



**U.S. Department of Justice**  
*Civil Rights Division*



**U.S. Department of Education**  
*Office for Civil Rights*  
*Office of Special Education and  
Rehabilitative Services*

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

### **Introduction**

Students with disabilities, like all students, must have the opportunity to fully participate in our public schools. A critical aspect of participation is communication with others. Three Federal laws – the Individuals with Disabilities Education Act (IDEA),<sup>1</sup> Title II of the Americans with Disabilities Act of 1990 (ADA) (Title II),<sup>2</sup> and Section 504 of the Rehabilitation Act of 1973 (Section 504)<sup>3</sup> – address the obligations of public schools, including charter schools, to meet the communication needs of students with disabilities, but do so in different ways.<sup>4</sup> Public schools must comply with all three laws, and while compliance with one will often result in compliance with all, sometimes it will not.

This document focuses on the different approaches used by the IDEA on the one hand, and Title II on the other, to determine what a school must do for a student with a hearing, vision, or

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<sup>1</sup> 20 U.S.C. §§ 1400-1482. Throughout this guidance, references to the IDEA are to Part B of the IDEA. 20 U.S.C. §§ 1400-1419; 34 C.F.R. pt. 300. The term “hearing, vision, or speech disabilities” is used throughout this document to reference disabilities for the purposes of Title II of the Americans with Disabilities Act of 1990 and encompasses eligible disability categories in IDEA (e.g., deafness, hearing impairment, deaf-blindness, visual impairment including blindness, speech or language impairment). For additional clarification of IDEA terminology and requirements related to addressing the communication needs of students with disabilities, see Appendix B below. For general information regarding IDEA requirements, please refer to <http://idea.ed.gov/>.

<sup>2</sup> 42 U.S.C. §§ 12131-12134; 28 C.F.R. pt. 35. For general information about the ADA, please see [www.ada.gov](http://www.ada.gov).

<sup>3</sup> 29 U.S.C. § 794; 34 C.F.R. pt. 104. As noted below, this document focuses on the IDEA and the specific Title II regulatory requirements for effective communication, rather than on Section 504. In general, a violation of Section 504 is a violation of Title II. Additionally, the vast majority of students covered by this guidance will be IDEA-eligible, and for these students, the Section 504 analysis concerning a free appropriate public education will align with the IDEA.

<sup>4</sup> While this document does not specifically address children with disabilities in preschools, the Title II provisions discussed in this document apply equally to children with disabilities attending public preschools. In addition, to the extent consistent with State law or practice, or order of any court, respecting the provision of public education to children of those ages, the IDEA requires school districts to make a free appropriate public education available to eligible children aged three through five, inclusive. 20 U.S.C. § 1412(a)(1); 34 C.F.R. §§ 300.101-300.102. See also, 20 U.S.C. § 1419 (preschool grants).

speech disability.<sup>5</sup> While the IDEA requires that schools make available a free appropriate public education (FAPE), consisting of special education and related services, to all eligible children with disabilities (including those with communication needs), the Title II regulations have a specific effective communication requirement for individuals with disabilities.<sup>6</sup> As a recent Federal court decision highlighted, the Title II requirement for effective communication differs from the IDEA requirements on this point.<sup>7</sup>

Public schools must apply both the IDEA analysis and the Title II effective communication analysis in determining how to meet the communication needs of an IDEA-eligible student with a hearing, vision, or speech disability. In some instances, in order to comply with Title II, a district may have to provide the student with services that are not required under the IDEA. In other instances, the communication services provided under the IDEA may meet the requirements of both laws for an individual student. Schools need to be knowledgeable about requirements of both Federal laws in order to meet the communication needs of students with disabilities.

After a brief overview, this document outlines the factors applicable to the IDEA analysis and the Title II effective communication analysis in a series of questions and answers and provides additional information in two appendices. Appendix A contains hypothetical case studies that consider whether a student who is receiving special education and related services under the IDEA also needs different or additional auxiliary aids and services in order to meet the effective communication requirements of Title II. Appendix B provides additional clarification of IDEA terminology and requirements addressing the communication needs of IDEA-eligible students with disabilities.

Title II and Section 504 also apply to individuals with disabilities who are not students, such as family members and members of the public seeking information from, or access to, the services, programs, and activities of the public school. These individuals also have a right to effective communication. This document briefly addresses those obligations as well.

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<sup>5</sup> This includes a student with multiple disabilities who has a hearing, vision, or speech disability.

<sup>6</sup> 28 C.F.R. § 35.160.

<sup>7</sup> The United States Court of Appeals for the Ninth Circuit addressed the IDEA and Title II effective communication obligations in a case entitled *K.M. v. Tustin Unified School District*, 725 F.3d 1088 (9<sup>th</sup> Cir. 2013), *cert. denied*, 134 S. Ct. 1493 (2014), available at <http://cdn.ca9.uscourts.gov/datastore/opinions/2013/08/07/11-56259%20web%20revised.pdf>. The United States government filed an amicus (friend of the court) brief in this case when it was before the Ninth Circuit; that brief can be found on the United States Department of Justice website at <http://www.justice.gov/crt/about/app/briefs/kmtustinbr.pdf>.

## Overview of Title II, Section 504, and the IDEA

### Title II of the Americans with Disabilities Act (Title II)

Title II and Section 504 are similar, but not identical in their scope. They both use the same definition of disability; they both protect students with disabilities regardless of their eligibility for special education and related services under the IDEA; and they both apply to every public elementary and secondary school in the country. Nonetheless, because the statutes vary in certain respects, they are each addressed separately.

Title II prohibits disability discrimination against qualified individuals with disabilities by all state and local governments, regardless of whether or not those entities receive Federal funds.<sup>8</sup> Title II applies to all programs, activities, and services of public school districts, including all public schools within school districts. This includes all public charter schools and magnet schools. Under the ADA (including Title II), a disability is (1) a physical or mental impairment that substantially limits a major life activity; (2) a record of such an impairment; or (3) being regarded as having such an impairment.<sup>9</sup>

Public school students with disabilities are covered by Title II regardless of their eligibility for special education and related services under the IDEA. The United States Department of Justice (DOJ) is responsible for implementing interpretive regulations for Title II, which are found in the Code of Federal Regulations (C.F.R.) at 28 C.F.R. pt. 35. These regulations require, among other things, that public schools provide students with disabilities an equal opportunity to participate in all school activities and that public schools ensure, through the provision of auxiliary aids and services, that communication with students with disabilities is as effective as communication with students without disabilities.<sup>10</sup> Both DOJ and the Office for Civil Rights (OCR) in the United

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<sup>8</sup> Under Title II, “qualified individual with a disability” means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity. 42 U.S.C. § 12131(2); 28 C.F.R. § 35.104.

<sup>9</sup> 42 U.S.C. § 12102(1). The ADA Amendments Act of 2008 amended the definition of disability for Titles I, II, and III of the ADA as well as Section 504. Pub. L. No. 110-325, 122 Stat. 3553 (2008). For a discussion of the United States Department of Justice’s (DOJ’s) interpretation of the changes to the definition, please see DOJ’s Notice of Proposed Rulemaking to Implement ADA Amendments Act of 2008, 79 Fed. Reg. 4839 (January 30, 2014). *See also* the Equal Employment Opportunity Commission’s final ADA title I rule incorporating the ADA Amendments Act of 2008, 76 Fed. Reg. 16977 (March 25, 2011), 29 C.F.R. pt. 1630.

