

ACCESSING ASSISTIVE TECHNOLOGY

Chapter 9

Special Education

From a 17-Chapter Manual
Available by Chapter and in Manual Form

Third Edition, 2007

Written by:

DISABILITY RIGHTS CALIFORNIA

Copyright © 1995 by Disability Rights California

Prepared with funding provided through State Grants for Protection and Advocacy Related to Assistive Technology Program supported by funds from the Rehabilitation Services Administration, U.S. Dept. of Education, Grant # H343A070005B.

These materials are based on the laws and court decisions in effect at the time of publication. Federal and state law can change at any time. If there is any question about the continued validity of any information in this manual, contact Disability Rights California or a legal resource in your community.

(Blank Page)

DISABILITY RIGHTS CALIFORNIA, is a private, nonprofit organization that protects the legal, civil, and service rights of Californians who have disabilities. Disability Rights California provides a variety of advocacy services, including information and referral, technical assistance, and direct representation. For information or assistance with an immediate problem, call:

DISABILITY RIGHTS CALIFORNIA

Toll Free: (800) 776-5746

8:30 AM to 5:00 PM - Monday through Friday

Central Office

100 Howe Ave., Suite 185-N
Sacramento, CA 95825
Legal Unit - (916) 488-9950
Administration - (916) 488-9955
TTY – (800) 719-5798

San Diego Area Office

1111 Sixth Ave., Suite 200
San Diego CA 92101
(619) 239-7681
TTY – (800) 576-9269

Los Angeles Area Office

3580 Wilshire Blvd., Suite 902
Los Angeles, CA 90010
Tel. - (213) 427-8747
TTY - (800) 781-5456

Oakland Area Office

1330 Broadway, Suite 500
Oakland, CA 94612
Tel. - (510) 267-1200
TTY – (800) 649-0154

Disability Rights California receives funding under the Developmentally Disabled Assistance and Bill of Rights Act, the Protection and Advocacy for Mentally Ill Individuals Act, the Protection and Advocacy for Individual Rights Act, and the Assistive Technology Act of 1998. Any opinions, findings, recommendations or conclusions expressed in this publication are those of the authors and do not necessarily reflect the views of the organizations which fund Disability Rights California.

ACCESSING ASSISTIVE TECHNOLOGY

TABLE OF CONTENTS

Chapter 1	Introduction and Overview
Chapter 2	Advocacy Skills
Chapter 3	Private Health Benefit Plans
Chapter 4	Regional Centers
Chapter 5	California Children's Services
Chapter 6	Reasonable Accommodation in Employment
Chapter 7	Vocational Rehabilitation (Including Loan Programs)
Chapter 8	Social Security Work Incentives
Chapter 9	Special Education
Chapter 10	Medi-Cal
Chapter 11	Medicare
Chapter 12	Veterans Administration
Chapter 13	Right to Assistive Technology from Public Entities
Chapter 14	Right to Assistive Technology from Private Businesses
Chapter 15	Right to Assistive Technology in Higher Education
Chapter 16	The Protections of The Lemon Law for Buyers of Assistive Technology
Chapter 17	Resource Guide (with Table of Contents)
Acronyms & Abbreviations	
Glossary	

ACCESSING ASSISTIVE TECHNOLOGY

Chapter 9

SPECIAL EDUCATION

Table of Contents

Question	Page
1. What is special education?.....	1
2. What are related services?	1
3. What is assistive technology in special education?.....	1
4. Who is eligible to receive assistive technology under IDEA?	4
5. Are there different rules for different age groups?.....	4
6. Which agencies have responsibility for providing assistive technology in special education?	5
7. What is an “educational agency” or a “local educational agency”?.....	6
8. How can my child get assistive technology through the school?.....	6
9. Will the school district evaluate my child’s need for assistive technology?.	7
10. What is an IEP and how does it work?.....	7
11. How can I get assistive technology included in my child’s IEP?	7
12. Who owns assistive technology that the school buys for a special education student?	9
13. Can the school district make us buy equipment with Medi-Cal or private insurance?	9
14. Can our child take home equipment that the school district buys?	9
15. Does the school district provide training to use an assistive technology device?	10
16. Who is responsible for repairing and maintaining assistive technology devices?.....	10

17.	Is cost a factor in determining whether my child can get assistive technology?.....	10
18.	I have a child with some hearing loss in both ears. Can we ask his school district for hearing aids?	11
19.	My child needs eyeglasses to do her schoolwork. Can she get them from her school district?	11
20.	Our child is blind. We want him to learn Braille. What can we ask his school district to do?	12
21.	Who is responsible for Braille school materials for my child?.....	12
22.	Our child has Medi-Cal coverage. She needs a communication device. Can her school district refuse to provide it because Medi-Cal now pays for these devices?.....	12
23.	My child is in a private school. Can he get assistive technology from the school district?	13
24.	Our child uses her own talking computer for schoolwork. What rights do we have if the computer is damaged at school?	14
25.	We would like our child to use the same computers in school as other kids do. What can we do?.....	14
26.	What if we disagree with the school district's position on our child's need for assistive technology or the type of technology?.....	15
27.	How does the hearing process work?	15
28.	What happens to the assistive technology device or service during the hearing process?.....	16
29.	What factors will the hearing officer look at to determine if my child is entitled to assistive technology?.....	16
30.	What can we do if the school district does not comply with the law?	17
31.	Are there any other ways to resolve a disagreement?	18
32.	My child does not qualify for special education. Can she get assistive technology through the school district?.....	18
33.	What can we do if the school district does not give my child a reasonable accommodation or meet its obligation to provide a free appropriate education under Section 504?.....	19
34.	Do school districts get special funding to provide assistive technology? ...	19

