

# DISABILITIES & THE LAW

## WHAT OPTOMETRISTS NEED TO KNOW

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### Abstract

*Since 1990, federal legislation has been enacted which broadens the rights of individuals with disabilities. Portions of the Americans with Disabilities Act of 1990, the Individuals with Disabilities Education Act, and Section 504 of the Rehabilitation Act have a significant impact on the practice of optometry. The optometrist working with students with special needs should be aware of the rights of the individual and the process to obtain services. It is then possible for the vision care specialist to be a part of the multi-disciplinary team required for treatment and education of these patients.*

### Key Words

*Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act, Americans with Disabilities Act (ADA), specific learning disability, autism, traumatic brain injury, related services, assistive technology, individualized education plan (IEP), attention deficit disorder, low vision, due process, optometry, accommodations, inclusion, seriously emotionally disturbed, assessment, transition services*

In 1990, I wrote an article about what optometrists should know concerning the Education for All Handicapped Children Act of 1975 (EHA).<sup>1</sup> Since that time, significant new legislation has been enacted which broadens the rights of individuals with disabilities. Three separate laws are involved. The EHA has been renamed the Individuals with Disabilities Education Act (IDEA).<sup>2</sup> Section 504 of the Rehabilitation Act of 1973<sup>3</sup> is being increasingly applied to the field of education. The Americans with Disabilities Act of 1990 (ADA)<sup>4</sup> requires that public schools provide "reasonable accommodations" to persons with disabilities. Additions and alterations resulting from these laws all have an impact on the practice of optometry.

### EHA and IDEA

Like its predecessor EHA, IDEA mandates a free and appropriate public education (FAPE) for children and youth with disabilities. It also assures that the rights of these individuals and their parents or guardians are protected in terms of fairness, appropriateness, and due process in decision-making about the provision of special education and related services. IDEA makes it possible for states and localities to receive federal funds to assist in the education of infants, toddlers, preschoolers, children and youth with disabilities.

These stipulations provide that:

- \* All children with disabilities, regardless of the severity, will receive a free, appropriate public education (FAPE).
- \* An Individualized Education Program (IEP) or an Individualized Family Service Plan (IFSP) will be drawn up for every eligible child.
- \* All students with disabilities will be educated in the regular education en-

vironment to the maximum extent appropriate.

- \* All will have the right to receive related services necessary to fully benefit from special education instruction.
- \* Parents have the right to participate in every decision related to the identification, evaluation, and placement of their children.
- \* Parents must give consent for any initial evaluation, assessment or placement.
- \* Due process procedures fully protect the rights of parents and their children to challenge and appeal any decision related to identification, evaluation, and placement.
- \* Parents have the right to confidentiality of information.<sup>5</sup>

Especially critical, and consistent with the name change, is the move from using the term "handicapped" to the word "disabled." This is a result of being sensitive to the politically correct use of language. No longer do we speak of a handicapped child, but rather of a child with a disability; the child comes first and the disability second.

### Section 504 and ADA

Students with disabilities who do not qualify for special education may still be eligible for accommodations under Section 504 of the Rehabilitation Act of 1973, or ADA. Section 504 provides that:

"no otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."<sup>3</sup>

Section 504 and ADA thus cover a broader range of disabilities than the spe-

cial education law. How this is interpreted will be discussed further in the section on Eligibility.

IDEA, Section 504, and ADA all define a disability as an impairment which substantially limits a student in the areas of physical, sensory, emotional, communicative, cognitive and/or social abilities. The definition of a "special education setting" now includes places other than a school classroom, such as the home, hospital, nursing home and public institution.

### Eligibility

EHA provided services to children who were mentally retarded, hard of hearing, deaf, visually impaired, learning-disabled, seriously emotionally disturbed, orthopedically impaired, and other health impaired. With the passage of IDEA, Autism and Traumatic Brain Injury (TBI) have been added to the list of disabilities that may render children eligible for special education services. In addition, Attention Deficit Disorder (ADD) is now eligible under the categories of learning-disabled, seriously emotionally disturbed or other health impaired. These additions have significant ramifications for the optometrist.

