

Assistive Technology

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Introduction

Some people are confused about assistive technology (AT) and how it is different from any other kind of technology. Assistive technology, or AT, is a unique form of technology in that it assists an individual with a disability to interact with or access their environment in easier, more effective ways and in some cases where they were unable to before. People with disabilities may need assistive technology to enable them to live more independent or inclusive lives. AT can come in many forms from simple aids for independent living, such as a reacher, to more complex devices such as power wheelchairs, environmental controls, or computers.

There are several laws which pertain to the provision of assistive technology. These include:

1. Technology Related Assistance for Individuals with Disabilities Act or the **Tech Act** of 1988 (Public Law 100-407).
2. Individuals with Disabilities Education Act or IDEA which was re-authorized in 1999.
3. Section 504 of the Rehabilitation Act of 1973.
4. The Americans with Disabilities Act.
5. The Social Security Act.

Legal References and Requirements

Tech Act
29 USC § 2201 et seq.

The Tech Act is a federal law which outlines the rights of individuals with disabilities of all ages to receive needed technology. This law provides funding to states to assist people with disabilities to obtain information on resources and assistance in obtaining necessary technology. In addition, the law provides definitions for assistive technology.

Definitions **Assistive technology device:** 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 individuals with disabilities.



Think expansively about AT. It can be anything from a pencil grip or magnifying glass, to a computer or environmental control. There are hundreds of ways that AT can be used to help people with physical, sensory (vision/hearing), learning and/or cognitive disabilities to have more control over their own lives.

Assistive technology service: Any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. Such services include:

1. The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment.
2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities.
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of 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 an individual with disabilities, or where appropriate, the family of an individual with disabilities.
6. Training or technical assistance for professionals (including individuals providing education and 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.

The Tech Act currently provides funding for technology loan closets which are available at most independent living centers. (*See Independent Living Centers chapter, pgs. 297 and 298.*) Schools as well as individuals can borrow devices. The Act also provides advocacy services for AT funding denials through the Wisconsin Coalition for Advocacy (WCA). (*See the cover page of this guide for contact information.*)

IDEA
20 USC § 1400 et seq.

The Individuals with Disabilities Education Act (**IDEA**) is the federal law which governs special education services for eligible students with disabilities. IDEA uses the same definition for AT as the Tech Act. When IDEA was re-authorized in 1997, changes were made regarding the provision of assistive technology for students with disabilities. The law now requires that all IEP teams consider the need for assistive

technology for all students eligible for special education. Assistive devices must be considered for all areas of need, regardless of disability type or severity.

Assistive devices can be provided to the student at home, at no cost to the family, if it is determined necessary to meet the student's goals. An example might be a computer to perform written work assignments or a tape recorder to listen to books on tape. **Devices provided to a student through the IEP process belong to the school and not the student.** Therefore, students involved in transition need to be aware that these devices will not move with them when they leave school. Transition IEPs should make appropriate plans for ensuring that AT needs will be met when school is finished.



Sometimes a student may be labeled "too disabled or too severe" to need assistive technology. However, it must be remembered that there are no eligibility requirements for assistive technology. There is no standard that states the student has to be functioning at a certain level in order to benefit from that technology.

Instead, the focus should be on the individual needs of the particular student, his/her current skill level and what goals are to be accomplished with or without a particular device. Many students with severe disabilities can and do benefit from assistive technology when their individual need and ability is considered.

WCA AT publications

Note: A useful publication that provides guidelines for incorporating assistive technology into special education services is called Bridge to Independence: Assistive Technology in Special Education. Two other resources are:

- Assistive Technology and Transition From School to Adult Life
A training and resource guide on transition and the role of assistive technology through the transition process for students with disabilities eligible for special education or Section 504 accommodations.
- Section 504 of the Rehabilitation Act of 1973, A Guide for Parents
A guide for parents on how to obtain appropriate Section 504 accommodations for students not eligible for special education (includes the role of assistive technology as an accommodation attained through Section 504).

These two documents are published by WCA and may be obtained by contacting one its offices.

Section 504 USC § 794

504 is a section of the Rehabilitation Act of 1973, an equal rights law for people with disabilities. Section 504 pertains to public institutions that receive federal funding, such as public schools. Eligible people

with disabilities must be provided equal access to programs and environments. Therefore, the provision of assistive devices may be appropriate as a means to accommodate a person with a disability. To qualify for services under Section 504 an individual must have a disability that interferes with one or more major life functions such as: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. Providing an assistive listening device to a student who is hard of hearing may be one example of an accommodation under Section 504.

