


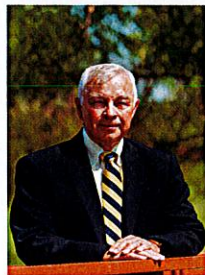
Serving Students with Food Allergies: Adjustments, Auxiliary Aids and Documentation

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Today's Presenter



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Serving Students with Disabilities: Adjustments Auxiliary Aids Documentation


FARE Post-Secondary
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Basic Principles

- **This is a Human Right**
 - A society is no better than how it treats its most vulnerable persons
 - Learning and thinking define us as human beings—it isn't always about employment
- **Disability is a form of diversity**
 - Adds to the classroom
 - An engine for innovation
 - Serves the disability community with professionals who have "walked in my shoes."

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Basic Principles (cont'd)

- **It is the law**
 - It is founded upon many well established principles as race, gender, national origin antidiscrimination law
 - It came about through struggles and strategies common to other civil rights movements (e.g., the protests in the early 1970's)

Legal Jurisdiction

- Section 504 of the Rehabilitation Act of 1973
- Title II of the Americans with Disabilities Act of 1990
- Title III of the ADA*
- The ADA of 2008

*Enlightened by the Title II regs.

Section 504

■ No otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance....

Section 504

- "Program or activity" means all of the operations of -
- * * *
- **(b)(2)(A)** a college, university, or other postsecondary institution, or a public system of higher education;

Title II of the ADA

- **Title II** covers public entities (state, county, city, and local governments, including school districts and public colleges and universities)
- **General Rule: No qualified individual with a disability shall**, by reason of such disability, **be excluded from participation in or be denied the benefits of the services, programs, or activities** of a public entity, or be subjected to discrimination by any such entity

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Title III of the ADA

- **Title III** covers private entities: **public accommodations**, commercial facilities, **examinations and courses related to licensing or certification**, and transportation provided to the public by private entities
- **General Rule: No qualified individual with a disability shall**, by reason of such disability, **be excluded from participation in or be denied the benefits of the services, programs, or activities** of a public entity, or be subjected to discrimination by any such entity

ADA Amendments Act of 2008— Applicable to Sec. 504 and Title III

- Effective Jan. 1, 2009.
- Amends ADA and conforms definition of disability in Section 504 with Amendments Act.
- Retains the elements of the term "disability," but changes the meaning of
 - "substantially limits a major life activity" and
 - being "regarded as" having an impairment.
- Requires "disability" to be construed broadly.

Who is protected?

Section 504 and Title III of the ADA protect a *qualified* individual who:

- Has a physical or mental **impairment** (e.g. AIDS, cancer, bipolar depression, ADHD, dyslexia etc.)
- That **substantially** (no longer means nearly impossible or significantly) **limits***
- A **major life activity** (no longer limited to matters of central importance to daily living) or a **major bodily function or system**
- **Or has a record of such a disability or is regarded as having a disability**
- *compared to most people in the population

"... in the details"

- **Determination made without regard to mitigating measures—even self-learned measures.**
- **Impairments that are episodic or in remission.** "[a]n impairment that is episodic or in remission is a disability if it would **substantially limit a major life activity when active.**"
- **Impairment need not substantially limit more than one major life activity.** "[a]n impairment that substantially limits **one major life activity need not substantially limit other major life activities** in order to be considered a substantially limiting impairment."

Who is "qualified?"

- This **individual is "qualified"** in that he/she **meets:**
 - The essential prerequisite academic and technical requirements of the school
 - And with accommodation can meet the continuing academic and technical requirements (including any conduct code)
 - The accommodation was requested and documented with regard to disability and functional limitation supporting the need for the accommodation and is necessary

“Qualified” (cont'd)

- **With accommodation**, the individual with a disability **complies with the code of conduct** to the same degree as non-disabled students
- **With accommodation** the individual with a disability **does not represent a direct threat** to the health or safety of *others*
- **With accommodation** the individual with a disability is **no more of a threat to self than is permitted from non-disabled students**

Auxiliary Aids

Colleges must take such steps as are necessary to ensure that **no student** with a disability is **denied the benefits of, excluded from participation in, or otherwise subjected to discrimination** because of the absence of educational **auxiliary aids** for students with impaired sensory, manual, or speaking skills.