35. What is AB 3632/882? How does it affect assistive technology?..... 20

36. Can my child get assistive technology to participate in vocational training?
..... 20

37. What are early intervention services? How do they affect assistive
technology?..... 21

38. How can a child obtain assistive technology through Part C? 22

39. What should we do if the agency will not provide services? 22

(Blank Page)

Chapter 9

SPECIAL EDUCATION

1. What is special education?

Congress enacted the Individuals with Disabilities Education Act (IDEA) in 1975. IDEA is a federal law that authorizes special education and related services, including assistive technology. 20 U.S.C. § 1400 and following. California patterned its own statutes on IDEA. California laws govern special education services in California. California Education Code (Cal. Ed. Code) § § 56000 and following.

Special education is instruction that is specially designed to meet the unique needs of students with disabilities at no cost to parents. This includes classroom instruction, home instruction, instruction in hospitals and institutions, vocational education, and physical education.

2. What are related services?

Related services are supportive services that students require in order to benefit from their special education programs. California calls related services *Designated Instruction and Services* (DIS). Cal. Ed. Code § 56363; 5 C.C.R. § § 3051 and following. Education for children with disabilities includes independent living skills and vocational education, and not just academics. Special education students may need a broad range of related services.

Assistive technology devices (and the services necessary to help a child select, acquire, or use an assistive technology device) are available if your child requires them as part of her special education or related services. 20 U.S.C. § 1401(1) and (2); 34 C.F.R. § § 300.105, 300.5 & 300.6.

3. What is assistive technology in special education?

In special education, “assistive technology” refers to any devices or services:

- That your child needs to benefit from his special education or related services; or

- That enable your child to receive his education in the least-restrictive environment. 34 C.F.R. § § 300.110 & 300.114.

The 1990 amendments to IDEA added the term “assistive technology” and its definition. The IDEA definition says:

The term 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 functional capabilities of children with disabilities. 20 U.S.C. § 1401(1).

The term 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:

- The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
- Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- Selecting, designing, fitting, customizing, adapting, applying maintaining, repairing, or replacing of assistive technology devices;
- Coordinating and using other therapies, interventions or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- Training or technical assistance for a child with disabilities or, where appropriate, the family of a child with disabilities;
- 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 individuals with disabilities. 20 U.S.C. § 1401(2).

Assistive technology in special education also includes specialized transportation equipment such as “special or adapted buses, lifts, and ramps.” 34 C.F.R. § 300.34(b)(16).

An Office of Special Education Programs (OSEP) letter said that the definition of “related services” includes assistive technology. 16 EHLR 1317 OSEP, 1990. The letter emphasized the hallmark of special education law that:

- The determination of what constitutes a free, appropriate public education must be made on an individual basis, and
- Any needed services must be included in the student’s IEP.

A 1992 OSEP letter stated that calculators, tape recorders, and teachers’ notes can be considered assistive technology. Lambert, 18 IDELR 1039, 1992. Other OSEP policy letters and hearing decisions clarify the types of assistive services and devices that IDEA covers. OSEP found that related services include:

- Failure to implement evaluation of a Dyna Vox or DynaMyte (augmentive communication software) for 8 year old with autism and severe language disorder was a violation of FAPE. *Indep. Sch. Dist. No. 623*, 31 IDELR ¶ 17, 1999.
- School District denied FAPE when it failed to provide another augmentative communication device to a student with downs syndrome and verbal apraxia. Accordingly, district was ordered to provide a specific device or one of equal value chosen by the parents. *East Allgheny Sch. Dist.*, 20 IDELR 662, 1998.
- Even though school provided Assistive technology, the court found the school denied FAPE because the device and program took too long to obtain and set up, and the parents and aide were never trained, and keyboarding instructions were inadequate. *East Penn Sch. Dist. v. Scott B.*, 29 IDELR 1058, 1999.
- District concluded that the student required a FM trainer and provided this device, student did not require hearing aids to receive FAPE. *Ankeny Community Sch. Dist.*, IDELR 451, 1999.

¹“EHLR” refers to the Education of the Handicapped Law Reporter. It is now called IDELR (Individuals with Disabilities Education Law Reporter) to reflect the change in the name of the Act.

