Assistive Technology and Schools

What is Assistive Technology?

Assistive Technology (AT) is a device or services that help people with disabilities increase, maintain, or improve their abilities.

When it comes to AT and a student with disabilities, there are rules the schools and families need to know.

What is an AT device?

An AT device is any item, piece of equipment, or system that is used to increase, maintain, or improve the functioning of a student with a disability.[1]



Examples of AT devices include:

- computers and specialized software
- augmentative communication devices, including tablets
- adaptive switches
- books on tape or other formats
- auditory equipment
- standing devices and gait trainers
- specialized transportation equipment like adapted buses, lifts, and ramps

Schools do not have to provide AT that is surgically implanted.

What is an AT service?

An AT service is any service that directly helps get or use an AT device.[2] For example:

- an evaluation to figure out what AT is appropriate
- buying, leasing, adapting, or repairing AT
- training for the student, staff, or other people involved in the student's educational program, like employers

When does a school have to provide AT?

School districts have to give students with disabilities a Free Appropriate Public Education (FAPE).[3] This means that if a student with a disability needs AT in order to get an appropriate education and have equal access, the school district has to make the AT available to the student.

What laws give students with disabilities rights to AT in public schools?

There are 3 main laws that give students with disabilities the right to use AT in public schools:

(1) **The Individuals with Disabilities Education Improvement Act (IDEA).** Under IDEA, school districts have to provide special education and related services. School districts have to provide AT to students if the AT is needed for the student to benefit from the educational program. Students in special education services have the greatest access to AT in schools.

(2) **Section 504 of the Rehabilitation Act.** This prohibits discrimination in regular and special education against students with disabilities.[4] AT may be required as "reasonable accommodation" under a 504 plan. A reasonable accommodation is when a school makes changes to their buildings or their rules so that a student with a disability can have equal access to education and space.



(3) **The Americans with Disabilities Act (ADA).** School districts have to provide reasonable accommodations to students with disabilities and provide devices and services, so a student can communicate.[5] These are things like: interpreters, closed captioning, or large print materials.

What if my child has a disability but does not qualify for special education services?

A student with a disability that greatly impacts a major life activity may be eligible for a 504 plan even if they don't qualify for special education.

Schools have to make reasonable accommodations for all students with disabilities when the disability greatly impacts one or more major life activity. These are things like, caring for oneself, doing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working. A 504 Plan may include AT devices and services.

School districts also have to provide AT as a reasonable accommodation if the student needs it to have access to educational programs or physical space.

Note: The rest of this fact sheet is information for students who are eligible for special education services. If your child is not eligible for special education but you think they may be eligible for a 504 plan, talk to an advocate or contact the MN Disability Law Center for more information or help.

How does a student with a disability get special education services?

Before a student can get special education services, there has to be an evaluation to see if the student is eligible.[6] The evaluation also identifies the student's educational needs.

The evaluation is done by a team from the school district. Parents or guardians and the student are part of the team. The team creates an Individual Education Program (IEP). For students under age 3, the IEP is called an Individual Family Service Plan (IFSP). The IEP lists the special needs of the student, goals and objectives that will help the student make progress, accommodations, related services, and supplementary aids and services.[7]

For any student in special education, the IEP team must consider if the student needs AT devices and services.

Who decides what AT the student needs?

The IEP team decides what AT the student needs. If the team has questions about what AT is needed, they can do another evaluation. An evaluation for AT can be done at the time of the first evaluation for special education services or can be done later if the student's needs change. The team decides who will do the evaluation. If a school district does not have qualified staff to do it, the district must contract with an experienced person from another public or private organization. It can't be any cost to the parent.



If the student already uses AT, can they use it during the evaluation?

Yes. A student already using AT must be able to use that AT during evaluation or testing. For example, a student who uses a communication device or a pencil grip must be able to use those during any testing.

How long does the school district have to complete the evaluation?

The evaluation must be done within 30 school days.[8]

What if I disagree with the school district's evaluation?

If you do not agree with an evaluation done by the school district, you can ask for an outside evaluation. The school district has to pay for it. This request should be made in writing to the case manager or district representative on the team.[9] If the school district refuses to do an outside assessment, they have to start a hearing to prove the evaluation was appropriate and complete.

Can I pay for my own evaluation?

