



Effective Communication for Students with Hearing, Vision, or Speech Disabilities in Public Schools

“Students with disabilities, like all other students, must have the opportunity to fully participate in public schools. A critical aspect of participation is communication with others.” The United States Department of Education and the United States Department of Justice issued significant guidance for public schools (including charter schools) on “effective communication for students with hearing, vision, or speech disabilities.”¹ PACER encourages parents to read the [full letter](#) including the accompanying [questions and answers](#). PACER’s goal is to alert parents about information to consider, and it does not constitute legal advice.

In summary:

- **Students with disabilities have rights** under Title II of the Americans with Disabilities Act (ADA). They may also have rights under IDEA, the Individuals with Disabilities Education Act, and under Section 504 of the Rehabilitation Act. Eligibility is determined differently under each law.²
- The **purpose of IDEA** is to provide a free, appropriate public education (FAPE) to eligible children with disabilities through the provision of special education and related services. Under IDEA, school staff and parents develop an educational program based on an individual child’s unique needs, including the child’s communication needs. Communication and assistive technology are among the “special factors” that the IEP team must consider.³ **The educational program needs only to provide a meaningful educational benefit.** Under IDEA, the school is not required to compare an educational program developed for a child with a disability to the educational programs it provides to students without disabilities.
- However, **Title II of the ADA** is a nondiscrimination statute that requires public entities, including public schools, to provide students with disabilities public services that are *equal to those services provided to individuals without disabilities*. **It requires schools to ensure that students with disabilities receive communication that is as effective as communication with students without disabilities through the provision of appropriate auxiliary aids and services, giving primary consideration to that particular aid or service requested by the person with the disability, or his or her parent or guardian.** Under Title II, services to students with disabilities must be compared to those who do not have disabilities.
- **The decision of which aids and services to use must be primarily based on the preferences of the student or his or her parents or guardian.** However, the school is not required to provide the method of choice if they can provide **an alternative that is as effective as communication with others**, or if it can show that the means the individual requests would require a fundamental alteration of the service or would impose an undue burden (significant cost or difficulty). The school must state in writing the reasons why it would pose an undue burden or fundamental alteration, and provide an effective

¹ Find the guidance at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-effective-communication-201411.pdf>. Court cases and further guidance will determine if “effective communication” applies to students with other disabilities who also have communication needs. Verbally, attorneys from both federal departments have said that it will cover them as well (OSEP webinar, March 24, 2016).

² See PACER’s handout on special education (IDEA) eligibility at <http://www.PACER.org/parent/resources/understanding-the-spec-ed-process.asp>, and Section 504 and ADA eligibility at <http://www.PACER.org/parent/php/PHP-c33.pdf>.

³ See PACER’s handout on special factors at <http://www.PACER.org/parent/php/php-c221.pdf>.

alternative auxiliary aid. The guidance states that “compliance with the effective communication requirement would, in most cases, not result in undue financial and administrative burdens.”

- **Who makes the decisions?** The IEP team makes IEP decisions. For Title II and Section 504, the school has the authority to assign who makes Title II determinations. PACER suggests that parents ask who has been assigned this role. The school has the responsibility of making sure that the identity and contact information of the school official is made publicly available in accessible formats. The school may designate the IEP team for an IDEA eligible student; however, the team must then make separate Title II and IDEA communication decisions.
- Each law includes methods to **resolve differences** if parents disagree with the school. Under IDEA, parents in Minnesota may use conciliation, mediation, facilitated IEP, file a complaint with the Minnesota Department of Education, or request a due process hearing.⁴ In general, IDEA’s hearing procedures must be used before seeking relief in state or federal court. In addition, regardless of whether a student is eligible for services under IDEA, a parent or student may file a Title II complaint with the United States Department of Education’s Office for Civil Rights or with the United States Department of Justice’s Civil Rights Division,⁵ or file a Title II grievance with the school district if the district has such a procedure.

Action steps: Parents might ask these questions of themselves and others:

- **For a child with a disability who may or may not have an IEP:**
 - First ask yourself, “Is my child able to communicate with others at school as effectively as students without disabilities?”
 - If not, parents may say to the school: “I don’t think my child has effective communication access. (Give reasons.) What can be done to ensure that my child does have effective and equal communication access?”
- **For a child with an IEP:**
 - Ask yourself, “Has my child’s IEP team discussed ADA Title II communication access?”
 - Parents may ask at the meeting, “Who at this IEP meeting is designated to make Title II communication access decisions? How will we document the decision on the IEP? What can be done to ensure that my child does have effective and equal communication access?”
- **For a child with a 504 Plan:**
 - Ask yourself, “Do I think my child needs more effective communication access? Do I know who the 504 service coordinator is so I know with whom to discuss it?”
 - Parents may say to the school, “I don’t think my child has effective communication access. (Give reasons.) What can be done to ensure that my child does have effective and equal communication access?”

Examples: Depending on the student’s needs:

- A student with hearing loss may need support through methods such as a sign language interpreter, an oral language interpreter, or a form of technology such as CART (Communication Access Realtime Translation).
- A student with a speech disability may need support through methods such as a word board, an interpreter, or some form of assistive technology.
- A student with low vision may need support through methods such as a screen reader, taped texts, or Braille materials.

⁴ See PACER’s handout on methods to resolve disagreements at <http://www.PACER.org/parent/php/PHP-a25.pdf>

⁵ Information on how to file a complaint with the Department of Education’s Office for Civil Rights can be found at <http://www2.ed.gov/about/offices/list/ocr/docs/howto.html?src=rt>; information on how to file a complaint with Department of Justice’s Civil Rights Division can be found at <http://www.justice.gov/crt/complaint>

⁶ Find the guidance at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-effective-communication-201411.pdf>

Case Study: In a recent decision from the director of compliance and assistance at the Minnesota Department of Education, the school district was found in violation when they failed to revise the IEP of a student with hearing loss to address his anticipated effective communication needs. Although the school considered the student's communication access, they did not make an effective communication back-up plan for when the sign language interpreter was unavailable to interpret. They did not provide the opportunity to access missed lectures until 2 to 17 days after the lectures occurred. They did not afford the student equal participation in classroom discussion when the interpreter was not available.

As stated earlier, “*Students with disabilities, like all other students, must have the opportunity to fully participate in public schools. A critical aspect of participation is communication with others.*”

Call PACER for more information on how this might apply to your child.