

New Jersey Department of Education
Office of Special Education
Special Education Compliance Monitoring of New Jersey Department of Corrections
Facilities Housing Students with Disabilities Eligible for Special Education and Related Services

Section One: Overview of Monitoring Activities

From March 14, 2022 to March 18, 2022, special education monitors from the New Jersey Department of Education (NJDOE), Office of Special Education (OSE) conducted special education monitoring at Garden State Youth Correctional Facility (GSYCF) and New Jersey State Prison (NJSP), state correctional facilities operated by the New Jersey Department of Corrections (NJDOC).

Prior to monitoring, the NJDOE monitors requested access to all student records and files relating to the provision of special education and related services to students with disabilities required under the Individuals Disabilities Education Act (IDEA), 20 U.S.C. §1400. Monitoring activities consisted of a comprehensive review of relevant and available student records, including Individualized Education Programs (IEPs); observations of pod instruction; and interviews with facility administrators and staff. The purpose of the onsite monitoring was to determine whether the GSYCF and NJSP were providing special education and related services to students with disabilities in accordance with the IDEA.

The NJDOE monitoring team consisted of Kimberly Murray, Nicole Buten, Cynthia Rimol, Yasmin Burrell and Ariadis Charles. Dr. Susan Roberts, the Court-appointed external monitor in *Adam X, et al. v. New Jersey Department of Corrections, et al.*, Civil Action No. 3:17-cv-00188-FLW-LHG (“Adam X”), was also in attendance and had unfettered access to students, student records, teachers and facility staff throughout the monitoring visit.

Section Two: Summary of Student Interviews

During the onsite monitoring, student interviews were conducted by Kimberly Murray from NJDOE, and Dr. Susan Roberts. The student interviews, which are not typically included in special education monitoring of local educational agencies (LEAs), were agreed to by the Adam X Parties for the purposes of monitoring the delivery of special education programs and related services to students housed within state correctional facilities. . The student interviews, which were voluntary and conducted with each individual student’s consent, consisted of 14 questions that were reviewed and approved by the Adam X Parties prior to the commencement of the 2019 monitoring which was conducted before the Settlement Agreement received final approval. Class Counsel requested additional questions be added during preparations for this Period I monitoring, particularly related to students in the RHU. DOE was not willing to add to their list of interview questions, but Dr. Roberts asked RHU-related (and other) questions as she found appropriate. The questions were designed to ascertain the student’s understanding of his/her special education rights; involvement in the development of the IEP; understanding of the IEP; frequency and types of special education programs and related services provided; teaching methods; classroom experiences; progress reporting; and access to the student’s special education program.

Garden State Youth Correctional Facility

During the onsite monitoring of GSYCF, 29 students were interviewed. The majority of students reported familiarity with their respective IEPs, including understanding the services listed in the IEP. The majority of students reported being invited to and participating in an IEP meeting prior to the

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implementation of the student's IEP. Six students reported not receiving a copy of their IEP, while two students did not remember or did not know if they had received a copy of their IEP. All but two students reported that special education rights were explained.

All of the students stated teachers teach multiple subjects and reported that classroom teachers lecture and engage in Q&A with students. All of the students reported teachers provide assistance to students when students request help or have questions about the materials.

All students reported that classes are scheduled five days per week and the majority of students claimed that classes are held daily. Responses to the frequency of class cancellation included "rarely", "frequently", "one time per week", "every other day" and "once in a while". A majority of students stated they receive a packet of materials to complete if and when classes are cancelled. Other students claimed that work was not provided or was dependent on the number of days classes were cancelled or the teacher. Two students reported receiving special education services while in administrative segregation and/or in cell study while the remaining 27 students interviewed were not placed in administrative segregation during their time at the facility.

New Jersey State Prison

During the onsite monitoring of NJSP, 2 students were interviewed. Both students reported familiarity with their IEPs, including understanding the services listed in the IEP. One student reported being invited to an IEP meeting where their rights were discussed along with options for earning high school credits. The other claimed that he was not invited to an IEP meeting and that credit evaluations and classes needed for graduation had not been discussed.

Both students stated the teacher teaches multiple subjects. One student is receiving instruction in the pod and the other is receiving cell side instruction. One student reported that the teacher provides assistance when students request help. Both students reported that instruction had been reduced from three times per week to one time per week.

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Section Three: State Facilities Education Act (SFEA) Requirements

General Requirements		
Required Component	Determination GSYCF	Determination NJSP
A register is maintained for each class program N.J.A.C. 6A:17-3.2(c)	Compliant	Compliant
The educational programs operate a minimum of 220 days per year N.J.A.C. 6A:17-3.2(d)	Compliant	Compliant
The education programs are available four hours per day, five days a week, 220 days per year N.J.A.C. 6A:17-3.2(d)	Compliant	Noncompliant
Home instruction is provided in accordance with N.J.A.C. 6A:16-10.2 N.J.A.C. 6A:17-3.2(f)	Compliant	Compliant
Staffing		
Required Component	Determination GSYCF	Determination NJSP
Educational personnel are employed to ensure the provision of programs and services N.J.A.C. 6A:17-3.4(a)	Compliant	Compliant
Educational personnel possess appropriate certification endorsement N.J.A.C. 6A:17-3.4(b)	Noncompliant	Noncompliant
Copies of educational staff certifications are maintained at the agency office of education and the appropriate program site N.J.A.C. 6A:17-3.4(c)	Compliant	Compliant
The agency has submitted a plan for the required professional development for all teachers and education services personnel N.J.A.C. 6A:17-3.4(d)	Compliant	Compliant
Student Records		
Required Component	Determination GSYCF	Determination NJSP
The state facility notifies the responsible district Board of Education immediately upon a student's admission N.J.A.C. 6A:17-3.6(a)	Compliant	Compliant
The responsible district provides requested information to the State facility within 10 days of notification of admission N.J.A.C. 6A:17-3.6(a)	Compliant	Compliant
Provision of Services		
Required Component	Determination GSYCF	Determination NJSP
Intake questions are included to ascertain the student's current educational level N.J.A.C. 6A:17-3.2(a)(1)(i)	Compliant	Compliant

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Education personnel do not teach subjects outside of their certification N.J.A.C. 6A:17-3.4(b)	Noncompliant	Noncompliant
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Specific Findings of Noncompliance

Garden State Youth Correctional Facility and New Jersey State Prison

Finding 1:

The GSYCF staff do not possess educational certification in all subject areas they are assigned to teach. The chart below specifies the staff members who are assigned teaching responsibilities outside the scope of their certification.

The teacher assigned to students with disabilities at NJSP had been on leave since January and was expected to return in April. During the teacher’s absence, a staff member from the Education Unit was providing instruction to the students. This staff member does not possess appropriate certification for the subject areas taught.

The NJDOC has introduced the use of online credit recovery programs. These programs provide grade level content from a certified teacher and the lessons are provided via computer in both synchronous and asynchronous formats. A teacher possessing an NJDOE teaching certificate provides supervision and support to the students. This format of instruction is acceptable and the teacher providing the supervision does not need to possess certification for the content area being taught. The NJDOC teachers reflected in the chart below do not include the teachers participating in the online credit recovery courses.

