



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

September 12, 2023

VIA CERTIFIED U.S. MAIL & E-MAIL

Paul Schnell
Commissioner
Minnesota Department of Corrections
1450 Energy Park Drive, Suite 200
St. Paul, MN 55108

Re: Notice of Investigatory Findings and Closure
Compliance Review of the Minnesota Department of Corrections (17-OCR-0794)

Dear Commissioner Schnell:

Thank you for the information and documentation that you provided to the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ), on behalf of the Minnesota Department of Corrections (MDOC). As the OCR previously informed you, the OCR selected the MDOC for Compliance Review 17-OCR-0794, which examines the MDOC's policies and practices to ensure that, as a DOJ grant recipient, they are consistent with the MDOC's obligations to serve the needs of confined youth with disabilities.¹ This letter documents the OCR's review of the MDOC's efforts to ensure its compliance with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504); Title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12132 (Title II or ADA); and their implementing regulations.

Specifically, Section 504 provides that, "no otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a). Similarly, under the ADA, "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity." 42 U.S.C. § 12132. A qualified individual with a disability is, "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or

¹ Regarding an individual, "disability" means a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. 42 U.S.C. § 12102.

activities provided by a public entity.” 42 U.S.C. § 12131(2); *see also* 28 C.F.R. 42.540 (l). In *Pennsylvania Department of Corrections v. Yeskey*, 524 U.S. 206 (1998), the U.S. Supreme Court explicitly held that Title II applies to incarcerated individuals in state correctional facilities.

Section 504 and Title II require that incarcerated individuals with disabilities have equal access to educational programs. *See* 28 C.F.R. app. A § 35.² Correctional institutions grant equal access by providing reasonable program modifications for individuals with disabilities so that they may participate in educational programs to the same extent as their peers. 28 C.F.R. § 35.130(b)(7).³ Youth who are incarcerated must also be able to participate in educational programs “in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d); 28 C.F.R. § 41.51(d).

I. JURISDICTION

The OCR is responsible for ensuring that recipients of federal financial assistance from the Office of Community Oriented Policing Services (COPS), Office on Violence Against Women (OVW), and OJP comply with applicable federal civil rights laws, including Section 504 and the ADA. The MDOC currently receives DOJ grant funds, including, but not limited to, grants through the Bureau of Justice Assistance’s Residential Substance Abuse Treatment for State Prisoners Program (2019-J2-BX-0030 for \$250,032) and Adult Reentry and Employment Strategic Planning Program (2018-RQ-BX-0005 for \$,164,348). The MDOC also receives funding through the Office of Juvenile Justice and Delinquency Prevention’s Juvenile Justice and Mental Health Collaboration Program (2020-MO-BX-0013 for \$622,883) and Juvenile Justice System Reform and Reinvestment Initiative (15-JDP-22-GG-03736-JRIX for \$1,205,016).

II. BACKGROUND

² “Correctional and detention facilities commonly provide a variety of different programs for education, training, counseling, or other purposes related to rehabilitation.... [I]t is critical that public entities provide these opportunities to inmates with disabilities. In proposed § 35.152, the Department clarified that Title II required equal access for inmates with disabilities to participate in programs offered to inmates without disabilities.” *Id.*; *see also* *Stevens v. Harper*, No. CIV-S-01-0675 DFL PAN P, 2002 U.S. Dist. LEXIS 19067, at *43-44 (E.D. Cal. Sept. 11, 2002) (court inferred plaintiffs were claiming that they were unable to participate in educational programs because of the alleged failure of the correctional institution to properly accommodate their disabilities and allowed Section 504 and Title II claims to stand); *Clark v. State*, No. C96-1486-FMS, 1996 WL 628221 (N.D. Cal. Oct. 1, 1996) (developmentally disabled state prisoners stated ADA claim when they were denied access to and benefits of education solely because of their disabilities), *aff’d on other grounds*, 123 F.3d 1267 (9th Cir. 1997); *Alexander S. v. Boyd*, 876 F. Supp. 773, 788 (D.S.C. 1995) (maintaining a Section 504 action for youth in custody with disabilities who could not access education because of their disabilities).

³ “A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.” *Id.*

The OCR initiated this Compliance Review to evaluate the MDOC's compliance with Title II and, as a recipient of federal financial assistance, Section 504. The DOJ's Title II regulations authorize "compliance reviews of public entities in order to ascertain whether there has been a failure to comply with the nondiscrimination requirements of this part." 28 C.F.R. § 35.172(b). The DOJ's Section 504 regulations related to post-award compliance reviews rely on the selection criteria for compliance reviews that appear in the implementing regulations of the Omnibus Crime Control and Safe Streets Act of 1968, as amended. 34 U.S.C. § 10228(c); 28 C.F.R. § 42.206(c), incorporated by reference into the Section 504 regulation at 28 C.F.R. § 42.530(b). These regulations provide that selection for service-related compliance reviews shall be made on specified bases, including: (1) the percentage of individuals with disabilities in the population receiving program benefits; (2) the number and nature of discrimination complaints filed against a recipient with the OCR or other federal agencies; (3) the scope of the problems revealed by a complaint investigation or a pre-award compliance review; and (4) the amount of assistance provided to the recipient by the OJP, COPS, or OVW. 28 C.F.R. § 42.206(c)(2)-(5).⁴

The MDOC currently houses seventy-two male youth in its custody at the Minnesota Correctional Facility-Red Wing (MCF-RW). The MCF-RW includes five general population living units (referred to as cottages) and a secured unit (the Dayton Security Unit), which serves as the facility's intake unit and discipline unit. Male youths at the MCF-RW attend Walter Maginnis High School (WMHS) where they receive on-site education, including high school diploma preparation and credit recovery courses. *See* MDOC Division Directive 204.041, Education-Juvenile Facilities (on file with the OCR). Pursuant to MDOC policy, educational programs must be recognized and approved by the Minnesota Department of Education, and the MDOC must ensure that its juvenile educational programs are consistent with state and federal statutes, rules, and regulations. *Id.*

