



7344 Stockman Street
Cheyenne, Wyoming 82009
(307) 632-2675 (Voice or Relay)
(800) 280-4922
wypanda@wypanda.com

P. O. Box 58, 195 South 5th Street
Lander, Wyoming 82520
(307) 332-8268 (Voice or Relay)
(877) 670-8366
wypandl@wypanda.com

ACCESS TO AND THE PROVISION OF ASSISTIVE TECHNOLOGY DEVICES AND SERVICES

Introduction

Protection & Advocacy System, Inc. (“P&A”) encourages efforts of Wyoming public and post-secondary schools, vocational rehabilitation services, and others to consider and supply assistive technology (“AT”) devices and services to students generally, especially students with disabilities. AT devices are defined as any product or equipment used to maintain or improve the functional capabilities of persons with disabilities. These devices may be acquired commercially, modified, or custom made. AT services are defined as any service that helps an individual select, purchase, or use an AT device which includes: evaluating, funding, designing, customizing, maintaining, repairing, training, and technical assistance. AT can ensure a student’s access to the general educational curriculum to the maximum extent possible, thereby assisting the student to achieve his/her full potential and also to fulfill several federal laws’ mandates.

Assistive Technology and Public Education

The individualized educational program (“IEP”) model forms revised by the Wyoming Department of Education (“WDE”) include the AT section at the end of “Section II: Consideration of Special Factors,” suggesting that an IEP meeting must be held before determining the student’s need for AT. P&A applauds this revision because the IEP Team should have full and complete information about the student’s general needs before making more specialized decisions regarding AT for the student. In reality, many children on IEPs are afforded some form of AT, and therefore schools could take far more credit for providing such services by checking “yes” to the provision of AT on the IEP form.

All services provided under the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”), including the acquisition and maintenance of AT devices, must be provided at no cost to the parents or student. The IEP Team *must* specifically consider whether the child needs AT devices and services, on a case-by-case basis, in developing each student’s IEP. AT can be utilized to provide the student with a more appropriate placement in the least restrictive environment or to access additional school programs and activities. Consequently, increased program access can provide for greater student independence and productivity. Appropriate AT services can also assist students in transitioning from special education programs to adult work-related activities.

A full and comprehensive AT evaluation should be conducted to determine whether the unique needs of the child require the provision of AT. Evaluations should include a functional assessment in the student's school, home, community, or work environments. Evaluators should examine the student's sensory, communication, and motor abilities and capabilities. AT evaluations usually provide recommendations on how to tailor AT services to a student's needs. Implementation is adjusted based on performance data or whether the student's needs are not being met with current devices or services.

Non-academic, educationally-related settings should be considered when evaluating the student's "educational needs" in regard to AT. For example, an IEP Team must consider whether home use of any AT device, such as a personal computer, is needed to provide a free appropriate public education, especially in regard to completing homework assignments. Furthermore, a single special education service including AT can be the stand-alone component of an extended school year ("ESY") program during any extended break from school. AT is considered to be the school district's property, and therefore the district cannot charge for normal use and ordinary wear and tear expenses. State law will govern parent liability for theft, loss, or damage due to the misuse of AT.

Assistive Technology and Transition

The Division of Vocational Rehabilitation ("DVR") should participate in transition planning meetings with the IEP Team and should determine whether AT will be essential for college or employment. There should be collaboration between DVR and the school to ensure that AT is not merely relinquished upon the student's graduation. If the student needs the same AT for training or employment purposes, then DVR could purchase it from the school when the student graduates. Otherwise, the student would then have to seek the same or similar device through DVR. The need for the device would continue to be reflected in the IEP with reference to DVR as the purchaser upon the student's transition. The AT would also appear in the individual plan of employment ("IPE"), which must be developed by DVR before the child graduates.

Assistive Technology and Higher Education

AT also applies to an eligible student under Section 504 of the Rehabilitation Act of 1973 as amended ("Section 504") and the Americans with Disabilities Act of 1990 as reauthorized ("ADA") if he/she has a physical or mental impairment that substantially limits a major life activity. Title II of the ADA applies to state-funded schools such as universities, community colleges, and vocational schools. Title III of the ADA applies to private colleges and some vocational schools. If a private or public school receives federal financial assistance, then it is also covered by the Section 504 regulations requiring schools to make their programs accessible to qualified students with disabilities. Schools may request current documentation of a disability if a student requests a reasonable accommodation. AT services and accommodations can be provided under a Section 504 Plan in a similar fashion as under an IEP. The appropriate standard for services under Section 504 and the ADA is that the needs of qualifying individuals must be met as adequately as the needs of students without disabilities. Many postsecondary schools

have an Office of Services for Students with Disabilities that serves as a liaison between students and staff. If the school does not have such an office, government-funded programs are required to have an ADA/504 Coordinator. Clear and definite AT provisions in the IEP can help facilitate communication between the public school and the ADA/504 Coordinator. As with any other IEP service, a specific and detailed list of required AT can help the student get necessary accommodations without unnecessary burden or delay.

