

# SmartStart: IEPs -- Assistive Technology Devices and Services

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This SmartStart is updated with references to the IDEA 2004 statute, the 2006 IDEA Part B regulations, the 2008 amendments to the Part B regulations, and the 2010 amendments to the Title II and Title III regulations implementing the ADA.

## Overview

The IDEA defines "assistive technology device" 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 a device. 34 CFR 300.5. "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 CFR 300.6. The IDEA requires each public agency to ensure that AT devices and services are made available to each child with a disability if required as part of the child's special education, related services, or supplementary aids and services. 34 CFR 300.105(a).

## Key Points

These key-point summaries cannot reflect every fact or point of law contained within a source document. For the full text, follow the link to the cited source.

### OBLIGATION TO PROVIDE ASSISTIVE TECHNOLOGY DEVICES/SERVICES -- GENERALLY

- As part of the program development process, the IEP team must "consider whether the child needs [AT] devices and services." 34 CFR 300.324(a)(2)(v).
- Districts are required to provide AT devices or services to a student with a disability if the participants on the student's IEP team determine that the student needs such a device or service in order to receive FAPE. *Letter to Anonymous*, 24 IDELR 854 (OSEP 1996); *Letter to Fisher*, 23 IDELR 565 (OSEP 1995); *Letter to Naon*, 22 IDELR 888 (OSEP 1995); *Letter to Seiler*, 20 IDELR 1216 (OSEP 1993); *Letter to Anonymous*, 18 IDELR 627 (OSEP 1991).
- 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).
- In *Letter to Fisher*, 23 IDELR 565 (OSEP 1995), OSEP stated that "each public agency must ensure that, as part of its Part B educational evaluation when warranted by the child's suspected disability, it assesses, in accordance with the evaluation requirements of 34 CFR 300.532, the student's functional capabilities and whether they may be increased, maintained, or improved through the use of [AT] devices or services ... The evaluation should provide sufficient information to permit the IEP team to determine whether the student requires [AT] devices or services in order to receive FAPE."
- AT must be provided at no cost to the parents of a child with a disability. *Letter to Cohen*, 19 IDELR 278 (OSERS 1992).
- The district in *Clark County School District*, 111 LRP 60397 (SEA NV 07/21/11), failed to conduct an assessment prior to providing a nonverbal student with limited intellectual capacity with an AT device as required by 34 CFR 300.304(c)(4). Even without the evaluation, the district might have prevailed at due process by arguing that it provided an educational benefit to the student if it had also demonstrated some degree of consistency in skill acquisition through the use of the device.
- A parent was not denied meaningful participation in her child's special education services when a district neglected to notify her of a delay in obtaining the child's AT. However, the delay itself constituted a denial of FAPE, regardless of the cause. *Sch. Dist. of Philadelphia*, 114 LRP 37532 (SEA PA 08/03/14).
- The IDEA does not limit the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school. Nor does the law prevent the

routine checking of an external component of a surgically implanted device to make sure it is functioning properly. 34 CFR 300.34(b)(2).

