



University Agrees To Modify Dining Services To Accommodate Food Allergies under the ADA

12/28/2012 by  (/authors/brian-d-pedrow) Brian D. Pedrow (/authors/brian-d-pedrow),

 (/authors/christopher-t-cognato) Christopher T. Cognato (/authors/christopher-t-cognato) |

Ballard Spahr LLP (/profile/Ballard_Spahr_docs/)

Explore: [ADA \(/topics/ada/\)](/topics/ada/) [ADAAA \(/topics/adaaa/\)](/topics/adaaa/) [Colleges \(/topics/colleges/\)](/topics/colleges/)
[Disability \(/topics/disability/\)](/topics/disability/) [DOJ \(/topics/doj/\)](/topics/doj/) [EEOC \(/topics/eec/\)](/topics/eec/)
[Food Allergies \(/topics/food-allergies/\)](/topics/food-allergies/) [Food Safety \(/topics/food-safety/\)](/topics/food-safety/)
[Reasonable Accommodation \(/topics/reasonable-accommodation/\)](/topics/reasonable-accommodation/) [Students \(/topics/students/\)](/topics/students/)
[Universities \(/topics/universities/\)](/topics/universities/)

Ballard Spahr_{LLP}

The Department of Justice (DOJ) has reached an [agreement](http://www.justice.gov/iso/opa/resources/75920121220161432503826.pdf) (<http://www.justice.gov/iso/opa/resources/75920121220161432503826.pdf>) with Lesley University of Cambridge, Massachusetts, under which Lesley agreed to modify its food services and meal plan system to accommodate students with celiac disease and other food allergies under the Americans with Disabilities Act (ADA). The agreement, announced in a recent [DOJ press release](http://www.justice.gov/opa/pr/2012/December/12-crt-1538.html) (<http://www.justice.gov/opa/pr/2012/December/12-crt-1538.html>), sends a clear signal to universities—as well as other places of public accommodation subject to Title III of the ADA—that the DOJ is actively enforcing the ADA's broadened scope under recent legislative and regulatory developments.

In addition, the [agreement](http://www.justice.gov/iso/opa/resources/75920121220161432503826.pdf) (<http://www.justice.gov/iso/opa/resources/75920121220161432503826.pdf>) puts Title III entities that serve food on notice that the DOJ views digestive disorders and food allergies as possible disabilities under the ADA. These entities, therefore, may have to make reasonable accommodations to individuals with such conditions, including posting notices regarding the presence of possible allergens in food products and providing patrons with meals not containing allergens.

In the past, courts have been reluctant to consider food allergies disabilities under the ADA; one example is *Land v. Baptist Med. Ctr.* (http://www.scholar.google.com/scholar_case?case=6010693255181391133&q=land+v.+baptist+med.+ctr.&hl=en&as_sdt=2,39&as_vis=1) In the settlement with Lesley, however, the DOJ states that it views afflictions like celiac disease—a condition triggered by consumption of protein gluten that can damage small intestines and inhibit the absorption of vital nutrients—as substantially limiting sufferers in one or more major life activities, thus warranting ADA protection. It also states that other food allergies that cause debilitating symptoms, such as difficulty swallowing and breathing, asthma, or anaphylaxis, may constitute disabilities under the statute.

This shift is not unprecedented. In the Americans with Disabilities Act Amendment Act of 2008 (ADAAA), Congress specifically sought to broaden the scope of the ADA's protections. The U.S. Equal Employment Opportunity Commission (EEOC)—the federal agency that enforces the provisions of the ADA affecting employers—followed suit with [new regulations](http://www.gpo.gov/fdsys/pkg/CFR-2012-title29-vol4/pdf/CFR-2012-title29-vol4-sec1630-2.pdf) (<http://www.gpo.gov/fdsys/pkg/CFR-2012-title29-vol4/pdf/CFR-2012-title29-vol4-sec1630-2.pdf>) in 2011 stating that the term “major life activity” includes eating and major bodily functions like digestion.

Although the DOJ, which has jurisdiction over Title III, has not adopted the EEOC's regulations, its settlement agreement with Lesley signals that it will enforce the ADA with the EEOC's newly formed definition of “disability” and related terms in mind. See also *Franchi v. New Hampton Sch.* (http://www.scholar.google.com/scholar_case?case=10058048876146639361&q=Franchi+v.+New+Hampton+Sch.&hl=en&as_sdt=2,39&as_vis=1) (finding that an eating disorder may meet the definition of a disability under the ADA as modified by the ADAAA).

Other provisions of the settlement agreement between the DOJ and Lesley underscore this point, including a requirement that the school engage students with food allergies in an “interactive process” to create individualized meal plans that accommodate each affected student's specific allergy. This term is used under Title I to describe the cooperative process in which employers must

engage in devising appropriate reasonable accommodations for their employees with disabilities.

The agreement with Lesley also requires the school to:

- Obtain and retain a record of identifying information from individuals who seek information about food-related disability services
- Provide dining services that meet the needs of each student with a food-related allergy, provided that such services do not fundamentally alter the nature of Lesley's goods, services, and facilities
- Post notices concerning food allergies for staff and for patrons in its student dining halls and other dining facilities. A sample of these notices is available on the [website](http://www.foodallergy.org/files/FoodAllergiesEnglish_2009_HR.pdf) (http://www.foodallergy.org/files/FoodAllergiesEnglish_2009_HR.pdf) of The Food Allergy & Anaphylaxis Network.

Lesley also must provide meals made without specific allergens under the terms of students' individualized meal plans; allow students with allergies to pre-order meals that require specific ingredients; and provide students with food allergies a separate area to store and prepare food.

Given this development, educational institutions subject to Title III of the ADA should revisit the ways in which they attempt to accommodate students with food allergies and digestive conditions. They also should consider altering their meal plans so that such students have the opportunity to make their specific conditions known and work, in an interactive process, to devise a reasonable modification to dining services.

If you have questions about this settlement agreement or its implications, please contact Brian D. Pedrow at 215.864.8108 or pedrow@ballardspahr.com, Christopher T. Cognato at 215.864.8612 or cognatoc@ballardspahr.com, or the member of the Higher Education or Labor and Employment Group with whom you work.

Topics: [ADA \(/topics/ada\)](#), [ADAAA \(/topics/adaaa\)](#), [Colleges \(/topics/colleges\)](#), [Disability \(/topics/disability\)](#), [DOJ \(/topics/doj\)](#), [EEOC \(/topics/eec\)](#), [Food Allergies \(/topics/food-allergies\)](#), [Food Safety \(/topics/food-safety\)](#), [Reasonable Accommodation \(/topics/reasonable-accommodation\)](#), [Students \(/topics/students\)](#), [Universities \(/topics/universities\)](#)

Published In: [Administrative Law Updates \(http://www.jdsupra.com/law-news/administrative-law/\)](http://www.jdsupra.com/law-news/administrative-law/), [Civil Rights Updates \(http://www.jdsupra.com/law-news/civil-rights/\)](http://www.jdsupra.com/law-news/civil-rights/), [Education Law Updates \(http://www.jdsupra.com/law-news/education/\)](http://www.jdsupra.com/law-news/education/)

DISCLAIMER: Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.

© Ballard Spahr LLP 2013 | Attorney Advertising