Assistive Technology in Texas Schools Series

Providing Assistive Technology:

A Legal Perspective

Guide to Assistive Technology Legal Issues

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Assistive Technology in Texas Schools Series

Providing Assistive Technology: A Legal Perspective is a professional development module that was collaboratively developed by:

- **Texas Assistive Technology Network led by Region IV Education Service Center**
- **Bracewell & Patterson, L.L.P.**
- **Texas Education Agency**

The Assistive Technology in Texas Schools Series consists of professional development modules that may be downloaded at no cost from the Texas Assistive Technology Network (TATN) website at http://www.texasat.net. Region IV Education Service Center (ESC) provides leadership for the decentralized function of assistive technology and facilitates the network that consists of representatives from the 20 regional education service centers in Texas and the Texas Education Agency. TATN has developed a framework for statewide collaboration to ensure the coordination of ongoing needs assessment, setting state priorities, and providing training, products and services to build district capacity in assistive technology.

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS

Page

I. What is Assistive Technology and What Laws Define the Responsibility of School Districts to Provide Assistive Technology?

General Federal Statutory and Regulatory Requirements

In order to understand the importance of considering the assistive technology ("AT") needs of students with disabilities and of providing AT devices and/or AT services, educators must be aware of the statutory and regulatory provisions that relate specifically to AT, as well as the broad guarantees of these laws that also encompass and govern the provision of AT devices/services.

Defining AT

In the Technology-Related Assistance for Individuals with Disabilities Act of 1988 (the "Tech Act"), Congress first guaranteed the availability of AT devices/services for Americans with disabilities. The Tech Act first defined the terms "assistive technology device" and "assistive technology service." In 1990, lawmakers added these definitions to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400, *et seq*., during the statute's reauthorization. The text in the IDEA and its accompanying regulations mimic, with only minor wording changes to reflect its application to school children, the language in the Tech Act, and remain a part of the IDEA as reauthorized in 1997. The IDEA federal regulations provide:

> …assistive technology 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 the functional capabilities of children with disabilities. 34 C.F.R. § 300.5.
>
> …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. 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, retaining, repairing, or replacing of 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 service), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities.
>
> 34 C.F.R § 300.6.

These definitions of AT devices and AT services are very broad, and therefore almost any type of technical device, or service related to a technical device, that is used to address the educational needs of a student with a disability would be considered AT. The sophistication of the technology of AT devices varies, and the broad definition of AT devices includes low tech devices such as pencil grips, as well as complex, high tech computer hardware and software

programs. Any services that are provided to assist a student to acquire or use any device in the broad range of AT devices are considered AT services.

Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12132, prohibits all governmental entities, not just those that receive federal funding, from denying individuals with disabilities access to services, programs, or activities. Children with disabilities who attend public schools are protected by the ADA as individuals who are participating in programs or are using services provided by their schools. While the IDEA specifically defines AT devices/services, the ADA defines "auxiliary aids and services," and that definition encompasses AT devices/services. The federal regulations accompanying Title II state:

> 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, tape texts, audio recording, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairment;
> (3) Acquisition or modification of equipment or devices; and
> (4) Other similar services and actions.
> 28 C.F.R. § 35.104.

Section 504 of the Rehabilitation Act ("Section 504"), 29 U.S.C. § 794, which prohibits discrimination against any qualified individual with a disability in a program receiving federal financial assistance, does not contain a specific definition of AT devices and services or auxiliary aids and services. The statute refers to "special education and related aids and services" and "supplementary aids and services" in its broad guarantee of a free appropriate public education ("FAPE"). *See* 34 C.F.R. § 104.33. These terms are addressed similarly in the IDEA, as shown below. Therefore, Section 504 does not contain any provisions that add any content to the definitions of AT devices or AT services.

The Federal Requirements to Consider and Provide AT

The IDEA, the ADA, and Section 504 all mandate that schools provide AT devices/services as part of appropriate educational programs for students with disabilities. The IDEA does so explicitly, while the ADA's and Section 504's guarantees of equal treatment of and participation by individuals with disabilities encompasses the provision of AT devices/services.

The IDEA requires that a school provide AT devices/services to a student with a disability who requires the AT devices/services in order to receive FAPE. FAPE includes special education and related services that are provided in compliance with the individualized education program (IEP) of a student with a disability. The federal regulations state:

Assistive Technology
Each public agency shall ensure that assistive technology devices or assistive technology services or both, as those terms are defined in 300.5-300.6 are made available to a child with a disability if required as a part of the child's
(a) Special education under 300.17;
(b) Related services under 300.16; or
(c) Supplementary aids and services under 300.550(b)(2).
34 C.F.R. § 300.308.

In addition to requiring the provision of AT devices/services, the 1997 reauthorization of the IDEA includes a mandate that the IEP team of each and every special education student consider the AT needs of the student during the development of his or her IEP. The statute states, in relevant part, "The IEP Team also shall consider whether the child requires assistive technology devices and services." 34 C.F.R. § 300.346(a)(2)(v).[1] The IDEA also establishes the more general special education concepts of FAPE and least restrictive environment ("LRE"), which both must be considered with respect to whether or not the provision of AT devices/services is necessary and how the AT devices/services should be implemented.

The ADA, in mandating equal access to programs and services offered by school districts, similarly requires the provision of auxiliary aids and services to enable individuals with disabilities to participate. The regulations state:

General
(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.
(c)(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 disabilities.
28 C.F.R. § 35.160.

The provision of AT devices/services is also mandated by Section 504's general requirement that individuals with disabilities must have equal access to programs and services offered by entities that receive federal funding, and by the statute's specific requirements regarding the provision of FAPE to public school students. The regulations state:

Discrimination prohibited
(a) General. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.
34 C.F.R. § 104.4.

Free appropriate public education
(a) General. A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person

[1] In Texas, an "IEP team" is referred to as an "Admission, Review, and Dismissal Committee," or "ARD committee." Because this document contains legal guidance from Texas and from other jurisdictions, the terms "IEP team" and "ARD committee" will both be used throughout the document.

who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) Appropriate education. (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met…

34 C.F.R. § 104.33

Interpreting the Requirements of the Different Federal Statutes as They Relate to Assistive Technology

The IDEA, the ADA, and Section 504 have different purposes, and therefore apply differently in the public education context. The IDEA guarantees FAPE to all children with particular disabilities that are listed in the law and who, because of those disabilities, need special education and related services. The ADA protects individuals with disabilities from discrimination by public entities and guarantees equal opportunity for those individuals to access public programs and facilities. Section 504 prohibits discrimination against or exclusion of otherwise qualified individuals because of their disabilities by programs that receive federal financial funding.

The combination of the IDEA, the ADA, and Section 504 governs the provision of AT devices/services. Schools will be required to provide the majority of AT devices/services under the IDEA. While this guide focuses on the provision of AT devices/services under the IDEA, there may be instances in which students who are not identified as eligible for special education services under the IDEA must receive AT devices/services under Section 504 or under the ADA. What is important to remember is that AT devices/services can fall under one of several "designations" under these statutes collectively. When addressing the needs of a student with a disability that impacts his or her educational progress, for a school district to be in compliance with these statutes, AT devices/services must be considered and must be implemented if necessary.

Issues Specific to Texas

In addition to requirements regarding AT devices/services in federal statutes and regulations, there are a few requirements in Texas law and regulations that relate to AT devices/services.

Transfer of AT Devices

Though federal law does not address the issue, the Texas Education Code and Texas Commissioner of Education Rules allow for the transfer of an AT device for the continuing use of a student through the sale, lease, or loan of the device. TEX. EDUC. CODE § 30.0015; 19 TEX. ADMIN. CODE § 89.1056. The AT device may be transferred to the student's new campus or new school district, to a state agency providing services to the student following graduation, or to the student's parents (or to the student if he or she has the legal capacity to enter into a contract). The transfer of the device must meet a number of requirements, including that there be a written transfer agreement that sets forth the fair market value for the device based on generally accepted accounting principles, that the parent of the child involved provide informed written consent to the transfer (or that the adult student with the legal capacity to enter into a contract provides

written consent). If the transfer is a sale, the parties must use a uniform transfer agreement that must include several provisions. The Texas Education Agency ("TEA") provides its Uniform Transfer Agreement for AT devices on its website at www.tea.state.tx.us/special.ed/forms/uta.html. Though districts may transfer AT devices, they are not required to do so. A school district contemplating the transfer of a device should review § 30.0015 of the Texas Education Code and § 89.1056 of Title 19 of the Texas Administrative Code carefully before completing the transaction to ensure that all specific requirements have been met.

II. What Must a School District do to Consider the Assistive Technology Needs of a Student?

As discussed in Part I, school districts have numerous responsibilities under statute with respect to AT devices/services. The most basic of those obligations are: (1) the student's ARD committee must consider the potential AT needs of the student; (2) the ARD committee must determine if an AT evaluation of the student is necessary to complete its consideration of the AT needs of the student; (3) if determined necessary, an AT evaluation must be performed in order to assess the specific educational needs of the student; (4) if the ARD committee decides AT devices/services are necessary, the team must make the provision of the device and/or services a component of the child's IEP; and (5) the district must implement the provision of the AT device/service to the student. The following discussion presents case law guidance regarding these district responsibilities to highlight best and worst practices.

