

2020

## When Food is a Weapon: Parental Liability for Food Allergy Bullying

D'Andra Millsap Shu

Follow this and additional works at: <https://scholarship.law.marquette.edu/mulr>



Part of the [Food and Drug Law Commons](#), [Health Law and Policy Commons](#), [Legal Remedies Commons](#), and the [Torts Commons](#)

---

### Repository Citation

D'Andra Millsap Shu, *When Food is a Weapon: Parental Liability for Food Allergy Bullying*, 103 Marq. L. Rev. 1465 (2020).

Available at: <https://scholarship.law.marquette.edu/mulr/vol103/iss4/6>

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized editor of Marquette Law Scholarly Commons. For more information, please contact [megan.obrien@marquette.edu](mailto:megan.obrien@marquette.edu).

# WHEN FOOD IS A WEAPON: PARENTAL LIABILITY FOR FOOD ALLERGY BULLYING

D'ANDRA MILLSAP SHU\*

*"I'm going to kill you with this peanut butter cracker."*<sup>1</sup>

---

\* Adjunct Professor, Thurgood Marshall School of Law at Texas Southern University. University of Houston Law Center (J.D.). The author wishes to thank the following people for reviewing drafts of this Article and providing their valuable insights: Richard Bales (Professor of Law, Ohio Northern University); Shelley Ward Bennett (Adjunct Professor, Thurgood Marshall School of Law at Texas Southern University); Carla M. Davis, M.D. (Associate Professor of Pediatrics; Chief, Section of Immunology, Allergy, and Retrovirology; Director, Texas Children's Hospital Food Allergy Program; Janie and Sandra Queen Endowed Chair in Immunology and HIV/AIDS; Baylor College of Medicine, Texas Children's Hospital); David R. Dow (Cullen Professor of Law, University of Houston Law Center); John C.P. Goldberg (Deputy Dean & Carter Professor of General Jurisprudence, Harvard Law School); David Pimentel (Associate Dean & Professor of Law, University of Idaho College of Law); Robert Ragazzo (University of Houston Law Foundation Professor of Law, University of Houston Law Center); Eric T. Sandberg, M.D. (Kelsey-Seybold Clinic; President, Greater Houston Allergy, Asthma and Immunology Society; Board of Directors, Texas Allergy, Asthma and Immunology Society); Katherine T. Vukadin (Professor of Law, South Texas College of Law Houston); David C. Yamada (Professor of Law & Director, New Workplace Institute, Suffolk University Law School). The author has built on the work in this Article and explored the concept of school liability for food allergy bullying under a disability-rights model. See D'Andra Millsap Shu, *Food Allergy Bullying as Disability Harassment: Holding Schools Accountable*, 92 U. COLO. L. REV. 1 (forthcoming Winter 2020).

1. Nicole Smith, *Food Allergy Bullying—What's the Solution?*, ALLERGICCHILD (June 25, 2013), <https://home.allergicchild.com/food-allergy-bullying-whats-the-solution> [https://perma.cc/255G-8AQV] (describing food allergy bullying incident among first graders); see also Sally Kuzemchak, *Food Allergy Bullying is Heartbreaking and Real*, PARENTS, <https://www.parents.com/recipes/scoop-on-food/food-allergy-bullying-is-heartbreaking-and-real> [https://perma.cc/GBT9-3LY5] ("One day at lunchtime, a boy in Will's group began to taunt him, coming at him with a peanut butter sandwich in a threatening way and saying something along the lines of 'I could kill you with this sandwich.'"); Suzanne Allard Levingston, *Bullies Use a Small But Powerful Weapon to Torment Allergic Kids: Peanuts*, WASH. POST (May 28, 2017), [https://www.washingtonpost.com/national/health-science/bullies-use-a-small-but-powerful-weapon-to-torment-allergic-kids-peanuts/2017/05/26/a296a878-292f-11e7-be51-b3fc6ff7faee\\_story.html?noredirect=on&utm\\_term=.cb18697ac3a2](https://www.washingtonpost.com/national/health-science/bullies-use-a-small-but-powerful-weapon-to-torment-allergic-kids-peanuts/2017/05/26/a296a878-292f-11e7-be51-b3fc6ff7faee_story.html?noredirect=on&utm_term=.cb18697ac3a2) [https://perma.cc/6K24-MSWM] (describing how bully wiped peanut butter on an allergic child and said "I dare you to die today"); Roni Caryn Rabin, *In Allergy Bullying, Food Can Hurt*, N.Y. TIMES (Feb. 15, 2018), <https://www.nytimes.com/2018/02/15/well/family/in-allergy-bullying-food-can-hurt.html> [https://perma.cc/W2AJ-FJU4] (recounting father's story of allergic son being taunted with a peanut butter sandwich by child saying "let's see if he dies").

*Food allergies in children are rising at an alarming pace. Increasingly, these children face an added threat: bullies targeting them because of their allergies. This bullying can take a life-threatening turn when the bully exposes the victim to the allergen. This Article is the first major legal analysis of food allergy bullying. It explores the legal system's failure to adequately address the problem of food allergy bullying and makes the case for focusing on the potential tort liability of the bully's parents. Parents who become aware of their child's bullying behavior and fail to take adequate steps to stop it are tacitly encouraging it and should be liable for their child's conduct. So too should parents who enable the bullying by flouting school policies and sending their child to school with a prohibited food that is then used to bully or by modeling intolerant behavior that their child mimics at school. Parental liability in appropriate circumstances will ensure that parents who contribute to their child's bullying are held accountable and that the bully's victim receives justice.*

I. INTRODUCTION .....	1467
II. FOOD ALLERGIES IN SOCIETY .....	1470
A. Food Allergy Basics .....	1470
B. Negative Attitudes About Food Allergies .....	1473
III. FOOD ALLERGIES IN SCHOOL .....	1476
IV. THE PROBLEM OF FOOD ALLERGY BULLYING .....	1481
V. THE CASE FOR PARENTAL LIABILITY FOR FOOD ALLERGY BULLYING.....	1487
A. Why Focus on Parents? .....	1487
B. The Legal Landscape of Parental Liability.....	1492
C. When Parents Could Be Liable for Food Allergy Bullying .....	1497
1. Use Existing Parental Liability Negligence Law to Hold Parents Liable .....	1498
2. Adopt a General Parental Duty of Reasonable Care in Food Allergy Bullying Cases .....	1499
D. Looking Ahead: <i>The Restatement (Third) of Torts</i> .....	1505
VI. CONCLUSION.....	1507

## I. INTRODUCTION

More children than ever are allergic to one or more foods.<sup>2</sup> For children with food allergies, the world can be a dangerous place.<sup>3</sup> Food is an integral part of daily life, and often, determining what an allergic child can safely eat is anything but straightforward. A wrong choice can have severe, even fatal, consequences.<sup>4</sup> The stress is worsened by the skeptics who think food allergies are either not real or are exaggerated, rather than a potentially life-threatening condition that must be taken seriously.<sup>5</sup>

Children spend a substantial portion of their waking hours at school. And in school, food is everywhere, from the cafeteria to the classroom. Snacks and treats seem to accompany every event or celebration, and food is often used in classroom activities and projects. Safely navigating school—without parents there to help—can be especially challenging for a child with food allergies.<sup>6</sup>

Increasingly, allergic children are facing another serious threat at school: being bullied because of their food allergy. Of the over five million children with food allergies,<sup>7</sup> at least one-third are bullied specifically because of their

---

2. See KRISTEN D. JACKSON, LAJEANA D. HOWIE & LARA J. AKINBAMI, CTNS. FOR DISEASE CONTROL & PREVENTION, U.S. DEP'T OF HEALTH & HUMAN SERVS., NCHS DATA BRIEF NO. 121, TRENDS IN ALLERGIC CONDITIONS AMONG CHILDREN: UNITED STATES, 1997–2011, at 2 (May 2013) <https://www.cdc.gov/nchs/data/databriefs/db121.pdf> [<https://perma.cc/39MN-PFQF>] (reporting increase from 3.4% to 5.1% of children having food allergies between 1997–1999 and 2009–2011).

3. See generally Linda L. Quach & Rita M. John, *Psychosocial Impact of Growing Up with Food Allergies*, 14 J. FOR NURSE PRAC. 477, 477 (2018).

4. See *infra* notes 16–19 and accompanying text.

5. See *infra* notes 42–47 and accompanying text.

6. See Elizabeth Landau, *Allergy Bullying: When Food is a Weapon*, CNN (Jan. 7, 2013, 7:17 AM ET), <https://www.cnn.com/2013/01/05/health/bullying-food-allergies/index.html> [<https://perma.cc/23QA-HYKW>] (“It’s hard for parents of food-allergic children to keep them safe at school when there are so many opportunities to eat snacks and meals with unsafe ingredients.”).

7. *Facts and Statistics*, FOOD ALLERGY RES. & EDUC., <https://www.foodallergy.org/resources/facts-and-statistics> [<https://perma.cc/YPR9-AERM>] [hereinafter *FARE Facts & Statistics*].

allergy,<sup>8</sup> usually by a classmate.<sup>9</sup> The bullying can range from being teased because they cannot eat a particular food to being assaulted with or force-fed the food and everything in between.<sup>10</sup> Food allergy bullying can be even more harmful than traditional bullying because some children are put in grave danger by mere skin contact with or inhalation of the allergen, and if an allergic child ingests the food, the bullying can be deadly.<sup>11</sup>

How do parents factor into all of this? Parents are, of course, a crucial influence in their children's behavior, and parents of bullies are no exception.<sup>12</sup> When schools implement policies, such as establishing nut-free classrooms, to protect allergic children, parents of non-allergic children are sometimes the most vocal critics.<sup>13</sup> Some have resisted these policies, even picketed the school

---

8. Dr. Jay Lieberman at the Jaffe Food Allergy Institute of Mount Sinai School of Medicine led a team that conducted the first study of food allergy bullying in 2010 and reported that 35.2% of school-aged children were bullied because of their food allergy. See Jay A. Lieberman, Christopher Weiss, Terence J. Furlong, Mati Sicherer & Scott H. Sicherer, *Bullying Among Pediatric Patients with Food Allergy*, 105 ANNALS ALLERGY, ASTHMA & IMMUNOLOGY 282, 283 (2010). Dr. Lieberman based these results on 353 responses, mostly by parents of food-allergic children, to a survey designed by a pediatric allergist specializing in food allergies and a bullying expert, among others. *Id.* at 282–83. One year later, a follow-up survey of the original survey group showed 29% had been bullied in the past year. See Rachel A. Annunziato, Melissa Rubes, Michael A. Ambrose, Chloe Mullarkey, Eyal Shemesh & Scott H. Sicherer, *Longitudinal Evaluation of Food Allergy-Related Bullying*, 2 J. ALLERGY & CLINICAL IMMUNOLOGY: IN PRACTICE 639, 639 (2014). After wide-spread reporting on the original results, in 2013, Dr. Eyal Shemesh of Mount Sinai designed a study of 251 food-allergy families and essentially replicated Dr. Lieberman's results, finding that 31.5% of these children reported bullying due to their food allergies. See Eyal Shemesh, Rachel A. Annunziato, Michael A. Ambrose, Noga L. Ravid, Chloe Mullarkey, Melissa Rubes, Kelley Chuang, Mati Sicherer & Scott H. Sicherer, *Child and Parental Reports of Bullying in a Consecutive Sample of Children with Food Allergy*, 131 PEDIATRICS e10, e10 (2013). Other studies have documented alarming rates of food allergy bullying. See Adora Lin & Hemant P. Sharma, *Teasing and Bullying Among Adolescents with Food Allergy*, 133 J. ALLERGY & CLINICAL IMMUNOLOGY AB288, AB288 (2014) (71% of surveyed adolescents reported having been teased by classmates because of their food allergy); A.E. Morris, A.B. Yates & G.D. Marshall, Jr., *Bullying and Teasing in Children with Food Allergy: A Survey of Pediatric Patients in Urban Jackson, Mississippi Outpatient Allergy and Immunology Clinics*, 129 J. ALLERGY & CLINICAL IMMUNOLOGY AB133, AB133 (2012) (one-third of surveyed allergic children reported bullying related to food allergy); see also Andrew T. Fong, Constance H. Katelaris & Brynn Wainstein, *Bullying and Quality of Life in Children and Adolescents with Food Allergy*, 53 J. PAEDIATRICS & CHILD HEALTH 630, 630 (2017) (“Several studies worldwide have investigated bullying in food allergic individuals, providing evidence for its occurrence in North America, Canada, Italy, and Japan.”).

9. See Lieberman, Weiss, Furlong, Sicherer & Sicherer, *supra* note 8, at 283 (79.8% of food allergy bullies were classmates).

10. See *infra* notes 90–104 and accompanying text.

11. See *infra* notes 63–65, 103–08 and accompanying text.

12. See *infra* notes 134–42, 207–08 and accompanying text.

13. See *infra* notes 61–62, 66–76 and accompanying text.

to have the policies revoked, in the name of their child's supposed "right" to eat certain foods. Others go further, defying school policies that ban certain foods and sending their children to school with dangerous food—food that could kill a classmate. While parental opinions about school policies will naturally vary, parents must be discouraged from promoting behaviors that threaten other children's education and even their lives.

This raises the issue of whether parents who engage in such behavior should bear any legal responsibility if their child becomes a food allergy bully. Very little, if any, civil litigation of any type exists for food allergy bullying, much less litigation regarding parental liability. General bullying litigation has included parents to a limited extent, but most cases appear to have settled.<sup>14</sup> Thus, analyzing potential parental liability for food allergy bullying requires drawing on general parental liability negligence law.

This Article advocates that parents of food allergy bullies should be liable for their child's conduct when the parents' actions contributed to the bullying. Part II provides necessary background information regarding food allergies and the negative attitudes surrounding them. Part III details the challenges food allergies create in schools and how schools have responded to the ever-increasing number of children with food allergies. Part IV explains the problem of food allergy bullying in schools and the unique dangers it poses for allergic children.

Part V then makes the case for parental liability for food allergy bullying in certain situations. It first explores the reasoning for focusing liability on parents by pointing out the shortcomings of other legal remedies and explaining the importance of parents in facilitating or stopping food allergy bullying. It then lays out the existing legal framework for parental liability in general and shows how courts have limited parents' duties regarding their children's tortious conduct so that parents can escape liability in all but the most egregious cases. From there, it argues for lifting these unjustified common law restrictions and imposing an ordinary duty of care in food allergy bullying cases. This would allow juries to assess the reasonability of a broad range of parental behaviors that might contribute to food allergy bullying while protecting parents who take reasonable actions to control their children. Though not a cure-all for food allergy bullying, parental liability in these circumstances promotes the public policy goals of encouraging parents to raise responsible children and protecting vulnerable members of society while not unduly interfering with parental rights. Part V concludes by looking ahead to see how parental liability might fare in jurisdictions that adopt the new *Restatement (Third) of Torts: Liability for Physical and Emotional Harm*.

---

14. See *infra* notes 175–77 and accompanying text.

## II. FOOD ALLERGIES IN SOCIETY

To understand the problem of food allergy bullying and what to do about it, one must first understand how food allergies work and how American society views food allergies and those who suffer from them.

### A. Food Allergy Basics

Food allergies are serious business. A food allergy occurs when the body's immune system mistakenly responds to a certain food as if it were harmful.<sup>15</sup> Responses can range from skin irritation to gastrointestinal and respiratory symptoms.<sup>16</sup> Some food-allergic individuals experience anaphylaxis, a severe condition that can lead to constricted airways, throat swelling, a drastic drop in blood pressure, unconsciousness, and even death.<sup>17</sup> A person experiencing anaphylaxis can die within minutes.<sup>18</sup> Reactions vary from person to person, and each individual's allergic response to a particular exposure is unpredictable—what once caused a skin rash could result in anaphylaxis the next time.<sup>19</sup>

---

15. See *Food Allergies in Schools*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/healthyschools/foodallergies> [<https://perma.cc/9BZT-8RC2>] [hereinafter *CDC Food Allergies*].

16. See *FARE Facts & Statistics*, *supra* note 7; *What You Need to Know About Food Allergies*, U.S. FOOD & DRUG ADMIN. (Sept. 26, 2018), <https://www.fda.gov/food/buy-store-serve-safe-food/what-you-need-know-about-food-allergies> [<https://perma.cc/S9X8-GRV7>] [hereinafter *FDA Food Allergies*].

17. *FDA Food Allergies*, *supra* note 16; see Laurent L. Reber, Joseph D. Hernandez & Stephen J. Galli, *The Pathophysiology of Anaphylaxis*, 140 J. ALLERGY & CLINICAL IMMUNOLOGY 335, 335 (2017).

18. See CTRS. FOR DISEASE CONTROL & PREVENTION, U.S. DEP'T OF HEALTH & HUMAN SERVS., VOLUNTARY GUIDELINES FOR MANAGING FOOD ALLERGIES IN SCHOOLS AND EARLY CARE AND EDUCATION PROGRAMS 20 (2013), [https://www.cdc.gov/healthyschools/foodallergies/pdf/13\\_243135\\_A\\_Food\\_Allergy\\_Web\\_508.pdf](https://www.cdc.gov/healthyschools/foodallergies/pdf/13_243135_A_Food_Allergy_Web_508.pdf) [<https://perma.cc/3RUC-BE4S>] [hereinafter *CDC VOLUNTARY GUIDELINES*] (“Death due to food-induced anaphylaxis may occur within 30 minutes to 2 hours of exposure.”); *Food Allergy*, AM. COLL. ALLERGY, ASTHMA & IMMUNOLOGY, <https://acaai.org/allergies/types/food-allergy> [<https://perma.cc/CS59-RY45>] [hereinafter *ACAAI Food Allergy*] (“Anaphylaxis can occur within seconds or minutes of exposure to the allergen, can worsen quickly and can be fatal.”).

19. See *ACAAI Food Allergy*, *supra* note 18 (“Symptoms of a food allergy can range from mild to severe. Just because an initial reaction causes few problems doesn't mean that all reactions will be similar; a food that triggered only mild symptoms on one occasion may cause more severe symptoms at another time.”); *CDC Food Allergies*, *supra* note 15 (“The symptoms and severity of allergic reactions to food can be different between individuals and can also be different for one person over time.”).