Staff Member	Certification	Classes Assigned out of Certification Areas	Facility
One	English	History, Science and Math	GSYCF
Two	English	History, Science and Math	GSYCF
Three	Elementary	English, History, Science and Math	GSYCF
Four	Elementary Data Processing Marketing Education Business Education	English, History, Science and Math	NJSP

Required Actions:

1. The NJDOC must develop policies and procedures to ensure students with disabilities are provided education by staff possessing the appropriate certification for the subjects they are assigned to teach. The policies and procedures must:
 - Address the transient nature of the SFEA student population temporarily placed at the GSYCF and NJSP and the lack of prior knowledge of SFEA student arrivals and departures at the GSYCF and NJSP;

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- Include short term solutions such as temporary re-deployment of existing staff or the use of contracted employees;
- Include long-range solutions such as hiring of additional education unit staff;
- Contain implementation dates for both short- and long-term solutions; and
- Include an oversight mechanism and a staff-training component.

The NJDOC shall submit the policies and procedures to the NJDOE for review and approval by **September 1, 2022**.

2. The NJDOC must conduct training for all NJDOC administrators responsible for personnel within the education unit on the approved policies and procedures. The NJDOC shall submit evidence of training, including meeting agenda and sign-in sheets to the NJDOE by **December 1, 2022**.

Verification of Correction:

Monitors from the NJDOE will conduct a site visit to verify implementation of all required actions. Verification activities will include:

- Staff interviews;
- Status updates on implementation of the benchmarks contained in the approved policy; and
- Review of staff assignments and certification.

Following the verification visit, the NJDOE will issue a report indicating the status of each required action. Additional required actions will be developed and required for all areas with continued noncompliance.

New Jersey State Prison

Finding 1:

Classes for students housed at NJSP do not operate education programs four hours per day, five days a week, 220 days per year in accordance with N.J.A.C. 6A:17-3.2(d). The teacher assigned to provide special education and related services to the students at NJSP has been on an extended leave of absence beginning in January 2022 and was not expected to return until April. During the teacher's absence, a staff member from the Education Unit was providing some instruction to the students during this time. The staff member reported meeting with the students when possible, but not five days per week, and the students reported receiving instruction one time per week.

Required Actions:

1. The NJDOC must ensure that students receive instruction in accordance with N.J.A.C. 6A:17-3.2(d). When a teacher is on an extended leave of absence, the NJDOC must ensure that an appropriately certified substitute is available to provide special education and related services. The NJDOE must develop policies and procedures to ensure students with disabilities are provided education when a teacher is on an extended leave of absence. The policies and procedures must:

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- Identify process to ensure adequate coverage of Education Unit personnel to ensure students receive special education and related services when assigned teachers are on extended leave;
- Contain implementation dates; and
- Include an oversight mechanism and a staff-training component.

The NJDOC shall submit the policies and procedures to the NJDOE for review and approval by **September 1, 2022**.

2. The NJDOC must conduct training for all NJDOC administrators responsible for personnel within the education unit on the approved policies and procedures. The NJDOC shall submit evidence of training, including meeting agenda and sign-in sheets to the NJDOE by **December 1, 2022**.
3. To demonstrate the NJDOC has corrected the individual instances of noncompliance, the NJDOC must conduct annual review meetings and revise the IEPs for specific students currently housed at a NJDOC facility whose IEPs were identified as noncompliant. At the annual review meeting, the IEP team must discuss whether compensatory services should be provided to the students and document the amount of compensatory services to be provided in the IEP. The names of the students whose IEP were identified as noncompliant will be provided to the NJDOC by the NJDOE.

Verification of Correction:

Monitors from the NJDOE will conduct a site visit to verify implementation of all required actions. Verification activities will include:

- Staff interviews;
- Status updates on implementation of the benchmarks contained in the approved policy; and
- Review of staff assignments and certification.

Following the verification visit, the NJDOE will issue a report indicating the status of each required action. Additional required actions will be developed and required for all areas with continued noncompliance.

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Section Four: Findings of Noncompliance with the IDEA and New Jersey Special Education Regulations; Required Actions

Definitions of NJDOE Monitoring Determinations:

1. **Compliant:** Based on the information reviewed, the NJDOE monitors determined the NJDOC demonstrated compliance with a specific requirement under the IDEA and/or state special education regulations.
2. **Noncompliant:** Based on the information reviewed, the NJDOE monitors determined the NJDOC demonstrated noncompliance with a specific requirement under the IDEA and/or state special education regulations.
3. **No Determination or NA:** The NJDOE will make no determination in situations where there were no applicable record(s) for the NJDOE monitors to review and/or document(s) as part of the NJDOE's Data Collection Form (DCF). In addition, the NJDOE will make no determination when a specific IDEA or state special education regulation provision is not applicable to the NJDOC, and when doing so, the NJDOE will expressly state why the IDEA and/or a state special education regulation is not applicable.

File Review Overview:

NJDOC provided forty (40) files to the NJDOE monitoring team for review. Six (6) files were for students recently placed at GSYCF and records had not arrived from the school district and are not included in this report and two (2) files were for students placed at New Jersey State Prison. The files of the thirty-four students placed at GSYCF and NJSP were reviewed with the findings reflected in this report.

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Section 1: Pre-referral Interventions			
General education staff maintain documentation of intervention(s) provided in the general education setting prior to referring a student for evaluation.			
N.J.A.C. 6A:14-3.3(b) and(c)			
Required Component	Determination	Number of Files with Noncompliance at GSCF	Number of Files with Noncompliance at NJSP
Type	Noncompliant	NA	NA
Frequency	Noncompliant	NA	NA
Duration	Noncompliant	NA	NA
Effectiveness	Noncompliant	NA	NA

Section 1 Note:

1. The SFEA students present at the GSYCF and NJSP at the time of monitoring were previously identified and determined to be eligible for special education and related services. Therefore, records demonstrating the provision of interventions for students who are experiencing academic or behavioral difficulties were not available for review.

Specific Findings of Noncompliance**Garden State Youth Correctional Facility****Finding 1:**

The State is responsible for ensuring the requirements set forth in the Individuals with Disabilities Education Act (IDEA, Part B) is made available to all students with disabilities, including students in adult correctional facilities. This includes a mechanism to provide interventions in general education prior to referring a student for an evaluation. In addition, adult correctional facilities are required to ensure that students who were not identified as a student with a disability prior to incarceration are entitled to referral to and, if appropriate, evaluation by a child study team unless State law provides an exemption to that requirement.

New Jersey Administrative Code (N.J.A.C.) 6A:14-8.1(h)2 requires that for students placed in a State facility, the State facility shall provide a program according to the following: If the student is not currently classified as a student with a disability, or if the State facility does not have current school records, within 30 calendar days of placement in the State facility, the State facility shall review the student's educational status and determine if referral to the child study team is required.

Multiple staff members reported that the DOC does not have a mechanism in place to provide interventions in general education to students who are experiencing academic or behavioral difficulties. Staff members also reported that there is no mechanism in place to refer a student in the GSYF to the Child Study Team to determine if an evaluation is warranted.

