

Food Allergies as Disabilities: What the Lesley University Settlement Means for Schools



[For a definition of food allergies and gluten please refer to the last page of this document.]

Executive Summary

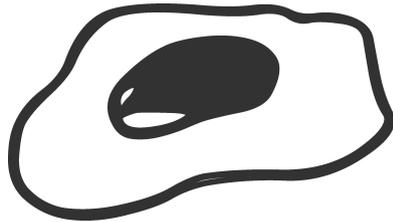
In December 2012, Lesley University entered into a Settlement Agreement¹ with the United States Justice Department regarding corrective measures needed to ensure that all students enjoy reasonable access to its dining services and facilities. This far-reaching settlement marks the first time the Justice Department expanded the definition of a “disability” to include food allergies. It lays out the measures the government deems necessary to prove compliance with the law and places all schools and universities on notice: food safety and allergen awareness are necessary and crucial elements of every dining program on campus.

FOOD ALLERGY IS A DISABILITY

Most of us are familiar with the broad framework of the Americans with Disabilities Act (ADA)¹, which requires organizations to provide reasonable accommodation for individuals who otherwise cannot avail themselves of products or services because of their physical limitations. We configure doorways and bathrooms to be accessible for wheelchairs, provide elevators or walkways as an alternative to stairs, allow employees to sit or rest if medically necessary, and so forth.

The Lesley University Settlement Agreement marks the first time that the Justice Department extended the protections of the ADA to food allergies.

The Justice Department’s logic makes intuitive sense. The ADA defines a disability as “...a physical or mental impairment that substantially limits a major life activity”.² The ability to eat food in order to nourish and sustain one’s body is critical to one’s health and well being. Not surprisingly, eating qualifies as a “major life activity” under the law.³



Now, food allergies count as disabilities.

In a clear and compelling message that has reverberated across the country, the Settlement Agreement explicitly states,

“Food allergies may constitute a disability under the ADA, 42 U.S.C. § 12102. (Emphasis provided) 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.”⁴

In other words, certain food allergies may be severe enough to qualify as disabilities under the ADA. That triggers an organization’s duty to accommodate.

THE ADA APPLIES TO SCHOOLS

Some school administrators have argued that the ADA does not apply to independent schools. That argument is misguided.

The ADA specifically applies to public accommodation, which is defined to include “a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education”.⁵ Independent schools must comply with the ADA’s nondiscrimination provisions, and provide reasonable accommodation to those unable to benefit from its programs because of a disability.

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THE LESLEY UNIVERSITY SETTLEMENT⁶

As the saying goes, “good cases make bad law”. The plaintiffs at Lesley University had a compelling case. They were students who suffered from celiac disease and/or food allergies who were not adequately served by the campus dining service. The University failed to take precautions to ensure they had reasonable food choices and access to the same services and privileges as other students. The allergy sufferers couldn’t safely eat in the dining halls due to cross contact. They couldn’t safely cook in the dorm kitchenettes because the equipment was shared among all students and thus unsafe for allergy sufferers. They couldn’t take advantage of campus services, such as ordering food online or using their dining cards at local restaurants and grocery stores, because of the lack of safe options. Yet these students were charged the same room and board fees as all others on campus and were required to participate in the University’s “mandatory” dining program. It’s easy to understand why the Justice Department intervened.

It’s important to analyze this Settlement in context: Lesley University serves 7,000 adult students on four campuses in an urban setting. A “reasonable accommodation” for an organization of this scale may not be reasonable for a smaller operation.

Nonetheless, the specific terms of the Settlement Agreement are instructive for all organizations. Here’s what the Justice Department demanded of Lesley University:



Informing the Community

Lesley University, along with most colleges and universities, has a Disability Services Policy that outlines the organization’s plans to accommodate students, employees and visitors on campus. Under the first prong of the Settlement Agreement, the University was required to amend its policy to include food-related disabilities and to distribute the revised policy widely via email to students and by including it in the University’s undergraduate and graduate Student Handbooks.

Identifying, Accommodating and Consulting with Students with Food-Related Disabilities

Because the ADA requires reasonable accommodation for *known* disabilities, many organizations implement specific procedures to identify, track and accommodate those requests. Lesley University’s Office of Disability Services manages the University’s compliance programs. It requires students requesting an accommodation to identify themselves to the University and specify the accommodation they seek.

Under the Settlement Agreement, Lesley University agreed to invite students with food allergies to come forward to identify their food-related needs to the University. The University promised to consult with each affected individual to understand his/her issue and to develop a customized plan to accommodate each situation. The objective is to enable food allergy sufferers to enjoy the dining program in the most inclusive manner possible.

