**Current Legal Issues**

**Involving Assistive Technology**

by

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**Learning Objectives**

**1. Understand the key operative IDEA regulations addressing assistive technology (AT) and AT services**

**2. Identify individual students’ situations and factors that would require AT evaluation.**

**3. Learn how to avoid problems in implementation and maintenance of AT.**

**4. Explore cases to identify practical steps to prevent disputes involving choice of AT.**

**5. Understand AT service and training requirements associated with providing AT.**

**6. Learn how to properly incorporate AT into students’ IEPs.**

**7. Review challenges posed in providing computer/tablet AT to students with disabilities.**

**8. Know the rules governing medically prescribed and surgically implanted devices.**

**Operative Regulations**

In amendments made to the Education of the Handicapped Act (now IDEA) in 1990, the Congress first added definitions for “assistive technology device” and assistive technology service.” *See* Pub. L. 101476 (1990 Amendments) at then 20 U.S.C. §1401(a)(25) and (a)(26); cited in *Letter to Anonymous*, 21 IDELR 1057 (OSEP 1994). The following are the present-day IDEA regulations addressing AT:

**34 C.F.R. §300.5**

**Assistive technology device.**

*Assistive technology device* means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

**34 C.F.R. §300.6**

**Assistive technology service.**

*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, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise Must .

**34 C.F.R. §300.105**

**Assistive technology.**

(a) Each public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§ 300.5 and 300.6, respectively, are made available to a child with a disability if required as a part of the child's—

(1) Special education under § 300.36;

(2) Related services under § 300.34; or

(3) Supplementary aids and services under §§ 300.38 and 300.114(a)(2)(ii).

(b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE.

*Comment*—Note the exclusion for surgically implanted devices, which was included in IDEA 2004. Also, note that the regulations treat AT and AT services as either special education, related services, or supplementary aids and services. The regulations also envision that the IEP team, on a case-by-case basis may determine that school-purchased AT is needed in the home or other settings in order for a child to receive FAPE.

**34 C.F.R. §300.324(a)(2)(v)**

The IEP Team must—consider whether the child needs assistive technology devices and services.

**AT Evaluations and Consideration of AT**

The IDEA regulations state that AT services include “the 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). In addition, another regulation requires IEP teams to consider whether a student needs AT devices and services. 34 C.F.R. §300.324(a)(2)(v). But, there is no firm requirement for AT evaluations for all students with disabilities. In addition, the IDEA does not specify who should conduct AT evaluations or how they should be conducted, beyond requiring that they include “a functional evaluation of the child in the child's customary environment.” 34 C.F.R. §300.6(a). Generally, however, schools may want to train staff that conduct AT evaluations on current technology applications for the education of students with disabilities. At times, schools may contract with AT consultants or create teams of staffpersons that include staff knowledgeable in the area of disability to conduct AT evaluations

The cases below illustrate disputes over whether schools should have undertaken actual AT evaluations in their consideration of the student’s need for AT. Sometimes, hearing officers and courts may excuse the lack of an AT evaluation if it is clear that the school has provided appropriate AT that has assisted the student in receiving a FAPE. Other cases contain specific facts that led the hearing officers or courts to find that the lack of AT evaluation violated the IDEA under the circumstances.

***Letter to Fisher*, 23 IDELR 565 (OSEP 1995)**

LEAs must ensure that its evaluations, when warranted, assess “the student’s functional capabilities and whether they may be increased, maintained, or improved through the use of assistive devices or services. The evaluation should provide sufficient information to permit the IEP team to determine whether the student requires assistive technology devices or services in order to receive FAPE.” OSEP also stated that if parents disagree with a district’s evaluation because it fails to address need for AT, they may request an IEE or request that the school assess the area of AT.

*Comment*—First, OSEP reemphasizes that IEP teams must determine whether an AT evaluation is warranted. In addition, according to OSEP, parents can request IEEs if they disagree with the school’s AT evaluation, or if they disagree with a school evaluation because it fails to assess the area of AT need.

***R.P. v. Alamo Heights Independent Sch. Dist*., 60 IDELR 60 (5th Cir. 2012)**

Although a District delayed for nearly a year in reviewing an AT evaluation for a nonverbal 10-year-old with Autism, ID, and speech impairments, it did not deny her a FAPE. Initially, the school used the picture exchange communication system (PECS), although it also tried a voice output device (Go Talk) that the parents were using at home. When the student’s expressive language was reported to have declined at home, the IEP team ordered an AT assessment to focus on communication devices. The IEP team did not review that AT evaluation until nearly a year later. By that time, the student was already using another voice output device (DynaVox) with agreed success. The parents requested a hearing on, among other issues, the AT problem. The Court found that the District failed to timely review its AT evaluation. But, it rejected the parents’ contention that as a result, the student was denied appropriate AT, since she was progressing using the PECS system even though the AT evaluation had not been reviewed, and the Court viewed PECS as AT. “While AHISD’s handling of the Fall 2008 AT assessment was not optimum,” the Court found that the student received a FAPE.

*Comment*—Another court could have found that the IEP team’s failure to timely review the AT evaluation was a procedural violation that seriously infringed on the parents’ opportunity for meaningful participation in the IEP process, and thus denied the student a FAPE. The District here skirted with real legal danger in neglecting to review its own completed AT evaluation.

***E.F. v. Newport Mesa Unified Sch. Dist.,* 65 IDELR 265 (C.D.Cal. 2015)**

A California school knew that a six-year-old with Autism was successfully using an iPad for entertainment purposes. In the meantime, the District had been using the picture exchange communication system (PECS) with little success, as the student primarily communicated by pointing, eye gazes, and leading persons by the hand. Nevertheless, the school waited nearly a year before conducting an AT evaluation and providing an iTouch device for functional communication. It did so only after a private evaluator pointed out that the student was able and willing to use iTouch to communicate, did the District decide to conduct an AT evaluation. The ALJ found that “given Student’s interest in using the iPad and his success with it, the District should have at least assessed Student right after discovering his ability to use the iPad.” The reviewing Court agreed with the hearing officer and the award of compensatory services, although it disagreed with the parents’ contention that the student should have been evaluated for AT even earlier, finding that “prior to learning about E.F.'s success with an iPad in February 2012, however, the District was reasonable to believe that E.F. was not yet ready to start using ‘high-tech’ devices, as his knowledge regarding such communication was still emerging.”

*Comment*—If staff discover that a child is already making use of an AT device successfully, the IEP team may want to consider an AT evaluation to assess whether the device could be used for education applications, or whether a similar device might be more adaptable to the classroom environment and tasks.

***A.L. v. Chicago Pub. Sch. Dist. No. 299*, 111 LRP 71856 (N.D.Ill. 2011)**

The parent of a high-schooler with a mild cognitive impairment challenged a District AT evaluation that concluded that the student did not need significant AT. The Court noted that the AT evaluation identified the student’s needs and properly assessed whether AT “would be useful in minimizing AL’s writing deficits, and whether auditory or visual input helped to increase AL’s comprehension.” The results indicated that the student received no clear benefit from AT, but nonetheless recommended the use of writing and symbol software. The Court held that the parent failed to prove a violation of IDEA arising from the AT evaluation.

***Glendora Unified Sch. Dist*., 49 IDELR 172 (SEA California 2007)**

A school employee unilaterally decided to deny two parental requests for AT evaluation for a deaf high school student. The parent requested the evaluations to address the student’s potential need for Communication Access Real-Time Translation (CART). After each request, a District staffperson told the parent that the student did not require CART, and thus, the AT evaluation was not needed. The ALJ found that although there is “no express requirement that a school district perform an assistive technology evaluation,” AT and AT services may be required as part of the child’s program. The denial of AT evaluations, when there was an apparent need to address the student’s communication needs and other deficits was inappropriate, particularly when the denial was made unilaterally by a staffperson. The District was providing an FM system that was not fully compatible with the student’s cochlear implant. Moreover, while the FM system allowed him to hear the teacher, he could not hear peer comments, which meant he could not participate in classroom discussions, which were a component of several of his classes. Some teachers testified that the student would benefit from CART, and none felt that the student of CART would be disruptive or detrimental to the student or the class. In addition, the student’s test scores and grades “have shown a pattern of decline.” The ALJ thus held that the student was not provided with meaningful access to the curriculum, as he had to miss out on classroom discussion and a substantial portion of the curriculum. The District was ordered compensatory services and implementation of CART.