About 32 million Americans have food allergies, including up to eight percent of children.<sup>20</sup> That is 5.6 million children or one in every thirteen.<sup>21</sup> Ninety percent of food allergy reactions result from exposure to one of the eight major food allergens: eggs, fish, shellfish, tree nuts, peanuts, wheat, dairy, and soybeans.<sup>22</sup> Forty percent of children with food allergies have had a severe or life-threatening reaction.<sup>23</sup> A food allergy reaction sends someone to the emergency room every three minutes.<sup>24</sup> Each year, anaphylaxis from food allergies results in 30,000 emergency room visits, 2,000 hospitalizations, and 150 deaths.<sup>25</sup> For reasons that are difficult to determine,<sup>26</sup> the prevalence of food allergies among American children is increasing at an alarming rate, with the Centers for Disease Control and Prevention reporting a 50% increase between 1997 and 2011.<sup>27</sup> The number of severe food allergy reactions is also increasing; the CDC reported 9,500 children with reactions severe enough to cause hospitalization between 2004 and 2006, up from 2,600 children between 1998 and 2000.<sup>28</sup>

---

20. See CDC VOLUNTARY GUIDELINES, *supra* note 18, at 9 (“Food allergies are a growing food safety and public health concern that affect an estimated 4%–6% of children in the United States.”); *FARE Facts & Statistics*, *supra* note 7 (“Researchers estimate that 32 million Americans have food allergies, including 5.6 million children under age 18.”); David M. Fleischer, Tamara T. Perry, Dan Atkins, Robert A. Wood, A. Wesley Burks, Stacie M. Jones, Alice K. Henning, Donald Stablein, Hugh A. Sampson & Scott H. Sicherer, *Allergic Reactions to Foods in Pre-School Aged Children in a Prospective Observation Food Allergy Study*, 130 PEDIATRICS e25, e26 (2012) (“Allergic reactions to foods affect up to 8% of children.”).

21. *FARE Facts & Statistics*, *supra* note 7.

22. *CDC Food Allergies*, *supra* note 15; *FDA Food Allergies*, *supra* note 16.

23. See *FARE Facts & Statistics*, *supra* note 7.

24. See Sunday Clark, Janice Espinola, Susan A. Rudders, Aleena Banerji & Carlos A. Camargo, Jr., *Frequency of US Emergency Department Visits for Food-Related Acute Allergic Reactions*, 127 J. ALLERGY & CLINICAL IMMUNOLOGY 682, 682 (2011); *FARE Facts & Statistics*, *supra* note 7.

25. *Frequently Asked Questions About Food Allergies*, U.S. FOOD & DRUG ADMIN., <https://www.fda.gov/Food/IngredientsPackagingLabeling/FoodAllergens/ucm530854.htm> [<https://perma.cc/DV9A-5ANA>]; see also *FARE Facts & Statistics*, *supra* note 7.

26. See Hugh S. Sampson, *Peanut Allergy*, 346 NEW ENG. J. MED. 1294, 1297 (2002).

27. See JACKSON, HOWIE & AKINBAMI, *supra* note 2, at 2 (food allergies in children increased from 3.4% to 5.1% between 1997 and 2011); see also *FARE Facts & Statistics*, *supra* note 7 (“The [CDC] reports that the prevalence of food allergy in children increased by 50 percent between 1997 and 2011.”); Perri Klass, *Life-Threatening Allergic Reactions Rising in Children*, N.Y. TIMES (Apr. 9, 2018), <https://www.nytimes.com/2018/04/09/well/family/life-threatening-allergic-reactions-rising-in-children.html> [<https://perma.cc/8MDQ-F6A2>] (describing Blue Cross Blue Shield report showing emergency room visits among its subscribers for anaphylaxis in children doubled between 2010 and 2016).

28. Claire Gagné, *Backlash After Food Allergy Accommodations Compared to Hysteria*, ALLERGIC LIVING (July 2, 2010), <https://www.allergicliving.com/2010/07/02/food-allergy-backlash-grows-1/> [<https://perma.cc/NYZ6-NJTL>].

Though promising treatments are being developed to help desensitize some individuals to their allergens,<sup>29</sup> no cure currently exists for food allergies.<sup>30</sup> Strictly avoiding the allergen is thus the safest course of action.<sup>31</sup> But that is easier said than done. For some people, even a tiny exposure to the allergen can cause an allergic response, including anaphylaxis.<sup>32</sup> Reactions have been documented from exposure to one milligram of peanut flour.<sup>33</sup> Food that is manufactured using the same equipment or in the same facility, or even prepared in the same kitchen, as an allergen might be contaminated with it.<sup>34</sup> Accidental ingestion happens frequently through a variety of mechanisms<sup>35</sup> and

---

29. These desensitization treatments do not “cure” the allergy, require lifelong maintenance, are unavailable to patients with the highest risk of anaphylaxis, and simply do not work for many people. See Elizabeth Feuille & Anna Nowak-Wegrzyn, *Allergen-Specific Immunotherapies for Food Allergy*, 10 ALLERGY ASTHMA IMMUNOLOGY RES. 189, 189, 204 (2018); Robert A. Wood, *Food Allergen Immunotherapy: Current Status and Prospects for the Future*, 137 J. ALLERGY & CLINICAL IMMUNOLOGY 973, 974, 979–80 (2016); Roni Caryn Rabin, *For Children With Peanut Allergies, F.D.A. Experts Recommend a New Treatment*, N.Y. TIMES (Sept. 13, 2019), <https://www.nytimes.com/2019/09/13/health/peanut-allergy-children.html> [<https://perma.cc/H6WB-FLSA>].

30. CDC *Food Allergies*, *supra* note 15; FDA *Food Allergies*, *supra* note 16.

31. CDC *Food Allergies*, *supra* note 15; FDA *Food Allergies*, *supra* note 16; Fleischer, Perry, Atkins, Wood, Burks, Jones, Henning, Stablein, Sampson & Sicherer, *supra* note 20, at e26.

32. See Reber, Hernandez & Galli, *supra* note 17, at 335 (explaining that anaphylaxis can be triggered by “minute amounts” of exposure to allergic foods); Belen M. Tan, Mandel R. Sher, Robert A. Good & Sami L. Bahna, *Severe Food Allergies by Skin Contact*, 86 ANNALS ALLERGY, ASTHMA & IMMUNOLOGY 583, 586 (2001) (“Severe food allergic reactions can occur through noningestant exposure (skin contact or inhalation), to even minute quantities of the offending allergen.”); see also James E. Gern, Evelyn Yang, Helen M. Evrard & Hugh A. Sampson, *Allergic Reactions to Milk-Contaminated ‘Nondairy’ Products*, 324 NEW ENG. J. MED. 976, 976 (1991) (reporting study of patients with allergic reactions to trace amount of milk in products labeled as “nondairy”).

33. See Jonathan O’B. Hourihane, Sally A. Kilburn, Julie A. Nordlee, Susan L. Hefle, Steve L. Taylor & John O. Warner, *An Evaluation of the Sensitivity of Subjects with Peanut Allergy to Very Low Doses of Peanut Protein: A Randomized, Double-Blind, Placebo-Controlled Food Challenge Study*, 100 J. ALLERGY & CLINICAL IMMUNOLOGY 596, 596 (1997).

34. See THE THRESHOLD WORKING GRP., U.S. FOOD & DRUG ADMIN., U.S. DEP’T OF HEALTH & HUMAN SERVS., APPROACHES TO ESTABLISH THRESHOLDS FOR MAJOR FOOD ALLERGENS AND FOR GLUTEN IN FOOD 21 (2006), <https://www.fda.gov/downloads/Food/IngredientsPackagingLabeling/UCM192048.pdf> [<https://perma.cc/ET2L-UMUJ>] [hereinafter THRESHOLD WORKING GROUP] (noting that cross-contact may occur when a trace amount of a food allergen is airborne or present on production machinery); Sarah Besnoff, Comment, *May Contain: Allergen Labeling Regulations*, 162 U. PENN. L. REV. 1465, 1469 (2014) (“Some food allergy sufferers can have allergic reactions to very small amounts of allergens, including food products that were only in cross-contact with allergens.”).

35. See Heather Martone, Note, *2.2 Million Children Left Behind: Food Allergies in American Schools—A Study of the Food Allergy and Anaphylaxis Management Act*, 18 J.L. & POL’Y 775, 790 (2010) (“Food allergy sufferers can only prevent experiencing an allergic reaction by avoiding their

is responsible for a significant number of allergic reactions.<sup>36</sup> For instance, a Minnesota man died after eating chocolate containing peanut residue.<sup>37</sup> Though ingesting allergens causes most reactions, mere skin contact or inhalation can trigger a reaction in rare instances,<sup>38</sup> such as the teacher who went into anaphylactic shock after touching a banana<sup>39</sup> or the boy who suffered severe systemic symptoms including bronchial obstruction after a drop of milk splashed on his shoulder.<sup>40</sup> A boy in London died after a bully threw cheese at him—the first known death from allergen skin exposure alone.<sup>41</sup>

### B. Negative Attitudes About Food Allergies

Despite the seriousness of food allergies, many people view them with skepticism or downright hostility. Some think food allergies are a fake condition.<sup>42</sup> Others understand that food allergies are real but believe food

trigger food, but this is not always possible because of cross contamination, insufficient food labeling, and accidental ingestion of allergens.” (footnotes omitted).

36. See CDC VOLUNTARY GUIDELINES, *supra* note 18, at 9 (“Studies show that 16%–18% of children with food allergies have had a reaction from accidentally eating food allergens while at school.”); Fleischer, Perry, Atkins, Wood, Burks, Jones, Henning, Stablein, Sampson & Sicherer, *supra* note 20, at e25 (demonstrating high frequency of food allergy reactions caused by accidental exposure to allergens); Sampson, *supra* note 26, at 1296 (stating that “inadvertent exposure” from sources such as peanut contamination of manufacturing equipment results in “an allergic reaction every three to five years in the average patient with peanut allergy”); THRESHOLD WORKING GROUP, *supra* note 34, at 21 (stating that cross-contact “has been shown to lead to allergic reactions in consumers on numerous occasions” (citations omitted)).

37. See Mary Lynn Smith, *Allergic Reaction to Peanut Residue Kills 22-Year-Old Twin Cities Man*, STAR TRIB. (Jan. 22, 2016, 12:21 PM), <http://www.startribune.com/peanut-allergy-kills-22-year-old-twin-cities-man/366152021> [<https://perma.cc/2FZN-ES4V>].

38. See Tan, Sher, Good & Bahna, *supra* note 32, at 583–84 (stating that although reactions are “generally triggered through ingestion,” “skin contact and inhalation can also trigger allergic reactions” and describing five instances of severe food allergy reactions from skin contact or inhalation).

39. See Greg Bradbury, *Banana Prank Sends Teacher to Hospital, Students to Court*, ABC NEWS (July 31, 2019, 7:42 PM), <https://abcnews.go.com/US/banana-prank-sends-teacher-hospital/story?id=64691960> [<https://perma.cc/CH72-5XJG>].

40. See G. Liccardi, F. De Falco, J.A. Gilder, M. D’Amato & G. D’Amato, *Severe Systemic Allergic Reaction Induced by Accidental Skin Contact with Cow Milk in a 16-Year-Old Boy. A Case Report*, 14 J. INVESTIGATIONAL ALLERGOLOGY & CLINICAL IMMUNOLOGY 168, 168 (2004) (describing instance where boy had severe allergic reaction to a drop of milk splashed onto his shoulder).

41. See Lisa M. Bartnikas & Scott H. Sicherer, *Fatal Anaphylaxis: Searching for Lessons from Tragedy*, 8 J. ALLERGY & CLINICAL IMMUNOLOGY: IN PRACTICE 334, 334 (2020); Ru-Xin Foong, Paul J. Turner & Adam T. Fox, *Fatal Anaphylaxis Due to Transcutaneous Allergen Exposure: An Exceptional Case*, 8 J. ALLERGY & CLINICAL IMMUNOLOGY: IN PRACTICE 332, 332 (2020).

42. See Gagné, *supra* note 28 (describing trend in food allergy reporting where “[s]uddenly it was fashionable to dismiss food allergy as a made-up phenomenon” and noting “[t]here have always

allergy concerns are exaggerated, both in the numbers of people afflicted and in the gravity of the condition.<sup>43</sup> These skeptics cannot understand how a small amount of a food could hurt anyone.<sup>44</sup> They accuse parents of overprotecting their children or embellishing the extent of the allergy or its risks to garner attention or make themselves feel special.<sup>45</sup> Still others appear to be

---

been people who are doubtful that food allergy even exists”); Lavanya Ramanathan, *It’s Bad Enough to Have a Food Allergy. But Then You Have to Deal with the Skepticism*, WASH. POST (Sept. 25, 2018, 6:00 AM CDT), [https://www.washingtonpost.com/lifestyle/magazine/its-bad-enough-to-have-a-food-allergy-but-then-you-have-to-deal-with-the-skepticism/2018/09/21/80d2e1f8-89d6-11e8-8aea-86e88ae760d8\\_story.html](https://www.washingtonpost.com/lifestyle/magazine/its-bad-enough-to-have-a-food-allergy-but-then-you-have-to-deal-with-the-skepticism/2018/09/21/80d2e1f8-89d6-11e8-8aea-86e88ae760d8_story.html) [https://perma.cc/HP4M-HMJW] (“[T]ell someone that you have a food allergy, and there’s a good chance they’ll roll their eyes in disbelief.”); Joel Stein, *A Nut Allergy Skeptic Learns the Hard Way*, TIME (Aug. 14, 2010), <http://content.time.com/time/magazine/article/0,9171,2007417,00.html> [https://perma.cc/FEZ2-9R85] (explaining how, after his son was diagnosed with a nut allergy, the columnist regretted his prior writing in which he proclaimed: “Your kid doesn’t have an allergy to nuts. Your kid has a parent who needs to feel special.”); Beth Teitell, *Skeptics Add to Food Allergy Burden for Parents*, BOS. GLOBE (Feb. 11, 2014, 2:34 AM), <https://www.bostonglobe.com/lifestyle/2014/02/11/with-one-child-food-allergy-restricting-another-allergy-moms-say-they-face-skepticism/Hi9h2AGwDyCzAB0NsCRX90/story.html> [https://perma.cc/YTD2-RBZL] (“[S]ome parents say they face disbelief that their children’s allergies exist at all.”).

43. See Kennedy, *Why I Mock “Attachment Parenting” and the Kids It Produces*, REASON (Apr. 29, 2012, 9:45 AM), <https://reason.com/2012/04/29/why-i-mock-attachment-parenting-and-the> [https://perma.cc/5UJ6-52K4] (“Now some food allergies are deadly, but for some reason an irrationally large percentage of parents want to force their ‘sensitive’ kids into this group. When half your kid’s class is defined as wheat, dairy, and nut sensitive, you should roll your eyes.”); Teitell, *supra* note 42 (“[P]eople think we’re all misdiagnosed, that we’re hypochondriacs,” says food allergy mom who runs a local parent support group); see also Ed Pilkington & Martin Pengelly, *Chris Christie Accuses Jared Kushner of Political “Hit Job” in Explosive New Book*, GUARDIAN (Jan. 15, 2019, 8:52 EST), <https://www.theguardian.com/us-news/2019/jan/15/chris-christie-book-jared-kushner-accusations-hit-job> [https://perma.cc/7GEW-5FVK] (recounting anecdote in Chris Christie’s book when Donald Trump insisted on ordering scallops for Christie’s dinner, even though Christie is allergic to them).

44. See *Food Allergy Research & Education Urges Public to Understand Severity of Food Allergy with New Awareness Campaign*, FOOD ALLERGY RES. & EDUC. (May 19, 2017), <https://www.foodallergy.org/media-room/food-allergy-research-education-urges-public-understand-severity-food-allergy-new> [https://perma.cc/7XSE-GQQ6] (“What many people don’t understand is that these life-threatening reactions sometimes can be caused by the tiniest exposure to an allergen.”); Teitell, *supra* note 42 (“[S]ome parents of kids with allergies say they’re challenged by people who don’t understand that even trace amounts of a food can trigger a potentially fatal allergic reaction, or anaphylaxis.”).

45. See Gagné, *supra* note 28 (describing backlash against food allergy parents, portraying them “as hysterical, anxiety-ridden and even needing to ‘feel special’”); Ishani Nath, *Parents Sue School Board, Principal in Shocking Allergy Case*, ALLERGIC LIVING (Dec. 9, 2014), <https://www.allergicliving.com/2014/12/09/parents-sue-school-board-and-principal-in-shocking-allergy-rights-case/> [https://perma.cc/5GGL-3P2E] (explaining that school officials reported parents of young child with peanut allergy to department of child services for insisting on school accommodations of her allergy and that the department’s investigation showed the report was “utterly

unconcerned for the needs or safety of allergic individuals, stressing instead their purported right to eat whatever they want, whenever they want to eat it.<sup>46</sup> Adding fuel to this fire are people who falsely claim to have a food allergy, either out of ignorance or because it is perceived as a convenient way to avoid eating a disfavored food.<sup>47</sup>

Media portrayals of food allergies exacerbate this negativity. Food allergies are often the butt of jokes in television shows and movies.<sup>48</sup> In 2018, an animated children's movie set up what it apparently intended as a comic scene in which a character was intentionally barraged with his allergen—blackberries—and then fumbled through using his emergency medicine when one got in his mouth.<sup>49</sup> A recent sitcom episode featured a joke about how someone could “take . . . out” a peanut-allergic kid “with a bag of trail mix.”<sup>50</sup>

---

unsubstantiated”); Teitell, *supra* note 42 (“[S]ome parents of allergic children say they are sometimes branded hypochondriacs or labeled as overprotective by neighbors, late-night comics, and even grandparents.”); Stein, *supra* note 42 (recounting author’s prior belief that children did not have food allergies but instead had “a parent who needs to feel special”).

46. See Julie Weingarden Dubin, *Allergy Backlash: Skeptic Moms Flout No-Peanut Rules*, TODAY (June 21, 2011, 2:30 PM CDT), <https://www.today.com/parents/allergy-backlash-skeptic-moms-flout-no-peanut-rules-1C7398269> [<https://perma.cc/5JRD-SEA5>] (quoting a comment from a food allergy skeptic: “It’s not fair to turn a whole school upside down for ONE student. . . . Peanut butter sandwiches are just about the only thing my kid will eat. Multiple kids have to suffer so one kid can ‘enjoy’ a normal childhood . . . yeah, screw that.”); Lisa Rutledge, *Cambridge Mom Calls for End to Nut Bans in Schools*, CAMBRIDGE TIMES (Oct. 27, 2018), <https://www.cambridgetimes.ca/news-story/8989124-cambridge-mom-calls-for-end-to-nut-bans-in-schools/> [<https://perma.cc/369Z-TEGV>] (reporting on Canadian mother who protested school’s nut-free policy because it restricted her non-allergic daughter’s food choices).