IEP Teams Must Consider Assistive Technology

The IDEA mandates that during the development of an IEP, the IEP team must consider whether the student requires AT devices/services in order to receive FAPE. 34 C.F.R. § 300.346(a)(2)(v). It is unacceptable for an ARD committee to ignore the possible AT needs of a special education student, even when it might seem readily apparent that AT devices/services are not needed.

If a school district never even considers the need for an AT evaluation of a student who is eligible for special education services, a hearing officer or court could very likely determine that the district had violated the IDEA. For example, a Texas special education hearing officer held that the evidence presented by the parents of a girl with mental retardation and a speech impairment failed to establish that any AT device or service would be necessary for the girl. The evidence did show, however, that the need for an AT assessment for the girl had never been seriously considered by her ARD committee. *Brenda C. v. Houston Indep. Sch. Dist.*, Comm'r Dec. No. 351-SE-798 (Nov. 30, 1998). The hearing officer stated that at a minimum, the ARD committee should conduct "some explicit review" to determine a child's need, if any, for an AT evaluation. *Brenda C. v. Houston Indep. Sch. Dist*., Comm'r Dec. No. 351-SE-798 at p. 13.

In a federal district court in Illinois, the parents of a student with multiple disabilities, including ADHD and bi-polar disorder, prevailed in a suit against the child's school district, in part, because the district failed to consider the student's need for an AT device/service. *Kevin T. v. Elmhurst Cmty. Sch. Dist*., 36 IDELR 153 (N.D. Ill. 2002). The court noted that members of the student's IEP team had testified that AT was discussed at team meetings, but that it wasn't

discussed in any detail. The court found significant the fact that the student's case manager at the district was "not even familiar with what constituted AT." *Kevin T. v. Elmhurst Cmty. Sch. Dist.*, 36 IDELR 153 at 671. The court held that this very brief treatment of the student's potential AT needs constituted a failure of the team to adequately consider his need for AT devices/services.

Standard for Assistive Technology as a Necessary Service

To answer the question of whether an AT device/service is or is not necessary as a component of a child's IEP, the ARD committee must determine, in light of the child's particular educational needs, whether the AT device/service is *necessary* in order for the student to receive FAPE. *See Letter to Bachus*, 22 IDELR 629 (OSEP 1995). In addition, hearing officers have stressed that the standard established by the United States Supreme Court in *Board of Education of Hendrick Hudson Central School District v. Rowley* with respect to the meaning of "appropriate" applies to a district's provision of an AT device/service as a part of an educational program. The court in *Rowley* held that an "appropriate" educational program does not mean one that maximizes progress, but rather means a program that is reasonably calculated to provide a student with a disability some educational benefit. The benefit must be more than trivial. It must be meaningful in light of the individual student's disability. *See Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Charles A. v. Fort Bend Indep. Sch. Dist*., Comm'r Dec. No. 061-SE-1000 (February 12, 2001); *Tuscaloosa City Bd. of Educ*., 34 IDELR 83 (SEA AL 2000).

In applying the *Rowley* standard to the provision of AT devices/services, hearing officers, including those in Texas, have found that though there might be a better technology available for a student to use, if a lesser technology provides some meaningful educational benefit, it is appropriate and therefore sufficient. *See Charles A. v. Fort Bend Indep. Sch. Dist.*, Comm'r Dec. No. 061-SE-1000 at p. 5; *Tuscaloosa City Bd. of Educ.*, 34 IDELR 83 at p. 325. In *Charles A.*, the Texas hearing officer determined that although a computer program that acoustically modified speech would definitely benefit the student, and though it was the best program for the child, the program provided by the school district, which consisted of lower-tech devices and services such as a typing tutor program, an electronic speller, and a computer course, was also appropriate, and therefore the district had not violated the IDEA.

In an Alabama due process hearing, the parent of a 15-year-old student with a severe expressive language impairment sought to have a school district upgrade the augmentative communication device that her child was provided. *See Tuscaloosa City Bd. of Educ*., 34 IDELR 83 (SEA AL 2000). The boy was using a "Superhawk", and his mother wanted the district to provide him a "DynaVox" instead. Though the expert witnesses for the mother testified that the boy would receive more educational benefit from the DynaVox, they did not dispute that he would also receive educational benefit from the use of the lower tech Superhawk. The district's witnesses were able to show that they were not recommending an AT device upgrade because the boy had not yet maximized or exhausted the capability of the Superhawk. They also testified that the district would provide a device upgrade when the boy was no longer receiving any educational benefit from his use of the Superhawk. Using the *Rowley* standard, the hearing officer held for the district, stating that because the boy was receiving educational benefit from his use of the Superhawk, it was an appropriate AT device.

Assistive Technology or Upgrades Requested May Sometimes Be Inappropriate

In some cases, though parents may be seeking AT device upgrades, the requested, more advanced devices are actually not appropriate for the students. In a New York case, the parent of an 18-year-old with a learning disability sought the consent of the school district to allow the student to use a more sophisticated calculator in math class than the one that had been provided to him by the school district. *See Bd. of Educ. of the Mamaroneck Union Free Sch. Dist.*, 34 IDELR 107 (SEA NY 2000). The student's IEP indicated that he could use "a scientific/graphing calculator," but did not specify exactly which calculator he could use. The hearing officer criticized the district for not being specific regarding, if not the model number of the AT device that was to be used, at least the purpose for which the device was to be used. He stated that a specific statement of the "purpose for which the device is to be used is necessary to provide sufficient guidance to the individuals who must implement a child's IEP." *Bd. of Educ. of the Mamaroneck Union Free Sch. Dist.*, 34 IDELR 107 at p. 415. Though he disagreed with how the use of the AT device was addressed in the student's IEP, the hearing officer determined that the district had not failed to provide the student a FAPE. The student's math teacher explained at the hearing that the more advanced calculator factored in a single step, not revealing the steps which the student had taken to solve math problems, and therefore not demonstrating whether he understood the concepts of the math course. However, the more simplistic calculator that the district had been providing for the boy's use allowed him to show his work and demonstrate his understanding, making the device not only appropriate, but a better choice for the boy's educational progress than the upgraded device the parent had requested.

In a Texas due process hearing, the parents of an 8-year-old with ADHD and spastic hemiplegia that limited his ability to write sought a laptop computer for his use at school and at home. *See Abiel G. v. Laredo Indep. Sch. Dist*., Comm'r Dec. No. 203-SE-297 (August 18, 1997). The district had been providing the boy with an "Alpha Smart Pro," a laptop computer-like data processor. The hearing officer noted that the Alpha Smart Pro is a device that is simpler and more durable than a laptop computer, and that it is usually recommended for younger children. In ruling for the district, the hearing officer determined that the parents had failed to show why their son, "whose keyboard needs are largely physical, would need the added sophistication and fragility of a laptop computer over a word processor designed for use by small children." *Abiel G. v. Laredo Indep. Sch. Dist.*, Comm'r Dec. No. 203-SE-297 at p. 7.

In a case in federal court in Pennsylvania, the court reviewed a school's decision that a student with a disability not be allowed to use teleconferencing technology to participate in his class from home. *See Eric H. v. Methacton Sch. Dist*., 38 IDELR 182 (E.D. Penn. 2003). The student had been diagnosed with leukemia, and after chemotherapy and a bone marrow transplant, his immune system had been significantly compromised so that he was not able to receive any vaccinations. The child's doctor recommended that the child stay home from school when the risk of infection to him was high, which had caused him to miss a significant number of days of school each year. The child's parents requested that he be able to use video teleconferencing ("VTC") so that he could participate in his class from home. Though the district's IEP team refused to include the use of VTC in the student's IEP, the team did agree with the parents that they could use the technology. The student's teacher testified that the use of the VTC exacerbated some of the boy's social and behavioral conduct that the school was attempting

to address—that he acted like he was "on stage" and engaged in attention-seeking behavior, and that this behavior was negatively impacting his peer relationships and was disruptive to the other students in the class. The parents argued that homebound instruction with the VTC was a less restrictive placement than homebound instruction without the VTC. However, the court decided that, even assuming the parents' assertion to be true, it was counterbalanced by the fact that the VTC was a disruptive influence on Eric and his class.

In a Texas due process hearing, the hearing officer analyzed an allegation that a school district violated IDEA when the district did not provide a student with a hearing impairment a new FM trainer. *See Eric M. v. North East Indep. Sch. Dist*., Comm'r Dec. No. 286-SE-495 (June 14, 1995). Apparently, the boy had received new hearing aids and the FM trainer provided by the district was not compatible with them. His mother requested that a new FM trainer that was compatible with the new aids be provided. However, the district's evidence established that the boy did not use his hearing aids and the FM trainer simultaneously. Rather, during instruction, he used only the FM trainer. The hearing officer determined that the FM trainer need not be compatible with the new hearing aids for the boy to receive FAPE, and denied the parent's request for relief on that issue.

How to Know When Assistive Technology is Not Necessary

The need for AT devices/services of a student who is eligible for special education services must be considered by his or her ARD committee. What factors of a child's educational situation might indicate that no AT device/service is necessary?

