

**GUIDELINES FOR SCHOOL DIVISION TRANSFER OF
ASSISTIVE TECHNOLOGY DEVICES
PURSUANT TO VIRGINIA CODE § 22.1-129.1**

Background

The *Code of Virginia* at § 22.1-129.1 permits any Virginia school division that has provided a “child with a disability” with an “assistive technology device” to transfer that device to another school division or a state agency that will be serving the child, or to the student or the student’s parent. The permissive transfer may occur when the student exits the school division and the device continues to be necessary to the student’s functional capabilities.

Effecting the transfer of school division owned assistive technology devices often poses particular difficulties for school division procurement offices and raises questions related to the proper disposal of division-owned equipment.

These Guidelines are intended to address issues that will be encountered by parents, educators, and administrators regarding the transfer of assistive technology. Sample documents, including an “Assistive Technology Device Transfer Request Form,” and a “Transfer Agreement” are provided to assist interested parties.

What the AT Transfer Statute Says

Virginia Code § 22.1-129.1. Transfer of assistive technology devices

A. For the purposes of this section:

"Assistive technology device" means any device, including equipment or a product system, which is used to increase, maintain, or improve functional capabilities of a child with a disability. Assistive technology device shall not include surgically implanted medical devices, such as cochlear implants.

"Child with a disability" means the same as that term is defined in § 22.1-213.

"Transfer" means the process by which a school division that has purchased an assistive technology device may sell, lease, donate, or loan the device pursuant to subsection B.

B. An assistive technology device may be transferred to (i) the school division to which a child with a disability transfers from the school division that purchased the device; (ii) a state agency, including the Department of Rehabilitative Services [now the Department for Aging and Rehabilitative Services], that provides services to a child with a disability following the child's graduation with a standard or advanced studies diploma or when a school division ceases to provide special education services for the student; or (iii) the parents of a child with a disability, or the child with a disability if the child with a disability is age 18 or older and has the capacity to enter into a contract.

School divisions should actively disseminate information to school personnel, relevant agencies/ bodies, community leaders, parents, students and the general public in order to increase understanding and participation. Vehicles for dissemination may include, but are not limited to, one or several of the following:

- Information display within schools and during community activities
- Internet Web sites
- E-mail
- Information in Parent Resource Centers
- Newsletters or flyers

- A. A transfer of an assistive technology device (hereinafter “Device”) pursuant to *Code* § 22.1-129.1 should be in accordance with a written transfer agreement which incorporates the elements set forth in the sample “Assistive Technology Equipment Release/Transfer Agreement,” and which includes specifically the following:
- 1) The name of the transferor school division;
 - 2) The name and address of the transferee;
 - 3) The student for whose benefit the transfer is being made;
 - 4) The type of transfer (donation, sale, loan or lease), and the financial consideration, if any;
 - 5) A description of any Device being transferred, and whether the transfer does or does not include any manufacturer’s warranty(ies);
 - 6) A provision that after taking delivery, the transferee bears all risk of loss or damage to the Device, and assumes all responsibility for care, maintenance, repair and/or upgrade associated with the Device;
 - 7) A provision that informed consent for the transfer has been obtained from either (i) the student’s parent/legal guardian, or (ii) the student, if the student is 18 or older and has the legal capacity to enter into a contract;
 - 8) The signatures of authorized representatives of both the school division transferor and the transferee, agreeing to the terms and conditions of the transfer; and
 - 9) The signatures of authorized representatives of both the school division transferor and the transferee, acknowledging delivery and receipt of the Device and receipt of payment, if any.
- B. A request for the transfer of a Device may be initiated by any person able to communicate the following information to the transferor school division:
- 1) The student’s name and date of birth;
 - 2) The school within the transferor school division where the Device is located;
 - 3) A description of the Device sufficient for the school division to identify it;
 - 4) The reason for the transfer request; and
 - 5) To whom transfer of the Device is requested.

