

## **Public Schools Funding Assistive Technology in Delaware**

Children with disabilities who need assistive technology (AT) devices and services to benefit from their education may be entitled to it under:

- The Individuals with Disabilities Education Improvement Act (IDEA)
- Section 504 of the Rehabilitation Act of 1973
- The Americans with Disabilities Act of 1990

The type of AT that a student may need varies from simple and inexpensive (e.g., pencil grip) to more expensive devices (e.g., amplification system).

### **IDEA**

The IDEA is the primary mechanism by which students with disabilities acquire the AT they need to benefit from their education. In IDEA, AT devices are defined broadly as items that maintain or improve the functional capabilities of a person with a disability. AT services are those that assist in the selection, acquisition, or use of an AT device.

The student's needs, including the need for AT, must be documented in a written Individualized Education Program (IEP). The IEP should be developed by a team of school personnel, the child's parents, and the child (if appropriate), and someone on the team should have sufficient knowledge about AT options if AT is among the services discussed. Like all other services authorized in the IEP, AT must be provided at no cost to the student and family.

The IDEA has been revised several times since its initial passage, under a different name, in 1975. AT access is supported in several important ways:

- AT is one of only five "special factors" that **MUST** be considered for all children for whom an IEP is developed. This means that the IEP team must explicitly discuss the student's need for AT and, if the need is confirmed or suspected, must take appropriate action to ensure access to needed devices and

- services. Delaware addresses this with an explicit check-off on the IEP form that is used statewide.
- Training for families and school staff relative to AT operation and use can be included on the IEP.
  - A school's obligation to provide AT may extend to homework and school-based extracurricular activities as long as these needs are documented in the IEP.

A complete copy of the IDEA, Delaware's Administrative Manual for Special Education Services (AMSES), and Delaware's IEP form can be reviewed by visiting the Delaware Department of Education's website, <http://www.doe.state.de.us/programs/specialed>.

### **Section 504 and the ADA**

Though not as predominant as the IDEA, both Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) can assist students with disabilities to obtain the assistance they need in school. Section 504 prohibits discrimination on the basis of disability in any program receiving federal funds. The ADA extends Section 504's non-discrimination provision to include public institutions that do not receive federal funds. Two provisions of the ADA directly concern public schools. Title II prohibits discrimination on the basis of disability by state and local governments. Title III bans discrimination on the basis of disability by places of public accommodation.

Section 504 differs from IDEA in several respects. Section 504 defines an "individual with a disability" more broadly. It includes one who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment. Another difference is that under Section 504 students can be eligible even if they do not need any special education services, but just need modifications to the regular education program. Another difference is schools do not receive federal funds to administer Section 504 as they do for the IDEA.

### **AT Access Under IDEA**

The process of obtaining AT through the IDEA starts at the IEP meeting. It is critically important that the IEP team has the knowledge

and skills to make informed decisions. The student's IEP should be based on a variety of factors, including data about the student, his/her environment, and the required tasks.

The standard for whether AT should be included in the IEP is whether it is needed to ensure reasonable educational progress in the least restrictive setting. AT may be considered as either special education and related services or as "supplementary aids and services." If the school rejects a parent's request for AT, the parent can seek an independent evaluation at the school's expense if the school fails to show that its evaluation was appropriate. The parent can also consider an appeal of the school's decision. There are organizations in Delaware, such as the Disabilities Law Program (DLP), that may be able to assist in this effort. The DLP can be reached at:

New Castle County  
(302) 575-0660 (voice)  
(302) 575-0696 (TDD)

Kent County  
(302) 674-8500 (voice/TDD)

Sussex County  
(302) 856-0038 (voice/TDD)

### **Important Considerations**

At times, a student's need for AT may be both educationally and medically necessary, as in the case of a child with cerebral palsy who uses a communication device throughout the course of the day. In this circumstance, the family may wish to pursue funding for the device through their insurance (private or Medicaid). In fact, Medicaid is considered the "payor of first resort" for students who are Medicaid beneficiaries. (The payment source that should be pursued first, prior to seeking other forms of reimbursement.) A school cannot require a family to access their insurance as a funding source. Families, however, may prefer this option because the child owns the device if it is purchased through health insurance; the school owns it if the school buys it. Regardless of the payment source, the school is ultimately responsible for ensuring that the student has access to all devices/services on the IEP in a timely fashion.

Finally, a student cannot derive educational benefit from a malfunctioning device. Thus, school districts are obliged to pay for repairs, replacement batteries, or other services needed to keep a device in good working order. If the device needs to be returned to a manufacturer for repair, the school must ensure that the child has access to comparable supports in its absence.

### **AT Access - 504 and ADA**

If a school decides that a student with a disability is not eligible for services under the IDEA, it must have a system in place to determine whether the student is covered by Section 504. This evaluation must be individualized and must be conducted by a team that includes the parents. The student's needs and services must be documented in writing and parents who disagree have the right to appeal. In satisfying Section 504's requirement, the school must ensure that all of its programs are accessible to all students. If a student needs an AT device under Section 504, the school may be required to provide training on the device as well as the device. Under Section 504, the school is responsible for repairs and maintenance.

Under the ADA, schools may use AT to accommodate students, parents, and staff so that the school's programs are accessible to them. However, the school is not required to fundamentally alter the nature of the program or activity or to incur unreasonable financial or administrative burdens to achieve ADA compliance. Those with concerns about ADA compliance may contact the DLP or the United States Attorney's Office at (302) 573-6277.

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