



# UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

May 26, 2011

## Frequently Asked Questions About the June 29, 2010, Dear Colleague Letter<sup>1</sup>

### General Issues

#### **1. Does the June 29, 2010, Dear Colleague Letter (DCL) on access to electronic book readers impose new legal obligations?**

**A: No.** The DCL discusses long-standing law. Specifically, it addresses key principles of Federal disability discrimination law: the obligation to provide an equal opportunity to individuals with disabilities to participate in, and receive the benefits of, the educational program, and the obligation to provide accommodations or modifications when necessary to ensure equal treatment. Under Section 504 of the Rehabilitation Act of 1973 (Section 504), these legal standards apply to entities that receive Federal financial assistance, including elementary, secondary, and postsecondary institutions. (In this FAQ, the term “schools” refers to all these types of institutions.) Under Title II of the Americans with Disabilities Act (ADA) of 1990 (Title II), these obligations apply to entities of state and local government, including public schools.<sup>2</sup>

The DCL outlines concerns on the part of the Department of Justice (DOJ) and the Department of Education (Department), raised in the context of their resolution of several cases, regarding compliance with these long-standing requirements.

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<sup>1</sup> The Department of Education has determined that this document is a “significant guidance document” under the Office of Management and Budget’s Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), *available at* [http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory\\_matters\\_pdf/012507\\_good\\_guidance.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/012507_good_guidance.pdf). OCR issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations and to provide members of the public with information about their rights under the civil rights laws and implementing regulations that we enforce. OCR’s legal authority is based on those laws and regulations. This document does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to [OCR@ed.gov](mailto:OCR@ed.gov), or write to us at the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202.

<sup>2</sup> The Department of Justice is responsible for enforcing Title III of the ADA, which prohibits discrimination on the basis of disability by private schools, among other entities.

Specifically, some postsecondary institutions were using electronic book readers that are inaccessible to students who are blind or have low vision. As explained by the DCL, application of our long-standing nondiscrimination requirements means that schools must provide an electronic book reader (*i.e.*, the technology that the school uses to provide educational benefits, services, or opportunities) that is fully accessible to students who are blind or have low vision; otherwise schools must provide accommodations or modifications to ensure that the benefits of their educational program are provided to these students in an equally effective and equally integrated manner.

For the purposes of assessing whether accommodations or modifications in the context of emerging technology, and, more specifically, electronic book readers, meet the compliance requirements, the DCL provides a functional definition of accessibility for students who are blind or have low vision. Under this definition, these students must be afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as sighted students. In addition, although this might not result in identical ease of use compared to that of students without disabilities, it still must ensure equal access to the educational benefits and opportunities afforded by the technology and equal treatment in the use of such technology. The DCL uses the term “substantially equivalent ease of use” to describe this concept. For more information and for examples that meet this standard, see Questions 11, 12, and 14.

**2. Does the DCL apply in the context of students with other disabilities that affect the ability to use printed materials?**

**A: Yes.** Other disabilities, such as specific learning disabilities, may make it difficult for students to get information from printed sources (often called “print disabilities”). In its provision of benefits, services, and opportunities, a school must ensure that these students are not discriminated against as a result of inaccessible technology.

Example: A student has a learning disability in reading but does not have impaired vision. The student is currently receiving audiobooks on cassette tape for her history class because she cannot readily process printed information. The school is replacing the history textbooks with electronic book readers as the principal means of conveying curriculum content, including all homework assignments. In this example, the electronic book readers provide greater functionality than audiobooks provide, with the result that an audiobook would not afford the benefits of the educational program in an equally effective and equally integrated manner. For this reason the school may not continue to rely on audiobooks to provide equal access to the curriculum. For more information on the differences between traditional alternative media, such as audiobooks, and emerging technology, such as electronic book readers, see Question 12.

**3. Does the DCL mean that schools cannot use emerging technology?**

**A: No.** On the contrary, the Department encourages schools to employ innovative learning tools. Because technology is evolving, it has the capability to enhance the academic experience for everyone, especially students with disabilities. Innovation and equal access can go hand in hand. The purpose of the DCL is to remind everyone that equal access for students with disabilities is the law and must be considered as new technology is integrated into the educational environment.

**4. Does the DCL apply to elementary and secondary schools?**

**A: Yes.** The DCL grew out of complaints filed with the Department’s Office for Civil Rights (OCR) and DOJ that concerned postsecondary education. However, the principles underlying the DCL — equal opportunity, equal treatment, and the obligation to make accommodations or modifications to avoid disability-based discrimination — also apply to elementary and secondary schools under the general nondiscrimination provisions in Section 504 and the ADA. The application of these principles to elementary and secondary schools is also supported by the requirement to provide a free appropriate public education (FAPE) to students with disabilities. For more information, see Question 13.

