

STUDENTS WITH DISABILITIES RIGHT TO AT UNDER IDEA

SUMMARY: *Students with disabilities have a right to any Assistive Technology (AT) device or service necessary for the student to receive a free appropriate public education (FAPE). The school district must provide the AT at no cost to the student or parents. All AT needs must be addressed in the student's Individualized Education Program (IEP). It is a good idea to finalize the IEP and obtain the AT device or service before school starts for the year. A student may take an AT device home to help with homework, use it at extra-curricular activities, etc. The key is that its use in these settings must be delineated in the IEP. AT devices purchased by the school remains property of the school. AT devices purchased by the parent or with Medicaid dollars are the property of the student.*

Eligibility: to receive an AT device or service the student must meet be:

1. Between ages of 3 and 21 years old.
2. Qualify for eligibility under IDEA categories: Mental retardation, Deaf/Hard of Hearing, Speech impairment, Blind/VI, Severe Emotional Disturbance, Orthopedic Impairment, Autism, TBI, Learning disability, other health impairment, or multiple disabilities.
3. Qualifies for special education or related services.
4. Need the AT to receive a Free Appropriate Public Education.

Evaluation: A parent may request and receive an evaluation of a student for special education services (including the possible use of assistive technology devices or services) based on a suspicion the student may be eligible. If the student qualifies, an IEP team is assembled and an Individualized Education Program (IEP) is created for the student. The IEP team must consider any AT device or service is necessary for the student to receive a Free Adequate Public Education (FAPE) in the Least Restrictive Environment (LRE). The evaluation is required to be completed 60 days after the request.

Q&A on AT Device Ownership:

Q: When the device is paid for under Medicaid, who owns the device? A: *The student.*

Q: When the device is paid for by the school under IDEA, who owns the device? A: *The school.*

Q: When the device is paid for by a combination of funds from Medicaid and the School who owns the device? A: *The student.*

Frequently Asked Questions:

Q: May a child receive an AT device paid for by the school under the IDEA? A: *Yes, when the device is necessary for the child to receive a free appropriate public education.*

Q: May the child take the device home? A: *Yes, when the IEP provides for the use of the AT at home if necessary to receive FAPE.*

Q: Who is responsible for wear and tear and maintenance? A: *The school is responsible for those devices which the school owns and purchased for the student's use pursuant to the IEP. The school may be responsible for other AT devices owned by the student, if the IEP team determines that the AT is needed at home in order for the child to receive FAPE.*

Q: Does this requirement cover transportation needs? A: Yes.

Q: May the child take the device with them to a new school in the same district? A: Yes, as determined by the IEP team in order for the child to receive FAPE.

Q: May the child take the device with them to a new district? A: If the child owns the device, yes; if the district owns the device, no. However, the new district must provide any AT device determined to be necessary by the IEP team.

Q: May the child obtain a device if they are in a private school? A: If the student is placed there by the public school district, and the device is required by the child's IEP.

Q: May the child take the device with them to a private tutor? A: Yes, if that use is permitted in the IEP.

Q: May the child use the device for extracurricular activities? A: Yes, if that use is permitted in the IEP. Ancillary use is permitted. For instance, if a child has a device that makes it possible to see the print to read and the device goes home from school pursuant to the IEP, then the child could also use that device for general reading at home.

Q: May the school charge for special education or related services? A: No.

A child is entitled to an AT device or service when the IEP team has determined that it is necessary for the child to receive FAPE in the Least Restrictive Environment. AT under the IDEA does *not* include medical devices. This means that for funding of an AT device under the IDEA the device must have a direct connection to the education of the student.

A Note About Timing & Documentation: The IEP should describe in detail the provision for the Assistive Technology devices the student needs and should be completed in the late spring or summer so the AT device can be available at the beginning of the school year. Request an evaluation for Section 504 eligibility at the same time of the IEP assessment.

Infants and Toddlers may be eligible for AT under Part C of the IDEA if the child meets the criteria for early intervention services and the Individual Family Services Program team decides the services are needed. Parents are part of the team.

Medicaid: If the child/family is of limited income additional sources of funding for AT can be found under Medicaid's Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program or S-CHIP. In Kansas these are called KanBe Healthy or HealthWave.

How do I contact DRC Kansas? How can DRC Kansas help?

If you are a person with a disability, parent of minor child with a disability or a legal guardian, and you have questions about rights under IDEA or other disability rights issues, you can call Disability Rights Center of Kansas (DRC) for help. DRC has attorneys and advocates on staff and offers a variety of levels of help from information and referral to advocacy to litigation. DRC can be reached at: Toll Free Voice 877-776-1541, Topeka Voice – 273-9661, Toll Free TTD 877-335-3725, via fax 785-273-9414, or email us at info@drckansas.org

DRC Kansas is a private, 501(c)(3) nonprofit corporation, independent of both state government and disability service providers. This independence allows DRC to focus on the needs of Kansans with disabilities, including providing legally-based disability rights advocacy and protecting the rights of Kansans with disabilities under state or federal laws. DRC is the official protection and advocacy system for Kansas.

THIS FACT SHEET IS FOR INFORMATIONAL PURPOSES ONLY. THIS FACT SHEET DOES NOT CONSTITUTE LEGAL ADVICE. If you believe you have a legal question or need legal advice, you are urged to contact DRC or a licensed attorney of your choosing.