



**U.S. Department of Justice**

**Civil Rights Division**

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*Disability Rights Section  
4 Constitution Square  
150 M Street NE  
Washington, DC 20530*

September 30, 2022

**VIA EMAIL**

Paul Schnell  
Commissioner  
Minnesota Department of Corrections  
1450 Energy Park Drive  
St. Paul, Minnesota 55108  
Paul.Schnell@state.mn.us

**Re: The United States' Findings and Conclusions Based on Its Investigation of the Minnesota Department of Corrections under the Americans with Disabilities Act, DJ # 204-39-192**

Dear Commissioner Schnell:

The United States Department of Justice (the Department) has completed its investigation of the Minnesota Department of Corrections (MNDOC), under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131–12134. The Department opened this investigation in response to complaints alleging that the MNDOC violates the ADA by failing to provide General Educational Development (GED) exam, course, practice test, and other program modifications to incarcerated individuals with disabilities. During the investigation, the Department interviewed 12 formerly or currently incarcerated individuals with disabilities and 36 MNDOC employees at multiple facilities. The Department also reviewed documents produced by the MNDOC, including the files of 24 incarcerated individuals with disabilities.

Under Title II of the ADA, no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a). The MNDOC is a public entity as defined by the statute. 42 U.S.C. § 12131(1); 28 C.F.R. § 35.104. Title II authorizes the United States to investigate complaints, make findings of fact and conclusions of law, attempt to secure voluntary compliance where violations are found, and commence a civil action. 42 U.S.C. § 12133; 28 C.F.R. pt. 35, subpt. F.

The Department has determined that the MNDOC violates the ADA by denying individuals with disabilities the benefits of its GED program and subjecting them to discrimination. While the MNDOC generally allowed qualified individuals with disabilities to

enroll or participate in its GED program, the MNDOC unlawfully denied them an equal opportunity to benefit from the program by failing to provide necessary reasonable modifications. *See* 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a), (b)(1)(i)-(ii), (b)(7)(i). This letter sets forth the Department’s findings of fact and conclusions of law and the minimum steps the MNDOC must take to meet its legal obligations and remedy the violations the Department has identified.

## **I. Findings of Fact**

### **A. MNDOC Educational Program, including its GED Program**

MNDOC policy requires that all incarcerated individuals have a verified secondary education credential, such as a GED, high school diploma, or state adult diploma.<sup>1</sup> The MNDOC’s educational sub-component, the Minnesota Career Education Center (MCEC), offers adult education programming, including the GED program. The MNDOC offers its GED program at all 10 of its adult facilities to enable individuals to obtain their secondary credential.

The MNDOC’s GED program includes courses, practice tests, and the administration of the actual GED exam. MNDOC staff schedule all GED exams, coordinate with security staff to bring the appropriate individuals to the testing center, proctor and supervise each exam, and provide approved accommodations to individuals with disabilities as required by the ADA, such as extended time. Furthermore, no test taker may apply for GED exam accommodations unless the MNDOC has found that the person has a disability and should apply for exam accommodations. If the MNDOC approves, MNDOC staff submit the individual’s accommodation request to GED Testing Service LLC (GTS), the private company that is the sole provider of the official GED exam, and GTS determines whether to allow accommodations during the exam. If GTS approves, then the MNDOC provides accommodations during the GED exam.

As of July 1, 2022, there were 7,833 adults incarcerated with the MNDOC, and around 1,956 incarcerated individuals lacked a secondary credential and are enrolled in a MNDOC secondary credential program.<sup>2</sup> While it is unclear how many of these individuals have disabilities, MNDOC educational staff informed the Department that they believed that the majority of their students have disabilities.

The MNDOC’s GED program serves a gate-keeping function. Incarcerated individuals must complete this educational requirement to be eligible to work in prison jobs, in which individuals can often earn more than they would in the MNDOC’s educational program, or participate in any post-secondary, career technical, or associate’s and bachelor’s degree

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<sup>1</sup> MNDOC Policy No. 204.040 (Education) (Feb. 4, 2020).

<sup>2</sup> MNDOC, Adult Prison Population Summary as of 07/01/2022, [https://mn.gov/doc/assets/Adult%20Prison%20Population%20Summary%207-1-2022\\_tcm1089-534656.pdf](https://mn.gov/doc/assets/Adult%20Prison%20Population%20Summary%207-1-2022_tcm1089-534656.pdf).

programs offered in MNDOC facilities.<sup>3</sup> While in an educational program, including the GED program, the MNDOC pays individuals 50 cents per hour.<sup>4</sup> But once an individual obtains a secondary credential, they are allowed to work a prison job where wages can reach \$1 or \$1.50 per hour. There are other MNDOC programs individuals with a secondary credential can participate in that pay as much as \$2 to \$3 per hour.<sup>5</sup> Thus, the GED program serves a critical role since incarcerated individuals cannot access many prison programs until they obtain a secondary credential.

