CHILD CARE POLICIES FOR FOOD ALLERGY

Elijah's Law Report for U.S. States and Territories

Asthma and Allergy Foundation of America

ELIJAH-ALAVI FOUNDATION

KIDS WITH FOOD ALLERGIES
A Division of the Asthma and Allergy Foundation of America

aafa.org/ElijahsLaw

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INTRODUCTION

On November 3, 2017, 3-year-old Elijah Silvera died after having a severe allergic reaction (anaphylaxis) at his child care facility. Even though the facility had documentation of Elijah's life-threatening milk allergy, asthma, and other allergies, the child care facility fed Elijah a grilled cheese sandwich. The facility then failed to follow emergency protocols to treat anaphylaxis.

In the wake of this tragedy, Thomas Silvera and Dina Hawthorne-Silvera, Elijah's parents, co-founded the Elijah-Alavi Foundation (EAF) and launched an initiative known as "Elijah's Echo." Their mission is to raise awareness about the severity of food allergies and to advocate for better anaphylaxis education and training. At the heart of this mission is to help states pass and implement Elijah's Law.

Elijah's Law is a bill that ensures child care facilities take concrete steps to manage food allergies for the children in their care. Such steps include developing emergency protocols, strategies for discussing food allergies with children, and plans for preventing exposure to food allergy triggers.

On September 12, 2019, New York was the first state to sign Elijah's Law into law. It requires New York child care programs to follow guidelines for preventing and responding to severe food allergy reactions.

Two years later, on August 20, 2021, Illinois became the second state to pass Elijah's Law. Under this law, the Illinois Department of Public Health must create policies to prevent anaphylaxis in school districts and child care centers.

The Asthma and Allergy Foundation of America (AAFA) has been proud to support EAF's efforts to pass Elijah's Law in New York and Illinois. We will continue to work toward protecting children in all 50 states, the District of Columbia, and U.S. territories.

The purpose of this report is to accelerate our efforts to pass Elijah's Law across the country.

WELCOME – A NOTE FROM DINA AND THOMAS SILVERA

Looking back on the past four years without our happy, smiling Elijah, we are both amazed and heartbroken by the milestones achieved and the knowledge we (as a society) have gained. Amid unfathomable sadness, we've passed laws in Elijah's name, created a Foundation, and provided critical food allergy education at levels we never could have imagined.

In the weeks following Elijah's death, we were faced with two options: channel our grief into change or be destroyed by the devastation. We decided to channel all the anger, bitterness, and rage we felt to move us into action.

We sought to understand why Elijah's child care program was so ill-equipped to handle an anaphylactic emergency. Our findings were alarming—in New York state, guidelines for prevention and recognition of anaphylaxis in child care programs were voluntary.

From left to right: Elijah, Dina, Thomas, and Sebastin Silvera (2017) Dina and Thomas co-founded the Elijah-Alavi Foundation, while Sebastin (now age 9) serves as the Director of Smiles.

It didn't take long to realize we needed to set our sights on state-wide change. And just like that, "Elijah's Law" became more than just an idea. It was now a tangible goal that we were determined to achieve. Our goal was to not only protect other families with food allergies, but to also empower child care providers to keep children with food allergies safe. We created the Elijah-Alavi Foundation (EAF), and through it we continue to advocate for better policies, offer resources, host community events, and share real-life inspiration for other families impacted by life-threatening allergies.

We want parents of children with life-threatening allergies to rest easy, knowing their child care providers are armed with proper education, resources, and tools to handle any anaphylactic emergency. At the same time, we want child care programs to understand the risks and consequences of life-threatening allergies, allowing precautions to be taken with ease and certainty.

We are grateful to all those who continue to help us in our mission.

Dina and Thomas Silvera
Co-Founders, Elijah-Alavi Foundation

BUILDING MOMENTUM – A MESSAGE FROM AAFA

Struck and saddened by Elijah's story, the Asthma and Allergy Foundation of America (AAFA) has committed to sharing "Elijah's Echo." Upon hearing that Elijah's Law needed additional support, AAFA and our New York community members immediately leapt into action in 2019. In a few short months, over 500 advocates answered our call to action to contact their New York state legislators to get Elijah's Law passed and signed into law.

This was just the beginning of our support for Elijah's Law and ongoing collaboration with the Elijah-Alavi Foundation (EAF). With Thomas, Dina, and EAF's leadership, we built a successful campaign to pass Elijah's Law in Illinois in 2021.

Though we are proud of these successes so far, we know the work is not done. Across the country, too many children with food allergies still lack the necessary protections to grow and thrive in early child care.

The purpose of this report is to support the adoption of Elijah's Law in more states. It is our hope that advocates, legislators (lawmakers), and other leaders will better understand state-level gaps in child care protections and take necessary measures to advocate for Elijah's Law across the country.

The report includes two pieces: a review of state-level policies protecting children with food allergies in child care programs, and a toolkit for advocates to support Elijah's Law in new states.

Join AAFA and EAF to make sure all children with food allergies are safe and protected in child care settings.

Elijah (age 3) hugging his brother Sebastin (age 4) at home in Harlem, New York.

KEY WORDS AND PHRASES

ANAPHYLAXIS
Anaphylaxis is a potentially life-threatening allergic reaction. Symptoms of anaphylaxis usually involve more than one part of the body such as the skin, mouth, eyes, lungs, heart, gut, and brain.