Making Allergen-Free Foods and Facilities Available to Students

The Settlement Agreement makes clear that safe dining options have to be broadly available, easily accessible and convenient for the students. For starters, a selection of nutritious foods, safely prepared and free of specific allergens, must be available at **each dining hall**.

In addition, the University agreed to allow students with food allergies to **pre-order** items from the menu 24 hours in advance, requesting that the items be prepared without a specific allergen. Pre-ordered foods will be prepared in a designated area in one dining hall to minimize risk of cross contact. The dining service will serve the pre-ordered meal at the student's dining hall of choice. In addition, a specific section of one dining hall will be reserved for food allergy sufferers.

The University also agreed to create and equip a **dorm kitchenette** in one dining hall for students with food allergies, and to train students in food safety protocols. For students interested in using meal card funds in the local community, the University promised to add **restaurants, grocers and specialty vendors** that provide products made without specific allergens.

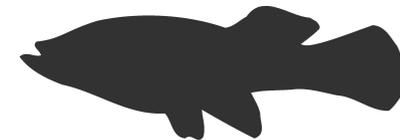
In short, students suffering from food allergies would be able to enjoy the same breadth of options as all other students on campus.

Training Dining Service Managers and Staff

As part of the implementation process, the University agreed to require its dining service contractor to provide detailed, on going food safety training for dining service managers and staff. Managers must complete the ServSafe® training course and attend annual training sessions on the nutrition requirements of food allergy sufferers. Dining service staff must attend twice-yearly training on celiac disease and food allergies, including training on food products that contain specific allergens and how to prevent cross contact. These topics are to be further reinforced during monthly staff meetings addressing food allergies and food safety practices.

Training Residence Life and Disability Services Staff

Finally, the University agreed to provide annual training on ADA compliance requirements to all members of its Residence Life and Disability Services staff who have contact with students or their families.



WHAT'S REQUIRED FOR SCHOOLS

Schools are different than universities. What's "reasonable" for a 7,000-student educational institution may not be reasonable for a small independent school. Nevertheless, here are ways for many of the required accommodations to be readily implemented in all settings.

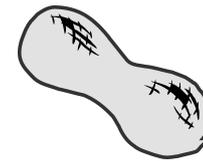
"Mandatory" Plans Must Accommodate Food Allergy Sufferers

The Justice Department took specific note of the fact that *all* Lesley University students were required to participate in the dining program. Yet allergy sufferers weren't able to enjoy the same breadth of options as fellow students because of their disability. That was the crux of their argument.

Independent schools that require all students to participate in the meal program must reasonably accommodate food allergy sufferers as a result of this ruling. Allowing allergy sufferers to "opt out" of the program is a potential form of accommodation noted by the Justice Department.

In a follow-up document entitled [Questions & Answers About the Lesley University Agreement](#), the Department discussed the applicability of the ruling to restaurants, concluding:

"The Lesley Agreement involved a mandatory meal program for a defined group of students. Because its meal plan was mandatory for all students living on campus, the ADA required that the University make reasonable modifications to its plan to accommodate students with celiac disease and other food allergies."²



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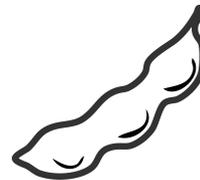
In other words, the mandatory nature of the Lesley University dining program caused concern because it robbed students of equal benefits and opportunities. In situations where customers can choose which establishments to patronize, food allergy sufferers are on an equal footing with all other customers seeking dining services. They can vote with their feet.

“Optional” dining programs appear to be exempted under this ruling. However, some accommodation may be required. As the Justice Department further noted,

“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 for 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.”⁸

Identify Students with Food Allergies

Schools routinely collect personal medical information for all students enrolled at the school. Food allergies should be included in the list of information requested. Once the school understands the extent of food allergies on campus, it can craft a plan to accommodate as needed.



Engage Students and Parents in a Discussion

The school, or the dining service provider, should reach out to each food allergy sufferer to discuss safe dining options that accommodate his/her disability. Personal outreach and individualized menu plans were a key component of the Lesley University Settlement Agreement. The objective is to allow the student to eat safely in the existing dining environment if reasonably possible.

Accommodate Food Allergy Sufferers

The goal of each school’s dining program should be to provide every student with a variety of safe, balanced and nutritious foods daily. Food allergy sufferers should enjoy a selection of safe options, made without specific allergens.