**5. Does the DCL apply to all school operations and all faculty and staff?**

**A: Yes.** All school operations are subject to the nondiscrimination requirements of Section 504 and the ADA. Thus, all faculty and staff must comply with these requirements.

Section 504 and the ADA require that covered entities designate at least one person to coordinate their compliance efforts, and that they adopt and publish grievance procedures to resolve complaints of noncompliance. In addition, postsecondary schools often designate certain staff or offices (sometimes referred to as disability student-services offices) to assist students with disabilities.

The law applies to all faculty and staff, not just a Section 504 or ADA coordinator or staff members designated to assist students with disabilities. All faculty and staff must comply with the nondiscrimination requirements of Section 504 and the ADA in their professional interactions with students, because these interactions are part of the operations of the school. So, for example, if an adjunct faculty member denies a student who is blind an equal opportunity to participate in a course by assigning inaccessible course content, the school can be held legally responsible for the faculty member’s actions. Therefore, schools should provide, and faculty and staff should participate in, professional development about accessibility and emerging technology, and about the role of faculty and staff in helping the school to comply with disability discrimination laws.

### Applying the DCL in Different Contexts

**6. Does the DCL apply beyond electronic book readers to other forms of emerging technology?**

**A: Yes.** The core principles underlying the DCL — equal opportunity, equal treatment, and the obligation to make modifications to avoid disability-based discrimination — are part of the general nondiscrimination requirements of Section 504 and the ADA. Therefore, all school programs or activities — whether in a “brick and mortar,” online, or other “virtual” context — must be operated in a manner that complies with Federal disability discrimination laws.

**7. Does the DCL apply to online courses and other online content, such as online applications for admission, class assignments, and housing?**

**A: Yes.** The principles in the DCL apply to online programs that are part of the operations of the school, *i.e.*, provided by the school directly or through contractual or other arrangements.

**8. Does the DCL apply to pilot programs or other school programs that are of short duration?**

**A: Yes.** The complaints discussed in the DCL were based on pilot programs that were part of the schools’ operations. As noted in Question 5 above, all school programs and activities are subject to the nondiscrimination requirements of Section 504 and the ADA.

**9. Does the DCL apply when planning to use an emerging technology in a class or school where no students with visual impairments are currently enrolled?**

**A: Yes.** Schools that are covered under Section 504 and the ADA have a continuing obligation to comply with these laws. Therefore, the legal obligations described in the DCL always apply. Just as a school system would not design a new school without addressing physical accessibility, the implementation of an emerging technology should always include planning for accessibility. Given that tens of thousands of elementary, secondary, and postsecondary students have visual impairments and that the composition of the student body at a given school may change quickly and unexpectedly, the use of emerging technology at a school without currently enrolled students with visual impairments should include planning to ensure equal access to the educational opportunities and benefits afforded by the technology and equal treatment in the use of such technology. The planning should include identification of a means to provide immediate delivery of accessible devices or other technology necessary to ensure accessibility from the outset.

### **Putting the DCL's Principles Into Practice**

#### **10. What questions should a school ask in determining whether emerging technology is accessible, or can be made accessible, to students with disabilities?**

**A:** Schools should begin by considering accessibility issues up front, when they are deciding whether to create or acquire emerging technology and when they are planning how the technology will be used. To that end, schools should include accessibility requirements and analyses as part of their acquisition procedures. Schools should keep in mind their obligation to ensure that students with disabilities receive the benefits of the educational program in an equally effective and equally integrated manner. Among the questions a school should ask are:

- What educational opportunities and benefits does the school provide through the use of the technology?
- How will the technology provide these opportunities and benefits?
- Does the technology exist in a format that is accessible to individuals with disabilities?
- If the technology is not accessible, can it be modified (see Question 11 below about additional questions related to modifications), or is there a different technological device available, so that students with disabilities can obtain the educational opportunities and benefits in a timely, equally effective, and equally integrated manner?

**Example:** A school intends to establish a Web mail system so that students can: communicate with each other and with faculty and staff; receive important messages from the school (*e.g.*, a message about a health or safety concern); and communicate with individuals outside the school. The school must ensure that the educational benefits, services, and opportunities provided to students through a Web mail system are provided in an equally effective and equally integrated manner. Before deciding what system to purchase, the school should make an initial inquiry into whether the system is accessible to students who are blind or have low vision, *e.g.*, whether the system is compatible with screen readers and whether it gives users the option of using large fonts. If a system is not accessible as designed, the school must take further action to determine whether an accessible product is available, or whether the inaccessible product can be modified so that it is accessible to students who are blind or have low vision.

