

Navigating the Legal Issues Surrounding Technology



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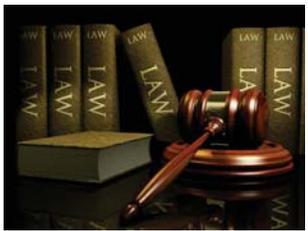
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Overview of Topics

- Legal Issues To Watch When Technology Meets Special Education
- What's Required of Schools in Providing AT
- Assistive Technology Assessments
- Assistive Technology Devices
- IEP Development – AT Devices and Services
- E-Learning Considerations
- Considerations When Using Emerging Technology
- Website Accessibility and OCR Enforcement
- Complaint Investigations and Case Law



Legal Issues To Watch When Technology Meets Special Education



Legal Issues To Watch

1. **Cyberbullying.** When a student with disabilities is the target of cyberbullying, schools may need to take measures beyond those delineated in their school's anti-bullying policies. OCR has made it clear that schools cannot ignore reports that a student with disabilities is being harassed by peers, even in cases where the misconduct occurred online. "OCR is looking to see that you intervened, conducted an investigation, reconvened with that information, and responded by implementing measures to stop the harassment."
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Legal Issues To Watch

Cyberbullying also can impact a student's ability to access her education. "It's often a more aggressive form of bullying. Kids who are targets [of cyberbullying] often experience higher levels of stress." A student's CCC needs to convene and discuss whether the student being bullied needs counseling, extra supervision, or other measures to ensure the student continues to receive FAPE.

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Legal Issues To Watch

2. **Student discipline.** A student with a disability may inappropriately use technology. Regarding assistive technology, for example, a student may figure out how to hack through the filters on a district-issued laptop. "Most of the time, discipline is about educating students around the right behavior." When disciplinary action would amount to a change in placement, school staffers need to know what disciplinary protections the student is entitled to under the IDEA and Section 504.

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Legal Issues To Watch

When misconduct occurs off-campus or online, there needs to be a significant nexus between the conduct and the school community before schools can intervene. There also needs to be a disruption in the school environment. For example, if a student texts a naked picture of another student to classmates and those students bring the picture to school, that can be enough of a connection and disruption to the school environment to signal a need to intervene. Before imposing discipline that would change an IDEA- or 504-eligible student's placement, however, administrators must consider whether the student is entitled to a manifestation determination review.

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Legal Issues To Watch

3. Student records. Teachers can unintentionally reveal private information when they post students' names or pictures online. When special education teachers post pictures of their students, they also can unintentionally reveal a student's disability status. "You want to make sure you're not posting students' pictures without parent consent. The directory information that parents sign at the beginning of the year probably doesn't include special education status."

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Legal Issues To Watch

- Also, advise teachers always to be professional when they write about students in emails because that can become part of the student's educational record. Most email is innocuous, but special education issues can become very emotional for parents and staff. The emails that teachers send to one another could be called up during a due process hearing. "You don't want to write anything in an email that a hearing officer might read one day."

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Legal Issues To Watch

4. Assistive technology. Many standalone AT devices are being replaced by software or apps that a student can access online. "The Internet is enabling kids to access curriculum, and in many cases it's meeting the definition of assistive technology as a service." That leads to questions about whether the student needs broadband or Internet access at home to be able to use these apps to help him with his homework, too. "Parents want their child to have access to those things at home, too." It's likely if a student requires AT to access materials at school, he'll also need AT at home to do homework.

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Legal Issues To Watch

- **5. Virtual school.** Online schooling can offer many benefits to students with disabilities. A flexible schedule or allergen-free environment may benefit students with medical conditions or severe allergies who couldn't attend a brick-and-mortar school. However, online schooling isn't appropriate for every student. "It's often very text-heavy, which might not be a good option for a student with a learning disability." It also might offer less social interaction. For students who need therapy sessions, teletherapy may be an option, but isn't going to be appropriate for every student. "There are definitely benefits and challenges for students with disabilities participating in them."

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What's Required of Schools in Providing Assistive Technology

What is Assistive Technology?



What's Required of Schools

- **Q:** *Is it appropriate to put AT on the initial assessment plan?*
- **A:** It depends on the student. If you've got a student with communication deficits or organizational deficits, it would be appropriate to consider AT right from the outset. This is driven by the student's needs, not the parent's request. Don't sit by idly and wait for the parents to ask for an evaluation. If it's obvious the student needs an AT evaluation, you should provide it. If you have a student who doesn't have an obvious AT need, you should at least talk about it as part of the IEP team but you may not need to do an AT evaluation as part of that initial assessment.

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What's Required of Schools

- **Q:** *When a parent requests an AT evaluation and the school team feels it is not necessary, whose responsibility is it to tell the parents?*
- **A:** This decision should be made by the CCC, with the parents participating. The person at the CCC "with the authority to commit the resources of the district" has the final say about whether an evaluation will be performed. The decision also should be communicated with prior written notice to the parents of the district's decision to reject the requested evaluation.

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What's Required of Schools

- **Q:** *What if the district can't quickly acquire the AT called for in the IEP?*
- **A:** The best thing to do is to get the CCC together as fast as you can. Be honest with the parent. Let them know you don't have it and problem-solve to get the services that he needs. Find an interim solution. In cases where there simply aren't any other options, you will need to consider providing compensatory educational services for the time a student goes without needed AT.