*Comment*—Outright denial of an AT evaluation when specifically requested by the parent is questionable, but having a staffperson unilaterally rejecting the AT evaluation outside of the IEP team process is a clear mistake. Since there was an active question as to whether the present FM system was meeting the student’s communication needs versus CART services, common sense would dictate that such question would need to be resolved through an AT evaluation. The AT evaluation might have identified alternatives to CART that could have met the student’s need to hear classroom discussion, as well as the teacher’s voice. Or, it might have conclusively shown that CART was the only viable option to address the needs.

***Montgomery County Pub. Schs*., 114 LRP 47714 (SEA Maryland 2014)**

An AT evaluation of a 2nd-grader with visual impairments had the student try different tablet computers, one of which seemed helpful for reading. But, the evaluation ultimately recommended a magnification device for viewing a whiteboard, magnification software for viewing a computer, and other accommodations, but not the tablet. When the parents requested an IEE, the District refused and requested a hearing to prove the appropriateness of its AT evaluation. The ALJ found that the District’s evaluator was qualified to conduct the assessment, used several assessment tools, and administered a proper assessment. He also noted that while a tablet could be an appropriate AT for a child with a visual impairment, it is not the only AT that can enable the student to access the curriculum. Importantly, the ALJ held that, to be appropriate, an AT evaluation does not have to determine which AT might be the best option. Ultimately, the parent’s argument was that the iPad was a “preferable” device, and that the AT evaluation did not specifically consider an iPad. The ALJ thus denied the parent’s request for an IEE at public expense.

*Comment*—This case also touches on the issue of choice of AT. While an iPad may have more multifaceted uses and applications, if the AT evaluation recommends AT that specifically address the student’s particular AT needs, both the evaluation and the AT it recommends are likely to be upheld legally, even if the recommended AT has less universal potential application.

***Antelope Valley Union High Sch. Dist*., 110 LRP 33085 (SEA California 2010)**

Without conducting an AT evaluation, a California District provided a student with dyslexia a portable Fusion text-to-speech system (3’’x 7” size) with headphones, after the student complained that the Fusion speaker made him “stand out” too much in class. The teacher trained himself and the student on the device and offered to train the parent, who declined. The student then complained that the device was too heavy to carry in his backpack. The student started refusing to use the device, instead asking for a notebook computer to assist in writing (he had previously refused to use an AlphaSmart word processing device also). The District noted that a notebook computer would be even heavier than the Fusion device, and would add other distractions, such as the internet and social media programs, which the student would want to access. The ALJ, however, found that the District improperly attributed the student’s failure to access his ATs to behavioral resistance, instead of conducting an AT evaluation to address the problem. “Knowing that Student was not benefitting from his AT-related services put the District on notice to make concerted efforts and inquiries to develop AT-related services which benefitted student.” Although the District changed the AT from the AlphaSmart to the Fusion, “the change or upgrade in the AT device was not based on a comprehensive assessment of student’s AT capabilities and needs,” which apparently included fine-motor deficits and a visual processing disorder. The lack of AT evaluation, moreover, impeded the parents’ opportunity to meaningfully participate in the IEP process. “District’s AT approach was to decide what Student needed, give it to him, monitor the AT use, and blame him if AT did not help.”

*Comment*—While a student’s preferences are a factor in making the AT determination, a student’s refusal to use a device does not mean the AT is not appropriate to meet his needs. Ultimately, however, the District’s failure to conduct an AT evaluation when the provision of AT had clearly proved problematic for a student with fairly complex needs was the main problem in its position. An AT evaluation would have weighed the relative benefits and drawbacks of the student’s preferred options against any drawbacks and the benefits of District-provided devices. An AT evaluation could have also assessed the degree to which the student’s resistance was purely behavioral, rather than based on the merits of the various AT options, and determined the impact of fine-motor and vision processing deficits.

***District of Columbia Pub. Schs*., 67 IDELR 134 (SEA DC 2015)**

The parents of a high-school student with SLD challenged the District’s failure to conduct a timely AT evaluation after they raised the possibility of the student using an iPad for organizational purposes. While the District did not commit to providing an iPad, it let the student use his own iPad at school to later assess his AT needs after he had used the device for a time. The ALJ first noted that “a parent may not select the assessments for a school district. The types of assessments to be employed in a reevaluation are within the reasonable discretion of the school district.” Since the ALJ felt that the IEP team adequately addressed the student’s needs in the area of organization by other means, he did not find that a failure to conduct an AT evaluation earlier was a violation of IDEA. Moreover, he noted that the District in fact agreed to conduct an AT assessment after the student had used his iPad for some time.

*Comment*—In dicta, the ALJ stated that “an assistive technology assessment is not an evaluation.” This conclusion seems contrary to OSEP’s position in *Letter to Fisher*, 23 IDELR 565 (OSEP 1995), which holds that parents that disagree with AT evaluations may request an IEE, thus implying that AT evaluations are “evaluations,” or parts thereof, within the meaning of IDEA

***Bastrop Independent Sch. Dist*., 116 LRP 13753 (SEA Texas 2016)**

A child with SLD, anxiety, attention deficits, and cognitive, memory, and executive function difficulties challenged his IEP on various grounds, including AT. In prior years, the District had conducted an AT evaluation, although it did not include a trial plan for AT devices. District staff testified that the student had access to AT per his IEP, but chose not to use it, but felt that it did not impede his progress. Instead, the student was using another AT device of his own. The hearing officer held that given that the student’s needs had changed, and the student was not using the AT provided by the District, but one of his own, the IEP team should have decided to conduct an updated AT evaluation. “It would be appropriate to conduct a new evaluation to discover how best to use assistive technology to accommodate the student’s memory issues.”

*Comment*—The hearing officer’s statement that the AT evaluation must identify how to “best” use AT seems to impose a higher legal standard than *Rowley* requires. Likely, however, the remark is not intended as a statement of the applicable legal standard, but rather to highlight that the student’s circumstances and needs (not using the District AT, and instead using his own AT) dictated the need for a new AT evaluation to identify appropriate AT that would assist the student in benefitting from his instructional program.

***Orangeville Comm. Unit Sch. Dist. 203*, 112 LRP 1209 (SEA Illinois 2012)**

A 14-year-old with arthritis exhibited difficulty climbing stairs, and, at times, holding a pen for writing. Of her own initiative, a teacher obtained a laptop for the student to use when she had difficulty holding a pen. The ALJ held that the student’s difficulty with writing instruments should have alerted the District that an AT evaluation was necessary. This failure, together with other IEP deficiencies, led to a denial of FAPE.

*Comment*—The ALJ did not explain whether the teacher-provided laptop properly addressed the specific issue, arthritis flare-ups that periodically made it difficult for the student to hold a pen for writing. Other ALJs and courts might have examined that question before determining that the lack of AT evaluation was a violation of IDEA.

***North Hills Sch. Dist. v. M.B*., 65 IDELR 150 (Pa. Comm. Ct. 2015)**

A District was aware of the severe communication deficits of an 8-year-old with Autism since his Kindergarten year. In first grade, the student was successfully using a tablet to communicate with others outside of the school setting, but in the classroom, he moaned and cried to make his needs known. Teachers used some AT in the classroom, but not necessarily for direct communication. The District, however, had not conducted an AT evaluation. The Court found the failure to evaluate AT needs contributed to the IEP not properly addressing the student’s communication needs. “Despite widespread agreement that M.B. used behaviors to communicate when other avenues are unavailable, and that M.B. had more success with assistive technology outside of school, the District failed to take affirmative measures to determine why M.B. did not exhibit those successes at school.” The Court thus affirmed an ALJ’s award of compensatory education services.

*Comment*—This case is similar to *E.F. v. Newport Mesa Unified Sch. Dist.,* 65 IDELR 265 (C.D.Cal. 2015), which was reviewed above, in that staff knew that the student was successfully using some AT outside of school but nevertheless did not conduct an AT evaluation.

***Vacaville Unified Sch. Dist*., 116 LRP 20081 (SEA California 2016)**

The District had, in years past, evaluated a 15-year-old student with Down’s Syndrome to assess applicability of AT. Although the parent suggested changes in the provision of AT, the District did not conduct a new AT evaluation, and it failed to consistently provide the AT that was on her IEP. The ALJ found that the District’s reliance on an old AT, in light of the debate as to present needs for AT, was inappropriate. The ALJ noted that Districts have an obligation to reassess the educational needs of a student with disabilities in order to meet their continuing duty to develop and maintain an appropriate educational program. In addition, the ALJ faulted the District for waiting to see if public insurance benefits would cover the AT the parent was seeking before determining if such technology was necessary for the student’s education.