Academic Adjustments-- aka “accommodations” or “reasonable modifications”

- School must make modifications to academic requirements necessary to ensure requirements do not discriminate on the basis of disability against a qualified person with a disability.
- Examples of possible modifications are:
 - change in length of time to complete a program
 - substitution of courses
 - adaptation of manner in which courses are conducted

“Reasonable Accommodations”

- **Reasonable accommodation** is not the lawful term that applies to students
- **Academic adjustments and auxiliary aids and services**
- **“reasonable modifications” to existing policies or practices**
- There is **no such thing as “reverse discrimination”** on the basis of disability
- Reasonable accommodation may well require an exception to a long-existing, written, consistently-followed rule (*PGA v. Martin*) (*Doe v. Samuel Merritt University*)

What Is Not Required

- School is not required to provide auxiliary aids or services that it can demonstrate would result in
 - A **fundamental alteration** in the nature of its program; or
 - **Undue** financial or administrative **burden**.

What Is Not Required

- Colleges are not required to provide devices or services of a personal nature.
- Examples:
 - Attendants
 - Individually prescribed devices
 - Readers for personal use or study

Basic Principles—Academic Adjustments, Auxiliary Aids, and Testing

- If a School student wants an academic adjustment or auxiliary aid or service, the student is responsible for notifying the School of his or her disability and need for academic adjustments or auxiliary aids or services.
- Academic adjustments and auxiliary aids and services must be provided in a timely manner.

2 Steps to Making Decisions

- *One:* Determination of whether individual has an impairment that substantially limits a major life activity (is it a disability?)
- *Two:* Determination of whether academic adjustment or auxiliary aid or service is required (for what?) and, if so, what it would be

Documentation

- Postsecondary schools may establish reasonable standards for documentation.
- "[The entity must assure that] **any request for documentation**, if such documentation is required, is **reasonable and limited** to the need for modification, accommodation, or auxiliary aid or service requested."
- Some schools require more documentation than others.
- The following list identifies the type of documentation some schools require.

Documentation Some Schools Require

- Diagnosis of physical or mental impairment. Caution: diagnosis ≠ disability!
- Evaluation by a qualified professional.
- The name, title, and professional credentials of the evaluator, including information about license or certification as well as the area of specialization, employment, and state in which the individual practices.
- AHEAD has somewhat different standards

Documentation cont'd

- Current testing and evaluation data.
- Documentation demonstrating existing disability. While some disabilities may be life-long, documentation may be required to demonstrate the current impact of those disabilities.
- Lifelong, largely unchanging disabilities may **require little or no updating** during the college career.

DOJ's Guiding Documentation Principles

- "When an applicant's documentation demonstrates
 - **a consistent history of a diagnosis of a disability**
 - is prepared by a [qualified] professional
 - who **made an individualized determination** of the applicant
 - **there is little need for further inquiry ...** and
 - generally **entities should grant the requested ... accommodation ...**"

3 C's of Documentation

- Students should attempt to provide documentation that is:
 - Current
 - Comprehensive
 - Complete

Paying for Evaluation

- Colleges are not required to conduct or pay for a new evaluation to document a student's need for an academic adjustment. This may mean the student must pay or find funding to pay an appropriate professional to do it.
- An institution may choose to conduct its own evaluation at its own cost.
- In order to clarify the documentation and obtain needed information, it is often helpful for the school to simply talk to the student's diagnostician with the student's permission.

Interactive Process

The school and student should (that's the mandatory 'should') engage in an interactive process to determine whether an academic adjustment is required and, if so, what academic adjustment is appropriate.

Consequences of failure . . .

Gastronomic Accommodation . . .

