Is This a Protection and Advocacy for Assistive Technology Case?

Becoming Familiar with the Definitions of AT Device and AT Service As Used by the PAAT Grant

Looking at Some Case Examples

Every state Protection and Advocacy (P&A) program receives a Protection and Advocacy for Assistive Technology (PAAT) grant, as authorized by the Assistive Technology (AT) Act of 2004, as amended.¹ The PAAT grant is administered by the Administration on Community Living within the federal Department of Health and Human Services.

Unlike other P&A grants that target disabilities,² the PAAT grant targets an intervention, the use of an AT device or an AT service to allow an individual with a disability to minimize or overcome the limitations they face because of their disability. For example, a PAAT case might involve representation on a Medicaid appeal to challenge a denial of funding for a specialized wheelchair (an AT device) to help the individual achieve mobility despite an inability to walk. Another case might involve advocacy at a special education individualized education plan (IEP) meeting to get a school district to provide a child who is blind training on the use of a voice dictation software program (the training being an AT service).

There are varying levels of understanding, within the P&A network, of what qualifies as a PAAT case. While there is a nearly universal understanding that a wheelchair is a use of technology that would be considered an AT device, there is less than universal understanding of the full range of items, including everyday items either as used or as modified that would meet the AT device definition. When it comes to AT services, there is even less understanding of what qualifies as an AT service. In fact, some P&A agencies might not realize that the training sought to use the voice dictation software in a public-school program clearly meets the AT service definition and the advocacy intervention by the P&A would qualify as a PAAT case.

This Q and A will lay out the AT Act’s definitions of AT device and AT service; and provide specific case examples of what is and what is not an AT device or an AT service, thereby allowing the P&A to categorize its advocacy efforts related to the device or service as PAAT grant activity or activity under a different grant. Keep in mind

¹29 USC 3004. The PAAT program was created by 1994 amendments to the Technology-Related Assistance to Individuals with Disabilities Act (Tech Act). 29 USC 2201 et seq. The Tech Act was re-authorized in 1998 as the AT Act, 29 USC 3001 et seq.
²See, e.g., the Protection and Advocacy and for the Developmentally Disabled Program, 42 USC 15001(b)(2); the Protection and Advocacy for Individuals with Mental Illness Program, 42 USC 10801 et seq.
that the P&A program may still choose to handle, through a grant other than PAAT, advocacy efforts to obtain an AT device or AT services. The goal of this publication is to make the P&A aware of when they could choose to handle the matter as a PAAT case.

**What is the AT Act’s Definition of AT Device?**

Under the federal AT Act:

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 individuals with disabilities.³

Each term of this definition is important as we look to determine whether an item sought by or used by an individual with a disability is an AT device.

This same AT device definition is part of the federal Individuals with Disabilities Education Act and Title I of the Rehabilitation Act, governing state vocational rehabilitation programs.⁴ PAAT advocates may wish to rely on these definitions when advocating within either program.

**What are Some Examples of Items that Meet or Do Not Meet the AT Device Definition?**

*Items that are AT Devices:*

- **Items that address mobility deficits:** This include a range of walkers, wheelchairs, and scooters, as they are either off-the-shelf or modified equipment specifically designed and used by individuals with disabilities to improve mobility. Specialty strollers, often used by children with disabilities too big for infant strollers but not ready for a wheelchair, would meet the definition of AT device. While the stroller used for the average infant would not be considered AT, when it is specifically designed for a child with a disability it meets the AT device definition.

- **Items that address communication deficits:** This includes dedicated speech generating devices (SGDs), with the sole purpose of the device being speech generation for an individual with little or no functional speech. It also includes everyday items like laptop computers, tablets, and even smart phones that, when used with added software or apps,⁵ will function as an SGD allowing the user with a disability to electronically produce speech.

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³ 29 USC 3202(4).
⁴ See 34 USC 300.5 (special education) and 34 CFR 361.5(b)(7) (vocational rehabilitation).
⁵ In the legislative history to the original Tech Act, Congress made it clear that they contemplated that both simple adaptations and the use of software would be included in the definition of AT device. Senate
**Items that address hearing deficits:** This includes hearing aids and cochlear implants, each designed to allow the user, through specially designed equipment, to minimize or overcome the impact of their hearing deficit. This also includes what is commonly called an audio loop, allowing the individual with a specialty hearing device to hear a classroom or training lecture. Computer Assisted Real Time Captioning (CART) services involve a specially trained person who captures a lecture or other audio presentation through input to a laptop or other device, and then transmits it as text on a dedicated screen or to the end user’s own laptop screen. Both the audio loop and CART interventions would qualify as using an AT device. Although the CART service is often accomplished through use of a traditional laptop, that laptop as used (probably with special software) is an AT device as its sole purpose is to aid the individual with a hearing deficit to benefit from an audio presentation.