*Comment*—If a parent questions the AT provided to their child or makes alternate AT suggestions, an IEP team may want to respond by conducting an AT reevaluation to properly address the question with current data.

***Victor Valley Union High Sch. Dist.*, 115 LRP 30624 (SEA California 2015)**

A 13-year-old student with Autism was provided a variety of low-tech and high-tech AT, including an iPad tablet computer, a one-button audio-recorder, a device that recorded multiple phrases with a playback button, a device for responding to two-choice questions, a touchscreen computer program, a GoTalk device, and a picture exchange communication system (PECS). But, the District did not conduct an AT evaluation. The ALJ ruled that there was no evidence that the student required an AT evaluation, since the District’s provision of a range of low-tech and high-tech devices adequately supported the student’s emerging functional communication skills. “There was no evidence Student had any unmet functional communication needs that required assessment.”

*Comment*—This ALJ follows the approach of other, although not all, ALJs. If the evidence indicates that the child’s AT needs were properly met without an AT evaluation, the lack of such evaluation may not equate to a violation of IDEA.

***Fort LeBoeuf Sch. Dist*., 116 LRP 28336 (SEA Pennsylvania 2016)**

A private evaluator assessed a high-school student with speech impairments and Irlen Syndrome, and recommended that he be provided a reading pen and a text reader. The District responded by providing the student a tablet device with text-to-speech functions (Nexus), but did not conduct an AT evaluation or incorporate the private evaluator’s suggestions (although the ALJ conceded that the private evaluator’s qualifications in AT were “lacking in evidence”). In addition, miscommunication and miscoordination resulted in the tablet not being properly charged at school, as a charging cord was not consistently available. The ALJ found a violation, stating that “The [d]istrict cannot argue that the [s]tudent's assistive technology needs are satisfied by the tablet, and then take no responsibility for keeping the tablet charged and usable.”

*Comment*—As the ALJ noted that the private evaluator’s AT recommendations were similar to what the District provided the student, one can wonder whether the ALJ might have found that the lack of AT evaluation could be excused by the provision of appropriate AT if a charger had been consistently available at school and home. Or, the ALJ might have found that the lack of an earlier AT evaluation deprived the student of AT he might have needed in the classroom earlier.

***School Dist. of the City of Adrian*, 115 LRP 32055 (SEA State Complaint Michigan 2015)**

Since all students in the school had access to an iPad, the SEA did not find that the lack of an AT evaluation or AT provisions in the IEP violated IDEA. The District properly concluded that AT did not need to be addressed in the IEP, since all students had access to iPads and teachers in each content area determined which applications would be best for each student.

*Comment*—Would not the teachers need assistance in matching the student’s disability-related needs to the applications to be used with the iPad? Moreover, if a student indeed needs an iPad and appropriate applications to enable them to benefit from their instructional program, IDEA would appear to require that the iPad and its uses be included in the IEP, whether or not all students had iPads. In addition, including the use of the iPad in the IEP would also enable the IEP team to monitor the student’s progress in using the device.

***Wayne-Westland Comm. Sch. Dist*., 115 LRP 42640 (SEA State Complaint Michigan 2015)**

A District provided a student with SLDs a word processor (AlphaSmart) and electronic text book, but did not conduct an AT evaluation. The parent, however, conceded, that she never requested the evaluation. The SEA ruled that since there was no request for an AT evaluation and the IEP addressed the need for AT, there was no violation of IDEA.

***Fayette County Sch. Dist*., 115 LRP 52071 (OCR 2015)**

Before a District stopped providing a high-school student with electronic textbooks, text-to-speech services, and electronic calendar reminders, as indicated in his IEP, it should have conducted an AT evaluation and convened and IEP meeting. Moreover, the District did not conduct an AT evaluation even though the parent specifically requested one. The District agreed to resolve the complaint voluntarily.

*Comment*—Although this is a case determined by compliance with §504, its point that prior to discontinuing the use of AT devices, the IEP team should consider an AT evaluation, is a valid one.

**Choice of ATDs**

As is the case with decisions on instructional methodology, disputes about choice of AT will inevitably arise. The cases show that, generally, schools’ choice of AT will be respected as long as the selected AT is appropriate to meet the student’s needs and assist in conferring a FAPE. In choosing AT, schools may want to consider some key factors:

• Relative flexibility and adaptability of the AT to the educational program as the student progresses

• The degree to which the AT will be linked to IEP goals

• Ease and practicality of use

• Amount of training required for staff and student (and perhaps parents, as applicable) to use the AT appropriately

• Availability of replacement parts or replacement devices

• Durability of device

• Potential need for updating software and ease of updating

• Student’s history with similar AT in the past

• Whether particular AT might be distracting or disruptive

• Results of trials with the AT or similar AT

***H.C. v. Katonah-Lewisboro Union Free Sch. Dist*., 61 IDELR 121 (2nd Cir.** **2013)**

As part of an action seeking reimbursement for private placement and challenging a District’s program for a 2nd-grader with an SLD, the parents claimed that the District’s refusal to provide their preferred model of FM system meant that it failed to address the student’s AT needs. The District used the Radium broadcast FM system rather than the Phonak personal system preferred by the parents, but the Court found that the parents “offered no evidence to demonstrate the inadequacy of the Radium system.” It stated that “a school district does not fail to provide a child with a FAPE simply because it employs one assistive technology over another, so long as the technology employed is reasonably calculated to permit the child to achieve educational benefits.”

***G.A. v. River Vale Bd. of Educ*., 62 IDELR 37 (D.N.J. 2013)**

Although the parents of a preschooler with mild-to-moderate hearing loss in one ear might have been correct that he would be better served with a hearing aid rather than an FM system, the District was not required to pay for the aid. The court held that the District-provided FM system with a desktop speaker, in conjunction with the student’s ability to hear in one ear, allowed the student to receive a FAPE. While an ear-level hearing aid, rather than a desktop system, would have been optimal, the student benefited from the device provided by the District. The Court noted, moreover, that the evaluating audiologist did not recommend a specific type of FM aid. It also pointed out that the parent-preferred hearing aid would be used for all waking hours, not just for education, and that *Letter to Seiler*, 20 IDELR 1216 (OSEP 1993) stated that schools were not responsible for personal assistive devices that the student would need regardless of school attendance, unless the IEP specifically included such a device. *See below*, for discussion of personal and medical devices.

***A.S. & W.S. v. Trumbull Bd. of Educ*., 45 IDELR 40 (D.Conn. 2006)**

Parents of siblings with severe asthma and allergic reactions to their elementary school challenged the school’s provision of AT to the students, among other claims. The District’s AT consultant, who evaluated the students, recommended that A.S. be given access to a computer at school and at home, as well as three specific software programs—CoWriter 4000, IntelliTalk Two, and Inspiration. There was an optional recommendation for a fourth program, Kurzweil 3000. The consultant noted her philosophy was to provide AT support in a manner that would least interfere with students’ ability to participate in regular classes, including low-tech AT instead of high-tech if it met the students’ needs. The Court found that the record did not support the contention that without the parents’ preferred AT, the students would not make progress. It also found no problem with the AT consultant’s position on low-tech vs. high-tech devices, noting that the District provided high-tech AT to the students.

*Comment*—IDEA is silent on the low-tech vs. high tech question. Generally, hearing officers and courts focus on whether the AT provided under the IEP, whether low-tech or high-tech, meets the student’s identified AT-related educational needs.

***Eric H. v. Methacton Sch. Dist*., 38 IDELR 182 (E.D.Pa. 2003)**

The parents of a 9-year-old second-grader with immune system complications associated with Leukemia treatment sought continued use of video teleconferencing (VTC) equipment so that he could participate “virtually” in the classroom environment when his risk for infection is high. The school argued homebound instruction could meet his needs without the use of such equipment. While the use of VTC provided the student with opportunities for “virtual” peer interaction and cooperative learning, he acted as if he was “on stage” and engaged in attention-seeking breaking of rules. Teachers testified the use of VTC with Eric was disruptive to other students and the class. The court held that the student was able to work on social and behavioral goals during the times he was able to attend school (he attended 75% of the time in 2nd grade). Even if homebound instruction supplemented with VTC were less restrictive than homebound instruction without it, the use of VTC was disruptive to other students and the classroom, and his behavior deteriorated when using VTC. Thus, discontinuing the use of VTC was not a violation of IDEA.