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- C. Upon receipt of a transfer request, the transferor school division should evaluate the initial validity of the request by determining:
- 1) Whether the school division actually owns the Device or has authority to transfer the Device;
 - 2) Whether the Device qualifies for transfer pursuant to *Code* § 22.1-129.1 (See definition of “assistive technology device”);
 - 3) Whether the student is a “child with a disability” as that term is defined in *Code* § 22.1-213;
 - 4) Whether the student is actually exiting (or has exited) the school division;
 - 5) Whether the student used the Device prior to transferring from the school division that owns the Device; and
 - 6) Whether the requested transferee qualifies for transfer pursuant to *Code* § 22.1-129.1B (school division or state agency) or pursuant to the definitions set forth at 8 VAC 20-81-10 (parent or child with a disability).
- D. Upon determining the initial validity of the request in accordance with B. and C. above, the transferor school division shall then determine the fair market value of the Device in accordance with generally accepted accounting principles including a reasonable allowance for use.
- E. The school division is not required by *Code* § 22.1-129.1 to sell the Device for a sum equal to its fair market value as determined in accordance with D. above. The method employed to determine a fair price at which to transfer the Device may include consideration of factors such as
- 1) How long the school division has owned the Device;
 - 2) How long the Device has been in use;
 - 3) The condition of the Device;
 - 4) Whether the Device can be used, or converted for use, by another student;
 - 5) The price paid by the school division to acquire the Device;
 - 6) Whether the Device is still under warranty, and if so, whether the warranties are transferable;
 - 7) How many similar devices the school division owns, and how many of those devices are in use and how many in surplus;
 - 8) Whether the school division has sold, leased, or donated any similar device in the past six months;
 - 9) The price at which similar devices in similar condition are available for sale in the retail or consumer resale market (for example, eBay);
 - 10) The price at which similar devices in similar condition are being “bought back” by the manufacturer or retailers (for example, Best Buy); and
 - 11) The price the transferee is willing and able to pay for the Device.
- F. If the school division determines that it wishes to transfer the Device, then it must determine whether it wishes to donate, loan, sell or lease the Device to the requested transferee. Upon determining the type of transfer (donation, loan, sale or lease), the school division shall convey its offer to the transferee by presenting the transferee with a transfer agreement that complies with the terms outlined in paragraph A. above.

- G. Transfer requests should be acted upon by a school division within 30 calendar days of receipt by the school division. If the school division approves a transfer, the school division shall convey its offer to the transferee within the same 30-day time period. Delivery of the Device to the transferee should occur within ten calendar days of the school division's receipt of confirmation and proof that the transferee has signed the transfer agreement and thus accepted the transfer offer and the terms and conditions thereof. If the school division denies the transfer request or special circumstances prevent schools from acting within time frames listed above, notification of that decision should be provided to requesting individual(s).
- H. Whether or not the Device is transferred with applicable warranties, a school division should (at the time the Device is delivered to the transferee) provide the transferee with:
- 1) Available information related to past service(s) (such as maintenance logs) performed on the Device, as well as any other relevant information regarding repairs and/or modifications previously made to the Device.
 - 2) Original documentation, including, but not limited to, owner's manuals and operating instructions, provided to the school division at the time it acquired the Device.
 - 3) In the case that original documentation is not available due to loss, theft, or damage, notification should be provided stating that the original documentation is unavailable and should be included in the terms of transfer.
- I. Each school division superintendent should designate an individual who shall be responsible for implementing these Guidelines and overseeing transfers in compliance with the school division's procedures. If a school division decides to deny a Device transfer request, then this individual shall provide the proposed transferee with notification and a list of resources from which a similar device, and/or funding therefore, might be acquired.
- J. Nothing in these Guidelines shall:
- 1) Alter a school division's existing obligation under state or federal law to provide devices to students with disabilities;
 - 2) Require a school division to transfer a Device to any person or entity;
 - 3) Limit a school division's right to sell, lease, donate, loan or otherwise convey or dispose of its property as authorized by any state or federal law, rule, regulation, or local policy;
 - 4) Extinguish a transferor school division's obligations to comply with any restriction on transferability imposed by the manufacturer or supplier of the Device, or applicable federal or state laws or regulations; or
 - 5) Extinguish any manufacturer's warranty that may exist by operation of the Virginia Assistive Technology Device Warranties Act, *Code § 59.1-470 et seq.*