**Items that address blindness or severe visual disabilities:** Devices used to create Braille, including a Braille printer, or the actual Braille output would meet the AT device definition as items used to increase or improve the functional capabilities of individuals who cannot access print or digital material through vision. The personal computer, laptop, or tablet, with software or apps allowing for voice dictation or voice output, would also meet the AT device definition as these devices are used. Most recently, the proliferation of apps for use with smart phones or tablets allows individuals who are blind access to a range of tools to negotiate a range of environments. As explained to the author by an individual who is blind, there are now smart phone apps, for example, to allow voice-output access to current rail, bus, or subway schedules tied to the user’s exaction location; to allow for reading of any printed materials, including menus and posted announcements by using an app-driven camera with voice output; and GPS-like apps are emerging that allow the individual who is blind to negotiate major event venues such as conference centers and sporting arenas. The smart phone or tablet, as used with the added apps described, would meet the AT device definition as their whole purpose is to improve functional capabilities of the end user.

**A range of other items as designed or as used:** Other items meeting the AT device definition would include, for example, items used in the home (e.g., specialty beds or mattresses for children or adults; dedicated environmental control devices or smart phone apps, allowing a user to open doors, operate appliances, or control the heat or air conditioning from a distance), to enter or exit the home (e.g., ramps or wheelchair lifts), to get into or operate a vehicle (e.g., an hydraulic lift or hand controls), and to exercise one’s right to vote (e.g., the addition of a ramp and an accessible voting machine). So long as the item, as designed or as used, meets the AT device definition, advocating for it would qualify as a PAAT activity.

**Items that are not AT Devices:**

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Report No. 100-438, 1988 US Code Cong. & Admin. News, p. 1405. It would make sense, then, to also include smart phone and tablet apps to be included in the definition of AT device.
A desktop computer, laptop, or smart phone, with no special modifications, software, or apps: These devices are designed to make the general population more capable of any number of tasks. That increased capability does not make these items AT devices unless specifically used to help the individual increase, maintain, or improve functional capabilities that are limited due to a disability. Therefore, use of one of these items by the individual with a disability is often not enough to make it an AT device. However, the everyday item, as used by the individual with a disability to overcome a functional limitation, would meet the AT device definition. For example, many smart phones now come with a built-in GPS app allowing an individual who is blind to search for local government offices, businesses, or restaurants and get walking directions to the destination through voice output. This off-the-shelf item would be an AT device, as used by the individual who is blind, as it allows him or her to overcome the limitations caused by the visual disability.

A sign language interpreter: Typically, this service is provided by a skilled individual, face-to-face, to interpret the spoken word so that an individual who is deaf can understand what is being said in a classroom, at a training event, in a courtroom, or in any number of other settings. Since the sign interpreter is using his or her hands to communicate, and not employing a device or any form of technology, neither the person nor the actual service given can be considered an AT device. By contrast, if the sign interpreter’s services reach the person who is deaf via a video relay system (using a web camera to provide a live stream of the interpreter signing to the individual who is deaf in a remote location), now we are using external technology to make the interpreter service available to the end user. Since the technology used to deliver the service would qualify as use of an AT device or devices, it would make the larger package of video relay interpretation something that could be properly handled through the PAAT grant.

Service animals: Would a trained guide dog that serves an individual who is blind meet the AT device definition? The author believes that the best answer to this question is no because we cannot classify an animal as an “item, piece of equipment, or product system” as those terms are used in the AT Act (certainly, an animal is not a device). Granted, the guide dog harness and leader, used when the dog is working, would meet the definition of an AT device as its sole purpose is to allow the individual full mobility despite a lack of vision. However, this does not create a “modified” or “customized” dog, in the same sense that a computer or vehicle is modified or customized. Similarly, service animals used for a range of other activities (e.g., to fetch or pick up items, to recognize the onset of a seizure, or to provide therapy or comfort) are not AT devices, even if trained to respond to a range of harnesses, vests, or other items used as external prompts. While those additional items might, in some cases, meet the definition of an AT device they do not make the animal an AT device.

