

Providing Assistive Technology: A Legal Perspective

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A Professional Development Module

Collaboratively developed by:

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



A Professional Development Module

- Part of the *Assistive Technology in Texas Schools Series*
- 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



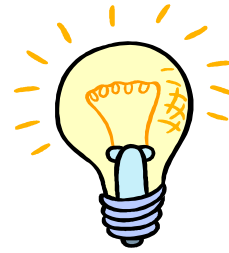
- **Individuals with Disabilities Education Act (IDEA)**
- **Section 504 of the Rehabilitation Act (Section 504)**
- **Americans with Disabilities Act, Title II (ADA)**

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

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**

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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**

Statutory Obligations

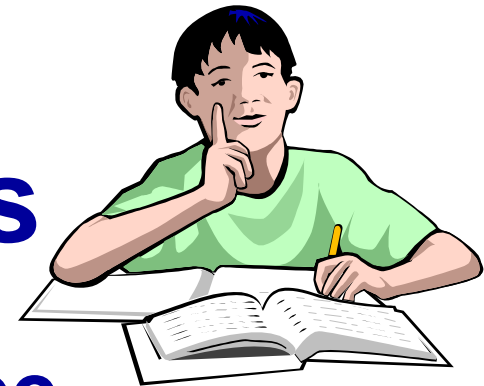


4. If necessary, AT must be written in as component of IEP
5. Must implement provision of AT device and/or AT services indicated in IEP

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 AT needs 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



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

Considering the AT Implications of IEP Components

Plan for:

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

AT Evaluations



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

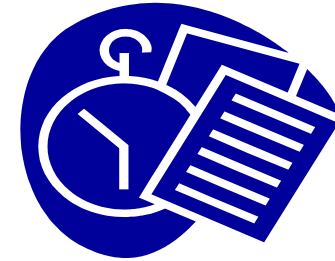
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When is an AT Evaluation Warranted?



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

Providing Sufficient AT Evaluations



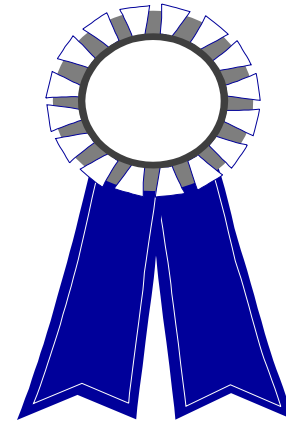
- Texas districts get to choose method of evaluation or strategies to use
- Detailed review and analysis of needs and abilities most likely meets IDEA requirements

Timeliness of Evaluation

- **Failure to provide timely evaluation could be violation of IDEA**

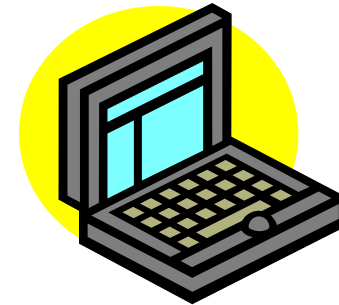


Professional Credentials of AT Evaluators



- **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**

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

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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

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Medically Related AT Services



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

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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**

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

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In Conclusion...