<sup>10</sup> 28 C.F.R. §§ 35.130 and 35.160. While Title II’s nondiscrimination mandate goes beyond requiring effective communication, this document only addresses the Title II effective communication requirements for public school students.

States Department of Education (ED) have responsibility for enforcing Title II and its regulations in public elementary and secondary education; this includes enforcing the Title II rights of IDEA-eligible students.

### **Section 504 of the Rehabilitation Act (Section 504)**

Section 504 prohibits disability discrimination against qualified individuals with disabilities by recipients of Federal financial assistance.<sup>11</sup> Because all school districts receive funds from ED, Section 504 applies to all the operations of all public school districts, including all public schools within those school districts. All public charter schools and magnet schools are subject to Section 504 regardless of whether they are, for example, a school within a school district that receives ED funds or are recipients themselves. Under Section 504, as under Title II, a disability is (1) a physical or mental impairment that substantially limits a major life activity; (2) a record of such an impairment; or (3) being regarded as having such an impairment.<sup>12</sup>

Public school students with disabilities are covered by Section 504 regardless of their eligibility for special education and related services under the IDEA. OCR is responsible for issuing regulations implementing Section 504 for recipients of financial assistance from ED, which are found at 34 C.F.R. pt. 104. These regulations require, among other things, that public school students with disabilities have an equal opportunity to participate in school and that they receive FAPE consisting of regular or special education and related aids and services designed to meet their individual educational needs as adequately as the needs of nondisabled students are met.<sup>13</sup> OCR enforces Section 504 and its regulations in public elementary and secondary schools; this includes enforcing the Section 504 rights of IDEA-eligible students.

In the remainder of this document, Section 504 is not separately discussed. As a general rule, violations of Section 504 also constitute violations of Title II; therefore, discussing the Section

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<sup>11</sup> Under Section 504, for purposes of preschool, elementary, secondary, or adult educational services, a student is a qualified individual with a disability if he or she has a disability and is (i) of an age during which students without disabilities are provided such services; (ii) of any age during which it is mandatory under state law to provide such services to individuals with disabilities; or (iii) to whom a state is required to provide a free appropriate public education under the IDEA. 34 C.F.R. § 104.3(l)(2).

<sup>12</sup> 29 U.S.C. § 705(9)(B), (20)(B). The ADA Amendments Act of 2008 amended the definition of disability that applies to Section 504. For a discussion of OCR's interpretation of the changes to the definition, please see the January 19, 2012, Dear Colleague Letter and Frequently Asked Questions document (FAQ) entitled "Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools," issued by the United States Department of Education's (ED's) Office for Civil Rights, available on ED's website at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201109.html> (Dear Colleague Letter) and <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html> (FAQ).

<sup>13</sup> 34 C.F.R. pt. 104, Subparts A and D.

504 protections separately would not provide additional guidance to public schools, all of which are subject to both laws. Moreover, in determining whether a recipient’s communication with an individual with a disability complies with ED’s Section 504 general nondiscrimination provisions, where applicable, OCR generally would not find a violation if a recipient complied with the requirements embodied in Title II’s effective communication regulation.<sup>14</sup>

Similarly, the vast majority of students with hearing, vision, or speech disabilities are IDEA-eligible, and one way of meeting a school’s Section 504 FAPE requirements is to comply with the IDEA FAPE requirements.<sup>15</sup> To address the Section 504 FAPE requirements would therefore not provide additional guidance to public schools in the most common situations.

### **Individuals with Disabilities Education Act (IDEA)**

Part B of the IDEA provides Federal funds to State educational agencies and through them local educational agencies (hereinafter school districts), for the purpose of assisting them in providing FAPE to eligible children with disabilities through the provision of special education and related services.<sup>16</sup> States receiving IDEA funds must ensure that school districts locate, identify, and evaluate children who are suspected of having disabilities and who need special education and related services. Each eligible child must have a written individualized education program (IEP), developed by an IEP Team, that, among other things, includes a statement of the special education and related services that the school district will provide to the child.<sup>17</sup> School districts also must ensure that FAPE is provided in the least restrictive environment to all eligible children with disabilities. These IDEA protections also apply to children with disabilities who attend public charter or magnet schools.<sup>18</sup> Among other things, the IEP must address the communication needs of eligible children. The Office of Special Education Programs (OSEP) in ED’s Office of Special Education and Rehabilitative Services (OSERS) administers the IDEA, and OSEP’s implementing regulations for Part B are found at 34 C.F.R. pt. 300.

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<sup>14</sup> 34 C.F.R. § 104.4. In situations where the Section 504 general nondiscrimination provisions apply, OCR generally would look to the effective communication standards in the Department’s Section 504 regulation for Federally conducted programs, 34 C.F.R. § 105.40. These standards are similar to those found in the Title II effective communication regulation.

<sup>15</sup> 34 C.F.R. §§ 104.33(b)(2), 104.35(d), 104.36.

<sup>16</sup> 20 U.S.C. §§ 1400-1419; 34 C.F.R. pt. 300. The IDEA includes 13 disability categories: autism, deaf-blindness, deafness, emotional disturbance, hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment including blindness. 34 C.F.R. § 300.8(c).

<sup>17</sup> 34 C.F.R. § 300.320.

<sup>18</sup> 34 C.F.R. § 300.209(a).

The IDEA does not restrict or limit the rights, procedures, and remedies available under the U.S. Constitution, the ADA, Section 504, or other laws protecting the rights of elementary and secondary students with disabilities, except that before filing a case in Federal or State court seeking relief that is also available under the IDEA, the child’s parents must generally go through (“exhaust”) the IDEA administrative hearing procedures.<sup>19</sup>

## Questions and Answers

### Title II of the Americans with Disabilities Act (Title II)

#### 1. Under Title II, what must public school districts do to provide effective communication to students with hearing, vision, or speech disabilities?

**Answer.** Title II and its implementing regulations require public school districts to ensure that communication with students with hearing, vision, or speech disabilities is as effective as communication with students without disabilities.

To do this, public schools must provide appropriate “auxiliary aids and services” where necessary to provide effective communication;<sup>20</sup> that is, schools must provide appropriate auxiliary aids and services so that students with disabilities have an equal opportunity to participate in, and enjoy the benefits of, the services, programs, and activities of the public school district.

Title II requires covered entities, including public schools, to give “primary consideration” to the auxiliary aid or service requested by the student with the disability when determining what is appropriate for that student.<sup>21</sup>

If, after complying with the process described in Q&A 6, a public school district can prove that providing a particular auxiliary aid or service would be a fundamental alteration in the nature of a service, program, or activity, or be an undue financial and administrative burden, the school does not need to provide that auxiliary aid or service. However, the school still has an obligation to provide, to the maximum extent possible, an effective auxiliary aid or service.<sup>22</sup>

These concepts are discussed in greater detail below.

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<sup>19</sup> 20 U.S.C. § 1415(l). For further discussion on the IDEA exhaustion requirement, please refer to Q&A 18.

<sup>20</sup> 28 C.F.R. § 35.160(b)(1).

<sup>21</sup> 28 C.F.R. § 35.160(b)(2).

