Peanut Allergies: A Medico-Legal Perspective

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In recent years, the media has reported several cases of serious injury and death of students and others resulting from allergic reactions to peanuts and other foods. While such events are relatively infrequent, they are alarming, and educators are justifiably concerned about the possibility of having to deal with a life-threatening allergic reaction in their schools. In addition, an increasing number of schools have to deal with parents who are making what may appear, at first blush, to be unreasonable demands on schools to accommodate their children who have allergies, life-threatening and otherwise.

"Reasonableness" from both legal and medical perspectives should drive any attempt to formulate policy or procedure to address these concerns. For example, under human rights legislation, schools must reasonably accommodate students with disabilities. The term "disability" is broadly defined and would include life-threatening allergic conditions. Under the law of negligence and liability, schools must do what is reasonable to prevent reasonably foreseeable harm to students under their care. But what is reasonable? For this we must look to the medical experts for information and guidance. Below, we place this medical information within a legal framework to help schools address their concerns.

The Duty of Care

The first consideration in formulating policy and procedure is to consider who is owed a duty of care in the school context, by whom and under what circumstances.

Who is owed a Duty of Care? School authorities know that they owe a duty of care to their resident students. However, following the broad principal of law governing the duty of care, school authorities also owe a duty of care to their "neighbour" and "neighbour" is defined broadly as anyone who may come to harm as a result of ones acts or omissions, if the harm to that person was reasonably foreseeable. Accordingly, a duty of care may be owed to school visitors: a visiting group of students who will be enjoying refreshments after a basketball game; a sibling who is invited to class to participate in student's birthday party; or a child from a foreign country who is visiting a student and is allowed to come to school and experience a Canadian school environment.

Policy and procedure should address avoidance strategies and treatment protocols for visiting children as well as for students in the school.

Since liability must be founded on foreseeability of a risk of harm, a determination must be made as to which, if any, students or children under the school's care, are at a real risk. The student's parent or guardian has the primary duty to inform school authorities about their child's life-threatening medical conditions, however, that duty may not absolve school authorities from the duty to ask the question.

Remember, negligence and liability may also be founded on an omission to act.

Policy and procedure should provide a mechanism for obtaining this initial information, perhaps with a simple question on a student's registration form, "Does your child have any medical problems of which the school should be aware?" or with an annual notice to parents requesting that they inform the school if any such problems exist or arise during the school year. Below we discuss what schools should do once they are alerted to student allergies.

By whom is the Duty of Care Owed? The duty of care will be owed by the school board itself and, as well, by any employee or agent of the school board who supervises allergic students. In the latter case, school boards will be held vicariously liable for the negligence of their employees or agents who are working within the scope of their assigned duties or performing duties that are reasonably related to their assigned duties. Accordingly, it is not sufficient to inform only the student's home teachers and office personnel. It is incumbent upon schools to notify any person who may be supervising students including other staff members, substitute teachers or supervising parents about student allergies, particularly if they are life-threatening.

Policy and procedure should provide for a method of ensuring that relevant information is transmitted to all supervising persons, particularly those who supervise younger children. Further, your school may wish to consider whether lunch room programs and services should be operated independently from the school, particularly where there is no legal obligation to provide these programs and services to students.

The Standard of Care

As mentioned above, the standard of care expected of school authorities is stated in very general terms as that of "a careful and prudent parent of a large family". It is a flexible standard depending upon the age, maturity, intelligence, experience and behavioral propensities of the student, the type of activity in which a student is engaged and other relevant factors. The foods ingested by and the eating environment of an intelligent, sixteen-year-old student would not have to be as closely monitored, for example, as those of a grade-one student of a mentally-disabled older student. The consensus statement of the Canadian Association of Allergy and clinical Immunology, the Ontario Allergy Society and the Allergy Asthma Information Association (the "Consensus Statement") proposes different procedures for pre-school and primary grade students than for older students. In the former, the consensus Statement recommends that, where peanut allergic children are present, no peanuts, peanut butter or peanut-containing foods should be allowed. In the latter, the Consensus Statement recognizes that it may be impractical to impose a complete ban, however, where peanut allergic students are present, it recommends that no peanut-containing foods be allowed in common eating areas. It also recognizes that allergy-free classrooms may have to be established in the appropriate circumstances. The same would hole true for any other potentially life-threatening allergens.

Policy and procedures should address differentiated avoidance strategies for the purpose of meeting a school's duty of care in a reasonable manner.

Meeting the Standard of Care

What schools should do to meet the requisite standard of care will depend, in large part, on what school authorities know or ought to know about allergy.

