

Assistive Technology and State and Federal Regulations

There are several laws that define and determine the educational and civil rights of persons who require assistive technology. These include Part B of the Individual with Disabilities Education Act (IDEA); the Americans with Disabilities Act (ADA); and Section 504 of the Rehabilitation Act.

What does the Individuals with Disabilities Act (IDEA) say about assistive technology?

Assistive Technology Device [34CFR 300.5] is defined in IDEA as:

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. The term does not include a medical device that is surgically implanted, or the replacement of such device.

Assistive Technology Service [34CFR 300.6] is defined in IDEA as:

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 (AT) device. The term includes -

- (a) The evaluation of the needs of a child with a disability, including a functional 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 education and rehabilitation plans and programs;
- (e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
- (f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

For more information visit: <http://idea.ed.gov/>

What does the American with Disabilities Act (ADA) say about assistive technology?

The Americans with Disability Act (ADA) is a civil rights statute passed in 1990 to protect the rights of persons with disabilities in school, work, and recreation. Title II of the ADA covers state and local government services. It prohibits discrimination against qualified individuals in the services, programs, or activities of public entities, such as public school systems and publicly operated preschool programs.

Regulations of Title II of the ADA state that “No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by the public entity.” [28 CFR 35.130(a)]

Aids, benefits and services provided to children with disabilities must be equal to those afforded to others and must be as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement.

In order to comply with Title II, school systems may be required to make reasonable modifications in policies, practices, and procedures or to provide “auxiliary aids and services” to the student with a disability. [28 CFR 35.130(b)(7)] These include assistive technology devices such as digital voice recorders, computers, and listening devices. In addition, the terminology includes assistive technology services, such as the acquisition or modification of equipment. [28 CFR 35.104]

Title III of the ADA prohibits places of public accommodation (privately owned entities) from discriminating against persons with disabilities. Title III requires public accommodations to make reasonable modifications in policies, practices and procedures that would afford individuals with disabilities an opportunity to participate in and benefit from the goods and services of the public accommodation. Title III covers private schools and day care programs. “Auxiliary aids and services” may be required if appropriate and entities must eliminate architectural barriers that are readily achievable to remove. [28 CFR 36.304]

For more information visit: <http://www.ada.gov/>

What does Section 504 of the Rehabilitation Act say about assistive technology?

Some children have impairments but do not need special education and therefore they do not meet eligibility requirements under the IDEA. Services, however, may be provided under Section 504 of the Rehabilitation Act. Section 504 of the Rehabilitation Act of 1973 is a civil rights statute that prohibits agencies and programs which receive federal funds from discriminating against individuals with disabilities. Under Section 504 an individual with a disability is defined as a person 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. [29 U.S.C. 706(8)(B)]

Major life activities include such items as walking, sleeping, seeing, hearing, learning, caring for one's self, performing manual tasks, speaking, breathing, and working. Some children who are not eligible for special education services may be able to receive services under the protection of Section 504 of ADA.

Since public preschools, elementary and secondary schools are federally funded, they must provide students with disabilities a Free Appropriate Public Education and ensure that students are afforded an equal opportunity to participate in all academic and extracurricular school programs.

Schools may have to make special accommodations, including the provision of assistive technology devices and/or services, to allow students with disabilities to have access to the full range of programs and activities.

For more information visit: <http://www2.ed.gov/about/offices/list/ocr/504faq.html>