

**SETTLEMENT AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
LESLEY UNIVERSITY
DJ 202-36-231**

Background

In or around October 2009, the United States Department of Justice (“United States”) received a complaint alleging that Lesley University (“Lesley” or the “University”) violated Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12181-12189 (“ADA”) by failing to make necessary reasonable modifications in policies, practices, and procedures to permit students with celiac disease and/or food allergies (collectively “food allergies”) to fully and equally enjoy the privileges, advantages, and accommodations of its food service and meal plan system. The United States initiated an investigation of these claims and the University has cooperated. The United States alleges that the University’s policies and practices concerning students with food allergies did not comply with Title III of the ADA. The University maintains that it has taken and will continue to take positive, good faith steps to make reasonable modifications to its food service policies, practices, and procedures and to work with students on a case-by-case basis to address the needs of individual students with food allergies.

In consideration of the terms set out in this document, the University and the United States (the “Parties”) agree to enter voluntarily into this Settlement Agreement (the “Agreement”). Nothing herein shall be deemed to be an admission or acknowledgment by the University that it has violated the ADA, its accompanying regulations, or any other federal or state law.

Lesley University is a private nonprofit university with approximately 8,000 students, located in Cambridge, Massachusetts, and is a public accommodation within the meaning of 42 U.S.C. § 12181(7)(J) and 28 C.F.R. § 36.104. As a public accommodation, Lesley is subject to the nondiscrimination requirements of Title III of the ADA, 42 U.S.C. § 12182, and its implementing regulation. Title III prohibits a private university from discriminating against any individual on the basis of disability in the full and equal enjoyment of the university’s goods, services, facilities, privileges, advantages, or accommodations. 42 U.S.C. § 12182 and 28 C.F.R. §§ 36.201, 36.202. As a public accommodation, Lesley acknowledges that it must also make reasonable modifications in policies, practices, or procedures, when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302

Food allergies may constitute a disability under the ADA, 42 U.S.C. § 12102. Individuals with food allergies may have an autoimmune response to certain foods, the symptoms of which may include difficulty swallowing and breathing, asthma, and anaphylaxis. For example, celiac disease is an autoimmune disorder that affects the major life activity of eating and the major bodily functions of the immune, digestive, bowel, and neurological systems. Celiac disease is

triggered by consumption of the protein gluten (found in foods containing wheat, barley, or rye), which can cause permanent damage to the surface of the small intestines and an inability to absorb certain nutrients, leading to vitamin deficiencies that deprive the brain, peripheral nervous system, bones, liver and other organs of vital nourishment. *See, e.g., Celiac Disease Definition*, U.S. Nat'l Library of Medicine, Nat'l Inst. of Health, A.D.A.M. Medical Encyclopedia (Jan. 20, 2010), available at <http://www.ncbi.nlm.nih.gov/pubmedhealth/PMH0001280/>. The Parties agree that it is in the Parties' best interests, and the United States believes that it is in the public interest, to resolve this dispute amicably and without litigation. The Parties have therefore voluntarily entered into this Agreement, agreeing as follows:

Resolution Terms

1. Compliance with the ADA

The University, its officers, employees, successors, and assigns, agree to comply with Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12181-12189, and 42 U.S.C. § 12203, and the implementing regulation, 28 C.F.R. pt. 36, including, but not limited to, the following:

- (a) The University acknowledges that it has a continuing obligation, and it is the University's policy, to make reasonable modifications in policies, practices, and procedures when the modifications are necessary to afford the University's goods or services to students and prospective students (collectively "students") with disabilities, 42 U.S.C. § 12182(b)(2)(A)(ii) and 28 C.F.R. § 36.302; and
- (b) The University acknowledges that it has a continuing obligation, and it is the University's policy, to refrain from engaging in retaliation, coercion, interference, intimidation, or any other action prohibited by 42 U.S.C. § 12203 and 28 C.F.R. § 36.206.

