

INFINITEC: ASSITIVE TECHNOLOGY IN-SERVICE AND ATTORNEY PANEL

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Federal Regulations

34 C.F.R. §300.5 Assistive Technology Dev

Assistive technology device means any equipment, or product system, whether commercially off the shelf, modified, or customized, is used to increase, maintain, or improve the capabilities of a child with a disability. This includes a medical device that is surgically implanted, or the replacement of such device.

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Federal Regulations

34 C.F.R. §300.6 Assistive Technology Service.

Assistive technology service means any service that directly addresses a child's disability in the selection, acquisition, or use of an assistive technology device. The term includes—

- (a) The evaluation of the needs of a child with a disability, including the evaluation of the child in the child's customary environment;
- (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- (c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- (d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing or emerging rehabilitation plans and programs;
- (e) Training or technical assistance for a child with a disability or the child's family; and
- (f) Training or technical assistance for professionals (including school personnel, education or rehabilitation services), employers, or other individuals providing services to, employ, or are otherwise substantially involved in the daily lives of functions of that child.

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Federal Regulations

34 C.F.R. §300.105 Assistive Technology.

(a) Each public agency must ensure that assistive technology devices or assistive technology services, or both, are made available to any child with a disability if required as a part of the child's

- (1) Special education under § 300.36;
- (2) Related services under § 300.34; or
- (3) Supplementary aids and services under § 300.114(a)(2)(ii).

(b) On a case-by-case basis, the use of school-provided assistive technology devices in a child's home or in other settings must be made available if the child's IEP Team determines that the child needs those devices in order to receive FAPE.

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Federal Regulations

34 C.F.R. §300.324(a)(2)(v) Development,
Revision of IEP

(2) Consideration of Special Factors

The IEP Team must—consider whether the
assistive technology devices and services.

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Illinois School Code

On August 20, 2018, the Illinois School Code was amended to require that IEP teams provide notification to parents and/or guardians in writing that the team will assess if the student needs assistive technology, and they must also provide a free telephone number and internet address so parents can locate information on the assistive technology program.

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Section 504 Obligations

Pursuant to Section 504 an eligible student is defined as one who:

- i) has a physical or mental impairment which substantially limits one or more major life activities,
- (ii) has a record of such an impairment, or
- (iii) is regarded as having such an impairment.

(34 C.F.R. §104.3(j)(1))

Major life activities include activities such as walking, seeing, hearing, learning, caring for one self, personal tasks, speaking, breathing and working.

Section 504 requires the provision of regular or special education and related aids and services that are designed to meet the educational needs to a student with a disability in the same manner as to those without disabilities.

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Assistive Technology Process

Assistive Technology Process:

1. Consideration of AT: determination of student needs AT to receive a FAPE.
2. Provision of AT: ensure student recommended AT with no charge to the family.
3. Implementation of AT: training, support, utilize AT, and customization of AT.
4. Monitoring of AT: data reviewing student performance based on AT.

Illinois Assistive Technology Guidance Manual – 2012 Edition

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Relevant Caselaw: Assistive Technology Evaluations

Letter to Fisher, 23 IDELR 565 (OSEP 1995)

IEP teams must determine whether an AT evaluation is warranted. OSEP also indicates that parents may request an IEE if they disagree with the school's evaluation or if they disagree with a school evaluation that fails to assess the area of AT need.

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Relevant Caselaw: Assistive Technology Evaluations

E.F. v. Newport Mesa Unified Sch. Dist., 65 IL
(C.D.Cal. 2015)

A six-year-old student with Autism was successful for entertainment purposes. At school, the District provided a picture exchange communication system (PECS) with success; the student primarily communicated by gazes, and leading persons by the hand.

The school district waited almost a year before conducting an evaluation and did so only after a private evaluator determined the student was able and willing to use an iTouch to communicate.