Inhalation Versus Ingestion: A recent newspaper article claimed that "a whiff of peanut butter on a desk may be enough to cause a violent anaphylactic reaction". In fact, the risk of a life-threatening allergic reaction resulting from this route of exposure is negligible. In a home-economics class where peanuts are being used in cooking a satay dish, peanut protein particles can become airborne and an allergic student may suffer itchy eyes, runny nose and asthma. A similar reaction could occur if many students were crunching on peanuts in class and throwing them around at one another. An asthma attack could have serious adverse consequences, however, the risk of violent anaphylaxis or death from inhaling airborne peanut is negligible. On the other hand, ingestion of even a minute amount of peanut could result in fatality.

The Life-Threatening Allergens:

One teacher we interviewed refused to take any precautions with respect to her pre-school student's peanut allergy, claiming she could not possibly monitor every child for everything to which the child was "allergic". That position, founded in ignorance, is simply irresponsible. The primary concern of educators is to prevent against anaphylaxis and resulting serious injury or death. Accordingly, a distinction must be made between true allergic reactions and other forms of food intolerance which are rarely, if ever, life-threatening. A further distinction must be made between allergens that are more likely to induce life-threatening reactions from those that rarely result in such reactions.

According to the Consensus Statement, the list of foods which most commonly cause allergy is relatively short: peanut, tree nuts, seafood, egg, milk, soy and wheat. Further, reactions to peanut, tree nuts and shellfish tend to be the most severe. Peanut allergies are one of the most common food allergies and the leading cause of food-induced anaphylaxis and death. Allergy to peanut is the most common cause of anaphylaxis in schools. Accordingly, this pre-school teacher does not have to treat all children who have food reactions, allergic or otherwise, as she should treat life-threatening food allergies.

At a minimum, policies and procedures should address those allergies which tend to be most common and have the most life-threatening potential in a school context, namely, peanut allergies. For example, it would not take too much effort to remove peanut products form food prepared for all school-sponsored activities and school/community functions, including foods prepared in the school cafeteria or during home economic classes. They should also address the appropriate response to other allergies as directed by the allergic child's physician.

The Life-Threatening Condition – Anaphylaxis:

Ideally, schools would prevent all allergic reactions, however, as mentioned, the primary concern of schools is the prevention and appropriate treatment of potentially severe allergic reaction, namely, anaphylaxis. Anaphylaxis affects multiple body systems resulting in breathing difficulty and a drop in blood pressure caused by an outpouring of fluids from blood vessels.

The severity of allergic reactions are unpredictable. The research indicates that although an individual's allergic reactions tend to be of similar severity to their prior reactions, it is not possible to predict with any certainty just how serious a future reaction might be. Since anaphylaxis can cause death quite quickly, it must be treated appropriately and as early as possible.

Policy and procedure should address how this can best be done. Below we provide more specific information for this purpose.

Identifying At-Risk Students:

It is necessary to determine which students are at risk of anaphylaxis. Not every allergic reaction in every student calls for treatment with epinephrine and a dash to the nearest hospital. Parents often claim that their children are allergic to many diverse substances and have severe reactions to all of them, which is possible but highly unlikely. They may also make unreasonable demands on school-based personnel.

Parents should be encouraged to get a complete assessment of their child's condition from a physician with expertise in the diagnosis and management of allergic conditions. For reasons which will become more evident, schools should recommend or insist that parents of allergic children provide the school with individualized, written physician-prescribed action plans.

Once allergic students are identified and the avoidance and treatment strategies are determined, that information must be communicated to all persons who may supervise allergic students. In addition, at-risk students should have other means of identification, e.g., a medical alert bracelet.

Policy and procedure should address how students, particularly at-risk students, can be identified. They should also address, on an individualized basis, how each allergic student should be monitored and treated, and how more specific information should be communicated efficiently to supervising persons. The Allergy Asthma Information Association, Suite 424, 130 Bridgeland Avenue, Toronto, Ontario M6A 1Z4 has a Package that may help schools formulate procedures. It contains valuable information about allergy including an Emergency Allergy Alert (protocol) Form.

Avoidance Strategies:

Since the smallest amount of ingested allergens can result in severe anaphylaxis and even fatality, the goal of avoidance strategies is to reduce that risk, recognizing that risk can never be completely eliminated in a school environment. Parents should instruct even their youngest children in how to avoid contact with the substances to which they are allergic. School personnel can reduce the risk of harm to allergic students by monitoring them carefully, particularly in the younger grades.

According to the Consensus Statement, allergic children should eat only foods that are prepared at home. They should not exchange foods or utensils with other students. Students in the same class should be encouraged to wash their hands before and after eating. Surfaces, toys and equipment should be washed clean of the allergen-containing foods and care should be taken to avoid allergens when selecting foods for crafts, cooking and other activities. As mentioned above, all foods provided to students or used in school should be peanut-free, particularly in larger schools where individual students may be harder to monitor. If necessary, a school may have to take reasonable measures to provide peanut-free

environments. Both the allergic student and others should be educated to understand the potential severity of reactions and to avoid exposing an allergic student to potentially harmful allergens such as peanut.