Americans with Disabilities Act

42 USC § 12101 et seq.

The Americans with Disabilities Act (**ADA**) applies to public facilities and some employers. It also requires government entities, such as public schools, to provide effective communication for people with disabilities. The ADA further requires those entities to consult, when possible, with the individual as to their preferred means of communication. This requirement gives the student with a disability more control over the type of accommodation provided. For example, a deaf student may prefer an American Sign Language (**ASL**) interpreter over closed captioning for a movie shown in school.

To be in compliance with the ADA, school districts must make reasonable accommodations to non-accessible programs for individuals with disabilities. The ADA protects not only students with disabilities, but any individual with a disability who may visit the school. A parent with a disability may also need accommodations. A parent with low vision may need written materials in an alternate format when attending school functions or meetings. A grandparent with a hearing impairment who wants to attend a play at the school may need an assistive listening device.

Social Security Act

42 USC § 301 et seq.

The Social Security Act (**SSA**) provides funding for assistive technology or durable medical equipment to those eligible for Medicaid due to low income or medical need. Durable medical equipment may be provided through a prior authorization process and may include such devices as communication aids, wheelchairs, and physical therapy equipment. Additional services may be provided under the Medicaid provision for school based services or Early Periodic Screening Diagnostics and Treatment (**EPSDT**) for those eligible under the age of 21. **Devices purchased under Medicaid belong to the recipient.**

Wheelchair Lemon Law

Sec. 134.87, Wis. Stats.

Covered wheelchairs

If you buy or lease a new motorized wheelchair or scooter for use by persons with disabilities in Wisconsin, you have protection if the chair or scooter has chronic defects. Section 134.87 of Wisconsin statutes, known as the "Wheelchair Lemon Law," entitles the owner of a chair or scooter that meets the statutory definition of a "lemon", to a refund or a replacement. Enacted in 1992, the law is patterned after the vehicle" Lemon Law." The law applies to new three or four wheel scooters for use by persons with disabilities and new motorized wheelchairs that were purchased in Wisconsin **on or after November 1, 1992.**

Warranty requirements All motorized wheelchairs and scooters purchased on or after November 1, 1992, must be covered by a one year express warranty, effective from the day the consumer receives the product. If the manufacturer does not offer the warranty, the chair is considered to be covered by a one year express warranty just as if it had been furnished by the manufacturer.

Definition of “lemon” A “lemon” is a motorized wheelchair or scooter with a “substantial” defect which the manufacturer or its authorized dealer has unsuccessfully attempted to repair at least four times, or which has been out of service because of “substantial” defects for a total of 30 calendar days.

Note: The 30 days do not have to be consecutive.

You have recourse under the law if you own or lease the motorized wheelchair or scooter within the term of the one year express warranty. Although it is not necessary to begin proceedings within the first year of ownership, the repair attempts or time out of service must occur within the term of the one year express warranty. *(For more information on how to document the problem see the Advocacy Point on pg. 101.)*

Covered defects The defects covered under the “Wheelchair Lemon Law” must significantly impair the use, value, or safety of the chair or scooter. For example, a defective motor would be included, but a rattle would not be. Defects which are the result of any abuse, neglect, or unauthorized modification of the chair by the owner are not covered by the law.

Remedies If you have purchased or leased a wheelchair or scooter that meets the definition of a “lemon”, the law entitles you to choose either a comparable new replacement, or a refund. If you choose a replacement, you are also entitled to receive “collateral costs,” which are defined under the law as expenses incurred by the consumer in connection with the repair of a defect, including the costs of obtaining an alternative wheelchair or other assistive device for mobility. If you decide to get a refund, you are entitled to the full purchase price (including any other charges paid at the time of sale) and all costs associated with the repair of the defect minus an amount based on your use of the chair or scooter. The remedies are similar under a lease agreement.

To receive a replacement chair or refund, you should notify the manufacturer that you wish to return the chair or scooter for a replacement or refund. Your dealer can supply you with the manufacturer’s address. If the manufacturer refuses your request, you may want to discuss your legal options with an attorney or advocacy group familiar with the law.

It may be possible to settle with the manufacturer without going to court, but if you go to court and are successful, you are entitled to recover double the amount of any monetary loss, as well as costs and reasonable attorney fees.



Your success in obtaining relief through the “Lemon Law” may be dependent upon the repair invoice documentation you present. Make sure you obtain a repair invoice each time your chair is in for repairs which shows the problem(s) you reported. You should obtain a repair invoice even if the shop cannot diagnose or fix the problem, or if you are complaining about a continuing problem. If your chair is in for repairs more than one day at a time, make sure the warranty repair order specifies the date it was brought in and the date it was returned.