

BEFORE THE UNITED STATES DEPARTMENT OF TRANSPORTATION
OFFICE OF AVIATION ENFORCEMENT AND PROCEEDINGS

FOOD ALLERGY RESEARCH)	
& EDUCATION)	
)	
Third Party Complainant,)	
)	
v.)	Docket DOT-OST-2017-_____
)	
AMERICAN AIRLINES,)	
)	
Respondent.)	

COMPLAINT OF FOOD ALLERGY RESEARCH AND EDUCATION

Comments with respect to this docket entry should be directed to:

Mary C. Vargas
Stein & Vargas, LLP
840 First Street NE, Third Floor
Washington, DC 20002
Mary.Vargas@steinvargas.com

Dated: February 15, 2017

BEFORE THE UNITED STATES DEPARTMENT OF TRANSPORTATION
OFFICE OF AVIATION ENFORCEMENT AND PROCEEDINGS

FOOD ALLERGY RESEARCH)	
& EDUCATION)	
)	
Third Party Complainant,)	
)	
v.)	Docket DOT-OST-2017-_____
)	
AMERICAN AIRLINES,)	
)	
Respondent.)	

COMPLAINT OF FOOD ALLERGY RESEARCH AND EDUCATION

Food Allergy Research & Education (“FARE”), the nation’s leading organization representing the rights of individuals with food allergies, through undersigned counsel, hereby files this formal complaint and requests that the Department of Transportation investigate and take immediate steps to bring American Airlines into compliance with its legal obligations pursuant to the Air Carrier Access Act. FARE is dedicated to improving the lives of individuals with food allergies. Therefore, FARE’s mission is directly impacted by American Airlines explicit and discriminatory policy of denying pre-boarding to individuals with food allergies and the people for whom it advocates are on a daily basis being denied their federally protected rights. In support thereof, FARE states as follows:

1. For more than two decades, FARE has worked to improve the lives of the approximately 15 million Americans with food allergies, including all those at risk for anaphylaxis.
2. FARE’s unwavering mission is to improve the quality of life and the health of

individuals with food allergies, and to provide them hope through the promise of new treatments. FARE's work to improve the quality of life focuses on supporting the ability of individuals with food allergies to live safe, productive lives with the respect of others through education and advocacy.

3. According to the CDC, food allergies among children increased significantly from 1997–2007, and allergic reactions to foods have become the most common cause of anaphylaxis in community settings. Therefore, food allergy has become a major health issue in the daily lives of Americans.
4. As a practical matter, adults and children with food allergies come from all walks of life and work in a wide variety of occupations. They volunteer, hold office, lead active lives and support families. They need to travel by air as part of these activities; other forms of transportation are not acceptable in modern life.
5. As a legal matter, individuals with food allergies are individuals with disabilities and are therefore protected by the Air Carrier Access Act.
6. A disability as defined by the Air Carrier Access Act is a substantial impairment to a major life activity. During an allergic reaction, multiple body systems are implicated, including but not limited to the immune system, respiratory system, and circulatory system with the potential for catastrophic results. Individuals with food allergies have substantial impairments to major life activities including but not limited to breathing and eating.
7. Food allergic individuals can experience a variety of allergic reactions simply from skin contact with a food. Therefore, ensuring surfaces are free of allergic foods is

important for food allergic individuals.

8. As an organization dedicated to improving the lives of individuals with food allergies, FARE's mission is directly impacted by American Airlines' explicit and discriminatory policy of denying pre-boarding to individuals with food allergies. This action prevents individuals from having adequate time to clean surfaces that may be contaminated with allergic foods.
9. Because FARE advocates for individuals and families with food allergies, FARE is authorized to assert claims to require compliance with federal law on behalf of those for whom it advocates.
10. FARE's members throughout the United States need to fly for work, for family events, and for recreation.
11. Pre-boarding allows an allergic individual or their travel companions to take necessary steps to guard against potentially dangerous exposure to allergens while in the air.
12. Pre-boarding allows allergic individuals and their families to wipe down seating areas, tray tables and armrests, and cover seats to prevent food allergen contact. This is accepted and routine practice in the United States and cannot be effectively accomplished during general boarding.
13. Pre-boarding is necessary in order to allow time and opportunity for allergic travelers to wipe down their seating area so that they can be seated safely and in a timely fashion.
14. Pre-boarding for this purpose does not burden American Airlines. It not only

addresses physical risk to these individuals but emotional risk as well. Individuals with food allergies, particularly children who have experienced terrifying anaphylactic reactions, experience significant anxiety when placed in close proximity to allergens that can be lethal for them. Pre-boarding to secure seating areas provides significant reassurance to this anxiety.