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What's Required of Schools

- **Q:** *When a team notices that a student doesn't use or need an AT device anymore, do we do an AT evaluation to discontinue the use of the device?*
- **A:** Those are two separate questions: If the student doesn't need a device anymore, that's a CCC decision. The CCC should get together and discuss the data showing that the student doesn't need AT anymore. No full AT evaluation is necessary if the CCC has the data that they need to make that decision. On the other hand, if the student is not using or refusing to use AT, the CCC needs to think about how to encourage and support the student in using the AT. Or that could trigger the need for a full-blown AT evaluation because there could be a mismatch between the student's needs and the technology being provided.

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What's Required of Schools

- **Q:** *Are schools legally required to train private tutors if we have offered training to the student and parents already?*
- **A:** Consider this request as a CCC. Don't reject the request out of hand. The definition of "assistive technology service" in 34 CFR 300.6 provides that the term includes "training or technical assistance for professionals, including individuals or rehabilitation services, employers or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities." So the CCC will have to determine whether training for a private tutor will be necessary for the child to receive FAPE under IDEA. Schools ordinarily will not be required to provide training for a private tutor; however, there may be situations where the CCC would decide that such training would be necessary.

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What's Required of Schools

- **Q:** *Who's responsible for the cost of fixing AT that's broken outside of school? Can the district require a signed document stating that if the technology is broken at home that the family is responsible for the cost?*
- **A:** The regulations make clear that "state law, rather than Part B, generally would govern whether parents are liable for loss, theft, or damage due to negligence or misuse of publicly owned equipment used at home." 34 CFR Part 300, Appendix A, Question 36. In *Board of Education of the Springville-Griffith Institute Central School District*, 106 LRP 16973 (SEA NY 10/31/03), the hearing officer said that requiring the parent to sign such a document would not be a violation of FAPE.

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What's Required of Schools

- But it's probably better not to require the parents to sign something because it invites a standoff when the parents refuse to sign. Instead, the district should have a policy stating that parents are responsible for loss under these circumstances (may depend on whether student is eligible for free textbooks or a foster child). Send a copy of the policy home with the device and don't wait for parents to agree.
- If the device is broken, you'll still have to provide a replacement for the student to use -- because the CCC will have said that this device is necessary for FAPE. The fight will be over how you recover from the parents, which is a function of state law. As a practical matter, this is why you should purchase insurance for such devices.

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What's Required of Schools

- **Q:** *If a device is sent home, does this mean that the school must also provide Internet services?*
- **A:** This is a tough issue. It all goes back to the "meaningful/some educational benefit" standard in *Rowley* [*Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 553 IDELR 656 (1982)]. If the student *must* have access to cloud-based supports, how can you refuse to provide Internet access at home? In some instances, you may be able to set the student up so that documents can be downloaded onto the hard drive of the device for offline access and then have the work the student does sync up when the student is back on the school's Wi-Fi.

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Assistive Technology Assessments



AT Assessments

- The IDEA requires each public agency to ensure that AT devices and services are made available to each child with a disability if such devices or services are required as part of the child's special education, related services, or supplementary aids and services. 34 CFR 300.105(a).
- To determine whether AT is necessary for a student's provision of FAPE, the district may need to conduct an evaluation of the student's specific needs. *Letter to Fisher*, 23 IDELR 565 (OSEP 1995).

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AT Assessments

- In *Letter to Fisher*, 23 IDELR 565 (OSEP 1995), OSEP stated "[t]he evaluation should provide sufficient information to permit the IEP team to determine whether the student requires [AT] devices or services in order to receive FAPE."
- **The failure to evaluate a student's need for AT devices or services can amount to a denial of FAPE.** *Puerto Rico (PR) Dep't of Educ.*, 68 IDELR 284 (OCR 2016) (concluding that a district denied a student FAPE when it failed to complete the second portion of the AT assessment required by the student's IEP).

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AT Assessments

- **If an AT evaluation shows that AT would not benefit a student in addressing his particular needs, a district need not provide it.** *A.L. v. Chicago Public School District No. 299*, 57 IDELR 276 (N.D. Ill. 2011)
- **When parents explicitly request an AT assessment, the district must provide the parents prior written notice of its decision to conduct the evaluation or deny the parents' request.** *See, e.g., Tehachapi Unified Sch. Dist.*, 116 LRP 256 (SEA CA 12/22/15) (determining that the district had no obligation to provide the parents prior written notice because they never requested an AT assessment).

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AT Assessments

- There are no federal or state regulations specifying the content of an AT assessment or who should conduct it.
- The definition of “assistive technology service” in Article 7 includes “[t]he evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment.”
- However, it does not specify what that evaluation must look like.

AT Assessments

- **USDOE has stated, with respect to auxiliary aids and services, that districts must give primary consideration to the auxiliary aid or service requested by the student with a disability when assessing what is appropriate for that student.** *Frequently Asked Questions on Effective Communication for Students with Hearing, Vision, or Speech Disabilities in Public Elementary and Secondary Schools*, 64 IDELR 180 (DOJ/OSERS/OCR 2014).