## OBLIGATION TO PROVIDE ASSISTIVE TECHNOLOGY DEVICES/SERVICES -- PARENTS' PREFERENCE

- Districts generally are not required to provide the specific AT devices or services specified by parents or to agree with each request. See *A.S. v. Trumbull Bd. of Educ.*, 45 IDELR 40 (D. Conn. 2006); *Eric H. v. Methacton Sch. Dist.*, 38 IDELR 182 (E.D. Pa. 2003) (court rejected parents' contention that video teleconferencing was necessary to permit the student to fully realize his extensive social and behavioral objectives); *Los Angeles Unified Sch. Dist.*, 46 IDELR 232 (SEA CA 2006) (finding that a district did not have to purchase a motorized wheelchair with a built-in stander for a ninth-grader with cerebral palsy, as the district's use of a stand-alone stander complied with the student's IEP); and *Collier County Sch. Bd.*, 44 IDELR 80 (SEA FL 2005).
- In some cases, however, the parents' preference is determinative or at least persuasive. See, e.g., *Greenwood County Sch. Dist.* 52, 19 IDELR 355 (SEA CA 1992) (district had proposed purchasing a less expensive augmentative communication device called "The Intro Talker," but the parents presented expert testimony that the student had the potential to acquire the higher-level language skills for which only their preferred device provided options; while cost is a relevant consideration in determining what AT devices and services to provide, it cannot be the determining factor); and *Davis Sch. Dist.*, 18 IDELR 696 (SEA UT 1992) (stroller device used for loading and unloading student on the school bus was an AT device and thus subject to the IEP process; therefore, parents were allowed to present evidence that the device they favored was necessary to provide FAPE).
- The ED has stated, with respect to auxiliary aids and services, that districts must give primary consideration to the auxiliary aid or service requested by the student with a disability when determining what is appropriate for that student. *Frequently Asked Questions on Effective Commc'n for Students with Hearing, Vision, or Speech Disabilities in Pub. Elem. and Secondary Schs.*, 64 IDELR 180 (DOJ/OSERS/OCR 2014).
- The fact that a district offers AT devices and services that go above and beyond a student's special education needs will not necessarily insulate it from a FAPE claim. In *Ada-Borup Independent School District #2854*, 49 IDELR 55 (SEA MN 2007), a Minnesota district provided an augmentative communication device to an 8-year-old boy with a speech-language impairment and mild cognitive delays. The district did not train the student or the parent on how to use the device. Instead, the district provided the parent with an instruction manual. The state ED acknowledged that nothing in the student's IEP required the district to provide a communication device for the child's home use, as there was no statement that the child required the device to receive FAPE. Once the district provided the device, however, it assumed a duty to ensure that the child could use it properly. The ED ordered the district to provide the training the child needed to use the device.
- Although a parent believed that her son would have made greater progress if the District of Columbia had provided him with a laptop, instead of merely providing him with a word processor and access to a classroom computer, the District Court held that the student received FAPE without the parent's preferred AT device. *Smith v. District of Columbia*, 58 IDELR 155 (D.D.C. 2012).
- A district's AT evaluation for a student with visual impairments didn't need to include a full evaluation of the use of a particular tablet computer to be appropriate, explained a Maryland ALJ. The parent's only argument was that the tablet was preferable to other devices and would be available to the student outside of school, noted the ALJ. Tablets are an important AT tool, the ALJ commented, but they aren't the only AT device that can assist students with visual impairments. The ALJ observed that the district's evaluation was sound, reliable, and properly administered. *Montgomery County Pub. Schs.*, 114 LRP 47714 (SEA MD 05/30/14).

## EVALUATION FOR ASSISTIVE TECHNOLOGY

- Students identified as needing special education and related services are entitled to an individual evaluation for possible AT devices. *Maynard Sch. Dist.*, 20 IDELR 394 (SEA AR 1993).
- There are no federal or state regulations specifying the content of an AT assessment or who should conduct it. *Clark County Sch. Dist.*, 112 LRP 1381 (SEA NV 10/10/11).
- The IDEA allows 60 days to complete an assessment unless the state has a different timeline, in which case the state rule controls. 34 CFR 300.301(c)(1). See also *Providence (RI) Pub. Sch. Dist.*, 108 LRP 53219 (OCR 02/29/08).
- The failure to evaluate a student's need for AT devices or services can amount to a denial of FAPE. In *Glendora Unified School District*, 49 IDELR 172 (SEA CA 2007), an ALJ found that an employee's unilateral decision to deny two requests for an AT evaluation required a California district to provide 15 months' worth of real-time closed-captioning services to a deaf high school student. By failing to provide technology that the student needed to

communicate effectively, the ALJ concluded, the district denied the student FAPE in the LRE. *See also North Hills Sch. Dist. v. M.B.*, 65 IDELR 150 (Pa. Commw. Ct. 2015) (given a first-grader's success in using a tablet to communicate with adults outside of the school setting, a Pennsylvania district should have tried to determine why the child resorted to moaning and crying in the classroom to make his needs known).