CHILD CARE SETTINGS
Child care settings are any licensed child care facility providing non-parental care to children. These settings include child care centers and family child care homes, also known as family day care. These settings exclude K-12 schools and preschools.

FOOD ALLERGY
A food allergy occurs when the body's immune system sees a certain food as harmful and reacts by causing symptoms. This is an allergic reaction.

EPINEPHRINE
Epinephrine is the only medicine that will stop anaphylaxis. Epinephrine is safe and most often comes in an easy-to-use device called an auto-injector.

PART 1 – STATE REVIEW OF FOOD ALLERGY POLICIES FOR CHILD CARE SETTINGS

Food allergies affect about one in 13 children in the United States – a number that has been growing. Exposure to an allergen can cause severe reactions, including anaphylaxis and, in rare cases, death. Because there is no cure for food allergies, awareness and preparedness are key for protecting health and saving lives, especially in a child care setting.

The Asthma and Allergy Foundation of America (AAFA) and the Elijah-Alavi Foundation (EAF) identified nine key standards that protect children with food allergies in the child care setting. AAFA and EAF developed these standards using the text of Elijah's Law and the National Resource Center for Health and Safety in Child Care and Early Education's (NRC) Caring for our Children (CFOC) standards.[1]

We conducted a state-by-state review of child care regulations in every state and U.S. territory against these nine policy standards. This assessment aims to help advocates and lawmakers better understand what protections already exist in their states and where additional protections are needed.

New York Senator Brian Benjamin and New York Assemblyman Al Taylor at Jackie Robinson Park in Harlem adding their signature to a full poster size of Elijah's Law.

1 Caring for Our Children (CFOC). (2017, November 9). *Nutrition and food service: General requirements.* CFOC Standards Database. https://nrckids.org/CFOC/Database/4.2.0.10

KEY POLICY STANDARDS FOR CHILD CARE SETTINGS

1. State requires up-to-date health records to include known allergies.
2. State requires a food allergy care plan for children with food allergies.
3. State requires child care personnel to receive training for the prevention, recognition, and treatment of allergic reactions to food.
4. State requires child care personnel to receive training on the administration of epinephrine auto-injectors.
5. State allows stocking of undesignated epinephrine auto-injectors at child care facilities.
6. State requires emergency services be contacted immediately whenever epinephrine has been administered.
7. State requires parent/guardian be notified of possible allergic reaction.
8. State requires child care facilities to have food service policies that address food allergies.
9. State requires a child's food allergies to be posted prominently in the child care facility and/or in the food preparation area.

METHODOLOGY

A legal researcher used the "National Database of Child Care Licensing Regulations" to conduct this state (and territory) review.[2] This website has a one-stop-shop for child care licensing and also includes other additional standards, such as Quality Rating and Information Standards (QRIS). The researcher used the state profiles to find the state statutes and regulations for all 50 states, the District of Columbia, and the U.S. territories. With guidance from AAFA, the researcher identified three key words related to food allergies: "allergies," "epinephrine", and "anaphylaxis." To capture all forms of those key words, the researcher used search terms: "allerg", "epi" and "anaphy."

To identify state statutes specifically related to epinephrine protections for authorized entities, the legal researcher did a search of a legal database using the search term "epinephrine." Results were categorized by date and analyzed for applicability to the child care setting.

The results of these searches were then analyzed against the nine standards and can be found in the chart on the following pages.

2 The database is curated by the Administration for Children and Families of the United States Department of Health and Human Services and updated at least annually. The database can be found here: https://licensingregulations.acf.hhs.gov/

CHART: STATE REVIEW OF FOOD ALLERGY POLICIES FOR CHILD CARE SETTINGS

States	Total Score (out of 9)	Policy Standard 1	Policy Standard 2	Policy Standard 3	Policy Standard 4	Policy Standard 5	Policy Standard 6	Policy Standard 7	Policy Standard 8	Policy Standard 9
Alabama	2			✓C¥		✓				
Alaska	4	✓		✓		✓α			✓	
Arizona	2			✓		✓				
Arkansas	4	✓	✓	✓		✓α				
California	3	✓C				✓α			✓C	
Colorado	4	✓	✓			✓			✓H	
Connecticut	5	✓	✓	✓	✓	✓α				
Delaware	6	✓		✓	✓		✓	✓	✓	
District of Columbia	7	✓	✓	✓		✓		✓	✓	✓
Florida	8	✓	✓	✓		✓α	✓	✓	✓	✓
Georgia	3	✓		✓		✓α				
Hawaii	2							✓	✓	
Idaho	2	✓							✓	
Illinois**	2					✓			✓	
Indiana	3	✓				✓α			✓C	
Iowa	3	✓	✓	✓						
Kansas	2			✓					✓	
Kentucky	5	✓			✓	✓	✓	✓		
LouisianaΩ	6	✓C	✓C	✓C				✓C	✓C	✓C

C Standard only applies to child care centers.
H Standard only applies to family or group child care homes.
¥ Standard only applies to child care facilities that participate in the Child Care Subsidy Program from the federal Child Care Development Block Grant.
* Standard only applies with parental consent.
Ω Louisiana and New Jersey only license child care centers, not child care homes.
α Epinephrine stocking statute does not explicitly list child care facilities, but such facilities are eligible.
** Illinois' Elijah's Law was passed on August 20, 2021 and not yet reflected in state licensing regulations at the time of this assessment. Illinois child care facilities will be required to develop a anaphylaxis plan and have at least one staff member who is trained on anaphylaxis present at all times.