- Hearing officer determined that oxygen tanks were a safety measure to ensure the student was capable of attending school, and as such qualified as assistive technology devices the district was required to provide. *Silsbee Indep. Sch. Dist.*, 25 IDELR 1023, 1997.
- Computer assistance (Eldon MO R-1 School District EHLR 352:144 OCR 1986);
- A device for loading/unloading students from a bus (Davis USD 18 IDELR 696, 1992);
- An electronic communication device (19 IDELR 355, 1992); and
- Hearing aids (Seiler, 20 IDELR 1216, 1993).

4. Who is eligible to receive assistive technology under IDEA?

Children who have disabilities and need special education services to benefit from education have the right to special education and related services. Related services include assistive technology. Eligible disabilities include sensory impairments (hearing, vision, speech, language), orthopedic impairments, mental retardation, autism, serious emotional disturbance, specific learning disabilities, or other health impairments. Children with traumatic brain injuries also qualify for special education under federal law. 20 U.S.C. § 1401(3); 34 C.F.R. § 300.8. California law refers to "children with disabilities." Cal. Ed. Code § 56026.

Children who meet these criteria who are between the ages of three years and 18 years, inclusive, are eligible for special education. Cal. Ed. Code § 56026(c)(2) and (3). Individuals between 19 and 21 who are enrolled in or are eligible for special education programs prior to their 19th birthdays, and who have not completed their prescribed courses of study (or who have not met prescribed proficiency standards), are eligible for special education. Cal. Ed. Code § 56026(c)(4).

5. Are there different rules for different age groups?

Yes. **From age 3 to age 18** – Children who have a qualifying disability are eligible for special education if they are at least three years old, but have not yet turned 19 and have not graduated from high school with a regular diploma. Cal. Ed. Code § 56026(c)(2) and (3).

From age 19 to age 21 – Students between 19 and 21 are eligible for special education if they:

- Are enrolled in (or are eligible for) special education programs before their 19th birthday; and
- Have not completed their prescribed course of study (or have not met prescribed proficiency standards). Cal. Ed. Code § 56026(c)(4).

From age 3 to age 5 – Children aged three to five years are eligible under the same criteria as school-age children. There is also one new category for three to five-year olds, called established medical disability. To qualify, this medical condition or congenital syndrome must have a high predictability of requiring special education. Cal. Ed. Code § 56441.11.

From birth to age 3 – Infants and toddlers under age three are eligible for early intervention services if they:

- Have a developmental delay in one or more of the following five areas: cognitive development; physical and motor development, including vision and hearing; communication development; social or emotional development; or adaptive development;
- Have established conditions that have a high probability of leading to developmental delay; and
- Are at a high risk of having substantial developmental disability due to a combination of biomedical risk factors diagnosed by qualified clinicians.

Cal. Gov. Code § 95014(a)(1)-(3). See question 37.

6. Which agencies have responsibility for providing assistive technology in special education?

Regional centers are the responsible lead agencies for infants and toddlers who have developmental delays or are at risk for delays. Cal. Gov. Code § 95004. School districts have responsibility for those who have solely low-incidence disabilities. Cal. Gov. Code § 95008. (See questions 37 and 38 for information about assistive technology for infants and toddlers available through the regional center and the school district.) For infants and toddlers served by a regional center, the rules and protections of IDEA, not the Lanterman Act, usually govern early

intervention. If your child also has developmental disabilities under state law, she would have a right to any additional benefits under the Lanterman Act.

School districts may also have to provide assistive technology for students as a *reasonable accommodation* under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973. Students who are not eligible for Special Education under the IDEA (perhaps because they do not fit into one of the defined categories, or because their learning problems are not severe enough) may still qualify for assistive technology to allow them equal access and opportunity to participate with non-disabled peers. (See question 32 for information on students eligible under Section 504 and ADA.)

7. What is an “educational agency” or a “local educational agency”?

The terms “education agency” or “local educational agency” or “school district” refer to the agency that administers your child’s school. For simplicity, we call them “schools.”

8. How can my child get assistive technology through the school?

You should include any necessary special education services, including assistive technology, in your child’s Individualized Education Program (IEP). To begin the process, you should ask the school, in writing, for the assistive technology that your child needs. If you do not know exactly what type of device your child needs, simply say why your child needs assistive technology.

For example, if your child has a hearing impairment, you can say that she needs help understanding what people are saying in the classroom. In the assessment and IEP process, the IEP team should determine your child’s needs for assistive technology along with her placement, transportation, related services, and other needs.

Once you make the request, the school district has **15 days** to provide a proposed assessment plan. This plan must contain a notice of your rights as the child’s parent. You have at least **15 days** to consent to the proposed assessments. Once the school district receives your consent, it has **50 days** to complete the assessments and hold an IEP meeting.

9. Will the school district evaluate my child's need for assistive technology?

Yes. Once you ask for assistive technology (or other special education services), the school district should do an evaluation of your child's need for the device or service. There is no cost to your family. If you disagree with the school district's findings, you can request an independent evaluation. The school district is responsible for the cost of your child's independent evaluation unless it shows that its assessment was accurate, complete, and met the proper requirements. 34 C.F.R. § 300.502; Cal. Ed. Code § 56329.