15. American Airlines refuses to permit allergic individuals to pre-board, specifically stating on its website that it will not “allow passengers [with food allergies] to pre-board to wipe down seats and tray tables.” <https://www.aa.com/i18n/travel-info/experience/dining/special-meals-and-nut-allergies.jsp>(See Attachment 1)
16. By enforcing and maintaining this discriminatory policy on its website and in communications with travelers, American Airlines is not only denying federally protected rights, but is misleading passengers about their legal rights on a daily basis. Because American Airlines states unequivocally that it prohibits pre-boarding, passengers will be misled to believe that there is no such right for individuals who need pre-boarding on the basis of allergy.
17. In so doing, American Airlines is harming FARE’s mission, harming FARE’s members, and unlawfully steering passengers with food allergies to other airlines that permit pre-boarding as required by 14 C.F.R. § 382.93.

**COUNT I
VIOLATION OF THE AIR CARRIER ACCESS ACT**

18. FARE incorporates and re-alleges all prior paragraphs.
19. 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.

20. Discrimination includes the failure to make necessary accommodations in order to allow safe and equal transport of individuals with disabilities.
21. Discrimination also includes maintaining policies that single out specific disability groups for lesser protection.
22. Discrimination includes hostile treatment on the basis of disability or request for accommodation.
23. Discrimination includes requiring individuals with disabilities to pay for needed accommodations.
24. American Airlines is an air carrier required to comply with the Air Carrier Access Act.
25. 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.
26. Individuals with life threatening food allergies are individuals with a disability because their food allergies substantially impair the major life activities of breathing and eating. During an anaphylactic reaction, an allergic individual experiences a complex immune response involving many body systems and resulting in compromise of multiple body systems, including the respiratory system, digestive system, and circulatory system. An unchecked response can be fatal. Avoidance of

known allergens is critical not only to physical wellbeing of allergic individuals but to their emotional wellbeing as well.

27. FARE's mission centers around educating and advocating for improvements to the quality of life and health of individuals with food allergies and the people and communities who care about them and providing hope to those through the promise of new treatments.
28. FARE is authorized to file a complaint because FARE's mission is frustrated by American Airline's ongoing and widespread violation of the Air Carrier Access Act.
29. FARE is also authorized to file a complaint on behalf of its many members and to seek investigation of American Airline's violation of the Air Carrier Access Act.
30. As an air carrier, American Airlines is required "to offer pre-boarding 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.
31. 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

32. Food allergic travelers who need to wipe down their seating area need additional

time to be seated and to do so safely.

33. Therefore, food allergic passengers must be permitted to pre-board both so that they have enough time to be seated and so that they can be seated safely.

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

35. American Airlines publicly maintains, disseminates, and enforces an explicit policy in direct violation of law intended to deny legal rights the Air Carrier Access Act affords to individuals with food allergies.

36. By enforcing and maintaining this discriminatory policy on its website and in communications with travelers, American Airlines is misleading passengers about their legal rights, and denying passengers with food allergies legal protections on a daily basis in significant and concerning numbers.

37. FARE's members and mission are both harmed by American Airlines' deliberate flaunting of federal law.

RELIEF REQUESTED

38. Therefore, FARE requests that the Department of Transportation take immediate steps to address American Airlines' blatant disregard for its legal obligations pursuant to the Air Carrier Access Act. Specifically, FARE 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. a full and complete retraction of the discriminatory policy in question both on its website and in practice, and an affirmative statement on its website that American Airlines will permit individuals with a disability, including those with food allergies, to pre-board to allow an opportunity to wipe down seating areas and be seated in a timely and safe fashion;
- d. mandated training to ensure American Airlines adopts a uniform approach to prevent its employees from continuing to apply discriminatory policies against those with allergies;
- e. any and all other relief that may be available including but not limited to assessment of civil penalties which are appropriate given American Airlines widespread, clear and flagrant violation of law, attorneys' fees and costs.

DATED: February 15, 2017

s/Mary C. Vargas
Mary C. Vargas
STEIN & VARGAS, LLP
840 First Street NE
Third Floor
Washington, DC 20002
240-793-3185 Telephone
888-778-4620 Facsimile
Mary.Vargas@steinvargas.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon the following via electronic mail on February 15,

2017:

Robert Silverberg (rsilverberg@sbgdc.com)

Alec Bramlett (alec.bramlett@aa.com)

Robert Gorman (Robert.gorman@dot.gov)

/s/Mary C. Vargas

Mary C. Vargas