<sup>22</sup> 28 C.F.R. § 35.164.

**2. What are examples of auxiliary aids and services for students with hearing, vision, and speech disabilities?**

**Answer.** In general, 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.

Auxiliary aids and services include a wide range of services, devices, technologies, and methods for providing effective communication, as well as the acquisition or modification of equipment or devices.

The Title II regulation lists examples of some, but not all, of these kinds of auxiliary aids and services.<sup>23</sup> For a person who is deaf, deaf-blind, or hard of hearing, some examples of auxiliary aids and services are interpreters, note takers, exchange of written materials, real-time computer-aided transcription services (e.g., CART), assistive listening systems, accessible electronic and information technology, and open and closed captioning.

Interpreters must be qualified.<sup>24</sup> This means that the interpreter must be able to interpret both receptively (having the skill needed to understand what the person with a disability is saying) and expressively (having the skill needed to convey information to the person with a disability). For example, an interpreter must be able to sign to the person who is deaf what is being said by the hearing person, and voice to the hearing person what is being signed by the person who is deaf. This communication must be conveyed effectively, accurately, and impartially, using any appropriate specialized vocabulary.<sup>25</sup> Thus, a teacher or other staff member who signs “pretty well” is not a qualified interpreter. Being able to sign “pretty well” does not mean that a person can process spoken communication into proper signs; nor does it mean that he or she has the proper skills to observe the person signing and change the signed or finger-spelled communication into spoken words.<sup>26</sup>

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<sup>23</sup> 28 C.F.R. § 35.104.

<sup>24</sup> *Id.*

<sup>25</sup> U.S. Department of Justice, *Technical Assistance on Effective Communication*, at <http://www.ada.gov/effective-comm.htm>.

<sup>26</sup> U.S. Department of Justice, *Title II Technical Assistance*, II-7.1200, at <http://www.ada.gov/taman2.html#II-7.1200>.

For a person who is blind, deaf-blind, or has low vision, some examples of auxiliary aids and services are qualified readers, taped texts, audio recordings, Braille materials and displays, screen reader software, magnification software, optical readers, secondary auditory programs (SAP); large print materials; and accessible electronic and information technology.

For a person with a speech disability, some examples of auxiliary aids or services are a word or letter board, writing materials, spelling to communicate, a qualified sign language interpreter, taped texts, a computer, a portable device that writes and/or produces speech, and telecommunications services.

In general, the services, devices, technologies and methods for providing effective communication that are “auxiliary aids and services” under Title II could also be provided under the IDEA as part of FAPE.

**3. What does it mean for a public school district to give “primary consideration” to the request of the student with a disability when making the decision to provide a particular auxiliary aid or service?**

**Answer.** The Title II regulations require that when a public school is deciding what types of auxiliary aids and services are necessary to ensure effective communication, it must give “primary consideration” to the particular auxiliary aid or service requested by the person with the disability.<sup>27</sup>

When determining what is appropriate for that student, the school must provide an opportunity for the person with the disability (or an appropriate family member, such as a parent or guardian) to request the aid or service the student with a disability thinks is needed to provide effective communication. It is the person with the disability (or his or her appropriate family member) who is most familiar with his or her disability and can provide relevant information about which aids or services will be most effective.

For example, if a high school student was deaf at birth or lost his or her hearing before learning language, that person may use American Sign Language (ASL) as his or her primary form of communication and may be uncomfortable or not proficient with other forms of communication. A high school student who lost his or her hearing later in life and who uses a cochlear implant may not be as familiar with sign language and may feel most comfortable and proficient with an oral interpreter or with the use of a computer or other technology. A young student who is nonverbal and is fluent in ASL but cannot read yet may not be able to use a

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<sup>27</sup> 28 C.F.R. § 35.160(b)(2).



computer with written text and may be most comfortable and proficient communicating with a sign language interpreter.

The public school must honor the choice of the student with the disability (or appropriate family member) unless the public school can prove that an alternative auxiliary aid or service provides communication that is as effective as that provided to students without disabilities. If the school district can show that the alternative auxiliary aid or service is as effective and affords the person with a disability an equal opportunity to participate in and benefit from the service, program, or activity, then the district may provide the alternative.

**4. What factors should a public school district consider in determining what auxiliary aids or services are necessary to afford qualified students with disabilities an equal opportunity to participate in, and enjoy the benefits of, the public school’s services, programs, or activities?**

**Answer.** The determination of what auxiliary aids or services will provide effective communication must be made on a case-by-case basis, considering the communication used by the student, the nature, length, and complexity of the communication involved, and the context in which the communication is taking place.<sup>28</sup>

When determining the appropriate method of communication, schools must make an individualized determination and cannot assume, for example, that simply because a student is deaf, the student is fluent in ASL.

In addition to giving primary consideration to the particular auxiliary aid or service requested by the student with a disability, the public school should also consider, for example, the number of people involved in the communication, the expected or actual length of time of the interaction(s), and the content and context of the communication. For example, will the communication with a deaf student be fairly simple so that handwritten or typed notes would suffice; or is the information being exchanged important, somewhat complex, technical, extensive, or emotionally charged, in which case, a qualified interpreter may be necessary.

The Title II regulations’ requirements apply to all of a student’s school-related communications, not just those with teachers or school personnel. Therefore, given the ongoing exchanges students experience with teachers, students, coaches, and school officials, any student who requires a sign language interpreter in order to receive effective communication in an academic

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<sup>28</sup> 28 C.F.R. § 35.160(b)(2).

class would likely need interpreter services throughout the day and may also need them to participate in school-sponsored extracurricular activities.<sup>29</sup>

For a deaf or hard of hearing student, a sign language interpreter or CART may be appropriate where student comments and discussions are part of the class experience for all students, i.e., to enable the student to understand comments and discussions from classmates that all students are exposed to, in addition to what is being said by the teacher, and to enable the student to express himself or herself in a manner that permits the teacher and classmates to fully understand and respond to the student.

Likewise, a student with cerebral palsy who is nonverbal may need a computer that produces text or speech in order to communicate with the teacher and his or her classmates.

For a blind student, that student's textbooks and handouts must be accessible for that student, and all written information used in the classroom should also be read aloud or presented in other accessible formats.

In determining which auxiliary aid or service to provide, school districts should be mindful that communications evolve depending on the circumstances. We strongly encourage schools to reassess the effectiveness of communication regularly as a situation changes. For example, what may begin as a simple request by a student to check out a book from the school library, where an exchange of written notes would be sufficient, can evolve into a more complex communication concerning assistance in completing a research paper, where an exchange of written notes might not be sufficient to ensure effective communication. For more information on school districts' continuing obligation to assess the effectiveness of auxiliary aids and services, see Q&A 13.

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<sup>29</sup> Under the IDEA, school districts must also take steps, including the provision of supplementary aids and services, to provide nonacademic and extracurricular services and activities in the manner necessary to afford every child with a disability an equal opportunity for participation in those services and activities. 34 C.F.R. § 300.107(a). A student's IEP must address the special education, related services, supplementary aids and services, program modifications, and supports for school personnel to be provided to enable the student to, among other things, participate in extracurricular and other nonacademic activities. 34 C.F.R. § 300.320(a)(4)(ii).