*Comment*—Data indicating that a particular AT device is distracting, disruptive, or otherwise presents difficulties of its own, must be considered as a factor in making the determination of appropriate AT. For example, for an elementary-grade student with a need for word processing AT, the full operating system of a laptop computer might require too much training and provide too many opportunities for distraction, as opposed to a simplified word processing device like the AlphaSmart.

***Waterford Sch. Dist*., 116 LRP 17648 (SEA Michigan 2016)**

The parents of a non-verbal preschooler were “alarmed” that their child had not acquired verbal language skills, and opposed the use of his IEP-provided functional communication system (iPad with Touch Chat), instead only wanting instruction on verbal language. The Hearing Officer noted that “Petitioners have nothing but disdain for Student’s use of communication devices.” The teacher testified, however, that use of the communication devices was the most consistent way for the student to participate in classroom activities, and that use of the devices was paired with verbal prompts, which enabled the student to begin approximating some words verbally. The Hearing Officer found that the IEP, its services, and the use of the communication devices was appropriate and conferred a FAPE.

*Comment*—Here, the parents’ objections were really about the IEP’s focus on functional communication while the student began to acquire speech. Thus, they opposed the use of an AT-based functional communication system.

***Los Angeles Unified Sch. Dist*., 46 IDELR 232 (SEA California 2011)**

The parents of a 19-year-old with cerebral palsy, ID, asthma, seizures, and developmental delays sought an iPad2. After careful consideration, however, the District had offered a SpringBoard communication device with a dynamic interface. The ALJ first noted the thorough nature of the District’s AT evaluation and device selection, pointing out that the District replaced a first device with a more advanced and lighter model (SpringBoard Lite) as it became available. In addition, the AT evaluator programmed the device and trained the student, mother, teacher, speech therapist, and aid in its use. Logs showed that the student made progress with the device and it was not in disrepair, as alleged by the parent. Although the parent contended that the iPad2 would better address the student’s needs, “the District [was] not obligated to provide the most technologically advanced AT device, or a device that would serve other purposes.” The Hearing Officer thus found that the AT provided by the District were reasonable calculated to confer educational benefit.

***Los Angeles Unified Sch. Dist*., 111 LRP 75098 (SEA California 2006)**

Although the parent of a teenager with cerebral palsy and scoliosis preferred the use of a motorized wheelchair with an electronic stander that positions the student in a standing position, the Hearing Officer ruled that the District’s provision of a stand-alone stander (EX Stander) was appropriate to meet the student’s needs. The parent-preferred C500 Permobile would not only position the student in a standing position, it included a stander, and was less conspicuous and more efficient than the stand-alone stander. While the parent’s choice might also assist the student outside of school, the District was not responsible for providing AT that was not necessary for the student’s education. The Hearing Officer found that “it is evident that the [motorized wheelchair], however elegant, is not required to provide the student a FAPE.” The parent was unable to point to any specific IEP goal or objective that could not be accomplished with the District-provided stander device.

*Comment*—The above two cases illustrate that, while preferable or optimal, the latest innovation in AT might not be truly necessary in order to enable a student to receive a FAPE. As long as it meets the student’s AT-related needs, a lesser alternative will meet the requirements of the law. IDEA does not guarantee the best possible AT for all students.

***Houston County Sch. Dist*., 116 LRP 8724 (SEA Georgia 2015)**

The fact that the District provided some AT to address a student’s complex communication deficits did not mean that its choice of device was appropriate. The District provided a 2nd-grader with Autism a voice-output device with a static display and 32 buttons with limited his communicative vocabulary (static devices’ choices are limited to the pictures on the display). The Hearing Officer held that the provided AT limited the student’s vocabulary and impeded his ability to make adequate gains, while a tablet with a dynamic display offered customizable and “virtually unlimited possibilities for picture vocabulary.” Moreover, the student had already demonstrated his ability to navigate and use a personal tablet for communication. In addition, the Hearing Officer also found that the District was two years late in evaluating the student’s AT needs and in providing communication AT. She thus found a denial of FAPE and awarded a variety of compensatory services.

*Comment*—While hearing officers and courts will generally respect schools’ choice of AT, as with choices on educational methodologies, the choices must be appropriate to meet the student’s needs. Here, they were not, and the school had also failed to timely evaluate for AT.

***Southington Bd. of Educ.*, 116 LRP 28397 (SEA Connecticut 2016)**

The parents of a gifted teenage student with SLDs and a vision focus problem requested that the District provide her text-to-speech software, and placed her in a private school when the District provided other AT. Although the student attended many honors classes, she did not achieve the very high grades her parents hoped would enable her to be accepted in Ivy League schools. Initially, the Hearing Officer held that IDEA does not require a program “that guarantees As and Bs in honors classes or acceptance to a highly competitive school.” The school’s provision of a laptop and access to Bookshare an online library for individuals with print-related needs was appropriate, even if admittedly less expensive than the parents’ preferred text-to-speech program. The Hearing Officer noted that the parents’ own consultant recommended Bookshare, and that the school properly considered her input. The District also provided an AT evaluation and OT services to assist the student in using the AT. The Hearing Officer therefore denied reimbursement for the private program.

***Fort Bend Independent Sch. Dist*., 34 IDELR 246 (SEA Texas 2001)**

The parents of a 15-year-old with ADHD requested that the school provide him a computer program containing acoustically modified speech (Fast ForWord) to assist his language processing difficulties. The parents produced research showing such a program could “re-route” pathways of the brain, although none of the research addressed use of the program in a school-based setting. After the District refused to provide the program, the parents placed their son in a private center that used Fast ForWord, and filed an IDEA hearing request. The Hearing Officer found that the student benefited from both the District’s program and the private Fast ForWord program. Even though the Fast ForWord program promised faster results, an appropriate program under IDEA is not necessarily designed to maximize educational benefit. There was no violation of IDEA.

**Acquisition, Implementation, and Maintenance of ATDs**

The logistics of acquiring selected AT lead to the day-to-day work of implementing the AT in the classroom, which leads to the need to provide periodic maintenance of the AT. Those functions must be undertaken properly to appropriately meet student’s ongoing AT needs. After AT is selected, parents should be informed of the time to secure purchase orders, order the AT, and make it operational, and that timeframe should be documented. If before the actual selection of an AT device the school will undertake trials of several options, the parent should be informed of the expected timeline for the trial. If possible, schools could arrange for a comparable loaner AT device while the student’s own device is received.

***Letter to Anonymous*, 21 IDELR 1057 (OSEP 1994)**

OSEP here clarifies that although a school must provide AT necessary for FAPE at no cost to parents, IDEA does not specify whether a school must assume responsibility for a device that is purchased by the parent and used at school to implement the IEP either at school or home. There is nothing that precludes parents from paying for AT that is to be used at school or home to implement the student’s IEP. If such a device is needed for FAPE, however, and the device the parents provided is no longer in working order, the school would be responsible for either providing a substitute device to meet the same need or reconvening the IEP team to review the IEP and revise, if appropriate, its AT provisions. OSEP went on to state that “in many cases, it may be reasonable for public agencies to assume liability for family-owned devices used to implement a child's IEP either at school or at home, since the public agency is responsible for providing assistive technology devices and services that are necessary parts of the child's special education, related services, or supplementary aids and services, as specified in the child's IEP. Further, without the use of the family-owned device specified in the IEP, the public agency would be required both to provide and maintain a needed device. On the other hand, there may be situations in which assuming liability for a family-owned device would create a greater responsibility for the public agency than the responsibility that exists under Federal law.”

*Comment*—The crucial issue is whether the assessment data and the student’s needs indicate that the child needs the parent-provided AT in order to assist him in benefitting from his program. If so, the school is ultimately responsible for ensuring that AT or another device that meets the same need is available to the student. If the parent-provided AT is not really necessary, the IEP should not include it, and the school’s responsibility would be only to ensure that appropriate AT is available.