. . . *United States v. Lesley University*

- **Response to a 2009 complaint** to DOJ that Lesley University failed in its duty under Title III of the ADA to accommodate
 - Students with Celiac disease
 - Students with food allergies
- **"Because its meal plan was mandatory for all students living on campus,** the ADA required that the University make reasonable modifications to the plan to accommodate students with celiac disease and other food allergies. This is different than the ADA's obligation for restaurants that serve the general public." DOJ Q & A on Lesley Settlement

Food Allergies and Disability

- Students may have an autoimmune response to certain foods, the symptoms of which may include difficulty swallowing and breathing, asthma, and anaphylaxis.
- **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.
 - Celiac disease is **triggered by consumption of the protein gluten** (found in foods containing wheat, barley, or rye).
 - **Can cause permanent damage** to the surface of the small intestines and an inability to absorb certain nutrients, leading to vitamin deficiencies that deprive the brain, peripheral nervous system, bones, liver and other organs of vital nourishment

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Put in the Hands of DSS

- **All students who want** accommodation to food services will be referred to DSS
- Meet with student in an interactive process to come up with the best possible plan, may be modified over time
- **Exemption from the mandatory dining plan** may be [part of] the modification
- Student will be **told in writing what modifications** will be made

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Provision of Modified Meals

- **Food Service Provider will:**
 - **provide meals made without specific allergens** to students with food allergies who have food allergy modification plans.
 - take **reasonable steps to prevent the food from containing** the specific allergens at issue for the student, to the extent possible.
 - The food will also be **nutritionally comparable** to the food choices offered to other students, to the extent reasonably possible.
 - Food Service Staff will take reasonable steps to **avoid cross-contamination**.
 - The University may also offer students with food allergies the **option to pre-order their meals** in a dedicated space to prevent contamination.

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A Separate Space for Students to Prepare Their Own Meals

- The University will **maintain the dedicated area and ensure** that it contains the following:
 - (i) **A sink and counter area, dish rack, and other kitchen supplies**, (i.e., paper towels, dish soap, sponges, etc.), refreshed as necessary;
 - ii) A **refrigerator and freezer** for perishable items;
 - iii) **Cabinet space** for non-perishable items;
 - (iv) **Separate appliances**, including a microwave and toaster; and
 - (v) A **food warmer** to keep pre-ordered meals warm.
- **With advanced notice, University will shop for the students**

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Who's in charge?

Training of Food Service Managers*

- Attend a "**ServSafe**" food handling and food service management class offered by the National Restaurant Association Educational Foundation
- **Regional nutritionist** will discuss the nutritional needs of students with food allergies and reevaluate the Food Service Provider's policies and procedures.
- **Annual training** for managers concerning the nutritional needs of students with food allergies
- ***This is the key to success!**

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Training for Food Service Staff

- **Instruction** on celiac disease and food allergies, including food products that contain allergens, cross-contamination, and proper food storage and preparation;
- Instruction on **how to handle inquiries** regarding food allergies;
- Instruction that the on-site Food Service Manager should **promptly notify Disability Services** when a student seeks modifications and refer the student to DSO
- Also **training for contractors** and **work study students**

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Grievance Process, Monitoring, and Damages

- **Grievance:**
- Student may request a review of whatever has not been resolved in the interactive process
- Students may also use the internal complaint grievance process
- **Damages:**
- Document retention and reporting
- \$50,000 to certain complainants in return for a release

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Rider University – Settlement Agreement (with DOJ)

- A student with celiac disease severe enough to be considered a disability alleged Rider failed to modify its dining option and meal plan policies
- Rider failed to permit students with food allergy disabilities to fully and equally enjoy the goods, services, facilities, privileges, advantages, and accommodations of its food service and meal plan systems.
- Also, Rider failed to adequately train staff.
- As a public accommodation, Rider is subject to the nondiscrimination requirements of Title III of the ADA, 42 U.S.C. § 12182, and its implementing regulation.

Rider University – Settlement Agreement (2)

- Rider acknowledged that it must also make reasonable modifications when necessary to afford equal opportunities to individuals with disabilities, unless it can demonstrate that making such modifications would fundamentally alter the nature of its program.
- Specifically, DOJ determined that Rider violated the ADA because it did not provide adequate information on its website for students seeking to obtain a reasonable modification of food services for food allergies or food-related disabilities.

