

Section 2

Federal Legislation and Assistive Technology

2013

Over time, federal legislation has been enacted to enable increased access to, and provision of, technology supports for individuals with disabilities. Assistive technology was formally defined in 1987 and written into the Technology-Related Assistance for Individuals With Disabilities Act (Tech Act, 1988). This section includes a review of legislation related to AT.

- **Americans With Disabilities Act, 1990**
- **Assistive Technology Act, 1998; amended 2004**
- **Rehabilitation Act, 1973; amended 1992, 1998**
- **Individuals With Disabilities Education Act (IDEA), 2004**

School districts must be knowledgeable about the laws that regulate and form special education services, as well as the legal implications related to applications of AT. The most recent definition of AT and AT services may be found in the 2004 reauthorization of IDEA.

Americans With Disabilities Act (ADA)

ADA, which was signed into law in July 1990, provides civil rights protection against discrimination for individuals with disabilities similar to the protection provided on the basis of race, gender, age, nationality, and religion. It mandates accessibility and accommodation requirements in public facilities, employment, state and local government services, transportation, and communication.

All new construction and modifications must be accessible to individuals with disabilities. For existing facilities, barriers to services must be removed if readily achievable. Public accommodations, including facilities such as restaurants, hotels, grocery stores, retail stores, etc., as well as privately owned transportation systems, must comply with ADA requirements.

ADA protects individuals with disabilities from employment discrimination based on the disability alone when the person is qualified to perform the essential functions of the job, with or without reasonable accommodations. Accommodations may include the use of assistive technology and technology access, unless the changes create an undue hardship for the employer.

Assistive Technology Act (Tech Act)

The Technology-Related Assistance for Individuals With Disabilities Act of 1988 (reauthorized in 1994) was passed by Congress to increase access to, availability of, and funding for AT through state efforts and national initiatives. It forms the basis for the Assistive Technology Act, signed into law in 1998 (amended 2004). This law affirms that technology is a valuable tool that can be used to improve the lives of Americans with disabilities.

The Tech Act continues to support states in sustaining and strengthening their capacity to address the AT needs of individuals with disabilities. As such, the act provides federal funds to assist states in developing consumer-responsive systems of access to AT, services, and information.

In Ohio, the Tech Act project is:

Assistive Technology of Ohio

1314 Kinnear Road, #1704

Columbus, OH 43212

Phone: 614-292-7721

E-mail: <mailto:atohio@osu.edu>

Web: www.atohio.org

Rehabilitation Act

The Rehabilitation Act was originally signed into law in 1973. The 1992 amendments are built on the presumption that an individual is able to achieve employment and other rehabilitative goals regardless of the severity of the disability. Vocational rehabilitation agencies are required to focus on solutions and attainment of employment outcomes, unless the agency can “unequivocally demonstrate” that no possibility of employment exists for a particular individual. Options for training, AT, reasonable accommodations, and supports must be carefully considered. Students who do not qualify for special education may still be eligible for accommodations under Title V of the Rehabilitation Act, commonly referred to as Section 504. This section provides that ...

“No otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

In 1998, Congress amended the Rehabilitation Act to require that all federal agencies remove barriers to make electronic and information technology accessible to people with disabilities. Section 508 establishes requirements for electronic and information technology developed, maintained, procured, or used by the federal government. Specifically, it requires federal electronic and information technology to be accessible to people with disabilities, including employees and members of the public. This web accessibility mandate has had significant impact on the general design of websites in terms of navigability and other user-friendly elements.

Individuals With Disabilities Education Act (IDEA)

IDEA is the safeguard ensuring that every student with a disability receives a free, appropriate public education (FAPE). Historically known as the Education for All Handicapped Children Act of 1975 (Public Law 94-142), IDEA's basic provisions have remained the same since its inception. IDEA requires school districts to provide special education and related services based on the IEP designed to meet the student's unique needs. IEP goals are identified and implemented to facilitate student access to and progress in the general education curriculum.