Key

✓ *State policy exists*

Passed a version of Elijah's Law

Policy Standards

1. State requires up-to-date health records to include known allergies.
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Maine	4	✓		✓		✓			✓	
Maryland	1	✓								
Massachusetts	5	✓	✓					✓	✓	✓
Michigan	2			✓		✓α				
Minnesota	7	✓	✓			✓	✓	✓	✓	✓
Mississippi	2	✓							✓	
Missouri	1					✓α				
Montana	2	✓		✓						
Nebraska	2	✓							✓	
Nevada	4	✓		✓		✓α			✓	
New Hampshire	7	✓	✓	✓		✓α	✓	✓	✓	
New JerseyΩ	4	✓C	✓C	✓C	✓C					
New Mexico	2	✓		✓						
New York	9	✓	✓	✓	✓	✓α	✓	✓	✓	✓
North Carolina	5	✓	✓	✓		✓				✓
North Dakota	1								✓H	
Ohio	1					✓C				
Oklahoma	3			✓		✓α				✓C
Oregon	3	✓	✓			✓α				

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Pennsylvania	3	✓	✓			✓				
Rhode Island	5	✓	✓			✓α			✓	✓*
South Carolina	1					✓				
South Dakota	1			✓						
Tennessee	6	✓	✓	✓		✓			✓	✓
Texas	7	✓	✓	✓	✓C	✓C			✓	✓
Utah	4	✓		✓		✓			✓	
Vermont	3	✓		✓					✓	
Virginia	5	✓	✓		✓			✓H	✓H	
Washington	7	✓	✓			✓α	✓	✓	✓	✓
West Virginia	3	✓				✓α			✓C	
Wisconsin	4			✓		✓		✓	✓	
Wyoming	3	✓							✓	✓
U.S. Territories										
American Samoa	0									
Guam	3	✓							✓	✓
Northern Mariana Islands	2							✓	✓	
Puerto Rico	0									
Virgin Islands	0									

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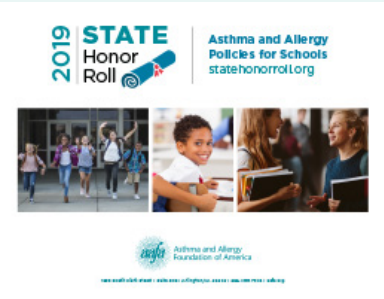
REGULATING CHILD CARE FACILITIES COMPARED TO K-12 SCHOOLS

The regulation of child care facilities is complex and can differ than regulation of K-12 schools. Each state uses a combination of statutes and regulations to guide different settings. The laws and regulations for schools and child care facilities are distinct in every state. State licensing of child care is separate from schools and is often overseen by a different regulatory entity. For example, in Illinois, schools are licensed by the Illinois State Board of Education. Child care facilities, by contrast, are licensed by the Department of Children and Family Services.

The role of federal and state laws in the regulatory oversight is different between schools and child care facilities as well. For example, the federal government ties requirements to federal funding for schools through federal legislation, such as the Every Student Succeeds Act. School district oversight is done at the local level through local boards of education. By contrast, every state has a regulatory structure for child care facilities, although there can also be local requirements as well. The federal government's role in child care licensing is limited to general requirements, such as those found in the Child Care Development Block Grant.

For this report, it is important to understand the regulatory structure in each state. The specific regulatory context is critical for assessing whether policies would successfully ensure child care facilities follow guidelines for preventing and responding to severe food allergy reactions.

Elijah's Law in Illinois provides a useful example. As it relates to school districts, the law requires the Board of Education to create, distribute, and post information about their anaphylaxis policies on its website. Schools must communicate with parents and guardians about the policies at least once a year. And schools must send the policies to each Board of every school district and charter school in the state. By contrast, as it relates to child care facilities, the law requires that an anaphylaxis plan is established and a trained individual is on-site at all times. Other requirements, such as the contents of the plan and how to use the plan, are not specifically outlined or required by the legislation.



The Asthma and Allergy Foundation of America (AAFA) publishes a separate report on school policies. AAFA's State Honor Roll Report for Asthma and Allergy Policies for Schools ranks the states with the best public policies for people with asthma, food allergies, anaphylaxis and related allergic diseases in U.S. elementary, middle and high schools. The report checks every state against 23 key measures that affect people with asthma and allergies in schools. The core policies fall under three categories: medication and treatment, awareness, and school environment. It is important to note that schools and child care facilities are regulated differently, therefore requiring separate analysis. The State Honor Roll report is available at StateHonorRoll.org.

FEDERAL POLICIES

This policy review looks at current regulation at a state level, but federal (national) law does exist as well. Federal law requires states to have health and safety requirements, including prevention of and response to emergencies due to food and allergic reactions. The Child Care and Development Block Grant (CCDBG) Act of 2014 and the Child Care and Development Fund (CCDF) Program final rule in 2016 reference "Caring for Our Children Basics" as a recommended baseline for minimum health and safety standards.[3]

However, federal law does not require specific language or requirements to follow these standards. Therefore, the states have a wide variety of child care licensing requirements, as the state review chart shows. Many states incorporate additional best practices in allergy response in the accreditation and/or quality rating and improvement system, but these are voluntary.

