



A LEGAL BASIS & GUIDING PRINCIPLES FOR IMPLEMENTING ASSISTIVE TECHNOLOGY



The Individuals with Disabilities Education Act (IDEA) provides the following mandates and definitions for implementing assistive technology for students identified as having a disability and requiring special education supports and services.

Assistive Technology: [IDEA 300.308]

Each public agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in 300.5-330.6, are made available to a child with a disability if required as part of the child's:

- special education under 300.17
- related services, or
- supplementary aid and services.

Definition of Assistive Technology Device:

The term “assistive technology device” means 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 300.5]

Definition of Assistive Technology Service:

The term “assistive technology service” means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. [IDEA 300.6] This includes:

1. the evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment
2. purchasing, leasing or otherwise providing for the acquisition of assistive technology devices by children with disabilities
3. selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices
4. coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs
5. training or technical assistance for a child with a disability, or, if appropriate, that child's family

Although IDEA requires that all students be provided with assistive technology as needed for delivery of a *free and appropriate public education* (FAPE), the only exception is for those devices that are determined to be “medical”. Not all children are covered under medical policies, or policies that include the provision of assistive technology devices.

Therefore school teams may need to assist families in accessing the Medicaid system for funding of such equipment, in some circumstances.

Additional legislation also has implications that need to be considered in the provision of assistive technology supports:



Title II of the American with Disabilities Act (ADA) mandates the provision of “auxiliary aids and services”, which encompasses assistive technology along with a variety of other services including human supports. Auxiliary aids and services are required, as needed, to ensure equal access to programs and services that are *needed for effective communication with individuals with disabilities*.

General Provisions: [ADA 35.160]

- (a) A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.
- (b)(1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of a service, program, or activity conducted by a public entity.
- (b)(2) In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with the disability.

Definition of Auxiliary aids and services: [ADA 35.104] Auxiliary aids and services includes:

1. Qualified interpreters, notetakers, transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons, videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
2. Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;
3. Acquisition or modifications of equipment or devices;
4. Other similar services and actions.



Section 504 of the Rehabilitation Act does not specifically define assistive technology devices and services, but refers to “special education and related aids and services” in the description of the delivery of an appropriate education and use of the terms “supplementary aids and services” in the discussion of academic settings in which students should be served.

The ADA includes a specific exemption for personal use devices as follows. IDEA has not yet included such a personal use exemption, and there are those who feel that the distinction between what is and is not “personal use” would be so problematic as to make such an exemption useless.

[ADA 35.135] Personal devices and services

This part does not require a public entity to provide to individuals with disabilities personal devices, such as wheelchairs, individually prescribed devices, such as prescription eyeglasses or hearing aids, readers for personal use or study; or services of a personal nature including assistance in eating, toileting, or dressing.

For the most part, the challenge to IEP teams is to ensure that students are provided a *free and appropriate public education*, or “FAPE”, AND equal access to the same opportunities afforded nondisabled children (as described in IDEA and Section 504). But in addition, the ADA specifies that “effective communication” and “consideration of consumer preference” are also requirements when addressing the assistive technology needs of individual students.