

# The Rights of Individuals with Allergy-Related Disabilities Under the ADA

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THE UNITED STATES  
DEPARTMENT *of* JUSTICE

# Agenda

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- **Individual with a Disability**
- **Titles II and III of the ADA; Section 504 of the Rehabilitation Act of 1973; their implementing regulations**
- **Resolutions by DOJ**
- **Technical Assistance Materials**
- **Questions**

# Caveats

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- Overview of the law and Justice Department public involvement
- Focuses on statute, regulations, and technical assistance
- Not intended to be legal advice, and should not be treated as such
- Not exhaustive
- Each issue must be analyzed individually
- Does not cover Individuals with Disabilities Education Act (IDEA)
- Consider consultation with an attorney who specializes in unique area

# Disability Rights Section

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- **Enforce ADA, Section 504, among others**
- **Promulgate Regulations**
- **Coordinate Enforcement**
- **Investigate Complaints and Undertake Compliance Reviews**
- **Technical Assistance**
- **Enforce through Litigation**
- **Mediation Program**

# Individual with a Disability

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- **ADA Amendments Act of 2008 modified definition of “disability”**
- **Under the Americans with Disabilities Act and Rehabilitation Act (RA), “disability” means:**
  - A physical or mental impairment that substantially limits one or more major life activities of such individual;
  - A record of such an impairment; or
  - Being regarded as having such an impairment.
- **Major Life Activities, as relevant:**
  - Nonexhaustive
  - Eating and breathing
  - Includes major bodily functions, such as functions of the immune system, digestive, bowel, and respiratory

# Individual with a Disability

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- **Rules of Construction:**
  - Construed in favor of broad coverage
  - “Substantially limits” interpreted with the findings and purposes of the ADAAA
  - An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.
  - An impairment that is episodic or in remission can be a disability if it substantially limits an MLA when active.
  - Made without regard to ameliorative effects or mitigating measures, such as medications, medical supplies, and equipment.

# Individual with a Disability: Regarded As

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- **“Being regarded as having such an impairment” – being subjected to an action prohibited under the ADA or RA because of an actual or perceived physical or mental impairment whether or not it limits or is perceived to limit a major life activity.**
  - Caution: 42 U.S.C. § 12201(h) – no need to provide reasonable modification to policies, practices, or procedures under this prong.
  - Does not apply to impairments that are transitory (6 months or less) and minor.

# ADA Title II Overview (Public Entities)

- “[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”  
42 U.S.C. § 12132.
- Public entities include any State or local government, department, agency, special purpose district, or other instrumentality.
- Qualified Individual with a Disability: “... an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.”

# ADA Title III Overview (Private Entities)

- **“No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.” 42 U.S.C. § 12182.**

# Public Accommodations

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- Places of lodging
- Establishments serving food or drink
- Theaters, concert Halls, stadiums
- Auditoria, convention centers, lecture halls
- Sales or rental establishments (e.g., bank, clothing store)
- Service establishments (e.g., hospital, lawyer's office)
- Terminal or depot for certain types of transportation
- Museums, libraries, galleries
- Parks, zoos, amusement parks
- Nurseries, elementary, secondary, undergraduate, postgraduate
- Day care, homeless shelter, food bank
- Gyms, spas, bowling alleys, golf courses, etc.

# Statutory and Regulatory Prohibitions

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- **Generally apply to individuals and classes of individuals with disabilities**
- **Different language between Title II and III, but both generally prohibit:**
  - Denial of the opportunity to participate or benefit
  - Unequal opportunity to participate or benefit
  - Separate opportunity to participate or benefit where necessary, but ineffective
  - Imposing or applying eligibility criteria that screen out or tend to screen out, unless necessary
  - Surcharges
- **Both Title II and III generally require:**
  - Reasonable modifications to policies, practices, and procedures where necessary to avoid disability discrimination -- individualized assessment
- **Section 504 of the RA:**
  - Similar, but somewhat different, requirements – e.g., FAPE
  - Title II modeled after it, adopts its remedies
  - Funding agencies have federally assisted regulations – e.g., 34 C.F.R. pt. 104