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AT Assessments

- **However, districts are not required to provide a student the AT devices or services specified by parents or accede to each AT request.** *See, e.g., Southington Bd. of Educ.*, 116 LRP 28397 (SEA CT 04/21/16) (determining that a district did not have to provide a student the text-to-speech software preferred by the parents because the student was able to receive FAPE by using a district-issued laptop); and *Smith v. District of Columbia*, 58 IDELR 155 (D.D.C. 2012) (finding that a student received FAPE by using a word processor instead of the laptop preferred by the parent).

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Assistive Technology Devices



AT Devices

- Article 7 defines “assistive technology device” as “any:
(1) item;
(2) piece of equipment; or
(3) product system;
whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student with a disability. **The term does not include a medical device that is surgically implanted or the replacement of such device.**”

IEP Development

- Generally, a school district is not responsible for providing eyeglasses, a hearing aid, or other personally prescribed devices for a student as an AT device.
- The IDEA Part B regulations provide that “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.” 34 CFR 300.34(b).

IEP Development

- However, nothing:
 - (i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services 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 Section 300.113(b). 34 CFR 300.34(b)(2).

IEP Development

- **Computers can be AT devices used for educational purposes. School districts are required to provide computers for use at home by students with disabilities only if home use is necessary for the provision of FAPE and such use is specified in the student's IEP.** Letter to Anonymous, 18 IDELR 627 (OSEP 1991).
 - **Calculators may be an AT device, depending on the nature of a student's disability. For example, a calculator could be an AT device for a student with LD who is placed in a regular education math class.** Letter to Lambert, 18 IDELR 1039 (OSEP 1992).
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IEP Development

- Other possible devices to consider may include:
 - Tablets, such as iPads
 - Smart Pens
 - Communication devices
 - Software, such as text to speech programs
 - Closed captioning
 - Adaptive switches
- A good resource is the Assistive Technology Coalition website: <https://atcoalition.org/>

AT Devices

- **As a general matter, a district is not required to purchase devices the student would require regardless of whether or not the student is attending school. However, this exclusion does not apply if the CCC determines that the student needs the device or service to receive FAPE and accordingly includes it in the IEP.** See, e.g., Letter to Anonymous, 24 IDELR 388 (OSEP 1996) (A public agency's obligation to maintain or purchase a pulmonary nebulizer device would depend on how that device was characterized and addressed in the student's IEP); and Letter to Galloway, 22 IDELR 373 (OSEP 1994) (stating that if the IEP of a child with a disability determines the child requires an AT device such as a hearing aid as part of his special education, then the responsible public agency would be required to provide the device at no cost to the parents).
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AT Devices

- **The responsibility for the acquisition and maintenance of an AT device belongs to the school district, not the parents. As a component of FAPE, an AT device must be provided at no cost to the parents.** See Letter to Cohen, 19 IDELR 278 (OSERS 1992).
- **A district is not required to select a more costly device that may provide more or better assistance to the student and maximize his or her education.** Board of Educ. of the Hendrick-Hudson Cent. Sch. Dist. v. Rowley, 553 IDELR 656 (U.S. 1982).
- **On the other hand, a district is not permitted to use the cost consideration to select a device that is inconsistent with the student's needs as expressed in the IEP.** Greenwood County Sch. Dist., 19 IDELR 355 (SEA SC 1992).

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AT Devices

- **Districts may not satisfy their responsibility to provide an AT device required by a student's IEP by permitting the student to use his own device, absent an agreement to that effect.** Washoe County Sch. Dist., 69 IDELR 201 (SEA 2016) (a district failed to implement a provision in the IEP of an 18-year-old that afforded him the use of a cell phone to record assignments in class. Noting that the district relied on the student's own phone to satisfy its obligations, the Nevada ED concluded that the district violated the IDEA's no cost requirement.)

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AT Devices

- **Proceed with caution when parents volunteer their own device for use at school.** Once a parent-provided device proves useful, it's tough to argue the device is not necessary for FAPE even if it was not required by the IEP. This leads to questions such as, who's responsible for the device's upkeep?
- Some parents want to use their insurance to purchase devices. That's permissible only if the school obtains their informed consent. Remember, once the student integrates the AT into her learning, the school likely must continue supporting the device to provide FAPE.

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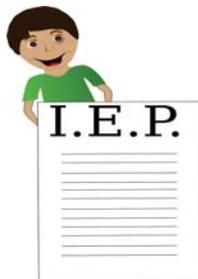
AT Devices

- **If a student needs to take home an AT device to complete homework assignments, the district should consider training the parents and other staff members on how to function the device to assist the student with any potential technical issues.** *See, e.g., Bethel Local Sch. Dist., 116 LRP 26503 (SEA OH 06/07/16) (finding that the student was unable to complete his class and homework assignments because neither his parents nor his teachers knew how to operate his tablet).*

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IEP Development – AT Devices and Services