#### B. MNDOC Failure to Properly Identify and Evaluate Individuals with Disabilities

Upon intake and throughout their incarceration, the MNDOC must conduct medical and mental health screenings of individuals, including screenings to identify their disabilities.<sup>6</sup> If staff identify that a person has a disability, they must refer to the MNDOC's policy of providing reasonable modifications to persons with disabilities, notify appropriate staff, and record information about any disabilities and needs in the person's MNDOC file.<sup>7</sup> MCEC educational staff, such as GED teachers, informed the Department that they do not generally have access to this information about their students' disabilities. MCEC staff stated that they also face difficulties in obtaining information from MNDOC medical and mental health staff related to students' disabilities, even when they request such information with the student's consent and to support the student's application for GED exam accommodations. In some instances, MNDOC medical and mental health staff refused to evaluate individuals to determine whether they have disabilities that require GED exam accommodations. In others, these staff failed to provide medical records to support accommodation requests. Because of this, MCEC staff had to often submit requests for GED exam accommodations using external data from years prior to the student's incarceration since they lacked more recent information, and this process of requesting records from external sources sometimes took months and caused significant delays.

In addition, if an incarcerated person reports impairments to staff or if staff observe that a person has an obvious or potential physical, developmental, or mental impairment, the MNDOC also requires staff to refer to its policy on providing reasonable modifications to persons with disabilities.<sup>8</sup> In practice though, MCEC staff generally do not adhere to this policy. Many MCEC staff told the Department that they knew that their students have or may have disabilities and none of these staff indicated that they informed these students about reasonable modifications, including for GED courses, practice tests, and exams. Incarcerated individuals also informed the Department that MCEC staff did not inform them about their right to request reasonable modifications or immediately refused when they requested such modifications in the GED program.

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<sup>3</sup> There are limited exceptions to this requirement when MNDOC educational programs are full and cannot enroll new students and when an incarcerated individual must complete a mandated treatment program as a first priority. MNDOC Policy No. 204.040 (Education) (Feb. 4, 2020).

<sup>4</sup> MNDOC Policy No. 204.010 (Offender Assignment and Compensation Plan) (Dec. 20, 2016).

<sup>5</sup> *Id.*

<sup>6</sup> MNDOC Policy No. 202.040 (Offender Intake Screening and Processing) (Dec. 4, 2018).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

C. MCEC Failure to Properly Identify, Evaluate, and Accommodate Individuals with Disabilities for GED Courses and Practice Tests

MNDOC policy also requires the MCEC to identify and evaluate individuals with disabilities who need services, accommodations, or programs to ensure equal educational opportunities.<sup>9</sup> MCEC staff must use an eligibility determination form to evaluate whether an individual has a disability, but this form provides a definition of disability that is inconsistent with and narrower than that in the ADA. It states that the term “substantially limits” means:

- a) unable to perform a major life activity that the average student of approximately the same age can perform OR
- b) significantly restricted as to the condition, manner, or duration under which a particular life activity is performed as compared to the average student of approximately the same age. The impairment must be substantial and somewhat unique, rather than commonplace, when compared to the average student of approximately the same age.

Discount from the analysis any sub-par performance due to other factors, such as lack of motivation and the immediate situation or environment. Use the average student in the general population as the frame of reference for comparison.

MCEC staff provided evidence demonstrating that their determinations of disability were not consistent with the ADA. For example, one facility’s Education Director gave examples of conditions that she considers both “substantial *and* somewhat unique,” and thus qualify as disabilities according to the evaluation form. She only identified individuals who do not have hands or arms, or are blind or deaf. She indicated that anxiety and depression would not qualify as disabilities, since they are “pretty common” among incarcerated individuals at her facility, and therefore would not meet the form’s requirement that they be “unique.”

