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Governor

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**GUIDANCE MEMORANDUM 21-02**

**TO:** All School District Superintendents  
Charter School Sponsors

**FROM:** Jhone M. Ebert, Superintendent of Public Instruction

**DATE:** May 28, 2021

**SUBJECT:** Guidance for 2021-22 School Year Reopening

A handwritten signature in black ink, appearing to read "Jhone M. Ebert".

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*This guidance supersedes all previous guidance issued by the Nevada Department of Education (NDE or Department) related to Path Forward Programs of Distance Education, existing authority for which expires at the end of the 2020-21 extended school year.*

**Background**

On April 19, 2021, Governor Sisolak issued [Declaration of Emergency Directive 044](#) requiring the Superintendent of Public Instruction to update the requirements and provide written guidance to county school districts and State and district sponsored charter schools (“districts and schools”) regarding reopening plans and plans for Path Forward Programs of Distance Education for the 2021-22 school year.

This memo describes the requirements for offering distance education during the 2021-22 school year. To support districts and schools in planning ahead, the final section of this memo provides background information regarding the reopening plans federally required under the American Rescue Plan (ARP) Act.

**In-Person Instruction**

In accordance with [Directive 044](#), effective May 1, 2021, authority for managing certain COVID-19 mitigation measures is delegated to district leaders and charter school sponsors. Superintendents and charter school sponsors (“LEA leaders”) may determine capacity limits, social distancing protocols, and sanitation protocols for school transportation, spaces within school buildings or on school grounds, and for public gatherings and events of up to 250 people.<sup>1</sup> LEA leaders should make these decisions in consultation with staff and families as well as local public health authorities.

**Path Forward Programs of Distance Education**

Given local control over mitigation requirements, it is anticipated that districts and schools will open for

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<sup>1</sup> Public gatherings and events of over 250 people organized or hosted by districts or schools or in school buildings or on school grounds require a Large Gathering Plan pursuant to Directives 044 and 041.

the 2021-22 school year with the capacity to offer in-person learning to all students. However, due to the need to accommodate student and family health and safety concerns and the potential need for students to have access to education while under quarantine, Section 15 of Directive 044 requires that all districts and schools provide a distance education option for students throughout the remainder of the Governor's Declaration of Emergency in response to COVID-19. Therefore, all districts and schools must submit a Plan for a Path Forward Program of Distance Education for the 2021-22 school year and the accompanying certification as described below. This requirement does not apply to programs of distance education as approved by NDE in accordance with Nevada Administrative Code (NAC) 388.830.

Distance education options must be available to all students, regardless of their public school of enrollment, if they have documentation from a medical professional related to a condition that would be compromised by attending school in-person or if they are quarantined on the advice of local public health officials. In addition, county school districts must provide distance education options to any student based on parent/guardian request through a process to be established by the district. County school districts may restrict entry into and exit from distance education to certain times within the academic year (i.e., beginning/end of quarter, semester, etc.)

### **Minimum Requirements for Path Forward Programs of Distance Education**

In implementing Path Forward Programs of Distance Education, districts and schools must ensure students participating in distance education have access to the technology necessary to participate in distance education, such as access to a computer and internet connectivity, or plan to provide accommodations for students without access to such technology. Districts and schools must provide opportunities for distance education as follows:

- (1) Any district or charter school student who has documentation from a medical professional related to a condition that would be compromised by attending school in-person or is quarantined on the advice of local public health officials must have an opportunity to access and participate in distance education.
- (2) All county school district students must have an ability to access and participate in distance education at the request of their parent/guardian through a process to be established by the district.

In addition, districts and schools must implement Path Forward Programs of Distance Education as follows:

- (1) A licensed teacher or substitute teacher must attempt to contact each student via electronic means or by telephone at least once per instructional day; if a student's lack of access to a telephone or internet service results in an inability to be contacted, a licensed teacher or licensed substitute teacher must attempt contact via other means (e.g., home visit) once per week and maintain a record of attempts.
- (2) The program of instruction must provide appropriate education for English Learners, students with Individualized Education Programs, and students with 504 Plans.
- (3) Licensed teachers and/or licensed substitutes must be accessible to students through the internet or by telephone during the school's regularly scheduled instructional hours.
- (4) Students participating in distance education must receive access to the nutrition services to which they are entitled.
- (5) Districts and schools must use a consistent method in Infinite Campus for recording contact with students participating in distance education, which may include students demonstrating regular weekly progress in their classwork that can be verified through a learning management system.