In an Oregon case, the IEP for the previous year of a student with ADHD had provided that she be allowed to tape record her classes. *See Greater Albany Public Sch. Dist*., 32 IDELR 157 (SEA OR 1999). Her IEP team decided that tape recording was not necessary and did not include this AT component in her subsequent IEP. The student's parents challenged the removal of the tape recorder from the IEP and requested an AT evaluation of their daughter. The district asserted at hearing that the student had average grades, that she was "making adequate progress and performing satisfactorily in the regular curriculum," that she was communicating orally and in writing "to teacher standards" without AT assistance, and that her parents had acknowledged that she had made extraordinary academic growth without AT assistance. The hearing officer held the determinations of the IEP team to be credible and controlling, and therefore denied the parents' challenge to the removal of the AT component from the student's IEP.

In a due process hearing before a Texas hearing officer, the parent of a student obtained an independent AT evaluation that suggested that the student, who had spastic cerebral palsy, needed a laptop computer with voice recognition software. *See Irene Y. v. Houston Indep. Sch. Dist.,* Comm'r Dec. No. 153-SE-0102 (March 8, 2002). The student's ARD committee considered the fact that the student was passing all of her classes, including honors classes, and determined that a laptop with voice recognition technology was not necessary. The hearing officer agreed that though the laptop could benefit the student, given her grades and the evidence of her progress in her IEP goals and objectives, the student did not require the requested AT device, and he denied the parent's requested relief.

The Practical Implications of Assistive Technology Components in IEPs and Planning for Assistive Technology Implementation During the ARD Committee Meeting

An ARD committee must be mindful of the practical problems that arise regarding the provision of AT devices/services that are written into an IEP. If the name of a specific AT device is written into an IEP, then the district will be obligated to provide the specific device. In some cases, there may be only one appropriate AT device. Often, however, there are numerous AT devices that may address the student's functional needs, some better than others. The ARD committee may want to specify the necessary features of an AT device that address the student's functional needs, rather than name a specific AT device.

Problems with the actual use of an AT device or service can result in the denial of FAPE. For example, in a Delaware due process proceeding, the IEP of a student with a learning disability stated that he could use a computer to complete class assignments, and that he should use voice recognition software in the classroom. *See In re: Student with a Disabilit*y, 29 IDELR 809 (SEA DE 1998). However, the facts of the situation showed that the software called for in the child's IEP had never been installed on the computers that he was able to use, and that the voice recognition software was inappropriate for classroom use because the presence of other students in the classroom interfered with its functioning. The appellate hearing officers, in ordering that the district perform an AT evaluation, stressed that appropriate use of the AT device/service must be contemplated—that perhaps voice recognition software could be used with the student at home or during times when he is pulled out of the classroom. The officers also stated that the need for any necessary peripheral devices or supplies such as "printers, microphones, keyboards, speakers, … diskettes, and printer cartridges" must be considered, and that they must be provided if necessary. *In re: Student with a Disabilit*y, 29 IDELR 809 at p. 813.

Considering and Providing for Assistive Technology Training

The IDEA's federal regulations address training related to AT devices in the definition of "assistive technology service." This term includes "[t]raining or technical assistance for a child with a disability, or if appropriate, that child's family; and [t]raining or technical assistance for professionals (including individuals providing education or rehabilitation service), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities." 34 C.F.R. § 300.6(e) & (f). Given this broad treatment of AT training, a school district must not forget to seriously consider and plan for the training that the student, teachers, educational aides, parents, and any other individuals might need to successfully implement the AT device/service required to carry out the IEP. Even if the specific device or other technology is absolutely appropriate, it may be inappropriate if it is not used by a properly trained student and/or properly trained staff members and parents. If appropriate, the ARD committee should address who should be trained. It is the school district's responsibility to ensure the appropriate training of staff takes place even though the ARD committee does not specifically address the issue. Hearing officers have consistently held that proper training for various appropriate people is essential for a student to receive FAPE through the use of certain AT devices.

The hearing officer in a Texas due process hearing expressed concern that the training on a software program to help a student with traumatic brain injury that was discussed at an ARD committee meeting was not actually provided until one year later. *Ryan K. v. El Paso Indep. Sch. Dist*., Comm'r Dec. No. 292-SE-0402 (Nov. 15, 2002). The student could not adequately operate the program himself, and the in-depth training that the ARD committee had intended for him and his parents never occurred because of scheduling difficulties. The hearing officer held that because of the delay in, and the inadequacy of, the training, along with other IDEA violations committed by the district, the district was to provide compensatory education services to the student, the scope of which were to be determined by the student's ARD committee.

A federal district court in Pennsylvania held that a district had failed in several respects in providing AT devices/services for a student who is eligible for special education services, including providing the necessary training of the student, his parents, his teacher, and his educational aide. *See East Penn Sch. Dist. v. Scott B.*, 29 IDELR 1058 (E.D. Penn. 1999). The court noted that the lower appeals panel had determined that the keyboarding instruction that the student had received to assist him in using a laptop with a word prediction program was inadequately adapted to his physical needs. The boy's teacher received only partial training on the software and did not receive full retraining until three months later. The boy's educational aide was never trained how to use the program, and the boy's parents were never trained how to use the laptop or the program. The court awarded the parents compensatory education due to the lack of training and other failures under the IDEA on the part of the district.

There have been some important recent decisions regarding training related to cochlear implants, devices that some students with hearing impairments are fitted with to allow them to eventually use their hearing. A discussion of these cases can be found below in Part IV of this guide.

III. Assistive Technology Evaluations

The issue of AT evaluations is an important one that is the subject of much legal contention between parents and school districts. The IDEA regulations state that the term "assistive technology service" includes "[t]he evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment." 34 C.F.R. § 300.6(a). Other than this general guidance from federal regulations, there are no other statutory or regulatory provisions regarding specifically how AT evaluations should be conducted. The AT needs of each student who is eligible for special education services must be considered in the development of the IEP. Practically, the ARD committee can take one of three actions. The ARD committee may determine that no AT devices/services are required by the student. The ARD committee may determine that AT devices/services are required and include them in the IEP. In the alternative, the ARD committee may refer the student for an evaluation after determining that more information is necessary to analyze the needs of the student, to determine whether an AT device/service is required, and to determine what AT devices/services are appropriate.

When is an Assistive Technology Evaluation Warranted?

The AT needs of each and every student who is eligible for special education services must be considered by his or her ARD committee when the IEP is developed, but a formal AT evaluation need not be conducted for every student with a disability. It is during this consideration that the ARD Committee is to determine if an AT evaluation is warranted and plan for any necessary AT evaluation. In some cases, members of the ARD committee are knowledgeable about the student's functional needs and the range of appropriate AT devices/services to meet those needs. The ARD committee may decide what AT devices/services should be provided for the student without the necessity of a formal AT evaluation. The devices/services may be provided as supplemental aids and services, as a related service, as part of the IEP, or as equipment or material to use to implement the IEP. This is particularly true with readily available, low tech AT devices/services. In other situations the ARD committee may not have sufficient in-depth knowledge of the student's functional needs, or the members of the ARD committee may not have the expertise or technical knowledge about what AT devices/services are available to meet the student's needs. The ARD committee may seek information from other sources such as an outside expert, a vendor of a device, or other school personnel. The ARD committee may seek an AT evaluation, in which case all IDEA requirements regarding evaluations, such as notice and parent consent, apply. If a parent or school personnel refers a student for an AT evaluation, the ARD committee will determine whether the evaluation is needed and, if so, the scope of the evaluation.

The decision whether or not to perform AT evaluations of students who qualify for special education services is a common subject of legal challenges. In one Oregon hearing, a student's new IEP excluded the provision in previous IEPs that she could tape record her classes. *See Greater Albany Public Sch. Dist*., 32 IDELR 157 (SEA OR 1999). The parents asserted that the district should not have discontinued the provision of the AT without first evaluating its effectiveness, and requested an AT evaluation. The IEP team had determined that an AT evaluation was not necessary because the student had been communicating orally and in writing at a level that met teacher standards without the use of the tape recorder. The hearing officer stated that the fact that the student "could complete written assignments without dictation was itself an evaluation of the necessity of that component of the IEP." In other words, the hearing officer found that enough of a consideration of the need for AT devices/services had been conducted to determine that an AT evaluation was unnecessary. *Greater Albany Public Sch. Dist*., 32 IDELR 157 at p. 492. The hearing officer decided that because the student was making adequate progress and performing satisfactorily in the general curriculum, there was no evidence that an AT evaluation should have been performed.

The Sufficiency of Assistive Technology Evaluations

Because there are no specific guidelines about what must be included as part of an AT evaluation for it to be sufficient, districts should consider both statutory and regulatory requirements regarding evaluations in general, as well as the specific guidance of prior cases, especially those in Texas, when they are creating AT evaluation guidelines.

