

# FAPE : BRAILLE AND ASSISTIVE TECHNOLOGY

Lenore Knudtson  
Knudtson Law, LLC  
Utah Law 2011

## CONSIDERATION OF SPECIAL FACTORS

- ▶ 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;

## SPECIAL FACTORS

- ▶ (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.

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## THE DEFINITION

- ▶ Visual impairment, including blindness, means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.
  - ▶ 34 C.F.R. §300.8(13).

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## BRAILLE IS THE STARTING POINT

- ▶ The IEP team should presume that a student who has a visual impairment should be provided Braille, unless it is determined through an evaluation that the student does not need Braille.
- ▶ It is important to conduct appropriate assessments to determine the primary reading medium for students.
- ▶ The student's IEP needs to clearly identify the primary communication mode, such as Braille, print, large print, or auditory and the data used to determine this decision.

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## EVALUATION IS THE KEY

- ▶ In all instances where Braille instruction is not provided for children covered under this provision, documentation of a learning media assessment (the evaluation) is required. Furthermore, it is critical that a qualified person conduct the assessment.
- ▶ The National Agenda for the Education of Children and Youths with Visual Impairments, including those with Multiple Disabilities, recommends that “All assessments and evaluations of students will be conducted by and/or in partnership with personnel having expertise in the education of students with visual impairments and their parents.” (Huebner, Merk-Adam, Stryker, and Wolffe, 2004).
- ▶ *The National Agenda for the Education of Children and Youths with Visual Impairments, Including Those with Multiple Disabilities*

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## THE LEARNING MEDIA ASSESSMENT

- ▶ There are many elements in a learning media assessment. The Braille provision specifically requires that the following be addressed: skills in reading and writing, reading and writing needs, and future need for Braille or Braille instruction.
- ▶ The assessment of future needs is important because a number of congenital eye diseases or disorders are degenerative.
- ▶ As we know, the educational system is charged with the responsibility of preparing students for a lifetime of literacy. This provision protects the right of children with visual impairments to be provided with skills in a literacy mode that will also last a lifetime, whatever the prognosis might be for their vision.
- ▶ [The National Agenda for the Education of Children and Youths with Visual Impairments, Including Those with Multiple Disabilities](#)

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## THE NICHCY CHECKLIST

- ▶ I. Has the student received a functional vision evaluation?
  - ▶  Yes
  - ▶  No
  - ▶  Student's vision is so limited a functional vision evaluation would not be appropriate

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## THE NICHCY CHECKLIST

- ▶ 2. Has the student received a learning media assessment?
  - ▶  Yes
  - ▶  No
  
- ▶ 3. Has the student received a recent clinical low vision assessment?
  - ▶  Yes
  - ▶  No
  - ▶  Student's vision is so limited a low vision clinical examination is not appropriate

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## THE NICHCY CHECKLIST

- ▶ 4. Does the student's visual condition indicate:
  - ▶  A progressive loss of vision?
  - ▶  Stability at the current level?
  - ▶  Unpredictability that will be followed by a possible decrease in vision?
  - ▶  A temporary condition that is expected to improve?

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## THE NICHCY CHECKLIST

- ▶ 5. Is there a medically diagnosed expectation of visual deterioration in adolescence or early childhood?
  - ▶  Yes
  - ▶  No
  
- ▶ 6. Does the student qualify for instruction and use of a new primary reading and writing medium because the individual can no longer effectively use the current medium?
  - ▶  Yes
  - ▶  No

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## THE NICHCY CHECKLIST

- ▶ 7. Will the student receive instruction in Braille? (The IEP team must provide for instruction in Braille unless the IEP team determines, after evaluation of the child's reading and writing skills, that instruction in Braille is not appropriate.)
  - ▶  Yes
  - ▶  No

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## THE NICHCY CHECKLIST

- ▶ 8. If instruction in Braille is not appropriate, which primary and secondary (if appropriate) learning media has been selected for this student?
  - ▶  Large Print ..... (  primary  secondary)
  - ▶  Regular Print ..... (  primary  secondary)
  - ▶  Regular Print w/ optical device.... (  primary  secondary)
  - ▶  Closed circuit television ..... (  primary  secondary)
  - ▶  Recorded ..... (  primary  secondary)
  - ▶  Individual is a non-reader or uses assistive technology..... (  primary  secondary)

