

**ADMINISTRATIVE PROCEEDING
IN THE
UNITED STATES DEPARTMENT OF EDUCATION**

IN THE MATTER OF
MICHIGAN DEPARTMENT OF
EDUCATION,

Respondent.

Docket No. 24-20-CR
OCR Case No. 15-21-4017
Compliance Proceeding Under
Section 504 of the Rehabilitation Act of 1973,
As Amended, 29 U.S.C. § 794,

NOTICE OF OPPORTUNITY FOR HEARING

INTRODUCTION

Pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504), and the regulations of the United States Department of Education, 34 C.F.R. §§ 100.6-100.11; and Parts 101 and 104, NOTICE IS HEREBY GIVEN that the Michigan Department of Education (Respondent) will be given an opportunity to be heard concerning the allegations set forth below.

INSTRUCTIONS

The Respondent has twenty (20) days from the date of service of this Notice of Opportunity for Hearing (Notice) within which to file its Answer, unless such time be extended by order of the responsible official of the U.S. Department of Education for good cause shown. 34 C.F.R. §§ 101.42, 101.52. The Respondent shall file an original and two copies of its Answer with the Civil Rights Hearing Clerk, U.S. Department of Education. 34 C.F.R. § 101.33. Submissions mailed via the U.S. Postal Service should be sent to: Office of Hearings and Appeals, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202-4533. Submissions filed via hand delivery, private messenger, or other private carrier should be sent to: Office of Hearings and Appeals, U.S. Department of Education, 550 12th Street, S.W. 10th Floor, Washington, D.C. 20024. The Respondent shall mail or deliver an additional copy of its Answer to Randolph Wills, Deputy Assistant Secretary for Enforcement, Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202-1100. 34 C.F.R. § 101.33. All notices and all written motions, requests, petitions, memoranda, pleadings, exceptions, briefs, decisions, and correspondence to a Department official related to the proceeding shall be filed with the Civil Rights Hearing Clerk and served on all parties. 34 C.F.R. § 101.33. Any motions by the Respondent for an extension of time to file its Answer

should be served on all parties and filed with the Civil Rights Hearing Clerk. 34 C.F.R. §§ 101.33, 101.42.

An Answer shall admit or deny specifically and in detail each allegation of this Notice, unless the Respondent is without knowledge to admit or deny, in which case the Answer should so state and such statement will be deemed a denial. Allegations of fact in this Notice that are not denied or controverted by the Answer shall be deemed admitted. Matters alleged as affirmative defense shall be separately stated and numbered. Failure of the Respondent to file an Answer within the 20-day period following service of this Notice may be deemed an admission of all matters of fact received in this Notice. 34 C.F.R. § 101.52.

Within 20 days after service of this Notice, the Respondent may request a hearing either in its Answer or in a separate document. 34 C.F.R. § 101.54. The Respondent may waive a hearing and submit written information and argument for the record. 34 C.F.R. § 100.9(a). The failure of the Respondent to request a hearing within the 20-day period shall be deemed waiver of the right to a hearing and to constitute the Respondent's consent to the making of a decision on the basis of such information as is available. 34 C.F.R. § 101.54.

JURISDICTIONAL AUTHORITY

The Assistant Secretary for Civil Rights, through the Office for Civil Rights (OCR), has jurisdiction in this matter to enforce Section 504 and its implementing regulations at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. Because the Respondent receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Section 504. OCR further has authority to enforce compliance with these laws under 34 C.F.R. § 104.61, 34 C.F.R. §§ 100.6 – 100.11, and 34 C.F.R. § 101.

The Office of Hearings and Appeals, Department of Education has jurisdiction to hear this matter under 34 C.F.R. § 100.9(b) and 5 U.S.C. §§ 3105, 3344.

ALLEGATIONS

The Assistant Secretary for Civil Rights, United States Department of Education (Petitioner) alleges as follows:

1. This action is brought pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504), and the regulations of the United States Department of Education, 34 C.F.R. §§ 100.6-100.11; and Parts 101 and 104.
2. The Michigan Department of Education (MDE or the Respondent) receives or has applied for Federal financial assistance under one or more acts of Congress administered by the United States Department of Education.
3. MDE received Federal financial assistance administered by the United States Department of Education directly from the United States Department of Education during Federal fiscal years 2020, 2021, 2022, and 2023.

4. Under Federal law, MDE is Michigan's state educational agency for the purpose of receiving and disbursing funds granted by the United States Department of Education under various acts of Congress.

5. MDE disbursed and continues to disburse Federal financial assistance to school districts in the state.

Background

6. School closures prompted by the COVID-19 pandemic in March 2020 and thereafter meant that many Michigan students with disabilities went without the academic instruction and services to which they were entitled under Section 504.

7. The pandemic posed many unique pragmatic challenges for school districts and state educational agencies in meeting their legal obligations to students with disabilities and their parents. Despite the challenges facing recipients, neither Congress nor the Department exempted or suspended recipients' obligations under Section 504.

8. MDE failed to ensure that Michigan students with disabilities were receiving a free appropriate public education (FAPE) as required by Section 504 during the COVID-19 pandemic. Furthermore, MDE exacerbated and contributed to the harm to students with disabilities caused by the FAPE denials by giving school districts, which it supervised and to which it provided Federal financial assistance, information about the remedies required for FAPE denials that was inconsistent with Section 504's requirements.

9. Under Section 504, as set forth in 34 C.F.R. §§ 104.4(b)(1) and 104.4(b)(4), no recipient may discriminate on the basis of disability "directly or through contractual . . . or other arrangements."

10. Under Section 504, as set forth in 34 C.F.R. § 104.4(b)(1)(v), no recipient may "aid or perpetuate discrimination" by providing significant assistance to an agency that discriminates on the basis of disabilities against the beneficiaries of the recipient's program or activity.

11. Under Section 504, as set forth in 34 C.F.R. § 104.33, a recipient that operates a public elementary or secondary education program or activity must provide a FAPE to each qualified individual with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability.

12. For students with disabilities who are also eligible for an Individualized Education Program (IEP) under the Individuals with Disabilities Education Act (IDEA), 34 C.F.R. § 104.33(b)(2) provides that implementation of an IEP developed in accordance with the IDEA is one means of meeting the Section 504 FAPE standard.

13. Many Michigan students with disabilities went without the academic instruction and services required for FAPE, as set forth in their Section 504 Plan or IEP, and some for prolonged periods of time.

