



**ASSISTIVE TECHNOLOGY
AND THE LAW**



Penny R. Reed, Ph.D.
pennyreed@charter.net

Adapted from *Providing Assistive Technology: A Legal Perspective*, Texas AT Network
www.texasat.net


GOAL



Participants will learn about:

- Federal and state statutes, regulations, and policy related to AT
- Legal guidance through case law examples on specific AT issues

**AT REQUIREMENTS
IN FEDERAL LAW**



- Individuals with Disabilities Education Act (IDEA)
- Section 504 of the Rehabilitation Act (Section 504)
- Americans with Disabilities Act, Title II (ADA)

300.105 ASSISTIVE TECHNOLOGY

Each public agency shall ensure that assistive technology devices or assistive technology services or both, as terms are defined in §§300.5 and 300.6 are made available to a child with a disability if needed as part of the child's

- 1) Special education under §300.36
- 2) Related services under §300.34; or
- 3) Supplementary aids and services under §300.38 and §300.114(a)(2)(ii).



300.5 AT DEVICE

AT Device: "any

- item
- piece of equipment
- or product system, whether
- acquired commercially off the shelf
- modified
- or customized,

that is used to

- increase,
- maintain,
- or improve functional capabilities of children with disabilities.



IDEA 2004 ADDED:

EXCEPTION: The term does not include a medical device that is surgically implanted, or the replacement of such device.

IDEA, 2004 P.L. 108-446, Section 602(1)(b)



300.6 AT SERVICE

AT Service:

Any service that directly assists a child with a disability in the:

- Selection
- Acquisition, or
- Use of an AT Device



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300.6 AT SERVICE INCLUDES:

A) the evaluation of needs including a functional evaluation, in the child's customary environment;



B) purchasing, leasing or otherwise providing for the acquisition of assistive technology devices;



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300.6 AT SERVICE INCLUDES:

C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;



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300.6 AT SERVICE INCLUDES:

D) coordinating with other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;



300.6 AT SERVICE INCLUDES:

E) training or technical assistance for an individual with disabilities, or where appropriate that child's family; and



300.6 AT SERVICE INCLUDES:

F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers or others who provide services to employ, or are otherwise, substantially involved in the major life functions of children with disabilities

[Authority 20 U.S.C., Chapter 33, Section 1401(26)]



IDEA AND AT



- AT must be considered
- If necessary, AT evaluation must be provided
- AT devices and/or services must be provided, if written in the child's IEP



SECTION 504 AND AT

504 requires "appropriate education" which may include general education instruction, special education, specially designed instruction and/or related aids and services"

- AT falls under these categories
- FAPE is required



ADA AND AT

- AT falls under ADA definition of "auxiliary aids and services"
- Auxiliary aids and services must be provided when they are necessary to afford an individual an equal opportunity to participate.



DETERMINING IF AT IS NECESSARY



- Given the child's particular educational needs, must the child have the AT in order to receive FAPE.



DETERMINING IF AT IS NECESSARY

- IEP must be reasonably calculated to provide some meaningful educational benefit



DETERMINING WHICH AT IS NECESSARY

"Appropriate," not "best," technology is required



**CONSIDERING THE AT
IMPLICATIONS
OF IEP COMPONENTS**



Plan for:

- Proper and timely implementation
- Maintenance and repair
- AT training



**ASSISTIVE TECHNOLOGY
CONSIDERATION**

IDEA '97 added the requirement that each IEP team *consider* the need for AT



THE IEP TEAM SHALL...

- (v) *consider whether the child needs assistive technology devices and services, with the exception of surgically implanted devices.*

IDEA, 2004 P.L.108-446, Section 614(b)



CONSIDERATION

- What does it mean?
- When should you do it?
- Why should you document it?
- How can you document it?



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AT CONSIDERATION GUIDE

WATI Assistive Technology Consideration Guide

Student Name: _____ School: _____

1. What task is it that we need the student to do, that also is really to do a level that reflects his/her ability/abilities (writing, reading, understanding, writing, thinking)? Document by describing each element that follows. Does your task say that we are looking for the student to do?

2. Is the student currently able to complete tasks with special strategies or accommodations? If yes, describe in Column A of each student task.

3. Is there another assistive technology (other device, tool, software, or software) that could be used to address the task? If yes, we know better (WATI)? If needed, list it and describe how it could help the student perform the task. Describe in Column B.

