

Food Allergy

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Going to College with Food Allergies

Implications of the Lesley University settlement

Across the country, high school seniors have received their college acceptance letters for the fall. For many, enrolling in a college or university will be the first time these incoming college freshmen will be managing their food allergies away from home. New guidance from the U.S. Department of Justice (DOJ) provides valuable information for prospective college students and their parents about their rights to accommodations.

This past winter, a settlement between Lesley University in Cambridge, Mass. and the DOJ

made headlines—it was the first food-allergy-related settlement in higher education under the Americans with Disabilities Act (ADA).

The settlement agreement ensures that students with food allergies and celiac disease can “fully and equally enjoy the university’s meal plan and food services in compliance with the ADA,” according to the DOJ.

How exactly might a settlement reached between a Massachusetts university and a group of its students affect other college students with food allergies? In the wake of the settlement, the DOJ released a technical assistance document with questions and answers about the agreement and potential implications for individuals with food allergies.

These public documents clarify that protections of the ADA and Section 504 of the Rehabilitation Act apply to college students with food allergies, said disability attorney Mary Vargas of Stein & Vargas.

“Pursuant to these federal civil rights laws, universities must not merely allow students with disabilities to attend; instead, universities need to ensure that students with

disabilities have full and equal access to all of the programs, activities and benefits of the university,” Vargas said. “The settlement and the Q&A put universities on notice that students with food allergies must be provided with meaningful and safe access to dining services.”

Vargas also said that universities that deny a student with a food allergy full and equal access to the benefits and services it offers to other students, including access to dining services, would be in violation of federal civil rights laws.

Scott P. Moore, who represents colleges and universities in ADA matters with the law firm Baird Holm, said it’s important to understand that the Lesley University settlement does not have any legal precedent, but rather it demonstrates what the DOJ believes is important in accommodating students with disabilities.

“The settlement reinforces the fact that colleges and universities must ensure that they accommodate students with food allergies if those food allergies rise to the level of a ‘disability’ under the ADA,” Moore said. “There is no question that the Lesley University settlement reminds universities that they must accommodate students with disabilities under ADA. The question is not

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FARE leaders recently met with Senate Appropriations Committee Chair Barbara Mikulski (D-Md). FARE Board members Rob Nichols and Chuck Paterakis, and FARE CEO John Lehr (pictured here with Sen. Mikulski) had the opportunity to discuss funding for food allergy research, legislation to encourage schools to stock epinephrine, and FARE's request for a grant program to support school efforts to implement food allergy guidelines.

From left to right: Nichols, Lehr, Mikulski and Paterakis. ●

Advocacy Update

As the nation's largest organization representing the food allergy community, FARE is committed to advancing legislative and regulatory initiatives that help improve safety and inclusion for individuals with food allergies. From schools to the halls of Congress, FARE is focused on protecting people with food allergies, including all those at risk for life-threatening anaphylaxis.

Food allergies now affect one in every 13 children in the United States, and the growing prevalence among kids is one reason why current advocacy efforts related to food allergy safety have emphasized the school environment.

As of this writing, 20 states allow schools to stock undesignated epinephrine auto-injectors. These devices are not intended

to replace a student's own prescribed epinephrine. They are for use in an allergic emergency, potentially by a student who may not know she is allergic, may not have her own medication close at hand, or when additional doses are needed while waiting for emergency responders to arrive. FARE strongly recommends that children with a suspected food allergy be seen by an allergist, be prescribed medication, and that the medication be in close proximity at all times.

States have taken a variety of approaches toward facilitating the availability of undesignated epinephrine auto-injectors. Maryland, Nebraska and Virginia require all schools to stock it. Other states have laws permitting stock epinephrine, whereas some have guidelines that address medication management (including

epinephrine) within schools. Some existing laws and guidelines may need to be revised. Currently, there are some 23 states that are drafting, have introduced, or recently passed stock epinephrine laws. FARE has been instrumental in many of these legislative efforts. We have written letters of support, organized our members in particular states to advocate, provided data to legislators and assisted with implementation once laws are passed.

We want the trend of providing stock epinephrine in public places to spread beyond schools, and envision working on its availability for the foreseeable future. We frequently get queries about stock epinephrine from camps, colleges and universities, and institutions serving adults as well, and are looking at these as future areas of work.

Please feel free to contact us by emailing advocacy@foodallergy.org with any questions or to learn more about how you can help. ●

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whether a university must accommodate a student with an eating-related disability, but how far must a university go in accommodating the student.”

Moore said the long-term implications of the settlement will likely come in the form of extensive accommodations the DOJ apparently believes are necessary. The settlement provides for accommodations including accepting pre-orders of meals, requiring meal delivery and ensuring independent meal provider participants have policies in place to accommodate students with food allergies. The unresolved question is whether universities must go as far as

Lesley University went in the settlement, or if a federal court believes such extensive accommodations are unreasonable, Moore said.

Implications for Restaurants

Included in the DOJ’s technical assistance document were questions about how the ADA relates to places of public accommodation that serve food, such as restaurants. According to the DOJ, the ADA does not require that restaurants serve allergen-free or gluten-free foods. However, this document does address other accommodations.

“A restaurant may have to take some reasonable steps to accommodate individuals

with disabilities where it does not result in a fundamental alteration of that restaurant’s operations. By way of example only, this may include: 1) answering questions from diners about menu item ingredients, where the ingredients are known, or 2) omitting or substituting certain ingredients upon request if the restaurant normally does this for other customers.”

A fundamental alteration is defined as a modification that is so significant that it alters the essential nature of the good or services that a business offers, according to DOJ. For example, a restaurant is not required to alter its menu or provide different foods to meet particular dietary needs.

For more information, contact the ADA Information Line at 800-514-0301 to speak to an ADA specialist, or visit www.ada.gov.

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FARE’s Food Allergy Thresholds Survey



70% of respondents reported that someone in their household had experienced a severe food allergy reaction



28% of respondents indicated they were not knowledgeable about allergen thresholds



93% would not purchase a food product containing the allergen if the amount present could trigger a mild reaction



64.8% would not purchase a food product containing the allergen even if the amount present would not trigger a reaction

FDA Focuses on Food Allergens, cont.

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tingly lips or an itchy throat.” Two percent responded they would buy the product, and about 5 percent indicated they did not know.

When asked whether they would buy a food containing the allergen if they could be assured the amount of allergen present in the food was not capable of triggering an allergic reaction, the majority of respondents still said no, but not to the same extent (64.8 percent said no; 17.1 percent said yes and 18.1 percent said they did not know).

It appears that any changes affecting consumers with regard to thresholds would be unlikely to occur for many years. However, it is crucial for the FDA to hear from the food allergy community now. As with the issue of preventive controls, FARE is submitting comment to the FDA prior to the May 13 deadline.

It is clear that we need to understand this issue much better before any changes are contemplated. ●