# DISPOSITION OF ASSISTIVE TECHNOLOGY DEVICES

**Nevada Department of Education**
Special Education, Elementary and Secondary Education,
And School Improvement Programs
700 E. Fifth Street, Suite 113
Carson City, NV 89701
(775) 687-9171

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# DISPOSITION OF ASSISTIVE TECHNOLOGY DEVICES

## Introduction

This technical assistance document is designed to provide a review of the federal requirements under the Individuals with Disabilities Education Act (IDEA: 20 U.S.C. §1400 et seq. and 34 C.F.R. Part 300), related federal laws, the Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC) Chapter 388 relating to the disposition of assistive technology devices when a pupil with a disability ceases to attend the Local Education Agency (LEA).

It is important to note that under the federal Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (34 C.F.R. Part 80), State agency grantees and subgrantees are also required to use, manage, and dispose of equipment, in accordance with State laws and procedures (34 C.F.R. §80.32(b)). Therefore, **LEAs should consult with their legal counsel** to ensure that the disposition of assistive technology devices is also consistent with Nevada law and regulations applicable to disposition of property by governmental entities as well as LEA policy. (See for example, NRS §§244.1505 and 332.185)

## Requirements to Provide Assistive Technology under IDEA

Under the IDEA: 20 U.S.C. §1400 et seq. and 34 C.F.R. Part 300 and the NAC, Chapter 388, an **"assistive technology device"** is defined as 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.) (34 C.F.R. §300.5; NAC, Chapter 388, §388.23)

Both the IDEA and the NAC require the **Individualized Educational Program** (IEP) Committee to consider whether a pupil needs assistive technology devices and services in the development, review and revision of the pupil's IEP. (NAC Chapter 388, §388.284(2)(f); 34 C.F.R. §§300.324(a)(2)(v) and 300.324(b)(2)) Each public agency is also required to ensure that assistive technology devices and/or services are made available to a pupil with a disability if required as a part of the child's special education, related services, or supplementary aids and services. The pupil's IEP must include a statement of required assistive technology devices and/or services that the committee has decided upon. (NAC Chapter 388, §388.284(1)(d); 34 C.F.R. §300.105(a))

## Ownership of an Assistive Technology Device

The source and terms of funding determine ownership of an assistive technology device acquired by a LEA for a pupil with a disability. Ownership then determines the

permissible/required disposition of the equipment when the pupil ceases to attend the LEA.

***Purchases of Assistive Technology outside of IDEA Part B funds***

There are a number of fiscal resources outside of IDEA Part B funds that are available for the purchase of assistive technology devices, such as public benefits or insurance, including Medicaid, or private insurance (34 C.F.R. §300.154), or charitable funds such as foundations, or fraternal and social organizations. If these alternative resources to IDEA Part B funds are utilized, many of these funding options or conditions of the donation allow the technology to become the **property of the student.** As such, the legal complexities relating to transfer of ownership may be greatly simplified.

***Purchases of Assistive Technology with IDEA Part B funds***

If an assistive technology device is purchased with IDEA Part B funds, the federal Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments establish requirements for State and local governments regarding the use, management and disposition of equipment purchased with federal education funds. (Uniform Administrative Requirements: 34 C.F.R. Part 80) The Uniform Administrative Requirements define equipment as "...tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above." (34 C.F.R. §80.3)

In accordance with the Uniform Administrative Requirements, the equipment purchased with IDEA Part B funds must be used "...in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency." (34 C.F.R §80.32(c)(1)) Further, the equipment is required to be "...available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency."(34 C.F.R. §80.32(c)(2)) Therefore, "...an **LEA is required to continue using equipment it purchases with Part B funds for as long as it needs the equipment to carry out the purposes of its Part B program.**

***When equipment is no longer needed by the agency***

In accordance with Title 34 C.F.R. §80.32(e): "When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of **less than $5,000** may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value **in excess of $5,000** may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment. The reference to the threshold of the $5000.00 is based on the definition of equipment set forth above in the Uniform Administrative Requirements and related disposition standards. (34 C.F.R. §§80.3 and 80.32(e))

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions."

Therefore, for those assistive technology devices purchased with IDEA Part B funds that are valued at less than $5000.00 and are no longer needed when the pupil ceases to attend the LEA, the disposition of the device is straightforward "with no further obligation to the awarding agency." Although most assistive technology devices are likely to have a fair market value less than $5,000.00 at disposition, for equipment "...valued in excess of $5,000, ... then the district's awarding agency (the State Educational Agency) has a right to an amount proportionate to its share in the cost of the equipment (§80.32(e)(2))." (30 IDELR 611 (OSEP, 1998); 34 C.F.R. §80.32(e)(2))

***Determining Fair Market Value***

In order to determine the applicable requirement for the disposition of an assistive technology device, a LEA must determine the "fair market value" of the equipment at the time of disposition, including the depreciation of the device based on factors such as the type of construction, nature of the equipment, historical usage patterns, and technological development.[1] If the LEA is authorized or required to sell the equipment under the Uniform Administrative Requirements, sale procedures are required to ensure the highest possible return. (34 C.F.R. §80.32(d)(5))

***Transition Planning and Transfer to State Vocational Rehabilitation (VR) agency***

Since transition planning and services are essential aspects of the Part B program, it is appropriate for students with disabilities, who are furnished assistive technology devices, to continue to use needed devices during their transition into a program of VR services. Once the student leaves school for the VR program, the LEA can transfer ownership of

[1] See **OMB Circular A-87**, Cost Principles for State, Local and Indian Tribal Governments for determination of fair market value. The recent version of the Circular can be found at: http://www.whitehouse.gov/omb/circulars/

the equipment to the State VR agency provided the LEA has determined that it no longer needs the device in connection with its Part B program or for any other Federally-supported project or activity that it (the LEA) conducts." (30 IDELR 611 (OSEP, 1998))

## Maintenance of Property Records

For all equipment purchased with IDEA Part B funds, the LEA must maintain property records "...that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property." (34 C.F.R. §80.32(d)(1)) As such, regardless of the manner of disposition of the property purchased with IDEA Part B, the required disposition data must be recorded and maintained. In addition: "Transfer of title to assistive technology devices should be completed through applicable State and local procedures that are consistent with these minimum record retention requirements." ((30 IDELR 611 (OSEP, 1998))

## Conclusion

The IDEA and the NAC are clear that assistive technology devices are required to be available to a pupil with a disability as a part of the pupil's special education, related services, or supplementary aids and services if required to provide a free appropriate public education. The disposition of such devices when a pupil ceases to attend the LEA is prescribed by the manner and source of funding used to acquire the device. The Department recommends that each LEA proactively consider issues of funding, ownership, and transfer of assistive technology devices in the development of local policies and procedures, including the utilization of the required property records to assist schools in determining the depreciated value of a device at disposition. In addition, it is recommended that with regard to individual pupils with a disability who utilize assistive technology devices, that each pupil's IEP Committee discuss and consider the necessity of assistive technology devices for transition activities (i.e., higher education, employment, daily living, etc.) and services to support the use of assistive technology within those activities.

**LEAs should consult with their legal counsel** to ensure that the disposition of assistive technology devices is also consistent with Nevada law and regulations applicable to disposition of property by governmental entities and LEA policy. (See for example, NRS §§244.1505 and 332.185)