- Although a Texas district's handling of an AT assessment was not optimal, the 5th Circuit ruled that the district provided FAPE to a nonverbal 10-year-old with autism, an intellectual disability, and a speech impairment. The court held that the district's year-long delay in reviewing an AT evaluation and providing a voice output device to the student did not deny her FAPE. *R.P. v. Alamo Heights Indep. Sch. Dist.*, 60 IDELR 60 (5th Cir. 2012).
- Districts are required to provide AT devices or services to a student if he needs it in order to receive FAPE. If an AT evaluation shows that AT would not benefit a student in addressing his particular needs, a district need not provide it. In *A.L. v. Chicago Public School District No. 299*, 57 IDELR 276 (N.D. Ill. 2011), the district's evaluator identified the student's unique needs relating to his cognitive impairment, but determined that AT did not help the student with his writing deficits or improve his ability to understand material. There was no evidence that an IHO improperly relied on the evaluation in declining to order the district to provide AT.
- A California district was required to conduct a comprehensive AT assessment that would consider whether the student's ability to utilize an AT device was affected by: a deficiency in fine-motor skills of the arms and hands, decreased strength and stamina, and the effect of dyslexia and a visual processing disorder on his ability to see the AT device screen. The lack of a comprehensive AT-related service, designed for the student's unique needs, which included his ability to make use of the AT, deprived the student of educational benefit. The ALJ decided that the statutory threshold was met and the failure to fully assess the student for AT-related services was a procedural violation that amounted to the denial of a FAPE. *Antelope Valley Union High Sch. Dist.*, 110 LRP 33085 (SEA CA 05/26/10).
- Evidence that a nonverbal first-grader with autism came to school with electronic devices which the student had used in other environments should have prompted a Pennsylvania district to further investigate the child's communication needs and capabilities. An IHO determined that the district denied the student FAPE in failing to develop an IEP that appropriately addressed the child's communication needs, including the use of AT. *North Hills Sch. Dist.*, 12 ECLPR 72 (SEA PA 2014)

#### **OBLIGATION TO PROVIDE ASSISTIVE TECHNOLOGY DEVICES/SERVICES USED OUTSIDE SCHOOL**

- As a general matter, a district is not required to purchase devices the student would require regardless of whether or not the student is attending school. However, this exclusion does not apply if the IEP team determines, as it is permitted to do, that the student needs the device or service to receive FAPE and accordingly includes it in the IEP. *See, e.g., 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 Bachus*, 22 IDELR 629 (OSEP 1995); and *Letter to Galloway*, 22 IDELR 373 (OSEP 1994).

#### **OBLIGATION TO PROVIDE EYEGLASSES, HEARING AIDS, AND OTHER PERSONALLY PRESCRIBED DEVICES**

- Generally, a school district is not responsible for providing eyeglasses, a hearing aid or other personally prescribed devices for a student as an AT device. However, it is possible that a school district would consider such a personal device an AT device, thus requiring the IEP team to include it in the IEP of a student with a disability in those instances when the provision is necessary for FAPE. *See Letter to Bachus*, 22 IDELR 629 (OSEP 1995); *Letter to Galloway*, 22 IDELR 373 (OSEP 1994); *Letter to Seiler*, 20 IDELR 1216 (OSEP 1993); and *Department of Educ., State of Hawaii*, 109 LRP 44127 (SEA HI 05/12/09).
- Although a preschooler with mild to moderate hearing loss in his left ear might have been better served by a hearing aid rather than an FM system, a New Jersey district was not required to pay for the device, according to a District Court. The court held that a desktop speaker, in conjunction with the student's right ear, would have allowed the child to receive FAPE). *G.A. v. River Vale Bd. of Educ.*, 62 IDELR 37 (D.N.J. 2013, *unpublished*).

#### **COCHLEAR IMPLANTS**

- The 2006 IDEA Part B regulations provide that "related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device." 34 CFR 300.34(b). However, nothing:
  - (i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services that are determined by the IEP team to be necessary for the child to receive FAPE.