**5. What does it mean for auxiliary aids and services to be provided in “accessible formats, in a timely manner, and in such a way as to protect the privacy and independence” of a student with a disability?**

**Answer.** The Title II regulations require that when a public school is providing auxiliary aids and services that are necessary to ensure effective communication, they must be provided in “accessible formats, in a timely manner, and in such a way as to protect the privacy and independence” of a student with a disability.<sup>30</sup> This regulatory provision has several requirements.

- First, the auxiliary aid or service provided must permit the person with the disability to access the information. For example, if a blind student is not able to read Braille, then provision of written material in Braille would not be accessible for that student. If homework assignments are available on-line, then the on-line program used by the school must be accessible to students who are blind. Similarly, for a student with limited speech who does not yet read, a computer that writes words would not be accessible for that student. Instead, a device that uses pictures to communicate words, thoughts, and questions may be appropriate.
- Second, the auxiliary aid or service must be provided in a timely manner. That means that once the student has indicated a need for an auxiliary aid or service or requested a particular auxiliary aid or service, the public school district must provide it (or the alternative, as discussed above) as soon as possible. If the student is waiting for the auxiliary aid or service (as opposed to requesting and arranging for it in advance), DOJ and ED strongly advise that the public school keep that student (and parent) informed of when the auxiliary aid or service will be provided. This requirement is separate from the provision of special education and related services under the IDEA. For example, where the student or his or her parent(s) requests auxiliary aids and services for the student under Title II, the appropriate aids and services must be provided as soon as possible, even if the IDEA’s evaluation and IEP processes are still pending.
- Third, the auxiliary aid or service must be provided in a way that protects the privacy and independence of the student with the disability. For example, for someone who is deaf and uses ASL, if other people in the environment understand ASL, then conversations that involve sensitive information must be conducted privately. Additionally, auxiliary aids and services must be provided in a manner that does not unnecessarily disclose the nature and extent of an individual’s disability. For example, if a student who is hard of hearing needs

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<sup>30</sup> 28 C.F.R. § 35.160(b)(2).

assistance with taking notes, a teacher should not call out for volunteers in the front of the whole class. Auxiliary aids and services also must be provided in a way that protects the independence of the student. For example, if a blind student requested an accessible electronic book (e-book) reader to complete in-class reading, instead of using a reading aide, the school district should provide the e-book reader because it would allow the student to go through the material independently, at his own pace, and with the ability to revisit passages as needed.

**6. What happens if the public school district thinks that providing a particular auxiliary aid or service would result in a fundamental alteration in the nature of a service, program, or activity, or an undue financial and administrative burden?**

**Answer.** A school district must provide a particular auxiliary aid or service that is otherwise required unless the district can prove that such an auxiliary aid or service would result in a fundamental alteration in the nature of the service, program, or activity or in undue financial and administrative burdens.

The head of the school district or his or her designee (i.e., another school official with authority to make budgetary and spending decisions) must make the determination that a particular auxiliary aid or service would result in a fundamental alteration in the nature of the service, program, or activity or in undue financial and administrative burdens after considering all resources available for use by the school district in the funding and operation of the service, program, or activity.<sup>31</sup> Such a determination must be accompanied by the decision maker's written statement of the reasons for concluding that a requested auxiliary aid or service would cause such alteration or burdens.<sup>32</sup> In those circumstances, the school district has the burden of proving that providing the requested auxiliary aid or service would result in such alteration or burdens.<sup>33</sup> Compliance with the effective communication requirement would, in most cases, not result in undue financial and administrative burdens.

While there is nothing in the ADA that would prevent the head of the school district from delegating this authority to an appropriate member of the child's IEP team, that designee must have authority to make budgetary and spending decisions and must have the knowledge necessary to consider all resources available to the school district for use in the funding and operation of the service, program, or activity.

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<sup>31</sup> 28 C.F.R. § 35.164.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

In situations where the school district decides not to provide a particular aid or service and can prove that doing so would result in a fundamental alteration or undue burdens, the district must take other steps that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, the individual with a hearing, vision, or speech disability can participate in, and receive the benefits or services provided by, the school district's program or activity.<sup>34</sup> Generally, this would involve the provision of an auxiliary aid or service that would not result in a fundamental alteration or undue burden.

**7. Under what circumstances is a public school required to provide auxiliary aids and services to persons with a hearing, vision, or speech disability who are not students, such as parents, other relatives, and members of the public, who seek to participate in or benefit from a district's services, programs, or activities?**

**Answer.** Title II's effective communication obligations are not limited just to students — schools are obligated to provide effective communication to all individuals who seek to participate in or benefit from a school district's services, programs, or activities such as student registration, parent-teacher conferences, meetings, ceremonies, performances, open houses, and field trips. All of the same Title II requirements and considerations discussed in the context of students with hearing, vision, or speech disabilities apply to other individuals with disabilities who are covered by this requirement.

**8. May a public school require an individual with a hearing, vision, or speech disability to bring another person to interpret or facilitate communication, or to rely on a person who accompanies an individual with such a disability?**

**Answer.** The Title II regulations expressly prohibit a public school from requiring an individual with a disability to bring another person to interpret for him or her.<sup>35</sup> Assuming the provision of an interpreter or other auxiliary aid or service is required, a school is prohibited from relying upon a person who accompanies a child or adult with a hearing, vision, or speech disability to interpret or facilitate communication except in two distinct circumstances.<sup>36</sup> First, in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available, the school may ask either a minor child or an adult to interpret or facilitate communication.<sup>37</sup> In no other circumstances may a school rely on a minor

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<sup>34</sup> *Id.*

<sup>35</sup> 28 C.F.R. § 35.160(c)(1).

<sup>36</sup> 28 C.F.R. § 35.160(c)(2).

<sup>37</sup> 28 C.F.R. §§ 35.160(c)(2)(i), (c)(3)

child to interpret or facilitate communication.<sup>38</sup> Second, where the individual with the hearing, vision, or speech disability specifically makes the request, an accompanying adult may interpret or facilitate communication if the accompanying adult voluntarily agrees to provide the assistance and the school’s reliance on the accompanying adult is appropriate under the circumstances.<sup>39</sup>

**9. Can public schools charge for the provision of auxiliary aids or services?**

**Answer.** No. Public schools cannot charge for the auxiliary aids or services that they provide to meet the effective communications provision in the Title II regulations. DOJ and ED strongly advise school districts that they inform students with disabilities and their parents that the district can and will provide auxiliary aids and services, and that there will be no cost for such aids or services.

**Interplay Between Title II and the IDEA**

**10. How do the IDEA FAPE and the Title II effective communication requirements differ with regard to the obligation to provide communication for students with disabilities attending public elementary and secondary schools?**

**Answer.** The Title II regulations explicitly require that a district take appropriate steps to ensure that communications with persons with disabilities are “as effective as” communications with other persons. They further require that a district provide appropriate auxiliary aids and services where necessary to afford a person with a disability an “equal opportunity” to participate in and enjoy the benefits of the district’s services, programs, or activities. Under the IDEA, FAPE must be individually designed to provide meaningful educational benefit to the child.<sup>40</sup> The IDEA does not require that a district compare the effectiveness of communications with a student with a disability to the effectiveness of communications with students without

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<sup>38</sup> 28 C.F.R. § 35.160(c)(3). A school is prohibited from relying on a minor child to interpret or facilitate communication in situations in which an interpreter or similar auxiliary aid is required. It would not be a violation of the prohibition applicable to the use of a minor child to interpret or facilitate communication if the situation does not require that the school provide an interpreter or similar auxiliary aid or service. For example, it would not be a violation if a child, accompanying her deaf parent, assisted her parent in requesting a copy of the school newsletter.