2. Disability Services for Students Policy

As of the effective date of this Agreement, the University agrees to amend its Disability Services for Students Policy (the "Amended Policy"). A copy of the Amended Policy is attached as Exhibit A. In addition,

- (a) Within thirty (30) business days¹ of the effective date of this Agreement, the University agrees to provide a link on the first page of its internal website service to the Disability Services Main Page and will post the Amended Policy on the Disability Services Main Page at www.lesley.edu/services/disability.
- (b) The University also agrees to separately distribute copies of the Amended Policy to employees and contractors in the Admissions, Residence Life, and Disability Services Offices who have contact with students and their families. Thereafter, the University agrees to provide a copy of the Amended Policy to all newly hired employees in the Admissions, Residence Life, and Disability Services Offices

¹ Business days refers to days in which the University is in session.

who have contact with students and their families, within seven (7) business days of their hire date.

- (c) Within thirty (30) business days of the effective date of this Agreement, the University will physically post the Amended Policy on a bulletin board in the Disability Services office and distribute the Amended Policy to all undergraduate and graduate students via e-mail. Beginning in academic year 2013-2014, the University will insert a summary of the Amended Policy, with a web address link to the full Amended Policy, in the University's undergraduate and graduate Student Handbooks.
- (d) Within forty-five (45) business days of the effective date of this Agreement, the University agrees to provide the United States with proof of the adoption of the Amended Policy and the posting of the Amended Policy on its website(s), and will provide the United States with a photograph of the posting of the Amended Policy in the Disability Services office.
- (e) Within sixty (60) business days of the effective date of this Agreement, the University will amend its contract with the University's food service provider (the "Food Service Provider") to formalize its current practice of requiring the Food Service Provider to comply with the University's policies and procedures on reasonable modifications. In addition, the University agrees to amend its contract with the Food Service Provider to formally include a requirement that each of the Food Service Provider's staff be provided with the educational training program described in Paragraph 6 of this Agreement. The University agrees to enforce the Food Service Provider's compliance with the contractual provisions referenced in this Paragraph.

3. Disability Services

- (a) The University will obtain and retain a record of identifying information from persons who seek information about food-related disability services at the University throughout the term of this Agreement. Identifying information includes, but is not limited to, the following: name; address; telephone numbers (home, work, mobile); best number and best time to call; and email address.
- (b) The University will advise students with food allergies (or others acting on a student's behalf) who request reasonable modifications to contact Disability Services. As set forth in the University's Procedures for Requesting Modifications (which is referenced in the Amended Policy), upon receiving a request or inquiry concerning reasonable modifications, Disability Services will meet with the student individually and work with the student cooperatively to fashion an individualized plan for the student. This is intended to be an interactive process in which the student and the University work together to formulate the best modification plan available for the student. Depending upon the individual circumstances, the University may allow students to be exempt from the mandatory meal plan as a possible form of a reasonable modification.

The University will ensure that any modification plan is provided in the most integrated setting appropriate to the needs of the individual with the disability. 42 U.S.C. § 12182(b)(1)(B) and 28 C.F.R. § 36.203. After engaging in this interactive process, the University will provide students with food allergies with written disability modification letters detailing the specific modification plan tailored to that student. The University recognizes that the modification process may be an ongoing one that requires additional changes throughout the student's enrollment at the University and will work with students to update their food allergy modification plans, as necessary.

- (c) Notwithstanding the process set forth in Paragraph 3(b), the University agrees to provide reasonable modifications to students with food allergies during the interactive process described above. After the student and the University engage in the interactive process, even if a student has not executed a written disability modification letter, the University agrees to provide modifications if the modification is reasonable and does not fundamentally alter the nature of the University's goods, services, facilities, privileges, advantages, or accommodations.