**11. The DCL states that where accessible technology is not available, a school can comply with Section 504 and the ADA if it provides students with disabilities “accommodations or modifications that permit them to receive all the educational benefits provided by the technology in an equally effective and equally integrated manner.” From a practical standpoint, what questions should schools ask to determine if this standard can be met?**

**A:** In making this determination, the questions a school should ask include:

- What educational opportunities and benefits does the school provide through the use of this technology?
- What can the school do to provide students with disabilities equal access to the educational benefits or opportunities provided through the use of the technology?
- How will the educational opportunities and benefits provided to students with disabilities compare to the opportunities and benefits that the technology provides to students without disabilities? Three relevant questions are:
  - Are all the educational opportunities and benefits that are available through the use of the technology equally available to students with disabilities through the provision of accommodations or modifications (*i.e.*, do students with disabilities have the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as sighted students)?
  - Are the educational opportunities and benefits provided to students with disabilities in as timely a manner as those provided to students without disabilities (*i.e.*, do the time frames under which opportunities and benefits are received by students meet the requirement that students with disabilities be provided benefits and opportunities in an equally effective and equally integrated manner)?
  - Will it be more difficult for students with disabilities to obtain the educational opportunities and benefits than it is for students without disabilities (*i.e.*, does ease of use for students with disabilities meet the requirement that students with disabilities be provided benefits and opportunities in an equally effective and equally integrated manner)?

**Example:** A high school teacher creates an online course that includes instruction, posting of assignments and other course content, and a forum where students can discuss their course work with the teacher and each other. The teacher would like to incorporate video clips into the course, but is unable to obtain the video clips with audio

descriptions. As a modification, the teacher creates separate audio descriptions for each video clip that narrate what is taking place in the video, and places them in a separate section of the online course. The online course includes links that enable persons who use screen readers to bypass the video clips completely and instead listen to the audio descriptions. Here, the use of detailed audio descriptions that are a part of the online course would provide students with disabilities access to the same opportunities and benefits in an equally effective and equally integrated manner.

Schools should also think about whether other accommodations may be needed to provide equal access. For example, a student who uses a screen reader may need extra time to take an online examination because it may take time for the screen reader to process information displayed on a screen and provide that information to the student.

**12. Are there circumstances under which it would be appropriate for a school to provide traditional alternative media, such as books on tape, to a student who is blind or has low vision?**

**A: Yes.** Traditional alternative media can still be used as an accommodation under appropriate circumstances. For example, if a school provides printed books to students in a class, books on tape may be an appropriate accommodation for a blind student. The DCL does not require schools to use emerging technology. If, however, a school chooses to provide emerging technology and proposes traditional alternative media as an accommodation or modification to provide equal access to the educational opportunities and benefits provided to all students, the alternative media must provide access to the benefits of technology in an equally effective and equally integrated manner. Some forms of emerging technology may readily offer students educational opportunities and benefits that traditional alternative media cannot replicate.

**13. If a student who is blind or has low vision makes a request for a particular emerging technology, and that technology currently is not used for all students, must the school provide it?**

**A: Not necessarily, because such decisions are individualized.** The DCL does not change the requirements and processes by which elementary and secondary schools must provide a free appropriate public education, or FAPE, to students with disabilities; nor does the DCL change the processes by which postsecondary schools provide academic adjustments and auxiliary aids to students with disabilities. Rather, the DCL discusses the issue of how Section 504 and the ADA apply if schools choose to incorporate emerging technology into their instruction or other programs or activities for all students.

At the elementary and secondary school levels, if parents believe that their child with a disability requires a particular emerging technology as part of the child's right to FAPE, even though that technology currently is not used for all students, an individualized decision about providing a specific technology should be made through the processes

used by the school district to make educational decisions consistent with Section 504 or the Individuals with Disabilities Education Act as applicable. At the postsecondary level, a decision about whether to provide a particular emerging technology as an auxiliary aid or service, even though such technology currently is not used for all students, is an individualized one that should be made through any procedure that the school may have established to consider students' requests for auxiliary aids or services. Postsecondary institutions' procedures must comply with Section 504 and the ADA.

**14. Must a school always provide the same form of emerging technology to a student who is blind or has low vision as it provides to all other students?**

**No:** The legal duty imposed by Section 504 and Title II is to provide equal opportunity — that is, to provide the student who has a disability with access to the educational benefit at issue in an equally effective and equally integrated manner. As described more fully in Question 1, a school must apply this standard in determining whether the use of a particular technological device for a student with a visual impairment is appropriate.