14. MDE was on actual notice of the extensive failures by school districts to provide Michigan students with disabilities the services set forth in their Section 504 Plans and IEPs. Multiple parents of Michigan students with disabilities directly contacted MDE to report that their children were being denied services they needed and to which they were entitled, and to seek MDE's guidance and intervention.

- a. For example, one parent told MDE by email that their child's school district was "not able to provide any speech services other than emailed handouts" during the spring of 2020 and "offer[ed] nothing over the summer so that kids with IEPs will not obtain specialized help for about 6 months."
- b. Another parent emailed MDE to report that their daughter's school was "saying they are unable to accommodate her IEP if she is in virtual learning," that she received no one-on-one time with her special education teacher, and that "[t]his is all against what she has in her IEP and the school is saying they can't accommodate the IEP."

15. These and other students experienced significant denials of the educational and other evaluations and services to which they were entitled under Section 504.

16. Regardless of the difficult circumstances during the COVID-19 pandemic, students with disabilities retained their right to FAPE under Section 504.

17. Students with disabilities, including those students with disabilities who are eligible for an IEP, are entitled under Section 504 to such remedial action as is necessary to overcome the effects of any violations of Section 504.

18. For any students with disabilities who did not receive appropriate services during the COVID-19 pandemic (including academic instruction and services set forth in their Section 504 or IEP plans), recipients that operate elementary and secondary education programs were required to convene a group of persons knowledgeable about each such student, the meaning of the evaluation data, and the placement options to make an individualized determination of whether, and to what extent, remedies to address violations of FAPE are necessary.

19. The remedial action required under Section 504 can include the provision of compensatory services. Compensatory services are those services required to remedy any educational or other deficits that result from a student with a disability not receiving the evaluations or services to which they were entitled under Federal law. Compensatory services are sometimes referred to as compensatory education.

20. Under Section 504, as set forth in 34 C.F.R. § 104.6(a)(2), where one recipient exercises control over a recipient that has discriminated, the Assistant Secretary, through OCR, may require either or both recipients to take remedial action.

21. As Michigan's state educational agency, MDE is "the agency primarily responsible for the State supervision of public elementary schools and secondary schools." 20 U.S.C. § 7801(49).

22. MDE did not meet its obligation to supervise and ensure compliance with Section 504 by elementary and secondary educational programs that received Federal financial assistance from it.

Procedural History

23. On March 11, 2021, the United States Department of Education, Office for Civil Rights (OCR) received a complaint against MDE alleging that it was violating Section 504.

24. By letter dated June 23, 2022, OCR notified MDE that it was opening for investigation the allegations in the March 11, 2021, complaint. The letter described the complaint as alleging that, since the start of the COVID-19 pandemic, MDE provided guidance to local education agencies (school districts or districts) "that improperly limits compensatory services, which may lead to a denial of a free appropriate public education to students with disabilities."

25. At the conclusion of the investigation, OCR determined based on the preponderance of the evidence standard that MDE has, in violation of Section 504, improperly limited compensatory services for students with disabilities who did not receive evaluations or services to which they were entitled, including by failing to provide compensatory services to students attending a school that MDE directly operates, thereby failing to ensure the provision of FAPE and remedy FAPE denials. OCR also determined based on a preponderance of the evidence standard that MDE failed to designate an individual to coordinate its efforts to comply with Section 504 and to publish notice accurately identifying such a coordinator. Accordingly, OCR found that MDE is in violation of the Section 504 regulations at 34 C.F.R. §§ 104.4(a), (b)(4)(i), (b)(4)(ii); 104.6(a); 104.7(a) and 104.8(a); 104.33; 104.35(a), (c); and 104.36.*

26. On June 20, 2023, OCR notified MDE by phone of its findings that MDE failed to comply with Section 504 and its implementing regulations.

27. On June 28, 2023, OCR notified MDE by email of its findings that MDE failed to comply with Section 504 and its implementing regulations. In the same email, OCR sent MDE a proposed resolution agreement to resolve OCR's findings and bring MDE into compliance with the law.

* OCR also investigated and made findings that MDE has violated various requirements of Title II of the Americans with Disabilities Act. OCR does not rely on MDE's violations of Title II as an independent basis for this administrative action.

28. OCR's June 28, 2023, email explained that under OCR's *Case Processing Manual* (CPM), MDE had no more than ninety (90) calendar days from June 28, 2023, the date the terms of the proposed agreement were shared with the recipient, within which to enter into a resolution agreement addressing MDE's failure to comply with Section 504.

29. The 90-day period referenced in OCR's June 28, 2023, email to MDE would expire on September 26, 2023.

30. On August 2, 2023, OCR emailed MDE to note that it had yet to receive any response to the proposed agreement sent on June 28, 2023 and offered to discuss the agreement.

31. In a letter dated August 3, 2023, MDE stated its disagreement with OCR's findings and requested either a letter of findings from OCR or a statement of the case. MDE also asked that OCR provide the specific statutes, regulations, or case law that it relied on to support its findings. The letter said that MDE would not sign the proposed resolution agreement.

32. On September 1, 2023, OCR offered by email to meet with MDE administrators to discuss OCR's findings and answer MDE's questions.

33. MDE informed OCR on September 13, 2023, by email that MDE administrators were available to meet with OCR on September 26, 2023, the deadline by which MDE was to enter into a resolution agreement.

34. On September 26, 2023, the agreed-upon date of the meeting, MDE informed OCR by email that it was canceling the meeting and would subsequently provide alternative dates or times to reschedule the meeting "within the next couple of weeks."

35. On October 2, 2023, MDE sent an email to OCR requesting further information, including the legal bases for OCR's findings, before MDE would reschedule the meeting.

36. On October 6, 2023, OCR issued a letter to MDE declaring impasse in the negotiations (Letter of Impasse) pursuant to OCR's *Case Processing Manual*, at Section 303(g).

37. OCR's October 6, 2023, Letter of Impasse explained that, unless a resolution agreement was reached within ten (10) calendar days of the date of the letter, OCR would issue a Letter of Impending Enforcement Action.

38. The 10-day period stated in the Letter of Impasse would expire on October 16, 2023.

39. MDE did not send OCR a signed version of the proposed resolution agreement, offer any counterproposal to resolve the identified compliance violations, or otherwise demonstrate that it had come into compliance during the 10-day impasse period identified in the Letter of Impasse.

40. On October 18, 2023, OCR issued a Letter of Impending Enforcement Action to MDE, pursuant to Section 305 of the CPM.

41. The Letter of Impending Enforcement Action explained that MDE had fifteen (15) calendar days to respond by signing the proposed resolution agreement and submitting it to OCR, or by demonstrating that it had fully come into compliance with Section 504 and Title II.