Conclusion

AT can ensure that a child has an equal opportunity to access the regular educational curriculum in the least restrictive environment. AT can be a key compensatory tool that assists a student in achieving his or her potential both in educational and employment settings. All IEP Teams must have the knowledge and skills to make informed decisions regarding AT for all students with disabilities. In order to make such an informed decision, a comprehensive AT evaluation should be conducted. For additional information and guidance, please see the “Wyoming Guidelines 2007: Assistive Technology for Students with Disabilities,” published by the WDE.

The Protection & Advocacy for Assistive Technology Program (“PAAT”) is designed to provide advocacy assistance and referrals to individuals with respect to AT. PAAT may assist in most AT situations including: education, vocational rehabilitation, private insurance, Medicare, Medicaid, and agency denials. Also, PAAT may assist in locating AT funding sources. Please note that PAAT does not provide actual AT devices to individuals or provide funding for such devices and services.

Assistive Technology Questions and Answers

1. Q. *What is assistive technology or AT?*

A. An AT device is any item or piece of equipment that is used to help improve or maintain the skills of a student. The term AT encompasses a variety of devices ranging from low-tech items which are relatively inexpensive to higher-priced items such as customized computer equipment. Examples of low-tech items include: pencil grips, highlighters, flash cards, cassette recorders, calculators, FM sound systems, large print books, modified chairs, altered classroom lighting, foam balls, communication boards, specialized gym equipment, and slant desks. Examples of high-tech items include: personal computers, speech generating devices, augmentative communication devices, closed circuit televisions, electronic note takers, and voice recognition and synthesis software programs. AT also includes access to AT devices used by students without disabilities. Generally, parents have the responsibility to provide their children with individually prescribed medical items such as eyeglasses or hearing aids.

An AT service is any service that helps a student in finding, buying, or using an AT device. Examples of AT services include designing, fitting, repairing, or replacing AT devices. Services also include the training or technical assistance for the student, student’s family, and service providers, if needed. AT services and devices are reimbursed dollar for dollar by the WDE if the AT is written into an IEP subject to WDE guidelines.

2. Q. *How does AT help students?*

A. AT can assist students in engaging in everyday activities with students who do not have disabilities. AT can give students access to school, social, and sports activities that they would not otherwise be able to participate in without the AT. AT allows for greater independence and productivity and gives students an opportunity to learn and have new experiences. AT can also improve a student's mobility, handwriting, spelling, reading, concentration, and organization skills.

3. Q. *What is an AT evaluation?*

A. Parents have the right to request an AT evaluation at any time. All activities which occur before, during, and after school should be evaluated to determine if AT would benefit the student. The AT evaluation should include: health, motor, vision, hearing, social/emotional, communication, general intelligence, and academic performance.

4. Q. *When and where can the student use AT?*

A. The student can use AT whenever and wherever the IEP says it can be used. The student should be able to continue using the device as he/she progresses from grade to grade. If the student transfers to another school district, then that district can purchase the existing AT device from the former district. If the IEP Team determines that the student needs to take an AT device home in order to receive an appropriate education, that device must be provided for home use.

5. Q. *What happens to AT when a student graduates?*

A. The IEP must include a transition plan for when the student transitions into the community. The IEP must include a list of different outside agencies that can provide transition services to help the student. The IEP should explain what AT the student needs to live in the community and how the AT will be provided. The district can transfer ownership of the AT to DVR provided the district has determined that it no longer needs the device in connection with its special education program. In the alternative, the district and DVR could initiate a joint purchase of the device to ensure the device remains with the student upon transition.

A Quick Guide to AT

AT Section in the WDE IEP Model Form

Assistive Technology: Yes No (If yes is checked, provide a description of the child's need for assistive technology devices and services in the present level of academic and functional performance (PLAAFP). Develop measurable annual goal if appropriate and/or designate services to address the student's need for assistive technology).

Need for AT Must Be Considered

The IEP Team shall-- consider whether the child needs assistive technology devices and

services. 20 U.S.C. § 1414(d)(3)(B)(v).

The IEP team must consider whether the child needs assistive technology devices and services. WDE Rules, Chapter 7, Part 5, §6(b)(v).

Classification of AT

Each school district or public agency must ensure that assistive technology devices or services as defined in Part 1 of these rules are made available to a child with a disability if required as part of a child's: (A) Special education; (B) Related services; (C) Supplementary aids and services. WDE Rules, Chapter 7, Part 3, §1(e)(i).

