

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

CRYSTAL SHELTON; I.S. by his)
mother and next friend, CRYSTAL)
SHELTON,)
)
Complainants,)
)
v.)
)
ALLEGIANT AIR, LLC)
)
Respondent.)

Docket DOT-OST-2024-_____

FORMAL COMPLAINT OF

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

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Dated: September 5, 2024

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FORMAL COMPLAINT OF CRYSTAL SHELTON AND I.S.

CRYSTAL SHELTON, and her minor child, I.S., a child with food allergies, were traveling from Chattanooga, Tennessee to Tampa, Florida when ALLEGIANT AIR, LLC denied accommodation, humiliated the mother and child for having requested disability accommodations, and then removed them from the plane for which they had purchased tickets stranding them in Tennessee. In so doing, ALLEGIANT AIR, LLC violated the Air Carrier Access Act and the Airline Passengers with Disabilities Bill of Rights.

In support thereof, COMPLAINANTS state as follows:

1. Complainants, Crystal Shelton and her son, I.S., live in Washington State and purchased tickets to travel from Chattanooga, Tennessee to Tampa, Florida on July 7, 2024, via Allegiant Air, LLC's Flight Number 205.
2. I.S. is eight years old and is allergic to pistachios and cashews and his allergies put him at risk of anaphylaxis. He has a history of anaphylaxis and was treated for anaphylactic shock as recently as February 4, 2024. During anaphylaxis, multiple

body systems quickly fail and death may result.

3. On the date of travel, Shelton notified a gate agent named “Zach” that her son has a severe allergy to pistachios and cashews and the gate agent agreed to note this information. At that time, Shelton also inquired whether Allegiant Air, LLC would be serving pistachios or cashews on the flight. I.S. is only eight years old, and when pistachios and cashews are served in a closed environment like an airplane with circulating air and at close range, he is exposed and fearful and at risk of anaphylaxis should he ingest his allergens or touch surfaces contaminated by his allergens and then touch his mouth or eyes during flight.
4. The gate agent informed Shelton that he did not know if pistachios or cashews would be served and stated that he would check. During boarding, the gate agent realized that he had not checked if nuts were being served as promised. He stopped boarding and went and checked. Upon return, the gate agent stated that there were cashews that would be served. Shelton asked if the cashews could not be served on the flight and the gate agent, Zack, told her to ask the flight attendant if they could not serve cashews.
5. When Shelton and her son boarded the plane, as directed by the gate agent, she notified a flight attendant named Bailey (“Flight Attendant A”) of her son’s allergies and asked whether the crew could refrain from serving cashews. Flight Attendant A to whom Shelton made this request agreed.
6. However, another flight attendant name Chloe (“Flight Attendant B”) overheard the conversation, became visibly enraged, and informed Shelton and her son that cashews would be served.

7. When Shelton explained that she was requesting cashews not be served as an accommodation for a disability to keep her son safe, Flight Attendant A reiterated that cashews would not be served.
8. Shelton and her son proceeded to their seats, buckled their safety belts, and sat quietly.
9. However, Flight Attendant B then began loudly mocking Shelton and her son. Flight Attendant B approached with an iPad where Shelton and her son were sitting quietly and began ranting that she would serve cashews and that Allegiant Air, LLC policy did not provide an allergen-free environment to passengers.
10. Flight Attendant B then continued ranting loudly about how Allegiant Air, LLC's allergy policy was "right there in black and white" and Shelton "was just too stupid to read it". Flight Attendant B appeared to be talking to herself, but loudly enough so everyone could hear her that she gets paid to serve cashews and she was going to get paid. She made other statements like, "I am going to get them off this plane" referring to the Shelton and her son. She also began stating that she was "documenting...they said this at this time" but these supposed documentations Flight Attendant B announced were obviously false as Shelton had said and done nothing. Instead Shelton was quietly whispering to and calming her child and not interacting with the flight attendants as Flight Attendant B created this false narration. Flight Shelton quietly called her husband on her cell phone during this time when Flight Attendant B was stating publicly that she was making a record of things that simply were not happening as Shelton was not engaged with the attendant at all during this time.
11. Shelton and her son remained seated quietly. However, silent tears were now running

down I.S.'s face and he whispered to his mother that he was scared of what the flight attendant was going to do.

12. Flight Attendant A approached the family multiple times and asked questions about I.S.'s allergy and specifically, about his reaction. Shelton explained that I.S. has anaphylactic reactions and that he has a serious allergy.
13. Shortly thereafter, the gate agent entered the plane and engaged in a discussion with the flight attendants in which Shelton overheard the gate agent say, "I cannot remove them unless they are unruly." After the gate agent left, Flight Attendant B responded loudly, "I'm going to get them off this flight."
14. Flight Attendant B further stated that Allegiant Air, LLC provides a commission to flight attendants for snack sales and that she wanted the family taken off the plane so that she could earn a commission on nuts.
15. The gate agent returned. He approached Shelton. He explained that all snacks on the plane were stored together and Shelton responded that "it wasn't a problem" because I.S. would not eat anything being served on the plane. Zach responded, "You don't seem unruly." Shelton did not understand why he would even suggest she and her son were being unruly as they were sitting quietly in their seats with their seat belts buckled. She confirmed that they were not being unruly and the gate agent departed.
16. Flight Attendant A then returned and told Shelton that all the food served on the plane was stored together. Shelton again responded that this was fine because her son would not eat anything served on the plane.
17. The gate agent then returned and sat in the empty seat next to Mrs. Shelton and told Shelton and her son that they were being removed from the flight. When asked why

he stated that the captain deemed them unruly and he had to follow the orders even if he thought we were not unruly.