No later than July 14, 2021:

- School district superintendents must submit the signed certification form attached via email to

Amelia Thibault at [acthibault@doe.nv.gov](mailto:acthibault@doe.nv.gov). District plans describing their approach to Path Forward Programs of Distance Education must be incorporated into the federally required LEA Plans for Safe Return to In-Person Instruction and Continuity of Services, described in more detail below.

- Charter school leaders must submit the signed certification and their Plans for Path Forward Programs of Distance Education to their sponsor; sponsoring authorities will compile and transmit the forms and plans to the Department.

### ***Hybrid Learning***

For the purposes of this guidance, “hybrid learning” is defined as any arrangement under which a district or school is providing in-person instruction concurrently with distance education either through electronic means or through paper correspondence. This may include scenarios under which some students are learning in-person and others are learning through distance education, as well as scenarios under which all students are alternating between in-person instruction and distance education on a regular schedule.

Districts and schools may, but are not required to, consider the following approaches to implementing hybrid learning:

- Prioritizing in-person instruction for students most negatively impacted by COVID-19, including students from families experiencing poverty, students of color, English learners, students with disabilities, students experiencing homelessness, children and youth in foster care, and migratory students;
- Evaluating students’ Individualized Education Programs or 504 Plans to determine whether the provision of services requires in-person instruction or interaction;
- Determining that certain grade levels or courses are better suited to in-person instruction or distance education; or
- Considering documented student and family medical circumstances.

Districts and schools may *not* determine whether students receive in-person instruction or distance education based on perceived access to technology, at-home support, or any other considerations of means or determinations of district or school personnel that are not based on evidence.

### ***Attendance***

Daily attendance must be taken for all modes of learning: in-person, hybrid, and full distance, except for schools that have approved Programs of Distance Learning per NAC 388.830. Schools with approved Programs of Distance Learning may continue to take attendance per NAC 387.193.

*Daily attendance* may be satisfied in any of the following ways:

- (1) The student is physically present; and/or
- (2) The pupil makes progress in their classwork leading toward mastery of Nevada Academic Content Standards and/or a course’s completion that can be verified through a learning management system or other means; and/or
- (3) The pupil participates in a real-time (synchronous) class session; and/or
- (4) The pupil meets with or otherwise communicates with a licensed teacher or licensed substitute teacher who is able to discuss the pupil’s progress in the course.

If a pupil participating in distance education full- or part-time demonstrates any one of the four criteria, the pupil is considered present for the full day. If the pupil does not demonstrate at least

one of the four criteria, they are considered absent for the full day.

### **Federally Required Plan for Safe Return to In-Person Instruction and Continuity of Services**

This section of the document is informational to provide LEAs with context that may inform the process used by LEAs to formulate and finalize their Plans for Path Forward Programs of Distance Education.

On April 22, 2021, U.S. Department of Education (USED) published an [interim final rule](#) (IFR) related to the implementation of the American Rescue Plan (ARP) Act. Per USED requirements, LEAs must either:

- (a) Within 30 days of receipt of ARP Elementary and Secondary School Emergency Relief (ESSER) funds, develop and make publicly available on the LEA’s website a plan for the safe return to in-person instruction and continuity of services; or
- (b) Have developed and made publicly available on the LEA’s website such a plan that meets statutory requirements before the enactment of the ARP Act, which must be revised no later than six months after it was last reviewed.

Given the USED guidance regarding LEA Plans for Safe Return to In-Person Instruction and Continuity of Services (“LEA Plans for Safe Return”), it is anticipated that all LEAs<sup>2</sup> must update or replace their 2020-21 reopening plans (as previously required by Emergency Directive 022) to meet the statutory requirements of the ARP Act.