10. What is an IEP and how does it work?

The Individualized Educational Program (IEP) is a legal document. The IEP sets out your child's present levels of educational performance, goals and objectives, special education and related services, and placement for each school year.

An IEP team develops the document. The IEP team must include you as the parent, your child (if appropriate), your child's teacher, and a school administrator. It may include a regional center caseworker. It may also include others who provide speech and language therapy, occupational therapy, counseling, etc. Each year, the IEP team must meet to review and revise the IEP for the following year, based on your child's progress and educational needs. If your child needs assistive technology devices and services, you should specifically include them in the IEP.

You must sign the IEP document before it can go into effect. If there is a disagreement about the IEP team's recommendations, you should not sign the IEP. You can ask for a due process hearing or some other means of dispute resolution.

11. How can I get assistive technology included in my child's IEP?

IDEA regulations say that you can include assistive technology in an IEP for three reasons:

- As part of special education;
- As a related service; or
- As a supplemental aid or service to allow the child to be educated in the least restrictive environment. 34 C.F.R. § 300.105.

Although these distinctions may seem confusing, the basic standard is that your child needs the assistive technology to benefit from special education. To benefit from special education means to make meaningful progress toward the goals and objectives in the IEP.

First: Assistive technology may be part of your child's goals *and objectives* for special education. 34 C.F.R. § 300.39. For example, your child may need a communication device so he can answer questions and talk to his teacher and peers. His IEP goal might say: "Using an electronic communication device, John will respond appropriately to questions from teacher and classmates five out of five times."

Second: Assistive technology may be part of *related services*. 34 C.F.R. § 300.34. It may be the related service itself, or it may enable your child to benefit from a related service. For example, your child may need a lift on the school bus so he can ride to school with his peers. Davis USD 18 IDELR 696, 1992. A related service may also be training or evaluation to help him use a device. For example, occupational therapy may involve finding the correct position to use a computer keyboard or a communication board.

Third: Assistive technology may be a *supplementary aid or service* that enables your child to be educated in the least restrictive environment. 34 C.F.R. § § 300.42 & 300.114(a)(2). The IEP team should consider and approve assistive technology to allow your child to stay in the regular classroom setting before considering a more restrictive setting. For example, a listening device that would help your hearing impaired child take part in a regular class would be allowable if, without the device, he would have to be in a more restrictive setting. If the IEP team includes assistive technology in your child's IEP, the school district must buy the device or service.

As of July 1, 1998, the law requires the IEP team to specifically consider a child's need for assistive technology devices and services when developing an IEP. 20 U.S.C. § 1414(d)(3)(B)(v). This requirement means that, while developing your child's IEP, the school must consider whether she needs assistive technology to assure that she will benefit from special education.

In addition, if your child is blind or has visual impairments, the IEP team must provide for instruction in Braille and the use of Braille. The only exception is when the IEP team determines, after evaluating your child's current and future needs,

that instruction in Braille or the use of Braille is not appropriate for her. 20 U.S.C. § 1414(d)(3)(B)(iii).

12. Who owns assistive technology that the school buys for a special education student?

Any equipment purchased by the school belongs to the school district. If your child moves to another school district, the equipment stays with the district that bought it. The school should allow your child to take the equipment home, however, if he needs it to benefit his education. For example, he might need it to do homework or to practice communication skills outside the classroom.

13. Can the school district make us buy equipment with Medi-Cal or private insurance?

Using other funding sources such as Medi-Cal or private insurance must be **voluntary**. The child's family must give permission. The school district **cannot** make you suffer a financial loss that parents of nondisabled students do not have to suffer. Such losses might include:

- Decreased availability of lifetime insurance coverage or other benefits;
- Increased premiums;
- Canceled policy;
- Out-of-pocket deductible expenses; and
- Limits on the amount of services you can claim.

Be sure to find out if using your own insurance will limit the amount of insurance protection available for future family use. Even if you volunteer to use other payment sources for assistive technology, the school district still has an obligation to provide all services included in the IEP. If your insurance or Medi-Cal does not cover the entire cost of the equipment, the school **must** assume the rest of the cost, so that there is no charge to you.

14. Can our child take home equipment that the school district buys?

Yes, if your child needs the equipment at home to benefit from special education, i.e., to make progress toward the goals in his or her IEP. Hearing officers

consistently rule that the school district cannot limit use of a device to school grounds if a student needs the device at home or in a community setting in order to receive a free, appropriate public education (FAPE). Generally, that means to make progress towards goals and objectives. If your child needs the device to complete his homework or to practice skills outside of school, be sure to include these activities in his or her goals. Ask that the IEP include specific mention of how and when your child can take the equipment home.

