

APPENDIX A

A MEMORIAL

REQUESTING THE GOVERNOR'S COMMISSION ON DISABILITY TO FORM A TASK FORCE TO ENSURE THAT NEW MEXICO'S 2014 ALL HAZARD EMERGENCY OPERATIONS PLAN COMPLIES WITH TITLE II OF THE FEDERAL AMERICANS WITH DISABILITIES ACT OF 1990 AND TO IDENTIFY BARRIERS TO COMPLIANCE OR DEFICIENCIES IN THE 2014 PLAN, IF ANY.

WHEREAS, the aftermath of hurricane Sandy caused widespread flooding and power outages in New York City for days, stranding people with disabilities who were unable to leave their buildings unassisted or who were unable to access public transportation to escape to safety; and

WHEREAS, according to a federal court judge in Manhattan, New York City has done an outstanding job in planning for and responding to emergencies and disasters, but through benign neglect has violated the Americans with Disabilities Act of 1990; and

WHEREAS, the same federal court judge has granted class action status to plaintiffs representing people with disabilities who claim that New York City violated the rights of approximately nine hundred thousand of its residents by failing to develop evacuation plans for people with disabilities in high-rise buildings; and

WHEREAS, in May 2013, the United States attorney for

Manhattan filed a statement of interest in that proceeding, asserting that New York City's emergency management plans violate the Americans with Disabilities Act of 1990 because the plans do not adequately protect the rights of persons with disabilities; and

WHEREAS, federal regulations made final on September 15, 2010 implementing Title II of the Americans with Disabilities Act of 1990 are codified at 28 Code of Federal Regulations part 35; and

WHEREAS, these federal regulations provide that no person with a disability shall be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity or be subjected to discrimination by a public entity; and

WHEREAS, under these federal regulations, a "public entity" includes a state or local government or department, agency, special purpose district or other instrumentality of a state, states or local government; and

WHEREAS, according to federal guidance, states and local governments must comply with Title II of the Americans with Disabilities Act of 1990 in their emergency and disaster-related programs; and

WHEREAS, the most current version of New Mexico's all hazard emergency operations plan posted on the web site of the homeland security and emergency management department is dated

2007, which date is before the Americans with Disabilities Act of 1990 amendments that require states and local governments to comply with Title II of the act in their emergency and disaster-related programs; and

WHEREAS, the 2007 plan establishes the New Mexico emergency operations system that organizes the state's response to emergencies and disasters while providing for the safety and welfare of its residents, establishing lines of authority, responsibilities and organizational relationships and formalizing how actions will be coordinated among state, federal and local governments; and

WHEREAS, the 2007 plan outlines specific procedures that reflect operational priorities, including life, safety, health, environmental protection, restoration of essential utilities, restoration of essential functions and coordination among all levels of government; and

WHEREAS, the 2007 plan establishes nine planning areas for evacuations and mass care, and as of 2007, these nine planning areas contained the following populations of persons over the age of five years with disabilities:

A. middle Rio Grande valley/greater Albuquerque metro planning area, one hundred twenty-eight thousand four hundred;

B. north central mountains planning area, thirty-eight thousand four hundred;

C. four corners planning area, twenty-one thousand eighty;

D. west central planning area, twenty-three thousand nine;

E. lower Rio Grande valley and southwest planning area, forty-eight thousand six hundred forty-six;

F. south central mountains planning area, fourteen thousand seven hundred fifteen;

G. southeast planning area, thirty-three thousand nine hundred;

H. eastern plains planning area, nineteen thousand one hundred twenty-six; and

I. northeast highlands and plains planning area, eleven thousand two hundred seventy; and

WHEREAS, according to the 2007 plan, local government provides for the evacuation of threatened or affected segments of the population in an emergency or disaster within its jurisdiction and its capabilities; and

WHEREAS, according to the 2007 plan, the decision to evacuate or shelter in place is made after initial evaluation by local officials, and in rare circumstances by the governor, by invoking the Riot Control Act or martial law, but there are no legal means for a mayor or county executive to order a mandatory evacuation; and

WHEREAS, New Mexico's 2007 all hazard emergency

operations plan was revised in 2009, also before the promulgation of regulations to implement changes in the Americans with Disabilities Act Amendments Act of 2008 (P.L. 110-325) that prohibit a public entity from discriminating against those persons with a disability in the provision of services, programs or activities by a public entity; and

WHEREAS, a revised 2014 plan is awaiting signature;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NEW MEXICO that the governor's commission on disability be requested to convene a task force to review the state's 2014 all hazard emergency operations plan to ensure that it complies with Title II of the Americans with Disabilities Act of 1990 and to identify barriers to compliance or deficiencies in the 2014 plan, if any; and

BE IT FURTHER RESOLVED that should the task force determine that the 2014 plan is not in compliance with Title II of the Americans with Disabilities Act of 1990, the task force make such recommendations as necessary to bring the state's 2014 plan into compliance; and

BE IT FURTHER RESOLVED that the task force include representatives from the homeland security and emergency management department, the department of public safety, the vocational rehabilitation division of the public education department, the bureau of health emergency management of the department of health, the aging and long-term services

department, the Indian affairs department, the governor's commission on disability, the developmental disabilities planning council, the commission for deaf and hard-of-hearing persons, the commission for the blind, the public regulation commission, the state fire marshal, the office of the state engineer, at least two rural counties and one class A county and at least two tribes or pueblos; and

BE IT FURTHER RESOLVED that the task force report its findings to the interim disabilities concerns subcommittee of the legislative health and human services committee by October 1, 2014; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the:

A. secretaries of homeland security and emergency management, public safety, public education, health, aging and long-term services and Indian affairs;

B. chairs of the governor's commission on disability, the developmental disabilities planning council, the commission for deaf and hard-of-hearing persons and the commission for the blind;

C. chair of the public regulation commission;

D. state fire marshal and the office of state engineer;

E. governor of every tribe and pueblo; and

F. emergency manager of every county.

APPENDIX B
Task Force Members*

Susan Gray

NM Governor's Commission on Disability Commissioner
Task Force Chairperson

Dee Martinez

NM Governor's Commission on Disability

Heather Stanton

Access and Functional Needs Coordinator,
Department of Health, Bureau of Health Emergency Management

Vanessa Willock

NM Department of Public Safety EEO Director and
Co-Chair, NM State ADA Coordinators Council

Evonne Gantz

Emergency Management Specialist,
Homeland Security Emergency Management Department

Nat Dean

Disability Consumer Advocate and Service Dog user

Justin Moore

Developmental Disabilities Planning Council and
Co-Chair, NM State ADA Coordinators Council

Lorenzo Salgado

Bureau Chief, General Services Division/Risk Management

***The opinions and recommendations contained in this report are those of the authors, and do not reflect the official position of the agencies listed above.**

APPENDIX C

<u>Acronym</u>	<u>Title/Description</u>
ADA	Americans with Disabilities Act
ALTSD	Aging and Long-Term Services Department
ARC	American Red Cross
BHEM	Bureau of Health Emergency management
CDHHP	Commission for Deaf and Hard-of-Hearing
CIL	Center for Independent Living
CYFD	Children, Youth, and Families Department
DDPC	Developmental Disabilities Planning Council
DHSEM/HSEMD	Department of Homeland Security and Emergency Management
DOH	Department of Health
DOIT	Department of Information Technology
DOT	Department of Transportation
DPS	Department of Public Safety
DVR	Vocational Rehabilitation Division
EMPG	Emergency Management Performance Grant
EMS	Emergency Medical Service
EOP	Emergency Operations Plan
FEMA	Federal Emergency Management Agency
GCD	Governor's Commission on Disability
HM 87	House Memorial 87
HSD	Human Services Department
HSEMD/DHSEM	Homeland Security Emergency Management Department
IAD	Indian Affairs Department
ICS	Incident Command System
IPAWS/CMAS/WEA	Mobile emergency alert systems
NIMS	National Incident Management System

NMCFB	NM Commission for the Blind
NMEMA	New Mexico Emergency Management Association
NRF	National Response Framework
PED	Public Education Department
PRC	Public Regulation Commission
SEOP	State All Hazard Emergency Operations Plan
SILC	State Independent Living Council
SMS	Short Message Service
TTY/TDD	Telecommunication Device for the Deaf

APPENDIX D

AMERICANS WITH DISABILITIES ACT OF 1990, AS AMENDED

Editor's Note:

Following is the current text of the Americans with Disabilities Act of 1990 (ADA), including changes made by the ADA Amendments Act of 2008 (P.L. 110-325), which became effective on January 1, 2009.

.....

TITLE 42 - THE PUBLIC HEALTH AND WELFARE

CHAPTER 126 - EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES

.....

SUBCHAPTER II - PUBLIC SERVICES

Part A - Prohibition Against Discrimination and Other Generally Applicable Provisions

Sec. 12131. Definitions

As used in this subchapter:

(1) Public entity

The term "public entity" means

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 24102(4) of title 49).

(2) Qualified individual with a disability

The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility

requirements for the receipt of services or the participation in programs or activities provided by a public entity.

Sec. 12132. Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

Sec. 12133. Enforcement

The remedies, procedures, and rights set forth in section 794a of title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title.

Sec. 12134. Regulations

(a) In general

Not later than 1 year after July 26, 1990, the Attorney General shall promulgate regulations in an accessible format that implement this part. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 12143, 12149, or 12164 of this title.

(b) Relationship to other regulations

Except for "program accessibility, existing facilities", and "communications", regulations under subsection (a) of this section shall be consistent with this chapter and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 794 of title 29. With respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under section 794 of title 29.

(c) Standards

Regulations under subsection (a) of this section shall include standards applicable to facilities and vehicles covered by this part, other than facilities, stations, rail passenger cars, and vehicles covered by part B of this subchapter. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204(a) of this title.

Part B - Actions Applicable to Public Transportation Provided by Public Entities
Considered Discriminatory

Subpart I - Public Transportation Other than by Aircraft or Certain Rail Operations

Sec. 12141. Definitions

As used in this subpart:

(1) Demand responsive system

The term "demand responsive system" means any system of providing designated public transportation which is not a fixed route system.

(2) Designated public transportation

The term "designated public transportation" means transportation (other than public school transportation) by bus, rail, or any other conveyance (other than transportation by aircraft or intercity or commuter rail transportation (as defined in section 12161 of this title)) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(3) Fixed route system

The term "fixed route system" means a system of providing designated public transportation on which a vehicle is operated along a prescribed route according to a fixed schedule.

(4) Operates

The term "operates", as used with respect to a fixed route system or demand responsive system, includes operation of such system by a person under a contractual or other arrangement or relationship with a public entity.

(5) Public school transportation

The term "public school transportation" means transportation by school bus vehicles of schoolchildren, personnel, and equipment to and from a public elementary or secondary school and school-related activities.

(6) Secretary

The term "Secretary" means the Secretary of Transportation.

Sec. 12142. Public entities operating fixed route systems

(a) Purchase and lease of new vehicles

It shall be considered discrimination for purposes of section which operates a fixed route system to purchase or lease a new bus, a new rapid rail vehicle, a new light rail vehicle, or any other new vehicle to be used on such system, if the solicitation for such purchase or lease is made after the 30th day following July 26, 1990, and if such bus, rail vehicle, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) Purchase and lease of used vehicles

Subject to subsection (c)(1) of this section, it shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system to purchase or lease, after the 30th day following July 26, 1990, a used vehicle for use on such system unless such entity makes demonstrated good faith efforts to purchase or lease a used vehicle for use on such system that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) Remanufactured vehicles

(1) General rule

Except as provided in paragraph (2), it shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system

(A) to remanufacture a vehicle for use on such system so as to extend its usable life for 5 years or more, which remanufacture begins (or for which the solicitation is made) after the 30th day following July 26, 1990; or

(B) to purchase or lease for use on such system a remanufactured vehicle which has been remanufactured so as to extend its usable life for 5 years or more, which purchase or lease occurs after such 30th day and during the period in which the usable life is extended; unless, after remanufacture, the vehicle is, to the maximum extent feasible, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) Exception for historic vehicles

(A) General rule

If a public entity operates a fixed route system any segment of which is included on the National Register of Historic Places and if making a vehicle of historic character to be used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the

historic character of such vehicle, the public entity only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of paragraph (1) and which do not significantly alter the historic character of such vehicle.

(B) Vehicles of historic character defined by regulations

For purposes of this paragraph and section 12148(a) of this title, a vehicle of historic character shall be defined by the regulations issued by the Secretary to carry out this subsection.

Sec. 12143. Paratransit as a complement to fixed route service

(a) General rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a public entity which operates a fixed route system (other than a system which provides solely commuter bus service) to fail to provide with respect to the operations of its fixed route system, in accordance with this section, paratransit and other special transportation services to individuals with disabilities, including individuals who use wheelchairs that are sufficient to provide to such individuals a level of service

(1) which is comparable to the level of designated public transportation services provided to individuals without disabilities using such system; or

(2) in the case of response time, which is comparable, to the extent practicable, to the level of designated public transportation services provided to individuals without disabilities using such system.

(b) Issuance of regulations

Not later than 1 year after July 26, 1990, the Secretary shall issue final regulations to carry out this section.

(c) Required contents of regulations

(1) Eligible recipients of service

The regulations issued under this section shall require each public entity which operates a fixed route system to provide the paratransit and other special transportation services required under this section

(A)

(i) to any individual with a disability who is unable, as a result of a physical or mental impairment (including a vision impairment) and without the assistance of another individual (except an operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities;

(ii) to any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device (and is able with such assistance) to board, ride, and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route on the system during the hours of operation of the system at a time (or within a reasonable period of such time) when such a vehicle is not being used to provide designated public transportation on the route; and

(iii) to any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system;

(B) to one other individual accompanying the individual with the disability; and

(C) to other individuals, in addition to the one individual described in subparagraph (a), accompanying the individual with a disability provided that space for these additional individuals are available on the paratransit vehicle carrying the individual with a disability and that the transportation of such additional individuals will not result in a denial of service to individuals with disabilities.

For purposes of clauses (i) and (ii) of subparagraph (A), boarding or disembarking from a vehicle does not include travel to the boarding location or from the disembarking location.

(2) Service area

The regulations issued under this section shall require the provision of paratransit and special transportation services required under this section in the service area of each public entity which operates a fixed route system, other than any portion of the service area in which the public entity solely provides commuter bus service.

(3) Service criteria

Subject to paragraphs (1) and (2), the regulations issued under this section shall establish minimum service criteria for determining the level of services to be required under this section.

(4) Undue financial burden limitation

The regulations issued under this section shall provide that, if the public entity is able to demonstrate to the satisfaction of the Secretary that the provision of paratransit and other special transportation services otherwise required under this section would impose an undue financial burden on the public entity, the public entity, notwithstanding any other provision of this section (other than paragraph (5)), shall only be required to provide such services to the extent that providing such services would not impose such a burden.

(5) Additional services

The regulations issued under this section shall establish circumstances under which the Secretary may require a public entity to provide, notwithstanding paragraph (4), paratransit and other special transportation services under this section beyond the level of paratransit and other special transportation services which would otherwise be required under paragraph (4).

(6) Public participation

The regulations issued under this section shall require that each public entity which operates a fixed route system hold a public hearing, provide an opportunity for public comment, and consult with individuals with disabilities in preparing its plan under paragraph (7).

(7) Plans

The regulations issued under this section shall require that each public entity which operates a fixed route system

(A) within 18 months after July 26, 1990, submit to the Secretary, and commence implementation of, a plan for providing paratransit and other special transportation services which meets the requirements of this section; and

(B) on an annual basis thereafter, submit to the Secretary, and commence implementation of, a plan for providing such services.

(8) Provision of services by others

The regulations issued under this section shall

(A) require that a public entity submitting a plan to the Secretary under this section identify in the plan any person or other public entity which is providing a paratransit or other special transportation service for individuals with disabilities in the service area to which the plan applies; and

(B) provide that the public entity submitting the plan does not have to provide under the plan such service for individuals with disabilities.

(9) Other provisions

The regulations issued under this section shall include such other provisions and requirements as the Secretary determines are necessary to carry out the objectives of this section.

(d) Review of plan

(1) General rule

The Secretary shall review a plan submitted under this section for the purpose of determining whether or not such plan meets the requirements of this section, including the regulations issued under this section.

(2) Disapproval

If the Secretary determines that a plan reviewed under this subsection fails to meet the requirements of this section, the Secretary shall disapprove the plan and notify the public entity which submitted the plan of such disapproval and the reasons therefor.

(3) Modification of disapproved plan

Not later than 90 days after the date of disapproval of a plan under this subsection, the public entity which submitted the plan shall modify the plan to meet the requirements of this section and shall submit to the Secretary, and commence implementation of, such modified plan.

(e) "Discrimination" defined

As used in subsection (a) of this section, the term "discrimination" includes

(1) a failure of a public entity to which the regulations issued under this section apply to submit, or commence implementation of, a plan in accordance with subsections (c)(6) and (c)(7) of this section;

(2) a failure of such entity to submit, or commence implementation of, a modified plan in accordance with subsection (d) (3) of this section;

(3) submission to the Secretary of a modified plan under subsection (d)(3) of this section which does not meet the requirements of this section; or

(4) a failure of such entity to provide paratransit or other special transportation services in accordance with the plan or modified plan the public entity submitted to the Secretary under this section.

(f) Statutory construction

Nothing in this section shall be construed as preventing a public entity

(1) from providing paratransit or other special transportation services at a level which is greater than the level of such services which are required by this section,

(2) from providing paratransit or other special transportation services in addition to those paratransit and special transportation services required by this section, or

(3) from providing such services to individuals in addition to those individuals to whom such services are required to be provided by this section.

Sec. 12144. Public entity operating a demand responsive system

If a public entity operates a demand responsive system, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, for such entity to purchase or lease a new vehicle for use on such system, for which a solicitation is made after the 30th day following July 26, 1990, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service such system provides to individuals without disabilities.

Sec. 12145. Temporary relief where lifts are unavailable

(a) Granting

With respect to the purchase of new buses, a public entity may apply for, and the Secretary may temporarily relieve such public entity from the obligation under section 12142(a) or 12144 of this title to purchase new buses that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates to the satisfaction of the Secretary

(1) that the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) the unavailability from any qualified manufacturer of hydraulic, electromechanical, or other lifts for such new buses;

(3) that the public entity seeking temporary relief has made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and

(4) that any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

(b) Duration and notice to Congress

Any relief granted under subsection (a) of this section shall be limited in duration by a specified date, and the appropriate committees of Congress shall be notified of any such relief granted.

(c) Fraudulent application

If, at any time, the Secretary has reasonable cause to believe that any relief granted under subsection (a) of this section was fraudulently applied for, the Secretary shall

(1) cancel such relief if such relief is still in effect; and

(2) take such other action as the Secretary considers appropriate.

Sec. 12146. New facilities

For purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity to construct a new facility to be used in the provision of designated public transportation services unless such facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

Sec. 12147. Alterations of existing facilities

(a) General rule

With respect to alterations of an existing facility or part thereof used in the provision of designated public transportation services that affect or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, for a public entity to fail to make such alterations (or to ensure that the alterations are made) in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations. Where the public entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility

containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) Special rule for stations

(1) General rule

For purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity that provides designated public transportation to fail, in accordance with the provisions of this subsection, to make key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) Rapid rail and light rail key stations

(A) Accessibility

Except as otherwise provided in this paragraph, all key stations (as determined under criteria established by the Secretary by regulation] in rapid rail and light rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 3-year period beginning on July 26, 1990.

(B) Extension for extraordinarily expensive structural changes

The Secretary may extend the 3-year period under subparagraph (A) up to a 30-year period for key stations in a rapid rail or light rail system which stations need extraordinarily expensive structural changes to, or replacement of, existing facilities; except that by the last day of the 20th year following July 26, 1990, at least 2/3 of such key stations must be readily accessible to and usable by individuals with disabilities.

(3) Plans and milestones

The Secretary shall require the appropriate public entity to develop and submit to the Secretary a plan for compliance with this subsection

(A) that reflects consultation with individuals with disabilities affected by such plan and the results of a public hearing and public comments on such plan, and

(B) that establishes milestones for achievement of the requirements of this subsection.

Sec. 12148. Public transportation programs and activities in existing facilities and one car per train rule

(a) Public transportation programs and activities in existing facilities

(1) In general

With respect to existing facilities used in the provision of designated public transportation services, it shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, for a public entity to fail to operate a designated public transportation program or activity conducted in such facilities so that, when viewed in the entirety, the program or activity is readily accessible to and usable by individuals with disabilities.

(2) Exception

Paragraph (1) shall not require a public entity to make structural changes to existing facilities in order to make such facilities accessible to individuals who use wheelchairs, unless and to the extent required by section 12147(a) of this title (relating to alterations) or section 12147(a) of this title (relating to key stations).

(3) Utilization

Paragraph (1) shall not require a public entity to which paragraph (2) applies, to provide to individuals who use wheelchairs services made available to the general public at such facilities when such individuals could not utilize or benefit from such services provided at such facilities.

(b) One car per train rule

(1) General rule

Subject to paragraph (2), with respect to 2 or more vehicles operated as a train by a light or rapid rail system, for purposes of section 12132 of this title and section 794 of title 29, it shall be considered discrimination for a public entity to fail to have at least 1 vehicle per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 5-year period beginning on the effective date of this section.

(2) Historic trains

In order to comply with paragraph (1) with respect to the remanufacture of a vehicle of historic character which is to be used on a segment of a light or rapid rail system which is included on the National Register of Historic Places, if making such vehicle readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity which operates such system only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of section 12142(c)(1) of this title and which do not significantly alter the historic character of such vehicle.

Sec. 12149. Regulations

(a) In general

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this subpart (other than section 12143 of this title).

(b) Standards

The regulations issued under this section and section 12143 of this title shall include standards applicable to facilities and vehicles covered by this part. The standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 12204 of this title.

Sec. 12150. Interim accessibility requirements

If final regulations have not been issued pursuant to section 12149 of this title, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under sections 12146 and 12147 of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

Subpart II - Public Transportation by Intercity and Commuter Rail

Sec. 12161. Definitions

As used in this subpart:

(1) Commuter authority

The term "commuter authority" has the meaning given such term in section 24102(4) of title 49.

(2) Commuter rail transportation

The term "commuter rail transportation" has the meaning given the term "commuter rail passenger transportation" in section 24102(5) of title 49.

(3) Intercity rail transportation

The term "intercity rail transportation" means transportation provided by the National Railroad Passenger Corporation.

(4) Rail passenger car

The term "rail passenger car" means, with respect to intercity rail transportation, single-level and bi-level coach cars, single-level and bi-level dining cars, single-level and bi-level sleeping cars, single-level and bi-level lounge cars, and food service cars.

(5) Responsible person

The term "responsible person" means

(A) in the case of a station more than 50 percent of which is owned by a public entity, such public entity;

(B) in the case of a station more than 50 percent of which is owned by a private party, the persons providing intercity or commuter rail transportation to such station, as allocated on an equitable basis by regulation by the Secretary of Transportation; and

(C) in a case where no party owns more than 50 percent of a station, the persons providing intercity or commuter rail transportation to such station and the owners of the station, other than private party owners, as allocated on an equitable basis by regulation by the Secretary of Transportation.

(6) Station

The term "station" means the portion of a property located appurtenant to a right-of-way on which intercity or commuter rail transportation is operated, where such portion is used by the general public and is related to the provision of such transportation, including passenger platforms, designated waiting areas, ticketing areas, restrooms, and, where a public entity providing rail transportation owns the property, concession areas, to the extent that such public entity exercises control over the selection, design, construction, or alteration of the property, but such term does not include flag stops.

Sec. 12162. Intercity and commuter rail actions considered discriminatory

(a) Intercity rail transportation

(1) One car per train rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person who provides intercity rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 12164 of this title, as soon as practicable, but in no event later than 5 years after July 26, 1990.

(2) New intercity cars

(A) General rule

Except as otherwise provided in this subsection with respect to individuals who use wheelchairs, it shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease any new rail passenger cars for use in intercity rail transportation, and for which a solicitation is made later than 30 days after July 26, 1990, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(B) Special rule for single-level passenger coaches for individuals who use wheelchairs

Single-level passenger coaches shall be required to

- (i) be able to be entered by an individual who uses a wheelchair;
- (ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, and a space to fold and store such passenger's wheelchair; and

(iv) have a restroom usable by an individual who uses a wheelchair, only to the extent provided in paragraph (3).

(C) Special rule for single-level dining cars for individuals who use wheelchairs

Single-level dining cars shall not be required to

(i) be able to be entered from the station platform by an individual who uses a wheelchair; or

(ii) have a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger.

(D) Special rule for bi-level dining cars for individuals who use wheelchairs

Bi-level dining cars shall not be required to

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, or a space to fold and store such passenger's wheelchair; or

(iv) have a restroom usable by an individual who uses a wheelchair.

(3) Accessibility of single-level coaches

(A) General rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person who provides intercity rail transportation to fail to have on each train which includes one or more single-level rail passenger coaches

(i) a number of spaces

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than one-half of the number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than one-half of the number of single-level rail passenger coaches in such train, as soon as practicable, but in no event later than 5 years after July 26, 1990; and

(B) Location

Spaces required by subparagraph (A) shall be located in single-level rail passenger coaches or food service cars.

(C) Limitation

Of the number of spaces required on a train by subparagraph (A), not more than two spaces to park and secure wheelchairs nor more than two spaces to fold and store wheelchairs shall be located in any one coach or food service car.

(D) Other accessibility features

Single-level rail passenger coaches and food service cars on which the spaces required by subparagraph (a) are located shall have a restroom usable by an individual who uses a wheelchair and shall be able to be entered from the station platform by an individual who uses a wheelchair.

(4) Food service

(A) Single-level dining cars

On any train in which a single-level dining car is used to provide food service

(i) if such single-level dining car was purchased after July 26, 1990, table service in such car shall be provided to a passenger who uses a wheelchair if

(I) the car adjacent to the end of the dining car through which a wheelchair may enter is itself accessible to a wheelchair;

(II) such passenger can exit to the platform from the car such passenger occupies, move down the platform, and enter the adjacent accessible car described in subclause (I) without the necessity of the train being moved within the station; and

(III) space to park and secure a wheelchair is available in the dining car at the time such passenger wishes to eat (if such

passenger wishes to remain in a wheelchair), or space to store and fold a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to transfer to a dining car seat); and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals. Unless not practicable, a person providing intercity rail transportation shall place an accessible car adjacent to the end of a dining car described in clause (I) through which an individual who uses a wheelchair may enter.

(B) Bi-level dining cars

On any train in which a bi-level dining car is used to provide food service

(i) if such train includes a bi-level lounge car purchased after July 26, 1990, table service in such lounge car shall be provided to individuals who use wheelchairs and to other passengers; and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

(b) Commuter rail transportation

(1) One car per train rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person who provides commuter rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 12164 of this title, as soon as practicable, but in no event later than 5 years after July 26, 1990.

(2) New commuter rail cars

(A) General rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease any new rail passenger cars for use in commuter rail transportation, and for which a solicitation is made later than 30 days after July 26, 1990, unless all such rail

cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(B) Accessibility

For purposes of section 12132 of this title and section 794 of title 29, a requirement that a rail passenger car used in commuter rail transportation be accessible to or readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, shall not be construed to require

- (i) a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger;
- (ii) space to fold and store a wheelchair; or
- (iii) a seat to which a passenger who uses a wheelchair can transfer.

(c) Used rail cars

It shall be considered discrimination for purposes of section 1132 of this title and section 794 of title 29 for a person to purchase or lease a used rail passenger car for use in intercity or commuter rail transportation, unless such person makes demonstrated good faith efforts to purchase or lease a used rail car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(d) Remanufactured rail cars

(1) Remanufacturing

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to remanufacture a rail passenger car for use in intercity or commuter rail transportation so as to extend its usable life for 10 years or more, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(2) Purchase or lease

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to purchase or lease a remanufactured rail

passenger car for use in intercity or commuter rail transportation unless such car was remanufactured in accordance with paragraph (1).

(e) Stations

(1) New stations

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a person to build a new station for use in intercity or commuter rail transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(2) Existing stations

(A) Failure to make readily accessible

(i) General rule

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for a responsible person to fail to make existing stations in the intercity rail transportation system, and existing key stations in commuter rail transportation systems, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 12164 of this title.

(ii) Period for compliance

(I) Intercity rail

All stations in the intercity rail transportation system shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than 20 years after July 26, 1990.

(II) Commuter rail

Key stations in commuter rail transportation systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after July 26, 1990, except that the time limit may be extended by the Secretary of Transportation up to 20 years after July 26, 1990, in a case where the raising of the entire passenger platform is the only means available of

attaining accessibility or where other extraordinarily expensive structural changes are necessary to attain accessibility.

(iii) Designation of key stations

Each commuter authority shall designate the key stations in its commuter rail transportation system, in consultation with individuals with disabilities and organizations representing such individuals, taking into consideration such factors as high ridership and whether such station serves as a transfer or feeder station. Before the final designation of key stations under this clause, a commuter authority shall hold a public hearing.

(iv) Plans and milestones

The Secretary of Transportation shall require the appropriate person to develop a plan for carrying out this subparagraph that reflects consultation with individuals with disabilities affected by such plan and that establishes milestones for achievement of the requirements of this subparagraph.

(B) Requirement when making alterations

(i) General rule

It shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, with respect to alterations of an existing station or part thereof in the intercity or commuter rail transportation systems that affect or could affect the usability of the station or part thereof, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portions of the station are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations.

(ii) Alterations to a primary function area

It shall be considered discrimination, for purposes of section 12132 of this title and section 794 of title 29, with respect to alterations that affect or could affect the usability of or access to an area of the station containing a primary function, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by

individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(C) Required cooperation

It shall be considered discrimination for purposes of section 12132 of this title and section 794 of title 29 for an owner, or person in control, of a station governed by subparagraph (a) or (b) to fail to provide reasonable cooperation to a responsible person with respect to such station in that responsible person's efforts to comply with such subparagraph. An owner, or person in control, of a station shall be liable to a responsible person for any failure to provide reasonable cooperation as required by this subparagraph. Failure to receive reasonable cooperation required by this subparagraph shall not be a defense to a claim of discrimination under this chapter.

Sec. 12163. Conformance of accessibility standards

Accessibility standards included in regulations issued under this subpart shall be consistent with the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board under section 504(a) of this title.

Sec. 12164. Regulations

Not later than 1 year after July 26, 1990, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this subpart.

Sec. 12165. Interim accessibility requirements

(a) Stations

If final regulations have not been issued pursuant to section 12164 of this title, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities as required under section 12162(e) of this title, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 12204(a) of this title, compliance with such supplemental minimum guidelines shall be necessary to satisfy

the requirement that stations be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(b) Rail passenger cars

If final regulations have not been issued pursuant to section 12164 of this title, a person shall be considered to have complied with the requirements of section 12162(a) through (d) of this title that a rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 12204(a) of this title) governing accessibility of such cars, to the extent that such laws and regulations are not inconsistent with this subpart and are in effect at the time such design is substantially completed.

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BROOKLYN CENTER FOR INDEPENDENCE OF :
THE DISABLED, a nonprofit organization, CENTER :
FOR INDEPENDENCE OF THE DISABLED, NEW :
YORK, a nonprofit organization, GREGORY D. BELL, :
and TANIA MORALES, :
:

Plaintiffs, :
:

-v- :
:

MICHAEL R. BLOOMBERG, in his official capacity as :
Mayor of the City of New York, and THE CITY OF :
NEW YORK, :
:

Defendants. :
:
-----X

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 11/07/2013

11 Civ. 6690 (JMF)

OPINION AND ORDER

INTRODUCTION 2
FINDINGS OF FACT 6
A. Emergency Planning for People with Disabilities 6
B. The City’s Emergency Planning Structure 8
C. Involving People with Disabilities in Emergency Planning 11
D. Evacuations 13
a. Building Evacuations 15
b. Transportation 18
c. The HEO 22
d. Evacuations During Hurricane Sandy 28
E. The Shelter System and Sheltering in Place 34
a. The Architectural Accessibility of Shelters 36
b. The Programmatic Accessibility of Shelters 42
c. The Shelter Survey 50
d. Refuges of Last Resort 52
e. Sheltering in Place 52
F. Power Outages 54
G. Recovery Operations 58
a. Resource Provision 59
b. Debris Removal 61
c. Interim Housing 62
H. Education and Outreach 64

I.	Communications	66
a.	Traditional Media.....	67
b.	Websites.....	69
c.	The 311 System.....	69
d.	The Special Needs Advance Warning System.....	72
e.	Notify NYC.....	75
f.	On-the-Ground Communication	76
g.	The Content of Communication.....	77
	CONCLUSIONS OF LAW	81
A.	Legal Standards.....	81
a.	The ADA and Rehabilitation Act	82
b.	The NYCHRL.....	87
B.	Discussion	89
a.	Evacuations	89
b.	The Shelter System and Sheltering in Place	93
i)	Architectural Accessibility	94
ii)	Programmatic Accessibility.....	100
iii)	Sheltering in Place	104
c.	Power Outages	104
d.	Recovery Operations.....	106
i)	Resource Provision	106
ii)	Debris Removal	106
iii)	Interim Housing.....	107
e.	Communications	108
i)	Outreach and Personal Emergency Planning.....	108
ii)	Communications During an Emergency.....	110
f.	Other Issues.....	113
i)	Inclusion of People with Disabilities in the Planning Process	113
ii)	Fundamental Alteration and Undue Hardship Defenses	113
	CONCLUSION.....	116

JESSE M. FURMAN, United States District Judge:

INTRODUCTION

The task of planning for, and responding to, emergencies and disasters is one of the most important, and challenging, tasks any government faces. Emergencies can take many forms — from power outages, to hurricanes, to terrorist attacks — and a government, particularly a local

government, must be prepared for them to strike at almost any moment. Such preparedness requires considerable planning, resources to execute those plans, and a willingness to learn from experience and revise plans that do not sufficiently accomplish their goals. Even then, each emergency is different and, to some extent, unpredictable, and no amount of planning or resources can fully prepare a local government to respond to what may come. Moreover, ultimately, there are limits to what the government can do on its own: Not only must a local government be prepared, but its residents must also prepare themselves.

In recent years, New York City (the “City”) has faced more than its fair share of emergencies and disasters, from the September 11th terrorist attacks in 2001; to Hurricane Irene in August 2011; to Hurricane Sandy, just over one year ago. Separate and apart from that tragic record, the task of planning for, and responding to, emergencies and disasters is especially challenging in New York City, given, among other things, the size and density of the City’s population, its island geography, and its large daily commuter and tourist populations. Given those challenges, and what New York City has had to face in recent years, the City’s planning and response have been remarkable in many ways. In particular, the array and detail of its plans for every imaginable kind of emergency is impressive; and the valor and sacrifice of those who have come to the aid of New Yorkers in times of emergency, from first responders to volunteers, have been nothing short of extraordinary. This lawsuit does not challenge those facts. Far from it: In many respects, this lawsuit has confirmed them.

Instead, the question in this lawsuit, certified as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2) , is whether in planning for, and responding to, emergencies and disasters, the City has adequately addressed the needs of people with disabilities — a segment of the population for which emergency planning is even more challenging and, some argue, more

important. The Plaintiff class comprises all people with disabilities, as defined by the Americans with Disabilities Act (the “ADA”), 42 U.S.C. § 12102, who are within the City and the jurisdiction served by the City’s emergency preparedness programs and services. *See Brooklyn Ctr. for Independence of the Disabled v. Bloomberg*, 290 F.R.D. 409, 420-21 (S.D.N.Y. 2012) (Docket No. 66). (*See also* Docket No. 69 (noting the lack of objections to the Court’s proposed definition of the class and ordering the certification of that class)). These Plaintiffs contend that the City’s emergency preparedness program fails to accommodate their needs by, among other things, inadequately planning for the evacuation of people with disabilities, from multi-story buildings and generally; failing to provide a shelter system that is accessible within the meaning of the ADA; ignoring the unique needs of people with disabilities in the event of a power outage; failing to communicate adequately with people with special needs during an emergency; and failing to account for the needs of people with disabilities in recovery operations following a disaster. They seek declaratory and injunctive relief under the ADA, Title 42, United States Code, Section 12131, *et seq.*; Section 504 of the Rehabilitation Act of 1974, Title 29, United States Code, Section 794, *et seq.*; and the New York City Human Rights Law (“NYCHRL”), New York City Administrative Code, Section 8-101 *et seq.*

In March 2013, only months after Hurricane Sandy devastated the City, the Court held a six-day bench trial limited to the question of liability — that is, whether the City’s emergency preparedness program does, in fact, fail to sufficiently accommodate people with disabilities. At trial, the Court heard from at least thirty-five witnesses, including City officials involved in emergency planning at the City’s Office of Emergency Management (“OEM”), the New York City Fire Department (“FDNY”), and the New York City Police Department (“NYPD”); City officials involved in addressing the needs of people with disabilities, at the Mayor’s Office for

People with Disabilities (“MOPD”) and elsewhere; experts on emergency planning with respect to people with disabilities; and several people with disabilities who testified about their needs with respect to emergency planning as well as their experiences in recent emergencies, including Hurricane Sandy.¹ In addition, the parties introduced approximately 25,000 pages of documentary exhibits, including over twenty plans developed by the City to address everything from providing shelter during an emergency to responding to a flash flood. Following trial, the parties and the United States Department of Justice, as an interested party, *see* 28 U.S.C. § 517, filed several hundreds of pages of briefing and proposed findings of fact and conclusions of law, a process that was completed in late May 2013.

This mountain of evidence and argument confirms that planning for, and responding to, emergencies and disasters is a Herculean task, and that, in many — perhaps most — respects, the City has done an outstanding job. But it also reveals that while the City’s emergency preparedness program adequately accommodates the needs of people with disabilities in some respects, it fails to do so in others. Most significantly, the City’s plans are inadequate to ensure that people with disabilities are able to evacuate before or during an emergency; they fail to provide sufficiently accessible shelters; and they do not sufficiently inform people with disabilities of the availability and location of accessible emergency services.

Notably, there is no evidence that these failures are a result of intentional discrimination by the City against people with disabilities. But the ADA, the Rehabilitation Act, and the NYCHRL seek to prevent not only intentional discrimination against people with disabilities, but also — indeed, primarily — discrimination that results from “benign neglect.” *Alexander v.*

¹ Pursuant to this Court’s Individual Rules and Practices, the Court heard direct testimony of all witnesses by affidavit. Had the Court heard direct testimony live, the trial would have been considerably longer than six days.

Choate, 469 U.S. 287, 301 (1985). Moreover, these laws require that a government entity do more than provide a program on equal terms to those with and without disabilities; they require “affirmative accommodations to ensure that facially neutral rules do not in practice discriminate against individuals with disabilities.” *Henrietta D. v. Bloomberg*, 331 F.3d 261, 275 (2d Cir. 2003). The evidence shows that the City has not done so in various ways.

Based on the evidence and testimony presented at trial, the Court makes the following findings of fact and conclusions of law. The trial did not, and this Opinion does not, address the actions the City must take to remedy the deficiencies in its emergency preparedness program. Those actions will be addressed in the next phase of the case.

FINDINGS OF FACT

A. Emergency Planning for People with Disabilities

1. According to New York City, of the more than eight million people living in the City, “it is estimated that there are 889,219 individuals with disabilities, making up 11% of the population. . . . [Of these,] 183,651 individuals have a serious hearing difficulty, 210,903 have serious vision difficulties, and 535,840 individuals have difficulty walking or climbing stairs.” (Ex. 120, at P003738; *see also* Ex. 7, at CNY000361-62 (providing social vulnerability statistics by evacuation zone based on 2000 census data); Ex. 24 at CNY018522 (providing statistics about the numbers of people with various disabilities living in New York City); Tr. 286:1-3 (Special Needs Coordinator Aaron Belisle discussing a “rule of thumb” that twenty percent of the City’s population has some form of disability)).² The City estimates that, within just the area

² Exhibit 120 is one of two briefing papers prepared by committees of the New York City Council in advance of hearings on Hurricane Sandy that Plaintiffs offered at trial. (*See also* Ex. 115). Defendants objected to admission of these documents on the basis that they are hearsay. (*See* Docket No. 128). Defendants later objected on the same basis to statements of New York City Council members contained within a transcript of a City Council hearing (Ex. 116). (*See*

that was subject to the mandatory evacuation order during Hurricane Sandy, “there are at least 118,000 people with disabilities.” (Ex. 120 at P003738).

2. People with disabilities face unique challenges in responding to emergencies. (See, e.g., Ex. 65, at CNY020238). They may, for example, rely on the availability of elevators, accessible transportation, accessible communication, or electricity-powered medical devices, any or all of which may be compromised in an emergency.³ (See Blanck Decl. ¶ 28; see also Bell Decl. ¶ 18 (“As a result of my blindness and PTSD, I am unable to react as quickly and easily to new and dangerous situations without accommodations. Because of my [disabilities], I need to plan ahead to make sure that my needs would be met during travel and at a shelter”); Buckner Decl. ¶ 13 (“Being blind and unable to drive, if I cannot arrange transportation, I am stuck wherever I happen to be.”); Halbert Decl. ¶ 9 (“There are things that I cannot do as quickly or at all as compared to people without disabilities. For example, I cannot run out of a high-rise building in an emergency.”); Morales Decl. ¶ 10 (“If I am at home and the power goes out, I do not know how I could evacuate because I have to use a motorized lift to get up and down the stairs at my house.”)).

3. Thus, as the City itself concedes, it is particularly important to account for the needs of people with disabilities in emergency planning. (See Defs.’ Response to Statement of

Ex. 566, at 4). The parties have stipulated to the admissibility of certain portions of these City Council documents. (See Ex. 566, at 3-4). Because this Opinion relies only on those portions, the Court need not decide whether any other portions of the documents are admissible.

³ “Accessible” is a term of art in the context of addressing the needs of people with disabilities. See, e.g., Report of Committee on Education and Labor, H.R. Rep. 101-485, pt. 2, at 117-18 (1990), reprinted in 1990 U.S.C.C.A.N. 303, 400-01; Report of Committee on the Judiciary, H.R. Rep. 101-485, pt. 3, at 60, reprinted in 1990 U.S.C.C.A.N. 445, 483. As discussed in more detail below, regulations issued pursuant to the ADA by the United States Department of Justice provide standards for determining whether a particular facility or service is accessible to people with disabilities. See, e.g., 49 C.F.R. Part 36 (providing standards for accessible design); id. Parts 37-38 (providing standards for accessible transportation).

Interest of United States 6 n.1 (Docket No. 157); *see also, e.g.*, Ex. 65, at CNY020275 (“Planners must compensate for their increased vulnerability by addressing, specifically, the needs of people with disabilities during the planning process.”); *id.* at CNY020277 (“Emergency planners must plan ahead to effectively provide services and communicate with people with disabilities before, during, and after an emergency.”); Ex. 153, at P001974 (“The importance of advance[] planning in developing and implementing [accommodations for people with disabilities] in general population shelters cannot be overstated. . . . [Accommodations for people with disabilities] cannot wait to be identified and put into place once an emergency or disaster occurs.”); *see also* McKinney Dep. 90:9-24 (OEM Deputy Commissioner for Planning testifying that it is important to plan for the needs of people with disabilities)). Indeed, the National Council on Disability, an independent federal agency charged with advising the President, Congress, and other agencies regarding policies, practices, and procedures that affect people with disabilities, has opined that the failure to address the specific vulnerabilities of people with disabilities in emergency planning “often leads to increased injury and death rates among this segment of the population during disasters.” (Ex. 65, at CNY020275; *see also* Blanck Decl. ¶ 34 (“When there is a lack of system-wide disaster planning for persons with disabilities . . . persons with disabilities are vulnerable to significant life-threatening harm.”)).

B. The City’s Emergency Planning Structure

4. The City’s emergency preparedness program consists of numerous plans, guides, strategies, playbooks, scripts, and protocols designed, among other things, to educate the public about emergency preparedness; to guide evacuation, transportation, and shelter during an emergency; to disseminate emergency information during a disaster; and to aid the City and its residents in recovering from an emergency. (*See, e.g.*, McKinney Decl. ¶ 14; Exs. 1-4A, 6-26,

28-36, 40-42, 113). The City's primary planning documents include the Area Evacuation Plan (Ex. 245A), the Coastal Storm: Evacuation Plan (Ex. 6), and the Coastal Storm: Sheltering Plan (Ex. 7). These general plans are supplemented by many other more specific plans, as well as by playbooks, manuals, and field guides, detailing how the plans should be implemented.

5. OEM is the City agency responsible for coordinating the City's emergency planning and responses to emergency situations. Among other things, OEM is responsible for preparing the City's emergency plans, conducting training and exercises, and overseeing the City's extensive education and outreach program. (*See* McKinney Decl. ¶ 9; Ex. 113, at P001941). *See also* N.Y.C. Charter, Ch. 19-A, §§ 495-497. OEM has more than 200 employees, and is divided into at least six levels of management. (*See* Tr. 281:14-16; Ex. 44, at CNY006811).

6. The City has a Special Needs Coordinator, whose role it is to advocate within OEM for people with special needs and to provide guidance on incorporating the needs of people with disabilities into the City's emergency plans. (*See* Belisle Decl. ¶ 2). Aaron Belisle was the full-time Special Needs Coordinator until August 2012, when he moved to a different position at OEM. (Tr. 282:10-14). As of the time of trial in this case, the City still had not replaced Belisle with a full-time Special Needs Coordinator. (*Id.* at 282:20-23). Instead, from August 2012 until at least the time of trial — a period that included Hurricane Sandy — Belisle performed both his new job and the role of Special Needs Coordinator on an acting basis. (*See* Belisle Decl. ¶ 4; Tr. 282:10-23).

7. Belisle testified that he is involved in many facets of OEM's work, that he feels empowered to raise issues regarding the needs of people with disabilities, and that he believes his input is valued. (*See* Belisle Decl. ¶¶ 13, 20, 21). Belisle also testified that he participated in

drafting several of the City's plans, operational documents, and online trainings. (Belisle Decl. ¶ 33). Belisle had no involvement, however, in drafting some of the City's core emergency plans, including its sheltering and evacuation plans. (Tr. 285:1-5). And while the Special Needs Coordinator may make suggestions about the City's emergency plans, Belisle testified, he does not have the authority to approve (or reject) them. (See Tr. 284:8-20 ("Ultimately, the plans are not approved by me. I would say that my suggestions are taken under advisement, and used or not used. Ultimately, I do not sign off on the plans."); *id.* at 357:24-358:1).

8. In fact, the OEM Special Needs Coordinator is on the lowest rung of OEM's organizational chart. (Ex. 44). Moreover, the position of Special Needs Coordinator has no staff. (Ex. 44; Tr. 281:23-25). Besides the Special Needs Coordinator, there is no one else at OEM whose job specifically includes representing people with disabilities in disaster preparedness. (Tr. 282:1-4). Nor is there a central coordinator for the City who represents people with special needs in the event of an emergency. (Tr. 282:25-283:4).

9. In addition to the Special Needs Coordinator, who represents the interests of people with disabilities within OEM, the MOPD helps to ensure that City services and programs more generally address the needs of people with disabilities. (See Calise Decl. ¶ 3). Although the Office responded, and continues to respond, to the needs of people with disabilities related to Hurricane Sandy (*see id.* ¶¶ 10-17, 19, 23-33, 35), the Commissioner of the MOPD, Victor Calise, acknowledged that he does not have a substantial role in emergency planning (*see* Tr. 437:15-438:9).