***School Dist. of Philadelphia v. C.H*., 66 IDELR 214 (E.D.Pa. 2015)**

The IEP of a high-schooler with Autism and speech/language impairments called for a tablet or other AT to help develop his writing and communication skills. The District, however, did not provide the AT for about seven months because staff indicated that the student was already “verbal.” The Court found a failure to implement AT amounted to a substantial or significant failure in implementation that denied the student a FAPE. It noted that the student regularly used the tablet’s vocabulary word bank with pictures when he struggled to find appropriate words. Without it, he had difficulty spontaneously constructing correct sentences. “The fact that C.H. could speak without the iPad did not mean that its role in the IEP was not substantial or significant.” The Court upheld the award of compensatory services, as well as an order to train staff on the use of the iPad.

*Comment*—It stands to reason that staff’s unilateral decision to stop using AT called for in a student’s IEP may have serious legal consequences. Evidence indicating that the student in fact needed the AT, contrary to staff’s assertions, further bolstered the parents’ claims.

***C.B. v. Pittsford Cent. Sch. Dist*., 54 IDELR 149 (W.D.N.Y. 2010)**

A District offered a 9th-grader with writing deficits AT, as well as the services of an AT Coordinator, but he admittedly did not consistently use a word processing device out of self-consciousness. The student also refused to use a tablet computer that his parents had provided. The parents argued that it was a lack of teacher support that led to the student not using the AT. The Court found otherwise, stating that “instead, the record indicates that [the student] understood how to use the assistive technology that he was provided, but chose not to do so.” The record, moreover, did not support the assertion that there was a lack of AT support.

*Comment*—Schools should note that in other similar cases, some hearing officers have taken the position that a student’s resistance to using the District-provided AT should alert the school that an AT reevaluation is warranted to address the reasons for the resistance and possible alternatives to the AT being provided. See, e.g., *Antelope Valley Union High Sch. Dist*., 110 LRP 33085 (SEA California 2010); *Bastrop Independent Sch. Dist*., 116 LRP 13753 (SEA Texas 2016) (both cases reviewed above in AT evaluation section)

***In re: Student with a Disability*, 115 LRP 9118 (SEA New York 2014)**

The IEP goals of a student with Autism incorporated use of an iPad, but the District did not provide the device. Instead, the parents purchased and provided the iPad. The review officer held that since the IEP incorporated the use of an iPad, it was the District’s obligation to provide the iPad, and thus, he ordered reimbursement to the parents for the cost of the iPad.

*Comment*—Note that here, the parents did not voluntarily provide the iPad; they did so only because the District failed to provide it despite it being incorporated into the IEP goals.

***District of Columbia Pub. Schs*., 67 IDELR 104 (SEA DC 2015)**

After an independent evaluator recommended a voice recorder for a teenager with SLD, the IEP agreed that the AT was needed. But, the school never provided it. At worst, stated the ALJ, the school should have provided the AT “within a few weeks.” And, the ALJ found that the AT was a substantial or significant portion of the IEP, such that a failure to provide it denied a FAPE. The ALJ thus ordered 160 hours of compensatory education services and access to the voice recorder within 10 days.

***Board of Educ. of the Springville-Griffith Institute Cent. Sch. Dist*., 106 LRP 16973 (SEA New York 2003)**

A New York ALJ held that state law, rather than the IDEA, generally governs whether parents are liable for the loss, theft, or damage due to negligence or misuse of District AT used at home. In this case, the District required parents to sign a “Student Laptop Sign-out Agreement” acknowledging that the parents are responsible for theft, damage, and loss of the AT. The ALJ found that a document requiring parents to accept responsibility for AT does not violate IDEA. “The agreement holding a borrower of property responsible for theft or damage is consistent with federal regulation.” The agreement does not impermissibly deprive the student of the right to the AT.

*Comment*—Of course, the problem for schools is in enforcing such agreements. If an expensive device is indeed lost, even though the agreement may indicate the parents’ acknowledgment of responsibility, the legal costs of recovering the loss may outweigh the possibility of actual recovery. Moreover, if the parents refuse to sign such agreements, it is unclear that the school is in its legal right to deny the student the AT, as it is still responsible for FAPE. For schools, the most feasible option is to secure insurance coverage for AT devices.

***Toledo City Schs*., 115 LRP 45357 (SEA State Complaint Ohio 2015)**

After an IEP calling for an iPad went into effect, a student did not receive the iPad for weeks. Then, soon after he got it, he had to give it up so it could be repaired, and did not get it back until a few days before the end of the school year. The student’s IEP indicated that the iPad was to be used for daily schedules, notes, lessons, word banks, and similar services. The SEA found that the District did not provide the AT required in his IEP and ordered corrective action.

***Lyon County Sch. Dist*., 110 LRP 73249 (SEA State Complaint Nevada 2010)**

An 8th-grader with a visual impairment relied significantly on a computer Braille notebook to complete assignments and organize his day. When the device malfunctioned after 15 days of use, it took 55 days for the school to repair it. The school, moreover, offered no replacement during that period. The SEA held that the delay was a violation of IDEA, as the failure to implement the AT caused the student to not achieve two of his IEP goals.

*Comment*—As AT devices may malfunction or need periodic maintenance, schools need to pre-plan for either swift repairs or have backup ATs available. Schools can explore contracting with AT providers for repairs and for quick rentals of AT devices for short periods. Thus, the AT acquisition process is one that involves not only purchasing the device, but planning for repairs and fast replacement options. Those factors can affect the choice between equally effective devices.

***Monroe County Comm. Sch. Corp*., 50 IDELR 178 (SEA State Complaint Indiana 2008)**

The IEP of a 9-year-old with LDs and a communication disorder called for the Kurzweil system (a read aloud program) on a computer, as well as scanned books. The training session for the program did not occur until two months after the IEP meeting, and five months after the training, staff barely started scanning books. Thus, there was a failure to timely implement the required AT. In addition, the SEA ruled that the provision for books on tape “when available” was vague and also ambiguous, as it did not state if the taped books would also be sent home.

*Comment*—Lack of specificity and clarity in IEP AT provisions not only can lead to inconsistency in implementation, but also to disputes over the interpretation of the provisions. The terms should be written so that the use of AT is clear to both parents and staff.

***Frederick County Pub. Schs.*, 116 LRP 19891 (SEA State Complaint Maryland 2015)**

A District did not consistently provide an IEP-required FM system to a 6-year-old with a hearing impairment in his “specials” classes, but consistently did so in his core classes. The SEA ruled that the lapse in implementation did not deprive the student of a FAPE, as it was not a material lapse in IEP implementation.

***Detroit City Sch. Dist*., 115 LRP 31115 (SEA State Complaint Michigan 2015)**

When the SEA investigated a complaint that the school failed to consistently provide an FM system to a child with a hearing impairment, it found that the District did not have documentation of the implementation. While the District had the audiologist’s logs showing that the system was present, checked, and programmed to work with the student’s hearing aids, there was not documentation showing daily implementation of the FM system.

*Comment*—While there is no legal requirement that use of AT must be documented on a daily fashion, schools and their legal counsel should consider the degree and methods of documentation of AT compliance. If students or parents report an implementation problem, it should be investigated, and a more solid documentation system may be needed.

***Oakland Unified Sch. Dist*., 115 LRP 32675 (OCR 2015)**

This OCR investigation highlights that schools must have a procedure in place to inform substitute teachers of a student’s AT needs to ensure that a student can access their AT when the regular teacher is not present. The District here agreed to provide instructions to substitute teachers on how to operate the AT.

*Comment*—This is an area of particular concern if a teacher is frequently ill or there is a long-term substitute in the classroom.

**Assistive Technology Services**

The IDEA’s definition of AT services is broad, including“any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device.” The definition expressly includes AT evaluations, the process of acquiring and providing AT, maintaining and replacing AT, coordinating the use of AT with other services, training of the student and possibly the family, and training of school staff. *See* 34 C.F.R. §300.306.

***Sierra Vista Unified Sch. Dist. No. 68*, 110 LRP 67624 (SEA Arizona 2010)**

The parents of a student with multiple disabilities claimed that the District failed to adequately train the student on a Palm Pilot PDA device that provided the student with timed reminders, and failed to maintain the device in working order consistently. The ALJ found, however, that there was evidence that training was provided on the device in the student’s life skills class. The student was also allowed to take the device home. Periodically, there were troubles with the Palm Pilot, but the school addressed the issues in a timely manner. The school even provided a second Palm Pilot for use while the other was being charged. The ALJ thus found no violation of IDEA.