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Required Actions:

1. The NJDOC must develop policies and procedures to ensure the provision of interventions to meet the needs of struggling learners. The policies and procedures must:
 - Include the creation of a team developed for the express purpose of supporting struggling learners;
 - Include the process for referring a student to the team for assistance. This process must include:
 - Form used by educational staff to refer a student to the team;
 - A list of sources that will be used to identify evidence-based interventions to support academic and behavioral needs of students;
 - The intervention form that will be created for each student;
 - Process to collect data and determine the effectiveness of the interventions; and
 - Process to refer a student to the child study team when the interventions in general education have not proven effective.
 - State the number of times each year, a minimum of 10, that the team will meet.

2. The NJDOC must develop policies and procedures to ensure the referral of students who may have a disability due to physical, sensory, emotional, communication, cognitive, or social difficulties to the Child Study Team to determine if an evaluation for special education and related services is warranted. The policies and procedures must:
 - Address the transient nature of the SFEA student population temporarily placed at the GSYCF and the lack of prior knowledge of SFEA student arrivals and departures at the GSYCF;
 - Address students who may have a disability even though they are advancing from course to course and obtaining high school credits;
 - Ensure that students referred to the child study team have an identification meeting within twenty days of referral;
 - Ensure that, when appropriate, an evaluation plan is developed, and written student consent is obtained prior to conducting any evaluations;
 - Ensure that all assessments are completed and an IEP implemented within 90 days of receipt of student consent; and,
 - Include a mechanism to verify implementation of the policy at all facilities providing educational services to student eligible under the State Facilities Education Act (SFEA).

The NJDOC shall submit the policies and procedures to the NJDOE for review and approval by **September 1, 2022**.

3. The NJDOC must conduct training for all NJDOC teachers, child study team members and administrators within the education unit on the approved policies and procedures. The NJDOC shall submit evidence of training, including meeting agenda and sign-in sheets to the NJDOE by **December 1, 2022**.

Verification of Correction:

Monitors from the NJDOE will conduct a site visit to verify implementation of all required actions. Verification activities will include:

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- Staff interviews;
- Status updates on implementation of the benchmarks contained in the approved policy; and
- Review of staff assignments and certification.

Following the verification visit, the NJDOE will issue a report indicating the status of each required action. Additional required actions will be developed and required for all areas with continued noncompliance.

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Section 2: Initial Evaluation			
<i>See Section 2 Note 1</i>			
Identification Meeting Requirements			
N.J.A.C. 6A:14-2.3(f) and 2.3(g) and 2.3(k); N.J.A.C. 6A:14-3.3(e); 20 U.S.C. §1414(b)(1); and 34 CFR §300.304(a) 20 U.S.C. §1414(b)(1)(c)(4)(A); 34 CFR §300.304(a)(4); and 34 CFR §300.305(a)			
Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
Notice of meeting provided early enough to ensure student has opportunity to attend	NA	NA	NA
Conducted within 20 days of receipt of referral	NA	NA	NA
Written notice provided within 15 days of meeting	NA	NA	NA
Required Participants at Identification Meeting			
N.J.A.C. 6A:14-2.3(f) and 2.3(g); N.J.A.C. 6A:14-2.4(a)1; 20 U.S.C. §1414(d)(1)(B); and 34 CFR §300.321(a) 34 CFR §300.503(c) and §300.504(d)			
Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
Student (indicate “did not attend” if student didn’t attend)	NA	NA	NA
NJDOC documents attempts to obtain student participation if student fails to attend the meeting	NA	NA	NA
General education teacher	NA	NA	NA
Full student study team	NA	NA	NA
Speech-language Specialist (Language concerns)	NA	NA	NA
Interpreter when necessary	NA	NA	NA
Evaluation			
N.J.A.C. 6A:14-2.3(a)6; N.J.A.C. 6A:14-2.5(b)6 and 3.6(b); 20 U.S.C. §1414(a)(1)(D); 34 CFR §300.300(a)			
Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
Multi-disciplinary evaluations: ESERS (minimum of 2 assessments by 2 team members)	NA	NA	NA
NJDOC maintains record of informed consent to evaluate	NA	NA	NA
Functional Assessment			
N.J.A.C. 6A:14-3.4(f)4(i-vi); 20 U.S.C. §1414(b)(4) and (5); and 34 CFR §300.306(c)(i)			
Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
Structured observation <input type="checkbox"/> If SLD— in classroom	NA	NA	NA
Student interview	NA	NA	NA
Teacher interview	NA	NA	NA

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Review of developmental/educational history	NA	NA	NA
Review of interventions	NA	NA	NA
Other informal measures	NA	NA	NA
Eligibility Meeting N.J.A.C. 6A:14-2.3(k)3,5 and 2.3(f) and 2.3(g)1-7; 20 U.S.C. §1414(b)(1); and 34 CFR §300.304(a) 20 U.S.C. §1414(b)(1)(c)(4)(A); 34 CFR §300.304(a)(4); and 34 CFR §300.305(a)			
Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
Notice of meeting provided early enough to ensure student has opportunity to attend	NA	NA	NA
Written notice provided within 15 days of meeting	NA	NA	NA
Required Participants at Eligibility or Eligibility IEP Meeting N.J.A.C. 6A:14-2.3(f) and 2.3(g)1-7; 20 U.S.C. §1414(b)(1)(c)(4)(A); 34 CFR §300.304(a)(4); and 34 CFR §300.305(a)			
Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
Student	NA	NA	NA
General education teacher	NA	NA	NA
Case manager/NJDOC representative (and at least one CST member who conducted an assessment)	NA	NA	NA
Interpreter when necessary: N.J.A.C. 6A:14-2.4(a)1 and 34 CFR §300.503(c) and §300.504(d)	NA	NA	NA
If continuing with IEP meeting, special education teacher or service provider is present for development of IEP	NA	NA	NA
Eligibility Criteria N.J.A.C.6A:14-3.5; N.J.A.C. 6A:14-3.3(e)1(i-iv); 20 U.S.C. §1414(c); 34 CFR §300.306(c); 20 U.S.C. §1414(d)(1)(D); and 34 CFR §300.321(f)			
Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
Established criteria applied in determining eligibility	NA	NA	NA

Section 2 Note:

1. The SFEA students present at the GSYCF at the time of monitoring were previously identified and determined to be eligible for special education and related services. Therefore, this section is not applicable.

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Section 3: Individualized Education Program			
IEP Meeting Requirements N.J.A.C. 6A:14-2.3(k)3-5; N.J.A.C. 6A:14-2.3(f) and 2.3(g)1-7; 20 U.S.C. §1414(b)(1)(c)(4)(A); 34 CFR §300.304(a)(4); and 34 CFR §300.305(a); 20 U.S.C. §1414(b)(1); and 34 CFR §300.304(a)			
Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
Notice of a meeting is provided early enough to ensure the student has an opportunity to attend	Complaint	0 of 32	0 of 2
Written notice is provided within 15 days following the meeting	Compliant	0 of 32	0 of 2
Annual Review Timelines N.J.A.C. 6A:14- 3.7a(1)			
Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
Annual reviews are conducted at least once per year	Compliant	0 of 32	0 of 2
IEP Meeting Participants N.J.A.C. 6A:14-2.3(k)2(i-x)1; N.J.A.C. 6A:14-2.4(a)1; 20 U.S.C. §1414(d)(1)(B); and 34 CFR §300.321(a) 34 CFR §300.503(c) and §300.504(d)			
Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
Adult student or parent/guardian for students under 18	Noncompliant	1 of 32	1 of 2
General education teacher	Noncompliant	7 of 32	1 of 2
Special education teacher	Noncompliant	8 of 32	1 of 2
Case manager (may also function as district rep)	Noncompliant	1 of 32	1 of 2
Interpreters at meetings when required	NA	NA	NA
IEP Required Considerations and Components N.J.A.C. 6A:14-3.7(c)1-11 and (e) 1-17; 20 U.S.C. §1414(d)(3)(A)(B); and 34 CFR §300.324(a)(1)(2)			
Present Levels of academic achievement and functional performance (PLAAFP)			
Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
Statement of how the student’s disability affects his/her involvement and progress in the general curriculum	Compliant	0 of 32	0 of 2
Strengths of the student	Compliant	0 of 32	0 of 2
Results of initial or most recent evaluations (relevant data)	Compliant	0 of 32	0 of 2
Positive behavioral interventions and supports for students whose behavior impedes learning	Compliant	0 of 32	0 of 2

