

# 01 | Assistive Technology and the Law

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“If the technology revolution only happens for families that already have money and education, then it’s not really a revolution.”

Arne Duncan  
U.S. Department of Education  
National Education Technology Plan 2016

## Assistive Technology and the Law

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The federal regulations for implementation of the Individuals with Disabilities Education Act (IDEA) define assistive technology (AT) devices and services<sup>1, 2</sup>. Assistive technology is technology used by individuals with disabilities in order to perform functions that might otherwise be difficult or impossible. IDEA requires Individualized Education Program (IEP) teams to consider the assistive technology needs of students during the development, review, and revision of an IEP<sup>3</sup>. IDEA also requires schools to provide AT if it is needed for a student to receive a free appropriate public education (FAPE).<sup>4</sup>

FAPE enables students the opportunity to access standards on their grade level. FAPE can include a variety of services such as special education, related services, supplementary aids and services, program modifications or support for school personnel<sup>5</sup>. AT, just like all other components of FAPE, must be provided at no cost to parents. Local Education Agencies (LEAs) must provide or pay for any AT necessary to ensure FAPE, either directly or through contract or other arrangements. The schools may not unnecessarily delay the provision of AT devices and services due to funding issues if a child requires the devices and services to benefit from the IEP.

## Title II of the Americans with Disabilities Act of 1990 (Title II)

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In addition to IDEA, there are two other federal laws that specifically address the obligation of all public schools to meet the communication needs of students with disabilities: Title II of the Americans with Disabilities Act of 1990 (Title II), and Section 504 of the Rehabilitation Act of 1973 (Section 504). Title II requires schools to ensure that students with disabilities receive communication that is as effective as communication with others through the provision of auxiliary aids and services<sup>6, 7</sup>.

In many cases, but not all, an IEP will meet the requirements of Title II. The Title II term “communication” includes all kinds of information exchange – reading, writing, listening and speaking. In AT terms, effective communication can require a technology support instead of a human support because the technology support allows a student to perform tasks independently thus achieving “effective communication” as required by Title II. The important point to note is that “effective communication” can be a higher standard and require additional assistive technology even when a student’s need for an “appropriate” education in FAPE has been met. For more information, please view the U.S. Department of Justice’s Civil Rights Division and the U.S. Department of Education’s Office for Civil Rights and Office of Special Education and Rehabilitative Services Dear Colleague Letter, Frequently Asked Questions, and Fact Sheet regarding effective communications for students with hearing, vision, or speech disabilities in public elementary and secondary schools.

– *Not included in this document.*

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## 02 | Assistive Technology and the Law (cont.)

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Title II is a civil rights law that prohibits discrimination against individuals with disabilities in areas of employment, public services, public accommodations, transportation and communication.<sup>8, 9</sup> Title II, which applies to schools as state or local entities, does not specifically define AT. It instead uses the term “auxiliary aids and services” including AT along with other services such as human supports. Title II states those physical barriers in existing facilities must be removed if removal is readily achievable. If not, school districts must offer alternative methods of providing the services if they are readily achievable. In addition, equal access includes the provision of auxiliary aids and services that are needed for effective communication with individuals with disabilities.

### Section 504 of the Rehabilitation Act of 1973 (Section 504)

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Reference to AT in Section 504 is included in “special education and related aids and services,” the description of the delivery of an appropriate education and use of the term “supplementary aids and services,” and the discussion of academic settings in which students with disabilities should be served. A student is not required to be eligible for special education services to be protected under Section 504. Section 504 also prohibits discrimination against individuals with disabilities and requires schools to provide equal access to their programs and services.

### Every Student Succeeds Act (ESSA)

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The Every Student Succeeds Act (ESSA) poses many changes to K-12 education. It calls for states to revamp their accountability systems – significantly scaling back the role tests play in gauging school progress. Under ESSA, states and districts can choose their own evidence-based interventions to transform their lowest performing schools. States will be required to report the performance of students with disabilities, along with students in groups, such as racial and ethnic minorities.

States can opt to get rid of teacher evaluations based in part on students’ standardized tests, which were required for states who wanted one of the Obama administration’s waivers from portions of the No Child Left Behind (NCLB) law. *Under ESSA, States, Districts to Share More Power* from Education Week, January 2016

### 2016 National Education Technology Plan (NETP)

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The NETP is a vision and plan for guiding the implementation of technology into learning, teaching, leadership, assessment, and infrastructure for education at all levels. The principles of the NETP align to the Innovative Technology Expands Children’s Horizons (ITECH) Program as authorized by Congress in December 2015 through the Every Child Achieves Act.

The goal of the plan is to provide students with greater equality and accessibility to education. The plan addresses using technology to provide new types of learning experiences, creating systemic changes in learning and teaching, assessing how the technology is assisting students and educators, and implementing infrastructure changes.

The plan contains research and recommendations throughout including suggestions that “education stakeholders should develop a born accessible standard of learning resource design to help educators select and evaluate learning resources for accessibility and equity of learning experiences.” The complete document can be found here:

<http://tech.ed.gov/files/2015/12/NETP16.pdf>

*Future Ready Learning, Reimagining the Role of Technology in Education*, from the Office of Educational Technology U.S. Department of Education, January 2016