*Comment*—IEP teams should consider determining a set amount of training to be provided to the student on the use of a device, and then stating that amount and frequency of training on the IEP.

***Ada-Borup Independent Sch. Dist. #2854*, 49 IDELR 55 (SEA State Complaint Minnesota 2007)**

The SEA ruled that providing a student with cognitive delays and speech impairments the instruction manual for an augmentative communication device was no substitute for one-on-one training on how to use the device. “There is no record . . . that district staff provided training on the use of the new AT device once it was available for the student's use.”

***Portland Pub. Schs*., 115 LRP 17839 (SEA State Complaint Michigan 2015)**

The SEA ruled, among other findings, that a student was not provided appropriate training on using his IEP AT. Although an AT consultant allegedly met with the student on six occasions, the consultant appeared unaware that the student was struggling with certain software. As there was no evidence the District provided appropriate specially designed instruction related to the student using the software, the SEA found a violation of IDEA.

**IEP Issues**

***Letter to Anonymous*, 18 IDELR 627 (OSEP 1991)**

For more than 25 years, OSEP has taken the position that if a student requires AT, their IEP must include a specific statement of such devices and/or services, “including the nature and amount of such services.” In addition, on a case-by-case basis, if the IEP team determines that AT is required for home use in order for the child to be provided a FAPE, the AT must be provided by the school for the student’s use at home.

*Comment*—IEP teams should not only include in the IEP the general type of AT that are needed to meet the students AT-related needs, as well as the amount and frequency of AT services, but also document which specific IEP goals will require use of the AT. At times, with AT that is more complex or a goal in and of itself, IEP goals may be needed to address progress on a student’s use of the AT, such as in the case of students using an AT device for communication.

With respect to the AT devices, IEP teams may want to describe the needed AT in terms of the general type of device that will meet the educational need. For example, “word processing device with simplified interface” rather than an AlphaSmart, or “tablet computer with capacity for speech-to-text applications,” rather than an iPad. This will afford the school with flexibility if a device malfunctions or needs to be replaced.

***Ottawa-Glandorf Local Schs.*, 67 IDELR 24 (SEA State Complaint Ohio 2015)**

A student’s IEP specifically called for an iPad and use of the join.me application, which allowed information to “leap’ from her Smart Board to her iPad. After the application no longer worked following a software update, the District tried to resolve the problem with the software manufacturer, but was unsuccessful. Documentation showed that the District eventually provided applications that were comparable and provided the same service. But, the IEP team never met to consider the change in applications and amend the IEP’s specific reference to the join.me application.

*Comment*—With respect to AT devices or software, IEP teams may want to describe the needed AT in terms of the general type of device or software that will meet the educational need. For example, word processing device with simplified interface rather than an AlphaSmart, or tablet computer with capacity for speech-to-text applications, rather than an iPad. This will afford the school with flexibility if a device malfunctions or needs to be replaced. Here, the school could have avoided the need for an IEP meeting by simply indicating that the student’s tablet computer would include some application allowing her to transfer information from her Smart Board to the tablet.

**Transfer Students**

Students that transfer from another school district must be provided services “comparable” to those provided in the prior district while the receiving district decides how to finalize the student’s IEP. *See* 34 C.F.R. §300.323(e), (f). At times, this raises issues regarding the provision of AT in the new school.

***Hillsboro Sch. Dist. 1J*, 114 LRP 20386 (SEA State Complaint Oregon 2014)**

After a high school student with SLDs transferred into the District, he was not provided an iPad, as he had been provided in his prior school. Rather, the new school offered AT that would have accomplished the same purpose—a phone with Evernote for note-taking, and a different type of tablet computer for use in class (which the parents rejected). “Even though it did not specifically provide an iPad to the student, it honored the essence of the previous IEP and the Student’s potential need for AT.”

***Novi Comm. Schs*., 115 LRP 65 (SEA State Complaint Michigan 2014)**

The Michigan SEA held that a District did not violate the IDEA by providing AT other than an iPad with or without the TouchChat application. First, the prior district’s IEP did not specifically call for an iPad, but rather AT to support communication in academic and social situations. The new district thus decided to provide a picture communication board and use of an iPad on a trial basis. The SEA found the AT provided was comparable to that in the prior district.

***Buffalo-Hanover-Montrose Pub. Schs. #877-01*, 115 LRP 24591 (SEA State Complaint Minnesota 2015)**

The Minnesota SEA found no violation when a school district provided a transfer middle-schooler with writing deficits with access to at least one of the AT options described in his previous district’s IEP (computer, SmartPen). Moreover, it also provided him with an iPad.

**Computers and Tablets**

***Carlsbad Unified Sch. Dist*., 59 IDELR 87 (SEA California 2012)**

In order to assist a 9-year-old with Autism in initiating social interaction, his parents wanted the District to provide him an iPad. When the District declined, the parents requested a hearing and argued that without expressly incorporating an iPad, his proposed IEP did not properly address social skills goals. The ALJ ruled that while the iPad was an interesting means for the student to initiate conversations, the District demonstrated that the student’s use of written scripts could be even more effective to work on social skills. Indeed, the IEP team noted that the student’s use of an iPad could be distracting and created problems, since the student tended to erase programs accidentally. The decision whether to use the written scripts provided for in the IEP or the iPad to initiate social interaction boiled down to a choice of methodology, which the law leaves to the District.

*Comment*—This case is another that illustrates that it is appropriate to consider whether a particular AT device might pose unwanted distractions. Specifically, students’ use of iPads might need to be monitored to ensure unnecessary and distracting apps (e.g., games, social media) are not downloaded and used during class time. In addition, staff may want to avoid providing the iPad when the student exhibits inappropriate behavior, as it may unwittingly reinforce such behavior.

***Chaffey Joint Union High Sch. Dist*., 59 IDELR 267 (SEA California 2012)**

When the District did not immediately conduct a summer AT evaluation in response to the parents request for an iPad to use on the bus, the parents requested a hearing, alleging denial of FAPE. The parents believed that an iPad would enhance the student’s learning ability by presenting material in an engaging format and make better use of unstructured transportation time. The ALJ concluded that there was no evidence that the 16-year-old with autistic-like behaviors needed an iPad to communicate, socialize, or control his behaviors on the bus. Moreover, the records reflected that the student did not need an iPad for his classwork or homework. To the contrary, he was making progress on all his IEP goals and passing his classes using the AT already being provided (weighted pen, ruler, special lined paper, and a keyboard). The ALJ held that a district must provide AT only to the extent a student needs it to benefit from special education. While the student demonstrated at the hearing that he could use an iPad with applications for math and biology, the ALJ found that the applications used did not related to his present curriculum.

*Comment*—While a student could potentially receive additional benefit from working on instructional material during transportation, the IDEA has never required that schools require students to use transportation time for educational purposes.

Notice also that the ALJ here applies the related services legal standard to the question of whether the student needs this AT (i.e., whether the students needs the AT to benefit from special education), rather than other hearing officers’ formulation that the AT must enable the child to receive educational benefit, which is the overall IEP/FAPE standard of *Rowley*.

***Regional Sch. Unit #57*, 113 LRP 39386 (SEA Maine 2013)**

A student with Autism, ID, and speech impairments was provided access to a laptop at school, which he began to use to improperly contact a teacher through Facebook, use obscenities, and threaten her. Even after the student, his parents, and the teacher met to discuss the inappropriate contacts, the student continued to improperly contact the teacher, to the point that she secured a harassment order to protect her. When the contacts did not stop, school administration took the student’s laptop from him. The student, however, started using his parents’ computer to contact and threaten the teacher. At the start of the school year, although all students in his grade were issued an iPad, the student was not, in light of his improper use of the internet. When the parents complained, staff explored ways to block the student’s e-mail and browser access and provided him an iPad accordingly, but the parents were not satisfied, as they wanted him to be able to access the internet at home with his iPad, even though some improper contacts continued. The Hearing Officer found that the student did not need a computer at home for his classwork, and did not require internet access, but that he was stressed that he could not use his iPad to access the internet like his peers. He found, however, that the restriction on iPad internet use did not deprive the student of a FAPE.

*Comment*—This case is another illustration about how some students may use AT inappropriately. It certainly does not seem inappropriate that staff blocked the student’s internet e-mail and browser access, as he had repeatedly abused his access to the internet to harass a teacher. The iPad here would appear to have created a much bigger problem than the benefit it provided.