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Relevant Caselaw: Assistive Technology Evaluations

E.F. v. Newport Mesa Unified Sch. Dist., 65
(C.D.Cal. 2015)

The hearing officer found that “given Stu in using the iPad and his success with should have at least assessed Stude discovering his ability to use the iPad agreed, but noted there was not an ob evaluation before learning of the student ipad, noting “prior to learning about E.F. an iPad in February 2012, however, th reasonable to believe that E.F. was not ye using ‘high-tech’ devices, as his knowle such communication was still emerging.”

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Relevant Caselaw: Assistive Technology Evaluations

Montgomery County Pub. Schs., 114 LRP 4 (Maryland 2014)

An AT evaluation of a 2nd -grader with visual impairment. The student tried different tablet computers, one of which had been helpful for reading. The evaluation findings recommended a magnification device for viewing a whiteboard, screen reader software for viewing a computer, and other accommodations, but not the tablet computer.

The hearing officer found while the tablet computer was not appropriate AT for a child with a visual impairment, the hearing officer found that to be appropriate, an AT that can enable the student to access the whiteboard. The hearing officer found that to be appropriate, an AT that does not have to determine which AT might be the best for the student. It has to be a preferred device by parents.

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Relevant Caselaw: Assistive Technology Evaluations

Antelope Valley Union High Sch. Dist., 110
(SEA California 2010)

Without conducting an AT evaluation, the school provided a student with dyslexia a portable Fusion text-to-speech device and headphones. The student had previously complained that the Fusion speaker made him stand out too much in class. The student trained himself and the student on the device and the parent, who declined. The student then complained that the device was too heavy to carry in his backpack. The student refused to use the device, instead asking for a note-taking device to assist in writing. The student had also previously used an AlphaSmart word processing device.

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Relevant Caselaw: Assistive Technology Evaluations

Antelope Valley Union High Sch. Dist., 110
(SEA California 2010)

The hearing officer found that the District improperly attributed Student's failure to access his AT devices to behavior issues instead of conducting an AT evaluation to address the need. "Knowing that Student was not benefitting from current services put the District on notice to make concerted efforts and inquiries to develop AT-related services which benefit Student."

The hearing officer also noted that the lack of an AT evaluation, moreover, impeded the parents' opportunity to meaningfully participate in the IEP process. The "District's AT team failed to decide what Student needed, give it to him, monitor its effectiveness, and blame him if AT did not help."

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Relevant Caselaw: Choice of Assistive Technology Devices

The relevant caselaw demonstrates that the choice of AT will generally be respected so long as the selected device is appropriate to meet the individual's needs and provide a FAPE.

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Relevant Caselaw: Choice of Assistive Technology Devices

Key Factors to Consider when Determining the Appropriate AT

1. Relative flexibility and adaptability of the AT to the educational needs and student progresses •
2. The degree to which the AT will be linked to IEP goals
3. Ease and practicality of use
4. Amount of training required for staff and student (and parents, if applicable) to use the AT appropriately
5. Availability of replacement parts or replacement devices
6. Durability of device
7. Potential need for updating software and ease of updating
8. Student's history with similar AT in the past
9. Whether particular AT might be distracting or disruptive
10. Results of trials with the AT or similar AT

<https://cdn.ymaws.com/www.tcase.org/resource/resmgr/Currenvi.pdf>

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Relevant Caselaw: Choice of Assistive Technology Devices

Los Angeles Unified Sch. Dist., 46 IDELR 23 (EEOC, California 2011)

The parents wanted an iPad2 for their 19-year-old child who has cerebral palsy, cognitive impairment, asthma, and developmental delays. The District provided a communication device with a dynamic interface.

The hearing officer noted the thorough nature of the evaluation and device selection, pointing out that the District replaced a first device with a more advanced one (SpringBoard Lite) as it became available. The District programmed the device and trained the student, speech therapist, and aide in its use.

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Relevant Caselaw: Choice of Assistive Technology Devices

Los Angeles Unified Sch. Dist., 46 IDELR 23 (California 2011)

Logs showed that the student made progress. Although the parent contended that the iPad2 was not the student's needs, the hearing officer found "the District is obligated to provide the most technologically advanced device or a device that would serve other purposes." The hearing officer thus found that the AT provided by the District was calculated to confer educational benefit.