In addition, MCEC staff generally fail to take steps to properly identify students with disabilities and provide reasonable modifications for GED courses and practice tests. For example, although multiple MCEC staff admitted that they knew that many of their students have disabilities and could benefit from modifications, the MNDOC produced no evidence that any students with disabilities ever received a written accommodation plan for GED courses or practice tests, as required by MNDOC policy. While MCEC staff claimed that they regularly provided modifications to students with disabilities without going through the process or creating a written accommodation plan to assist them with GED course preparation or practice tests, individuals with disabilities requested modifications, including for GED courses and practice tests, and MCEC staff typically failed to respond, evaluate their requests, or provide them with any modifications.

The MNDOC also stopped providing some individuals with disabilities with necessary modifications when they transitioned into the GED program. Some individuals with disabilities entered MNDOC custody as juveniles and with an active Individualized Education Program

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<sup>9</sup> MNDOC Policy No. 204.040 (Education) (Feb. 4, 2020).

(IEP) from their public school, which identified needed accommodations.<sup>10</sup> The MNDOC provided them with services required under their IEPs, including one-on-one assistance with a special education teacher, extended time, and modified work. But once these individuals turned 21 years old and transferred into an adult educational program, such as the GED program, the MNDOC stopped providing them with modifications. The MNDOC typically failed to conduct an evaluation or create a written accommodation plan. Instead, these individuals with disabilities were not provided with adequate modifications and assistance and often failed their GED exams. Likewise, multiple individuals informed their GED program teachers that they previously had an IEP, had disabilities, and needed modifications, but the teachers generally failed to refer them for evaluation or provide them with necessary modifications.

D. MCEC Failure to Properly Identify, Evaluate, and Accommodate Individuals with Disabilities for GED Exams

As stated previously, to obtain GED exam accommodations, the individual must submit a request and supporting documentation to GTS for review and approval through their online GTS account. Incarcerated individuals are prohibited from accessing the internet, so MNDOC staff must submit all GED exam accommodations requests on their behalf. The MCEC requires GED students to submit requests for GED exam accommodations to MCEC staff who ultimately review, deny or approve each request. Once the MCEC agrees that the person has a disability and should apply for GED exam accommodations, MCEC staff then submit the application to GTS, which reviews it and issues a decision, usually within a week to ten days. If GTS approves the request, the MNDOC provides the accommodations during the GED exam.

The MNDOC's data revealed that it rarely permitted or supported GED exam accommodation requests for individuals with disabilities. Even though hundreds of incarcerated individuals are enrolled in the GED program on any given day and multiple GED teachers acknowledged that many of their GED students have disabilities, the MNDOC provided documentation showing that, since January 1, 2017, only 19 incarcerated individuals submitted written requests for GED exam accommodations to the MNDOC. All GED exam accommodation requests came through one teacher at one facility, even though the MNDOC offers GED programs at all 10 of its facilities and employs over 20 GED program staff. There were also lengthy delays between the date of the individual's request or referral for GED exam accommodations and the MCEC's subsequent response. Some requests for GED exam accommodations took as long as ten months to be processed and approved by the MNDOC and GTS, and some requests were not resolved in time for the exams or before the incarcerated individual's release from custody.

Similar to modifications for GED courses and practice tests, multiple individuals with disabilities stated that they were never informed that they could receive accommodations for the GED exam or the process for requesting such accommodations. Since incarcerated individuals cannot access the internet, their only source of information regarding GTS and GED exam accommodations is the information provided by the MNDOC, and individuals with disabilities

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<sup>10</sup> The MNDOC also has policies related to students eligible for services under the Individuals with Disabilities Education Act (IDEA), but as these are not relevant to this matter, we do not include these policies in this memorandum.

often stated that MNDOC staff never informed them that they could request such accommodations.

For those who were aware that they could request accommodations, they notified MNDOC staff of their disabilities and requested accommodations for the GED exam, but MNDOC staff generally failed to take any steps to provide them with accommodations. In at least one instance, over objections raised by the student's GED teacher, the MNDOC prohibited an incarcerated individual with a head injury, depression, anxiety, and Post Traumatic Stress Disorder (PTSD) from applying for GED exam accommodations even though the individual stated that his impairments impacted his focus, comprehension, memory, and ability to handle stress.

As a result, individuals with disabilities did not receive reasonable modifications necessary for them to equally benefit from the GED program, and many struggled through GED courses, failed their GED practice tests and exams, were terminated from the GED program, or were released from incarceration without a GED. Some were forced to repeatedly take and fail GED practice tests or exams without modifications over many months or years while other incarcerated individuals without disabilities passed and moved on to other programs and opportunities.