Frequently Asked Questions

1. Who may request a school division to transfer an assistive technology device being used by a student?

Anyone may request a school division to transfer an assistive technology device being used by a student. However the person initiating the request must be able to communicate the following information to the transferor school division

- 1) The student's name and date of birth,
- 2) The school within the transferor school division where the assistive technology device is located,
- 3) A description of the assistive technology device sufficient for the school division to identify it,
- 4) The reason for the transfer request,
- 5) To whom transfer of the assistive technology device is requested.

2. To whom may the assistive technology device be transferred?

- 1) Another school division,
- 2) A state agency,
- 3) The student's parent(s) or legal guardian,
- 4) The student who is of the age of majority (18) and has the capacity to enter into a contract.

Code § 22.1-129.1 authorizes a school division to transfer an assistive technology device to (i) the school division to which a child with a disability transfers from the school division that purchased the device; (ii) a state agency, including the Department of Rehabilitative Services [now the Department for Aging and Rehabilitative Services], that provides services to a child with a disability following the child's graduation with a standard or advanced studies diploma or when a school division ceases to provide special education services for the student; or (iii) the parents of a child with a disability, or the child with a disability if the child with a disability is age 18 or older and has capacity to enter into a contract.

Virginia's Special Education Regulations at 8 VAC 20-81-20 include the relevant definition of "parent."

3. What initial prerequisites must be met before the school division can consider the request?

The school division must determine whether it owns the assistive technology device. The ownership determination requires an examination of funding sources used to acquire the assistive technology device. If the school division was not the sole source of funds for the assistive technology device, then the assistive technology device may belong to the

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student. For example, other funding sources could include Medicaid, foundations, fraternal and social organizations, religious groups, charitable organizations, business, individuals and private insurance. If the assistive technology device was purchased solely by the school division using school division funds, then the school division is the owner of the assistive technology device and may choose to transfer it under the discretion provided in *Code* §22.1-129.1. If the assistive technology device was donated to the school division, then it can be transferred if there were no conditions imposed by the donor that would prohibit the transfer.

The assistive technology device must meet the definition set forth in *Code* § 22.1-129.1.

“Children with disabilities” means those persons (i) who are age two to 21, inclusive, having reached the age of two by the date specified in § 22.1-254, (ii) who have intellectual disability or serious emotional disturbance, or are physically disabled, speech impaired, hearing impaired, visually impaired, or multiple disabled, or are otherwise health impaired including those who have autism spectrum disorder or a specific learning disability or are otherwise disabled as defined by the Board of Education and (iii) who because of such impairments need special education.

The child with a disability must have been using the assistive technology device prior to transferring from the school division that owns the assistive technology device. A transfer sale, loan, lease, or donation may also be considered if the student is using the assistive technology device within the terms of a trial to determine need or benefit. The student’s transfer cannot be used to trigger a transfer request for an assistive technology device that was not being used by the student at the time of the transfer. For example, a transfer request cannot be granted for an assistive technology device that had been provided in the past but use of which was discontinued, (b) the school division owns but was never actually used by the student, or (c) may have been provided for the student in the future if the student had remained in the school division, but had not yet been put into use by the student at the time the student transferred.

The special education student must actually be exiting the school division.

4. Are there any circumstances under which the school division is required to grant the transfer request?

No. *Code* § 22.1-129.1 (“Assistive Technology Transfer statute”) is entirely permissive. This does not mean that provision of the assistive technology device to the student may not be required pursuant to some other legal obligation. But nothing in the Assistive Technology Transfer statute requires a school division to transfer an assistive technology device simply because a request is made or because the student is transferring out of the school division.