The Child Care Development Block Grant

First enacted in 1990, the Child Care Development Block Grant (CCDBG) Act provides federal funding to states to help low-income families with children under 13 years old afford quality child care. In 2014, Congress reauthorized the CCDBG and included revisions to strengthen health and safety requirements for the child care facilities that receive CCDBG funds. These revisions included a training requirement for child care personnel to receive training in the prevention of and response to emergencies due to food and allergic reactions.

3 Head Start Early Childhood Learning & Knowledge Center. (2021, December 22). *Caring for our children basics: Care for children with food allergies.* U.S. Department of Health & Human Services, Administration for Children & Families. https://eclkc.ohs.acf.hhs.gov/health-services-management/caring-our-children-basics/care-children-food-allergies

RECOMMENDATIONS TO IMPROVE CHILD CARE POLICIES

The results of this state-level policy review are clear: more protective child care policies are needed across the country. While individual child care facilities might have comprehensive policies, there is a need for statewide regulatory requirements to ensure consistency across the state.

For example, some states have health consultant requirements for child care settings. Those consultants then have example language child care facilities can use to form their own policies that include many of the nine policy standards. When looking at which states require these standards, only New York, Elijah's home state, met all nine policy standards as of this assessment. These policies are in place in New York as a direct result of passionate advocacy from Elijah's family and supporters.

Food Allergy Training

Only about half of states (28 states) explicitly require staff training for the prevention, recognition, and treatment of allergic reactions to food in their child care licensing regulations. This requirement must be universal, especially since child care facilities can be the sites for first-ever reactions to foods. For the one in 13 children with food allergies, having trained caregivers present at all times is the cornerstone of ensuring their safety at child care facilities of any kind.

Medication Access and Training

Epinephrine is the first line treatment for anaphylaxis.[4] Two-thirds of states (33 states) allow child care facilities to stock undesignated epinephrine auto-injectors, but only seven states require personnel training in the administration of epinephrine. Young children who have severe food allergies always need access to epinephrine and a trained adult who can promply administer the life-saving treatment. Undesignated stock epinephrine is critical for a child who may be experiencing their first-ever reaction to an allergen while in child care. Prompt treatment of anaphylaxis with epinephrine reverses potentially life-threatening symptoms and reduces hospitalizations and deaths.[5]

Communication Plans to Coordinate Emergency Care

In the event of an emergency or suspected allergic reaction, clear communication plans must be in place. Only seven states require emergency services be contacted after epinephrine has been administered and only 14 states and territories require a parent or guardian be notified of a suspected allergic reaction. Every child care facility should have clearly established emergency protocols known to all staff and every parent or guardian. When a severe allergic reaction occurs, child care staff should promptly treat the reaction with epinephrine, call emergency services, and then contact a parent or guardian. Emergency care plans should be reviewed at least annually by both child care personnel and parents or guardians.

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4 Sampson H.A., Muñoz-Furlong A., Campbell R.L., Adkinson Jr., N.F., Bock S.A., Branum A., et al.(2006). Second symposium on the definition and management of anaphylaxis: summary report—Second National Institute of Allergy and Infectious Disease/Food Allergy and Anaphylaxis Network symposium. *J Allergy Clin Immunol*. 2006; 117: 391-397

5 Pumphrey, R.S. (2000). Lessons for management of anaphylaxis from a study of fatal reactions. *Clinical Experimental Allergy*, 30(8), 1144–1150. https://doi.org/10.1046/j.1365-2222.2000.00864.x

PART 2 – ADVOCACY TOOLKIT

In addition to providing an overview of each state's current child care policies for food allergy and anaphylaxis, the Asthma and Allergy Foundation of America (AAFA) and the Elijah-Alavi Foundation (EAF) created this toolkit to provide advocates with resources to pass better bills in their states. It is clear that major gaps still exist in many states and individual action is needed to expand protections for children with food allergies in child care settings.

Your voice is critical to help build awareness in your community and to educate your elected officials who can lead change. With this toolkit, you will learn how to contact your state legislators, how to request a meeting with your state legislators, and how to communicate and advocate effectively. The toolkit also includes a sample letter to your state legislator, an Elijah's Law fact sheet that can be shared, suggested social media posts to help amplify your advocacy, and sample bill language for Elijah's Law that can be used in your state.

From left to right: New York Senator (now Lt. Governor) Brian Benjamin; District Leader Cordell Cleare; Dina Silvera; Thomas Silvera; and Assemblyman Al Taylor celebrating the passage of Elijah's Law at Jackie Robinson Park in Harlem, New York.

CONTACTING YOUR STATE LEGISLATORS

Finding Your State Legislators

If you live in one of the 50 states, you have one state senator and one state representative. You can find your senator and representative by going to openstates.org and entering your home address in the search bar. The results will include both your state and federal representatives. The state results will say either "upper" or "lower" chamber. Your state senator is a member of the upper chamber and your state representative is a member of the lower chamber.

If you live in the District of Columbia or a U.S. territory, you can still use openstates.org to find your local representatives. You also have non-voting members of Congress at the federal level.

Calling Your Legislator

Calling elected officials is an extremely easy and effective way to raise important issues. First, you will want to introduce yourself and let the staff member know that you are a constituent (someone who lives in their district). Do not be surprised if they ask for your zip code. This is because constituent concerns are prioritized. You will then want to briefly raise your concern or request for your legislator using our communication tips on page 19.

