Legal Basis for AT

The Individuals with Disabilities Education Act (IDEA) provides the following mandates and definitions for implementing assistive technology for students identified as having a disability and requiring special education supports and services.

Assistive Technology: [IDEA 300.308]

Each public agency shall ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in 300.5-330.6, are made available to a child with a disability if required as part of the child’s:

- special education under 300.17
- related services, or
- supplementary aid and services.

Definition of Assistive Technology Device:

The term “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 functional capabilities of children with disabilities. [IDEA 300.5]

Definition of Assistive Technology Service:

The term “assistive technology service” means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. [IDEA 300.6] This includes:

1. the evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child’s customary environment
2. purchasing, leasing or otherwise providing for the acquisition of assistive technology devices by children with disabilities
3. selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices
4. coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs
5. training or technical assistance for a child with a disability, or, if appropriate, that child’s family

Although IDEA requires that all students be provided with assistive technology as needed for delivery of a free and appropriate public education (FAPE), the only exception is for those devices that are determined to be "medical". Not all children are covered under medical policies, or policies that include the provision of assistive technology devices. Therefore school teams may need to assist families in accessing the Medicaid system for funding of such equipment, in some circumstances.
Title II of the American with Disabilities Act (ADA) mandates the provision of “auxiliary aids and services”, which encompasses assistive technology along with a variety of other services including human supports. Auxiliary aids and services are required, as needed, to ensure equal access to programs and services that are needed for effective communication with individuals with disabilities.

General Provisions: [ADA 35.160]
(a) A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.
(b)(1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of a service, program, or activity conducted by a public entity.
(b)(2) In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with the disability.

Definition of Auxiliary aids and services: [ADA 35.104] Auxiliary aids and services includes:
1. Qualified interpreters, notetakers, transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons, videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
2. Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;
3. Acquisition or modifications of equipment or devices;
4. Other similar services and actions.

Section 504 of the Rehabilitation Act does not specifically define assistive technology devices and services, but refers to “special education and related aids and services” in the description of the delivery of an appropriate education and use of the terms “supplementary aids and services” in the discussion of academic settings in which students should be served.

The ADA includes a specific exemption for personal use devices as follows. IDEA has not yet included such a personal use exemption, and there are those who feel that the distinction between what is and is not “personal use” would be so problematic as to make such an exemption useless.

[ADA 35.135] Personal devices and services
This part does not require a public entity to provide to individuals with disabilities personal devices, such as wheelchairs, individually prescribed devices, such as prescription eyeglasses or hearing aids, readers for personal use or study, or services of a personal nature including assistance in eating, toileting, or dressing.

For the most part, the challenge to IEP teams is to ensure that students are provided a free and appropriate public education, or “FAPE”, AND equal access to the same opportunities afforded nondisabled children (as described in IDEA and Section 504). But in addition, the ADA specifies that “effective communication” and “consideration of consumer preference” are also requirements when addressing the assistive technology needs of individual students.
More than one federal law addresses the requirement that school districts provide assistive technology to students who need it to benefit from and have equal access to their educational programs. Most students with disabilities receive their AT under the mandates in IDEA. However, other students may receive similar AT devices and services under the requirements of Section 504 of the Rehabilitation Act (Section 504) or the Americans with Disabilities Act (ADA).

School districts have been required since 1990 to provide both AT devices and services. IDEA requires that the devices and services be available to every student with a disability if that student needs AT in order to receive a free appropriate public education (FAPE). Education agencies are required to provide AT to students with disabilities to ensure that they have access to their educational programs. This access can mean access to special instruction, access to the general curriculum, or access to extracurricular activities.

IDEA also addresses the use of school-purchased AT at home. When students with disabilities have educational goals that require them to use specific skills at home, the IEP team may decide that the AT is also needed in order to do the homework. The use of an augmentative communication device may also require home use.

When AT is needed, it becomes part of FAPE for the student. The AT devices that are necessary to ensure FAPE must be provided at no cost to the parents, and the parents cannot be charged for normal use and wear and tear. Conversely, IDEA also states that the provision of AT devices and services is limited to those situations in which they are required in order for a student with disabilities to receive FAPE.

Not all students with disabilities need specially designed instruction. Students with disabilities who do not require specially designed instruction are not eligible for special education services under IDEA and will not have IEPs. These students may still need AT in order to access or participate in their education and may receive it under the provisions of Section 504 of the Rehabilitation Act or the Americans with Disabilities Act (Title II). Section 504 is a civil rights law that guarantees that no student with a disability will be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Education agencies that receive federal funds must provide accommodations to students with disabilities if needed so that they will receive an education equal to that of their peers. One or more of those accommodations may be AT.

The Americans with Disabilities Act (ADA) of 1990 is also a civil rights law that prohibits discrimination on the basis of disability. Students with disabilities are covered by Title II and Section 504 regardless of their eligibility for special education and related services under the IDEA.

There are differences between the IDEA and the Title II regulations. Title II regulations require that public schools provide appropriate “auxiliary aids and services” when necessary to afford an “equal opportunity” to participate in and benefit from the district’s services, programs, and activities. Assistive technology may be part of those “auxiliary aides.” Title II specifically requires that a student with disabilities have the opportunity to be as effective at communicating as a student without disabilities. This is a more stringent requirement than IDEA and may require further action.

Since AT was first mandated in 1990, school districts and other education agencies across the United States have developed a variety of styles of delivering AT services. These vary from an “expert model,” where members of an AT team are the only ones in the agency empowered to make recommendations about the selection, acquisition, and use of AT, to “capacity building models,” where the members of the AT team spend their time training and supporting members of the IEP teams and student service teams so that they can effectively perform as independently as possible.

Unfortunately, IEP teams often have a difficult time effectively considering a student’s need for AT unless they have had sufficient training to understand AT and what it does. A survey of educators about their understanding of AT found that respondents who had 40 or more hours of training about AT felt that it was essential to students’ daily routine and felt comfortable in identifying and using AT to ensure educational access. Respondents without training felt that AT was not important to students’ daily activities and stated that they were not confident in identifying and using AT. In that same study, nearly 90% of respondents stated that their preservice preparation programs did not adequately emphasize AT use.