5. Who determines whether or not the transfer request will be granted?

Each school division must establish who will consider transfer requests. There is no statutory requirement dictating who this must be. The decision maker should not be the student's IEP Team, although there is no legal impediment to the decision maker being a member of the IEP Team. The role of the IEP Team is to make the recommendation to the school division's designee that the student's assistive technology device be transferred and provide the justification for that recommendation. Notification to the IEP Team (including the parent and student) of the school division's decision whether or not to transfer the assistive technology device should be the responsibility of the school division's designee.

6. If the transfer request is granted, how will the school division determine whether it will offer to sell, lease, donate, or loan the assistive technology device?

The statute does not dictate how a school division determines the terms of transfer. The school division has the discretion to make this determination. School divisions may consider factors listed in B., C., and E. above.

7. Is there paperwork the school division should provide to the transferee?

The statute does not address paperwork requirements in connection with the assistive technology transfer. The Guidelines suggest as best practice that school divisions document the transfer and the transfer terms, and require the transferee to sign an agreement and a transfer receipt, even if the assistive technology device is being donated. A sample request form and transfer agreement are provided in connection with these Guidelines. School divisions may choose to draft their own agreement and request form, but should do so in conformity with the Guidelines.

8. If an assistive technology device is a piece of equipment that also has software or applications installed on the equipment that the student has been using, must the school division transfer the installed software or applications, as well?

Since the school division's decision to grant or deny an assistive technology transfer request is entirely within its discretion, so too is its decision to transfer or not transfer peripheral or accessory equipment, or a product system. In most cases, software or applications installed on an electronic device are also considered "assistive technology devices," so it is important to specify in a transfer request exactly what "devices," and device components are being requested. With certain assistive technology devices, the software or application used by the student may be an integral (and inseparable) part of the assistive technology device itself.

The school division's ability to transfer certain assistive technology devices may be restricted by the licensing agreements it has entered into with product manufacturers or distributors. It may not be within the school division's power to transfer certain assistive technology devices, or certain warranties. An example would be a student who is using

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an iPad with certain applications that have been purchased by the school division and customized over time for the student's use. The school division may be able to "wipe" the iPad and transfer that assistive technology device to the student, but may be prohibited by contract from transferring the "apps" or the customized content that was developed with the apps. This may affect the student's desire to have the assistive technology device transferred, and may also affect the school division's desire to transfer the assistive technology device.

9. If the assistive technology device is still under an express warranty, does the warranty transfer as well?

Whether or not such a warranty can be transferred depends upon the terms of the warranty itself.

10. If the school division transfers the assistive technology device for financial consideration (a sale or lease), what does the school division then do with that money?

The statute does not speak directly to this issue. It is the discretion of each school division to determine how to allocate funds received from a transfer unless otherwise required by federal law or regulation.

11. How will the school division determine a dollar figure for the assistive technology transfer, if it decides to sell or lease the assistive technology device?

The statute does not speak directly to this issue. It is the discretion of the school division to determine a fair price.

It is important to understand the difference between fair market value and a fair price. According to the United States Internal Revenue Service, fair market value is the "price that property would sell for on the open market." However, the purpose of the Assistive Technology Transfer statute is not to require a school division to sell a student's assistive technology device on the "open market." In fact, the point of the Assistive Technology Transfer statute is to afford students an opportunity to obtain their assistive technology devices without resort to the "open market." Thus, a school division has the discretion to determine what price is fair for the assistive technology device.

The school division is not required to sell the assistive technology device for its fair market value. A fair market price is the price set for an item after calculating its current fair market value. These Guidelines include a list of generally accepted consideration that a school division can reference in connection with arriving at transfer terms including a reasonable allowance for use.

12. When should assistive technology transfer requests be made? And how quickly does a school division have to respond to a transfer request? How quickly does the assistive technology device have to be transferred?

The transfer request should be made as soon as a date for the student's exit from the school division is known. The school division should respond to the transfer request as soon as possible, but certainly within 30 calendar days. The school division should make the assistive technology device available for delivery to the transferee as soon as possible, but within ten calendar days of receiving proof that the transferee has agreed to the terms and conditions of the transfer offered by the school division. Special circumstances causing a delay in transfer should be communicated to the requesting individual(s).