Assistive technology was not originally included in IDEA but was later written into the law and placed in the section entitled “Related Services.” In a 1990 policy letter, the Office of Special Education in the U.S. Department of Education referred to the Tech Act definition of AT in clarifying students' right to AT in the IEP. This laid the groundwork for the inclusion of specific language for AT devices and services in the 1990 Amendments to IDEA. Finally, it was granted its own section, Section 300.5 and 300.6, where it is defined. The 1997 Amendments to IDEA specifically require that AT be considered for every student with a disability as part of the IEP process. Assistive technology may be considered either as special education and related

services or as supplementary aids and services.

In Ohio, the mandates of IDEA are presented in the Operating Standards for Ohio Educational Agencies Serving Children with Disabilities (2008). The purpose of these operating standards is to ensure that FAPE is available all children with disabilities residing in Ohio between the ages of 3 and 21 years, as provided by Part B of IDEA, as amended by the Individuals With Disabilities Education Improvement Act of 2004. These Ohio rules will be referenced in the legal areas of this document.

IDEA Definition of Assistive Technology

While IDEA continues to define an AT device in the Tech Act terminology, an exception was added in IDEA 2004. The definition now states:

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 the functional capabilities of a child with a disability. *The term does not include a medical device that is surgically implanted, or the replacement of that device.*

(IDEA, 2004, 300.5; Ohio Department of Education, 2008, 3301-51- 01 (B)(2).)

The exclusion of medical devices that are surgically implanted, referred to above, is usually thought to apply to cochlear implants. A similar exclusion exists in the definition of related services indicating that school districts are not responsible for “selecting designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing” surgically implanted medical devices. In 2006 the US Department of Education’s regulations interpretations of IDEA 2004 amended the regulatory definition of related services to exclude “a medical device that is surgically implanted, the optimization of the devices functioning (e.g. mapping), maintenance of the device [and] the replacement of the device”. In 2012, the U.S. Circuit Court of Appeals upheld the regulatory definition provided by the U.S. Department of Education in *Petit v U.S. Department of Education*. While the regulations provided for these exclusions there remain some obligation by IEP teams for related services. These related services include routine checking of acoustical hearing aids and the external components of cochlear implants.

There is no federal “approved list” of AT devices and services covered by IDEA. Assistive technology can be quite simple and inexpensive, or it can include more sophisticated devices.

Determination regarding the provision of AT for a student with a disability must be made on an individual basis. As such, it is important to recognize that the definition of AT includes both devices and services. These defined services ensure that appropriate processes are in place for evaluation, acquisition, and implementation of AT that will foster student achievement within the educational program.

This federal definition of AT devices and services is identical to the definition provided in the Operating Standards for Ohio Educational Agencies Serving Children With Disabilities (2008).

IDEA and Consideration of Assistive Technology

The requirement that every student with a disability must be “considered” for AT during the development of

his/her IEP remains in IDEA 2004.

In developing the child's IEP, the IEP team must consider whether the child needs assistive technology devices and services.

(IDEA, 2004, 300.324 (a)(2)(v); Ohio Department of Education, 2008, 3301-51-07 (L)(b)(v).)

The IEP team must evaluate the specific needs of each student and develop criteria to establish whether specific AT devices/services are necessary to meet the unique needs of a student. This consideration must be conducted during the student's IEP meeting at least annually.

Neither IDEA nor the Operating Standards for Ohio Educational Agencies Serving Children with Disabilities (Ohio Department of Education, 2008) provide specific guidance on how to conduct this consideration. The Ohio Center for Autism and Low Incidence's (OCALI) OCALI Consideration for Assistive Technology Checklist is included in Section 5 of this manual. The checklist may guide an IEP team when conducting a consideration of a student's need for AT during the IEP process. Questions to be asked include:

- What specific task do we want this student to perform that he/she is unable to do because of his/her disability?
- What current special strategies, accommodations, or assistive technologies have been tried to enable the student to complete this task? How well have they worked? (Include in the Present Levels of Performance section of IEP.)
- Are there continuing barriers when the student attempts this task? If so, describe. (Include in the Present Levels of Performance section of IEP.)
- Are there new or additional assistive technologies to be tried to address continuing barriers? If so, describe. (Document in Services section of IEP.)
- Is there a need for further investigation and/or assessment to determine assistive technology solutions? (Describe this plan and document in Services section of IEP.)