A panel of hearing officers in Delaware found the AT evaluation provided by a district to be insufficient because the evaluation, conducted by the district's director of AT, "did not seem

to readily identify adequate resources to tackle [the student's] immense challenges." *In re: Student with a Disability*, 31 IDELR 99, 371 (SEA DE 1999). Apparently, the hearing officers did not think that the district had considered numerous software applications that were designed to assist students identified as "Trainable Mentally Handicapped," such as the plaintiff. The district's director of AT could not adequately define for the panel the meaning of AT "in any cohesive fashion or consistently with" IDEA or the Delaware special education administrative manual. *In Re: Student with a Disability*, 31 IDELR 99 at p. 376. The panel ordered the district to pay for and consider the results of an independent AT evaluation.

In two Texas due process decisions, hearing officers determined that AT evaluations met IDEA standards. In a case involving a 9-year-old with autism, mental retardation, and a speech impairment, his mother challenged the findings of the AT evaluation conducted by the district. *Vinay V. v. Houston Indep. Sch. Dist*., Comm'r Dec. No. 306-SE-598 (Nov. 14, 1998). The hearing officer determined that the evaluation consisted of "a detailed review and analysis of Vinay's needs and abilities, based on then current information and data derived from a review of Vinay's educational records, observations and discussions with his classroom teacher and parent." *Vinay V. v. Houston Indep. Sch. Dist*., Comm'r Dec. No. 306-SE-598 at p. 3. The hearing officer held that the AT evaluation was appropriate and in compliance with the provisions of the IDEA, and he denied the mother's request that the district pay for an independent AT evaluation.

In another Texas due process hearing, the hearing officer analyzed whether the district failed to provide notice as required under the IDEA regarding the nature of proposed assessment strategies for an AT evaluation of the student, and failed to propose adequate standardized and/or validated measures for the AT evaluation. *See Carl P. v. Houston Indep. Sch. Dist*., Comm'r Dec. No. 104-SE-1100 (Dec. 30, 2000). The parents believed that the district's AT evaluation must use validated testing and that the district must have provided notice of that validation when it sought written consent for the AT evaluation from the parents. The hearing officer determined that the IDEA "leaves the selection of appropriate assessment instruments and methodologies to state and local discretion." *See Carl P. v. Houston Indep. Sch. Dist*., Comm'r Dec. No. 104-SE-1100, at 4. In Texas, districts have the discretion to choose the method of evaluation, including informal evaluation measures, and other strategies appropriate to determine the individual student's needs. Houston ISD had chosen not to use standardized or validated tests in its administration of the AT evaluation, which was the district's right.

The best practice for an AT evaluation is for it to be conducted by a multidisciplinary team of people who assess the student's needs across a variety of domains such as communication, written language, academic content areas, fine and gross motor skills and daily living skills. The evaluation of a particular domain may be informal. For example, if the concern expressed by the ARD committee is with regard to the student's handwriting, the evaluation of communication and daily living skills may be informal, based on input from teachers and parents, and simply note that functioning in those areas is adequate for the age and grade level of the student. In other domains, formal evaluation procedures may be appropriate using protocols, skills inventories and various frameworks to assess the child's functional needs and develop recommendations regarding AT devices/services.

Timeliness of Evaluation and Issuance of Report

Allegations regarding the time it takes to perform an AT evaluation has been a subject of legal challenges. An 8-year-old with autism and a severe language disorder was recommended by a communication consultant in October of 1997 for a trial period with "DynaVox" augmentative communication software which was not implemented. *See Indep. Sch. Dist. No. 623*, 31 IDELR 17 (SEA MN 1999). In August of 1998, the parents requested an IEP team meeting to discuss the provision of the DynaVox recommended the year prior. Several IEP team meetings were held, and after resolution could not be achieved on the AT issue and on other issues, the parents requested mediation. The parents arranged for an independent AT evaluation of their son, and the report recommended that the student be provided the DynaMyte, a similar portable communication system. The mediation in October of 1998 did not result in agreement. The parents rented a DynaMyte on the advice of the independent evaluator. They had the student trained by a private speech clinician, and the usefulness of the device for the boy was evaluated during that period by a private entity. The district finally obtained the software in February of 1999 so that a trial period on the program could be conducted at school and an evaluation of the program's usefulness to the student in the school setting could be completed. The hearing officer held for the parents on the issue of reimbursement for the private evaluation of the appropriateness of the DynaMyte because the district "erred by not conducting such an evaluation, or agreeing to such an evaluation after a specific request, in a timely fashion." *See Indep. Sch. Dist. No. 623*, 31 IDELR 17 at 55.

Professional Credentials of those Performing Assistive Technology Evaluations

There are no federal or state statutes or regulations that address, explicitly, what the professional credentials or qualifications of those performing AT evaluations must be. In addition, it appears that there have been no reported challenges to the quality or validity of AT evaluations based on the qualifications of the AT evaluators. However, in conducting AT evaluations, districts should be mindful of the regulations that apply to all special education evaluations provided by districts, the regulations that govern the qualifications of personnel who work with students with disabilities, and certification standards established by the State Board for Educator Certification in Texas ("SBEC").

The Texas Commissioner of Education Rules require that individuals who provide special education and related services must be certified, endorsed, or licensed in the areas in which they are assigned. 19 TEX. ADMIN. CODE § 89.1131. This provision refers to the IDEA definition of "qualified personnel" as individuals who have met state agency-approved or recognized certification, licensing, or registration. 34 C.F.R. § 300.23. The IDEA requires that certain related services be provided by individuals with particular credentials. State law mandates that services to be provided by an audiologist, occupational therapist, physical therapist, physician, nurse, school psychologist, associate school psychologist, social worker, or speech language pathologist must be provided only by a person holding the appropriate credential from the appropriate state agency. 34 C.F.R. § 300.24; TEX. EDUC. CODE § 21.003(b). In addition, SBEC has developed new standards which explicitly require that a newly certified special education teacher "understands assistive technology as defined by state and federal regulations." The standards further mandate specific knowledge, understanding, and

competencies related to AT from early childhood through twelfth grade special education teachers. The SBEC Special Education Standard VIII states:

> **Teacher Knowledge: What Teachers Know**
>
> ***Teachers of Students in Grades EC-12***
> The beginning special education teacher knows and understands:
>
> 8.1k the range and variety of assistive technology, devices, services, and resources;
>
> 8.2k state and federal laws pertaining to the acquisition and use of assistive technology;
>
> 8.3k how to access school and community resources for meeting the assistive technology needs of individual students;
>
> 8.4k when to make a referral for an assistive technology evaluation;
>
> 8.5k how to effectively consider the benefits of assistive technology during the Admission, Review, and Dismissal (ARD) process; and
>
> 8.6k the role of assistive technology, devices, and services in facilitating students' access to the general curriculum and active participation in educational activities and routines.
>
> **Application: What Teachers Can Do**
>
> ***Teachers of Students in Grades EC-12***
>
> The beginning special education teacher is able to:
>
> 8.1s link individual student needs with appropriate assistive technology, devices, and services;
>
> 8.2s find and access school and community resources on assistive technology;
>
> 8.3s make informed decisions with regard to types and levels of assistive technology, devices, and services (e.g., "no tech," "low tech," and "high tech") and support the implementation of those devices and services based on individual needs;
>
> 8.4s participate in the selection and implementation of augmentative or alternative communication devices and systems for use with students;
>
> 8.5s collect and use data about the individual's environment and curriculum to determine and monitor assistive technology needs;
>
> 8.6s keep classroom assistive technology equipment in good working order;
>
> 8.7s implement assistive technology as directed by a student's Individual Educational Plan (IEP).
>
> www.sbec.state.tx.us/SBECOnline/standtest/allspeced.pdf.

There are several legal provisions related to evaluations that are important to consider when determining the multidisciplinary team to perform an AT evaluation. First, the IDEA requires that evaluations in general involve a variety of assessment tools, and that no single procedure be used as the sole criterion for determining an appropriate program for a child. 34

C.F.R. § 300.532(b) & (f). The IDEA also mandates that the child be assessed in all areas related to the suspected disability. 34 C.F.R. § 300.532(g). Also, if a standardized test is administered as part of the evaluation, it must be done by "trained and knowledgeable personnel in accordance with any instructions provided by the producer of the test." 34 C.F.R. § 300.532(c)(ii).

Given these relevant regulatory provisions, school districts should consider of how they staff their AT evaluations. A multidisciplinary team that can assess a student's functional needs across several domains may include instructional personnel, appraisal personnel such as a diagnostician or a licensed specialist in school psychology, a physical therapist, an occupational therapist, and a speech/language pathologist. The members of an AT evaluation team should be determined by the student's disability or the nature of the suspected need. For example, the AT evaluation of a student with a visual impairment or hearing impairment should include a person with expertise in those areas. The IDEA does not mandate that individuals with certain credentials participate in an AT evaluation. However, when an AT evaluation is necessary, the best practice is for the evaluation to be conducted by a team of people with appropriate credentials and expertise to assess the student's functional needs in a variety of areas.

