This overview synthesizes recent published [FN1] letters of findings (LOFs) [FN2] issued by the Office for Civil Rights (OCR) specific to K–12 students who are on individual health plans (IHPs). [FN3] The emphasis is the effect of the Americans with Disabilities Amendments Act (ADAAA) in terms of eligibility, [FN4] although it also covers interrelated issues in these LOFs. [FN5] It does not cover LOFs that are specific to related but separate issues, such as health–related accommodations prior to the ADAAA [FN6] and the ADAAA's effect on the eligibility/FAPE process more generally. [FN7] It also does not extend to case law concerning related but separable issues, such as administration of medication, [FN8] implementation of health–related provisions of 504 Plans, [FN9] or IHPs incorporated in IEPs. [FN10] The accompanying chart provides for each LOF the citation, a summary of the facts as a result of OCR's investigation, OCR's rulings (or conclusions), and a sampling of the provisions in the resulting voluntary resolution agreement.

The primary lesson, in terms of compliance with OCR's view, [FN11] appears to be that school districts should promptly arrange to screen all students on IHPs to determine which ones are covered by the § 504 “child find” obligation [FN12] and, for those children, to obtain parental consent, conduct a *579 timely eligibility evaluation, and provide the procedural safeguards notice. The corollary lesson is to provide a 504 Plan, which conforms to the § 504 definition of free appropriate public education (FAPE), [FN13] for these students duly determined to meet these eligibility standards. The choices to meet this final requirement appear to range from 1) identifying the IHP as the 504 Plan to 2) developing a 504 Plan that incorporates the contents the IHP and adds, if any, the necessary accommodations and/or services to meet the individual needs of the eligible student “as adequately as the needs of non–disabled students are met.” [FN14]

[FN1] Education Law Into Practice is a special section of the EDUCATION LAW REPORTER sponsored by the Education Law Association. The views expressed are those of the author and do not necessarily reflect the views of the publisher or the Education Law Association. Cite as 276 Ed.Law Rep. [577] (April 12, 2012).

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[FN1] Although “published” has various meanings with regard to court decisions or other primary legal sources, here it refers to OCR LOFs published in the INDIVIDUALS WITH DISABILITIES LAW REPORT (IDELR). It does not extend to other relevant LOFs in LRP’s electronic database. See, e.g., Springer (NM) Mun. Pub. Sch., 111 LRP 65460 (OCR 2011) (concluding that IHP did not suffice for student eligible under Section
504).

[FN2]. Although LOFs show OCR’s compliance posture in enforcing Section 504, the following caveat merits attention: “Letters of findings are not formal statements of OCR policy and they should not be relied upon, cited, or construed as such. OCR’s formal policy statements are approved by a duly authorized OCR official and made available to the public.” Catoosa Cnty. (GA) Sch. Dist., 57 IDELR ¶ 141 (OCR 2011). Moreover, as this same LOF illustrates, the resulting “voluntary” resolution agreement is not equivalent to an officially imposed remedy. Id.

[FN3]. “IHP” is used generically herein to cover what some districts label with various other terms, such as “individual healthcare plan,” “medical/health plan” or “medical management plan.”

[FN4]. See, e.g., Perry A. Zirkel, History and Expansion of Section 504 Student Eligibility: Implications for School Nurses, 25 I. SCH. NURSING 256 (2009); Perry A. Zirkel, Legal Perspectives: New Section 504 Student Eligibility Standards, 41 TEACHING EXCEPTIONAL CHILD. 68 (June 2009).

[FN5]. In some cases, the interrelationship is blurry. For example, in a covered case of a student with food allergies, the summary infra does not extend to the harassment issue. Catoosa Cnty. (GA) Sch. Dist., 57 IDELR ¶ 141 (OCR 2011).

