### **2019/2020 School Year: March 16, 2020 – May 20, 2020**

The specially designed instruction in the student's May 13, 2019 IEP in effect through April 30, 2020 provided 1650 minutes per week of special designed instruction from March 16, 2020 through April 30, 2020 or 27.5 hours per week with the locations in the community or classroom/special education. The student's present levels of academic achievement and functional performance included that the student needs guidance and prompts; does not work independently; and gets distracted and needs reminders to stay focused on work tasks. (FOF #7) The student's supplementary aids and services included an adult to assist with completing assignments and oral dictation to an adult. The specially designed instruction in the student's May 1, 2020 provided 1500 minutes per week of specially designed instruction or 25 hours a week with the locations in the community or "self-contained". (FOFs #3, #9, #15)

On March 15, 2020, Governor Sisolak announced that due to the COVID-19 pandemic school buildings statewide would be closed to students beginning March 16, 2020, at least through April 6, 2020. This Emergency Directive was extended several times and on April 28, 2020, the Governor ordered all kindergarten through 12th grade school buildings to remain closed for onsite education for the remainder of the 2019-2020 school year. (FOF #2) Commencing May 1, 2020, after the closure of school buildings to students for the remainder of the 2019/2020 school year, the student's specialized designed instruction was reduced to 10 minutes per week of: "Distance learning due to Covid-19 services have changed to virtual or phone assistance or email." (FOF #15)

While the CCSD denied the failure to implement the student's IEP with regard to the required provision of direct instruction, supervision and monitoring in the 2019/2020 school year and reportedly provided the student weekly instruction from March to the end of the school year (FOF #10), the CCSD did not provide the requested documentation in response to this Complaint that verified the number of minutes of instruction provided to the student and the provision of this instruction through direct instruction, supervision, and monitoring (or, prior to the May 1, 2020 IEP, the required guidance, prompts and adult assistance). (FOFs #7, #9, #10, #15) Even if the CCSD provided the student weekly instruction through direct instruction, supervision and monitoring until the end of the 2019/2020 school year on May 20, 2020, this weekly

instruction would not be capable of implementing the required minutes per week in the student's IEP. (FOFs #3, #9)

Therefore, from March 16, 2020 through the end of the 2019/2020 school year, it is determined that the CCSD failed to implement the student's IEP with regard to providing the work environment/job site for the student; and, in the absence of verifiable documentation otherwise pursuant to NAC §388.215, failed to provide the student the specially designed instruction in the student's IEP(s) through direct instruction, supervision and monitoring.

The determination of the time period of noncompliance for purposes of this Complaint, however, is a bit complicated. In the March 2020 *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak*, the OSEP provided the following guidance with regard to the closure of elementary and secondary school buildings for an extended period of time due to exceptional circumstances:

“The IDEA, Section 504, and Title II of the ADA do not specifically address a situation in which elementary and secondary schools are closed for an extended period of time (generally more than 10 consecutive days) because of exceptional circumstances, such as an outbreak of a particular disease. If an LEA closes its school [buildings] to slow or stop the spread of COVID-19, and does not provide any educational services to the general student population, then an LEA would not be required to provide services to students with disabilities during that same period of time. Once school resumes, the LEA must make every effort to provide special education and related services to the child in accordance with the child's individualized education program (IEP) or, for students entitled to FAPE under Section 504, consistent with a plan developed to meet the requirements of Section 504....If an LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE. (34 CFR §§ 104.4, 104.33 (Section 504) and 28 CFR § 35.130 (Title II of the ADA) SEAs, LEAs, and schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP developed under IDEA, or a plan developed under Section 504. (34 CFR §§ 300.101 and 300.201 (IDEA), and 34 CFR § 104.33 (Section 504)).”<sup>8</sup>

With regard to the school closure in the CCSD and the commencement of distance learning instruction provided to all students: March 30, 2020 is ten school days after school closure on March 16, 2020. However, on March 20, 2020, CCSD Superintendent released guidelines for distance learning and attendance for all students and on-line web learning was available on the CCSD's website for all students on March 23, 2020. The 2019/2020 school year ended May 20, 2020, 37 school days thereafter. (FOF #3) Therefore the time period of noncompliance for purposes of this Complaint commenced March 23, 2020.