10. There was no evidence that either the Police or the Fire Department employs anyone responsible for ensuring that the department's emergency plans and policies accommodate the needs of people with disabilities. (See Tr. 341:9-16; Maniotis Dep. 34:5-24;

Villani Dep. 12:17-21; Wahlig Dep. 51:15-52:16). OEM Assistant Commissioner Dina Maniotis testified that she was not aware of anyone in either department who is “a liaison specific for persons with disabilities.” (Maniotis Dep. 34:5-24). NYFD Division Chief Fredrick Villani testified that the FDNY’s Bureau of Operations — the unit responsible for working with OEM (*see* Villani Decl. ¶ 3) — does not have a person responsible for ensuring that the Bureau’s plans and policies comply with the ADA. (*See* Villani Dep. 12:17-21). And James Wahlig, an NYPD Deputy Inspector in the Operations Division — the division responsible for the Police Department’s emergency response (*see* Wahlig Decl. ¶¶ 2, 5) — testified that he did not know if the Police Department had anyone responsible for addressing the needs of people with disabilities in an emergency. (*See* Wahlig Dep. 51:15-52:16).

C. Involving People with Disabilities in Emergency Planning

11. One way in which emergency planners can help ensure that the needs of people with disabilities are incorporated sufficiently into emergency plans is to include people with special needs in the planning process. (*See, e.g.*, Belisle Decl. ¶ 30 (“One of the ways we ensure the plans are reflective of those they serve is to include community members in the planning process.”); Blanck Decl. ¶ 57 (“Meaningful participation by the disability community is central to effective disaster planning.”); Kailes Decl. ¶ 128 (similar)).

12. The parties disagree about the extent to which people with disabilities are included in the City’s emergency planning process. The City’s expert Elizabeth Davis testified that the City’s planning process is “collaborative and inclusive” and that its emergency plans “are developed in conjunction with a [sic] multiple stakeholders, governmental and non-governmental organizations, a number of which have direct experience working with the disability community.” (Davis Decl. ¶ 4). By contrast, Plaintiffs’ expert Peter Blanck testified

that “the disability community has not been meaningfully and effectively engaged by New York City in the emergency planning process.” (Blanck Decl. ¶ 58; *see also* Kailes Decl. ¶ 129 (“[T]he City has not actually engaged the disability community in a way that the community views as legitimate, meaningful, or in a way that uses their input and expertise.”)).

13. The City maintains a Special Needs Advisory Group (“SNAG”), composed of approximately fifty representatives of agencies, service providers, and advocacy groups that represent and work with people with special needs. (*See* Belisle Decl. ¶¶ 3, 34). The group, which is chaired by the Special Needs Coordinator, meets quarterly to discuss emergency planning and to offer feedback and suggestions to the City. (*Id.* ¶¶ 3, 34, 37). Its members have participated in emergency training, given presentations, and advised OEM on some of its outreach materials. (*Id.* ¶ 36). In particular, SNAG helped develop the *Ready New York: My Emergency Plan* guide (Ex. 3), an emergency preparedness guide, the goal of which is to help people, particularly those with special needs, develop a personal emergency plan. (*See* Belisle Decl. ¶ 38; Tr. 377:21-379:18).

14. SNAG’s role is merely advisory. (*See* Tr. 347:8-22). The group has no decisionmaking authority and, indeed, has not even seen any of the City’s emergency plans in their entirety. (*Id.* at 347:11-22). Some SNAG participants expressed frustration at what, in their view, is a lack of opportunity for the group to meaningfully contribute to the City’s core emergency plans. (*See, e.g.*, Trapani Decl. ¶ 29 (testifying that in her time at SNAG, she was not given the opportunity to comment on the adequacy of the City’s emergency plans with respect to people with disabilities); Tr. 145:9-24, 146:6-147:25 (employee of Plaintiff organization CIDNY, Margi Trapani, testifying that CIDNY stopped sending a representative to SNAG because she “felt, and [CIDNY’s] executive director concurred, that the time there was not

valuable to [CIDNY's] interests in helping people prepare for emergencies or disasters, [and] that [SNAG was] having very limited effects on anything to do with the real needs of people with disabilities as they experience emergencies and disasters"); Tr. 509:11-25 (Executive Director of Plaintiff organization BCID, Joan Peters, testifying that "the concerns of the disability community" were not being addressed by SNAG and that she therefore decided that BCID would no longer attend SNAG meetings)).

D. Evacuations

15. The City has two principal plans for evacuation: the Coastal Storm Evacuation Plan (Ex. 6) and the Area Evacuation Plan (Ex. 245A).⁴ The former is the City's plan for evacuations in advance of a coastal storm or any other large-scale event with advanced warning. The latter is its general evacuation plan for emergencies that occur without warning, including but not limited to terrorist attacks. (*See* Wahlig Decl. ¶ 10; Tr. 784:25-785:2; Ex. 245A). Its "purpose" is to "coordinate evacuations of one or more neighborhoods due to large-scale, no-notice incidents." (Ex. 245A, at 6).

16. The Area Evacuation Plan in effect at the time this case was filed was approved in 2005. (*See* Ex. 5). In September 2012, the plan was revised; a draft version of the revised plan that had not yet been approved was entered into evidence at trial. (*See* Ex. 245; Tr. 727:3-7). Some of the witnesses' declarations were based on the 2005 Area Evacuation Plan, and some were based on the 2012 draft. (*Compare, e.g.*, Blanck Decl. ¶ 70 (citing 2005 plan), *and* Kailes Decl. ¶ 37 (same), *with* McKinney Decl. ¶ 19 (citing 2012 draft); Davis Decl. ¶ 77 (same)). The

⁴ The City has a separate plan for the evacuation of health care facilities. (*See* Ex. 9). Plaintiffs have not alleged that this plan is deficient and did not present any evidence that the plan fails to address the needs of people with disabilities. (*See* Pls.' Revised Proposed Findings of Fact & Conclusions of Law, Docket No. 154). Accordingly, it is not addressed here.

plan was revised again in February 2013. (Ex. 245A). That version of the plan was formally approved on March 4, 2013 — one week before trial. (Ex. 245A; Tr. 863:9-15).⁵

17. Eight pages of the 107-page Coastal Storm Evacuation Plan are devoted to the “Homebound Evacuation Operation” (“HEO”), the purpose of which is “to coordinate evacuation assistance for homebound individuals who have no other options for evacuation.” (Ex. 6, at CNY000139). With the exception of the HEO, which is discussed in more detail below, the Coastal Storm Evacuation Plan fails to provide any specific details about how the City will ensure that people with disabilities are able to evacuate.

18. The 2005 version of the Area Evacuation Plan did not include any information regarding the evacuation of people with disabilities. (*See* Ex. 5). Although the version of the plan that was approved on the eve of trial states that “[e]very operational strategy must account for populations with special needs and mobility impairments” (Ex. 245A, at 8), it provides little information about exactly how such populations will be accommodated. It contains a “Special Needs and Mass Care operational strategy” (Ex. 245A, at 33), but it does little more than incorporate the HEO, which had been developed for evacuation of homebound individuals during coastal storms (*see* McKinney Decl. ¶ 19). With the exception of the HEO, there is no information in the Area Evacuation Plan about how the City will evacuate people with disabilities from multi-story buildings or how it will ensure sufficient accessible transportation.

⁵ The City, however, did not advise Plaintiffs or the Court that the revised Area Evacuation Plan had been adopted until March 18, 2013 — one day before the close of testimony. (*See* Tr. 851:6-853:24). Nevertheless, as the Area Evacuation Plan is central to the City’s emergency planning and because the parties stipulated to its admission (Ex. 566), the Court will consider the revised plan. Unless otherwise specified, all references in this Opinion to the Area Evacuation Plan are to the version approved on March 4, 2013.

a. Building Evacuations

19. FDNY is the lead City agency responsible for building evacuations. (Villani Decl. ¶ 34). The NYPD is also involved in emergency evacuations and, in particular, in canvassing buildings to identify and rescue those who may be unable to evacuate without assistance. (Wahlig Decl. ¶ 20).

20. As Defendants' expert Elizabeth Davis testified, New York is "a vertical, not a horizontal city." (Tr. 917:10-13). The City has thousands of multi-story buildings. (See Kailes Decl. ¶ 57). Naturally, evacuation from these buildings may be more challenging for people with disabilities than for others. (See, e.g., Blanck Decl. ¶ 63; Halbert Decl. ¶¶ 9, 12; Kailes Decl. ¶¶ 55, 57; Tr. 462:18-23, 715:23-716:5; Ex. 65, at CNY020324). For example, many people with disabilities are unable to navigate stairs independently and therefore need assistance evacuating during an emergency in which elevators are rendered inoperable or may not be used. (See Trapani Decl. ¶ 27(e); Kailes Decl. ¶ 55; Tr. 462:18-23). In addition, many people with disabilities rely on wheelchairs or other assistive devices or service animals that, where possible, should be evacuated with them. (See Ex. 65, at CNY020335, CNY020341). As Plaintiff's expert Peter Blanck testified, because of these challenges, "[e]ffective and adequate evacuation planning from high rise structures is important to the needs of people with mobility impairments, and other disabilities, in the event of large scale or localized evacuations." (Blanck Decl. ¶ 63).

21. The City's plans generally assume that people will be able to evacuate their buildings without assistance. (See, e.g., McKinney Dep. Vol. III 28:11-13 ("[W]e rely on individuals to be prepared and to leave when they're asked to leave."); see also Ex. 1, at CNY000040 (*Ready New York* emergency planning guide for seniors and people with disabilities

instructing readers to not to use elevators during an emergency, but failing to suggest an alternative for those whose disabilities prevent them from navigating stairs)).

22. With the exception of the HEO, the City's emergency plans fail almost entirely to address the needs of people with disabilities during an evacuation of a multi-story building. Belisle, OEM's Special Needs Coordinator, testified that there is nothing in the written plans "[s]pecific to [the evacuation of] people with disabilities" from high-rise buildings. (Tr. 309:21-24; *see also* Tr. 358:18-22 (Belisle testifying that he is not aware of any Fire or Police Department plans that address the evacuation of people with disabilities from high-rise buildings)). Representatives of the NYPD and FDNY testified that they do not have any plans that address "high-rise evacuations for people with disabilities in the City of New York." (Tr. 789:9-12 (FDNY Division Chief Villani); Tr. 731:4-7 (NYPD Deputy Inspector James Wahlig); *see also* Manahan Dep. 96:13-25; Wahlig Dep. 59:12-16, 100:3-7).

23. FDNY Division Chief Villani testified that there was no need to plan specifically for the evacuation of people with disabilities, because the Fire Department "treat[s] everybody the same way." (Tr. 945:10-11; *see also id.* at 307:2-5 (testimony of Belisle that his "understanding of the fire department's plans is that they treat everyone who they help evacuate from a high-rise building as having a special need"); *id.* at 945:10-11 (FDNY Assistant Chief Manahan testifying that "[i]f somebody is stuck and needs to be removed, we treat everybody the same way")). Villani explained that "FDNY personnel use their training and experience to respond to and evacuate individuals with disabilities in much the same way as with able-bodied individuals: firefighters, paramedics and EMTs quickly assess the needs of the individual and transport them out of harm's way — whether to a hospital or other safe place — depending on the needs of the individual and the dictates of the particular emergency situation." (Villani Decl.

¶ 36). NYPD Deputy Inspector James Wahlig testified that the NYPD conducts evaluations in a similar manner, treating people with disabilities who require evacuation on a “case-by-case basis.” (Tr. 732:17-20).

24. The City has several resources that may be used to assist in evacuating people with disabilities. For example, firefighters carry stokes baskets, backboards, and skids, all of which allow them to transport people who are unable to evacuate on their own. (*See* Tr. 958:3-10). Every ambulance in the City is equipped with a stair chair, a device that allows emergency responders to assist non-ambulatory evacuees down stairs. (Villani Decl. ¶¶ 39-40). While NYPD police cars do not carry stair chairs, the Emergency Services Unit, NYPD’s special operations division, has special equipment, including stair chairs, necessary to assist non-ambulatory evacuees. (*See* Tr. 751:12-17).

25. Although FDNY Chief Villani testified that the Fire Department’s Emergency Medical Services “protocols allow the transportation of a wheelchair, a home health aide, or service animal” with an evacuee (Villani Decl. ¶ 42; *see* Tr. 797:4-15), NYPD Deputy Inspector Wahlig testified that the Police Department provides no such guidance (*see* Tr. 731:8-732:20).

26. There is little doubt that the FDNY and the NYPD are capable of rescuing individuals with disabilities from high-rise buildings under ordinary circumstances. (*See, e.g.*, Villani Decl. ¶¶ 34, 35, 45; Tr. 923:1-22). It is less clear, however, that they would be able to do so during a large-scale evacuation, particularly one that occurs with little or no notice. (*See* Kailes Decl. ¶ 61). As Plaintiffs’ expert June Kailes testified, “[i]n a mass evacuation, it may be impossible for fire personnel to get to the numbers of people who will need evacuation assistance, and responding fire personnel may not be able to coordinate with ambulance services.

Moreover, first responders may need to fight against the tide of people going down and out of the building in order to get [their] equipment to the correct location.” (*Id.*).

27. The City does not require most high-rise buildings to maintain emergency evacuation devices for people with disabilities and, indeed, most buildings do not have them. (*See id.* ¶ 60; Tr. 307:23-308:7). Nor does the City have any plan for making these devices available during an emergency. (Tr. 307:20-24). As noted above, with the exception of the HEO, the City does not, in fact, have any plan for how people who cannot evacuate on their own, such as people with mobility disabilities, will be evacuated in these circumstances. (*See* Kailes Decl. ¶ 60; Blanck Decl. ¶ 68; *see also* Delarosa Decl. ¶ 38 (class member testifying that she called 911 in advance of Hurricane Sandy and “the 911 operator told [her] that [the operator] did not know what the emergency plans were for people who use wheelchairs”). Plaintiffs’ expert Peter Blanck testified that without such a plan, “it will be difficult for the City to effectively evacuate people with disabilities from [high-rise] structures, . . . particularly . . . during a large scale evacuation and for emergencies with no advance warning.” (Blanck Decl. ¶ 68).⁶

b. Transportation

28. The City’s emergency evacuation plans rely heavily on the use of public transportation. (*See, e.g.*, Ex. 6, at CNY000130 (“[A] successful evacuation will depend on the efficient use of mass transportation.”); *id.* (noting that, “[i]n the worst case scenario, . . . about 1.83 million [people] are expected to use public transportation” to evacuate during an

⁶ Plaintiffs’ witnesses suggested that the City could accommodate people with disabilities during an evacuation by requiring high-rise buildings to maintain evacuation devices. (*See, e.g.*, Tr. 201:25-203:17). The City has asserted that such a requirement would be unduly expensive and difficult to implement. (*See* Defs.’ Proposed Findings Fact & Conclusions Law ¶ 77 (citing Tr. 202:17-203:13, 257:20-258:9, 909:7-910:7, 920:15-922:14)). Because the trial was limited to liability, with remedies to be discussed at a later stage, the Court need not and does not address the issue here.

emergency); Ex. 245A, at 25 (“[Public transportation] will be a key component of many evacuation options, both for moving evacuees from the evacuation area, and for redistributing those displaced by the incident.”); Tr. 318:19-22 (Belisle testifying that “the emergency plans operate under the assumption that people are going to use the existing transportation resources”); Tr. 735:20-736:2 (Wahlig testifying that an emergency evacuation would rely on the City’s existing public transportation infrastructure); *see also* Ex. 68, at CNY00023744 (Mayor stating during press conference in advance of Hurricane Sandy that, “[i]f you are going to” a shelter, “we strongly urge you to get there via public transportation”). Accordingly, the City encourages people to use public transportation to evacuate during an emergency. (*See, e.g.*, Tr. 318:11-18; Ex. 4A, at CNY000028 (directing people to “[u]se public transportation if possible” to evacuate in an emergency)). In fact, Belisle testified that, with the exception of the HEO, the City was “not responsible for transportation of people to evacuation centers” and that the City plans for “people [to] find their [own] way to evacuation centers.” (Tr. 318:23-319:3).

29. Most of the City’s public transportation, however, is inaccessible to people with disabilities. (*See, e.g.*, Tr. 315:11-15 (Belisle testifying that “the majority of subway stops in New York are not accessible”); *id.* at 461:8-11 (testimony of MOPD Commissioner Calise that public transportation in New York “presents challenges” to people with disabilities); Kailes Decl. ¶ 39; *see also* Ryan Decl. ¶ 18 (“[T]he usual ways of traveling in New York City are extremely inaccessible to wheelchair-users”); Conner Decl. ¶ 15 (class member testifying that “the types of public transportation available to [her] are very limited” because she is blind)). The vast majority of the New York City subway system is inaccessible; indeed, less than twenty percent of all subway stations are accessible. (*See* Ex. 157, at P002127, P002130-37; Curry Decl. ¶ 29; Halbert ¶ 15; Torres Decl. ¶ 23). Public buses have only two seats that can

accommodate wheelchairs (Tr. 187:8-11, 188:15-18), and during an emergency may be too full to accommodate passengers with disabilities. (See Tr. 187:12-23; Martinez Decl. ¶ 35.) Only about two percent of the City's yellow taxicabs are accessible to people with disabilities, see *Noel v. N.Y.C Taxi & Limousine Comm'n*, 687 F.3d 63, 66 (2d Cir. 2012), and those that are accessible pick up passengers only in Manhattan. (See Tr. 315:16-18, 455:20-456:19, 460:20-461:1).

30. To address these deficiencies, New York State's Metropolitan Transit Authority (the "MTA") provides paratransit services — that is, accessible public transportation — through the Access-A-Ride program. (See Morales Decl. ¶ 28; Ryan Decl. ¶ 19; Tr. 337:23-25, 338:1-5, 459:20-22). See also 49 C.F.R. § 37.121 (requiring that "each public entity operating a fixed route system" to "provide paratransit or other special service to individuals with disabilities"). Because "[m]uch of New York City's public transportation system is not accessible to persons who use wheelchairs. . . . , persons with mobility disabilities rely disproportionately on paratransit for travel around New York City." (Trapani Decl. ¶ 67). Unlike other forms of public transportation, however, paratransit ordinarily requires a user to reserve a ride at least twenty-four hours in advance. (See Bell Decl. ¶ 28; Buckner Decl. ¶ 19; Conner Decl. ¶ 16; Morales Decl. ¶ 28; Ryan Decl. ¶ 19; Torres Decl. ¶ 23; Tr. 193:13-15, 251:19-21, 337:5-9, 458:1-6).

31. The City directs people with disabilities to continue to rely on paratransit in an emergency. (See, e.g., Tr. 608:2-8; see also Ex. 58, at CNY00025360, CNY00025362 (scripts from 311, the City's government information hotline, for Hurricanes Irene and Sandy informing callers that "Access-A-Ride should be able to help [people with disabilities] get to an evacuation center")). There is nothing in the City's plans, however, to ensure that people with disabilities

are actually able to use paratransit during an emergency. The City's plans do not, for example, mandate that paratransit be available without reservations during an emergency; that it remain open for a certain amount of time after the issuance of an evacuation order; or even that it be available at all during an emergency. (*See, e.g.*, Tr. 789:3-5 (FDNY Chief Villani testifying that the plans do not contain any directive about the availability of paratransit during an emergency)). Nor may the City direct Access-a-Ride's operations during an emergency: Access-a-Ride is not run by the City but rather by the MTA, a public corporation chartered by the state, and the City has no agreement with the MTA to provide services during an emergency. (*See* Kailes Decl. ¶ 46; Tr. 335:20-23, 336:6-9, 336:18-21, 337:1-4, 337:20-21, 374:23-375:9).

32. In fact, the City has no meaningful plan whatsoever to ensure sufficient accessible transportation to evacuate people with disabilities during an emergency. With the exception of the HEO, the Coastal Storm Evacuation Plan contains no information at all about the transportation of people with disabilities during an emergency evacuation. (*See* Ex. 6). And the Area Evacuation Plan states that, in the event of an emergency, the "MTA *may* reroute paratransit vehicles to support special needs evacuations"; that the Taxi and Limousine Commission "*may* request support from private ambulette operators";⁷ that "MTA Paratransit *may* be asked to implement shuttle routes to hospitals or Evacuation Staging Areas"; and that "[b]uses and paratransit vehicles *may* be given special or prioritized access on restricted routes if used for evacuation operations." (Ex. 245A, at 28 (emphases added); *see also* Tr. 788:9-789:5 (FDNY Chief Villani testifying that the plans contain no directives requiring support from the MTA or the Taxi and Limousine Commission in an emergency)). The City has not even

⁷ New York law defines an ambulette as "a special-purpose vehicle, designed and equipped to provide nonemergency transport, that has wheelchair-carrying capacity, stretcher-carrying capacity, or the ability to carry disabled individuals." 18 N.Y.C.R.R. § 505.10(b)(3).

determined whether sufficient accessible transportation would be available in the event of an emergency. (*See* Tr. 293:19-23 (Belisle testifying that he is not aware “of any surveys of the sufficiency of accessible transportation in the event of an emergency”)); *id.* at 743:1-3 (testimony of NYPD Deputy Inspector Wahlig that “[t]he NYPD doesn’t know how many paratransit vehicles could be available to it” in an emergency)).

c. The HEO

33. As noted, the purpose of the HEO is to “coordinate evacuation assistance for homebound individuals who have no other options for evacuation” in an emergency. (Ex. 6, at CNY000139). Although it was developed as part of the Coastal Storm Evacuation Plan, the City now views the Operation as an all-hazards plan to be implemented, when needed, in any kind of emergency. (*See* Villani Decl. ¶ 9; Ex. 245A, at 36).

34. The HEO is designed to begin when the City’s shelter system, discussed below, opens and to end six to eight hours before a storm makes landfall. (*See* Ex. 6, at CNY00140). The HEO does not resume after a storm has cleared.

35. People are referred to the HEO when they call 311, the City’s government information hotline, during an emergency and state that they require evacuation assistance. (*See* Ex. 6, at CNY000139 (“Public messaging will inform homebound individuals in need of transportation assistance to call 311.”); Morrisroe Decl. ¶ 41 (stating that homebound individuals are directed through “mayoral press conferences and press releases, NYC.gov, 311’s online Web site and texting services, the MOPD and its Web site,” and emails to nongovernmental partners to call 311 if they need assistance evacuating)).

36. When someone calls 311 to inquire about assistance evacuating, the 311 representative determines which of three levels of assistance the caller requires. (*See* Ex. 6, at

CNY000140; Morrisroe Decl. ¶ 42; Villani Decl. ¶¶ 10-11). First, people who are capable of getting to the sidewalk in front of their building are transferred to MTA paratransit dispatchers. (*See* Ex. 6, at CNY000142; Villani Decl. ¶¶ 11-12). Second, for callers who can sit up unassisted for an extended period of time but cannot exit the building on their own, 311 dispatchers take their contact information and forward it to the FDNY. (*See* Ex. 6, at CNY000142; Villani Decl. ¶¶ 11-12). The FDNY compiles a list of those who need assistance, and dispatches teams of firefighters on a school bus to evacuate them. (*See* Ex. 6, at CNY000193-94; Manahan Decl. ¶¶ 16-19; Villani Decl. ¶ 12). If an evacuee does not answer the door, the FDNY evacuation team makes one attempt to contact the evacuee by phone and, if the evacuee cannot be reached, it moves on. (*See* Ex. 6, at CNY000193). Finally, those who are incapable of sitting up unassisted and must be transported on a stretcher are transferred to the Emergency Medical Service (“EMS”) through the 911 system to be transported by ambulance to a hospital outside the evacuation zone. (*See* Ex. 6, at CNY000142; Villani Decl. ¶¶ 11-12).

37. The HEO does not allow evacuees to choose their destination. As described in the Coastal Evacuation Plan, all of those evacuated by the HEO are transported to an evacuation center or a hospital, depending on the level of care they require. (*See* Ex. 6, at CNY000142; Tr. 314:11-15). FDNY Chief Villani testified that those who require assistance evacuating from their building may also request that they be left in front of the building and not be transported anywhere. (Tr. 793:22-794:11).

38. The HEO is not intended to meet the needs of all people with disabilities during an evacuation. Instead, it is designed to be a limited program, a “last resort” for those who are homebound and unable to evacuate without assistance. (Ex. 6, at CNY000107; Villani Decl. ¶ 9; Davis Decl. ¶ 81; Tr. 776:8-10, 895:6-9; *see also* Kailes Decl. ¶ 40 (“The scale of the program

appears to be designed to provide individualized assistance to a small number of people.”)). During Hurricane Irene, in which approximately 370,000 residents were ordered to evacuate (*see* Ex. 154, at P001703), only about 200 people were evacuated via the HEO (Manahan Decl. ¶ 13); and during Hurricane Sandy, in which approximately 375,000 people were ordered to evacuate (*see* Ex. 78, at CNY00022673), the HEO evacuated fewer than 100 people (McKinney Dep. Vol. III, at 18:12-16).

39. Despite this limited mandate, the City’s expert Elizabeth Davis testified that the Operation has “served the needs of the people who requested its services” and that “the FDNY has the capacity to successfully fulfill all requests during its implementation.” (Davis Decl. ¶ 80). In support of this conclusion, Davis cited the deposition testimony of Kelly McKinney, OEM’s Deputy Commissioner of Planning and Preparedness, that, theoretically, there is no “upper bound to the capacity” of the HEO; the capacity of the Operation at any given point, McKinney explained, depends on the resources available to it at that point, and the availability of such resources is a “function of time.” (McKinney Dep. Vol. I, at 75:11-25; *see* Davis Decl. ¶ 80). But McKinney did not, in his deposition or otherwise, state what the capacity of the Operation as currently resourced is, whether he believed such capacity was sufficient to evacuate all those who might require evacuation through the HEO during an emergency, and, if not, how long it would take to acquire the resources to make the HEO sufficient. (*See* McKinney Dep. Vol I, at 74:9-75:25). And Davis testified that she had not seen any assessment of the capacity of the HEO. (Tr. 895:23-896:3).

40. The evidence presented at trial does support the conclusion that FDNY was able to fulfill all the requests it received for evacuation as part of the HEO during Hurricanes Irene and Sandy. FDNY Assistant Chief Manahan testified that, during Hurricane Irene, the Fire

Department was able to safely evacuate everyone who requested its assistance through the HEO. (*See* Manahan Decl. ¶ 13). He testified that, during Hurricane Sandy, he did not “receive any reports of any problems or disruptions involving [the FDNY’s] evacuation activities.” (Manahan Decl. ¶ 21). Plaintiffs did not introduce any evidence to the contrary.

41. Notwithstanding the FDNY’s ability to serve all of those who requested its assistance during Hurricanes Irene and Sandy, there are several reasons to believe that the HEO could be insufficient to meet the needs of people with disabilities in future emergencies. First, the evidence at trial related solely to the Fire Department’s resources. The Fire Department, however, is not involved in transporting those who are able to exit their buildings unassisted, but who need assistance getting to a shelter or other location. (*See* Ex. 6, at CNY000140-42). Instead, the HEO depends upon paratransit to evacuate these people. (*See* Ex. 6, at CNY000142). The Fire Department’s capacity is therefore irrelevant to the HEO’s ability to accommodate them. And, as explained above, there is nothing in the City’s emergency plans to ensure that paratransit will remain available in an emergency.

42. Second, the City does not inform the public about the existence of the HEO. (*See* Tr. 293:13-16; Kailes Decl. ¶ 41). Homebound individuals are directed to call 311 if they are unable to evacuate. (*See, e.g.*, Ex. 6, at CNY000140; Ex. 61 (email to service providers of people with special needs before Hurricane Sandy stating that “[c]lients who cannot evacuate their homes independently and who do not have any other options can call 311 to coordinate transportation to an evacuation center”); Ex. 67, at CNY 00023739 (mayoral press conference before Hurricane Sandy stating “[i]f you can’t get to a shelter by yourself, you can request transportation by calling 311”); Morrisroe Decl. ¶ 41; *see also* Ex. 3, at CNY001091 (“Call 911 if you are stranded and need emergency assistance to evacuate your home.”)). But they are not

informed that there is a City program that could help them do so, or that that Operation is available before — and, indeed, *only* before — a storm actually makes landfall.

43. It is difficult to know how many more people would have requested the assistance of the HEO during Hurricanes Irene and Sandy if they had known that it was available, or whether the Operation would have been able to accommodate an increase in requests. (*See* Kailes Decl. ¶ 40 (noting that while the HEO evacuated 200 people during Hurricane Irene and fewer than 100 people during Hurricane Sandy, “[i]n a major coastal storm, thousands of people with disabilities, if not more, might need to evacuate”); Villani Decl. ¶ 22 (“It is not possible to predict with precision the number of individuals who will require evacuation assistance during an emergency.”); Tr. 779:1-10 (Villani testifying that the Fire Department has not assessed how many wheelchair-accessible vehicles would be available for the HEO; that he did not know how many vehicles of any kind are available for the Operation; and that there is no “predefined number of vehicles” available to support homebound evacuations); *Id.* at 781:10-14 (Villani testifying that the Fire Department has not determined the greatest number of people it could evacuate through the HEO)).

44. Third, the HEO is triggered by a request for evacuation assistance. Some people with disabilities, however, may not be able to request such assistance (and may not have someone who could request assistance on their behalf). Moreover, the City depends on the 311 system, discussed below, to “serve as the single point of intake for all homebound individuals requesting evacuation assistance.” (Ex.6, at CNY000140). Indeed, it provides no other method for people with disabilities to request assistance. (*See, e.g.*, Tr. 744:1-7). As explained below, however, 311 may be unreliable or unavailable during an emergency. The City has not even

evaluated the capacity of 311 to assist those who might require evacuation assistance. (See Tr. 313:15-18).

45. Finally, and most fundamentally, it is hard to know whether, or how, the HEO could function in a no-notice emergency, such as a terrorist attack. As noted above, the HEO was originally conceived as part of the Coastal Storm Evacuation Plan for use in emergencies with advance notice. (See McKinney Decl. ¶ 19). And, by its terms, it appears to depend on such advance notice. As currently written, for example, the Operation ends at least six hours *before* an emergency actually strikes, and does not reactivate afterwards. (See Ex. 6, at CNY00140; Tr. 779:15-23, 952:10-12; Manahan Dep. 88:6-18; 101:12-15). It is designed, therefore, to assist homebound individuals in evacuating *before* a storm makes landfall, not after. (See Ex. 6, at CNY000139-CNY000140; Manahan Dep. Tr. 100:16-17; *id.* at 101:7-17 (testifying that the Homebound Evacuation Operation is a pre-event plan)).

46. As noted above, earlier versions of the Area Evacuation Plan — the City’s plan for evacuations in no-notice events — did not include the HEO or any other provisions to evacuate people with disabilities. (See Ex. 5). Although the version of the Area Evacuation Plan adopted on the eve of trial incorporates the HEO and provides that it will be implemented “if necessary,” it does not detail how the Operation would be implemented in an emergency without warning. (Ex. 245A, at 36). It is unclear how an evacuation operation that is intended to begin and end before an emergency actually strikes can be applied to an emergency that occurs without warning. Indeed, FDNY Chief Villani conceded at his deposition that because the HEO is “designed specifically for something in advance,” he did not know whether it could be implemented in an emergency without warning and that the Fire Department had neither planned nor prepared for such implementation. (Villani Dep. 15:6-20).

d. Evacuations During Hurricane Sandy

47. Hurricane Sandy provided some indication of how the City's evacuation plans operate in the event of an emergency with advance notice.

48. The Mayor issued a mandatory evacuation order for the areas of the City most likely to be most affected by Hurricane Sandy — denominated Zone A — at 11:30 a.m. on Sunday, October 28, 2012. (See Ex. 68, at CNY00023743; Ex. 76, at CNY00023346). The Mayor directed residents of Zone A to evacuate by the end of the day. (See Ex. 76, at CNY00023346). The City directed people who needed assistance evacuating to call 311. (See, e.g., Ex. 61 (email to service providers of people with disabilities stating “[c]lients who cannot evacuate their homes independently and who do not have any other options can call 311 to coordinate transportation to an evacuation center.”); Ex. 67, at CNY00023739 (Mayor's statement that “[i]f you can't get to a shelter by yourself, you can request transportation by calling 311. But I would stress that your first option should be to stay with family and friends.”); Ex. 68, at CNY00023744 (Mayor's statement that “[i]f you cannot evacuate yourself and need assistance, call 311 and we will be sure to make sure somebody comes and helps you”); Morrisroe Decl. ¶ 43).

49. In advance of the evacuation order, Access-a-Ride was available to people with disabilities who made reservations at least twenty-four hours in advance. (Ex. 397, at CNY00022779 (October 26, 2012 Situation Report stating that, as Hurricane Sandy approached, MTA paratransit was “[s]etting up schedules from two-day to one-day booking for clients”)). Paratransit began to shut down almost immediately after the evacuation order was issued on October 28, 2012, with the MTA website announcing that “[o]utbound Access-A-Ride trips” would be “scheduled only until 12 p.m. . . ., and return trips [would] continue until 5 p.m.” (Ex.

160, at CNY00382). Any trips scheduled to take place after that time were cancelled. (*Id.*) By contrast, subway service did not begin to shut down until 7:00 p.m. on October 28, 2012, and MTA bus service was not curtailed until at least 9:00 p.m. (Ex. 76, at CNY00023346; *see also* Ex. 79, at CNY00022662 (indicating that some subways ran until 10:00 p.m., and some buses did not stop running until 11:00 p.m.)).

50. The NYPD requisitioned thirty MTA buses, and for several hours after public transit had shut down, police officers drove through the evacuation zone providing transportation to those who had no other way to evacuate. (*See* Wahlig Decl. ¶ 19; Tr. 747:4-23). The buses traveled along a designated route, but also responded to calls for assistance via 311 and 911 as well as reports from patrol officers of people who needed help evacuating. (*See* Tr. 748:1-6). The bus drivers were not instructed to ensure that the buses did not get too full to allow wheelchair users to access them, and no wheelchair users were evacuated in this way. (*Id.* at 749:10-12, 750:6-12).

51. The HEO began at 9:00 a.m. on Sunday, October 28, 2012, the same time the City's shelter system opened (*see* Ex. 76, at CNY00023346; Tr. 950:9-12), and was deactivated at 10:00 p.m. that same night (*see* Tr. 952:1-9 (testimony of FDNY Assistant Chief Manahan that the Operation concluded at 10:00 p.m. on October 28, 2012); Manahan Decl. ¶ 17 (same); *see also* Ex. 79, at CNY00022656 (Hurricane Sandy situation report stating that by 3:00 a.m. all HEO activities had ceased); Manahan Dep. 70:10-15 (confirming that the HEO concluded at 10:00 p.m. on October 28, 2012)). Those who called 311 after that time requesting evacuation assistance were advised not to leave their locations and to shelter in place. (Ex. 79. at CNY00022651, CNY00022659; *see* Ex. 58, at CNY00025363). The HEO did not reopen after the hurricane passed. (*See* Tr. 952:3-12).

52. The storm made landfall at approximately 7:30 p.m. on Monday, October 29, 2012, and by the night of October 30, 2012, it had subsided. (See Ex. 116, at 31; Ex. 81, at CNY00022463). See National Oceanic and Atmospheric Administration, Service Assessment: Hurricane/Post-Tropical Cyclone Sandy, October 22-29, 2012, at 12 (May 2013), available at <http://www.nws.noaa.gov/os/assessments/pdfs/Sandy13.pdf> (visited on October 31, 2013); see also, e.g., *Chubb & Son, Inc. v. Kelleher*, No. 92 CV 4484 (CBA), 2006 WL 2711543, at *4, n.2 (E.D.N.Y. Sept. 21, 2006) (taking judicial notice of the National Oceanic and Atmospheric Administration's records reflecting the date Hurricane Wilma struck a certain region in Florida); *Mamiye Bros. v. Barber S.S. Lines, Inc.*, 241 F. Supp. 99, 116 (S.D.N.Y. 1965) (taking judicial notice of forecasts from the United States Weather Bureau published in the newspaper).

53. In the immediate aftermath of the hurricane, the Fire and Police Departments conducted a search-and-rescue operation. (See Manahan Decl. ¶ 23). The operation was limited to rescuing those in life-threatening situations. (See Manahan Dep. 108:13-14 (“[W]e were searching for people who desperately need to be saved.”); Tr. 946:17-19 (FDNY Assistant Chief Manahan testifying that “a rescue is when there’s — if you didn’t show up at the scene, that the person could suffer serious injury or death”); Kass Decl. ¶ 9). It did not aid those who were in need of evacuation assistance but otherwise safe. (See Manahan Dep. 109:6-15).

54. The record demonstrates that some people with disabilities were unable to evacuate because of insufficient transportation. (See, e.g., Bell Decl. ¶ 30 (class member testifying that during Hurricane Sandy, he “tried to use Access-A-Ride, but the Access-A-Ride dispatch did not answer the phone”); Martinez Decl. ¶ 35 (class member testifying that the evacuation buses were too crowded for him to board in his wheelchair)).

55. Even after Hurricane Sandy had passed, some class members were unable to access public transit. (*See* Bell Decl. ¶ 30 (testifying that “[w]hen Access-[A]-Ride started to operate again, [he] was told that only those individuals who had medical emergencies” would be provided transportation); Morales Decl. ¶ 24 (testifying that several days after Hurricane Sandy, she needed to go to the hospital to speak with her doctor, but she was unable to get there because the MTA buses were too crowded for her to board in her wheelchair, and Access-A-Ride did not answer the phone)).

56. MTA buses resumed modified service on Tuesday, October 30, 2012 at 5:00 p.m. (Ex. 81, at CNY00022461, CNY00022468), and bus service was as close to fully operational as possible by October 31, 2012. (Ex. 83, at CNY00022418). Subway service was partially restored on November 1, 2012. (Ex. 85, at CNY00022379). Access-A-Ride began offering limited paratransit service in cases of “medical necessity” on October 31, 2012, and resumed regular service on November 1, 2012, although it did not resume most transportation within Zone A for several more days. (*See, e.g.*, Exs. 365, 367, 375, 378).

57. There is substantial evidence that people with disabilities were stuck in high-rise buildings after the storm. For example, MOPD Commissioner Calise testified that he received calls from people who were stranded in their buildings and, more generally, that it was “known” that people who used wheelchairs were stuck in high-rise buildings in the aftermath of Hurricane Sandy. (Tr. 444:8-24; *see* Calise Decl. ¶ 26). Belisle also testified that he was aware that people with disabilities had been stranded in their apartments after Hurricane Sandy, but that he did not know how many had been stranded. (*See* Tr. 310:23-311:4; *see also* Lekas Miller Dep. 54:12-24 (testifying that in a building she had visited after Hurricane Sandy, there were many people with limited mobility who could not leave their apartments); Ex. 116, at 73:8-10 (testimony of Deputy

Mayor Caswell Holloway at a City Council hearing that the City recognized that “some New Yorkers [were] unable to leave their homes without elevators or for medical reasons”); Tr. 721:1-8 (Deputy Commissioner for Environmental Health at the City’s Department of Health and Mental Hygiene testifying that it was “clear” after Hurricane Sandy that “there was a need for reaching out to people who might remain stranded”); *id.* at 947:19-22 (Manahan testifying that he was aware that after Hurricane Sandy there were many people stranded in multi-story buildings); Ex. 329, at CNY00023894 (press release stating that after Hurricane Sandy, there were teams canvassing high-rise buildings in Far Rockaway and Coney Island to “assess[] the wellbeing of residents who had not been able to leave their apartments and who may have been without water, electricity and heat”).

58. Class member Kenneth Martinez, who relies on a motorized wheelchair for mobility and lived in Far Rockaway when Hurricane Sandy struck, testified that he became aware of the impending hurricane on Sunday, October 28, 2012, the day before it was to make landfall. (Martinez Decl. ¶ 28). Police officers directed him to an intersection where buses were gathering to transport evacuees. (*Id.* ¶ 34). Although there were “four or five buses lined up at the intersection,” Martinez could not get on any of them because they were too crowded for him to board in his wheelchair. (*Id.* ¶ 35). A bus driver told him that more buses would be arriving within ten to fifteen minutes. (*Id.*). Martinez waited outside for twenty minutes, but no more buses came. (*Id.*). He could not stay outside for any longer because it was raining, and he feared that his motorized wheelchair would short out in the rain. (*Id.*).

59. The following day, Martinez called 311 in an attempt to get evacuation assistance. (*Id.* ¶ 37). He testified that although he began calling at 12:30 p.m., he could not get through until 4:00 p.m. (*Id.* ¶¶ 37-38). The 311 operator informed Martinez that he would be put “on a

list,” but that he would “have to wait.” (*Id.* ¶ 38). Nobody ever came to assist him. (*Id.*) That evening, flood water began to fill Martinez’s first-floor apartment, and Martinez was scared that he “was going to drown.” (*Id.* ¶¶ 39-46). With the water “so high” that his “head was almost to the ceiling,” Martinez began “banging on the ceiling, hoping that the neighbors would hear” him. (*Id.* ¶ 47). They did — and were able to break a window into his apartment, swim inside, and rescue him. (*Id.* ¶¶ 48-50).

60. Class member Joyce Delarosa, who uses a wheelchair and relies on oxygen and lives on the east side of Manhattan, testified that during Hurricane Sandy, the power in her building went out, leaving her unable to power her oxygen concentrator or exit the building. (Delarosa Decl. ¶¶ 2, 51-55). She called 911 for evacuation assistance, and was told that, “unless [she] was having an immediate medical crisis and need[ed] to go to the hospital,” she could not receive assistance. (*Id.* ¶ 57). Because she did not think she needed to be in a hospital, but rather only needed to plug in her oxygen concentrator, she declined emergency assistance. (*Id.*) She testified that she called 311 to request assistance evacuating her daughter, who also uses a wheelchair, but was told that the City would not provide evacuation assistance unless her daughter needed to go to a hospital. (*Id.* ¶ 59). Eventually, Delarosa testified, the consequences of lack of oxygen became so severe that she did require medical attention, at which point she called 911 again. (*Id.* ¶ 64). EMS came to her apartment, used a stair chair to evacuate her, and provided her oxygen. (*Id.* ¶¶ 64-65). Delarosa testified that the only way she was able to convince the EMS providers to evacuate her daughter too was to lie and say that her daughter needed to go to the hospital as well. (*See id.* ¶¶ 66-70; Tr. 88:9-89:9).

61. Class member Melba Torres, who uses a wheelchair and lives on the Lower East Side of Manhattan, testified that after receiving an evacuation order, she sent her aide to

investigate accessible transportation options, but that her aide reported to her that the buses being used to evacuate the people in her building were not wheelchair accessible. (*See* Torres Decl. ¶¶ 2, 62, 66). As a result, she did not evacuate, and spent six days in her apartment without running water, heat, or electricity. (*Id.* ¶ 72). At one point, Torres testified, a police officer came to her apartment, but the officer stated that she could not receive evacuation assistance unless she was having a medical emergency. (*See id.* ¶ 82).

E. The Shelter System and Sheltering in Place

62. A core aspect of the City's emergency plans is providing shelter to those displaced in an emergency. (*See* Tr. 319:5-9; Ex. 7). Because people with disabilities often require accessible housing or other accommodations, they may be less able than those without disabilities to stay with friends, family, or neighbors during a disaster. (*See, e.g.*, Torres Decl. ¶¶ 25-26 (testimony of class member Melba Torres, who has a mobility disability, that she does not know of anyone with whom she could stay during an emergency because she does not know anyone who both has a wheelchair accessible apartment and could provide her the assistance she needs to complete her daily activities); Delarosa Decl. ¶¶ 27-28 (class member testifying that she does not have any family or friends with whom she could stay); Halbert Decl. ¶ 22 (same); Martinez Decl. ¶ 20 (same)). Therefore, emergency shelters are particularly important for people with disabilities.

63. The City's plan for providing shelter during a disaster is the Coastal Storm Sheltering Plan ("Sheltering Plan"). (Ex. 7; *see* Maniotis Decl. ¶ 19). Despite its name, this Sheltering Plan is not limited to coastal storms. (Maniotis Decl. ¶ 19). It is an "all-hazards" plan, meaning that it could be activated during any large-scale emergency, including an emergency that arose without warning. (*Id.*).

64. As detailed in the Sheltering Plan, the City uses a “scalable solar system model” for sheltering. (Maniotis Decl. ¶ 21; *see* Van Pelt Decl. ¶ 12; Ex. 7, at CNY00357). The City has over five hundred shelters, which are grouped into sixty-five “solar systems.” (*See* Maniotis Decl. ¶ 20; Ex. 7, at CNY00357). Each solar system consists of one evacuation center that serves as the “hub,” along with five to ten shelters. (*See* Van Pelt Decl. ¶ 12; Ex. 7, at CNY00357). In most cases, one of these shelters is co-located with the evacuation center. (Tr. 326:6-8; Ex. 7, at CNY00360).

65. The City also has eight special medical needs shelters (“SMNSs”), at least one of which is located in every borough. (*See* Van Pelt Decl. ¶ 13; Ex. 7, at CNY00357; Ex. 14, at CNY001390). The SMNSs are intended to shelter individuals whose needs exceed the capability of the general shelters but who do not require hospitalization. (Van Pelt Decl. ¶ 13; Ex. 7, at CNY00389; Ex. 14, at CNY001390).

66. During every emergency in which the City offers sheltering, all evacuation centers and SMNSs are open. (*See* Tr. 323:14, 373:10-11; 914:23-915:3; Ex. 7, at CNY000394). Additional shelters are opened based on need. (*See* Tr. 323:14-15, 914:23-915:3; Ex. 7, at CNY000385, CNY000395). Evacuees seeking shelter are instructed to report first to an evacuation center. (*See* Van Pelt Decl. ¶ 14; Ex. 7, at CNY000357, CNY000363, CNY000371). Once there, they undergo a basic intake process to evaluate their needs, after which they are either directed to a co-located shelter or transported to another shelter, an SMNS, or a hospital. (*See* Van Pelt Decl. ¶ 14; Tr. 374:5-12; Ex. 7, at CNY000357, CNY000363, CNY000371).

67. The vast majority of evacuation centers and shelters are located within New York City Department of Education (“DOE”) facilities — that is, school buildings. (Van Pelt Decl. ¶ 16; Ex. 43, at CNY0023932). Although the locations of evacuation centers are publicized in

advance of an emergency in various ways (Van Pelt Decl. ¶ 15; Ex. 7, at CNY000417; *see, e.g.*, Ex. 4A (brochure providing a list and map of evacuation centers)), the City does not publicize the location of other shelters in the system (*see* Tr. 322:17-20, 322:25-323:1, 373:3-23).

68. If fully activated, the City's shelter system has the potential to shelter over 600,000 people. (*See* Ex. 7, at CNY000359; Van Pelt Decl. ¶ 12).

69. The solar system model has important benefits. First, because the system is scalable, it allows emergency managers to activate facilities only when needed and thus efficiently allocate City staff, equipment, and other specialized resources. (*See* Tr. 915:14-21; Van Pelt Decl. ¶ 12). Second, it "allows for a consistent message to the public," as people can be "directed to a limited number of evacuation centers which are publicized" in advance and always open, "rather than to shelters which may or may not be open depending on the size of the storm." (Davis Decl. ¶ 98). As evacuation information is "not dependent on the size of the storm," the City's expert Elizabeth Davis explained, people "can more easily develop an evacuation plan in advance of" an emergency. (*Id.* (emphasis omitted)).