The IFR regarding the LEA Plans for Safe Return is excerpted below for your ease of reference:

“First, the requirement clarifies that an LEA's plan must include how it will maintain the health and safety of students, educators, and other school and LEA staff, and the extent to which it has adopted policies, and a description of any such policies, on each of the CDC's safety recommendations including:

- Universal and correct wearing of masks;
- Modifying facilities to allow for physical distancing (e.g., use of cohorts/podding);
- Handwashing and respiratory etiquette; cleaning and maintaining healthy facilities, including improving ventilation; contact tracing in combination with isolation and quarantine, in collaboration with the State, local, territorial, or Tribal health departments;
- Diagnostic and screening testing;
- Efforts to provide vaccinations to school communities;
- Appropriate accommodations for children with disabilities with respect to health and safety policies; and
- Coordination with State and local health officials.

“Second, the requirement further clarifies that the plan must describe how the LEA will ensure continuity of services, including but not limited to services to address students' academic needs and students' and staff social, emotional, mental health and other needs, which may include student health and food services.

“Third, the requirement provides that, during the period of the ARP ESSER award established in section 2001(a) of the ARP Act (i.e., until September 30, 2023), an LEA must periodically, but no less frequently than every six months, review and, as appropriate, revise its plan. Consistent with section 2001(i)(2) of the ARP Act, which requires an LEA to seek public comment on the development of its plan, an LEA must seek public input and take such input into account in determining whether to revise its plan and, if it determines revisions are necessary, on the

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<sup>2</sup> Districts that do not receive ARP ESSER funds via the Title I methodology do not have to complete LEA Plans for Safe Return and instead must submit a memo to the Department briefly describing their Path Forward Program of Distance Education.

revisions it makes to its plan, i.e., the LEA must seek public input on whether to revise its plan and on any revisions to its plan no less frequently than every six months (taking into consideration the timing of significant changes to CDC guidance on reopening schools). The requirement clarifies that, if the LEA revises its plan, the revised plan must address each of the aspects of safety currently recommended by the CDC or, if the CDC has updated its safety recommendations at the time the LEA is revising its plan, each of the updated safety recommendations. The requirement also clarifies that an LEA that developed a plan prior to enactment of the ARP Act that meets the requirements under section 2001(i)(1) and (2) of the ARP Act but does not address each of the required aspects of safety established in this requirement must, as part of the required periodic review, revise its plan consistent with these requirements no later than six months after it last reviewed its plan.

“Fourth, under the requirement, the plans must be: In an understandable and uniform format; to the extent practicable, written in a language that parents can understand or, if not practicable, orally translated; and upon request by a parent who is an individual with a disability, provided in an alternative format accessible to that parent.”

In addition, the [Frequently Asked Questions](#) document released by USED on May 26, 2021 indicates that “an LEA may use ESSER and GEER funds to engage the public on the development of the safe return to in-person instruction plan and for conducting active and sustained engagement with the school community. This includes using funds to cover the costs of conducting ongoing outreach, paying for translating and interpreting services as needed to ensure effective communication with individuals with limited English proficiency, providing reasonable accommodations such as interpreters and written materials in alternate formats for individuals with disabilities upon request, holding public meetings (including virtually), and conducting surveys of families, students, educators, and other staff to better understand their perceptions, needs, and concerns.”

### **Next Steps Regarding ARP ESSER**

- *Application Opens June 14, 2021:* NDE has requested an extension from USED to release the ARP ESSER application on June 14. This request was made with our LEAs in mind as, once we release the application it will start the 30-day window for LEAs to complete their Plans for Safe Return and 90-day window to complete ARP ESSER Funding plans.
- *LEA Plans for Safe Return Due July 14, 2021:* LEA Plans for Safe Return will be submitted via ePAGE and will be due per federal requirements no later than July 14.
- *LEA ARP ESSER Funding Plans Due September 10, 2021:* NDE is in the process of finalizing an ARP ESSER Resource Guide to support LEAs in creating plans and applying for ARP ESSER funds. LEA plans for ARP ESSER funds are distinct and have a separate set of federal requirements than LEA Plans for Safe Return to In-Person Instruction and Continuity of Services. LEA ARP ESSER funding plans will be due in ePAGE September 10.

If you have any questions related to this guidance, please contact Chief Strategy Officer Jessica Todtman at [jtodtman@doe.nv.gov](mailto:jtodtman@doe.nv.gov) or 702-757-7203.