After selecting the MDOC and initiating this Compliance Review, the OCR issued a series of Data Requests to, and conducted periodic teleconferences with, MDOC officials and designated MCF-RW executive staff. In addition, the OCR conducted an investigatory onsite visit to the MCF-RW which included observing the parts of the facility accessible to youth and interviewing MDOC staff who play relevant roles in the administration of services to youth in confinement, including the Warden / Superintendent, Associate Warden of Operations, Program Director, Watch Commanders, Security Captain, Secured Unit Supervisor, Hearing Officer, Student Support & Reintegration Coordinator, Special Education Director, Behavioral Health Director, and additional mental health and special education staff. The OCR most recently collected additional information from the MDOC in February 2023 and held a series of teleconferences with MDOC staff in July 2023. During the course of the review, the OCR shared its observations

⁴ The OCR reminds the MDOC that, in addition to the specific regulations under consideration in this Compliance Review, the MDOC may have additional statutory and regulatory obligations under Section 504, Title II, and the Individuals with Disabilities Education Act of 1990, as amended. 20 U.S.C. §1400 (IDEA). This Compliance Review does not purport to make compliance determinations under any regulation enforced by the Department of Education or other federal agency delegated or designated with the authority to enforce said regulations.

with the MDOC and identified areas of concern. The MDOC committed to, and implemented, various responsive actions which are identified and discussed in detail below.

III. DISCUSSION

1. Concern: Compartmentalized practices may create barriers to comprehensive and complete implementation of a youth's disability related services and can result in a denial of equal opportunities to participate in or receive the benefits of its services, programs, and activities.

The OCR's onsite interviews identified concerns that MCF-RW education staff often did not incorporate or cross-reference much of the individual therapy and other services provided by the behavioral health staff, the MDOC's mental health care providers, in their individualized education plans (IEPs)⁵ for youth with disabilities. The OCR noted that this practice could pose additional challenges for youth with disabilities when they transition back to their home schools, including preventing them from receiving appropriate services both while at MNF-RW and through delays in meeting their goals upon return to their home schools. Although the IEP creates an opportunity for staff to work collaboratively to examine and support the student's needs, on many occasions MCF-RW staff appeared to implement the IEPs independently from each other, operating in behavioral health, education, physical health, and security department silos with limited communication and information sharing even when developing IEPs.

The regulations at 28 C.F.R. § 35.107 require the designation of at least one responsible employee to coordinate its efforts to comply with and carry out its responsibilities. The MDOC identifies the MCF-RW's ADA Coordinator in the resident manual, initial letter to parents, facility website, and facility iShare site. Additional information concerning the WMHS ADA and Section 504 Coordinators are located on its website.⁶ The MDOC has further established a procedure to ensure that information related to a resident's disability-related needs is shared between the Section 504 Coordinators and ADA Coordinator. The MDOC has also ensured that IEP documents are available to MCF-RW staff on a shared platform and the MDOC committed to providing annual training to education staff on Section 504, developing additional Section 504

⁵ An IEP plan guides the delivery of special education supports and services for students with a disability. See, U.S. Dep't. of Ed., Off. Special Ed. and Rehab. Serv., *A Guide to the Individualized Education Program*, <https://www2.ed.gov/parents/needs/spced/iepguide/index.html> (last visited Aug. 22, 2023). The OCR is not granted the authority to enforce U.S. Department of Education regulations but notes that while this letter discusses "IEPs", because that is the term used by the MDOC and is considered the MDOC's determination as to educational services to be provided to residents with disabilities. Compliance with the procedural and substantive terms of IDEA are not considered here. Additional obligations may apply under Section 504; any (in)eligibility determinations made under IDEA do not necessarily preclude the need for services or accommodation pursuant to Section 504. A youth with a disability who attends public school, including when in MDOC custody, is entitled to services and accommodations that enable the youth to receive the same access to education as youth without disabilities. The factual circumstances that constitute a denial of a free appropriate public education (FAPE) may also support findings of non-compliance with the regulations enforced by the OCR.

⁶ WALTER MAGINNIS HIGH SCHOOL, *Section 504*, <https://wmhsredwing.org/page/3135> (last visited Aug. 22, 2023).

information in training materials, and ensuring that MDOC policy addresses modifications and reasonable accommodations related to a youth's access to education.

The MDOC has also established the ability for youths and the ADA Coordinator to communicate directly via tablets. Specifically, youth at the MCF-RW are now able to complete and submit requests for ADA modifications and the ADA Coordinator can communicate with youths regarding their requests using the tablet's messaging feature. In response, The MDOC committed to review and improve its policies, procedures, and practices at the MCF-RW to ensure each youth's IEP, Section 504 plan, or both, meets the youth's disability needs and includes all necessary education-related aids and services.

Specifically, the MDOC has either done or demonstrated significant progress to accomplish the following:

- A. Increase collaboration between behavioral health, education, physical health, and security staff.
 - i. Establish formal processes to share information between service teams and streamline educational and therapeutic meetings.

MCF-RW staff holds weekly "cottage committee" meetings, which include the program lieutenant, mental health provider, case workers, and security staff (referred to as cottage staffing team). During these meetings, the cottage staffing team discuss specific building issues or concerns and reviews how each resident group is functioning in the cottage, at school, and during other programming. The cottage staffing team also reviews individual youth who might be ready to advance in their program levels, engages in modified treatment planning, and discusses other program-related topics and behavior concerns.

However, the OCR identified a concern that these cottage committee meetings were held during the school day, at a time when education staff were unable to attend. Education staff also did not always attend the initial treatment team meetings where the MCF-RW staff assess each youth to develop an individual treatment plan. Additionally, educational records were not always available for these meetings. Critically, persons knowledgeable about the youth must be able to provide input and relevant information when identifying the education and disability related needs to develop an appropriate plan to deliver services. A failure to do so may result in an inability to ensure students with disabilities are able to access the educational program and can constitute discrimination on the basis of disability.