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Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
Language needs—LEP students	Compliant	0 of 32	0 of 2
Blind/visually-impaired instruction in Braille	Compliant	0 of 32	0 of 2
Communication needs	Compliant	0 of 32	0 of 2
Deaf/Hard of hearing – opportunities for direct communication with peers and personnel	Compliant	0 of 32	0 of 2
Need for assistive technology	Compliant	0 of 32	0 of 2
Required Statements			
Measurable annual goal(s) and objective(s)	Compliant	0 of 32	0 of 2
Statement how progress towards annual goals will be measured	Compliant	0 of 32	0 of 2
Statement of how adult students will be informed of student progress towards annual goals and how often progress reports are provided to students	Compliant	0 of 32	0 of 2
Age 16 required transition statements	Noncompliant <i>See Section 3 Note 1</i>	32 of 32	2 of 2
Statements of supports for personnel	Compliant	0 of 32	0 of 2
Projected starting dates of related services and frequency, location and duration of services			
Related Services	Compliant	0 of 32	0 of 2
Program	Compliant	0 of 32	0 of 2
In-class resource-amount of time teacher is present in the class	NA <i>See Section 3 Note 2</i>	NA	NA

Section 3 Notes:

1. This finding is addressed in Section 5 of the report: Age 14 and 16 Transition Requirements.
2. The SFEA students are educated in the general education class in an inclusive setting. The in-class resource requirement does not apply to students educated in this setting.

Specific Findings of Noncompliance:

Garden State Youth Correctional Facility and New Jersey State Prison

Finding 1:

The NJDOC did not consistently ensure that the required participants were in attendance at IEP team meetings for students eligible for special education and related services. Specifically, special education teachers and general education teachers did not consistently attend IEP team meetings. In addition, one GSYFC student record and one NJSP student record did not contain sign-in or attendance sheets for the meeting. As attendees could not be verified those two student records are determined noncompliant.

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Required Actions:

1. The NJDOC must ensure that meetings are conducted with required participants and that documentation of attendance and/or written adult student consent to excuse a member of the team is maintained in student files. The NJDOC must develop policies and procedures to ensure IEPs meetings are conducted at least once annually.
2. The policy must include an oversight mechanism to ensure ongoing compliance. The NJDOC shall submit the policy to the NJDOE for review and approval by **September 1, 2022**.
3. The NJDOC must conduct training for all child study team members, teachers and education unit supervisors on the approved policies and procedures. The NJDOC shall submit evidence of training, including meeting agenda(s) and sign-in sheets to the NJDOE by **December 1, 2022**.

Verification of Correction:

Monitors from NJDOE will conduct a site visit to verify implementation of all required actions. Verification activities will include:

- Staff interviews;
- Student interviews;
- Review of all revised IEPs; and (do we need this for this issue?)
- Review of records of randomly selected students.

Following the verification visit, the NJDOE will issue a report indicating the status of each required action. Additional required actions will be developed for all areas with continued noncompliance. In the event a student whose IEP was determined noncompliant during the monitoring visit is no longer in the custody of the NJDOC, no further action will be taken by the NJDOE.

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Section 4: Reevaluation of Students Eligible for Special Education and Related Services			
See Section 4 Note 1			
Timelines			
N.J.A.C. 6A:14-3.8(a); 20 U.S.C. §1414(a)(2)(B)(ii)			
Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
Reevaluation conducted within 3 years of previous date of eligibility	Compliant	0 of 32	0 of 2
Reevaluation Meeting Requirements			
N.J.A.C. 6A:14-2.3(k)3-5; N.J.A.C. 6A:14-2.3(f) and 2.3(g)1-7; 20 U.S.C. §1414(b)(1)(c)(4)(A); 34 CFR §300.304(a)(4); and 34 CFR §300.305(a); 20 U.S.C. §1414(b)(1); and 34 CFR §300.304(a)			
Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
Notice of the meeting is provided early enough to ensure adult student has opportunity to attend	Compliant	0 of 32	0 of 2
Written notice is provided within 15 days following the meeting	Compliant	0 of 32	0 of 2
Required Participants at Reevaluation Planning Meeting			
N.J.A.C. 6A:14-2.3(k)2(i-x); N.J.A.C. 6A:14-2.3(k)7; N.J.A.C. 6A:14-2.4(a)1; 20 U.S.C. §1414(c)(1)(A)(i); and 34 CFR §300.305(a) 34 CFR §300.503(c) and §300.504(d)			
Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
Case manager	Noncompliant	2 of 32	1 of 2
Adult student or parent/guardian for students under 18	Noncompliant	2 of 32	1 of 2
NJDOC documents attempts to obtain adult student participation	NA	NA	NA
General education teacher	Noncompliant	16 of 32	1 of 2
Special education teacher	Noncompliant	13 of 32	1 of 2
Interpreters at meetings when required	NA	NA	NA
Waiving of Reevaluation			
N.J.A.C. 6A:14-2.3(a)1; N.J.A.C. 6A:14-2.3(a)1; 20 U.S.C. §1414(c); 34 CFR §300.300(c)(1) and (2)			
Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
Notice is provided to obtain consent if NJDOC proposes waiving the reevaluation	NA	NA	NA
If adult student consents to waive reevaluation, the NJDOC maintains record of student consent and a new timeline is set 3 years from date of consent	NA	NA	NA

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Determination of Continued Eligibility Meeting Requirements			
N.J.A.C. 6A:14-2.3(k)3,5; N.J.A.C. 6A:14-2.3(f) and 2.3(g)1-7; 20 U.S.C. §1414(b)(1); and 34 CFR §300.304(a) 20 U.S.C. §1414(b)(1)(c)(4)(A); 34 CFR §300.304(a)(4); and 34 CFR §300.305(a)			
Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
Notice of the meeting is provided early enough to ensure the adult student has opportunity to attend	Compliant	0 of 32	0 of 2
Prior to conducting any assessments consent from the adult student will be obtained	Compliant	0 of 32	0 of 2
Written notice is provided within 15 days following the meeting	Compliant	0 of 32	0 of 2
Required Participants at Meetings to Determine Continued Eligibility			
N.J.A.C. 6A:14-2.3(k)2(i-x); N.J.A.C. 6A:14-2.4(a)1; 20 U.S.C. §1414(c)(1)(A)(i); and 34 CFR §300.305(a); 34 CFR §300.503(c) and §300.504(d)			
Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
Case manager	Noncompliant	2 of 32	1 of 32
Adult student or parent/guardian for students under 18	Noncompliant	2 of 32	1 of 32
General education teacher	Noncompliant	12 of 32	1 of 32
Interpreters when necessary	NA	NA	NA

Specific Findings of Noncompliance

Garden State Youth Correctional Facility and New Jersey State Prison

Finding 1:

The NJDOC did not consistently ensure that the required participants attended reevaluation planning meetings and meetings to determine continued eligibility for students eligible for special education and related services. Specifically, special education teachers and general education teachers were not consistently in attendance at reevaluation planning meetings and meetings to determine continued eligibility. In addition, two GSYFC student records and one NJSP student record did not contain sign-in or attendance sheets for the meeting. As attendees could not be verified those three student records are determined noncompliant.