18. I.S. continued to cry silently, but Shelton and I.S. followed the gate agent from the plane as directed.
19. Shelton forgot her purse in the plane and turned around to go get it.
20. When Shelton asked why they were being removed from the flight, the gate agent told Shelton that they were being removed for “being unruly.” Shelton asked how they were being unruly and the gate agent explained that because a food allergy could cause an emergency landing, Shelton and her son were being removed as unruly passengers.
21. The gate agent confirmed in a conversation that was recorded that Shelton and her son were not actually being unruly and that the claim of them being unruly had been invented by the flight crew.
22. The gate agent indicated they could be put on the next available flight that Allegiant Air, LLC flew to the destination, but that flight was not scheduled until 2 days later.
23. It took approximately an hour for the airline to remove Shelton and her son’s luggage from the plane while they stood by helplessly.
24. Despite having paid for passage on Flight No. 205, Shelton was forced to purchase alternate tickets from another airline which could only get the family out from Atlanta the following day. Shelton and her son were forced to rent a car, drive through the night to Georgia allowing the mom and child only a couple hours of sleep, pay for a night in a hotel, and purchase the tickets to fly to Tampa on another airline from Atlanta.

25. When Shelton requested that the ticket price she paid to Allegiant Air, LLC for the passage she and her son were denied be refunded, Allegiant Air, LLC refused. Later, Allegiant Air, LLC issued flight credits but such credits are of no use given Allegiant Air, LLC's conduct in refusing to permit them to travel because of food allergy and a request for accommodation.
26. The Shelton family incurred expenses as a result of Allegiant Air, LLC's discrimination, including the cost of a rental car, the cost of a hotel, and the cost of airfare on another carrier.
27. The Shelton family was mocked and humiliated on the basis of disability and because of having requested accommodation.
28. I.S. was humiliated, terrified and under mental distress cause by Allegiant Air, LLC's conduct. Allegiant Air, LLC – adults in uniforms - harassed him and his mother because of his food allergy.

**COUNT I
VIOLATION OF THE AIR CARRIER ACCESS ACT AND THE AIR
PASSENGERS WITH DISABILITIES BILL OF RIGHTS**

29. 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.
30. Discrimination includes the failure to make necessary accommodations in order to allow safe and equal transport of individuals with disabilities.
31. ALLEGIANT AIR, LLC is an air carrier required to comply with the Air Carrier Access Act and the Airline Passengers with Disabilities Bill of Rights.
32. 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.
33. 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 the physical wellbeing of allergic individuals but to their emotional wellbeing as well.
34. I.S. has a life-threatening allergy to cashews and pistachios. When his allergens come in contact with his mouth or eyes, he experiences symptoms involving multiple body systems and which require emergency treatment. I.S. is not only physically at risk as a child when exposed to his allergens, he becomes anxious when required to be in close proximity in a closed environment like an airplane to substances that are life-threatening for him.
35. In denying accommodation, ALLEGIANT AIR, LLC violated the Air Carrier Access Act, its implementing regulations, and the Airline Passengers with Disabilities Bill of Rights.
36. The Airline Passengers with Disabilities Bill of Rights describes the fundamental rights afforded passengers with disabilities pursuant to the Air Carrier Access Act and

its implementing regulations.

37. In falsely claiming Shelton and her 8-year-old son were unruly simply because they were seated with a disability, ALLEGIANT AIR, LLC was discriminatory and retaliatory in violation of federal law and caused harm.
38. In removing Shelton and her 8 year old son from the plane for disclosing I.S.'s allergy and requesting accommodation ALLEGIANT AIR, LLC discriminated and retaliated against the Shelton family, causing the family to incur financial and emotional harm.
39. Of great significance, when an airline removes passengers for simply disclosing their disability, this intimidation results in passengers being intimidated from future disclosure of disability. Such result is contrary to federal law and requires firm repudiation by the United States Department of Transportation and imposition of fines to make clear such abhorrent conduct will not be tolerated.
40. Further, ALLEGIANT AIR, LLC should be required to disgorge profits made through discriminatory conduct and refund the financial costs their unlawful course of conduct created for the Shelton family and as well as paying the consequently costs of their discriminatory and retaliatory conduct. Absent such actions being required by the U.S. Department of Transportation, the rights provided in the Air Carrier Access Act for individuals with disabilities are meaningless and without effect.

RELIEF REQUESTED

41. Complainants request that the Department of Transportation:

- a. Issue a finding that ALLEGIANT AIR, LLC discriminated and retaliated in violation of the Air Carrier Access Act in its treatment of Complainants because of the disclosure of disability and the request for accommodation;
- b. Impose a fine against ALLEGIANT AIR, LLC as consistent with the Air Carrier Access Act to make clear that intimidation, retaliation and discrimination for disclosure of disability and requests for accommodation will not be tolerated;
- c. Mandate training to ensure ALLEGIANT AIR, LLC employees do not continue their pattern or practice of engaging in humiliation, intimidation and retaliation against food allergic passengers and their parents;
- d. Require ALLEGIANT AIR, LLC to disgorge unlawfully obtained profits insofar as ALLEGIANT AIR, LLC took the Shelton's airfare but refused to transport them;
- e. Require ALLEGIANT AIR, LLC to reimburse the Shelton family for the consequential damages incurred as a result of the airline's discriminatory and retaliatory conduct;
- f. Any and all other relief that may be available including but not limited to attorneys' fees and costs.

DATED: September 5, 2024

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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 September 5, 2024:

Laura Overton
General Counsel and VP of Legal Affairs
Allegiant Air, LLC
1201 N. Town Center Drive
Las Vegas, NV 89144

/s/Mary C. Vargas
Mary C. Vargas