42. The Letter of Impending Enforcement Action explained that if MDE did not enter a resolution agreement or otherwise comply with the regulations, OCR would either initiate administrative proceedings to suspend, terminate, or refuse to grant or continue and defer financial assistance to MDE or refer the case to the U.S. Department of Justice for judicial proceedings to enforce any rights of the United States under any law of the United States.

43. The 15-day period stated in the Letter of Impending Enforcement Action expired on November 2, 2023.

44. MDE did not respond to OCR's Letter of Impending Enforcement Action until a letter dated November 15, 2023. MDE's November 15, 2023, letter disputed OCR's findings.

45. In its November 15, 2023, letter, MDE enclosed the resolution agreement that OCR sent MDE June 28, 2023, with proposed revisions in redline and said that MDE was willing to enter into the redlined version of the agreement.

46. Under the redlined resolution agreement, MDE would agree only to take actions related to its failure to designate at least one person to coordinate its efforts to comply with Section 504 and its failure to determine if students of one specific school that it operates, the Michigan School for the Deaf, required additional services in light of the students being denied FAPE during the pandemic. MDE's redlined version struck through all other aspects of the proposed agreement.

47. The redlined resolution agreement would not have brought MDE into compliance with Section 504.

48. On December 15, 2023, OCR staff spoke with counsel for MDE in further efforts to resolve MDE's noncompliance. OCR agreed to send MDE a revised resolution agreement that would address MDE's concerns about the June 28, 2023 proposed agreement while maintaining the key terms of the agreement needed to remedy MDE's noncompliance.

49. In a letter dated February 1, 2024, OCR responded to some of the assertions in MDE's November 15, 2023, letter and attached a revised resolution agreement. The letter stated that MDE could contact OCR staff to discuss the letter.

50. On February 16, 2024, OCR emailed MDE's legal counsel to confirm whether MDE had received the February 1, 2024, letter since MDE had yet to respond. The email from OCR again offered to speak with MDE's counsel or address any questions regarding the letter or revised resolution agreement.

51. MDE’s legal counsel responded by email on February 16, 2024, to confirm MDE had received OCR’s February 1, 2024, letter and revised resolution agreement. The email stated that MDE’s counsel “anticipate[d] having a response to [OCR] by the end of March.”

52. By email on April 16, 2024, MDE declined to agree to the proposed resolution agreement. MDE did not offer a counterproposal to resolve the matter, seek to continue negotiations with OCR, or otherwise demonstrate that it had come into compliance with Section 504.

53. To date, MDE has refused to enter into a resolution agreement and has failed to achieve compliance by voluntary means.

54. Petitioner has determined that compliance by MDE with Section 504 cannot be achieved by voluntary means.

MDE’s Guidance and Other Information on Compensatory Services

55. In response to the spread of COVID-19 in March 2020, the Governor of Michigan issued a series of executive orders closing all K-12 school buildings for the remainder of the 2019-2020 school year.

56. In Executive Order 2020-142, issued on June 30, 2020, the Governor stated that “[d]istricts shall, to the extent practicable and necessary, make individualized determinations whether and to what extent compensatory services may be needed for students in light of the school closures in the 2019-2020 school year.”

57. By emergency order issued by the Michigan Department of Health and Human Services on November 15, 2020, the state again closed schools serving students in grades 9-12 for in-person instruction between November 18-December 8, 2020, except for students who were English Language Learners or students receiving special education services. For other periods during the 2020-2021 school year and thereafter, Michigan districts were varied in the timing and extent of their return to in-person instruction.

58. MDE has an Office of Special Education (OSE), which MDE describes as responsible for “ensur[ing] compliance with all federal and state statutory and regulatory requirements.”

59. MDE published guidance documents from March 2020 to March 2022 on OSE’s website regarding how school districts should respond to the impact of the school closures on students with disabilities who have IEPs.

60. Additionally, during this time period and continuing to date, MDE operated a helpline and email address through which OSE responds to inquiries and provides information and resources to members of the public, including school district staff.

61. By email to other MDE staff on December 8, 2020, the Supervisor of OSE summarized data about use of the helpline between July 1, 2020 and November 30, 2020. The OSE Supervisor explained that the data showed that “Parents and Schools were the top contacts” and that “Adequacy of Programs and IEP Implementation were the 2 top topics which are supportive of what parents are asking questions about.” The OSE Supervisor summarized this data “to demonstrate that from the get go our Information Line has been fielding calls about [the issue of IEP implementation] and the issue is trickling down into larger needs,” and thus was “an issue that the OSE needs to make sure [it is] addressing in both the parent world and with districts and ISDs.”

62. MDE also held at least 30 webinars from March 2020 through December 2020, and gave other presentations to a wide range of stakeholders from July 2020 through April 2021, reflecting the information in its guidance documents.

63. The director of OSE acknowledged in a December 2020 webinar that many parents also had questions about “Section 504 plans” for students with disabilities who are not eligible for IEPs. However, MDE did not publish any separate guidance to answer questions specific to the provision of compensatory services for students with Section 504 plans.

64. The guidance, technical assistance, presentations, and other materials MDE provided between March 2020 and March 2022 failed to correctly inform school districts, families, and other stakeholders of Section 504’s requirements for the provision of compensatory services. These communications instead stated various requirements for or limitations on the provision of compensatory services that were inconsistent with Section 504 and encouraged school districts to remedy the failures to provide students with appropriate services through means that were insufficient under Section 504.

MDE Guidance and Other Information Inconsistent with Section 504

65. MDE issued the following guidance, technical assistance, presentations, and other materials in which it addressed topics relevant to compensatory services:

- a. In March 2020, OSE issued guidance titled “Determining the Need For and Amount of Compensatory Education.”
- b. On April 10, 2020 (revised on May 18, 2020), OSE issued guidance titled “Guidance for Compliance with the Individuals with Disabilities Education Act and the Michigan Administrative Rules for Special Education During the COVID-19 Pandemic,” to “compile questions [MDE was] receiving and provide answers in a uniform and consistent manner.”
- c. On July 7, 2020, MDE issued guidance titled “Guidance to Address Foregone Learning for Students with IEPs as a Result of the COVID-19 Pandemic.”
- d. On July 30, 2020, OSE gave a presentation titled “Recovery Services Due to COVID-19 for Students with IEP’s [sic].”