### **The 2020/2021 School Year**

For the time period August 1, 2020 to September 30, 2020, the specially designed instruction in the student's May 1, 2020 IEP provided 555 minutes per week of functional academic skills in the location of self-contained; 400 minutes per week of vocational skills in the location of community worksite and 425 minutes per week in the location of self-contained; and 120 minutes per week of functional academic skills in the location of community work site. This equals 1500 minutes per week of specially designed instruction or 25 hours a week. (FOF #15)

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<sup>8</sup> This policy guidance is publicly available at: <https://sites.ed.gov/idea/files/qa-covid-19-03-12-2020.pdf>

The October 1, 2020 revision to the student's annual IEP maintained the total number of minutes/hours per week of specially designed instruction in the May 1, 2020 IEP. However, it reduced the number of minutes of direct specially designed instruction for the time period October 1, 2020 to April 30, 2021 to 450 minutes (7.5 hours) per week of real-time instruction (synchronous) and the remainder of the specially designed instruction (1050 minutes per week or 17.5 hours) was to be provided through the student's independent work (asynchronous). (FOF #20)

The student has also been enrolled in the Vocational Rehabilitation Pre-Employment Transition Services (Pre-ETS) since September 17, 2020 and has been participating in the program virtually. (FOFs #26, #28) However, no documentation was provided in the course of this investigation on the number of minutes per week of the Pre-ETS program or whether the services included direct instruction, supervision and monitoring.

This is a student who requires extensive supports and direct instruction, supervision and monitoring in order to acquire the appropriate skills necessary for a successful transition from school to a work environment and to be able to function in the student's community. (FOF #13) While the CCSD denied the failure to implement the student's IEP with regard to the required provision of direct instruction, supervision and monitoring in the 2020/2021 school year, the CCSD only provided several student work samples and lesson plans commencing August 24, 2020 in response to the NDE's request for documentation to support this denial. (FOF #10)

It is recognized that the student did demonstrate engagement in distance learning provided from August 2020 to October 2020. (FOF #18) However, in the absence of any explanation and documentation otherwise regarding the provision of direct instruction, supervision and monitoring and the student's progress toward the annual IEP goals, it is difficult to ascertain how 17.5 hours a week of asynchronous instruction, in particular, provided the student the required direct instruction, supervision, and monitoring to the "greatest extent possible." Therefore, in the absence of verifiable documentation otherwise pursuant to NAC §388.215 that the student was provided the direct instruction, supervision, and monitoring required in order to acquire the appropriate skills during the provision of asynchronous and synchronous instruction, it is determined that the specially designed instruction provided to the student commencing August 24, 2020 failed to meet the requirements of both the student's May 1, 2020 IEP and the October 1, 2020 revision in this regard. (FOFs #9, #15)

As a final matter, notwithstanding the absence of documentation and the finding of noncompliance, it is important to note that if the alternate delivery of 7.5 hours of specially designed instruction through synchronous instruction and any synchronous services provided through the Vocational Rehabilitation agency met the requirements of the student's IEP with regard to direct instruction, supervision, and monitoring, the assessment of the student's progress toward the annual goals should reflect the resultant progress. As such, those hours of instruction will impact the determination of whether and to what extent the student has regressed or failed to progress toward meeting the annual goals set out in the student's IEP during this disruption to in-person instruction at school and if so, will mitigate the extent of the remedy for any regression or failure to progress.