70. The Court heard testimony about both the architectural accessibility of the City's shelters — that is, the accessibility to people with disabilities, and particularly mobility disabilities, of the buildings the City uses as shelters — as well as the accessibility of the programs and services offered therein. It also heard testimony about the City's plans for refuges of last resort and sheltering in place. The Court will address each in turn.

a. The Architectural Accessibility of Shelters

71. The City's Sheltering Plan is silent as to the architectural accessibility of the shelter system. (*See* Ex. 7). It does not require that the City consider accessibility in choosing facilities to serve as shelters, let alone mandate that the shelter system, or any portion thereof, be

architecturally accessible to people with disabilities. Nor does it provide any guidance to ensure that there are accessible pathways between the shelter entrance, the rooms used for sheltering, and the bathroom, or that the particular rooms set up for sheltering — that is, the rooms chosen as dormitories, used for food service, etc. — are themselves accessible. The other plans related to sheltering similarly lack such guidance. (*See, e.g.*, Ex. 15 (Evacuation Center Field Guide); Ex. 16 (Hurricane Shelter Field Guide)).

72. The City's written plans do instruct shelter operators, when opening a shelter or evacuation center, to identify which areas of the shelter are accessible to people with disabilities, but they do not provide instructions for how to do so, nor do they require that any of the shelter areas actually be accessible. (*See* Ex. 15, at CNY01119; Ex. 16, at CNY001258). In addition, during an emergency, shelter operators are provided a checklist to evaluate the accessibility of their shelter. (Belisle Decl. ¶ 48; Ex. 472). The checklist asks shelter staff, for example, to mark the accessible entrances and bathrooms as such. (Ex. 472). But again, it does not require that a shelter actually have accessible entrances or bathrooms, and it does not give instructions for determining whether an entrance or bathroom is accessible. (*See id.*; Tr. 392:1-6). It is unclear whether shelter operators even use the checklist. (*See* Tr. 808:19-25, 809:16-20 (testimony of Erin Villari, who managed two different shelters during Hurricane Sandy, stating that she did not check to see if the restrooms at those shelters were accessible)).

73. Significantly, the City does not even know which of its shelters and evacuation centers are accessible. (*See, e.g.*, Tr. 328:23-329:1 (Belisle testifying that the City has yet to determine what percentage of New York public schools — the facilities the City uses for most shelters — have accessible bathrooms); *id.* at 333:18-22 (Belisle agreeing that “no one from the City knows what percentage of shelters have rest rooms that are accessible to people who must

use wheelchairs”); *id.* at 359:23-360:9 (Belisle testifying that he did not know whether all evacuation centers are accessible); Maniotis Dep. 90:3-5 (testifying that she did not know how many shelters are wheelchair accessible)).

74. Further, the evidence at trial demonstrated that many of the City’s shelters and evacuation centers are not fully accessible to people with disabilities — and that the City is aware of that fact. (*See, e.g.*, Tr. 319:21-14 (Belisle testifying that he is “aware that many polling sites,” which are located in the same DOE facilities as shelters, “as they were used the day of election, may be inaccessible”); *id.* at 330:2 (Belisle testifying that he is “aware that schools lack accessible bathrooms”); *id.* at 447:14-17 (MOPD Commissioner Calise testifying that he is aware of the fact that “at least some public schools have multiple architectural barriers for persons with disabilities”); *id.* at 496:25-497:3 (Susan Dooha, Executive Director of Plaintiff CIDNY, testifying that during a conversation with former MOPD Commissioner Matt Sapolin after Hurricane Irene, Sapolin stated “that he believed the City knew that the shelters were not accessible, and that they would not claim that the shelters were accessible”); *see also id.* at 915:22-916:10 (Elizabeth Davis, the City’s expert, testifying that “[t]here are evacuation centers that appear to have deficiencies [in accessibility] that need correction”)). For example, Special Needs Coordinator Belisle testified that “[n]ot all of [the City’s] shelters are accessible” and that “some of [the City’s evacuation centers] may not be as accessible as we want.” (Tr. 359:21-360:4). Similarly OEM Deputy Commissioner McKinney testified that “[n]ot all of the City’s emergency shelters are fully accessible.” (McKinney Dep. Vol. I 105:20-21).

75. When CIDNY employee Trapani compared a list of shelters open during Hurricane Irene with a list of schools identified by the DOE as inaccessible to people with disabilities, she found that the majority of schools used as shelters during Hurricane Irene had

been characterized by the City itself as inaccessible. (See Trapani Decl. ¶ 35; Tr. 148:14-149:19; Ex. 146). And several witnesses, including the Commissioner of the MOPD, testified about shelters that lacked accessible entrances or bathrooms, or were otherwise not fully accessible to people with disabilities, during Hurricanes Irene and Sandy. (See, e.g., Trapani Decl. ¶¶ 39-41, 43, 52-54, 58, 61-62; Dooha Decl. ¶¶ 57-58, 81-82; Calise Decl. ¶¶ 15-16).

76. Although the record makes clear that many evacuation centers and general shelters are not accessible to people with disabilities, the evidence suggests that SMNSs are wheelchair accessible. (See, e.g., Maniotis Decl. ¶ 24; Tr. 448:13). At a minimum, Plaintiffs did not prove through competent evidence that the SMNSs are inaccessible to people with disabilities. (But see Tr. 541:1-12 (Plaintiffs' expert Peter Blanck testifying that he visited an SMNS that did not appear to be fully accessible — citing, in particular, apparently inaccessible outdoor showers — but stating that he did not perform “an accessibility assessment”)).

77. Because of its awareness that not all shelters and evacuation centers are accessible — that is, compliant with the ADA — the City has adopted a “usability” standard. (See, e.g., Tr. 363:8-11 (Belisle testifying that “during the training . . . for coastal storm staff,” the City “reiterate[s] the importance of having a *usable* entrance for people with disabilities” (emphasis added)); Tr. 330:6-10 (Belisle testifying that “before Hurricane Sandy, the City confirmed that “all of the shelters” had “a wheelchair *usable* entrance” (emphasis added)); Calise Decl. ¶¶ 17-18 (testifying that during Hurricane Sandy, the MOPD chose — and the Mayor, the OEM website, and the MOPD website used — the term “usable” rather than accessible to describe evacuation center entrances because not all of the entrances were “completely code compliant,” but they did “enable an individual using a wheelchair to enter the shelter, sometimes with assistance”)).

78. As the City's expert conceded, the concept of "usability" is not equivalent to the ADA's standard of accessibility. (Tr. 912:25-913:14; 915:22-916:5, 930:5-8; *see also* Tr. 439:3-5 (testimony of MOPD Commissioner Calise that usability does not necessarily mean consistent with the ADA); Calise Decl. ¶ 18 (same); Kailes Decl. ¶ 80 (describing usability as "an unclear term, not a standard or reassuring term in the disability community, and likely lead to confusion and lack of trust as to the accessibility at these facilities")). Instead, it represents the City's attempt to enable people with disabilities to at least enter a facility, despite the fact that it might be inaccessible within the meaning of the ADA. (*See* Calise Decl. ¶ 18; Tr. 439:3-24, 913:7-13). For example, during Hurricane Sandy, some evacuation centers had temporary ramps that, while not ADA-compliant, enabled a person using a wheelchair to enter the facility, at least when assisted by a police officer. (*See* Calise Decl. ¶¶ 15, 18).

79. During Hurricanes Irene and Sandy, some shelters lacked even a usable entrance. (*See, e.g.*, Trapani Decl. ¶¶ 52-53 (testifying that at Newcomers High School, used as a shelter during Hurricane Sandy, the ramp leading to the front door was unsafe, the front door was too narrow to accommodate a person using a wheelchair, and there was no indication of any other entrance that was accessible); *id.* ¶ 58 (testifying that at P.S. 166, another shelter used during Hurricane Sandy, the accessible entrance was difficult to find and locked and that there was no doorbell); Morales Decl. ¶¶ 18-22 (class member testifying that she was unable to get into a shelter during Hurricane Irene because the accessible entrance was locked). *But see* Belisle Decl. ¶ 65 (testifying that the City, presumably after Trapani's visit, identified an accessible entrance at Newcomers High School)).

80. Some evacuation centers and shelters also lacked bathrooms that were even usable by people with disabilities. (*See, e.g.*, Torres Decl. ¶¶ 38-39 (class member testifying that

she was unable to use the bathroom at Hunter College, the shelter to which she evacuated during Hurricane Irene, because the stalls were too narrow to accommodate her wheelchair)). The City's public information during Hurricane Sandy stated only that the shelters would have usable *entrances*; it made no commitment that the shelters would have usable — let alone accessible — restrooms, or that the dormitories, food distribution areas, and other shelter areas would themselves be usable. (*See, e.g.*, Ex. 69 at CNY00023748; Ex. 61; *see also, e.g.*, Tr. 439:16-19 (MOPD Commissioner Calise testifying that a shelter would be “usable” if it permitted a person with a disability to enter but lacks a bathroom that person could use)).

81. Furthermore, nothing in the City's written emergency plans requires any of the City's evacuation centers or shelters to be usable, or even defines the term. Nor do the plans provide any guidance for making evacuation centers and shelters usable. Therefore, there is no way to know whether or how the City will attempt to make inaccessible shelters usable for people with disabilities in the future.

82. The City's sheltering plans also provide little or no guidance for setting up shelters to ensure that people with disabilities can navigate within them. The plans do not, for example, require that accessibility be considered in designating the rooms to be used for registration, dormitories, and other shelter spaces. Nor do they require that the pathways to and from the accessible entrance (if there is one), the bathroom, and the main sheltering areas be navigable by people with mobility disabilities (although the checklist given to shelter operators does direct them to determine whether such pathways are “clearly marked, unobstructed, and without stairs” (Ex. 472)). Both the plan for setting up general shelters and the plan for SMNSs, however, do provide guidelines designed to allow people in wheelchairs to access the cots used in the dormitories. (*See* Ex. 14, at CNY001441 (providing that cots at SMNSs should be set up

with “[s]pace to pull a wheelchair up to the cot”); Ex. 16, at CNY001266 (instructing that general shelter operators should “[a]llocate additional space around cots for shelterees who use wheelchairs or walkers, or who need extra room to get on and off the cots”).

83. City officials testified that if a shelter was not sufficiently accessible, the City would provide accessible transportation to another shelter that was. (*See* Calise Decl. ¶ 21; Van Pelt Decl. ¶ 14; Tr. 328:8-9). But there is nothing in the City’s sheltering plan that requires this. The plan states that once evacuees arrive at an evacuation center, they will “either be assigned to a Hurricane Shelter in the same facility or transported to an associated Hurricane Shelter or Special Medical Needs Shelter by bus.” (Ex. 7, at CNY000357). It does not, however, provide that the bus itself will be accessible to people with disabilities. In addition, the City has not assessed how many people might require accessible transportation between evacuation centers and shelters — and, by extension, whether it would be able to provide such transportation. (*See* McKinney Dep. Vol. I 81:3-8).

b. The Programmatic Accessibility of Shelters

84. In addition to ensuring that the shelter facilities are physically accessible, there are several other accommodations that may be required to ensure that people with disabilities are able to access sheltering. First, people with cognitive or sensory disabilities may require accommodations in order to effectively communicate with shelter staff, receive information, and navigate a shelter. (*See* Kailes Decl. ¶ 70; Ex. 65, at 126, 130; Ex. 153, at P001989). For example, those who are blind or have low vision might require information to be written in Braille or read aloud; those who are deaf may require a sign language interpreter or written communications; people with cognitive disabilities may require that information be presented slowly or in simple language. (*See* Ex. 65, at CNY020343, CNY020347; Ex. 153, at P001980-

81, P001989; Conner Decl. ¶ 20 (blind class member testifying that she would “need accessible formats of any printed materials in an emergency shelter . . . in Braille, in audio format, read aloud to [her], or electronically”); Curry Decl. ¶¶ 32-33 (testimony of class member who is deaf and has low vision that she would need “assistance with orientation” as well as assistance reading any printed materials and completing any paperwork)). Therefore, emergency planning experts emphasize the importance of both training shelter staff to communicate with people with disabilities and ensuring that emergency plans direct and make possible the provision of information via multiple modes of communication. (*See, e.g.*, Kailes Decl. ¶ 69; Ex. 65, at CNY020343, CNY020345; Ex. 153, at P001989).

85. The City provides shelter staff with some training and guidance on communicating with people with disabilities. For example, as part of their training, shelter operators are taught that in order to accommodate people with disabilities, information should be provided in multiple formats. (Ex. 501, at CNY014100). In addition, the City has developed a guide for shelter staff primarily focused on effective communication with people with disabilities. (Belisle Decl. ¶ 46; Ex. 48). And at the time of trial, OEM was developing a new video training course focused on interacting with people with disabilities, scheduled to be available to all City employees involved in the emergency sheltering system by the 2013 hurricane season. (Van Pelt Decl. ¶ 33; Belisle Decl. ¶ 45).

86. The sheltering plans, however, do not mention accessible communication, let alone provide for accommodations, such as sign language interpreters or common signage in Braille, to ensure that people with disabilities are able to communicate and understand the information provided at shelters. (*See, e.g.*, Tr. 338:17-21). Although the MOPD website stated that those who required sign language interpretation while in an evacuation center or shelter

during Hurricane Sandy would be provided an interpreter (*see, e.g.*, Ex. 359, at CNY00021262), Belisle testified that the City does not, in fact, provide interpreters at shelters (Tr. 338:20-21). The package of materials given to shelter operators does include an emergency communications board that contains pictures and symbols related to emergency situations and basic needs to help individuals who have difficulty communicating share their needs with shelter staff. (*See* Belisle Decl. ¶ 47; Van Pelt Decl. ¶ 30; *see also* Calise Decl. ¶¶ 13-15 (testifying that the boards were at the registration tables of five shelters he visited just before Hurricane Sandy); McLachlan Decl. ¶ 11 (testifying that there were communication boards available at the registration table at the SMNS at which she worked during Hurricane Sandy)). The board was not entered into evidence, however, so it is not clear what it contains or how helpful (or not) it might be.

87. Regardless, the City does not provide — or plan for — any other accommodations. Instead, the City relies on people with disabilities to find ways of communicating their needs without assistance. For example, the City’s *Ready New York* guide to developing a personal emergency plan advises individuals with hearing disabilities to “practice communicating [their] needs through gestures, note cards, text messages, or other means.” (Ex. 3, at CNY001089; *see also* Ex. 1, at CNY000039 (similar); Ex. 3, at CNY001089 (advising those preparing emergency plans to “plan how [they] will talk to . . . emergency workers in an emergency”)).

88. Some people with disabilities depend on service animals or caregivers to assist them and keep them safe and may only remain safe and independent in a shelter that permits them to remain with their service animal or caregiver. (*See* Kailes Decl. ¶¶ 69, 77; Ex. 65, at 126, 129; Ex. 153, at P001987-88). The City’s plans provide that people with disabilities may bring service animals to shelters and evacuation centers. (*See, e.g.*, Ex. 12, at CNY000663; Ex.

14, at CNY001484). The plans give conflicting guidance on whether people with disabilities will be permitted to stay in the same shelter with their caregivers; the plans suggest that people with disabilities may be placed in the same general shelter as their caregiver, but that caregivers may not be permitted to stay in SMNSs. (*Compare* Ex. 12, at CNY000664 (stating that people with disabilities may bring their “home health aide or family member” with them to a general shelter but not to an SMNS); *with* Ex. 14, at CNY001440 (providing that operators of SMNSs should “[m]ake every effort to see that each shelteree’s companions or caregivers also have space in the [same] Dormitory Area”)).

89. People with disabilities often depend on access to electricity. (*See* Kailes Decl. ¶ 70; Ryan Decl. ¶ 30; Ex. 65, at CNY020347-48; Ex. 153, at P001980). For example, some people depend on electricity to power life-sustaining equipment, such as ventilators. (Ex. 65, at CNY020347-48). And people with mobility disabilities often rely on power wheelchairs or scooters that need to be recharged. (*See* Kailes Decl. ¶ 70; Ex. 153, at P001980). In addition, some shelters are only accessible if the elevator is working, and thus if the shelter has power. (*See* Trapani Decl. ¶¶ 57, 61; Dooha Decl. ¶ 58). For many people with disabilities, then, their ability to stay in a shelter depends upon the availability of electricity at the shelter. (*See* Kailes Decl. ¶ 70 (“Another essential element that ensures people with certain disabilities are included in general population shelters is the ability to access power (when necessary via generators) for: charging power wheelchairs, scooters and other essential devices, and refrigerating certain medications.”); Ex. 153, at P001978 (guidance from the Federal Emergency Management Agency (“FEMA”) stating that emergency plans “should include strategies to provide power for services that require a back-up power system in an emergency or disaster”)).

90. The City’s shelter plans do not include strategies to provide back-up power generators at shelters or to otherwise ensure that electricity will be available at shelters for those who depend on it. (*See* Tr. 340:11-15 (Belisle testifying that nothing in the City’s written emergency plans “addresses the issue of providing power for people who use medical devices powered by electricity”). Every SMNS, however, either has a back-up generator on site or has the capacity to quickly connect one of the generators the City has purchased for this purpose. (*See* Davis Decl. ¶ 110; Maniotis Decl. ¶ 24; Tr. 340:7-10). The City does own some back-up generators (*see* Tr. 621:9-17), and during Hurricane Sandy, it was able to procure over 200 more (McKinney Decl. ¶ 60; *see also* Jenkins Decl. ¶ 13 (testifying that during Hurricane Sandy, the City was able to “set up emergency contracts with three vendors that provided large generators”). And “quick-connects” — connections that allow for the rapid installation of generators during an emergency — are installed at a small number of shelters. (*See* Davis Decl. ¶ 111 & n.4; Jenkins Decl. ¶ 40). During Hurricane Sandy, however, most evacuation centers lacked generators and some, therefore, at times, lacked power. (*See* Ex. 116, at 169:5-170:3).

91. At the time of trial, the City was in the midst of conducting an assessment of “critical infrastructure sites,” including evacuation centers and shelters, to survey and record the requirements of each facility for installing back-up generators, so that these requirements do not have to be assessed during an emergency. (Jenkins Decl. ¶ 40). The City has also requested funding from the federal government to install quick-connects in additional shelters and evacuation centers, as well as other critical sites. (Jenkins Decl. ¶ 41; Tr. 626:4-627:9).

92. As explained in a FEMA guide to planning for the integration of people with disabilities in general population shelters, “[d]espite best efforts and advance planning,” some people with disabilities will arrive at emergency shelters without the medical equipment,

medications, or food they need. (Ex. 153, at P001978; *see also* Kailes Decl. ¶ 75 (“For many people, it is unrealistic that they will be able to bring with them the equipment or supplies they need to stay independent and healthy.”); Buckner Decl. ¶ 12 (class member testifying that if she were away from home when an emergency occurred, she “would not have [certain] supplies that are essential for [her] survival”). FEMA therefore advises that emergency planners include in emergency plans “a process for locating, purchasing, and storing as much of the supplies and equipment as possible and practical to meet the needs of” shelter residents with special needs and that, prior to an emergency, planners “[d]evelop provider agreements with the private sector to ensure that necessary equipment and supplies that have not been purchased and stored will be available during an emergency or disaster.” (Ex. 153, at P001978; *see also* Blanck Decl. ¶ 43 (testifying that disaster planning “includes the need to ensure that shelters, when opened, contain life-sustaining equipment and other means that people with disabilities need, which may include . . . emergency medications, and durable medical equipment such as wheelchairs, walkers, and crutches”). Among other things, FEMA recommends that wheelchairs, wheelchair battery chargers, accessible cots, and nutritional drinks (for people with diabetes) be available at general population shelters. (Ex. 153, at P02076-82; *see* Kailes Decl. ¶ 76).

93. The City maintains a stockpile designed to provide the shelter system with the “basic supplies” required to house and care for 70,000 people for seven days. (Ex. 43, at CNY00023926). These supplies are pre-configured into sets to be delivered to evacuation centers, general shelters, and SMNSs in the event of an emergency. (*See* Ex. 43, at CNY00023930, CNY00023936-39; Ex. 250, at CNY00024561; Tr. 637:24-638:3). For emergencies with advance warning, supplies are sent to each shelter in advance. (*See* Ex. 8, at CNY018277; Ex. 249, at CNY00025688). The company with which the City contracts to deliver

stockpiled goods to shelters is obligated to do so within forty-eight hours of a City request. (Tr. 640:9-16). Therefore, in disasters that occur without warning, or where a shelter requires additional supplies from the stockpile, these supplies may be deployed within two days. (*See id.* at 638:17-24, 640:9-16; Van Pelt Decl. ¶ 41).

94. While the supplies provided to SMNSs include some items to accommodate people with disabilities, such as wheelchairs, accessible cots, and diabetic testing kits, the City's emergency plans do not call for such items to be provided to general shelters. (*See Ex. 43*, at CNY00023928-29, CNY00023936-39; Jenkins Decl. ¶ 29). Nevertheless, it seems that during Hurricane Sandy, at least some general shelters had accessible cots available. (*See Villari Decl. 19* (testifying that special needs cots were available at the general shelter housed in P.S. 217)); Trapani Decl. ¶ 59 (testifying that she observed that the general shelter located at P.S. 166 had both regular and special needs cots). *But see* Torres Decl. ¶ 42 (class member Melba Torres testifying that the shelter where she stayed during Hurricane Irene lacked accessible cots)).

95. Robert D. Van Pelt, the Director of Human Services at OEM, testified that this year, the City plans to purchase double the supplies typically stockpiled for SMNSs, so that these supplies will also be available to any general shelters that need them. (Tr. 839:14-19). In addition, he testified that the City is purchasing additional items to accommodate people with special needs, such as "wheelchairs of different kinds" and "toilet seats that are raised and have grips." (*Id.* at 839:20-24).

96. There are several items people with disabilities might require that are not stockpiled by the City. For example, the City does not stockpile power wheelchairs, chargers for such wheelchairs, walkers, ventilators, or prescription medications. (*See Jenkins Decl. ¶ 30*; Tr. 619:3-6, 619:17-24). Nor does the City have any memoranda of understanding with

organizations that might be able to provide these items in the event of an emergency. (See Tr. 619:25-620:11; 621:3-6). The City does have a requisition process through which it can obtain items that are not stockpiled. (Jenkins Decl. ¶ 30; Tr. 619:10-12, 640:24-641:11, 641:23-643:7). It is unclear, however, how long this process takes (see Tr. 619:7-16), or which items the City would be willing to requisition. But during trial, Plaintiffs did not point to a single instance during Hurricane Sandy or otherwise where the City failed to provide a person with a disability with supplies he or she needed; nor did they produce any evidence that, more generally, the requisition process is insufficient to meet the needs of people with disabilities.

97. Although the record indicates that at least some of the supplies required by people with disabilities are available at — or can, if needed, be procured by — the City’s shelters, the City warns otherwise in its communications with the public. For example, one *Ready New York* guide cautions that “Shelters DO NOT have special equipment (e.g., oxygen, mobility aids, and batteries). Be prepared to bring your own.” (Ex. 3, at CNY001092; see also Ex. 51 (311 call script for Hurricane Irene stating that evacuation centers “are not equipped to provide food for special diets”); Ex. 60 (311 call script for Hurricane Sandy stating “[i]f you need oxygen tanks or other medical equipment, bring it with you to the evacuation center,” and “refrigeration for medication will NOT be provided at evacuation centers”)).

98. These warnings are likely to discourage people with disabilities from evacuating to a shelter in the first instance. (See Kailes Decl. ¶ 72 (stating that the issuance of such warnings “will likely result in people being reluctant and fearful to evacuate, and can have serious unintended life-threatening consequences,” because people with disabilities will “believe that if they . . . cannot get what they need to survive and maintain their health, safety and independence once they get to a shelter, then they will be better off ignoring evacuation

instructions”); Bell Decl. ¶ 5 (class member testifying that he “would be reluctant to go [to a shelter] if [he] did not know . . . if [he] could get the help, medicine, and food” he needs); Ex. 65, at CNY020312 (“As seen in east coast hurricanes, some people with disabilities do not evacuate if they believe that shelters are not ready for them.”)).

c. The Shelter Survey

99. In order to determine the accessibility of the facilities it uses as shelters, the City included several questions about accessibility in a survey distributed online to all DOE facilities in October 2012. (*See* 2012 Shelter Survey, Ex. 47; Van Pelt Decl. ¶ 19; Maniotis Decl. ¶ 38; Belisle Decl. ¶ 50; Tr. 328:13-16 (Belisle testimony)). By the time of trial, nearly all of the schools in the DOE system had completed the survey. (*See* Van Pelt Decl. ¶ 19; Belisle Decl. ¶¶ 50, 51; Tr. 328:17-19).

100. The survey was completed by the custodial engineers at each facility. (*See* Van Pelt Decl. ¶ 21; Belisle Decl. ¶ 49). These employees were given an instruction sheet with the survey, but were not given any specialized training. (Tr. 331:22-24; 332:2-6). Although Belisle testified that no specialized training was needed to administer the survey (Tr. 332:2-6), Plaintiffs’ expert testified that the custodial engineers were inadequately trained to complete the survey, which was “very likely to lead to unreliable survey data.” (Kailes Decl. ¶ 81).

101. The survey directed the collection of information such as the measurements of facility entrances, the availability (or lack thereof) of wheelchair ramps, the measurements of facility elevators, and the presence (or absence) of Braille and visual cues in the facility elevators. (Ex. 47, at CNY019647-48, CNY019657). It did not, however, request measurements for bathrooms. (*See* Ex. 47, at CNY019665-66). Instead, it stated that “a bathroom is ADA accessible if it is marked with the universal wheelchair symbol.” (*Id.* at CNY019665). The

presence of such a symbol, however, does not necessarily mean a bathroom is actually accessible. (See Tr. 389:13-20 (Belisle testifying that “[w]e have . . . learned that there are bathrooms in schools that are marked with accessible symbols” that are not, in fact, accessible); *id.* 207:13-16; Kailes Decl. ¶ 82). In fact, during Hurricane Sandy, MOPD Commissioner Calise visited a shelter that had a restroom that was inaccessible, despite being marked with a universal access sign. (Tr. 450:19-451:5).

102. To remedy this problem, and to verify the survey data more generally, the City has begun to conduct site visits of the facilities surveyed. (See Davis Decl ¶ 104; Tr. 384:16-385:3). During these visits, teams from OEM, trained by Belisle, assess the accessibility of the facility by, for example, measuring entrances and restrooms. (See Tr. 395:6-21, 835:16-21; Davis Decl. ¶ 105; Van Pelt Decl. ¶ 21). Van Pelt testified that, as of the date of the trial, teams from OEM had visited all of the facilities used as evacuation centers in Zone A. (Tr. 835:22-25). In addition, OEM is working with MOPD to recruit volunteers with mobility disabilities to participate in additional site visits. (Van Pelt Decl. ¶ 21).

103. Although the City had initially planned to analyze the data from the surveys and site visits by February 28, 2013 (Ex. 483, at CNY 020085), it had not done so at the time of trial in March 2013. (See Tr. 328:25-329:1; 384:18-21). Once analyzed, the City intends to use the data to create a “corrective action plan.” (Ex. 483, at CNY 020085). It has not, however, done so yet. In addition, the City does not have a plan for implementing any corrective action needed to ensure the shelter system is accessible or for funding such action. Belisle testified that there is a proposal to allocate \$10 million dollars to the project, but that proposal has not been approved and there is no evidence that it will be. (Tr. 333:23-334:10).

d. Refuges of Last Resort

104. For coastal storms (that is, emergencies for which there is advanced notice), the City also provides refuges of last resort, facilities intended to provide a safe place for people who are stranded on the street and unable to reach a regular shelter before the storm hits. (*See* Ex. 6, at CNY000147). These refuges may operate without food, water, utilities, or other City assistance until the storm passes. (*Id.*) Like regular shelters, refuges of last resort are typically located in DOE school facilities. (Ex. 6, at CNY000149).

105. OEM maintains a list of facilities that could be chosen as refuges of last resort. (*See id.* at CNY000147-49). Facilities are chosen based on four criteria: (1) location within inundation zones; (2) proximity to major highways and thoroughfares; (3) structural ability to withstand storm surges; and (4) the number of floors above the rise of the greatest expected storm surge. (*Id.* at CNY000149). As a storm approaches, the City chooses the facilities that will be opened during that storm and disseminates the list to the media. (*Id.* at CNY000148). Facilities do not need to be accessible to people with disabilities to be chosen as refuges of last resort. (*See* McKinney Dep. Vol. I, at 127:14-16).

106. Because refuges of last resort are located in schools, the facility survey described above will provide information about the accessibility (or lack thereof) of these refuges. (*See* Tr. 344:5-8).

e. Sheltering in Place

107. In its outreach materials, the City advises residents that, in the event of an emergency, they may need to shelter in place — that is, remain where they are. (*See, e.g.*, Ex. 1, at CNY000041; Ex. 2, at CNY000008; Ex. 4A; Maniotis Dep. 55:24-57:2). Given this possibility, the City encourages residents to “[k]eep enough supplies in your home to survive for

at least three days.” (Ex. 4A; *see also* Ex. 1, at CNY000033 (“Every New Yorker should plan to be self-sufficient for several days.”)).

108. As Defendants’ expert explained, this guidance “serves to remind individuals that assistance may be slow to arrive due to the existence of debris and the massive response needs after a large-scale disaster.” (Davis Decl. ¶ 45). Additionally, it “helps individuals who cannot realistically self-sustain for that period to acknowledge that reality in advance of an event and to incorporate additional contingencies into their personal emergency plan to account for that reality.” (*Id.*). The seventy-two hour figure is consistent with advice from FEMA and the Red Cross that people should be prepared to shelter in place for at least seventy-two hours after an emergency. (*See id.*; Tr. 211:14-17, 261:5-9).

109. Plaintiffs’ experts characterized the City’s guidance as “evidence that the City assumes people with disabilities can shelter in place for 72 hours.” (Kailes Decl. ¶ 90; *see* Blanck Decl. ¶ 85 (“New York City’s emergency plans assume that individuals must be prepared to survive after an emergency in place for up to three days.”)). Such an assumption, these experts testified, is problematic because some people with special needs cannot survive for that long without electricity, medication, and/or assistance from others. (*See* Blanck Decl. ¶ 85; Kailes Decl. ¶ 89).

110. But the City’s plans do not *assume* that people with disabilities (or anyone else) can or will shelter in place after an emergency. The Coastal Storm Plan, for example, provides an evacuation plan designed to ensure that all those in the affected area are evacuated *before* an emergency strikes. (*See* Ex. 8, at CNY018277). Similarly, the Area Evacuation Plan provides for evacuation as an initial response to an emergency. (*See* Ex. 245A, at 11). Thus, the City’s guidance that people, including those with disabilities, prepare to shelter in place is simply that:

guidance that people should be prepared for the possibility that assistance within the first seventy-two hours will not be available.

F. Power Outages

111. As noted above, people with disabilities are particularly vulnerable to power outages, as they often rely on equipment that requires electricity. (*See* Trapani Decl. ¶ 27 (testifying that people with disabilities often “rely on electricity daily to power their wheelchairs, run life sustaining equipment like oxygen concentrators, and keep temperature sensitive medicines cool”); *id.* (“Without some preparedness for the extraordinary power needs of people with disabilities, these people are less able to remain safe and healthy during a disaster.”); *see also* Kailes Decl. ¶ 64; Ryan Decl. ¶ 30; Ex. 65, at 130-31; Ex. 153, at P001980).

112. The City maintains a Power Disruption Plan to coordinate and guide the City’s response to power outages. (*See* Ex. 19). The Plan provides that the Consolidated Edison Company of New York (“Con Ed”), which provides electricity for nearly all of New York City (*id.* at CNY001667), must compile a list of its customers who rely on electricity for life-supporting medical equipment or for whom the loss of electricity would cause a serious medical hardship. (*See id.* at CNY001693; *see also* Ex. 112 (Con Ed brochure allowing customers to inform Con Ed that they are supported by electrically powered life-sustaining equipment)).⁸ The plan provides that, in the event of a power outage (or, if possible, in advance of one), Con Ed will attempt to contact the customers on the list by telephone and advise them to use back-up equipment or to go to the nearest hospital emergency room. (*See* Ex. 19, at CNY001693-94; Wahlig Decl. ¶ 22). If Con Ed is unable to reach a customer that relies on electrically powered

⁸ State law requires that electric companies maintain such a list. *See* 16 N.Y.C.R.R. § 105.4(b)(5).

life-sustaining equipment, the NYPD will dispatch an officer to make sure that the person is safe. (Ex. 19, at CNY001694; Wahlig Decl. ¶¶ 22-23).

113. Many people with disabilities rely on electricity-powered equipment that is integral to their ability to remain healthy, safe, and mobile, but is not technically life-supporting. (See Kailes Decl. ¶ 64 (“[T]he definition of ‘life sustaining equipment’ is quite narrow, and would not encompass the many thousands of people who are not on life-sustaining equipment but who nevertheless rely on electricity for mobility (whether for mobility devices such as a power wheelchair, or in order to use the elevator) or who have periodic use of breathing devices and oxygen, or to store temperature sensitive medication.”)). Although the Power Disruption Plan recognizes that these people may be particularly affected by a power outage (see Ex. 19, at CNY001670), there is nothing in the plan, or in any other City plan, about accommodating the needs of these people. (See Tr. 340:11-15 (Belisle testifying that there is nothing in the City’s emergency plans that addresses the provision of power to people with disabilities who require electricity to power their medical devices); Kailes Decl. ¶¶ 66-67; see also Tr. 792:20-23 (FDNY Chief Villani testifying that there is no Fire Department plan for evacuating people with disabilities in the case of a power outage)).

114. During Hurricane Sandy, a vast swath of the City lost power. The day after the hurricane made landfall, over 700,000 people were without power. (See Ex. 81, at CNY00022469). Nearly 40,000 customers remained without power over a week later. (See Ex. 93, at CNY00022117). MOPD Commissioner Calise testified that, after Hurricane Sandy, he heard that some people had problems because their medical equipment had run out of power. (See Tr. 445:11-14).

115. Class member Joyce Delarosa testified that although she has informed Con Ed that she relies on an electricity-powered oxygen machine, Con Ed did not notify her in advance of Hurricane Sandy that it would be shutting down power in her neighborhood. (Delarosa Decl. ¶¶ 20, 40). Because of the power outage, she was unable to use her oxygen machine. (*Id.* ¶¶ 54-63). As a result, her health deteriorated and she was in serious pain, leading her to require emergency medical attention for oxygen deprivation. (*Id.* ¶¶ 63-64, 71).

116. Class member Melba Torres relies on electricity to power her wheelchair, the air mattress she uses to reduce the pain caused by a curve in her spine, and the lift she uses to get in and out of bed. (Torres Decl. ¶¶ 84-86). Torres testified that, because of the power outage during Hurricane Sandy, she was unable to evacuate her building and was unable to inflate her bed for a week, leaving her in severe pain. (*Id.* at ¶ 85).

117. In the aftermath of Hurricane Sandy, the City established charging centers in areas that remained without power. (Murray Decl. ¶ 40). But there is nothing in the City's emergency plans that mandates such stations.

118. Days after the hurricane, many residents still lacked power, and the City was concerned that people might be trapped in their homes. (*See* Murray Decl. ¶¶ 21-22; Tr. 716:6-16). But the City's emergency plans did not account for this situation — at the time of Hurricane Sandy (and at the time of trial), the City had no plan for canvassing after a power outage or other emergency. (*See* Tr. 355:14-18; 714:16-25; McKinney Dep. Vol. III, at 22:8-17).

119. The City's first response was to coordinate a volunteer effort to canvas apartment buildings as well as single family homes in areas without power. (*See* Murray Decl. ¶¶ 15, 21; Ex. 477). That effort began on November 3, 2012 — five days after Hurricane Sandy. (*See id.* ¶ 21). Volunteers distributed food, water, and blankets and identified those who needed

assistance. (*See id.* ¶¶ 23, 30-32). Between November 3 and November 5, over 1,000 volunteers managed to reach about 12,000 structures in four boroughs. (*Id.* ¶ 21-22). The City did not, however, track where these volunteers had been, and it had no way of knowing which buildings had been reached. (*See* Tr. 719:15-720:23).

120. Fearing, therefore, that these efforts were insufficient, between November 9 and November 14, 2012, the City undertook a more systematic canvassing operation of high-rise buildings conducted by teams composed of local and federal health and emergency personnel. (*See* Kass Decl. ¶¶ 10-12, 19; McKinney Decl. ¶ 62; Ex. 116, at 73:8-12; Tr. 719:12-721:5, 721:19-722:7). These teams assessed and attempted to fulfill the needs of those they reached — by providing food, water, medical attention, prescription medication, and, where necessary, evacuation assistance. (*See* Kass Decl. ¶¶ 12, 15-17). In six days of canvassing, the teams knocked on nearly 37,000 doors, approximately 13,000 of which were occupied; received nearly 1,000 food and water requests; and assisted with 35 medical evacuations. (*Id.* ¶ 19).

121. On November 24, 2012 — nearly a month after the hurricane — the City began canvassing buildings that were six stories or lower in which people remained without heat or electricity. (*See* Belisle Decl. ¶ 67; Manahan Decl. ¶ 24; McKinney Decl. ¶ 62; Tr. 346:3-6). The City worked with the National Guard to provide residents with food, blankets, and space heaters as well as to encourage them to relocate to a hotel, paid for by the City. (*See* Belisle Decl. ¶ 67; Manahan Decl. ¶ 24).

122. As noted above, none of these canvassing efforts was undertaken pursuant to a City emergency plan, as the City had no such plan. (*See* Tr. 355:14-18; 714:16-25; McKinney Dep. Vol. III, at 22:8-17). Without such a plan, although the City was able to marshal substantial resources and reach a large number of people, its efforts were haphazard and belated. Its first

systematic effort to reach those without power began ten days after Hurricane Sandy. (*See* McKinney Decl. ¶ 62). And even that effort suffered from a lack of guidance that could have been remedied by advance planning. For example, the canvassing teams were directed to record information such as the need for food and water. (*See* Tr. 718:21-719:1; Ex. 516). But halfway through the canvassing operation, there was a change of management structure, and the new teams did not continue to gather information in a systematic way. (*See* Tr. 718:2-18).

123. The City intends to develop a canvassing plan, but at least as of the time of trial had not yet done so. (*See* McKinney Decl. ¶ 32 (testifying that a plan for canvassing after an emergency will likely be incorporated into the City's emergency plans in the future); McKinney Dep. Vol. III, at 57:10-22 (testifying that the City intends to develop a canvassing plan, but as of yet, there is no such plan "underway"))).

G. Recovery Operations

124. There is also evidence in the record supporting Plaintiffs' claims about the recovery process after an emergency. The City has several plans relating to recovery after an emergency, including plans for the provision of both life-sustaining commodities, such as food and water, as well as information, assistance, and services. (*See, e.g.*, Exs. 24, 25, 30, 31, 273). The City also has a Debris Management Plan to guide debris clearance, removal, and disposal after an emergency. (*See* Ex. 17, at CNY000696). Finally, at the time that Hurricane Sandy struck, the City was considering the formulation of a plan concerning interim housing following a disaster. After the hurricane, the City established an office to design and implement a housing recovery plan for those affected by the disaster. The Court will describe each in turn.

a. Resource Provision

125. The City's primary plan for distributing life-sustaining commodities after an emergency is the Commodities Distribution Point Plan. (Ex. 24). This plan provides that, after a large-scale emergency, the City may set up commodity distribution points to distribute, among other things, food, water, and ice for medication that must be kept cold. (*See id.* at CNY018522, CNY018544). It requires that the distribution sites be accessible to people with mobility impairments and that the sites be clear of debris. (*See id.* at CNY018542; Ex. 25, at CNY018609). There is, however, nothing in the plan to ensure that communications at the commodity distribution points are accessible to people with disabilities.

126. The City opened several commodity distribution points after Hurricane Sandy. (*See, e.g.*, Ex. 85, at CNY00022385; Ex. 86, at CNY0002234-35; Ex. 89, at CNY00022271). Putting aside those people who were unable to reach the distribution points because, for example, they had no way to leave their apartments in the first place, there was no evidence presented at trial that people with disabilities were unable to access the services these centers provided.

127. The City also has a Disaster Assistance Service Center plan, which provides that, after a disaster, the City may open Disaster Assistance Service Centers to provide information, assistance, and services from federal, state, and local agencies as well as from private organizations. (*See* Ex. 30, at CNY015216; Maniotis Decl. ¶¶ 27-30). Such centers provide generally applicable services — including the provision of telephone and internet access, financial assistance, and relocation assistance — as well as services specifically relevant to people with special needs. (*See* Ex. 30, at CNY015226-30). For example, they provide information regarding the replacement of lost durable medical equipment and referrals for medical consultations. (*See id.*). The plan governing the Disaster Assistance Service Centers

directs that they are to be located in a facility that is “Americans with Disabilities Act (ADA) compliant or modifiable to be compliant.” (*See id.* at CNY015234). There is, however, nothing in the plan to ensure that communications within these centers are accessible to people with disabilities.

128. The City opened several Disaster Assistance Service Centers (in some cases, called Restoration Centers) after Hurricane Sandy. (*See, e.g.*, Ex. 85, at CNY00022385; Ex. 93, at CNY00022116; Ex. 94, at CNY00022074). MOPD Commissioner Calise testified that he visited these centers to make sure that they were accessible to people with disabilities and to inform the centers’ staff that there was a video sign language interpretation system they could use. (Calise Decl. ¶ 32). Again, putting aside those who were unable to leave their buildings, there was no evidence presented at trial that people with disabilities were unable to access the services that these Disaster Assistance Service Centers provided.

129. Finally, after Hurricane Sandy, the City provided substantial assistance to those who required prescription medication. For example, volunteers handed out fliers listing pharmacies that were open and could expedite prescription requests. (*See* Murray Decl. ¶¶ 44-45; *see* Ex. 477, at CNY00025439-41; Tr. 693:22-694:8). Some volunteers even contacted pharmacies on behalf of those who required medication refills. (*See* Murray Decl. ¶ 45). The City also partnered with the State Department of Health to provide a mobile pharmacy in areas affected by the hurricane in which pharmacies were not yet reopened. (*See id.* ¶ 46). These actions were not, however, taken pursuant to any emergency plan. The City does not, in fact, have any plan directing the provision of prescription medication assistance in the event of an emergency.

b. Debris Removal

130. People with disabilities are uniquely affected by the debris that may accumulate after a disaster. (*See Ex. 65*, at CNY020369-70; Blanck Decl. ¶¶ 44, 94). People with mobility disabilities or visual or cognitive impairments, for example, may not be able to navigate streets and sidewalks obstructed with debris. (*See Ex. 65*, at CNY020369-70; Bell Decl. ¶ 26; Buckner Decl. ¶ 27; Kailes Decl. ¶ 32).

131. The City's Debris Management Plan provides for debris clearance and removal in phases. (*See Ex. 17* at CNY000699). The initial phase of the Plan calls for clearing debris from roadways, prioritizing “[p]rimary routes and streets that provide access to hospitals, shelters, police, fire stations and other facilities providing vital public services”; then, “[r]outes and streets that provide access to components of the . . . utility systems that are vital to the restoration of essential utility services”; and finally, “[r]esidential streets and access ways.” (*Id.* at CNY000711-13). The next phase of the Plan involves removing the debris that was cleared to the side of the road during the first phase and collecting debris from neighborhoods affected by the emergency. (*See id.* at CNY000714).

132. While the Debris Management Plan provides that the City shall “coordinate efforts” to address the needs of people with disabilities, it does not provide any guidance as to how their needs will be taken into account. (*See Ex. 17*, at CNY000745). Plaintiffs’ experts testified that this cursory mention of people with special needs was insufficient to ensure that the needs of people with disabilities were met. (*See* Blanck Decl. ¶ 83; Kailes Decl. ¶ 114).

133. Class member Jen Halbert, who uses a wheelchair, testified that after a blizzard in 2010, the snow on the sidewalk in front of her building was not removed, and therefore she could not leave her apartment building for a week. (Halbert Decl. ¶ 21). Similarly, class member Jean

Ryan, who also uses a wheelchair, testified that a few years ago, she stayed home for over a month due to the City's failure to clear snow from in front of her building. (Ryan Decl. ¶¶ 31-32). Plaintiffs, however, provided no evidence that anyone with disabilities was hindered by debris in the aftermath of either Hurricane Irene or Hurricane Sandy.

c. Interim Housing

134. Special Needs Coordinator Belisle testified that an important component of the City's emergency planning is to provide interim housing after a disaster. (Tr. 344:23-345:2). Before Hurricane Sandy, the City participated in the development of a Regional Disaster Recovery Housing Plan. (See Ex. 248; McKinney Decl. ¶ 70). It is not clear, however, whether or to what extent this plan was ever adopted by the City. (See, e.g., McKinney Decl. ¶ 70 (testifying that the Regional Disaster Recovery Housing Plan is an "example of planning that was interrupted by" Hurricane Sandy)).

135. Approximately five years ago, the City began to develop a removable, reusable housing unit that could be installed quickly to provide interim housing in the aftermath of a disaster. (See McKinney Decl. ¶ 70; Ex. 37; Tr. 345:13-21). The unit is designed to be fully compliant with the ADA. (See McKinney Decl. ¶ 70; Ex. 37, at CNY006996). A series of prototype units were being installed next to OEM's Cadman Plaza headquarters in Brooklyn at the time of trial. (See McKinney Decl. ¶ 70). OEM Deputy Commissioner McKinney testified that he expected them to be operational by fall of 2013. (*Id.*).

136. As this interim housing was not operational at the time of trial, it was, of course, not available during Hurricane Sandy. (See Tr. 766:5-10). In fact, at the time the hurricane struck, the City had no operational plan to provide interim housing — that is, housing beyond

that provided by the shelter system — for people with disabilities, or anyone else for that matter, following an emergency. (*See* Tr. 345:3-12, 764:1-3).

137. In the aftermath of Hurricane Sandy, Mayor Bloomberg created an Office of Housing Recovery Operations to design and implement a housing recovery plan for those affected by the hurricane. (*See* Gair Decl. ¶ 1; Ex. 258; Ex. 310, at CNY00023834). Among other things, the Office of Housing Recovery Operations helped to ensure that people with disabilities had livable housing after Hurricane Sandy. For example, it convinced FEMA to include repairs of accessibility features, such as ramps, in the kinds of home repairs it would fund through FEMA’s Rapid Repair program. (Gair Decl. ¶ 13).

138. In addition, the City provided accessible hotel rooms to people with special needs who required interim housing through a program that provided hotel rooms to those displaced after Hurricane Sandy. (*See id.* ¶ 21). Individuals could request a hotel room by calling 311, by visiting a Restoration Center — a center coordinating recovery services — or through a referral from those who were canvassing after the hurricane. (*See* Ex. 251, at CNY00025531; Weissman Decl. ¶ 22). There is no evidence that people with disabilities were unable to enter the City’s hotel program or that they were not given accessible hotel rooms. (*See* Davis Decl. ¶ 135 (testifying that the program “includes a number of features that support the needs of people with disabilities including . . . multiple access points” and the availability of “accessible hotel rooms”)). In fact, several people who were given interim housing through the City hotel program were identified as having a mobility disability. (*See* Gair Decl. ¶ 20).

139. With respect to longer-term solutions, at the time of trial the Office of Housing Recovery Operations was developing a plan to use a \$20 million grant the City had received for housing recovery. (*See* Tr. 770:5-23).

140. Although there is a draft Concept of Operations guiding the Office of Housing Recovery Operations, its purpose is limited to providing guidance on the internal operations of the Office with respect to Hurricane Sandy. (*See* Tr. 764:4-10). It is not, and is not intended to be, a general housing recovery plan. (*See id.*). At the time of trial, therefore, the City still lacked an emergency plan for housing recovery after a disaster.

H. Education and Outreach

141. In addition to the foregoing plans concerning the response to emergencies, the City has a substantial outreach program, designed to encourage disaster preparedness and volunteerism. (*See* Schaffer Decl. ¶ 2). This program includes training volunteers to educate their communities about emergency preparedness and to assist with the City's emergency response; bringing together the leaders of community organizations to discuss and promote emergency preparedness; giving presentations throughout the City; and publishing emergency preparedness brochures. (*See id.* ¶¶ 14, 26, 28, 30).