***Anoka-Hennepin Independent Sch. Dist. #011*, 48 IDELR 202 (SEA State Complaint Minnesota 2007)**

The parents of a 7th-grader with SLD and OHI requested that the district provide him with a laptop for use at school and home, scanner, wireless internet access, and specialized software. As part of its SEA complaint process, the state ED noted that the district provided the student with desktop computers with appropriate software in all his classes. Although the District had not counducted an actual AT evaluation, existing evaluations did not indicate that the student needed a computer at home to receive FAPE. Nonetheless, the District offered the parents a desktop computer for use at home, along the Kurzweil software used at school, and a flash drive to transport files. The parents rejected the offer. The SEA also noted that the student was maintaining a B average using only the school desktop computers. The SEA found no denial of FAPE, but advised the District to conduct an AT evaluation.

*Comment*—Note that the SEA did not find the District in violation for not conducting an AT evaluation, likely since it was providing AT already, and the provided AT appeared to assist the student in benefitting from his program. As the District, moreover, had offered a desktop computer and software for home use, it was difficult for the parent to argue that a laptop version was required for school and home.

***Harrison Sch. Dist. 2*, 115 LRP 33704 (SEA State Complaint Colorado 2015)**

Although a student’s IEP indicated that AT in the form of a laptop was necessary, the District took the laptop away from the student for over a month after the software was no longer supported by the manufacturer and the laptop had not been working for three months. The SEA found that not only was the AT not properly implemented as indicated in the IEP for a significant period of time, when the laptop was returned, the student was not provided training on how to use the new software. Staff, moreover, lacked the training and knowledge to assist the student with the laptop and new software.

*Comment*—This case illustrates a common challenge in providing laptops and computers to students—even if the hardware is in place, software will periodically need to be updated, and the student and staff may need to be re-trained in using the updated software. If not, implementation lapses will ensue, with the resulting liability implications.

**Personally Prescribed Devices, Medical Equipment, and Cochlear Implants**

**IDEA Regulations**

**34 C.F.R. §300.34—Related services.**

1. *General. Related services* means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

(b) *Exception; services that apply to children with surgically implanted devices, including cochlear implants.*

(1) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

(2) Nothing in paragraph (b)(1) of this section—

(i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.

(ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

(iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in § 300.113(b).

**34 C.F.R. §300.113—Routine checking of hearing aids and external components**

**of surgically implanted medical devices.**

(a) Hearing aids. Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

(b) External components of surgically implanted medical devices.

(1) Subject to paragraph (b)(2) of this section, each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.

(2) For a child with a surgically implanted medical device who is receiving special education and related services under this part, a public agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

**Department of Education Commentary to the 2006 IDEA Regulations**

“The [AT] definition in the Act specifically refers to any item, piece of equipment, or product system that is used to increase, maintain, or improve the functional capabilities of the child and specifically excludes a medical device that is surgically implanted or the replacement of such device. Accordingly, we continue to believe it is appropriate to exclude surgically implanted medical devices from this definition.” 71 Fed. Reg. 46,547 (August 14, 2006).

“§300.105(a) requires each public agency to ensure that assistive technology devices (or assistive technology services, or both) are made available to a child with a disability if required as part of the child’s special education, related services, or supplementary aids and services. This provision ties the definition to a child’s educational needs, which public agencies must meet in order to ensure that a child with a disability receives a free appropriate public education (FAPE).” 71 Fed. Reg. 46,547 (August 14, 2006).

“[M]edical devices that are surgically implanted, including those used for breathing, nutrition, and other bodily functions, are excluded from the definition of an *assistive technology device* in section 602(1)(B) of the Act. The exclusion applicable to a medical device that is surgically implanted includes both the implanted component of the device, as well as its external components.” 71 Fed. Reg. 46,547 (August 14, 2006).

“The definition of *related services* in § 300.34(b) specifically excludes a medical device that is surgically implanted, the optimization of device functioning, maintenance of the device, or the replacement of that device. In addition, the definition of *assistive technology device* in § 300.5 specifically excludes a medical device that is surgically implanted and the replacement of that device.” 71 Fed. Reg. 46,548 (August 14, 2006).

“The decision of whether a hearing aid is an assistive technology device is a determination that is made on an individual basis by the child’s IEP Team. However, even if the IEP Team determines that a hearing aid is an *assistive technology device*, within the meaning of § 300.5, for a particular child, the public agency is responsible for the provision of the assistive technology device as part of FAPE, only if, as specified in § 300.105, the device is required as part of the child’s *special education* defined in § 300.39, *related services* defined in § 300.34, or *supplementary aids and services* defined in § 300.42. … As a general matter, public agencies are not responsible for providing personal devices, such as eyeglasses or hearing aids that a child with a disability requires, regardless of whether the child is attending school. However, if it is not a surgically implanted device and a child’s IEP Team determines that the child requires a personal device (e.g., eyeglasses) in order to receive FAPE, the public agency must ensure that the device is provided at no cost to the child’s parents.” 71 Fed. Reg. 46,581 (August 14, 2006).

“Teachers and related services providers can be taught to first check the externally worn speech processor to make sure it is turned on, the volume and sensitivity settings are correct, and the cable is connected, in much the same manner as they are taught to make sure a hearing aid is properly functioning. To allow a child to sit in a classroom when the child's hearing aid or cochlear implant is not functioning is to effectively exclude the child from receiving an appropriate education. Therefore, we believe it is important to clarify that a public agency is responsible for the routine checking of the external components of a surgically implanted device in much the same manner as a public agency is responsible for the proper functioning of hearing aids.” 71 Fed. Reg. 46,571 (August 14, 2006).

**Caselaw and Guidance**

Under the IDEA, therefore, schools are not responsible for the purchase of surgically implanted devices, the optimization of that device's functioning (e.g., mapping of cochlear implants), or the maintenance and replacement of such devices. See also, *Letter to Gregg*, 48 IDELR 17 (ED 2006); *Petit v. U.S. Dep’t of Educ*., 58 IDELR 241 (D.C. Cir. 2012); *A.U. v. Roane County Bd. of Educ*., 48 IDELR 3 (E.D.Tenn. 2007); 71 Fed. Reg. 46,570-71 (August 2006). But, schools must ensure that the external components of students’ surgically implanted medical devices are functioning properly by conducting routine checking. See, e.g, *Adams-Arapahoe Sch. Dist. 28J*, 115 LRP 2736 (SEA Colorado 2014). In addition, schools must ensure that hearing aids worn in school by children with hearing impairments or deafness are functioning properly, even if they did not provide the aids. The clarifications in IDEA 2004 and its 2006 regulations, however, have not extinguished all potential disputes in this area.

***Letter to Seiler*, 20 IDELR 1216 (OSEP 1993)**

In response to an inquiry on whether schools are responsible for purchasing hearing aids as AT for students with hearing impairments, OSEP responded that “historically, it has been the policy of this Office 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/she was attending school.” But, it clarified that such a policy would not apply if the school specified in the student’s IEP that he needed a hearing aid. See also, *Letter to Galloway*, 22 IDELR 373 (OSEP 1994).

*Comment*—Thus, if the IEP team includes the hearing aid in the IEP, it must assume responsibility for providing the hearing aid. OSEP took the same position as *Letter to Seiler* with respect to eyeglasses in *Letter to Bacchus*, 22 IDELR 629 (OSEP 1995). Subsequently, OSEP expressed the same opinion with respect to a pulmonary nebulizer, noting that the student would need the device whether they were in school or not. *Letter to Anonymous*, 24 IDELR 388 (OSEP 1996).

***J.C. v. New Fairfield Bd. of Educ*., 56 IDELR 207 (D.Conn. 2011)**

A preschooler who used a myoelectric prosthetic arm with moving fingers that opened and closed asserted that the arm was AT for which the District was responsible, as the arm was not surgically implanted. The Court, however, noted that the parents consulted a doctor and secured a prescription for the prosthetic arm so that insurance would pay for it, even if a prescription was not necessarily required. “Therefore this Court is unpersuaded that J.C.’s myoelectric does not constitute medical device thereby excluding it from the definition of AT.” Secondly, the Court found that the prosthetic arm was not necessary to confer the student a FAPE. “J.C. is able to complete virtually all tasks both with and without the myoelectric arm.” Lastly, while the IEP mentioned the arm, and it was discussed in an IEP meeting, “these instances did not formally designate the arm as AT.”