**AUTISM** - Children with autism have previously been served under other categories, none of which fully described their needs. Autism is an extreme form of a pervasive developmental disorder (PDD). Children with PDD, whose symptoms are similar but less severe, are often included in this category. The inclusion of optometric interventions such as correction of refractive conditions and vision therapy can be critical to postural changes and increased social awareness that facilitate learning and language development for these children. These services can be included as an integral part of their educational program.

**TBI** - Frequently, the student with a head injury previously did not qualify for services unless his/her cognitive abilities or learning became impaired. It is now recognized that assessment and intervention for children with TBI is unique because of the rapid changes in their functioning in the two years post accident. Tests measuring levels of current functioning of both sensory and motor impairments are within the domain of the optometrist, who can add a great deal both here and in the area of intervention. Flexibility in programming is paramount.<sup>6</sup> Again the services that the optometrist can pro-

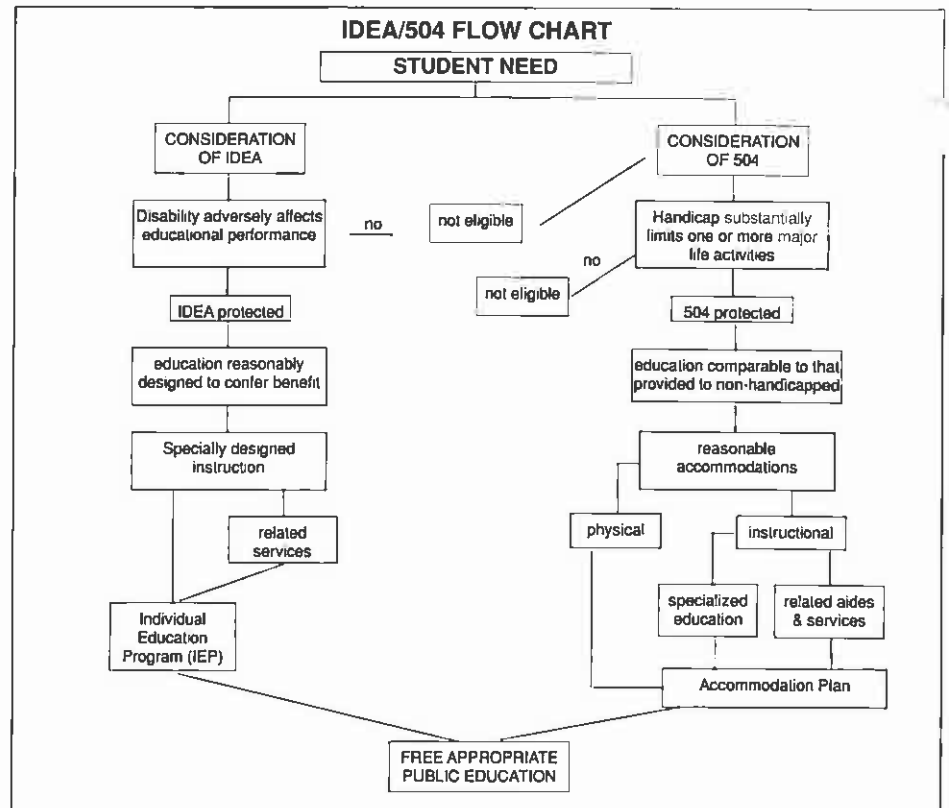


Figure 1. Reprinted with permission from the Council of Administrators of Special Education, Inc.

vide, especially in conjunction with occupational and physical therapists in the school or in a rehabilitation setting can frequently benefit the patient.

**ADD** - There has been considerable controversy as to whether ADD should be included in IDEA as a distinct disability category. Resistance to this, especially by those who do not believe that it is a separate and definable handicapping condition, has been strong. This issue has been resolved by a memorandum from the Department of Education<sup>7</sup> stating that in order for a child with ADD to be eligible for special education and related services under IDEA, the child must be found to have one or more specified physical or mental impairments.

Children with ADD can qualify for special education services if they satisfy the criteria of specific learning disability or seriously emotionally disturbed. They must meet the criteria of those categories, however. They may also qualify under the category of other health impaired.<sup>8</sup> The list of chronic problems within the definition of other health impairment includes those that result in limited alertness which adversely affects educational performance. Children with ADD thus may qualify here as well.