You may also ask to speak to the appropriate legislative assistant based on the topic. Here is a brief example: "Hi, my name is Jane Doe from Virginia, zip code 22202. As a mother of child with food allergies, I am calling to encourage the senator to support legislation to improve food allergy and anaphylaxis policies in child care facilities. Is there a legislative assistant who covers these types of issues that I could speak with?"

Writing to Legislators

Writing to legislators is another advocacy tool you can use whether by physical mail or by email. Again, you will want to identify yourself as a constituent and make your request for support clear and concise at the beginning of the letter or email. You should then provide any relevant background information and personal stories related to the request. We have provided a sample letter in support of Elijah's Law on page 20.

Requesting a Meeting with Legislators

The easiest way to request a meeting is by phone or email. Legislators all have public email addresses and/or contact forms on their websites. Using the tips above, contact your representative's office and add a request for a meeting. You may need to be flexible on timing but be persistent. You will most likely meet with a member of staff and not the lawmaker themself.

Once a virtual or in-person meeting is scheduled, be prepared, on time, and concise. Review communication tips on page 19 prior to a meeting and be prepared with any additional background "leave-behind" materials. We have provided a leave-behind fact sheet for Elijah's Law on pages 22-23. It is also important to follow-up with a thank you note or email after the meeting.

Addressing Legislators

When addressing legislators in writing or in conversation, refer to the chart below:

	State Senator	State Representative
Formal Address	The Honorable (Full Name) (Name of State Legislature Upper Chamber) (Address of State Legislature)	The Honorable (Full Name) (Name of State Legislature Lower Chamber) (Address of State Legislature)
Salutation	Dear Senator (Last Name)	Dear "Mr./Ms./Mrs." or "Representative" or "Assemblyman, Assemblywoman, Assemblymember" or "Delegate" (Last Name)
Conversation	Senator (Last Name)	"Mr./Ms./Mrs." or "Representative" or "Assemblyman, Assemblywoman, Assemblymember" or "Delegate" (Last Name)

	United States Senator	United States Representative
Formal Address	The Honorable (Full Name) United States Senate Washington, DC 20510	The Honorable (Full Name) United States House of Representatives Washington, DC 20515
Salutation	Dear Senator (Last Name)	Dear "Mr./Ms./Mrs." or "Representative" (Last Name)
Conversation	Senator (Last Name)	"Congressman, Congresswoman" or "Representative" (Last Name)

Note: The names of upper and lower chambers of state legislatures vary by state. You can find information on your state legislatures by clicking on your state at congress.gov/state-legislature-websites.

TIPS FOR COMMUNICATING WITH LEGISLATORS AND THEIR STAFF

Legislators serve many constituents and address a wide range of policy issues. Here are some important points to keep in mind when communicating with legislators.

1. **Remember that Legislators and Their Staff are Human Beings**
   - Conversations should not be argumentative or confrontational.
   - In advocacy, respectful relationships build the foundation for change.
2. **Share Personal Stories**
   - Personal stories are extremely powerful and are often remembered.
   - Keep stories very brief (under two minutes) and tied to legislation and policy issues.
3. **Identify Yourself as a Constituent**
   - Let your legislator know that you live in their district and identify yourself as a constituent.
   - Legislators are more likely to focus on issues pertaining to their district and constituents.
4. **Increase Number of Communications**
   - Advocates should craft key messages and consider asking friends and family to help in contacting legislators on important issues.
   - The more communications a legislator receives about an issue the more likely they will act.
5. **Repeat Your Main Points**
   - The frequency legislators hear about an issue plays a role in whether they favor a cause.
6. **Keep Materials Brief, Straightforward, and Simple**
   - When sharing printed materials with a legislator, try to keep it to a one-page, bulleted fact sheet that reinforces the key points on the issue.
   - Lengthy materials are often not read.
7. **Clearly Communicate What You are Asking for**
   - Be specific on the action you want taken, such as support for a bill or policy.
   - Stay informed on where legislators stand on issues and actions they have taken.
8. **Follow Up**
   - Thank legislators when they support the issue or take a public stance on it.
9. **Share Media Coverage**
   - If a media story covers an issue you have previously raised with the legislator, share a copy of the article and remind them about the previous communication on the topic.
10. **Take Notes**
    - Keep a record of your communications to maintain dialogues and foster relationships.

SAMPLE LETTER TO YOUR STATE LEGISLATOR

[Date]

Dear ***[Legislator Title and Name]***

I am writing today as a constituent and supporter of the Elijah-Alavi Foundation and Asthma and Allergy Foundation of America. I ask you to enact legislation similar to Elijah's Law that passed in New York and Illinois here in ***[your state name].*** The hope is that Elijah's Law will address the gaps in food allergy and anaphylaxis policies for child care settings.

Elijah Silvera, age 3, was enrolled in a child care program at a Harlem facility in November 2017. Despite having a well-documented severe dairy allergy, Elijah was given a grilled cheese sandwich by an employee. Elijah went into severe anaphylactic shock and died.

Many people mistakenly believe there are laws in place that will protect children with food allergies in both K-12 schools and child care facilities. Even with the increased public awareness of food allergies, the policies in these settings fall short. There are no federal laws in place that require anaphylaxis policies in schools or child care facilities. Each state's education agency often leaves the establishment of school policies to the discretion of individual districts.