In response to the OCR identifying these issues, the MDOC implemented a new school schedule to afford education staff the opportunity to attend cottage committee meetings; included a dedicated section in the daily logs for education staff to report any issues for review and discussion; created an amended treatment plan form; and identified and required staff to attend treatment team meetings, which the MCF-RW conducts initially for every youth upon entry and as needed throughout their stay. The MDOC also adopted additional changes, including a

requirement that special education staff share information on a monthly basis with other teams regarding which students are identified as having an IEP. Further, the MDOC modified its individual treatment and education plans to include disability-related information and worked to establish a procedure to ensure IEPs include mental health and other related services provided by program staff. The MDOC also now requires IEP Case Managers to be invited to all treatment related meetings, except for residents in the Sex Offender Program. To further ensure that special education and treatment plans fully incorporate all evaluative data available to MCF-RW staff, the MDOC developed and proactively implemented additional procedures to remove barriers to sharing evaluation data between special education, treatment, and health care staff.

- ii. Ensure that special education and treatment plans clearly indicate all disability-related services that MCF-RW staff provides, including mental health and physical health services.

The OCR's review identified concerns that the MDOC did not consistently incorporate mental health or other services provided by the therapeutic treatment team in the student's IEP. Where possible, compiling all relevant information necessary to identify a student's disability needs, accommodations, and services into one document, such as an IEP, can reduce errors, oversights, and omissions when delivering services.

In response, the MDOC modified its individual treatment and education information plans to include all disability-related information. The MDOC has also established a procedure to ensure that IEPs include mental health and other related services that the facility program staff provides.

- iii. Provide information and training to MCF-RW staff to address misconceptions about perceived legal prohibitions, such as in the Health Insurance Portability and Accountability Act, to information sharing and collaboration.

During the OCR's onsite interviews, many MCF-RW staff members demonstrated a misunderstanding of their legal obligations, requirements, and limitations under the Health Insurance Portability and Accountability Act (HIPAA) and other laws and regulations, which created unnecessary barriers to information sharing and collaboration. For instance, several MDOC employees suggested that information sharing between staff members was limited due to HIPAA and other restrictions. The OCR shared its findings from these interviews with MDOC's leadership and recommended that it provide accurate information to MCF-RW staff regarding HIPAA requirements and allowances to dispel any misconceptions.

In response, the MDOC affirmed that health services staff are permitted, in identified circumstances, to share information pursuant to Policy 500.190, "Health Care Data Practices." Further, the MDOC now commits to provide information regarding medical conditions at treatment team meetings and to include such information in the youth's individual treatment plan consistent with Policy 500.190. Moreover, the MDOC now encourages appropriate information sharing between therapists, education, and security staff in accordance with an interpretation of "health and safety" that includes the health and safety of youth, staff, and visitors.

- iv. Incorporate behavior intervention techniques used in other campus settings to ensure consistency of implementation.

The OCR informed the MDOC that IEP behavior planning should consider and incorporate how behavior intervention techniques are used in other campus settings to ensure consistency in implementation. Inconsistent implementation of an IEP or deviations from agreed upon strategies and services can result in unnecessary delays in making progress towards meeting IEP goals. The MDOC reported that it has since formed a facility-wide Positive Behavior Interventions & Supports (PBIS) team at the MCF-RW, which the MDOC believed would aid in addressing this issue. The MDOC has provided training for the PBIS team and begun work to establish facility-wide PBIS practices with the assistance of a consultant. Since 2019, the MCF-RW has begun implementing facility-wide PBIS practices. The MDOC has further implemented restorative justice practices,⁷ and established a procedure to ensure that it incorporates behavior interventions and incentives employed by living unit and programming staff into students' IEPs when appropriate.

The MDOC has also taken additional steps to ensure that the individual behavior planning, already occurring in conjunction with the new PBIS planning, is appropriately captured in each student's IEP (e.g., living unit staff-developed behavior management techniques). These steps include having the school psychologist prepare an "Education Summary Data Report" for all team members at each student's intake meeting and for the special education case manager. The IEP case manager is now also responsible for collecting pertinent information, including mental health assessment summaries and input from health services as necessary, as part of IEP team meeting prep.

- B. Obtain complete, accurate disability identification and provide all necessary program modifications, accommodations, and related aids and services.
 - i. Establish processes to timely and accurately identify and document concomitant disabilities that may require services.

Although the MDOC identified many youths at the MCF-RW as having emotional or behavioral disorders, the OCR's investigation showed the MDOC did not always identify concomitant secondary disabilities (e.g., processing disorders, learning disabilities). As a result, MCF-RW staff may not be fully addressing all of the youth's disabilities. For example, the OCR reviewed an IEP that identified a twelfth grade student as having an emotional or behavioral disorder and provided behavioral support, but did not include diagnoses or services related to academic

⁷ The OJP's Office of Juvenile Justice and Delinquency Prevention defines restorative justice as "a theory of justice that emphasizes repairing the harm caused by criminal behavior." Development Services Group, Inc. 2010. "Restorative Justice." Literature review. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention. https://www.ojjdp.gov/mpg/litreviews/Restorative_Justice.pdf. Key components of restorative practices and programs include, involving all stakeholders, and identifying and taking steps to repair harm. *Id.*

performance despite evidence that the student was functioning at the second or third grade level and showed significant verbal processing delays. In another IEP, the OCR observed that the youth was identified as having a learning disability, but there were no services related to his speech, which testing showed was almost unintelligible.

Based on these observations, the OCR raised concerns that the MDOC may not be fully identifying and serving all disabilities (e.g., secondary disabilities), in part, because the MDOC only appeared to conduct an IEP re-evaluation when a student came from out-of-state or if an IEP evaluation was about to expire. The OCR advised the MDOC that, to ensure students are receiving all necessary services, the MDOC may need to conduct evaluations whenever it determines that an existing IEP or evaluation is insufficient or no longer appropriate. As a matter of continued technical assistance, the OCR recommends the MDOC consider incorporating the evaluation of existing IEPs for appropriateness as either part of intake or as soon as practicable based on observation of classroom performance. Additional accommodations or services may be necessary for a youth to fully access the educational program in this new placement.