IV. Common Issues Regarding Assistive Technology

Ownership of and Liability for Assistive Technology Devices

Situations may arise in which a family-owned AT device is used at school or a district-owned device is used at home. These situations can sometimes lead to confusion regarding what arrangements are proper and who should be responsible for the upkeep and maintenance of the device. In a 1994 letter, the Office of Special Education Programs ("OSEP") at the U.S. Department of Education opined that though federal special education laws do not require school districts to assume liability for AT devices that are family-owned, it is reasonable for states to require such. *See Letter to Anonymous*, 21 IDELR 1057 (OSEP 1994). The letter states that in many cases, it would be reasonable to expect the district to assume liability for family-owned devices included in IEPs because, under IDEA, the district would have to both provide and maintain the AT device if the parent did not. A *state,* through rules and regulations, could determine that districts are liable for the repair and maintenance of family-owned AT devices.

There is no rule from the Texas Education Agency that makes schools responsible for the upkeep or maintenance of a family-owned AT device. However, given the decision of a Texas hearing officer, it appears that in Texas, a district using a family-owned device does assume responsibility for the device if the device must be provided pursuant to the student's IEP. *See Sonya S. v. Spring Branch Indep. Sch. Dist.*, Comm'r Dec. No. 221-SE-296 (Apr. 12, 1996). In a due process hearing involving a student with a speech impairment, the parents of the child volunteered their home FM monitor for use at school if the school's monitor was out of commission for more than 24 hours. The hearing officer determined that the school may use the family-owned device, but noted that if it did, the district would assume liability for the device. However, in this case the use of the FM monitor was specified in the student's IEP. In another situation in which a student was using portable tape recorders at school that were family-owned, but were not necessary under his IEP, OCR determined that the school district was not

responsible under Section 504 for reimbursing his parents after the devices were damaged at school. *See Letter to Lubbock (TX) Indep. Sch. Dist.,* 27 IDELR 509 (OCR 1997).

In another Texas case, the hearing officer determined that the district's offer to the parents went above and beyond IDEA requirements. *See Juan V. v. Progresso Indep. Sch. Dist.*, Comm'r Dec. No. 072-SE-1100 (Dec. 18, 2000). The parents of a tenth grader with a hearing impairment claimed in a due process hearing that the district was obligated to provide their son hearing aids and an amplification system for use in the classroom. The hearing officer noted that assessments of the boy showed that he had "functional hearing," and that while he would benefit from the use of a hearing aid and/or a sound amplification system, he did not need either of the devices to make educational progress. The hearing officer stated that in offering to assist the parents by paying for insurance for the hearing aides, the district had gone beyond what is required under IDEA.

In some instances, the purchase of the AT device or services that a child with a disability requires may be covered by public insurance such as Medicaid or by his or her parents' private insurance. Given IDEA's mandate that services be provided to students with disabilities free of cost, lawmakers have included in the statute the stipulation that a district may not use Medicaid or other public insurance of a family to purchase services if doing so would cause the family to incur costs of any sort or would cause the available benefits of the family to decrease. *See* 34 C.F.R. § 300.142(e). In addition, a school district may not access the private insurance of parents unless the district has fully informed the parents of their rights under the IDEA and the parents have provided informed consent to the use of their insurance. *See* 34 C.F.R § 300.142(f). The information that the parents must receive from the district must include the fact that they could incur financial consequences from the use of their private insurance to pay for services that the school district is required to provide, and that they should contact their insurance provider so that they may understand the foreseeable future financial costs of the arrangement before providing consent. In addition, parents must be told that their refusal to allow the district to access their private insurance proceeds does not relieve the district from its obligation to ensure that all of the services required in their child's IEP are provided free of cost. *See* Comments to C.F.R. § 300.142(f), 64 Fed. Reg. 12567 (March 12, 1999). Some parents may wish to use their insurance to purchase AT devices, and that is permissible, provided that the district has obtained their informed consent. A district's failure to provide this information and obtain the informed consent would be a violation of the IDEA. The decision to use a family's private insurance may be made only by the parent, and in most situations, a district will have to provide the required AT device without using any private insurance coverage. If parents do use their private insurance to purchase an AT device, they are the owners of that device.

When considering the use of a district-owned device at home, OSEP has stated that state law will govern liability for the loss, theft or damage due to negligence or misuse of publicly-owned equipment that is used at home in accordance with a child's IEP. *See Letter to Culbreath*, 25 IDELR 1212 (OSEP 1997); *see also* Comments to 34 C.F.R. § 300.308, 64 Fed. Reg. 12540 (March 12, 1999). Though a district cannot charge parents for normal use and wear and tear, it could charge parents for loss or theft to the extent state law provides that individuals lawfully in the possession of the property of another are financially responsible for the property's loss or damage.

There are two laws that may result in a parent being liable for damages caused to a district-owned AT device due to negligence or misuse. First, the Texas Family Code provides: "A parent or other person who has the duty of control and reasonable discipline of a child is liable for any property damage proximately caused by: (1) the negligent conduct of the child if the conduct is reasonably attributable to the negligent failure of the parent or other person to exercise that duty; or (2) the willful and malicious conduct of a child who is at least 10 years of age but under 18 years of age. TEX. FAM. CODE § 41.001. A parent may be liable for damage caused to a district-owned AT device if the parent had the duty of control of his or her child and the damage was proximately caused by the parent's negligent failure to exercise that duty.

Also, the legal concept of "bailment" may apply to a situation in which a student is provided a district-owned AT device and the item is lost, stolen, or destroyed. Because the device, even when in the possession of the student, remains the property of the district, the district may be able to bring a legal action against the parent for the difference in value between the device that was provided to the student and was lost, stolen, or destroyed, and a new device. The legal validity of such an action may be bolstered by a statement signed by the parent that sets out the terms and conditions for use of the equipment, the guidelines and time for its return, and the understanding that it is to be returned in the same condition, less usual wear and tear, or the parent may be liable for the loss.

In addition, Texas Education Code § 11.158 gives the boards of trustees of Texas school districts the authority to require payment of a security deposit for the return of materials, supplies, and equipment. TEX. EDUC. CODE § 11.158(1)(3). The district must implement the requirement of security deposits for equipment in a way that does not discriminate against students with disabilities, for instance, the district can show that it requires security deposits for the use of any equipment by any student that has a specific monetary value. The district may charge security deposits to parents to help insure against damage or loss. Note that school districts may not withhold student records from a student or his or her parent, even if a required fee has not been paid. In addition, a fee must be waived if a student or his or her parent or guardian is unable to pay the fee. TEX. EDUC. CODE § 110158(f).

Timeliness of the Provision of Assistive Technology

Challenges have been made in Texas and in other states regarding delays in providing the AT device/service that is necessary under students' IEPs. Though there is no statutory language regarding when, specifically, the AT device/service must be available for a child's use, a child's IEP must be implemented as soon as possible following its finalization and without delay. *See* 34 C.F.R. § 300.342(b)(iii); *Letter to Anonymous*, 18 IDELR 627 (OSEP 1991). Like any other IEP provision, if the AT component is not implemented, the district may be in violation of the IDEA.

In Michigan, a hearing officer held that the extended periods of time during which two different AT devices should have been provided by a district pursuant to a girl's IEP, but were not, constituted more than mere technical violations. *See Brandywine Public Sch.*, 35 IDELR 81 (SEA MI 2001). The student, whose disability is a condition which consists of cysts in the brain, required, per her IEP, an adaptive toilet seat and a computer with an adapted keyboard and software program. Approximately three and a half months after the student's IEP team

determined the need for the toilet seat and wrote it into her IEP, the seat had not been provided, and the student fell from a toilet at school and missed eight days of school as a result. In addition, the computer was not provided for two and a half months, and the adapted keyboard and accompanying program were not provided for approximately six months. Apparently, testimony from the hearing proved that the delay in the provision of the computer and software program had led to a loss of learning on the part of the student. *Brandywine Public Sch*., 35 IDELR 81 at 323.

In a Pennsylvania case, a federal district court awarded a significant number of compensatory education hours to a student with multiple disabilities after the boy's school district failed in several capacities related to AT. The court found that the district had "dragged its feet." The need for the AT device and services had been recognized in 1994, the device had been acquired in September of 1995, and the device was not functional until February of 1996. The court stated that it thought one school semester to be a reasonable amount of time for the district to have obtained the necessary laptop and word prediction software and to have implemented a plan for use of the AT device. The district's failure to do so led to a compensatory education award for AT-related deficiencies of 270 hours of services.

Texas special education hearing officers have also reviewed allegations concerning delays in providing required AT devices/services to a student. One hearing officer found that a school district had not implemented the AT device and services necessary for a student in a "coordinated and collaborative" fashion because of a series of delays. *See Ryan K. v. El Paso Indep. Sch. Dist*., Comm'r Dec. No. 292-SE-0402 (Nov. 15, 2002). Delays in the provision of the AT device and services to the student were attributable to the school district's staff changes and purchasing procedures, as well as to the student's scheduling problems, his difficulty manipulating the device carefully, and unavoidable technical problems. The hearing officer determined that the delays had appeared to significantly negatively impact the educational progress of the student, and ordered the ARD committee to meet and determine what amount of compensatory education services would be appropriate for the boy and his family.