Child care facilities do not fall under the umbrella of school districts; regulations for child care facilities are often set by a different state department than schools. Frequently, child care facilities use language to imply food allergy policies, but it is a key point that these are not laws. Elijah Silvera's death was an avoidable tragedy that illustrates the critical need for these laws in child care settings.

I ask you to review the following points and give them careful consideration:

- In 2011, the FDA implemented the Food Safety Modernization Act. Afterwards, the CDC released *Voluntary Guidelines For Managing Food Allergies in Schools and Early Care and Education Programs*. It is a misconception that these CDC guidelines have established regulations for schools and child care. Although thorough, the guidelines are voluntary, not required, and not legally enforceable.

- In 2019, with overwhelming bipartisan support, New York became the first state to pass Elijah's Law (A6971B). The law extends food allergy protections currently in place in K-12 schools to all early child care programs. Elijah's Law requires the Health Commissioner to establish guidelines and procedures for the prevention of and response to anaphylaxis for all child care providers. The protocols include training courses, guidelines for the development of individualized emergency health-care plans, communication and treatment plans, and risk-reduction strategies.

- In 2021, Illinois passed the Childhood Anaphylactic Policy Act (HB 0102, Elijah's Law). The Illinois Department of Public Health, in consultation with the Board of Education and the Department of Children and Family Services, is now required to establish

anaphylaxis policies for school districts and child care settings. Illinois school districts ***and*** child care facilities will be required to follow new protocols to prevent and respond to potentially life-threatening allergic reactions.

- Pennsylvania's HB 1259, Elijah's Law, was introduced in 2021. If passed, it will establish an anaphylaxis policy for school districts and child care facilities. It will require that guidelines, training, procedures, and treatment are followed during a medical emergency resulting from anaphylaxis. These measures also support the prevention of anaphylaxis.

- Virginia's SB 737/HB 1328, Elijah's Law, was introduced in early 2022. If passed, it will require each early childhood care and education entity to implement policies for the possession and administration of epinephrine by trained personnel and for at least one trained personnel to be on-site at all times.

- California's A2042, Elijah's Law, was introduced in early 2022. If passed, it will require anaphylaxis prevention training and education in child daycare facilities and educational institutions.

One preventable death of a child is one too many. Please support legislation for anaphylaxis policies in child care and schools in ***[your state name]*** so we don't lose another child like Elijah.

With sincere thanks,

[your name]
[your home address, optional]

ELIJAH'S LAW FACT SHEET

On November 3, 2017, 3-year-old Elijah Silvera died after having a severe allergic reaction at his child care facility. Even though the child care facility had documentation of Elijah's life-threatening dairy allergy, asthma, and other allergies, the child care facility fed Elijah a grilled cheese sandwich. The facility then failed to follow emergency anaphylaxis protocol.

FOOD ALLERGIES

Food allergies are affecting a growing number of American children and adults. It is most prevalent among young children. In the U.S., one in 13 children have food allergies. Exposure to an allergen can cause severe reactions, including anaphylaxis and, in rare cases, death. Because there is no cure for food allergies, awareness, and preparedness are key for protecting health and saving lives.

COMPONENTS OF ELIJAH'S LAW

States must require child care facilities to take concrete steps to manage food allergies for the children in their care. This includes developing emergency protocols, communication plans for discussing food allergies with children, and plans for preventing exposure.

Key provisions in Elijah's Law:

- Requires the state's department of health – in consultation with others – to establish anaphylaxis policies for school districts and child care facilities.
- Requires the state's department of health to create, distribute, and make available on its website informational materials regarding the anaphylaxis policies.
- Contains requirements for the anaphylaxis policies.
- Requires schools and child care facilities to notify parents and guardians of the policies at least once each calendar year.
- Requires the policies to be forwarded to each school board of a school district, charter school, and child care facility in the state.

GOALS OF ELIJAH'S LAW

Access: for every child care facility to have epinephrine auto-injectors on hand in case of emergency.

Education: for every adult that works in child care facilities to know the signs of anaphylaxis and be able to treat children experiencing it; to be trained by an accredited food allergy training like training.webelay.com.

Equity: to make sure that all children, in every school or child care facility, in every neighborhood, regardless of socioeconomic conditions, culture, or class, will be safe where their parents drop them off.

Asthma and Allergy Foundation of America

aafa.org/ElijahsLaw

ELIJAH-ALAVI FOUNDATION

KIDS WITH FOOD ALLERGIES
A Division of the Asthma and Allergy Foundation of America

ELIJAH'S LAWS IN THE UNITED STATES

New York's Elijah's Law S218B/A6971B

On September 12, 2019, Elijah's Law was signed into law in Elijah's home state of New York. The law requires all child care programs to follow state food allergy guidelines to prevent, recognize and respond to life-threatening anaphylactic reactions. This law was the result of an initiative known as "Elijah's Echo." Elijah's Law in New York was the first of its kind in the United States.

Illinois' Elijah's Law HB0102

On August 20, 2021, the Childhood Anaphylactic Policy Act, also known as Elijah's Law, was signed into law in Illinois. The Illinois Department of Public Health, in consult with the State Board of Education and the Department of Children and Family Services, is to establish anaphylaxis policies for school districts and child care facilities. The Act contains the specific requirements, guidelines, policies, and protocols for schools. Child care facilities are required to develop a plan for anaphylaxis and have at least one staff member who is trained on anaphylaxis present at all times.