In response, the MDOC committed to identifying and documenting all concomitant disabilities exhibited by the youth in its custody. Additionally, with the assistance of its own consultant, the MDOC designed and implemented a Multi-Tiered System of Support (MTSS) framework to address and monitor achievement and opportunity gaps, which may have resulted in part from a lack of concomitant disability identification. With adequate training and implementation of MTSS, the MDOC should be able to appropriately identify when a youth should be referred for evaluation based on potential concomitant disabilities that are not currently identified or otherwise addressed in the youth's IEP.

- ii. Review and update all processes for determining a youth's program modifications and accommodations to ensure that a full range of options are available and used to meet the needs of each youth with a disability.

An examination of pertinent information gathered during the review revealed there was a relatively small set of accommodations available to youth at WMHS (e.g., extended time for students with intellectual and developmental disabilities, ability to use the resource room for a cool down period for students with mental health disabilities). The OCR identified specific examples of individuals who may not be receiving appropriate services based, in part, on MCF-RW staff's limited view of what educational supports were available for youth with disabilities. For instance, in one IEP, the MCF-RW neither conducted a speech evaluation for speech services nor an assistive technology evaluation or accommodation of computer usage for the student's severe limitations in written language because these services were not considered as available modifications or accommodations.⁸ An exclusive and exhaustive list of "approved" or

⁸ The OCR notes that MCF-RW similarly did not provide any accommodations on standardized tests (such as extra time) to this youth with disabilities, despite his having a reading score at an early elementary level.

“available” accommodations inappropriately limits an individualized assessment of what is necessary to provide appropriate services and ensure equal access for students with disabilities.

The OCR encouraged MCF-RW staff to think more broadly about what accommodations are necessary for the youth with a disability to (e.g., assistive technology through tablets). The OCR advised that when developing a list of available modifications and accommodations, the MDOC must ensure that it is done with the mindset of being illustrative (versus exhaustive) so that staff remain open to addressing new and/or unanticipated needs of the youth with disabilities.

In response to the concerns that the OCR raised, the MDOC developed an evolving document of available modifications and accommodations. The MDOC also compiled an illustrative list of additional modifications and accommodations that could be made available and established an implementation plan for providing appropriate resources when necessary. Further, the MDOC provided additional related professional development for the MTSS team and learning opportunities for instructors. The MDOC also implemented facility-wide PBIS practices that provide behavior interventions at all levels, school-wide Check & Connect school engagement intervention,⁹ a Social Emotional Learning course (e.g., WhyTry Program),¹⁰ and a restorative practices framework.¹¹ As a matter of continued technical assistance, the OCR reminds the MDOC that in addition to the implementation of such facility-wide changes to intervention strategies youth with disabilities may still require individualized assessment to determine if further, specific, modifications are necessary.

- iii. Provide information and training for all special education staff regarding IEP drafting requirements, including but not limited to drafting of measurable goals and objectives and requirements around the provision of transition services and assistive technology evaluations.

The OCR’s review found IEPs that did not benchmark annual goals, which resulted in no ascertainable way to gauge progress. Similarly, the OCR also identified IEPs that stated goals,

⁹ The MCF-RW also initiated a school-wide Check & Connect school engagement intervention, which involved a two-day Check & Connect mentorship training for all education staff in August 2021.

¹⁰ The MDOC held a WhyTry social emotional learning training for WMHS special education staff in July 2019 and launched the WhyTry Program as a credit-bearing course for WMHS students in November 2019. The MCF-RW repeated this training for new special education staff in June 2021. The MDOC also launched a WhyTry resilience for youth training for special education staff in June 2021 and launched it as a credit-bearing course for WMHS students in July 2021. The MDOC has also added Purpose Prep, a library of social and emotional learning courses, to the WMHS online course offerings beginning in April 2020. Additionally, the MDOC added recovery resources to student tablets for self-exploration beginning in Spring 2021. Further, the MDOC held Adverse Childhood Experiences and Trauma-Informed Care trainings for all education staff in June 2021 and October 2021.

¹¹ The MDOC held a virtual restorative practices training for all education staff in August 2020. According to the MCF-RW, it has held over 100 restorative practices classroom activities, including restorative circles, one-on-one discussions, and group discussions over the last year.

such as the student would stop being “disrespectful” and “breaking accepted rules,” which are not objectively measurable. The OCR recommended that the MDOC offer refresher training for MCF-RW education staff on incorporating evaluations and diagnostic information into IEPs. The OCR also recommended that the MDOC provide refresher training on drafting measurable goals to ensure that they are driven by present levels of performance and accurately determine the services each student receives.

In response to these recommendations, the MDOC began using IEP drafting tools to create Specific, Measurable, Attainable, Results-oriented, and Time-bound (SMART) goals for students. The OCR reviewed an example of the IEP drafting process and finds that, if used appropriately, addresses this concern. Additionally, the MDOC committed to determining the utility of other assistive technology needs and maintaining an implementation plan.

iv. Improve processes to increase parent involvement in the IEP process.

According to interviews, MCF-RW staff frequently held meetings in a half hour window based on Case Manager availability and without much flexibility to allow for parent involvement. The MDOC agreed with OCR about the importance of parental involvement in the IEP process and proactively took additional action to allow families to be more informed about their student’s progress as a part of its workforce plan. As part of this plan, the MDOC expanded Check & Connect student intervention and engagement practices to build constructive family-school relationships. Additionally, the MDOC has since launched its new WMHS website.¹² The WMHS website includes information regarding the MCF-RW’s ADA Coordinator’s identity, contact information, and job functions; and provides families with electronic access to student data via an online parent portal, which is also be accessible via the WMHS website. According to the MDOC, parents are contacted to schedule a meeting time that works and provided an option to participate in person, by phone, or virtually. If a parent is unable to attend, the special education case manager will attempt to contact the parent to review the notes and proposed plan.

C. Assign classes and coursework based on the needs of each youth with a disability.

- i. Clarify the process and standard by which the MDOC IEP team will decide whether to place the youth in a general education environment with assistance or in a separate resource room, based on the youth’s individual needs.**

Based on its onsite interviews and document review, the OCR deduced that the MDOC largely appeared to rely on the Case Manager’s interest or preference when deciding whether a youth with disabilities would be taught in a general education environment with assistance or in a separate resource room. The youth’s disability needs were not always considered when determining which would be the least restrictive environment. The MDOC has since developed and implemented an IEP team meeting agenda template, which specifically includes a discussion

¹² See <https://wmhsredwing.org/> (last visited Aug. 22, 2023).

of the least restrictive environment based on the youth's individual needs. Further, during the OCR's Compliance Review, the MDOC expanded its special education course offerings to include language arts, math, behavior skills, and transition skills, and provided an in-service training in Universal Design for Learning for all WMHS teachers on March 5, 2020, which should increase circumstances where less restrictive educational environments are determined to be appropriate.