142. The outreach and education materials distributed by the City emphasize personal preparedness. (*See* Exs. 1-4A; Tr. 387:7-9, 570:1-8; Trapani Decl. ¶ 5). In particular, the City publishes a series of emergency preparedness guides titled *Ready New York*, which are designed to assist people in developing their own personal emergency plans. (*See* Exs. 1-4A; Ex 12, at CNY000635; Schaffer Decl. ¶¶ 26-27). They are distributed throughout the year at fairs and presentations, including those targeted to seniors and people with special needs; they are available on the OEM website; and they may also be ordered by calling 311. (*See* Schaffer Decl. ¶¶ 28-29; Tr. 571:25-562:9). Most of the guides are available in audio, and the guide for seniors and people with disabilities is available in Braille as well. (Schaffer Decl. ¶¶ 2, 26). As noted

above, the *Ready New York: My Emergency Plan* guide is specifically designed to assist people with special needs in creating their own emergency plan. (See Ex. 3; Schaffer Decl. ¶ 27).

143. Personal preparedness is indisputably an important component of emergency planning. (See Davis Decl. ¶ 35). The information provided by the City, however, fails in several respects to provide people with disabilities sufficient information to prepare for an emergency. For example, the *Ready New York* guides provide almost no information about the accessibility of the shelter system — and, to the extent they do, the information is incorrect. None of the *Ready New York* guides provides a list of shelters or evacuation centers that are accessible to people with disabilities. The *Ready New York: My Emergency Plan* guide — which is specifically designed for people with special needs — states only that “[s]helters are subject to change depending on the emergency” and that residents should “call 311” to find an accessible shelter during an emergency. (Ex. 3, at CNY001092).

144. In fact, the *Ready New York* guide specific to hurricanes is the only guide that even provides a list of the City’s evacuation centers. (Tr. 573:23-574:2). But that guide does not specify which evacuation centers are accessible. (See Ex. 4A). Instead, it states that “[c]ity shelters include accessible facilities and accommodations for people with special needs,” suggesting incorrectly that all shelters are accessible to people with disabilities. (*Id.*). City websites also lack shelter accessibility information. (See Delarosa Decl. ¶ 35; Trapani Decl. ¶ 37). Thus, there appears to be no way for people with special needs to determine in advance which shelters or evacuation centers are accessible to them (a gap that is hardly surprising given that, as discussed above, the City itself does not know which evacuation centers are accessible).

145. Similarly, although the City advises people with special needs to plan for transportation in an emergency, it does not provide information about whether accessible

transportation will be available or how to access it. (*See, e.g.*, Ex. 3, at CNY001089 (stating that residents should “[b]e prepared to make other transportation plans if [their] subway or bus is not running” but failing to provide any information about accessible emergency transportation options); Ex. 4A (advising people with special needs to “consider your transportation needs” without providing any guidance as to how they should do so)).

146. As numerous class members testified, without information such as which shelters or evacuation centers, if any, are accessible or whether there will be accessible transportation available during an emergency, it is difficult for people with disabilities to develop a sufficient personal emergency plan. (*See* Bell Decl. ¶¶ 18-19; Buckner Decl. ¶ 13; Conner Decl. ¶ 12; Curry Decl. ¶¶ 25-26; Delarosa Decl. ¶ 74; Halbert Decl. ¶¶ 9-10; Martinez Decl. ¶ 60; Morales Decl. ¶¶ 11-12; Ryan Decl. ¶¶ 14-15).

I. Communications

147. Finally, as noted, Plaintiffs raise various claims with respect to the means and content of the City’s communications with people with disabilities.

148. Because people with disabilities have diverse communication needs — for example, those who are blind may require Braille or oral communication and those who are deaf may require visual communication or translation into American Sign Language — reaching people with special needs often requires the use of multiple modes of communication. (*See* Ex. 65, at CNY020313; Belisle Decl. ¶ 44; Davis Decl. ¶¶ 53, 58). In addition, people with disabilities may be more likely to receive and heed emergency information that is disseminated through people who are familiar with, and trusted by, those receiving the information. (*See* Ex. 65, at CNY020310; Davis Decl. ¶¶ 54; Kailes Dec. ¶ 106).

149. The City uses both of these strategies. The City provides emergency-related information through several means of communication, including traditional media, government websites, social media, the 311 system — the City’s non-emergency, government services hotline — and door-to-door notification. (*See, e.g.*, Exs. 1-4A, 66-75; Ex. 12, at CNY000627-29; Ex. 29, at CNY011850-51, CNY011854, CNY011883-84; Ex. 302, at CNY00023789; McKinney Decl. ¶ 63). In addition, it distributes information through the Special Needs Advance Warning System, a network of service providers for people with special needs and other special needs organizations. (*See* Ex. 12, at CNY000631; Ex. 18).

a. Traditional Media

150. A primary way in which the City communicates emergency information to the public is through traditional media — in particular, through press conferences and press releases. (*See, e.g.*, Ex. 12, at CNY00638-58; Exs. 66-74, 299-335).

151. The City’s Emergency Public Information Plan, its general plan for communicating emergency information, provides “recommendations” about how emergency announcements should be publicized. (*See* Ex. 29, at CNY011881). For example, the Plan recommends that “TV stations should not overlap closed-captioning space when using crawl”; that the City should “[r]emind stations to pronounce websites and spell them out, as well as print them across the screen”; that “[i]f public briefings have a sign language interpreter, stations should include them in the frame”; and that TTY/TDD numbers and relay information (services that allow people with hearing or speech deficiencies to communicate over the telephone, typically via text) should “[a]lways” be included. (*Id.* at CNY01182). By their terms, these recommendations are just recommendations; there is no requirement that they be followed, and the City does not have any agreements in place to ensure that they will be.

152. Similarly, the Coastal Storm Public Information Plan, the City's plan for communicating emergency information during a coastal storm, provides that "OEM will . . . work with the media and partner organizations to ensure information is disseminated to people with hearing and sight impairments, and that information is provided in an accessible format." (Ex. 12, at CNY000619). It does not, however, detail how it will do so.

153. Before and during Hurricane Irene, there was no closed captioning of the Mayor's press conferences; nor did the City use a sign language interpreter. (*See* Curry Decl. ¶ 20; Tr. 296:9-11). In connection with Hurricane Sandy, the City drafted a policy titled "Engaging the Deaf/Hard-of-Hearing Community." (*See* Calise Decl. ¶ 11). The policy provides that "American Sign Language ('ASL') interpreters shall be used, at a minimum, when the Mayor provides the public with critical and time-sensitive communications about a significant and imminent threat to public health and safety during a state of emergency." (Ex. 298). "Such situations," the policy continues, "[s]hall also require the City to issue a media advisory to the directors, managers, and editors of all major television networks . . . formally request[ing] that networks provide open captioning and post written bullets on screen summarizing the Mayor's official statements." (*Id.*). Finally, the policy provides that "all of the Mayor's official statements under a state of emergency shall be promptly posted on the City website at nyc.gov." (*Id.*).

154. In accordance with this policy, there was an ASL interpreter present at the Mayor's press conferences during Hurricane Sandy. (*See* Calise Decl. ¶ 11; Curry Decl. ¶ 22; Tr. 295:23-296:1). In addition, the City issued a Media Advisory "request[ing] that broadcasters provide . . . open captioning of all mayoral announcements and storm updates and when applicable include graphics and post bulleted points that summarizes [sic] the announcement."

(Ex. 297; *see* Calise Decl. ¶ 11. *But see* Curry Decl. ¶ 22 (testifying that the press conferences she saw during Hurricane Sandy were not closed captioned)).

b. Websites

155. The City also disseminates information through multiple websites, including NYC.gov, the 311 website, the OEM website, and the website of the MOPD. (*See, e.g.*, Ex. 1, at CNY000038; Ex. 12, at CNY000627; Calise Decl. ¶ 24). The Emergency Public Information Plan “recommends” that websites publicizing emergency information “are accessible to those with special needs.” (Ex. 29, at CNY011881-82). With the exception of the City’s online evacuation zone map, which cannot be read by a screen reader for people with disabilities (*see* Bell Decl. ¶ 24), there was no evidence presented at trial that the City’s websites are inaccessible to people with special needs.

156. During Hurricane Irene, the NYC.gov website experienced so much traffic that it caused a temporary outage. (*See* Morrisroe Decl. ¶ 56). The City increased its web capacity thereafter, and as a result, the website remained online during Hurricane Sandy. (*See id.* ¶ 58).

c. The 311 System

157. The 311 system is the City’s main source of government information and access to non-emergency services. (*See* Morrisroe Decl. ¶¶ 11-12; Tr. 292:22-25, 598:13-15). The 311 system is available twenty-four hours a day, seven days a week, by telephone and text message, as well as online. (Morrisroe Decl. ¶¶ 11-12). The 311 call center is accessible to people with hearing impairments through the New York State Relay system for those with hearing impairments. (Morrisroe Decl. ¶¶ 12, 16). The City publicizes the existence of 311 in various ways, including through press releases, social media, and emergency preparedness brochures. (*See* Morrisroe Decl. ¶ 29).

158. The 311 call center responds to most inquiries with an automated system that provides information through pre-recorded instructions, messages, and announcements. (Morrisroe Decl. ¶ 19). The automated system begins by stating “that 311 is ‘here to help’” and directing callers to call 911 if the situation is an emergency. (*Id.*).

159. A caller whose question cannot be answered through the automated system is connected with a representative, who responds to the caller based on scripts in the 311 database. (*See* Morrisroe Decl. ¶¶ 27-28; Exs. 50-57, 59-60). The scripts are based on information provided by City agencies, which is translated into a usable format by 311 employees. (*See* Morrisroe Decl. ¶ 24; Tr. 603:22-604:8).

160. Callers cannot directly access emergency services through the 311 system, but 311 call representatives can connect a call to 911. (Morrisroe Decl. ¶ 32). If a 311 representative believes a caller might have an emergency, the representative initiates a conference call with 911 and remains on the line until the 911 operator decides whether 311 or 911 should handle the call. (*Id.* ¶ 33; Tr. 615:18-616:4).

161. During an emergency, the 311 system provides information such as guidance on preparing for an emergency, how to shelter in place, the location of evacuation zones, how to request evacuation assistance, and evacuation center locations. (*See* Morrisroe Decl. ¶ 34-36; Exs. 50-60, 486). In fact, in many cases, the City’s public information regarding emergencies does not directly provide information relevant to people with disabilities, but rather directs them to call 311. (*See, e.g.*, Ex. 1, at CNY000041 (“To find an accessible shelter near you during an emergency, call 311”); Ex. 67, at CNY00023739 (Mayoral press release issued during Hurricane Sandy directing individuals to call 311 for transportation assistance)).

162. The 311 system is supported by telephone lines provided by Verizon. (Morrisroe Decl. ¶ 55). During Hurricane Sandy, both of the locations Verizon uses to support the 311 lines failed. (*Id.*). Nevertheless, the 311 call center remained operational, albeit in a more limited capacity, because the City was able to redirect lines from another location until service at the primary 311 locations was restored. (*Id.*).

163. Belisle, OEM's Special Needs Coordinator, testified that he had never seen an assessment of the capacity of 311 during an emergency. (Tr. 293:6-9). Further, although the 311 system maintains statistics about the number of calls it receives and the time each caller waits to speak to a representative, it cannot track callers who try to reach the system but are unable to get through because the capacity of the system was reached. (Tr. 612:20-24). Therefore, although the 311 system was operational throughout Hurricane Sandy, there is no way to know how many people attempted to get through to the system but were unable to do so. (*See id.*).

164. Several class members testified that they had difficulty reaching 311 during Hurricane Sandy. Class member Kenneth Martinez, for example, testified that he called 311 for about three and a half hours before he was able to get through. (Martinez Decl. ¶ 38; *see also id.* ¶ 41 (testifying that he also called 911, which just had a recording instructing callers to call 311)). Melba Torres testified that she called 311 numerous times and was unable to get through. (*See Torres Decl.* ¶¶ 47, 52). Similarly, Mary Conner testified that there were times in the week after Hurricane Sandy when she was unable to reach 311. (*See Conner Decl.* ¶ 12).

165. During Hurricane Sandy, the 311 system experienced a much higher than average call volume, leading to longer than average wait times for those who wished to speak with a representative. (Morrisroe Decl. ¶ 50). Before the hurricane, the system received an average of 360,000 calls per week, and the average wait time to speak with a 311 call representative was

eighteen seconds. (*Id.* ¶¶ 47, 49). In the days between October 25 and November 10, 2012 — that is, the time period just before, during, and after the hurricane — 311 received over three million calls, and the average wait time to speak with a representative was 5.3 minutes. (*See id.* ¶¶ 48, 50). Some callers, however, waited over twenty minutes to speak to a representative. (*See id.* ¶ 50 (stating that the maximum wait time on November 4, 2012 was just over twenty minutes); Ex. 84, at CNY00022409 (noting that as of 11:20 p.m. on October 31, 2012, callers were waiting over twenty-six minutes to speak with a representative)).

166. While under ordinary circumstances, these wait times may not be problematic, during an emergency in which the power goes out, some individuals may not have sufficient power in their cellular telephones to wait on hold. (*See, e.g.*, Delarosa Decl. ¶ 48; Torres Decl. ¶ 74; Tr. 195:14-22). In addition, even when 311 has sufficient capacity to receive calls, it can only help those who have the ability to place calls, an ability that is threatened in an emergency. (*See, e.g.*, Ex. 301, at CNY00023773 (transcript of Mayor Bloomberg’s remarks two days after Hurricane Sandy describing the loss of telephone service); Tr. 89:21-92:1 (class member Joyce Delarosa testifying that she had intermittent difficulty making calls during Hurricane Sandy)).

167. For these reasons, 311 may not always a reliable source of information or services during an emergency.

d. The Special Needs Advance Warning System

168. One of the primary ways the City communicates emergency-related information to people with disabilities is through the Special Needs Advance Warning System (“AWS”). (*See* Belisle Decl. ¶ 40; Ex. 18). The AWS is “an all-hazards tool to push targeted information to individuals with special needs during hazardous weather, potential utility or transportation

disruptions, public health emergencies, incidents requiring evacuation, and other emergencies that may impact special needs populations.” (Ex. 18, at CNY000859).

169. The AWS does not provide information directly to people with disabilities; instead, it provides information to service providers for people with special needs by email and online. (Belisle Decl. ¶¶ 40, 42; Ex. 18, at CNY000857). These providers are, in turn, supposed to convey the information to those they serve. (See Maniotis Decl. ¶ 16; Ex. 18, at CNY000857). In addition, when there is an emergency, OEM conducts conference calls with “umbrella AWS agencies,” government agencies that provide services or support to people with special needs or the organizations that serve them. (See Belisle Decl. ¶ 42). The AWS also allows providers to convey information to OEM, such as, for example, how an emergency is affecting their clients or resources the provider might need. (See Ex. 18, at CNY000857; Belisle Decl. ¶ 40).

170. Approximately 900 service providers — organizations such as City agencies that serve people with special needs, advocacy groups for people with disabilities, and health care organizations — have access to the AWS website and receive AWS emails. (See Belisle Decl. ¶ 43; Tr. 294:21-22).

171. As explained in the City’s plan detailing the AWS, the rationale behind the system is that “[e]mergency communication to people with special needs is more effective when done through their service providers” because “[t]hese agencies have developed trusted relationships with their clients and can tailor communication and support to their client’s specific needs.” (Ex. 18, at CNY000857). Plaintiffs’ expert June Kailes testified that “emergency communication to people with disabilities can,” in fact, “be more effective when done through their service providers.” (Kailes Dec. ¶ 106). She expressed concern, however, that “the City is

overly reliant on this system to communicate with all people with disabilities” and that “the City does not know the effectiveness of the system, or lack thereof.” (*Id.*).

172. Although it is clear that the AWS reaches many organizations, it is not clear to what extent the information provided to these organizations actually reaches people with disabilities. For one thing, the providers do not receive any resources from the City to aid them in communicating emergency information to people with disabilities. (Tr. 295:8-11). The organizations, therefore, may simply lack the resources to communicate the messages they receive via AWS to their clients. (*See, e.g.*, Trapani Decl. ¶ 75 (“Many of the AWS participating organizations . . . are small non-profits whose budgets and staffs are overtaxed on a good day. These are not organizations that have the resources to take on major notification efforts.”); *id.* ¶ 74 (testifying that Plaintiff organization CIDNY was unable to reach all of its clients who lived in the evacuation zone during Hurricane Sandy and that if an emergency occurred at night or on a holiday, the organization might not have staff available to pass along AWS messages); Wasserman Decl. ¶ 27 (testifying that during Hurricane Irene, Plaintiff organization BCID was unable to reach all of its clients “because it had limited time and resources with which to conduct this outreach and notification” and that “[i]n an emergency with no advance warning, it is unlikely that BCID would be able to reach a significant portion, if any, of its clients”); Tr. 516:18-517:2 (BCID Executive Director Peters testifying that during Hurricane Sandy, BCID was closed due to the storm, and therefore the organization could not contact its clients until after the Mayor had issued the evacuation order); Ex. 18, at CNY000862 (“Not [all] AWS agencies have the time or resources to reach all clients during an emergency.”)).

173. In addition, many people with disabilities are not connected to a service provider, and therefore would not receive any information transmitted via the AWS. (*See, e.g.*, Kailes

Decl. ¶ 108 (“The primary problem with New York’s Advance Warning System is that the targeted individual must be connected with a service organization, and persons who are not affiliated with a service or government organization would not get these notifications. This means that many people who live at home independently day to day, who would nonetheless need accessible services during an emergency, would not get warnings about how to use and access accessible emergency services.”); Trapani Decl. ¶ 73 (“People who do not regularly rely on CIDNY for services because they live independently do not get our AWS notifications despite the fact that in an emergency, these people would need additional help and aid.”); Delarosa Decl. ¶ 41 (class member testifying that she is “not a client of any of the independent living centers, or a client of Meals on Wheels, or any other similar organization, so there is no reason . . . any of those organizations would have [her] contact information”); Ex. 18, at CNY000857 (“Not all people with special needs are connected to an AWS agency or are ‘known.’”)).

174. As Belisle acknowledged, the City has not conducted any study to determine the capacity of service providers to deliver the information they receive through AWS to their members and clients. (Tr. 295:12-17).

e. Notify NYC

175. In addition to the AWS, which provides emergency information to organizations, the City maintains an emergency notification service for individuals called Notify NYC. (McKinney Decl. ¶ 13). Anyone wishing to receive notifications from Notify NYC may register online or via 311 to receive Notify NYC messages, which are available in several formats, including email, text message, and recorded phone call. (*Id.*; Ex. 1, at CNY000047). The City’s expert Elizabeth Davis testified that the service was accessible to people with disabilities because

it allowed people to register online or by telephone and because it provided messages in a variety of formats. (Davis Decl. ¶ 68).

176. Notify NYC's reach, however, is limited. The day before Hurricane Sandy made landfall, Notify NYC had only 100,245 subscribers — only about one percent of the population of New York City. (Ex. 79, at CNY00022659).

f. On-the-Ground Communication

177. In addition to its efforts to reach people through traditional media and online, the City also distributes emergency information — for example, evacuation notices — by passing out fliers door-to-door. (See Ex. 12, at CNY000621; Ex. 302, at CNY00023789; Conner Decl. ¶ 14; Murray Decl. ¶¶ 41, 44; Torres Decl. ¶ 62; Tr. 752:7-11).

178. The Emergency Public Information Plan directs that written messages should “[u]se specific, clear and concise language, written at a 3rd grade reading level”; that “[w]hen stating locations,” written messages should “include information about finding accessible transportation and sites for those with special needs”; and that those creating fliers and forms should “consider” various “print accessibility guidelines,” such as font type, style, color, and spacing. (Ex. 29, at CNY011881). But there is nothing in the City's emergency plans requiring that these fliers be accessible to those with visual disabilities or that the information they contain be communicated in other ways to those who cannot read the fliers.

179. During Hurricanes Irene and Sandy, the City distributed fliers that were not, in fact, accessible to those with visual disabilities. (See, e.g., Conner Decl. ¶ 14 (class member with vision disability testifying that, in advance of Hurricane Irene, she received a flier containing evacuation information that she could not read); Tr. 695:6-12 (testifying that the fliers distributed

during canvassing after Hurricane Sandy were not available in Braille and that there were no instructions about other methods of distributing the information they contained)).

180. Although not called for by the City's emergency plans, during Hurricane Sandy, NYPD officers also drove through neighborhoods using their patrol car loudspeakers to convey emergency information. For example, in the aftermath of the hurricane, officers drove through neighborhoods that remained without power and used patrol car loudspeakers to encourage residents to go to shelters. (*See, e.g.*, Ex. 305, at CNY00023801; Ex. 307, at CNY00023818; Ex. 310, at CNY00023833; Ex. 313, at CNY00023842).

181. Several class members reported that they lacked sufficient information during Hurricane Irene and Hurricane Sandy. (*See* Bell Decl. ¶ 25; Conner Decl. ¶ 14; Delarosa Decl. ¶¶ 35-36, 38; Torres Decl. ¶ 62). For the most part, however, the problem was not that they were unaware of the emergency. (*But see* Martinez Decl. ¶ 28 (testifying that he was unaware of Hurricane Sandy until the day before it made landfall because he did not have a computer and did not watch television or listen to the radio in the days before the storm)). To the contrary, the evidence demonstrates that, because the City distributed information through multiple means, emergency information effectively reached people with disabilities.

g. The Content of Communication

182. The absence of information cited by class members was thus more a function of the content than the means of the City's communications. (*See* Bell Decl. ¶ 25; Delarosa Decl. ¶¶ 35-36; Torres Decl. ¶ 62). For example, the City's plans do not require that the City provide information about shelter accessibility, accessible transportation, evacuation assistance, or any other information required by people with disabilities to respond to an emergency. And, indeed,

during recent emergencies, the information relevant to people with special needs has often been incomplete, incorrect, or lacking entirely.

183. For example, the City has failed to provide reliable information about the accessibility of the shelter system. The City has alternately (and in some cases, incorrectly) stated that all evacuation centers are accessible; that all shelters have at least one wheelchair-accessible entrance; and that all evacuation centers have at least one entrance usable by people with wheelchairs. (See Ex. 61 (email sent before Hurricane Sandy via the AWS incorrectly stating that “[a]ll shelters have at least one wheelchair *accessible* entrance” (emphasis added)); Ex. 151 (email sent by Belisle to an employee of CIDNY before Hurricane Irene stating incorrectly that “all 65 evacuation centers are *accessible*” (emphasis added)); Ex. 60 (311 script from Hurricane Sandy instructing 311 operators to inform callers that “[a]ll evacuation centers have at least one *usable* entrance for wheelchairs” (emphasis added)); Ex. 69, at CNY 00023748 (transcript of Mayoral statement, in which Mayor stated “[a]ll of these shelters have at least one entrance usable for wheelchairs”); see also Delarosa Decl. ¶ 33 (class member testifying that in researching the shelter system in advance of Hurricane Irene, she “found that the information about accessibility was inconsistent”).

184. During Hurricane Sandy, the Mayor repeatedly stated that all of the City’s evacuation centers had at least one entrance that was “usable” by people with wheelchairs. (See Exs. 67-69). This information was also provided to those who called 311. (See Ex. 60). There was no information, however, about whether the facilities within the evacuation centers — such as restrooms and sheltering areas — were accessible. (See Exs. 60, 67-69; see also Delarosa Decl. ¶ 35 (class member testifying that in advance of Hurricane Sandy, a 311 operator told her that the City maintained a list of “accessible” shelters, but that the operator could not tell whether

the shelters on the list had accessible bathrooms); Trapani Decl. ¶ 37 (testifying that she “was simply not able to obtain information that was reliable about where fully accessible shelters were located, or about how accessible any individual shelter was in fact”).

185. The City also fails to provide sufficient information about evacuation and transportation assistance for people with disabilities. The City’s initial messages regarding Hurricane Sandy, for example, did not provide any information at all about evacuation assistance for people with disabilities. (*See* Ex. 66, at CNY00023735 (transcript of Mayor Bloomberg’s remarks, stating “[a]s to the homebound who are living in these communities: if you have homebound relatives or acquaintances in these low-lying areas, consider taking steps now to move them to a safer location, in your own home, or in the home of a relative or friend”); Ex. 278, at CNY00020830 (AWS message stating “[i]f your client lives in an evacuation zone, and the Mayor calls for an evacuation then please prompt them to make arrangements to stay with friends and family if necessary. If those arrangements cannot be made please help him or her determine where they will go and how they will get there if there is an evacuation.”)). This is consistent with the press release templates provided in the Coastal Storm Public Information Plan, which, until twenty-four hours before a storm, do not provide any information about accessible transportation or evacuation assistance from the City; instead, they state “[i]f you have a disability that may prevent you from evacuating your home on your own, seek assistance from friends, relatives, and neighbors.” (*E.g.*, Ex. 12, at CNY000642, CNY000644, CNY000646).

186. One day before the Mayor issued the evacuation order in connection with Hurricane Sandy, the City began directing people to call 311 for transportation or evacuation assistance. (*See, e.g.*, Ex. 67, at CNY00023739; Ex. 68, at CNY00023744; Ex. 355). The City, however, provided no further information about, for example, what accessible transportation was

available, how long it would be available, and where it was located. Additionally, the information provided was sometimes wrong or misleading; for example, the website for the MOPD continued directing people to contact 311 to request evacuation assistance from paratransit for one day after paratransit had already shut down. (*See* Ex. 356). After Hurricane Sandy, the Mayor announced that the City would provide buses to shelters in areas that remained without power, but he did not state whether the buses would be accessible to people with disabilities. (*See, e.g.*, Ex. 304, at CNY00023797).

187. Instructing people with special needs to call 311 immediately before or during an emergency is not as effective as providing them with information directly and in advance of an emergency. First, it undermines their ability to develop a personal plan in advance of an emergency, the importance of which the City's own outreach materials stress. (*See* Exs. 1- 4A; Tr. 387:7-9, 570:1-8; Trapani Decl. ¶ 5; *see also, e.g.*, Tr. 451:25-452:3 (MOPD Commissioner Calise acknowledging that people who use wheelchairs or have other disabilities need to plan and learn in advance where accessible shelters are located)). Further, as explained above, during an emergency, the 311 system may have long wait times; callers may have difficulty getting through; and telephone service may be unavailable entirely. During an emergency, the communication and transportation options for people with disabilities in particular may be severely curtailed.

188. Several class members testified about the lack of sufficient information during Hurricane Sandy. (*See, e.g.*, Bell Decl. ¶ 25 (“The Mayor . . . gave no useful information or instructions about what people who are blind should do. The Mayor said nothing I could use about how blind people or persons with other disabilities like me might evacuate, shelter, or signal to authorities that they need help.”); Delarosa Decl. ¶ 35 (stating that during Hurricane

Sandy, she could not find shelter accessibility information online, nor was 311 able to provide such information); *id.* ¶ 38 (testifying that during Hurricane Sandy, a 911 operator informed her that she “did not know what the emergency plans were for people who use wheelchairs”). Class member Melba Torres, for example, who lives in New York City Housing Authority housing, testified that the day the Mayor issued the evacuation order, she received a flier under her door at 5:40 p.m. informing her that the building’s elevators would be shut off by 8:00 p.m. (Torres Decl. ¶ 62). The flier, however, included no information about where she should go, whether the shelter system was accessible to people with disabilities, or whether there was accessible transportation to take her to a shelter. (*Id.*). Lacking this information, she stated that she was unable to get out of the building by the time the elevators shut down. (*See id.* ¶¶ 62-67).

CONCLUSIONS OF LAW

189. As noted, Plaintiffs allege deficiencies in the following areas of emergency planning and preparedness for persons with disabilities: (1) evacuations, including evacuations from multi-story buildings and transportation; (2) the sheltering system and the amount of time people are expected to shelter in place without assistance; (3) power outages; (5) recovery operations; and (6) communications and outreach. They bring claims under Title II of the ADA, 42 U.S.C. § 12131 *et seq.*, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.*, and the NYCHRL, N.Y.C. Admin. Code § 8-101 *et seq.*

A. Legal Standards

190. The legal framework that governs this case is not materially in dispute. The parties largely, if not entirely, agree on the applicable legal standards.

a. The ADA and Rehabilitation Act

191. Title II of the ADA provides in relevant part that “[n]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. Similarly, Section 504 of the Rehabilitation Act states that “[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794.

192. Although “there are subtle differences between these disability acts, the standards adopted by Title II of the ADA for State and local government services are generally the same as those required under section 504 of federally assisted programs and activities.” *Henrietta D. v. Bloomberg*, 331 F.3d 261, 272 (2d Cir. 2003) (internal quotation marks omitted); *see also, e.g., Weixel v. Bd. of Educ. of City of New York*, 287 F.3d 138, 146 n.6 (2d Cir. 2002) (“Apart from the Rehabilitation Act’s limitation to denials of benefits ‘solely’ by reason of disability and its reach of only federally funded — as opposed to ‘public’ — entities, the reach and requirements of both statutes are precisely the same.”). Further, in this case, the parties agree that the differences between the two statutes are not relevant. (*See* Pls.’ Mem. Fact and Law, Docket No. 90, at 4 n.1; Defs.’ Pre-Trial Mem. Law, Docket No. 97, at 4 n.1). Accordingly, the Court will consider the ADA and Rehabilitation Act claims together. *See Henrietta D.*, 331 F.3d at 272 (doing the same and citing cases for the proposition that a court may do so unless one of the “subtle distinctions” between the statutes “is pertinent to a particular case”).

193. The ADA was enacted to “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b)(1). Given this purpose, it is to be broadly construed. *See Henrietta D.*, 331 F.3d at 279; *see also Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967) (noting the “familiar canon of statutory construction that remedial legislation should be construed broadly to effectuate its purposes”); *Castellano v. City of New York*, 142 F.3d 58, 69 (2d Cir. 1998) (noting “the ADA’s broad remedial purpose”). The same is true of the Rehabilitation Act. *See, e.g., Heilweil v. Mount Sinai Hosp.*, 32 F.3d 718, 722 (2d Cir. 1994) (“Because the [Rehabilitation] Act is a remedial statute, it and the regulations promulgated under it are to be construed broadly.”).

194. In order to establish a violation of the ADA or the Rehabilitation Act, Plaintiffs must show that: (1) they are “qualified individuals” with a disability; (2) Defendants are subject to the ADA or the Rehabilitation Act; and (3) Plaintiffs “were denied the opportunity to participate in or benefit from [the City’s] services, programs, or activities, or were otherwise discriminated against by [D]efendants, by reason of [their] disabilities.” *Henrietta D.*, 331 F.3d at 272 (internal quotation marks omitted). Here, there is no dispute that Plaintiffs are qualified individuals with disabilities (or organizations that advocate on their behalf and have standing to sue as organizations, *see Brooklyn Ctr. for the Disabled v. Bloomberg*, 290 F.R.D. 409, 415-17 (S.D.N.Y. 2012)); that the City is subject to the ADA and the Rehabilitation Act; and that the City’s emergency preparedness program is a service, program, or activity within the meaning of both statutes. (*See* Defs.’ Pre-Trial Mem. Law (disputing none of these issues); Defs.’ Proposed Findings Fact & Conclusions Law (same)). The only issue, then, is whether Plaintiffs were denied the opportunity to participate in, or benefit from, the City’s emergency preparedness and response program or were otherwise discriminated against by the City.

195. The ADA seeks to prevent not only intentional discrimination against people with disabilities, but also — indeed, primarily — discrimination that results from “thoughtlessness and indifference,” that is, from “benign neglect.” *Alexander v. Choate*, 469 U.S. 287, 301 (1985); see H.R. Rep. No. 101–485(II), at 29 (1990). Thus, it is insufficient for a program to be offered on equal terms to those with and without disabilities; the law requires “affirmative accommodations to ensure that facially neutral rules do not in practice discriminate against individuals with disabilities.” *Henrietta D.*, 331 F.3d at 275; see also *Tennessee v. Lane*, 541 U.S. 509, 511 (2004) (“Recognizing that failure to accommodate persons with disabilities will often have the same practical effect as outright exclusion, Congress required the States to take reasonable measures to remove . . . barriers to accessibility.”); 42 U.S.C. § 12112(b)(5)(A) (defining discrimination to include failing to “mak[e] reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability”). As the Second Circuit has put it, “[i]t is not enough to open the door for the handicapped; a ramp must be built so the door can be reached.” *Dopico v. Goldschmidt*, 687 F.2d 644, 652 (2d Cir. 1982) (internal quotation marks and alterations omitted).

196. In particular, with respect to Plaintiffs’ claims in this case, “the relevant inquiry asks not whether the benefits available to persons with disabilities and to others are actually equal, but whether those with disabilities are as a practical matter able to access benefits to which they are legally entitled.” *Henrietta D.*, 331 F.3d at 271. Specifically, “an otherwise qualified handicapped individual must be provided with *meaningful access* to the benefit that the grantee offers.” *Id.* (emphasis added) (internal quotation marks omitted); see also *Alexander*, 469 U.S. at 301 (holding that the ADA requires not only that people with disabilities be provided with access to public services, but that they “be provided with *meaningful access*” (emphasis

added)). To accomplish such “meaningful access, reasonable accommodations in the grantee’s program or benefit may have to be made.” *Henrietta D.*, 331 F.3d at 271; *accord Alexander*, 469 U.S. at 301.

197. At the same time, the Second Circuit has emphasized that a distinction must be drawn “between (i) making reasonable accommodations to assure access to an existing program and (ii) providing additional or different substantive benefits.” *Wright v. Giuliani*, 230 F.3d 543, 548 (2d Cir. 2000) (per curiam). The ADA and the Rehabilitation Act “do not require that substantively different services be provided to the disabled, no matter how great their need for the services may be. They require only that covered entities make ‘reasonable accommodations’ to enable ‘meaningful access’ to such services as may be provided, whether such services are adequate or not.” *Id.* The statutes, in other words, do not require “optimal” accommodations. *J.D. ex rel. J.D. v. Pawlet Sch. Dist.*, 224 F.3d 60, 71 (2d Cir. 2000).

198. In interpreting the mandates of the ADA, Courts look to the regulations promulgated by the Department of Justice, which was charged by Congress with implementing the Act. *See Henrietta D.*, 331 F.3d at 273.⁹ Such regulations provide in relevant part that “a public entity, in providing any aid benefit, or service, may not,” on the basis of disability: (1) “[d]eny a qualified individual . . . the opportunity to participate in or benefit from the aid, benefit, or service”; (2) “[a]fford a qualified individual . . . an opportunity to participate in or

⁹ Whatever degree of deference is owed to the regulations (an issue not in dispute here), the views expressed by the Department of Justice in the Statement of Interest it filed in this case are “entitled to respect, but only to the extent that those interpretations have the power to persuade.” *Christensen v. Harris Cnty.*, 529 U.S. 576, 587 (2000) (internal quotation marks and citation omitted). The Court finds that the views expressed in the Statement of Interest are entitled to great respect, as the Statement was well researched, well reasoned, and ultimately quite persuasive. That said, although the Statement was very helpful to the Court in evaluating the complex issues in this case, the Court notes that it has conducted an independent analysis of each issue in this case, and has not relied on the Statement to support any of its conclusions.

benefit from the aid, benefit, or service that is not equal to that afforded others”; or (3) “[p]rovide a qualified individual . . . with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.” 28 C.F.R. § 35.130(b)(1).¹⁰

199. In evaluating whether a particular program complies with the ADA, the program must be evaluated “in its entirety.” 28 C.F.R. § 35.150(a). “[T]he ADA does not . . . require perfection.” *United Spinal Ass’n v. Bd. of Elections*, 882 F. Supp. 2d 615, 624 (S.D.N.Y. 2012). It does not, for example, “[n]ecessarily require a public entity to make *each* of its existing facilities accessible.” 28 C.F.R. § 35.150(a)(1) (emphasis added); *see also Tennessee v. Lane*, 541 U.S. at 531-32. It does, however, require that “when viewed in its entirety,” a “service, program, or activity” administered by a public entity be “readily accessible to and usable by individuals with disabilities.” 28 C.F.R. § 35.150(a).

200. To the Court’s knowledge, only one other court — the District Court for the Central District of California — has ever examined a public entity’s emergency preparedness and planning for compliance with the ADA and the Rehabilitation Act. *See Communities Actively Living Indep. & Free v. City of Los Angeles* (“CALIF”), No. CV 09-0287 (CBM), 2011 WL 4595993 (C.D. Cal. Feb. 10, 2011). In that case, the court found, on summary judgment, that the emergency preparedness program of the City of Los Angeles failed to “include provisions to notify people with auditory impairments or cognitive disabilities of an emergency, or evacuate, transport, or temporarily house individuals with disabilities during or immediately following an emergency or disaster.” *Id.* at *13. Such failures, the court held, violate Title II of

¹⁰ The Justice Department has also promulgated more specific regulations governing, for example, the accessibility of public communications and facilities that house government services. These regulations are discussed below as relevant.

the ADA and Section 504 of the Rehabilitation Act. *See id.* at *17. Although the court did not find it “necessary . . . to enumerate every deficiency at [that] stage of the litigation,” it highlighted Los Angeles’s failure “to provide or [even] identify accessible shelters when such shelters are available to other residents” as well as its reliance on *ad hoc* accommodations rather than planning in advance to meet the needs of people with disabilities. *Id.* at *13-14. Based on these deficiencies, and others the court did not address in detail, the court held that people with disabilities were “denied the benefits of the City’s emergency preparedness program because the City’s practice of failing to address the needs of individuals with disabilities discriminates against such individuals by denying them meaningful access to the City’s emergency preparedness program.” *Id.* at *15.

b. The NYCHRL

201. As noted, Plaintiffs also bring claims under the NYCHRL. Under that law, it is “an unlawful discriminatory practice for any . . . owner, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation, because of the actual or perceived . . . disability . . . of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof.” N.Y.C. Admin. Code § 8-107(4)(a). The NYCHRL further requires that “any person prohibited by the [law] from discriminating on the basis of disability shall make reasonable accommodation to enable a person with a disability to . . . enjoy the right or rights in question provided that the disability is known or should have been known by the covered entity.” *Id.* § 8-107(15)(a). Defendants do not dispute that the City’s emergency planning is subject to the NYCHRL. (*See* Defs.’ Pre-trial Mem. Law 5).

202. Although the ADA and the NYCHRL are similar in nature, they are not coextensive. *See Loeffler v. Staten Island Univ. Hosp.*, 582 F.3d 268, 278 (2d Cir. 2009). Under the Local Civil Rights Restoration Act of 2005 (the “Restoration Act”), N.Y.C. Local Law No. 85 (2005), the NYCHRL is to “be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York State civil and human rights laws, including those laws with provisions comparably-worded to provisions of [the NYCHRL], have been so construed.” *Id.* § 7. As New York courts have made clear, “[a]s a result of [the Restoration Act], the [NYCHRL] now explicitly requires an independent liberal construction analysis in all circumstances, even where state and federal civil rights laws have comparable language.” *Williams v. N.Y.C. Hous. Auth.*, 872 N.Y.S.2d 27, 31 (1st Dep’t 2009); *accord Loeffler*, 582 F.3d at 278. Accordingly, “[t]here is now a one-way ratchet: ‘Interpretations of . . . federal statutes with similar wording may be used to aid in interpretation of New York City Human Rights Law, viewing similarly worded provisions of federal and state civil rights laws as a *floor* below which the City’s Human Rights law cannot fall.’” *Loeffler*, 582 F.3d at 278 (quoting the Restoration Act § 1 (emphasis added)).

203. In particular, the NYCHRL has a broader definition of disability than the definitions contained in the ADA and the Rehabilitation Act, *see Attis v. Solow Realty Dev. Co.*, 522 F. Supp. 2d 623, 631-32 (S.D.N.Y. 2007), as well as a broader notion of which accommodations are reasonable, *see Phillips v. City of New York*, 884 N.Y.S.2d 369, 378 (1st Dep’t 2009). For purposes of liability in this case, however, the Court has not found — and the parties have not identified — any relevant difference between the analysis required by the NYCHRL and the analysis required by the federal laws of the question at issue here: whether the City discriminates against people with disabilities in its emergency preparedness program. *See*

Kreisler v. Second Ave. Diner Corp., No. 10 Civ. 7592 (RJS), 2012 WL 3961304, at *14 (S.D.N.Y. Sept. 11, 2012) (applying the same standard under the ADA and the NYCHRL where the parties had provided no reason to believe the standards under the two laws were different for purposes of the case at issue), *aff'd*, — F.3d —, 2013 WL 5340465 (2d Cir. 2013) (per curiam). Furthermore, as the Court concludes that the City's emergency plans violate the ADA and the Rehabilitation Act, it follows that Defendants are liable under the NYCHRL as well.

B. Discussion

204. Having summarized the applicable legal principles, the Court turns to Plaintiffs' challenges to the City's plans for (1) evacuations, including evacuation from multi-story buildings and transportation; (2) the sheltering system and sheltering in place; (3) power outages; (4) recovery operations following emergencies; and (5) emergency-related communications and outreach.

a. Evacuations

205. First, Plaintiffs have proved that the City's plans for evacuations, including its plans for the evacuation of multi-story buildings and its plans for transportation in the event of an emergency evacuation, are not in compliance with the ADA, the Rehabilitation Act, and the NYCHRL. The City maintains several plans intended to facilitate the safe evacuation of City residents and visitors during an emergency. For the most part, these plans assume that people will be able to exit their buildings unassisted and that they will evacuate using public transit. For many people with disabilities, however, these assumptions are flawed. People with disabilities may require assistance evacuating their buildings and accessible public transportation in order to reach an evacuation center. The City's plans do not sufficiently accommodate either of these needs.

206. Most glaringly, apart from the HEO, the City has no plan whatsoever for evacuating people with disabilities from multi-story buildings. The evidence at trial showed, however, that many people with disabilities cannot evacuate multi-story buildings on their own, particularly if a power outage has rendered elevators inoperable. The City's witnesses testified that the City does not need to plan specifically for the evacuation of people with disabilities because it can accommodate all those who need evacuation on a case-by-case basis. But as the court held in *CALIF*, such *ad hoc* accommodations "are both legally inadequate and practically unrealistic." 2011 WL 4595993, at *14.

207. Instead, the evidence at trial, including testimony from the City's own witnesses, demonstrated that the needs of people with disabilities, including the need for evacuation assistance, could only be accommodated through advance planning. "The purpose of the City's emergency preparedness program is to *anticipate* the needs of its residents in the event of an emergency and to *minimize* the very type of last-minute, individualized requests for assistance described by the City, particularly when the City's infrastructure may be substantially compromised or strained by an imminent or ongoing emergency or disaster." *Id.* With respect to its plans for evacuation of residents from multi-story buildings during an emergency, therefore, the City has failed to provide people with disabilities with meaningful access.

208. This exclusion is magnified by the City's failure to ensure the availability of sufficient accessible transportation in the event of an emergency. The City's evacuation plans rely on public transportation, but there is no dispute that the vast majority of such transportation is inaccessible to people with disabilities under the best of circumstances.¹¹ Further, the

¹¹ In its response to the Department of Justice's Statement of Interest, the City notes that subway and bus service are provided by the New York City Transit Authority ("NYCTA"), and that, "[w]hile NYCTA is a planning partner with the City, it is a separate legal entity, and [] not a

evidence at trial demonstrated that even transportation that is ordinarily accessible to people with disabilities is likely to be unavailable during an emergency. MTA buses, for example, which have two wheelchair-accessible seats, may be too crowded for people in wheelchairs to board. And paratransit requires a twenty-four hour advance reservation, which renders it almost useless in the event of a disaster that arises without warning. In addition, during Hurricane Sandy, paratransit began to shut down only half an hour after the Mayor issued the evacuation order, while subway and bus service remained open for at least eight more hours.

209. Additionally, the City has no plans or agreements to ensure that paratransit — which is run by the MTA, a state agency, rather than by the City — remains open for a sufficient amount of time after an evacuation order is issued to allow people with disabilities to evacuate; that it remain open for as long as other forms of public transportation to ensure people with disabilities have an equal opportunity as those without disabilities to evacuate; that paratransit operate without the need for reservation in the event of an emergency; or, indeed, that paratransit be available for evacuations at all. Nor does the City have any other plan to ensure the availability of accessible transportation in the event of an emergency.

210. The point of preparing for a mass evacuation in advance is to ensure that, when an emergency strikes, there will be sufficient resources (and plans for the use of those resources) to enable those who need to evacuate to do so. But the failure to plan for accessible transportation virtually ensures that the opportunity of people with disabilities to evacuate will be unequal to that of individuals without special needs — that is, that the opportunity of people with

party to this action.” (Defs.’ Response to Statement of Interest of United States 16 n.2). The City further notes that it does “not own operate or control [sic] the New York City taxis, and cannot be held liable for any purported inaccessibility of that system.” (*Id.*). That may be true, but it is beside the point here. The City is not liable in this case for the inaccessibility of the subway, bus, and taxi systems *per se*; it is liable for its emergency preparedness plans, which rely heavily on those systems and do not make adequate provision for people with disabilities.

rendered “usable” only by means of a ramp that was not, in fact, usable by a person in a wheelchair, at least not without the help of a police officer.

220. Even assuming the City’s contention is accurate, some of its evacuation centers only had usable entrances during Hurricane Sandy because of the City’s *ad hoc* modifications as the storm approached. There is nothing in the City’s plans that requires evacuation centers to be located in buildings with usable entrances (let alone anything that provides guidance as to how to modify non-accessible entrances such that they are usable) or confirms that the City has available the resources to do so. Therefore, while the Court does not doubt that the intent of the City during Hurricane Sandy was to make its evacuation centers usable for people with disabilities — and not simply to evade liability in this lawsuit — there is insufficient evidence to demonstrate that in future emergencies all evacuation centers will have usable entrances. *Cf. Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (explaining that “[a] case might become moot if subsequent events made it *absolutely clear* that the allegedly wrongful behavior could not reasonably be expected to recur” and that demonstrating that “the challenged conduct cannot reasonably be expected to start up again” is a “heavy burden” (emphasis added)).

221. More importantly, the ability of people with disabilities to enter a facility is necessary, but not sufficient, for compliance with the ADA. *See Brown v. Cnty. of Nassau*, 736 F. Supp. 2d 602, 615 (E.D.N.Y. 2010) (noting that the ability of people with disabilities to enter a facility “does not necessarily equate with the facility being *readily* accessible and usable by the disabled under the law”). Those displaced by a disaster may need to stay at a shelter for days or longer. (*See, e.g.*, Ex. 7, at CNY000366 (“Worst-case storm scenario could require sheltering of over 600,000 evacuees for more than 72-hours.”)). During Hurricane Sandy, the shelters

remained open for over three weeks. (*See* Ex. 105, at CNY00022958). If a person with disabilities cannot use the bathrooms at a shelter, that shelter is not accessible — or even usable — by that person. *See Brown*, 736 F. Supp. 2d at 615-16; *Ass'n for Disabled Ams., Inc. v. Concorde Gaming Corp.*, 158 F. Supp. 2d 1353, 1367 (S.D. Fla. 2001) (“If a public accommodation’s restrooms are unfit for the use of a disabled person, the public accommodation is not accessible.” (internal quotation marks omitted)). Where, as here, a facility’s “wheelchair ramps are so steep that they impede a disabled person or . . . its bathrooms are unfit for the use of a disabled person, then it cannot be said that the [facility] is ‘readily accessible,’ regardless [of] whether the disabled person manages in some fashion to” enter it. *Shotz v. Cates*, 256 F.3d 1077, 1080 (11th Cir. Fla. 2001).

