



**ED POLICY UPDATES  
AND RESOURCES  
PANEL**

**2015 PROJECT DIRECTORS MEETING  
U.S. DEPARTMENT OF EDUCATION, CHARTER SCHOOL PROGRAM**

# ED POLICY UPDATES & RESOURCES

- Dispute Resolution
- Effective Communication
- Section 504, Title II, and the Rights of Students with Disabilities in Charter Schools: An Update
- Correctional Education

# PANELISTS

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# DISPUTE RESOLUTION OPTIONS--IDEA

- **MEDIATION:** 34 CFR § 300.506, 20 U.S.C. 1415(E)
- **STATE COMPLAINTS:** 34 CFR § § 300.151-300.153, 20 U.S.C. 1221(E)(3)
- **DUE PROCESS:** 34 CFR § § 300.507-300.518, 20 U.S.C. 1415
  - **Resolution Process:** 34 CFR 300.510, 20 U.S.C. 1415(f)(1)(B)

# DISPUTE RESOLUTION RESOURCES

- **DISPUTE RESOLUTION FAQs:**

[HTTP://WWW2.ED.GOV/POLICY/SPECED/GUID/IDEA/MEMOSDCLTRS/ACCCOMBINEDOSERSDISPUTERESOLUTIONQAFINALMEMO-7-23-13.PDF](http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf)

- **PROCESS COMPARISON CHART:**

[HTTP://WWW.DIRECTIONSERVICE.ORG/CADRE/PDF/OSEP%20COMPARISON%20CHART%20FINAL%2011-2013.PDF](http://www.directionservice.org/cadre/pdf/osep%20comparison%20chart%20final%2011-2013.pdf)

- **CADRE:**

[HTTP://WWW.DIRECTIONSERVICE.ORG/CADRE/](http://www.directionservice.org/cadre/)

- **PARENT GUIDES:**

[HTTP://WWW.DIRECTIONSERVICE.ORG/CADRE/DRPARENTGUIDES2014.CFM](http://www.directionservice.org/cadre/drparentguides2014.cfm)

# **EFFECTIVE COMMUNICATION**

Joint ED and DOJ guidance issued  
November 12, 2014

# BACKGROUND

- *K.M. v. Tustin Unified School District*, 725 F.3d 1088 (9th Cir. 2013)
  - The IDEA’s FAPE obligation to students with a hearing, vision and speech disability, and Title II of the ADA’s effective communication obligation, have different elements, specify different rights, and serve different purposes.
  - Compliance with the IDEA does not automatically satisfy the school’s Title II effective communication obligations for a student.

# JOINT ED AND DOJ DEAR COLLEAGUE LETTER

- Following the *Tustin* decision, ED and DOJ issued a Dear Colleague Letter to explain the rights of students with disabilities, including charter school students with disabilities, under three laws with requirements that address communications needs of public school students:
  - The Individuals with Disabilities Education Act;
  - Section 504 of the Rehabilitation Act of 1973; and,
  - Title II of the Americans with Disabilities Act of 1990.

# FEDERAL REQUIREMENTS

- Three Federal laws address the obligations of public schools, including charter schools, to meet the communication needs of students with disabilities, but do so in different ways.
- Public schools must comply with all three laws, and while compliance with one will often result in compliance with all, sometimes it will not.

# INDIVIDUALS WITH DISABILITIES EDUCATION ACT

- Part B of the IDEA provides Federal funds to State educational agencies and through them local educational agencies, for the purpose of assisting them in providing FAPE to eligible children with disabilities through the provision of special education and related services.

# SECTION 504 OF THE REHABILITATION ACT OF 1973

- Prohibits disability discrimination in federally assisted programs or activities.
- The joint DCL on effective communication did not discuss rights and requirements under Section 504 separately.
  - Title II applies to all State and local public entities, including charter schools;
  - As a general rule, violations of Section 504 also constitute violations of Title II;
  - One way of meeting a school's Section 504 FAPE requirements is to comply with the IDEA FAPE requirements.

# TITLE II OF THE AMERICANS WITH DISABILITIES ACT

- 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.
- Title II and its implementing regulations require public entities, such as LEAs and public charter schools, to ensure that communication with students with hearing, vision, or speech disabilities is as effective as communication with students without disabilities.

