

UNITED STATES DEPARTMENT OF TRANSPORTATION
AVIATION CONSUMER PROTECTION DIVISION

NICOLE MACKENZIE,)
)
 Complainant,)
)
 v.) COMPLAINT
)
 AMERICAN AIRLINES,)
)
 Respondent.)

Nicole Mackenzie, through undersigned counsel, alleges that American Airlines violated and remains in violation of the Air Carrier Access Act insofar as it has an explicit policy denying preboarding to individuals with severe peanut and tree nut allergies. These individuals need to preboard in order to wipe down their seating area to guard against exposure to their allergens and allergic reactions in flight. In support thereof, Mackenzie alleges as follows:

1. On Monday, September 26, 2016, Mackenzie was scheduled to fly with her family from Portland, Oregon through Dallas to Charlotte, North Carolina via American Airlines flight number AA1475.
2. Mackenzie's 7-year-old daughter, Isla, has a severe allergy to peanuts, tree nuts, and seeds. When exposed to peanuts, tree nuts, nut residue or seeds, Isla is at risk of anaphylaxis. Anaphylaxis is a life-threatening allergic reaction that results from ingesting allergens, but anaphylaxis can also result when an allergic individual touches surfaces with nut residue and then touches their eyes, nose, or mouth. As a result, special precautions are necessary, particularly when flying with children with

peanut and tree nut allergies.

3. A life threatening food allergy, like Isla's, qualifies as a disability with the meaning of the Air Carrier Access Act because it substantially limits the major life activities of eating and breathing. When a person like Isla is exposed to their allergen, their immune system prompts a response that compromises multiple body systems including the respiratory, digestive, and circulatory systems. Allergic reaction for a child like Isla is not a stuffy nose and hives - it can be catastrophic. The only way to prevent allergic reaction is avoidance of exposure to allergens. Once exposed to their allergen, administration of epinephrine and emergency medical care is required.
4. Because tree nuts are served on American Airline flights and because passengers routinely bring peanuts and tree nuts to consume on airplanes, air travel is particularly frightening for families of food allergic children. The realities of experiencing a catastrophic reaction at 35,000 feet require that families take necessary precautions to guard against exposure to allergens, including preboarding to wipe down the allergic passenger's seating area and tray table and covering their seat.
5. These precautions not only provide physical protection, they are necessary to the emotional wellbeing of a severely allergic child. A child with a food allergy lives their life knowing that one bite, one touch of the wrong thing, can result in losing the ability to speak, to breathe, to live. Anaphylaxis is terrifying. The physical precautions – wiping down seating areas and tray tables in addition to protecting

against exposure and anaphylaxis allows the child an important measure of reassurance that they will be safe during their flight.

6. As the mother of a minor child with a disability who needed accommodation, Nicole Mackenzie is associated with an individual with a disability and was asserting rights protected by the Air Carrier Access Act.
7. In advance of the scheduled flight, Mackenzie called American Airlines to inform them of her daughter's severe allergies and inquire what accommodations could be provided.
8. As soon as Mackenzie explained that her daughter has a severe food allergy, the representative became derisive and made clear American Airlines would "do nothing" to accommodate the family.
9. During the call, Mackenzie requested accommodation. Specifically, she requested permission to preboard so that she might wipe down her daughter's seating area and tray table to guard against exposure to her allergens. Mackenzie needed to preboard to take these necessary precautions that cannot adequately be accomplished once other passengers begin to board.
10. American Airlines acknowledges that there is nut residue on its planes. American Airlines serves tree nuts in-flight and refuses all requests to limit tree nut service regardless of the risk to its allergic passengers.
11. American Airlines refused to make any accommodations for the Mackenzie family, specifically informing Nicole Mackenzie that she would not be permitted to pre-board.

12. Upon arrival at the airport on September 26, 2016, Isla's father, Paul Mackenzie approached an American Airlines representative, identified as the parent of a child with a severe food allergy on the flight and requested permission to preboard so that the Mackenzies could wipe down Isla's seating area and tray table.
13. Again, American Airlines refused the Mackenzie's request to preboard.
14. Again, the American Airlines representative became hostile when the Mackenzies identified the disability as a food allergy.
15. American Airlines refusal to allow the Mackenzies to take necessary steps to protect their daughter caused the family unnecessary stress and fear and increased the risk of allergic reaction for Isla.
16. The Mackenzies did their best to wipe down the seating area during regular boarding, but were prevented from doing so because other passengers were in the aisles and seating areas. In addition, other passengers became impatient with the Mackenzies trying to wipe down the seating area.
17. The Mackenzies were scheduled to return home to Portland from Charlotte on October 4, 2016, on American Airlines flight number AA1787.
18. In advance of her return flight, Nicole Mackenzie again made multiple written and verbal requests to preboard in hopes of avoiding the risk and fear that surrounded their flight to Charlotte.
19. On Friday, September 30, 2016, Mackenzie submitted a Disability Request Form via American Airlines' online portal at <https://www.aa.com/contact/forms?topic=DA>.
20. In her Disability Request Form, Mackenzie identified as the parent of a child with a

disability (severe food allergy) and requested permission to preboard to wipe down the seating area in advance of the family's flight home. Mackenzie received no response.