Consequently, children with ADD who previously may not have qualified for services under EHA can sometimes be considered disabled under IDEA. This accesses related services, such as occupational therapy, and accommodations, such as taking frequent breaks, for these children with underlying sensory processing problems. It is important for behavioral optometrists working with children with ADD to be aware of the availability of these related services on two counts. First, it has been my observation that some children with both ADD and visual dysfunctions will frequently benefit in terms of attention by virtue of vision therapy. Secondly, it allows the optometrist to make an appropriate referral to an occupational therapist or other professional whose intervention can contribute to solving this complex of problems.

### Section 504 and ADA

As was stated above, some students are identified as having one or more of the specified physical or mental impairments stipulated under the statutory guidelines of IDEA, but not to the degree that warrants classification for special education. Others, such as those with attention deficits, may not meet the requirements for

**SAMPLE PLAN  
SECTION 504**

John Doe has been determined eligible for services under Section 504 and the ADA because of a visual dysfunction. The following represents an intervention plan designed to meet his needs within regular education.

**I. MODIFICATIONS**

Slant-top desk and built-up chair to be provided by occupational therapy services. Tape recorder to be used in all classes provided by John's family. Preferential seating to be determined by classroom teacher. Extended time for tests, as needed.

**II. STRATEGIES**

Regular education teacher to monitor seating to assure that lighting is adequate. Additional time for standardized tests to be given in resource room.

**III. INTERVENTIONS**

John is responsible for transporting slant-top desk to rooms for science and social studies.

This plan will be monitored by \_\_\_ Mrs. Jones, Classroom teacher \_\_\_ and reviewed on:  
\_\_\_ 11/15/94 \_\_\_ Date  
\_\_\_ 2/15/95 \_\_\_ Next Review Date  
\_\_\_ 5/25/95 \_\_\_ Next Review Date

Figure 2.

IDEA categories, such as learning-disabled. In both cases, if the disorder or condition substantially limits the student's ability to function at school, the student can be considered handicapped within the guidelines of ADA and Section 504.

In some cases there will be duplicate coverage, as an individual may qualify under more than one law. All students eligible for special education and Section 504 are covered by ADA. Figure 1 is a Flow Chart that shows how to access services using either IDEA or 504.<sup>9</sup>

Accommodations and special services necessary for the student to benefit from a "full and appropriate public education" must be provided. In these cases, the school develops either a Pupil Assistance Plan or a Section 504 Plan. These plans include specifications of the modifications or materials that are needed, who shall implement the plan, timelines for implementation, including frequency and duration of contact, and how long the plan will be in effect prior to follow-up. Examples of modifications that an optometrist could ask for are a slant-top desk, a chair with arms, increased lighting, special seating, use of a tape recorder, and access to a computer. A typical Section 504 Accommodation Plan is shown in Figure 2.

**Assessment**

IDEA mandates a full, comprehensive evaluation by a multi-disciplinary team, assessing all areas related to the suspected

disability. These are the same requirements as EHA. New to the law is that reevaluations are required AT LEAST every three years. School systems sometimes interpret this as ONLY every three years. If a parent requests a reevaluation in any given area because progress or lack of progress is of concern, an evaluation of that area must be conducted. A reevaluation is not required before a significant change in placement. However, a review of current data is strongly recommended.

Sometimes parents do not agree with findings of the evaluation by the school system. As in the EHA, IDEA provides for an independent educational evaluation at district expense in such a case.

Optometric tests continue to be an important part of the assessment process. The optometrist's written report of his/her findings, and how visual and/or ocular dysfunctions could impact learning is often crucial. Furthermore the optometrist can collaborate with the members of the educational multi-disciplinary team, especially the school psychologist, occupational therapist, the resource teacher, and the person who completes the educational assessment.