15. Does the school district provide training to use an assistive technology device?

Yes. The school must give your child, you, other family members, and school personnel adequate training to assure proper use of the device. IDEA includes such training in the definition of assistive technology service. The school district must pay for the training. 20 U.S.C. § 1401(2)(E).

16. Who is responsible for repairing and maintaining assistive technology devices?

The school district is responsible for repairing and maintaining the devices it buys. You and the school district should look at all warranties and maintenance contracts that come with devices to see if they cover these services. The IEP team should discuss training, repair, and maintenance with the school district. Everyone should agree on the arrangements before implementing the IEP. The school district should review its property insurance policy to see what the policy covers and whether it will cover loss or damage at school and at home.

17. Is cost a factor in determining whether my child can get assistive technology?

The school district may consider cost in deciding whether to provide a device but only if a less expensive device is also appropriate. One hearing officer ruled that cost was a factor, but then authorized a \$7,000 Liberator communication device. 19 IDELR 355, 1992. Cost may not be a factor if the other choice will deny your child access to FAPE.

18. I have a child with some hearing loss in both ears. Can we ask his school district for hearing aids?

Yes. If your child is a special education student and needs hearing aids as part of his special education program, or related services, or supplementary aids and services. 34 C.F.R. § 300.105. Normally, hearing aids are considered personal devices and school districts do not have to supply them. But, it is different when you can show that your child needs hearing aids to increase, maintain, or improve his functional capabilities as set out in his IEP goals and objectives. 34 C.F.R. § 300.5. OSEP Policy Letter to P. Seiler, 20 IDELR 1216 (11/19/93) and OSEP Policy Letter to J. Galloway 22 IDELR 373 (12/22/94).

How to determine the educational need for hearing aids is part of the IEP process. After assessment, it is up to you and the rest of the IEP team to set your child's educational goals and objectives. If your child's hearing loss interferes with his progress toward these goals and objectives, you must make sure that his IEP says so. The IEP team must write his goals and objectives clearly, so the school district understands why it must make the hearing aids available. You can justify your child's need for hearing aids under one of the three main IEP areas -- special education, related services, and supplementary aids and services. (See Questions 1 and 2 for explanations of these terms.)

If your child has Medi-Cal, CCS, or private insurance benefits, the school can ask them to provide the hearing aids. See questions 13 and 22 for information about your right to agree or refuse to use these benefits for items related to special education.

19. My child needs eyeglasses to do her schoolwork. Can she get them from her school district?

Like hearing aids, eyeglasses are personal devices. Normally, school districts do not have to provide them. But, when the devices are necessary for your child to receive a FAPE, the school district does have to provide them. OSEP Policy Letter to T. Bachus, 22 IDELR 629 (1/13/95). As part of the assistive technology evaluation, your child may have her vision tested to identify her needs. See OSEP Policy Letter to Bachus. If the examination shows that she needs eyeglasses to read, write, or take part in the school program:

- The IEP team should discuss the need for eyeglasses; and
- The school district must furnish the required eyeglasses.

In most cases, children with visual impairments need eyeglasses. However, OSEP has said it is possible that children with other disabilities, such as learning disabilities, may need eyeglasses too. According to OSEP, if your child needs glasses to achieve her IEP goals, then the school district must supply them. See Letter to Bachus above.

20. Our child is blind. We want him to learn Braille. What can we ask his school district to do?

You can ask his school to teach him Braille and to provide materials in Braille. Under the law, your child's IEP team must consider using Braille as his primary means of communication. The law makes an exception if the IEP team finds that a different means of communication is appropriate for him. 20 U.S.C. § 1414(d)(3)(B)(iii).

21. Who is responsible for Braille school materials for my child?

The simple answer is that a "qualified" person should Braille the materials. This is what the federal law says, but it does not say what "qualified" means in terms of education or experience. States can set their own qualification standards. California's Education Code has no certification or licensing requirements for Braille transcribers. Some courses (like math, physics, chemistry and geography) may require specialized knowledge or experience. You should insist that your child's school choose a transcriber who has the necessary skills for Braille texts, maps, graphs, diagrams, charts, and any special terms or symbols used in your child's classes.

22. Our child has Medi-Cal coverage. She needs a communication device. Can her school district refuse to provide it because Medi-Cal now pays for these devices?

No. Under part B of the IDEA, state and local education agencies have an ongoing responsibility to provide a FAPE to eligible children with disabilities. These agencies carry out that duty by providing the services set out in the child's IEP.

Augmentative communication devices have long been recognized as an educational benefit under IDEA. If your child needs an augmentative communication device, you must state it in his IEP and his school must supply it. The law allows schools to use available federal and state resources to meet their obligations. That may

include use of Medi-Cal services. But the school cannot suspend or postpone delivery of special education services because such resources are also available.

Since 1996, Medi-Cal has become a steady source of funding for augmentative communication devices and services. Access to augmentative communication through Medi-Cal requires a carefully prepared evaluation by a licensed speech pathologist. Without it, Medi-Cal will deny or defer requests until you send them adequate justification. See question 33 of Chapter 10 in this manual. If you face a prolonged delay in obtaining authorization from Medi-Cal, the school must act immediately and buy or rent the device. The school can ask for reimbursement when Medi-Cal approves the device. 20 U.S.C. § 1412(a)(12)(B).