4. Dining Services

- (a) Upon the effective date of this Agreement, the University agrees to post prominent notices concerning food allergies at each of its five student dining halls or food eatery facilities; the notices will be printed in a bold font no smaller than 40 points and will state the following, or something substantially similar to the following: "Food-Allergic Individuals: Be aware that we handle and prepare egg, milk, wheat, shellfish, fish, soy, peanut, tree nut products, and other potential allergens in our cafes and kitchens. Before placing your order, please inform your server if you or a person in your party has a food allergy. Please direct questions to the manager."
- (b) The University agrees to display the notice located at [http://www.foodallergy.org/files/FoodAllergiesEnglish 2009 HR.pdf](http://www.foodallergy.org/files/FoodAllergiesEnglish%2009%20HR.pdf) in a prominent location in the cooking areas and/or food preparation areas in each dining hall or food eatery.
- (c) The University agrees that its Food Service Provider will continue to provide meals made without specific allergens to students with food allergies who have food allergy modification plans under the process described in Paragraph 3. The Food Service Provider will take reasonable steps to prevent the food from containing the specific allergens at issue for the student, to the extent possible. The food will also be nutritionally comparable to the food choices offered to other students, to the extent reasonably possible. The University's dining hall food lines will continue to offer and identify a variety of food options made without certain allergens (e.g., wheat, dairy, nuts), and the Food Service Staff will take reasonable steps to avoid cross-contamination. To further minimize the risk of cross-contamination from meals obtained in the general dining hall food lines, the

University may also offer students with food allergies the option to pre-order their meals, consistent with the procedures outlined in Paragraph 4(d). All students with food allergies who have registered with Disability Services and engaged in the interactive process will have the choice to pre-order their meals or obtain their meals from the food lines.

- (d) **Pre-Order Option:** The University agrees to continue to offer a Pre-Order Option for students with food allergies to pre-order their daily lunch and dinner in accordance with the process defined in this paragraph.
- (i) As of the date of this Agreement, the Pre-Order Option will allow students to review the online daily dining hall and food eatery menus and to e-mail their requested meal choices to the University's Food Service Manager, the Food Service Executive Chef, or the Dining Hall Manager.
 - (ii) The Pre-Order Option will allow students to pre-order their meals if they give at least twenty-four (24) hours advanced notice before the meal, to ensure that the Food Service Provider has or can obtain the necessary ingredients to prepare the specific meal request without the allergen(s) at issue. The Food Service Provider will make reasonable efforts to fulfill all reasonable meal requests, even if the requests are not made in a timely manner, but cannot guarantee that it will have the necessary ingredients on hand to prepare the specific meal request to be made without specific allergens if it does not have at least twenty-four (24) hours advanced notice.
 - (iii) If the Food Service Provider is unable to fulfill a student's particular meal request because the request is not made in a timely manner, the Food Service Provider will make reasonable efforts to provide alternative meal options made without specific allergens for the student.
 - (iv) The Food Service Provider will prepare all meals made without specific allergens, including pre-ordered meals, in a designated area within the University's cooking and food preparation areas in order to avoid cross-contamination.
 - (v) The Food Service Provider will provide these meals in a dedicated space at the White Hall Dining Hall, referenced in Paragraph 4(f), or transport the meals to the University's other dining halls or food eateries, as referenced in Paragraph 4(e). Subject to review and concurrence by counsel for the United States, the University agrees to continually review and revise this process, as necessary, for the term of this Agreement.
- (e) The University understands that students may be at or near different parts of campus during lunch and dinner and might prefer to have their meals delivered to these locations. Accordingly, when students order meals via the Pre-Order Option described in Paragraph 4(d), students may request that the University deliver their meals to the University's other dining hall and food eatery facilities. Students should provide the Food Service Provider with reasonable twenty-four

(24) hours advanced notice to allow the Food Service Provider to prepare and deliver the meal to the designated location. The University will make reasonable efforts to deliver the meals to the designated location after receiving 24 hours advanced notice, but in certain circumstances may be unable to deliver meals in a timely manner due to inclement weather or other transportation impediments. Due to the limited size and capacity of the University's dining hall kitchens, the University will prepare such meals at the White Hall kitchen facility. These meals will then be delivered to the other University kitchens, where they are kept separate to avoid cross-contamination.