The IDEA does not guarantee the best possible AT.

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Relevant Caselaw: Implementation and Maintenance of AT

School Dist. of Philadelphia v. C.H., 66 IDEL (2015)

The IEP of a high school student with Autism and other impairments called for a tablet or other AT to help develop his writing and communication skills. The District did not provide the AT for about seven months. The IEP indicated that the student was already “verbal.”

The Court found a failure to implement AT constituted a substantial or significant failure in implementation, denying the student a FAPE. Without it, he had difficulty constructing correct sentences. “The fact that C.H. was verbal without the iPad did not mean that its role in his education was substantial or significant.”

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Relevant Caselaw: Implementation and Maintenance of AT

C.B. v. Pittsford Cent. Sch. Dist., 54 IDELR 121 (2010)

A District offered a 9th grade student with writing difficulties the services of an AT Coordinator, but he did not consistently use a word processing device out of school. The student also refused to use a tablet computer that had been provided.

The parents argued that it was a lack of teacher support that caused the student not using the AT. The Court found that "instead, the record indicates that [the student] did not know how to use the assistive technology that he was provided and not to do so." The record, moreover, did not support the claim that there was a lack of AT support.

But Note: Duty to reevaluate in such situations from

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Relevant Caselaw: Implementation and Maintenance of AT

Board of Educ. of the Springville-Griffith Ind. Sch. Dist., 106 LRP 16973 (SEA New York)

In this case, the District required parents to sign a "Sign-out Agreement" acknowledging that they were responsible for theft, damage, and loss of the AT while at school.

The hearing officer held that state law, rather than the agreement, generally governs whether parents are liable for damage due to negligence or misuse of District property. The hearing officer found that a document requiring parents to accept responsibility for AT does not violate IDEA because holding a borrower of property responsible for theft is consistent with federal regulation." The agreement impermissibly deprive the student of the right to use the AT.

But Note: Enforcement of such agreements may be necessary to leave the student without a device.

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Relevant Caselaw: Implementation and Maintenance of AT

Lyon County Sch. Dist., 110 LRP 73249 (SE Complaint Nevada 2010)

An 8th grade student with a visual impairment relied on a computer Braille notebook to complete assignments each day. When the device malfunctioned after 15 days, the school was required to provide a replacement within 55 days for the school to repair it. The school, however, did not provide a replacement during that period. The state held this a violation of IDEA, as the failure to implement the IEP denied the student the opportunity to not achieve two of his IEP goals.

But Note: Ensure consideration of replacement device options (i.e. copies of AAC pages).

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Relevant Caselaw: Parent AT Requests

Carlsbad Unified Sch. Dist., 59 IDELR 87 (S.D. Cal. 2012)

In order to assist a 9-year-old student with Autism in social interaction, his parents wanted the District to provide an iPad. When the District declined, the parents requested a hearing. They argued that without expressly incorporating an iPad into the IEP did not properly address social skills goals.

The Hearing Officer ruled that while the iPad was a useful means for the student to initiate conversations, the evidence demonstrated that the student's use of written scripts was more effective to work on social skills. Indeed, the Hearing Officer found that the student's use of an iPad could be distracting and cause problems, since the student tended to erase programs and data.

The decision whether to use the written scripts or the iPad to initiate social interaction boiled down to a matter of methodology, which the law leaves to the District's discretion.

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Relevant Caselaw: Parent AT Requests

Chaffey Joint Union High Sch. Dist., 59 IDE
California 2012)

The parents believed that an iPad would enhance the student's learning ability by presenting material in an engaging format and make better use of unstructured transportation time. The Hearing Officer concluded that there was no evidence that the student with autistic-like behaviors needed an iPad to learn, to socialize, or control his behaviors on the bus. More importantly, the Hearing Officer reflected that the student did not need an iPad for his homework.

The Hearing Officer noted that the student was meeting all his IEP goals and passing his classes using the accommodations provided (weighted pen, ruler, special lined paper). The Hearing Officer held that a district must provide accommodations to the extent a student needs it to benefit from special education.