IEP Development

- **As part of the IEP-development process, the CCC must "consider whether the child needs [AT] devices and services."** 34 CFR 300.324(a)(2)(v).
- **Districts are required to provide AT devices or services to a student with a disability if the CCC determines that the student needs such a device or service in order to receive FAPE.** *Letter to Anonymous, 24 IDELR 854 (OSEP 1996); Letter to Fisher, 23 IDELR 565 (OSEP 1995); Letter to Naon, 22 IDELR 888 (OSEP 1995); Letter to Seiler, 20 IDELR 1216 (OSEP 1993); and Letter to Anonymous, 18 IDELR 627 (OSEP 1991).*

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IEP Development

- Under the FAPE standard articulated by the U.S. Supreme Court in *Endrew F. Douglas County School District RE-1*, 69 IDELR 174 (2017), **AT devices and services must be included to the extent that they are necessary in order for the student to make progress appropriate in light of the child's circumstances.**
- **AT must be provided at no cost to the parents of a child with a disability.** *Letter to Cohen, 19 IDELR 278 (OSERS 1992).*
- **OSEP has stated that where a child's IEP requires AT, the document must include a specific statement of such AT devices or services.** *Letter to Anonymous, 18 IDELR 627 (OSEP 1991).*

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IEP Development

- **The fact that a district offers a student with a disability AT devices and services will not necessarily insulate it from a FAPE claim. The AT provided to the student must be tailored to his individual needs.** *See, e.g., Houston County Sch. Dist., 67 IDELR 133 (SEA GA 2015) (finding that although the district decided to provide the student a voice-output device, the device's static display and 32 buttons limited his communicative vocabulary and impeded his ability to make "measurable or adequate gains in the school setting").*

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IEP Development

Article 7 defines “assistive technology service” as “any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes, but is not limited to, the following:

- (1) The evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment.
- (2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for students with disabilities.

IEP Development

(3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices.

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

(5) Training or technical assistance for the following:

(A) A student with a disability or, if appropriate, the student's family.

(B) 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 students with disabilities.

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IEP Development

- The CCC should consider the need for assistive technology services and specify in the IEP those that are necessary for a student to receive a FAPE.
- In particular, pay attention to the student's or parents' need for training on use of an AT device.
- Failure to purchase or delay in providing needed AT devices can result in a denial of FAPE.
- Likewise, failing to maintain AT devices can result in a denial of FAPE.

E-Learning Considerations



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E-Learning Considerations

For schools that utilize e-learning, they will need to consider:

- Will e-learning days be offered only when school is closed due to weather or at other times?
- Whether e-learning is appropriate for students with disabilities?
- How those services will be provided to students with disabilities?
- What AT is needed to provide e-learning to students with disabilities?
- Will virtual therapy be provided? How?
- What will be offered to students with disabilities for whom e-learning is not appropriate?
- How will that be documented in the student's IEP?

Considerations When Using Emerging Technology



Dear Colleague Letter – 6/29/10 Electronic Book Readers

“Requiring use of an emerging technology in a classroom environment when the technology is inaccessible to an entire population of individuals with disabilities [...] is discrimination prohibited by the [ADA and Section 504] unless those individuals are provided accommodations or modifications that permit them to receive all the educational benefits provided by the technology in an equally effective and equally integrated manner.”

Dear Colleague Letter – 6/29/10 Electronic Book Readers

“Under title III, individuals with disabilities [...] may not be discriminated against in the full and equal enjoyment of all the goods and services [...]; they must receive an equal opportunity to participate in and benefit from these goods and services and they must not be provided different or separate goods or services unless doing so is necessary to ensure that access to the goods and services is equally as effective as that provided to others.”

Dear Colleague Letter – 6/29/10 Electronic Book Readers

- May not be excluded from participation in or denied the benefits of the services, programs, or activities of, nor subjected to discrimination by schools
- “Individuals with disabilities must be provided with aids, benefits, or services that provide an equal opportunity to achieve the same result or same level of achievement as others”
- “It is unacceptable for universities to use emerging technology without insisting that this technology be accessible to all students.”

Example: Case Western University

Several universities signed Letters of Resolution with the DOJ’s Civil Rights Division because they were using the Kindle DX as part of a pilot program with Amazon; the electronic book reader was not accessible to students with visual impairments.

DOE FAQ re: DCL on Electronic Book Readers

The FAQ clarifies many things, including that the above ***DCL applies to all schools*** (not just postsecondary), ***to all students with disabilities*** (not just low vision), and ***to all forms of emerging technology*** (not just electronic book readers).

DOE FAQ re: DCL on Electronic Book Readers

- No staff or faculty member can assign inaccessible course content for a student with a disability because it denies an equal opportunity to participate. The school may be held legally responsible for the faculty member’s actions.
- Schools should provide professional development about accessibility and emerging technology to help staff comply.
- The implementation of an emerging technology should always include planning for accessibility, even if no students with visual impairments (or other disabilities that would affect use) currently are enrolled.

DOE FAQ re:

DCL on Electronic Book Readers

- In determining if technology is accessible, schools should ask:
 - What educational opportunities and benefits does the school provide through the use of the technology?
 - How will the technology provide these opportunities and benefits?
 - Does the technology exist in a format that is accessible to individuals with disabilities?
- If the technology is not accessible, can it be modified or is there a different technological device available so that students with disabilities can obtain the educational opportunities and benefits in a timely, equally effective, and equally integrated manner?