21. On October 2, 2016, Mackenzie submitted a second Disability Request Form via American Airlines' online portal again explaining her daughter's disability and requesting that she be permitted to preboard to wipe down the seating area. Again, Mackenzie received no response from American Airlines.
22. On October 3, 2016, Mackenzie called American Airlines Disability Services and spoke with a representative named Danetta. Mackenzie informed Danetta that her daughter has a severe food allergy and would be flying from Charlotte to Portland on the following day. She requested that she be allowed to preboard in order to wipe down the seating area to remove allergens that could cause an allergic reaction for her daughter.
23. Danetta informed Mackenzie that she would not be permitted to preboard pursuant to American Airlines' policy for nut allergic travelers. Danetta indicated that the policy for those with nut allergies was available online and specifies that those with nut allergies will not be permitted to preboard.
24. Danetta further explained that in order to preboard, those with severe allergies must either be an "Advantage member" or pay an additional fee.
25. Mackenzie then asked how long it takes American Airlines to process Disability Request forms. Danetta informed Mackenzie that all Disability Request forms are processed within 24-48 hours.

26. Mackenzie's Disability Request was then four days old with no response.
27. As with Mackenzie's prior communications with American Airlines, the representative responded with derision after she identified as the parent of a child with a food allergy. The representative's tone changed and the representative became impatient and dismissive making clear no accommodation would be made.
28. To date, Mackenzie has never received any response to any of her written requests that American Airlines accommodate her daughter's disability by allowing her to preboard and wipe down the seating area and American Airlines' explicit policy of denying preboarding to those with food allergies prevents her from equal and safe access to travel with American Airlines on the basis of disability.
29. American Airlines' repeated refusal to allow Mackenzie to preboard to wipe down her daughter's seating area is consistent with its blatantly discriminatory policy for travelers with allergies found at <https://www.aa.com/i18n/travel-info/experience/dining/special-meals-and-nut-allergies.jsp> which states explicitly that passengers with nut allergies will not be permitted to preboard to wipe down seating areas despite American Airlines' acknowledgement that there may be nut residue present in the seating area.

COUNT I
VIOLATION OF THE AIR CARRIER ACCESS ACT

30. Mackenzie incorporates and realleges all prior paragraphs.
31. The Air Carrier Access Act provides that no air carrier may discriminate against any otherwise qualified individual with a disability, by reason of such disability, in the provision of air transportation. See 49 U.S.C. 41705.

32. Discrimination includes the failure to make necessary accommodations in order to allow safe and equal transport of individuals with disabilities.
33. Discrimination also includes requiring payment for necessary accommodations.
34. Discrimination also includes hostile treatment on the basis of disability or request for accommodation.
35. American Airlines is an air carrier required to comply with the Air Carrier Access Act.
36. An individual with a disability is defined to include any individual who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities. A physical or mental impairment means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems.
37. Isla Mackenzie is an individual with a disability that substantially impairs the major life activities of breathing and eating. Her severe allergy to peanuts, tree nuts and seeds results in anaphylaxis. When exposed to her allergens, Isla experiences a complex immune response resulting in compromise of multiple body systems, including her respiratory system, digestive system, and circulatory system. An unchecked response can be fatal. Avoidance of her allergens is critical not only to her physical wellbeing but to her emotional wellbeing as well.
38. Nicole Mackenzie is an individual associated with a child with a disability and was asserting her child's rights pursuant to the Air Carrier Access Act.
39. As an air carrier, American Airlines is required, "to offer preboarding to passengers with a disability who self-identify at the gate as needing additional time or

assistance to board, stow accessibility equipment, or be seated.” See 14 CFR 382.93.

40. Mackenzie repeatedly identified her daughter’s disability and in response was repeatedly denied the legal protections the law affords her for her daughter’s safety.

41. As DOT has stated,

It is the Enforcement Office’s view that section 382.93 requires carriers to board passengers with disabilities who self identify at the gate as needing to preboard for one of the listed reasons to board the plane before all other passengers, including first class passengers, elite-level passengers, members of the military, passengers with small children, etc. The purpose of section 382.93 is to afford passengers with disabilities who are entitled to preboard enough time and space to board, stow their accessibility equipment, or be seated safely.

https://www.transportation.gov/sites/dot.gov/files/docs/Preboarding%20Notice%20Final_0.pdf

42. Notably, American Airlines not only must grant requests for preboarding to wipe down seating areas for passengers with disabilities (food allergies), it is prohibited from charging passengers for preboarding necessitated by disability. See 14 C.F.R. § 382.57

43. American Airlines is in blatant and unapologetic violation of the Air Carrier Access Act with respect to the rights of passengers with severe food allergies. See Exhibit A.

44. American Airlines maintains an explicit policy of denying preboarding to those with nut allergies, refuses to respond to requests for accommodation filed on behalf of those with food allergies, attempts to charge those with food allergies for necessary

accommodations that it must freely provide, and provides hostile response to those who assert rights on the basis of food allergies.

RELIEF REQUESTED

45. Therefore, Mackenzie requests that the Department of Transportation take immediate steps to investigate and address American Airlines' outrageous conduct. Specifically, Mackenzie seeks the following:

- a. a statement that American Airlines' policies discriminate against individuals with food allergies;
- b. enforcement action to bring American Airlines into compliance with federal law;
- c. mandated training to ensure American Airlines does not target, deny rights to, or retaliate against those with nut allergies;
- d. any and all other relief that may be available including attorneys' fees and costs and assessment of civil penalties which are appropriate given American Airlines blatant and unlawful targeting of those with severe nut allergies.

DATED: December 28, 2016

s/Mary C. Vargas
Mary C. Vargas