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## THE NICHCY CHECKLIST

- ▶ 9. Has a written explanation of why the individual is using the selected learning media been provided?
  - ▶  Yes
  - ▶  No
- ▶ 10. Will a teacher certified at the appropriate grade level to teach students with visual impairment provide instruction in Braille reading and writing?
  - ▶  Yes
  - ▶  No
  - ▶  Not applicable

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## THE NICHCY CHECKLIST

- ▶ 11. Has the student received an assessment in the following areas of need:
  - ▶ \_\_\_ Orientation and Mobility (independent travel instruction)?
  - ▶ \_\_\_ Skills for acquiring information, including appropriate use of technological devices and services (low and high tech)?
  - ▶ \_\_\_ Social interaction skills?
  - ▶ \_\_\_ Transition services needs?
  - ▶ \_\_\_ Recreation needs?
  - ▶ \_\_\_ Career Education?
  - ▶ \_\_\_ Daily living (adaptive skills)?
  - ▶ \_\_\_ Other skills necessary to enable the individual to learn effectively?

▶ [www.nichcy.org](http://www.nichcy.org)

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## THE IEP

- ▶ The IEP must address the visually impaired learner's need for specialized instruction and related services in order to provide FAPE.
- ▶ Remember, Braille is the starting point **UNLESS** your assessment demonstrates otherwise.
- ▶ Consider the Expanded Core Curriculum areas for visually impaired students.

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## THE EXPANDED CORE CURRICULUM

- ▶ compensatory or functional academic skills, including communication modes
- ▶ orientation and mobility
- ▶ social interaction skills
- ▶ independent living skills
- ▶ recreation and leisure skills
- ▶ career education
- ▶ use of assistive technology
- ▶ sensory efficiency skills
- ▶ self-determination

▶ American Foundation for the Blind: [www.afb.org](http://www.afb.org)

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## EXPANDED CORE CURRICULUM

- ▶ The expanded core curriculum is the term used to describe the subject matter that is necessary and unique to students with visual impairments, and it guides and frames services and instruction to students.
- ▶ Consider if students will benefit from specialized instruction in the expanded core curriculum areas.
- ▶ Evaluate their needs in all areas of the expanded core curriculum.

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## THE IEP

- ▶ There is a strong likelihood that a visually impaired student might also need assistive technology.
- ▶ These services should be linked together to provide a cohesive IEP.

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## THE IEP

- ▶ The IEP team, with the consultation of experts as needed, is responsible for identifying IEP services to meet the learner's unique needs.
- ▶ "It would be improper to suggest that the IEP team should have deferred to a specialist in deaf-blind education on all questions of programming and placement at the expense of the other professionals on the team."
- ▶ See *Millay v. Surry Sch. Dep't.*, 56 IDELR 98 (D. Maine 2011).

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## IDENTIFICATION OR IMPLEMENTATION FAILURE

- ▶ As with any failure to identify or meet the educational needs of a special education student, the failure to provide Braille or Braille instruction to a visually impaired learner is likely to rise to the level of a substantive denial of FAPE.
- ▶ Unless the team can document through a thorough evaluation that the student does not require Braille, the public agency is vulnerable to a denial of FAPE claim.
- ▶ The failure to specifically address the student's needs in the IEP will almost surely result in a denial of FAPE.



## 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 devices.

- ▶ 34 C.F.R. §300.5

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## ASSISTIVE TECHNOLOGY SERVICE

- ▶ *Assistive technology service* means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. . .

- ▶ 34 C.F.R. §300.6

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## IEPS AND AT

- ▶ The IEP team must consider whether the child needs assistive technology devices or services.

- ▶ *34 C.F.R. §300.324(a)(2)(v)*

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## FAPE AND AT

- ▶ Schools must ensure that assistive technology devices or services, or both, are made available to a child with a disability if required as part of the child's –
  - ▶ **Special education services;**
  - ▶ **Related services; or**
  - ▶ **Supplementary aids or services.**
- ▶ On a case-by-case basis, the use of school-purchased assistive technology devices in the child's home or other settings is required if the IEP team determines that the child needs access to those devices **in order to receive FAPE.**

- ▶ See 34 C.F.R. §300.105.