Parents can use their health plan or pay for an evaluation by an outside independent person. The IEP team must look at and think about the recommendations from the outside evaluation. But the school district doesn't have to follow those recommendations unless the IEP teams agrees and puts them in the IEP.

Where should AT be written into the IEP?



For all students in special education, the IEP team must look at if the student needs AT devices and services. There are several sections of the IEP that may include AT:

- annual goals
- short-term objectives
- the list of supplementary aids and services
- the list of related services the student needs

Who pays for the AT?

If AT is needed for a student to benefit from special education, the school must provide it at no cost to the student or family.[10] School districts may charge a fee to students with disabilities if it is a fee charged to ALL students, like a lab fee for computers.

Can the school use other resources to pay for AT?

School districts can use other sources of funding **if there is no cost** to the student or family.[11] Other funding sources are:

- Medical Assistance
- the student's private health plan
- Vocational Rehabilitation Services
- State Services for the Blind
- private community resources and foundations

Schools have to ask parents for permission to access a health plan (health insurance).[12]

Note: Using a private health plan could cause an increase in premiums or count against the family cap, which would be an indirect cost. Parents can refuse to let a school district go through a health plan.

If the device is paid for by Medical Assistance or private insurance, who owns it?

If the school district buys a device using the student's Medical Assistance or private health plan, the student owns the device. The IEP team decides how the device is used at school. But the student can take the device home after school and on weekends, holidays, and summer vacations.

Can a school district refuse to provide AT because they don't have the money?

If the IEP team decides that the student needs AT, the district must provide the AT device or service even if their financial situation is poor.

Can a school administrator or school board override an IEP team's decision for AT devices and services?

No. Only the IEP team[13] can change an IEP. An administrator or school board cannot change an IEP. A school district has to carry out an IEP even if they object to it.

Can a school say a student has to leave the regular classroom to access AT?

As much as possible, students in special education have to be educated with students who do not have disabilities. If AT can be used to help the student learn in the regular classroom, the school must provide the AT in the regular classroom.

Can a student take an AT device home or to work on weekends, holidays, and summer vacations?

Yes, but that has to be written into the IEP. There must be an educational reason to take the device home.

Can the school take away or restrict the student's access to AT?

The school district must follow the IEP. The IEP should state where and when the student has access to the AT. Schools can't deny or restrict access to devices that help students function.

If a school has to take away a device, like walkers, wheelchairs, hearing aids, and communication boards to prevent harm to a person or the device, it must be returned to the student as soon as possible.



Does a school district have to make AT available to students who have been suspended or expelled?

A school district must provide AT to suspended or expelled students with disabilities who need the AT to be able to get their Free Appropriate Public Education (FAPE).[14]

What happens to an AT device when a student leaves a school district?

If the school district owns the device and a student with a disability changes school districts, the new school district may buy the device from the old school district. But they don't have to sell it if the device can be used by other students.

If the student is transitioning to a work environment or a postsecondary educational program, the Department of Employment and Economic Development (DEED) can buy the device from the school district. The student must be getting vocational rehabilitation services from DEED and the device must be exactly the same as the one in the rehabilitation plan the student made with DEED.[15]

What if I disagree with what the school district wants to do for the student?

If you do not agree with proposed IEP or evaluation or if the school district refuses to provide needed AT devices or services, you should first talk about the issue with the IEP team or other school staff. If you still disagree, you must object in writing within 14 days of the date the school sent you the notice of their decisions.[16] You can ask for any of these things:

- an independent evaluation (see *What if I disagree with the school district's evaluation?* above)
- a conciliation conference
- mediation
- a facilitated IEP meeting, or
- a due process hearing

You can also file a complaint with the Minnesota Department of Education (MDE).

What is a conciliation conference?[17]

You have the right to meet with school district staff if you disagree with the proposed IEP. School districts must offer a conciliation conference if a parent objects to the proposed IEP.

You can also ask for one by giving a written request to the case manager or district representative on the team. The conciliation conference must be held within 10 days at a place and time agreed to by both the parents and the school district.



Within 5 days of the final conciliation conference, the school district must give you a written memorandum and a proposed IEP says what the school district is going to do.

What is mediation?[18]

You can ask for mediation through the Minnesota Special Education Mediation Services. This is at no cost to the parent. A trained mediator tries to help the family and school district work out the problems and reach a good decision for the student.

Both you and the school district must agree to mediation. Contact the local special education director to ask for mediation.

