

Food Allergies Inject Legal Risk

Edwin C. Darden

Phi Delta Kappan 2013 95: 70

DOI: 10.1177/003172171309500216

The online version of this article can be found at:

<http://pdk.sagepub.com/content/95/2/70>

Published by:



<http://www.sagepublications.com>

Additional services and information for *Phi Delta Kappan* can be found at:

Email Alerts: <http://pdk.sagepub.com/cgi/alerts>

Subscriptions: <http://pdk.sagepub.com/subscriptions>

Reprints: <http://www.sagepub.com/journalsReprints.nav>

Permissions: <http://www.sagepub.com/journalsPermissions.nav>

>> [Version of Record](#) - Oct 1, 2013

[What is This?](#)

Food allergies inject legal risk

The law is mostly on the side of students who have food allergies, compelling schools and districts to keep them safe, but the requirements are not unlimited.



Schools have two key legal obligations to students who suffer from serious allergies, severe asthma, or other life-threatening

ailments: Make the young scholar academically strong and keep her physically healthy at school.

Astute teachers and administrators know they must take precautions when dealing with medical conditions that can strike at any moment and lead to death. Courts are stern about the obligation of districts to safeguard the well-being of such vulnerable children.

Make no mistake. This category doesn't include widespread annoyances like viral infections, head lice, or bedbugs. Nor does it include mental or physical impairments that merit special education. Rather, this category includes students with a dire personal health issue marked by sporadic flare-ups.

The classic example is peanut allergies, a condition shared by increasing numbers of children. A widely reported study found that the percentage of children with peanut or tree allergies more than tripled between 1997 and 2008 (Sicherer, Munoz-Furlong, Godbold, & Sampson, 2010). Indeed, the National Institutes of Health (2012) concluded that 5 million Americans, including 5% to 8%

of children, suffer from food allergies.

That reality creates legal and logistical hurdles for educators. Most court cases find that one of three federal laws applies: Section 504 of the Rehabilitation Act of 1973, the Individuals with Disabilities Education Act (IDEA), or the Americans with Disabilities Act (ADA).

Building-level employees literally hold a child's life in their hands. An allergic food reaction can provoke anaphylactic shock, a reaction by the immune system that identifies a food as "foreign" and fights it using antibodies. A student can then experience breathing difficulties, a drop in blood pressure, and other harmful effects. Some 90% of allergies are triggered by eight foods: milk, eggs, peanuts, tree nuts (e.g. almonds, walnuts), soy, wheat, fish, and shellfish. That makes breakfast, lunch, sports concession stands, and field trips a hidden maze of legal jeopardy.

Safety first

There should be no doubt that the duty for school leaders is always safety first. Still, two court cases and a settlement agreement with the U.S. Department of Education's Office for Civil Rights drive home the point.

In 2010, Hevel Elementary School in the Romeo Community Schools in Michigan banned all tree and peanut foods due to a single student's severe allergy and Section 504 plan. The Michigan Court of Appeals, upholding the district stance, noted that officials tried less intrusive measures, but

those were condemned by the student's doctor. The physician said even airborne exposure to peanut products could trigger trouble.

Breakfast, lunch, sports concession stands, and field trips are a hidden maze of legal jeopardy related to food allergies.

Hevel parent Kathleen Liebau sued the district, the superintendent, the principal, the school nurse, and "unknown individuals who approved the 504 plan." She asserted that "because she and her daughter are not parties to the 504 plan, she cannot be bound by the nut-ban policy." The July 2013 unpublished decision by a Michigan appeals court said the well-being of every student is the priority. "[T]he school district had the authority to adopt a schoolwide ban on nuts as part of the 504 plan for [the student] given its determination that the ban was necessary," the court said.