The OCR also inferred that staff availability, or the lack thereof, may have prevented some youth from receiving specific services for the entire amount of time as dictated in their IEPs. During the pendency of the OCR's Compliance Review, the MDOC implemented a new school schedule to provide greater options to individualize students' schedules so that students could attend courses best suited for their individualized needs. The MDOC also reaffirmed that it has implemented an MTSS framework, which will help students advance to more challenging work when ready. While this effort is commendable, the OCR recommends the MDOC specifically consider whether compensatory education or other support is necessary for youth who previously did have their IEPs fully implemented because of staffing or other reasons.

- ii.** Tailor coursework provided to youth with disabilities held in the Dayton Security Unit to their individualized needs and, to the extent practicable, linked to their current courses.

The OCR's investigation revealed that the teacher assigned to the Dayton Security Unit (DSU), the MCF-RW's secured intake and discipline unit, frequently used a separate curriculum from WMHS and that this curriculum did not consistently align with the youth's enrolled courses or IEP goals. Consequently, a youth with disabilities may not have received the same curriculum or equivalent educational time when placed in the DSU.

In response to the OCR's initial feedback, the MDOC updated its processes to provide youth access to educational computer applications and online courseware while in the DSU to better access school curriculum and educational supports. The MDOC also implemented a process to ensure that WMHS teachers are providing classroom assignments to students held in the DSU. MDOC acknowledged that, to the extent that electronic tablets or other technology are being used to accomplish this objective, the youth's special education team should ensure that the youth have proper modifications and supports in place to use the technology effectively.

When the MDOC was in the process of establishing one-to-one tablets for WMHS students, the OCR emphasized the point that some youths with disabilities may need in-person support, as well as other assistance, to receive equal educational benefit from computer-based learning. Further, when implementing its new tablet program at the MCF-RW, the MDOC must ensure that its new policies and procedures provide all of the accommodations to students with disabilities who are engaged in digital learning necessary to complete coursework digitally; this may include having access to an in-person teacher who can answer questions and otherwise provide support, and that these accommodations are recorded in IEPs.

Subsequently, the MDOC implemented one-to-one tablets school-wide. These tablets are used, in part, to provide digital literacy instruction and scholastic achievement assessments, and to ensure that students with disabilities have access to accommodations, modifications, and supports based on their individual needs as documented in their IEPs. Further, the MDOC has committed to ensuring that youth with disabilities retain access to an in-person teacher who can answer questions and provide support as a disability-related accommodation. In fulfilling this commitment, the OCR commends the MDOC for remaining mindful that many youths with disabilities need in-person support, as well as other assistance, to receive equal educational benefit from computer-based learning.

2. Concern: Inconsistent application of school discipline may result in an inappropriate denial of educational opportunities for youth with disabilities.

During the OCR's onsite visit, MCF-RW staff evinced confusion regarding when to use particular pre-disciplinary behavior management techniques, such as "cool downs", and the Incident Command System (ICS). Indeed, the MCF-RW did not appear to have clearly articulated policies and practices regarding school discipline. The OCR encouraged the MDOC to ensure that MCF-RW staff understand specific behavior management techniques and restraint, along with general PBIS policies and training.

In response, the MDOC developed clear policies regarding school discipline, including the appropriate use of de-escalation techniques and under what circumstances MDOC staff are authorized to initiate ICS (i.e., only when a youth poses an imminent risk of harm to self or others). Specifically, the MDOC has established a list of minor and major behaviors, including examples and non-examples, related behavior management techniques, and potential consequences to guide school discipline and ensure that non-security staff are empowered to handle minor behaviors in the school setting. Further, the MDOC now uses restorative justice practices in the WMHS and has formed Professional Learning Communities to foster collaborative learning and support school-wide engagement.

The MDOC collaborated with its crisis intervention team master instructor and PBIS consultant to develop and deliver scenario-based training on newly developed school-based discipline policies, including training on evidence-based techniques for addressing behavior by non-compliant youth in the school setting. The MCF-RW also provides scenario-based role playing and discussion trainings during its Spring and Fall workshops for staff. According to the MDOC, these trainings are conducted by MCF-RW security staff (i.e., education lieutenant), are experience-based (e.g., actual situations that have occurred at MCF-RW) and are mandatory for all WMHS education staff.

The MDOC established a workshop for staff that is aimed at reducing isolation and assignment of youth to the DSU. The MDOC has reduced its use of the DSU as a substitute for placing youth in a restricted or disciplinary room to address certain forms of misconduct. The MDOC has also now identified a process wherein special education staff conduct daily reviews for school

removals that occurred the previous day. Further, the Director of Special Education and special education case manager are notified if two such removals occur within a thirty-day period and modifications to the IEP may be considered at that time.

The MDOC saw a significant decline in the number of formal discipline cases at the MCF-RW. The MDOC attributed its decision not to use disciplinary room time as a punitive measure as having positively impacted its rate of formal discipline at the MCF-RW. Moreover, the MDOC reports that its Watch Commanders – who are the security staff supervisors on duty – now encourage staff to work with low-risk behaviors outside of the Dayton Security Unit and are mentoring staff on alternatives to disciplinary room time when living unit supervisors are not onsite. To ensure that the process to review a youth’s status in disciplinary room time is an authentic review of whether or not the youth is safe to return to the open program, the MDOC has re-trained staff on how to conduct proper reviews and the documentation required when making this assessment.