*Therefore, the CCSD failed to comply with the IDEA and NAC, Chapter 388, with regard to implementing the student's IEP(s) in effect in the 2019/2020 school year from school closure due to the COVID-19 pandemic in March 2020 to the end of the 2019/2020 school year for 37 school days and in the 2020/2021 school year to October 12, 2020, specifically with regard to providing the work environment(s)/job site(s) for the student; and the direct instruction, supervision and monitoring in order for the student to acquire the appropriate skills for a successful transition from school to a work environment.*

## Corrective Action

As discussed previously, having determined that the CCSD failed to implement the student's IEPs with regard to providing the work environment/job site for the student and direct instruction, supervision and monitoring, the next inquiry is whether a student-specific corrective action is required to address the needs of the student. 34 C.F.R. §300.151(b). This is an individualized determination. In this case, the absence of specially designed instruction for the determined 37 school days after school closure in March 2020 fell significantly short of the specially designed instruction required by the student's IEP. Notwithstanding the provision of distance education to the student in the 2020/2021 school year, the continued absence of the required direct instruction, supervision and monitoring perpetuates this loss of educational opportunity and, at the time of this Report, given the rising cases of COVID-19 (FOF #6), it is uncertain when the CCSD will return to in-person instruction in the school setting.

The student will turn 20 in January 2021 and time is of the essence since the student's eligibility will end when the student turns 22 years of age. NRS 388.417(8). While the student made satisfactory progress toward the annual goals in the student's IEP at each quarter in the 2019/2020 school year, the student did not meet any of the annual goals by the end of the school year (FOFs #11, #16) and, as such, this reported progress does not result in a contrary conclusion on the impact of the failure to provide the required services. Given these and other student-specific facts set forth above, it has been determined that the failure to implement the student's IEP in these regards is a material failure warranting corrective action. (*Van Duyn*)

## Corrective Action Plan

Therefore, the CCSD is required to take corrective action to address the violations found in this Complaint. In accordance with NRS §385.175(6), the NDE requests a plan of corrective action (CAP) from CCSD within 14 CCSD business days of the receipt of this Report. The CAP must be approved by the NDE prior to implementation.

Given the fluidity of the situation in the midst of the COVID-19 pandemic, this corrective action must be twofold: a mitigation strategy to address the current distance learning instruction and the absence of the required specially designed instruction in the 2019/2020 school year and a strategy upon return to in-person instruction to determine whether the student has regressed or did not make the expected progress toward the student's annual goals in the 2020/2021 school year and the appropriate remedy to address any regression or lack of progress. **Unless agreed to otherwise in writing by the CCSD and the Parent**, the CAP must provide for the following student-specific directed action, including the timeline within which it will be implemented:

### I. Mitigation Strategy

#### A. Distance Learning- Mitigation

This mitigation corrective action is designed to implement the specially designed instruction in the student's IEP to "the greatest extent possible"<sup>9</sup> during the provision of distance education instruction. The corrective action is consistent with the CCSD Distance Education Guidance (FOFs #30 - #33) and will, at minimum, mitigate any loss of educational benefit to the student due to the absence of the required direct instruction, supervision and monitoring in the provision of distance education and result in some data collection and assessment on the student's progress toward meeting the student's annual goals during the student's

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<sup>9</sup>U.S. Dept. of Educ., *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* (March 12, 2020).

participation in distance education. The CCSD's corrective action plan for mitigation strategies must include:

Convening the student's IEP Team<sup>10</sup> no later than 10 school days<sup>11</sup> after the NDE's approval of the CAP with the implementation of the revisions to the student's distance education October 1, 2020 IEP within five school days of the IEP Team meeting. The revised IEP must, at minimum:

- a. Provide the method of supervision and monitoring to be used for the student's synchronous and asynchronous instruction and method of documentation;
- b. Increase the synchronous minutes of specially designed instruction with direct instruction, supervision and monitoring consistent with the student's IEP to the "greatest extent possible" to a minimum of 12.5 hours a week (one-half of the required hours a week of direct instruction in the student's May 1, 2020 IEP);
- c. Include the specific method of data collection on the student's progress or lack of expected progress toward the student's annual goals during distance learning;
- d. Provide written reports of the student's progress toward the IEP goals on at least a monthly basis until in-person instruction at school/community is resumed. The written reports must include the objectives achieved and the data relied upon to reach the determination of progress; and
- e. Provide for virtual alternatives to in-person community-based instruction, such as a virtual job shadowing program. (This named program is available at no cost to Nevada LEAs.)