<sup>39</sup> 28 C.F.R. § 35.160(c)(2)(ii). For more information on the use of companions as interpreters, see U.S. Department of Justice, *Technical Assistance on Effective Communication*, at <http://www.ada.gov/effective-comm.htm>.

<sup>40</sup> *Bd. of Educ. v. Rowley*, 458 U.S. 176, 201 (1982); *Deal v. Hamilton Cnty. Bd. of Educ.*, 392 F.3d 840, 862 (6th Cir. 2004), *cert denied*, 546 U.S. 936 (2005).

disabilities, although there is nothing in the IDEA that precludes districts from doing so as part of FAPE.<sup>41</sup>

For a student with a disability who is covered under both laws -- such as all IDEA-eligible students with hearing, vision, or speech disabilities -- the school district must ensure that both sets of legal obligations are met, and that none of the student's rights under either law are diminished or ignored. For many students, the special education and related services that they receive under the IDEA will also ensure that communication with those students is as effective as communication with other persons. In other instances, the services, devices, technologies and methods for providing effective communication that are provided to a particular student as "auxiliary aids and services" under Title II may not necessarily be the same as those determined under the IDEA. Further, if the special education and related services provided under the IDEA are not sufficient to ensure that communication with the student is as effective as communication with other persons, the Title II obligations have not been met. Thus, depending on the circumstances, the services and aids that a student receives under the IDEA may be the same as or greater than the services and aids that would be provided under Title II; in other circumstances, a student may receive more services and aids under Title II than those provided under the IDEA.

A student with a disability does not, and cannot be asked to, give up his or her rights under Title II in exchange for, or because he or she already receives, special education and related services under the IDEA. That is, the provision of FAPE under the IDEA does not limit a student's right to effective communication under Title II.

**11. Must a student be eligible under the IDEA in order to be provided auxiliary aids and services needed to ensure effective communication under Title II? (In other words, must a student with a disability have an IEP to access effective auxiliary aids and services?)**

**Answer.** No. Title II does not require IDEA eligibility. While many students who have communication needs based on a hearing, vision, or speech disability are eligible under the IDEA and have IEPs, these are not prerequisites for receiving auxiliary aids and services needed to ensure effective communication under Title II.

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<sup>41</sup> *Rowley*, 458 U.S. at 198-200.

## **Implementation**

### **12. How does a parent request auxiliary aids and services for a child under Title II? Can the request be made as part of the IEP process or must it be made through a separate process?**

**Answer.** Title II does not designate a particular responsible person for a parent or student to contact about, or a specific process for individuals to follow, with regard to obtaining services under Title II. The school district can determine whom the parent should contact with requests for auxiliary aids and services and other ADA issues. Title II requires school districts to provide notice about Title II and its applicability to the school districts' services, programs, or activities.<sup>42</sup> The school district or public school should make sure that the identity and contact information of the designated school official is made publicly available in accessible formats.

A best practice is for a district to proactively notify parents and students about the right to effective communication under Title II and identify the designated school official who accepts requests for Title II auxiliary aids and services. In order to carry out a school district's responsibility to ensure effective communication, district staff, such as teachers and administrative staff, who might reasonably be contacted by parents or students with requests for auxiliary aids or services, need to be knowledgeable about how to handle this type of request. For example, the district's process might ensure that staff refers parents to the designated school official. As another example, the district's process might call for the teacher or other staff member to communicate the parent's request directly to the designated school official and to notify the parent that the request has been so communicated. In addition, a school district's Section 504 or ADA Coordinator<sup>43</sup> (discussed in further detail below) could be the designated school official or facilitate the process.

If a child has an IEP, neither the IDEA nor Title II require that the child's IEP Team address a parent's Title II request for his or her child; however, a school district may choose to delegate this responsibility to the child's IEP Team. Please refer to Q&A 15 for additional information regarding the role of the IEP Team. As discussed below, a parent does not need to make a specific request under Title II before a school considers its responsibilities to provide auxiliary aids and services.

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<sup>42</sup> 28 C.F.R. § 35.106.

<sup>43</sup> A school district that employs 15 or more persons must designate at least one person to coordinate its compliance with Section 504. 34 C.F.R. § 104.7(a). A school district that employs 50 or more persons must designate at least one employee to coordinate its compliance with Title II. 28 C.F.R. § 35.107(a). Nothing prohibits the ADA Coordinator from being the same person as the Section 504 Coordinator.



**13. For children who are already receiving special education and related services under the IDEA, do parents have to make specific requests for different or additional auxiliary aids and services to trigger the Title II obligations for effective communication? Also, once the decision is made to provide a particular auxiliary aid or service to a student with a hearing, vision, or speech disability, does the school district have any obligation under either Title II or the IDEA to revisit that decision? If so, when?**

**Answer.** Parents do not have to make a specific request for different or additional auxiliary aids. When the school district knows that a student needs assistance with communication because, for example, he or she has a hearing, vision, or speech disability, the school district also has an affirmative obligation to provide effective communication under Title II, whether or not a parent requests specific auxiliary aids and services under Title II. This obligation is in addition to the requirement that the school district make FAPE available if the student is eligible under the IDEA.

As a best practice, schools should consult with the parent or guardian (and students, as appropriate) at the first opportunity regarding what auxiliary aids or services are appropriate and update information about these preferences at least every year or whenever the parent or guardian requests a change. Nothing prevents the parent, guardian, or student from specifically requesting a particular auxiliary aid or service if not so consulted.

Also, under the IDEA, each school district must ensure that the IEP Team reviews and, if appropriate, revises the child's IEP periodically, but not less than annually.<sup>44</sup> In general, a reevaluation under the IDEA must occur at least once every three years.<sup>45</sup> Under Title II, the public school has a continuing obligation to assess the auxiliary aids and services it is providing to students with hearing, vision, or speech disabilities to ensure that these students are receiving effective communication.

For information on what parents can do if they disagree with a school district's decision on what Title II's effective communication provisions require for their child, please refer to Q&A 18.

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<sup>44</sup> 34 C.F.R. § 300.324(b).

<sup>45</sup> 34 C.F.R. § 300.303(b).

**14. Who in a school district participates in the determinations about the provision of auxiliary aids and services under Title II? Does the ultimate decision maker differ depending upon whether the student is covered by the IDEA, Title II, or both?**

**Answer.** The Title II regulations do not designate a particular responsible person or group of people to make the determinations about the provision of auxiliary aids and services under Title II.

The Title II regulations do require that most school districts (those that employ 50 or more persons) select at least one employee to coordinate implementation and compliance with the district's responsibilities under Title II.<sup>46</sup> Such an employee is generally referred to as the ADA Coordinator. A school district may give the ADA Coordinator the responsibility of making decisions about the auxiliary aids and services required under Title II, and may choose to have the ADA Coordinator participate in Title II effective communication decisions and in IEP reviews. The Title II regulations also address who should make determinations concerning whether a particular auxiliary aid or service would create a fundamental alteration or undue burden. Please refer to Q&A 6 for additional information.

