



Providing Assistive Technology: A Legal Perspective



A Professional Development Module

Collaboratively developed by:

The Texas Assistive Technology Network with leadership provided by Region 4 Education Service Center and consultation from Bracewell & Giuliani LLP.



A Professional Development Module

Available at www.texasat.net





Objectives



Participants will learn about:

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





Standards that Define and Govern the Provision of AT

- Federal statutes and regulations
- Texas statutes and regulations





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)
- Assistive Technology Act of 2004 (AT Act)

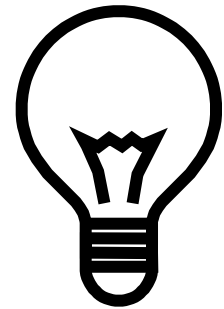


IDEA Definitions



- AT Device: any item, piece of equipment or product system that is used to increase, maintain, or improve the functional capabilities of children with disabilities, except for a surgically implanted medical device
- AT Service: any service that directly assists a child with a disability in the selection, acquisition, or use of an AT device, except for the optimization, maintenance, or replacement of a surgically implanted device





IDEA and AT

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

Section 504 and AT

- Refers to "special education" and "related aids and services"
- AT falls under these categories
- Special education and related aids and services constitute FAPE, the provision of which is required



ADA and AT

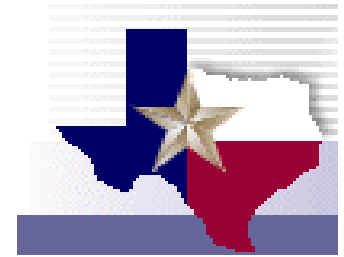


- AT falls under ADA definition of "auxiliary aids and services"
- Auxiliary aids and services must be provided when they are necessary to afford an individual an equal opportunity to participate.





Texas AT Rules & Policy Guidelines



- Texas Education Code § 30.0015
- Title 19 Texas Administrative Code § 89.1056





Transfer of AT Devices

- Transfer to new school, district, state agency following graduation, or to parents or student when they move
- Optional
- Agreement must be in writing and must contain specific provisions
- Written consent required





Statutory Obligations

1. Must consider AT needs
2. Must determine if an AT evaluation is necessary
3. If necessary, AT evaluation of student must be completed





Statutory Obligations



4. If necessary, AT must be written in as component of IEP
5. Must implement provision of AT device and/or AT services indicated in IEP





Common AT-related Legal Issues

- Considering the AT needs of students
- AT evaluations
- Other specific issues

Considering the AT Needs of Students

- Failure of an ARD committee to consider the AT needs of a special education student is a violation of IDEA.
- "Some explicit review" of each student's AT needs is most likely required.





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

- Must AT be included for an IEP to be reasonably calculated to provide the student with a disability 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**





AT Evaluations

- 1. Determining if an AT evaluation is warranted**
- 2. Providing sufficient AT evaluations**
- 3. Timeliness of AT evaluation**
- 4. Credentials of AT evaluators**





Determining if an AT evaluation is warranted

- Not every special education student needs formal AT evaluation
- ARD committee determines need to seek further information or formal evaluation





Providing Sufficient AT Evaluations

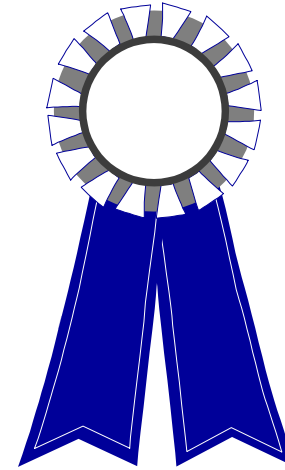
- Texas districts get to choose which assessment instruments or strategies to use
- Detailed review and analysis of needs and abilities most likely meets IDEA requirements

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



Specific AT Issues

- At-home use
- Medically related devices and services
- Personal devices
- Copyright concerns



Ownership and Liability for AT Devices

- District using family-owned device that is component of IEP assumes liability for device
- District not liable for family-owned device that is not component of IEP





Ownership and Liability for AT Devices

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





AT for At-home Use

- Efficiency arguments by parents in support of need for at-home device might not be enough to show district's obligation

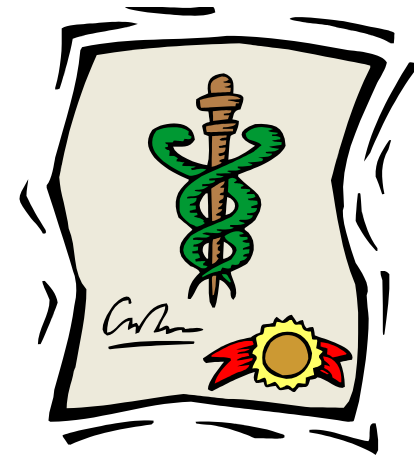




Medically Related AT Services

- IDEA Medical service exception does not always apply
- Mapping, programming, maintenance, and replacement of Cochlear Implants and other surgically implanted medical devices are NOT AT services
- Students with surgically implanted medical devices still entitled to services necessary for FAPE

Medically Related AT Devices



- Obligation to provide medically related AT devices is unclear
- Surgically implanted medical devices, such as CIs, and the replacement of such medical devices is excluded from definition of AT device
- Schools still required to monitor and maintain medical devices necessary for child's health and safety



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 Issues

- National Instructional Materials Accessibility Standards
- National Instructional Materials Accessibility Center
- Texas law



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



A Quick Review of Basic Requirements

- AT may be required by IDEA, ADA, or Section 504
- AT needs must be considered





A Quick Review

- If ARD committee determines AT is necessary, it must be included in IEP
- If AT is included in IEP, it must be implemented



In Conclusion...

- The provision of AT is a very important part of guaranteeing that students with disabilities receive the educational services that they have a right to receive under federal and state law.