- (ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or
- (iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in Section 300.113(b).

34 CFR 300.34(b)(2). See also [SmartStart: Surgically Implanted Devices \(including Cochlear Implants\)](http://www.specialedconnection.com/LrpSecStoryTool/servlet/GetDocByTitle?doctitle=SmartStart:+Surgically+Implanted+Devices+(including+Cochlear+Implants))  
[http://www.specialedconnection.com/LrpSecStoryTool/servlet/GetDocByTitle?doctitle=SmartStart:+Surgically+Implanted+Devices+\(including+Cochlear+Implants\)](http://www.specialedconnection.com/LrpSecStoryTool/servlet/GetDocByTitle?doctitle=SmartStart:+Surgically+Implanted+Devices+(including+Cochlear+Implants)).

- The Education Department did not exceed its authority when it defined "related services" in the 2006 Part B regulations to exclude cochlear mapping. *Petit v. U.S. Department of Educ.*, 58 IDELR 241 (D.C. Cir. 2012).

## COMPUTERS

- Computers can be AT devices used for educational purposes. School districts are required to provide computers for use at home by students with disabilities only if home use is necessary for the provision of FAPE and such use is specified in the student's IEP. *Letter to Anonymous*, 18 IDELR 627 (OSEP 1991).
- Not every student with a disability who would benefit from the provision of a computer to use at home is entitled to receive one as a district-funded AT device. See *Garcia v. California State Dept. of Educ. Hearing Office*, 24 IDELR 547 (E.D. Cal. 1996) (testimony of teachers helped confirm that a student would not need a computer to do homework and had access to a computer at school for other purposes, consistent with his IEP).
- Although acknowledging that a home computer could be helpful to a high school student, the student did not require the computer to make educational progress. Evidence indicated that the student did not make full use of the computers available at school. The district's IEP team believed that the student's frustration in writing by hand was more emotional than physical and that he should be encouraged to overcome that problem. *Jefferson County Sch. Dist. R-1*, 34 IDELR 212 (SEA CO 2001).
- Although a computer program addressing language skills may have been the best available technology to address a student's language processing difficulties, an IHO ruled that the district's IEP, which did not include the use of the program, offered the student educational benefit in the LRE. *Fort Bend Indep. Sch. Dist.*, 34 IDELR 246 (SEA TX 2001).
- The IDEA does not require districts to assume responsibility for computers purchased by parents in connection with the student's IEP implementation. However, OSEP believes it would be reasonable and consistent with the IDEA for public agencies to assume liability for family-owned devices used to implement a child's IEP at school or at home, since the public agency is responsible for providing AT devices and services that are necessary parts of the child's special education, related services, or supplementary aids and services, as specified in the child's IEP. See *Letter to Anonymous*, 21 IDELR 1057 (OSEP 1994).
- A Minnesota district did not need to provide a seventh-grader with a laptop computer, a scanner, wireless Internet access, and specialized software in order to meet its obligations under the IDEA. The state ED concluded that the district met the student's AT needs by ensuring that he had desktop computers with appropriate software available in all of his classes. The ED observed that the neither existing evaluation reports nor recommendations from the student's private school showed that the student required home use of a computer to receive FAPE. Nonetheless, the district offered to provide a desktop computer for the student's home use, along with a flash drive that would allow him to transport files between home and school. The parent rejected the proposed IEP, however, claiming that the student required a personal laptop with wireless Internet access. Noting that the student was maintaining a B average using only the school computers, the ED determined that the student did not need the requested equipment. *Anoka-Hennepin Indep. Sch. Dist. #011*, 48 IDELR 202 (SEA MN 2007).
- An Iowa district had to provide compensatory services to a high school freshman with a print disability for a seven-week delay in providing him access to the AT he needed. All students received laptops through a district program at the beginning of the school year. However, the district realized after classes began that the student did not have the speech-to-text software he needed on his laptop. Although the district ordered the software over the summer, it did not install it on the student's laptop until October 2011. Without the AT on his laptop for home use, the student was denied equal access to the educational programs and services afforded his nondisabled peers. *In re: Student with a Disability*, 59 IDELR 27 (SEA IA 2012).
- The grandparent of a nonverbal 6-year-old with autism and a hearing impairment failed to establish that a district's alleged failure to provide AT devices short-circuited her grandson's educational program. The appellate board noted that the district provided AT services and devices the student required in order to receive FAPE, including a

