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Assistive Technology and Students with Disabilities

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Assistive technology is designed to allow students with disabilities to accomplish tasks they would have been unable to perform without AT.

As part of providing a free appropriate public education (FAPE) to students with disabilities, the Individuals with Disabilities Education Act (IDEA) requires school boards to offer assistive technology when necessary to ensure that students receive the educational benefits to which they are entitled.

As important as related services such as assistive technology (AT) are, the Supreme Court noted that school boards must provide such help only to the extent that it is necessary for students with disabilities to benefit from the programming identified in their individualized education plans (*Irving Independent School District v. Tatro* 1984). Although the related services mandate has been part of the IDEA since its adoption in 1975, the specific language requiring boards to provide AT—which was first added as part of its 1990 reauthorization—has been subjected to little litigation.

Aware of the key role that AT devices can play in the delivery of special education, as well as their potentially significant cost, this column focuses on legal issues surrounding AT use for students with disabilities.

By highlighting the limited, but important, litigation in this area, this column is designed to keep school business officials (SBOs), their boards, and other education leaders abreast of the latest developments so they can better marshal their resources as they develop appropriate policies.

After reviewing the key AT provisions in the IDEA and its regulations, the column suggests six guiding principles to assist SBOs and others in developing legally sound policies for delivering AT to qualified students with disabilities.

The IDEA and Assistive Technology

Assistive technology generally refers to items and devices to help individuals with disabilities achieve greater independence. In mandating the delivery of AT for students with disabilities, Congress created it as a category separate from special-education and related services even though it fits within either of these rubrics. Regardless, Congress directed school boards to provide AT for students with individualized education plans (IEPs) if it is necessary to ensure that they receive a free appropriate public education in the least restrictive environment.

Before the enactment of its 1990 amendments, the IDEA did not define AT devices and services. The 1997 and 2004 amendments to the IDEA offered additional clarifications about board responsibilities pertaining to AT. The IDEA and its regulations now define AT devices as items, pieces of equipment, or product systems used to increase, maintain, or improve the functional capabilities of individuals with disabilities (20 U.S.C. § 1401[1]; 34 C.F.R. § 300.5). These AT devices may include commercially available, modified, or customized equipment. A 2004 amendment to the IDEA indicates that AT does not include surgically implanted medical devices or their replacements (20 U.S.C. § 1401[1][B]).

The IDEA further defines AT services as those designed to provide direct assistance to individuals with disabilities in the selection, acquisition, or use of assistive technology devices (20 U.S.C. § 1401[2]). The IDEA establishes six elements in the delivery of AT services:

1. Educators must include evaluations of student needs, including functional evaluations, in their customary environments.
2. Boards must purchase, lease, or otherwise provide for the acquisition of AT devices for students.
3. Educators must help select, design, fit, customize, adapt, apply, maintain, repair,

or replace AT devices.
4. Officials must coordinate the use of other therapies, interventions, or services with AT devices, such as those associated with existing educational and rehabilitation programs.
5. Boards must offer training or technical assistance to students and their families.
6. Boards must provide training and technical assistance for professionals who deliver educational or rehabilitation services for students with disabilities (20 U.S.C. § 1401[2]).

AT must be included in IEPs if it is necessary for students to receive FAPEs under the standard set by the Supreme Court in *Board of Education of Hendrick Hudson School District v. Rowley* (1982). In *Rowley*, the Court held that a FAPE is developed in accordance with the IDEA's procedures and is reasonably designed to provide students with "some educational benefit" (p. 176). What's more, since AT may allow many students with disabilities to benefit from education in least restrictive environments, it may be required under the IDEA's least restrictive environment provision.

As part of the overall process of developing IEPs, educators, in partnership with parents, must consider whether children need AT devices and services (34 C.F.R. § 300.324[a][2][v]). Yet the IDEA does not require IEP teams to document their considerations of the AT needs of students if they find that providing assistive technology is unnecessary. On the other hand, if IEP teams agree that students need AT, the details must be incorporated into their IEPs.

The IDEA's regulations specifically direct school boards to ensure that AT devices and services are made available to students if either or both are called for in their IEPs (34 C.F.R. § 300.105[a]). Moreover, students are entitled to AT devices in their homes if their IEP teams agree that they are necessary for their receiving FAPEs (34 § 300.105[b]). For example, students who need AT to complete classroom tasks may also need it to finish their homework assignments.

Explanatory material that accompanies the current IDEA regulations in the *Federal Register* clarifies that school boards are not required to provide students with such personal devices as eyeglasses, hearing aids, or braces that children need regardless of whether they attend school (Final Regulations 1999). Of course, boards are free to offer such assistance if they wish to do so. The explanatory material also emphasizes that students with disabilities have a right to access general technology that is available to their peers who are not disabled. If students with disabilities require accommodations in order to use general technology, they must be provided.

It is important to recall that assistive technology is designed to allow students with disabilities to accomplish tasks they would have been unable to perform without AT or to carry them out more easily. It is also worth acknowledging that AT can take many forms, such as providing students with calculators or computers with software specifically designed or adapted for individuals with disabilities.