222. Next, Defendants assert that, during Hurricane Sandy, the City assigned aides to assist people with disabilities. (Def.’ Proposed Findings of Fact & Conclusions of Law ¶ 247). The only evidence in the record that anyone in the shelter system was provided with an aide, however, is a single sentence in the declaration of Erin McLachlan, who managed a SMNS for a week during Hurricane Sandy. McLachlan testified that “a week or so” after the hurricane, “FEMA received a contract with ResCare and we brought in approximately 25-30 personal care attendants.” (McLachlan Decl. ¶ 15).¹³ There is no indication that these attendants were present

¹³ Defendants’ expert Elizabeth Davis described the Personal Assistance Service, pursuant to which, she explained, a local jurisdiction could request through FEMA personnel to serve as personal attendants and caregivers in the shelter system. (*See* Davis Decl. ¶ 118). She testified that Hurricane Sandy was the first time this service was activated. (*Id.*). Davis did not, however, assert any personal knowledge of the Personal Assistance Service or its use during Hurricane Sandy. Accordingly, the Court declines to rely on it. *See* Fed. R. Evid. 602 (“A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.”); *United States v. Cuti*, 720 F.3d 453, 457-58 (2d Cir. 2013) (“The Federal Rules of Evidence allow the admission of fact testimony so long as the witness has personal knowledge, while opinion testimony can be presented by either a lay or expert witness.” (internal citation omitted)). In any event, Davis’s testimony would not alter the

at any other shelter or evacuation center or that they assisted people with disabilities in navigating otherwise inaccessible facilities. Furthermore, even if the attendants aided people with disabilities in receiving sheltering services, they arrived a week after the shelter system opened. People with disabilities do not have meaningful access to the shelter system if they must wait a week after a disaster to use it. Finally, the attendants about which McLachlan testified were provided by FEMA; they were not made available pursuant to any City plan. Therefore, there is no reason to believe they will be available in future emergencies.

223. Third, Defendants note that the eight SMNSs are fully accessible to people with disabilities. (Defs.' Proposed Findings of Fact & Conclusions of Law ¶ 247). But the ADA requires that public entities "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d); *see also id.* Part 35, App. B (defining "the most integrated setting appropriate to the needs of qualified individuals with disabilities" to mean "a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible"). Many people with disabilities do not require the specialized medical care provided in the SMNSs; they require only that a general shelter be accessible to them. Requiring people with disabilities who do not require medical care to seek shelter in SMNSs would therefore violate this regulation. *See, e.g., Olmstead*, 527 U.S. at 597 ("Unjustified isolation . . . is properly regarded as discrimination based on disability."); *id.* at 600 (holding that "institutional placement of persons who can handle and benefit from community settings" violates the ADA).

conclusion that the provision of personal attendants to some people a week after a disaster pursuant to a FEMA program that is not embodied in any City plan is insufficient to overcome the architectural barriers to accessibility in the City's shelter system.

224. Finally, Defendants argue that the City's shelter system as a whole is sufficiently accessible to people with disabilities because, if a particular shelter does not meet a person's needs, the City will provide accessible transportation to relocate that individual to one that does. (Defs.' Proposed Findings of Fact & Conclusions of Law ¶ 247). But there is nothing in the City's sheltering plan about accessible transportation between shelters. And, in any event, it is unclear how the City would transport someone to an accessible shelter given that it does not even know which of its shelters are accessible. Furthermore, the provision of accessible transportation between shelters does not ensure that there are sufficient accessible shelters available. Nor does it account for the possibility that transportation may be difficult or impossible during and after an emergency. The City provides people without disabilities the opportunity to identify in advance, and to use in an emergency, an evacuation center in their neighborhood. People with disabilities are not given this same opportunity.

225. To be sure, the ADA does not require that *every* shelter be accessible. *See* 28 C.F.R. § 35.150(a); *see also Tennessee v. Lane*, 541 U.S. at 531-32. But the City cannot even identify which, or how many, of its shelters and evacuation centers are accessible. There is no way, therefore, for the City to ensure that there are sufficient shelters and evacuation centers to meet the needs of people with disabilities or for it to direct people to accessible shelters and evacuation centers.

226. The City's sheltering plans prepare it to open sixty-five evacuation centers, any one of which a person without disabilities can use in an emergency, as well as additional shelters sufficient to accommodate over 600,000 people, the maximum number of people the City anticipates will need shelter. At a minimum, to provide people with disabilities meaningful access to the City's shelter system, the City's evacuation centers must be accessible to people

with disabilities; a sufficient number of shelters to accommodate people with disabilities must also be accessible; and the City must be able to identify which shelters are, in fact, accessible. Therefore, in order for people with disabilities to have meaningful access to the City's emergency plans, the plans must provide for this level of accessibility.¹⁴

227. A similar conclusion applies to refuges of last resort. Accessibility is not a criterion the City considers in determining which facilities are chosen to serve as refuges. To ensure that people with disabilities are able to access these refuges in an emergency, the City must ensure in advance that a sufficient proportion are accessible to people with disabilities; identify which refuges are accessible; and, when it publicizes the list of open refuges of last resort during an emergency, provide information about which are accessible.

ii) Programmatic Accessibility

228. The purpose of the City's shelter system is not only to provide safe buildings in the event of an emergency, but also to "offer essential services to preserve the health and safety of evacuees." (Ex. 7, at CNY000363). Moreover, even if the purpose of the shelter system were merely to provide safe structures during a disaster, the City would be required to provide reasonable accommodations — such as, for example, the provision of signage in forms intelligible to people with hearing, cognitive, visual, or other disabilities — to ensure that people with disabilities had meaningful access to such structures. *See, e.g. Henrietta D.*, 331 F.3d at 271. Therefore, the City must do more than ensure that the buildings in which it locates its

¹⁴ The fact that, at the time of trial, the City was in the process of surveying all DOE facilities for accessibility does not change the Court's conclusion. First, the record does not contain the results of the process, let alone any evidence that the City has used the data to remedy the lack of accessibility. Second, as discussed above, there are reasons to believe that the methodology of the survey is flawed. Third, and in any event, "[w]hile the Court commends the City for continuing to conduct full accessibility surveys of its shelters . . . , such efforts — in isolation — are not sufficient." *CALIF*, 2011 WL 4595993, at *14 (citation omitted).

shelters are physically accessible; it must ensure that the services offered therein are also accessible. It fails to do so in several respects.

229. First, the City fails to accommodate the communication needs of people with disabilities. Department of Justice regulations provide that “[a] public entity shall take appropriate steps to ensure that communications with [people] with disabilities are as effective as communications with others.” 28 C.F.R. § 35.160(a)(1). Such steps may require the provision of “appropriate auxiliary aids and services.” *Id.* § 35.160(b)(1). And while “[t]he type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place,” the regulations provide that, “[i]n order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.” *Id.* § 35.160(b)(2).

230. The City’s sheltering plans do not ensure effective communication with people with disabilities. The City’s efforts on this score are minimal: The City does not, for example, provide sign language interpretation at shelters or ensure that common signage is available in Braille. And while the City provides some guidance to shelter staff about communication with people with special needs, the only accommodation it makes in this regard is to provide a communications board with pictures and symbols at shelter registration tables. As noted, this board is not in evidence, and therefore the Court cannot determine the extent to which it might aid people with disabilities that impair their ability to communicate. In any event, such a board cannot aid those with visual disabilities; nor can it enable those with hearing disabilities to understand oral announcements. Nor is it clear that the communications board is available at any

point other than registration. Without the means to communicate at shelters, people with disabilities may be less able than others to access the services therein. The City's emergency plans fail to account for this possibility. As the purpose of these plans is to help ensure that all City residents have access to the services provided by shelters, they fail to provide meaningful access to those with disabilities.

231. For some people with disabilities, the ability to meaningfully access the City's sheltering services also depends on access to electricity. Without electricity, those who, for example, depend on ventilators or power wheelchairs will be less healthy, safe, and independent at a shelter than people without disabilities. Nevertheless, while all of the City's SMNSs have back-up generators or the capacity to quickly to connect to a back-up generator, there is no plan for ensuring electricity at the other shelters where some people with special needs are bound to be located. Moreover, as noted, the City may not limit its accommodations of people with disabilities to SMNSs. Instead, those who are able to stay in general shelters must be accommodated there. *See* 28 C.F.R. § 35.130.

232. For the same reason, the City's provision of supplies required by people with disabilities, such as accessible cots, solely to SMNSs is impermissible. Although the City's Director of Human Resources testified that, in the future, the City plans to order enough supplies that they may be provided to both SMNSs and general shelters, there is nothing in the City's plans that requires this and therefore no assurance that the City will do so. *See, e.g., Friends of the Earth*, 528 U.S. at 189 ("It is well settled that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." (internal quotation marks omitted)); *R.C. Bigelow, Inc. v. Unilever N.V.*, 867 F.2d 102,

106 (2d Cir. 1989) (“[A] disclaimer of intention to revive allegedly unlawful conduct does not suffice by itself to meet defendants’ heavy burden in order to render the case moot.”).

233. Plaintiffs contend that, in general, the City’s stockpile does not contain sufficient supplies to meet the needs of people with disabilities. (*See* Pls.’ Mem. Fact & Law 12-13). In particular, the City does not stockpile items such as meals for special diets, chargers for power wheelchairs, or prescription medications. Defendants argue that the law does not require it to provide such supplies. Ordinarily, a public entity is not required “to provide to individuals with disabilities personal devices, such as wheelchairs; individually prescribed devices, such as prescription eyeglasses or hearing aids; readers for personal use or study; or services of a personal nature including assistance in eating, toileting, or dressing.” 28 C.F.R. § 35.135. This regulation, however, is not universally applicable. It does not apply “in special circumstances, such as where the individual is an inmate of a custodial or correctional institution.” 28 C.F.R. Part 35, App. B (2005). An emergency constitutes a similar special circumstance. The purpose of the shelter system is to provide people with the goods and services they need to remain healthy, safe, and functional when an emergency has rendered them unable to provide these goods and services for themselves. The City may not provide people without disabilities the goods and services they require while withholding them from those with special needs.

234. But Plaintiffs presented no evidence that those who need such supplies are unable to get them through the City’s substantial requisition process, through which the City can obtain almost anything within forty-eight hours. (Tr. 640:9-16). Therefore, there is no reason the stockpile itself must contain these items. Plaintiffs failed to demonstrate that the stockpile, combined with the elaborate requisition process, was insufficient to accommodate the needs of people with disabilities. *See, e.g., Wells v. Thaler*, 460 Fed. Appx. 303, 313 (5th Cir. 2012)

(holding that the plaintiff had failed to establish an ADA violation where there was “no evidence indicating that the existing resources are inadequate or did not meet his needs”).

235. The City’s communication about the stockpile, however, is another matter. Although the record indicates that the City provides adequate supplies for people with disabilities in the shelter system, the City informs the public that it will not do so. This misinformation not only violates the requirement that people with disabilities must be able to obtain accurate information about the provision of accessible services, *see* 28 C.F.R. § 35.163(a), but also dissuades people with disabilities from attempting to use the shelter system. In both respects, it does not provide people with disabilities meaningful access to the City’s program.

iii) Sheltering in Place

236. Next, Plaintiffs contend that because the City advises residents to prepare to shelter in place for three days after an emergency, its plans rely on this assumption. (*See* Pls.’ Mem. Fact & Law 15). Such an assumption, they argue, disproportionately burdens people with disabilities, many of whom are unable to survive on their own for that period of time. (*Id.*). But the City’s plans provide that, where possible, evacuation will take place before an emergency, and that in an emergency without notice, evacuation and life safety measures will take place as soon as possible thereafter. The City’s recommendation that people be prepared to shelter in place for up to seventy-two hours is simply personal preparedness advice — advice that is in accordance with guidance provided by FEMA and the Red Cross. Such guidance cannot in and of itself disproportionately burden people with disabilities.

c. Power Outages

237. The City’s failure to account for people with disabilities during a power outage impairs their ability to meaningfully access any City services after an emergency. Because many

people with disabilities depend on elevators, a power outage renders many people with disabilities unable to leave their buildings. Those unable to leave their buildings are obviously unable to access the City's emergency services, such as sheltering, food and water distribution, and the provision of medical services.

238. The City's power outage plan does not account for this. It plans for the electric company, and if that fails, the Police Department, to check on people dependent on electricity-powered life-sustaining equipment in the event of a power outage. But the City's emergency plans do not require that, where possible, the public — or least those who depend on electricity for health, safety, or mobility — be notified in advance of a power outage; as explained above, the plans do not provide sufficient evacuation assistance to ensure that during a power outage, people with disabilities can exit their buildings; nor do they call for canvassing after an emergency, to help ensure that the services provided to people without disabilities may reach those with disabilities who are unable to leave their buildings.

239. Although the City did undertake a large-scale canvassing effort after Hurricane Sandy, this canvassing was an improvised response to the realization that people remained trapped in their buildings after the storm. As noted, such "*ad hoc* reasonable accommodations . . . are both legally inadequate and practically unrealistic" in the context of an emergency preparedness program, the purpose of which "is to anticipate the needs of [the City's] residents in the event of an emergency and to minimize" the need for improvisation, "particularly when the City's infrastructure may be substantially compromised or strained by an imminent or ongoing emergency or disaster." *CALIF*, 2011 WL 4595993, at *14. To ensure that people with disabilities are able to access the services provided by the City after an emergency, therefore, such a response must at least be incorporated into the City's plans.

d. Recovery Operations

240. As noted, the City's emergency plans provide for the provision of resources and the removal of debris in the aftermath of a disaster. For the most part, these plans are sufficient to accommodate the needs of people with disabilities.

i) Resource Provision

241. The City has several plans for the provision of resources — such as food and water, ice, and information about various kinds of assistance — after an emergency. The plans direct that the facilities at which these resources are provided be accessible to people with disabilities. (*See* Ex. 24, at CNY018542; Ex. 25, at CNY018609; Ex. 30, at CNY015234). And there was no evidence presented at trial that would suggest that the facilities were not, in fact, accessible following Hurricane Sandy. The City's emergency plans do not, however, provide for accessible communications at the centers where resources are distributed. Such failure plainly violates the City's obligation to provide equally effective communication to people with disabilities, *see* 28 C.F.R. § 35.160(a)(1), and impedes people with disabilities from accessing the resources provided.

ii) Debris Removal

242. Next, Plaintiffs argue that the City's plan for removing debris after an emergency does not adequately account for people with disabilities, who may be unable to navigate streets and sidewalks littered with debris. With the exception of one provision that states that the City will "coordinate efforts" to address the debris removal needs of people with disabilities, the Debris Management Plan does not specifically address those needs. Plaintiffs' argue that because of this omission, the plan violates the ADA. (Pls.' Mem. Fact & Law 20). The ADA, however, does not mandate that all City services provide special accommodations for people

with disabilities. Instead, it mandates that people with disabilities have meaningful access to all services; special accommodations are required only if necessary to achieve this access. *See, e.g., Henrietta D.*, 331 F.3d at 271; *Thomas v. Pa. Dep't of Corr.*, 615 F. Supp. 2d 411, 425-26 (W.D. Pa. 2009) (“[T]he law requires only that defendants provide accommodations that would allow plaintiff to participate in the desired programs; the court has found no cases, and plaintiff has not provided the court with one, which stand for the proposition that plaintiff is entitled to whatever accommodation he desires.”). This lawsuit was filed shortly after Hurricane Irene and went to trial months after Hurricane Sandy. And yet the only evidence Plaintiffs provided that anyone with disabilities was ever impeded by debris was testimony about the failure to clear snow banks after a single snowstorm years earlier. They have thus failed to demonstrate that the City’s debris removal plan does not sufficiently accommodate the needs of people with disabilities as it is written.

iii) Interim Housing

243. Plaintiffs argue that “the City’s plans for accessible housing in the recovery phase after an emergency are virtually nonexistent.” (Pls.’ Mem. Fact & Law 19). They are correct. That is not because the City’s housing plans fail to consider people with disabilities, however, but rather because the City lacks any plan for interim housing.

244. At most, the City has a plan that has not taken effect, pursuant to which it is developing interim housing units. As of the date of the trial in this case, however, these units had yet to be implemented. And, in any case, they were to be fully accessible to people with disabilities. During Hurricane Sandy, the City provided interim housing in hotel rooms. Again, however, this was not done pursuant to any preexisting emergency plan. And, again, the City provided accessible hotel rooms to those who needed them.

245. There is no dispute that interim housing after an emergency is important to people with and without disabilities. It is, however, a program that is not currently included in the City's plans. Because the City does not plan for interim housing for anyone, the ADA does not require that it do so specifically for people with disabilities. *See Wright*, 230 F.3d at 548 (“[T]he disabilities statutes do not require that substantively different services be provided to the disabled, no matter how great their need for the services may be. They require only that covered entities make ‘reasonable accommodations’ to enable ‘meaningful access’ to such services as may be provided, whether such services are adequate or not.”).

e. Communications

246. Plaintiffs' last substantial challenge to the City's plans concerns both the means and content of communications, from the City's outreach and education program in advance of an emergency to its communications before and during an emergency. For the most part, the City's means of communicating (at least outside of the shelter system and at the resource distribution centers, which are discussed above) are sufficient to comply with the ADA; the content of its communications, however, falls short in several respects.

i) Outreach and Personal Emergency Planning

247. As noted above, the City provides a robust outreach program designed to assist individuals in preparing a personal emergency plan. Among other things, a personal preparedness plan should include information about how a person would evacuate during an emergency, where they would go, and how they would get there. But the City's outreach fails to provide crucial information that people with disabilities would require to develop such a personal preparedness plan. For example, the City does not publicize which shelters or evacuation centers are fully accessible to people with disabilities (in part because the City itself does not know that

information). Nor does it provide information about whether accessible transportation will be available during an emergency and how to access it.

248. The law requires that “[a] public entity shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.” 28 C.F.R. § 35.163(a). The City’s otherwise impressive outreach program fails to do so. This failure to provide information about the existence and location of accessible services, such as evacuation centers and transportation, renders people with disabilities less able to develop a personal emergency plan than others.

249. The instruction, in some of the City’s materials, to call 311 during an emergency to find the locations of accessible shelters does not remedy this lack of advance information. For one thing, the ability of people to access the 311 system may be compromised in an emergency. But, more importantly, people without disabilities are able to plan *in advance* where they will go and how they will get there in an emergency. Without any information on accessible evacuation centers or transportation, people with disabilities cannot make such a plan. The ADA prohibits the provision of such an unequal opportunity to plan. *See* 28 C.F.R. § 35.130(b)(1); *see also* *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 397 (2002) (characterizing the purpose of the ADA as a “basic equal opportunity goal”); *Henrietta D. v. Giuliani*, 119 F. Supp. 2d 181, 208 (E.D.N.Y. 2000) (holding that a City program that failed to provide people with disabilities an “equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others” violated the ADA (internal quotation marks omitted)),

*appeal dismissed by 246 F.3d 176 (2nd Cir. 2001), and aff'd sub nom. Henrietta D. v. Bloomberg, 331 F.3d 261 (2d Cir. 2003).*¹⁵

ii) Communications During an Emergency

250. Plaintiffs also contend that both the means and content of the City's communication during an emergency are insufficient. As noted above, with respect to the means of communication, Justice Department regulations provide that "[a] public entity shall take appropriate steps to ensure that communications with [people] with disabilities are as effective as communications with others," 28 C.F.R. § 35.160(a)(1), including, where necessary, the provision of "appropriate auxiliary aids and services," *id.* § 35.160(b)(1).

251. The City employs a wide variety of methods — including press conferences, websites, the 311 system, AWS, and NotifyNYC.gov — to communicate information during an emergency. Most, if not all, of these means are accessible to people with disabilities. The Mayor's office, for example, has a policy requiring sign language interpretation of important press conferences; the City's websites are largely accessible to those who are blind via screen readers; and 311 is available to those who are deaf via TTY. None of these means of information distribution is perfect. Press conferences may not always be closed-captioned; the 311 system may not always be available; and the reach of AWS is limited. But the multiplicity

¹⁵ That is not to say that the City needs to provide information on the accessibility of all of its shelters to comply with the ADA. Such a mandate would be incompatible with the solar system model of sheltering that the City has devised, a model with significant benefits (including the ability to focus resources where needed, which plainly helps in serving people with disabilities). Moreover, the ADA does not demand that level of perfection. *See, e.g., United Spinal Ass'n*, 882 F. Supp. 2d at 624. At a minimum, however, the ADA requires the City to provide accurate information about the accessibility of evacuation centers — the location of which the City knows in advance of an emergency and to which all evacuees are directed in the first instance.

of means by which information is distributed ensures that people with disabilities have an equal opportunity to access emergency information as those without disabilities. *See, e.g., Loye v. Cnty. of Dakota*, 625 F.3d 494, 499-501 (8th Cir. 2010) (holding that the proper standard is not whether every communication is accessible, but rather whether, as a whole, the communication provided to people with disabilities is “effective” and ensures “meaningful access to the services being provided”).

252. Notably, the only person with disabilities that Plaintiffs identified who was insufficiently warned of Hurricane Sandy’s approach, Kenneth Martinez, testified that he did not have a computer, watch television, or listen to the radio in the days leading up to the storm. (*See* Martinez Decl. ¶ 28). It was not, therefore, Martinez’s disability that prevented him from receiving the City’s emergency information; a person without disabilities who did not use a computer, watch television, or listen to the radio would also likely not have received information that a storm was approaching. Plaintiffs provided no evidence that the *means* of communication employed by the City during an emergency are any less effective at reaching people with disabilities as those without.

253. There is certainly room for the City to improve on its plans with respect to the means of communicating emergency information. For example, while the City adopted a policy during Hurricane Sandy to require a sign language interpreter at the Mayor’s press conferences, that policy is not memorialized in the City’s emergency plans themselves and is limited by its terms to the Mayor’s press conferences. (Ex. 298). Additionally, while there are recommendations that televised warnings and alerts contain audio and captioning components, there is nothing in the City’s plans that *requires* these accommodations. (*See* Tr. 295:18-22). Given the multiplicity of ways that the City communicates emergency information and the lack

of evidence that people with disabilities do not receive this information, however, these shortcomings are not enough in themselves to constitute a violation of the ADA.

254. The content of the City's emergency communications, however, is a different matter. In particular, just as the City's outreach program fails to provide sufficient information about the location of accessible emergency services, so too do its communications during an emergency. For example, the City's emergency plans do not require the City to provide information about the location of accessible evacuation centers during an emergency. During Hurricane Sandy, the City announced only that all evacuation centers had a usable entrance. As explained above, however, a usable entrance does not make an evacuation center or shelter accessible, let alone accessible within the meaning of the ADA and applicable regulations. The failure to provide information about which evacuation centers or shelters were actually accessible plainly deprives people with disabilities of the ability to "obtain information as to the existence and location of accessible services, activities, and facilities." 28 C.F.R. § 35.163(a).

255. Nor do the plans require the City to publicize the availability of evacuation assistance or accessible transportation. Instead, the City encourages residents to call 311 to access this information. As repeatedly noted above, however, the 311 system may be unavailable during an emergency. And, in any event, limiting people with disabilities to calling 311 during an emergency deprives them of the opportunity to develop an evacuation plan in advance of the emergency. That guidance, therefore, also fails to satisfy the requirement that the City provide people with disabilities information about the existence and location of accessible services. See 28 C.F.R. § 35.163(a); *Clarkson v. Coughlin*, 898 F. Supp. 1019, 1044 (S.D.N.Y. 1995) ("[A] public entity . . . is obligated by the ADA to make available . . . information regarding . . . the existence and location of accessible services, activities and facilities.").

f. Other Issues

i) Inclusion of People with Disabilities in the Planning Process

256. In addition to evidence regarding the insufficiency of the City's emergency plans themselves, Plaintiffs also introduced evidence intended to demonstrate that the City does not sufficiently include people with disabilities in the planning process. Plaintiffs, however, have not alleged — let alone demonstrated — that people with disabilities are denied an opportunity to participate in the planning process that those without disabilities are given. *Cf.* 28 C.F.R. § 35.130 (prohibiting a public entity from denying a person with a disability “the opportunity to participate as a member of planning or advisory boards” on the basis of that disability). There is no question that the inclusion of people with disabilities in the planning process may facilitate the development of plans that accommodate their needs. (*See* Belisle Decl. ¶ 30; Blanck Decl. ¶ 57; Kailes Decl. ¶ 128). But the ADA does not mandate that the City involve people with disabilities in the formulation of its emergency preparedness program; instead, it requires only that they have meaningful access to that program. Conversely, even if — as Defendants contend — people with disabilities are included in the City's planning process, such inclusion does not remedy the failure of the emergency plans themselves to adequately accommodate people with special needs.

ii) Fundamental Alteration and Undue Hardship Defenses

257. Although public entities generally have an obligation to “make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability,” such modifications are not required if a public entity can demonstrate that the requested accommodations “would fundamentally alter the nature of the service, program, or activity,” 28 C.F.R. § 35.130(b)(7), or “impose an undue hardship on the

operation of [the] program,” *id.* § 41.53; *see also Henrietta D.*, 331 F.3d at 281. The contention that a requested accommodation constitutes a fundamental alteration or would impose an undue hardship is an affirmative defense. *See Am. Council of the Blind v. Paulson*, 525 F.3d 1256, 1266 (D.C. Cir. 2008); *Lentini v. Cal. Ctr. for the Arts*, 370 F.3d 837, 845 (9th Cir. 2004). Plaintiffs contend that Defendants waived any such defense by failing to plead it in their Answer. (*See* Pls.’ Mem. Fact & Law 4 n.2; Ans. (Docket No. 33)).

258. Rule 8(c) of the Federal Rules of Civil Procedure provides that “[i]n responding to a pleading, a party must affirmatively state any . . . affirmative defense.” But the fundamental alteration and undue hardship defenses arise in response to a plaintiff’s proposed accommodation. *See, e.g., Borkowski v. Valley Cent. Sch. Dist.*, 63 F.3d 131, 138 (2d Cir. 1995); *see also Henrietta D.*, 331 F.3d at 281 (“The regulations implementing both the Rehabilitation Act and the ADA give a public entity defendant the opportunity to show that a requested accommodation is unreasonable.” (emphasis added)). Here, Plaintiffs’ Amended Complaint did not propose any specific accommodations. Instead, it sought a declaration that Defendants had violated the ADA, the Rehabilitation Act, and the NYCHRL; and an injunction requiring Defendants to develop an emergency preparedness program that adequately accommodates people with disabilities. (Am. Compl. ¶¶ 155-56). Defendants, therefore, could not reasonably be expected to have pleaded a defense to a claim not presented. The Court has not found — and Plaintiffs have not cited — any case in which a court has held that failure to plead a fundamental alteration or undue hardship defense waived that defense, particularly where, as here, Plaintiffs did not request in their Complaint any particular modifications.¹⁶

¹⁶ Furthermore, the failure to plead an affirmative defense in an answer does not automatically waive that defense. *See McGuiggan v. CPC Int’l, Inc.*, 84 F. Supp. 2d 470, 480 (S.D.N.Y. 2000). In particular, the law is clear that, “in the absence of prejudice, a defendant

259. Because the trial was limited to the question of liability, the parties (and the Court) agreed to defer the question of remedies — that is, the availability of modifications to the City’s emergency preparedness program and the reasonableness thereof — until after the Court reached its decision on liability. (*See* Tr. 985:15-987:2). The Court notes, however, that the record supports the conclusion that reasonable modifications are available to remedy at least some of the demonstrated violations. For example, the Department of Justice provides a Tool Kit to help ensure that emergency planning complies with the ADA. (*See* Tinio Decl. Ex. A). And the City took several actions in response to Hurricane Sandy that are not currently included in the City’s emergency plans — for example, canvassing buildings after a prolonged power outage — that demonstrate that such actions are reasonable and do not pose an undue burden on the City or fundamentally alter the City’s emergency planning program. Because, however, the trial was limited to the question of liability, the Court need not, and does not, address the reasonableness of any specific proposed modification at this time. *See CALIF*, 2011 WL 4595993, at *16. Instead, at the remedy stage that will follow this Opinion, Plaintiffs will be given an opportunity to offer proposed accommodations, and Defendants will be given the opportunity to demonstrate that any such accommodations are unreasonable or fundamentally alter the nature of the City’s emergency preparedness program. *See Brown*, 736 F. Supp. 2d at 612 (explaining that an ADA plaintiff bears the initial burden of demonstrating that “there are

may raise an affirmative defense in a motion for summary judgment for the first time.” *Id.* (internal quotation marks omitted). This Court does not ordinarily — and did not in this case — permit summary judgment practice in a non-jury action. *See* Individ. Rules & Practices 3(C)(i). Defendants raised the issues of fundamental alteration and undue hardship in their pretrial memorandum of law (*see* Defs.’ Mem. Law 5), and their proposed findings of fact and conclusions of law (*see* Defs.’ Proposed Findings Fact & Conclusions Law ¶¶ 252-53). As the Court has yet to consider any particular accommodations, it follows that Plaintiffs have suffered no prejudice from Defendants’ failure to raise this defense in their Answer.

plausible modifications that could be made to make the [program or service] readily accessible and that the costs of such modifications, facially, do not clearly exceed their benefits” and that once that burden is satisfied, “the burden of persuasion shifts to the defendant to show that making the [program or service] readily accessible would result in a fundamental alteration of the nature of services or an undue burden”).

CONCLUSION

In sum, the Court concludes that the City has violated the ADA, the Rehabilitation Act, and the NYCHRL by failing to provide people with disabilities meaningful access to its emergency preparedness program in several ways. In particular:

- (1) The City’s evacuation plans do not accommodate the needs of people with disabilities with respect to high-rise evacuation and accessible transportation;
- (2) its shelter plans do not require that the shelter system be sufficiently accessible, either architecturally or programmatically, to accommodate people with disabilities in an emergency;
- (3) the City has no plan for canvassing or for otherwise ensuring that people with disabilities — who may, because of their disability, be unable to leave their building after a disaster — are able to access the services provided by the City after an emergency;
- (4) the City’s plans to distribute resources in the aftermath of a disaster do not provide for accessible communications at the facilities where resources are distributed;
- (5) the City’s outreach and education program fails in several respects to provide people with disabilities the same opportunity as others to develop a personal emergency plan; and
- (6) the City lacks sufficient plans to provide people with disabilities information about the existence and location of accessible services in an emergency.

By contrast, Plaintiffs have failed to prove that the City’s emergency preparedness program violates the law in other respects. For example, Plaintiffs failed to establish that the City’s plans regarding the provision of supplies to people with disabilities housed in the shelter

system during an emergency are insufficient or that the City's advice to residents to be prepared to shelter in place for seventy-two hours after an emergency violates the law. Additionally, while the evidence indicates that there are problems with the content of the City's emergency communications, Plaintiffs have not demonstrated that the means by which the City disseminates emergency information, and plans to do so in the future, are, considered together, inadequate to effectively communicate the information to people with disabilities. Finally, with respect to recovery operations, Plaintiffs have failed to establish that the City's emergency preparedness plans violate the rights of people with disabilities in providing for accessible facilities to distribute resources after an emergency, in preparing for the removal of debris, or — to the extent the City has a plan at all — in furnishing interim housing following an emergency.

The record in this case makes clear that, although the City's emergency preparedness plans fall short of legal requirements in several significant respects, they are still remarkable in many ways. The challenges facing cities in general, and this city in particular, are immense, and New York City has done an admirable job of preparing for a wide range of disasters, both manmade and natural, that could strike at almost any time. The record also makes clear that individual New Yorkers have gone to great lengths, and put themselves at great risk, to help their fellow New Yorkers, including many with special needs. The question in this case, however, is not whether the City, or individual first responders, have done an admirable job in planning for, or responding to, disasters generally. They plainly have. Instead, the question is whether the City has done enough to provide people with disabilities meaningful access to its emergency preparedness program given the broad remedial purposes of the ADA, the Rehabilitation Act, and the NYCHRL. The answer to that question is that it has not, and in doing so it has deprived

people with disabilities of what they are entitled to under the law, not to mention of the peace of mind that people *without* disabilities can have when it comes to the City's preparedness plans.

As noted above, the trial in this case was limited to the question of liability. Having found that the City violated the ADA, the Rehabilitation Act, and the NYCHRL in several respects, the Court will proceed to consider the issue of how to remedy those violations. Given the complexity and potential expense involved, there is no question that crafting an appropriate remedy would be better accomplished by those with expertise in such matters and through negotiation, whether court-supervised or otherwise, than by Court order. Further, the United States has indicated that it is able and willing to assist the parties and, if necessary, the Court in addressing the question of remedy. (Statement of Interest of the United States 1 n.2).

The parties are therefore directed to meet and confer — in person and with representatives of the Department of Justice, if they elect to participate — about the most productive means of resolving the question of remedies through alternative dispute mechanisms. At the same time, mindful that the Court will impose remedies if the parties cannot agree on them, the parties shall discuss the process and schedule for the remaining litigation, including but not limited to whether there is a need for additional discovery, whether the parties anticipate motion practice, and whether there is a need for another trial on remedies. The parties shall submit a joint status letter with respect to these matters and any other information that the parties believe may assist the Court in advancing the case to settlement or trial no later than **November 26, 2013**. They shall then appear for a conference with the Court on **December 3, 2013** at

3:15 p.m. in Courtroom 1105 of the Thurgood Marshall Courthouse, 40 Centre Street, New York, New York.

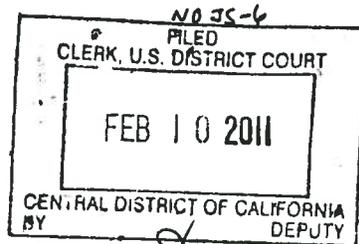
SO ORDERED.

Dated: November 7, 2013
New York, New York



JESSE M. FURMAN
United States District Judge

APPENDIX F



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

COMMUNITIES ACTIVELY
LIVING INDEPENDENT AND
FREE, ET AL.

Petitioner,

v.

CITY OF LOS ANGELES, ET AL.

Respondents.

No. CV 09-0287 CBM (RZx)

ORDER:

- (1) GRANTING PLAINTIFFS' MOTION FOR SUMMARY AJUDICATION ON LIABILITY;
- (2) GRANTING IN PART PLAINTIFFS' MOTION TO STRIKE;
- (3) GRANTING PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE
- (4) SUSTAINING PLAINTIFFS' OBJECTION; AND
- (5) OVERRULING DEFENDANT CITY OF LOS ANGELES' OBJECTIONS

There are four matters pending before the Court: (1) Plaintiffs Communities Actively Living Independent and Free's ("CALIF") and Audrey Harthorn's ("Harthorn") (collectively, "Plaintiffs") Motion for Summary Judgment against Defendant City of Los Angeles ("the City"), [Doc. No. 93]; (2) Plaintiffs' Motion to Strike five declarations filed by the City in opposition to Plaintiffs' Motion for

1 Summary Judgment, [Doc. No. 98-6]; (3) Plaintiffs' Objection to Reply
2 Declaration of Angela Kaufman, [Doc. No. 106]; and (4) the City's Objections to
3 Evidence Submitted by Plaintiffs in Support of Their Motion for Summary
4 Judgment. [Doc. No. 97-12.]

5 JURISDICTION

6 This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1334, and 1367.

7 FACTUAL AND PROCEDURAL BACKGROUND

8 On January 14, 2009, Plaintiffs filed the complaint in this action against the
9 City and Defendant County of Los Angeles ("the County") (collectively,
10 "Defendants") alleging four causes of action: (1) violation of Title II of the
11 Americans with Disabilities Act ("ADA"); (2) violation of Section 504 of the
12 Rehabilitation Act of 1973 ("Section 504"); (3) violation of the California
13 Disabled Persons Act ("CDPA"), California Civil Code § 54, *et seq.*; and (4)
14 violation of California Government Code § 11153.¹ [Doc. No. 1.] The dispute
15 concerns whether Defendants' emergency preparedness programs adequately
16 serve the needs of the more than 800,000 individuals with disabilities who live
17 within the jurisdiction of the City. (Plaintiffs' Memorandum of Points and
18 Authorities in Support of Motion for Summary Judgment ("Pls.' Mem. re Mot. for
19 Summary Judgment") at 2:13-15, 4:1-2; Plaintiffs' Response to Defendants'
20 Statement of Genuine Issues ("SGI") at ¶ 25.²) Plaintiffs contend that these
21 individuals suffer discrimination as a result of their disabilities because
22 Defendants' emergency preparedness programs fail to address their unique needs.
23 (Pls.' Mot. for Summary Judgment at 2:13-15, 17:21-23.) Due to their exclusion
24 from such programs, Plaintiffs further maintain that they are disproportionately

25
26 ¹ On April 13, 2010, the Court signed the parties' Stipulation Approving Certification of a Class. [Doc. No. 81.]
27 The class is comprised of all people with disabilities, as defined by the ADA, who are within the City and the
jurisdiction served by Defendants' emergency preparedness programs and services. (Order Approving Certification
of a Class at 1:4-9.)

28 ² The Court refers only to the Plaintiffs' Response to Defendants' Statement of Genuine Issues when the referenced
fact is undisputed by the parties.

1 vulnerable in the event of an emergency. (*Id.* at 2:12-13.)

2 On June 7, 2010, the Court approved a stipulation filed by Plaintiffs and the
3 County, which requested a stay of action in consideration of an agreement
4 between Plaintiffs and the County to develop an Access and Functional Needs
5 Annex to address the needs of individuals with disabilities with respect to the
6 County's emergency preparedness and planning. [Doc. No. 88.] Therefore,
7 Plaintiffs' Motion for Summary Judgment is brought solely against the City.

8 Effective emergency preparedness plans must include the following
9 essential components: (1) development of a comprehensive emergency plan,
10 (Declaration of Michael C. Collins, Plaintiffs' Expert, ("Collins Decl.") at ¶ 11(a);
11 Deposition of Steve Dargan, Liaison between the County's Department of Public
12 Health's Emergency Preparedness and Response Program and the City's
13 Emergency Management Department, ("Dargan Dep.") at 38:10-13; SGI at ¶ 2);
14 (2) assessment of the efficacy of the emergency plan, (Collins Decl. at ¶ 11(b);
15 Dargan Dep. at 38:14-18); (3) advance identification of needs and resources,
16 (Collins Decl. at ¶ 11(c); Dargan Dep. at 38:19-22); (4) provision of public
17 notification and communication, (Collins Decl. at ¶ 11(d); Dargan Dep. at 38:23-
18 39:1; Deposition of Keith Garcia, the City's Emergency Coordinator I, ("Garcia
19 Dep.") at 33:23-34:1; Deposition of Andrew Neiman, Lieutenant with the Los
20 Angeles Police Department, ("Neiman Dep.") at 51:22-52:1; Deposition of Anna
21 Burton, Assistant General Manager of the City's Emergency Management
22 Department, ("Burton Dep.") at 18:12-14); (5) provision of policies or procedures
23 concerning the concept of sheltering in place, (Collins Decl. at ¶ 11(e); Dargan
24 Dep. at 39:2-5; Declaration of Robert Freeman, Chief of the Operations Division
25 of the City's Emergency Management Department, ("Freeman Decl.") at ¶ 10); (6)
26 provision of shelter and care for individuals forced to evacuate their homes,
27 (Collins Decl. at ¶ 11(g); Dargan Dep. at 39:10-13; Garcia Dep. at 34:12-15;
28 Neiman Dep. at 51:14-21; Burton Dep. at 18:9-11, 19:1-4); (7) provision of

1 assistance with evacuation and transportation, (Collins Decl. at ¶ 11(f); Dargan
2 Dep. at 39:14-17; Garcia Dep. at 34:2-11, 34:16-20; Neiman Dep. at 52:2-6;
3 Burton Dep. at 17:25-18:8); (8) provision of temporary housing, (Collins Decl. at
4 ¶ 11(h); Dargan Dep. at 39:24-40:2; Burton Dep. at 18:15-18); and (9) provision
5 of assistance in recovery and remediation efforts after an emergency or disaster.
6 (Collins Decl. at ¶ 11(i); Dargan Dep. at 40:3-7; Garcia Dep. at 34:21-25.)

7 The City's emergency preparedness program – which consists of a 200-plus
8 page Emergency Operations Plan, twenty-one (21) incident-specific annexes, an
9 Emergency Operations Board, and an Emergency Management Committee –
10 addresses “preparation, planning, response and recovery for the city in a disaster”
11 or other emergency. (SGI at ¶¶ 35, 37, 39-40; Burton Dep. at 11:22-12:4, 24:4-10;
12 Deposition of James Featherstone, General Manager of the City's Emergency
13 Management Department, (“Featherstone Dep.”) at 34:20-35:3.) Such
14 emergencies include earthquakes, wildfires, flooding, landslides, and terrorist
15 attacks. (SGI at ¶ 33.) According to the City's Chief of the Operations Division
16 of the Emergency Management Department (“EMD”), the City's emergency plans
17 “are designed to save lives, protect property and return the City to normal service
18 levels” by “assist[ing] in the response and recovery efforts following a disaster.”
19 (Freeman Decl. at ¶¶ 4, 5.)

20 Although the City's emergency preparedness program requires coordination
21 from numerous departments, (*id.* at ¶ 6), California's state emergency plan and
22 Standardized Emergency Management System place the City at the first level of
23 response for meeting the disaster needs of its residents in the event of an
24 emergency. (Burton Dep. at 128:15-21, 129:2-5; Garcia Dep. at 71:7-15.)
25 Despite the fact that individuals with disabilities have special needs and may
26 require reasonable accommodations during an emergency, the City's emergency
27 preparedness program does not include provisions to notify people with auditory
28 impairments or cognitive disabilities of an emergency, or evacuate, transport, or

1 temporarily house individuals with disabilities during or immediately following an
2 emergency or disaster. (Burton Dep. at 41:9-42:1, 44:5-8, 44:16-45:4, 52:18-22,
3 54:11-15, 127:5-13; Garcia Dep. at 36:1-4, 36:23-37:13, 41:8-12³, 42:15-19, 55:8-
4 56:1; Deposition of Robert Freeman, Chief of the Operations Division of the
5 City's EMD, ("Freeman Dep.") at 27:7-28:2, 56:21-25, 57:3-7, 78:8-12;
6 Featherstone Dep. at 20:15-18, 67:21-25, 68:16-71:11; Deposition of Angela
7 Marie Kaufman, ADA Compliance Coordinator with the Department on
8 Disability, dated July 22, 2010 ("Kaufman Dep.") at 129:12-19, 131:19-22, 132:2-
9 6.) Although the City's employees testified that such responsibilities are
10 delegated to specific departments, such as the Los Angeles Fire Department
11 ("LAFD"), the Los Angeles Police Department ("LAPD"), and the Department of
12 Parks and Recreation, (Freeman Dep. at 15:14-23, 28:18-29:4; Declaration of
13 James Featherstone, General Manager of the City's EMD, ("Featherstone Decl.")
14 at ¶ 18), there is no evidence in the record of any City documents explaining how
15 these departments shall assist individuals with disabilities during an emergency or
16 disaster. (Freeman Dep. at 30:3-7, 61:7-25; Neiman Dep. at 32:17-33:2.) The
17 individual departments which have been delegated the responsibility of assisting
18 such individuals similarly have no plans for addressing the needs of individuals
19 with disabilities in the event of an emergency or disaster. (Freeman Dep. at 72:11-
20 14; Neiman Dep. at 32:12-16, 54:23-55:17, 59:18-60:16; Deposition of Stacy
21 Gerlich, Captain with the LAFD, ("Gerlich Dep.") at 23:15-22, 38:11-15, 39:9-
22 18.) Indeed, the departments have not assessed whether they have the "capacity to
23 respond to the needs of people with disabilities during a disaster" or emergency.
24 (Neiman Dep. at 31:22-32:3; Gerlich Dep. at 34:15-20.) The City has likewise not
25 done a study of whether it has "the resources or capacity to respond to the needs of
26 people with disabilities in an emergency." (Kaufman Dep. at 188:24-189:4.)

27 _____
28 ³ Garcia, however, testified that the City can request buses that are accessible for people with disabilities. (Garcia
Dep. at 37:3-9.)

1 In 2008, the City's Department on Disability ("DOD") reported that the
2 City's emergency preparedness program "is seriously out of compliance" with the
3 ADA and Section 504 and the City's residents with disabilities "will continue to
4 be at-risk for suffering and death in disproportionate numbers unless the City
5 family drastically enhances the existing disability-related emergency management
6 and disaster planning process and readiness as required by the ADA and other
7 statutes." (Declaration of Mary-Lee Smith, Plaintiffs' Counsel, ("Smith Decl.") at
8 ¶ 14, Ex. L (Memorandum from the DOD to the City's EMD (Aug. 27, 2009).)
9 The DOD issued numerous recommendations, including, but not limited to, the
10 following: (1) The City should conduct a survey of all shelters, warming centers,
11 cooling centers, relocation sites, and evacuation assistance centers, for
12 accessibility pursuant to the U.S. Department of Justice's ADA Checklist for
13 Emergency Shelters; (2) the City should establish a Memorandum of
14 Understanding with the Los Angeles Chapter of the American Red Cross to
15 outline and address the provision of reasonable accommodations and personal
16 assistants during activations; (3) the City should forward certain information
17 regarding an Alert and Notification System, if one is purchased, to the DOD,
18 including how the system provides functional equivalency to the disability
19 community; and (4) the City should take other actions to ensure that all emergency
20 plans meet the needs of people with disabilities and that such needs are
21 communicated and understood by all of the City's relevant departments. (Smith
22 Decl. at ¶ 14, Ex. L.) Other than surveying shelter sites, there is no evidence that
23 the City has adopted any of the DOD's recommendations.⁴ (Kaufman Dep. at
24 66:23-67:14, 69:19-70:10, 72:9-14; Featherstone Dep. at 21:19-23; Declaration of
25

26 ⁴ Two EMD employees report a new requirement to take an online Federal Emergency Management Agency course
27 addressing persons with disabilities in emergencies as the only change made after the filing of this lawsuit. (SGI at
28 ¶ 31; Garcia Dep. at 51:17-52:4; Featherstone Dep. at 49:6-50:9.) The City also indicated that the City's Oversight
Committee has recommended the purchase of 5 portable lifts and 56 evacuation chairs but it is unclear whether the
items have been purchased by the City. (Declaration of Angela M. Kaufman, ADA Compliance Coordinator with
the DOD, ("Kaufman Decl.") at ¶ 25.)

1 Albert Torres (“Torres Dep.”) at 20:7-25.)

2 With respect to shelter and care, specifically, the City, through the
3 Department of Parks and Recreation, has a responsibility to provide shelter to
4 residents displaced by an emergency. (Featherstone Dep. at 89:2-18; Torres Dep.
5 at 12:8-18.) The City, however, has conducted full disability compliance surveys
6 for only a fraction of its approximately 200 shelter sites. (Torres Dep. at 16:13-
7 16, 20:7-25, 47:12-18.) Of the surveyed sites, few – if any – of the shelters meet
8 all requirements mandated by the ADA. (*Id.* at 21:15-21.) The City maintains
9 that the American Red Cross is responsible for mass shelter and care along with
10 temporary housing, (Burton Dep. at 72:18-73:6, 73:25-74:5; Featherstone Dep. at
11 75:16-25, Garcia Dep. at 60:11-18; Gerlich Dep. at 18:16-21); however, there is
12 no agreement between the City and the American Red Cross setting forth any
13 specific responsibilities of the American Red Cross with respect to individuals
14 with disabilities. (Deposition of Michael Kleiner, Director of Emergency and
15 Disaster Response of the American Red Cross of Greater Los Angeles, (“Kleiner
16 Dep.”) at 14:24-15:3, 24:16-25:10, 25:17-22.) Indeed, the Director of Emergency
17 and Disaster Response of the American Red Cross of Greater Los Angeles
18 testified that it is not his understanding that the American Red Cross is solely
19 responsible for shelter compliance with the ADA or accessibility of shelters for
20 individuals with disabilities. (*Id.* at 20:22-21:5.) The emergency preparedness
21 program has no provision addressing the inspection or evaluation of the American
22 Red Cross’ policies and procedures at shelters. (Burton Dep. at 74:18-22.)