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Website Accessibility and OCR Enforcement



DOE FAQ re:

DCL on Electronic Book Readers

- If accessible technology is not available, a school is compliant if it provides students with disabilities “accommodations or modifications that permit them to receive all the educational benefits provided by the technology in an equally effective and equally integrated manner.”

Website Accessibility

- **According to the Office for Civil Rights’ website:**
Technology plays an increasingly important role in education at all levels. For example, schools and colleges commonly use computers in traditional classrooms, electronic book readers that supplement or replace paper textbooks, online classes, and online registration and class scheduling. Section 504 and Title II require schools and colleges to ensure that the technology they use is fully accessible to individuals with disabilities or otherwise to provide equal access to the educational benefits and opportunities afforded by the technology.

Website Accessibility

- Under both Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, a public entity (which includes public schools) must make its website accessible to individuals with disabilities by removing all barriers that may prevent access (including all intranet pages and password protected areas).
- The widely accepted standard for accessibility is the Web Content Accessibility Guidelines 2.0 (WCAG) Level AA.
- Section 508 of the Rehabilitation Act also contains accepted standards for website accessibility.

Website Accessibility

- Why do we have to have an accessible website?
- Schools are required by law to make sure their websites are accessible to the disabled.
 - If your website doesn’t meet the ADA compliance standards, you could end up as the target of an investigation by the Office for Civil Rights (OCR).
 - If OCR receives a complaint (and that can be from anyone, even if they aren’t disabled), it will result in an investigation.
 - If you fail to correct the issues in the complaint, it could result in a disability discrimination complaint being filed against your school. OCR has the right to enforce your compliance, and you get to spend money correcting the issues, risk losing funding, or face a lawsuit.

Website Accessibility

What do we need to do to ensure website accessibility?

- Understand school website accessibility requirements and assess whether your website meets those standards.
- Establish a website accessibility policy that includes a set of standards that outlines what is expected of those managing your website (and those adding content) and specifies the training and requirements necessary for those responsible for maintaining the website.
- Create a process for implementation and develop website update training
- Audit your website: Wave 3.0 <http://wave.webaim.org/>
- Provide a forum for website feedback

Website Accessibility

WCAG Standards – 4 Principles:

1. Understandable
 - Text is readable and understandable
 - Content appears and operates in predictable ways
 - Webpage assists users in avoiding or making mistakes
2. Robust
 - Website maximizes compatibility with current and future user tools

Website Accessibility

WCAG Standards – 4 Principles:

3. Perceivability
 - The ability of a disabled user to see or hear web content (e.g., web page has text alternative for non-text content)
 - Webpage provides transcripts of audio only content
 - Webpage provides captioning and audio described video content

Website Accessibility

WCAG Standards – 4 Principles:

4. Operable
 - Disabled users can utilize a webpage's functionality (e.g., all functionality is available from a keyboard)
 - Disabled users have enough time to read and use content
 - Webpage does not use content that causes seizures
 - Webpage provides help for users to find and navigate content

OCR Enforcement

- OCR has advised that it has changed its procedure for investigating website accessibility complaints
- They look at the website and do an initial assessment
- Then they advise the school regarding the problems they observed and allow the school an opportunity to voluntarily cure the problems
- The school has a certain time period (up to 180 days) to fix the issues

OCR Enforcement

- If the school fixes the issues and is compliant within 180 days, the complaint will be closed due to insufficient evidence that the school is not in compliance
- If the school is unable to complete all the changes required within 180 days, it can enter into a Resolution Agreement
- Once the school enters into the Resolution Agreement, if it can make the changes within 90 days of signing the agreement, OCR will close the complaint without any voluntary monitoring

OCR Resolution Agreements

Most of the OCR Resolution Agreements contain the same general requirements:

- Development of Policies and Procedures
- Perform an audit of website
- Development of a Corrective Action Plan
- Notice
- Training (at least annually)
- 6-month reporting

Be sure to negotiate sufficient time for the requirements to be met

Southeastern (VA) Cooperative Educational Program, 68 IDELR 77 (OCR April 15, 2016)

- OCR found 11 webpages operated by the district that made them noncompliant with Section 504 and Title II.
- OCR gave the district two years to make the websites fully accessible to individuals with disabilities, but the district did not fix the webpages.

Southeastern (VA) Cooperative Educational Program, 68 IDELR 77 (OCR April 15, 2016)

- In determining whether a website provides equal access to individuals with disabilities, OCR considers whether individuals with disabilities have the same:
 - Ease of use,
 - Completeness of information,
 - Functionality, and
 - Timeliness of response

Southeastern (VA) Cooperative Educational Program, 68 IDELR 77 (OCR April 15, 2016)

- The following were concerns the OCR identified in the district's webpages:
 - Lack of textual information for non-text elements
 - Main dropdown menus not exposed to assistive technology
 - Photo carousel not controllable through the keyboard
 - Insufficient color contrast between text and background

Virtual Community School of Ohio, 62 IDELR 124 (OCR Nov. 6, 2013)

- Virtual charter school did not provide individuals with disabilities with equal opportunity to participate in or benefit from its web-based education program and access was not as effective as that provided to other students.
- Individuals with visual disabilities, learning disabilities, and parents interested in the school with disabilities all had difficulties with web accessibility.