Required Actions:

1. The NJDOC must ensure that meetings are conducted with required participants and that documentation of attendance and/or written adult student consent to excuse a member of the team is maintained in student files. The NJDOC must develop policies and procedures to ensure IEP meetings are conducted at least once annually.
2. The policy must include an oversight mechanism to ensure ongoing compliance. The NJDOC shall submit the policy to the NJDOE for review and approval by **September 1, 2022**.

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3. The NJDOC must conduct training for all child study team members, teachers and education unit supervisors on the approved policies and procedures. The NJDOC shall submit evidence of training, including meeting agenda(s) and sign-in sheets to the NJDOE by **December 1, 2022**.

Verification of Correction:

Monitors from NJDOE will conduct a site visit to verify implementation of all required actions. Verification activities will include:

- Staff interviews;
- Student interviews; and
- Review of records of randomly selected students.

Following the verification visit, the NJDOE will issue a report indicating the status of each required action. Additional required actions will be developed for all areas with continued noncompliance. In the event a student whose IEP was determined noncompliant during the monitoring visit is no longer in the custody of the NJDOC, no further action will be taken by the NJDOE.

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Section 5: Age 14 and 16 Transition Requirements			
<i>See Section 5 Note 1</i>			
Student Invitations			
N.J.A.C. 6A:14-2.3(k)2x and 3.7(e)13, 3.7(h); 20 U.S.C. §1414 (d)(1)(A)(i)(1)(VIII); and 34 CFR §300.322(b)(2)			
Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
Adult student is invited to attend his/her own IEP meeting	Compliant	0 of 32	0 of 2
Age 14 IEP Requirements			
N.J.A.C. 6A:14-3.7(e)11			
Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
The IEP includes a statement of the adult student’s strengths, interests and preferences	Compliant	0 of 32	0 of 2
The IEP includes a description of the need for consultation with other agencies	Compliant	0 of 32	0 of 2
The IEP includes the name or position of a staff person responsible to serve as liaison to post-secondary resources	Compliant	0 of 32	0 of 2
The IEP includes a statement of needed interagency linkages and responsibilities	Compliant	0 of 32	0 of 2
Age 16 IEP Requirements			
N.J.A.C. 6A:14-3.7(e)11			
Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
The IEP includes an appropriate postsecondary measurable goal or goals that covers education or training, or employment, and, as needed, independent living	Compliant	0 of 32	0 of 2
The post-secondary goals are updated annually	Compliant	0 of 32	0 of 2
There is evidence that the measurable postsecondary goals were based on age-appropriate transition assessment	Noncompliant	32 of 32	2 of 2
The IEP includes transition services that will reasonably enable the student to meet his or her postsecondary goals	Compliant	0 of 32	0 of 2

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Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
The transition services include courses of study that will reasonably enable the student to meet his or her postsecondary goals	Compliant	0 of 32	0 of 2
The IEP includes annual goals related to the student’s transition services needs	Compliant	0 of 32	0 of 2
If appropriate, there is evidence that a representative of any participating agency was invited to the IEP team meeting with the prior consent of the student or student who has reached the age of majority	NA <i>See Section 5 Note 2</i>	NA	0 of 2

Section 5 Notes:

1. Age 16 transition requirements apply only to those adult students who will be released prior to turning age 21. The NJDOC is not required to include transition requirements in the IEPs of students who will be released after age 21 as set forth in 34 CFR §300.324(d)(ii).
2. The IEPs of the students did not identify any needed interagency linkages. Therefore, the requirement that a participating agency receive an invitation to attend the IEP meeting is not applicable.

Specific Findings of Noncompliance

Garden State Youth Correctional Facility and New Jersey State Prison

Finding 1:

The NJDOC did not consistently complete IDEA required transition planning for adult students and document decisions in the IEP for students at GSCYF and NJSP. The IEPs did not include evidence that post-secondary goals on based on age-appropriate transition assessments.

Required Actions:

1. The NJDOC must ensure that transition is discussed at each IEP meeting for students age 14 or above, and that decisions are documented in the IEP. The NJDOC must develop policies and procedures to ensure age 16 transition components are documented in the IEP for each eligible student.
2. The policies and procedures must include an oversight mechanism to ensure ongoing compliance. The NJDOC shall submit the policy to the NJDOE for review and approval by **September 1, 2022**.
3. The NJDOC must conduct training for all child study team members, teachers and education unit supervisors on the approved policies and procedures. The NJDOC shall submit evidence of training, including meeting agenda(s) and sign-in sheets to the NJDOE by **December 1, 2022**.

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4. To demonstrate the NJDOC has corrected the individual instances of noncompliance, the NJDOC must conduct annual review meetings and revise the IEPs for specific students currently housed at a NJDOC facility whose IEPs were identified as noncompliant. Names of the students whose IEPs were identified as noncompliant will be provided to the NJDOC by the NJDOE.

Verification of Correction:

Monitors from the NJDOE will conduct a site visit to verify implementation of all required actions. Verification activities will include:

- Staff interviews;
- Student interviews;
- Review of all revised IEPs; and
- Review of records of randomly selected students.

Following the verification visit, the NJDOE will issue a report indicating the status of each required action. Additional required actions will be developed for all areas with continued noncompliance. In the event a student whose IEP was determined as noncompliant during the monitoring visit is no longer in the custody of the NJDOC, no further action will be taken by the NJDOE.

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Section 6: Graduation Notice and Summary of Performance			
<i>See Section 6 Note</i>			
Written Notice of Graduation			
N.J.A.C. 6A:14-4.11(b)2			
Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
Provided when required - prior to graduation	NA	NA	NA
Summary of academic achievement and functional performance			
N.J.A.C. 6A:14-4.11(b)4; 20 U.S.C. §1414(c)(5)(B); and 34 CFR §300.305(e)(3)			
Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
Includes date of graduation/exit	NA	NA	NA
Provided prior to graduation or the conclusion of the school year in which he/she exceeds the age of eligibility (exits program)	NA	NA	NA

Section 6 Note:

1. The students at GSYCF and NJSP had not reached credit requirements from their respective school districts to graduate. Therefore, this section is not applicable.
2. Files of SFEA students with disabilities who had graduated were not available for review during the monitoring visits. In accordance with N.J.A.C. 6A:17-3.2(k), when student in a State facility who has an identifiable school district of residence as defined by N.J.S.A. 18A:7B-12, the district board of education shall grant a State-endorsed diploma in accordance with N.J.A.C. 6A:8-5.1 and 5.2 and 6A:14-4.11. When students meet their graduation requirements the student record is sent back to the district and are not maintained by the DOC.