23 Plaintiffs filed the instant Motion for Summary Judgment on August 2,
24 2010. [Doc. No. 93.] An opposition and reply were filed thereto.⁵ [Doc. Nos. 97,
25 98.] Along with its reply, Plaintiffs concurrently filed a Motion to Strike five of

26 _____
27 ⁵ Plaintiffs’ reply to the Motion for Summary Judgment and their reply to the Motion to Strike exceeded the ten-
28 page limit prescribed by the Court’s Standing Order. The parties are reminded that all papers must be filed in
accordance with the Federal Rules of Civil Procedure, the Local Rules of this District, and the Court’s Standing
Order. Future violations of these rules may result in the imposition of sanctions.

1 the nine declarations filed by the City in support of its opposition.⁶ [Doc. No. 98-
2 6.] An opposition and reply were filed thereto. [Doc. Nos. 99, 103.] On October
3 7, 2010, a Statement of Interest of the United States in support of Plaintiffs'
4 Motion for Summary Judgment was filed with the Court. [Doc. No. 111.] The
5 Court heard oral argument from the parties. [Doc. No. 112.]

6 **PLAINTIFFS' MOTION TO STRIKE**

7 Plaintiffs request that the Court strike five declarations submitted by the
8 City in opposition to Plaintiffs' Motion for Summary Judgment. Plaintiffs
9 contend that the subject declarations are deficient in one or more of the following
10 respects: (1) they introduce new witnesses and information not previously
11 disclosed by the City in violation of Federal Rule of Civil Procedure 26(a) and
12 26(e); (2) they clearly and unambiguously contradict prior deposition testimony of
13 the declarant(s); (3) they set forth opinions from witnesses lacking the requisite
14 qualifications to be experts; and/or (4) they reference material contained in written
15 documents without attaching such documents as required by Federal Rule of Civil
16 Procedure 56(e)(1). (Plaintiffs' Memorandum of Points and Authorities in
17 Support of Plaintiffs' Motion to Strike ("Pls.' Mem. re Mot. to Strike") at 1:9-21.)

18 **I. LEGAL STANDARD**

19 Federal Rule of Civil Procedure 26(a) requires that parties provide certain
20 initial disclosures. FED. R. CIV. P. 26(a). The parties must thereafter supplement
21 or correct discovery responses and disclosures as necessary. FED. R. CIV. P. 26(e).
22 "If a party fails to provide information or identify a witness as required by Rule
23 26(a) or (e), the party is not allowed to use that information or witness to supply
24 evidence on a motion, at a hearing, or at a trial, unless the failure was substantially
25 justified or is harmless." FED. R. CIV. P. 37(c)(1); *see also Wong v. Regents of the*

26 _____
27 ⁶ Plaintiffs' Motion to Strike was filed in violation of Local Rule 7-3, which requires that a conference of counsel
28 take place at least ten (10) days prior to the filing of the motion. L.R. 7-3. Because the parties did meet and confer
prior to the filing of the motion, the Court concludes that judicial economy is best served by the Court's
consideration of the Motion to Strike but cautions Plaintiffs' counsel that future violations may warrant sanctions.

1 *Univ. of Cal.*, 410 F.3d 1052, 1060 (9th Cir. 2005) (“Parties must understand that
2 they will pay a price for failure to comply strictly with scheduling and other
3 orders, and that failure to do so may properly support severe sanctions and
4 exclusions of evidence.”). The party facing sanctions bears the burden of
5 establishing that the delay was either substantially justified or harmless. *Yeti by*
6 *Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106-07 (9th Cir. 2001). In
7 determining whether a violation of a discovery deadline was substantially justified
8 or harmless, courts are guided by the following considerations: (1) prejudice or
9 surprise to the party against whom the evidence is offered; (2) the ability of that
10 party to cure the prejudice; (3) the likelihood of disruption of the trial; and (4) bad
11 faith or willfulness involved in not timely disclosing the evidence. *Lanard Toys,*
12 *Ltd. v. Novelty, Inc.*, 375 Fed. Appx. 705, 713 (9th Cir. Apr. 13, 2010). The Ninth
13 Circuit affords “particularly wide latitude to the district court’s discretion to issue
14 sanctions under Rule 37(c)(1).” *Yeti by Molly*, 259 F.3d at 1106.

15 II. DISCUSSION

16 a. The Court Strikes Only Paragraph 14 of the Declaration of Eric 17 Baumgardner

18 Baumgardner is an Emergency Preparedness Coordinator I with the City’s
19 EMD assigned to the Operations Division, Planning Unit as the Planning Officer.
20 (Declaration of Eric Baumgardner, Emergency Preparedness Coordinator I with
21 the City’s EMD, (“Baumgardner Decl.”) at ¶ 2.) The City designated
22 Baumgardner as one of its two experts on July 6, 2010. (Declaration of Karla
23 Gilbride, Plaintiffs’ Counsel, in Support of Plaintiffs’ Motion to Strike
24 Declarations (“Gilbride Decl.”) at ¶ 5, Ex. C.) The designation did not provide
25 any information about the scope or substance of his testimony.⁷ (*Id.*) Plaintiffs

26
27 ⁷ Baumgardner was not required to submit an expert report because he is a City employee who was not retained or
28 compensated to testify in this action, and his duties do not routinely involve giving testimony. See FED. R. CIV. P.
26(a)(2)(B); see also *Armatix v. Owens-Brockway Glass Container, Inc.*, 2010 U.S. Dist. LEXIS 7995, *1-2 (E. D.
Cal. Jan 14, 2010) (Karlton, J.).

1 contend that “the first opportunity [they] had to inquire into [Baumgardner’s]
2 opinions was at his deposition on July 22[, 2010], at which he stated, on multiple
3 occasions that he formed no opinions tentative or otherwise, that he was prepared
4 to testify to at that time or planned to testify to in the future either in a sworn
5 declaration or in other sworn testimony.” (Pls.’ Mem. re Mot. to Strike at 2:2-7.)
6 Less than one month later, on August 17, 2010, Baumgardner executed a
7 declaration regarding emergency management planning in support of the City’s
8 opposition to Plaintiffs’ Motion for Summary Judgment.

9 Plaintiffs argue that the City cannot rely on late disclosed documents
10 referenced by Baumgardner in his declaration. (Pls.’ Mem. re Mot. to Strike at
11 3:13-24.) The Court finds that the City’s failure to disclose the Federal
12 Emergency Management Agency (“FEMA”) Comprehensive Preparedness Guide
13 101 is harmless because it is a publicly available planning document. The Court,
14 however, strikes paragraph 14 because it refers to “procedural documents or
15 Standard Operating Procedures” that were not produced by the City.⁸

16 Plaintiffs also argue that Baumgardner’s declaration should be stricken
17 because it contains late-disclosed expert opinions. (*Id.* at 5:12.) Although
18 Baumgardner was disclosed as an expert witness and it is disconcerting to the
19 Court that Baumgardner was so ill-prepared for his deposition, the Court finds that
20 the City may rely on Baumgardner as a fact witness due to his employment as the
21 Emergency Preparedness Coordinator I with the City’s EMD assigned to the
22 Operations Division, Planning Unit as the Planning Officer. (*See* Baumgardner
23 Decl. at ¶ 1.) The statements made in Baumgardner’s declaration are well within
24 the realm of permissible testimony given his professional experience. Moreover,
25 Plaintiffs had the opportunity to depose him and likely could have anticipated
26 most, if not all, of these issues. Therefore, the Court strikes only paragraph 14 of

27 _____
28 ⁸ The City maintains that Baumgardner’s declaration refers only to the FEMA Comprehensive Preparedness Guide 101. (The City’s Opposition to Plaintiffs’ Motion to Strike Declarations at 6:1-7.)

1 Baumgardner's declaration because it refers to "procedural documents or Standard
2 Operating Procedures" that were not produced by the City.

3 **b. The Court Strikes Only Paragraph 26 of the Declaration of**
4 **Angela Kaufman**

5 Angela Kaufman ("Kaufman") is the ADA Compliance Coordinator with
6 the DOD. (Declaration of Angela Kaufman, ADA Compliance Coordinator with
7 the DOD, ("Kaufman Decl.") at ¶ 2.) The City designated Kaufman as an expert
8 on July 6, 2010. (Gilbride Decl. at ¶ 5, Ex. C.) During her deposition on July 22,
9 2010, the City's counsel stated that Kaufman was being offered as a rebuttal
10 expert to Plaintiffs' designated expert witnesses. (*Id.* at ¶ 4, Ex. B at 94:10-95:2.)
11 Kaufman also testified that she was a rebuttal expert witness and that she intended
12 to offer testimony only on the issue of personal preparedness in the event of a
13 disaster and rebuttal testimony to the testimony of Plaintiffs' expert witnesses.
14 (*Id.* at ¶ 4, Ex. B at 94:17-95:2, 98:1-10.)

15 The Court finds that Kaufman possesses the necessary qualifications to
16 testify as an expert witness because she has significant work experience in the
17 field of emergency planning, and has served on several committees and advisory
18 boards involving disability and emergency planning and management. (Kaufman
19 Decl. at ¶¶ 4-18.) Because Kaufman was designated as an expert witness for the
20 purposes of opining on personal preparedness in the event of a disaster and
21 rebutting the testimony of Plaintiffs' designated experts, the Court does not
22 consider her opinions as to any other issues because the City has failed to
23 demonstrate substantial justification or harmlessness for the failure to disclose
24 such opinions. Due to her employment as the ADA Compliance Coordinator with
25 the DOD, Kaufman may also address the DOD's policies and practices and her
26 personal experiences in her capacity as the ADA Compliance Coordinator.
27 Accordingly, the Court strikes paragraph 26 of Kaufman's declaration.

28

1 **c. The Court Strikes the Declaration of Ralph Acuna**

2 Ralph Acuna (“Acuna”) is a Management Analyst II for the DOD.
3 (Declaration of Ralph Acuna, Management Analyst II for the DOD, at ¶ 2.)
4 Although the City never disclosed Acuna as either a fact or expert witness, (Pls.’
5 Mem. re Mot. to Strike at 16:7-12), it argues that Acuna was known to Plaintiffs
6 as having relevant testimony and the City’s failure to formally designate him as a
7 witness is harmless. (The City’s Opposition to Plaintiff’s Motion to Strike
8 Declarations (“Def.’s Opp’n to Mot. to Strike”) at 3:18-20; 4:23-5:1.)

9 The record before the Court reflects that the City never disclosed Acuna as a
10 witness. The Joint Rule 26(f) Report limited the number of declarations and
11 depositions available to each party; therefore, it is entirely reasonable to conclude
12 that Plaintiffs’ discovery strategy was dictated by the disclosed witness lists.
13 Because the City has failed to meet its burden, the Court strikes Acuna’s
14 declaration in its entirety.

15 **d. The Court Strikes the Declaration of Timothy Ottman**

16 On July 9, 2010, Plaintiffs served a deposition notice on the City seeking to
17 examine the person most knowledgeable about the “[p]olicies, procedures and/or
18 protocols of the Los Angeles Fire Department (LAFD) related to (1) notifying
19 people with disabilities; (2) providing evacuation assistance to people with
20 disabilities; and (3) providing transportation assistance to people with disabilities
21 in the event of a disaster.” (Gilbride Decl. at ¶ 8, Ex. F.) The City produced Stacy
22 Gerlich, who was deposed on July 12, 2010. (Pls.’ Mem. re Mot. to Strike at 18:5-
23 6.)

24 In opposition to Plaintiffs’ Motion for Summary Judgment, the City filed
25 the declaration of Timothy Ottman (“Ottman”), the Battalion Chief of the LAFD
26 and the LAFD’s Safety Officer. (Declaration of Thomas A. Ottman, Battalion
27 Chief of the LAFD and the LAFD’s Safety Officer, at ¶ 1.) Ottman was not
28 disclosed as a witness and the City concedes that Plaintiffs had no actual notice of

1 this witness. (Def.'s Opp'n re Mot. to Strike at 9:5-7.) The City, however, argues
2 that its failure to disclose was substantially justified and harmless because the City
3 could not reach Gerlich and Ottman's declaration is consistent with her deposition
4 testimony. (Def.'s Opp'n re Mot. to Strike at 9:19-10:6; Dermer Decl. at ¶ 14.)

5 The City fails to demonstrate that the late disclosure is substantially justified
6 and it fails to explain why it did not use Gerlich as its declarant in support of the
7 opposition. Moreover, the Court does not need to rely on the allegedly disputed
8 fact, (SGI at ¶ 206), to rule on Plaintiffs' Motion for Summary Judgment.

9 The City likewise fails to establish that the late disclosure is harmless.
10 Plaintiffs are prejudiced by the City's reliance on an undisclosed witness,
11 particularly when they specifically requested that the City produce the person with
12 the most knowledge about the areas discussed in Ottman's declaration. Therefore,
13 the Court strikes Ottman's declaration in its entirety.

14 **e. The Court Strikes the Declaration of Luann Pannell**

15 On July 9, 2010, Plaintiffs served a deposition notice on the City seeking to
16 examine the person most knowledgeable about the "[p]olicies, procedures and/or
17 protocols of the Los Angeles Police Department (LAPD) related to (1) notifying
18 people with disabilities; (2) providing evacuation assistance to people with
19 disabilities; and (3) providing transportation assistance to people with disabilities
20 in the event of a disaster." (Gilbride Decl. at ¶ 8, Ex. F.) The City produced
21 Andrew Neiman ("Neiman"), who was deposed on July 12, 2010. (Pls.' Mem. re
22 Mot. to Strike at 19:19-20.)

23 In opposition to Plaintiffs' Motion for Summary Judgment, the City filed
24 the declaration of Luann Pannell ("Pannell"), the Director of Police Training and
25 Education for the LAPD. (Declaration of Luann P. Pannell, Director of Police
26 Training and Education for the LAPD, at ¶ 2.) The City contends that its failure to
27 disclose was substantially justified and harmless because the City could not reach
28

1 Neiman and Pannell's declaration is consistent with his deposition testimony.
2 (Def.'s Opp'n re Mot. to Strike at 9:16-10:6; Dermer Decl. at ¶ 14.)

3 The City again fails to demonstrate that the late disclosure is either
4 substantially justified or harmless. The City fails to explain what attempts it made
5 to contact Neiman. It similarly fails to establish that its reliance on an undisclosed
6 witness was harmless to Plaintiffs. Regardless, the Court does not need to rely on
7 the allegedly disputed fact, (SGI at ¶ 208), to rule on Plaintiffs' Motion for
8 Summary Judgment. Accordingly, the Court strikes Pannell's declaration in its
9 entirety.

10 The Court notes that the City strenuously objects to the exclusion of these
11 declarations because they comprise a substantial portion of its evidence in
12 opposition to Plaintiffs' Motion for Summary Judgment. (Def.'s Opp'n to Mot. to
13 Strike at 2:3-3:17.) Yet the City could have submitted other evidence – such as
14 deposition testimony or declarations from disclosed witnesses – produced in
15 accordance with the discovery rules rather than rely so heavily on declarations
16 involving late-disclosed information or witnesses. The Court will not permit the
17 City to circumvent discovery rules where it could have easily complied with such
18 rules and where it has failed to establish that the late disclosures were either
19 substantially justified or harmless. Thus, the Court strikes the declarations of
20 Baumgardner and Kaufman to the extent set forth above and the declarations of
21 Acuna, Ottman, and Pannell in their entirety.

22 **OBJECTIONS TO EVIDENCE SUBMITTED IN SUPPORT OF AND IN**
23 **OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

24 In addition to Plaintiffs' Motion to Strike, both parties separately filed
25 objections to evidence submitted by the opposing party in support of or in
26 opposition to the Motion for Summary Judgment.

27 **I. THE CITY'S OBJECTIONS**

28 The Court summarily overrules all of the City's 419 objections to evidence

1 submitted by Plaintiffs in support of their Motion for Summary Judgment as
2 unduly vague and overbroad. The City's objections concern the following
3 evidence: (1) the deposition testimony of Anna Burton (Objection Nos. 1-57); (2)
4 the deposition testimony of Steve Dargan (Objection Nos. 58-73); the deposition
5 testimony of James Featherstone (Objection Nos. 74-127); (4) the deposition
6 testimony of Robert Freeman (Objection Nos. 128-58); (5) the deposition
7 testimony of Keith Garcia (Objection Nos. 159-217); (6) the deposition testimony
8 of Stacy Gerlich (Objection Nos. 218-53); (7) the deposition testimony of Angela
9 Kaufman (Objection Nos. 254-78); (8) the deposition testimony of Michael
10 Kleiner (Objection Nos. 279-92); (9) the deposition testimony of Andrew Neiman
11 (Objection Nos. 293-327); (10) the deposition testimony of Albert Torres
12 (Objection Nos. 328-57); (11) the declaration of Michael Collins (Objection Nos.
13 358-77); (12) the declaration of Harthorn (Objection Nos. 378-82); (13) the
14 declaration of June Kailes (Objection Nos. 383-403); (14) the declaration of
15 Shannon Murray (Objection Nos. 404-08); (15) the declaration of Lilibeth
16 Navarro (Objection Nos. 409-16); and (16) the declaration of Norma Jean
17 Vescovo (Objection Nos. 417-19). [Doc. No. 97-12.]

18 In *Dukes v. Wal-Mart, Inc.*, the defendant raised "hundreds, if not
19 thousands, of [evidentiary] objections" to the 114 declarations filed by the
20 plaintiffs. 222 F.R.D. 189, 198 (N.D. Cal. 2004) (Jenkins, J.). The district court
21 concluded that the objections were unduly vague because the defendant failed to
22 provide any individualized discussion of the objections. *Id.* at 199. The district
23 court further observed that the defendant's "grossly overbroad approach is more
24 suggestive of an intent to harass than a good faith effort to address genuine
25 objections." *Id.* at 199.

26 Similarly, in *Californians for Disability Rights, Inc. v. California*
27 *Department of Transportation*, the defendants submitted 121 boilerplate,
28 evidentiary objections to various declarations offered by the plaintiffs in support

1 of their motion. 249 F.R.D. 334, 349-50 (N.D. Cal. 2008) (Armstrong, J.). The
2 Court therefore “decline[d] the defendants’ invitation to analyze objections that
3 defendants did not themselves bother to analyze, and the objections [were]
4 overruled on those grounds alone.” *Id.* at 350.

5 It is not the Court’s responsibility to attempt to discern the City’s grounds
6 for objecting to evidence submitted by Plaintiffs where the City merely repeats the
7 same categorical objections but provides little to no explanation as to why the
8 subject evidence is objectionable. Accordingly, the Court summarily overrules all
9 of the City’s objections.

10 **II. PLAINTIFFS’ OBJECTION**

11 The Court sustains Plaintiffs’ objection to the City’s filing of the
12 unaccompanied Declaration of Angela M. Kaufman in Reply to June Kailes’
13 Reply Declaration filed on September 21, 2010. [Doc. No. 106.] Although not
14 styled as a response to a reply, the City should have sought leave from the Court
15 prior to filing Kaufman’s reply declaration. L.R. 7-10 (“Absent prior written
16 order of the Court, the opposing party shall not file a response to the reply.”).
17 However, the Court also strikes paragraph 7 of June Kailes’ reply declaration
18 because it addresses facts related to the FEMA’s Comprehensive Preparedness
19 Guide 301 which were not previously addressed in the City’s opposition to
20 Plaintiffs’ Motion for Summary Judgment.

21 **PLAINTIFFS’ REQUEST FOR JUDICIAL NOTICE**

22 Plaintiffs request that the Court take judicial notice of the following
23 documents in support of their Motion for Summary Judgment: (1) website of the
24 City’s EMD page entitled “Caring for those who depend on you – Persons with
25 Disabilities”; (2) Los Angeles QuickFacts from the U.S. Census Bureau; (3)
26 website of the City’s EMD page entitled “Emergency Plans and Annexes”; (4)
27 website of the City’s EMD page entitled “Emergency Management Committee”;
28 (5) Excerpts of the City’s Citywide Logistics Annex; (6) The City’s Tsunami San

1 Pedro Area Evacuation Maps; and (7) excerpts from the City's Recovery and
2 Reconstruction Plan. (Plaintiffs' Request for Judicial Notice in Support of
3 Plaintiffs' Motion for Summary Judgment at 1:1-2:26.)

4 Federal Rule of Evidence 201 provides that "[a] judicially noticed fact must
5 be one not subject to reasonable dispute in that it is either (1) generally known
6 within the territorial jurisdiction of the trial court or (2) capable of accurate and
7 ready determination by resort to sources whose accuracy cannot reasonably be
8 questioned." FED. R. EVID. 201(b). Generally, courts take judicial notice of
9 governmental websites provided that they have sufficient indicia of reliability.
10 *See, e.g. Lemperle v. Wash. Mut. Bank*, 2010 U.S. Dist. LEXIS 107204, *7-8 (S.D.
11 Cal. Oct. 7, 2010) (Anello, J.); *see also Woods v. Greenpoint Mortg. Funding,*
12 *Inc.*, 2010 U.S. Dist. LEXIS 76804, *5-6 (E.D. Cal. July 28, 2010) (Shubb, J.); *see*
13 *also Jarvis v. JP Morgan Chase Bank, N.A.*, 2010 U.S. Dist. LEXIS 84958, *3-4
14 (C.D. Cal. July 23, 2010) (King, J.). All of the above-referenced documents are
15 public materials available on governmental websites. Therefore, the Court takes
16 judicial notice of these documents.

17 **PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

18 **I. LEGAL STANDARD**

19 On a motion for summary judgment, the Court must determine whether,
20 viewing the evidence in the light most favorable to the nonmoving party, there are
21 any genuine issues of material fact. FED. R. CIV. P. 56(c); *see also Simo v. Union*
22 *of Needletrades*, 322 F.3d 602, 609-10 (9th Cir. 2003). Summary judgment
23 against a party is appropriate when the depositions, answers to interrogatories, and
24 admissions on file, together with the affidavits or declarations, if any, show that
25 there is no genuine issue as to any material fact and that the moving party is
26 entitled to judgment as a matter of law. FED. R. CIV. P. 56(a), (c). The moving
27 party bears the initial burden of establishing the basis for its motion and
28 identifying those portions of the pleadings and discovery responses that

1 demonstrate an absence of a genuine issue of material fact. *Celotex Corp. v.*
2 *Catrett*, 477 U.S. 317, 323 (1986). If the moving party meets its initial burden, the
3 nonmoving party must then set forth, by affidavit or as otherwise provided in Rule
4 56, specific facts showing that there is a genuine issue for trial. *Anderson v.*
5 *Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

6 In judging evidence at the summary judgment stage, the Court does not
7 make credibility determinations or weigh conflicting evidence. *T.W. Elec. Serv.,*
8 *Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987). Rather,
9 “[t]he evidence of the nonmovant is to be believed, and all justifiable inferences
10 are to be drawn in [the nonmovant’s] favor.” *Anderson*, 477 U.S. at 255. The
11 evidence presented by the parties must be admissible. FED. R. CIV. P. 56(c).
12 Conclusory, speculative testimony is insufficient to raise genuine issues of
13 material fact and defeat summary judgment. *Soremekun v. Thrifty Payless, Inc.*,
14 509 F.3d 978, 984 (9th Cir. 2007).

15 II. DISCUSSION

16 Plaintiffs request that the Court enter summary judgment on each of their
17 causes of action with respect to liability because, despite the special
18 accommodations that individuals with disabilities require, the City admits that it
19 has no plan to notify, evacuate, transport, or shelter these individuals in the event
20 of an emergency or natural disaster. (Pls.’ Mem. re Mot. for Summary Judgment
21 at 1:6-2:24.) Plaintiffs argue that the City’s residents with disabilities are
22 consequently at a higher risk than the general population to be harmed in an
23 emergency or natural disaster. (*Id.*) The named plaintiffs also maintain that they
24 have experienced immediate fear, apprehension, and unease because they believe
25 they have a right to be, but are not, included in the City’s emergency preparedness
26 program. (*Id.*; Declaration of Audrey Harthorn, Plaintiff, (“Harthorn Decl.”) at ¶
27 11; Declaration of Lilibeth Navarro, founder and Executive Director of CALIF,
28 (“Navarro Decl.”) at ¶¶ 10, 12.)

1 The City, meanwhile, contends that Plaintiffs are not entitled to judgment as
2 a matter of law because “there is no evidence presented by Plaintiffs as to what
3 service the City actually provides (not ideally should provide) for its residents
4 generally that it does not provide for [Plaintiffs].” (The City’s Memorandum of
5 Points and Authorities in Opposition to Plaintiffs’ Motion for Summary Judgment
6 (“Defs.’ Opp’n to Mot. for Summary Judgment”) at 4:22-24.) According to the
7 City, Plaintiffs cannot establish actual discrimination because “the City has not
8 taken *any* action which disproportionately burdens people with disabilities.” (*Id.*
9 at 4:8-9.) (emphasis in original) Thus, the City argues that they cannot be held
10 liable for any alleged violations because they have not “*exclude[d]* people with
11 disabilities by reason of those disabilities” from any public program or service.
12 (*Id.* at 4:19-21.) (emphasis in original) Finally, the City argues that Plaintiffs
13 cannot prevail on a motion for summary judgment because they have presented no
14 evidence that the class representatives requested, but were refused, a reasonable
15 accommodation from the City. (*Id.* at 4:24-26.)

16 **a. Plaintiffs are Entitled to Judgment as a Matter of Law as to**
17 **Liability on their ADA and Section 504 Claims Against the City**

18 Congress enacted the ADA “to remedy widespread discrimination against
19 disabled individuals.” *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 674 (2001). Title
20 II of the ADA, in particular, prohibits discrimination against individuals with
21 disabilities in the provision of services, programs, or activities by public entities.
22 42 U.S.C. § 12132. Section 504, in turn, requires that “[n]o otherwise qualified
23 individual with a disability in the United States . . . shall, solely by reason of her
24 or his disability, be excluded from the participation in, be denied the benefits of,
25 or be subjected to discrimination under any program or activity receiving Federal
26 financial assistance.” 29 U.S.C. § 794(a). Due to the similarities between the
27 statutes, the Ninth Circuit has held that “there is no significant difference in the
28 analysis of rights and obligations created by” the ADA and Section 504. *Vinson v.*

1 *Thomas*, 288 F.3d 1145, 1152 n.7 (9th Cir. 2002); *see also Pierce v. County of*
2 *Orange*, 519 F.3d 985, 1010 n.27 (9th Cir. 2008) (“Title II of the ADA was
3 expressly modeled after § 504 . . . and essentially extends coverage to state and
4 local government entities that do not receive federal funds.”).

5 To establish a violation of Title II of the ADA, “a plaintiff must show: [(i)]
6 he is a ‘qualified individual with a disability’; [(ii)] he was either excluded from
7 participation in or denied the benefits of a public entity’s services, programs or
8 activities, or was otherwise discriminated against by the public entity; and [(iii)]
9 *such exclusion, denial of benefits, or discrimination was by reason of his*
10 *disability.” Weinreich v. Los Angeles County Metro. Trans. Auth.*, 114 F.3d 976,
11 978 (9th Cir. 1997) (emphasis in original); *see also* 42 U.S.C. § 12132. To
12 establish a Section 504 violation, a plaintiff must also show that the program
13 receives federal funding. 29 U.S.C. § 794(a).

14 The plaintiff bears the initial burden of establishing a prima facie case,
15 including that a reasonable accommodation is available. *Pierce*, 519 F.3d at 1011.
16 The public entity may rebut the plaintiff’s showing by demonstrating that the
17 requested accommodation would require a fundamental alteration or cause an
18 undue burden. *Id.*

19 ***i. The Named Plaintiffs and Class Members are Qualified***
20 ***Individuals with Disabilities***

21 Pursuant to the ADA, “[t]he term ‘disability’ means, with respect to an
22 individual[,] (A) a physical or mental impairment that substantially limits one or
23 more of the major life activities of such individual; (B) a record of such an
24 impairment; or (C) being regarded as having such an impairment.” 42 U.S.C. §
25 12102(1); *see also* 28 C.F.R. § 35.104.

26 Plaintiffs have established that they are, or advocate on behalf of, qualified
27 individuals with disabilities. Harthorn is a resident of Los Angeles who suffers
28 from arthrogryposis, a congenital condition causing multiple joint contractures and

1 lack of muscle development. (Harthorn Decl. at ¶ 2.) She uses a power
2 wheelchair for mobility but cannot get into or out of her chair independently. (*Id.*)
3 CALIF, meanwhile, is a private, non-profit community-based corporation
4 providing advocacy, resources, and individualized assistance to people with
5 disabilities in the Los Angeles area. (Navarro Decl. at ¶ 3.) It is devoted to the
6 goal of full inclusion, equality, and civil rights for all people with disabilities,
7 especially in the underserved minority communities of Los Angeles. (*Id.*) The
8 Court also notes that the City stipulated that the named plaintiffs be designated as
9 the class representatives for purposes of this action. [Doc. No. 81.]

10 Plaintiffs have also established that the class consists of individuals with
11 disabilities. Indeed, the parties stipulated that the class is comprised of all people
12 with disabilities, as defined by the ADA, who are within the City and the
13 jurisdiction served by the City's and the County's emergency preparedness
14 programs and services. (Order Approving Certification of a Class at 1:4-9.)
15 Accordingly, the Court finds that Plaintiffs and all class members are qualified
16 individuals with disabilities.

17 ***ii. Plaintiffs are Excluded from Participation in the City's***
18 ***Emergency Preparedness Program***

19 The ADA is a comprehensive mandate designed to eliminate both "outright
20 intentional exclusion" and "the discriminatory effects of architectural,
21 transportation, and communication barriers, overprotective rules and policies,
22 [and] failure to make modifications to existing facilities and practices." 42 U.S.C.
23 § 12101(a)(5). It applies with equal force to facially neutral policies that
24 discriminate against individuals with disabilities. *See McGary v. City of Portland*,
25 386 F.3d 1259, 1265 (9th Cir. 2004) (explaining that the Ninth Circuit has
26 "repeatedly recognized that facially neutral policies may violate the ADA when
27 such policies unduly burden disabled persons, even when such policies are
28 consistent enforced."); *see also Crowder v. Kitagawa*, 81 F.3d 1480, 1483-84 (9th

1 Cir. 1996). With respect to facially neutral policies, courts must determine
2 whether individuals with disabilities are denied “meaningful access” to state-
3 provided programs, services, and activities. *Crowder*, 81 F.3d at 1484. If
4 qualified individuals are denied “meaningful access” to a benefit because of their
5 disability, the public entity must provide reasonable modifications.⁹ *Mark H.*
6 *Lemahieu*, 513 F.3d 922, 937 (9th Cir. 2008). The accompanying regulation
7 provides that a “[b]enefit includes provision of services, financial aid or
8 disposition (i.e. treatment, handling, decision, sentencing confinement, or other
9 prescription of conduct).” 28 C.F.R. § 42.540(j).

10 In *Crowder v. Kitagawa*, the Ninth Circuit held that a facially neutral and
11 uniformly enforced Hawaii law requiring an 120-day quarantine on carnivorous
12 animals entering the state violated the ADA because it “burden[ed] visually-
13 impaired persons in a manner different and greater than it burden[ed] others.” 81
14 F.3d at 1484. The Court explained that, “[b]ecause of the unique dependence
15 upon guide dogs among many of the visually-impaired, Hawaii’s quarantine
16 effectively denie[d] these persons . . . meaningful access to state services,
17 programs, and activities while such services programs, and activities remain[ed]
18 open and easily accessible by others.” *Id.*

19 Relying on *Crowder*, the Ninth Circuit upheld a preliminary injunction
20 precluding Los Angeles County from closing a hospital dedicated primarily to
21 providing rehabilitative services to individuals with disabilities. *Rodde v. Bonta*,
22 357 F.3d 988 (9th Cir. 2004). Because no other facility in the County could
23 provide comparable services, the Court held that “the closure of [the facility]
24 would deny certain disabled individuals meaningful access to government-
25 provided services because of their unique needs, while others would retain access
26 to the same class of services.” *Id.* at 998.

27 _____
28 ⁹ “Reasonable accommodation” and “reasonable modification” are interchangeable terms. *McGary*, 386 F.3d at 1266 n.3.

1 In this case, the City provides a governmental program – its emergency
2 preparedness program – to its residents. According to the Chief of the Operations
3 Division of the City’s EMD, the emergency preparedness program is “designed to
4 save lives, protect property and return the City to normal service levels” by
5 “assist[ing] in the response and recovery efforts following a disaster.” (Freeman
6 Decl. at ¶¶ 4, 5.) To this end, the City provides a variety of “benefits,” including,
7 but not limited to, the provision of services to notify, evacuate, transport, and
8 shelter its residents in the event of an emergency or disaster.

9 The City’s emergency preparedness program is designed to apply equally to
10 all of its residents. (*Id.* at ¶ 12.) Plaintiffs, however, have provided substantial
11 evidence demonstrating that individuals with disabilities lack meaningful access to
12 the City’s emergency preparedness program due to the City’s failure to address or
13 provide for their unique needs. Although it is not necessary for the Court to
14 enumerate every deficiency at this stage in the litigation, Plaintiffs have
15 established, and the City has failed to dispute, that the City’s emergency
16 preparedness program does not include provisions to notify people with auditory
17 impairments or cognitive disabilities of an emergency, or evacuate, transport, or
18 temporarily house individuals with disabilities during or immediately following an
19 emergency or disaster despite the fact that such individuals have special needs and
20 may require reasonable accommodations during an emergency or disaster.

21 (Burton Dep. at 41:9-42:1, 44:5-8, 44:16-45:4, 52:18-22, 54:11-15, 127:5-13;
22 Garcia Dep. at 36:1-4, 36:23-37:13, 41:8-12¹⁰, 55:8-56:1, 42:15-19, 55:8-56:1;
23 Freeman Dep. at 27:7-28:2, 56:21-25, 57:3-7, 78:8-12; Featherstone Dep. at
24 59:22-60:15, 67:21-25, 68:16-71:10; Kaufman Dep. at 129:12-19, 131:19-22,
25 132:2-6; Gerlich Dep. at 50:1-5.)

26
27
28 ¹⁰ The Court notes that the City can request buses that are accessible for people with disabilities. (Garcia Dep. at 37:3-9.)

1 The City contends that the emergency preparedness program is intended to
2 be general – not tactical – in nature, and actual responsibilities are to be delegated
3 to other departments. (Freeman Dep. at 15:14-23, 28:18-29:4, Featherstone Dep.
4 at 67:17-22.) Yet there is no evidence in the record that the individual
5 departments which have been delegated the responsibility of assisting such
6 individuals, including the LAFD, the LAPD, and the Department of Parks and
7 Recreation, have any plans for addressing the needs of individuals with disabilities
8 in the event of an emergency or disaster. (Freeman Dep. at 72:11-14; Neiman
9 Dep. at 32:12-16, 54:23-55:17, 59:18-60:16; Gerlich Dep. at 23:15-22, 38:11-20,
10 39:9-18.) Neither the City nor the individual departments have assessed whether
11 they have the capacity to respond to the needs of individuals with disabilities
12 during an emergency or disaster. (Neiman Dep. at 31:22-32:3, 43:12-16; Gerlich
13 Dep. at 34:15-20, 35:13-18, 47:20-24; Kaufman Dep. at 167:6-13, 188:24-189:4.)
14 The City also has failed to provide any evidence of the provision of reasonable
15 accommodations to specific disabled individuals by any of its departments during
16 an emergency or disaster.

17 The DOD recognized that the City’s emergency preparedness program “is
18 seriously out of compliance” with the ADA and Section 504 and the City’s
19 residents with disabilities “will continue to be at-risk for suffering and death in
20 disproportionate numbers unless the City drastically enhances the existing
21 disability-related emergency management and disaster planning process and
22 readiness as required by the ADA and other statutes.” (Smith Decl. at ¶ 14, Ex.
23 L.) The Court therefore concludes that individuals with disabilities are
24 disproportionately burdened by the City’s failure to consider their unique needs in
25 the administration of its emergency preparedness program.

26 The City’s provision of shelters provides one of many examples in which
27 individuals with disabilities lack meaningful access to the City’s emergency
28 preparedness program. The City, through its Department of Parks and Recreation,

1 has a plan for providing mass shelter and care for residents who are forced to
2 evacuate their homes and it has identified approximately 200 shelter sites to be
3 used in the event of an emergency or disaster. (Torres Dep. at 16:13-19; 47:12-
4 18.) However, the City does not know which, if any, of these shelters are
5 architecturally accessible to individuals with disabilities. (*Id.* at 21:15-21.)
6 Likewise, the City does not know which, if any, of these shelter sites could
7 accommodate people with specific special needs, such as service animals. (*Id.* at
8 35:24-36:6, 38:7-12, 42:2-5.) Individuals with disabilities currently have no way
9 of knowing which shelters have been designated as accessible. (Burton Dep. at
10 66:4-8.) In the event of an emergency or disaster, individuals with disabilities are
11 therefore disproportionately burdened by the City's failure to provide or identify
12 accessible shelters when such shelters are available to other residents. While the
13 Court commends the City for continuing to conduct full accessibility surveys of its
14 shelters and for identifying the need for evacuation devices, such as portable lifts
15 and evacuation chairs, (*id.* at 19:13-17, 20:7-22; Kaufman Decl. at ¶ 25), such
16 efforts – in isolation – are not sufficient.

17 The City's response that its lack of affirmative action with respect to
18 individuals with disabilities somehow absolves the City of liability is not only
19 unavailing but also contrary to clearly-established precedent. *See McGary*, 386
20 F.3d at 1266 (explaining that the ADA "guard[s] against the façade of 'equal
21 treatment' when particular accommodations are necessary to level the playing
22 field."). Because individuals with disabilities require special needs, the City
23 disproportionately burdens them through its facially neutral practice of
24 administering its program in a manner that fails to address such needs. (*See Defs.'*
25 *Opp'n to Mot. for Summary Judgment* at 8:11-13.)

26 The City's contentions that it can make *ad hoc* reasonable accommodations
27 upon request or that Plaintiffs' claims are somehow deficient because the named
28 plaintiffs have not sought individual accommodations are both legally inadequate

1 and practically unrealistic. The gravamen of Plaintiffs' complaint is that the City
2 fails to provide for the unique needs of individuals with disabilities in its
3 emergency preparedness program. The purpose of the City's emergency
4 preparedness program is to *anticipate* the needs of its residents in the event of an
5 emergency and to *minimize* the very type of last-minute, individualized requests
6 for assistance described by the City, particularly when the City's infrastructure
7 may be substantially compromised or strained by an imminent or ongoing
8 emergency or disaster.

9 The Court is similarly not persuaded by the City's argument concerning the
10 importance of personal planning and preparedness. (Defs.' Opp'n to Mot. for
11 Summary Judgment at 1:11-13.) Although it is certainly important for all of the
12 City's residents to prepare for an emergency, it is the City's emergency
13 preparedness program that is at issue in this action. The City provides a
14 comprehensive emergency preparedness program and such program must be open
15 and accessible to all of its residents. It is irrelevant for purposes of this action
16 whether individuals should also personally plan and prepare for emergencies
17 and/or disasters. Accordingly, the Court finds that Plaintiffs are denied the
18 benefits of the City's emergency preparedness program because the City's practice
19 of failing to address the needs of individuals with disabilities discriminates against
20 such individuals by denying them meaningful access to the City's emergency
21 preparedness program.

22 ***iii. The Exclusion of Plaintiffs from the City's Emergency***
23 ***Preparedness Program is by Reason of Their Disabilities***

24 To be actionable, the exclusion from participation in or denial of the
25 benefits of services, programs or activities by a public entity must be by reason of
26 a disability. *See* 42 U.S.C. § 12132. In *McGary*, the City of Portland's Office of
27 Planning and Development Review ("OPDR") issued a Notice to Remove
28 Nuisance because it concluded that the amount of trash and debris in the plaintiff's

1 yard constituted a nuisance in violation of the city code. 386 F.3d at 1260. The
2 plaintiff, an individual with AIDS, was subsequently hospitalized with meningitis,
3 but the OPDR refused to provide the plaintiff with additional time to remove the
4 debris. *Id.* at 1260-61. Although it did not reach the merits, the Ninth Circuit held
5 that the plaintiff sufficiently alleged that he was discriminated against by reason of
6 his disability due to the City's failure to provide a reasonable time
7 accommodation. *Id.* at 1269-70.

8 Here, too, the denial of meaningful access to the City's emergency
9 preparedness program is by reason of Plaintiffs' disabilities. The City provides a
10 comprehensive emergency preparedness program to the general public but it
11 denies individuals with disabilities meaningful access to the program while the
12 benefits of the program remain open and easily accessible to other residents.
13 Because of the City's failure to address their unique needs, individuals with
14 disabilities are disproportionately vulnerable to harm in the event of an emergency
15 or disaster.

16 The City's reliance on *Weinreich v. Los Angeles County Metro. Transp.*
17 *Auth.*, 114 F.3d 976 (9th Cir. 1997), is inapposite. In *Weinreich*, the Ninth Circuit
18 held that Los Angeles County's Metropolitan Transportation Authority ("MTA")
19 did not discriminate against the plaintiff on the basis of his disability by refusing
20 to exempt him from a recertification requirement of the MTA's Reduced Fare
21 Program. 114 F.3d at 978. The Reduced Fare Program served elderly and eligible
22 disabled patrons but, to qualify, disabled participants must provide updated
23 medical information every three years demonstrating the ongoing existence of a
24 disability. *Id.* The plaintiff sought an exemption from the recertification
25 requirement because he was indigent and could not afford to pay a private doctor
26 to recertify his disability. *Id.* The Ninth Circuit held that the plaintiff's "lack of
27 'meaningful access' to the Reduced Fare Program was not due to his medical
28 disability, but rather to his inability to satisfy a condition of eligibility because of

1 his financial circumstances.” *Id.* at 979.

2 Unlike *Weinreich*, the City’s failure to address the unique needs of
3 individuals with disabilities in its emergency preparedness program is by reason of
4 their disabilities. The City contends that the emergency preparedness program is
5 intended to be general, not tactical, in nature, and actual responsibilities are to be
6 delegated to other departments. (Freeman Dep. at 15:14-23, 28:18-29:4,
7 Featherstone Dep. at 67:17-22.) Because of this practice, individuals with
8 disabilities are burdened “in a manner different and greater than it burdens
9 others.” *Crowder*, 81 F.3d at 1484. For example, although the City has a plan to
10 provide shelter at designated sites, the record reflects that many, if not all, of these
11 sites are not ADA-compliant. (Torres Dep. at 21:15-21.) Because the City does
12 not know which of its shelters are accessible, individuals with disabilities do not
13 know how to locate an accessible shelter. Accordingly, the Court finds that
14 Plaintiffs’ exclusion from the City’s emergency preparedness program is by
15 reason of their disabilities.

16 ***iv. The City Receives Federal Funding***

17 To assert a Section 504 claim, a plaintiff must establish that the program at
18 issue receives federal funding. 29 U.S.C § 794(a). It is undisputed that the City
19 receives federal funding for its emergency preparedness program. (SGI at ¶ 243.)
20 Plaintiffs have therefore established this element of their Section 504 claim.

21 ***v. Reasonable Modifications are Available***

22 “When a state’s policies, practices or procedures discriminate against the
23 disabled in violation of the ADA, Department of Justice regulations require
24 reasonable modifications in such policies, practices or procedures ‘when the
25 modifications are necessary to avoid discrimination on the basis of disability,
26 unless the public entity can demonstrate that making the modifications would
27 fundamentally alter the nature of the service, program, or activity.’” *Crowder*, 81
28 F.3d at 1485 (quoting 28 C.F.R. § 35.130(b)(7)).

1 Plaintiffs have established that reasonable modification(s) to the City's
2 emergency preparedness program are available, including those identified in the
3 DOD's recommendations to the EMD and the U.S. Department of Justice's ADA
4 Checklist for Emergency Shelters. (Smith Decl. at ¶ 14, Ex. L; Collins Decl. ¶¶
5 15, 30, Ex. A; Declaration of June Kailes, Plaintiffs' Expert, at ¶¶ 18, 21, 39, 48.)
6 Although the City disputes whether some of the reasonable modifications
7 enumerated by Plaintiffs are necessary or purely "aspirational," it has presented no
8 evidence demonstrating that any specific reasonable modification would
9 fundamentally alter the nature of its emergency preparedness program or cause
10 undue burden. Plaintiffs, however, seek an entry of summary judgment solely on
11 the issue of liability, and the Court consequently makes no finding as to the
12 appropriate remedy at this stage of the litigation.

13 **b. Plaintiffs are Entitled to Judgment as a Matter of Law as to**
14 **Liability on Their State Law Claims Against the City**

15 *vi. The City Violates the CDPA by Failing to Provide Full and*
16 *Equal Access to the City's Emergency Preparedness Program*

17 The CDPA provides that "[i]ndividuals with disabilities shall be entitled to
18 full and equal access, as other members of the general public, to accommodations,
19 advantages, [and] facilities." CAL. CIV. CODE. § 54.1. A violation of the ADA
20 also constitutes a violation of the CDPA. CAL. CIV. CODE. § 54(c); *see also*
21 *Hubbard v. SoBreck*, 554 F.3d 742, 745 (9th Cir. 2009). Accordingly, Plaintiffs
22 are entitled to judgment as a matter of law as to liability on their CDPA claim
23 because, as set forth above, they have established a violation of the ADA.

24 *vii. The City Violates California Government Code Section 11135*
25 *by Failing to Provide Full and Equal Access to the City's*
26 *Emergency Preparedness Program*

27 Section 11135 prohibits any program or activity receiving financial
28 assistance from the state from denying "full and equal" access to or discriminating

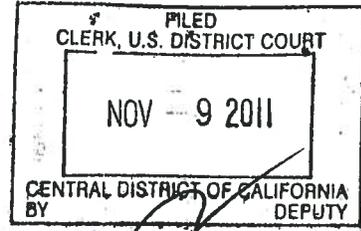
1 against individuals with disabilities. CAL. GOV. CODE. § 11135. This section “is
2 identical to the Rehabilitation Act except that the entity must receive State
3 financial assistance rather than Federal financial assistance.” *D.K. v. Solano*
4 *County Office of Educ.*, 667 F. Supp. 2d 1184, 1190-91 (E.D. Cal. 2009) (England,
5 J.). It is undisputed that the City receives state funding for its emergency
6 preparedness program. (SGI at ¶ 244.) The Court therefore finds that Plaintiffs
7 are entitled to judgment as a matter of law as to liability on their Section 11135
8 claim because, as set forth above, they have established a violation of Section 504
9 and the City receives state funding.

