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## Federal Special Education Legislation

The Individuals with Disabilities Education Act (IDEA) mandates the school system's responsibility to provide assistive technology devices and services to students with disabilities. The following information is included to provide IEP teams with an understanding of the legal context for providing assistive technology devices and services:

### Definition of Assistive Technology

Assistive technology devices are identified in the IDEA 2004 as:

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 the functional capabilities of children with disabilities.

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

(Authority 20 U.S.C. 1401(1))

Although the IDEA uses the term "device", it is important to recognize that assistive technology devices required by students with disabilities include hardware and software as well as stand-alone devices. Almost any tool can be considered to be an assistive technology device except for those assistive technology devices that are surgically implanted and have been excluded from the definition of an assistive technology device as defined in IDEA.

The definition of an assistive technology device is very broad and gives IEP teams the flexibility that they need to make decisions about appropriate assistive technology devices for individual students. Assistive technology includes technology solutions that are generally considered instructional technology tools, if they have been identified as educationally necessary and documented in the student's IEP. For example, a classroom computer with a word processing program can be considered assistive technology for a student who demonstrates difficulty in writing and spelling if the IEP team has determined that it is educationally necessary. Assistive technology devices can be purchased from a local store or a vendor that specializes in the production and sale of assistive technology devices. These devices often need to be modified or customized to meet the individual needs of a student with a disability. For example, a computer keyboard may need to be adapted through the addition of tactile locator dots for a student with a visual impairment. When determining assistive technology needs, IEP teams should consider commercially available solutions that may be used "as is" or ones that can be modified to meet the student's unique needs. In some situations, it may be necessary to construct a device to meet the student's needs.

A range of assistive technology devices are available. Some are relatively "low technology" and inexpensive. For example, a pencil grip is an assistive technology device that may be used by a student with a physical disability to improve handwritten communication through increasing the student's grasp of and control over his or her pencil. An adapted cup with enlarged handles may be used by a student who has difficulty holding a standard cup. Other devices are more "high technology" tools and are often more expensive. An example of a "high technology" tool is an augmentative communication device in which a student types in messages on a communication display and they are spoken aloud.

A particular student with a disability may require assistive technology solutions from one or more of the above categories. For example, a student with a severe intellectual disability may use an augmentative communication device to supplement his or her communication skills, adaptive switch toys to participate in leisure activities, and an adapted keyboard for accessing the software applications on the classroom computer.

As defined in IDEA, an assistive technology service is:

Any service that directly assists a child with a disability in the selection, acquisition, and use of an assistive technology device. The term includes-

- a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
- b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- c) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;
- d) Coordinating and use other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
- f) Training or technical assistance for professionals (including individuals or rehabilitation services), employers, or other individuals who provide services to employ, or are otherwise substantially involved in the major life functions of children with disabilities.

(Authority 20 U.S.C. 1401(2))

As stated in the IDEA, assistive technology services are provided to assist in the selection, acquisition, and use of an assistive technology device. Often an IEP team focuses their energies on the device itself and forgets that the assistive technology services, as described in this document, are critical to the student's use of the device. For some students, appropriate assistive technology devices are identified through an evaluation which the IDEA specifies must be conducted in the student's customary environment. After, a device has been selected to meet the student's needs, the next step or "service" is to actually provide the assistive technology device for the student's use. After the device has been obtained, and if appropriate, modified, all appropriate individuals should be trained in the use of the device and the device should be made available for the student's use across instructional settings as needed.

Prior to IDEA 2004, there was some discussion as to whether a school system was responsible for the maintenance, programming, and replacement of surgically implanted assistive technology devices such as cochlear implants and whether or not these would be considered assistive technology. The following excerpt from IDEA addresses this issue:

For a child with a surgically implanted medical device who is receiving special education and related services under this part, a public agency is not responsible for the maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device)

(Authority 20 U.S.C. 1401(1), 1401(26)(B))

Although the school system, under the present legislation, is not responsible for maintaining, programming, and replacing surgically implanted assistive technology devices, the IDEA states that the system does have a responsibility to ensure that the external components of these devices are functioning properly.

Each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.

(Authority 20 U.S.C. 1401(1), 1401(26)(B))

#### Provision of Assistive Technology

The legal cornerstone for providing assistive technology devices and services is found in Section 300.105 in the Federal Register based on the most recent re-authorization of IDEA:

- a) Each public agency shall ensure that assistive technology devices and assistive technology devices and services, or both, as those terms are defined in Sections 300.5 and 300.6, are made available to a child with a disability if required as a part of the child's —
- 1) Special education under Section 300.36;
  - 2) Related services under Section 300.34; or
  - 3) Supplementary aids and services under Section 300.38 and 300.114(a)(2)(ii).
- b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive FAPE.