47. See Neil Swidey, *Why Food Allergy Fakers Need to Stop*, BOS. GLOBE MAG. (Oct. 14, 2015, 10:53 AM), <https://www.bostonglobe.com/magazine/2015/10/14/why-food-allergy-fakers-need-stop/PB6uN8NF3eLWFjXnKF5A9K/story.html> [<https://perma.cc/YW4T-9KLJ>] (imploring “food allergy fakers” to stop describing their food preferences as allergies because it “erode[s] hard-won progress for people with genuine allergies and disorders”); Teitell, *supra* note 42 (stating that skepticism regarding the existence of food allergies is “fed in part by the enormous number of Americans who avoid things like gluten or dairy for lifestyle rather than life-and-death reasons”).

48. See *Statement by Food Allergy Research & Education and Members of Clinical Advisory Board on Depiction of Food Allergies in Entertainment Media*, FOOD ALLERGY RES. & EDUC. (Feb. 13, 2018) <https://www.foodallergy.org/media-room/statement-food-allergy-research-education-and-members-clinical-advisory-board-depiction> [<https://perma.cc/8653-GAUB>] [hereinafter *FARE Media Statement*] (summarizing 2016 study analyzing 115 television shows and movies referencing food allergies and concluding that 59% of them contained humorous depictions that downplayed the seriousness of the allergy).

49. See *Allergy Bullying: It’s Real, and It’s Dangerous*, CBC RADIO (Apr. 20, 2018, 5:02 PM ET), <https://www.cbc.ca/radio/whitecoat/allergy-bullying-it-s-real-and-it-s-dangerous-1.4627456> [<https://perma.cc/CG4U-P7DV>] (discussing incident in *Peter Rabbit* movie); *FARE Media Statement*, *supra* note 48 (same).

50. See CBC RADIO, *supra* note 49 (discussing episode of rebooted *Roseanne* television series).

A stand-up comedian quipped, “If being near a nut can kill you, do we really want that in the gene pool?”<sup>51</sup> These portrayals reinforce the idea that food allergies are trivial at best, signaling to children that such antagonistic behavior is acceptable and influencing attitudes towards food allergy policies in schools.<sup>52</sup> This is not unlike those who have argued that the risk from the rising rate of measles infections is overblown, citing an episode of *The Brady Bunch* that made light of the entire family contracting the measles.<sup>53</sup>

### III. FOOD ALLERGIES IN SCHOOL

At school, food is everywhere. Of course, children eat lunch at school. Along with lunch, the federal government provides programs for breakfast and dinner in many schools.<sup>54</sup> Outside the cafeteria, food is often brought into classrooms for snacks, class parties, and celebrations, particularly in elementary school. Aside from eating, food is used for crafts and science experiments. Field trips and extracurricular activities can also involve snacks and meals.<sup>55</sup>

---

51. *Id.*; see also Teitell, *supra* note 42 (commenting on food allergy jokes by late-night comedians).

52. See *FARE Media Statement*, *supra* note 48 (reporting research results that “food allergies indeed do seem to be treated humorously in the media more often than not, and this can matter” because “[t]he humorous treatment decreased food-allergy-related policy support for elementary schools via decreased perceptions of the seriousness of food allergies”); see also CBC Radio, *supra* note 49 (“Some illnesses we elevate and say the people who are dealing with them are very heroic, and others we make the butt of jokes and we dehumanize them.”).

53. See Gwynne Hogan, ‘Brady Bunch’ Episode Fuels Campaigns Against Vaccines—And Marcia’s Miffed, NAT’L PUB. RADIO (Apr. 28, 2019, 8:54 AM ET), <https://www.npr.org/sections/health-shots/2019/04/28/717595757/brady-bunch-episode-fuels-campaigns-against-vaccines-and-marcia-s-miffed> [https://perma.cc/65BV-EPMJ].

54. See *Child Nutrition Programs*, FOOD & NUTRITION SERV., U.S. DEP’T AGRIC., <https://www.fns.usda.gov/school-meals/child-nutrition-programs> [https://perma.cc/8EL9-XD2V].

55. See *Food Allergies in the Classroom*, FOOD ALLERGY RES. & EDUC., <https://www.foodallergy.org/education-awareness/community-resources/your-back-to-school-headquarters/managing-food-allergies-in> [https://perma.cc/EPZ8-2LVD] (providing ways to reduce allergen exposure at school, including restricting food from classrooms, finding ways to celebrate that do not involve food, avoiding food use in craft and science projects, and rewarding children with non-food items); Livingston, *supra* note 1 (reporting on allergic child’s difficulties dealing with a classroom experiment involving exploding peanuts); Jeanne M. Lomas & Kirsi M. Järvinen, *Managing Nut-Induced Anaphylaxis: Challenges and Solutions*, 8 J. ASTHMA & ALLERGY 115, 118 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4631427/> [https://perma.cc/65JK-H7GY] (“Most peanut and tree nut reactions at school occur in the classroom and are due to utilization of nuts in craft projects or nut exposure during celebrations such as for a birthday.”); C. Lynne McIntyre, Anne H. Sheetz, Constance R. Carroll & Michael C. Young, *Administration of Epinephrine for Life-Threatening Allergic Reactions in School Settings*, 116 PEDIATRICS 1134, 1139 (2005) (documenting allergic reactions in school from parties and special events, cooking classes, and a class project involving peanut butter); CTRS. FOR DISEASE CONTROL & PREVENTION, MANAGING FOOD ALLERGIES IN

The combination of ubiquitous food and the burgeoning numbers of food-allergic children creates logistical and safety challenges for schools.<sup>56</sup> The average classroom has two children with a food allergy.<sup>57</sup> Because peanuts are one of the most prevalent and dangerous allergens,<sup>58</sup> schools frequently implement policies involving nuts, especially peanuts. Nut-free cafeteria tables are common, and many schools ban nuts from the entire school or at least from classrooms containing a nut-allergic child.<sup>59</sup> Because candy (especially

---

SCHOOLS: THE ROLE OF SCHOOL TEACHERS AND PARAEducATORS 2, [https://www.cdc.gov/healthyschools/foodallergies/pdf/teachers\\_508\\_tagged.pdf](https://www.cdc.gov/healthyschools/foodallergies/pdf/teachers_508_tagged.pdf) [<https://perma.cc/N8TW-DCA8>] [hereinafter *CDC School Food Allergies*] (recommending that schools “[a]void using allergens in classroom activities, including arts and crafts, counting, science projects, parties, holiday and celebration treats, or cooking”); Wendy Mondello, *Food Allergy Bullying*, GLUTEN FREE & MORE (Apr. 23, 2018), <https://www.glutenfreeandmore.com/issues/food-allergy-bullying-2/> [<https://perma.cc/WC5V-869V>] (recounting story of fifth grader who suffered anaphylactic reaction from science experiment involving peanut butter). Some schools are banning food from classroom parties and special events, both out of concern for food allergic children and to promote children’s health by disassociating food from celebrations. See Brenda Goodman, *Sweets Ban at School Parties May Cut Calorie Overload*, WEBMD (Nov. 18, 2011), <https://www.webmd.com/children/news/20111118/sweets-ban-at-school-parties-may-cut-calorie-overload#1> [<https://perma.cc/73YH-CB3K>]; Lindsay Lowe, *No More Cupcakes . . . And Carrots? School District Bans All Food from Class Parties*, TODAY (Aug. 26, 2016, 5:38 PM CDT), <https://www.today.com/parents/no-more-cupcakes-carrots-school-district-bans-all-food-class-t102055> [<https://perma.cc/V6HA-A4B8>].

56. See Landau, *supra* note 6 (“It’s hard for parents of food-allergic children to keep them safe at school when there are so many opportunities to eat snacks and meals with unsafe ingredients.”); McIntyre, Sheetz, Carroll & Young, *supra* note 55, at 1134 (“The potential for life-threatening allergic reactions in children has emerged as a significant health issue for schools.”).

57. *FARE Facts & Statistics*, *supra* note 7; Ramanathan, *supra* note 42.

58. See Lisa M. Bartnikas, Michelle F. Huffaker, William J. Sheehan, Watcharoot Kanchongkittiphon, Carter R. Petty, Robert Leibowitz, Marissa Hauptman, Michael C. Young & Wanda Phipatanakul, *Impact of School Peanut-Free Policies on Epinephrine Administration*, 140 J. ALLERGY & CLINICAL IMMUNOLOGY 465, 465 (2017), [https://www.jacionline.org/article/S0091-6749\(17\)30472-4/pdf](https://www.jacionline.org/article/S0091-6749(17)30472-4/pdf) [<https://perma.cc/A8X5-X7U6>] (“Peanut allergy is the third leading food allergy in US children and rates are rising.”); CDC VOLUNTARY GUIDELINES, *supra* note 18, at 19 (noting that peanuts account for 50%–62% of fatal or near fatal food allergy reactions); McIntyre, Sheetz, Carroll & Young *supra* note 55, at 1136 (reporting study in which 25% of allergic reactions at school causing anaphylaxis involved students with only peanut or tree nut allergies); Sampson, *supra* note 26, at 1294 (“Allergies to peanuts and tree nuts account for the majority of fatal and near-fatal anaphylactic reactions.”).

59. See Bartnikas, Huffaker, Sheehan, Kanchongkittiphon, Petty, Leibowitz, Hauptman, Young & Phipatanakul, *supra* note 58, at 465; Grace Chen, *Why Peanuts are Being Banned at Public Schools*, PUB. SCH. REV. (June 25, 2019), <https://www.publicschoolreview.com/blog/why-peanuts-are-being-banned-at-public-schools> [<https://perma.cc/H2JF-8KZY>]; Tove Danovich, *Parents, Schools Step Up Efforts to Combat Food-Allergy Bullying*, NAT’L PUB. RADIO (June 5, 2018, 8:00 AM ET), <https://www.npr.org/sections/thesalt/2018/06/05/613933607/parents-schools-step-up-efforts-to-combat-food-allergy-bullying> [<https://perma.cc/6LKL-57MW>]; Elizabeth McQuaid & Barbara

chocolate) and baked goods often share preparation or manufacturing equipment with nuts,<sup>60</sup> nut-free classrooms might be chocolate- and cupcake-free too.

Given the popularity of peanut butter—not to mention candy, cookies, and birthday cake—most kids are not happy when these items are prohibited, and all too often, neither are their parents.<sup>61</sup> School is a microcosm of the skepticism and negativity about food allergies in the world at large. Parents and other students do not want their school food choices restricted, and they see the solution as simple: allergic kids should just not eat the food they are allergic to.<sup>62</sup>

---

Jandasek, *Children's Food Allergies: Another Target for Bullying?*, LIFESPAN (Sept. 2013) <https://www.lifespan.org/centers-services/bradley-hasbro-childrens-research-center/school-issues/childrens-food-allergies> [<https://perma.cc/5LEL-KWQ5>]; David R. Stukus, *Peanut-Free Schools: What Does It Really Mean, and Are They Necessary?*, 140 J. ALLERGY & CLINICAL IMMUNOLOGY 391, 391 (2017), [https://www.jacionline.org/article/S0091-6749\(17\)30666-8/pdf](https://www.jacionline.org/article/S0091-6749(17)30666-8/pdf) [<https://perma.cc/TP7D-BF4C>].

60. See Terence J. Furlong, Jennifer DeSimone & Scott H. Sicherer, *Peanut and Tree Nut Allergic Reactions in Restaurants and Other Food Establishments*, 108 J. ALLERGY & CLINICAL IMMUNOLOGY 867, 869 (2001) (reporting study finding frequent allergic reactions to dessert foods in places like bakeries and ice cream shops); *Nut and Peanut Allergy*, KIDSHEALTH <https://kidshealth.org/en/parents/nut-peanut-allergy.html> [<https://perma.cc/ZKV8-SP26>] (stating that cookies, baked goods, and candy are “[s]ome of the highest-risk foods for people with peanut or tree nut allergy” because of the risk of cross-contamination or the inclusion of nuts as a hidden ingredient); Lomas & Järvinen, *supra* note 55, at 118–19, (stating that children’s parties and bakeries are among high-risk situations for cross-contamination and accidental exposure to nuts).

61. See Carina Hoskisson, *Why Do Your Kid's Allergies Mean My Kid Can't Have a Birthday?*, HUFFINGTON POST (Feb. 20, 2014, 9:48 AM EST), [https://www.huffpost.com/entry/why-do-your-kids-allergies-mean-my-kid-cant-have-a-birthday\\_n\\_4767686](https://www.huffpost.com/entry/why-do-your-kids-allergies-mean-my-kid-cant-have-a-birthday_n_4767686) [<https://perma.cc/6WAF-KNNE>]; see also Gagné, *supra* note 28 (describing resistance to food allergy policies because those impact children without allergies).

62. See Kennedy, *supra* note 43 (opining that parents with allergic children should not “force an entire group of otherwise healthy kids to alter their lunch and snack selections based on their deficits”); Landau, *supra* note 6 (recounting comment posted regarding food allergy accommodations in school: “It is completely unfair and ridiculous to expect 400 other families to change their eating habits because you can’t teach your kid not to touch someone else’s food.”); Jill Pond, *Leave Your Stupid Peanut Butter at Home*, BLUNT MOMS (Aug. 22, 2016), <https://bluntmoms.com/leave-stupid-peanut-butter-home/> [<https://perma.cc/6QE9-9MCS>] (describing negative comments relating to nut-free policies, including “The whole class has to change for one or two kids? Why can’t those kids just stay away from nuts?”); Rutledge, *supra* note 46 (discussing mother who kept her daughter home from school while she challenged school’s nut ban because the policy “restrict[s] rights to food choices”); see also Bartnikas, Huffaker, Sheehan, Kanchongkittiphon, Petty, Leibowitz, Hauptman, Young & Phipatanakul, *supra* note 58, at 472 (stating that nut-free policies may frustrate students and families by restricting food choices).

If only it were that simple. Accidental ingestion is a huge risk, especially with younger children.<sup>63</sup> And children are messy eaters. The stray bit of peanut butter on one child's hand can transfer, for example, to a table or doorknob, creating the possibility that an allergic child will unknowingly touch and then ingest the allergen.<sup>64</sup> Because some allergic children react to skin contact with or inhalation of an allergen, having any contact with the allergen puts those children in great danger.<sup>65</sup>

Despite this threat, some skeptical parents or those who are unaware of the danger resist schools' efforts to protect allergic children.<sup>66</sup> Some intentionally send banned food to school with their children because they or their children prefer that food.<sup>67</sup> Others have pushed to have the policies rescinded, including staging protests, proclaiming "Our Kids Have Rights Too."<sup>68</sup> Some have even

---

63. See Fleischer, Perry, Atkins, Wood, Burks, Jones, Henning, Stablein, Sampson & Sicherer, *supra* note 20, at e25 (discussing high frequency of food allergy reactions caused by accidental exposure to allergens among young children); Teitell, *supra* note 42 (describing allergic reaction when dairy-allergic toddler ate a milk-soaked Cheerio she found in a chair crevice); see also *supra* notes 35–37 and accompanying text.

64. See Wade TA Watson, AnnMarie Woodrow & Andrew W. Stadnyk, *Persistence of Peanut Allergen on a Table Surface*, 9 ALLERGY, ASTHMA & CLINICAL IMMUNOLOGY 7, 8 (2013) (remarking that "[p]eanut allergen is very robust" and demonstrating that table smeared with peanut butter and not cleaned for 110 days still contained the allergen); see also Michael Borella, Note, *Food Allergies in Public Schools: Toward a Model Code*, 85 CHI.-KENT L. REV. 761, 764–65 (2010) ("It is no secret that some children are messy eaters and often fail to wash their hands thoroughly with soap and water after eating. The residue from one child's peanut butter sandwich can easily find its way onto the desk or clothes of a child with a peanut allergy.").

65. See *supra* notes 38–41 and accompanying text.

66. See Borella, *supra* note 64, at 765 ("[P]arents who do not have children with food allergies may resist restrictions on what their non-allergic children are allowed to eat and where they are allowed to eat it."); Stukus, *supra* note 59, at 391 ("[P]arents of nonallergic children have used social media and online forums to express displeasure over limitations on their children imposed by food bans, including limiting their lunch choices or ability to bring food-based treats for classroom celebrations.").

67. See Dubin, *supra* note 46 ("Though more schools take measures to protect kids with food allergies, and most parents are sensitive to the dangers, a small but vocal group of parents think such allergies are exaggerated, even invented. Some even send junior off to his nut-free class with a peanut-butter-and jelly sandwich."); Rutledge, *supra* note 46 (describing mother's protest of school's nut-free policy after her daughter came home hungry because she was not allowed to eat the peanut butter her mother packed); Nicole Smith, *Parents Who Bully About Food Allergies*, ALLERGICCHILD (Oct. 13, 2012), <https://home.allergicchild.com/parents-who-bully-about-food-allergies/> [<https://perma.cc/32RM-4YZW>] ("One Mom announced at a PTO meeting that she was done following 'all the no peanuts rules' and was bringing peanut butter cookies to Field Day for all the students."); see also Bartnikas, Huffaker, Sheehan, Kanchongkittiphon, Petty, Leibowitz, Hauptman, Young & Phipatanakul, *supra* note 58, at 465 (noting that nut bans are "difficult to enforce").

68. Mary Quinn O'Connor, *Amid Protest, Florida School Stands Behind Tough New Peanut Allergy Regulations*, FOX NEWS (Mar. 15, 2011), <https://www.foxnews.com/us/amid-protest-florida-school-stands-behind-tough-new-peanut-allergy-regulations> [<https://perma.cc/2THT-F7XN>] (quoting

suggested that severely allergic children should be forcibly removed and home-schooled rather than the school being made safe for those children.<sup>69</sup>

The gamut of negativity and skepticism played out in miniature in the comments of a 2019 *New York Times* article about the difficulties one mother faced in working with a children's theater program to accommodate her peanut-allergic child.<sup>70</sup> For example:

- “Disease du jour: peanut allergy . . . I’m looking forward to the day when this bit of hysteria passes and these kids have magically ‘outgrown’ their allergies.”<sup>71</sup>
- “So because your kid has an allergy every other kid must live a life without the substance your kid is allergic to, right? Unfair. Teach her to stay away from nuts. . . . She’s yours, not mine. My kid would bring what I make her for lunch, PB&J.”<sup>72</sup>
- “If your child is too sickly to interact with other children keep them at home.”<sup>73</sup>
- “This is what you get when political correctness runs

---

picket sign); *see also* Kim Shiffman, *Pickets for Peanuts?*, ALLERGIC LIVING (Mar. 25, 2011), <https://www.allergicliving.com/2011/03/25/pickets-for-peanuts/> [https://perma.cc/B9L9-2V62] (“‘You can’t take peanut butter and jelly—or any right—away from my child,’ yelled one angry protester to the mother of another peanut-allergic child at the school. ‘Keep your child at home!’”); Teitell, *supra* note 42 (discussing lawyer who has been approached to represent families unhappy with school’s nut ban).