Virtual Community School of Ohio, 62 IDELR 124 (OCR Nov. 6, 2013)

Three students with vision-related disabilities had IEPs that provided for accommodations/services such as:

- Modified curriculum
- Shortened assignments
- A scribe
- Small groups
- Abridged reading
- Large print
- A large screen monitor
- Extended time

Though these were to be provided in their home environment, there was no explanation in the IEP about how the School would provide those things with internet-based learning (specifically small groups and a scribe).

Virtual Community School of Ohio, 62 IDELR 124 (OCR Nov. 6, 2013)

- The School had not adopted a web accessibility policy or otherwise articulated standards for ensuring accessibility. OCR reviewed the following webpages:
 - Pages on which people are likely to enter the website (homepage)
 - Pages with different layouts and functionality
 - Tables, forms, or dynamically generated results
 - Pages with informative images
 - Diagrams or graphs

Virtual Community School of Ohio, 62 IDELR 124 (OCR Nov. 6, 2013)

- Pages with scripts or application that perform a particular task or function
- Pages most likely to garner the most traffic from visitors and/or which provide the most important information regarding the program
 - Information pertaining to admissions, curriculum requirements, code of conduct, and extra-curricular activities

Virtual Community School of Ohio, 62 IDELR 124 (OCR Nov. 6, 2013)

- OCR also selected a sampling of classes in the School's online learning environment based on the enrollment of the three students with visual impairments, including classes from the high school, middle school, and elementary school and classes that spanned a variety of disciplines, such as science, language arts, math, and government.

Virtual Community School of Ohio, 62 IDELR 124 (OCR Nov. 6, 2013)

- OCR found a number of concerns:
 - The website contained some images without text equivalents, making content inaccessible to screen reading software, non-visual browsers, and Braille readers.
 - Some photographs throughout the School's website and its media library were inaccessible. Images posted by teachers within the online learning environment lacked text equivalents.
 - In one class a teacher provided no alternative text for over 1,400 images.
 - Teachers directed students to lessons on external websites that lacked text equivalents.

Virtual Community School of Ohio, 62 IDELR 124 (OCR Nov. 6, 2013)

- Documents posted on the School's website, including the curriculum catalog, application packet, and program information for the Branching Program, were all posted in PDF format, but the PDFs were not properly tagged for the document to be accessible.
- The website used color and font sizes in areas of critical program information, such as the online Enrollment Application and its Calendar of Events, that may not be accessible to persons with disabilities.
- Electronic forms used by the School to be completed online were not constructed so that persons using assistive technology could complete and submit the forms.

Virtual Community School of Ohio, 62 IDELR 124 (OCR Nov. 6, 2013)

- Other factors that impacted the ease of use and/or access to content located on the schools website included:
 - Dropdown menus of the main navigation bar not available to users who must navigate with a keyboard
 - Lack of a method for a user to skip repetitive navigation links
 - Including a photo gallery without text equivalents

Virtual Community School of Ohio, 62 IDELR 124 (OCR Nov. 6, 2013)

- Pages not organized so that they were readable without requiring an associated style sheet
- Videos and other multimedia without accessible features, such as keyboard-only controls, audio descriptions, and text captions synchronized with the video images
- Course content, class assignments, instructions, or other critical information provided in inaccessible PDF format

Virtual Community School of Ohio, 62 IDELR 124 (OCR Nov. 6, 2013)

- Videos and other multimedia without accessible features, such as keyboard-only controls, audio descriptions, and text captions synchronized with the video images
- Assignments and quizzes not available to users who must navigate with a keyboard
- Pictures and other images lacking text equivalents, and
- Assigned lessons provided by linking inaccessible, third-party content on external websites

Virtual Community School of Ohio, 62 IDELR 124 (OCR Nov. 6, 2013)

OCR determined that the School's website and online learning environment did not comply with the Accessibility Standards and were not accessible.

OCR emphasized that the Respondent is a virtual school and had not made its website accessible.

OCR required the School to enter into a Resolution Agreement to resolve the violations.

Virtual Community School of Ohio, 62 IDELR 124 (OCR Nov. 6, 2013)

- Relevant sections from the Resolution Agreement:
 - "Accessible" means that a person with a disability is afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as a person without a disability in an equally effective and equally integrated manner, with substantially equivalent ease of use.
 - A person with a disability must be able to obtain the information as fully, equally, and independently as a person without a disability.
 - [School] must identify and adopt the specific technical standards it will use to determine whether electronic and information technologies are accessible.

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Complaint Investigations and Case Law



CP-024-2017

November 14, 2016

- **Issue** (one of several): Did the School provide the Student with the assistive technology listed in the IEP including providing the student switches? 511 IAC 7-42-8(b)
- The Student has an IEP effective from 01/18/2016 to 01/18/2017 that requires "[a]ssistive technology in the form of switches be provided to the student on a daily basis."
- The School admits it did not have the switches in place for use during math instruction until September 15, 2016, thirty (30) school days after the start of the school year.
- **Conclusion:** The School took 30 school days after the start of the school year to provide the student with the assistive technology listed in his IEP. For this reason **a violation of 511 IAC 7-42-8(b) is found.**

CP-024-2017

November 14, 2016

- **Corrective Action:**
- Conduct an in-service training on: (1) providing written notice required by 511 IAC 7-42-7; (2) implementing an IEP as it is written; (3) obtaining parent consent in writing to implement the IEP prior to the expiration of 10 instructional days; and (4) detailing the responsibilities of the teacher of record.
- Develop policies and procedures for monitoring IEP compliance.