Section 300.105 clearly states that the school system is responsible for addressing assistive technology when it is required as a part of the student's special education services, related services, or supplementary aids and services. Use of school provided assistive technology is not limited to the school setting. Section 300.105 clearly specifies that school-purchased assistive technology may be made available in the child's home or in other settings if the IEP team determines that the child requires assistive technology to receive a free and appropriate public education (FAPE).

The inclusion of the statement regarding home use of school-purchased assistive technology has significant implications for school systems. In the past, many school systems have been reluctant to provide technology in the home setting. As a result of this requirement, it is evident that the provision of school-purchased assistive technology in the home setting is the decision of the student's IEP team. School systems should not develop policies, procedures, or operating guidelines that negatively impact the IEP team's ability to address and provide for the use of assistive technology in settings other than the school. As more technology is provided in the home setting, school systems will have to address whether or not parents should be held liable for loss of a device or for damage to a device beyond normal wear and tear.

#### Consideration of Assistive Technology Devices and Services

The 1997 re-authorization of the IDEA included the requirement that each IEP team consider a list of special factors in the development, review, and revision of the student's IEP. The special factors addressed in IDEA are not exclusionary. In fact, several of the factors such as considering braille needs and communication needs of the student are linked to assistive technology while one special factor specifically addresses assistive technology devices and services. The legal reference for considering assistive technology is found in Section 300.346:

Consideration of special factors - The IEP team shall-

- v. Consider whether the child requires assistive technology devices and services

The requirement to consider the need for assistive technology devices and services brings the issue of assistive technology to every IEP team. In order for IEP teams to be able to effectively, address assistive technology devices and services, teams must use a collaborative decision-making process to determine whether or not an individual student requires assistive technology.

Information on considering assistive technology needs of students with disabilities is found in subsequent sections of this document.

Section 300.346 also addresses the documentation of assistive technology in the IEP. It states that:

If, in considering the special factors described in paragraph (a) of this section, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) to receive FAPE, the IEP team must include a statement to that effect in the child's IEP.

(Authority: 20 U.S.C. 1414 (d)(a))

This section clearly mandates that if the IEP team determines that a particular student requires an assistive technology device and/or service, the IEP must include a statement regarding assistive technology must be included in the IEP. Information on considering assistive technology needs and documenting assistive technology devices and services in the IEP is provided in subsequent sections of this manual.

## State Rules and Regulations for Special Education

The State of Georgia Rules and Regulations for Special Education also address the provision of assistive technology devices and services in section 160-4-7-.02 FREE APPROPRIATE PUBLIC EDUCATION (FAPE). The rules and regulations are based on the mandates in IDEA discussed previously in this document. They are as follows:

### (6) ASSISTIVE TECHNOLOGY

(a) Children with disabilities who require assistive technology in order to receive a free appropriate public education (FAPE) are eligible for assistive technology devices or services, or both, as a part of the child's special education, related services, or supplemental aids and services.

(b) Each IEP Team will consider whether or not a child requires assistive technology devices and services in order to receive a free appropriate public education (FAPE). Minimal compliance will be indicating the appropriate response in the Consideration of Special Factors section of the IEP. Assistive technology can also be addressed when considering other factors such as communication needs and instruction in the use of Braille. [34 C.F.R. § 300.324]

(c) An assistive technology evaluation may be required if appropriate assistive technology solutions are not known to the child's IEP Team through the consideration process. This evaluation shall be conducted by a multidisciplinary team of professionals knowledgeable about assistive technology devices in the technology areas being assessed. The child and family should also be included in this evaluation process. The evaluation should result in recommendations for assistive technology devices and services, if required.

(d) If the child's IEP Team determines that assistive technology devices or services are required for the child to receive a FAPE, a statement to that effect must be included in the child's IEP.

1. If assistive technology is required for the child to participate in districtwide or Statewide testing, the need for technology should be documented in the appropriate section of the IEP and provided to the child.

2. If assistive technology devices or services, or both, are required for a child who is blind or other print disabled to access alternative format instructional materials, the assistive technology should be documented in the IEP and provided to the child.

(a) If the IEP Team determines that the child with a disability requires school-purchased assistive technology at home or in other settings to receive a FAPE, the assistive technology must be provided to the child at no cost to the parent. The need for assistive technology in the non-school settings should be documented in the child's IEP. [34 CFR § 300.105]

(Authority O.C.G.A. 20-2-150; 20-2-152)

## Conclusions

Federal legislation and state rules for special education clearly define the school system's responsibility to provide assistive technology devices and services to students with disabilities. School staff, including administrators, teachers, and related service providers, and parents should be knowledgeable about the requirement for providing assistive technology. As school systems develop policies, procedures, and guidelines related to the provision of assistive technology, the documents should be consistent with federal special education legislation and state rules discussed in this report.