- (f) The University agrees to continue to provide students with food allergies a separate area to store and prepare food (the "dedicated area") in the manner set forth below. As of the date of this Agreement, the University will continue to dedicate a restricted room adjacent to the White Hall dining room and accessible to the University's Student Center. The University will provide identified students with food allergies, who have engaged in the interactive process as set forth in Paragraph 3(b), with card access to the dedicated area. The University will restrict access to the dedicated area to the identified students with food allergies and ensure that these students can access the dedicated area at any time during the months in which the University is in session. While neither the University nor the Food Service Provider can fully ensure that students with access to the dedicated area do not cross-contaminate the dedicated area, the University will take reasonable steps to avoid cross-contamination in the dedicated area and will develop and maintain a process for educating students with food allergies who have access to the dedicated area on how to avoid cross-contaminating the dedicated area. The University will maintain the dedicated area and ensure that it contains the following:
 - (i) A sink and counter area, dish rack, and other kitchen supplies, (i.e., paper towels, dish soap, sponges, etc.), refreshed as necessary;
 - (ii) A refrigerator and freezer for perishable items;
 - (iii) Cabinet space for non-perishable items;
 - (iv) Separate appliances, including a microwave and toaster; and
 - (v) A food warmer to keep pre-ordered meals warm.
- (g) The University agrees to continue to allow students with access to the dedicated area to submit their individualized and specific "shopping lists" of requested food made without allergens to the Food Service Provider. The University will ensure that the Food Service Provider purchases the requested items in a timely manner (approximately once or twice per week). The University also agrees to ensure that the Food Service Provider independently monitors the food supply in the dedicated area and replenishes the food supply as necessary.

- (h) The University recognizes that students with food allergies may wish to purchase food outside of the University (at local restaurants, grocery stores, and other establishments), through the use of their student CashLynx account. The University agrees to make reasonable efforts to retain and obtain vendors that offer food made without allergens to participate in the CashLynx card program. As of the date of this Agreement, there are multiple vendors that provide allergen-free food options and accept CashLynx card payments.
- (i) Within thirty (30) business days of the effective date of this Agreement, the University will provide a separate link on the first page of its internal website to the Dining Service Main Page (the “DS Main Page”). The DS Main Page will advise students that the University will provide food options for students with food allergies in all Lesley University campus dining halls and food eateries. The DS Main Page will also provide a link to the Food Service Providers’ online menus of the dining halls and food eateries and include updated weekly meal options for students with food allergies. The DS Main Page will also provide a link to “Information Regarding Food Allergies” (or its equivalent). The link regarding food allergies will provide:
 - (i) Contact information for the dining services staff person(s) designated as the contact person(s) pursuant to Paragraph 4(d) above;
 - (ii) A description of and link to the Amended Policy; and
 - (iii) A description of and link to the Complaint Resolution Procedure described in Paragraph 5 below.

5. Modification Appeal Process

The University recognizes that despite its good faith and reasonable efforts to make reasonable modifications of its policies, practices, and procedures for students with food allergies, students may ultimately disagree with the University’s proposed modifications. If a student with food allergies disagrees with the determinations made by Disability Services after the student has engaged in the interactive process, the student may request a review by the Executive Director of Academic Support Services (Lesley’s ADA/Section 504 Coordinator), consistent with the Amended Policy referenced in Paragraph 2. Appeals of this review are heard by the Dean of Student Life and Academic Achievement.

6. Complaint Resolution Procedure

In general, students may also file complaints of discrimination pursuant to the University’s Office of Equal Opportunity and Inclusion Complaint Resolution Procedure (the “Complaint Resolution Procedure”), referenced in the Amended Policy.