Rider University – Settlement Agreement (3)

- Rider also improperly delegated responsibility for accommodating students with disabilities on the basis of food allergies to a food service provider; and in certain instances, **Rider** did not readily offer exemptions from its meal plans for students seeking exemption due to a food allergy or food-related (or other?) disability.
- Rider disputed violating the ADA, but decided to enter the agreement to resolve the dispute.
- Rider acknowledged that it has a continuing obligation, to make reasonable modifications, including modifications to its dining and meal plan policies, necessary to afford students with severe food allergy-related disabilities an equal opportunity to . . .

Rider University – Settlement Agreement (4)

- Rider agreed to update its policies and webpages related to food services.
- Rider agreed to appoint a single individual to coordinate university's compliance and to handle all requests for disability related food policy modifications and appeals from denials (the ADA Coordinator????).
- Stresses the need to engage in the interactive process.

Rider University – Settlement Agreement (5)

- Must provide (mandatory) meal plan modifications when it receives an appropriate request from a student with a food-related disability (*i.e.*, allergy).
- Notices widely distributed and posted.
- University responsible for coordinating agreement elements with its food service provider.
- Several options to be provided like the *Leslie University* settlement (*e.g.*, pre-ordered meals).
- Create a dedicated Allergen Awareness Food Preparation Area for students with disabilities on the basis of food allergies in the Daly Dining Hall, which will be staffed by a dedicated chef and consist of a separate kitchen and food preparation area.

Rider University – Settlement Agreement (6)

- Establish a "teaching kitchen" for students with disabilities.
- Hire a full-time dietician to handle helping students develop diet or meal plans.
- Set up non-contaminated areas for students with food allergy related disabilities to store, prepare, and cook foods, as other students do.
- Train food service managers and employees on the elements of the agreement and their additional responsibilities.
- Repeat food service training twice a year.
- And on, and on—check out the settlement agreement on your flash drive.

DOJ: Restaurant v. Food Service

- **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 restaurant [under Title III] is **not** required to alter its menu or provide different foods to meet particular dietary needs."
- "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**.

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Some tips . . .

- Always talk first to the school's ADA/Section 504 Coordinator. Why?
- Be confident in your request and be clear about the student's disability and the accommodations necessary to provide the student with an equal opportunity (engage in the "interactive process" and have the required documentation at hand).
- Be prepared to discuss *Leslie U.* and *Rider U.* and what DOJ will expect/require.
- Ensure your student participates in these discussions.
- Take steps to be sure your student is better prepared for this experience than you are.

FARE Guidelines For Managing Food Allergies in Higher Education

- <https://www.foodallergy.org/education-awareness/community-resources/college-and-university-staff/pilot-guidelines-for-managing>
- The topics covered in the pilot guidelines include:
 - A **clear process for requesting** accommodations / modifications
 - Documentation required to establish an individual's food allergy as a disability
 - A process for **determining appropriate** accommodations
 - **Includes checklists and model policies.**

FARE Guidelines (Cont.)

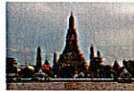
- **Strategies** for implementing accommodations
- **Outreach and marketing** so that students and others know of food allergy/ceeliac disease accommodation services
- **Assessment of services**, assuring compliance and remedying mistakes [don't wait for the grievances to roll in!]
- **Emergency response plans**, training and signage including how to respond to **anaphylaxis** and promptly administer epinephrine

FARE Guidelines (Cont.)

- **Training**, including who should receive it
- Food preparation, production, **avoiding cross-contact** or using **separate equipment, sanitizing**, labeling, and serving
- **Student responsibilities**
- Maintaining the **confidentiality of student records**
- BOLO--CDC Guidelines for post-secondary institutions

What about . . .

- Our study abroad program?
- Do Sec. 504 and Title III apply overseas?
- Who can apply?
- What rules when?
- Our clinical/field experiences/internships?
- Athletics?



Four Pillars . . .

1. The **right to be in higher education** if they are qualified for admission
2. Once admitted, the **right to access all programs** (with *substantially* equal ease)
3. **Eligibility for academic adjustments/reasonable* modifications relating to their disabilities**
4. **The right to confidentiality** of all disability-related information

*Note what "reasonable" means in this context: whatever is necessary to provide an equal opportunity.