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Relevant Caselaw: Parent AT Requests

Sherman v. Mamaroneck Union Free Sch. Dist.
181 (2nd Cir. 2003)

A student with SLD in math was allowed to use a calculator in math, but he was failing the class. The model of instruction required him to work through the various steps of a math problem to arrive at an answer. His parent insisted that he be provided with a TI-92 model, which would provide the final answer, requiring the student to learn to factor equations.

Teachers indicated that the TI-92 would be inappropriate and would improperly circumvent the learning process of the student. They also testified that the student was failing due to lack of effort. The Second Circuit Court held that the student had the capacity to learn factoring, "if a school provided that assistive device requested, even if it awarded passing grades, it would in fact deny the student the education benefits the IDEA requires."

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Relevant Caselaw: Parent AT Requests

City of Chicago Sch. Dist. 299, 62 IDELR 22 (2013)

Although a 9th -grader with Autism and SLD in 8th grades, including in math, the hearing officer found that the calculator only masked his deficiencies in math. The parent presented uncontroverted evidence that while the student could perform math calculations with the calculator, he did not understand the basic calculations he was performing. The school psychologist testified that the student's math skills were below the first percentile in math. The hearing officer believed the teacher that the student had the capacity to understand math skills, but he ordered the school to provide multi-sensory based instruction to teach math skills, rather than simply replacing the need for math instruction with accommodations completely mask Student's deficiencies in math calculations."

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Federal Regulations Medical Devices

34 C.F.R. §300.34—Related services.

(a) General. Related services means transportation, developmental, corrective, and other supportive services required to assist a child with a disability to benefit from education, and includes speech language pathology services, interpreting services, psychological services, occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities, counseling services, including rehabilitation counseling, and mobility services, and medical services for evaluation purposes. Related services also include services and school nurse services, social work services, and parent counseling and training.

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Federal Regulations Medical Devices

34 C.F.R. §300.34—Related services

(b) Exception; services that apply to children with implanted devices, including cochlear implants.

(1) Related services do not include a medical device surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or replacement of that device.

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Federal Regulations Medical Devices

34 C.F.R. §300.34—Related services.

Nothing in paragraph (b)(1) of this section—

- (i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services that are determined by the IEP Team to be necessary for the child to receive a free appropriate public education;
- (ii) Limits the responsibility of a public agency to monitor and maintain medical devices that are necessary to maintain the health and safety of the child, including breathing, nutrition, or operation of other medical devices while the child is transported to and from school or other activities;
- (iii) Prevents the routine checking of an external surgically implanted device to make sure it is working properly, as required in § 300.113(b).

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Federal Regulations Medical Devices

34 C.F.R. §300.113—Routine checking of hearing aids and external components of surgically implanted medical devices.

- (a) Hearing aids. Each public agency must ensure that each child in a school by children with hearing impairments, including children who are deaf-blind, are functioning properly.
- (b) External components of surgically implanted medical devices.
 - (1) Subject to paragraph (b)(2) of this section, each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.
 - (2) For a child with a surgically implanted medical device who is receiving special education and related services, the public agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or any external component of the surgically implanted medical device).

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Federal Regulations Medical Devices

Letter to Seiler, 20 IDELR 1216 (OSEP 1995)

Historically, it has been the policy of OSEP that a school was not required to purchase a hearing aid for a student who is hearing impaired because a public agency is not required to provide a personal device that the student needs, regardless of whether he/she was attending school. OSEP clarified that such a policy would not apply if the IEP specified that the student's IEP that he needed a hearing aid.

Key Question for analyzing these matters: Whether the student would need the AT whether they attend school or not.

But Note: Be careful what you put in the IEP re: need for AT. Implementation and receipt of FAPE, as you do not have additional obligations that schools are traditionally required to purchase or provide.

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Resources

<https://www.isbe.net/Documents/assist-t-manual.pdf>

https://cdn.ymaws.com/www.tcase.org/re/Current_Legal_Issues_Involvi.pdf

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Questions?

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