[FN6]. See, e.g., Westport (CT) Pub. Sch., 54 IDELR ¶ 329 (OCR 2009) (concerning § 504 eligibility of student with asthma and mold allergy); Buncomb (NC) Sch., 54 IDELR ¶ 235 (OCR 2009) (concerning blood sugar checks for students with diabetes); N. Penn. (PA) Sch. Dist., 53 IDELR ¶ 336 (OCR 2009) (concerning implementation of IEP provision for air–purifying measures for student with airborne allergies); Pine–Richland (PA) Sch. Dist., 53 IDELR ¶ 200 (OCR 2009) (concerning disclosure of child's food allergy to her classmates as part of efforts to maintain safe environment); Henry Cty. (MO) R–I Sch. Dist., 52 IDELR ¶ 233 (OCR 2009) (concerning implementation of 504 plan provision for gluten–free diet); Bethlehem (NY) Cent. Sch. Dist., 52 IDELR ¶ 169 (OCR 2009) (concerning exclusion of student with 504 plan for food allergy from culinary arts class, contrary to medical information).

[FN7]. See, e.g., Virginia Beach (VA) City Pub. Sch., 54 IDELR ¶ 202 (OCR 2009) (found that district failed to consider whether the student's ADHD substantially limited additional major life activities, such as concentrating, thinking, and/or communicating); Union City (MI) Cmty. Sch., 54 IDELR ¶ 131 (OCR 2009) (ruling that the district failed to provide a timely and appropriate evaluation under § 504 for a student with bone cancer by 1. not conducting the evaluation until several months after notification of her medical condition, 2. using unduly restrictive, learning–based definition for eligibility, 3. not considering all relevant information, particularly of a medical nature; and 4. not providing individualized FAPE via a knowledgeable team); Aurora (CO) Sch. Dist., 52 IDELR ¶ 171 (OCR 2009) (ruling that district violated by refusing evaluation of “smart” student with peanut allergy and asthma plus not providing procedural safeguards notice). For a discussion of the FAPE consequences of the ADAAA, see Perry A. Zirkel, Does Section 504 Require a Section 504 Plan for Each Eligible Non–IDEA Student? 40 J.L. & EDUC. 407 (2011).

[FN8]. See, e.g., Davis v. Francis Howell Sch. Dist., 138 F.3d 75 (8th Cir. 1997); DeBord v. Bd. of Educ., 126 F.3d 1102 (8th Cir. 1997) (ruling that § 504 and the ADA do not require administration, to an eligible student, of medication that is beyond the recommended dosage); R.K. v Bd. of Educ., 755 F.Supp.2d 800 [266 Ed.Law Rep. [193]] (E.D. Ky. 2010) (ruling that offer to provide insulin pump monitoring in another district school sufficed under § 504/ADA rather than hiring nurse in neighborhood school for kgn. child with Type I diabetes); Am.
Nurses Ass'n v. O'Connell, 110 Cal.Rptr.3d 305 [257 Ed.Law Rep. [778]] (Ct. App. 2010), review granted, 116 Cal.Rptr.3d 194 (2010) (ruling that state nurse practice act did not allow school personnel who were not licensed nurses to administer insulin to children with diabetes per the child's IEP or 504 plan); cf. P.K. v. Middleton Area Sch. Dist., 56 IDELR ¶ 105 (D.N.H. 2011) (ruling, under the IDEA, that district did not violate the IEP provision for monitoring and maintaining latex–free environment).

[FN9]. See, e.g., Oxford Hills (ME) Sch. Dist., 57 IDELR ¶ 83 (OCR 2011) (finding that district complied with field trips provision in 504 Plan for student with diabetes).

[FN10]. See, e.g., Prince William Cnty. (VA) Pub. Sch., 57 IDELR ¶ 172 (OCR 2011) (clarifying that such IHPs are concurrently within OCR's § 504 jurisdiction).

[FN11]. The courts do not necessarily share the procedural rigor of OCR's position. For a discussion of the difference with a focus on 504 Plans, see Zirkel, supra note 7.

[FN12]. This obligation is to conduct an evaluation in accordance with the § 504 regulations for students whom the district reasonably believes may have a physical or mental impairment that substantially limits a major life activity under the applicable standards of the ADAAA. As the summarized cases reveal, limiting the scope of the Child Find screening or subsequent evaluation to the major life activity of learning clearly violates the Section 504 definition for eligibility, not only after but also before the effective date of the ADAAA.

[FN13]. 34 C.F.R. § 104.33(b) (“regular or special education and related aids and services”).

[FN14]. Id. This definition and the accompanying requirement for compliance with the applicable procedural safeguards provision.

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