It may be necessary for an IEP team to seek additional assessment before necessary AT can be documented in the IEP.

IDEA Implications for Assistive Technology

The implications for AT as part of special education services are inherent within the basic premises of IDEA.

All students with disabilities are entitled to a free and appropriate public education (FAPE) appropriate to their needs.

(IDEA, 2004, 300.17; Ohio Department of Education, 2008, 3301-51-09(A).)

All children are entitled to a FAPE “regardless of the severity of their disabilities. (*Timothy W. v. Rochester N.H. School Dist.*, 1989). It is the responsibility of the IEP team to determine what constitutes “appropriate.” This must be done on a case-by-case basis for each student and included in the IEP.

In *Board of Education of Hendrick Hudson Central School District v. Rowley* (1982), the court stated that IDEA guarantees a “basic floor of opportunity,” offering the same opportunities other students have through specialized instruction and related services that are individually designed to provide educational benefit to the student. The court did not rule that maximization of opportunities for student with disabilities was required. However, the program must be based on the student’s unique needs and be designed to enable the student to benefit from an education. In other words, the student must be making progress. Therefore, more than a minimal benefit is required for the program to be appropriate.

In determining what is appropriate, the school district must be able to answer the following two questions:

- Did the district comply with the IDEA’s procedures?
- Was the IEP reasonably calculated to enable the child to benefit educationally?

With regard to AT, the relationship between the student’s educational needs and the AT device or service must be considered. The basic standard to be met, whether or not the student needs the AT, is receiving FAPE (*Pachl v. School Board of Independent School District No. 11*, 2002)

“Free” as related to AT means that the devices and services, if deemed appropriate, must be provided at no cost to parents. This is defined in the list of AT services, including purchase or acquisition, maintenance, and repair. The school is also required to assume the costs for assessment, therapies, and related services needed to implement the use of necessary AT.

IDEA specifies that school districts may use Medicaid or parents’ private insurance for special education, including AT. However, “each time the public agency proposes to access the parents’ private insurance proceeds the agency must obtain parental consent....and inform the parent that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.” (IDEA 2004) Meaning that the parents must give permission for the use of their private funds. Furthermore, the district cannot deny services if the parents refuse to authorize use of Medicaid or private insurance. Such use also cannot result in any cost to the parents (e.g., co-payment, deductible). However, Medicaid and private insurance are viable options for obtaining augmentative and alternative communication (AAC) devices since these may be considered “medically necessary.” Medicaid or private insurance does not cover “educationally necessary” items.

According to the U.S. Department of Education, if an IEP team determines that an AT device is needed for home use in order to for a student to receive FAPE, the assistive technology must be provided, again at no cost to the parents. An example would be a student needing a given device at home to complete homework assignments.

To the maximum extent possible, students with disabilities should be educated with students without disabilities, as close to home as possible, and in the least restrictive environment (LRE).

(IDEA, 2004, 300.114; Ohio Department of Education, 2008, 3301-51-09 (A).)

IDEA also requires that students receive their educational services in the least restrictive environment (LRE). Therefore, removal from the general education classroom is to occur only when the student cannot be successfully educated in that setting even with supplemental aids and services. IDEA further emphasizes that a student with disabilities cannot be removed from an age-appropriate general classroom “solely because of needed modifications in the general curriculum.” The statute goes on to explain that supplementary aids and services are to be made available in the general education classes to enable the students with disabilities to be educated with nondisabled peers to the maximum extent possible. Assistive technology is included in the definition of “supplementary aids and services” and must be considered for the ways in which it will enable the student to be educated in the general education program.

When determining LRE for a student, the individual needs of the student must be met. Therefore, the district must have available a continuum of placements (e.g., services in general education class, separate class). The burden is on the school district to prove that the general education environment is not beneficial to the student. The school district must also determine if the support of AT will enable the student to remain in the general education environment. The implication is that there must be district-wide awareness of the types of AT devices available and how they might benefit a student in the classroom.