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## DISTRICTS ARE REQUIRED. . .

- ▶ . . . to provide assistive technology devices or services if the student's IEP team determines that such device or service is needed in order to receive FAPE.
- ▶ See *A.S. and W.S. v. Trumbull Bd. of Educ.*, 45 IDELR 40 (D. Conn. 2006) and *Eric H. by. v. Methacton Sch. Dist.*, 38 IDELR 182 (E.D. Pa. 2003).

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## AT IN A COMPREHENSIVE EVALUATION

- ▶ A child's evaluation should provide sufficient information to permit the IEP team to determine whether the student requires technology devices or services in order to receive FAPE.
  - ▶ *Letter to Fisher*, 23 IDELR 565 (OSEP 1995).

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## AT IN THE IEP

- ▶ OSEP has stated that where a child's IEP requires assistive technology, the document must include a specific statement of such assistive technology devices or services.
  - ▶ *Letter to Anonymous*, 18 IDELR 627 (OSEP 1991).
- ▶ A school board has no authority to unilaterally change any decisions made by an IEP team regarding the provision of assistive technology devices.
  - ▶ *Letter to Anonymous*, 24 IDELR 854 (OSEP 1996).

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## WHAT ABOUT PERSONALLY PRESCRIBED DEVICES?

- ▶ As a general matter, a district is not required to purchase devices for use beyond the student's school day.
- ▶ This exclusion does not apply if the IEP team determines that the student needs continuous access to the device or service in order to receive FAPE.
- ▶ See *Letter to Anonymous*, 24 IDELR 388 (OSEP 1996), (a public agency's obligation to maintain or purchase a pulmonary nebulizer device would depend on how that device was characterized and addressed in the student's IEP). *Letter to Galloway*, 22 IDELR 373 (OSEP 1994).

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## EYEGASSES?

- ▶ If a student with a vision impairment requires eyeglasses regardless of whether he or she was attending school, then a public agency will NOT be required to provide them to the student.
- ▶ However, if the public agency determines that the child with a disability requires eyeglasses in order to receive FAPE and the child's IEP specifies that the child needs eyeglasses, then the public agency must provide the eyeglasses at no cost to the parents and could seek funds from outside of the agency to do so.
- ▶ As part of the special education evaluation, a child must be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. The cost of these assessments are the responsibility of the public agency responsible for providing FAPE to the child.
- ▶ *Letter to Bachus, 22 IDELR 629 (OSEP 1995).*

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## HEARING AIDS?

- ▶ Is the public agency responsible for the purchase of a hearing aid if the child's IEP indicates that the device is necessary?
- ▶ If the IEP of a child with a disability indicates that he/she requires an assistive technology device such as a hearing aid as part of his/her special education, then the responsible public agency would be required to provide the device at no cost to the parents.
- ▶ *Letter to Galloway, 22 IDELR 373 (OSEP 1994).*
- ▶ *Letter to Seiler, 20 IDELR 1216 (OSEP 1993).*

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## WHAT ABOUT PROSTHETIC DEVICES?

- ▶ Noting that the child was able to function without the prosthetic, the District Court ruled that the prosthetic was not an AT device that the child needed to receive FAPE.
  - ▶ The court recognized that the definition of "assistive technology device" in the Part B regulations is not exhaustive.
  - ▶ However, the court pointed out that a device qualifies as AT only if it is necessary for the child to receive an educational benefit.
- ▶ *J.C. v. New Fairfield Bd. of Educ.*, 56 IDELR 207 (D. Conn. 2011).

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## LOW TECH VS. HIGH TECH

- ▶ Is there an LRE continuum for assistive technology?
  - ▶ "It's often preferable to use a low tech tool because the kid can learn it faster, they can use it in more environments, it is better accepted especially by older children." Moreover, the technology consultant's approach comports with the IDEA's goal of "mainstreaming," students with disabilities "to the maximum extent appropriate," a goal which the Second Circuit has interpreted "as a requirement that special education be provided in the 'least restrictive setting consistent with a child's needs.'" ("The majority of us who are doing national work in assistive technology ... believe that under a least-restrictive-environment approach we really have to stress low tech tools first as a least-restrictive-environment issue.")
- ▶ See *A.S. v. Trumbull Bd. of Education*, 45 IDELR 40 (D. Conn. 2006).