computer to augment his speech, and that the IEP team determined that the student did not require them at home. *In re: Student with a Disability*, 8 ECLPR 87 (SEA KY 2010).

## CALCULATORS

- Calculators may be an AT device, depending on the nature of a student's disability. For example, a calculator could be an AT device for a student with a learning disability who is placed in a regular education math class. *Letter to Lambert*, 18 IDELR 1039 (OSEP 1992). See also *Sherman and Nishanian v. Mamaroneck Union Free Sch. Dist.*, 39 IDELR 181 (2d Cir. 2003) (11th-grade student, who had been using calculators throughout high school, did not need an updated model to pass his class).

## OXYGEN, TANKS, MONITORING EQUIPMENT

- The oxygen and tanks required by a preschooler with OHI due to Kartagener syndrome, immotile cilia syndrome, hypoxia, and asthma were not the district's financial obligation. The hearing officer concluded neither the oxygen nor the oxygen tanks were related services or AT devices. The physician-prescribed oxygen was medicine and the tanks necessarily part of the prescription. However, the district was obligated to provide the oxygen monitoring equipment and a portable cart to the student at no cost as AT devices. *Gaylord Cmty. Schs.*, 40 IDELR 224 (SEA MI 2003).

## PROSTHETICS / ARTIFICIAL LIMBS

- Although a preschooler's parents wanted their daughter to be a "two-handed child," they could not require a Connecticut district to pay for the child's myoelectric prosthetic arm. An IHO determined that the prosthesis did not qualify as an AT device under the IDEA. The IHO explained that the child, who was missing the lower part of her left arm, did not need the myoelectric arm to benefit from the preschool curriculum. *New Fairfield Bd. of Educ.*, 6 ECLPR 36 (SEA CT 2008). The District Court also held that the prosthetic was not necessary for the child to receive FAPE. *J.C. v. New Fairfield Bd. of Educ.*, 56 IDELR 207 (D. Conn. 2011).

## COMPUTER TABLETS

- A district's careful assessment of a 19-year-old's AT needs, and its deliberation in choosing a device that matched them, helped defeat a parent's assertion that the student needed an iPad2. Because the district reasonably determined that the SpringBoard, a device with a dynamic interface, would enable the nonverbal student to communicate with others, access the curriculum, and express his wants and needs, the district met its obligations. *Los Angeles Unified Sch. Dist.*, 111 LRP 75098 (SEA CA 10/31/11).
- Despite the device's "cool factor," a California district did not have to permit a 9-year-old with autism to use an iPad to initiate social interaction with his peers. The student's parents contended that the district's failure to incorporate their son's use of an iPad as a means of initiating conversations with his peers meant that a proposed IEP did not include appropriate social skills goals. An ALJ, however, disagreed and permitted the district to implement the IEP without parental consent. *Carlsbad Unified Sch. Dist.*, 59 IDELR 87 (SEA CA 2012).
- Reasoning that a district was true to "the essence" of a transfer student's prior IEP when it came to AT, the Oregon ED rejected the parents' contention that the district denied the student FAPE. While the district didn't provide the high school student with an iPad for note-taking, it offered technology that would have accomplished the same purpose. *Hillsboro Sch. Dist. 1J*, 114 LRP 20386 (SEA OR 04/07/14).