The revised edition of the Woodcock-Johnson Psycho-Educational Battery<sup>10</sup> and the Third Edition of the Wechsler Intelligence Scale for Children (WISC-III)<sup>11</sup> have new subtests which measure visual skills. The optometrist working with the school system should request that

the psychologist administer the supplementary Symbol Search, Mazes, and Digit Span subtests on the WISC-III as they all have visual components. The optional Perceptual Organization and Processing Speed Index scores, obtained by combining scores on these and other subtests, are very helpful in substantiating the presence of visual problems. On the Woodcock-Johnson, Visual Closure and Picture Recognition are subtests which comprise the Visual Processing Cluster, and Visual Matching and Cross Out make up the Processing Speed Cluster. These, too, are essential ingredients of an assessment of any child suspected of having underlying visual problems.

A Section 504 evaluation also draws upon information from a variety of sources in the area of concern. Thus, pertinent optometric data will be useful in making a determination of a student's needs. Unlike IDEA, Section 504 has no provision for independent evaluations. However, the district must consider all evaluations presented, even if they were not done by the school system.

**The Individualized Education Plan (IEP)**

IEPs are required for children serviced under both IDEA and Section 504. If a child qualifies as having a disability, he is covered under IDEA. If he/she is denied eligibility under IDEA, he/she may nevertheless be eligible for services under Section 504. The IEP stipulated by IDEA is identical to that from EHA. To summarize, it must include long-term goals, short-term objectives, the frequency and duration of remediation, the title of the person delivering the service, methods and measures for evaluating progress, and the amount of time a child is to spend in regular education.

Some areas which are not frequently, but should be, included in the IEP are self-esteem, socialization, and behavior. If ANY of these areas is affected by the disability or is in need of support or modification, the IEP must describe exactly how modifications, accommodations, supplementations, or services are to be provided, whether they are in the regular or the special education setting. This could include any testing situation, not just at school, but also national or state testing. All of these continue to provide possibilities for input from the optometrist.

A new requirement that affects older students has been added to the IEP under IDEA. Beginning no later than age 16, and in some cases as young as 14, the IEP must include a statement of the "transition services" that the student will need before leaving the school setting. These are designed to help the student select, access, and succeed in post-secondary settings, such as college, vocational training, independent living, or employment. The planning involves input from the student, parents, secondary and post-secondary education professionals. Goals and objectives for activities of daily living, such as making change, dressing, taking public transportation, and telling time must be addressed. The IEP must also address any inter-agency responsibilities needed for the transition services to be successful. This could include Vocational Rehabilitation, Family and Protective Services, or other social service agencies. A very comprehensive publication is available on this subject from the National Information Center for Children and Youth with Disabilities.<sup>12</sup>

An example of an IEP is available in my previous article<sup>1</sup> and a sample 504 Plan is shown in Figure 2.

IDEA, Section 504 and ADA all clearly require that the FULL school experience for the student be addressed. This means that goals, objectives, modifications, and accommodations should be included not only for academic subjects, but for recess, lunch, art, music, physical education, extra-curricular activities, and school-sponsored events such as sports competitions, as well. This brings up the subject of inclusion.

Inclusion is an outgrowth of the efforts of some parents of children with severe disabilities to have them integrated into regular education settings. It is their contention that a self-contained special education class may not satisfy the law's requirement that students be placed in the least restrictive environment. IDEA has strengthened commitment to greater inclusion especially for the more severely disabled. However, this raises questions about placement for students with learning disabilities who have many unique and specific needs. The bottom line is that placement decisions must be made based on the IEP, not on programs available. The commitment to educate a student with disabilities in a regular classroom setting

should continue to the degree that it is consistent with meeting the specific needs of that student. Each decision must be the result of a cooperative venture involving educators, parents, and the student, when appropriate.

If school systems make an administrative decision to serve all students with disabilities in regular classrooms with supportive services, this could be a violation of the student's rights. It is generally agreed that full inclusion is only one option within the full continuum of placements mandated by Federal Law.

Since public schools require parent participation, parents who meet the ADA definition of a person with a disability are entitled to protection here, too. For instance, if a regular education student has a parent with a disability, the school must accommodate that parent at school-sponsored events such as football games and graduation.

ADA has even more power than Section 504 or IDEA because it affects private as well as public schools. Every student, no matter what his/her disability, in every school setting, is entitled to the same opportunities as every other student. The optometrist can act as a parent advocate, when appropriate, for services.

