



ARCHIVED INFORMATION



U.S. Department of Education
Office for Civil Rights

U.S. Department of Justice
Civil Rights Division

March 3, 2015

Robbi Cooper
State Co-Contact Decoding Dyslexia – Texas
9 Scott Crescent
Austin, Texas 78703

Dear Ms. Cooper:

This responds to your letter dated November 12, 2014, regarding the recently released Dear Colleague Letter from the Departments of Education and Justice that explained the responsibility of public schools to ensure that communication with students with hearing, vision, or speech disabilities is as effective as communication with other students. In your letter, you express concern that this Dear Colleague Letter did not address the communication needs of students with dyslexia, dysgraphia, or other disabilities that affect a student's ability to access and use information from printed sources or to write or express ideas in print.

The 2014 guidance resulted from an important appellate court decision in which the Departments of Justice and Education participated, *K.M. v. Tustin Unified School District*. In that case, the court of appeals agreed with the United States that the requirement to provide a meaningful educational benefit under the Individuals with Disabilities Education Act (IDEA) is different from the requirement to provide equal opportunity and equally effective communication under the Americans with Disabilities Act (ADA). While, in many instances, the services a school provides under the IDEA to ensure a free appropriate public education (FAPE) will also satisfy the school's obligation under the ADA to ensure equally effective communication, this is not always the case. Simply because a school district provided a student with a FAPE does not necessarily mean that the student was provided all the services due under title II of the ADA. To comply with both statutes, a school may have to provide additional and different aids and services.¹

The Dear Colleague Letter, following on *Tustin*, focuses on public schools' obligations to address the communication needs of a common category of students with disabilities—those with hearing, vision, or speech disabilities. But the guidance does not limit the scope of title II's

¹ The United States' brief and the federal appellate court decision are attached to this response.

protections for students with dyslexia, dysgraphia, or other disabilities. As explained in the guidance, title II's implementing regulation requires public entities to take appropriate steps to ensure that communications with any individual with a disability are as effective as communications with others, and to provide auxiliary aids and services where necessary to afford such individuals an equal opportunity to participate in, and enjoy the benefits of, the public entity's services, programs, or activities.

These requirements, among others, implement title II's broad equal opportunity mandate. If students with disabilities need particular auxiliary aids or services in order to equally benefit from the services, programs, and activities of the public school, it is the obligation of the school under title II's implementing regulations to provide them unless an applicable defense applies. For example, if a student with dyslexia or dysgraphia needs a computer to do classwork or needs speech recognition software on that computer in order to equally benefit from the school's services, programs, and activities, then the school must generally provide it unless an applicable defense applies. (Of course, the school may also be required to provide these same aids or services to ensure FAPE, which does not offer schools the defenses that are applicable to many of title II's implementing regulations).

Please be assured that the Departments of Education and Justice are committed to ensuring that all students with disabilities have access to equal opportunities at school. We appreciate your thoughts on this important issue and hope this information is helpful.

Sincerely,



Catherine E. Lhamon
Assistant Secretary
Office for Civil Rights
U.S. Department of Education



Vanita Gupta
Acting Assistant Attorney General
Civil Rights Division
U.S. Department of Justice

Encls.

cc: Kathy Stratton, Psy. D.