## RESPONSIBILITY FOR ACQUISITION AND MAINTENANCE OF AT DEVICES

- The responsibility for the acquisition and maintenance of an AT device belongs to the school district, not the parents. As a component of FAPE, an AT device must be provided at no cost to the parents. See *Letter to Cohen*, 19 IDELR 278 (OSERS 1992).
- A district is not required to select a more costly device that may provide more or better assistance to the student and maximize his or her education. *Board of Educ. of the Hendrick-Hudson Cent. Sch. Dist. v. Rowley*, 553 IDELR 656 (U.S. 1982). On the other hand, a district is not permitted to use the cost consideration to select a device that is inconsistent with the student's needs as expressed in the IEP. *Greenwood County Sch. Dist.*, 19 IDELR 355 (SEA SC 1992).
- Evidence established that an Arizona district properly implemented a student's IEP by providing a student with a PDA and training the student and parent on its use. Although the device sometimes required maintenance, there

was no material implementation failure where the district provided training and reasonably maintained the device. *Sierra Vista Unified Sch. Dist. No. 68*, 110 LRP 67624 (SEA AZ 09/02/10).

## ASSISTIVE TECHNOLOGY DEVICES/SERVICES MUST BE INCLUDED DIRECTLY IN IEP

- As part of the program development process, the IEP team must "consider whether the child needs AT devices and services." 34 CFR 300.324(a)(2)(v).
- 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). A school board has no authority to unilaterally change any decisions made by an IEP team regarding the provision of AT devices. *Letter to Anonymous*, 24 IDELR 854 (OSEP 1996).
- OSEP has stated that where a child's IEP requires AT, the document must include a specific statement of such AT devices or services. *Letter to Anonymous*, 18 IDELR 627 (OSEP 1991).
- In *Sherman County School District*, 111 LRP 34156 (SEA OR 04/15/11), the Oregon Department of Education concluded that the IEP team properly evaluated the teen's AT needs but that those needs were not adequately addressed in the student's IEP. The student's IEP failed to include an appropriate statement of the AT devices and services necessary to increase, maintain, or improve the functional capabilities of the student with a specific learning disability and a communication disorder.

## STUDENT RESISTANCE TO ASSISTIVE TECHNOLOGY DEVICES/SERVICES


- A New York district offered FAPE to a ninth-grader with deficits in written expression, although the student did not consistently use his AT, the U.S. District Court, Western District of New York held. 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 AT that he was provided, but chose not to do so," U.S. District Judge Charles J. Siragusa wrote. *C.B. v. Pittsford Cent. Sch. Dist.*, 54 IDELR 149 (W.D.N.Y. 2010).

## Links

- [SmartStart: FAPE -- Free Education](#)
- [SmartStarts -- SmartStart: Auxiliary Aids and Services](#)
- [SmartStarts -- SmartStart: Surgically Implanted Devices \(including Cochlear Implants\)](#)
- [SmartStarts -- SmartStart: Specific Types of Testing Accommodations](#)
- [Assistive Technology: Are districts required to provide computers for home use to students with disabilities?](#)
- [Assistive Technology 101](#)
- [FCTD Assistive Technology Glossary](#)
- [Form: Assistive Technology Evaluation Guide for Students With Learning Disabilities](#)
- [Chart: Assistive Technology Continuum](#)
- [Sample Forms and Tools -- Form: Assistive Technology Implementation Organizer](#)
- [Sample Forms and Tools -- Form: Assistive Technology School-to-Home Authorization](#)

## Additional Resources

Additional resources on this topic are available for purchase from LRP Publications:

- [Assistive Technology in Special Education: Identifying Student Needs, Responding to Parent Requests, and Other Compliance Issues](#) by Teri E. Engler, Esq.
- [Cool Tools in Schools: Responding to Requests for the Latest Technology in Special Education](#)  Presented by Paula Maddox Roalson
- [Academic and Behavioral Interventions That Work for Students With Autism](#)
- [What Do I Do When ...® The Answer Book on Special Education Law -- Sixth Edition](#) by Andrew Tatgenhorst, Esq.

Please share your experience and expertise. Forward any suggested additions or changes to this or other Smart Starts to [SmartStarteditor@lrp.com](mailto:SmartStarteditor@lrp.com).

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