## **II. Conclusions of Law**

The MNDOC violated the ADA by discriminating against individuals with disabilities in its GED program, including GED courses, practice tests, and exams. Title II of the ADA provides that “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, or be subject to discrimination by any such entity.” 42 U.S.C. § 12132. Public entities may not deny individuals with disabilities the opportunity to participate in or benefit from its aids, benefits, services, or programs or afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others. 28 C.F.R. § 35.130(b)(1)(i)-(ii). Public entities must also “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.* § 35.130(b)(7)(i).

The MNDOC denies qualified individuals with disabilities an equal opportunity to benefit from its GED program. In particular, while the MNDOC allows qualified individuals with disabilities to enroll or participate in its GED program, the MNDOC unlawfully denies them an equal opportunity to benefit from the program by failing to provide them with necessary reasonable modifications. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a), (b)(1)(i)-(ii), (b)(7)(i). Public entities, including prison or correctional entities like the MNDOC, have an affirmative obligation to ensure that individuals with disabilities receive reasonable modifications when necessary to avoid discrimination on the basis of disability. 28 C.F.R. § 35.130(b)(7)(i).

The MNDOC employs an inappropriate standard for evaluating whether an incarcerated individual has a disability and should receive reasonable modifications for GED courses, practice tests, or exams. The ADA defines a person with a disability as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of such individual.<sup>11</sup> 42 U.S.C. § 12102(1)(A). “Major life activities” include a wide range of activities, such as seeing, hearing, eating, sleeping, walking, speaking, learning, reading, concentrating, thinking, writing, communicating, interacting with others, and working. *Id.* § 12102(2)(A). The term also includes the operation of a major bodily function, such as the functions of the neurological system or the operation of an organ. *Id.* § 12102(2)(B). The term “substantially limits” is construed broadly and should not demand extensive analysis. *Id.* § 12102(4)(A)-(B). The impairment does not need to prevent or significantly restrict an individual from performing a major life activity, and the limitations do not need to be severe, permanent, or long-term. Contrary to the ADA, the MNDOC requires that an impairment be “somewhat unique” as “compared to the average student of approximately the same age” and defines “substantially limits” as either a total inability to perform a major life activity or as being “significantly restricted” in performing a major life activity “as compared to the average student of approximately the same age.” The MNDOC, using this inappropriate standard, refused to provide reasonable modifications to incarcerated individuals with disabilities in its GED courses and practice tests and prohibited individuals with disabilities from applying to GTS for GED exam accommodations.

The MNDOC fails to provide reasonable modifications to individuals with disabilities that are necessary to ensure that they have an equal opportunity to benefit from the MNDOC’s GED courses and practice tests, such as extended time, frequent breaks, modified assignments, and one-on-one assistance. Multiple individuals with disabilities notified MCEC staff of their disabilities and requested modifications, but MNDOC staff denied their requests. The reasonable modification obligation also applies when a public entity knows or reasonably should know that the person has a disability and needs a modification, even where the individual has not requested a modification. Although MCEC staff knew that their GED program students have disabilities and need modifications, such as students with disabilities who received services and modifications under their IEPs, MCEC staff generally failed to provide reasonable modifications and did not notify them of their right to request modifications.

In order to meet its obligation to provide reasonable modifications and equal opportunities to individuals with disabilities, the MNDOC must identify and evaluate incarcerated individuals with disabilities and notify them of their right to reasonable modifications. Since incarcerated individuals do not have access to the internet and can only learn about GED exam accommodations from MNDOC staff, it is critical that the MNDOC provide them with notice of their rights. Despite this, nearly all MCEC staff failed to notify incarcerated individuals with disabilities about reasonable modifications to its GED courses and practice tests as well as GED exam accommodations. The MNDOC does not inform incarcerated individuals even when they have asked generally about accommodations for disabilities, or where staff have personal knowledge of the individual’s disabilities and need for accommodations. As a result, there are only twelve individuals that the MNDOC has allowed

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<sup>11</sup> The ADA also covers a person with a record of such an impairment or a person who is regarded as having such an impairment. 42 U.S.C. § 12102(1)(B)-(C).

apply for GED exam accommodations to GTS since January 1, 2017. The dearth of GED exam accommodation requests from all but one of the MNDOC's 10 adult facilities further evidences that the MNDOC fails to meet its Title II obligation to notify individuals of their ADA rights and provide reasonable modifications to individuals with disabilities.

The MNDOC also unlawfully prohibited individuals with disabilities from applying to GTS for GED exam modifications. For example, the MNDOC prohibited an individual from applying for GED exam accommodations even though the individual had a head injury, depression, anxiety, and PTSD and his impairments substantially impaired his focus, comprehension, memory, and ability to handle stress.