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Section 7: Classroom Observation/Compliance Requirements		
Implementation of IEPs		
Required Component	Determination for GSYCF	Determination for NJSP
Provision of special education programs	Compliant	Noncompliant
Provision of related services	Compliant	Compliant
Implementation of accommodations and modifications	Compliant	Compliant
Teachers have access to IEPs <i>Interviews indicate teachers have access to IEPs</i>	YES	YES
NJDOC maintains documentation that teachers have been informed of their responsibilities <i>Evidence demonstrates teacher have been informed of IEP responsibilities</i>	YES	YES

Specific Findings of Noncompliance

New Jersey State Prison

Finding 1:

The teacher assigned to provide special education and related services to the students at NJSP has been on an extended leave of absence beginning in January 2022 and was not expected to return until sometime in April. During the teacher’s absence, a supervisor in the Education Unit was providing some instruction to the students during this time. The supervisor reported meeting with the students when she could, and the students reported receiving instruction one time per week. While students are receiving education programming, they are not receiving education programs four hours per day, five days a week, 220 days per year in accordance with N.J.A.C. 6A:17-3.2(d).

Required Actions:

1. The NJDOC must ensure that students receive instruction in accordance with N.J.A.C. 6A:17-3.2(d). When a teacher is on an extended leave of absence, the NJDOC must ensure that an appropriately certified substitute is available to provide special education and related services. The NJDOE must develop policies and procedures to ensure students with disabilities are provided education when a teacher is on an extended leave of absence. The policies and procedures must:
 - Identify process to ensure adequate coverage of Education Unit personnel to ensure students receive special education and related services when assigned teachers are on extended leave;
 - Contain implementation dates; and
 - Include an oversight mechanism and a staff-training component.

The NJDOC shall submit the policies and procedures to the NJDOE for review and approval by **September 1, 2022**.

2. The NJDOC must conduct training for all NJDOC administrators responsible for personnel within the education unit on the approved policies and procedures. The NJDOC shall submit evidence of training, including meeting agenda and sign-in sheets to the NJDOE by **December 1, 2022**.

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3. To demonstrate the NJDOC has corrected the individual instances of noncompliance, the NJDOC must conduct annual review meetings and revise the IEPs for specific students currently housed at a NJDOC facility whose IEPs were identified as noncompliant. At the annual review meeting, the IEP team must discuss whether compensatory services should be provided to the students and document the amount of compensatory services to be provided in the IEP. The names of the students whose IEP were identified as noncompliant will be provided to the NJDOC by the NJDOE.

Verification of Correction:

Monitors from the NJDOE will conduct a site visit to verify implementation of all required actions. Verification activities will include:

- Staff interviews;
- Status updates on implementation of the benchmarks contained in the approved policy; and
- Review of staff assignments and certification.

Following the verification visit, the NJDOE will issue a report indicating the status of each required action. Additional required actions will be developed and required for all areas with continued noncompliance.

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Section 8: Discipline Procedures			
<i>See Section 8 Note</i>			
IEP Development and Implementation			
34 C.F.R. §300.304(b); 34 C.F.R. §300.501(c); 34 C.F.R. §300.530(a)-(h)			
Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
The public agency provides services to student with disabilities that have been removed from their current placement for 10 school days in the same school year, during any subsequent days of removal	Compliant	0 of 2	0 of 1
Personnel apply relevant disciplinary procedures to students with disabilities in the same manner and duration as would be applied to students without disabilities when the NJDOC changes a student’s placement for disciplinary reasons exceeding 10 consecutive school days and determined that the violation was not a manifestation of the student’s disability	Compliant	0 of 2	0 of 1
Students with disabilities who are removed from their current placement are provided services in another setting in order to continue to participate in the general education curriculum and to progress toward meeting IEP goals	Noncompliant	0 of 2	1 of 1
During suspensions of more than 10 school days in a school year, regardless of the manifestation determination, students with disabilities receive services to enable them to participate in the general curriculum and to progress toward IEP goals	Noncompliant	0 of 2	1 of 1
Within 10 school days of any decision to change the placement of a student with a disability	Compliant	0 of 2	0 of 1

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because of a violation of a code of student conduct, the NJDOC, the student, and relevant members of the IEP team meet to review all relevant information in the student’s file, including the student’s IEP, and any teacher observations			
In making the manifestation determination, the IEP team reviews all relevant information in the student’s file to determine if the conduct in question was caused by, or had a direct and substantial relationship to the student’s disability	Compliant	0 of 2	0 of 1
An interim alternative educational setting is determined by the IEP team when there is a change of placement	Compliant	0 of 2	0 of 1
Positive Behavioral Supports			
34 C.F.R. §300.324(a); 34 C.F.R. §300.530(d)-(h)			
Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
In the case of a student whose behavior impedes the student’s learning or that of others, the IEP Team considers the use of positive behavioral interventions and supports and other strategies to address that behavior	Compliant	0 of 2	0 of 1
At least one general education teacher participates in the determination of appropriate positive behavioral interventions and supports and other strategies for the student	Compliant	0 of 2	0 of 1
As appropriate, a functional behavioral assessment and behavioral intervention services and modifications are designed to address the behavior violation so that it NJDOEs not recur for a student with a disability who is	Compliant	0 of 2	0 of 1

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removed from the student's current placement			
Functional behavioral assessments are based on multiple sources of data, including but not limited to, information obtained from direct observation of the student, information from the student, the student's teacher(s) and/or related service provider(s), a review of available data and information from the student's record	Compliant	0 of 2	0 of 1
When a student has been removed for more than 10 days and the student's conduct is a manifestation of the student's disability, the IEP Team conducts a functional behavioral assessment and implements a behavioral intervention plan	Compliant	0 of 2	0 of 1
If the student already has a behavioral intervention plan, the IEP Team meets to review the plan and its implementation and modifies the plan and its implementation, as necessary, to address the behavior that resulted in the disciplinary change of placement	Compliant	0 of 2	0 of 1
Procedural Safeguards			
34 C.F.R. §300.501(c); 34 C.F.R. §300.530(d) and (h)			
Required Component	Determination	Number of Files with Noncompliance at GSYCF	Number of Files with Noncompliance at NJSP
If the student cannot participate in a meeting in which a decision is to be made regarding the educational placement of the child, the agency uses other methods to ensure student participation, including individual or conference calls or video conferencing	Compliant	0 of 2	0 of 1
If a placement decision is made by a group without the	Compliant	0 of 2	0 of 1

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involvement of a student, the agency maintains a record of the attempts to ensure their involvement			
The public agency provides services during periods of removal to a student with a disability who has been removed from his or her current placement	Noncompliant	0 of 2	1 of 1
The agency notifies the student on the date in which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct and provides the student with the procedural safeguards notice	Compliant	0 of 2	0 of 1

Section 8 Note: Findings for section 8 are based on the documentation in three student files and the information obtained from student interviews.

