



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI

MDE OF COLUMBIA
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA

June 15, 2023

By email only to: marcielipsitt@outlook.com

Ms. Marcie Lipsitt
27260 Willowgreen Court
Franklin, MI 48025

Re: OCR Docket No. 15-22-2198
Michigan Department of Education

Dear Ms. Lipsitt:

This letter is to advise you of the resolution of the investigation that the U.S. Department of Education, Office for Civil Rights (OCR) initiated in the Michigan Department of Education (the MDE), in response to the complaint you filed on September 12, 2022. OCR investigated whether the MDE's online programs, services, and activities exclude qualified persons with disabilities from participation in, deny them the benefits of, or otherwise subject them to discrimination under any program or activity, in violation of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. § 104.4 and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35. In addition, OCR investigated whether the MDE fails to take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as its communication with others, in violation of 28 C.F.R. § 35.160(a).

Prior to the instant matter, OCR had addressed the accessibility for people with disabilities of the MDE's online programs, services, and activities in the context of your earlier complaint, OCR docket number 15-14-1110, filed on February 18, 2014. The case was resolved through a voluntary resolution agreement signed on June 22, 2015. During the monitoring of the agreement, OCR had worked closely with MDE to educate its technology staff on how to identify and remove barriers to access for people with disabilities and, more generally, how to maintain the accessibility of its website. This training included rigorous, validated manual testing techniques and document accessibility. The monitoring was terminated on March 11, 2021, when OCR found MDE to be in compliance with Section 504 and Title II with respect to the accessibility of its online programs, services, and activities. You were notified when the matter was closed.

On September 12, 2022, OCR received a new complaint from you alleging discrimination against individuals with disabilities, also involving the MDE. OCR initiated a new investigation to determine whether MDE's website and online programs excluded qualified people with disabilities from participation in, denied them the benefits of, or otherwise subjected them to discrimination under any program or activity, in violation of Section 504 and Title II. In addition, OCR investigated whether MDE failed to take appropriate steps to ensure that communications

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with applicants, participants, members of the public, and companions with disabilities are as effective as its communication with others, in violation of 28 C.F.R. § 35.160(a).

OCR conducted tests on September 16 and 17, 2022, October 28, 2022, December 8, 2022, and January 18, 2023, of MDE's website and online programs and determined, as of the initial testing date, that there were some barriers to access for people with disabilities in online programs, services, and activities on some pages, while other pages were barrier-free. The pages selected by OCR for testing included a list of approximately 15 pages representative of MDE's overall online programs, services, and activities, focusing on pages of critical importance to students and members of the public, and including all pages listed by you in your complaint. OCR reviewed MDE's homepage; different templates; the most highly-trafficked pages; and other pages of importance, as listed below. OCR does not review all of a covered entity's web pages because a website is not static and web pages are always changing. Thus, it is most important for OCR to carefully test those pages that are of critical importance to the ability of students or members of the public to access the MDE's programs or activities.

After selecting the specific pages to be tested, OCR applied both automated and validated, rigorous manual testing protocols to identify technological barriers to access including checking for appropriate keyboard access and navigation, semantic markup, visual focus indicators, color contrast, video captioning, and document accessibility. If OCR were to identify a technological barrier to access, it would then perform a secondary evaluation to determine whether the technological barrier implicated MDE's compliance with the law by impeding the ability of people with disabilities from having an equal opportunity to enjoy MDE's online programs, services, or activities.

Through its testing of representative pages and OCR's communications with the MDE, OCR determined as of January 18, 2023, that the MDE had remediated all identified barriers on the web pages listed below, if any, which had previously impeded the ability of people with disabilities to access the MDE's online programs and activities:

- The Homepage (www.michigan.gov/mde);
- The Top 10 Strategic Education Plan (www.michigan.gov/mde/resources/michigan-top-10-strategic-education-plan);
- The Early Childhood Development and Family Education page (<https://www.michigan.gov/mde/about-us/mde-divisions-and-offices/early-childhood-development-and-family-education>);
- The COVID-19 Education Resources and Information page (<https://www.michigan.gov/mde/resources/coronavirus>);
- The COVID-19 Health and Nutrition Services Resources page (<https://www.michigan.gov/mde/services/food/covid19>);

- MDE COVID-19 Summer Learning Resources (<https://www.michigan.gov/mde/resources/coronavirus/summer>);
- Michigan State Board of Education Meeting for August 9, 2022 - Afternoon Session page (<https://www.youtube.com/watch?v=pEB5WNcg1n8>);
- The Contact Us page (<https://www.michigan.gov/mde/contact-us>);
- The Special Education page (<https://www.michigan.gov/mde/services/special-education>);
- The Parent Resources page (<https://www.michigan.gov/mde/services/special-education/parent-resources>);
- The Learning At a Distance resource (originally found at <https://www.michigan.gov/mde/-/media/Project/Websites/mde/Year/2020/04/09/LearningDistanceGuidance.pdf?rev=3a687e73686b45dab5ebfc6c8d30661c&hash=1F924903968CC6D69F099CA9285670B9>; the resource was discontinued as obsolete);
- The COVID-19 Online Instructional Resources page (the original URL listed in the complaint, <https://www.michigan.gov/mde/services/academic-standards/instruction/mde-covid-19-online-instructional-resources>, was replaced with a new URL, <https://www.michigan.gov/mde/resources/coronavirus/mde-covid-19-education-information-and-resources>);
- The 2021-2022 Annual Report (<https://www.michigan.gov/mde/-/media/Project/Websites/mde/top10/2022-MDE-Annual-Report.pdf?rev=1ca17fa432384c32b07553aafb9d4189&hash=C3C874772AAE43BDFD B28710C3A9183A>);
- The Michigan Dashboard for School Transparency page (<https://mischooldata.org/parentdashboard>); and

To memorialize its commitment to maintain the accessibility of its website and online programs, on June 15, 2023, the MDE signed the enclosed Agreement, voluntarily resolving the investigation into your complaint allegations pursuant to Section 302 of OCR's Case Processing Manual. When fully implemented, the Agreement will address the evidence obtained and all of the allegations investigated. OCR will monitor the implementation of the Agreement until the MDE is in compliance with the terms of the Agreement and the statutes and regulations at issue in the case.

This concludes OCR's investigation. This letter should not be interpreted to address the MDE's compliance with any other regulatory provision or to address any issues other than those

addressed in this letter. This letter sets forth OCR's determination in an individual OCR directed investigation. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. An individual may have the right to file a private suit in Federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

Sincerely,

A handwritten signature in black ink, appearing to read "Judith Risch", is centered on the page. The signature is written in a cursive style with a long horizontal line extending to the right.

Judith Risch
Co-Lead, National Digital Access Team

Enclosure