The MCF-RW conducted a pilot program whereby they utilized a dedicated sergeant position focused on working with youths after they are placed on disciplinary room time and to provide comprehensive reviews used in determining whether a youth is ready to return to the open program. The MDOC initially created and filled this temporary position in December 2020, and upon review made the position permanent in 2021. In November 2021, the MDOC provided the OCR with data demonstrating that the MCF-RW has reduced its use of disciplinary room time since the OCR initiated its review and since the MCF-RW adopted these new procedures.

While these efforts are commendable, the OCR recommends that the MDOC continue to analyze the effectiveness of these changes specifically as they apply to youths with disabilities. Additional steps may be required to ensure that manifestations of a disability are not the basis for disciplinary action or sustained removal from the educational setting.

The MDOC has also addressed or taken significant steps to address the following:

- A. Reduce instances in which youth with disabilities are removed from the school setting for disciplinary purposes.
 - i. Implement the behavioral services set out in IEPs and Section 504 plans in a manner that is consistent with the facility-wide PBIS initiative and youths’ individualized therapy plans when addressing disruptive behavior in the school setting.

While the OCR acknowledges the potential benefits the above identified changes to discipline policy will have to all youth at MCF-RW, there will still be instances when disability needs must still be addressed individually. When a youth’s specific disabilities manifest as behaviors that contravene generally applicable conduct policies, IEPs should contemplate how to address these behaviors prior to the imposition of disciplinary action.

The MDOC has committed to implementing the behavioral services set out in each student's IEP and Section 504 plans in a manner that is consistent with the facility-wide PBIS initiative and individualized therapy plans when addressing disruptive behavior in the school setting. Further, the MDOC established refocus rooms in the WMHS and living units to allow youth time and space to de-escalate. Additionally, the MDOC has increased communication between caseworkers, education staff, and facility staff. Moreover, the MDOC established a procedure that incorporates students' Check & Connect data and Personal Learning Plans progress into cottage committee meetings.

The MDOC also now trains MCF-RW staff to take alternative actions prior to moving a resident to the DSU (e.g., refocus room, crisis intervention training, PBIS) and to ensure that staff provide individualized responses to resident behavior based on the youth's identified accommodations, modifications, and interventions.

- ii. Revise policies and procedures to ensure youth with disabilities are not improperly subjected to discipline due to a manifestation of their disabilities, including the use of chemical irritants, the use of restraints and restrictive procedures, and exclusionary placement.

The OCR's onsite interviews indicated that the MCF-RW did not have a reliable method to incorporate information from clinical staff about a youth's disabilities into the disciplinary process, which could result in disciplinary action taken because of a disability. Meaningful input from behavioral health staff during the conflict resolution conference, discipline hearing processes, and disciplinary room time reduction plan development for youth with disabilities is critical to ensuring that behaviors that are a manifestation of a disability are considered when determining the appropriateness of disciplinary action.

The MDOC has committed to ensuring that it fully considers and incorporates behavioral health provider feedback into the DSU disciplinary process, including conflict resolution conferences and disciplinary hearings. To help facilitate this, the MDOC identified a behavioral health provider for each living unit, including the DSU. Additionally, the MDOC incorporated the treatment team meeting process and assigned a caseworker to the DSU.

The OCR also specifically encouraged the MDOC to review its policies and practices regarding the use of chemical irritants at the MCF-RW. The OCR's document review identified instances when youth with disabilities had been threatened with chemical irritants or assigned disability room time for potential manifestations of disability, including failure to take prescribed psychotropic medication. The OCR also recommended that the MDOC ensure that all uses of restraint and chemical irritants on youth are documented so that there is a record for legal guardians and healthcare providers.

In response to these concerns, The MDOC has committed to continuing to train all MCF-RW staff regarding behavioral manifestations of disabilities and techniques for achieving rule compliance without the use of physical restraint, mechanical restraint, or chemical irritants. The

MDOC also committed to have the Watch Commander document all uses of restraint on an incident report prior to the end of the shift in which they were used. Further, the MDOC has committed to ensuring that the Executive Team reviews all incident reports from the prior day during its daily meeting. As the MDOC reports, these reviewing officials include the Warden, Assistant Warden of Operations, and the Security Captain. Additionally, the MDOC assures that health services conduct welfare checks on youth the day after restraints are employed.

The MDOC has also worked in consultation with the Minnesota Department of Education's Special Education Division to develop and implement policy that aligns with the U.S. Department of Education's Office of Special Education and Rehabilitative Services due process and discipline guidance for students in correctional facilities.¹³

3. Concern: The Dayton Security Unit may lack resources to adequately provide youth with disabilities access to services and program activities.

The OCR noted that students with disabilities may not receive the same curriculum or equivalent educational time when placed in the DSU as they would otherwise receive at the WMHS. The OCR's interviews and document review also revealed that students often refused to accept school instruction while housed in the DSU, referred to as "school refusals," which further exacerbated the gap in education received while in the DSU compared to the WMHS.

At the time OCR shared its preliminary findings, the MDOC stated that if a student refused school while housed in the DSU, a second attempt was made by the teacher, but this was not documented. In response to discussions with the OCR, the MDOC expanded the assignment of a special education teacher to the Dayton Security Unit to two hours per day and began to document school refusals and efforts to increase possible education time by offering education time for both morning and afternoon sessions.

Further, on its own initiative, the MDOC has committed to allowing students access to secure tablets to complete their schoolwork throughout school hours. The MDOC's initial implementation of tablets began in June 2019 and were fully implemented in the WMHS building in November 2019. Tablets were expanded to the DSU classroom in January 2020. The MDOC further expanded tablet access to the living unit and DSU dayrooms in late March to early April 2020 – spurred by the urgency of the pandemic.

The full implementation of tablets has also allowed the MDOC to establish a system by which it rewards students for school attendance and schoolwork completion – to incentivize school participation and minimize "school refusals." With student access to secure education tablets throughout the school day in the DSU classroom and living unit dayrooms, students are now awarded tokens for school attendance and schoolwork completion. Student can use these tokens to access music, games, and movies on their tablets during evenings and weekends.

¹³ U.S. Dep't. of Ed., Off. Special Ed. and Rehab. Serv., Dear Colleague Letter (Dec. 05, 2014).