- e. On August 4, 2020, OSE gave a presentation to charter school authorizers titled “Proactive Planning for Students with IEPs: Addressing the Impact of COVID-19.”
- f. On August 24, 2020, OSE issued guidance titled “Guidance to Address Return to Learn for Students with IEPs” to “provide answers to a series of questions MDE ha[d] received in a uniform and consistent manner.”
- g. In November 2020, OSE issued guidance on Compensatory Education.
- h. On March 22, 2022, OSE issued guidance titled “Guidance on the Recommended Use of Contingency Learning Plans,” which provided information to “families of students with disabilities, advocates, intermediate school districts (ISDs), and local school districts, including public school academies (PSAs).”

66. MDE repeatedly made assertions in these and other communications that are inconsistent with Section 504 because the assertions unlawfully limit the circumstances in which compensatory services must be provided to students with disabilities.

67. *Procedural Barriers to Obtaining Compensatory Services:* MDE’s assertions regarding how compensatory services could be obtained improperly indicated that compensatory services could only be obtained pursuant to due process complaint proceedings, state complaint proceedings, or MDE’s monitoring activities.

- a. The March 2020 guidance stated: “The ordering of compensatory education occurs if, at the conclusion of a state complaint, the Michigan Department of Education Office of Special Education (MDE OSE) determines that a district failed to provide a Free Appropriate Public Education (FAPE).” The guidance did not identify any other means by which compensatory education could be obtained.
- b. The July 7, 2020, guidance stated that “[c]ompensatory education is part of due process complaint procedures and is a possible remedy when it is determined that a school district denied a FAPE to an individual student,” without clarifying that a student need not file a due process complaint to obtain compensatory services. The guidance then stated that compensatory education “is typically awarded as a result of an educational loss identified in a state complaint final decision by an administrative law judge in a due process hearing, or due to identified noncompliance as a result of in State monitoring activities.” The guidance included a chart which stated that compensatory education “[r]esults from a state complaint or due process hearing or focused monitoring corrective action” for district noncompliance. Neither the guidance nor the chart identified any other means by which compensatory education could be obtained.

- c. The July 30, 2020, presentation stated: “Compensatory education is ordered by the MDE OSE or an administrative law judge [ALJ] as part of corrective action from a state or due process complaint where it was determined there was a denial of FAPE.” The presentation did not identify any other means by which compensatory education could be obtained.
- d. The August 4, 2020, presentation repeated this statement and further added that it may be ordered “occasionally during a State monitoring activity.”

68. There is no statutory or regulatory limitation on compensatory services to students who filed a complaint or for whom the SEA decides are entitled to compensatory services in the course of the SEA’s monitoring activities. MDE’s guidance to the contrary is inconsistent with Section 504.

69. *Authority to Determine Compensatory Services:* MDE’s assertions regarding the determination of compensatory services improperly indicated that, without convening a group of knowledgeable persons, OSE can alone determine whether a student is entitled to compensatory services and, if so, the amount, type, frequency, and duration of the compensatory services.

- a. The March 2020 guidance stated that, once MDE determines a student was denied FAPE through the complaint process and orders compensatory education, “[t]he amount of compensatory education to be ordered must be considered on an individual basis and is determined by a team of MDE OSE staff.” The August 4, 2020, presentation repeated this statement.
- b. The July 7, 2020, guidance included a chart comparing compensatory education and recovery services; the chart stated that the type, amount, frequency, and duration of compensatory education is determined by OSE or an administrative law judge, whereas the student’s IEP Team, including their parent, determines the same for recovery services based on student-level data.

70. These assertions are inconsistent with Section 504. Unless compensatory services are ordered by a hearing officer or court, Section 504 requires that a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options make such determinations, as set forth in 34 C.F.R. § 104.35(c). When OCR identifies a compliance concern or violation in administrative enforcement proceedings requiring compensatory services, the recipient must convene such a group of knowledgeable persons in accordance with 34 C.F.R. § 104.35(c).

71. *Limitation of the Basis for Which Compensatory Services may be Provided:* MDE’s assertions regarding the basis upon which compensatory services could be obtained improperly indicated that a student with a disability could receive compensatory services only under limited circumstances.

- a. The March 2020 guidance stated that compensatory education is ordered if, following a state complaint, OSE determines that “the student, who is the subject

of the complaint, suffered a loss of educational benefit.” The guidance did not explain that other deficits may entitle a student to compensatory education.

- b. The July 7, 2020, guidance stated that compensatory education is typically awarded upon a finding of educational loss, and included a chart that stated that compensatory education is provided “for district identified noncompliance leading to educational loss and a denial of a free appropriate public education (FAPE).” Neither the guidance nor the chart explained that other deficits may entitle a student to compensatory education.
- c. The July 30, 2020, presentation included a slide that stated:

“Compensatory Education Is:

- A remedy under the IDEA due to an educational loss or denial of a FAPE
- Designed to ‘place a child in the position they would have been in but for the violation of the Act.’
- Awarded to an individual student as a result of district error or neglect
- Based on individual needs and aligned with IEP goals as determined by the district, with input from the parent, while meeting conditions defined by the MDE OSE or the ALJ.
- Provided outside of the normal school day.”

The presentation did not explain that other deficits may entitle a student to compensatory education or that a student may receive compensatory education even without district error or neglect.

- d. The August 4, 2020, presentation identified common indicators that a student was denied FAPE and needs compensatory education, stating such indicators could include, among others, if the district failed to implement “large parts of” the student’s IEP. This was a change from the March 2020 guidance, which stated that a common indicator was if the student’s IEP “was not implemented as written.” Both the March 2020 guidance and the August 4, 2020, presentation also stated that a common indicator was if the student did not have access to their IEP provisions and/or the general curriculum “for a period of time” due to reasons including disciplinary removals or errors in manifestation determination findings.
- e. The August 24, 2020, guidance repeated that compensatory education is a legal remedy awarded “because of a district error or neglect that resulted in a denial of FAPE and a loss of educational benefit.” The guidance did not explain that other deficits may entitle a student to compensatory education or that a student may receive compensatory education even without district error or neglect.

72. Compensatory services are not contingent on fault, and a student may be entitled to compensatory services because of other, non-educational deficits that result from the student with a disability not receiving the evaluations or services to which they were entitled.

Additionally, a student need not have been denied implementation of “large parts” of their IEP to be entitled to compensatory services for the educational or other deficits they experienced. Further, the amount of time the student was denied educational or other benefits does not limit their right to obtain compensatory services for those missed benefits.

73. *Limitations on When Compensatory Services may be Provided:* MDE’s assertions that compensatory services must be provided outside of the normal school day improperly indicate that compensatory services may not be provided during the student’s normal school day.