Policy and procedure should address avoidance strategies of general application to the entire school population and those of specific application to students who are known to be at risk of anaphylaxis.

The Duty to Treat Reasonably

In spite of all the efforts by school personnel, allergic reactions cannot always be avoided. When emergency treatment is undertaken voluntarily, e.g., by a visitor in your school, that person will be expected to do what is reasonable considering his or her knowledge, training and experience. Where there is a legal duty to provide medical services to students or where schools formally undertake the duty to provide medical treatment to students, more will be expected of school-based personnel. They will be expected to make reasonable efforts to gain the requisite skill and knowledge to undertake medical treatment, emergency or otherwise, appropriately.

Policy and procedure should provide for the training of staff in basic first aid, resuscitative techniques and in the use of epinephrine auto-injectors. It should provide a mechanism for staff to determine appropriate treatment protocols, particularly for students at risk of anaphylaxis.

Management of Anaphylaxis

Two primary risk factors for death from food allergy are underlying asthma and delay in administering epinephrine. Often children with food allergies also have asthma. The earliest manifestation of an anaphylactic reaction is often asthma. Asthmatic children experiencing anaphylaxis are frequently treated for asthma while more appropriate treatment with epinephrine is withheld. There is no substitute for epinephrine in the emergency management of anaphylaxis. Although antihistamines and asthma inhalers are useful adjunctive therapies, they cannot be relied upon to adequately treat anaphylaxis. Several years ago, a Canadian student on a school trip to Paris ate pate-containing nuts. She took antihistamines and rushed back to her hotel to get further help. Unfortunately, she succumbed to anaphylaxis before appropriate therapy could be initiated. A dose of epinephrine could have saved her life.

When a student experiences an allergic reaction, the physician-prescribed action plan should be followed. In the absence of any specific action plan, the school should follow the Consensus Statement guidelines: "Epinephrine must be administered as soon as possible after the onset of symptoms of severe allergic reaction." However, if the student has a history of sever anaphylaxis or poorly controlled asthma, epinephrine may have to be given at the earliest sign of reaction. In extreme cases, epinephrine may have to be administered after ingestion and prior to the onset of any manifestations of anaphylaxis. School-based personnel would have difficulty making these clinical distinctions and that is why the physician-prescribed action plan is so important!

Schools should also take the following important precautions:

- Epinephrine should be kept in close proximity to children at risk of anaphylaxis.

- EpiPens® should be clearly marked with the student's name and routine checks should be undertaken to ensure that they are not stale-dated.

- In all cases where epinephrine is administered the student should be transported to hospital immediately. In some cases, additional epinephrine may be required during transport.

- Students at risk of anaphylaxis should be carefully monitored. Even an older student who knows how to self-administer epinephrine may need adult assistance if ability to self-administer is hampered by an adverse reaction. In fact, it is our understanding that the student who died in Paris was not under any supervision at the relevant time.

- Policy and procedure should provide for the treatment of students in accordance with physician-prescribed action plans or, in the absence of such plans, in accordance with predetermined guidelines. In addition, they should address precautions of general application to the school community.

Liability for Breach of the Standard of Care

In light of the above information, failure to do what the reasonable prudent parent of a large family would do in the circumstances constitutes negligence. However, school authorities will not necessarily be liable or wholly liable to pay damages for such negligence. If, for example, the student had suffered severe neurological damage even if the appropriate treatment had been undertaken, school authorities would not be held liable for this injury. In the case of the student who died in Paris, school authorities would not be liable if the evidence proved that the student would have succumbed even if several doses of epinephrine had been administered. Further, they would not be liable if the chain of causation was broken. Even if school personnel are negligent in the monitoring and treatment of a student, the real cause of death could, for example, be caused by delay due to an accident enroute to the hospital.

The use of waivers should also be considered. It has been suggested that no parent should waive liability of school authorities for injuries to students caused by the negligence of school authorities. That proposition is moot, because if there is no negligence, there will be no liability. School authorities would probably prefer to have all liability waived, particularly where they voluntarily undertake to provide medical treatment to students. However, the courts do not like waivers very much and will do everything possible to get around them and find liability, particularly in a sympathetic case.

Further, parents may only waive liability for their own damages, e.g., For their expenses in transporting their child home, in providing care for their child, in purchasing special equipment or hiring special services for the rehabilitation of their child. They cannot waive the school's liability for the child's damages. The child can sue in her own right after reaching the age of majority. In the case of injuries to minors, most provincial statutes of limitation will begin to run at that time.

Also recommended: "Anaphylaxis: A Handbook for School Boards", published by the Canadian School Boards Association. Available in English & French for $10 or $8 for 50 or more. Order information: Canadian School Boards Association, 130 Slater Street, Suite 350, Ottawa Ont K1P 6E2. Telephone: (613) 235-3724 Fax (613) 238-8434 Email: admin@CdnSBA.org

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