



ARCHIVED INFORMATION



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

U.S. Department of Justice
Civil Rights Division

Judith L. Page, PhD, CCC-SLP
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AUG - 6 2015

Dear Dr. Page:

This responds to your letter dated May 21, 2015, regarding the 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. We apologize for our delay in responding. In your letter, you express your organization's support for the Departments' efforts to ensure that students with disabilities have access to equal opportunities at school. You posit, however, that additional clarification is needed as to how school districts can effectively apply both an Individuals with Disabilities Education Act (IDEA) analysis and an effective communication analysis under the Americans with Disabilities Act (ADA) in determining how to meet the communication needs of an IDEA-eligible student with a hearing, vision, or speech disability. You also urge the Department to provide further guidance on how school districts can more effectively serve students with disabilities who are not currently IDEA-eligible.

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 IDEA is different from the requirement to provide equal opportunity and equally effective communication under Title II of the 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 Title II of 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 certain categories of students with disabilities—those with

¹ See *K.M. v. Tustin Unified Sch. Dist.*, 725 F.3d 1088 (9th Cir. 2013). The Amicus Curiae Brief filed by the United States in this case is available at <http://www.justice.gov/crt/about/app/briefs/kmtustinbr.pdf>.

hearing, vision, or speech disabilities. The accompanying guidance 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. Through this approach, the Departments sought to provide guidance on both the interpretation and application of the relevant legal requirements under each statute.

We appreciate your bringing to our attention the concerns raised and clarification sought by your organization and its members. The Departments of Education and Justice have robust outreach and technical assistance programs towards ensuring that all stakeholders understand their rights or responsibilities under Title II and IDEA. We would be pleased to talk with you about ways that we might further engage with your organization on this and other issues of importance to the nation's public school children.

Sincerely,



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