- a. The July 30, 2020, presentation stated that “Compensatory Education is: . . . [p]rovided outside of the normal school day.”
- b. The August 4, 2020, presentation repeated this statement.
- c. The November 2020, guidance stated that: “Compensatory education is intended to be a supplement to a student’s current instruction and educational opportunities. Therefore, compensatory education is provided outside the course of the regular school day, when instruction will not be supplanted, and a FAPE and the least restrictive environment will not be further compromised. Compensatory education may be provided before school, after school, and/or during the summer and other periods when there are breaks of instruction.”

74. No such statutory or regulatory limitation on when compensatory services are provided exists, and Section 504 requires an individualized assessment of how a student will receive needed services. Confining compensatory services to times outside of the normal school day is also inconsistent with Section 504’s requirement that students with disabilities have equal access to a recipient’s programs or activities, including those occurring outside the normal school day.

75. *Conflation of Compensatory Services with Other Services:* MDE’s assertions regarding recovery services, extended school year (ESY) services, and contingency learning plans (CLPs) failed to correctly inform school districts about the extent to which compensatory services—regardless of the term MDE used to describe them—were legally required for students with disabilities.

- a. The April 2020 guidance contrasted compensatory education, which it described as a “legal remedy,” with ESY services, which it described as “an individual entitlement for students with an IEP.” The guidance stated, with respect to “COVID-19 related circumstances” and “the additional impact of school building closure on learning and students’ progress toward their IEP goals,” that “[p]roviding appropriate ESY services may reduce the need for compensatory education services when schools return to normal operations, particularly for students for whom the absence of in-person instruction has had a significant impact.” The guidance also instructed that, “[u]nless an IEP team is able to fully implement the current or most recent IEP,” each student’s IEP team must either develop a new IEP, amend the current IEP, issue prior written notice, or develop a

CLP. MDE did not explain that compensatory services may be required under Section 504 following periods when CLPs are in place.

- b. The July 7, 2020, guidance contrasted compensatory education, which it stated was remedial, with “recovery services,” which it stated were neither mandatory nor remedial. The guidance stated that some students may not have received specially designed instruction, related services, and supplementary aids and supports, resulting in a regression of skills or impacting the students’ ability to make progress in the general curriculum. MDE thus stated that, “in some cases, students with IEPs may benefit from recovery services due to the COVID-19 pandemic.” Whereas the chart stated that compensatory education results from district noncompliance, it said that recovery services result from “a loss of instructional time due to the COVID-19 pandemic and the additional impact of the instructional loss” for a student with an IEP.
- c. The July 30, 2020, presentation stated that there were “[b]lurred lines” between “Compensatory Services, Extended School Year Services and Recovery Services.” The presentation stated that a “common link between compensatory education and recovery services” is the “making up of services which the student was entitled to but was not provided.” The presentation repeated that compensatory education was part of corrective action from a complaint where there is a determination of a FAPE denial but that “[r]ecover services are determined by the IEP team, including the parent, as a result of failure to retain skills and make progress on the IEP goal(s) and general curriculum due to loss of learning opportunities which resulted from the COVID-19 pandemic.”
- d. The August 24, 2020, guidance encouraged districts to develop a CLP for when the district is “unable to provide a full offer of a FAPE.” The guidance referenced Executive Order 2020-142, which required districts to make individualized determinations about compensatory services to the extent practicable and necessary, but the guidance did not explain that compensatory services may be required under Section 504 following periods when CLPs are in place.
- e. The March 22, 2022, guidance “strongly recommend[ed]” that districts use CLPs and stated that the need for CLPs could be triggered by “school, district, or program closure due to COVID-19,” among other examples. The guidance did not explain that compensatory services may be required under Section 504 following periods when CLPs are in place.

76. MDE also improperly steered some families of students with disabilities towards recovery services, ESY, or CLPs without explaining they may have a right to compensatory services under Section 504.

- a. For example, one parent emailed MDE stating that their child’s school said it was “unable to accommodate [the student’s] IEP if [the student] is in virtual learning.” The parent asked MDE: “What options do we have to move forward?” MDE’s

email in response recommended that the parent ask for a CLP or discuss modifying the CLP if the student already had one, and directed the parent to the August 24, 2020, guidance and a forthcoming December 2020 webinar. The email did not inform this parent that their child may be legally entitled to compensatory services.

- b. Another parent, who had attended a December 2020 MDE webinar, emailed MDE to ask how the employment and adult transition services that their child had not been receiving since March 2020 would be recovered. MDE provided information about recovery services and CLPs and referred the parent to its April 2020 and July 7, 2020, guidance documents. MDE's email provided no information about compensatory services and MDE told the parent that they would have to file a state complaint or request a due process hearing if recovery services were denied and the parent believed their child was denied services for FAPE listed on the child's IEP.
- c. One individual emailed MDE in January 2021 to ask whether there was "some kind of compensation available or being constructed" for "special education students missing school due to COVID-19." MDE provided information about recovery services and CLPs and referred the individual to its July 7, 2020, and August 24, 2020, guidance documents, as well as webinar materials from September and December 2020. MDE's email provided no information about compensatory services and MDE told the individual that the processes available to a parent who believes their child was denied FAPE are facilitation, mediation, state complaint proceedings, and due process complaint proceedings.
- d. With respect to students who aged out of eligibility for special education services after the start of the COVID-19 pandemic and had not received services in their IEPs during that time, MDE told parents of students with disabilities and advocates supporting those students that they could seek recovery services but districts were not required to provide them. MDE told these individuals that "compensatory education could potentially be awarded even though the student has aged out" if MDE or an administrative law judge found a FAPE denial, without explaining that the student's IEP team could determine compensatory services were required.

77. MDE has also advised that compensatory education cannot be provided until a district has first implemented one or more of these other services. For example, a representative from the Traverse Bay Area Intermediate School District contacted MDE in May 2020 because a parent was likely to ask for compensatory education that week and the district was seeking advice on how to approach the conversation with the parent. MDE advised the district to postpone the discussion about possible compensatory education to the fall and stated that "[d]istricts need an opportunity to deliver instruction to complete the school year, consider ESY and other possible options for summer learning." MDE told this district that "[o]nly when those things have been discussed/implemented are districts able to determine any additional loss pertaining to considerations of compensatory education."

78. Recovery services, ESY, and CLPs as MDE described them to stakeholders are not adequate substitutes for the compensatory services that are required by Section 504.