Yet AT does not necessarily need to be "high tech" and can include such items as rubber pencil grips to allow children to more easily use writing instruments. Items that assist individuals with disabilities can be considered AT even if they do not involve technology in the modern or electronic sense of the word.

Guiding Principles

Since the relatively few cases generated by the IDEA's AT provisions are significant insofar as they help clarify the law, the following six principles gleaned from the litigation can serve as guides for SBOs, their boards, and other education leaders as they address the needs of students with disabilities.

1. AT decisions should be based on comprehensive data regarding student needs. The IDEA assessment process should begin with competent AT evaluations. Although conducting AT evaluations for all students with disabilities is unnecessary, evaluations should be completed if parents request them or if IEP team members think assistive technology may be needed to provide FAPEs (*Blake C. ex rel. Tina F. v. Department of Educ., State of Hawaii* 2009). Conversely, since the IDEA does not require the delivery of AT when boards can provide FAPEs without it, a federal trial court in Minnesota observed that evaluations are unnecessary if AT is clearly not needed (*Grant ex rel. Sunderlin v. Independent Sch. Dist. No. 11* 2005).

Comprehensive AT evaluations should identify students' areas of need, assess whether AT would minimize their deficits, and include determinations about whether AT is necessary to provide FAPEs (*A.L. ex rel. L.L. v. Chicago Pub. Sch. Dist. No. 299* 2011). Evaluations must be completed in a timely fashion (Idea Public Charter Sch. v. District of Columbia 2005). If boards lack qualified staff members to conduct AT evaluations, they should retain outside consultants for this purpose.

2. AT is not required when FAPEs can be provided without assistance. Although all students would likely benefit from AT, boards are not obligated to provide assistive technology when children can receive FAPEs without it despite the potential benefits of these devices and services. Accordingly, if students can make meaningful progress toward their IEP goals and receive educational benefits from the special-education services provided by their boards without AT, officials are required to do no more (*Smith v. District of Columbia* 2012). In this respect, boards must meet *Rowley*'s

"some educational benefit standard" for a FAPE.

3. AT must be sufficient to confer an educational benefit. It is important to obtain and set up AT devices in a timely fashion so that students can receive the benefits when they are needed. In addition, as asserted by a federal trial court in Pennsylvania, it is critical for school board officials to train students, parents, and service providers so that intended benefits are realized (*East Penn Sch. Dist. v. Scott B.* 1999).

4. The purpose of AT is to aid students, not circumvent the learning process. The IDEA does not obligate boards to allow children to use such devices as computers or calculators that would permit them to bypass learning tasks expected of other students.

For example, in a case from New York, the Second Circuit affirmed that educators could deny a student's request to use an advanced calculator in his mathematics classes because it would have provided final answers to problems without requiring him to understand how to complete the steps leading to the solutions (*Sherman v. Mamaroneck Union Free Sch. Dist.* 2003). The court pointed out that permitting the use of unneeded AT devices can actually deny the educational benefits mandated by the IDEA by allowing students to achieve passing grades without completing the requisite learning.

5. Courts usually defer to the methodology choices preferred by educators. When students require AT, many options are available to meet their needs. For instance, more than one software program may provide students with the desired assistance. When conflicts over methodologies develop, courts generally defer to educators' choices if their preferred methodologies are recognized as valid.

This principle has carried over to AT such that in a case from New Mexico, the Tenth Circuit reasoned that as long as school boards provide forms of AT to meet student needs, they will have complied with the IDEA even if parents prefer something else (*Miller v. Board of Educ. of Albuquerque Pub. Schs.* 2009). As reflected in this case, since judges concede that they are not in the business of choosing between conflicting methodologies, they typically defer to educators unless parents can prove that board AT proposals cannot provide educational benefits.

6. School boards are not responsible when students or parents fail to cooperate. The adage "You can lead a horse to water but you can't make it drink" can be applied to AT. As reflected by a case from New York, courts do not render school boards accountable when officials offer AT but students do not use the devices or services (*C.B. ex rel. E.B. v. Pittsford Cent. Sch. Dist.* 2010).

Still, as revealed by a case from Illinois, school personnel must appropriately train students in the use of devices, help them use technology properly, and provide follow-up support. If officials take these steps but students do not use the supplied AT, educators are not to be faulted if children fail to obtain the desired educational benefit (*T.G. ex rel. Mr. & Mrs. T.G. v. Midland Sch. Dist. 7* 2012).

Conclusion

Relatively sparse statutory and regulatory provisions, and limited litigation, address the requirements for school boards to provide AT to students with disabilities. As such, SBOs, their boards, and other education leaders, in conjunction with special educators, need to develop policies to help identify when and to what extent they will supply qualified children with technological devices and allow their use in instructional settings.

Developing sound policies not only can help ensure that students who need AT devices and services will have access to necessary support sufficient to meet the IDEA's FAPE requirements but also can help avoid conflict and potentially costly litigation.

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