69. *See* Erika Dacunha, *A Teen’s Story of Allergy Bullying—and Bravery*, ALLERGIC LIVING (July 16, 2013), <https://www.allergicliving.com/2013/07/16/a-teens-story-of-allergy-bullying-and-bravery/> [https://perma.cc/S8DH-B6HV] (discussing how school parents met to discuss whether an allergic child should be removed from school); Margaret Hartmann, *Parents Protest to Remove 6-Year-Old with Peanut Allergy from Class*, JEZEBEL (Mar. 22, 2011, 12:22 AM), <https://jezebel.com/parents-protest-to-remove-6-year-old-with-peanut-allerg-5784267> [https://perma.cc/C34G-YSZ6] (reporting on parental protests to have peanut-allergic girl home-schooled and school’s nut-free policies rescinded); Landau, *supra* note 6 (quoting comment on food allergy bullying article: “[H]ow about you keep your sickly kid home? That is what homeschooling is for.”).

70. *See* Roni Caryn Rabin, *In a Children’s Theater Program, Drama Over a Peanut Allergy*, N.Y. TIMES (Jan. 16, 2019), <https://www.nytimes.com/2019/01/16/well/eat/peanut-nut-food-allergy-discrimination.html> [https://perma.cc/W6CQ-B6S9].

71. Debra, Comment to *In a Children’s Theater Program, Drama Over a Peanut Allergy*, N.Y. TIMES (Jan. 17, 2019), <https://www.nytimes.com/2019/01/16/well/eat/peanut-nut-food-allergy-discrimination.html> [https://perma.cc/W6CQ-B6S9].

72. White Wolf, Comment to *In a Children’s Theater Program, Drama Over a Peanut Allergy*, N.Y. TIMES (Jan. 17, 2019), <https://www.nytimes.com/2019/01/16/well/eat/peanut-nut-food-allergy-discrimination.html> [https://perma.cc/W6CQ-B6S9].

73. Pw, Comment to *In a Children’s Theater Program, Drama Over a Peanut Allergy*, N.Y. TIMES (Jan. 17, 2019), <https://www.nytimes.com/2019/01/16/well/eat/peanut-nut-food-allergy-discrimination.html> [https://perma.cc/W6CQ-B6S9].

amok. . . . [T]hese children and adults bask in the attention of false victimhood . . . .”<sup>74</sup>

- “I fear that in today’s overly competitive environment of childhood achievement these parents may be reaching for the wrong thing to distinguish their child as ‘special.’”<sup>75</sup>
- “Tell your kid not to eat peanut butter. . . . Problem solved.”<sup>76</sup>

Tensions can run high, as parents of food-allergic children act to protect their children, while some parents of the other children, out of ignorance or hostility, resist these efforts—all the while leaving schools navigating the middle. Sandwiches, snacks, and science experiments become flashpoints.

#### IV. THE PROBLEM OF FOOD ALLERGY BULLYING

Food allergy bullying is a new twist on an age-old problem. With so much tension over accommodating food allergies in schools, it should perhaps come as no surprise that allergy-based bullying has emerged as a significant concern for children with food allergies.<sup>77</sup> Studies indicate that about one-third of school-aged children with food allergies are bullied because of their allergies<sup>78</sup> and that allergic children are twice as likely as their peers to be bullied.<sup>79</sup>

74. There, Comment to *In a Children’s Theater Program, Drama Over a Peanut Allergy*, N.Y. TIMES (Jan. 17, 2019), <https://www.nytimes.com/2019/01/16/well/eat/peanut-nut-food-allergy-discrimination.html> [<https://perma.cc/W6CQ-B6S9>].

75. Geraldine, Comment to *In a Children’s Theater Program, Drama Over a Peanut Allergy*, N.Y. TIMES (Jan. 16, 2019), <https://www.nytimes.com/2019/01/16/well/eat/peanut-nut-food-allergy-discrimination.html> [<https://perma.cc/W6CQ-B6S9>].

76. Nadia, Comment to *In a Children’s Theater Program, Drama Over a Peanut Allergy*, N.Y. TIMES (Jan. 16, 2019), <https://www.nytimes.com/2019/01/16/well/eat/peanut-nut-food-allergy-discrimination.html> [<https://perma.cc/W6CQ-B6S9>].

77. See Lieberman, Weiss, Furlong, Sicherer & Sicherer, *supra* note 8, at 282 (“Bullying, teasing, and harassment of children with food allergy seems to be common, frequent, and repetitive. These actions pose emotional and physical risks that should be addressed in food allergy management.”); *Bullying and Youth with Disabilities and Special Health Needs*, STOPBULLYING.GOV, <https://www.stopbullying.gov/at-risk/groups/special-needs/index.html> [<https://perma.cc/4DRR-VCZ7>] (“Kids with special health needs, such as epilepsy or food allergies, also may be at a higher risk of being bullied. Bullying can include making fun of kids because of their allergies or exposing them to the things they are allergic to. In these cases, bullying is not just serious, it can mean life or death.”).

78. See *supra* note 8 and accompanying text; see also Rabin, *supra* note 1 (“[S]tudies have shown that close to one in three children with food allergies have been bullied specifically because of their allergy.”).

79. See Bartnikas & Sicherer, *supra* note 41, at 335; Lieberman, Weiss, Furlong, Sicherer & Sicherer, *supra* note 8, at 286; Quach & John, *supra* note 3, at 479.

Bullying definitions vary somewhat across the literature but typically include three common elements: (1) unwanted, aggressive behavior, (2) that is repeated or has the potential to be repeated, and (3) that involves a power imbalance between the bully and victim.<sup>80</sup> Food allergy bullying will often fit into this framework.<sup>81</sup>

Food allergy bullying is frequently repetitive and is on the rise. In one study, 34% of bullied children reported being mistreated more than twice per month, and 69% were bullied for at least a year.<sup>82</sup> Though the phenomenon has been studied for only about a decade,<sup>83</sup> it is apparent that as more children are developing food allergies, food allergy bullying is also increasing.<sup>84</sup>

Food allergy bullying inherently involves a power imbalance because the victim has a vulnerability—the allergy—that the bully presumably does not

---

80. See ADELE KIMMEL, PUB. JUSTICE, LITIGATING BULLYING CASES: HOLDING SCHOOL DISTRICTS AND OFFICIALS ACCOUNTABLE 2 (2017), <https://www.publicjustice.net/wp-content/uploads/2016/02/Bullying-Litigation-Primer-Fall-2017-Update-FINAL.pdf> [<https://perma.cc/NNZ3-R7ZU>]; U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-12-349, SCHOOL BULLYING: EXTENT OF LEGAL PROTECTIONS FOR VULNERABLE GROUPS NEEDS TO BE MORE FULLY ASSESSED 1 n.1 (May 2012), <https://www.gao.gov/assets/600/591202.pdf> [<https://perma.cc/NBY8-FCE4>]; Diane M. Holben & Perry A. Zirkel, *School Bullying Litigation: An Empirical Analysis of the Case Law*, 47 AKRON L. REV. 299, 302 (2014); *What is Bullying*, STOPBULLYING.GOV, <https://www.stopbullying.gov/what-is-bullying/index.html> [<https://perma.cc/389L-R2FA>].

81. The bullying definition provides a useful context, but that is really beside the point. If an allergic child is injured from abusive behavior based on the child's allergy and the bully's parent played a role, then the bully's parent should be subject to liability based on the principles discussed below. See *infra* Part V.

82. See Annunziato, Rubes, Ambrose, Mullarkey, Shemesh & Sicherer, *supra* note 8, at 639.

83. See Lieberman, Weiss, Furlong, Sicherer & Sicherer, *supra* note 8, at 282 (“To our knowledge, no study to date has assessed the scope of bullying regarding food allergy.”); see also *Bullying Rampant Among Allergic Children*, ALLERGIC LIVING (Sept. 29, 2010), <https://www.allergicliving.com/2010/09/29/allergic-children-being-bullied/> [<https://perma.cc/HPA6-9C8B>] (characterizing the Lieberman study as “the first-ever study to assess the social impact of food allergies in children”); Antonella Muraro, Laura Polloni, Francesca Lazzarotto, Alice Toniolo, Ileana Baldi, Roberta Bonaguro, Gianluca Gini & Matthew Masiello, *Comparison of Bullying of Food-Allergic Versus Healthy Schoolchildren in Italy*, 134 J. ALLERGY & CLINICAL IMMUNOLOGY, 749, 749 (2014) (stating that “Lieberman and Sicherer were the first to explore bullying among food-allergic pediatric patients”).

84. See Danovich, *supra* note 59; Marwa Eltagouri, *Three Teens Charged with Knowingly Exposing Allergic Classmate to Pineapple. She was Hospitalized*, WASH. POST. (Jan. 27, 2018, 4:36 AM CST), <https://www.washingtonpost.com/news/education/wp/2018/01/26/3-teens-charged-with-knowingly-exposing-allergic-classmate-to-pineapple-she-was-hospitalized/> [<https://perma.cc/26ZU-PL7>]; Chloe Mullarkey, *Food Allergy and Bullying: The Implications for Parents of Children with Food Allergies*, NYU APPLIED PSYCHOL. OPUS, [https://wp.nyu.edu/steinhardt-appsych\\_opus/food-allergy-and-bullying-the-implications-for-parents-of-children-with-food-allergies/](https://wp.nyu.edu/steinhardt-appsych_opus/food-allergy-and-bullying-the-implications-for-parents-of-children-with-food-allergies/) [<https://perma.cc/BUN8-GW7L>].

have.<sup>85</sup> Indeed, allergic kids are particularly susceptible to bullying.<sup>86</sup> To be protected in school, food allergies must be disclosed.<sup>87</sup> Whether because they sit at nut-free cafeteria tables, wear medical identification, carry bulky emergency medicine, or bring special snacks to class, everyone soon knows which kids have food allergies.<sup>88</sup> “Bullies target children with food allergies in school because the child manages diet and medicine, which is a daily visible struggle.”<sup>89</sup>

Allergic children suffer typical bullying tactics, such as name-calling, exclusion, teasing, and taunting.<sup>90</sup> Bullies may simply zero in on these children

---

85. See Ralph E. Cash, *Bullying and Food Allergy: What Can Allergists Do?*, AM. COLL. ALLERGY, ASTHMA & IMMUNOLOGY, <https://acaai.org/resources/connect/letters-editor/bullyingandfoodallergywhatcanallergistsdo> [<https://perma.cc/79V4-K48S>]; Lieberman, Weiss, Furlong, Sicherer & Sicherer, *supra* note 8, at 286 (describing the power imbalance between victims with food allergies and bullies without); Mullarkey, *supra* note 84 (same).

86. See Lieberman, Weiss, Furlong, Sicherer & Sicherer, *supra* note 8, at 286 (finding that bullying of children with food allergies “is common, possibly double the rate noted in the general population”); see also Fong, Katelaris & Wainstein, *supra* note 8, at 631 (explaining that some academics believe food allergy bullying is caused by “the lifestyle modifications that are required to accommodate those with food allergies, such as the need to be extremely diligent; advice to exclude certain foods from the playground and canteen; and the need to have emergency treatment on hand”).

87. See McQuaid & Jandasek, *supra* note 59 (commenting that allergic children “cannot ‘fly under the radar’” because “their food allergy is usually apparent to others” due to, for example, “the different food choices children with food allergies have to make or by designated lunchtime seating arrangements”). Indeed, federal health information privacy laws generally do not apply in elementary and secondary schools. See Office for Civil Rights, *Does the HIPAA Privacy Rule Apply to an Elementary or Secondary School?*, HHS.GOV (Nov. 25, 2008), <https://www.hhs.gov/hipaa/for-professionals/faq/513/does-hipaa-apply-to-an-elementary-school/index.html> [<https://perma.cc/8L64-WSSX>].

88. See Caroline Connell, *Food Allergy Bullying on the Rise*, ALLERGIC LIVING (Sept. 17, 2012), <https://www.allergicliving.com/2012/09/17/food-allergy-bullying-on-the-rise/> [<https://perma.cc/769N-U9CT>] (“A food allergy certainly makes a child different, and the difference is emphasized by the necessary routine precautions, like carrying an auto-injector and reading food labels, which are part of these kids’ lives.”); Mullarkey, *supra* note 84 (describing the stigma food allergy children face, due in part “to children receiving special treatment” in school, including “sitting at a designated table, carrying and self[-]administering medicine during the day, and increased attention from teachers or faculty”); Catherine Saint Louis, *In Bullies’ Hands, Nuts or Milk May Be a Weapon*, N.Y. TIMES: WELL (June 17, 2013, 5:33 PM), <https://well.blogs.nytimes.com/2013/06/17/in-bullies-hands-nuts-or-milk-may-be-a-weapon/> [<https://perma.cc/5QT2-7DL7>] (“[A] severe food allergy is a unique vulnerability: It takes only one lunch or cupcake birthday party for other children to know which classmates cannot eat nuts, eggs, milk or even a trace of wheat.”).

89. Mullarkey, *supra* note 84.

90. See Lieberman, Weiss, Furlong, Sicherer & Sicherer, *supra* note 8, at 283 (stating that 64.7% of those bullied based on food allergies were teased or taunted); Quach & John, *supra* note 3, at 479 (“They may be intentionally excluded from their peers, endure teasing and name-calling, and are targets of rumors.”); Saint Louis, *supra* note 88 (“[A] classmate held a Kit Kat candy wrapper near his

because of their vulnerability, but some bullying may also stem from hostility about the impacts of food allergy policies, such as cupcakes being banned from the classroom.<sup>91</sup>

What sets food allergy bullying apart from more typical bullying is the physical component. Allergic children are frequently bullied directly with the food they are allergic to, with one study reporting 57% of bullying incidents involving the actual dangerous food.<sup>92</sup> Stories abound of bullies threatening allergic children with their allergen,<sup>93</sup> shoving or waving it in their face,<sup>94</sup> slipping it into their food,<sup>95</sup> or using it to contaminate their school supplies or work area.<sup>96</sup> Examples include:

---

face and kept chanting, ‘You can’t eat this!’”); Shemesh, Annunziato, Ambrose, Ravid, Mullarkey, Rubes, Chuang, Sicherer & Sicherer, *supra* note 8, at e14 (collecting data regarding bullying by being teased, criticized, and excluded, rumors being spread, and belongings being damaged).

91. See Eve Becker, *Food Allergy Bullying*, LIVING WITHOUT MAG. (Jan. 2013), [https://www.foodallergyawareness.org/media/education/Bullying-Food%20Allergy%20Bullying\\_DecJan2013\\_Living%20Without%20Magazine.pdf](https://www.foodallergyawareness.org/media/education/Bullying-Food%20Allergy%20Bullying_DecJan2013_Living%20Without%20Magazine.pdf) [<https://perma.cc/3LSS-8PD4>] (“A food allergy can be a stigmatizing factor that marks a child as different and exposes him or her to bullying.”); Livingston, *supra* note 1 (noting that teachers may invite bullying by singling a child out as the reason a food or activity will be missed); McQuaid & Jandasek, *supra* note 59 (“Given the increased prevalence of food allergies and higher levels of awareness of which children are affected through the implementation of special accommodations, children with food allergies may be at risk for negative peer interactions and bullying.”).

92. Lieberman, Weiss, Furlong, Sicherer & Sicherer, *supra* note 8, at 282; see also Lin & Sharma, *supra* note 8, at AB288 (45% of survey respondents reported that “other children tried to make them eat a food allergen”); Shemesh, Annunziato, Ambrose, Ravid, Mullarkey, Rubes, Chuang, Sicherer & Sicherer, *supra* note 8, at e10 (reporting that allergic children are frequently threatened with food).

93. See Connell, *supra* note 88 (relaying story of students running up to allergic classmate and saying, “‘We ate peanuts! We ate peanut M&M’s. And we’re going to breathe on you!’”); Dacunha, *supra* note 69 (recounting experience where “[s]ome kids would chase me around with their hands up chanting, ‘I ate peanut butter!’”).

94. See Lieberman, Weiss, Furlong, Sicherer & Sicherer, *supra* note 8, at 283 (43.5% of bullied children had allergen waved in their face); Rabin, *supra* note 1 (peanuts and other food waved in allergic children’s faces).

95. See Lieberman, Weiss, Furlong, Sicherer & Sicherer, *supra* note 8, at 285 (discussing incidents of food intentionally being contaminated with allergen); Rabin, *supra* note 1 (“The most dangerous incidents occur when bullies surreptitiously contaminate the child’s own food with a food allergen . . . .”); Saint Louis, *supra* note 88 (classmates may plot to switch a peer’s lunch to see if he gets sick).

96. See Connell, *supra* note 88 (bully licked allergic child’s pencils and erasers after eating allergen); Evan Gorman, *Allegations Surface Over Prank Causing Allergic Reaction in Hancock Co. Student*, 14 NEWS (Sept. 20, 2018, 7:02 PM CDT), <https://www.14news.com/2018/09/21/allegations-surface-over-prank-causing-allergic-reaction-hancock-co-student/> [<https://perma.cc/EBB6-6J4A>] (peanut butter smeared on child’s school supplies, which got on the child’s hands); Mondello, *supra* note 55 (peanut butter rubbed on locker).

- During an argument, a child pulled a peanut butter sandwich from his lunchbox, waved it at an allergic boy, and said, “What are you gonna do about it now?”<sup>97</sup>
- An athlete shoved a sandwich dripping with mayonnaise into a teammate’s face.<sup>98</sup>
- A girl crumbled a peanut butter cookie into another girl’s lunchbox.<sup>99</sup>
- Bullies filled a girl’s desk with pistachios and hid nuts in her classroom.<sup>100</sup>

Even worse, some bullies try to force-feed their targets<sup>101</sup> or otherwise physically touch them with the allergen.<sup>102</sup> Last year, a middle-school girl intentionally rubbed pineapple on her hand and then high-fived a girl she knew had a severe pineapple allergy. That sent the victim to the hospital.<sup>103</sup> In 2017 in London, a bully intentionally touched a dairy-allergic boy with cheese. He died.<sup>104</sup>

Bullying of all types harms children—that is well established.<sup>105</sup> But food allergy bullying poses unique additional risks. In an effort to avoid standing

97. Ishani Nath, *Food Allergy Bullying: What You Can Do*, ALLERGIC LIVING (Nov. 21, 2014), <https://www.allergicliving.com/2014/11/21/food-allergy-bullying-what-you-can-do/> [https://perma.cc/4MYA-ZE2V].

