



Top Five Things You Need to Know About Your Responsibilities for Providing Equal Access to People with Food Allergies

Provided by Rocky Mountain ADA Center

Several recent court rulings have brought to light the plight of people with food allergies. Food allergies affect about two percent of adults and four to eight percent of kids in the U.S., and the number of young people diagnosed with a food allergy has risen in the last decade, according to the [Centers for Disease Control and Prevention](#). Two court rulings have reiterated the protections of children and students with severe allergies, specifically to dietary allergens, under the Americans with Disabilities Act (ADA).

- In December 2012, the Department of Justice stated that food allergies may constitute a disability under the ADA and entered into a settlement agreement with [Lesley University](#) in Cambridge, Mass. requiring that all meal plans at the University are inclusive of students with celiac disease and food allergies. The University also agreed to pay a fine of \$50,000.
- The case of [Shannon Knudsen v. Tiger Tots Community Child Care Center Corp.](#) was appealed to an Iowa appellate court after the Iowa District Court for Polk County determined that a child's tree nut allergy does not constitute a disability according to the Iowa Civil Rights Act. In a 2-1 decision this January, the appellate court ruled that the federal definition of disability under the ADA applies in Iowa.

“These rulings reiterate the fact that children and students cannot be excluded on the sole basis that they have been identified as having food allergies,” said Candice Alder, technical assistance and training director of the [Rocky Mountain ADA Center](#) which provides information, training and informal guidance to individuals and organizations with rights and responsibilities under the ADA. “Schools and daycare facilities need to find reasonable accommodations for people with food allergies and make their programs accessible to all.”

Child care centers, daycare providers and private schools should be aware of the following guidelines regarding allergies and the ADA:

1. Who must comply with the ADA?

Child care services provided by government agencies, such as Head Start, summer programs, and extended school day programs, must comply with Title II of the ADA. State funded schools such as universities, community colleges and vocational schools are also covered under Title II of the ADA. Privately-run child care centers, home daycare providers and private school are

considered public accommodations and must comply with Title III of the ADA. Almost all child care centers, regardless of size or number of employees, must comply with Title III of the ADA. Even small, home-based centers that may not have to follow some state laws are covered by Title III. The exception is child care centers that are actually run by religious entities such as churches, mosques, or synagogues. Activities controlled by religious organizations are not covered by Title III.

2. Does the ADA apply to people with allergies?

Yes. In both the ADA and Section 504, a person with a disability is described as someone who has a physical or mental impairment that substantially limits one or more major life activities, or is regarded as having such impairments. Eating, going to daycare and going to school are "major life activities." Allergies are still considered disabilities under the ADA, even if symptoms are controlled by medication.

3. Would celiac disease or gluten sensitivity be covered under the ADA?

Yes. Celiac disease and gluten sensitivity are considered food allergies.

4. Do child care centers and home daycare providers have to take children with severe, sometimes life-threatening allergies?

Yes. Under Section 504, public schools and programs cannot exclude children solely because they have been identified as having severe allergies and they cannot avoid their responsibility by claiming to have limited funds or resources. The ADA requires public accommodations to make changes, except in cases where an "undue burden" would result. The law does not define "undue burden." It depends on the organization's size and the real costs of the changes.

5. How can access be provided to people with food allergies?

Child care centers, daycare providers and schools must make an individualized assessment about whether they can meet the particular needs of the child/student without fundamentally altering its program. General modifications **to ensure equal access may include** providing alternative foods for lunches and snacks for children with food allergies and training the staff to recognize an allergic reaction and administer allergy medication such as antihistamine and autoinjectors of epinephrine.

The Rocky Mountain ADA Center provides information on the ADA to individuals and organizations in Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming. The ADA Center can help make suggestions and guide child care centers, daycare providers and schools to make reasonable modifications to their policies, practices or procedures when such modifications are necessary to make the center's services and facilities accessible to individuals with disabilities, unless the modifications would fundamentally alter the nature of its services. For more information contact the ADA Center at (800) 949-4232 or visit www.adainformation.org.