79. Furthermore, some of MDE's guidance about these services conflicted with Section 504's requirements for FAPE. For example, MDE's March 22, 2022 guidance on CLPs suggested that, in remote learning settings, parents may need counseling and training so that the parent can implement some of the curriculum and services the student needs for FAPE. Under Section 504, it is the recipient, not the parent, which must provide FAPE and it must do so without cost to the student or their parents or guardian except as set forth in 34 C.F.R. § 104.33(c).

80. *Failure to Specify Section 504's Requirements for Compensatory Services:* MDE's failure to specifically address the right of students with Section 504 plans to receive compensatory services, coupled with the information it provided for students with IEPs that was inconsistent with Section 504, created ambiguity as to whether compensatory services due to missed benefits during the COVID-19 pandemic were available for students with disabilities who are not eligible for an IEP under IDEA.

81. To date, MDE has not publicly corrected the statements in guidance and other materials it issued regarding compensatory services that are inconsistent with Section 504.

82. For example, in a March 29, 2022 email, an MDE special education consultant advised other MDE personnel that, contrary to MDE's assertions in its prior guidance and presentations, "compensatory education is not necessarily or strictly limited to being provided outside of the school day, i.e., only after or before hours or on non-school days." To date, MDE has never corrected the information it repeatedly published stating that compensatory education is provided outside of the normal school day.

The Impacts of MDE's Guidance and Other Information about Compensatory Education

83. Parents, schools, and districts across the state reviewed and relied upon MDE's guidance documents, including statements made in them that were inconsistent with Section 504. Some schools and districts explicitly sought guidance from MDE, including a group of special education administrators representing various schools and intermediate school districts who emailed MDE on May 11, 2020 to explain that they "anticipate[d] a need for clear, written guidance for [their] districts" about compensatory services.

84. Illustrating the extensive reliance on MDE's guidance and information, one parent informed MDE on December 18, 2020, that she had requested recovery services for her daughter "[p]ursuant to the MDOE's July 7, 2020, Guidance to Address Foregone Learning for Students with IEPs as a Result of the COVID-19 Pandemic document." The parent told MDE that few of her daughter's IEP goals had been addressed since March 2020. The parent's written request for recovery services specifically asked that "services to make up for the lost time" be provided during the period when the student would otherwise have health or gym class to "comport[] with the MDOE directive for recovery services to be provided during the normal school day."

85. This parent also informed MDE that she had attended a December 2020 MDE webinar on recovery services. The parent told MDE that, based on that webinar, she “understood [MDE] to say that Recovery Services are only available for the loss attributable to the lack of District preparedness from March 2020 to June 2020.” The parent also asked MDE whether she was “correct in understanding that the solution to the issue of September to present day loss is going to a due process hearing,” adding “That seems extreme.”

86. MDE’s response to this parent did not discuss compensatory services and suggested that the options of pursuing a due process complaint or state complaint, among other options, were only available “[w]hen a district determines it will not utilize recovery services as a way to address the potential additional impact of the COVID-19 pandemic on students with IEPs which would be over and above the impact experienced by all students, and a parent feels their child was or has been denied [FAPE].” Nor did MDE’s response clearly state that a student may be entitled to compensatory services for losses occurring after June 2020, including when in-person instruction resumed in some districts during the 2020-2021 School Year. The information MDE gave this parent was inconsistent with Section 504 because compensatory services may be required under Section 504 regardless of whether a district provides recovery services and filing a due process or state complaint is not a prerequisite to obtaining compensatory services.

87. In another example, one school district stated, in response to a separate complaint filed with OCR alleging that the district discriminated against students with IEPs by postponing the start of the 2020-2021 school year for such students by one week, that it used the first week to develop CLPs for students with IEPs because of MDE’s August 24, 2020, guidance. The district told OCR that it “decided to take [the August 24, 2020, MDE Guidance] seriously and to make it a priority,” and that it “chose[] to come into compliance with the MDE guidance.”

88. As another example, one school district entered into a “Recovery Services Agreement to Address Impact of the COVID-19 Pandemic” on behalf of some students with disabilities that stated that “[t]he Parents and the School consulted the Michigan Department of Education Recovery Services Guidance Document from July 7, 2020” and “Return to Learn for Students with IEPs Guidance Document from August 24, 2020,” in addition to relevant data.

89. From March 2020 through the summer of 2022, OSE routinely referred individuals seeking information about compensatory services to the July 7, 2020, guidance and repeated one or more of the statements from MDE guidance recited in paragraphs 67, 69, 71, 73, and 75 of this Notice. For example, in several communications, OSE told school district staff that compensatory services must be provided outside of the regular school day, as stated in the August 4, 2020, presentation.

Michigan School for the Deaf

90. MDE operates and oversees the Michigan School for the Deaf (MSD), a public residential school in Michigan for preschool, elementary, and secondary students who are deaf or hard of hearing.

91. The supervisor of the OSE Program Accountability Unit within MDE has direct supervision over MSD and its employees, including MSD's principal.

92. Students are referred to MSD by their local school district and the student's placement is determined by an IEP team, which includes a representative from MSD.

93. MDE is the operating district for MSD.

94. Before the COVID-19 pandemic began, MSD provided instruction to its students seven and a half hours each day on Mondays through Thursdays (from 7:50 a.m. to 3:20 p.m.) and four hours and forty minutes on each Friday (from 7:50 a.m. to 12:30 p.m.).

95. Although other schools in Michigan reopened on April 6, 2020, following the Governor's initial closure of all K-12 school buildings in March 2020, MSD delayed reconvening classes until April 27, 2020, due to staffing issues.

96. From April 27, 2020, through the end of the 2019-2020 school year, MSD provided virtual asynchronous lessons to students, including pre-recorded videos and packets of work that were mailed to students.

97. For the entirety of the 2020-2021 school year, MSD conducted live virtual classes pursuant to a "distance learning plan." Under this plan, MSD decreased the number of instructional minutes in its program, offering students only three hours of instruction each day.

98. MSD has not provided any compensatory services to redress the MSD students' lost instructional time during the 2019-2020 school year and 2020-2021 school year resulting from MSD's delayed reconvening of classes and the 43% reduction in instructional time, from 34 hours and forty minutes per week to 15 hours of instruction per week.

99. From at least January 2021, when MSD's speech and language pathologist left, through May 2, 2022, MSD failed to provide speech and language services to 29 students whose IEPs included speech language services because MSD no longer had a speech and language pathologist.

100. In a letter on February 11, 2021, the principal of MSD told the families of students who should have been receiving speech and language services pursuant to each student's IEP that the speech and language pathologist had resigned, and that, to maintain compliance with each student's IEP, MSD would provide "make up sessions (Compensatory Education)" when they hired a new speech and language pathologist or reimburse families that sought speech and language services from a private provider. MSD did not fill the speech and language pathologist position for the 2021-2022 school year.