23. My child is in a private school. Can he get assistive technology from the school district?

Whether your child has a right to get assistive technology from the school district depends on why he is in a private school.

If your child's placement in a private school resulted from a school district decision, then he has a right to a FAPE, just like children who attend public schools. His need for assistive technology to benefit from his private schooling follows the same principle. Each year, when writing a new IEP, his IEP team must consider whether he needs assistive technology to achieve the goals set out in his IEP. If the IEP team finds that an item of technology is necessary, the district must provide it at no cost to you.

But the district may not be responsible if you acted on your own to put your child in a private school. If you did, you have the right to reimbursement of the cost of his schooling and any related services or assistive technology only if a hearing officer or judge rules that:

- His school district failed to provide or offer him a FAPE; and
- His current placement is in fact appropriate. *Burlington Sch. Comm. v. Department of Educ.* 471 U.S. 359 (1985).

Thus, if your child is in a private school, and you buy assistive technology for him, you can get reimbursement only if you can show:

- The two conditions above are met; and

- The expense was necessary to help him benefit from his education.

The law now requires parents to first inform the district, at either the IEP meeting or by letter, of their concerns. You need to tell the district that you disagree with the proposed placement, that you reject that placement, and that you intend to place your child in a private school at district expense. These steps are necessary if a parent wishes to ultimately attempt to obtain reimbursement for the costs of the private school placement and any necessary related services and assistive technology. This prior notice is not necessary under four circumstances:

- When the parents are illiterate;
- When compliance would endanger the child;
- When the school prevents the parents from giving the notice; and
- When the district does not notify the parents of their rights. 20 U.S.C. § 1412(a)(10)(C).

If your child could receive a FAPE in a public setting, but you prefer to send him to a private school, the district does not have to meet his individual needs.

However, the district has a general obligation to spend a proportionate share of federal Part B funds on your child. The amount is small and would not allow the district to meet every need of every child placed in a private school by a parent.

24. Our child uses her own talking computer for schoolwork. What rights do we have if the computer is damaged at school?

The law does not require your child's school to assume responsibility for any damage to any assistive technology it does not own. But, OSEP has advised schools to do so if you bought the device for school purposes. Schools cannot compel you to let your child use a family-owned device at school. Your child's school must provide the equipment the IEP team says he needs. 34 C.F.R. § 300.6(c). In many cases, schools find that it costs less to pay for repair or replacement than to buy a device.

25. We would like our child to use the same computers in school as other kids do. What can we do?

More and more schools are making computers part of their general class work. Your child has a right to learn about and benefit from new educational

technologies the same as nondisabled students. The root of this right is in IDEA and in anti-discrimination laws such as the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act. Under IDEA, you can use the IEP process to get adequate access for your child. Most of the time, you should be able to write the need for computer access into your child's IEP as a special education service. Or, you could argue that the requirement for least restrictive environment goes beyond sharing classrooms. Thus, inclusive education requires use of the same or similar technologies as your child's nondisabled peers use.

Title II of the ADA and Section 504 provide an even more direct and powerful legal basis for seeking equal access to technologies. Under these laws, people with disabilities have a right to full and equal access to the services of any public program, or any program that gets federal funds. Providing educational technology in schools is such a program. Your child has a right to use and receive its benefits to the same extent as nondisabled children. On October 10, 1997, the U.S. Department of Education issued a memorandum entitled *Consenting Access to Educational Technology*. That memo, which stresses schools' responsibilities in this area, includes a letter from the Secretary of Education to school districts, as well as a technical guide on how to make educational technologies accessible to students with disabilities. For more information on Title II of the ADA and how you can enforce it, see Chapter 13 in this manual.

26. What if we disagree with the school district's position on our child's need for assistive technology or the type of technology?

Your child's IEP team should discuss any disagreements and try to resolve them informally. If you disagree with the proposed IEP, you can file for a due process hearing with the state Special Education Hearing office.

27. How does the hearing process work?

You must send a hearing request in writing to:

Office of Administrative Hearings
Attn: Special Education Division
2349 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833
Ph: (916) 263-0880
Fax: (916) 263-0890

The Hearing Office will schedule a date for a hearing in case you cannot resolve the disagreement through mediation. The Hearing Office will also give you the name and telephone number of a mediator. If both you and the other parties want to schedule a mediation before the hearing, you can call the mediator. Because you can resolve most cases in mediation, we strongly recommend it. The Hearing Officer must hold the hearing and make a decision within **45 days** of receiving the hearing request. Both you and the school district have a right to be represented by an attorney or advocate at the mediation and at the hearing. If you win, the school district may have to pay for your reasonable attorney's fees.