Pennsylvania's Elijah's Law HB1259

Introduced on April 21, 2021, "Elijah's Law" in Pennsylvania, if passed, will establish an anaphylaxis policy for school districts and child care centers stating guidelines, training, procedures, and treatment to be followed during a medical emergency resulting from anaphylaxis and for the prevention of anaphylaxis.

Virginia's Elijah's Law SB 737/HB 1328

Introduced on January 21, 2022, "Elijah's Law" in Virginia, if passed, will require each early childhood care and education entity to implement policies for the possession and administration of epinephrine by trained personnel and for at least one trained personnel to be on-site at all times.

California's Elijah's Law AB2042

Introduced on February 14, 2022, "Elijah's Law" in California, if passed, will require anaphylaxis prevention training and education in child daycare facilities and educational institutions.

Other States

The Elijah-Alavi Foundation has been in discussion with several state representatives in Alaska, Massachusetts, Missouri, New Hampshire, and New Jersey, among others, about the need for Elijah's Law.

It shouldn't take a tragedy to create change. Elijah did not die in vain. His echo and his words ring through each and every one of us. We need to create impactful legislation in your state that will require a bill aimed at preventing another tragedy like Elijah's.

aafa.org/ElijahsLaw

Asthma and Allergy Foundation of America

ELIJAH-ALAVI FOUNDATION

KIDS WITH FOOD ALLERGIES
A Division of the Asthma and Allergy Foundation of America

Current as of February 2022

SAMPLE SOCIAL MEDIA POSTS

Twitter to State Representatives:

[@YourRepresentative] Introduce Elijah's Law & keep the 1 in 13 children with life-threatening food allergies in **[Your State]** safe. Child care facilities must have policies in place to respond to anaphylaxis & save lives. @aafanational @elijahsecho aafa.org/ElijahsLaw

[@YourRepresentative] Support Elijah's Law! Children with food allergies deserve safe environments to grow and learn. Child care facilities must have anaphylaxis policies in place to respond to emergencies & save lives. aafa.org/ElijahsLaw

Twitter to Family and Friends:

Join me, @elijahsecho, and @aafanational in supporting Elijah's Law. Child care facilities must have anaphylaxis policies in place to respond to emergencies & save lives. You can find out how to help using this advocacy toolkit: aafa.org/ElijahsLaw

Facebook to State Representatives (find their official Facebook page and post a comment on their page):

On November 3, 2017, 3-year-old Elijah Silvera died after having a severe allergic reaction at his child care facility. Even though the facility had documentation of Elijah's life-threatening dairy allergy, asthma, and other allergies, the child care facility fed Elijah a grilled cheese sandwich. Then the facility failed to follow emergency anaphylaxis protocol.

As a constituent, I urge you to **[introduce/support]** Elijah's Law here in **[Your State]** to protect the 1 in 13 children with life-threatening food allergies. Child care facilities must have anaphylaxis policies in place to respond to emergencies and save lives. One preventable death of a child is one too many. www.aafa.org/ElijahsLaw

Facebook to Family and Friends:

On November 3, 2017, 3-year-old Elijah Silvera died after having a severe allergic reaction at his child care facility. Even though the facility had documentation of Elijah's life-threatening dairy allergy, asthma, and other allergies, the child care facility fed Elijah a grilled cheese sandwich. Then the facility failed to follow emergency anaphylaxis protocol.

Join me in ensuring a tragedy like this does not happen to one more family. Learn how you can advocate for Elijah's Law with me here in **[Your State]** or in your own state with the help of this toolkit from the Elijah Alavi Foundation and the Asthma and Allergy Foundation of America.

Let's make change together! www.aafa.org/ElijahsLaw

SAMPLE BILL LANGUAGE FOR ELIJAH'S LAW

Section 1. This act shall be known and may be cited as "Elijah's Law".

Anaphylaxis policy for school districts and childcare providers.

1 (a) The *[head of department of health or similar position]*, in consultation with the [head of department of education or similar position], shall establish an anaphylaxis policy for school districts setting forth guidelines and procedures to be followed for both the prevention of anaphylaxis and during a medical emergency resulting from anaphylaxis. Such policy shall be developed after consultation with representatives of allergy medicine, pediatric physicians, school nurses and other health care providers with expertise in treating children with anaphylaxis, parents of children with life threatening allergies, school administrators, teachers, school food service directors and appropriate not-for-profit corporations representing allergic individuals at risk for anaphylaxis.

1 (b) The *[head of department of health or similar position]*, in consultation with the *[head of children and family services or similar position]*, shall establish an anaphylaxis policy for child care providers as defined in *[insert section of law]* to be followed for both the prevention of anaphylaxis and during a medical emergency resulting from anaphylaxis. Such policy shall be developed after consultation with representatives of allergy medicine, pediatric physicians, and other health care providers with expertise in treating children with anaphylaxis, parents of children with life threatening allergies, child care administrators and personnel, and appropriate not-for-profit corporations representing allergic individuals at risk for anaphylaxis. The *[head of department of health or similar position]*, in consultation with the *[head of children and family services or similar position]*, shall create informational materials detailing such anaphylaxis polices to be distributed to child care facilities.