7. Educational Program

- (a) Food Service Managers

- (i) Within thirty (30) business days of the effective date of this Agreement, the University will require that the Food Service Provider train its managers and employees on how to comply with the terms of this Agreement.
 - (ii) Within sixty (60) business days of the effective date of this Agreement, the Food Service Managers will attend a “ServSafe” food handling and food service management class offered by the National Restaurant Association Educational Foundation. The University will provide the United States with proof of completion of the course within ten (10) business days of training.
 - (iii) Within sixty (60) business days of the effective date of this Agreement, and at least annually thereafter, the University will ensure that the Food Service Provider’s regional nutritionist will, as it has done in the past, visit the University to discuss the nutritional needs of students with food allergies and to reevaluate the Food Service Provider’s policies and procedures. In addition, the University will ensure that the Food Service Managers receive annual training concerning the nutritional needs of students with food allergies.
- (b) Food Service Staff
- (i) Within thirty (30) business days of the effective date of this Agreement, the University will require that the Food Service staff is trained regarding the terms of this Agreement.
 - (ii) For the duration of this Agreement, to ensure that the Food Service Provider’s staff complies with the terms of this Agreement, the University will require the Food Service Provider to continue to provide educational training to all food service staff a minimum of twice per year, including at least once before the fall and spring semesters begin. This mandatory training will include the following:
 - (1) Instruction on celiac disease and food allergies, including food products that contain allergens, cross-contamination, and proper food storage and preparation;
 - (2) Instruction on how to handle inquiries regarding food allergies, including questions regarding ingredients and sub-ingredients in the meals;
 - (3) Instruction that the on-site Food Service Manager should promptly notify Disability Services when a student seeks modifications to, or an exemption from, the University’s mandatory meal plan; and
 - (4) A question and answer session to review each of the foregoing areas.

- (iii) In addition to the Food Service Provider's formal, twice yearly mandatory allergy awareness training, the University will require the Food Service Managers to conduct monthly staff meetings that address allergy awareness and food safety practices.
- (c) Lesley University Employees and Contractors
 - (i) Within ninety (90) business days after the effective date of this Agreement and thereafter at least once per year, the University agrees to provide an educational training program regarding its obligations under Title III of the ADA to all employees and contractors in Residence Life and Disability Services who have contact with students and their families. This training can be conducted by the University via a commercially available program.
 - (ii) Within seven (7) business days of the completion of the training referenced in Paragraph 6(c), the University will provide the United States with proof that this training has occurred, including a dated copy of the agenda and a dated sign-in sheet with the names and titles of the employees and contract employees who received the training.

8. Reporting and Document Retention

- (a) For the duration of this Agreement, the University agrees to preserve all records related to this Agreement. The University also agrees that upon ten (10) business days' written notice, representatives of the United States are permitted to inspect and copy any of the University's records related to this matter or inspect any premises under the University's control bearing on compliance with this Agreement at any and all reasonable times, provided, however, that the United States will endeavor to minimize any inconvenience to the University from such inspections.
- (b) Within sixty (60) business days after the effective date of this Agreement and thereafter forty-five (45) days prior to each anniversary of the effective date of this Agreement, the University agrees to submit a written report to the United States describing all actions taken relating to its compliance with this Agreement. The University's report will include appropriate documentation, including any relating to the Policies referenced in this Agreement and summaries of all Office of Equal Opportunity and Inclusion complaints and investigatory reports relating to food allergies.

9. Monetary Payment

- (a) Pursuant to 42 U.S.C. § 12188(b)(2), the University agrees to pay the sum of fifty thousand dollars (\$50,000) to the individuals previously identified by the United States. The University agrees to make such payments to the previously identified individuals in an amount and manner agreed to by the Parties. The United States will deliver such payments when the identified individual has signed a Waiver

and Release of Claims and upon receipt of the signed Waiver and Release of Claims by counsel for the United States.