If you have questions about mediation, call the Alternative Dispute Resolution Services coordinator at MDE: (651) 582-8689.

What is a facilitated IEP meeting?[19]

A facilitated IEP meeting is an IEP team meeting with a neutral person (facilitator) who tries to help the team talk it over and develop an IEP. The facilitator is not a decision maker. You or the school district can ask for a facilitated IEP meeting.

The meeting has to be at a time and place agreed to by everyone. You can bring advocates or other people to the meeting.

If you have questions about a facilitated IEP meeting, call the Alternative Dispute Resolution Services coordinator at MDE: 651-582-8689.

What if none of these fix the problem?

If none of these fix the problem, you can file a complaint or ask for a due process hearing.

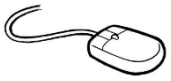
- **Complaints**

You, or any interested party can file a complaint with the MDE. You can file a complaint if:

- The school district violates state or federal law
- There is a disagreement between the parent and the school district about the student's services. This includes when a district does not provide AT as written in the IEP.

Complaints have to be filed within 1 year from the date of the violation, disagreement, or incident. The MDE reviews the complaint and decides within 60 calendar days.

There is a complaint form (PDF) on MDE's website. Go to: http://education.mn.gov.



→ Click on *Students and Families*
→ Under *Programs and Initiatives*
→ Click on *Special Education*
→ In the upper left corner, click on *Conflicts in Special Education*
→ Scroll down and click on *Special Education Complaints*

Send, fax or email the completed form to:

Minnesota Department of Education
Special Education Dispute Resolution Supervisor
Division of Assistance and Compliance
400 NE Stinson Blvd.
Minneapolis, MN 55413

651-582-8725 (Fax)
MDE.Dispute-Resolution@state.mn.us (Email)

You must send a copy of the complaint to the school district or public education agency serving the child at the same time you file the complaint with MDE.

- **Due Process Hearings**[20]

A due process hearing helps resolve disputes about the identification, evaluation, placement, services, or provision of FAPE, including disputes over AT.

It is a chance for you to present evidence and cross-examine school officials. It is led by an independent hearing officer. The officer must issue written findings of fact and a decision. A due process hearing is a formal legal process.

You don't have to find a lawyer, but it is a good idea to talk to one before asking for a due process hearing.

Where can I get more information?

There is more information on special education at www.LawHelpMN.org.



→ Click on the *Self Help Library* tab
→ Click on *Disability*
→ Click on *Special Education and learning Disabilities*

The MDE website also has more information. Go to: https://education.mn.gov



→ Click on *Students and Families*
→ Click on *Programs and Initiatives*
→ Click on *Special Education*

How can I contact the Minnesota Disability Law Center?

The Minnesota Disability Law Center provides free legal help to people with disabilities in Minnesota.



To apply for help, call:
Metro: (612) 334-5970
Toll Free: 1-800-292-4150

For all other calls: 612-332-1441

Minnesota Disability Law Center
111 North 5th Street, Suite 100
Minneapolis, MN 55403

https://mylegalaid.org/disability-law-center/

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Laws, Statutes, Rules & Regulations for this fact sheet

1. 34 CFR § 300.5 - Assistive technology device
2. 34 CFR § 300.6 - Assistive technology service
3. 34 CFR § 300.17 - Free appropriate public education
4. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794
5. 28 CFR § 35.160(a)(1) and (b)(1) – General information
6. 34 CFR § 300.301 - Initial evaluations
7. 34 CFR § 300.320 - Definition of individualized education program
8. Minn. R. 3525.2550, Subpart 2 – Conduct Before Evaluation
9. 34 CFR § 300.502 - Independent educational evaluation
10. 34 CFR § 300.105(a) - Assistive technology
11. 34 CFR § 300.154(d) - Methods of ensuring services
12. 34 CFR § 300.154(e) - Methods of ensuring services
13. 34 CFR § 300.321 - IEP Team
14. 34 CFR § 300.530(d)(1) – Services
15. Minn. Stat. § 125A.59, Subdivision 1 - Option to purchase by Department of Employment and Economic Development

Minn. Stat. § 125A.091:

16. Subdivision 3a - Additional requirements for prior written notice
17. Subdivision 7 - Conciliation conference
18. Subdivision 9 - Mediation
19. Subdivision 11 - Facilitated team meeting
20. Subdivision 12 - Impartial due process hearing