98. Danovich, *supra* note 59.

99. Charlotte Jude Schwartz, *Food Allergy Bullying: The Stakes Are High, As I Found Out*, ALLERGIC LIVING (Jan. 9, 2014), <https://www.allergicliving.com/2014/01/09/food-allergy-bullying-the-stakes-are-high/> [https://perma.cc/7BUX-7R2K].

100. *See* Dacunha, *supra* note 69.

101. *See* Lin & Sharma, *supra* note 8, at AB288 (45% of survey respondents reported that “other children tried to make them eat a food allergen”); Saint Louis, *supra* note 88 (food allergy program director stated that “[e]very few months, a child recounts being force-fed an allergen”); *see also* Danovich, *supra* note 59 (children waved egg at allergic boy and say “let’s feed this guy egg”); Landau, *supra* note 6 (kindergarten child came home crying because a boy told him he was going to force him to eat a peanut).

102. *See* Becker, *supra* note 91 (bully wiped peanut butter on allergic child’s neck); Connell, *supra* note 88 (peanut butter smeared on child’s forehead); Eltagouri, *supra* note 84 (girls intentionally exposed allergic classmate to pineapple); Landau, *supra* note 6 (boy touched allergic girl’s face with peanut butter); Lieberman, Weiss, Furlong, Sicherer & Sicherer, *supra* note 8, at 282 (discussing reports of children being smeared or sprayed with their allergen); Levingston, *supra* note 1 (boys threw peanuts at allergic child); Rabin, *supra* note 1 (nacho cheese rubbed on boy’s face, milk poured on children, and cake thrown); Saint Louis, *supra* note 88 (child’s face touched with peanut butter).

103. *See* Eltagouri, *supra* note 84; Rabin, *supra* note 1; *see also* Bradbury, *supra* note 39 (three seventh-grade students rubbed banana on the doorknob of teacher they knew had severe banana allergy and threw bananas at her, sending her to the hospital for anaphylactic shock).

104. Bartnikas & Sicherer, *supra* note 41, at 334; Foong, Turner & Fox, *supra* note 41, at 332.

105. *See* Connell, *supra* note 88 (noting that bullying can cause sadness, depression, humiliation, embarrassment, low self-esteem, societal withdrawal, fear to go to school); *Effects of Bullying*,

out, allergic teens may eat food they are not sure is safe or refuse to carry emergency medicine, exponentially increasing their risk of dying from anaphylaxis.<sup>106</sup> The stress from being bullied, moreover, can make an allergic reaction more severe.<sup>107</sup> Most frighteningly, being bullied with the allergen is literally life-threatening in some instances because ingesting even a small amount of it can cause anaphylaxis.<sup>108</sup>

Many bullies might not recognize the grave danger that their conduct poses,<sup>109</sup> but some clearly do, such as the one who taunted: “I could kill you with this sandwich.”<sup>110</sup>

---

STOPBULLYING.GOV, <https://www.stopbullying.gov/at-risk/effects/index.html> [<https://perma.cc/R86Q-B8WA>] (last updated Sept. 12, 2017) (substance abuse, violence, suicide, depression, anxiety, sadness, loneliness, health problems, and declining academic performance); *see also* Becker, *supra* note 91 (eight-year-old boy bullied because of food allergy became angry and combative, his grades dropped, and he stated repeatedly that he wanted to hurt himself or die). Though beyond the scope of this Article, bullying is, unfortunately, not limited to children, and it harms adults as well. *See generally* David C. Yamada, *The Phenomenon of “Workplace Bullying” and the Need for Status-Blind Hostile Environment Protection*, 88 GEO. L.J. 475 (2000).

106. *See* Connell, *supra* note 88 (noting concern that “older kids who are targeted may try to hide their allergies” by not carrying their emergency medicine); *Bullying*, FOOD ALLERGY & ANAPHYLAXIS CONNECTION TEAM, <https://www.foodallergyawareness.org/education/bullying/> [<https://perma.cc/VHU6-QNEH>] [hereinafter *FAACT Bullying*] (stating that “[b]ullying has also been shown to increase risky behavior among children with food allergies,” including not carrying emergency medicine and purposefully eating potentially unsafe foods, and that “[f]atalities among adolescents with food allergies are more common due to risk-taking behaviors”); *see also* Janet French, *Food Allergy Bullying: How to Spot It and Actions to Take*, ALLERGIC LIVING (May 15, 2018), <https://www.allergicliving.com/2018/05/15/food-allergy-bullying-how-to-spot-if-your-child-is-a-target-and-actions-to-take/> [<https://perma.cc/GTY6-32YY>] (“Surveys also have revealed that children receiving unwanted attention about their allergies had more trouble managing the allergy, and were less likely to wear medical identification.”).

107. CDC VOLUNTARY GUIDELINES, *supra* note 18, at 39 (“Bullying, teasing, and harassment can lead to psychological distress for children with food allergies which could lead to a more severe reaction when the allergen is present.”).

108. *See* Connell, *supra* note 88 (“All bullying is serious, but when an anaphylactic child is targeted, of course, the results can be life-threatening.”); Eltagouri, *supra* note 84 (quoting allergy doctor, “putting a little bit of peanut butter on the keyboard to hurt somebody is a potentially deadly thing”); Lieberman, Weiss, Furlong, Sicherer & Sicherer, *supra* note 8, at 286 (“These actions pose a risk of psychological harm in all people, but unique to this population is that bullying, teasing, or harassment can also pose a direct physical threat when the allergen is involved.”); Rabin, *supra* note 1 (quoting mother of food-allergic child that bullying with the allergen “is like an assault with a deadly weapon”).

109. Livingston, *supra* note 1.

110. Kuzemchak, *supra* note 1; *see also supra* note 1 and accompanying text.

The overwhelming majority of food allergy bullies are school classmates.<sup>111</sup> But what part do the bully's parents play? Should parents be liable in tort for their child's bullying? When parents fail to stop food allergy bullying, even though they could do so, or engage in other behavior that tacitly encourages or enables their child's food allergy bullying, they should be liable.

#### V. THE CASE FOR PARENTAL LIABILITY FOR FOOD ALLERGY BULLYING

The legal system has long recognized that parents uniquely shape the lives of their children, with many judicial decisions upholding the fundamental right of parents in childrearing.<sup>112</sup> To a large extent, the legal system has traditionally shielded parents from liability for their children's tortious behavior.<sup>113</sup> But at least when it comes to food allergy bullying, that protection is too strong. When parents use their tremendous influence to condone or promote food allergy bullying rather than stamping it out, parents should be made to answer for doing so.

##### A. *Why Focus on Parents?*

Food allergy bullying victims have many potential avenues of legal redress for their injuries. They can sue the bully directly, and in some situations, bullies have been criminally charged. Victims can also sue the school or school-related individuals or entities.<sup>114</sup> Many jurisdictions have anti-bullying statutes. So why focus on tort liability for the bully's parents? Obstacles and limitations to other forms of responsibility and parents' particular ability to control and mold their children's behavior make parental liability worth critical examination.

---

111. See Lieberman, Weiss, Furlong, Sicherer & Sicherer, *supra* note 8, at 283 (79.8% of food allergy bullies were classmates). Shockingly, 21.4% of these children reported being bullied by a teacher or other school personnel. *Id.* at 285.

112. See, e.g., *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (discussing the Due Process right "to direct the education and upbringing of one's children"); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition."); *Ginsberg v. New York*, 390 U.S. 629, 639 (1968) ("[C]onstitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society."); see also David Pimentel, *Punishing Families for Being Poor: How Child Protection Interventions Threaten the Right to Parent While Impoverished*, 71 OKLA. L. REV. 885, 891 (2019) (stating that "the right to parent" is "a fundamental liberty interest protected by the U.S. Constitution").

113. See *infra* Section V.B.

114. For a discussion of school liability for food allergy bullying, see Shu, *supra* note \*.

Minors can be sued for their own torts.<sup>115</sup> Assault, battery, and intentional infliction of emotional distress are likely candidates for potential bullying liability,<sup>116</sup> though even these suits might not be successful.<sup>117</sup> Even so, most minors are judgment proof,<sup>118</sup> and assuming they are generally covered under their parents' homeowner's insurance, intentional conduct is typically excluded from coverage,<sup>119</sup> meaning suing the bully would be pointless in all but the most unusual of cases.

In severe circumstances, food allergy bullies have been charged with crimes. The middle-school girls involved in the pineapple bullying incident were charged with conspiracy, and the girl who actually performed the high-five was charged with felony aggravated assault.<sup>120</sup> A college hazing incident involving peanut butter being rubbed on an intoxicated student's face led to the perpetrator pleading guilty to criminal assault and battery charges.<sup>121</sup> Pursuing criminal law remedies in these cases is appropriate and should continue, but criminal law will not cover less serious—but still very dangerous and

---

115. See W. PAGE KEETON, DAN B. DOBBS, ROBERT E. KEETON & DAVID G. OWEN, PROSSER & KEETON ON TORTS § 123, at 913 (5th ed. 1984) [hereinafter PROSSER & KEETON ON TORTS]; Shaundra K. Lewis, *The Cost of Raising a Killer—Parental Liability for the Parents of Adult Mass Murderers*, 61 VILL. L. REV. 1, 4 (2016).

116. See Jessica Brookshire, Comment, *Civil Liability for Bullying: How Federal Statutes and State Tort Law Can Protect Our Children*, 45 CUMB. L. REV. 351, 364 (2015); Benjamin Walther, Comment, *Cyberbullying: Holding Grownups Liable for Negligent Entrustment*, 49 HOUS. L. REV. 531, 542, 546 (2012); see also *Boston v. Athearn*, 764 S.E.2d 582, 583 (Ga. Ct. App. 2014) (bullying victim sued minor bully for defamation and intentional infliction of emotional distress).

117. In the workplace bullying context, intentional infliction claims are typically unsuccessful, with courts finding that the conduct is not extreme and outrageous. See Yamada, *supra* note 105, at 493–509. Whether the same result would play out in the food allergy bullying context with children remains to be seen.

118. See PROSSER & KEETON ON TORTS, *supra* note 115, § 123, at 913; Lewis, *supra* note 115, at 4.

119. See Scott D. Camassar, *Cyberbullying and the Law: An Overview of Civil Remedies*, 22 ALB. L.J. SCI. & TECH. 567, 581 (2012); Rina Carmel, Barbora Pulmanova, Sherilyn Pastor & Nina Golden, *Will Cyberbullying Claims be Covered under Homeowners' Policies?*, AM. B. ASS'N (Dec. 12, 2012), <https://www.americanbar.org/groups/litigation/committees/insurance-coverage/articles/2012/novdec2012-cyberbullying-homeowner-policies/> [<https://perma.cc/DQM8-3KDB>]; see also Shane Kimzey, Note, *The Role of Insurance in Fraternity Litigation*, 16 REV. LITIG. 459, 480–83 (1997) (analyzing insurance coverage for intentional conduct in litigation regarding fraternities concerning activities such as sexual assault, alcohol abuse, and hazing).

120. Eltagouri, *supra* note 84; see also Bradbury, *supra* note 39 (three middle-school students charged with assault after rubbing banana on teacher's doorknob and throwing bananas at her, knowing of her allergy); *supra* note 103 and accompanying text.

121. Rabin, *supra* note 1; see also Connell, *supra* note 88 (discussing teen sentenced to four days in jail for smearing peanut butter on peer and arrest of another teen who crumbled peanut butter cookie in allergic child's lunchbox).

emotionally harmful—acts of bullying and does not provide any compensation for the victim.

Given the prevalence of bullying of all types in school,<sup>122</sup> victims have taken to the courts to hold school districts and personnel, including teachers, liable.<sup>123</sup> These suits, however, are largely unsuccessful for a variety of reasons, including governmental immunity defenses.<sup>124</sup>

Legislative remedies are similarly lacking. No federal anti-bullying statutes exist.<sup>125</sup> In the last two decades, all states have enacted anti-bullying legislation,<sup>126</sup> which varies widely in scope and depth.<sup>127</sup> These laws, however, are inadequate. They do not provide substantive relief to food allergy bullying victims, nor do they generally prescribe any consequences for the bully.<sup>128</sup> None provide for victim compensation or even allow a private right of action.<sup>129</sup>

122. See Daniel B. Weddle, *Bullying in Schools: The Disconnect Between Empirical Research and Constitutional, Statutory, and Tort Duties to Supervise*, 77 TEMP. L. REV. 641, 650–52 (2004); *Facts About Bullying*, STOPBULLYING.GOV, <https://www.stopbullying.gov/media/facts/index.html> [<https://perma.cc/3CSC-4BK3>] [hereinafter *StopBullying Facts About Bullying*].

123. See Camassar, *supra* note 119, at 570; Natalie DiBlasio, *More Bullying Cases Have Parents Turning to Courts*, USA TODAY (Sept. 11, 2011, 9:23 PM), <https://usatoday30.usatoday.com/news/education/story/2011-09-11/bullying-lawsuits-parents-self-defense-courts/50363256/1> [<https://perma.cc/F9AG-WBAT>]; S.L. Wykes, *Parents Settle Suit for Alleged Bullying by Their Children*, HOUS. CHRON. (Oct. 16, 2005, 5:30 AM CDT), <https://www.chron.com/news/nation-world/article/Parents-settle-suit-for-alleged-bullying-by-their-1580253.php> [<https://perma.cc/5WH3-KG3S>].

124. See KIMMEL, *supra* note 80, at 26–27; Camassar, *supra* note 119, at 577–79; Diane M. Holben & Perry A. Zirkel, *Bullying of Students with Disabilities: An Empirical Analysis of Court Claim Rulings*, 361 EDUC. L. REP. 498, 502 (2019); Peter J. Maher, Kelly Price & Perry A. Zirkel, *Governmental and Official Immunity for School Districts and Their Employees: Alive and Well?*, 19 KAN. J. L. & PUB. POL'Y 234, 235 (2010); Weddle, *supra* note 122, at 682–87.

125. See *Federal Laws*, STOPBULLYING.GOV, <https://www.stopbullying.gov/laws/federal/index.html> [<https://perma.cc/6KWH-47Y9>]. Three times, Representative Matt Cartwright of Pennsylvania introduced a bill to require schools to enact policies to address food allergy bullying specifically. The latest attempt was June 2018. These bills died in committee. See H.R. 6196, 115th Cong. (2018); H.R. 4691, 114th Cong. (2016); H.R. 3660, 113th Cong. (2013); ALLERGY Act, GOVTRACK.US <https://www.govtrack.us/congress/bills/115/hr6196/text> [<https://perma.cc/LU4J-QQ6Z>].

126. See *Laws, Policies & Regulations*, STOPBULLYING.GOV <https://www.stopbullying.gov/laws/index.html> [<https://perma.cc/M5CG-HFCM>] [hereinafter *StopBullying Law Summary*] (collecting information about all state anti-bullying statutes); see also Ari Ezra Waldman, *Are Anti-Bullying Laws Effective?*, 103 CORNELL L. REV. ONLINE 86, 87 (2018).

127. Denis Binder, *A Tort Perspective on Cyberbullying*, 19 CHAP. L. REV. 359, 362 (2016).

128. See *StopBullying Law Summary*, *supra* note 126.

129. See KIMMEL, *supra* note 80, at 25; Camassar, *supra* note 119, at 567; Ryan M. McCabe & Lori J. Parker, *Cause of Action Against School District for Injuries to Student Resulting from Bullying by Another Student*, 59 CAUSES OF ACTION 2D 307, § 14 (2013); Paul M. Secunda, *Overcoming*

Rather, these laws typically do little more than require school districts to adopt anti-bullying policies,<sup>130</sup> leading many commentators to criticize them as mere window dressing.<sup>131</sup> And most do not even require the bully's parents to be notified, thereby ignoring parents' function in combatting bullying.<sup>132</sup> Though symbolically important to show social condemnation, so far, state anti-bullying laws have had little impact on bullying.<sup>133</sup>

Parents can both foster and prevent food allergy bullying in many different ways. By virtue of their very status, parents have some ability to control their children's behavior, especially with younger children.<sup>134</sup> When parents know their child is bullying allergic children but fail to take appropriate actions to stop it, they allow the bullying to continue and tacitly encourage it.<sup>135</sup>

---

*Deliberate Indifference: Reconsidering Effective Legal Protections for Bullied Special Education Students*, 2015 U. ILL. L. REV. 175, 212.

130. See JAMES A. RAPP, 3 EDUCATION LAW § 9.05[3][e] (2019) (noting that most state bullying statutes require schools to adopt policies rather than providing detailed rules); Weddle, *supra* note 122, at 678 (stating that with state anti-bullying statutes, “[o]ften the only real requirement is that a written policy be developed that spells out consequences for bullying and retaliation”); see also *StopBullying Law Summary*, *supra* note 126 (documenting that all state bullying laws have district policy requirements).

131. See McCabe & Parker, *supra* note 129, § 14, at 356 (discussing criticisms of state bullying laws as “little more than empty political pandering”).

132. Only twenty-two state anti-bullying laws require the bully's parents to be notified of the bully's conduct. See CONN. GEN. STAT. § 10-222d(b)(4) (2019); DEL. CODE ANN. tit. 14, § 4164(b)(2)(j) (2020); FLA. STAT. § 1006.147(4)(i) (2019); GA. CODE ANN. § 20-2-751.4(b)(3) (2019); 105 ILL. COMP. STAT. 5/27-23.7(b)(4) (2017); IND. CODE § 20-33-8-13.5(a)(2)(B)(iii) (2019); LA. STAT. ANN. § 17:416.13(D)(3)(d) (2019); 603 MASS. CODE REGS. 49.05(1) (LexisNexis 2020); MICH. COMP. LAWS § 380.1310b(5)(f) (2020); MINN. STAT. § 121A.031 subdiv. 4(a)(4) (2019); MISS. CODE ANN. § 37-11-69(1)(c) (2020); MONT. ADMIN. R. 10.55.719(5)(e) (2020); NEV. REV. STAT. § 388.1351(3)(a) (2019); N.H. REV. STAT. ANN. § 193-F:4(II)(h) (2020); OHIO REV. CODE ANN. § 3313.666(B)(5) (LexisNexis 2020); OKLA. STAT. tit. 70, § 24-100.4(A)(6) (2016); 200-30 R.I. CODE R. § 10-2(2.6)(D); TEX. EDUC. CODE ANN. § 7.0832(c)(3)(B) (West 2019); UTAH CODE ANN. § 53G-9-604(1)(b) (LexisNexis 2019); VA. CODE ANN. § 22.1-279.3:1(C) (2020); W. VA. CODE § 18-2C-3(b)(5) (2017); WIS. STAT. § 118.46(1)(a)(5) (2017–2018).