28. What happens to the assistive technology device or service during the hearing process?

A *stay put* provision keeps your child's current IEP in effect while a hearing is pending. Say, for example, the current IEP provides for a special computer, but the new IEP cuts that provision. Once you file for a hearing, your child's current IEP stays in effect until the dispute is settled. The school district has to provide all services in the current IEP, including the computer, throughout the hearing process.

29. What factors will the hearing officer look at to determine if my child is entitled to assistive technology?

In deciding whether your child is entitled to an assistive technology device or service, the hearing officer follows basic legal mandates for providing a FAPE. The hearing officer will look at:

- Whether your child needs the device or service to benefit from special education; and
- Whether the device or service is part of the school district's obligation to educate students with disabilities in the regular education environment, if possible.

In applying these standards, hearing officers have considered:

- The importance of language in education, lack of alternative systems, and predicted success (in ordering a school district to provide a communication device);

- Whether a lift would improve gross motor skills, safety, normalcy, and family acceptance of the device (in deciding the most acceptable way to help a child get on and off the bus); and
- Whether the IEP appropriately considered the child's unique needs.

30. What can we do if the school district does not comply with the law?

When you believe the school district has violated a part of special education law or procedure you (or any other person, public agency or organization) can file a complaint with the California State Department of Education (CDE). Examples of non-compliance could be when the school district:

- Does not provide a device that is in your child's IEP;
- Does not follow time lines for assessment and referral;
- Does not inform you of an IEP meeting; or
- Does not implement a due process hearing decision.

When the CDE investigates a complaint, it will determine whether the school district was *out of compliance* with the law or with your child's IEP. If the CDE finds the school district out of compliance, it will order the school district to come back into compliance. The CDE may also order the agency to submit a plan of correction. A plan of correction sets out the steps the school district must take to insure the problem does not occur again, either to your child or to other children. The CDE sometimes orders compensatory services or reimbursement for out-of-pocket costs a family incurred as a result of the school district's non-compliance.

To file a compliance complaint with CDE, write to:

Complaint Management and Mediation Unit
 Special Education Division
 California State Department of Education
 1430 N Street, Suite 2401
 Sacramento, CA 95814

CDE must investigate and resolve the complaint within **60 calendar days** from receipt of the complaint. If the Complaint Management and Mediation Unit does

not respond within **10 days** after the complaint is mailed, call the Unit at (916) 445-4632 to follow up.

31. Are there any other ways to resolve a disagreement?

Yes. When you have a disagreement, you may ask for a “pre-due process” mediation. You send this request to the Special Education Hearing Office at the address listed in question 27. This pre-due process mediation is not mandatory. You may skip it and just file for a due process hearing.

A pre-due process mediation is exactly like a due process mediation. The state provides a mediator to sit down informally with both sides and try to resolve the disagreement. The Special Education Hearing Office probably will not offer a regular due process mediation after an unsuccessful pre-due process mediation.

There are three major disadvantages to pre-due process mediation. *First*, an attorney or independent contractor advocate cannot represent you at a pre-due process mediation. *Second*, and the reason most advocates do not recommend pre-due process mediation, “stay-put” protections do not necessarily apply until you ask for a due process hearing. Cal. Ed. Code § § 56500.3 and 56501. “Stay-put” protections guarantee that your child will stay in his existing placement, or receive existing services, until the dispute is resolved. Third, there are no set time lines for completing a pre-due process mediation.

32. My child does not qualify for special education. Can she get assistive technology through the school district?

Some students with disabilities are not eligible for special education under the IDEA. They may still need assistive technology devices and services to take part in school activities, however. If your child is in this category, she may be covered under the anti-discrimination provisions of the ADA or Section 504 of the Rehabilitation Act.

If your child is covered under the ADA or Section 504, she may get assistive technology as a *reasonable accommodation* under the ADA or as part of a school's responsibility to provide a free appropriate public education to students who are only eligible under Section 504. Does your child need the device or service to take part in education equally with other students? If so, she might get assistive technology to overcome functional limitations even if she does not need special education. If she uses a wheelchair, for example, she might need a specially

designed desk to do her classroom work. Or, if she has a visual impairment, she might need a special computer monitor or software to enlarge characters on the screen.

33. What can we do if the school district does not give my child a reasonable accommodation or meet its obligation to provide a free appropriate education under Section 504?

You can file a complaint with the Office of Civil Rights at the U.S. Department of Education. You, or your advocate, should write or call OCR and ask for a copy of the complaint form and instruction sheet for filing it. OCR's address and telephone number are:

U.S. Department of Education
Office for Civil Rights
Region IX Office
Old Federal Building
50 Beale Street, Suite 7200
San Francisco, CA 94105
Ph: (415) 486-5555; TDD: (877) 521-2172
Fax: (415) 486-5570

OCR will acknowledge the complaint within **15 days** of receiving it. But, if it needs more information, OCR may take up to 45 days or longer to review the complaint. If it finds the school district is out of compliance, OCR will seek voluntary compliance within **60 days**. If the school district does not comply, OCR will begin enforcement within **30 days**.

