


# Notetaking Guide

## Providing Assistive Technology: A Legal Perspective

**Providing Assistive Technology:**

**A Legal Perspective**

1

Texas Assistive Technology Network 

---

---

---

---

---

---

---


---

**A Professional Development Module**

Collaboratively developed by:

- Texas Assistive Technology Network, led by Region IV ESC
- Bracewell & Patterson, L.L.P.
- Texas Education Agency

2

Texas Assistive Technology Network 

---

---

---

---

---

---


---

---

**A Professional Development Module**

- Part of the *Assistive Technology in Texas Schools Series*
- Available at [www.texasat.net](http://www.texasat.net)

3

Texas Assistive Technology Network 

---

---

---

---

---

---

---

---

# Notetaking Guide

## Providing Assistive Technology: A Legal Perspective

### 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

4



---

---

---

---

---

---

---

---

### Standards that Define and Govern the Provision of AT

- Federal statutes and regulations
- Texas statutes and regulations

5



---

---

---

---

---

---

---

---

### 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)

6



---

---

---

---

---

---

---

---

# Notetaking Guide

## Providing Assistive Technology: A Legal Perspective

### 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
- **AT Service:** any service that directly assists a child with a disability in the selection, acquisition, or use of an AT device

7



---

---

---

---

---

---

---

---

### 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

8



---

---

---

---

---

---

---

---

### 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

9



---

---

---

---

---

---

---

---

# Notetaking Guide

## Providing Assistive Technology: A Legal Perspective

### 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.

10



---

---

---

---

---

---

---

---

### Texas AT Rules & Policy Guidelines



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

11



---

---

---

---

---

---

---

---

### 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

12



---

---

---

---

---


---

---

---


# Notetaking Guide

## Providing Assistive Technology: A Legal Perspective

**Statutory Obligations** 

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

13

Texas Assistive Technology Network 

---

---

---


---

---

---


---

---

**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

14

Texas Assistive Technology Network 

---

---

---

---

---

---


---

---

**Common AT-related Legal Issues**

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

15

Texas Assistive Technology Network 

---

---

---

---

---

---

---

---

# Notetaking Guide

## Providing Assistive Technology: A Legal Perspective

### Considering the AT Needs of Students



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

16



---

---

---

---

---

---

---

---

### Determining if AT is Necessary



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

17



---

---

---

---

---

---

---

---

### Determining if AT is Necessary



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

18



---

---

---

---

---

---


---

---

# Notetaking Guide


## Providing Assistive Technology: A Legal Perspective

### Determining which AT is Necessary



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

19

Texas Assistive Technology Network 

---

---

---

---

---

---

---


---

### Considering the AT Implications of IEP Components

Plan for:

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

20

Texas Assistive Technology Network 

---

---

---

---

---

---


---

---

### AT Evaluations

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

21

Texas Assistive Technology Network 

---

---

---

---

---

---


---

---

# Notetaking Guide


## Providing Assistive Technology: A Legal Perspective

### When is an AT Evaluation Warranted?



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

22

Texas Assistive Technology Network 

---

---

---

---


---

---

---


---

### Providing Sufficient AT Evaluations



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

23

Texas Assistive Technology Network 

---

---

---

---

---


---

---


---

### Timeliness of Evaluation

- Failure to provide timely evaluation could be violation of IDEA



24

Texas Assistive Technology Network 

---

---

---

---

---

---

---

---

# Notetaking Guide

## Providing Assistive Technology: A Legal Perspective

### Professional Credentials of AT Evaluators



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

25



---

---

---

---

---

---

---

---

### Specific AT Issues



- Ownership and liability
- Timeliness of provision
- Maintenance and repair
- At-home use
- Medically related devices and services
- Personal devices
- Copyright concerns

26



---

---

---

---

---

---

---

---

### 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

27



---

---

---

---

---

---

---

---

# Notetaking Guide

## Providing Assistive Technology: A Legal Perspective

### 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

28



---

---

---

---

---

---

---

---

### 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

29



---

---

---

---

---

---

---

---

### 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

30



---

---

---

---

---


---

---

---


# Notetaking Guide

## Providing Assistive Technology: A Legal Perspective

**Medically Related AT Services** 

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

31

Texas Assistive Technology Network 

---

---

---


---

---

---


---

---

**Medically Related AT Devices** 

- Obligation to provide medically related AT devices is unclear

32

Texas Assistive Technology Network 

---

---

---


---

---

---


---

---

**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

33

Texas Assistive Technology Network 

---

---

---

---

---

---

---

---

# Notetaking Guide

## Providing Assistive Technology: A Legal Perspective

### 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

34



---

---

---

---

---

---

---

---

### A Quick Review of Basic Requirements



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

35



---

---

---

---

---

---

---

---

### In Conclusion...

36



---

---

---

---

---

---

---

---