Example: A school library plans to make electronic books available to students by loaning electronic book readers. The school does not, prior to purchase, make necessary inquiries about whether the book readers are accessible to students who are blind or have low vision.

The school subsequently determines that the book readers are not accessible. In an effort to ensure that the educational benefits, *i.e.*, the same library books, are available in an equally effective and equally integrated manner to students with visual impairments, the school purchases a few small, light-weight tablet computers for the library. These tablet computers are designed to serve as a platform for electronic books, as well as other visual and audio media. If the tablet computers can access those electronic books and have accessible text-to-speech<sup>3</sup> functions that allow users to hear the on-screen content read aloud, navigate device controls, and select menu items with the same ease of use afforded by the electronic book readers to sighted students, the tablet computers will then provide the same content and functionality to students with visual impairments.<sup>4</sup> In this example, the tablet computers have those features. As a result, the accommodation or modification would meet the standards articulated in the DCL because it provides the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as sighted students, as well as meet the standards in the DCL for ease of use.

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<sup>3</sup> A text-to-speech function is software that provides audio for the printed words, enabling a person to hear instead of having to see the printed material.

<sup>4</sup> The text-to-speech function of the tablet computers provides, for example: electronic book text that is accurate and presented in proper reading order; descriptions of graphical and other non-textual material (*e.g.*, a narrative description of a photograph); and proper presentation of material contained in tables (*e.g.*, properly associating row and column headers with their respective cell data).



In addition, the school purchases the tablet computers in sufficient numbers to loan them to students with visual impairments under the same terms and conditions as it provides the electronic book readers to sighted students. Here, the timely provision of electronic books on accessible tablet computers provides students with visual impairments access to the same educational opportunities and benefits in an equally effective and equally integrated manner.

An accommodation that would not be appropriate in this example would be simply providing a student with an aide to read an electronic book to the student. An aide who is available to read the electronic book to the student only at the school during designated times would not be equivalent to the access provided to sighted students using electronic book readers who would be able to read their library books any time and at any location.

### **Other Federal Guidance**

#### **15. Is there any other information available from the Federal government that offers additional guidance about accessibility and emerging technology?**

**A: Yes.** Additional sources of guidance and information include:

#### **U.S. Department of Education**

- U.S. Department of Education Office of Educational Technology, National Education Technology Plan, <http://www.ed.gov/technology/netp-2010>.
- Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities, <http://www2.ed.gov/about/bdscomm/list/aim/index.html>.

#### **U.S. Department of Education Grantees**

##### **Accessible Media Production and Dissemination**

- National Instructional Materials Access Center (NIMAC), <http://www.nimac.us>.
- Bookshare for Education, <http://www.bookshare.org>.
- Described and Captioned Media Program, <http://www.dcmp.org>.
- Learning Ally (formerly Recording for the Blind & Dyslexic), <http://www.learningally.org>.

- National Instructional Materials Accessibility Standard Center (NIMAS Center), <http://aim.cast.org/collaborate/NIMASCtr>.
- The American Printing House for the Blind (APH), <http://www.aph.org>.
- The World Wide Web Consortium (W3C), <http://www.w3.org/standards/>.
- The Center for Implementing Technology in Education (CITEd), <http://www.cited.org>.
- The Family Center on Technology and Disability (FCTD), <http://www.fctd.info>.

#### Technical Assistance and Training

- National Center on Accessible Instructional Materials (AIM Center), <http://aim.cast.org>.

#### **U.S. Department of Justice**

- Advance Notice of Proposed Rulemaking, Nondiscrimination on the Basis of Disability: Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations, 75 Fed. Reg. 43,460 (July 26, 2010), *available at* <http://www.regulations.gov/#!documentDetail;D=DOJ-CRT-2010-0005-0001>.
- ADA Best Practices Tool Kit for State and Local Governments, Chapter 5: Website Accessibility Under Title II of the ADA, <http://www.ada.gov/pcatoolkit/chap5toolkit.htm>.

#### **Architectural and Transportation Barriers Compliance Board (U.S. Access Board)**

- Advance Notice of Proposed Rulemaking, Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Telecommunications Act Accessibility Guidelines; Electronic and Information Technology Accessibility Standards (regarding Section 508 of the Rehabilitation Act), 75 Fed. Reg. 13,457 (March 22, 2010), *available at* <http://www.access-board.gov/sec508/refresh/notice.htm>. (*Note: Section 508 of the Rehabilitation Act applies only to the Federal government.*)

#### **U.S. General Services Administration**

- Section 508.gov website, [www.Section508.gov](http://www.Section508.gov).