CP-037-2017

December 8, 2016

- **Issue:** Did the School provide the Student with the assistive technology device specified in the Student's individualized education program (IEP)? Specifically, did the School provide the Student with an augmentative communication device? 511 IAC 7-36-7(k)

CP-037-2017

December 8, 2016

- **Conclusion:**
- The Student's IEP required that the Student be provided with an augmentative communication system device.
- The Student had not previously been determined in need of such assistive technology, and the CCC considered several recommended options and agreed to allow the Student a trial period with different devices prior to selecting a specific device.

CP-037-2017

December 8, 2016

- **Conclusion (cont.):**
- The School offered the Complainant the opportunity to select from several comparable augmentative communication system devices which could assist the Student.
- Because the School ensured that the Student had access to an augmentative communication system device during the summer and fall of 2016, up to the filing of the complaint, no violation of 511 IAC 7-42-8(b) was found.

CP-054-2017

January 20, 2017

- **Issue:** Did the School respond by written notice to the Parent's request for an educational reevaluation, specifically for an FBA, within 10 instructional days? 511 IAC 7-40-4(d) (Parent requested FBA and assistive technology evaluation)
- **Facts:** At a CCC, the Parent requested a formal FBA and an assistive technology evaluation. Within 10 days of the request, the School sent the Parent with written notice and a request for consent for an FBA and an assistive technology evaluation. The Parent refused to provide consent for the reevaluations. No FBA or assistive tech evaluations were conducted.
- **Conclusion:** Because the School provided the Parents with a notice of reevaluation for an FBA and an assistive technology evaluation within ten instructional days after the request, no violation of 511 IAC 7-40-4(d) is found.

CP-030-2016

December 8, 2015

- **Issues:**
 - (1) Did the School provide the Students with instructional curricula, materials, and equipment, as well as assistive technology devices and services as needed to allow Students to be involved in and progress in the general education curriculum per 511 IAC 7-36-7?
 - (2) Did the School provide the assistive technology required for Student C and Student D?
- **Facts:** A sound amplification system is required in the IEPs of Student C and Student D. The School provided no documentation of assistive technology, specifically, the sound amplification system required in the IEPs of Student C and Student D. The School admits that there is no record of direct services provided, in the form of a log or other tracking system.

CP-030-2016

December 8, 2015

- **Conclusion:**
- Finding of Fact #7 indicates that the IEPs of both Student C and Student D require access to a sound amplification system as assistive technology. The School failed to submit any documentation as to the provision or use of such technology.
- The School failed to provide sufficient documentation to demonstrate that the Students' IEPs were being implemented as written. **Therefore, a violation of 511 IAC 7-42-8(b) is found.**

CP-030-2016

December 8, 2015

- **Corrective Action:**
- Develop a tracking system to indicate topic, date, time, and length of services provided in order to ensure that all students are actually receiving direct or related services as written within the IEP.
- Ensure that all the Students receive an adequate number of hours of compensatory services to compensate for the lost educational opportunity associated with not having an appropriately certified interpreter or direct academic support services from the beginning of the 2015-2016 school year to the first date of service for the newly hired certified interpreter or the implementation of service tracking system. (Must reconvene the CCC meeting to review and revise the IEP to determine the total amount and nature of compensatory services to be provided to each of the Students.)

Seattle Sch. Dist. No. 1, 67 IDELR 22 (OCR August 26, 2015)

- School required a 6th grader with a profound hearing impairment to use an inaccessible telephone and didn't conduct an AT evaluation until 7 months after it was requested.
- Decision: Under Section 504 and Title II, districts should give primary consideration to the request of a student with a disability to determine the type of auxiliary aid or service that is necessary and consider the privacy and independence of the student. Also, districts must conduct an evaluation when a student needs or is believed to need special education or related services before taking any action with respect to an initial placement or a change in placement. OCR noted that the district could provide an accessible phone for the student to afford him the privacy and independence experienced by his hearing peers.

Seattle Sch. Dist. No. 1, 67 IDELR 22 (OCR August 26, 2015)

- Decision (cont.): OCR also pointed out that the seven months between when the district learned of the parent's request for an AT evaluation and when the evaluation occurred was "sufficient to establish that ... the district failed to provide the student" FAPE for the period in question. It noted that he may be entitled to compensatory education. In the resolution agreement, the district agreed to update policies to provide better training to staff. It also committed to making sure that students with disabilities had access to communications that were as effective as communications for students without disabilities and related aids and services when necessary for equal opportunities.