New Jersey State Prison

Finding 1:

When a student is removed from their current placement due to disciplinary removals, the education agency must ensure students with disabilities receive services to enable them to participate in the general curriculum and to progress toward IEP goals. The teacher assigned to provide special education and related services to the students at NJSP has been on an extended leave of absence beginning in January 2022 and was not expected to return until sometime in April. During the teacher’s absence, a supervisor in the Education Unit was providing some instruction to the students during this time. The supervisor reported meeting with the students when she could, and the students reported receiving instruction one time per week. While students are receiving limited education programming, they are not receiving the special education and related services required by the IEP.

Required Actions:

1. The NJDOC must ensure that students moved to NJSP for disciplinary reasons receive services to enable them to participate in the general curriculum and to progress toward IEP goals and that staffing issues do not impact the provision of services. When a teacher is on an extended leave of absence, the NJDOC must ensure that an appropriately certified substitute is available to provide special education and related services. The NJDOE must develop policies and procedures to ensure students with disabilities are provided education when a teacher is on an extended leave of absence. The policies and procedures must:
 - Identify process to ensure adequate coverage of Education Unit personnel to ensure students receive special education and related services when assigned teachers are on extended leave;

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- Contain implementation dates; and
- Include an oversight mechanism and a staff-training component.

The NJDOC shall submit the policies and procedures to the NJDOE for review and approval by **September 1, 2022**.

2. The NJDOC must conduct training for all NJDOC administrators responsible for personnel within the education unit on the approved policies and procedures. The NJDOC shall submit evidence of training, including meeting agenda and sign-in sheets to the NJDOE by **December 1, 2022**.
3. To demonstrate the NJDOC has corrected the individual instances of noncompliance, the NJDOC must conduct annual review meetings and revise the IEPs for specific students currently housed at a NJDOC facility whose IEPs were identified as noncompliant. At the annual review meeting, the IEP team must discuss whether compensatory services should be provided to the students and document the amount of compensatory services to be provided in the IEP. The names of the students whose IEP were identified as noncompliant will be provided to the NJDOC by the NJDOE.

Verification of Correction:

Monitors from the NJDOE will conduct a site visit to verify implementation of all required actions. Verification activities will include:

- Staff interviews;
- Status updates on implementation of the benchmarks contained in the approved policy; and
- Review of staff assignments and certification.

Following the verification visit, the NJDOE will issue a report indicating the status of each required action. Additional required actions will be developed and required for all areas with continued noncompliance.

Recommendation

Interviews conducted by the NJDOE monitor and Dr. Roberts with students who were placed in the RHU due to an infraction that occurred during school hours demonstrated the students were not familiar with the term “manifestation determination meeting”. Review of relevant student records demonstrated that appropriate procedures regarding manifestation determination meetings are being followed. However, it is important that the adult student completely understands the name, purpose and outcome of the manifestation determination meeting in order to fully participate in the meeting and advocate for himself. It is recommended that the NJDOC develop plain language documents that explain each step of the manifestation determination meeting and that meeting norms are developed to ensure a check for understanding occurs at each step in the process.

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Section Five: External Monitor Recommendations
(Provided Directly by Dr. Susan Roberts)

Upon review of the NJDOE Framework of Findings from the March 2022 monitoring visit as required by the May 20, 2019, Consent Order, I write this to endorse and agree with the findings. As the court-appointed external monitor, I participated in the on-site review with the members of the New Jersey Department of Education (NJDOE) monitoring team. Specifically, I was involved with the following monitoring activities:

- I participated in 26 of 27 student interviews at Garden State Youth Correctional Facility (GYCF). The six remaining students were in quarantine due to COVID-19 or assigned to the I-Wing.
- I observed NJDOE team members complete a review of student records using a Data Collection Form. The form provided an efficient and consistent process for reviewing student records.
- I observed two staff member interviews, including the school psychologist and the school principal.
- I participated in student interviews in the New Jersey State Prison (NJSP) Restorative Housing Unit (RHU), along with an interview of the education supervisor.
- I participated in three interviews of students assigned to the RHU at GYCF. Three other students refused to be interviewed.
- I observed instruction in the pod at the RHU at GYCF.

Findings Listed by NJDOE

I endorse and agree with the findings made by the NJDOE review team, as listed in the Framework of Findings. The review was comprehensive, and the team's use of the agreed upon monitoring tools was credible.

External Monitor Comments Specific to the Settlement Agreement

Section II(b)(6): Students with disabilities will be provided a minimum of four hours of instruction per day in the regular classroom setting. This requirement is not applicable in cases including, but no limited to: (a) students who deny or refused education in the classroom setting (for example, if a student refuses to leave the cell); (b) students who are unable to attend classroom education due to medical concerns (for example, due to risk of infection to other students); and (c) students whose classes are interrupted due to bona fide security interests (for example, if a fight or other disruption delays movement to the classroom). To the extent these exceptions occur, the identity of the student, reason, and date will be tracked by the DOC. To the extent exceptions in (c) above result in class cancellations, make-up instruction will be provided per Section II(b)(8).

Although classes are not cancelled often, according to student interviews, students are not provided make-up work when classes are cancelled. When they return to class, they pick up where they left off.

According to student interviews, the new two-hour block schedule is "hard." The classes are "too long." "Shorter classes are better." Staff indicated that it is hard to engage the students in one content area for two hours.

The school administrator indicated that there is a reduction in student trafficking and noise since the two-hour block schedule has been implemented.

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I recommend that teachers receive professional development on topics relevant to engaging the learner and using evidence-based strategies such as *Universal Design for Learning* as a way to address the needs of those learners who struggle with the longer class periods.

Section II(b)(7): *The DOC will use appropriately certified teachers to provide special education services in accordance with the mandates listed in students' IEPs.*

As indicated in the CAP Framework of Findings, the DOC is non-compliant in this area.

Section II(b)(8): *Students with disabilities will be provided with make-up instructional time when correctional needs require the cancellation of the entire morning (AM session) or the entire afternoon (PM session) of class. Make-up instruction will cover the relevant subject and content of the cancelled class.*

As indicated above, student interviews demonstrate that make-up instruction is not typically provided. I recommend that NJDOC develop a system for documenting class cancellations and the provision of make-up instruction to students with disabilities. I would also note that providing a student with a "packet" of "make-up work" is not the same as providing "make-up instruction."

Also, the DOC could explore the use of secure technology (tablets) for students to access when classes are cancelled so they can continue to engage in meaningful educational activities that are relevant to them.

NJDOE could ask for documentation to show when make-up work and/or make-up instruction was provided (based on whether school was in session "in-person" or if instruction was impeded because of COVID restrictions).

Section II(b)(9): *Instructional personnel will use research-based instructional practices, which may include the use of worksheets as reinforcement exercises. The Parties agree worksheets are an instructional aide and not an instructional technique. Worksheets will be used as a supplement and not to the exclusion of other methods or techniques."*

Some classroom instruction appears to be based on evidence-based practices. According to students, most instruction is provided through packets/worksheets and one-on-one instruction **when the student asks for help**. They stated that it is hard for them to be engaged for two hours with this method of instruction.

Understandably, students were provided with packets/worksheets during the time the school was closed due to COVID. Some students completed the work, but most stated they couldn't complete the packets without help, so they didn't complete them. This illustrates the need for teachers to engage in other strategies and practices to assure students are able to accomplish their learning goals now that they are able to attend class in person.