If a student is IDEA-eligible, a school district can also decide that a parent's request under Title II for a child will be addressed by the IEP team. See Q&A 15.

**15. Under what circumstances may the IEP Team make decisions about the provision of auxiliary aids and services required under Title II?**

**Answer.** Under the IDEA, the school must ensure that the child's educational program, as part of FAPE, is based on the individual needs of the child and is reasonably calculated to enable the child to receive meaningful educational benefit. 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.

However, the IEP Team needs to be aware that the decision regarding the auxiliary aids and services needed to ensure effective communication as required under Title II poses a different question than the FAPE determination under the IDEA and must be made using the Title II legal standards. For additional information on the Title II requirements, please refer to Q&A's 1 through 9.

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<sup>46</sup> 28 C.F.R. § 35.107(a). Smaller school districts may have only a Section 504 Coordinator, 34 C.F.R. § 104.7(a), who can serve the same functions.

**16. Is the IDEA evaluation process different than the analysis used when considering an individual’s request for a particular auxiliary aid or service under Title II?**

**Answer.** Under the IDEA, each school district must conduct a full and individual initial evaluation before the initial provision of special education and related services to a child with a disability. The evaluation must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent that may assist in determining whether the child is a child with a disability and needs special education and related services. Evaluations also must be provided and administered in a student’s native language or other mode of communication.<sup>47</sup>

If a school district has already completed a child’s evaluation under the IDEA, it may rely on information obtained from that evaluation when determining the need for effective communication under Title II. However, the school district must analyze the child’s needs and how to meet those needs based on the Title II standard, and this includes giving primary consideration to a request for a specific auxiliary aid or service. A school district may not ignore information obtained through the IDEA evaluation procedures, but may implement its own procedures to determine whether a child needs a particular auxiliary aid or service to ensure effective communication under Title II. Similarly, as explained above in Q&A 5, a school district must provide the auxiliary aids or services in a timely manner and cannot wait for the IEP process to run its course before providing necessary auxiliary aids and services under Title II. The IDEA does not prohibit a school district from providing the needed auxiliary aids and services under Title II while the IDEA evaluation is pending.

In this situation, the school district must first address the child’s needs for auxiliary aids and services based on the Title II standard while proceeding with the IDEA evaluation process, meaning the school district must provide those aids and services that ensure communication with the child is as effective as communication with students without disabilities and give primary consideration to the parent’s or child’s request for specific auxiliary aids and services, if any. Once the IDEA evaluation is complete, the school district may need to reassess whether the child needs different auxiliary aids or services to ensure effective communication under Title II if the results of the IDEA evaluation provide additional information regarding the child’s needs or the effectiveness of the auxiliary aids and services being used.

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<sup>47</sup> 34 C.F.R. §§ 300.301,300.304.

**17. May a school district determine that, under Title II, all children with a hearing, vision, or speech disability will receive the same auxiliary aid or service as others with that kind of disability?**

**Answer.** No. As stated earlier, when a school district decides what auxiliary aids or services to provide, that decision is made on an individualized, case-by-case basis. Because students with disabilities experience varying levels and types of limitations from hearing, vision, or speech disabilities, and because school districts must give primary consideration to the requests of the individual, these determinations must be made on an individual basis. For examples of appropriate auxiliary aids and services in individual cases, see Q&A 4.

**18. What dispute resolution mechanisms are available if a parent believes that a school district has improperly denied or limited his or her child’s access to a particular auxiliary aid or service under Title II or has not made FAPE available under the IDEA?**

**Answer.** Under the IDEA, a parent challenging the provision of FAPE may request mediation, may file a complaint with the State educational agency, or may request an impartial administrative hearing by filing a due process complaint and participating in the prescribed resolution process.<sup>48</sup> The administrative hearing procedures vary by state and may include one or two levels of administrative review. An administrative hearing decision may be appealed to a State or Federal court empowered to hear such cases. In general, IDEA’s administrative hearing procedures must be utilized before seeking relief in State or Federal court. More information about IDEA’s dispute resolution procedures is available at <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/accombinedosersdisputeresolutionfinalmemo-7-23-13.pdf>.

Regardless of whether or not the student also is eligible under the IDEA, a parent of a student with a disability can file a Title II complaint regarding the denial or limitation of a particular auxiliary aid or service with the United States Department of Education’s Office for Civil Rights or with the United States Department of Justice’s Civil Rights Division,<sup>49</sup> or file a Title II grievance with the school district if the school district has such a procedure.<sup>50</sup>

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<sup>48</sup> 34 C.F.R. §§ 300.506, 300.507.

<sup>49</sup> Information on how to file a complaint with ED’s Office for Civil Rights is on ED’s website at <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>. Information on how to file a complaint with DOJ’s Civil Rights Division is on DOJ’s website at <http://www.justice.gov/crt/complaint/>.

<sup>50</sup> A school district that employs 50 or more persons must adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by Title II. 28 C.F.R. § 35.107(b). A school district that employs 15 or more persons must adopt grievance procedures that incorporate

*(footnote continued on following page)*

A parent may also choose to file a civil action alleging a violation of Title II in Federal court. However, parents and guardians should be aware that the IDEA requires that, before filing a Federal case under other laws, such as Title II of the ADA, seeking a remedy that is also available under the IDEA, the parent or guardian generally must exhaust the administrative hearing procedures of the IDEA, which means obtaining a final decision under the IDEA's impartial due process hearing procedures.<sup>51</sup>

## **Funding**

### **19. Under what circumstances may a school district use IDEA funds to pay for auxiliary aids or services for IDEA-eligible students to ensure effective communication as required by Title II?**

**Answer.** The IDEA provides that grant funds must be used only in accordance with the applicable provisions of the IDEA and to pay the excess costs of providing special education and related services to children with disabilities.<sup>52</sup> Therefore, IDEA funds may be used only to pay for auxiliary aids and services under Title II that also are required to be provided under the IDEA, such as assistive technology or interpreter services that are included in the student's IEP. If a child receives auxiliary aids and services under Title II that are not included in the child's IEP, IDEA funds may not be used to pay for those services.

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appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504. 34 C.F.R. § 104.7(b).

<sup>51</sup> 20 U.S.C. § 1415(l). Several Federal courts have applied this provision to specific facts in determining whether administrative exhaustion under the IDEA is required prior to filing a Federal case seeking relief under other Federal laws, including Title II of the ADA. *See, e.g., Honig v. Doe*, 484 U.S. 305, 327 (1988); *J.B. ex rel. Bailey v. Avilla R-XIII Sch. Dist.*, 721 F.3d 588, 594 (8th Cir. 2013); *Payne v. Peninsula Sch. Dist.*, 653 F.3d 863, 871-878 (9th Cir. 2011) (en banc), *cert. denied*, 132 S. Ct. 1540 (2012), *overruled on other grounds by Albino v. Baca*, 747 F.3d 1162, 1171 (9th Cir. 2014); *McCormick v. Waukegan Sch. Dist.*, 374 F.3d 564 (10th Cir. 2004). Although other Federal circuits have issued decisions on IDEA exhaustion, for a discussion of the Federal government's view of exhaustion, generally, *see* United States' Brief as Amicus Curiae in *Payne v. Peninsula Sch. District* (9th Cir. 2011), available at <http://www.justice.gov/crt/about/app/briefs/paynebr.pdf>.

