Effective Communication in Public Elementary and Secondary Schools

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Frequently Asked Questions on Effective Communication for Students with Hearing, Vision, or Speech Disabilities in Public Elementary and Secondary Schools

Document

by the Department of Justice and Department of Education
Compliance with IDEA does not automatically satisfy the school’s Title II effective communication obligations for a student.

K.M. v. Tustin Unified School District, 725 F.3d 1088 (9th Cir. 2013)
Federal Requirements

- IDEA, Section 504, and the ADA each address the obligations of public schools, including charter schools, to meet the communication needs of students with disabilities, but do so in different ways.

- Public schools must comply with all three federal laws, and while compliance with one will often result in compliance with all, sometimes it will not.
How do Title II and Section 504 compare?

- Are similar, but not identical in their scope.
- They use the same definition of disability.
- Both protect students with disabilities regardless of their eligibility for special education and related services under IDEA.

Both apply to every public elementary and secondary school in the country.

*However, because the statues vary in certain aspects, they are addressed separately*
**FAPE** is provided through the provision of special education and related services in conformance with an individualized education program (IEP).

- Provide the opportunity to access, and make progress in, the general education curriculum.
- IEP requirements include consideration of a child’s communication needs.
Section 504 of the Rehabilitation Act of 1973

- Prohibits disability discrimination in federally assisted programs or activities.
- The joint DCL on effective communication did not focus on Section 504.
  - As a general rule, violations of Section 504 also constitute violations of Title II;
  - One way of meeting a school’s Section 504 FAPE requirements is to comply with the IDEA FAPE requirements.
Title II of the ADA

- Prohibits disability discrimination against qualified individuals with disabilities by all State and local governments, regardless of whether those entities receive Federal funds.

- Requires public entities, such as LEAs and charter schools (any school that receive federal funds for education), to ensure that communication with individuals with disabilities is as effective as communication with students without disabilities.
Who is a qualified individual with a disability under Title II?

Disability under Title II means:

(1) a physical or mental impairment that substantially limits one or more major life activities or major bodily function;
(2) a record of such an impairment; or
(3) regarded as having an impairment.

Qualified individual with a disability is one who meets the essential eligibility requirements.

*The second and third prongs of the definition become a factor if discrimination or negative action has occurred because of the “record” or “history” of being regarded as having an impairment.*
Who is a child with a disability under the IDEA?

A child with a disability is a child:

Is evaluated in accordance with IDEA procedures as having one of the 13 disabilities listed in the definition, and who, by reason thereof, needs special education and related services.
How do public schools meet their Title II effective communication obligations?

- Public schools must provide appropriate “auxiliary aids and services” to ensure that communication with students with disabilities is as effective as with other students so that these students have an equal opportunity.
Title II defenses

- Public schools need not provide a specific auxiliary aid or service if the school can show that providing that aid or service would result in a fundamental alteration or undue financial or administrative burdens.

- But still must take other appropriate steps, i.e., provide other auxiliary aids or services, that would not result in fundamental alteration or undue burdens.
What are auxiliary aids and services under Title II?

Auxiliary aids and services make aurally or visually delivered information available to students with hearing, vision, or speech disabilities so that they can receive information from, and convey information to, others as effectively as students without disabilities.
Possible aids or services for a student who is deaf; deaf-blind or hard of hearing

Some examples:
- Exchange of written materials
- Interpreters
- Note takers
- Real-time computer-aided transcription services (CART)
- Assistive listening systems
- Accessible electronic and information technology
- Open and closed captioning
Possible aids or services for a student who is blind, deaf-blind, or has low vision

For example:

- Qualified readers
- Taped texts
- Audio recordings
- Braille materials and refreshable Braille displays
- Accessible e-book readers
- Screen reader software, Magnification software, and Optical readers
- Secondary auditory programs (SAP)
- Large print materials
Possible aids or services for a student with a speech disability

Examples:

- Word or letter board
- Writing materials
- Spelling to communicate
- A qualified sign language interpreter
- A portable device that writes and produces speech
- Telecommunications services
How do IDEA FAPE and Title II effective communication requirements differ?