In whatever setting the IEP team determines is the LRE, the school must provide the necessary supports and tools for learning to take place.

Students with disabilities must be provided supplementary services and aids that permit them to benefit from their education.

(IDEA, 2004, 300.320; Ohio Department of Education, 2008, 3301-51-07 (H)(1)(e).)

IDEA defines “supplementary aids and services” to mean aids, services, and other supports that are provided in general education classes, other education-related settings, and in extracurricular and nonacademic settings to enable children with disabilities to be educated with nondisabled peers to the maximum extent appropriate. As stated before, AT is included in this definition. Given the clarification that supports are to be provided in other settings, it is clear that the student should be able to also use a device (such as an AAC device) in after-school and nonacademic functions.

All supplementary aids and services are to be listed in the IEP. This may include AT devices and supports, such as inservice training for the teaching staff. All personnel working with the student should be trained in implementation of the AT in the classroom. Specifically, to ensure that the device is used effectively, these significant people must be familiar with the device and ways in which it will enable the student to benefit from his/her educational program.

With a parent’s informed consent, a fair assessment must be completed to determine the student’s educational needs.

(IDEA, 2004, 614; Ohio Department of Education, 2008, 3301-51-06 (A)(4).)

Evaluation provides the foundation for the IEP. In the Operating Standard for Ohio Educational Agencies Serving Children with Disabilities (Ohio Department of Education, 2008), the term “assistive technology” is not specifically mentioned in the section entitled “Evaluation Procedures.” This section does state, however, that the student shall be assessed in all areas related to the suspected disability, including motor abilities, communicative status, and academic performance.

Providing appropriate AT begins with a comprehensive assessment.

Key principles of assessment in IDEA are as follows:

1. Evaluation instruments must be administered by trained personnel.
2. Instruments include those designed to assess areas of specific need and not
3. Merely those that provide an intelligence quotient (IQ).
4. Evaluation shall be conducted by a multidisciplinary team or group of persons.
5. No single instrument should be the sole criterion for decision-making.

The AT evaluation team must be knowledgeable about the specific area of disability and the technology devices and services that may enable the student to benefit from his/her educational program. If the school district does not employ personnel who can properly evaluate the student’s AT needs, it must obtain such services. Assessment should be completed in the student’s customary environment and should remain part of a team process that considers the global educational needs of the student.

Parents have the right to an independent AT evaluation at the district’s expense, if they disagree with the evaluation conducted by the district.

If a student is identified as having exceptional educational needs, an Individualized Education Program (IEP) must be prepared annually.

(IDEA, 2004, 300.320; Ohio Department of Education, 2008, 3301-51-07 (A).)

The IEP must include the goals for the student, the services the student will receive, and how and where the student will receive those services. The IEP team must consider and determine modifications or tools that are needed for the student to achieve the goals. The IEP must also specify what AT devices and/or services are necessary for the student to receive FAPE.

Assistive technology may be documented in the IEP as part of the student’s profile, present levels of academic achievement and functional performance, goals and objectives, transition services, specially designed services, visual impairment services, and participation in state and district testing. Regardless of where in the IEP AT appears, the IEP document should clearly reflect the AT needed and describe the manner in which it will be used as well as the services/supports required.

IDEA vs. Section 504

Section 504 was added to the Rehabilitation Act of 1973. Section 504 prohibits discrimination on the basis of disability in any program receiving special funds, including public school districts.

To be eligible for services under IDEA, a student's disability must meet the definition of one of the several disabilities listed and must require special education services. Under Section 504, on the other hand, students with disabilities are eligible even if they do not need any special education services. Therefore, students who do not meet the criteria under IDEA but who still need some specialized assistance (including AT) are covered by Section 504. If a student with a disability who is not receiving special education services needs an AT device to fully participate in school activities, Section 504 may require that the school provide the device and any training needed to effectively use it at no cost to the parents and be responsible for repairs and maintenance.