## **B. Compensatory Education for the 2019/2020 School Year**

Given the determination that the CCSD did not provide the student the specially designed instruction in the student's IEP(s) through direct instruction, supervision, and monitoring for the applicable time period of 37 school days in the 2019/2020 school year, and that this was a material failure warranting student-specific corrective action (*Van Duyn*), compensatory education is ordered.

Compensatory education is designed to provide the educational benefits that likely would have accrued to the student from special education services if they had been supplied in the first place. This is a fact-specific determination. (*Parents of Student W. ex rel. Student W. v. Puyallup School Dist.* No. 3, 31 F.3d 1489; 21 IDELR 723 (9th Cir. 1994); *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. 2005)) In compensatory education awards, there is no obligation to provide a day-for-day compensation for time missed. *Parents of Student W. v. Puyallup*. This approach for determining compensatory education is considered 'qualitative' in nature, rather than strictly 'quantitative' and requires that a compensatory education award be made not merely by establishing the amount of services which were not provided, but that an analysis be done to establish what may make the student whole for the denial of services.

In this case, based on the May 1, 2019 IEP, 1650 minutes per week of special designed instruction were required to be provided to the student in the community and school setting in the 2019/2020 school year. Of that, the specially designed instruction in the classroom setting was approximately five hours a day. (FOF #9)

Based on the purpose of this compensatory education order as a mitigation strategy; the ordered CAP upon the return to in-person instruction to address any regression or lack of progress toward the student's annual goals; and the likelihood that the CCSD will be unable to implement the community-based instruction in a

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<sup>10</sup>Upon agreement, IEP Facilitation through the NDE is available to the Parent(s) and the CCSD to provide an impartial Facilitator at any of these ordered IEP Team meetings.

<sup>11</sup> If the student's parents are unavailable to participate in the student's IEP meeting within that timeframe, the documentation provided to the NDE upon completion of the CAP must include that documentation.)

workplace setting in the student's IEP for some period of time, **unless agreed to otherwise in writing by the CCSD and the Parent(s)**, the CAP must provide for a minimum of 92.5 hours of compensatory education consistent with the student's IEP, including direct instruction, supervision and monitoring.<sup>12</sup>

The CCSD must consult with the student's Parent(s) on the appropriate means to provide this compensatory education to meet the student's educational needs and must consider any concerns of the Parent(s) and/or proposals in the development of the compensatory education plan. This compensatory education must be in addition to the services in the student's IEP and, as such, must be provided during school breaks or before or after school. In addition, given the uncertainty with regard to the duration of the system-wide distance education, at the CCSD's discretion, the compensatory education may be provided in whole or in part through distance education with direct instruction, supervision, and monitoring. The compensatory education may also be provided in whole or in part as community-based instruction to the student in a work-center setting through the POST program, when access to those work settings resumes.

## II. Upon the Return to In-person Instruction

With regard to the 2020/2021 school year, there is a paucity of information and data on the extent the student has regressed or failed to progress toward meeting the annual goals set out in the student's IEP during this disruption of in-person instruction at school and in the community. (FOF #22) This data/information is important in that it informs the need for a remedy and the nature/amount of the remedy.