10 CONCLUSION

11 Based on the foregoing, the Court hereby orders as follows:

- 12 1. The Court **GRANTS** in part Plaintiffs’ Motion to Strike as set forth
13 above;
- 14 2. The Court **SUSTAINS** Plaintiffs’ Objection;
- 15 3. The Court **OVERRULES** Defendants’ Objections;
- 16 4. The Court **GRANTS** Plaintiffs’ Request for Judicial Notice;
- 17 5. The Court **GRANTS** Plaintiffs’ Motion for Summary Adjudication as
18 to the City’s liability on Plaintiffs’ claims for: (1) violation of Title II of
19 ADA; (2) violation of Section 504; (3) violation of the CDPA,
20 California Civil Code § 54, *et seq.*; and (4) violation of California
21 Government Code § 11153;
- 22 6. The Court finds that the City violated (1) Title II of ADA; (2) Section
23 504; (3) the CDPA, California Civil Code § 54, *et seq.*; and (4)
24 California Government Code § 11153, and Plaintiffs are entitled to
25 judgment as a matter of law as to liability on all of these claims;
- 26 7. The pretrial conference date and trial date, presently scheduled for
27 March 28, 2011 and April 12, 2011, respectively, are hereby vacated;
- 28 8. Plaintiffs and the City shall participate in a settlement conference with

APPENDIX F



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

COMMUNITIES ACTIVELY LIVING
INDEPENDENT AND FREE, a
nonprofit corporation, and AUDREY
HARTHORN, an individual, on behalf of
themselves and ALL OTHERS
SIMILARLY SITUATED,

Plaintiffs,

v.

CITY OF LOS ANGELES, a public
entity, and COUNTY OF LOS
ANGELES, a public entity,

Defendants.

CASE NO.: CV-09-0287 CBM (RZx)

~~Proposed~~ Order Re Injunctive Relief

1 **[Proposed] ORDER**

2 Pursuant to this Court's Order granting Plaintiffs' Motion for Summary
3 Adjudication (Dkt. 140), the Court issues the following order with respect to Defendant
4 City of Los Angeles ("the City"):

5 **A. Expert Review and Revision of the City's Emergency Preparedness**
6 **Program**

7 The City will hire BCFS to serve as the independent expert to address all
8 components of the City's emergency preparedness program. *See* Order re Expert
9 Selection (Dkt. No. 169), dated 9/29/11. BCFS shall subcontract with June Kailes in
10 order to utilize her subject matter expertise in disability issues. *See id.* The expert will
11 evaluate the City's current plans and develop revised emergency plans as to all
12 components of the City's emergency preparedness program to address the needs of
13 persons with disabilities. Components to be addressed are listed in the Court's Order
14 Granting Summary Adjudication (Dkt. No. 140), dated 2/10/11, pages 3-4.

15 In evaluating and revising the City's current emergency plans, the expert will,
16 among other tasks, review relevant documents, meet with City personnel and meet with
17 other governmental and non-governmental representatives (e.g. other local, state or
18 federal emergency planners, and representatives of community organizations that
19 represent people with disabilities). Throughout this process, the expert will also work
20 cooperatively with City employees. In order to avoid unnecessary and duplicative costs,
21 the expert should attempt to utilize the time and resources of City employees, if available,
22 so long as the expert determines that City employees have the requisite expertise and
23 skill. All work performed pursuant to this Order will be under the direction of the expert
24 and ultimate decision-making authority remains with the expert. As the City's emergency
25 plans are revised, the expert will oversee the implementation of these revised emergency
26 plans.¹

27
28 ¹ Pursuant to 42 U.S.C. § 12206(c)(1), the U.S. Department of Justice ("DOJ") may provide technical assistance to the Parties and the expert throughout the review and

1 **B. Compliance Period, Continuing Jurisdiction and Reporting**

2 The revision of the City's emergency plans and the implementation thereof shall be
3 completed in a time period of three years commencing with the entry of this Order. The
4 Parties agree that the Court shall retain jurisdiction for three years following the entry of
5 this Order. The Court notes that this three year period is designed to allow the City a
6 thoughtful and complete review of its emergency plans, and to provide time to implement
7 the plans once revised. However, the Court orders that the City begin this review and
8 revision without delay, and that it proceed as expeditiously as possible in this process.

9 During the three year period, the expert will provide bi-annual reports to the Court
10 and counsel for the Parties such that they may monitor the progress being made. These
11 reports shall include sufficient detail such that the Court and counsel for the Parties can
12 evaluate progress of the review and revision of the plans, and at a minimum shall include
13 the following information:

- 14 1. Identification of key City personnel involved in the process;
- 15 2. Identification of community groups and governmental agencies consulted or
16 otherwise involved in the process;
- 17 3. Work plans, including time lines and completion dates, for revision of each
18 of the City's emergency plans, broken down by type of plan;
- 19 4. The status of the revision of the City's emergency plans, per the work plans
20 developed by the expert;
- 21 5. Identification of any obstacles or problems identified by the expert in the
22 review and revision of the plans.

23 To the extent they believe it is necessary, the Parties may provide comments on
24 these bi-annual reports and request additional information from the expert as to the

25
26
27 revision and implementation phases. The DOJ will be the lead federal agency in this case
28 and all communications and interactions related to this litigation between Counsel and
any federal agency, including the Federal Emergency Management Agency, will go
through the DOJ.

1 progress made under this Order, within 30 days of the report's issuance. The Parties will
2 meet and confer if after receiving such additional information, either party believes
3 further information is required. The Parties shall share with each other all additional
4 information provided by the expert and shall file their comments, if any, with the Court.

5 At the conclusion of the three year period, the expert will submit a final report to
6 the Court describing the work completed to date. Within thirty (30) days of said
7 submission, the Parties may submit briefing to the Court as to their position on whether
8 the work required to remedy the violations identified by this Court is complete and/or
9 whether jurisdiction by the Court should be retained. Based on the expert's reports and
10 the Parties' briefing, the Court will make a determination whether to terminate the case or
11 to extend the jurisdiction of the Court.

12 **C. Dispute Resolution**

13 If any disputes arise and if the Parties are unable to resolve those disputes through
14 a good faith meet and confer process, such disputes shall first be referred to Magistrate
15 Judge Andrew J. Wistrich or a successor that he shall designate, if Magistrate Judge
16 Wistrich becomes unavailable. Any unresolved disputes may be submitted to this Court
17 for final resolution.

18 **D. Attorneys' Fees and Costs**

19 Following the entry of this Order by the Court, the Parties will negotiate in good
20 faith for three weeks in order to attempt to reach an agreement as to the amount of
21 attorneys' fees and costs for Class Counsel in this matter. If the Parties can reach
22 agreement as to the amount of attorneys' fees and costs within three weeks but require
23 additional time for the Los Angeles City Council to approve the amount, the Parties will
24 inform the Court of the date by which the City Council will consider the fee amount and

25 / / /

26 / / /

27 / / /

28 / / /

1 request an extension until that date. If the Parties cannot reach agreement as to the
2 amount of attorneys' fees and costs after three weeks of negotiations, Plaintiffs will file a
3 motion with the Court within one week.

4 **IT IS SO ORDERED.**

5 DATED: 11/9/11

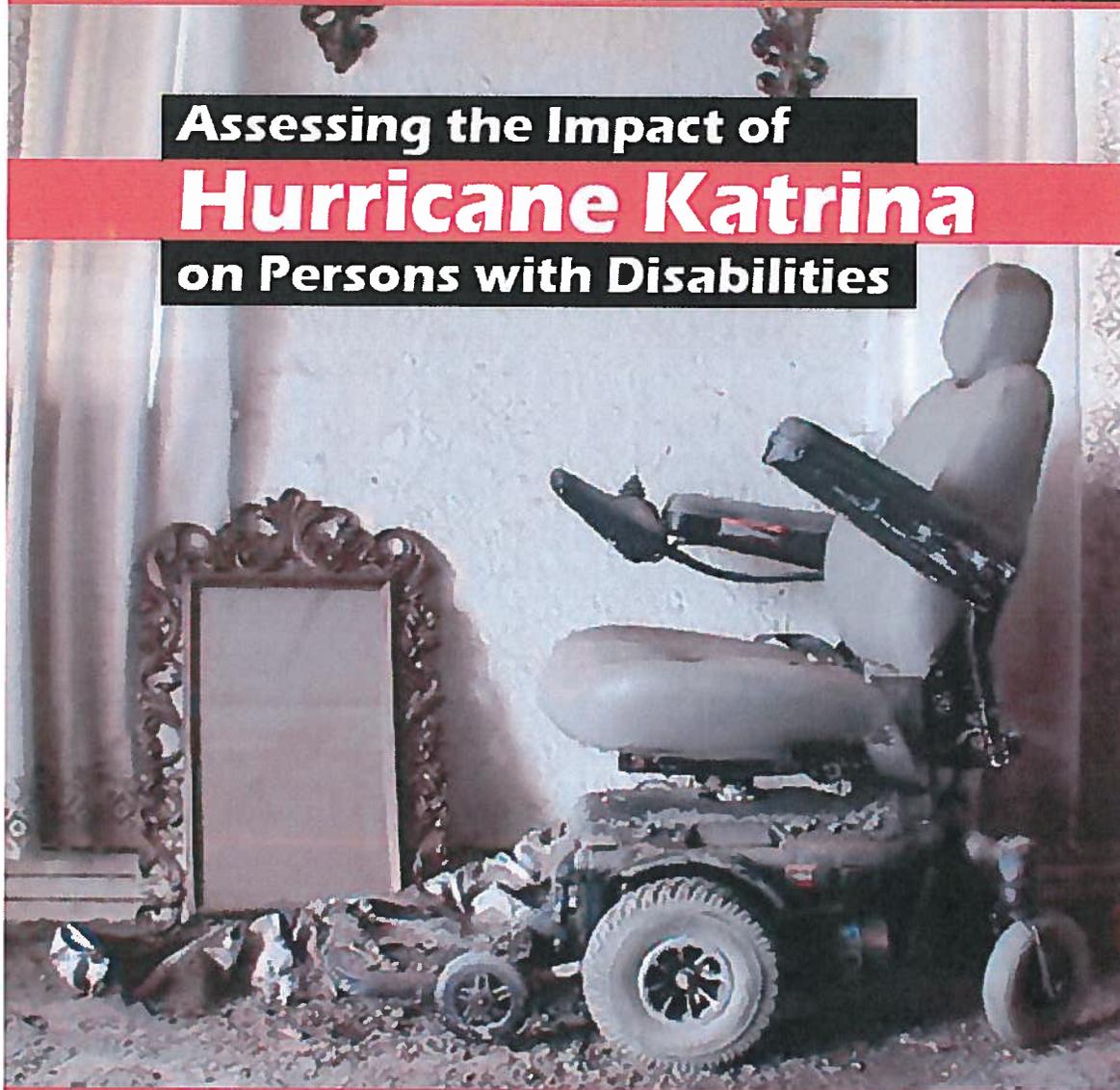
By: 

Hon. Consuelo B. Marshall

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Final Report January 2007

Assessing the Impact of
Hurricane Katrina
on Persons with Disabilities



Glen W. White, PhD
Michael H. Fox, ScD
Catherine Rooney, MA
University of Kansas

Anthony Cahill, PhD
University of New Mexico

Funded by the National Institute on Disability and Rehabilitation Research (H133B000500-04B)

■ Acknowledgements

The authors gratefully acknowledge the numerous staff and consumers of centers for independent living as well as staff of emergency management agencies who willingly shared their experiences and opinions with the research team.

■ About The Authors

Glen W. White, Ph.D., is currently a professor in the Department Applied Behavioral Science and directs the Research and Training Center on Independent Living (RTC/IL) at the University of Kansas.

Michael H. Fox, Sc.D., is an associate professor in the Department of Health Policy and Management at the Kansas University Medical Center Research and is an associate scientist at RTC/IL at the University of Kansas.

Catherine “Cat” Rooney, M.A., is the project coordinator for the NIDRR-funded research project at the Research and Training Center on Independent Living at the University of Kansas. She also serves as the project coordinator for the “Nobody Left Behind” research grant, also located at the RTC/IL.

Anthony Cahill, Ph.D., is Senior Research Scientist and Director of the Division of Disability and Health Policy at the Center for Development and Disability in the University of New Mexico School of Medicine.

■ For More Information

Dr. Glen W. White, Principal Investigator

785-864-4095 (phone) 785-864-5063 (fax) 785-864-0706 (TDD) glen@ku.edu

■ Citation Information

White, G. W., Fox, M. H., Rooney, C., & Cahill, A. (2007). Assessing the impact of Hurricane Katrina on persons with disabilities. Lawrence, KS: The University of Kansas, The Research and Training Center on Independent Living.

■ Photo Credits

Pictures in this report were taken by Glen White and Catherine Rooney on visits to the research sites. Please acknowledge photo credits appropriately.

■ About the Report

This report was funded by the National Institute on Disability and Rehabilitation Research, award #H133B000500-04B. Published by The Research and Training Center on Independent Living, The University of Kansas, 1000 Sunnyside Avenue, 4089 Dole Center, Lawrence, KS 66045-7555, (785) 864-4095 (Voice), (785) 864-0706 (TTY)
<http://www.rtcil.org/products/index.shtml>



Table of Contents

Executive Summary	3
Introduction	6
Background	6
Research Questions.....	6
Six Key Research Questions of the Katrina Project.....	8
Methods.....	9
Site Selection	
Background Demographic and Other Data Collection	
Survey Instruments	
Interview and Focus Groups	
Relocation Center Interviews	
Review of Statewide Independent Living Councils Plans	
Conclusion.....	11
Findings	11
The Impact of Hurricane Katrina	11
Gaps in Pre-Disaster Planning.....	14
Gaps in Pre-Disaster Information Sharing and Communication.....	18
Information	
Communication Within CILs	
Communication Between CILs and Other Organizations	
Gaps in Pre- and Post-Disaster Coordination.....	21
Activities by CILs After the Storms	
Relationships with Responding Organizations	
Evacuation	
Temporary and Permanent Accessible Housing	
Restoring the “Civic Fabric” of Services Used by People with Disabilities	
Recommendations	26
Introduction.....	26

Pre-Disaster Planning: Increasing Leadership and Strategic Vision to Reduce the Impact of Disasters on People with Disabilities.....	27
Increase the Role of Statewide Independent Living Councils Recommendation One	
Defining the Needs of People with Disabilities Recommendation Two	
Personal Disaster Planning for People with Disabilities Recommendation Three	
Organizational Disaster Planning for CILs Recommendation Four	
Pre- and Post- Disaster Communication and Information	31
Education and Training for CILs on Public Emergency Recommendation Five	
Response and Recovery Plans and Procedures Recommendation Six	
Pre- and Post-Disaster Coordination.....	34
Community-Based Registries of People Needing Assistance Recommendation Seven	
Community-Based Registries of Resources for People with Disabilities Recommendation Eight	
Review of Accessibility of Secondary and Temporary Shelters for People with Disabilities Recommendation Nine	
Conclusion.....	37
Appendices.....	39
A - Informed Consent Form.....	40
B - Survey of CIL Managers and Key Personnel.....	42
C - Interview Instrument for Emergency Managers.....	51
D - Focus Group Script for Individual Experiences.....	57
E - First Anniversary of Katrina: Life in New Orleans for Persons with Disabilities.....	58

Executive Summary

■ The Research Project

The report by the U.S. House of Representatives Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, ***A Failure of Initiative: The Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina***¹ documents 90 specific failures at all levels of government in planning and responding to Hurricane Katrina and the other storms of 2005 in the Gulf Coast. Despite its comprehensiveness, this report pays inadequate attention to the unique challenges associated with ensuring that the needs and priorities of persons with a wide range of physical and cognitive disabilities are met before, during, and after a disaster.

Building on prior work of investigators from the University of Kansas and the University of New Mexico, the National Institute on Disability and Rehabilitation Research (NIDRR) sought to address this gap by funding a research project to identify major barriers faced during Hurricane Katrina by centers for independent living (CILs) and emergency managers in responding to the needs of people with disabilities. Through a combination of surveys, focus groups, and interviews in six research sites in the Gulf Coast states, investigators gathered information on the experiences of respondents and developed recommendations for future policy, planning, and practice to address identified gaps.

■ Key Findings

The research revealed that there were significant gaps in three key areas:

- pre-disaster planning by CILs, individuals with disabilities, and local emergency management agencies;
- pre- and post-disaster communication and information sharing within CILs, between CILs and consumers, and between local emergency management agencies; and
- pre- and post-disaster coordination between CILs and other disability agencies, local and regional emergency management organizations, and community supports.

¹ <http://katrina.house.gov/>

■ Recommendations

In developing recommendations based on these research findings, researchers avoided initiatives that would require massive new resources or significant revisions to existing policy or law. Instead, we focus on recommendations:

- targeted at the local level;
- that can be implemented with relatively modest investments;
- that in many cases can be implemented using existing materials and products developed by disability and emergency management agencies across the country; and
- are firmly within the assumptions of current emergency management planning and policy that “all response is local.”

Nine recommendations, each explained in detail in the body of the report, are offered.

- One:** An initiative should be developed that places statewide independent living councils (SILCs) in a leadership role in the process of bringing together disability organizations and emergency management organizations in the states.
- Two:** Disability organizations, including CILs and SILCs, should initiate planning for campaigns targeted at local and state emergency managers to separate people with disabilities from other persons with so called “special needs.”
- Three:** Staff and consumers of CILs should implement systematic training and education that will result in increased numbers of people with disabilities who have personal disaster plans.
- Four:** An education and training curriculum should be developed around effective organizational disaster response and recovery plans for CILs across the country. This should include content-specific elements of an organizational disaster plan, materials that can be used by the leadership and staff of CILs and ongoing technical assistance to CILs for developing and implementing these plans.
- Five:** Evidence-based research findings that are user-friendly should be made available to assist CILs, other community-based organizations, and interested people with disabilities to help them understand how existing emergency planning and response systems operate around the country.

- Six:** State emergency management officials should be encouraged to designate one or more disability contacts at the city and county level as first responders/relief providers for inclusion in emergency operations centers when a disaster strikes.
- Seven:** Community wide efforts should be put in place that identify persons with disabilities in need of additional services in a disaster, and should be developed to link these persons to services required to either evacuate or "shelter in place."
- Eight:** Community wide efforts need to be put in place that can identify functional supports, including accessible transportation, durable medical equipment, alternative communication systems (screen readers, sign language interpreters, personal assistive services, etc.), and accessible shelters for persons with disabilities in a disaster. Systems need to be developed to link these goods and services to individuals in need of them during evacuation and in shelters.
- Nine:** Investments need to be made at the community level to provide back-up community supports for persons with disabilities in disaster affected areas whose abilities to function independently are dependent upon maintaining access to social and medical services.

Introduction

■ Background

On February 12, 2006, the U.S. House of Representatives Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina released a comprehensive report detailing failures and performance gaps in the planning for and response to the single most costly natural disaster in our nation's history. ***A Failure of Initiative: The Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina*** documents 90 specific failures in response at all levels of government.

Despite its comprehensiveness, one shortcoming of the report is that it does not pay sufficient attention to the challenges associated with ensuring that the needs and priorities of people with a wide range of physical and cognitive disabilities were met before, during, and after the disaster. This group represents a large portion of the population of the United States. The Centers for Disease Control and Prevention (CDC) estimates that over 50 million people in the United States have some form of disability. In a recent report, the CDC estimated that nearly a half-million people with disabilities lived in the counties and parishes affected by the storm in the states that are the sites for this research (see Table One). Finally, the 2000 Census reports that over one million families in Alabama, Mississippi and Louisiana contained at least one person with a disability.²

While some mention is made in the report of the responsibilities of local government to accommodate "special needs populations" as a component of an overall evacuation strategy, the report largely ignored an important and far wider range of issues related to people with disabilities during the disaster.

■ Research Questions

Building on prior work of investigators from the University of Kansas and the University of New Mexico in disaster preparation and emergency response for people with disabilities, the National Institute on Disability and Rehabilitation Research (NIDRR)³ sought to fill this void in our understanding through research which sought to answer six key questions:

² United States Bureau of the Census: Disability and American Families: 2000

³ In October 2005, leadership at OSERS and NIDRR had indicated interest in assessment of the roles CILs played in assisting people with disabilities living in affected coastal regions during Hurricane Katrina. Drawing upon work from the earlier Nobody Left Behind research project, Dr. Glen White of The Research and Training Center on Independent Living at the University of Kansas submitted a supplemental proposal to NIDRR to investigate hurricane related activities affecting people with disabilities before, during, and following Hurricane Katrina. Dr. White's supplemental proposal was awarded in December 2005. Collaborators on the proposal were Dr. Michael Fox from the Kansas University Medical Center and Dr. Anthony Cahill of the University of New Mexico.

Table One

Numbers Of People with Disabilities Five Years and Older Residing in Coastal Counties or Parishes Affected by Hurricane Katrina⁴

State	County/Parish	Disabled Population Over Five Years Of Age
ALABAMA		
	Mobile	86,863
MISSISSIPPI		
	Hancock	10,776
	Harrison	40,495
	Jackson	25,379
LOUISIANA		
	Jefferson	88,512
	Orleans	102,106
	Plaquemines	4,565
	St. Bernard	14,545
	St. Charles	7,554
	St. James	3,796
	St. John Baptist	6,690
	St. Tammany	30,8115
	Tangipahoa	20,675
	Washington	11,013

⁴ Centers for Disease Control, United States Department of Health and Human Services: Hurricanes - Special Populations: People With Disabilities. 2006
<http://www.cdc.gov/ncbddd/hurricanes/disabilities.htm>

■ Six Key Research Questions of the Katrina Project

- What were the major barriers faced by people with disabilities and staff of Centers for Independent Living (CILs) who work with them in planning for and responding to the disaster?
- What were the major barriers and gaps that CIL personnel experienced in three areas: (a) locating and assisting people with disabilities; (b) meeting their independent living needs including medication and durable medical equipment, accessible housing and transportation, and accommodating caregivers and service animals; and (c) providing for assistive technologies?



Lower Ninth Ward of New Orleans, LA
G. White, photographer

- What were the major barriers for staff of local emergency management agencies in identifying and locating people with disabilities before and during the disaster, including identifying their functional and health care needs?
- What were the major barriers and gaps that emergency personnel faced in evacuating people with disabilities?
- What were the major barriers and gaps faced by emergency management personnel in providing services to people with disabilities during and after the disaster, including providing medication and durable medical equipment, accommodating caregivers and service animals, and providing for assistive technologies?
- What types of resources, including planning, training, information, equipment, and facilities did people with disabilities, staff of CILs, and local emergency management personnel identify as being potentially most useful to them in the event of future large-scale emergencies?

The ultimate goal of this research project is to provide a series of recommendations at the policy and program levels that can be used by emergency management agencies, CILs, and the public that will result in improvements to services provided to people with disabilities in future disasters.

This report builds upon the CDC/ATPM funded *Nobody Left Behind* (NLB) project at the University of Kansas.⁵ Major findings from that research were used to inform survey and interview questions used in this project. Key findings of the prior NLB project included:

- Poor participation of persons with disabilities and agencies that work with them in the disaster management process;
- Inadequate training of emergency managers and first responders in understanding the unique needs of persons with disabilities in a disaster;



Accessible FEMA Trailer, New Orleans, LA metro area
G. White, photographer

- Insufficient emphasis on detailed county level surveillance that would help emergency managers and other disaster planners understand the range of mobility needs among persons at risk in their jurisdictions in the event of an imminent evacuation; and
- Inadequate information about specific people with disabilities and their needs located in their service areas, both those in institutions as well as individuals living in the community.⁶

■ Methods

Site Selection

Centers for independent living were identified in parts of Alabama, Mississippi, and Louisiana affected by Katrina. Contacts were made to coordinate site visits and identify key informants for surveying and interviewing CIL employees and consumers. Local emergency management personnel were then identified in corresponding counties or service areas.

⁵ www.nobodyleftbehind2.org

⁶ A detailed description of findings from the *Nobody Left Behind* research will be part of the forthcoming *Journal of Disability Policy Studies* special issue on Disaster Preparation and Emergency Response for People with Disabilities, to be published April 2007.

Background Demographic and Other Data Collection

Background data were compiled for counties and parishes that were in the sample.

Survey Instruments⁷

Investigators developed two written survey instruments: one for a representative of each CIL, either the executive director or a delegate, and a representative of the local emergency management agency in the corresponding geographic area (see Appendix A for the informed consent form used for both CIL staff and emergency managers; Appendix B for the CIL interview instrument; and Appendix C for the survey instrument for emergency managers). Initial drafts of the surveys were developed by the research team and were then pilot-tested with CIL and emergency management staff in Kansas and New Mexico. The surveys were available in both paper and electronic form, and other accessible formats as needed.

Interviews and Focus Groups

After completion of the initial surveys, site visits for individual and telephone interviews as well as focus groups were administered at many of the research sites to gather more in-depth information with CIL staff, people with disabilities, and emergency management personnel.⁸ Drs. White and Fox conducted a site visit to Mississippi in February, 2006 and a second trip in March to Louisiana, while Dr. Cahill and Ms. Rooney conducted a site visit to Alabama in April, 2006. (See Appendix D for a copy of the focus group and interview script).

Fifty-six individuals associated with CILs participated in the research. Six CIL directors or key CIL staff completed surveys in Mississippi, Louisiana, and Alabama. Additional on-site focus groups were convened using semi-structured interviews with 22 CIL personnel and 18 consumers. Ten more persons with disabilities, subsequently identified by CIL directors, were interviewed during the site visits or by telephone. After all site visits, recordings of interviews and focus groups were transcribed and analyzed for emerging themes using standard qualitative analytic techniques.

Relocation Center Interviews

An additional nine persons with disabilities who stayed in relocation centers and later resettled in New Orleans were interviewed along with staff of agencies that

⁷ Both survey and focus group instruments received approval from the University of Kansas Internal Review Board (HSCL #15573). Informed consent was received in writing or over the phone for each individual who was interviewed, participated in a focus group or completed a survey in the three states. Contractual agreements were made in which compensation was provided for respondent's time in participating in the research.

⁸ Focus groups and interviews were tape recorded for later transcription and analysis.

participated in the provision of services to people with disabilities in relocation centers in New Mexico.

Review of Statewide Independent Living Council's Plans

Contacts were identified for the 51 statewide independent living councils (SILCs), which includes the 50 states and District of Columbia, through the Independent Living Research Utilization (ILRU) Directory of Centers and SILCs websites.⁹ Each was contacted to obtain information on any material in their State Plans or annual report related to disaster preparedness or emergency response. Forty SILCs participated in this survey for a 78% response rate.

■ Conclusion

Together, 65 individuals associated with CILs and 6 emergency managers in corresponding service areas participated in the research through surveys, focus groups, and interviews across multiple settings in the three Gulf States. They, along with the review of SILC policies, represent a comprehensive and robust source of information to draw conclusions and make appropriate recommendations for future policy and practice regarding people with disabilities in disaster preparation and emergency response.

Findings

■ The Impact of Hurricane Katrina

Despite the long history of hurricanes in the Gulf States, Hurricane Katrina and the other storms of 2005 were an anomaly - far more severe than anything that had occurred before in terms of both severity and breadth. The recent history of hurricanes on the Gulf Coast were on a much smaller scale, and after a few days of inconvenience, individuals, including people with disabilities, resumed their daily lives. The force of Katrina pushed human and material resources to extreme limits. It had a severe disruptive impact on entire communities, including people with and without disabilities as well as political, social, and legal systems.

“About 6:15, I went and got the paper... I later heard gurgling water... I made it to the wheelchair... Then, I went down under the water three times. I called 911 on the cell phone and the operator told me to get up as high as I could get. But I told her, I said ‘Miss, I can’t get me any higher’....”

⁹ <http://www.ilru.org/html/publications/directory/index.html>

The research sites in the Gulf States were well equipped in terms of counties served by CILs (see Figure One). Emergency shelters and designated transportation providers were populated throughout the area, as were emergency management agencies at the county level. However, the infrastructure that supports communities of all sizes throughout the Gulf States was not significantly coordinated to maximize evacuation of residents with disabilities.¹⁰ Interviews and focus groups with people with disabilities in the affected areas revealed an unprecedented pattern of disruption and loss.

Every person interviewed for this report lost their residence and household belongings, while over half lost items that significantly affected their independence for weeks or even months after the storm. These included such things as vehicles, durable medical equipment, or accessible housing. Many also lost the family or social networks that sustained them. Reactions of respondents understandably ranged from fear and disbelief, to shock, grief, anger, and considerable depression. For example, a respondent from New Orleans area stated,



Abandoned Power Chair, New Orleans
G. White, photographer

"I get depressed and wished I would have just gone ahead [and stayed] and drowned. When you look around and you don't have anything you used to have, it's hard. You can't get back the memories."

A unique consequence of Hurricane Katrina is the significant amount of time that persons with disabilities displaced by the disaster stayed with extended families, and the corresponding physical, emotional, and financial stress this placed on them and their families. Many of the focus group interviewees among CIL staff and consumers evacuated to relatives' homes. While some stayed only a few nights before moving on to shelters or other temporary housing, many stayed with families for weeks and even months while attempting to rebuild their lives.

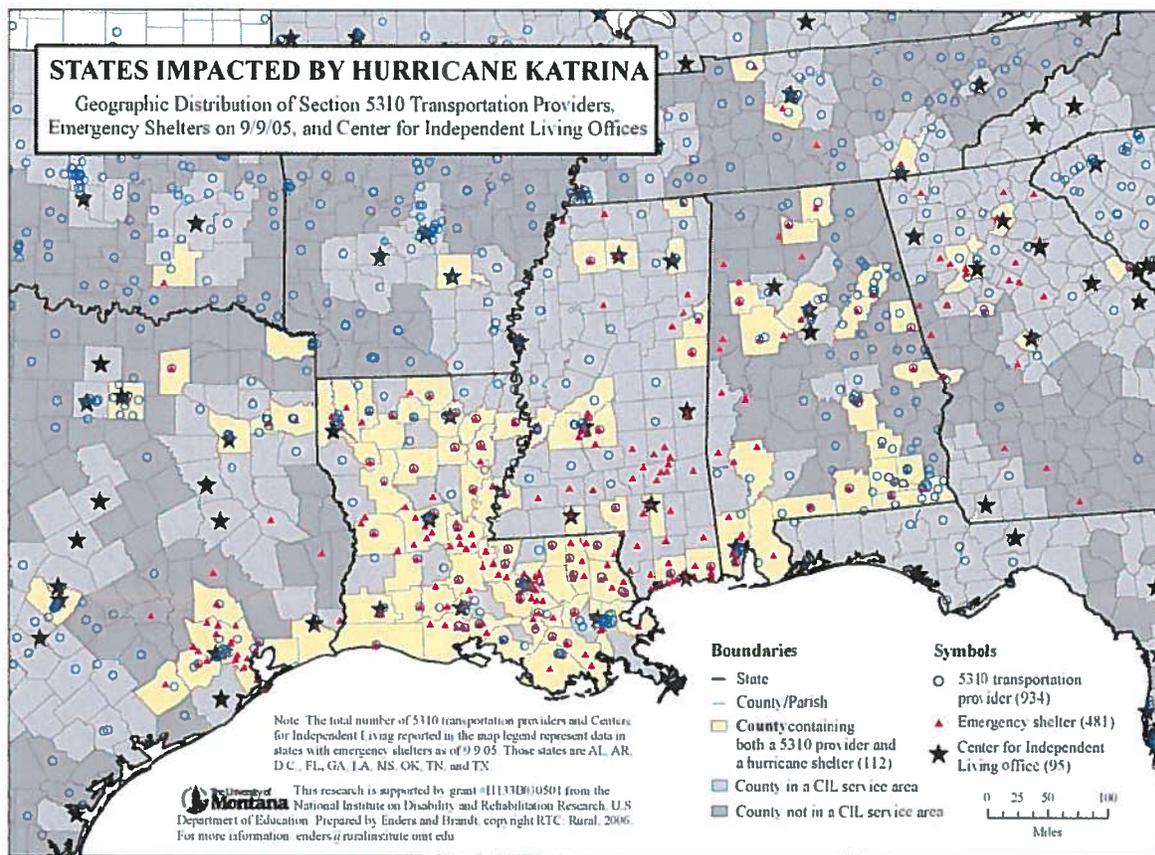
All of the CILs interviewed reported that damage to their facilities and equipment during the storms hampered their efforts to respond to consumers and others who

"We stayed because it never had been that bad before. Never thought the water would rise like that. It caught us off guard. We were pretty much going by the seat of our pants...."

Respondent from Mississippi

¹⁰ Enders, A. & Brandt, Z. (2007, April). Using Geographic Information Systems (GIS) technology to improve management and disaster response for people with disabilities. [special edition] *Journal of Disability Policy Studies*.

Figure One
Geographic Distribution of CIL Offices, Emergency Shelters and Designated Transportation Providers in States Affected by Hurricane Katrina



requested assistance. The ability of CILs to function internally also was significantly disrupted, including an inability to process payrolls, recover files on computers, pay vendors, and maintain other essential services.

What were the causes of this unprecedented upheaval in the lives of people with disabilities in the Gulf States? One cause, of course, is the unanticipated severity of the storm. However, the research on which this report is based revealed significant gaps in three key areas: pre-disaster planning, pre- and post-disaster communication and information, and pre- and post-disaster coordination.

■ Gaps in Pre-Disaster Planning

Governments at all levels have increasingly stressed the need for individuals with and without disabilities to prepare personal plans that will allow them to maximize their self-sufficiency in the first critical hours and days after a disaster occurs. In the case of people with disabilities interviewed for this report, the impact of the storm was heightened by the fact that few developed personal preparedness plans beforehand. Some of the people interviewed prepared by getting basic supplies, evacuating early or attempting to get to a shelter before the storm. However, most chose to stay based on their experience from past storms that the impact would be manageable. This belief had major consequences for those interviewed.

CILs were also caught unprepared. Responses from the CIL directors surveyed revealed that little pre-disaster planning took place in the CILs. There was also little interaction between the CILs and emergency management personnel before the hurricane (see Tables Two and Three). While four of six CILs that were interviewed did have a plan in place to protect data stored on computers, most planning in other areas, including equipment, vehicles, supplies, and staffing, was either incomplete or non-existent. (see Table Two).

- Four of the six CILs did not have anyone on staff with disaster preparedness training and five did not have a plan or procedures to provide services in the event of a disaster. The one CIL that did report having procedures in place also reported that they were not written down.
- While three CILs reported having a formal or informal relationship with local emergency managers before the storm, none had a formal plan in place with the local emergency management agency.¹¹

¹¹ CILs in Alabama reported discussing special needs shelters with local emergency managers before the storms, but these informal conversations stopped short of developing concrete, viable plans that could be incorporated into existing local and state plans and procedures.

- Only one third of the CILs interviewed reported having any training in emergency or disaster preparedness and response. Only one of the six CILs interviewed stated that they had any procedures in place in the event of a disaster.
 - Most CILs that were interviewed reported having little written in terms of personal disaster planning for people with disabilities, saying instead that they expected consumers to have taken the initiative to develop a personal plan. None reported having an emergency inventory or “to go” list. Only one of the seven CILs stated that they had disaster-related information for consumers.
- Most CILs interviewed reported having little written in terms of a personal disaster plan for consumers should a severe hurricane occur. Only one of the six CILs stated that they had disaster related information for people with disabilities.*

In the same way, local emergency managers reported that they had little contact with disability organizations before the storm.

- Five of the six reported no contact between their offices and disability organizations before the storm. (See Table Three). The one that did report contact was not with disability organizations, but with the human service agency and public transit agencies.
- While five of the six reported having a plan in place that included people with disabilities, one was limited to bed-bound patients needing medical care. Another was in fact referring to the mass care and special needs shelter plans that were in place and a third was referring to the parish emergency operation plan in place.
- Of the five that reported having a plan in place that included people with disabilities, only two stated that disability organizations had been involved in the preparation of the plan.

Table Two

Summary of Pre-Disaster Planning At Centers for Independent Living ¹²

Survey Question	Research Site					
	1	2	3	4	5	6
Did anyone at your CIL have disaster preparedness training?	No	No	No	Yes, basic	Yes, limited	No
Before Katrina, did your CIL have a plan to provide services in the event of a disaster?	No	No	No	Yes	No	No
For those without a plan, did CIL staff or consumers put together an information plan of action when Katrina was approaching?	No	No	No	N/A	No	No
Did your CIL have an informal or formal relationship with emergency managers or first-responders before Katrina?	No	Yes	No	No	Yes	Yes
Was there any type of formal plan in place with local emergency managers before Katrina?	No	No	No	No	No	No
Before Katrina, did you have any off-site storage or back-up facilities for records that are needed to manage the center?	Yes, off site	Yes	Yes	No	Yes	No

¹² Responses of Directors of Independent Living Centers to survey questions regarding pre-disaster planning

Table Three

Summary of Disability-Related Pre-Disaster Planning By Local Emergency Management Personnel

Survey Question	Research Site					
	1	2	3	4	5	6
Were you contacted by people with disabilities or disability groups before as the hurricane approached?	No	No	No	No	Yes - by public agencies (DHS, public transit)	No
What did they want?	N/A	N/A	N/A	N/A	Information & offered housing	N/A
Before the hurricane, did your office have a plan in place to assist people with disabilities?	Yes - limited to bed-bound patients	Yes	No specific plan - relied on mass care and special needs sheltering plans	Yes - Parish EO Plan	Yes	No
Were disability organizations involved in preparing these plans?	No	Yes	No	No - prepared by medical personnel	Yes	N/A

■ Gaps in Pre- and Post-Disaster Information Sharing and Communication

Information

Interviews with CIL staff, consumers and emergency managers revealed a lack of information sharing at several levels. While CILs are a potentially invaluable source of information for the emergency management community on the characteristics and needs of people with disabilities in their service areas, their resources were largely untapped before, during, and after the storm. Only one county-level emergency management office reported knowing the location of individuals with disabilities in his service area. Yet, even this information was incomplete since it was based on service records maintained by agencies including the human service agency and public transit agencies rather than on-going communication with the local CIL or other disability organizations. By definition, administrative data sets are an incomplete source of information, since they only contain information about individuals receiving services from some public agency.

While CILs are a potentially invaluable source of information to the emergency management community on people with disabilities, they were a source that remained largely untapped before and during the preparation and response phases of the storms. However, all emergency management agencies interviewed reported that they would like to engage the disability community in future planning.

Further, no emergency management office interviewed maintained or had access to lists maintained by CILs or other disability organizations about individuals with disabilities. Emergency management offices had little or no communication with CILs, which effectively limited any access to available resources that could have been used for evacuation and sheltering of people with disabilities, including accessible vehicles, durable medical equipment and other resources (see Table Four). On-going contacts with CILs and other disability organizations could have yielded valuable information on the population of people with disabilities for that particular county or parish. All six emergency management agencies interviewed reported that they would like to engage the disability community, including CILs, in future planning.

Most pre-disaster communication on disability-related issues reported by emergency managers was usually with other government agencies including public transit agencies, human service agencies and other organizations searching for information on such things as available housing or supplies. In interviews, however, CIL staff repeatedly raised the fact that they were unable to obtain information about where shelters were opening, how to get consumers there, or what types of people with disabilities should not be sent to mass-care shelters.

Table Four
Summary of Responses of Emergency Managers on Information About People With Disabilities

Survey Question	Research Site					
	1	2	3	4	5	6
Did your office have information on the following:						
- Where people with disabilities were located?	Yes	Yes		Some	Yes	No
- What type of disabilities they had?	Yes (bed-bound only)	Yes		Some	yes	No
Special services needed (medication, equipment, transportation, etc.)	After event only	After event only	No	No	Yes	No
Where did this information come from?	Public health nurse; ambulance service; citizen calls	Department of Human Services, disability advocacy organization, hospitals			Department of Human Services, Public Health Service, public transit agencies	N/A
How useful was this information?	Very	Not needed		Very	N/A	N/A

■ Communication Within CILs

Before Katrina, most CILs were communicating face-to-face or via phone or e-mail. Communication of all kinds was disrupted for significant periods of time during and after the storm. In Mississippi, the main CIL office in Jackson tried to establish communication with the four southern satellite offices located in various sections of the state. However, communications were significantly disrupted, with some cell phones working in Jackson, yet having very limited connections with the satellite offices.

In New Orleans, CIL staff reported that voice communication was not available following the storm. Communications were lost in Baton Rouge for 26 days and cellular coverage was available two months after that. CIL staff members were thrilled when internal communication was re-established, but many staff expressed frustration at not being able to re-establish contact with consumers for long periods of time. CILs in Mississippi tried to contact consumers via phone, through personal contacts, and by radio and television in two areas. CIL staff in the New Orleans area worked with government agencies to determine if people with disabilities were relocated to nursing homes or other secondary or temporary shelters. However, most CILs reported having only vague knowledge several months following Katrina about how many consumers were still in their service areas, since they may have been in shelters and then moved to another location.

CILs reported that communication with other agencies after the storm was both unreliable and inconsistent due to failures of technology, including land and cell phone systems and a lack of pre-disaster communication that would have laid the groundwork for post-disaster communication and action.

Communication Between CILs and Other Organizations

All CIL executive directors and staff interviewed or who responded to surveys reported that establishing communication with other agencies, including emergency management agencies, was difficult or impossible for long periods of time after the storms. For example, during the post-evacuation stage in Mississippi, the main CIL office staff unsuccessfully tried to establish contact with a variety of public and private agencies, including advocacy agencies, rehabilitation and welfare departments, federal and local emergency management agencies, and human service agencies.

“FEMA did not know about us. The Red Cross didn’t know about us. So, when we were coming in to [talk about disaster planning], they said ‘Oh, no, we don’t need you guys.’ Yet a month later they did need us.”

Respondent from Alabama

Communication with other agencies and organizations after the storm was both unreliable and inconsistent. In part, this was due to the disruption of technology-based communication systems, including both land and cell phone systems. Efforts to identify or assist people with disabilities by both emergency management agencies and CILs

were significantly hampered by the breakdown of technological infrastructure during and after the storm.

While four of six CILs said that it was within their mission to locate and assist consumers during emergencies, the breakdown in technology hampered their efforts to do so. CILs incorrectly assumed that land and cell phones would be available to communicate with each other and with consumers, yet acknowledged after the fact that they were unable to do so. In the same vein, one emergency management agency reported that they relied on individuals calling “911”, but also reported that telephone service was not available for several days after the storm struck.

Communication failures were also due in part to the absence of effective pre-disaster communication, information sharing and planning by CILs and emergency management agencies. One of the key elements of emergency management planning is that it must be done well before an event. Once the emergency response system has been activated and put in place, it is difficult to introduce new, ad-hoc plans. Given the disorganized and fractured nature of the overall response to Katrina by public agencies at the local, state, and federal levels that has been documented in numerous reports, it is not surprising that communication at the organizational and personal levels was a significant challenge for CILs.

“The frustrating thing...was that we couldn’t communicate with each other. We didn’t know what was going on with people with disabilities”.

Respondent from Mississippi

The New Orleans CIL reported that much of the communications they received were actually from out-of-state organizations, including the National Council on Independent Living, the Association of Programs for Rural Independent Living, the National Spinal Cord Injury Association, the National Organization on Disability, the Rehabilitation Services Administration, the United Spinal Association in New York, and other CILs in the US.

These external calls and contacts resulted in tangible support in the form of money, volunteers, durable medical equipment, and clothing. A CIL in Alabama reported communicating with other Alabama CILs, United Cerebral Palsy Association of Mobile, and Volunteers of America. Each of these organizations also was contacted with offers of assistance by the Independent Living Research Utilization organization in Houston following Katrina. The overwhelming response to the question “What type of resources would be most helpful to better serve people they serve in an emergency or disaster?” was the need for better communication and networking at all levels.

■ Gaps in Pre- and Post-Disaster Coordination

Activities by CILs After the Storm

Despite the significant disruptions to CILs caused by these gaps in planning, information, and communication, the CILs interviewed for this project still played a significant role in locating and assisting consumers after the storm. Four of six CILs

reported providing services in the days and weeks after the storm, and reported providing services to between 200 and 2,000 people with disabilities. In the days and weeks following the storm, CILs:

- Contacted existing consumers to assess their immediate needs, including searching door-to-door and searching shelters to locate people with disabilities;
- Tried to ensure that persons with disabilities had the medical equipment and supplies they needed to be as independent as possible while staying in a shelter;
- Provided peer support, and assisted people with disabilities to obtain basic supplies including water, food, ice, and clothing;
- Replaced or loaned durable medical equipment lost in the storm such as wheelchairs, walkers, etc.;
- Assisted consumers in contacting emergency response and other public agencies including FEMA, the Red Cross, the Social Security Administration and motor vehicle agencies to obtain replacement Social Security cards, licenses, and ID cards; and
- Assisted consumers in obtaining services including food stamps, medication, medical services, equipment, personal assistance services, and toilet and grooming supplies.

Relationships with Responding Organizations

The active role that CILs played is consistent with their mission in the communities and regions they serve. However, since the disaster planning and linkages with emergency managers discussed above were almost non-existent, this placed CIL staff in difficult positions. Without adequate training they were often denied access to shelters and remained outside the formal communication loops established by the emergency management community, and were significantly hampered in their ability to provide effective assistance.

“Six weeks after the storm, the Red Cross director informed me in a meeting that it was not their responsibility to help people with disabilities. That was FEMA’s responsibility....”



CIL directors discussed the disconnect that existed between the CILs and emergency management agencies after the storm. There was a strong feeling that staff of many of these agencies did not understand the importance of serving people with disabilities affected by Katrina or were either uninterested or unaware of the expertise that CILs possessed and the services

“The Red Cross told me they didn’t get the grant to help people with disabilities.”

Interview Respondents

they were able and willing to provide in the response and recovery phases of the disaster.

Alternatively, some CILs believed that they were “dumped on” by emergency services agencies after the storm. One CIL reported being overwhelmed with telephone calls after the local emergency management agency began giving out their 800 number whenever a person reported they had a disability. The majority of calls were outside the knowledge and scope of the CIL, including how to get roof repairs, electricity turned on, and other issues. One CIL staff reported that a caller was referred by an emergency management agency worker who told a person with a disability that the CIL could get her a new van.

A particular source of concern on the part of CIL staff interviewed was the perceived refusal by the Red Cross to work with them, other disability organizations, and people with disabilities themselves. These concerns included:

- not allowing CIL staff to enter the shelters to identify or assist people with disabilities;
- not allowing service animals into shelters; and
- turning away people with obvious disabilities from entering the mass care shelters.

Evacuation

CILs that were part of this project reported that between 150 to over 4,000 people with disabilities were evacuated before or relocated after the storm. However, many others did not evacuate beforehand. According to a study of Houston shelter evacuees, the first and second major reasons for not evacuating prior to Katrina were people thinking that the storm was not going to be as powerful as it was and not having a car or way to evacuate.¹³ Interviews with CIL staff and people with disabilities who did not evacuate prior to Katrina confirmed that based on previous storms, they also did not think the storm was going to be as destructive as it was.



Abandoned Downtown After Katrina in Bayou Le Batre, AL
C. Rooney, photographer

CIL staff and consumers reported two additional factors that were barriers to successful evacuation – accessible transportation combined with a place to go for

¹³ Kaiser Family Foundation (2005, September). *Survey of hurricane Katrina evacuees* [Electronic version]. Retrieved June 27, 2006 from [http://www.kff.org/newsmedia/](http://www.kff.org/newsmedia/upload/7401.pdf) upload/7401.pdf

safety. For example, several people with disabilities reported not evacuating because they did not own a car, did not have money for public transportation, or were unaware of transportation options to shelters. A CIL client's wife describes the sentiments of those interviewed:

"Without the money, there is nothing you can do and if you don't even have a car to get out of the storm, there is no where to go and I think that's the biggest problem. [So, we] resigned ourselves to the safest building that we could be in by sticking it out."

This same couple said they were unaware until after the storm that emergency management agencies offered transportation services to local shelters. In two locations, emergency management offices offered rides to shelters during Katrina, but no one took them up on the offer. Given the lack of pre-disaster communication discussed earlier, this is not surprising. A number of people interviewed who evacuated in another person's vehicle and left their vehicle behind found the vehicle destroyed when they returned. This loss of personal transportation often contributed to feelings of losing independence and increased the difficulty in recovering from the storm.

