

Life, Liberty & peanut butter?

The allergic child has the law on its side when it comes to banning peanuts in schools. But it shouldn't have to be fought in the court: this is a community and social responsibility.

By Isabel Grant

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There is a new battle raging in many Canadian schools, from British Columbia to Nova Scotia. It's not pedagogical principles, class size or even racial tensions in the classroom. This is a battle over peanut butter.

My daughter, 5, and otherwise the picture of health, suffers from a life-threatening peanut allergy. Tiny amounts of peanut products in her mouth, eyes or nose will send her body into shock, virtually instantaneously. Her face, mouth and throat swell, breathing becomes very difficult, she becomes disoriented and, if not treated immediately with an injection of adrenalin, she could die within minutes. She carries injectible medication, her "epipen," in a fanny pack around her waist everywhere she goes. Even this treatment will buy her perhaps only 15 minutes to get to the emergency room. It is estimated that at least 1 per cent of all children suffer from some form of anaphylaxis and experts agree that it is on the rise in children.

Because of its deadly nature, parents of peanut-allergic children often try to persuade their schools to provide peanut-free lunchrooms or to prohibit peanuts altogether in the school. Most families are supportive of such initiatives. But there is a small and vocal minority who assert that their rights are being violated. This argument is usually focused around peanut butter, an inexpensive, convenient source of protein for children's lunches. But for the anaphylactic child, peanut butter is poison. Thus the conflict is crystallized: the safety of the anaphylactic child versus the "right to peanut butter."

Peanut butter is particularly deadly to anaphylactic children because it sticks to surfaces, to cutlery and to hands and faces. One Canadian child died because the jam sandwich she had eaten had been made with a knife used to make a peanut butter sandwich. Another died because her cheese sandwich was packed in a bag next to a peanut butter sandwich.

As a law professor with an interest in human rights, I am confident that the allergic child has the law on her side. Provincial human-rights legislation prohibits discrimination on the basis of disability for services customarily available to the public. It is clear that a life-threatening medical condition that greatly restricts the activities of daily living is a disability. Further, it is clear that schools have a legal duty to accommodate children with physical disabilities. The only limit on that duty is the principle of undue hardship. The Supreme Court of Canada in 1992 made clear that the mere fact of inconvenience to others would not limit the duty to accommodate. There would have to be a significant interference with the rights of others. And the "rights of others" does not include a right to eat peanut butter under the law in any Canadian jurisdiction. Similarly, the equality guarantees in the Canadian Charter of Rights and Freedoms, which clearly applies to school boards, prohibit discrimination on the basis of disability. The point, in short, is that the law requires people to be inconvenienced, and the state to spend some money, to protect the rights of disadvantaged members of our community. All Canadian children have a right to a safe education in the public school system. Children with anaphylaxis deserve no less.

As a parent, however, I believe that this should not have to be fought out in the courts or before human-rights tribunals. This is an issue about community and social responsibility. Schools are public institutions to which we entrust our children on the assumption that they will be educated and kept safe. Schools are also, outside of the family, often the first community to which our children belong. When one member of a community is in danger, one hopes that other members will rally behind that individual, even if support is not always the most convenient option. The extent to which we demonstrate this to our children will shape their vision of community and responsibility.

Children with anaphylaxis are greatly limited in their ability to participate in social life. Most only eat food made at home. Birthday parties, restaurant outings, school picnics and barbecues, Christmas and Halloween are severely limited for these children. My daughter experiences exclusion on an almost daily basis. Children having a picnic on the school yard warn her to stay away because someone is eating peanut butter. Some parents are so nervous about having her in the house that she is not invited to birthday parties.

My daughter has been lucky to develop a group of friends, and their families, who have gone out of their way to include her in social events safely. Many parents have told us that the nut restrictions, while inconvenient, were a positive experience for their children. It helped them learn about differences, disability and accommodation in a way that was meaningful to them.

No school and no parent can guarantee the safety of these children. Parents are merely asking that members of their child's community help them minimize the risk at school. We are asking for hand-washing and table-washing policies, for adequate supervision at lunch and recess so that life-saving treatment could be delivered quickly. Most importantly, we are asking that other children refrain from eating peanut butter for *one meal a day*. Surely this inconvenience is warranted when a child's life is at stake.

A common objection to nut restrictions is that they create a "false sense of security." This argument is one only made by people who do not live with anaphylaxis daily. We parents will certainly not assume she is safe, knowing how easily accidents and mistakes can happen. Our daughter, who at 5 understands the threat to her life, will not let down her guard. One simply is not lulled into a false sense of security when a child's life is at stake.

I worry every day about my daughter's safety. I also worry about striking a balance between protecting her and not isolating her, between developing in her a healthy fear of peanuts and not making her constantly afraid of dying. I worry that governments and school boards won't act until another child dies in the classroom or on a school field trip.

But our battles have raised a new kind of worry for me about the nature of communities and institutions in our society. Those parents who are fighting the nut-restricted policies send a critical message to their children -- that it is more important that they eat just what they want, exactly when they want it, than that they help protect the life of their classmate. That message will affect the way these children see their responsibility to people different from them in more profound ways than my daughter.

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