4. Would the use of assistive technology help the student perform the task more easily or efficiently, in the best instance, or perhaps successfully with/or personal strategies? If yes, register Column C.

Task	A. If currently completes task with special strategies/accommodations, describe.	B. If currently completes task with assistive technology, list, describe.	C. Describe here or additional assistive technology to be used.
Describe aspects of writing			
Computer access			
Computing software			
Communication			
Reading			
Learning/ thinking			

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AT EVALUATIONS

- Determining if an AT evaluation is warranted
- Providing sufficient AT evaluations
- Timeliness of AT evaluation
- Credentials of AT evaluators



WHEN IS AN AT EVALUATION WARRANTED?

- Not every student with a disability needs formal AT evaluation
- IEP committee determines need to seek further information or formal evaluation



PROVIDING SUFFICIENT AT EVALUATIONS

- Districts get to choose method of evaluation or strategies to use
- Detailed review and analysis of needs and abilities most likely meets IDEA requirements
- Use a proven format



TIMELINESS OF EVALUATION

- Failure to provide timely evaluation could be violation of IDEA



PROFESSIONAL CREDENTIALS OF AT EVALUATORS

- Comply with legal requirements regarding evaluations in general
- • Comply with legal requirements regarding the qualifications of special education providers



SPECIFIC AT ISSUES

- Ownership and liability
- Timeliness of provision
- Maintenance and repair
- At-home use
- Medically related devices and services
- Personal devices
- Copyright concerns
- Need to base interventions on peer reviewed research



OWNERSHIP AND LIABILITY FOR AT DEVICES

- District using family-owned device that is component of IEP assumes liability
- • District not liable for family-owned device that is not component of IEP
- • Parent could be liable for damage to or loss of district-owned AT device

TIMELINES IN PROVIDING AT

- Extended, unreasonable delay in provision of AT violates law
- Unreasonable delay by districts has been punished by significant compensatory education awards to parents



MAINTENANCE AND REPAIR OF AT DEVICES

- Responsibility of district
- Failure to repair in a timely manner might deny a student FAPE
- ARD committees should establish plans for maintenance and repair of certain devices



AT FOR AT-HOME USE

- If IEP states that AT at-home is necessary, it must be provided
- If at-home device is "want" rather than "need," district need not provide it
- Efficiency arguments in support of need for at-home device might not be enough to show district's obligation



**MEDICALLY RELATED
AT SERVICES**

- IDEA medical service exception does not always apply
- Service related to Cochlear Implants is an important new issue



**MEDICALLY RELATED
AT DEVICES**

- Obligation to provide medically related AT devices is unclear



PERSONAL AT DEVICES

- District's obligation to provide a personal AT device is same as that for any other AT device
- If student requires personal AT device to receive FAPE pursuant to IEP, district must provide device



AT AND COPYRIGHT CONCERNS

- Districts may be able to use "fair use" exception, which allows reproduction of some copyrighted works for educational purposes
- Districts should explore borrowing and sharing reproduced works



ACCESSIBLE INSTRUCTIONAL MATERIALS

- IDEA 2004 includes a definition of students who may be provided with accessible textbooks created with NIMAS files from the NIMAC. That definition, used within the legislation, is "blind or other persons with print disabilities." "Blind or other persons with print disabilities" means children served under IDEA who may qualify in accordance with the act entitled, "An Act to provide books for the adult blind," approved March 31, 1931 (2 U.S.C. 135a; 46 Stat. 1487) to receive books and other publications produced in specialized formats [674(e)(3)(A)].



WHO IS COVERED?

Students with "print disabilities" under the Chaffee Amendment to the Copyright Law are those who have been certified by a competent authority as unable to read printed materials because of:

- A visual impairment or blindness
- Physical limitations
- An organic dysfunction



WWW.BOOKSHARE.ORG

- The Office of Special Education Programs of the U.S. Department of Education has awarded Bookshare.org a \$32 million five-year grant to dramatically expand the Bookshare.org collection and provide all U.S. students with **qualifying print disabilities** free access to the service.



PEER REVIEWED RESEARCH & AT

- 300.320 (a) (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child--



A QUICK REVIEW OF BASIC REQUIREMENTS

- AT may be required by IDEA, ADA, or Section 504
- AT needs must be considered
- If IEP committee determines AT is necessary, it must be included in IEP
- If AT is included in IEP, it must be implemented



IN CONCLUSION

www.texasat.net

Select: Training Modules
Then: Legal Module
Then: Resource Guide