

Unprecedented Federal Civil Rights Action Mandates that University Modify Its Meal Plan for Students with Food Allergies and Celiac Disease

The federal government recently announced its settlement of an unprecedented civil rights action requiring a university to develop individualized meal plans for students with food allergies and celiac disease. At the same time, the government declared that all colleges and universities must consider the demands of students with food allergies and that this settlement should serve as a model for nondiscriminatory meal plan policies.

The Americans with Disabilities Act

As public accommodations, American colleges and universities must comply with the requirements of Title III of the Americans with Disabilities Act of 1990 (the "ADA"). That law prohibits private colleges and universities from discriminating against individuals with disabilities. In addition, the law requires private colleges and universities to make reasonable modifications to their policies, practices, and procedures, when modifications are necessary to provide goods, services, privileges, advantages, or accommodations to individuals with disabilities. The ADA does not require modifications that fundamentally alter the nature of the underlying goods, services, privileges, advantages, or accommodations.

Under Title III of the ADA, students may bring suit in federal court to seek orders requiring colleges and universities to comply with the law. Students may also bring violations of the ADA to the attention of the United States Department of Justice (the "Justice Department"). The Justice Department is authorized to sue colleges and universities in any case of general public importance or any case involving a pattern or practice of discrimination, and often brings cases based on individuals' complaints. The Justice Department may seek injunctive relief, monetary damages, and civil penalties up to \$50,000 for any first violation, and up to \$100,000 for any subsequent violation.

The Justice Department's Investigation

In October 2009, the Justice Department received a complaint alleging that Lesley University failed to make reasonable accommodations, as required by the ADA, for students with celiac disease and food allergies. The complaint alleged that the university violated the ADA by requiring all of its students living on campus to purchase a meal plan from Lesley University, even though some students, because of food allergies or conditions such as celiac disease, could not eat the food offered through the plan without suffering serious adverse health consequences. The Justice Department's Civil Rights Division in Washington, D.C. handled the investigation until a settlement was reached in December 2012, more than three years after the initial complaint.

The Model Settlement

The Justice Department's settlement with Lesley University breaks new ground as the first time the Justice Department and a college or university have settled alleged violations of the civil rights of students with food allergies or celiac disease. The key features of the settlement include the requirements that Lesley University:

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(a) work with students to develop individualized meal plans allowing students with food allergies to eat in the most integrated setting possible; (b) provide hot and cold gluten-free and allergen-free options in its dining halls; (c) allow students to pre-order meals; (d) provide separate space for students to prepare and store allergen-free food; (e) take reasonable efforts to retain local vendors that will accept students' prepaid meal cards for payment; (f) post prominent notices concerning food allergies in student dining halls; (g) exempt students, in certain circumstances, from the meal plan; and (h) pay \$50,000 in damages to a group of students identified in the Justice Department's investigation. In addition, the settlement requires Lesley University to take steps to avoid cross-contamination of food with certain allergens and to train its food service workers in complying with these new requirements.

Implications

In reaching its settlement with Lesley University, the Justice Department has signaled that food allergy accommodations will be a new area of focus in its ADA enforcement work, especially against colleges and universities. The head of the Justice Department's Civil Rights Division, Thomas E. Perez, announced that food allergies present issues that "colleges and universities across the country need to consider." The Justice Department has also cited the Lesley University settlement "as a model for other schools – particularly those that require students to participate in a meal plan."

The Justice Department's investigation of Lesley University promises to be the first of a new wave of government and private enforcement actions against colleges and universities. The country has experienced a proliferation of food allergies and food-related diseases, like celiac disease. With the Lesley University settlement, the Justice Department has shown its commitment to using the ADA on behalf of individuals with serious food allergies and related conditions. The Justice Department and private individuals are likely to bring similar actions in the future.

Conclusion

In light of this new enforcement priority, institutions of higher education should consider their ADA compliance in the area of food allergies and potential steps they can take to avoid liability. HSE attorneys would welcome the opportunity to assist you in creating a compliance plan or addressing any concerns regarding government investigations in this area. If you would like our assistance, or if you have any questions about this LEGALcurrents®, please contact any member of our Higher Education or Government and Internal Investigations practice groups at (585) 232-6500. ■



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