

CLIENT NEWS BRIEF

Should School Districts Go “Peanut-Free”?

Peanut allergies are on the rise. In fact, according to Food Allergy Research & Education (FARE), the number of children who are allergic to peanuts tripled from 1997 to 2008. Peanut allergies can cause a severe and potentially fatal allergic reaction. Allergic students who come into contact with peanuts can go into anaphylactic shock, making it critical to have epinephrine auto injectors (e.g., EpiPens) close at hand. Districts have an obligation to keep students safe, and failing to properly address student food allergies may result in liability, violate Section 504 of the Rehabilitation Act, or even violate the Individuals with Disabilities Education Act. Many schools create peanut-free zones or tables in cafeterias to help prevent exposure. But what about creating a peanut-free school, or even a peanut-free school district? Is this something districts should consider?

Recently, school districts across California have seen an increase in such requests by parents. This is due, in part, to widespread media reports of tragedies related to peanut allergies. In one highly publicized case this summer, a 13-year old girl with a peanut allergy passed away after eating a rice crispy treat. She was attending a camp with her family, including her physician father. She ate the treat because they typically do not contain peanuts. This one did. She immediately tasted the peanuts, spit out the bite, and let her parents know. Her parents gave her medication, including administering three doses of epinephrine. However, despite her father’s best efforts, the girl ultimately died.

School districts must provide reasonable accommodations to students with severe food allergies to prevent the tragedy described above from occurring at school. Typically, these students qualify for reasonable accommodations under Section 504. Reasonable accommodations with regard to peanut allergies may include peanut-free tables at lunch time, peanut-free classrooms, hand-washing policies, and food-sharing policies. The Office for Civil Rights and the courts have repeatedly upheld these accommodations as reasonable. (See, e.g., *Plumas (CA) Unified School District*, 55 IDELR 265 (OCR 2010).) The “reasonableness” of the accommodation is directly proportional to the severity of the allergy in question as assessed by medical professionals. Thus, as a reasonable accommodation for a student with an extremely severe, life-threatening peanut allergy, it may be appropriate to create a peanut-free school, or even an entirely nut-free school. According to FARE, an estimated 25-40% of people who have a peanut allergy also are allergic to tree nuts. Further, because peanuts and tree nuts often come into contact with one another during manufacturing and serving processes, allergists recommend that patients with a peanut allergy avoid tree nuts as well.

However, the decision to go peanut-free or entirely nut-free impacts many aspects of running a school district, including:

- Facilities (e.g., leases for preschool and after school programs);
- Labor and employment (e.g., what if an employee refuses to follow a peanut-free policy?);

October 2013
Number 69



Michael E. Smith
Partner
Fresno Office

msmith@lozanosmith.com



Deborah U. Etinger
Senior Counsel
Petaluma Office

detinge@lozanosmith.com



Benjamin C. Rosenbaum
Associate and Students
Practice Group Co-Chair
Fresno Office

brosenbaum@lozanosmith.com

LS Lozano Smith
ATTORNEYS AT LAW



As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

CLIENT NEWS BRIEF

October 2013
Number 69

- Menus and vending machines (e.g., what are the costs of creating a peanut-free menu?);
- Student issues (e.g., what about the rights of other students?); and
- Enforcement of peanut-free policies (e.g., how do districts police peanuts brought into school?).

Moreover, in adopting reasonable accommodations, districts must avoid potentially enhancing liability by taking on inappropriate duties. The request for a peanut-free school or district is complex and presents a multitude of issues to consider. As a result, we encourage you to contact your legal counsel to discuss the practical implications of going peanut-free if your district is faced with such a request or has severely allergic students. We also encourage districts to either adopt or revise food allergy board policies and administrative regulations to ensure your district has consistent practices and guidelines throughout its schools. Finally, we encourage an open dialogue on the issue with your parents and the community, as well as programs to educate students and parents on the harms of serious food allergies.

For further detailed information regarding addressing food allergies in school, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).