<sup>52</sup> 34 C.F.R. § 300.202(a). In using IDEA funds for these purposes, an LEA must comply with the excess costs requirement in 34 C.F.R. § 300.202(b). (For more information please refer to App. A. to 34 C.F.R. Part 300.)

## Resources

### **20. Where can a school district or parent get more information about these issues?**

**Answer.** For information about Section 504 or Title II, school districts and parents can contact the OCR office for the state in which the school is located. Contact information for the OCR office that serves each state is available at <http://wdcrobcop01.ed.gov/CFAPPS/OCR/contactus.cfm>. Districts and parents can also call OCR's customer service line at 800-421-3481 (voice) or 800-877-8339 (TDD) to obtain this contact information.

In addition, for information about Title II requirements for effective communication, school districts and parents can call DOJ's toll-free ADA Information Line, 800-514-0301 (voice) or 800-514-0383 (TTY), or consult DOJ's ADA website, <http://www.ada.gov>.

For information about the IDEA requirements for children with disabilities and communication needs, school districts and parents can contact OSEP at (202) 245-7459 or consult OSEP's website at <http://www2.ed.gov/about/offices/list/osers/osep/index.html>. In addition, a list of OSEP's State contacts can be found at <http://www2.ed.gov/policy/speced/guid/idea/monitor/state-contact-list.html>.

Below are links to several relevant Federal documents.

- U.S. Department of Justice. (2014). *Technical Assistance Document on Effective Communication*. Retrieved October 1, 2014, from <http://www.ada.gov/effective-comm.htm>
- U.S. Department of Education. (2013). *Office of Special Education Programs Memorandum 13-08--July 23, 2013-Dispute Resolution Procedures under Part B of the Individuals with Disabilities Education Act*. Retrieved October 1, 2014, from <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf>
- U.S. Department of Education. (2013). *Dear Colleague Letter from the Assistant Secretary for Special Education and Rehabilitative Services and the Director of Special Education Programs-June, 19, 2013-Braille instruction*. Retrieved October 1, 2014, from <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/brailledcl-6-19-13.pdf>
- U.S. Department of Justice. (2012). *K.M. v. Tustin Unified School District*, 725 F.3d 1088 (9<sup>th</sup> Cir. 2013) amicus brief. Retrieved October 1, 2014, from <http://www.justice.gov/crt/about/app/briefs/kmtustinbr.pdf>

- U.S. Department of Education. (2011). *Questions and Answers On Individualized Education Programs (IEP's), Evaluations, and Reevaluations*. Retrieved October 1, 2014, from <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C3%2C>
- U.S. Department of Education. (2011) *Questions and Answers on Accessible Technologies*. Retrieved October 1, 2014, from <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-ebook-faq-201105.html>
- U.S. Department of Education and U.S. Department of Justice. (2010). *Dear Colleague Letter from the Assistant Secretary for Civil Rights, U.S. Department of Education, and the Assistant Attorney General for Civil Rights, U.S. Department of Justice – Emerging Technologies in Education-June 29, 2010*. Retrieved October 1, 2014, from <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100629.html>

## **Appendix A**

### **Case Studies Illustrating the Proper Application of the IDEA Analysis and the Title II Effective Communication Analysis**

#### **Case Study #1: Auxiliary aids and services under Title II are different from special education and related services under the IDEA.**

Tommy is a thirteen-year-old student with significant hearing loss. He has a cochlear implant, and also relies on lip-reading and social cues to communicate with others. He has been evaluated under the IDEA and determined eligible for special education services.

When addressing the communication needs of a child who is deaf or hard of hearing, the IEP Team must consider the child's language and communication needs, opportunities for direct communication with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode. The IEP Team also must consider whether the child needs assistive technology devices and services. For the past three years, Tommy's IEP Team, which includes Tommy's parents, agreed that Tommy would use FM technology, which consists of a microphone held by the teacher and a receiver that transmits to Tommy's implant. During this time period, Tommy has maintained above average grades, completed grade level work, and interacted appropriately with his peers. Recently, however, Tommy expressed concern that he cannot hear other classmates during class discussions and often must "fake it." He also stated that the FM system transmitted static and background noises and interfered with his ability to focus. Based on these concerns Tommy's mother requested that he receive communication access real-time translation (CART) services, which is an immediate transcription of spoken words to verbatim text on a computer screen.

FAPE determination under the IDEA: After Tommy expressed his concerns about the FM system and requested CART services, Tommy's IEP Team timely reconvened. Under the IDEA, the IEP Team must determine the special education and related services necessary to provide FAPE and ensure those services are reasonably calculated to enable Tommy to receive meaningful educational benefit. Included in this analysis is whether CART services are necessary for Tommy to receive FAPE. Based on Tommy's above average grades, his grade-level work and teachers' reports on Tommy's interactions in class with his peers, the IEP Team determined that transcription services (e.g., CART) were not necessary for Tommy to receive FAPE. The IEP Team did, however, recommend that Tommy receive an updated FM system and preferential seating in classrooms, and that teachers repeat student's comments, use closed-captioning videos, and provide Tommy with course notes.



Effective Communication determination under Title II: Because Tommy is a student with a hearing disability already identified under the IDEA, the school district also has an affirmative obligation under Title II to ensure that he receives effective communication. Under Title II, the school district must take appropriate steps to ensure that communication with Tommy is as effective as communication with students without disabilities. The school district also must provide appropriate auxiliary aids and services, where necessary, to afford Tommy an equal opportunity to participate in, and enjoy the benefits of, the school program. In determining what auxiliary aids and services are appropriate for Tommy, the school must give primary consideration to the requests made by Tommy and his parents.

Tommy's school district has delegated the responsibility of determining the appropriate auxiliary aids and services needed to ensure effective communication to the ADA Coordinator. As soon as Tommy made his request, his teacher alerted the ADA coordinator about Tommy's request for CART services. In this case, Tommy cannot hear many of the students in the classroom, and by not hearing a student's question or comment, he does not always understand a teacher's response. The ADA coordinator timely determined that because Tommy cannot fully hear or understand all that is said in the classroom, he is not receiving effective communication. The Coordinator gives primary consideration to Tommy's request for CART services and agrees that CART services would provide Tommy with effective communication. Because the CART services would not result in a fundamental alteration or in undue financial and administrative burdens, Tommy will receive CART services as an auxiliary service under Title II and not as a related service under the IDEA.

**Case Study #2: The appropriate auxiliary aids and services under Title II are the same as special education and related services required under the IDEA.**

Julie is a student with a visual impairment. She has been evaluated under the IDEA and determined eligible for special education and related services. Through the second grade, as part of her IEP and placement, Julie has been receiving Braille instruction, and the school district provided materials in Braille. In the summer before third grade, Julie began using an accessible e-book reader. Her parents, therefore, have requested that prior to the new school year Julie's IEP be revised to include an accessible e-book reader in addition to Braille instruction.

FAPE determination under the IDEA: Prior to the new school year, Julie's IEP Team convenes to discuss her IEP for the upcoming school year. The IEP Team agrees that because Julie now uses an accessible e-book reader she should use the e-book reader in addition to Braille materials. All agree that these services are reasonably calculated to enable Julie to receive meaningful educational benefit.