Train Dining Service Managers and Staff

All members of the school’s dining service team should be trained in food safety and allergy awareness. Such training should include information about the eight major allergens and celiac disease, foods and ingredients likely to contain food allergens, methods to prevent cross contact, and proper food storage and preparation. Training should occur at least once per semester and be followed up with ongoing discussions about food safety and minimizing the risk of cross contact. In addition, all members of the dining service team must understand how to respond to student questions about allergen-containing foods that are served in the dining hall daily.

Train Residence Life Staff at Boarding Schools

Keeping students safe in residence halls requires vigilance. Staff members need to be knowledgeable about food allergies to ensure that the living spaces are safe for all students. Schools which allow student access to dorm kitchenettes should consider providing a safe cooking option for allergy sufferers. Schools should also train students in food safety and methods of avoiding cross contact, so they can keep their classmates safe.

Prepare and Serve Foods Safely

Each school's dining hall should offer a variety of food options daily, including foods that don't contain specific food allergens. The dining service team needs to take reasonable steps to prevent cross contact while preparing meals. This may include changing the production process and preparing non allergen containing items first, designating a dedicated area for preparing allergen-free menu items, using separate utensils, cutting boards and equipment for allergen-free preparation, and so forth.

Schools also need to consider how foods are displayed and served. Are allergen-containing items served alongside allergen-free foods? This could lead to cross contact; one food item may accidentally fall into the other, or serving utensils could be swapped. Depending on the nature and severity of food allergies in the community, schools may consider storing and serving non-allergen containing items in a separate area for safety's sake.



SUMMARY

Depending on the extent and severity of the symptoms, food allergies may be disabilities under the ADA, requiring schools to provide reasonable accommodation for food allergy sufferers. Schools offering mandatory meal programs must take steps to provide a variety of safe, balanced, nutritious choices for allergy sufferers. Schools with optional dining plans may also need to take reasonable measures to inform and accommodate allergy sufferers, if possible. Extensive training for the dining service team in food safety and avoiding cross contact is the key to success. The health and safety of students depends on it.

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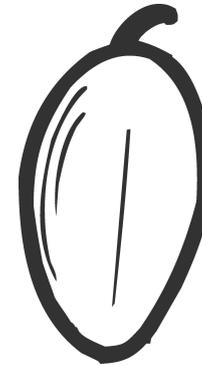


1. Americans With Disabilities Act, 42 U.S.C. §§ 12181-12189.
2. Ibid.
3. Major Life Activities..."include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working" as well as the operation of several specified major bodily functions." 42 U.S.C. § 12102 (2)(A).
4. Settlement Agreement Between the United States of America and Lesley University, DJ 202-36-231, 1 (Dec. 2012).
5. 42 U.S.C. § 12181 (7)(J); 28 C.F.R. §36.104.
6. Settlement Agreement, *supra*.
7. Questions and Answers About the Lesley University Agreement and Potential Implications for Individuals with Food Allergies, http://www.ada.gov/q&a_lesley_university.htm.
8. Ibid.

Understanding Food Allergies and Gluten

A food allergy is a medical condition in which a person's immune system reacts to a food it deems harmful to the body. As the body tries to protect itself from the invading allergen, the person experiences symptoms which may include hives, swelling of the lips or tongue, tightness of the chest, cramping and diarrhea. The most serious type of allergic reaction is called anaphylaxis. Chemicals released during anaphylaxis cause the body to go into shock: blood pressure drops, airways constrict and hives and swelling may appear. Without swift and appropriate intervention, the person can die.

Celiac disease is a medical condition in which a person cannot consume any gluten. Gluten is a protein found in wheat, barley and rye. A person consuming gluten experiences digestive symptoms like bloating, gas, diarrhea and vomiting. Over time these issues lead to malabsorption of vitamins, minerals and nutrients and cause problems in growth and development.



United States Top Allergens:

Egg, Fish (e.g., cod, salmon, tuna), Milk, Peanuts, Shellfish (e.g, crab, shrimp)*, Soy, Tree Nuts (e.g., almonds, hazelnut)**, Wheat

* Crustacean, shellfish (such as crab, crawfish, shrimp), not molluscan shellfish (such as clams, mussels)
**United States considers coconut a tree nut.

Canada Top Allergens

Egg, Fish (e.g., cod, salmon, tuna), Gluten, Milk, Mustard, Peanuts, Sesame, Shellfish (e.g, shrimp, clams)*, Soy, Sulfite, Tree Nuts (e.g., almonds, hazelnut)**, Wheat

*Crustaceans and molluscs
**Canada does not consider coconut a tree nut.