133. See Waldman, *supra* note 126, at 105.

134. See Bieker v. Owens, 350 S.W.2d 522, 524 (Ark. 1961) (“It is within reason and good logic to say that the parent has a responsibility to control minor children while they are in their formative years.”); Curry v. Superior Court, 24 Cal. Rptr. 2d 495, 501 (Ct. App. 1993) (“[A] parent has the duty and opportunity to control, supervise, and train his or her child in the ways of responsible behavior.”); Wells v. Hickman, 657 N.E.2d 172, 178 (Ind. Ct. App. 1995) (“Parents are in a unique position in society because they have a special power to observe and control the conduct of their minor children.”); PROSSER & KEETON ON TORTS, *supra* note 115, § 123, at 914–15 (“[T]he parent has a special power of control over the conduct of the child, which he is under a duty to exercise reasonably for the protection of others.”); see also *infra* notes 207–08 and accompanying text.

135. See, e.g., Robertson v. Wentz, 232 Cal. Rptr. 634, 638 (Ct. App. 1986) (noting that when parents know of a child's destructive tendencies and “fail[] to exercise reasonable measures to restrain

Parental actions influence children’s mindset and conduct.<sup>136</sup> Children mimic adults, especially their parents.<sup>137</sup> They are much more likely to do as we do rather than as we say.<sup>138</sup> Children can absorb negative attitudes from parents, which in turn facilitates undesirable behavior, including bullying.<sup>139</sup>

---

or discipline the child,” the parents “thus encourage[] or acquiesce[] in such misconduct on the part of the child” (internal quotation marks omitted); *accord* *Ross v. Souter*, 464 P.2d 911, 913 (N.M. Ct. App. 1970); *see also infra* note 200 and accompanying text.

136. *See* James Herbie DiFonzo, *Parental Responsibility for Juvenile Crime*, 80 OR. L. REV. 1, 47 (2001); Machteld Hoeve, Judith Semon Dubas, Veroni I. Eichelsheim, Peter H. van der Laan, Wilma Smeenk & Jan R.M. Gerris, *The Relationship Between Parenting and Delinquency: A Meta-Analysis*, 37 J. ABNORMAL CHILD PSYCHOL. 749, 762–63 (2009); Sarah Swan, *Home Rules*, 64 DUKE L.J. 823, 890 (2015); *see also* RAPP, *supra* note 130, § 9.02[6][c][iii] (“Parent attitudes impact school culture.”); Howard Davidson, *No Consequences—Re-Examining Parental Responsibility Laws*, 7 STAN. L. & POL’Y REV. 23, 23 (1996) (“Far too many courts, as well as family and youth services agencies, have either undervalued or ignored the role parents play in their children’s severe misbehavior and what can and should be done about it.”).

137. *See* Gisela Telis, *Kids Overimitate Adults, Regardless of Culture*, SCI. MAG. (May 7, 2010, 4:23 PM), <https://www.sciencemag.org/news/2010/05/kids-overimitate-adults-regardless-culture> [<https://perma.cc/95U8-N2F8>] (“[O]verimitation—in which a child copies everything an adult does, even irrelevant or silly actions—is a universal human trait . . .”).

138. Alan Kazdin & Carlo Rotella, *I Spy Daddy Giving Someone the Finger*, SLATE (Jan. 27, 2009, 3:00 PM), <https://slate.com/human-interest/2009/01/your-kids-will-imitate-you-use-it-as-a-force-for-good.html> [<https://perma.cc/3PNA-RUKM>] (stating that modeling “affects behavior far more than telling your children what to do” and can teach children how to interact with others); Leon F. Seltzer, *How Do Parents Model Exactly What They Don’t Want?*, PSYCHOL. TODAY (July 5, 2017), <https://www.psychologytoday.com/us/blog/evolution-the-self/201707/how-do-parents-model-exactly-what-they-don-t-want> [<https://perma.cc/2XY5-ZBT3>] (“[W]hat we *tell* our kids to do—and not to do—will have less influence on them than what we *model* for them.”).

139. *See* STOPBULLYING.GOV, UNDERSTANDING THE ROLES OF PARENTS AND CAREGIVERS IN COMMUNITY-WIDE BULLYING PREVENTION EFFORTS 2 (2017), [https://www.stopbullying.gov/sites/default/files/2017-09/hrsa\\_guide\\_parents-and-caregivers\\_508v2.pdf](https://www.stopbullying.gov/sites/default/files/2017-09/hrsa_guide_parents-and-caregivers_508v2.pdf) [<https://perma.cc/CP7Y-TQW9>] (discussing bullying prevention and noting that “[c]hildren learn by example and will reflect the attitudes and behaviors of their parents/caregivers”); *see also* Connell, *supra* note 88 (describing parents’ role in modeling caring and empathy for people with food allergies); *StopBullying Facts About Bullying*, *supra* note 122 (“Studies also have shown that adults, including parents, can help prevent bullying by . . . modeling kindness and respect . . .”); Rebecca Wenrich Wheeler, *Bullying Prevention: Changing Our Language, Modeling Empathy*, POECENTER (Oct. 15, 2018), <https://www.poehealth.org/bullying-prevention-changing-our-language-modeling-empathy/> [<https://perma.cc/R4UH-W4WL>] (“Parents also play a role in preventing bullying behavior by modeling empathy, respect, and kindness toward others.”). President Trump provides a vivid demonstration of children modeling adult bullying behavior, as some school bullies are changing their tactics to parrot the President’s behavior. *See* Hannah Natanson, John Woodrow Cox & Perry Stein, *Trump’s Words, Bullied Kids, Scarred Schools*, WASH. POST (Feb. 13, 2020), <https://www.washingtonpost.com/graphics/2020/local/school-bullying-trump-words/> [<https://perma.cc/WJ36-MJ59>] (“Since Trump’s rise to the nation’s highest office, his inflammatory language—often condemned as racist and xenophobic—has seeped into schools across America.

So when parents, for example, actively resist classroom accommodations for allergic children, their actions send the wrong message. “[I]t’s not hard to see where some kids pick up the idea that singling out allergic classmates is OK.”<sup>140</sup>

Parents control what food young children bring to school. Most parents comply with school food policies, even if grudgingly at times.<sup>141</sup> But some parents intentionally send prohibited food to school.<sup>142</sup> This endangers the allergic children, especially if their child weaponizes that food.<sup>143</sup>

Given the barriers to other forms of liability and the impact parents can have on food allergy bullying, parents that engage in these behaviors should be liable if they contribute to their child becoming a food allergy bully.

### B. *The Legal Landscape of Parental Liability*

The legal system has long struggled with how to handle minors’ torts.<sup>144</sup> Under the common law, parents are not vicariously liable for their children’s torts; no liability flows by simple virtue of the parent/child relationship.<sup>145</sup>

---

Many bullies now target other children differently than they used to, with kids as young as 6 mimicking the president’s insults and the cruel way he delivers them.”).

140. Connell, *supra* note 88 (citing bullying expert’s opinion about adult responsibility for bullying and discussing parent protest of food allergy classroom measures in Florida school); *see FAACT Bullying*, *supra* note 106 (noting children’s modeling of adult behaviors, including shunning food-allergic children after a teacher excludes that child from a class activity); Hartmann, *supra* note 69 (“Parents should be teaching their kids that it’s important to help their classmate, but instead,” by protesting to remove peanut-allergic girl from the classroom rather than accommodating her allergy, “they’re sending the message that it’s okay to ostracize and harass people with disabilities.”); *see also* RAPP, *supra* note 130, § 9.02[6][c][iii] (“Where parents overlook or even sanction misconduct, school officials find it very difficult to maintain a safe and welcoming school environment.”); Wheeler, *supra* note 139 (“Children watch adults’ behavior closely . . . [I]f our interactions are critical, demeaning, or aggressive, how can we expect the children around us to behave any better?”); *CDC Voluntary Guidelines*, *supra* note 18, at 36 (“Food allergy awareness is reinforced when staff members model behaviors and attitudes that comply with rules that reduce exposure to food allergens.”).

141. *See* RAPP, *supra* note 130, § 9.02[6][c][iii] (“Even where dissatisfied with the actions of school authorities, parents are nonetheless responsible for their child’s compliance with school rules.”).

142. *See supra* note 67 and accompanying text.

143. *See* Connell, *supra* note 88 (relaying story of child who “ate peanut butter (which he wasn’t supposed to have) then ran over to breathe on [a boy], who was sitting at the allergen-free table”).

144. *See* Lisa Gentile, *Parental Civil Liability for the Torts of Minors*, 16 J. CONTEMP. LEGAL ISSUES 125, 125 (2007); Elizabeth G. Porter, *Tort Liability in the Age of the Helicopter Parent*, 64 ALA. L. REV. 533, 535 (2013).

145. *See* PROSSER & KEETON ON TORTS, *supra* note 115, § 123, at 913; Rhonda V. Magee Andrews, *The Justice of Parental Accountability: Hypothetical Disinterested Citizens and Real Victims’ Voices in the Debate Over Expanded Parental Liability*, 75 TEMP. L. REV. 375, 388 (2002); *see also* Moore v. Crumpton, 295 S.E.2d 436, 439 (N.C. 1982) (“In North Carolina and in all other jurisdictions applying common law principles, it is a well-established doctrine that the mere fact of

Children are viewed as independent legal entities responsible for their own torts.<sup>146</sup> As discussed above, suing children is often a dead end,<sup>147</sup> which can create an injustice if a child's tortious conduct causes severe injury.<sup>148</sup>

To provide relief to victims and encourage parents to control their children,<sup>149</sup> courts and legislatures have developed ways to hold parents liable in limited circumstances, both under statutory schemes and via tort common law. Though both routes can help some victims, they each have significant limitations.

Every state has enacted legislation that holds parents strictly liable for some conduct of their children.<sup>150</sup> These statutes, though better than nothing, only marginally improve the common law because many are limited to property crimes (like vandalism)<sup>151</sup>—thus excluding serious personal injury—and often cap victim recovery at the hundreds to low thousands of dollars.<sup>152</sup>

In addition to statutes, many states allow common law parental liability based not on vicarious liability but on the parent's own conduct.<sup>153</sup> Though generally there is no duty to control the conduct of others, that rule does not

---

parenthood does not make individuals liable for the wrongful acts of their unemancipated minor children.”).

146. See *Sanders v. Herold*, 217 S.W.3d 11, 15 (Tex. App.—Houston [1st Dist.] 2006, no pet.); PROSSER & KEETON ON TORTS, *supra* note 115, § 123, at 913; see also Lewis, *supra* note 115, at 4.

147. See *supra* notes 115–19 and accompanying text.

148. See PROSSER & KEETON ON TORTS, *supra* note 115, § 123, at 913.

149. See Gentile, *supra* note 144, at 127; Ashley Wellman, Eve Brank & Katherine Hazen *Parental Blame Frame: An Empirical Examination of the Media's Portrayal of Parents and Their Delinquent Juveniles*, 16 WHITTIER J. CHILD & FAM. ADVOC. 87, 96–97 (2017).

150. See Wellman, Brank & Hazen, *supra* note 149, at 89.

151. See, e.g., ALA. CODE § 6-5-380(a) (2020); TEX. FAM. CODE ANN. § 41.001 (West 2019); see also Andrews, *supra* note 145, at 377–78 (“Presently, the parents of a minor child are vastly more likely to be held responsible if their child shatters the window of his high school than if the child shatters the skull of his high school teacher. This is because civil liability statutes in most jurisdictions hold parents responsible on a strict liability basis for minor property damage, but much less so for personal injury.” (footnote omitted)).

152. See, e.g., ME. STAT. tit. 14, § 304 (2019) (\$800); MICH. COMP. LAWS § 600.2913 (2020) (\$2,500); NEV. REV. STAT. § 41.470(2) (2019) (\$10,000); TEX. FAM. CODE ANN. § 41.002 (West 2019) (\$25,000); see also PROSSER & KEETON ON TORTS, *supra* note 115, § 123, at 913 (discussing low damages caps in parental liability statutes); Andrews, *supra* note 145, at 398 (noting that most parental liability statutes “limit the amount of the total possible liability to dollar amounts in the low thousands”).

153. Lewis, *supra* note 115, at 6; see also *Boston v. Athearn*, 764 S.E.2d 582, 585 (Ga. Ct. App. 2014); *Williamson v. Daniels*, 748 So. 2d 754, 759 (Miss. 1999).

apply when a special relationship exists, such as the parent/child relationship.<sup>154</sup> A negligent supervision suit against a parent uses this principle to seek to hold a parent liable for failing to supervise or exercise sufficient control over the child to prevent the child's tortious misbehavior.<sup>155</sup> Thus, parental liability is based on the parent's independent negligent supervision, not the mere existence of the parent/child relationship.<sup>156</sup>

Section 316 of the *Restatement (Second) of Torts*, which many states have adopted, sets forth parental liability based on negligent supervision.<sup>157</sup> Section 316 provides:

A parent is under a duty to exercise reasonable care so to control his minor child as to prevent it from intentionally harming others or from so conducting itself as to create an unreasonable risk of bodily harm to them, if the parent

(a) knows or has reason to know that he has the ability to control his child, and

(b) knows or should know of the necessity and opportunity for exercising such control.<sup>158</sup>

Though at first glance section 316 might seem to significantly expand the common law, in reality, it does not.

First, by its very terms, section 316 allows parental liability only when the plaintiff can establish very specific knowledge-based requirements.<sup>159</sup> Typical negligence liability, on the other hand, is conditioned on the general duty to exercise reasonable care in the circumstances.<sup>160</sup> Thus, the limited duty in

154. See PROSSER & KEETON ON TORTS, *supra* note 115, § 56, at 384–85; see also Robertson v. Wentz, 232 Cal. Rptr. 634, 637 (Ct. App. 1986); Newkumet v. Allen, 230 S.W.3d 518, 524 (Tex. App.—Eastland 2007, no pet.).

155. See Gentile, *supra* note 144, at 125; Lewis, *supra* note 115, at 6; see also PROSSER & KEETON ON TORTS, *supra* note 115, § 123, at 915 (stating that “the parent who has notice of a child’s dangerous tendency or proclivity must exercise reasonable care to control the child for the safety of others”).

156. See PROSSER & KEETON ON TORTS, *supra* note 115, § 123, at 914; Gentile, *supra* note 144, at 125; see also Crisafulli v. Bass, 2001 MT 316, ¶ 27, 38 P.3d 842, 846 (emphasizing that parental liability is not “for the acts of a child but for that parent’s own failure to exercise reasonable care”); Moore v. Crumpton, 295 S.E.2d 436, 440 (N.C. 1982) (“The liability of a parent for failure to exercise reasonable control over an unemancipated child arises from the *independent negligence of the parent* and not from the imputed negligence of the child.”).

157. See Lewis, *supra* note 115, at 6.

158. RESTATEMENT (SECOND) OF TORTS § 316 (AM. LAW INST. 1965).

159. See Andrews, *supra* note 145, at 391.

160. See DAN B. DOBBS, PAUL T. HAYDEN & ELLEN M. BUBLICK, HORNBOOK ON TORTS, § 10.5, at 213 (2d ed. 2016) [hereinafter DOBBS ON TORTS] (“In negligence law, when a duty is owed,

section 316 is a far cry from the basic negligence standard applied in most circumstances.<sup>161</sup>

Second, courts have been reluctant to use this limited-duty provision to expose parents to liability for their children's conduct.<sup>162</sup> Judges, rather than juries, determine, as a matter of law, whether a duty exists in any particular case.<sup>163</sup> Negligent supervision lawsuits rarely make it past the dispositive motions stage.<sup>164</sup> Courts routinely dismiss negligent supervision suits after determining the parents had no duty as a matter of law<sup>165</sup> in what one scholar called a "steady stream of judicial no-duty determinations."<sup>166</sup>

In particular, these courts have focused on foreseeability, traditionally an aspect of duty.<sup>167</sup> As one commentator put it, "[f]oreseeability has provided the primary mechanism for determining (and narrowing) the contours of parental

---

the standard of conduct to which the defendant must conform is typically the standard of a reasonable person under the circumstances to avoid physical harm to others.").

161. See DOBBS ON TORTS, *supra* note 160, June 2019 update, § 209 n.1 (characterizing the propensity rule for parental liability as "a heightened foreseeability standard"); Andrews, *supra* note 145, at 392 ("Compared with the traditional common law approach of parental immunity for their minor children's torts, section 316 arguably represents an attempted expansion of liability . . . . But when compared to the baseline of the general duty of care . . . , section 316 is seen as consistent with the effort to maintain limits on the potential liability of parents for their own negligent conduct as related to their minor children's torts." (footnotes omitted)).

162. See DOBBS ON TORTS, *supra* note 160, § 26.9, at 652 (noting courts' hesitance to impose parental liability for children's torts); Andrews, *supra* note 145, at 393 ("[E]ven courts in those jurisdictions that adopt the limited-duty approach codified in the Restatement often narrowly construe that rule in an effort to limit the potential liability of parents for their minors' torts."); Porter, *supra* note 144, at 554 (discussing the "longstanding judicial reluctance to allow juries to evaluate" parental liability).

163. See DOBBS ON TORTS, *supra* note 160, § 9.6, at 198; PROSSER & KEETON ON TORTS, *supra* note 115, § 37, at 236.

164. See Porter, *supra* note 144, at 535; see also *Dinsmore-Poff v. Alvord*, 972 P.2d 978, 981, 981 n.13 (Alaska 1999) (analyzing section 316 cases and summaries and concluding that "the most common conclusion" in these cases is a finding in favor of parents); Andrews, *supra* note 145, at 396 ("[P]laintiffs asserting parental liability claims have a difficult time establishing a case at common law.").

165. See Andrews, *supra* note 145, at 389 (noting that duty "often poses the most difficulty" in negligent parental supervision cases); Porter, *supra* note 144, at 535–36 (discussing reasons for judicial reluctance to impose parental liability).