In addition to these universal changes, the MDOC has taken significant steps to accomplish the following:

- A.** Provide education services or modifications consistent with IEPs to ensure access to the educational program within Dayton Security Unit.
 - i.** Provide youth housed in the Dayton Security Unit equivalent education time aligned with the curriculum provided at the WMHS and consistent with all of the services delineated in their IEPs/Section 504 plans.

As previously noted, the OCR's investigation found that the teacher assigned to the DSU frequently used a separate curriculum from the WMHS teaching staff and that this curriculum did not consistently align with a youth's enrolled courses. For instance, the OCR found that the special education teacher for the DSU frequently printed out a social skills worksheet to use for student special education minutes. However, it is unlikely that the IEPs and 504 plans of all youth in a given facility require precisely the same worksheets on precisely the same social skills, and some would likely require direct instruction in social skills or other models of behavior services (e.g. counseling or group), rather than worksheets. In addition, the IEPs for youths with disabilities are likely to have include other services that the OCR did not observe while at the DSU, such as speech therapy, occupational therapy, assistive technology, direct academic instruction, and physical therapy.

In addition to committing to ensure that youth housed in the DSU receive all services set forth in their IEPs and Section 504 plans as well as an equivalent education to that which is provided at the WMHS, the MDOC has expanded the amount of access to a special education teacher in the DSU so that students have guaranteed access to special education instruction if needed based on their IEPs. The MDOC also committed to reviewing its policies and procedures related to "school refusals" to determine if it can modify its practices to encourage students to accept instruction and pursue ways to provide compensatory education for those youths who do not while housed in the DSU.

- B.** Provide youth with disabilities secured in the Dayton Security Unit appropriate mental health services.
 - i.** Behavioral health care provided at the Dayton Security Unit will be consistent with facility-wide PBIS practices, and the youth's individual therapy plan, and IEP/Section 504 plan.

The OCR's onsite interviews revealed that, in addition to limited availability of staff to provide behavioral health care at the DSU, there was also insufficient space for mental health staff to provide private therapy services for multiple youths with mental health disabilities housed at the DSU. The OCR expressed concerns that the behavioral health care provided at the DSU did not consistently adhere to the individual therapy and IEP/Section 504 plans for students with disabilities as well as facility-wide PBIS practices.

The MDOC has since designated additional space in the Dayton Security Unit where behavioral health staff can meet with youths privately so that multiple individual mental health counseling sessions could occur simultaneously. The MDOC also reported that behavioral health staff now designates one mental health provider for each living unit including the DSU. This provider is responsible for completing all mental health evaluations, treatment planning, and documentation. The MDOC requires the mental health provider to create individual mental health treatment plans to determine what mental health needs are to be addressed and if individual treatment plans need to be modified based on the youth's changing needs. The MDOC shares these individual treatment plans with those staff working directly with the youths to assist them in developing their mental health management. The MDOC has committed to tracking these changes to ensure that they have the desired impact.

Additionally, behavioral health staff now attend all treatment team meetings, IEP meetings, and other related meetings where the treatment needs of the students can be coordinated and modified based on their changing mental health needs. The MDOC also now conducts treatment team meetings for students held in the DSU.

- C. Reduce instances where youth with disabilities are unnecessarily placed in the Dayton Security Unit.
 - i. Clarify the standard that youth with disabilities are only held in the Dayton Security Unit while on a Special Management Plan if non-restrictive living unit housing poses a threat to themselves, others, or the safe operation of the facility.

As MDOC policy provided and MCF-RW staff interviews affirmed, youths could be and were housed at the DSU while on a Special Management Plan (SMP). Pursuant to MDOC policy, the Corrections Security Caseworker (CSC) or a Clinical Program Therapist (CPT) will place a youth on a SMP, developed in consultation with the treatment team, if he exhibits behavior that poses a threat to himself, others, or the safe operation of the facility, such as assault, Prison Rape Elimination Act (PREA) violations, or an escape risk. *See* MDOC Instruction 203.011-2RW, Treatment Planning and Reports (on file with the OCR). Although SMPs are not disciplinary in nature, youths may be housed in the DSU on a full-time or part-time basis as part of an SMP. *Id.* The CSC or CPT and CPD conduct weekly reviews of SMPs. *Id.*

The MDOC has since replaced SMPs with Successful Living Plans (SLPs). According to MDOC, youth are placed on SLPs only when an imminent threat to self or others exists in the form of the youth not being willing or able to commit to being safe in the open living unit. A Treatment Team Meeting is held to create the initial plan and the SLP is evaluated daily. The OCR appreciates that behavioral health staff and the special education teacher are part of the Treatment Team and reminds the MDOC of the importance that SLPs incorporate or consider the youth's disability needs.

- ii. Restrict the days and times that the MDOC will accept new admissions to MCF-RW.

At the time of the OCR's visit to MDOC, some newly admitted youths to the MCF-RW were, due to the timing of their admission, held in restrictive housing over the weekend. The OCR noted a concern that the MDOC's inability to fully process a youth's intake and living unit assignment before the weekend can create unnecessary harm for youth, especially those with disabilities, if housed in the DSU longer than necessary. The MDOC subsequently amended its admissions times following OCR's visit thereby addressing this concern.

- iii. Conduct Constant Observation Status in living units when safe to do so for youth with disabilities who are not otherwise required to be assigned to Dayton Security Unit.

MDOC once placed youth under Constant Observation Status (COS) for mental health observation in the "100 unit," the most restrictive unit at MCF-RW, as it was the only housing equipped to conduct such observations. Following OCR's onsite visit, the MDOC added cameras to an additional three rooms in the DSU so that youth under mental health observations do not need to be housed in the most restrictive unit at MCF-RW. The MDOC also refined the criteria for which COS applies. Under certain conditions, a youth may now be placed on a less restrictive Behavioral Observation Status.

4. Concern: Inadequate physical and program accessibility may create barriers to access for youth with physical disabilities, including mobility, hearing, and vision impairments, and limit effective participation in the MDOC programs.