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## LOW TECH VS. HIGH TECH

- ▶ The parents wanted the student to receive all of his academic content on a computer with specific programming.
- ▶ The student benefitted from lower tech assistive technology that the parents were requesting.
- ▶ The lower tech options assisted the student to access the special education program in his IEP.
- ▶ The parents' claim that AT services recommended were not provided to the student are without merit.
- ▶ See *B.D. v. Puyallup Sch. Dist.*, 53 IDELR 120 (W.D.Wash. 2009).

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## LOW TECH V. HIGH TECH

- ▶ The parents of an 11th-grader with an LD in mathematics claimed their son could not pass a junior year math course without use of an advanced calculator.
- ▶ The student had been using the earlier model throughout high school, but the parents claimed it no longer served him because his junior year math class required more complex mathematical operations. Contrary to the parents' assertions, however, the older model calculated the answers for the operations the student needed to perform, but required the student work through the problem, step by step, before it produced an answer.
- ▶ The new model simply gave the answer with the push of a button and required no knowledge of the underlying theory. If anything, the court opined, the new calculator provided less benefit than the old one: "If a school district simply provided the assistive devices requested, even if unneeded, and awarded passing grades, it would in fact deny the appropriate educational benefits the IDEA requires."
- ▶ *Sherman v. Mamaroneck Union Free Sch. Dist.*, 39 IDELR 181 (2<sup>nd</sup> Cir. 2003).

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## IF A STUDENT SAYS “NO” TO AT?

- ▶ The student's IEPs provided specialized instruction and a word processor for taking notes and completing assignments.
- ▶ The IEPs placed the student in general education classes with teacher consultants to assist with heavy note-taking, resource room writing instruction, OT for fine motor skills, and assistive technology training.
- ▶ However, the student resisted using the word processor out of self-consciousness.
- ▶ The court found no evidence that a lack of teacher support led to the student not using the word processor. "Instead, the record indicates that [the student] understood how to use the assistive technology that he was provided, but chose not to do so."

▶ *C.B. v. Pittsford Cent. Sch. Dist.*, 54 IDELR 149 (W.D.N.Y. 2010).

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## CAN A PARENT BE CHARGED FOR DAMAGE TO A DEVICE

- ▶ Who assumes responsibility for damage or loss of publicly-owned assistive technology---the public agency or parents?
- ▶ In cases where publicly-owned assistive technology devices provided to a student with a disability as a part of a FAPE have been damaged due to negligence or abuse, or have been lost or stolen, state law governs the determination as to who is liable for the damage or loss of equipment.
- ▶ However, such state laws must be consistent with Part B and the right to a FAPE.
- ▶ On the other hand, districts can not assess charges on parents for damage which occurs through normal use and wear and tear of these devices.

▶ *Letter to Culbreath*, 25 IDELR 1212 (OSEP 1997).

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## THE LINK BETWEEN SEVERAL PROVISIONS

Assistive  
Technology  
300.5 & 300.6

Supplementary  
Aids and Services  
300.42

Nonacademic  
settings and  
services  
300.107 &  
300.117

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## WHAT DOES THIS MEAN?

- ▶ Be prepared to provide assistive technology devices or services in nonacademic settings in order to allow “each child with a disability to participate with nondisabled children in the extracurricular services and activities to the **maximum extent appropriate** to the needs of that child.”
- ▶ 34 C.F.R. §300.117.

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## QUALITY INDICATORS FOR ASSISTIVE TECHNOLOGY [WWW.QIAT.ORG](http://WWW.QIAT.ORG)

- ▶ 1. The education agency has written procedural guidelines that ensure equitable access to assistive technology devices and services for students with disabilities, if required for FAPE.
- ▶ Intent: The education agency has clear written procedural guidelines that provide equal access to assistive technology devices and services for all students. Access to AT is the same for the student regardless of abilities, economic status or geographic location. All district personnel are familiar with the procedural guidelines.