In another dispute concerning AT, a district and the parents of a student with a disability entered into a written mediation agreement in which the district was to provide to the student, within one month of the signing of the agreement, a PowerBook notebook computer with a color screen. *See Jenifer M. v. Houston Indep. Sch. Dist*., Comm'r Dec. No. 415-SE-697 (Nov. 17, 1997). The mediation agreement was signed on May 10, 1996. Because of supply problems, the district first provided the student a word processor, and then later a PowerBook with a monochrome screen. The district did not provide the PowerBook with a color screen, as stipulated in the mediation agreement, until February of 1997. Because of the district's delay, the hearing officer ordered the district to pay the parents, as compensatory services, the fair market cost for rental of a computer equivalent to a Power Notebook with a color screen for the period of delay.

Maintenance and Repair of Assistive Technology Devices

Today, many of the higher-tech devices that are provided by schools to students with disabilities are complicated devices that require complex programming and upkeep. For many schools and parents, the operability of a device is a constant concern, especially when the student

cannot sufficiently make educational progress with any other type of alternative AT device. A Texas hearing officer has opined that "[u]nreasonable delays in repairing a critical piece of hardware or software could result in harm to the educational program and constitute a denial of FAPE." *See R.L. v. Laredo Indep. Sch. Dist*., Comm'r Dec. No. 115-SE-1201 (Feb. 4, 2002). In another Texas case, the AT device at issue, a laptop computer, was broken several times in the course of a school year, sometimes by the special education student using the device. *See Ryan K. v. El Paso Indep. Sch. Dist.*, Comm'r Dec. No. 292-SE-0402 (Nov. 15, 2002). The cumulative delays, some of which were caused by delays in repairing the laptop or acquiring a replacement, led to a holding for the parents.

In a complaint to OCR, the parents of a student with a hearing impairment alleged that the FM system used by their child in the classroom had been inoperable for several days, and therefore the school district had violated the child's civil rights under Section 504. *See Manteca (CA) United Sch. Dist*., 38 IDELR 268 (OCR 2003). The parents complained that on four occasions, the batteries in the FM system were low, and on one occasion, the student's teacher could not find the FM system, and so the student attended class without the device. The student functioned quite well in the classroom without the FM system because she wore hearing aids and sat at the front of the class. Evidence showed that even when its batteries were low, the FM trainer functioned properly, so OCR determined that the days on which the batteries were low were of no consequence. The one day that the girl's teacher could not find the FM trainer, and so the student participated in class without the device, was determined by OCR not to constitute a denial of FAPE. It is unclear whether the finding of no Section 504 violation was based upon the fact that the student was able to make educational progress in the classroom without the AT device, or upon the fact that the time period during which she was without the use of the AT device was extremely short.

In two cases, the fact that an AT device had been non-functioning for a period of time was not held to be a violation of IDEA. However, as shown below, those situations were probably unique in that devices other than the ones specified in the IEPs were sufficient to meet the students' needs. In an Ohio case, the augmentative communication device that a child with multiple disabilities had been using pursuant to her IEP, called a "Touch Talker," broke. *See Highland Local Sch. Dist*., 29 IDELR 224 (SEA OH 1997). The next month, at an IEP team meeting, all members of the team agreed that the Touch Talker was not an appropriate augmentative communication device for the student, and the parents informed the district that they were in the process of purchasing a different communication device, a "DynaVox." The student's agreed-upon IEP included the term "assistive device," but did not specify the Touch Talker. The evidence showed that during the time that the child did not have the use of an electronic talker, school staff used a variety of assistive devices, including a communication book, pictures, and objects, and that the student made progress in her communication objectives. The hearing officer determined that though an electronic talker was not available, the use of the other, lower-tech AT devices was sufficient to meet the needs of the student.

In a New York case, though the AT device at issue was inoperable for a period of time, the hearing officer did not find a denial of FAPE. *See Bd. of Educ. of the City Sch. Dist. of the City of Beacon*, 30 IDELR 937 (SEA NY 1999). The student was hearing impaired and had various physical disabilities, which necessitated his use of a wheelchair and a walker. After a speech/language pathologist recommended an AT device, and pursuant to a mediation agreement

between the parents and the school district, the district provided the boy an Apple Macintosh PowerBook laptop with a touch sensitive screen, a synthesized voice output, and communication board software. The laptop failed in May of 1997. While the computer was at the dealer being repaired, the district agreed to assume the costs of renting another communication device, a "DynaVox," that the parents had obtained. The PowerBook was returned from the dealer in June of 1997. Apparently, though the laptop was then functioning, it could not be used in the manner it had been used previously because the touch screen was no longer calibrated so that the laptop could function as a communication device for the boy. The touch screen was not appropriately recalibrated until May of 1998. The hearing officer stated that he was concerned about the district's delay in having the device properly repaired, and that the delay had not been in the child's best interest. However, the hearing officer determined that the laptop "was only one of the means by which the boy communicated," noting that the boy's teachers had stated that the other AT devices/services that were being implemented with the boy, picture boards and sign language, were sufficient to allow the boy to make progress towards his IEP goals. Finding no evidence to refute the teachers' statements, the hearing officer denied the parents any relief.

Though the hearing officers in the above two cases held for the districts, a school district should not delay in the repair of an AT device that is a component of a student's IEP. Not providing the AT device/service that an ARD committee has deemed necessary for a student and has addressed in the student's IEP may be a violation of the IDEA. However, because AT devices will malfunction, and because some of the devices are very complex and take time to fix, it appears that if a district makes a good faith effort to use other AT devices/services as short-term substitutes for the broken device during the repair period, and these allow the student to make progress toward his or her IEP goals and objectives, a reasonable lapse in the availability of the AT device due to its repair would most likely not violate the IDEA. If however, there is one particular device for which no other even short-term substitute device will suffice for a student's use, the district might secure the same device through a short-term lease or some other arrangement so the student will continue to receive FAPE while the district-owned device is being repaired.

Case law contains examples of what hearing officers and judges have thought does or does not constitute a "reasonable" time for both the acquisition and repair of an AT device. Very clearly, an entire school year or a calendar year is too long for a student to be without the AT device/service provided for in his or her IEP. *See East Penn Sch. Dist. v. Scott B*., 29 IDELR 1058 (E.D. PA 1999). In addition, delays of nine months, six months, two and one-half months, and one month have been held to be too long. *See Jenifer M. v. Houston Indep. Sch. Dist*., Comm'r Dec. No. 415-SE-697 (Nov. 17, 1997); *Brandywine Public Sch*., 35 IDELR 81 (SEA MI 2001); *Jackson County Bd. of Educ*., 38 IDELR 83 (SEA AL 2002). One court stated that one school semester was a reasonable amount of time for a particular district to have "procured a suitable laptop computer and word prediction software, and to have designed a functional plan for the implementation of the technology." *East Penn Sch. Dist. v. Scott B*., 29 IDELR 1058 at 1063. The reasonableness of a delay will depend very heavily upon the specific facts of a case, and though one can use prior decisions as general guidelines with respect to what period of time without the appropriate AT device is too long under the IDEA, there are no hard and fast rules to follow. What is clear is that an abundance of caution must be exercised in this area. School districts must move as quickly as possible to implement the AT device/service that is promised in students' IEPs. Hearing officers and courts will generally allow districts a reasonable amount

of time to properly repair malfunctioning devices. *See R.L. v. Laredo Indep. Sch. Dist*., Comm'r Dec. No. 115-SE-1201 (Feb. 4, 2002) (holding, "[c]ertainly the district should do everything it its power to quickly repair any problems on [the student's] home or classroom equipment").

A pair of Texas due process hearing decisions have addressed the need for a plan regarding the maintenance and repair of an AT device. Such plans may be a good way for districts to proactively address the problems of maintenance and repair. A hearing officer analyzed an allegation that the FM monitor used in school by a child with a hearing impairment had not been consistently functional. *See Sonya S. v. Spring Branch Indep. Sch. Dist*., Comm'r Dec. No. 058-SE-1095 (Jan. 12, 1996). The hearing officer found this allegation to be true, and ordered that the district ARD committee convene a meeting to ensure that the FM monitor was maintained in good working order, suggesting that a weekly maintenance check of the device by qualified personnel could be added as a component of the student's IEP. In a follow-up to that due process hearing, the same parents alleged that the district had failed to maintain the FM monitor in good working order. In the second decision, issued just three months after the first, the same hearing officer acknowledged that on occasion, the FM monitor did not function well or was unavailable. *See Sonya S. v. Spring Branch Indep. Sch. Dist*., Comm'r Dec. No. 221-SE-296 (Apr. 12, 1996). However, she determined that the preponderance of the evidence showed that the district had fulfilled its obligation to maintain the AT device. The district had added additional personnel to the list of individuals who could be contacted should a problem with the device occur and had purchased and made readily available additional units and fresh batteries. In addition, the school nurse maintained a written log documenting the condition of the device. An arrangement had been made with the parents that if the school FM monitor was inoperable for more than 24 hours, the school would borrow the family-owned FM monitor that the student used at home. Despite all of this evidence, the hearing officer thought that there was some confusion on the part of the parents regarding the procedures for maintaining and repairing the device, and ordered the district to write an addendum to the student's IEP that need not contain a "rigid step by step protocol," but could instead be a "set of choices school personnel may make in order to respond most effectively to whatever circumstances arise." *Sonya S. v. Spring Branch Indep. Sch. Dist*., Comm'r Dec. No. 221-SE-296 at p. 5. In addition, the hearing officer directed that the terms of the agreement between the parents and the district regarding the school's borrowing of the family-owned FM monitor be specified in the IEP addendum. Though such an addendum to an IEP, and such documentation of the proper functioning of AT devices, might seem beyond IDEA requirements in most situations, it could be the best way to address inevitable issues regarding the repair of AT devices.