Determining Educational Relevance of Assistive Technology Devices and Services

According to Chamber (1997), the school district must answer four specific questions when determining whether AT is educationally necessary for a student:

1. Is the provision of an AT device or service essential for the student to receive FAPE?
2. Is an AT device or service necessary for the student to be educated within the LRE?
3. Are the AT devices and/or services a necessary related service?
4. Given AT services and/or devices, will the student have access to school programs and activities?

If the answer to any of the above questions is yes, the AT device and/or service is legally required, and is the responsibility of the school district.

Related Issues in IDEA 2004

In addition to the sections of IDEA that address AT specifically, other areas of IDEA on supports and services are directly related to AT. Those areas include universal design and the National Instructional Materials Accessibility Standard and the provision of accessible instructional materials.

Universal Design: IDEA refers to the definition of universal design that is used in the Assistive Technology Act.

The term 'universal design' means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly usable (without requiring assistive technologies) and products and services that are made usable with assistive technologies.

(Assistive Technology Act of 1998, 29 U.S.C. 3002)

According to IDEA, state educational agencies (or local agencies in the case of district assessments) shall, to the extent feasible, use universal design principles when developing and administering any statewide assessment. With an increased emphasis on the universal design of products and services, some students with disabilities may be able to access and use educational materials without the addition of special AT.

National Instructional Materials Accessibility Standard and Accessibility of Print Materials: One of the most significant AT-related additions to IDEA is the provision of accessible instructional materials to blind students or other students with print disabilities in a timely manner and free of charge. "Print instructional materials" means printed textbooks and related printed core materials that are written and published primarily for use in elementary and secondary school instruction and are required by a state education agency (SEA) or local education agency (LEA) for use by students in the classroom. The law specifies that materials must be formatted to the National Instructional Materials Accessibility Standard (NIMAS) to be used in the preparation of electronic files suitable and used solely for efficient conversion of print materials, including textbooks, in accessible media, free of charge, to blind or other students with print disabilities in elementary and secondary schools.

For additional information on NIMAS/NIMAC, see the National Center on Accessible Instructional Materials: aim.cast.org

For information on NIMAS/NIMAC in Ohio:

Center for Instructional Supports and Accessible Materials (CISAM)

Ohio State School for the Blind
5220 North High Street
Columbus, OH 43214
614.644.8378
cisam.ossb.oh.gov/ContactUs.php

Implications of Case Law Related to Assistive Technology / Computer Provision

The implications of past case law suggest how the courts may rule on future decisions related to computer provisions. Doty, Seiler, and Rhoades (2001) provide a summary of case law as follows:

1. Courts are likely to provide a computer to a student with a disability in order to provide a basic floor of opportunity.
2. Courts are likely to rule for provision of a computer when it is part of a product system. A product system may include additional software and peripheral hardware used along with the computer to provide a system of support for the individual that could not be achieved with any of the items individually. For example, a person with a significant physical challenge who has difficulty writing may not be able to use a standard keyboard or mouse. They may instead need to use switches attached to the computer via a switch interface to make selections from an on-screen keyboard that would then allow them to type into a specialized word processing program. None of these items alone would allow the individual to write independently, but in combining the computer, on-screen keyboard and specialized word processing software, switches and switch interface into a product system the individual would be able to write independently.

3. Courts may rule that a computer is necessary when it will increase the student's access to a LRE.
4. Courts are likely to rule for a computer if a teacher views the computer as necessary for that student.
5. Rejecting the suggestion of a computer for the reason of not knowing how to use it maybe viewed as a denial of a related service necessary for FAPE.
6. In an IEP, if computer use is reasonably calculated to provide some benefit to a student, the court is like to award its use.

Disability Rights Ohio

As case law emerges related to AT, there may be times when assistance is needed by AT users, assessment teams, as well as suppliers to understand their obligation for providing devices and services under the various laws and legislation. Disability Rights Ohio is designated under federal law as the Client Assistance Program under the Rehabilitation Act. As such, the mission of Disability Rights Ohio is to advocate for the human, civil, and legal rights of people with disabilities in Ohio.

Disability Rights Ohio provides legal advocacy and rights protection to a wide range of people with disabilities. This includes assisting with problems such as abuse, neglect, discrimination, access to AT, special education, housing, employment, community integration, voting, and rights protection with the juvenile and criminal justice systems.