# **TITLE II AND EFFECTIVE COMMUNICATION: AUXILIARY AIDS AND SERVICES**

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

## TITLE II AND EFFECTIVE COMMUNICATION: PRIMARY CONSIDERATION TO REQUEST FOR PARTICULAR AUXILIARY AID OR SERVICE

- A school must give “primary consideration” to the particular auxiliary aid or service requested by the student with a disability (or the student’s parent).
  - A school must honor the request unless it can prove that an alternative is as effective and provides the student equal opportunity to participate and benefit;
  - If the school can prove that providing a particular auxiliary aid or service would be a fundamental alteration in the nature of the program or an undue financial and administrative burden, as determined pursuant to Title II requirements, the school does not have to provide it, but it is required, to the maximum extent possible, to provide an effective auxiliary aid or service.

# **TITLE II AND EFFECTIVE COMMUNICATION: DETERMINATION ABOUT WHAT AUXILIARY AID OR SERVICE PROVIDES EFFECTIVE COMMUNICATION AND EQUAL OPPORTUNITY**

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

# HOW DO THE IDEA FAPE AND THE TITLE II EFFECTIVE COMMUNICATION REQUIREMENTS DIFFER?

- Title II: communications with persons with disabilities are “as effective as” communications with other persons;
- IDEA: FAPE must be individually designed to provide meaningful educational benefit to the child.

# **MUST A STUDENT BE ELIGIBLE UNDER THE IDEA IN ORDER TO BE PROVIDED AUXILIARY AIDS AND SERVICES UNDER TITLE II?**

- 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.

# **UNDER WHAT CIRCUMSTANCES MAY THE IEP TEAM MAKE DECISIONS ABOUT THE PROVISION OF AUXILIARY AIDS AND SERVICES REQUIRED UNDER TITLE II?**

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

# EXAMPLES

- Hypothetical illustrating Title II and IDEA analyses with the result that appropriate auxiliary aids and services under Title II are different from special education and related services under the IDEA.
- Hypothetical illustrating Title II and IDEA analyses with the result that the appropriate auxiliary aids and services under Title II are the same as special education and related services required under the IDEA.

# RESOURCES

- Dear Colleague Letter on Effective Communication:  
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-effective-communication-201411.pdf>
- Frequently Asked Questions on Effective Communication for Students with Hearing, Vision, or Speech Disabilities in Public Elementary and Secondary Schools:  
<http://www2.ed.gov/about/offices/list/ocr/docs/dcl-faqs-effective-communication-201411.pdf>
- Government's amicus brief in *Tustin*:  
<http://www.justice.gov/crt/about/app/briefs/kmtustinbr.pdf>

# **Section 504, Title II, and the Rights of Students with Disabilities in Charter Schools: An Update**

U.S. Department of Education

Office for Civil Rights

March 9, 2015

# Today's Objectives

- Provide an overview of the Office for Civil Rights (OCR) and its mission;
- Provide an overview of the laws, enforced by OCR, that protect students with disabilities in charter schools from discrimination;
- Provide an overview of recent guidance issued by OCR that explains the rights of students with disabilities in a variety of applications; and,
- Provide resources for obtaining the documents addressed and additional information.

# OCR and its Mission

- OCR is the agency within the Department of Education that enforces civil rights laws prohibiting discrimination in education programs on the basis of race, color, national origin, sex, disability, and age.
- OCR is headquartered in Washington, DC and includes 12 regional offices.
- OCR investigates and resolves complaints of discrimination, conducts compliance reviews, provides technical assistance, and issues guidance on selected topics that explains the requirements of these laws.

# Section 504 and Title II

- We are focusing today on the two laws, enforced by OCR, that prohibit discrimination on the basis of disability:
  - Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs or activities that receive federal financial assistance; and
  - Title II of the Americans with Disabilities Act of 1990, which prohibits disability discrimination by State and local public entities whether or not they receive federal financial assistance.
- The guidance discussed today explains the requirements of these laws, which require nondiscrimination and equal opportunity, in a variety of applications.

# Rights of Students with Disabilities in Charter Schools: OCR 5-14-14 Letter

- Students with disabilities in charter school have the same rights to nondiscrimination and equal opportunity under Section 504 and Title II as students in other public elementary and secondary schools. Applications include:
  - Recruitment and admission;
  - All areas, including academics, educational services, athletics and extracurricular services and activities;
  - Provision of a “free appropriate public education;”
  - Accessible programs, buildings, and technology;
  - Prompt action to eliminate bullying or disability harassment;
  - Discipline, including compliance with requirements where misconduct is caused by, or related to a student’s disability.