# Potentially Relevant Defenses

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- **Legitimate Safety Requirements for the safe operation of services, programs, or activities.**
  - Cannot be based on “mere speculation, stereotypes, or generalizations.”
- **Undue Burden – significant difficulty or expense, considerations:**
  - **Public Entities:** head of a public entity after considering all resources available for use in the funding and operation accompanied by a written statement
  - **Public Accommodations:** cost, financial resources of site or sites, number of employees, parent companies, etc.
- **Fundamental Alteration:** modification so significant it alters the essential nature of the aid, benefit, good, service, etc.
- **Must still do those things that are not defensible.**

# Agreement with Lesley University

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- Agreement ensures that its students with celiac disease and other food allergies can fully and equally enjoy the university's food services in compliance with the ADA
- Approximately 8,000 students, Cambridge, MA
- Public Accommodation
- All on-campus students had to participate/pay for the meal plan.
- Agreement:
  - Policy modifications, including process for exception for meal plan while living on campus, modifications to meal services, individualized plans for students.
  - Pre-order option available across campuses; separate, dedicated area to prepare food with key card access with gluten and allergen free foods, utensils, appliances, cabinet space, refrigerator, and freezer; shopping lists by students; efforts to retain partner vendors off-campus to use meal card with allergen free options
  - Educational Program for food service managers, staff, employees and contractors
  - Various notices – postings, web-based, University literature
  - Complaint-resolution process, appeals
  - Reporting
  - Monetary payment (\$50,000)

# Considerations

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- Not “one-size-fits-all”
- Individualized determination critical, though some systemic considerations relevant
- Additional Information: Q&A About the Lesley Agreement and Potential Implications for Individuals with Food Allergies:  
[www.ada.gov/q&a\\_lesley\\_university.htm](http://www.ada.gov/q&a_lesley_university.htm)

# Agreement with La Petite Academy, Inc.

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- Older agreement, but relevant considerations, policies and procedures worth note
- 750 locations nationwide at the time
- Complaints of refusing EpiPen administration, among others
- [www.ada.gov/lapetite.htm](http://www.ada.gov/lapetite.htm)

# Technical Assistance: Child Care Centers

- **19. Q: What about children who have severe, sometimes life-threatening allergies to bee stings or certain foods? Do we have to take them?**
- **A: Generally, yes. Children cannot be excluded on the sole basis that they have been identified as having severe allergies to bee stings or certain foods. A center needs to be prepared to take appropriate steps in the event of an allergic reaction, such as administering a medicine called "epinephrine" that will be provided in advance by the child's parents or guardians.**
- [www.ada.gov/childqanda.htm](http://www.ada.gov/childqanda.htm)

# Technical Assistance: Restaurants

- **Q&A following Lesley:**
  - **4. Does the ADA require that all public accommodations that serve food, like restaurants, also serve gluten-free or allergen-free food?**
  - **A:** No. The ADA does not require that every place of public accommodation that serves food to the public provide gluten-free or allergen-free food.
  - **5. What might a restaurant or other similar place of public accommodation need to do to accommodate an individual with celiac disease or other food allergies?**
  - **A:** 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.
- **Reaching Out to Customers with Disabilities Guidance:**
  - A customer with a food allergy may ask a restaurant if it is possible to omit a sauce or ingredient from a dish he or she wishes to order. When it is easy to do, the request should be honored.

# Technical Assistance: Emergency Planning

- Provide food options that allow people with dietary restrictions to eat. Because of disabilities, some people are unable to eat certain types of food. For example . . . people have severe allergies to common food ingredients, such as peanut oil and byproducts. In planning food supplies for shelters, emergency managers and shelter operators need to consider foods and beverages for people with common dietary restrictions.
- [www.ada.gov/pcatoolkit/chap7shelterprog.pdf](http://www.ada.gov/pcatoolkit/chap7shelterprog.pdf)

# Resources

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- [www.ada.gov](http://www.ada.gov)
- **ADA Information Line:**
  - 800-514-0301 (voice)
  - 800-514-0383 (TTY)
- **Instructions for Filing a Complaint:**
  - [www.ada.gov/filing\\_complaint.htm](http://www.ada.gov/filing_complaint.htm)



## Our Next Webinar

### **New Directions, New Hope**



James Baker, M.D.  
Chief Executive Officer  
Food Allergy Research & Education

Wednesday, December 10  
1:00 – 2:00 PM ET

Member registration opens  
Friday, November 21

Open registration begins  
Monday, December 1