Effective communication determination under Title II: Because Julie is a student with a visual impairment already identified under the IDEA, the school district also has an affirmative obligation under Title II to ensure that she receives effective communication. In Julie's school district, the district delegated the responsibility of determining effective communication to the public school district representative who participates in the school's IEP Team meetings. Shortly after becoming aware that Julie's parents requested an accessible e-book reader, the IEP Team discusses whether any additional appropriate auxiliary aids and services are necessary to provide Julie with effective communication under Title II. Julie's parents make no specific request for additional services beyond the accessible e-book reader. After considering how to ensure Julie receives communication that is as effective as communication with students without disabilities, the team, including the school district representative delegated to make effective communication decisions, determines that the use of an accessible e-book reader in addition to Braille materials will provide effective communication under Title II. As discussed above, the use of the e-book reader in addition to Braille materials also ensures the provision of FAPE under the IDEA. Julie, therefore, will not receive additional auxiliary aids and services under Title II because the IEP meets both the IDEA and Title II standards to meet her communication needs.

## **Appendix B**

### **Individuals with Disabilities Education Act (IDEA) and Communication Needs**

Under Part B, evaluations of all children suspected of having a disability are subject to the IDEA evaluation and eligibility requirements.<sup>53</sup> The purpose of the Part B evaluation is to determine whether the child has a disability and the nature and extent of the special education and related services that the child needs.<sup>54</sup> The school district must provide the parents prior written notice describing any evaluation procedures the agency proposes to conduct.<sup>55</sup> In conducting the evaluation, the school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent that may assist in determining whether the child is a child with a disability and the child’s educational needs.<sup>56</sup> No single measure or assessment may be used as the sole criterion for determining whether a child is a child with a disability and an appropriate educational program for the child.<sup>57</sup> Assessments or other evaluation materials must be provided and administered in the child’s native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so.<sup>58</sup> For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).<sup>59</sup>

Once a child is determined eligible to receive special education and related services under the IDEA, a school must provide a free appropriate public education (FAPE) to the child with a disability through a properly developed individualized education program (IEP). An IEP is a written statement for a child with a disability that is developed, reviewed, and revised in accordance with Part B of the IDEA. Under the IDEA, the child’s IEP must be reasonably calculated to enable the child to receive meaningful educational benefit.

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<sup>53</sup> 34 C.F.R. §§ 300.304, 300.305, 300.306.

<sup>54</sup> 34 C.F.R. § 300.15.

<sup>55</sup> 34 C.F.R. § 300.304(a).

<sup>56</sup> 34 C.F.R. § 300.304(b)(1).

<sup>57</sup> 34 C.F.R. § 300.304(b)(2).

<sup>58</sup> 34 C.F.R. § 300.304(c)(1)(ii). For additional information regarding a school district’s responsibilities regarding IDEA evaluation procedures, see “Questions and Answers on Individual Education Programs (IEPs), Evaluations and Reevaluations, September 2011.”

<http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C3%2C>

<sup>59</sup> 34 C.F.R. § 300.29(b).

A child's IEP must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. The IEP also must include:

- a statement of measurable annual goals;
- a description of how the child's progress toward meeting the annual goals will be measured; and
- a statement of the special education and related services and supplementary aids and services provided to the child and a statement of the program modifications or supports for school personnel that will enable the child to:
  - advance toward attaining the annual goals,
  - be involved in and make progress in the general education curriculum, and
  - participate in extracurricular and other nonacademic activities.

An IEP Team is a group of individuals responsible for developing, reviewing, or revising an IEP for a child with a disability. In general, the IEP Team must include the parent(s) and/or legal guardian(s) of the child; not less than one regular education teacher of the child; not less than one special education teacher or service provider of the child; a representative of the school district; an individual who can interpret the instructional implications of evaluation results; other individuals who have knowledge or special expertise regarding the child; and, whenever appropriate, the child.

The IEP must address the communication needs of each child with a disability. For a child who is deaf or hard of hearing, the IEP Team must consider: (1) the child's language and communication needs; (2) opportunities for direct communication with peers and professional personnel in the child's language and communication mode; (3) academic level; and (4) full range of needs, including opportunities for direct instruction in the child's language and communication mode.<sup>60</sup> In the case of a child who is blind or has a visual impairment, the IDEA requires that Braille instruction be provided unless the IEP Team determines, based on an evaluation of the child's current reading and writing skills and needs and appropriate writing and reading media, that such instruction or use is not appropriate.<sup>61</sup> For all children with

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<sup>60</sup> 34 C.F.R. § 300.324(a)(2)(iv).

<sup>61</sup> Because the evaluation also must assess a child's future needs for instruction in Braille or the use of Braille, a child's current vision status should not necessarily determine whether it would be inappropriate for that child to receive Braille instruction while in school. This is particularly true for a child with a degenerative vision condition who may have a high degree of functional vision when the evaluation is conducted. The evaluation of such a child would need to assess whether, despite the child's current vision status, the child still could benefit from Braille instruction while in school to increase the likelihood that the child will obtain productive employment and be able

*(footnote continued on following page)*

disabilities, including children with communication needs, the IEP Team also must consider whether the child needs assistive technology devices and services as part of the determination of special education, related services, and supplementary aids and services that are needed to enable the child to receive meaningful educational benefit.

Special education means specially designed instruction, i.e., adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction: (1) to address the unique needs of the child that result from the child’s disability; and (2) to ensure access of the child to the general curriculum. Special education may include instruction in the use and mastery of sign language or Braille.

The term “related services” means such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. They include services such as speech-language pathology and audiology services, oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services [interpreters], and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell for students who are deaf or hard of hearing, and mobility and orientation training for students with low vision or blindness.

Supplementary aids and services are aids, services, and other supports that are provided in regular education classes, other education-related settings, and extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.<sup>62</sup> Such aids and services may include large print materials or Braille materials.

Under the IDEA, an assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability.<sup>63</sup> For a person with a speech-related disability, a common example of an assistive technology device is a communication board. For a person with a vision disability, examples of assistive technology devices include refreshable Braille displays and accessible e-book readers.

Likewise, an assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Assistive

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to participate more fully in family and community life. See Office of Special Education Programs Dear Colleague Letter on Braille, June 19, 2013 at <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/index.html>.

<sup>62</sup> 34 C.F.R. § 300.42.

<sup>63</sup> 34 C.F.R. § 300.5.

technology services include the evaluation of the needs of a child with disability, including a functional evaluation of the child in the child's customary environment; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices; and selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices. Assistive technology services also include coordinating and using other therapies, interventions, or services with assistive technology devices and training or technical assistance for the child, the child's family, and any professionals, employers, or other individuals who provide services to or are otherwise involved in the major life functions of the child.<sup>64</sup>

If a child's IEP Team determines related services or supplementary aids and services are required as part of FAPE, the school district also must determine whether the child needs assistive technology devices and services.

Public schools cannot charge students and parents for the special education, related services, and supplementary aids and services, including assistive technology devices and services, that are part of a student's IEP and provided under the IDEA.

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<sup>64</sup> 34 C.F.R. § 300.6.