166. Porter, *supra* note 144, at 559.

167. See W. Jonathan Cardi, *Purging Foreseeability: The New Vision of Duty and Judicial Power in the Proposed Restatement (Third) of Torts*, 58 VAND. L. REV. 739, 740 (2005); Benjamin C. Zipursky, *Foreseeability in Breach, Duty, and Proximate Cause*, 44 WAKE FOREST L. REV. 1247, 1258 (2009).

duty for negligent supervision.”<sup>168</sup> Most courts have taken the already limited duty in section 316 and narrowed it even further by equating parents’ knowledge of the “necessity . . . for exercising” control over their child with knowledge of a child’s propensity for dangerous or otherwise inappropriate conduct.<sup>169</sup> Thus, no matter how egregious a child’s behavior or whether the parent could have prevented or minimized it, if a child has never previously acted out, these courts will find no duty because the conduct was unforeseeable under this specific foreseeability standard (even if it might have been otherwise foreseeable).<sup>170</sup>

What is more, some courts further circumscribe this already onerous element, demanding that parents have notice not only of the child’s dangerous propensity but also of the particular misconduct at issue in the case.<sup>171</sup> In other words, according to these courts, the child must have committed the near-identical act previously for parents to be on notice of their child’s dangerous propensity. Absurd results abound. Case in point: the mother of a child who threw pocket knives into a wall was deemed unable to foresee that her child might throw a different type of knife—a butcher knife—near another child.<sup>172</sup> In another case, parents who knew their child had a “propensity to be rough with smaller children by pushing or hitting them” could not be liable for their

---

168. Porter, *supra* note 144, at 558–59; *see also* Andrews, *supra* note 145, at 393 (noting courts’ narrow interpretation of section 316); Nielsen v. Spencer, 2005 WI App 207, ¶ 12, 287 Wis. 2d 273, 704 N.W.2d 390 (same).

169. *See* Porter, *supra* note 144, at 557–59; *see also* Williamson v. Daniels, 748 So. 2d 754, 760 (Miss. 1999) (“[T]he parent must have knowledge of prior malicious acts similar enough to the specific act complained of to put the parent on notice of the necessity to control the child.”); DOBBS ON TORTS, *supra* note 160, § 26.9, at 652 (explaining that courts have expressed their resistance to negligent supervision liability through mechanisms such as concluding that parents could not reasonably foresee, as a matter of law, the specific harm).

170. *See* DOBBS ON TORTS, *supra* note 160, § 26.9, at 652 (“Courts have been reluctant to impose liability upon parents for the torts of their children, even when the parents know that their child is dangerous and could take steps to prevent the harm.”); *see also* Dinsmore-Poff v. Alvord, 972 P.2d 978, 981 (Alaska 1999) (“Courts resolve most cases in the parents’ favor upon finding no such past misconduct or, at least, no parental knowledge thereof.”); Stephens v. Miller, 970 So. 2d 225, 227 (Miss. Ct. App. 2007) (stating parental liability depends in part on a showing of “a criminal act or intentional tort the child has previously performed”); PROSSER & KEETON ON TORTS, *supra* note 115, § 123, at 915 (discussing parental duties “once specific dangerous tendencies have been manifested”).

171. *See* PROSSER & KEETON ON TORTS, *supra* note 115, § 123, at 915 (stating that “there is no liability upon the parent unless he has notice of a specific type of harmful conduct”); Porter, *supra* note 144, at 558–59 (“Many courts have interpreted this sentence literally, holding that a child’s misconduct is not foreseeable—and therefore parents have no duty to supervise as a matter of law—until a child has displayed a ‘dangerous propensity’ for that particular type of misconduct.”).

172. *See* Saenz v. Andrus, 393 S.E.2d 724, 726 (Ga. Ct. App. 1990).

child hurting a younger, smaller child with a croquet mallet, because this was the first time their child had used a croquet mallet specifically to do the job.<sup>173</sup> Not every court views the law so narrowly,<sup>174</sup> but enough do to present a significant barrier to parental liability.

With these limitations on parental liability, how can the tort system hold parents responsible for food allergy bullying?

### C. *When Parents Could Be Liable for Food Allergy Bullying*

Food allergy bullying has not seen much, if any, civil litigation to date. Lawsuits involving more traditional forms of bullying are on the rise, though most of these are against school districts and personnel.<sup>175</sup> Rarely are bullying lawsuits brought against parents,<sup>176</sup> and most that are not dismissed appear to settle.<sup>177</sup> Thus, drawing on basic parental negligence principles provides the best predictor as to how suits against parents of food allergy bullies will fare.

Even with its restrictions, basic negligence law lays a foundation for parental liability in certain food allergy bullying cases. But that is not enough. Courts should forego the unnecessary common law restrictions and expand the

---

173. *See* *Snow v. Nelson*, 475 So. 2d 225, 226 (Fla. 1985); *see also* *Wells v. Hickman*, 657 N.E.2d 172, 178–79 (Ind. Ct. App. 1995) (holding it was not foreseeable that child who beat his pet dog to death, killed his pet hamster, had a fight at school, talked about committing suicide, and had explosive anger issues would beat another boy to death); *Stephens*, 970 So. 2d at 227 (holding that mother’s notice that child liked to close the van door did not amount to notice that the child might close the door intentionally on someone); *Ross v. Wendel*, 2017-Ohio-7804, 97 N.E.3d 722, at ¶¶ 27–29 (concluding teen’s specific act of burning of neighbor’s truck was not foreseeable, even though parents knew that teen and neighbor had ongoing conflict over neighbor reporting teen for poaching, which led to his arrest, neighbor continued to harass teen, and teen bought a rifle at a flea market for protection against the neighbor); *see also* *Porter*, *supra* note 144, at 559–60 (collecting cases).

174. *See, e.g.*, *Ridgell v. McDermott*, 427 S.W.3d 310, 313–14 (Mo. Ct. App. 2014) (reversing dismissal of teacher’s suit against parents of child who attacked her, concluding parents had sufficient notice of his violent tendencies based on his prior similar violent attacks against her and others); *Linder v. Bidner*, 270 N.Y.S.2d 427, 428, 430 (Sup. Ct. 1966) (refusing to dismiss negligent supervision complaint against parents of boy who beat another child based on general allegations that they knew their son had a “vicious and malignant disposition” and a “habit of mauling, pummeling, assaulting, and mistreating smaller children”).

175. *See supra* note 123 and accompanying text.

176. *See* Beth Greenfield, *Parents Slap Daughter’s Cyberbullies with Rare Lawsuit*, YAHOO (Jan. 24, 2014), <https://www.yahoo.com/entertainment/bp/parents-slap-daughter-s-cyberbullies-with-rare-lawsuit-200330554.html> [<https://perma.cc/J7EM-KNF4>]; Wykes, *supra* note 123.

177. *See* PUB. JUSTICE, JURY VERDICTS AND SETTLEMENTS IN BULLYING CASES (Apr. 2019), <https://www.publicjustice.net/wp-content/uploads/2019/04/2019.04.22-Spring-2019-Edition-Bullying-Verdicts-and-Settlements-Final-1.pdf> [<https://perma.cc/R42Q-GFP8>] (reporting settlements and favorable jury verdicts in 178 bullying cases between 1996 and April 2019, with only 5 suits against parents, and all 5 settled).

contours of parental duty to cover other situations where parents' own conduct makes imposing liability for their child's food allergy bullying fair and appropriate. Parental liability in these instances would compensate bullying victims and send the message that parents will be held responsible for the potentially deadly consequences of their parenting decisions regarding food allergies.

#### 1. Use Existing Parental Liability Negligence Law to Hold Parents Liable

Traditional parental liability negligence law can provide the basis for parental liability in some food allergy bullying cases. As previously established, the most restrictive courts would require parents to know in advance of their child's propensity for food allergy bullying and for the child to have engaged in such behavior before.<sup>178</sup> Thus, parental notice is the lynchpin of negligence liability in these courts. In the twenty-two states with bullying statutes that require schools to notify the bully's parents of all incidents,<sup>179</sup> these parents should receive the required notice automatically. Presumably, many schools in other states would also notify the bully's parents, even without a statutory mandate.

Through whatever notice mechanism, if a child bullies and the parents are notified, the parents must take reasonable actions to prevent future bullying.<sup>180</sup> If they do not, they are subject to negligence liability if their child bullies again, even in the most restrictive common law jurisdictions, assuming of course that all other negligence elements are met. For example, in *Boston v. Athearn*, the court found a fact issue regarding potential parental liability for a son's continued use of a fake Facebook account to harass a classmate because the parents failed to take steps to stop his behavior after they learned of it.<sup>181</sup> Similarly, if a parent learns of a food allergy bullying incident and does nothing to discipline the child or prevent the child from bullying again, the parent should be liable for future bullying.

---

178. See *supra* notes 162–73 and accompanying text.

179. See *supra* note 132.

180. See *Dinsmore-Poff v. Alvord*, 972 P.2d 978, 982 (Alaska 1999) (discussing cases where parents were found not liable because they made “reasonable effort[s] to prevent a recurrence” of son's behavior); *Costa v. Hicks*, 470 N.Y.S.2d 627, 630, 633–34 (App. Div. 1983) (reversing jury verdict in favor of parent who failed to place additional restrictions on son's use of a motorcycle after he knew son violated prior restrictions); *Moore v. Crumpton*, 295 S.E.2d 436, 442 (N.C. 1982) (finding that parents who sought professional help for teen's behavioral and substance abuse issues could not have done more, “short of physically restraining his movements and placing him under twenty-four hour a day observation”).

181. *Boston v. Athearn*, 764 S.E.2d 582, 584, 587 (Ga. Ct. App. 2014).

Negligence liability in such instances—when parents know their child has engaged in food allergy bullying but take no reasonable measures to prevent its recurrence—is an important initial step, but it leaves much uncovered. For example, parents can openly mock allergic children, fight against school policies to protect them, and defy food bans. Sadly, some adults actually behave this way, with potentially severe consequences if their children use this conduct as a springboard for bullying. Tort law should address this parental behavior too.

## 2. Adopt a General Parental Duty of Reasonable Care in Food Allergy Bullying Cases

Courts applying negligence law in parental liability cases have overly limited parents' duties, imposing no liability when parents could have taken reasonable actions to stop their child from hurting someone.<sup>182</sup> In the food allergy bullying context, courts could fix this problem by removing the limits on parents' duties under existing tort law so that parents owe a duty of reasonable care in the case of this particularly dangerous form of bullying.

Traditionally, judges determine whether a duty exists in a particular case, and they have mostly used this power in parental liability cases to strictly interpret notions of foreseeability and find no duty as a matter of law.<sup>183</sup> They do so, in part, by requiring parental notice of a child's dangerous propensities and that the child previously misbehaved in virtually the identical manner before.<sup>184</sup> This limited duty approach has led to outrageous results and rewards imaginative bullying.<sup>185</sup> Food allergy bullying is too serious—it can kill—to let an inventive bully operate with impunity to the bully's parents if they know about or encourage the behavior. A “child's creativity in developing new ways to bring about injury should not absolve parents from the duty to attend to and discipline the child.”<sup>186</sup>

But it does not have to be this way. Duty is essentially a public policy decision based on societal values.<sup>187</sup> Though some tort scholars have argued

---

182. See *supra* notes 162–73 and accompanying text.

183. See *supra* notes 162–66 and accompanying text.

184. See *supra* notes 167–74 and accompanying text.

185. See *supra* notes 172–73 and accompanying text.

186. *Snow v. Nelson*, 475 So. 2d 225, 227 (Fla. 1985) (Ehrlich, J., specially concurring).

187. See DOBBS ON TORTS, *supra* note 160, § 10.3, at 208–09 (stating that duty is based on policy considerations that reflect opinion and value judgments); PROSSER & KEETON ON TORTS, *supra* note 115, § 1, at 6 (explaining that a key guiding principle of tort law is that “liability must be based upon conduct which is socially unreasonable”); Cardi, *supra* note 167, at 753 (noting that most courts

that duty and policy should be decoupled,<sup>188</sup> most courts view duty as a function of various policy considerations,<sup>189</sup> following Dean Prosser's statement that duty "is only an expression of the sum total of those considerations of policy which lead the law to say that the plaintiff is entitled to protection."<sup>190</sup> Negligence duties are flexible, adapting to changing community norms and societal needs.<sup>191</sup> Courts can and should alter duties when the circumstances so warrant.<sup>192</sup>

The scope, severity, and risks of food allergy bullying justify a change in how courts treat duty in these cases. Millions of children are bullied because of their food allergies, and as the number of food-allergic children grows, even more children will be at risk for bullying. Bullying is bad enough, but food allergy bullying is even worse because it can be deadly in the moment. More should be done to protect these children, and expanding duty is one step in the right direction.

Courts should abandon propensity—as demonstrated through prior similar conduct—as the sole standard for foreseeability in parental negligence cases

---

agree that "community consensus regarding day-to-day obligations is an important consideration in the duty analysis").

188. See John C.P. Goldberg & Benjamin C. Zipursky, *The Moral of MacPherson*, 146 U. PA. L. REV. 1733, 1846 (1998) (challenging the "dogma among torts scholars that, as Prosser put it, duty is merely shorthand for a laundry list of policy factors bearing on whether liability should be permitted or barred in some class of cases"). Even if duty is not viewed as a vehicle for judicial policymaking, judges can apply common law negligence cases in a manner that expands or innovates to adjust to new circumstances. See *id.* at 1743–44.

189. See PROSSER & KEETON ON TORTS, *supra* note 115, § 3, at 15 (commenting on courts' open consideration of policy in judicial decisions); Andrews, *supra* note 145, at 403 ("Within the law of torts, perhaps more so than in any other area of law, courts have explicitly recognized the role of public policy in influencing courts' decisions."); Goldberg & Zipursky, *supra* note 188, at 1772–73 ("[C]ourts in a majority of the states have at one time or another cited or quoted the Prosserian mantra that duty is . . . an expression of the sum total of considerations of policy."); Tory A. Weigand, *Duty, Causation and Palsgraf: Massachusetts and the Restatement (Third) of Torts*, 96 MASS. L. REV. 55, 58 (2015) (noting that "most states employ some version of a multi-factored policy approach to duty determinations"); see also, e.g., *Casebolt v. Cowan*, 829 P.2d 352, 356 (Colo. 1992) (explicitly considering public policy in duty determination); *Crisafulli v. Bass*, 2001 MT 316, ¶¶ 25–28, 38 P.3d 842 (same); *Gritzner v. Michael R.*, 2000 WI 68, ¶¶ 24–28, 235 Wis. 2d 781, 611 N.W.2d 906 (same).

190. PROSSER & KEETON ON TORTS, *supra* note 115, § 54, at 358; see also DOBBS ON TORTS, *supra* note 160, § 10.1, at 204 (explaining that discussions of duty should always begin with Dean Prosser's observations on duty as policy).

191. See Andrews, *supra* note 145, at 438 (stating that "[d]uty has traditionally been considered a malleable and flexible concept, its boundaries subject to revision over time").

192. See PROSSER & KEETON ON TORTS, *supra* note 115, § 54, at 359 ("Changing social conditions lead constantly to the recognition of new duties."); see also DOBBS ON TORTS, *supra* note 160, § 10.1, at 205 ("With respect to [duties], courts may either deny, limit, create, or expand the duty based on articulated principle or policy factors.").

based on food allergy bullying. Instead, parents in these cases should be held to the same standard that exists in general negligence law—the duty to act reasonably under the circumstances.<sup>193</sup> Failing to act to curb a known propensity for food allergy bullying could certainly be used to show parental negligence, but so could other actions.

Comparisons to other areas of negligence law depending on the foreseeability of others' conduct to establish duty illustrate that foreseeability and demonstrated propensity need not be so closely linked. Negligent entrustment law, for instance, is based on the defendant improperly entrusting property to someone who uses it to cause a foreseeable injury.<sup>194</sup> A plaintiff can show foreseeability by proving the owner knew the user had misused such property in the past, but factors such as the user's age, experience, and physical or mental limitations can also demonstrate foreseeability of the risk of harm.<sup>195</sup> Likewise, tavern owners are liable for foreseeable injuries to their patrons caused by other patrons.<sup>196</sup> Knowledge that a particular patron has fought before can establish that danger from that patron is foreseeable, but negligence can also be shown, for example, by an owner's failure to stop a fight soon enough or allowing other unruly behavior to continue.<sup>197</sup>

Under a basic duty standard, such as is applied in negligent entrustment and tavern-owner cases—not the limited duty courts have so long used in parental liability cases—judges would dismiss far fewer suits on duty grounds.<sup>198</sup> This

---

193. See Porter, *supra* note 144, at 538 (“Parental liability, like parenting itself, is legitimately frightening. Nevertheless, parenthood entails responsibility as well as rights, and parents, like all other tortfeasors, should be held to a standard of reasonable care.”); see also *supra* notes 160–61 and accompanying text.

194. See DOBBS ON TORTS, *supra* note 160, § 26.10, at 653; PROSSER & KEETON ON TORTS, *supra* note 115, § 123, at 914.

195. See DOBBS ON TORTS, *supra* note 160, § 26.10, at 653–54.

196. See Joan Teshima, Annotation, *Tavernkeeper's Liability to Patron for Third Person's Assault*, 43 A.L.R.4th 281, § 2[a] (1986) (“[A] tavernkeeper, while not an insurer of his guest's safety, owes them a duty to exercise reasonable care to protect them from reasonably foreseeable injury at the hands of other patrons.”).

197. See 7 AM. JUR. PROOF OF FACTS 2d 635 *Tavern Keeper's Liability for Injury Inflicted by Patron* § 2 (Mar. 2020 update); see also *Stevens v. Jefferson*, 436 So. 2d 33, 34 (Fla. 1983) (“But specific knowledge of a dangerous individual is not the exclusive method of proving foreseeability. It can be shown by proving that a proprietor knew or should have known of a dangerous condition on his premises that was likely to cause harm to a patron.”).

198. See Andrews, *supra* note 145, at 437 (“[T]he common law of duty should be interpreted to permit a greater number of parental liability claims to proceed beyond the inevitable motion to dismiss. At a minimum, such claims should presumptively be viewed as posing fact questions for juries regarding the adequacy of parental response to evidence of behavior on the part of their children that poses a risk of harm to others.”).

is not to say that judges would find a duty exists in every food allergy bullying case. But eliminating the limited duty would send more cases to the jury, allowing juries to decide, for example, if parents sending banned food to school or openly undermining schools' policies to protect allergic kids is reasonable behavior if it contributes to those parents' children becoming food allergy bullies.

Creative plaintiffs could argue that these parental behaviors create liability not only for negligent supervision in food allergy bullying cases but under other tort theories as well. For example, a parent who intentionally packs banned peanut butter in her child's lunch, having reason to know her child might use that food to bully a peanut-allergic child, might be liable for negligently entrusting her child with that dangerous food.<sup>199</sup> Apart from negligence theories, parents who actively and openly undermine school allergy protection policies or who fail to discipline their children or otherwise undertake measures to stop bullying activity could be said to encourage, ratify, or endorse their child's behavior, which can provide an independent basis for liability.<sup>200</sup>

---

199. See DOBBS ON TORTS, *supra* note 160, § 26.10, at 653–54; see also PROSSER & KEETON ON TORTS, *supra* note 115, § 123, at 914 (discussing negligent entrustment liability based on entrusting a child with “a thing dangerous in the hands of that particular child because of his . . . propensity to misuse it”); *S. Am. Fire Ins. Co. v. Maxwell*, 274 So. 2d 579, 581 (Fla. Dist. Ct. App. 1973) (concluding jury should consider whether parents negligently entrusted bicycle without training wheels to five-year-old child); *Mayer v. Self*, 341 S.E.2d 924, 925 (Ga. Ct. App. 1986) (finding a jury question existed on whether parents negligently entrusted child with a golf club when child had previously hurt someone with a golf club); *Stronger ex rel. Stronger v. Riggs*, 21 S.W.3d 18, 22–23 (Mo. Ct. App. 2000) (“Even if an instrument is not inherently dangerous, the dangerous instrumentality exception applies in those situations in which a parent entrusts to a child an instrumentality capable of becoming a source of danger to others when . . . the parent knows that the child is likely to put it to a dangerous use.” (citation and emphasis omitted)).