34. Do school districts get special funding to provide assistive technology?

The IDEA provides funding for special education in general, including assistive technology devices and services. Under Part G, the IDEA also provides grants for school districts to make assistive technology more available. 20 U.S.C. § 1461.

Under California law, school districts must provide the equipment needed to implement your child's IEP. State law provides money for school districts to buy equipment required in IEPs for students with low-incidence disabilities (visual, hearing, or solely orthopedic impairments). Cal. Ed. Code § 56836.22. That would include Braille equipment for blind students or communication devices for students with speech or hearing disabilities. School districts also have to buy equipment

needed to provide related services such as occupational and physical therapy. Cal. Gov. Code § 7575(d).

Even though schools get specific funding for students with low-incidence disabilities, they still have to provide assistive technology for all eligible students. The school district cannot deny devices and services because your child does not meet the low-incidence disability criteria, or because the school district has already spent all its low incidence funds.

35. What is AB 3632/882? How does it affect assistive technology?

Assembly Bill (AB) 3632/882 is a law that says state agencies (like the Departments of Education, Health Services, Social Services, and Mental Health):

- Must provide certain services to children with specified disabilities; and
- Must coordinate and share the resources (people and money) necessary to provide them with a FAPE.

AB 3632/882 delegates responsibility for providing certain services to non-education agencies when consistent with their statutory obligations. For instance, California Children's Services (CCS) might be required to provide occupational therapy in order for an eligible child to use an assistive technology device. Children must meet the agency's criteria in order for AB 3632/882 to apply, which in the case of CCS means the child must need the therapy under the CCS medical necessity standard. School districts are responsible for children who are not eligible for AB 3632/882 services. Furthermore, if a child is eligible for services under AB 3632/882, it is the school district's responsibility to ensure that the child receives any services that are necessary. In the event that the other agency fails to provide a service, the school district is responsible for providing it and seeking reimbursement from the agency. (See Disability Rights California's *Special Education Rights and Responsibilities* manual, Chapter 9, for more on AB 3632/882.)

36. Can my child get assistive technology to participate in vocational training?

Yes. All special education students may get transition services which include vocational training services. Depending on your child's age and ability level, these

services may include grooming skills, social skills training, and general work behaviors in the classroom, workplace and community. 34 C.F.R. § 300.43.

Common assistive technology to modify the vocational education curriculum might include accessible desks, talking computer terminals, and sound or light signals. If your child needs modifications to take part in a regular vocational education program, be sure to include the modifications in your child's IEP.

37. What are early intervention services? How do they affect assistive technology?

In 1986, PL 99-457 amended the IDEA. These amendments include early intervention services as part C of the IDEA. Early intervention services are available for children **from birth through 36 months**. They can include any necessary assistive technology. 34 C.F.R. § 303.12(d)(1).

School districts must provide services to children with solely low-incidence disabilities (visual, hearing, severe orthopedic impairments, or any combination of these) from birth through age 36 months.

Regional centers have responsibility for children who are regional center clients, or who are at risk of becoming developmentally disabled, through age 36 months. This includes those children who are also eligible for special education. An infant with Down Syndrome, for example, would receive part C services through the regional center. A child with only blindness would receive services through the school district. Regional center Part C services include early intervention services. 34 C.F.R. § 303.12. Protections and rules are similar to those that apply to children under the IDEA.

Children *age three and over* who are eligible for special education will get services from the school district. Before a child reaches her third birthday, the regional center and school district must develop a plan for transition to preschool. The transition plan may include assistive technology.

Available assistive technology under Part C is the same as under the IDEA. 34 C.F.R. § 303.12(d)(1). Assistive technology may be part of the supports and services necessary to enhance a families' capacity to meet the developmental needs of the child.

38. How can a child obtain assistive technology through Part C?

The process for getting services under Part C, including assistive technology, is the same whether your child receives services through the school district or through the regional center. Your child's Individual Family Service Plan (IFSP), which is similar to an IEP, must include assistive technology if the planning team decides that it is necessary in order to make progress toward IFSP outcomes. Once your child is referred to the appropriate agency, that agency:

- Appoints a service coordinator;
- Completes an evaluation;
- Conducts an IFSP meeting within 45 days; and
- **May** provide interim services within the 45-day period. 34 C.F.R. § § 303.321(e), 303.322(e), 303.342(a) and 303.345.

39. What should we do if the agency will not provide services?

If you disagree with an agency about early intervention services (whether you disagree with the regional center or the school district) you may file for a due process hearing. To start the process, write to:

Office of Administrative Hearings
Attn: Special Education Division
2349 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833
Ph: (916) 263-0880
Fax: (916) 263-0890

This process is similar to the special education hearing process. If both you and the agency agree, the hearing office has **30 days** to hold a mediation and a hearing, if necessary, and mail a written decision to the parties. 34 C.F.R. § 303.420 and following. During the hearing process, services must continue as set out in your child's IFSP. 20 U.S.C. § 1439(b).