10. Miscellaneous Provisions

- (a) Failure by the United States to enforce this Agreement with respect to any of its provisions or deadlines shall not be construed as a waiver of the right of the United States to enforce other deadlines and provisions of this Agreement.
- (b) All materials sent to the United States pursuant to this Agreement shall be sent either by .pdf attachment or by overnight, prepaid delivery, to Alyse Bass, Senior Trial Attorney, and/or William Lynch, Trial Attorney, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20005, Attn: DJ #202-36-231.
- (c) The effective date of this Agreement is the date of the last signature to this Agreement.
- (d) This Agreement, including Exhibit A, constitutes the entire Agreement between the Parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement will be enforceable under its provisions.
- (e) This Agreement is limited to resolving claims under the ADA related to the University's obligations to make reasonable modifications to its meal plan and services for students with food allergies, and does not purport to remedy any other existing or potential violations of the ADA or any other federal, state, or local law. The University acknowledges that this Agreement does not limit the University's continuing responsibility to comply with all aspects of the ADA and all other federal laws.
- (f) The Parties agree that, as of the effective date of this Agreement, litigation is not "reasonably foreseeable" concerning the matters described in the introductory paragraph. To the extent that either party previously implemented a litigation hold to preserve documents, electronically stored information (ESI), or things related to the matters described in the introductory paragraph, the party is no longer required to maintain such a litigation hold. Nothing in this Paragraph relieves either party of any other obligations imposed by this Agreement.
- (g) A copy of this Agreement and any information contained in it, including the Amended Policy, will be made available to any person by the University or the United States, upon request.
- (h) This Agreement shall be binding on the University and its successors in interest, assigns, agents, employees, and contractors. The University has a duty to notify any and all successors in interest of this Agreement and the duties and responsibilities it imposes on the University. In the event the University seeks to

transfer or assign all or part of its obligations under its meal program, and the successor or assignee intends to carry on some or all of the University's responsibilities, the University shall, as a condition of the transfer or assignment, obtain the written accession of the successor or assignee to any obligations remaining under this Agreement for the remaining term of this Agreement.

- (i) The University and the United States recognize that the process and procedures necessary to reasonably modify the University's meal plan and services for students with food allergies are not static, and that these issues in particular are constantly evolving. Accordingly, the University agrees to continue to evaluate the policies and procedures set forth herein, and to modify and revise such policies as necessary to remain in compliance with Title III of the ADA. Pursuant to Paragraph 7 above, the University will notify the United States of any substantive changes to the policies and procedures set forth in this Agreement.

11. Duration of Agreement

- (a) This Agreement will remain in effect for three (3) years from its effective date.
- (b) The United States may review compliance with this Agreement at any time. If the United States believes that the University has failed to comply in a timely manner with any requirement of this Agreement, the United States will so notify the University in writing and attempt to resolve the issue in good faith. If the United States is unable to reach a satisfactory resolution of the issue within sixty (60) days, after providing notice to the University and allowing the University an opportunity to cure, the United States may institute a civil action in federal district court to enforce the terms of this Agreement, or take other action to enforce Title III of the ADA.

12. Time for Performance

Any time limits for performance imposed by this Agreement may be extended by the mutual written consent of the United States and the University.

Executed this 20 day of December, 2012.

For the United States of America:

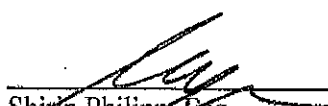
Carmen M. Ortiz
United States Attorney
Eve A. Piemonte Stacey
Assistant United States Attorney
United States Attorney's Office
One Courthouse Way, Suite 9200
Boston, MA 02210

Thomas E. Perez
Assistant Attorney General
Eve L. Hill
Senior Counselor to the Assistant
Attorney General
Civil Rights Division
Gregory B. Friel, Acting Chief
Kathleen P. Wolfe, Special Litigation
Counsel
Jana L. Erickson, Deputy Chief



Alyse S. Bass, Senior Trial Attorney
William F. Lynch, Trial Attorney
Disability Rights Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W. - NYA
Washington, D.C. 20530

For Lesley University:


Shirin Philipp, Esq.
General Counsel
Lesley University
29 Everett Street
Cambridge, MA 02138