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Again, I recommend that teachers receive professional development on topics relevant to engaging the learner and using evidence-based strategies such as *Universal Design for Learning* as a way to address the needs of those learners who struggle with the longer class periods, and who need more than worksheets and packets.

Section II(b)11: Behavioral assessments and plans, including Functional Behavior Assessments and Behavioral Intervention Plans, will be developed, and implemented for students with disabilities in appropriate circumstances.

I found no evidence that this is taking place.

However, in practice, it is difficult for school staff to control poor behavior on the housing unit that results in a student being sent to the RHU. In cases such as this, even if a student had an FBA/BIP that was implemented in the school, it wouldn't impact the student's behavior on the housing unit because the same supports are not in place.

I recommend that the education staff, on a large scale, teaches students skills related to self-regulation and emotional regulation. Providing instruction on these skills and allowing students to practice them in the school environment can have significant benefits over-all. Students who learn and practice these skills will have the tools necessary to help prevent them from getting into trouble on their housing units. Providing positive incentives/rewards for students who demonstrate an ability to self-regulate can increase the effectiveness of this type of instruction.

According to my interview with the school psychologist, she spends much of her counseling time providing one-on-one instruction to students who lack these self-regulation and emotional-regulation skills. It makes sense to broaden the scope of this instruction and increase its impact.

Section II(b)12: Manifestation determinations will be conducted for students listed on the DOC's special education roster for disciplinary incidents that occur during the school day that result in a disciplinary charge. If the manifestation determination finds that the behavior is a result of the student's disability, the student will not be placed in the Restorative Housing Unit or other close custody until for more than ten days without a finding of a bona fide security or compelling penological interest justifying a change in educational placement (see 20 U.S.C. 1414(d)(7)), unless either an exception applies (see 34 C.F.R. 300.530(g)) or if the sentence extends pre-existing placement in the Restorative House Unit or other close custody unit. An adjudication of guilt for a violation of N.J.A.C. 10A:4-41 will not be sufficient, without more, for a finding of a bona fide security or other compelling penological interest. An individualized finding by the facility Administrator or their designee as to that interest will be required in each case.

It was hard to determine the DOC's compliance with this element of the agreement. If the student's discipline was associated with an incident that occurred on the housing unit, the school is not required to conduct a Manifestation Determination meeting. **I recommend when a student is assigned to the RHU, the school staff maintain documentation to indicate whether the discipline was associated with**

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an incident at the school. This will enable to monitoring team from NJDOE to discern whether or not there was a need for a Manifestation Determination meeting.

Section II(b)(13): For students eligible to receive special education and related services in the Restorative Housing Unit or other close custody unit, the DOC will ensure that the conditions of this educational environment reflect classrooms in the general population by modifying the classroom setting: The DOC will take steps to reduce outside noise and improve privacy with noise-reducing fabric or blankets, while ensuring correctional police officers can observe education staff and inmates to address penological concerns.

- a. As of the Effective Date, the following modifications will be made at the module for the Garden State youth Correctional Facility (formerly used as the module for Wagner Youth Correctional Facility) and Northern State Prison. The educational module will be modified with an approximately eight-foot long noise reduction wall-curtain blocking off two-and-a-half walls that will be attached near the top of the educational module and remain open approximately two feet from the floor for visibility.*
- b. As of the Effective Date, Section II(b)(i)(13) does not apply to New Jersey State Prison and South Woods State Prison. If the DOC learns that more than three students classified as being entitled to special education are housed in the Restorative Housing Unit or other close custody unit in either of those DOC Prisons, the DOC will notify Plaintiff's Counsel to discuss the implications of this provision. The DOC will check the number of such students at least monthly.*

The RHU at GYCF was "sound proofed" with large blankets as described in the above agreement. The unit was very loud. The instructor was outside the fence using a whiteboard to teach a lesson. The two students had calculators. It was very hard to hear the instructor.

Section II(b)14: Any use of Cell Study must comply with the following:

- a. Cell Study will only be used to deliver education services to students in the following situations: (a) students who deny or refuse education in the classroom setting (for example, if a student refuses to leave the cell); (b) students who are unable to attend classroom education due to medical concerns (for example, due to risk of infection to other students); (c) or students whose classes are interrupted due to bona fide security interests (for example, if a fight or other disruption delays movement to the classroom).*
- b. The DOC will continue to document the identity of the students, reason, and date for the use of Cell Study; and*
- c. During Cell Study, a certified teacher will attempt to engage each student in face-to-face instruction. Subject to the teacher's professional discretion, if the first engagement was unsuccessful, the teacher will attempt to reengage the student in face-to-face instruction that day.*
- d. Cell Study may not consist solely of the student completing a worksheet without simultaneous feedback or active participation by the teacher.*

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After observation and interviews of staff and students in the RHU at New Jersey State Prison (NJSP) and GYCF, it was clear that students in the RHU do not benefit from the same instruction they would receive in the Learning Center at GYCF.

The difference is significant.

- Students must be strip searched before entering the classroom (pod) in the RHU. This appears to add another barrier for them to receive the services they need.
- Three of six students refused to be interviewed regarding education services in the RHU at GYCF.
- One student stated a staff member would deliver “work” to the cell and invite the student to “come down” to the pod for explanation. He says that she does not explain it at the door. Other students report the same.
- Students report that school is cancelled a lot.
- Students report that materials are outdated, and they need more resources.
- One student states that school is “hard in the cage.”
- Students state that Cell Study is, “pass out the work, no explanation.”

Regarding the instruction in the RHU at NJSP:

- It was reported by the education supervisor that there hasn’t been any instruction because the students are “done.” Meaning, both are close to graduating. The education supervisor visits the students “as often as possible.”
- It was noted that the teacher assigned to these students had been out for two months, and she had the records to determine if the students have completed what they need in order to graduate.
- One student at the RHU at NJSP states that the staff are not very professional and “they need to teach.” He reported that he did NOT see a teacher three times per week; it was more like “once every other week or so.”
- The other student at the RHU at NJSP said that 6 months ago he had 50 credits and now he is graduating. He said that his teacher was “persistent.” When asked about attending school “in the pod,” his response was, “Take it for what it’s worth.”

I recognize that providing relevant, comprehensive education services in the RHU setting is extremely difficult. The agency’s priority is safety and security. However, the needs of the students are not being met.

I recommend that the DOC investigate the use of secure technology (tablets) to provide engaging and interactive education and rehabilitative programming to students in the RHU. This would alleviate the need for students to be strip searched in order to receive services. Students would not have to be educated in the very noisy environment in the pod. The content on the devices would be relevant to their needs and would be individualized per their IEPs. This type of technology has been used successfully in Restrictive Housing Units (and other areas) in many jurisdictions across the country.

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I would note that instruction cannot be replaced with secure tablets. However, the use of secure tablets helps to assure that students are accessing relevant content when instructors are not available, and instructors can facilitate the students' use of the tablets to complete high school credits and other relevant programming.

Other Relevant Comments and Recommendations

Professional development specific to the needs of teachers who engage with difficult students is a critical piece to the success of students with disabilities. I recommend that teachers be involved in the selection of relevant professional development. They reported that the professional development on Trauma Informed Practice provided by staff from Rutgers University was extremely helpful to them.

The DOC staff was very accommodating during the week of the on-site monitoring. It was evident that they are making progress in meeting the criteria of the settlement agreement.