200. PROSSER & KEETON ON TORTS, *supra* note 115, § 123, at 914 (stating that “[a] parent may be liable for the tortious act of the child if the parent has directed it or encouraged it”); *Robertson v. Wentz*, 232 Cal. Rptr. 634, 638 (Ct. App. 1986) (stating that parents will be liable for their children's torts “if, knowing of the child's vicious or destructive tendencies or acts, he fails to exercise reasonable measures to restrain or discipline the child and thus encourages or acquiesces in such misconduct on the part of the child” (internal quotation marks omitted)); *Langford v. Shu*, 128 S.E.2d 210, 212–13 (N.C. 1962) (“Apart from the parent's own negligence, liability exists . . . where the [child's tortious] . . . act is consented to or ratified by the parent. . . . Failure to restrain the child, it is said, amounts to a sanction of or consent to his acts by the parent.”); see also *Ivan v. Cty. of Middlesex*, 595 F. Supp. 2d 425, 462–64 (D.N.J. 2009) (finding a fact issue as to whether supervisor who received clear notice of employee's harassing behavior assisted or encouraged it by not punishing employee); *Vinson v. McManus*, 316 S.E.2d 98, 99 (N.C. Ct. App. 1984) (finding plaintiff stated a valid claim against a father by alleging he “ratified and consented to the tortious acts of his son by ignoring the plaintiff's pleas for help and by failing to take any action to stop the son” from assaulting the plaintiff).

Parents owe society a duty to raise reasonable children and should be held responsible for the consequences of their parenting choices.<sup>201</sup> Parenting comes in many styles, and some fear that expanding parental liability will unduly interfere with parents' rights to raise their children as they see fit.<sup>202</sup> Overregulation of parenting is a real concern, but expanding parental duties relating to food allergy bullying does not unreasonably intrude into parental decision making. Parents can still raise their children however they choose, but if those choices promote food allergy bullying, parents should be made to answer for that harm.<sup>203</sup> Choices have consequences.

Critics argue that parental liability measures, in general, are unfair because parents cannot completely control their children.<sup>204</sup> That is certainly true to some extent, especially with older teens.<sup>205</sup> Factors other than parents,

---

201. See *Wells v. Hickman*, 657 N.E.2d 172, 178–79 (Ind. Ct. App. 1995) (stating that parents have a duty to reasonably exercise their power to control their children); *Nolechek v. Gesuale*, 385 N.E.2d 1268, 1272 (N.Y. 1978) (justifying parental liability, “not because parents are obliged to raise their children in any particular way,” but because “however the children are raised, there must be respect for the hazards created for third parties”); *Andrews*, *supra* note 145, at 436 (“[P]arents have some responsibility for the character of the children they raise.”); *Porter*, *supra* note 144, at 538 (“[P]arenthood entails responsibility as well as rights . . . .”); PROSSER & KEETON ON TORTS, *supra* note 115, § 123, at 914–15 (“The parent has a special power of control over the conduct of the child, which he is under a duty to exercise reasonably for the protection of others.”).

202. See DOBBS ON TORTS, *supra* note 160, § 26.9, at 652 (stating that because teens need experience with freedom and control, courts should not interfere with parenting except in “clear cases”); see also *Andrews*, *supra* note 145, at 439 (discussing concern that increased parental liability will interfere with parenting decisions); *Porter*, *supra* note 144, at 577–79 (same).

203. See *Andrews*, *supra* note 145, at 439 (“[M]any would decry any extension of parental liability as a usurpation of parents’ rights to raise their children with maximum freedom. That freedom, however, should not be viewed as absolute, and should come with corresponding responsibilities to the rest of society.”); see also *Vanthournout v. Burge*, 387 N.E.2d 341, 344 (Ill. App. Ct. 1979) (“With the right to bear and raise children comes the responsibility to see that one’s children are properly raised so that the rights of other people are protected.” (internal quotation marks omitted)); *Nolechek*, 385 N.E.2d at 1272 (explaining that parents’ rights to make decisions regarding their children does not absolve them from liability when their decisions are unreasonable and cause harm).

204. See Linda A. Chapin, *Out of Control? The Uses and Abuses of Parental Liability Laws to Control Juvenile Delinquency in the United States*, 37 SANTA CLARA L. REV. 621, 625 (1997) (describing other factors that eclipse action or inaction by parents as the primary cause of juvenile delinquency); DiFonzo, *supra* note 136, at 42–47 (discussing the debate about how much control parents have over their children’s behavior); Min Kang, *Parents as Scapegoats*, 16 J. CONTEMP. LEGAL ISSUES 15, 19 (2007) (“[I]n many families, parents may no longer be capable of influencing the behavior of their children.”); *Swan*, *supra* note 136, at 865 (“In reality, parents have quite limited means to actually control the behavior of their children, and even parents who ‘do everything right’ may nevertheless have children who engage in misconduct.”).

205. See DOBBS ON TORTS, *supra* note 160, § 26.9, at 652; Leslie Joan Harris, *An Empirical Study of Parental Responsibility Laws: Sending Messages, But What Kind and to Whom?*, 2006 UTAH L. REV. 5, 30.

including peers, impact a child's behavior.<sup>206</sup> Some children may bully for these reasons or other reasons that may never be known. Some children behave badly despite the efforts of very good parents.

Lack of complete control in some cases does not mean the control that parents do have should be ignored. Parents are typically the most influential adults in a child's life.<sup>207</sup> That is the entire point of the right to raise children without undue governmental interference.<sup>208</sup> That other influences exist does not negate parents' influence. This is not to say, of course, that parents should be strictly liable for their child's misdeeds. Parents should not, without more, be liable for a child's "general incorrigibility" or "nasty disposition."<sup>209</sup> But when parents take actions that ignore or foster their child's food allergy bullying, they should be subject to liability.

Moreover, juries can be trusted to recognize situations where parents have acted reasonably, but unsuccessfully, to control their children.<sup>210</sup> Juries can differentiate between parents who made reasonable, even if imperfect, efforts to control their children as opposed to parents who, perhaps along with other influences, contributed to their child's food allergy bullying and hold only the latter group of parents liable. And in situations where parents and something else caused the bullying, juries will take that into account. Indeed, the tort system is quite adept at dealing with multiple causes of tortious behavior.<sup>211</sup>

Expanding parental liability for food allergy bullying promotes the functions of the tort system. Tort law serves, among other things, to compensate victims and reinforce societal standards of behavior.<sup>212</sup> Victims of food allergy bullying currently have very little civil recourse and almost no

---

206. See Chapin, *supra* note 204, at 626 ("[W]e should not ignore the multiplicity of factors which may contribute to juvenile delinquency and focus myopically on parental responsibility."); Kang, *supra* note 204, at 19–21 (discussing many "powerful forces" other than parents that influence teen behavior); Swan, *supra* note 136, at 890–91 (noting the "other powerful predictors that do not involve parenting" in influencing juvenile misconduct, including "high cost of living, poor standards of education, inadequate recreation, and slums, as well as peer groups" (internal quotation marks omitted)).

207. See Lewis, *supra* note 115, at 44 (stating that it takes a village to raise a child, "and the most important villager is a parent"); see also *supra* notes 134–40 and accompanying text. Even parental liability critics acknowledge parents' influence on their children's behavior. See, e.g., DiFonzo, *supra* note 136, at 47; Swan, *supra* note 136, at 890.

208. See Porter, *supra* note 144, at 553, 572–73; see also *supra* note 112 and accompanying text.

209. PROSSER & KEETON ON TORTS, *supra* note 115, § 123, at 915.

210. See Andrews, *supra* note 145, at 439; Porter, *supra* note 144, at 572–73.

211. See Andrews, *supra* note 145, at 437.

212. See DOBBS ON TORTS, *supra* note 160, § 2.1, at 15–16; PROSSER & KEETON ON TORTS, *supra* note 115, § 1, at 5–7.

ability to obtain compensation for their injuries.<sup>213</sup> Allowing civil liability against the bully's parents would provide a means to compensate victims while sending a strong statement that parents should be held accountable for raising food allergy bullies when their own action, or inaction, contributed to this especially dangerous form of bullying.<sup>214</sup> Though using the tort system to protect food allergy bullying victims might increase litigation, this is why the tort system exists, and the threat of liability could decrease litigation in the long run by discouraging inappropriate parental behavior and encouraging parents to better control their children.<sup>215</sup>

#### D. Looking Ahead: The Restatement (Third) of Torts

In 2010, the American Law Institute finalized the *Restatement (Third) of Torts: Liability for Physical and Emotional Harm*.<sup>216</sup> This new Restatement does not simply summarize or restate existing law but would, if followed, fundamentally alter most courts' negligence jurisprudence.<sup>217</sup> To date, at least

---

213. See *supra* Section V.A.

214. See Andrews, *supra* note 145, at 436 (“However much we might agree that parents do not have *complete* control over the conduct of their children, few would argue that the manifestation of antisocial behavior in children occurs randomly. Instead, most would agree that parents have *some* responsibility for the character of the children they raise. . . . [I]t seems fairer to impose liability on the parents of the tortfeasor than to impose liability on the child's victim via a rule of . . . limited liability.”).

215. See Yamada, *supra* note 105, at 533 (“If . . . legislatures or judges create rights because public policy deems them important and the marketplace cannot adequately address the underlying ills, then the courts . . . exist in part to vindicate those rights. It follows that if the threat of liability is the best way to discourage certain behavior, general concerns about an overly litigious society should not be allowed to defeat the creation of new rights.”); Mark C. Weber, *Disability Harassment in the Public Schools*, 43 WM. & MARY L. REV. 1079, 1109–10 (2002) (“[D]amages awards have an important symbolic role in expressing social disapproval. Social disapproval of harassment is crucial to taking harassment seriously and stopping it.” (footnote omitted)).

216. See RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL AND EMOTIONAL HARM (AM. LAW INST. 2010) [hereinafter THIRD RESTATEMENT].

217. See W. Jonathan Cardi & Michael D. Green, *Duty Wars*, 81 S. CAL. L. REV. 671, 671 (2008) (noting that the Third Restatement “has received stinging criticism for failing to restate the law”); Porter, *supra* note 144, at 565 (noting that the Third Restatement's drafters have used its provisions “in an attempt to influence or alter common law norms”); Weigand, *supra* note 189, at 75 (“[T]he Third Restatement is not truly a ‘restatement’ of law, and swims against a tide of nationwide precedent and practice.” (footnote omitted)); see also THIRD RESTATEMENT § 7 cmt. j (“Despite widespread use of foreseeability in no-duty determinations, this Restatement disapproves that practice . . .”); John C.P. Goldberg & Benjamin C. Zipursky, *Intervening Wrongdoing in Tort: The Restatement (Third)'s Unfortunate Embrace of Negligent Enabling*, 44 WAKE FOREST L. REV. 1211, 1212 (2009) (“It is in our view inappropriate for a ‘restatement’ of the law to discard basic tort concepts rather than, for example, to acknowledge them and criticize them in commentary.”).

nine states have adopted portions of the Third Restatement or cited it favorably for points that could significantly impact parental liability.<sup>218</sup>

Two changes are particularly relevant to parental liability. First, the Third Restatement establishes a general duty of reasonable care that presumptively applies in all negligence actions; duty is no longer part of the plaintiff's prima facie case of negligence.<sup>219</sup> Second, when judges make duty determinations, they can only do so based on certain enumerated criteria that would apply narrowly across an entire class of cases as opposed to only the particular case at issue.<sup>220</sup> Foreseeability is specifically excluded from the judicial duty calculus.<sup>221</sup> Thus, foreseeability-based decisions would be reserved for determining breach and would be the sole province of the jury.<sup>222</sup>

Jurisdictions that adopt these provisions of the Third Restatement will be ripe for the expansion of parental negligence liability. The limited common law duty in the Second Restatement's section 316—which courts narrow even further by their strict interpretation of the propensity test for foreseeability—

---

218. See *Gipson v. Kasey*, 150 P.3d 228, 231 (Ariz. 2007); *Munn v. Hotchkiss Sch.*, 165 A.3d 1167, 1185, 1185 n.19 (Conn. 2017); *Thompson v. Kaczinski*, 774 N.W.2d 829, 834–35 (Iowa 2009); *Rafferty v. Merck & Co.*, 92 N.E.3d 1205, 1214 (Mass. 2018); *A.W. v. Lancaster Cty. Sch. Dist.*, 784 N.W.2d 907, 917 (Neb. 2010); *Rodriguez v. Del Sol Shopping Ctr. Assocs.*, 2014-NMSC-014, ¶ 3, 326 P.3d 465; *Mower v. Baird*, 2018 UT 29, ¶ 16, 422 P.3d 837; *LeClair v. LeClair*, 2017 VT 34, ¶¶ 10–11, 169 A.3d 743; *Behrendt v. Gulf Underwriters Ins. Co.*, 2009 WI 71, ¶ 19, 318 Wis. 2d 622, 768 N.W.2d 568.

219. See THIRD RESTATEMENT § 7 & cmt. a, b; see also DOBBS ON TORTS, *supra* note 160, § 10.3, at 210 (“[T]he default rule, to be applied in all but the most exceptional cases of physical harm, is that everyone owes a duty of care not to create unreasonable risks to others.”); Weigand, *supra* note 189, at 58–59 (stating that the Third Restatement “creates a presumption of a duty of care on all actors” and that “[d]uty remains a legal question but it no longer is the plaintiff’s burden to prove as part of the prima facie case”).

220. See THIRD RESTATEMENT § 7 cmt. a; see also *Cardi*, *supra* note 167, at 770 (stating that “no-duty cases are narrow categorical exceptions to the general duty rule”); Porter, *supra* note 144, at 566 (“The combined effect of these provisions—as the Reporters acknowledge—is to drastically restrict the role of a court in making duty determinations based on fact-specific grounds.”).

221. See THIRD RESTATEMENT § 7 cmt. j; see also DOBBS ON TORTS, *supra* note 160, § 10.3, at 210 (explaining that under the Third Restatement, “foreseeability of harm is not a factor to be considered on the duty issue”); *Cardi*, *supra* note 167, at 790 (explaining that exceptions to the duty of reasonable care should be “exceptional” or “special” and that “[l]ack of foreseeability is not ‘exceptional’ or ‘special,’ but rather a run-of-the-mill argument made by defendants in many negligence cases”); Weigand, *supra* note 189, at 60 (The Third Restatement “makes express the elimination of foreseeability from the duty determination.”).

222. See THIRD RESTATEMENT § 7 cmt. j; see also *Cardi*, *supra* note 167, at 794 (explaining that the Third Restatement’s “casting foreseeability out of duty” means “foreseeability as a limitation on negligence liability is no longer a presumed matter for the judge, but a presumed matter for the jury”); Weigand, *supra* note 189, at 56 (“[F]oreseeability is otherwise relegated to the issue of breach and the work of fact finders.”).

has been the primary mechanism for insulating parents from most liability for their children's torts.<sup>223</sup> In the Third Restatement's framework, these limits would no longer have a place, leaving advocates fertile ground for exploring broader parental liability in food allergy bullying cases and beyond.<sup>224</sup>

## VI. CONCLUSION

Parental liability for food allergy bullying is not a panacea. Schools—where children spend a significant amount of time and where most food allergy bullying occurs—clearly have a crucial role to play in stopping food allergy bullying and protecting allergic children, though they need help from parents too.<sup>225</sup> Further, raising awareness is critically important, both for parents and students. For the many who do not understand the seriousness of food allergies, a little education can go a long way in turning around bad behavior.<sup>226</sup>

Human behavior is complex, and many children likely bully for reasons having little, if anything, to do with their parents. But in situations where parents have a significant influence—such as where they know of their child's bullying and do not try to stop it, intentionally violate school food policies, or signal to their children that mistreating those with food allergies is acceptable—they should be held accountable for their conduct.

The legal system should not cocoon parents of food allergy bullies in the protection of a limited duty standard. Perhaps parents should not enjoy the limited duty protection in any circumstances. Regardless of the merits of expanding the duty in other areas, it should not take an epidemic of children

---

223. See *supra* notes 159–73 and accompanying text.

224. See Porter, *supra* note 144, at 567–68 (discussing the impact on parental negligence liability of the Third Restatement's rejection of foreseeability in the duty analysis, stating that “[i]n negligent supervision suits, courts have used foreseeability in duty to narrow parents’ duties to supervise their children” and thus “[r]emoving foreseeability from the duty analysis will result in more suits surviving dispositive motions”); *id.* at 570 (“Eliminating foreseeability would represent a substantial shift in the framework of negligent supervision liability.”); see also Lewis, *supra* note 115, at 30–31 (concluding that in jurisdictions adopting the Third Restatement, “foreseeability will not even be a factor, much less a bar, to the recognition of a duty” for parental liability for the parents of adult mass murders).

225. See RAPP, *supra* note 130, § 9.02[6][c][iii] (“Communities should not be surprised when school officials seem challenged to address behavioral problems that parents are either unwilling or unable to address.” (internal quotation marks omitted)).

226. See CDC *Voluntary Guidelines*, *supra* note 18, at 39 (“Among adolescents, food allergy education and awareness can be an effective strategy to improve social interactions, reduce peer pressure, and decrease risk-taking behaviors that expose them to food allergens.”); Claire Gagné, *Bullying Case Grabs Attention*, ALLERGIC LIVING (July 2, 2010), <https://www.allergicliving.com/2010/07/02/food-allergy-bullying-case/> [<https://perma.cc/HTR7-R7XW>] (discussing teen's food allergy bullying experience, stating that after she reported the incident and the school and her parents explained the seriousness of her allergies to the bullies, they stopped their behavior, are nice to her now, and asked questions to learn about her allergies).

being gravely injured or dying at school from food allergy bullying for courts to hold parents accountable for their conduct in facilitating this behavior or failing to take reasonable actions to control their children. This measure will not eliminate food allergy bullying or compensate all victims, but it is a step in the right direction to protect children with food allergies and provide them the educational environment all children deserve.