101. In an email dated April 4, 2022, the MSD supervisor noted that MSD was "severely out of compliance" with IDEA regarding speech and language services.

102. As of May 2, 2022, MSD had calculated that, in total, it owed MSD students more than 520 hours of compensatory services for the missed speech and language services.

103. MSD sent letters dated May 10, 2022, to the families of students who should have received speech and language services stating that MSD had failed to provide the services since the start of the 2021-2022 school year and that, as a result, MSD would provide virtual “compensatory education services” at no cost, in accordance with each student’s IEP.

104. The May 10, 2022, letters did not acknowledge MSD’s failure to provide the services in January 2021, when the speech and language pathologist left, or offer to provide compensatory services to address the speech and language services that MSD failed to provide between January 2021 and the end of the 2020-2021 school year.

105. MSD did not provide compensatory speech and language services to address the speech and language services it failed to provide during the 2020-2021 school year.

106. Starting in the summer of 2022, MSD did provide compensatory speech and language services to 27 of the 29 students whom it had failed to provide speech and language services during the 2021-2022 school year. The remaining 2 students did not receive compensatory speech and language services.

107. However, MSD did not convene an IEP meeting for the individual students to determine the compensatory services or invite parents or guardians to participate in this determination. Instead, the MSD supervisor and an assistant determined the amount of compensatory speech and language services for each student.

108. These actions were in violation of Section 504, including 34 C.F.R. § 104.35(c), which requires that a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options make such determinations.

109. MSD did not provide parents or guardians with information about Section 504’s procedural safeguards applicable to determinations regarding compensatory services for the missed services.

110. These inactions were in violation of Section 504, as set forth in 34 C.F.R. § 104.36, which requires that a recipient establish and implement a system of procedural safeguards and to provide parents notice of such procedures.

111. On November 29, 2021, MSD sent a letter to the families of students who should have been receiving social work services pursuant to each student’s IEP to notify them that MSD’s social worker had resigned in October 2021. MSD did not provide social work services to any students for the remainder of the 2021-2022 school year. Similar to its letter regarding the speech and language pathologist, this letter stated that, to maintain compliance with each student’s IEP, MSD would provide compensatory services when it hired a new social worker or reimburse families that sought social work services from a private provider.

112. MSD did not provide social work services to any students in the 2022-2023 school year.

113. MSD did not provide any compensatory services for the MSD students who had not received social work services during the 2021-2022 or 2022-2023 school years.

114. MSD has also been unable to fill a position for a visual impairment consultant. Therefore, MSD students have not received the services pursuant to each student's IEP that this person would provide.

Section 504 Coordinator

115. Under Section 504, as set forth in 34 C.F.R. § 104.7(a), a recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with Section 504 (i.e., the Section 504 Coordinator).

116. Under Section 504, as set forth in 34 C.F.R. § 104.8(a), a recipient that employs fifteen or more persons shall take appropriate continuing steps to notify participants, beneficiaries, applicants, and employees that it does not discriminate on the basis of disability and shall identify the employee designated pursuant to § 104.7(a).

117. MDE is a recipient that employs fifteen or more persons and is subject to the requirements of 34 C.F.R. § 104.7(a) and § 104.8(a).

118. During its investigation, OCR asked MDE to identify and provide the contact information for the employee it had designated to coordinate its compliance with Section 504.

119. In response to OCR's request, MDE identified a person listed on a statewide list of Americans with Disabilities Act coordinators whose name otherwise did not appear on MDE's website. However, MDE's published nondiscrimination notice identified a different person as its Section 504 Coordinator, though this individual also did not appear elsewhere on MDE's website and did not appear to be a current MDE employee.

120. In response to a data request for a different OCR complaint investigation, MDE stated by email on December 13, 2022 that it did "not have an individual designated to coordinate its compliance with Section 504."

FAILURE TO ENSURE FAPE AND TO REMEDY FAPE DENIALS (Students with Disabilities in Michigan)

121. MDE is prohibited under Section 504 from, directly or indirectly, permitting programs that benefit from Federal financial assistance it disburses to discriminate on the basis of disability. MDE is further prohibited from providing significant assistance to an agency that discriminates against students in Michigan on the basis of disability.

122. As the state educational agency for Michigan, MDE is responsible for ensuring that school districts operating in the state comply with Section 504 and its implementing regulations, including the duties to provide FAPE to students with disabilities and to remedy any denials of FAPE.

123. MDE's nondiscrimination responsibility under Section 504 includes a duty to ensure that the subrecipient LEAs to which it gives funds are not subjecting students with disabilities to discrimination under Section 504, including a duty to ensure implementation of any corrective actions necessary to remedy noncompliance.

124. Although MDE knew that families and school districts had questions about Section 504's requirements for compensatory services, it failed to provide any guidance that directly addressed the provision of compensatory services to students with disabilities who do not have an IEP.

125. The information that MDE did provide about compensatory services for students with disabilities who have IEPs was inconsistent with the requirements of Section 504 and its implementing regulations. Rather than assisting school districts in complying with their legal obligations under Section 504, the information MDE provided was inconsistent with Section 504, thus interfering with the school districts' compliance.

126. To date, MDE has failed to correct or clarify the information that it provided to school districts and other stakeholders that was inconsistent with Section 504.

127. To date, MDE has further failed to ensure through monitoring whether, in connection with students with disabilities who missed benefits due to the COVID-19 pandemic, school districts have complied with the correct legal requirements under Section 504 applicable to compensatory services.

128. MDE's actions and inactions precluded students with disabilities—those with and without IEPs alike—from obtaining compensatory services in accordance with Section 504.

129. Based on the information contained in allegations 1-114 above and in the Letter of Impending Enforcement Action, incorporated herein by reference, OCR has determined, based on the preponderance of the evidence standard, that MDE violated Section 504 by improperly limiting and failing to provide compensatory services for students with disabilities.

**FAILURE TO ENSURE FAPE AND TO REMEDY FAPE DENIALS
(Students attending Michigan School for the Deaf)**

130. As the operating district for MSD, MDE is responsible for ensuring that MSD complies with Section 504 and its implementing regulations, including Section 504's requirements to provide FAPE and remedy any denials of FAPE.

131. Across multiple school years, MDE denied MSD students academic instruction and services to which they were entitled under Section 504, including speech and language services, social work services, and visual impairment services.