As mentioned previously, the duration of systemwide distance learning for all CCSD students in the 2020/2021 school year is unknown at the time of this Report, as is the impact of any mitigation strategies that will be implemented in accordance with this CAP. Therefore, additional data collection is necessary when on-site in-person instruction resumes to: enable the determination whether the student has regressed or did not make expected progress toward meeting the student's annual goals as a result of the failure to implement the specially designed instruction in the student's IEP; ascertain the degree, if any, of the student's recoupment of lost skills and progress; and craft an individualized remedy, if appropriate. (See *NDE Guidance*, November 10, 2020)

The CCSD's CAP to be implemented upon the student's return to in-person instruction must include:

- a. **Job Opportunities:** If community-based work sites are not open to students with disabilities enrolled in the CCSD when in-person instruction commences, consistent with all COVID-19 health and safety protocols, the CCSD must provide for the completion of various jobs within the classroom and on school campus consistent with the coordinated activities for transition services in the student's IEP. (FOFs #8, #14, #15, #20)
- b. **Reevaluation:** A reevaluation of the student must be completed in accordance with the IDEA, 34 C.F.R. §300.305, no later than 40 school days after the return to in-person instruction to gather relevant functional, developmental and academic information on the educational needs of the student, specifically whether the student has regressed and/or did not make the expected progress

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<sup>12</sup> Based on the May 1, 2019 IEP, this amount is one half of the approximately 185 hours of specially designed instruction in a school setting for the 37 school days for the 2019/2020 school year. Given the actual circumstance of the suspension of community work/settings and, accordingly, the opportunity for the student to receive specially designed instruction in those settings as a mitigation strategy, any job/worksites compensatory education through this mitigation strategy would not be implementable at this time. This determination has no impact on any determination with regard to necessary compensatory education upon the student's return to in-person instruction in a school and community setting.

toward the student's IEP goals in the student's May 1, 2020 and October 1, 2020 IEPs during the disruption to in-person instruction and whether and to what degree the student is demonstrating the ability to recoup any lost skills and expected progress.

- c. IEP Team meeting: The student's IEP Team must be convened no later than 14 school days<sup>13</sup> after the reevaluation of the student upon the return to in-person instruction to determine whether and to what extent the student has lost skills and/or expected progress toward the student's annual goals; the extent of recoupment of any or all of the lost skills and/or expected progress and, if appropriate, the remedy, to address the regression and/or loss of expected progress. (See *NDE Guidance*, November 10, 2020, on the factors/data an IEP Team may want to consider in this determination.) The Prior Written Notice provided to the Parent after the IEP meeting must include a detailed explanation of the IEP Team's determinations and each evaluation procedure, assessment, record, or report used as the basis for these determinations.
- d. Remedy, as appropriate: If the IEP Team determines the student has regressed or lost skills or expected progress as compared to assessment results and other data prior to the commencement of the closure of school buildings, the IEP Team must consider and determine the appropriate remedy that is reasonably calculated to provide the educational benefits that the student would have likely received, but for the disruption to in-person instruction at school. The consideration of the appropriate remedy may include the compensatory education ordered for the 2019/2020 school year in this Complaint Report and may include any periods of attendance when the student was absent from participation in distance education in the 2020/2021 school year. The Prior Written Notice provided to the Parent after the IEP meeting must include a detailed explanation of the IEP Team's determinations and the data from the evaluation procedure, assessment, record, or report used as the basis for the determination.

The CCSD and the Parent(s) are encouraged to work together throughout this process, including in the determination of the appropriate remedy upon the return to in-person instruction, if required. However, nothing in this CAP for the 2020/2021 school year shall be interpreted to constitute a limitation on the Parent(s)' or CCSD's rights under the IDEA or NAC to access the alternative dispute resolution processes if the Parent(s) and the CCSD do not agree on the determination whether the student has regressed or failed to progress toward meeting the student's IEP goals; and/or the determined remedy if the student has regressed or failed to progress.

Documentation of the completion of the CAP must be provided to the NDE within 14 days of its completion. (In recognition that the first student-specific mitigation strategy will be completed earliest, the submission of the documentation on the completion of this mitigation strategy must be submitted within 14 days of its completion, notwithstanding the later submission of documentation related to the ordered compensatory education and the actions to be taken upon the return to in-person instruction at school.)

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<sup>13</sup> See footnote 11 with regard to the timeliness of this IEP meeting.