Assistive Technology for At-Home Use

Another issue regarding AT is whether a school district must provide an AT device/service for a child's use at home. If a child's ARD committee determines that he or she must have a certain AT device or service at home, the child's school district must provide it. *See Letter to Anonymous*, 18 IDELR 627 (OSEP 1991). In some cases, if a child with a disability requires the AT device to complete homework that non-disabled students in his or her class are asked to complete at home, the district may have to provide the AT at home. However, the at-home AT issue most often arises in reported case law when parents believe that their child needs a device at home (usually a computer of some sort), and the child's ARD committee disagrees. In more cases than not, this type of challenge by parents fails because the at-home device is

determined to be more than is necessary for the district to meet the *Rowley* standard of providing the student some meaningful educational benefit.

In a Texas case, the hearing officer reviewed a claim that the school district had violated the IDEA by not providing a computer at home for a child with autism to use during necessary in-home training. *See Marie R. v. Texas City Indep. Sch. Dist*., Comm'r Dec. No. 351-SE-0602 (Aug. 6, 2002). The hearing officer found that the parents had failed to prove that a computer at home was necessary, and that though there was no doubt that the child could benefit from the use of a computer at home, under *Rowley*, the school district's obligation was not to provide the child with the best educational program available, but was merely to provide a program reasonably calculated to provide her some meaningful educational benefit. This "want but not need" analysis has been used by other hearing officers in situations in which parents are seeking at-home computers. A home computer may very well be of educational benefit to a student. However, the student without a home computer is not denied FAPE if the student is provided the opportunity to obtain some meaningful educational benefit from the use of AT devices/services at school. *See Jefferson County Sch. Dist. R-1*, 34 IDELR 212 (SEA CO 2001).

Another Texas school district was providing an 8-year-old with a physical disability that affected his ability to write for long periods of time with a desktop computer in his classroom and an AlphaSmart portable data processor. *See Abiel G. v. Laredo Indep. Sch. Dist*., Dkt No. 203-SE-297 (Aug. 18, 1997). The boy's parents did not think that these devices were sufficient, and filed for a due process hearing against the district after the district denied their request for a laptop computer for home use. The hearing officer held that the parents had failed to show how a laptop at home was necessary, given the AT support that was provided to the student at home (the AlphaSmart), and actually noted that a laptop was too fragile and complex for the use of an 8-year-old.

In a similar case in California, a district had offered to provide a fourth grader with access to desktop computers with voice output technology in her classroom, in her resource specialist room, and in the computer lab at school, as well as an AlphaSmart word processor for her exclusive use. *See East Whittier City Elementary Sch. Dist*., 34 IDELR 49 (SEA CA 2000). The girl's mother rejected this offer and requested, based on the advice of a language development specialist who had conducted an independent AT evaluation of the student, a laptop with voice output capabilities for use at school and at home. The language development specialist testified as an expert for the parent that the student required the laptop for personal use so that she would be able to use the same computer throughout the day and at night and so all of her work would be stored on one hard drive for her ready access. The hearing officer determined that because this expert was making "an efficiency argument rather than identifying [the student's] educational need," and because her concerns could be easily remedied and did not relate specifically to any of the girl's educational needs, her arguments in support of the necessity of the laptop were unpersuasive. In addition, the evidence did not show that the student's educational needs could be addressed only by voice output technology, nor did it show that she required such technology while she was not at school. The hearing officer denied the parent's request for a laptop.

Medically Related Assistive Technology Devices and Services

Because the disabilities of many children are medically related, the provision of AT devices/services may often be intertwined with the provision of medical services. The IDEA excludes medical services, other than those for diagnostic or evaluative purposes, from the definition of related services which must be provided by a school district to a child with a disability who requires the related service to receive a FAPE. 34 C.F.R. § 300.24. There is much confusion about what technology is actually medical in nature and need not be provided as AT devices/services by a district.

Medically Related AT Services

In a United States Supreme Court decision addressing the provision of services related to the use of a medical device with a student, the court used a two-step analysis to determine if the services were medical in nature and therefore not required to be provided by the district. *Irving Indep. Sch. Dist. v. Tatro*, 468 U.S. 883 (1984). The court considered the following: (1) are the requested services included within the definition of related services (the court referenced related services as those that enable a child to remain in school during the day so that the student has meaningful access to education as contemplated by the IDEA); and (2) are the requested services excluded as medical services (medical services being defined as those that are provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services)? The court held that the clean intermittent catheterization of an 8-year-old with spina bifida was a related service because it could be provided by a lay person with minimal training and was necessary for the student to remain at the school during the day. Since the catheterization involved manipulating technological devices, the school health services that the district was obligated to provide free of charge were, in effect, AT services.

In recent years, more and more children with hearing impairments are undergoing surgery that involves the implanting of a device in a child's skull and in the cochlea of one of his or her ears. This cochlear implant ("CI") is intended to provide the child with the ability to use their hearing. The increase in the number of cochlear implant operations being performed has been accompanied by an increase in legal disputes surrounding the proper implementation of education programs for children with the implants.

For the CI to work appropriately for a child, it must be mapped, or programmed, to stimulate the cochlea in various ways to increase the child's ability to make sense of the sounds being received. According to federal district courts, only a specially trained audiologist can properly map a CI, and though speech/language pathologists may work closely with audiologists in determining the proper mapping of implants, they cannot map the devices themselves. *See Stratham Sch. Dist. v. Beth P.*, 38 IDELR 121 (N.H.D. 2003). The IEP of a child with a CI should address the child's use of the device as assistive technology in the educational environment. Whatever training might be necessary for district staff should be provided to ensure that the student will be receiving FAPE.

There have been several recent court and hearing officer decisions that place the responsibility for the mapping of CIs upon school districts. However, none of these decisions

involved Texas schools. In a recent U.S. district court decision, the school district involved argued that CI mapping is a medical service, and therefore need not be provided by a district as a related service under the IDEA. *Stratham Sch. Dist. v. Beth P.*, 38 IDELR 121 (N.H.D. 2003). The court did not agree with the district's argument. The court stated that because it was clear that the student's CI had to be mapped for him to benefit from educational instruction, and because his current IEP was based upon his communicating through his CI, the use of the CI was required for him to achieve FAPE. Therefore, the CI mapping constituted a related service under the IDEA and the district was ordered to reimburse the parents for the mapping services they had purchased from a private audiologist, as well as for the parents' travel to and from the audiologist for mapping services. *See also Avon Local Sch. Dist.*, 38 IDELR 254 (SEA OH 2003) (holding that the mapping of a cochlear implant is a related service that must be provided free of cost to parents).

In a California due process hearing, the district's speech/language therapists, who had had no experience and very little training in providing services to post-CI children, indicated that they would provide the same therapies to a child post-CI that they had provided him pre-CI. *Foothill Special Educ. Local Plan Area (SELPA)*, 38 IDELR 29 (SEA CA 2002). The hearing officer concluded that experience is critical in providing services to a child with a CI, because those who routinely work with CI children "know what progress in a CI child should look like." The hearing officer held for the parents, and ordered the district to reimburse them the cost of the child's private therapy and to continue to pay for the private placement until the district could offer an alternative appropriate program. *See also Bd. of Educ. of Paxton-Buckley-Loda Unit Sch. Dist. v. Jeff S.*, 184 F.Supp. 2d 790 (C.D. Ill. 2002).

Though there have been no decisions regarding this issue in Texas, there have been a sufficient number of cases in other states for districts to be on notice that it would be best practice to provide appropriate services and training to staff related to CI.

Medically Related AT Devices

There appear to have been two decisions by Texas hearing officers since *Tatro* that address the provision of medically related AT *devices* rather than services. In a case involving a child who had to be fed several times a day through a tube using an electronic nutrition pump device, the hearing officer recognized that while the *Tatro* court had determined that districts were required to provide services related to medical devices, the court had left open the question of whether a school district must provide the actual medically related AT device for a student's use. *Dennis M. v. Laredo Indep. Sch. Dist*., Comm'r Dec. No. 116-SE-196 (June 11, 1996). In holding that the district did not need to provide the nutrition pump, the hearing officer determined that the child did not require the pump to meet his educational needs. The hearing officer stated, "[a]lthough the pump derivatively renders Dennis more amenable to education by keeping him nourished, it does not directly contribute to the implementation or satisfaction of his educational program." The hearing officer also stated that since the student was not learning any feeding or other self-help skills from the use of the nutrition pump, his need for the device was "totally independent of his educational requirements." The boy's parent or a social service agency was responsible for his medical devices, not the district, which was responsible only for his educational needs.