Agency: Disabilities Rights Ohio

Address: 50 W. Broad Street, Suite 1400, Columbus, OH 43215-5923

Telephone: 614-466-7264

TTY: 614-728-2553

Website: www.disabilityrightsohio.org/need-our-help

Summary

This section addressed the legislation and laws that pertain to AT. IDEA was discussed as the major law to inform school districts about their obligations to provide AT to students with disabilities. Universal design (UD) and Accessible Instructional Materials (AIM) as identified in IDEA and as related to AT were also discussed. Additionally, it was pointed out that not all students with disabilities are eligible for special education services, and consequently AT, under IDEA. Some students are eligible for AT supports and services under Section 504 of the Rehabilitation Act. Finally, many of laws have been revised over the years, and consequently persons with disabilities have achieved even greater support for acquisition of both AT devices and services.

References

Americans With Disabilities Act of 1990, Pub. L. No. 101-336.

Assistive Technology Act of 1998, 29 U.S.C. 3002 Pub. L. No. 105-394.

Assistive Technology Act of 2004, Pub. L. No. 108-364.

Board of Education of the Hendrick Hudson Central School District, Westchester County, et al. v. Rowley, 458 US 176 – Supreme Court 1982; Google Scholar. Retrieved from <http://goo.gl/qyU0r>

Chamber, A. C. (1997). Has technology been considered? A guide for IEP teams. Arlington, VA: Council of Administrators of Special Education. Retrieved from <http://goo.gl/Bq1wF>

Doty, M., Seiler, R., & Rhoades, L. (2001). Assistive technology in the schools: A guide for Idaho educators. Boise, ID: Idaho State Department of Education, Special Education Section. Retrieved from <http://goo.gl/4NbKF>

The Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142.

Individuals With Disabilities Education Act of 2004, Pub. L. No. 108-446.

Ohio Department of Education. (2008). Operating standards for Ohio educational agencies serving children with disabilities. Retrieved from <http://goo.gl/0zOcO>

Pachl v. School Board of Independent School District No. 11, Dist. Court, Minnesota 2005. Retrieved from <http://goo.gl/lsFNQ>

Petit v U.S. Department of Education. US. Court of Appeals for the District of Columbia Circuit 2012. Retrieved from <http://goo.gl/ZsHHD>

Rehabilitation Act of 1973, Pub. L. No. 93-112.

Technology-Related Assistance for Individuals With Disabilities Act of 1988, Pub. L. No. 100-407.

Timothy W. v. Rochester, NH School Dist., 875 F. 2d 954 – Court of Appeals, 1st Circuit, 1989. Retrieved from <http://goo.gl/tw71j>

Resources

ADA U.S. Department of Justice. www.ada.gov

ADA Library, JAN Job Accommodation Network. askjan.org/links/adalinks.htm

Association of Assistive Technology Act Programs (ATAP). www.ataporg.org

Disability Rights Ohio. www.disabilityrightsohio.org

Georgia Project for Assistive Technology (GPAT). (n.d.). Considering assistive technology for students with disabilities. Retrieved from www.gpat.org/Georgia-Project-for-Assistive-Technology/Pages/Considering-Assistive-Technology-for-Students-with-Disabilities.aspx

NIMAS Resources. nimas.cast.org/about/resources/index.html

Section 508. www.section508.gov

Smith, S. J. (2011). Assistive technology consideration in the IEP process: Online training module. In Ohio Center for Autism and Low Incidence (OCALI), Assistive Technology Internet Modules. Columbus, OH: OCALI. www.atinternetmodules.org

U.S. Department of Education. Building the Legacy: IDEA 2004. idea.ed.gov

U.S. Department of Education. (2004). The Rehabilitation Act. www.ed.gov/policy/speced/reg/narrative.html

U.S. Department of Education, Office of Civil Rights. Section 504. www.ed.gov/about/offices/list/ocr/504faq.html

U.S. Department of Labor, Office of Disability Employment Policy. (2007). ADA Hotlinks and Document Center. www.jan.wvu.edu/links/adalinks.htm