The OCR advised that the MDOC should plan for periodic comprehensive reviews to determine that the facility has a plan for physical accessibility and program accessibility, as required by the ADA and Section 504 (e.g., at least one accessible bathroom for in-cottage use). The OCR directed the MDOC to technical assistance resources regarding accessibility available on the DOJ's ADA.gov website (e.g., adequate clear floor space, appropriate placement and models of fixtures and furniture, grab bars). Responding to the OCR's feedback, the MDOC began conducting inspections for new barriers to physical accessibility by the Executive Team to ensure accessibility.

A. Identify and address physical accessibility needs of youth with mobility impairments.

- i. Develop policies and procedures for providing wheelchair assistants to youth who use wheelchairs and require assistance, including vetting, training, and scheduling.

Initially, the MCF-RW practice was to train other youth to provide wheelchair assistance, a practice similar to that used in the adult correctional setting. However, during the pendency of this Compliance Review, the MDOC revised its policy and process for providing assistance to youth with mobility impairments. According to the MCF-RW Nurse Supervisor, MCF-RW staff are now trained and responsible for providing wheelchair assistance. The MDOC also provided the OCR with information concerning its policy and practice when youth present with mobility

impairments that may require the use of assistive devices. The MDOC confirmed that youth who are determined to require the need of wheelchair assistance have such accommodations included in both a paper form that is sent to the youth's cottage team and in their internal computer system so that the information is available as needed.

- B.** Address program accessibility needs of youth with disabilities related to vision and hearing.
 - i.** Conduct periodic audits of assistive technology for youths with hearing disabilities (e.g., video remote interpreting (VRI) testing).

The MDOC has noted that such audits are incorporated into policy 203.250 (Modifications for Offenders/Residents with Disabilities), which requires medical staff to ask newly admitted residents if they require a modification. The MDOC assures that if a modification is requested, the ADA Coordinator reviews the request and determines if it is warranted. Based on subsequent discussions with the OCR, the MDOC further committed that the ADA Committee would conduct technological audits of assistive technology for youths who are deaf or hard of hearing on a quarterly basis.

- ii.** Clarify policies and procedures regarding the use of physical restraints (e.g., handcuffs) for youths who use sign language to communicate.

At the time of the OCR's onsite visit, the MDOC did not have written policies and procedures for physically restraining youths who use sign language to communicate at the MCF-RW. The MDOC reported that it has been the MCF-RW's longstanding practice to handcuff a youth who communicates via sign language so that his hands may remain in front of his body; however, this practice was not recorded in official policy. The MDOC has since formally added this current cuffing practice to its restrictive procedures policy.

- iii.** Develop methods (e.g., separate methods for pre-arranged communications and immediate communications) to concurrently relay aurally delivered information to youth with hearing disabilities.

The OCR's investigation identified the need for the MDOC to develop methods to relay aurally delivered information to youths with hearing disabilities in lieu of audio-based notifications (i.e., PA system) and to establish safeguards to ensure that the same information is relayed simultaneously across notification systems.

The MDOC reported that most living units in the MCF-RW have amplified fire alarm horns (80db to the pillow) in the sleeping rooms. Additionally, the MDOC installed a lighted intercom station in one designated sleeping room in each resident living unit as well as a strobe fire alarm device to notify hearing impaired residents of an activated alarm. The MDOC recognizes that additional measures may be required to address youth with vision related disabilities and who are deaf / hard of hearing. Indeed, Title II requires recipients to provide effective communication to

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ensure important communication between the youth and the MDOC is clearly and timely provided.¹⁴

IV. CONCLUSION

As set forth above, the OCR has worked closely with the MDOC to support the adoption of ameliorative changes during the pendency of this Compliance Review. The DOJ appreciates the MDOC's efforts to comply with Section 504 and the ADA, specifically regarding the areas of focus delineated above. The OCR notes that the MDOC has taken other measures, not specifically identified here, including changes to policy, process, and hirings and training, to improve conditions at MDF-RW and WMH. Many of these changes serve to increase access to a wider set of educational programs and health services and are universal in design, application, and impact, demonstrating a commitment to all youth within their care, including those with disabilities. Based on the foregoing, the OCR is officially closing Compliance Review No. 17-OCR-0794 as of the date of this letter. Although the DOJ does not anticipate it, should there be a material breach of any assurances set forth by the MDOC in association with the closure of this Compliance Review, the DOJ has the discretion to reopen this matter and assess the need for additional review and/or a formal investigation.

This letter does not constitute a finding that the MDOC is or will be in full compliance with the ADA, Section 504, or other federal civil rights laws, nor does it address other potential claims of discrimination based on a protected category that may arise from MDOC activities. OCR's determination here is limited to the specific facts of the matter and does not preclude DOJ from taking additional appropriate action to evaluate a recipient's compliance with any of the laws enforced by DOJ. OCR's closure of this Compliance Review does not affect a recipient's requirement to comply with all applicable federal laws and regulations, provided that the MDOC remains subject to such laws and regulations.

Please also note that this letter does not affect any legal rights that current or future complainants may have to file private lawsuits regarding concerns raised with the OCR. We are also obligated to inform you that recipients may not intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone who has either acted or participated in an action to secure rights protected by the civil rights laws that the DOJ enforces. The protection against retaliation extends to recipient employees who provide information or otherwise cooperate with OCR's review. Any individual who alleges such harassment or intimidation may file a Complaint with the OCR.


Under the Freedom of Information Act (FOIA), the OCR may be obligated to release, upon request, information and related documents related to this Compliance Review. In the event that we receive such a request, we will seek to protect, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

¹⁴ 28 C.F.R. Part 35, subpt. E.

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The OCR appreciates the MDOC's cooperation regarding this Compliance Review. If you have any questions concerning this letter or any of its terms, please contact the OCR at 202-307-0690 or askOCR@ojp.usdoj.gov.

Sincerely,

A handwritten signature in black ink, reading "Michael L. Alston", is written over a light gray rectangular background. To the left of the signature is a large, bold, black "X" mark. The entire signature area is enclosed in a thin black rectangular border.

Michael L. Alston

Director

Signed by: MICHAEL ALSTON

cc: Shon Thieren, Warden, Minnesota Correctional Facility–Red Wing (via email only)
Ruth Kuehni, Management Analyst, Minnesota Correctional Facility–Red Wing (via email only)