A different Texas hearing officer determined that another medically related AT device must be provided by a school district. In a due process hearing in which a school district sought a holding that it was not obligated to supply and maintain oxygen tanks for a student on campus and on the bus, the hearing officer held just the opposite—that the district was responsible for the provision and maintenance of the medically related AT device. *See Silsbee Indep. Sch. Dist. v. Steve Lynn F.*, Comm'r Dec. No. 159-SE-1296 (March 26, 1997). The student had a seizure disorder, and part of the protocol that was to be followed when the student had a seizure was to administer oxygen from a tank. The district had been providing the oxygen tanks, but believed it was not required to do so under the IDEA. The hearing officer concluded that though the oxygen tanks for emergency use did not really fall within the legal definition of "related services," they were considered AT devices in that they were used to increase, maintain or improve the functional capabilities of a child with disabilities. It appears from the decision that the oxygen tanks were a component of the student's IEP, and the hearing officer determined that the school was required to provide them. Because the hearing officers in these two cases rendered such different decisions, it remains unclear which medically related AT devices districts are responsible for providing.

Personal Assistive Technology Devices

Some AT devices, like hearing aids or eyeglasses, are personal devices that are custom made for the use of a particular student and that travel with the student in all environments. Because of the nature of the use of these types of devices by students, it is sometimes difficult for school district staff to understand that these devices are AT devices just like any other with respect to the obligation of districts to provide them for the use of students with disabilities.

In the early- and mid-1990s, school districts sought guidance from OSEP on the issue of personal AT devices, and those determinations are still applicable today. In a 1995 letter, OSEP addressed whether or not a school district was obligated to provide eyeglasses to a student with a disability. The letter stated, "…the policy of this office has been that a public agency was not required to purchase a hearing aid for a student who was deaf or hearing impaired because a public agency is not responsible for providing a personal device that the student would require regardless of whether he or she was attending school. OSEP also has taken this position with respect to the provision of eyeglasses to children with disabilities, *i.e.*, eyeglasses are a personal device the student requires regardless of whether he or she attends school. However, this policy does not apply where a public agency determines that a child with a disability requires eyeglasses in order to receive a free appropriate public education (FAPE), and the child's individualized education program (IEP) specifies that the child needs eyeglasses. In that situation, the public agency must provide the eyeglasses at no cost to the child and his or her parents." *Letter to Bachus*, 22 IDELR 629, 629-30 (OSEP 1995) (emphasis added); *see also Letter to Seiler*, 20 IDELR 1216 (OSEP 1993) (stating that if the child's IEP reflects that he or she needs a hearing aid in order to receive FAPE, the district is responsible for providing the hearing aid free of charge to the student and parents).

In a case before a court of appeals in Puerto Rico, the court ordered the Puerto Rico Department of Education to provide a physically disabled student a wheelchair. *See Vega v. Dep't of Educ.*, 33 IDELR 246 (P.R. Ct. App. 2000). The Department of Education had performed an AT evaluation of the student, and had recommended that a wheelchair be

purchased for the student's use at all times, but then notified her parents that the wheelchair would not be provided. The Department had determined that there was no provision in applicable statutes and regulations that educational agencies must buy wheelchairs for students who request them. The Department also offered the fact that the wheelchair would be used outside of school as another reason for its denial of the provision of the device. The court held that the evidence showed that the student needed the wheelchair in order to "facilitate her education," that there was "no legal reason why a wheelchair should be denied to her," and that a wheelchair is the type of AT device the law contemplated. The court stressed that the girl's use of the wheelchair for purposes other than attending school was not a sufficient ground for denying her the AT device.

Though the provision of personal AT devices seems to garner much confusion, in light of the above statements by OSEP, addressing personal device questions is not difficult. Personal AT devices are to be treated no differently than any other AT devices with respect to considering the need for AT devices, including the AT device in an IEP, and implementing the provision of the AT device. If a student's ARD committee determines that a personal AT device is necessary for the child to receive educational benefit, the device should be specified in the child's IEP. If the IEP provides for the use of the device, the district must provide the device to the student, even if it is a device that is used exclusively by that one student, and even if the student uses the device outside of school. This analysis can be applied to the provision of personal laptop computers to students, as discussed above in many cases.

On the other hand, school districts do not have any responsibility for AT devices that are not required by a child's IEP. In cases in which a student wears hearing aids, but his or her ARD committee has not included them in the IEP, the district need not purchase the hearing aids nor pay for their upkeep or repair. *See Juan V. v. Progreso Indep. Sch. Dist*., Comm'r Dec. No. 072-SE-1100 (Dec. 18, 2000); *Ankeny Comty. Sch. Dist*., 30 IDELR 451 (SEA IA 1999).

V. Assistive Technology and Copyright Concerns

The use of some AT devices necessitates the reproduction of copyrighted works into formats that are usable for students with certain disabilities. For instance, written text might be scanned into a machine in order to make a Braille copy of the work, or an audio recording of printed material may be made for use by a student with a visual impairment. The need for this type of reproduction of copyrighted materials raises questions about the legality of making such copies. Though this area of the law is complex and confusing, educators should have a basic understanding of how their provision of AT devices/services may be effected by federal copyright laws.

First, there is a federal copyright statute that provides an exception to copyright infringement for certain entities by allowing those entities to reproduce copyrighted works for the blind or for others with disabilities without infringing on those copyrights. The statute reads:

> [I]t is not an infringement of copyright for an authorized entity to reproduce or to distribute copies or phonorecords of a previously published, non-dramatic literary work if such copies or phonorecords are produced or distributed in specialized formats exclusively for use by blind or other persons with disabilities. 17 U.S.C. §121.

The statute defines "authorized entity" as "a nonprofit organization or a governmental agency that has a primary mission to provide specialized services relating to training, education, or adaptive reading or information access needs of blind or other persons with disabilities." Though it is *a* mission of a school district to provide specialized services for the blind and others with disabilities, it is not a school district's *primary mission* to do so. Given this definition, unfortunately, this statutory provision does not give schools the authority to reproduce copyrighted materials without penalty.

However, another exception in federal copyright law could serve to allow school districts to legally reproduce copyrighted materials for teaching students with disabilities. The fair use exception provides that some reproduction of copyrighted works used for teaching may not infringe on the copyright protections on those works. The determination of whether or not such use is fair use is a complex consideration that involves analyzing four factors. Those four factors are:

> (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
> (2) the nature of the copyrighted work;
> (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
> (4) the effect of the use upon the potential market for or value of the copyrighted work.
> 17 U.S.C. § 107.

Depending on the facts of each specific situation, if a school district's actions in audio recording or scanning a textbook or novel pursuant to a specific student's IEP are challenged as a violation of copyright, it appears that the fair use exception would provide a strong defense to liability. However, there is no formula to use to determine absolutely what use is fair use, and these factors must be applied to the specific facts of each situation in which a school is considering reproduction of a work for this purpose. It appears some copying of textbooks, for instance, might be fair use. On the other hand, a district would probably be at a greater risk of copyright violation for the reproduction of novels, given the nature of such works. The commercial availability of copyrighted works in the necessary form must be considered, and if, for instance, an audiotape of a novel may be purchased commercially, the use of the fair use exception would most likely not be available. Though the analysis of each factor is too complex to include here, several cases provide insight into how the factors should be considered. *See Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 586 (1994); *Feist Publications, Inc. v. Rural Tel. Service Co.*, 499 U.S. 340, 348-50 (1991); *Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 563-64 (1985) (considering the nature of the copyrighted work); *see also Cambell*, 510 U.S. 569 at 586-87; *Belmore v. City Pages, Inc.*, 880 F. Supp. 673, 678 (considering the portion reproduced); *see also Sundeman v. Seajay Society, Inc.*, 142 F.3d 194 (4th Cir. 1998); *Harper & Row*, 471 U.S. at 566-67; *Sony v. Universal City Studios, Inc.*, 464 U.S. 417, 450-51(considering the effect of the use upon market value).

While school districts are not given the absolute authority to make reproductions of materials for students with disabilities, other agencies are, as discussed above. In order to avoid any copyright issues, educators are encouraged to explore options related to borrowing texts already modified into the proper form for the use of children with disabilities from agencies whose primary focus is assisting individuals with disabilities. For instance, the Texas State

Library and other organizations which specialize in recording for the blind, have libraries of novels on tape that school districts may access for the use of students with visual impairments. In addition, a link to networks that have resources that are digitally scanned is available at www.texasat.net.

If a district chooses, after applying the fair use factors to each situation, to reproduce copyrighted materials, the district should implement a system of record-keeping and custody for the reproductions so that if faced with challenges to the reproduction, the district could best prove that all copies were used for purposes that were nonprofit and educational. The documentation could be used to show that the copies were used for children with disabilities whose IEPs called for such modification. The documentation could also be used to show that the recordings were used only within the district.

VI. Conclusion

The provision of AT devices/services is a very important part of guaranteeing that students with disabilities receive the educational services that they have a right to receive under federal and state law. The AT related issues that are litigated in state due process hearings and in federal courts are varied and numerous, and there are some areas in which it remains unclear what the proper course of action for school districts should be. However, for the most part, a review of the statutory and regulatory mandates, as well as the legal standards established by case law, provide important and significant guidance for school districts to follow.