What is the AT Act’s Definition of AT Service?

Under the federal AT Act:
The term "assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes--

(A) the evaluation of the assistive technology needs of an individual with a disability, including a functional evaluation of the impact of the provision of appropriate assistive technology and appropriate services to the individual in the customary environment of the individual;

(B) a service consisting of purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;

(C) a service consisting of selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, replacing, or donating assistive technology devices;

(D) coordination and use of necessary therapies, interventions, or services with assistive technology devices, such as therapies, interventions, or services associated with education and rehabilitation plans and programs;

(E) training or technical assistance for an individual with a disability or, where appropriate, the family members, guardians, advocates, or authorized representatives of such an individual;

(F) training or technical assistance for professionals (including individuals providing education and rehabilitation services and entities that manufacture or sell assistive technology devices), employers, providers of employment and training services, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities; and

(G) a service consisting of expanding the availability of access to technology, including electronic and information technology, to individuals with disabilities.\(^6\)

This same AT services definition is part of the federal Individuals with Disabilities Education Act and Title I of the Rehabilitation Act, governing state vocational rehabilitation programs.\(^7\) PAAT advocates may wish to rely on these definitions when advocating within either program.

What are Some Examples of Items that Meet or Do Not Meet the AT Services Definition?

**Items that are AT Services:**

\(^6\) 29 USC 3002(5).
\(^7\) See 34 USC 300.6 (special education) and 34 CFR 361.5(b)(8) (vocational rehabilitation).
Evaluations to determine an individual’s ability to perform a range of tasks, despite a disability, through the use of an AT device or devices: This could include evaluating a child’s ability to use one or more types of speech generating devices and determining which special adaptations may be needed; it could include a driving evaluation to determine an individual’s ability to independently drive with modifications to the vehicle; and it could include an evaluation of an individual with a short-term memory deficit, to determine whether a series of reminders and video recordings of instructions on a smart phone will allow the individual to better perform in a work setting.

Repairs to existing AT devices: Advocates often overlook this part of the AT services definition. Advocacy for repairs would, of course, qualify as a PAAT activity. Importantly, when a special education program or state vocational rehabilitation program is involved, that program is likely responsible for the repairs if the device that needs repairing was provided as part of an Individualized Education Plan (IEP) or Individual Plan of Employment (IPE) or is otherwise needed by the individual to achieve educational benefit or to achieve a work goal.

Training to the individual or family member on how to use the AT device: Whether we are looking at a speech generating device, voice dictation software, or vehicle modifications, training to use the AT-related intervention is critical to ensuring the individual uses the item to the best of his or her ability. In many cases, particularly for children, a trained parent or other family member is critical as well.

Training of professionals at a school or employment setting: Many of us have heard stories of the speech generating device or computer software to be used in a public-school setting that sits for weeks or months in a box because nobody at the school knows how to use it. The needed training of school staff would meet the AT services definition which appears in special education law and advocating for that training would be an appropriate PAAT case.

Items that are not AT Services:

If the service in question falls within the AT services definition and is sought in connection with an existing or potential AT device, it is unlikely that P&A advocates would mistakenly look at something as an AT service. Just keep in mind that if the underlying device does not meet the AT device definition, training on how to use it is not an AT service, nor would repairs be an AT service.

What if I have Questions about the Topics Covered in this Q&A?

Technical assistance is available through either the author, Jim Sheldon of the National AT Advocacy Project, Neighborhood Legal Services (jsheldon@nls.org; 716-847-0655 ext. 262) or Ron Hager, National Disability Rights Network (ron.hager@ndrn.org; 202-253-5252). You can call Jim or Ron if you have questions
about the topics discussed or with any other questions related to AT funding and advocacy.

Are There Other Resources Available Related to the Kinds of Work Advocates can be Involved in Through a PAAT Grant?

A good resource that covers the area broadly is a training outline, authored by Ron Hager and Jim Sheldon, and updated for the June 2017 National Disability Rights Network annual conference, Expanding Your Protection and Advocacy for Assistive Technology (PAAT) Practice: Thinking Beyond the Traditional AT Devices and AT Funding Sources. You can obtain this document at the TASC Resources section of the NDRN website or by emailing Ron Hager (ron.hager@ndrn.org) or Jim Sheldon (jsheldon@nls.org).