Evaluation of Need for AT

Interpreting prior law, the Office of Special Education Programs ("OSEP") stated that each public agency must ensure that, as part of its Part B educational evaluation when warranted by the child's suspected disability, it assesses the student's functional capabilities and whether they may be increased, maintained, or improved through the use of assistive technology 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. *Letter to J. Fisher*, 23 IDELR 565 (OSEP 1995).

Right to Independent Educational Evaluation ("IEE")

A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section. If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either– (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria. If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense. If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation. A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees. 34 CFR § 300.502(b).

Definition of an AT 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 CFR § 300.5.

Interpreting prior law, OSEP stated on at least two occasions that schools may be required to provide students with hearing aids, if they were necessary to the students' educational needs. *Letter to P. Seiler*, 20 IDELR 1216 (OSEP 1993); *Letter to J. Galloway*, 22 IDELR 373 (OSEP 1994).

Definition of an AT 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 substantially involved in the major life functions of that child. 34 C.F.R. § 300.6.

AT Devices may be Required for Home Use

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 to receive FAPE. WDE Rules, Chapter 7, Part 3, §1(e)(ii).

Determinations regarding whether an individual student with disabilities should receive assistive technology devices or services and the nature and extent of assistive technology devices or services to be provided to the student must be made by the participants on a student's individualized education program (IEP) team. These include the team's determination as to whether the assistive technology is special education, a related service, or a supplementary aid or service and whether the student needs to take the assistive technology device home in order to receive an appropriate education. If the student's IEP team determines that the student needs to take a required assistive technology device home in order to receive an appropriate education, that device must be provided at no cost to the parents. This means that a district could not assess a charge on parents for normal use and wear and tear. *Letter to Culbreath*, 25 IDELR 1212 (OSEP 1997).

Parents Cannot be Required to use Private Health Insurance to Pay for AT

The requirements that a free appropriate public education be provided “without charge” or “without cost” mean that an agency may not compel parents to file an insurance claim when filing the claim would pose a realistic threat that the parents of children with disabilities would suffer a financial loss not incurred by similarly situated parents of children without disabilities. “Financial losses” include a decrease in available lifetime coverage or any other benefit under an insurance policy, an increase in premiums or the discontinuation of the policy, or an out-of-pocket expense such as the payment of a deductible amount incurred in filing a claim. Financial losses do not include incidental costs such as the time needed to file an insurance claim or the postage needed to mail the claim. *United States Department of Education Notice of Interpretation*, 45 Fed. Reg. 86390 (December 15, 1980).

Transition Services Under an IEP

Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include— (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and (2) The transition services (including courses of study) needed to assist the child in reaching those goals. 34 CFR § 300.320(b).

Transferring Ownership of AT Equipment

Students with disabilities can continue to use Part B- funded equipment once they leave school and school districts can transfer ownership of the equipment to other entities, provided the district that purchased the device no longer needs it. Coordination between LEAs and State VR agencies to enable students with disabilities to continue using assistive technology devices as they move from one program to the other is an efficient, cost-effective means of facilitation transition from school to work-related services and fully support the type of cooperation between agencies to which you refer. *Letter to Goodman*, 30 IDELR 611 (OSERS 1998).

Section 504 Requirements

No otherwise qualified individual with a disability in the United States, as defined in section 7(20) [29 U.S.C. § 705(20)], shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. 29 U.S.C. § 794(a).

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 Federal financial assistance. 34 CFR § 104.4(a).

Resources

Protection & Advocacy System, Inc.

tel: 1-800-280-4922

web: <http://www.wypanda.com>

Wyoming Institute for Disabilities

tel: 1-888-989-9463

web: www.uwyo.edu/wind/; <http://wind.uwyo.edu/connect/>

Centrum for Disability Services/WyWIPAS

tel: 1-877-350-9050

web: <http://www.centrumwy.org/>

Wyoming Independent Living Rehabilitation, Inc.

Wyoming Technology Access Program (WYTAP)

tel: 1-800-735-8322

web: <http://www.wilr.org/wytap.html>

Rocky Mountain Disability & Business Technical Assistance Center

tel: 1-800-949-4232

web: <http://www.adainformation.org/>

Wyoming Department of Education

tel: (307) 777-7690

web: <http://www.k12.wy.us/>

This publication is paid 100% by federal funds and is available in alternative formats.

This publication was made possible by funding support from the
Rehabilitation Services Administration, United States Department of Education.

These contents are solely the responsibility of the grantee and do not necessarily
represent the official view of the funding source.

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