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## QUALITY INDICATORS FOR ASSISTIVE TECHNOLOGY [WWW.QIAT.ORG](http://WWW.QIAT.ORG)

- ▶ 2. The education agency has clearly defined and broadly disseminated policies and procedures for providing effective assistive technology devices and services.
- ▶ Intent: District personnel in special education and general education are familiar with the policies and procedures in both special education as well as general education. The procedures are readily available at each campus and all school personnel know how to access the procedures.

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## QUALITY INDICATORS FOR ASSISTIVE TECHNOLOGY [WWW.QIAT.ORG](http://WWW.QIAT.ORG)

- ▶ 3. The education agency has written descriptions of job requirements, which include knowledge, skills, and responsibilities for staff members who provide assistive technology services.
- ▶ Intent: The education agency has clear written statements of job requirements that address the necessary AT knowledge, skills and responsibilities for all staff members. This includes all personnel from the classroom through central office. This could be reflected in a position description, assignment of duty statement or some other written description.

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## QUALITY INDICATORS FOR ASSISTIVE TECHNOLOGY [WWW.QIAT.ORG](http://WWW.QIAT.ORG)

- ▶ 4. The education agency employs a range of personnel with competencies needed to provide quality assistive technology services within their areas of primary responsibility.
- ▶ Intent: The agency employs staff members from the classroom through the central office who have knowledge and skills of AT commensurate with job requirements. Though classroom teachers supervisors and purchasing agents may need different knowledge and skills related to assistive technology, all must be knowledgeable for the system to work well.

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## QUALITY INDICATORS FOR ASSISTIVE TECHNOLOGY [WWW.QIAT.ORG](http://WWW.QIAT.ORG)

- ▶ 5. The education agency includes assistive technology in the technology planning and budgeting process.
- ▶ Intent: Historically, the AT needs of the agency have either been separate or omitted. A comprehensive technology plan provides for the technology needs of all students in both general education as well as special education.

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## QUALITY INDICATORS FOR ASSISTIVE TECHNOLOGY [WWW.QIAT.ORG](http://WWW.QIAT.ORG)

- ▶ 6. The education agency provides continuous learning opportunities about assistive technology devices, strategies and resources for staff, family and students.
- ▶ Intent: The training addresses the needs of the student, the family, and all of the staff involved with the student. Ongoing training and technical assistance opportunities are readily accessible to all members of the IEP team. The training and technical assistance includes training on AT devices, strategies and resources to support IEP goals and objectives.

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## QUALITY INDICATORS FOR ASSISTIVE TECHNOLOGY [WWW.QIAT.ORG](http://WWW.QIAT.ORG)

- ▶ 7. The education agency uses a systematic procedure to evaluate the components of assistive technology services to ensure accountability for student progress.
- ▶ Intent: There is a clear systematic procedure with which all administrators are familiar and use regularly. This procedure is used consistently across the agency at both central office and the building level. The components of this process include budgeting, planning, delivery and evaluation of AT services.

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## COMMON ERRORS:

- ▶ 1. If policies and guidelines are developed, they are not known widely enough to assure equitable application by all IEP teams.
- ▶ 2. It is not clearly understood that the primary purpose of assistive technology in school settings is to support the implementation of the IEP for the provision of a free appropriate public education (FAPE).
- ▶ 3. Personnel have been appointed to head assistive technology efforts, but resources to support those efforts have not been allocated. (Time, a budget for devices, professional development, etc.)
- ▶ 4. Assistive technology leadership personnel try to or are expected to do all of the assistive technology work and fail to meet expectations.
- ▶ 5. Assistive technology services are established but their effectiveness is never evaluated.

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## SUMMARY

- ▶ IEP teams must consider the Braille needs for a visually impaired student. It is mandatory!
- ▶ A learning media assessment is necessary in order for the IEP team to conclude that a student does not need Braille.
- ▶ IEP teams must consider the assistive technology needs of every student with a disability.
- ▶ The IEP must specifically address AT needs.

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Thank you for your time.

## QUESTIONS???

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