Houston County School District, 67 IDELR 133 (Ga. SEA December 7, 2015)

- A Georgia district could not persuade an ALJ that it provided a grade schooler with autism FAPE merely by alleging that it utilized assistive technology to address the student's communication needs. Finding that the student's voice-input device did not help improve the student's communication skills, the ALJ concluded that an IDEA violation occurred.
- The ALJ explained that under the IDEA, a student's IEP team has an obligation to consider, among other things, the student's communication needs and "whether the child needs assistive technology devices and services." Here, the ALJ noted that when the student's parent and an independent evaluator recommended AT services, the district failed to evaluate the student's AT eligibility for two years.

Houston County School District, 67 IDELR 133 (Ga. SEA December 7, 2015)

- Once it conducted the AT evaluation and determined that the child required AT for communication purposes, the ALJ observed, the district decided to provide the student a voice-output device. However, the evidence showed that the voice-output device did not adequately meet the student's needs.
- Although the device permitted the student to convey basic demands and feelings, such as when he was hungry, the device's static display and 32 buttons limited his communicative vocabulary and impeded his ability to make "measurable or adequate gains in the school setting," the ALJ opined.

Houston County School District, 67 IDELR 133 (Ga. SEA December 7, 2015)

- He pointed out that a tablet with a dynamic display and "customizable, ... virtually unlimited possibilities for picture vocabulary" would have offered the child "several advantages over a mid-tech [voice-output] device with a static display."
- Moreover, the child had already demonstrated his ability to navigate and use a personal tablet for communication purposes, the ALJ added.
- Because the district failed to properly address the student's needs, the ALJ found that the student was entitled to compensatory services.

Lathrop R-II Sch. Dist., 116 LRP 16678 (OCR September 30, 2015)

- Putting off the purchase of an iPad for a high school student with a communication impairment brought a Missouri district into an OCR investigation that uncovered a series of Section 504 and ADA Title II shortcomings.
- To address OCR's concerns, the district agreed to secure text telephones or an equally effective communication system and develop procedures and provide staff training on how to handle Section 504 and Title II issues.

Lathrop R-II Sch. Dist., 116 LRP 16678 (OCR September 30, 2015)

- The student's parents filed a complaint with OCR, arguing that the student was unable to communicate at school because he could not access AT.
- The student had an IEP calling for an AT device, but the superintendent overruled the IEP decision, stating that "the school does not allow other kids to do this."
- Later, the student was provided with an iPad, but after six weeks, it had to be returned because it was on loan.
- The district was unable to find another iPad to borrow, and the student was not provided with another one until approximately two weeks into the next school year.

Lathrop R-II Sch. Dist., 116 LRP 16678 (OCR September 30, 2015)

- The Title II and Section 504 effective communication requirements apply to all of a student's school-related communications, including exchanges with teachers, students, coaches, and school officials and for activities and programs throughout the school day, including school-sponsored extracurricular activities.
- OCR explained that districts must take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.
- Because the district did not have an effective telecommunication system in place, OCR concluded that the district did not comply with Section 504 or Title II.

Lathrop R-II Sch. Dist., 116 LRP 16678 (OCR September 30, 2015)

- Additionally, OCR noted, the district's conclusion that there was "no money" to supply the student with an iPad was no excuse for delay in obtaining the device "unless the purchase of an iPad created an undue financial burden" on the district.
- Without showing such a burden, the district's budgetary concerns were not enough to overcome its Title II and Section 504 obligations, OCR explained.
- To address OCR's findings, the district agreed to develop effective communication procedures for OCR approval, train staff on Section 504 and Title II, and notify parents of how to request an auxiliary aid or service for effective communications.

Tooele County Sch. Dist., 112 LRP 24902 (OCR Mar. 27, 2012)

- A Utah district easily could have deflected allegations that it engaged in disability discrimination if it had maintained records of how it distributed new technology to its elementary, middle, and high school classrooms.
- To be compliant with Section 504 and Title II, districts must afford students with disabilities equal access to all the educational benefits, programs, and activities they provide.
- Addressing allegations that the district here ignored students in self-contained classrooms when distributing new technology over the course of two school years, OCR observed that the district had no records of what technology it acquired or how it distributed it. Such information was necessary to refute discrimination allegations.

Tooele County Sch. Dist., 112 LRP 24902 (OCR Mar. 27, 2012)

- **Ruling:**
- OCR accepted the district's voluntarily submitted resolution agreement to address concerns that it violated Section 504 and Title II in depriving its elementary, middle, and high school special education students of equal access to new technology.
- The district will provide an accounting for all the current technology in each of its schools' classrooms. The accounting will identify the type of technology and the type of classroom in which it is located.
- The district also will draft a policy stating that the needs of students with disabilities will be fully considered when acquiring and distributing new technology.

Tooele County Sch. Dist., 112 LRP 24902 (OCR Mar. 27, 2012)

- **Meaning**
- As new technology, such as iPads, make their way into schools, districts need to remember to be fair when distributing those items to students.
- Special education students should equally benefit from a district's receipt of new technology and equipment. It's a good idea to keep records of recently received equipment and its distribution in order to ensure even-handed assignments.
- The district here could have ensured its compliance with Section 504 and Title II in its distribution of new technology to students in self-contained classrooms compared to nondisabled students if it had simply kept track of how it dispersed the equipment.

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QUESTIONS???

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