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#### Individuals with Disabilities Education Improvement Act of 2004

# Assistive Technology and IDEA: Regulations

Joel Mittler, C.W. Post Campus, Long Island University

IDEA was reauthorized in 2004. Here is a brief summary of how IDEA 2004 addresses assistive technology for students with disabilities.

On December 2, 2004, President George W. Bush signed into law P.L. 108-446, the *Individuals with Disability Education Improvement Act* (IDEA 2004). The law took effect on July 1, 2005. The Final Rules and Regulations that expanded upon and/or explained various parts of IDEA 2004 were published on August 14, 2006. They took effect on October 13, 2006.

The process leading up to the publication of the Final Rules and Regulations was a lengthy one. Initially, the U. S. Department of Education (DOE) asked professionals in the field to submit questions or concerns about IDEA 2004 that they wanted the rules to address. Several months after receiving those concerns, DOE officials published the Proposed Rules and Regulations, along with a lengthy document that explained their thinking behind them. As required by law, interested parties had 75 days to submit comments in writing or at a series of DOE-scheduled meetings held in various locations across the country.

The DOE received approximately 5,500 comments. As required by law, each comment must be addressed as part of the Final Regulations. To this end, in August 2006, the DOE issued another very lengthy document that accompanied the Final Rules and Regulations.

Following is a brief summary of how IDEA 2004 addresses assistive technology for students with disabilities.

## IDEA 2004 and Assistive Technology— A Summary of Changes

IDEA 2004 was not intended to overhaul its predecessor, IDEA 1997, but rather address some issues that had arisen during the intervening few years. Thus, aside from some noteworthy changes in the Individualized Education Program (IEP) procedures, due process, discipline, and a few other areas, it only minimally modified the existing references to assistive technology. Yet, even modest changes may prove significant.

The requirement that every child must be “considered” for assistive technology remains intact. The regulations state:

### § 300.105 Assistive technology.

(a) Each public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§ 300.5 and 300.6, respectively, are made available to a child with a disability if required as a part of the child’s—

- (1) Special education under § 300.36;
- (2) Related services under § 300.34; or
- (3) Supplementary aids and services under §§ 300.38 and 300.114(a)(2)(ii).

(b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child’s home or in other settings is required if the child’s IEP Team determines that the child needs access to those devices in order to receive FAPE.

and

§ 300.324 Development, review, and revision of IEP.

(a) Development of IEP—(1) General. In developing each child’s IEP, the IEP Team must consider—

- (i) The strengths of the child;
- (ii) The concerns of the parents for enhancing the education of their child;
- (iii) The results of the initial or most recent evaluation of the child; and
- (iv) The academic, developmental, and functional needs of the child.

(2) Consideration of special factors.

The IEP Team must—

(i) In the case of a child whose behavior impedes the child’s learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

(ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child’s IEP;

(iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child’s reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child’s future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child’s language and communication needs, opportunities for direct communications with peers and professional personnel in the child’s language and communication mode, academic level, and full range of needs, including opportunities for

direct instruction in the child's language and communication mode; and

(v) **Consider whether the child needs assistive technology devices and services** (*emphasis mine*).

One small, but potentially important change in IDEA 2004 was the replacement of the word "requires"—as in "Consider whether the child **requires** (emphasis added) assistive technology devices and services"—that appeared in IDEA 1997 with the word "needs." IDEA 2004 includes the directive that every IEP should "Consider whether the child **needs** (emphasis added) assistive technology devices and services."

While it is hard to know if this change will have any impact on IEP teams, it might prove a bit confusing as teams try to decipher the reason for the change. One promising possibility is that the word "needs" will result in a more liberal interpretation of assistive technology than the word "requires." This could ultimately result in more children being able to access available devices and services.

Perhaps the most noticeable change in IDEA 2004 is the definition of an assistive technology device. The regulations state:

§ 300.5 Assistive technology device.

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 the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

IDEA 2004 continues to define an assistive technology device as any item, piece of equipment, or product system that is used to increase, maintain, or improve the functional capabilities of the child. However, it specifically excludes a medical device that is surgically implanted or the replacement of such a device. This change is usually thought to apply to cochlear implants, but it might also refer to any device that is surgically implanted to assist in a bodily function such as breathing, eating, etc.

Most comments concerning assistive technology related to this change. They included comments directly opposing it. With the specific wording in the law, however, there is little that can be done to change its meaning or to explain ambiguities. Thus, there were no changes in this section of the regulations.

A similar exclusion for "surgically implanted devices" exists in the definition of related services. However, this same regulation on related services permits the checking of hearing aids and the external components of surgically implanted devices to see if they are turned on and functioning.

One change in the regulations that may prove to be significant concerns the review and revision of IEPs. The IDEA 1997 regulations specifically state that when reviewing or revising an IEP, the "special factors," including the consideration of assistive technology, must be included. The proposed IDEA 2004 regulations eliminated that requirement, creating a situation whereby assistive technology cannot be added (or modified) in any IEPs beyond the original one.

Several comments (including those of this author) pointed out that such a restriction would limit the ability of a child to receive an appropri-

ate education. Fortunately the regulators agreed and a new paragraph was added permitting the consideration of assistive technology (and the other special factors) during a review or revision of the IEP. The regulations state:

§ 300.324 Development, review, and revision of IEP.

(b) Review and revision of IEPs—

(1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team—

(i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(ii) Revises the IEP, as appropriate, to address—

(A) Any lack of expected progress toward the annual goals described in § 300.320(a)(2), and in the general education curriculum, if appropriate;

(B) The results of any reevaluation conducted under § 300.303;

(C) Information about the child provided to, or by, the parents, as described under § 300.305(a)(2);

(D) The child's anticipated needs; or

(E) Other matters.

(2) Consideration of special factors. In conducting a review of the child's IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.

Not only did the regulation maintain that critically important practice in the IEP process, but it also demonstrated the validity of the commenting process in the development of the regulations.

## Universal Design and IDEA 2004

IDEA 2004 also references universal design in the law and the regulations. While several commenter's referred to the definition of universal design and asked for modifications, the regulators responded that IDEA 2004 refers to the definition in the Assistive Technology Act of 1998 and cannot be modified. That definition states:

(17) UNIVERSAL DESIGN.—The term “universal design” means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly accessible (without requiring assistive technologies) and products and services that are made usable with assistive technologies. (Section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.)

## Accessibility and IDEA 2004

Perhaps the most significant assistive technology-related addition in IDEA 2004, which is included in the published regulations, is the provision that all students who are blind and individuals with print disabilities in elementary schools and secondary schools have access to print instructional materials—including textbooks—in accessible format, free of charge. The law provides a standard by which instructional materials should be prepared (e.g., electronic files suitable and used solely for efficient conversion into specialized formats). This standard is known as the National Instructional Materials Accessibility Standard (NIMAS). The law also establishes a National Instructional Materials Access Center

(NIMAC) to maintain a catalog of such materials and make them available to eligible students who are blind or who have print disabilities in elementary schools and secondary schools. While states are not required to access their materials from NIMAC, they are required to make accessible materials available to all their students who are blind or who have a print disability.

## Conclusion

Changes in the IDEA 2004 final rules and regulations affect the field of assistive technology and may have a significant impact on the work of teachers and administrators. These changes, seemingly minor, may impact the delivery of services for many years to come.