13. There are numerous products that qualify as an "Assistive Technology Device." Does a transfer request have to be made for even small, low dollar items?

Yes. The Guidelines apply to all assistive technology devices that meet the definition set forth in the statute.

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Sample Transfer Request Form (this is a 2 page document to be printed front and back)

<Virginia School Division Name>

Assistive Technology Equipment Release/Transfer Request: Confidential

Student Name:	ID# and DOB:
School:	Special Education Program(s)/Therapies:
Request made by:	Requestor's Title/Position:
Requestor's contact info (phone, e-mail):	Date of Request:
Equipment name:	Documented on IEP: <input type="checkbox"/> Yes <input type="checkbox"/> No Date of current/most recent IEP:
Does equipment being requested have components, software, product systems, applications or content that is also being requested? <input type="checkbox"/> Yes <input type="checkbox"/> No	If yes, please detail:
Reason for request: The student is (check one) <input type="checkbox"/> transferring to another school division <input type="checkbox"/> graduating <input type="checkbox"/> other: _____	Requesting transfer of equipment to: <input type="checkbox"/> school division: _____ <input type="checkbox"/> state agency: _____ <input type="checkbox"/> parent: _____ <input type="checkbox"/> the student. If so, is the student 18 or older and has the legal capacity to enter into a contract? <input type="checkbox"/> Yes <input type="checkbox"/> No If the student is 18 or older, does the student have a legal guardian? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> other: _____

Is the student currently using this device? <input type="checkbox"/> Yes <input type="checkbox"/> No How long has the student used the device?
Is the student using this device on a daily basis? <input type="checkbox"/> Yes <input type="checkbox"/> No
What functional capability is the equipment used for? <input type="checkbox"/> Communication <input type="checkbox"/> Mobility <input type="checkbox"/> Vision <input type="checkbox"/> Hearing <input type="checkbox"/> Reading <input type="checkbox"/> Independence to access to community or increase work productivity <input type="checkbox"/> Other (attach explanation)
Amount of reliance the student has on the device:
Is the device customized for this student? <input type="checkbox"/> No <input type="checkbox"/> Yes (attach detail)
Impact on the student if the device does not transfer:
Condition of the device: <input type="checkbox"/> Excellent <input type="checkbox"/> Good <input type="checkbox"/> Poor
Is the student/family in the process of obtaining this or a similar device through Medicaid or another agency or source? <input type="checkbox"/> No <input type="checkbox"/> Yes. If yes, what is the expected delivery date?
Do you know who paid for the device at the time it was acquired? <input type="checkbox"/> No <input type="checkbox"/> Yes (provide detail)

Attach additional pages, as needed.

Request consented to by: parent/guardian or student (if 18 or older and has the legal capacity to enter into a contract)

Signature: _____ Date: _____

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**** This section to be completed by the School Division Representative ****

Did the school division purchase this device using only school division funds? <input type="checkbox"/> Yes <input type="checkbox"/> No If not, please identify what other funding sources were used:
Does the school division believe that it has all legal title (ownership of) this device and all related components for which transfer is being requested? <input type="checkbox"/> Yes <input type="checkbox"/> No If no, please explain:
Can this device be used, or converted for use, by another student? <input type="checkbox"/> Yes <input type="checkbox"/> No
When was the device acquired by the school division?
Is the school division contractually prohibited from transferring the device or any installed component thereof? <input type="checkbox"/> No <input type="checkbox"/> Yes. If yes, please explain:
Is the device still under warranty? <input type="checkbox"/> No <input type="checkbox"/> Yes. If yes, when do any applicable warranties expire? Are the warranties transferable?
How many similar devices does the school division currently own? _____ of which # _____ are in use and # _____ are in surplus
Has the school division sold, leased or donated a similar device in the past 6 months? <input type="checkbox"/> No <input type="checkbox"/> Yes \$ _____
Is a fair market value of the device readily ascertainable? <input type="checkbox"/> No <input type="checkbox"/> Yes \$ _____ If yes, please state source of value information:

Transfer decision: **No, do not transfer** (provide list of alternative resources for obtaining Device)
 Yes*, transfer to (specify to whom): _____
Terms of transfer: **Donate** **Loan** _____ **(term)**
 (offer to) **Sell** \$ _____ **Lease** \$ _____ **for** _____ **(term)**

Device details (if transfer is recommended):

Name/description (include product codes or model numbers, as appropriate)	Serial Number(s)	Warranty information, if transferable, has been located and can be provided at time of transfer	Warranty expired or non-transferable. No warranty/"AS IS"

*If transfer is recommended, then the information from this form should be used to prepare the Transfer Agreement

Transfer approved by (name and title): _____

(Signature): _____ Date: _____

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OTHER TERMS AND CONDITIONS

2. Transfer of Title. Transferor hereby conveys and releases to the transferee all right and title to the Device. Should any third party assert a superior claim to ownership of the Device, Transferor shall cooperate with Transferee in identifying and providing information and assistance in responding to such a claim.

3. Disclaimer of Transferor's Warranties. This device is transferred "As Is," without any warranties of any kind, express or implied, except as provided in paragraph 1 above. Without limiting the generality of the foregoing, the implied warranties of merchantability and fitness for a particular purpose are hereby disclaimed by transferor.

4. Inspection. Transferor has urged Transferee to **carefully examine the Device** personally and/or by agents of Transferee's choosing, as Transferee is accepting the Device "AS IS" with all conditions and defects. Transferee warrants that Transferee has conducted any and all inspections of the Device that Transferee desires or deems necessary. **Transferee agrees to release and hold harmless Transferor from any and all liability and/or responsibility for any mechanical or other defects of the Device that may be discovered or arise after Transferee takes delivery.**

5. Delivery; Risk of Loss.

(a) In the event the basis for transfer is donation or loan (as indicated above), then Transferor agrees to have the Device available for delivery to Transferee within 10 days of receiving Transferee's signature on this Agreement.

(b) In the event the basis for transfer is sale or lease (as indicated above) then Transferor agrees to make the Device available for delivery to Transferee upon receipt of payment in full of the agreed upon amount.

(c) Risk of loss or damage shall pass to the Transferee when the Device is made available for delivery to Transferee. **After delivery, Transferee bears all responsibility for all care, maintenance, repair and/or upgrade associated with the Device.**

(d) In the event the basis for transfer is loan or lease, then Transferee must return the Device to Transferor at the expiration or termination of the lease or loan term in substantially the same condition as at the time of taking delivery. The lease or loan term shall immediately terminate in the event that the Student stops using the Device. If Transferee fails to return the Device at the expiration or termination of the applicable term, Transferee shall be liable to Transferor in the amount indicated above.

6. Entire Agreement. This document contains the entire agreement between the parties, and there are no other terms or agreements, whether oral or written, not herein stated. Any modification of this Agreement must be in writing and signed by both parties. The headings in this Agreement are inserted for convenience only and are not part of this Agreement.

7. Proof of Title. In the event the basis for transfer is a sale or donation, then Title to the Device shall pass from Transferor to Transferee upon delivery of the Device as set forth in Paragraph 5. This Agreement shall constitute a Bill of Sale upon delivery.

8. Affirmation. By signing below, each signatory affirms that the information contained on the first page of this Agreement is, to the best of his/her knowledge, correct, true and accurate. If the Device is not being transferred to the Student or the Student's parent/guardian, then Transferor represents and warrants to Transferee that the Student or the Student's parent/guardian has consented to transfer the Device in accordance herewith.

TRANSFEROR:

TRANSFEEE:

<Virginia School Division Name>

(Printed Name/Title)_____

Designee Signature:_____

Signature:_____

ACKNOWLEDGMENT OF PAYMENT RECEIPT (if any) ON _____ (DATE)

Payment in the amount of \$_____ received by Transferor: _____

ACKNOWLEDGMENT OF DEVICE DELIVERY AND RECEIPT ON _____ (DATE)

Device Delivered by: _____ Received by: _____