1 (c) In establishing policies pursuant to this subdivision, the *commissioners [head of department of health or similar position]*, *[head of department of education or similar position]*, and *[head of department of health or similar position]* shall consider existing requirements, as well as current and best practices for schools and child care providers on allergies and anaphylaxis, including those in place for child care facilities regulated by *[insert appropriate department or governing body]*. Such *commissioners* shall also consider the voluntary guidelines for managing food allergies in schools and early care and education programs issued by the United States department of health and human services, to the extent appropriate for the setting.

1 (d) The *[head of department of health or similar position]* shall create informational materials detailing such anaphylaxis policies to be distributed to local school boards of education, charter schools, boards of cooperative educational services, and child care facilities, and shall make the materials available on the department's website.

Section 2. The anaphylaxis policies established under subdivision one of this section shall include the following:

2(a) a procedure and treatment plan, including emergency protocols and responsibilities for school nurses and other appropriate school and child day care personnel, for responding to anaphylaxis;

2(b) a training course for appropriate school and child care personnel for preventing and responding to anaphylaxis. The *[head of department of health or similar position]* shall, in consultation with the *[head of department of children and family services or similar position]* and the *[head of the department of education or similar position]*, consider existing training programs for responding to anaphylaxis to avoid duplicative training requirements. Such pre-existing program shall fulfill the requirement for a training course pursuant to this subdivision if the standards of such pre-existing program are deemed by the *[head of department of health or similar position]* to be at least as stringent as the standards promulgated by the *[head of*

department of health or similar position] in the development of the training course by the *[insert state]*;

2(c) a procedure and appropriate guidelines for the development of an individualized emergency health care plan for children with a food or other allergy which could result in anaphylaxis;

2(d) a communication plan for intake and dissemination of information provided by the state regarding children with a food or other allergy which could result in anaphylaxis, including a discussion of methods, treatments, and therapies to reduce the risk of allergic reactions, including anaphylaxis;

2(e) strategies for the reduction of the risk of exposure to anaphylactic causative agents, including food and other allergens; and

2(f) a communication plan for discussion with children that have developed adequate verbal communication and comprehension skills and with the parents or guardians of all children about foods that are safe and unsafe and about strategies to avoid exposure to unsafe food.

Section 3. At least once per calendar year, schools shall send a notification to the parents and/or guardians of all children under the care of such schools to make them aware of such anaphylaxis policies, as developed by the *[head of department of health or similar position]*. For children under the care of the child care providers, such notification shall be provided by the child care provider when the child is enrolled and annually thereafter. Such notifications shall include contact information for parents and guardians to engage further with the school or child care provider to learn more about individualized aspects of such policies.

Section 4. Within six months of the effective date of the chapter of the laws of *[insert year/ date]* which enacted this law, the anaphylaxis policies established under this section shall be jointly forwarded by the *[head of department of health or similar position]* as well as the *[head of department of education or similar position]* or the *[head of department of children and family services or similar position]* as appropriate to each local school board of education, charter school, board of cooperative educational services and child care service provider, as defined in *[insert section of law]*, in the *[insert state]*. Each such board and charter school entity shall implement or update as appropriate their anaphylactic policy in accordance with those developed by the state within six months of receiving the anaphylaxis policies.

Section 5. The anaphylaxis policies established by this section shall be updated at least once every three years, or more frequently if the *[head of department of health or similar position]* determines it to be necessary or desirable for the protection of children with a food allergy or other allergy which could result in anaphylaxis.

Emergency Clause: This act shall take effect immediately.

USEFUL LINKS

Download/Print the Elijah's Law Fact Sheet (PDF): aafa.org/media/3256/elijahs-law-fact-sheet.pdf

Download/Print the Tips for Communicating with Legislators and Their Staff (PDF): aafa.org/media/3257/tips-for-communicating-with-legislators.pdf

Download/Edit the Sample Letter to Your Legislator (Word document): aafa.org/media/3258/elijahs-law-sample-letter.doc

Find Your State Legislature Website: congress.gov/state-legislature-websites

Find Your State Education Agency: www2.ed.gov/about/contacts/state/index.html

Find Your State Health Department: cdc.gov/publichealthgateway/healthdirectories/healthdepartments.html

ABOUT US

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SOCIAL MEDIA

Facebook	/elijahalavifoundation	/AAFANational	/kidswithfoodallergies
Instagram	@elijahsecho	@AAFANational	@kidswithfoodallergies
Twitter	@Elijahsecho	@AAFANational	@KFAtweets

ABOUT AAFA

Founded in 1953, the Asthma and Allergy Foundation of America (AAFA) is the oldest and largest non-profit patient organization dedicated to saving lives and reducing the burden of disease for people with asthma, allergies and related conditions through research, education, advocacy, and support. AAFA offers extensive support for individuals and families affected by asthma and allergic diseases, such as food allergies and atopic dermatitis (eczema). Through its online patient support communities, network of local chapters and affiliated support groups, AAFA empowers patients and their families by providing practical, evidence-based information and community programs and services. Learn more at aafa.org.

ABOUT EAF

The Elijah-Alavi Foundation was founded to ensure that all infants and children with severe food allergies and asthma have safe spaces to learn and socialize in daycare centers and schools. We intend to achieve this mission by partnering with a network of organizations and professionals to provide the training, resources, and counsel for educators and school administrators to implement policies that reduce the risk of life-threatening allergic reactions in children. The most imperative aspect of such a partnership is the shared interests in the diverse communities we serve, as every demographic represented among them depends upon us for our commitment to public health and overall well-being.

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Asthma and Allergy Foundation of America

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