A similarly strong lesson was delivered in Iowa. The state's Court of Appeals ruled in January 2013 that a preschool child's tree-nut allergy qualifies under the Americans with Disabilities Act. When Shannon Knudsen's mother attempted to enroll her in school she informed the school of the girl's allergies and suggested an



EDWIN C. DARDEN (edwin@edadvocat.com) is director of education law and policy for Appleseed, a freelance writer, adjunct law instructor, and managing partner of The Education Advocacy Firm, Springfield, Va.



emergency care plan. The school refused. In *Knudsen v. Tiger Tots Community Child Care Center*, the court cited the ADA as the logic for overturning the school's decision.

Nationally, the Education Department's civil rights office rebuked the Gloucester (Va.) County Public Schools for refusing a Section 504 plan for a student with severe allergies. The student's doctor wrote, "... the student is extremely allergic to peanuts and tree nuts. [Her] reactions are so severe that she has developed hives from being kissed on the cheek by someone who ate peanut butter."

The OCR-Gloucester settlement agreement letter scolded, "... the evidence from the student's doctor was not contradicted by any other evidence, and that neither the evaluation team members nor anyone with whom they consulted had qualifications approaching those of the student's doctor to diagnose the nature and severity of [the student's allergy]."

A tragedy

In early 2012, Ammaria Johnson, a 7-year-old girl in Chesterfield County, Va., mistakenly ate a peanut during recess. She complained of feeling sick, went into anaphylactic shock, and died a short time later. An epinephrine dosage might have saved her life. An epinephrine shot is usually

injected in the upper thigh and quickly opens breathing passages and relieves immediate symptoms long enough to get the student to a hospital. The incident with Ammaria prompted Virginia to change its law four months later. Previously schools needed a prescription and specific permission from parents to administer epinephrine. Use was then restricted, however, to that specific child. The revised law signed in April 2012 requires schools to stock EpiPens and frees them to use the medication whenever an emergency arises. The law also requires schools to train school nurses and other personnel how to deliver EpiPen doses.

Six states have laws permitting general use of EpiPens. One of them, Illinois, goes a step further to immunize nurses from lawsuits if they administer epinephrine mistakenly but in good faith.

Congress is considering the Food Allergy and Anaphylaxis Management Act, which would direct the U.S. Department of Education to draft voluntary guidelines on food allergy management plans, training, parent documentation of allergies, and more.

Limited obligation

The legal obligations are not unlimited, however. Take for example J.M., a 7th-grade student with diabetes from New York City. J.M.'s family asked school officials to routinely heat his lunch because he might otherwise skip the meal and potentially get sick. J.M.'s mom, Aura Moody, claimed that heating her son's lunch was a reasonable accommodation under Section 504. The school district refused.

The second U.S. Circuit Court of Appeals ruled for the district, explaining that hot food was not a requirement to successfully manage diabetes. The March 2013 opinion noted that the district provided Moody with various lunch menu options and monitored his glucose level,

enough for meaningful access to school lunches.

Overall, the legal take-away for school personnel is that they must be aware of life-threatening student health conditions, act to address them, and understand that the law leans toward accommodation. While that might seem like an intimidating responsibility, courts are convinced it is a load educators are equipped to bear. ■

References

- National Institutes of Health. (2012, July). *Food allergy, an overview*. NIH Publication 12-5518. Bethesda, MD: Author. www.niaid.nih.gov/topics/foodallergy/documents/foodallergy.pdf
- Sicherer, S., Munoz-Furlong, A., Godbold, J., & Sampson, H. (2010, May). U.S. prevalence of self-reported peanut, tree nut, and sesame allergy: 11-year follow-up. *Journal of Allergy and Clinical Immunology*, 125 (6), 1322-1326.

For more information

National School Boards Association

Safe at School and Ready to Learn: A Comprehensive Policy Guide for Protecting Students with Life-Threatening Food Allergies
www.nsba.org/foodallergyguide.pdf

Centers for Disease Control

Sample health policies, statistics, and a review of laws and policies concerning child and adolescent health.
www.cdc.gov/healthyyouth/foodallergies/

The Food Allergy and Anaphylaxis Network
www.foodallergy.org

American Academy of Allergy, Asthma, and Immunology
www.aaaai.org

National Association of School Nurses
www.nasn.org

Asthma & Allergy Foundation of America
www.aafa.org