132. Without consideration of their individualized needs, MDE categorically provided MSD students with less academic instruction during the COVID-19 pandemic than students in other school districts in the state received and less than the MSD students' IEPs required.

133. In accordance with the information it provided school districts, which was inconsistent with Section 504, MDE improperly limited compensatory services for students at MSD.

134. To date, MDE has failed to remedy its noncompliance concerning compensatory services for MSD students who missed instruction and services during the COVID-19 pandemic.

135. Based on the information contained in allegations 1-114 above and in the Letter of Impending Enforcement Action, incorporated herein by reference, OCR has determined, based on the preponderance of the evidence standard, that MDE violated Section 504 by improperly limiting and failing to provide compensatory services for students with disabilities at MSD.

FAILURE TO DESIGNATE AND IDENTIFY A SECTION 504 COORDINATOR

136. Section 504 requires MDE to designate a Section 504 Coordinator and to take steps to notify participants, beneficiaries, applicants, and employees of the identity of the employee so designated.

137. To date, MDE has failed to designate a Section 504 Coordinator or take steps to notify participants, beneficiaries, applicants, and employees of the identity of the employee so designated.

138. Based on the information contained in allegations 115-120 above and in the Letter of Impending Enforcement Action, incorporated herein by reference, OCR has determined, based on the preponderance of the evidence standard, that MDE violated Section 504 by failing to designate a Section 504 Coordinator and take steps to notify participants, beneficiaries, applicants, and employees of the identity of the employee serving as its current Section 504 Coordinator.

ATTEMPTS TO SECURE VOLUNTARY COMPLIANCE

139. Based on the information contained in allegations 23-54 above and in the Letter of Impending Enforcement Action, incorporated herein by reference, Petitioner has determined that compliance by MDE with Section 504 cannot be achieved by voluntary means.

140. So long as MDE continues to operate its federally assisted program(s) in violation of Section 504 and its implementing regulations, Federal financial assistance received by MDE, and any assistance for which MDE might be eligible to apply to receive from the U.S. Department of Education, will be administered in a manner which discriminates on the basis of disability.

CONCLUSION AND RELIEF REQUESTED

Based on the foregoing allegations and those set forth in the Letter of Impending Enforcement Action, incorporated herein by reference, Petitioner determines that the Respondent remains in violation of Section 504 and its implementing regulations.

WHEREFORE, the Assistant Secretary for Civil Rights requests, pursuant to Section 504 and 34 C.F.R. §§ 100.6-100.11 and Parts 101 and 104, that the presiding officer issue an order:

1. Finding MDE in violation of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and 34 C.F.R. §§ 100.8(a); 100.10(a)(1); 104.4(a), (b)(4)(i), (b)(4)(ii); 104.6(a); 104.7(a); 104.8(a); 104.33; 104.35(a), (c); and 104.36, for failing to ensure FAPE and remedy denials of FAPE for students with disabilities at schools operated by school districts and students with disabilities at the Michigan School for the Deaf and for failing to designate and notify others of the identity of its Section 504 Coordinator;
2. Declaring that the assertions by MDE described in paragraphs 67, 69, 71, 73, and 75 of this Notice are inconsistent with Section 504;
3. Finding that compliance by MDE cannot be achieved through voluntary means;
4. Requiring MDE to cease and desist violating Section 504 by:
 - a) Continuing to publish, disseminate, or rely on the assertions described in paragraphs 67, 69, 71, 73, and 75 of this Notice inconsistent with Section 504 in MDE guidance, technical assistance, presentations, and other materials;
 - b) Failing to issue, disseminate, and provide training on corrected guidance that accurately states the requirements of Section 504 regarding compensatory services;
 - c) Failing to remedy the harms caused by MDE's guidance to school districts and parents that contained instructions that were inconsistent with Section 504, including by:
 - 1) reviewing the MDE administrative state complaints filed during the COVID-19 pandemic to determine if such complaints were resolved based on the assertions described in paragraphs 67, 69, 71, 73, and 75 of this Notice and, if so, reopen such complaints for resolution in accordance with Section 504; and
 - 2) taking steps to ensure that the subrecipient school districts to which MDE gives funds provide compensatory services to students for benefits not received during the COVID-19 pandemic in accordance with Section 504;

- d) Failing to remedy MDE’s noncompliance with the requirements of Section 504 regarding compensatory services for students at the Michigan School for the Deaf for benefits not received during the COVID-19 pandemic; and
 - e) Failing to designate at least one person to coordinate its efforts to comply with Section 504 and to provide notice identifying that employee; and
5. Granting such other and further relief that the needs of justice may require, including, but not limited to, ordering the suspension, termination, or refusal to grant or continue Federal financial assistance from the Department to MDE until MDE satisfies the Assistant Secretary for Civil Rights that it has: complied with any Cease and Desist Order issued in connection with these proceedings; and corrected its noncompliance with Section 504 and the Department’s implementing regulations issued thereunder.

Dated: May 23, 2024

Respectfully submitted,



Catherine E. Lhamon
ASSISTANT SECRETARY FOR CIVIL RIGHTS

Randolph Wills
Deputy Assistant Secretary for Enforcement
Seth M. Galanter
Principal Deputy Assistant Secretary
Anne Hoogstraten
Supervisory General Attorney
Sarah Fech-Baughman
General Attorney
Joseph Golinker
General Attorney

U.S. Department of Education
Office for Civil Rights
400 Maryland Avenue, S.W.
Washington, D.C. 20202
Randolph.Wills@ed.gov
Seth.M.Galanter@ed.gov
Anne.Hoogstraten@ed.gov
Sarah.Fech-Baughman@ed.gov
Joseph.Golinker@ed.gov

Michael D. Todd
Regional Director, Cleveland Office
Ann Millette
Senior Attorney

U.S. Department of Education
Office for Civil Rights
1350 Euclid Avenue, Suite 325
Cleveland, OH 44115
Michael.Todd@ed.gov
Ann.Millette@ed.gov
(202) 987-1829

CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of May, 2024, served by Priority Express Mail, a copy of this Notice on the following:

Kelly A. Carter
Neil Giovanatti
Assistant Attorneys General
Michigan Department of Attorney General
P.O. Box 30758
Lansing, Michigan 48909
(517) 335-7603
carterk1@michigan.gov
giovanattin@michigan.gov

Counsel for MDE in Response to Docket No. 24-20-CR; OCR Case No. 15-21-4017



Sandrien Mekany
U.S. Department of Education
Office for Civil Rights
400 Maryland Avenue, S.W.
Washington, D.C. 20202
Sandrien.Mekany@ed.gov