Title II: communications with persons with disabilities are “as effective as” communications with other persons;

IDEA: FAPE must be individually designed to provide meaningful educational benefit to the child.
How do schools decide which auxiliary aid or service provides effective communication?

Individualized determination;
Primary consideration;
Case-by-case basis considering:
  ◦ Communication used by the student, and communication requested by the student (if different from communication used);
  ◦ The nature, length, and complexity of the communication involved;
  ◦ Context of communication.
What does “primary consideration” mean?

A school must give “primary consideration” to the particular auxiliary aid or service requested by the student with a disability (or the student’s parent).

Subject to available defenses, a school must honor the request unless it can show that an alternative is as effective and provides the student an equal opportunity to participate and benefit.
To be effective, appropriate auxiliary aids and services must be provided . . .

In accessible formats;
In a timely manner; and
In such a way as to protect the student’s privacy and independence.
How are requests made for Title II auxiliary aids and services?

Title II does not designate a particular contact person or a specific process.

- School district can determine who and how, and should make that information publicly available.

- For IDEA-eligible children, school district has an affirmative obligation to do Title II assessment. No specific or separate parental request is required.
May information from IDEA evaluations be used when considering a Title II request for auxiliary aids or services?

- Title II does not mandate a particular process.
- Information obtained during IDEA evaluation can be relied on in Title II analysis, but must apply a Title II standard.
- Must provide Title II auxiliary aids and services in timely manner; **cannot wait for IEP process** to run its course.
Can the IEP Team make decisions about the provision of auxiliary aids and services required under Title II?

If a school district designates the IEP Team as having the responsibility of making decisions about the auxiliary aids and services required under Title II, then the IEP Team may make this decision.
You Be The Judge Activity

As you discuss what the answer is to the following scenarios, keep in mind the primary considerations.

- Primary consideration;
  
  Case-by-case basis considering:
  - Communication used by the student, and communication requested by the student (if different from communication used);
  - The nature, length, and complexity of the communication involved;
  - Context of communication.
You Be The Judge

Is a school required to provide computer assisted real-time translation to help a student who is Deaf follow a sketch at a pep rally or will the student’s interpreter give her access to the information?
You Be The Judge

Is a school in violation of Title II – Effective Communication for not giving a hard of hearing student access to a public phone to contact his parents during school hours?
You Be The Judge

Is a school in violation of ADA’s Title II Effective Communication by not having their school’s website accessible for students who use screen-reading Assistive Technology?
Is the dispute resolution process for Title II different than under the IDEA?

- Under the IDEA, a parent can request mediation, file a complaint with the State educational agency, or request an impartial administrative hearing.

- Under Title II, a parent can file a Title II complaint with ED OCR or DOJ, file a grievance with the school district, or file a civil lawsuit in Federal court.
  - Under IDEA administrative exhaustion may apply
Does IDEA funds pay for auxiliary aids or services for effective communication?

- IDEA funds can be used only to pay for auxiliary aids and services under Title II that also are required to be provided under IDEA.

- If a student receives auxiliary aids and services under Title II that are not included in the student’s IEP, IDEA funds cannot be used to pay for those services.
Resources

Dear Colleague Letter on Effective Communication:
http://www2.ed.gov/about/offices/list/ocr/letters/colleague-effective-communication-201411.pdf

Frequently Asked Questions on Effective Communication for Students with Hearing, Vision, or Speech Disabilities in Public Elementary and Secondary Schools:
http://www2.ed.gov/about/offices/list/ocr/docs/dcl-faqs_effective-communication-201411.pdf

Government’s amicus brief in Tustin:
http://www.justice.gov/crt/about/app/briefs/kmtustinbr.pdf
Questions
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