### Related Services

Related services are supportive services which are required to assist a student with a disability in benefiting from special education. In the past these have included speech and language therapy, occupational therapy, physical therapy, psychological services, adaptive physical education, transportation, and vision therapy in a number of states. The reader can refer to my earlier article<sup>1</sup> for a discussion on how vision therapy services can be integrated into an IEP. IDEA has added therapeutic recreation, social work services, rehabilitation counseling, and assistive technology devices and services.

Although all of these additions are important, the one most relevant to the profession of optometry is the addition of assistive technology devices and services.

IDEA defines an 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 functional capa-

bilities of individuals with disabilities," and an assistive technology service as "...any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device."<sup>13</sup>

Specifically, this service includes evaluation, provision, selection, coordination, training, and assistance in the use of any technology devices necessary for the individual with a disability to benefit from his/her educational setting. Assistive technology covers a broad range of areas, such as computer access, augmentative communication, adaptive toys and games, positioning and mobility or visual aids.

Computer access for all students eligible for special education is an essential component of the laws. At any undergraduate level, the necessity for this technology is determined on an individual basis by the multi-disciplinary team. Colleges and universities that do not make at least one computer in each computer lab available for adaptation to a variety of disabilities may be in violation of Section 504. Public colleges and universities that violate this resolution may also be found guilty under ADA.<sup>14</sup>

Other equipment could include, but not be limited to, screen-reading software and hardware, print enlargement and Braille printers and displays. Making computers accessible to the visually-impaired is analogous to making other campus facilities accessible to individuals who need wheelchairs or sign language interpreters. For the reader interested in the technology needs of persons with visual impairments, a relatively new publication, "Technology and Disability," devoted its first edition to this subject.<sup>15</sup>

Visual aids covers an enormous range of adaptations and devices. General methods for accommodating vision needs include: increasing contrast, enlarging images, and making use of tactile and auditory materials. In addition to lenses, prisms, and tints, devices for students with vision problems include magnifying apparatus, closed circuit television read/write systems, tape recordings, large print books, Brailled materials, synthesized voice, scanners, electronic note-takers, halogen or other lighting modifications, and visual stimulation such as light boxes. These should not be limited to the patient with low vision, but also used in the education plan as part of rehabilitation of stu-

dents with head injury and developmental problems such as autism and pervasive developmental disorder. It is essential that those in the related service areas understand the use of these aids, once they have been prescribed by the optometrist.

The optometrist must work with the professionals providing related services to assure that they are aware of the potential contributions of vision care to the patient's progress. When counselors and therapists are aware of the benefit of behavioral vision care, and knowledgeable about it, they can incorporate activities into their sessions that enhance and reinforce the work of the optometrist. For instance, understanding that lack of eye contact can be a result of visual dysfunction rather than shyness can be helpful to mental health professionals. Likewise, they can provide access to the behavioral optometrist for consultation.

### Due Process

Both IDEA and Section 504 require districts to provide impartial hearings for parents or guardians who disagree with the identification, evaluation, or placement of a student. In either case, a family may represent itself, bring along an advocate or hire an attorney. If the family of the student with the disability prevails, the district is responsible for attorney's fees as well as those of private professionals, if they are incurred. A professional advocate's fees are not reimbursable. Timelines are stipulated federally, and initially interpreted locally, but may not be less stringent than national guidelines.

### Conclusion

The optometrist working with students who have visual dysfunctions must be knowledgeable not only about how these conditions affect learning, but also about the services and support systems an eligible patient is entitled to by law. Since 1990, revisions and additions have been made which broaden coverage. The complexity of eligibility, access, and delivery requires some study. However, by knowing the basics of the laws, especially those governing students with low vision, learning disabilities, traumatic brain injury, autism, and attention deficits, the optometrist can provide a major service for his patient.

Because laws vary state to state, it is helpful to obtain a copy of the state's interpretation of IDEA, ADA, and Section

504. There may also be local attorneys or advocates for the disabled who can counsel families and professionals as to their rights. It is essential that the optometrist be part of this multi-disciplinary team as vision is often an essential contributor to the disability and its manifestations.

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