Public entities, including the MNDOC, must also respond to requests for modifications, accommodations, and aids in a timely manner to ensure equal opportunity for individuals with disabilities. 28 C.F.R. § 36.309(b)(1)(vi); 28 C.F.R. pt. 35, app. A (explaining that, while the Title III regulation on testing accommodations applies only to private entities, the regulation is "useful as a guide for determining what constitutes discriminatory conduct by a public entity in testing situations"). The MNDOC unlawfully delayed in responding to and submitting the GED exam accommodation requests of some individuals with disabilities. For example, one individual waited ten months for his request to be processed and approved by the MNDOC and GTS. In some instances, the MNDOC's response was too late for the student to obtain accommodations. The MNDOC has an obligation to timely respond to requests and must do so while the need is still ripe.

Qualified individuals with disabilities did not receive reasonable modifications necessary for them to equally benefit from the MNDOC's GED program. Because they lacked necessary modifications, individuals with disabilities struggled for months or years in their GED courses and on practice tests, failed their GED exams, were terminated from the GED program, or were released from incarceration without a GED. Thus, the MNDOC's inappropriate denial of reasonable modifications to its GED program denied individuals with disabilities an equal opportunity to benefit from the program, violating the ADA. Individuals with disabilities were also deprived of the myriad benefits associated with obtaining their GED, including enrolling in the MNDOC's college, career, or technical programs as well as obtaining higher-paying prison jobs. This further compounds the unequal treatment to which the MNDOC subjects individuals with disabilities. 28 C.F.R. § 35.130(b)(1)(i)-(ii). Incarcerated individuals with disabilities suffered economic and non-economic harms due to the MNDOC's discrimination against them.

### **III. Recommended Remedial Measures**

The MNDOC has violated and continues to violate the ADA in its treatment of individuals with disabilities in its GED program. To remedy these violations, and to protect the civil rights of individuals with disabilities going forward, the MNDOC should promptly implement corrective measures, including the following:

1. Adopting or revising written policies to explicitly state that the MNDOC may not discriminate against, exclude from participation, or deny the benefits of its GED



program—including GED courses, practice tests, and exams—to qualified individuals with disabilities.

2. Identifying an ADA Coordinator responsible for monitoring the GED program, training staff, and overseeing investigations and resolutions of ADA complaints or grievances.
3. Revising the MNDOC's process as needed to ensure that incarcerated individuals with disabilities are notified of their right to request modifications in the GED program and on the GED exam; that their requests are promptly reviewed, investigated, and addressed by appropriate action; and that the results of the review are provided in a timely manner to each individual.
4. Revising the MNDOC's process as needed to ensure that incarcerated individuals with disabilities' requests for GED exam accommodations to GTS are promptly and appropriately submitted, and that the results of the request are provided in a timely manner to each individual.
5. Revising the MNDOC's complaint process as needed to ensure that ADA-related complaints are promptly reviewed, investigated, and addressed by appropriate action, and that the results of the review are provided in a timely manner to each complainant.
6. Appropriately training and educating all MNDOC staff about the nondiscrimination and antiretaliation requirements of the ADA.
7. Paying compensatory damages to the aggrieved individuals for injuries caused by the MNDOC's actions described in this letter.
8. Providing the United States with written status reports delineating all steps taken to comply with these requirements, including the date(s) on which each step was taken, and, where applicable, information sufficient to demonstrate compliance.

#### **IV. Conclusion**

We hope to work cooperatively with you to resolve the Department's findings in this matter. If the MNDOC declines to enter into voluntary compliance negotiations or if our negotiations are unsuccessful, the United States may take appropriate action. We will also share a copy of this letter with the complaining parties. A complainant may file a private suit whether or not we find a violation. 42 U.S.C. § 12133.

Please contact Christine Kim and Matthew Faiella, Trial Attorneys at the Disability Rights Section of the Civil Rights Division, at [christine.kim@usdoj.gov](mailto:christine.kim@usdoj.gov) and [matthew.faiella@usdoj.gov](mailto:matthew.faiella@usdoj.gov), if the MNDOC is interested in working with the United States to reach an appropriate resolution along the lines described above.

Please note that this Letter of Findings is a public document and will be posted on the Department of Justice's website. If you have any questions as you review this letter, please feel free to contact us.

Sincerely,

/s/ Anne S. Raish

Anne S. Raish

Acting Chief

Disability Rights Section