# **Bullying of Students with Disabilities is Prohibited**

## **OCR 10-21-14 Letter**

- If a student with a disability is bullied or harassed on the basis of disability, a school, when it knows or should know, must take immediate and appropriate action to investigate. If bullying or harassing conduct on the basis of disability occurred, the school must take prompt and effective steps reasonably calculated to end the bullying or harassment, eliminate any hostile environment, prevent the misconduct from recurring, and, as appropriate, remedy its effects. Failure to respond appropriately to bullying that is sufficiently serious to create a hostile environment is a violation.
- If a student with a disability is bullied on any basis in a manner that may have the effect of denying FAPE to the student, the IEP team or Section 504 team must determine the effects of bullying on the student's needs related to receipt of FAPE and determine any necessary changes in services to ensure FAPE. Failure to take prompt action to stop the bullying and implement the IEP team's or Section 504 team's determinations is a violation.

# Rights of Students with Disabilities in the Juvenile Justice System OCR & DOJ 12-8-14 Letter

- Students with disabilities in juvenile justice residential programs are protected from disability discrimination. Examples include:
  - Provision of a “free appropriate public education;”
  - Nondiscrimination in discipline, including compliance with applicable requirements where misconduct is caused by or related to disability;
  - Prompt and appropriate response to disability harassment;
  - Provision of auxiliary aids and services to ensure effective communication.

# Rights of Students with Disabilities in Extracurricular Athletics

## OCR 1-25-13 Letter

- Students with disabilities must have opportunities to participate in extracurricular athletics that are equal to those of other students.
  - Decisions about ability to participate must be individualized and not based on generalizations or stereotypes.
  - The provision of equal opportunity requires individualized considerations as to whether reasonable modifications to school policies, practices, and procedures and providing aids and services necessary to ensure equal opportunity are required.
    - Individualized considerations as to whether a student may participate safely must include considerations of reasonable modifications and the provision of aids and services.
    - Schools may require a level of skill or ability for participation in a competitive activity.

# Retaliation is Prohibited

## OCR 4-24-13 Letter

- It is unlawful to retaliate against an individual for the purpose of interfering with any right or privilege under the civil rights laws enforced by OCR.
- This includes, for example, retaliation for:
  - Complaints to school officials about possible civil rights problems at the school;
  - Filing a complaint with OCR or testifying or participating in any way in an OCR investigation or proceeding.

# **Ebola and Discrimination**

## **OCR December, 2014 Fact Sheet**

- Treating students consistent with CDC guidance on Ebola should not raise civil rights concerns.
- In those uncommon situations in which a student is legitimately excluded from school, the school is responsible for taking appropriate steps to ensure continuity of learning.
- If a student with a pre-existing disability is required or advised by public health authorities to stay home, the school must ensure that the student continues to receive FAPE.
- Schools have the same responsibilities to address bullying or harassment based on disability or perceived disability (being regarded as having Ebola) that apply in all other cases.

# Effective Communication

## OCR, OSERS, and DOJ 11-12-14 Letter and FAQ

- This letter and FAQ, which discuss the requirements of Section 504, Title II, and the IDEA, in connection with the requirements of Title II that public school ensure that communication with students with disabilities is as effective as communication with students without disabilities, has been covered earlier in this session. Coverage of those documents is not repeated here.

# Resources

- OCR's web page provides information about all of the laws enforced by OCR: [www.ed.gov/ocr/](http://www.ed.gov/ocr/)
- OCR provides technical assistance, upon request, to recipients of financial assistance, such as SEAs, charter school LEAs, and school districts. For contact information for the OCR office that provides technical assistance for the state in which a particular school is located, see OCR's web site at <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>. This information is also available from OCR's Customer Service Team at (800) 421-3481 (TDD: 800-877-8339) or [ocr@ed.gov](mailto:ocr@ed.gov).

## Resources (continued)

- The Department of Justice's Civil Rights Division also enforces Title II in public schools. For information about Title II requirements, schools, parents, and others may contact DOJ:
  - DOJ's toll-free ADA information line: 800-514-0301 (voice) or 800-514-0383 (TTY);
  - DOJ's ADA web site: [www.ada.gov](http://www.ada.gov).