*Comment*—That an IEP merely *refers* to a medical device, hearing aid, or eyeglasses does not mean that the school has assumed responsibility for the device. The IEP has to incorporate the device as necessary for implementation of the IEP and receipt of FAPE for that to happen.

***Gaylord Comm. Schs*., 40 IDELR 224 (SEA Michigan 2003)**

A preschool student with a variety of health conditions needed oxygen tanks and related equipment, such as a portable cart and an oxygen monitoring device. The parent claimed all the oxygen and equipment were AT required under IDEA in order for the child to benefit from instruction. The ALJ disagreed in part, holding that while the oxygen tanks and equipment fall under the broad definition of AT, they were prescribed by the student’s physician, and thus are treated like prescribed medication. Neither the oxygen itself, nor the tanks, were required under IDEA, since the tanks are only the container for the oxygen and the prescription for oxygen necessarily includes its container. The portable cart and oxygen monitoring device, however, did not fall under the exception applicable to prescribed medication, and were thus required under IDEA.

*Comment*—The ALJ relied on *Irving Independent Sch. Dist. v. Tatro*, 468 U.S. 883 (1984) and OSEP opinions in support of his decision that health care related equipment is not included in the definition of “related services.” He also analyzed OSEP letters in reaching the conclusion that the oxygen equipment is also not AT, but rather more akin to medication prescribed by a physician, which is not covered under the IDEA. OSEP, other ALJs, and other courts also tend to ask whether the student would need the AT whether they attend school or not in analyzing the issue.

The 2006 regulations promulgated after the date of this case clarify that schools must “appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school.” 34 C.F.R. §300.34(b)(2)(ii).

Generally, parents access other funding sources to secure medical or personal devices that are needed by their children regardless of school attendance. If they have problems securing funding for such devices, schools generally tend to provide assistance in finding funding sources through local or state agencies. Of course, the reason the guidance and regulations are structured in this fashion is to allow schools to pay for hearing aids and eyeglasses, if they wish to do so, without offending IDEA funding restrictions.

***Cobb County Sch. Dist*., 5 ECLPR 85 (SEA Georgia 2007)**

Although it is clear from the IDEA regulations that schools are not responsible for surgically implanted devices, such as cochlear implants, the parent of a Kindergartener with a hearing impairment sought a “boot” attachment for her daughter’s cochlear implant. She claimed that the child would achieve greater success with the attachment than with the District-provided FM system, since the boot would allow the sound signal to be plugged directly into the child’s implants. The ALJ granted the District’s motion for summary judgment, finding as a matter of law that the school had no obligation to provide the optimal hearing AT. Moreover, the preliminary evidence showed that the student participated successfully in all regular classes.

***Allentown Sch. Dist*., 114 LRP 38147 (SEA Pennsylvania 2014)**

As part of a challenge to the program for a student with a hearing impairment, a Pennsylvania ALJ ordered the IEP team to develop a communication plan to address how staff should respond in situations where the child’s cochlear implant needed a new battery or was not working correctly due to other technical difficulties.

*Comment*—Schools may not be required to maintain a cochlear implant or optimize its function, but they must routinely check to ensure the external components of students’ surgically implanted medical devices are functioning properly. The ALJ’s suggestion of a communication plan with the parents to help address battery and technical issues serves as a valuable suggestion for schools facing such situations.

**Use of ATDs Outside of School**

An IDEA regulation clarifies that “on a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE.” 34 C.F.R. §300.105(b).

***Garcia v. California State Dept. of Education Hearing Office*, 24 IDELR 547 (E.D.Cal. 1996)**

A 7th-grader with hearing impairments and SLDs challenged his public school program on various grounds and sought reimbursement for a private placement. One of the claims asserted that the District failed to provide the student with a computer for his use at home. The ALJ, however, noted that the student had access to a computer at school and teachers testified that that they could not think of any assignments for which he would need a computer at home. Although an evaluation called for the student to be introduced to word processing, the evaluation did not identify a need for a home computer.

*Comment*—If a student’s IEP calls for use of AT for classwork, and there is an expectation that the student perform some work at home, it is likely that hearing officers will find that the school is obligated to provide comparable AT for the home. This issue appears to be less common in light of the advent of highly portable tablet computers that are intended to be carried from school to home and back.

***Jefferson County Sch. Dist. R-1*, 34 IDELR 212 (SEA Colorado 2001)**

The parent of a high school student with dysgraphia requested that he be provided a home computer containing applicable software to assist him with writing. When the District refused, the parent filed a hearing request. The ALJ first noted that the evidence showed that the student was able to complete his assignments during the school day, even though he did not even make full use of the computers at school that contained appropriate writing applications. The ALJ held that although a computer for the home might be helpful, “the home computer requested is at this point a ‘want’ and not a ‘need.’”

***In re: Student with a Disability*, 115 LRP 45283 (SEA Virginia 2015)**

Although the District provided a 14-year-old with SLD, speech impairments, and Autism a calculator, laptop, and low-tech visual organizers at school, his parents requested a tablet device for the home. The ALJ concluded that while a laptop was already being used at school with the student, he did not need it at home in order to access the curriculum. The District’s provision of AT, moreover, complied with the recommendations of an AT “Considerations/Assessment.” The ALJ concluded that the student’s IEP was appropriate.

**Calculators**

***Sherman v. Mamaroneck Union Free Sch. Dist*., 39 IDELR 181 (2nd Cir. 2003)**

A student with SLD in math was allowed to use a TI-82 calculator in math, but he was failing the class. The model of calculator required him to work through the various steps of a math problem in order to arrive at an answer. His parent insisted that he be allowed to use the TI-92 model, which would provide the final answer, without requiring the student to learn to factor equations. The parents rejected a compromise TI-92 would only be used to check the answers after the problems were worked out. Teachers indicated that the TI-92 would be inappropriate, as it would improperly circumvent the learning process by factoring for the student. They also testified that the student was failing due to lack of effort. The Second Circuit Court held that since the student had the capacity to learn factoring, “if a school district simply provided that assistive device requested, even if unneeded, and awarded passing grades, it would in fact deny the appropriate education benefits the IDEA requires.” It noted that several of the student’s teachers testified that he was capable of factoring with the assistance of the TI-82.

*Comment*—Schools should note that while accommodations and AT may be necessary, they should not be used to replace instruction or learning. If the school had acceded and provided the TI-92 calculator, the student might have passed the class, but he would not have learned key math concepts he was capable of learning.

***City of Chicago Sch. Dist. 299*, 62 IDELR 220 (SEA Illinois 2013)**

Although a 9th-grader with Autism and SLDs earned passing grades, including in math, an ALJ found that the use of a calculator only masked his deficiencies in math. The parent presented uncontroverted evidence that while the student could perform math calculations with the calculator, he did not understand the basic calculations he was performing. Thus, the school psychologist testified that the student actually performed below the first percentile in math. The ALJ agreed with a teacher that the student had the capacity to understand basic math skills, but he ordered the school to provide multi-sensory research-based instruction to teach math skills, rather than a calculator that simply replaced the need for math instruction. “The District’s accommodations completely mask Student’s deficiencies in basic math calculations.”

**Voluntarily-Placed Private School Students**

As illustrated in the case below, parents that voluntarily decide to remove their child from a public school and place them in a private school may not be able to get access to AT that was provided under their child’s public school IEP. Depending on how the district where the private school is located decides to allocate the proportionate share of IDEA-B funds, it might not fund AT. And, the regulations make clear that voluntarily placed private school students have no individual right to the special education or related services they would receive if enrolled in public schools. *See* 34 C.F.R. §300.137(a).

***Medford Sch. Dist. #549C*, 113 LRP 49886 (SEA State Complaint Oregon 2013)**

The parent of an 8-year-old with health impairments placed him voluntarily in a private school. When the public school district made its decision on how to use the proportionate share of IDEA-B funding for private school students, it provided the student with some speech-language services, but not the iPad or FM system it had provided him under his public school IEP. The parent thus filed an SEA complaint. The SEA ruled that there was no IDEA violation, as students that are voluntarily placed in private schools by their parents to not have an individual right to specific special education and related services they would have received if they were enrolled in the public school. The District had no obligation to consider the student’s “specific form of disability or areas of weakness.” The services provided the student under the proportionate share process were in accordance with the District’s consultation process for determining how to allocate the funds.