# Resources (continued)

- Documents referenced in today's presentation:
  - Dear Colleague Letter of May 14, 2014 from Assistant Secretary Catherine E. Lhamon concerning the applicability of civil rights laws to charter schools is available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf>.
  - Dear Colleague Letter of October 21, 2014 from Assistant Secretary Catherine E. Lhamon concerning the obligation of elementary and secondary schools to respond to the bullying of students with disabilities, including those students who are not eligible for services under the Individuals with Disabilities Education Act, but who are eligible for services under Section 504 is available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague/bullying-201410.pdf>.
  - Continued on next slide.

# Resources (continued)

- Documents referenced in today's presentation:
  - Dear Colleague Letter of December 8, 2014 from Assistant Secretary for Civil Rights Catherine E. Lhamon, U.S. Department of Education, and Acting Assistant Attorney General for Civil Rights, U.S. Department of Justice concerning the applicability of Federal civil rights laws to juvenile justice residential facilities is available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-residential-facilities-201412.pdf>.
  - Dear Colleague Letter of January 25, 2013 from Seth M. Galanter, Acting Assistant Secretary for Civil Rights addressing equal access to extracurricular athletics for students with disabilities is available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.pdf>.
  - Continued on next slide.

# Resources (continued)

- Documents referenced in today's presentation:
  - Dear Colleague Letter of April 24, 2013 from Acting Assistant Secretary for Civil Rights Seth M. Galanter concerning the prohibition against retaliation under Federal civil rights laws is available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201304.pdf>.
  - OCR Fact Sheet dated December 16, 2014 entitled “Implementing CDC’s Ebola Guidance for Schools while Protecting the Civil Rights of Students and Others” is available at <http://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-ebola-201412.pdf>.
  - Continued on next slide.

# Resources (continued)

- Documents referenced in today's presentation:
  - Dear Colleague Letter of November 12, 2014 from Assistant Secretary for Civil Rights Catherine E. Lhamon and Acting Assistant Secretary Office of Special Education and Rehabilitative Services Michael K. Yudin, U.S. Department of Education, and Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice Vanita Gupta concerning effective communication for students with hearing, vision, or speech disabilities in public elementary and secondary schools, and the attached “Frequently Asked Questions on Effective Communication for Students with Hearing, Vision, or Speech Disabilities in Public Elementary and Secondary Schools” are available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-effective-communication-201311.pdf> and <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-faqs-effective-communication-201411.pdf> respectively.

# CORRECTIONAL EDUCATION

## **Letter to Chief State School Officers and State Attorneys General**

- **December 8th letter from Attorney General Holder and Secretary Duncan on the importance of providing high-quality correctional education**

For a PDF version of the letter, please go [here](#).

# GUIDANCE PACKAGE

- A set of **Guiding Principles for Providing High-Quality Education in Juvenile Justice Secure Care Settings** from the U.S. Department of Education (ED) and U.S. Department of Justice (DOJ) identifies promising practices for improving education programs in juvenile justice facilities, as well as areas in which Federal legal obligations apply.

# GUIDANCE PACKAGE

- A **Dear Colleague Letter on the Individuals with Disabilities Education Act for Students with Disabilities in Correctional Facilities** from ED's Office of Special Education and Rehabilitative Services clarifying State and public agency obligations under the Individuals with Disabilities Education Act to ensure the provision of a free and appropriate public education to eligible students with disabilities in correctional facilities.

# GUIDANCE PACKAGE

- A [Dear Colleague Letter on the Civil Rights of Students in Juvenile Justice Residential Facilities](#) from ED's Office for Civil Rights and DOJ's Civil Rights Division clarifying that those juvenile justice residential facilities that receive Federal funding, like all other public schools, must comply with Federal civil rights laws that prohibit discrimination based on race, color, national origin, sex, religion, and disability.

# ADDITIONAL RESOURCES

- **Frequently Asked Questions** [FAQs]

Questions and answers describing the contents of the guidance package, how to get more information about the content of the package, and what the guidance package means for policymakers, district and school leaders, teachers, students, families, and community members.

# ADDITIONAL RESOURCES

- **Fact Sheet on the Correctional Education Guidance Package**

A two-page brief outlining the contents of the Correctional Education Guidance Package and quick statistics on the importance of providing education services to youth in confinement.

**English** [PDF, 823K] | **En español** [PDF, 841K]