"A friend called and asked if I wanted to go with him to evacuate. I said no because most motels and hotels are not wheelchair accessible. I would have to crawl on the floor to get into and out of the bathtub and to get back into my chair just to get dressed."

Respondent from New Orleans

Temporary and Permanent Accessible Housing

Successful evacuation depended not only on the availability of transportation, including accessible transportation, but on appropriate housing being available. The complexity of finding accessible accommodations - whether in a public shelter, a hotel, or a private home of a family member or friend - is significant. Most interviewees reported that in many cases, they could not find - or in the case of mass care shelters, were refused entry into - accessible accommodations. Without accessible accommodations, the safety, health, and independence of persons with disabilities were severely compromised.

Many CIL staff and consumers reported difficulty even when they evacuated to family or friends' homes. A number of people with mobility limitations reported leaving the home after one or two nights because the home was not accessible, including being able to use the bathroom or transfer in and out of a bed.

Interviewees reported the same experiences with hotels and shelters. One person reported sleeping in his van while looking for accessible housing in Baton Rouge, while another reported being relocated from a non-accessible relative's home to non-accessible temporary housing in a hotel. A subsequent life-threatening pressure sore that required two surgeries caused this person to be transferred for eight months between a nursing home and a hospital because there were no accessible

accommodations for her to return to during the recovery stages. She did not qualify for a FEMA accessible trailer because her elderly mother received one, and only one person per household can get a trailer. Since she had lived in an RV parked on her mother's property, it was considered one household.

Restoring the “Civic Fabric” of Services Used by People with Disabilities

The unprecedented destruction wreaked by Hurricane Katrina and succeeding storms significantly disrupted the network of services provided by social, medical, and civic institutions for the majority of residents of the affected areas, whether with or without a disability. Together, these institutions and the services they provide - whether they be medical services, accessible transportation services, or services provided by social networks such as faith-based, disability advocacy, or civic groups - constitute the “civic fabric” which supports the ability of people with disabilities to function independently and maintain their quality of life.

Many persons with disabilities require personal services that allow them to respond or react to disasters in similar ways as persons without disabilities. These might include: social networks, in which individuals take responsibility for others in their midst in need of help; transportation networks, in which accessible vans or buses are widely available to all who need them; or specialized medical networks, in which extended services provide personal care or use of medical devices such as wheelchairs, ventilators, or glucose monitoring equipment.

The length of time that it took to restore these networks - many are still not fully functioning or functioning at all over a year after the storms - has had a disproportionate impact on people with disabilities in the affected areas of the Gulf States. This deficit was illustrated through several examples below provided by people with disabilities interviewed over the course of this project, as well as a brief supplemental interview conducted with a sample of New Orleans residents with disabilities one year after the storm (See Appendix E for a summary of these interviews).

- A resident of St. Bernard Parish whose wife had a disability refused to move into the accessible FEMA trailer placed in the yard of their destroyed home because the community lacked sufficient medical, social, and civic services to prevent his wife from being subjected to significant health risk.
- The daughter of a resident of Biloxi risked drowning in their home in order to retrieve a hearing aid, knowing that her mother would find it virtually impossible to replace one in the aftermath of the storm and loss of services.
- A resident of New Orleans could not move to Texas to stay with relatives after the storm for fear of losing Medicaid services, yet was unable to move back into his former neighborhood because it lacked food, reliable utilities, and medical services.

- Another resident of the Lower Ninth Ward was unable to evacuate her home once flooding became serious because her power chair no longer worked and there was no means of transportation that she could access – such as swimming or wading to a rescue boat – which her neighbors were able to do. She, as were many others, were simply left behind.

Recommendations

■ Introduction

How can the gaps identified in pre- and post-disaster planning, communication and information, and coordination be filled? In the years since 2001, significant attention has been given to improvements in planning, policy, and services for people with disabilities. Numerous organizations in the public, private, and non-profit sectors have examined the impact of disasters on people with disabilities and developed innovative programs, services, and revisions to existing policies that have the potential to mitigate the impact of future disasters on people with disabilities.

Work that has been done nationally in planning, communication and information sharing, and coordination provide a rich and useful source for changes in policies and programs targeted at improving services to people with disabilities. ...

Staff of both the CILs and emergency management offices interviewed for this project all reported a strong interest in learning from the mistakes that occurred during the storms of 2005. The work that has been done nationally in planning, communication and information sharing, and coordination provide a rich and useful source for changes in policies and programs targeted at individuals with disabilities, CILs themselves, and local emergency management organizations. The recommendations offered here, while targeted at the people and organizations in the areas of the Gulf Coast states affected by Hurricane Katrina, are applicable to other parts of the country and other types of disasters as well. This is consistent with current emergency management policy at the federal levels, which uses an “all hazards” approach.

We have focused on recommendations that could be implemented with relatively modest investments at the local and state levels.

In developing recommendations, we have avoided initiatives that would require massive new resources or significant revisions to existing policy or law at the federal or state levels. While significant additional resources at all levels of government directed towards disability issues, as well as revisions to numerous existing statutes to include disability issues, are warranted in many cases, the hard, cold fact is that they are unlikely to be available. Instead, we have focused on recommendations that could be implemented at the local, regional, or state levels with relatively modest investments by

statewide independent living councils (SILCs) or within individual CILs and local emergency management agencies. However, we also recognize that many of them will require the investment of the scarcest resource available: time on the part of already over-burdened staff of CILs and local emergency management agencies.

“CIL staff and emergency managers must find ways to plan for unforeseen events, not prepare for the last known event.”

National Plan Review

■ **Pre-Disaster Planning: Increasing Leadership and Strategic Vision to Reduce the Impact of Disasters on People with Disabilities**

CIL directors and staff, as well as local emergency managers interviewed across the Gulf States, clearly have sufficient leadership skills and strategic vision for day-to-day management and oversight of activities and resources that people with disabilities need to live independently in their communities. However, the sheer size and destructive power of Katrina overwhelmed the leadership skills of most CIL personnel and emergency managers - not surprising since the leadership of the federal, state, and local governments were also in disarray following the catastrophic consequences of the storm.

One of the hallmarks of good leadership is strategic planning for the future. One conclusion of the recently published review of state disaster plans by the Department of Homeland Security and the federal Department of Transportation was that most plans “...cannot...manage catastrophic events” and “...are scaled to familiar events”.¹⁴ Individuals with disabilities, CIL staff, and emergency managers must find ways to plan for unforeseen events, not prepare for the last known event. Greater attention should be given to strategic planning to reduce or avoid the barriers and concerns encountered by CIL staff and consumers as well as emergency managers. Key stakeholders in each community should engage in strategic planning with specific attention to the needs of citizens with disabilities before, during, and following disasters.

Increase the Role of Statewide Independent Living Councils

Statewide independent living councils (SILCs) can play an important role in this strategic planning effort. They are a natural vehicle for planning, in that they are able to work with and provide information, technical assistance and other resources to CILs within their states. From the 78% response rate received by the SILCs surveyed for this report, there is an increased interest in including disaster preparedness and emergency response into statewide plans. There is a precedence of SILCs in Arizona, California, and Michigan taking leadership roles in disaster and emergency response activities.

¹⁴ Nationwide Plan Review: Phase 2 Report. U.S. Department of Homeland Security In cooperation with the U.S. Department of Transportation. Washington, 2006.

Recommendation One

Develop an initiative that places SILCs in a leadership role in a process of bringing together disability organizations including CILs, as well as state and local emergency planners, to develop mechanisms to increase information sharing, coordination, and the development of disaster preparation and emergency response plans that incorporate people with disabilities.

There are a number of ways this may be accomplished. These include:

- Forming planning committees consisting of state and local police, fire, emergency management and relief organizations, health agency, and representative disability organizations to assure adequate preparedness for persons with disabilities;
- Sending SILC representatives to agencies that are responsible for making statewide policies on disaster preparedness and response, such as the Community Emergency Response Team or State Emergency Management Agency to initiate contacts and begin the process of incorporating disability into those plans;
- Sending a representative to local and state-level Emergency Operations Centers (OEC) when they are activated to serve as a point of contact and resource for the population with disabilities;
- Serving as a catalyst to encourage CILs at a local level to work with local level emergency planning authorities.

Defining the Needs of People with Disabilities

In the official world of emergency management, people with disabilities are included in the much larger group of “vulnerable populations.” This group, however, is so inclusive as to be operationally meaningless.¹⁵ It includes not only people with disabilities but seniors, prisoners, pregnant women, homeless individuals, border populations, undocumented illegal immigrants, people with chronic mental illness, chronic substance abusers, and people with immuno-depressed conditions, among others. If something is everything, it is effectively nothing. In order to develop effective plans for people with disabilities, they must be identified and treated as one distinct population within the larger array of “vulnerable populations.”

¹⁵ Kailes, J. (2005). Disaster Services and “Special Needs:” Term of Art or Meaningless Term? A white paper commissioned by the Nobody Left Behind research project, www.nobodyleftbehind2.org/findings/index.shtml

Recommendation Two

Disability organizations including CILs and SILCs should initiate campaigns toward local and state emergency managers to separate the needs of people with disabilities from other “vulnerable populations.”

Even within the larger disability community, there is little homogeneity. The needs of individuals with Down Syndrome, for example, are significantly different in many ways from individuals who are paralyzed. However, identifying people with disabilities as a group distinct from other “vulnerable populations” will help to focus on plans, programs, and services for this heterogeneous group.¹⁶

Personal Disaster Planning for People with Disabilities

Recommendation Three

Staff and consumers of CILs should implement systematic training and education that will result in increased numbers of people with disabilities who have developed personal disaster plans.

In the years before and since September, 2001, many useful guides to personal disaster planning for people with disabilities have been developed, including guides by the American Red Cross¹⁷, state emergency management agencies,¹⁸ universities¹⁹ and disability organizations such as the National Organization on Disability and AARP.²⁰ Thus, the need is not to develop new materials, but to design and implement an initiative that will result in more Americans with disabilities being better prepared to maximize their health, security, and independence when a disaster occurs. Every individual with a disability interviewed for this project would have benefited from such a personal disaster plan.

¹⁶ For example, the New Mexico Task Force on Targeted Populations and Emergency Preparedness chartered by the State Office of Emergency Management has four workgroups: disability; wards of the state (incarcerated individuals and foster children); chronic mental illness; and other targeted populations (health children under the age of legal consent not with their parents or guardians, health seniors and pregnant women).

¹⁷ American Red Cross, Disaster Preparedness for People With Disabilities. <http://www.redcross.org/search/search.asp>

¹⁸ Pennsylvania Department of Health, Special Populations Emergency Preparedness Planning. <http://www.dsf.health.state.pa.us/health/cwp/view.asp?a=171&q=233957>; California Department of Rehabilitation, Disaster Preparedness for Persons with Disabilities: Improving California's Response." <http://www.ilru.org/html/training/webcasts/handouts/2003/08-27-PB/resources.htm#disaster>

¹⁹ Center for Unconventional Security Studies, University of California at Irvine, Emergency Preparedness Guidelines. http://www.cusa.uci.edu/emergency_preparedness.htm

²⁰ National Organization on Disability and AARP, Preparing Makes Sense for People With Disabilities and Older Americans. <http://www.nod.org/index.cfm?fuseaction=page.viewPage&pageID=1430&nodeID=1&FeatureID=1620&redirected=1&CFID=10223977&CFTOKEN=21130441>

The curricular design of this education and training program is relatively simple and could take many forms. It could be a one-to-two hour training program taught by CIL staff to their consumers. It could also be made available in alternate formats, including web-based and other electronic formats. As discussed above, there is an ample supply of materials targeted at individuals with disabilities, their families and caregivers that can form the basis of this program. What is needed is a systematic initiative that would give CIL staff in the Gulf States and nationally the tools they need - including a pre-designed training curriculum - to assist their consumers in increasing their levels of personal preparedness.

This “train the trainer” program would provide CIL staff with a curriculum to use with participants, tips and techniques on effective training, and content-specific information about what makes up a personal disaster plan. It could also include copies of guides such as those discussed above for distribution to participants. An important part of the program would be tips on how to engage in effective follow-up with participants to ensure that they have completed their plans.

CILs are an ideal centerpiece for this initiative. They have close ties with the communities they serve. They have credibility with the people they serve, and would not be viewed as an “outside” entity by participants. They have a clear understanding of the characteristics and needs of people with disabilities in their communities. Further, CIL staff in the Gulf States has a clear view of the consequences of not having personal disaster plans in place.

CILs are an ideal centerpiece for increasing the numbers of people with disabilities that have developed personal disaster plans.

This initiative is not limited to CILs in the areas affected by Hurricane Katrina, however. Disaster planning on the federal and state levels now uses an “all hazards” approach that emphasizes the common elements of personal disaster planning regardless of the nature of the emergency. Such a curriculum and a “train-the-trainer” education and training program, if implemented on a national basis, has the potential to significantly improve the health and safety of people with disabilities when another disaster occurs.

Organizational Disaster Planning for CILs

One key lesson learned from this research project was that the CILs did not have adequate organizational disaster plans in place before the storms struck. Organizations, like individuals, need plans in place to protect important assets (people, confidential information, supplies, and equipment) when a disaster occurs as well as plans to restore services as quickly as possible. These plans need to incorporate an understanding that many CIL staff has families who also will require their attention. As with information and materials on personal disaster planning, numerous models of and guides to organizational disaster planning exist, including those developed by

government and emergency management agencies.²¹ The “missing link” in assisting CILs to become better prepared on an organizational level is to provide the training and technical assistance needed to understand the elements of an organizational disaster plan and how to implement it.

Matching the needs of persons with disabilities with existing resources is hindered by lack of communication between local emergency management and organizations, such as CILs that serve or advocate for persons with disabilities.

Recommendation Four

An education and training curriculum should be developed around effective organizational disaster response and recovery plans for CILs across the country. This should include content-specific elements of an organizational disaster plan, materials that can be used by the leadership and staff of CILs and ongoing technical assistance to CILs for developing and implementing these plans.

CILs are necessary sentinels that could provide effective assistance to individuals with disabilities in the event of a natural or man-made disaster. Based on the research on which this report is based, it is clear that they urgently need assistance in developing plans that will allow them as organizations to resume the effective delivery of services and resources to people with disabilities. CILs may well need additional financial resources to help bring this recommendation to reality.

■ Pre- and Post-Disaster Communication and Information

Effective communication and information sharing between the disability community and local and regional emergency management systems is essential for planning, action, and mitigation to help people with disabilities to have the best possible outcomes in the event of a catastrophic event. As has been documented in this report, too little of either took place both before and after Hurricane Katrina hit the Gulf Coast. If a silver lining to the storm is to be found among the devastation, it is that the hurricane exposed the weaknesses within existing communication systems and the consequences of insufficient communication.

It is vitally important that there is on-going dialogue among CILs, statewide independent living councils and their counterparts with statewide emergency planning

²¹ Occupational Safety and Health Administration, **How to Plan for Workplace Emergencies and Evacuations.** <http://www.ilru.org/html/training/webcasts/handouts/2003/08-27-PB/resources.htm#disaster>; American Red Cross, **Preparing Your Business for the Unthinkable.** <http://www.ilru.org/html/training/webcasts/handouts/2003/08-27-PB/resources.htm#disaster>; **Howard County Agency Disaster Preparedness Plan.** [\http://www.cern.us/ht/d/sp/a/GetDocumentAction/i/634?PHPSESSID=de488a551769c0f75f21859930d76e8c#search=%22Volunteer%20Center%20Serving%20Howard%20County%20Agency%20Disaster%20Preparedness%20Plan%22;

services, county/parish emergency planners, and national agencies and organizations such as FEMA and American Red Cross. This dialogue and planning can help ensure that service provision for people with disabilities affected by disasters is more timely and relevant for their needs. It can also help avoid needless misdirection of people to services for which they do not qualify or that may be inappropriate for their needs.

Education and Training for CILs on Public Emergency Response and Recovery Plans and Procedures

Preparation, response, recovery, and mitigation from natural or man-made disasters do not take place in a vacuum. While this may sound like a statement of the obvious, a key finding of the research on which this report is based was the lack of knowledge on the part of both staff of CILs and emergency management agencies about each. One striking lesson learned is the extent to which CIL staff were unaware of the formal plans under which disaster planning, response, and recovery take place at the local, regional, state, and federal levels. These organizations, including local emergency management agencies with which CILs should work, adhere to a comprehensive set of policies, procedures, and guidelines that govern what occurs when a disaster happens. At the federal level, emergency planning and response is governed by a "Target Capability List" (TCL) that includes mandatory outcomes, procedures, and benchmarks with which state and local emergency management agencies must comply and report their progress.²²

In the same manner, state and local emergency management agencies develop their own plans based on the TCL that they will implement when a disaster occurs. While these agencies have a reasonable amount of flexibility to develop plans that meet unique local characteristics and resources, they are also meant to be implemented in a fairly rigid way once a disaster occurs. In summary, disability organizations and individuals who wish to influence these plans must do so armed with the knowledge of not only what those plans are, but the parameters and constraints within which those plans are developed and revised. Three recommendations are offered that will increase the level of communication and information sharing at the local level.

²² The target capability list (TCL) was developed in response to a presidential order (*National Preparedness* (HSPD-8) which calls for a National Preparedness Goal that establishes measurable priorities, targets, and a common approach to developing needed capabilities. The Goal utilizes a "capabilities-based planning approach to identify target levels of capabilities that Federal, State, local, and tribal entities must achieve in order to respond to natural or man-made disasters. http://www.ojp.usdoj.gov/odp/docs/Target_Capabilities_List_041405.pdf#search=%22target%20capability%20list%22

**Including The Needs and Priorities Of
People With Disabilities, Seniors, People Who
Are Chronically Mentally Ill And People Who Are Chronic
Substance Abusers In Public Health Emergency Preparedness**

A Report Prepared for The Public Health Emergency Preparedness Unit
Of The New Mexico Department Of Health In Response To The Cooperative
Agreement Between The New Mexico Department Of Health And The Centers For
Disease Control And Prevention For Public Health Preparedness And Response For
Bioterrorism



Center for Development and Disability
Health Sciences Center
University of New Mexico

May, 2004

This report was prepared under Memorandum of Understanding 02/655.4200.0486 between the
New Mexico Department of Health and The Center for Development and Disability at the
University of New Mexico.

The opinions expressed in this report are those of the authors, and do not represent the official
opinions of the New Mexico Department of Health or the University of New Mexico.

Members Of The Advisory Workgroup

Connie Amidon
New Mexico Department of Health,
Behavioral Health Services Division

Eileen Benavidez
New Mexico Human Services
Department, Medical Assistance
Division

Peg Burkey
Nurse Manager, Los Alamos Public
Health Office

Barbara Deaux
New Mexico Area Agency on
Aging, Planning and Service Area II

Debbie Kay Herring
American Red Cross, Tierra del Sol
Chapter

Kathe Kirkbride
New Mexico Department of Health,
Emergency Medical Services for
Children

Bob Lujan
New Mexico State
Agency on Aging

Bern Myers
New Mexico Department of Health,
Office of Disability and Health

Virginia Murphy
New Mexico Commission for the
Blind

Hope Reid
Governor's Committee on the
Concerns of the Handicapped

Andrea Poole
Shaening Associates, Inc.

Christina Rutland
New Mexico Developmental
Disabilities Planning Council

Lynne Anker-Unnever
New Mexico Agency on Aging

Mary Beresford
Alliance for Disability Education

Anthony Cahill
Center for Disability and
Development, University of New
Mexico, Health Sciences Center

Darlene Franklin
New Mexico Geriatric Education
Center, University of New Mexico,

Chris Isengard
Statewide Independent Living
Council

James Leach
Santa Fe Office of Emergency
Management

Dee Martinez
Governor's Committee on Concerns
of the Handicapped

Judy Myers
Governor's Committee on Concerns
of the Handicapped

Ann McCampbell, M.D.
Multiple Chemical Sensitivities Task
Force of New Mexico

Greg Trapp
New Mexico Commission for the
Blind

Pat Putnam
New Mexico Developmental
Disabilities Planning Council

**Mary Ann Shaening/
Shaening Associates, Inc.**

Kim Bañales
New Mexico Commission for the
Deaf and the Hard of Hearing

Bert Blumenfeld
American Red Cross, Tierra del Sol
Chapter

Marcie Davis
Davis Innovations, LLC

Ron Gurley
National Alliance for the Mentally
Ill-New Mexico

Richard D. Jiron
New Mexico Department of
Education, Division of Vocational
Rehabilitation

Larry Lorenzo
National Federation of the Blind

Dwayne Merritt
Rio Arriba Office of Emergency
Management

Melissa Mitchell
Innovative Solutions, Inc

Matt McCue
New Mexico Department of Health,
Long Term Services Division,

Anne Pascarelli-Barraza
New Mexico Department of Health,
Public Health Emergency
Preparedness Unit

Lissa Reidel
Folio One, Limited

■ INTRODUCTION

The terrorist attacks in New York City on September 11th, 2001 and the subsequent series of anthrax attacks along the eastern seaboard and in the Midwest served as the catalyst for staff of federal, state and local agencies charged with the responsibility for planning emergency health services in case of possible future attacks. Both the Centers for Disease Control and Prevention (CDC) and the Health Research and Services Administration (HRSA) provided states with funds to assess their health-related emergency preparedness planning in light of possible future attacks.

In New Mexico, the New Mexico Department of Health was charged as the lead agency in this process. In the first year of the project, the primary task was to conduct an assessment of existing plans and resources. Unlike most other states, the New Mexico Department of Health made a clear commitment to formally recognize the needs of a wide variety of populations in the assessment and planning process. These included people with physical and cognitive disabilities, seniors, people who are chronically mentally ill, substance abusers and children with special health care needs. As the assessment process began, a workgroup was established with representatives of numerous public and private organizations representing these constituencies, as well as agencies involved in providing services in the event of a public health emergency. (See Appendix A for a list of members of the workgroup).

In addition, the Department of Health asked the Center for Development and Disability at the University of New Mexico to undertake several tasks in support of the workgroup. Among these was completion of an assessment of the needs and priorities of these populations that provided answers to several research questions developed by Shaening and Associates, the prime contractor for the Department of Health in preparing the overall statewide assessment. This re-

port contains those findings, along with several recommendations directed to the Department.

Some of these recommendations are broad in scope, directed at policies of the Department, while others are directly related to the research questions developed by Shaening Associates.

In preparing this report, CDD staff and contractors utilized several types of information.

First, interviews were conducted with staff of several New Mexico agencies involved in services or advocacy including the:

- New Mexico Developmental Disabilities Planning Council;
- New Mexico State Agency on Aging;
- New Mexico Commission for the Blind;
- New Mexico Commission for Deaf and Hard of Hearing Persons;
- New Vistas Independent Living Center;
- New Mexico Department of Health Long Term Services Division;
- New Mexico Home Health Association;
- New Mexico Department of Vocational Rehabilitation;
- New Mexico Department of Health Behavioral Health Services Division;
- Recovery of Alcoholics Program; and the
- New Mexico Chapter of the National Alliance for the Mentally Ill.

Other sources used to prepare this report include:

- a national review of best practice prepared by the Governor's Committee on the Concerns of the Handicapped;
- a related search by CDD staff and contractors of materials from public and private agencies including the Federal Emergency Management Agency (FEMA), the American Red Cross and the Administration on Developmental Disabilities of the federal Department of Health and Human Services; and

- meetings with the Department of Health’s emergency preparedness communications consultant. (See Appendix B for a list of reports, web sites, presentations and other products used in the preparation of this report).

■ **KEY ISSUES IN EMERGENCY PREPAREDNESS FOR PEOPLE WITH DISABILITIES, SENIORS, PEOPLE WHO ARE CHRONICALLY MENTALLY ILL, SUBSTANCE ABUSERS AND CHILDREN WITH SPECIAL HEALTH CARE NEEDS**

As discussions at meetings of the workgroup progressed, three key issues emerged. First, *how can people with disabilities, seniors, people who are chronically mentally ill, substance abusers and children with special health care needs be identified in the case of an emergency?*

There is no single place in which people with these conditions are registered. Some receive services from one or more public agencies, but many do not. Even in those cases in which services are provided, names and other identifying information that exist in the administrative databases of public agencies are not easily available, particularly in a large-scale emergency in which non-emergency personnel may not be in their offices and communication services may be erratic.

Second, *how can the unique needs of these populations be identified in advance and made known to those who will have first contact with them, including fire and police personnel and emergency management services personnel?* In the event of a large scale emergency requiring voluntary or mandatory evacuations, movement of large numbers of people to temporary shelters, and provision of health services such as inoculations or primary health care services, there will be little time to brief first responders on needs unique to individuals in these populations. In these circumstances, there is also likely to be a great deal of confusion and difficulty in communications.

Finally, *how can services be provided that meet the needs of individuals in these populations?* During any large-scale emergency, there will of necessity be an emphasis on common

sets of pre-planned procedures, policies and programs. In the event of an emergency requiring the movement and/or provision of health services to large numbers of people, there may be few opportunities to vary from routines and procedures to ensure that the needs of one individual – whether a member of one of these populations or not – are met.

■ **KEY FINDINGS RELATED TO EMERGENCY PREPAREDNESS FOR PEOPLE WITH DISABILITIES, SENIORS, PEOPLE WHO ARE CHRONICALLY MENTALLY ILL, SUBSTANCE ABUSERS AND CHILDREN WITH SPECIAL HEALTH CARE NEEDS**

During numerous discussions of the workgroup, four themes emerged which drove subsequent work and helped to shape the findings and recommendations contained here.

The Need For An “All-Hazards” Approach

The original mandate of the federal agencies providing funding for emergency preparedness health planning was on responding to bioterror attacks such as smallpox and anthrax.¹ Early meetings of the workgroup (as well as the overall state-wide assessment) also followed this emphasis. Over

While in early meetings the workgroup focused on bioterror attacks, it quickly became clear that this perspective was too narrow. Many or most of the issues involved in preparing for and responding to the health needs of New Mexicans in a possible bioterrorist attack are identical or highly similar to issues involved in any major interruption of normal life in some or all of the state.

the course of the assessment process, however, it became clear to workgroup members that a singular focus on bioterrorism was too narrow and confining. Many of the principles and issues involved in preparing for and responding to the health needs of New Mexicans in a possible bioterrorist attack are identical or highly similar to issues involved in any major interruption of normal life in some or all of the state. For example, the Hantavirus outbreak of 1993, the Menin-

¹ For example, the CDC grant program under which this report was prepared was titled “Public Health Preparedness and Response for Bioterrorism”.

gococcal outbreak in Cuba, New Mexico in 1995, the Cerro Grande fire of 1999, and the more recent fires in Ruidoso all required a large-scale health responses from public and private health organizations that included

- sheltering large numbers of people outside of their homes;
- providing these individuals with food, drink and basic health necessities;
- providing both primary and specialty health care to larger numbers of people than could be handled by existing health care facilities under “normal” circumstances, and
- identifying, locating and providing services to people with unique requirements such as individuals with mobility limitations or cognitive disabilities.

In recognition of this, the workgroup quickly adopted an “all-hazards” perspective on issues relating to the populations it was charged with representing. This perspective, which holds that planning for responses to a variety of public

Adopting an “all-hazards” approach to emergency planning for these populations recognizes that prior work done by public agencies such as the Department of Health and private agencies such as the Red Cross can provide us with valuable lessons for future emergency preparedness efforts regardless of the cause.

health crises with either natural or human causes, recognizes that prior work done by public agencies such as the Department of Health and private agencies such as the Red Cross can provide us with valuable lessons for future emergency preparedness efforts regardless of the cause. The observations and recommendations included here incorporate this perspective. This perspective has been recognized by federal agencies focusing on emergency preparedness.

The Need To Build Community Capacity

Early discussions within the workgroup focused on centralized solutions to many of the issues described above. For example, there was much early discussion about the challenges of creating a centralized, voluntary registry of people in these populations to be used in the event of

an emergency. As the workgroup considered these types of solutions, however, a new focus emerged that formed the basis of many of the findings and recommendations contained in this report. Response and mitigation to natural and man-made disasters as defined by past and current policy of federal agencies such as FEMA and the National Guard are classic examples of a “command and control”, top-down approach.

Such an approach, including evacuation planning, opening of public health service sites, provision of health care and voluntary or mandatory evacuations will, without question, be utilized in New Mexico should an emergency occur requiring a large-scale public health response. However, the

unique challenges of identifying, locating and providing services to individuals who are members of these populations will best be overcome by adopting an approach that emphasizes assisting community-based groups and organizations to identify and assist individuals in these populations. These “naturally occurring

The unique challenges of identifying, locating and providing services to individuals who are members of these populations will best be overcome by adopting an approach that emphasizes assisting community-based groups and organizations to identify and assist individuals in these populations. These “naturally occurring networks” are powerful tools that can be tapped in the event of an emergency, particularly in the many rural parts of the state.

networks” are powerful tools that can be tapped in the event of an emergency, particularly in the many rural parts of the state. They include clubs, fraternal organizations, faith-based organizations, and affinity groups such as neighborhood associations.

This perspective also focuses attention on providing education and information to individuals who are members of these populations on how they can help prepare themselves for possible emergencies. As has been stressed by many individuals and other resources consulted by CDD staff in preparing this report, the level of preparedness among many American is low. In a

Harris Interactive Survey taken in December of 2001, 61% of Americans reported that they do not have home evacuation plans, 50% of employed have no plans to evacuate their workplaces, and 58% do not know whom to contact about community emergency plans.²

As will be discussed below, resources should be directed towards providing these community-based groups with technical assistance and other support to enhance their ability to assist their members with disabilities should an emergency requiring assistance occur. Resources should also be directed at providing educational and other materials to these groups about individual planning.

Avoid Duplicating the Wheel

While events since September 11, 2001 have focused the nation's attention in a dramatic way on issues related to emergency preparedness, there is also a natural tendency on the part of many to assume that these are new issues. In fact, quite the opposite is true. Many public and private organizations have spent considerable time and resources devoted to addressing the unique needs and priorities of people with disabilities and members of other populations discussed in this report.

As the New Mexico Department of Health and affiliated organizations move from assessment to action, every effort should be made to tap into existing knowledge and experience and use existing materials, rather than attempting to recreate the wheel. To do so would not only be a waste of public resources, it would ignore the considerable knowledge and experience that organizations such as the Red Cross, Emergency Medical Services and FEMA have developed over time.

As plans are made to move from assessment to action in New Mexico, staff of public and private agencies addressing this issue should where possible use or adapt existing materials, rather than attempting to create them from scratch. To do so would not only be a waste of public

² Patricia Morrissey, **Disaster Management for Individuals with Disabilities**. Presentation made at the 2002 Southwest Conference on Disability, Albuquerque, October, 2003

resources, it would ignore the considerable knowledge and experience that organizations such as the Red Cross, Emergency Medical Services and FEMA have developed over time. It will also lead to quicker solutions than creating new sets of materials, training programs, etc.

■ **KEY RECOMMENDATIONS RELATED TO EMERGENCY PREPAREDNESS FOR PEOPLE WITH DISABILITIES, SENIORS, PEOPLE WHO ARE CHRONICALLY MENTALLY ILL, SUBSTANCE ABUSERS AND CHILDREN WITH SPECIAL HEALTH CARE NEEDS**

Within these three key findings, a number of specific recommendations emerged based on the research questions posed by Shaening and Associates.

Training (Question 11)

Training is a key issue for staff and volunteers of Public Health Service Sites, disaster workers, medical providers, counselors, Disaster Mortuary Team members, transporters/drivers and others. All first responders, including firefighters, police, ambulance personnel and National Guardsmen and women, must be prepared to work with people with disabilities and members of the other populations discussed in this report. These individuals must have a clear definition of their individual role as well as a clear understanding of the disaster management process and the roles of other emergency personnel.

All first responders, including firefighters, police, ambulance personnel and National Guardsmen and women, must be prepared to work with people with disabilities and members of the other populations discussed in this report. These individuals must have a clear definition of their individual role as well as a clear understanding of the disaster management process and the roles of other emergency personnel.

In addition, they must have adequate training in recognizing a physical or cognitive disability, a basic understanding of the various types of disabilities, and the physical and mental effects of those disabilities. For example, a first responder must be aware that alarming and dis-

ruptive behavior, anxiety, extreme emotional and physical distress, may be the direct result of an individual's disability compounded by stress and/or lack of medication.

Recommendation One:

Using and adapting existing materials, the Department of Health should develop a training program for first responders and other emergency preparedness personnel (including staff and volunteers of Public Health Service Sites) on the unique needs and priorities of individuals who are members of the populations discussed in this report. The training program should be developed in such a way that it can be incorporated into existing public safety training curricula or be delivered on a stand-alone basis.

At a minimum, the training program should include as topics:

- Recognizing various physical and cognitive disabilities;
- Practical skills for interacting with individuals who are members of populations included in this report, including a special emphasis on communicating with people with cognitive disabilities such as autism; and
- Issues around lifting, transferring and transporting people with significant mobility limitations.

Recommendation Two:

The training sessions should include as handouts an expanded series of “tip sheets” designed to be quick reference resources for first responders and other emergency preparedness personnel. These tip sheets should also be distributed to appropriate organizations whose members may not be attending training sessions.

Identifying and Locating People with Disabilities, Seniors, People Who Are Chronically Mentally Ill, Substance Abusers And Children With Special Health Care Needs

While many individuals who are members of one of the populations identified in this report receive one or more services from a public or private agency, many do not. Even for those receiving services, the databases of the organizations from which they receive those services are not necessarily accessible quickly (e.g., nights and weekends) or structured for quick access. As discussed earlier, there is no central registry that can be used to identify individuals who might

need assistance. Even were such a registry to be created, significant problems remain. In addition to privacy considerations, the registry would not identify people who are not receiving services. However, these individuals are almost always members of one or more of the “naturally occurring networks” discussed earlier in this report.

The concept of a central registry in which lists of people with disabilities and others would be maintained is fraught with difficulties. Instead, an approach should be adopted that facilitates the work of “naturally occurring networks” of community-based groups who wish to assist their members in the event of an emergency.

Recommendation Three:

A brief educational and promotional program should be developed that can be presented to civic, faith-based, neighborhood and other community-based organizations around the state. The focus of the program should be on how these organizations can, if they wish, create a low-cost volunteer program to have members who wish to do so identify themselves as people in need of assistance in the event of an emergency.

The program should include tips on successfully operating such a program, how to avoid problems such as the distribution of private information, what information to collect (including sample forms), and tips on how to respond in the event of an emergency. At the conclusion of the program, an offer should be made to deliver the training sessions described earlier.

Membership On The Health Advisory Network: Disseminating Information to People with Disabilities, Seniors, People Who Are Chronically Mentally Ill, Substance Abusers And Children With Special Health Care Needs (Questions 1, 2 and 5)

The Health Advisory Network proposed by the Department of Health and Shaening Associates is a key component in the emergency preparedness planning. It will facilitate the dissemination of critical information during a variety of crisis situations. This communication process is even more vital to individuals who are members of the populations identified in this report, as they are historically more isolated and reticent to engage with entities, people and processes

unfamiliar to them. The following is a list of agencies that were recommended for inclusion in the Health Advisory Network contact directory:

- New Mexico Developmental Disabilities Planning Council
- New Mexico State Agency on Aging
- New Mexico Commission for the Blind
- New Mexico Commission for Deaf and Hard of Hearing Persons
- New Vistas Independent Living Center
- New Mexico Department of Health Long Term Services Division
- New Mexico Home Health Association
- New Mexico Governor's Committee on the Concerns of the Handicapped
- New Mexico Department of Vocational Rehabilitation
- New Mexico Disabled American Veterans
- New Mexico Department of Health Behavioral Health Services Division
- New Mexico Chapter of the National Alliance for the Mentally Ill
- New Mexico Association of Developmental Disabilities Community Providers
- New Mexico Association of Family Providers
- Information Center for New Mexicans with Developmental Disabilities/Baby Net
- Parents Reaching Out
- New Mexico Association of Retarded Citizens (ARC)
- New Mexico Children, Youth and Families Department
- University of New Mexico Medical School and Hospital
- Las Vegas Medical Center

- New Mexico Hospital Association
- Ability Center
- CHOICES
- San Juan Center for Independence
- Independent Living Resource Center
- New Mexico School for the Visually Handicapped
- New Mexico School for the Deaf
- Brain Injury Association of New Mexico

Recommendation Four:

Information should be disseminated using a “phone tree” model. The agencies within the HAN should be responsible for notifying all the programs within their networks and these programs, in turn, would communicate with their clients or members on a local level.

This method of information dissemination would achieve two goals. One, it would facilitate efficient distribution of information throughout the state. Secondly, the messenger would be a local provider who has established recognition and trust with clients or members.

Issues in Communicating With People with Disabilities, Seniors, People Who Are Chronically Mentally Ill, Substance Abusers And Children With Special Health Care Needs (Questions 3, 4 and 5)

Accessible communication is an essential element of an effective emergency preparedness plan. Both interviews conducted for this report as well as the secondary sources reviewed emphasized the importance of incorporating multiple means of communication to meet the needs of individuals who are members of the populations included in this report.

Recommendation Five:

The Department of Health should work closely with their Emergency Preparedness Consultant and others to ensure that to the extent possible, the communication-related needs and priorities of people with disabilities, seniors, people who are chronically mentally ill, substance abusers and children with special health care needs are met.

Specific recommendations include the following.

- Information should be communicated both orally and visually. All materials must be available in multiple formats, including, but not limited to, Braille, audio cassette, Large Print and email;
- Messages should also be communicated in American Sign Language;
- Educational materials to support individuals with disabilities, caregivers and other support persons and organizations must be prepared prior to a crisis situation;
- Materials should be used with the general media and with specific channels, such as Newsline for the Blind;
- Alternative channels of communication, such as Newsline for the Blind, Close Captioning, etc. should be identified;
- All materials should also be in appropriate Native languages;
- All materials should be developed at the appropriate reading and mental aptitude levels for the targeted audience, i.e. for individuals with developmental disabilities, chronic mental illness, seniors, etc.;
- Oral and visual Public Service Announcements should be developed to educate people and providers about how to help persons with disabilities and seniors during a crisis;
- Discussions should be initiated with New Mexico government agencies and non-profit entities that maintain various interpretive services to create a registry of available interpreters (sign, Native and other forms of communication). These interpreters would be located throughout the state and may be available to assist during a crisis situation at a PHSS or another pivotal location; and
- Discussions should be initiated with television news media to ensure that real time captioning is included for all breaking news.

The workgroup that has met regularly to consider issues relating to the populations discussed in this report should also be used to identify gaps in existing communication systems.

Recommendation Six:

In order to develop and perfect this communication system, the Disabilities Work Group should conduct a table top simulation of a bioterrorist disaster, led by an experienced Emergency Manager and including critical service providers. Such an exercise would serve as a valuable source of “lessons learned” and identify gaps in existing communications systems related to people with disability.

Accommodations and Transportation (Questions 6, 7, 8 and 9)

Public Health Service sites (PHHS) are an important part of the Department of Health’s plan to provide health-related services to residents of one or more areas of the state affected by a large-scale emergency. The PHHS would “...have the dual purpose of providing preventive services and/or identifying potential contagious illness to the general public in the event of a health emergency.” While the PHHS, if activated, would by defini-

Given their purpose, if and when Public Health Service Sites are activated it will likely be in an atmosphere of anxiety or even panic among some of the general population of the state. Nevertheless, attention must be given to , the need to provide accessible services at the PHHS to people with a wide range of physical or cognitive disabilities, including transporting or evacuating individuals to and from them, remains.

tion be operating in an atmosphere of public anxiety or even panic, the need to provide accessible services at the PHHS to people with a wide range of physical or cognitive disabilities, including transporting or evacuating individuals to and from them, remains.

Recommendation Seven

Transportation has been and continues to be an issue for people with disabilities and seniors due to the shortage of accessible vehicles. In response to this need, a registry should be created that identifies New Mexico government and non-profit entities throughout the state, including school districts, senior centers, independent living centers, vocational rehabilitation offices, etc., which may own or have access to these types of vehicles. Where possible, agreements with these agencies and organizations should be reached that would provide access to their services in the event of a large-scale emergency.

Once an individual arrives at a PHSS, the basic needs of individuals who are members of populations included in this report must be accommodated. These basic needs may include:

- Information in various formats as discussed earlier in this report;
- Specific dietary needs;
- Shelter including accessible housing, beds, toilets, showers, supplies for bowel and bladder maintenance, etc.;
- Medical needs including chemical sensitivities, vaccinations and interactions between medications, medical equipment and supplies (e.g., oxygen, ventilators, etc) and current medications; and
- The needs of service animals.

Recommendation Eight

If quarantining, observation and isolation is warranted, special considerations must be made to meet their basic needs under those strict conditions. In planning and establishing PHSS, it is recommended that a registry be created that includes New Mexico government agencies, non-profits and commercial medical providers and suppliers throughout the state. The registry should include medical suppliers, hospitals, home health agencies, senior centers, etc. that may sell or utilize items necessary to meet these basic needs. Where possible, agreements with these agencies and organizations should be reached that would provide access to their services in the event of a large-scale emergency.

Mass Fatalities (Question 10)

It is painful – although realistic - to consider that if a catastrophic event of sufficient magnitude occurs, there could well be a large number of fatalities, either in one catastrophic

event, or over a period of several weeks or months. Visual recognition, medical records, or DNA testing may be necessary to identify deceased individuals. When a senior or an individual with a disability is approached to assist with identification through one of these means, there are several things that must be considered:

- Persons with vision loss may need alternative methods of identification. For example, a photograph may be used or a friend or relative may be available to make a visual identification and to assist in the identification process.
- People with cognitive disabilities, chronic mental illness and seniors may also need a friend or family member to make the actual identification and to assist in the identification process.
- Consideration should be given in regard to the psychological and physical implications for the survivor who has lost this family member, friend or caregiver.
- Case management services should be available regarding arrangements for the remains of the deceased and the short and long-term implications of the death.

Once again, effective communication and physical accommodations should be provided.

■ CONCLUSION

In a speech at the 2002 Southwest Conference on Disability, Patricia Morrissey, Commissioner of the Administration on Developmental Disabilities of the federal Department of Health and Human Services, reinforced the idea discussed in the Introduction to this report that emergency preparedness planning is a good idea for all citizens – regardless of whether or not they have a disability and regardless of the source of the emergency. Effective planning for any type of disaster, including those caused by terrorist attacks, can and should take place on an individual as well as organizational level. Citizens, regardless of disability or health status, should be prepared to meet the challenges of a large-scale emergency.

This type of personal planning, while encouraged by the Red Cross and other organizations, is too infrequently used. It is the hope of the authors of this report that these recommen-

dations will be accepted and implemented in the second and subsequent years of the emergency preparedness planning process.

■ **APPENDIX A: WORK GROUP PEOPLE WITH DISABILITIES, SENIORS,
PEOPLE WHO ARE CHRONICALLY MENTALLY ILL, SUBSTANCE ABUS-
ERS AND CHILDREN WITH SPECIAL HEALTH CARE NEEDS**

Connie Amidon

New Mexico Department of Health, Behavioral Health Services Division

Lynne Anker-Unnever

New Mexico Agency on Aging

Kim Bañales

New Mexico Commission for the Deaf and the Hard of Hearing

Eileen Benavidez

New Mexico Human Services Department, Medical Assistance Division

Mary Beresford

Alliance for Disability Education

Bert Blumenfeld

American Red Cross, Tierra del Sol Chapter

Peg Burkey

Nurse Manager, Los Alamos Public Health Office

Anthony Cahill

Center for Disability and Development, University of New Mexico, Health Sciences Center

Marcie Davis

Innovative Solutions, Inc.

Barbara Deaux

New Mexico Area Agency on Aging, Planning and Service Area II

Darlene Franklin

New Mexico Geriatric Education Center, University of New Mexico, School of Medicine

Ron Gurley

National Alliance for the Mentally Ill-New Mexico

Debbie Kay Herring

American Red Cross, Tierra del Sol Chapter

Chris Isengard

Statewide Independent Living Council

Richard D. Jiron

New Mexico Department of Health, Division of Vocational Rehabilitation

Kathe Kirkbride

New Mexico Department of Health, Emergency Medical Services for Children

James Leach

Santa Fe Office of Emergency Management

Larry Lorenzo

National Federation of the Blind

Bob Lujan

NEW MEXICO State Agency on Aging

Dee Martinez

Governor's Committee on Concerns of the Handicapped

Dwayne Merritt

Rio Arriba Office of Emergency Management

Bern Myers

New Mexico Department of Health, Office of Disability and Health

Judy Myers

Governor's Committee on Concerns of the Handicapped

Melissa Mitchell

Innovative Solutions, Inc.

Virginia Murphy

New Mexico Commission for the Blind

Ann McCampbell, M.D.

Governor's Committee on Concerns of the Handicapped

Matt McCue

New Mexico Department of Health, Long Term Services Division, Los Lunas Community Program

Hope Reid

Governor's Committee on the Concerns of the Handicapped

Greg Trapp

New Mexico Commission for the Blind

Anne Pascarelli-Barraza

New Mexico Department of Health, Public Health Emergency Preparedness Unit

Andrea Poole

Shaening Associates, Inc. (Consultant)

Pat Putnam

New Mexico Developmental Disabilities Planning Council

Lissa Reidel

Folio One, Limited (risk communication consultant)

Christina Rutland

New Mexico Developmental Disabilities Planning Council

Mary Ann Shaening/

Shaening Associates, Inc. (Consultant)

■ **APPENDIX B: RESEARCH QUESTIONS POSED BY SHAENING AND ASSOCIATES**

-
- Policy Issues in New Mexico For Emergency Preparedness for People With Disabilities, Seniors, People With Chronic Mental Illness, Substance Abusers and Children With Special Health Care Needs

Shaening and Associates generated the following eleven research questions to assess specific needs and issues regarding emergency preparedness.

1. Who are the people, programs, agencies or organizations who can respond on behalf of people with disabilities, seniors and people with chronic mental illness and substance abuse who should be part of the Health Advisory Network (HAN), the risk communication “must contact” list, and other contact directories?
2. How do you identify and locate people with disabilities, seniors and people with chronic mental illness and substance abuse? What resources (persons, programs, agencies, plans, etc.) currently exist?
3. How do you ensure an effective means of communication for all people with disabilities, seniors, and people with chronic mental illness and substance abuse? What resources (persons, programs, agencies, plans, etc.) currently exist?
4. What are the unique considerations, if any, in developing effective messages to communicate risk and provide information to people with disabilities, seniors and people with chronic mental illness and substance abuse, including providing information about the local Public Health Service Site (PHSS) (what it is, how to get there, when to go, etc.)? What resources (persons, programs, agencies, plans, etc.) currently exist?
5. What are the unique needs/accommodations, if any, regarding motivating people with disabilities, seniors, and people with chronic mental illness and substance abuse to go to their PHSS or to take other necessary actions or precautions? What resources (persons, programs, agencies, plans, etc.) currently exist?
6. What are the unique needs/accommodations, if any, regarding evacuating, quarantining, or isolating people with disabilities, seniors, and people with chronic mental illness and substance abuse? What resources (persons, programs, agencies, plans, etc.) currently exist?
7. What are the unique needs/accommodations, if any, regarding transporting people with disabilities, seniors, and people with chronic mental illness and substance abuse? What resources (persons, programs, agencies, plans, etc.) currently exist?
8. What are the unique needs/accommodations, if any, regarding vaccinating or treating people with disabilities, seniors, and people with chronic mental illness and substance abuse? What resources (persons, programs, agencies, plans, etc.) currently exist?
9. How do you ensure people with disabilities, seniors and people with chronic mental illness and substance abuse will report or seek help for unusual illness/symptoms? What are the unique needs/accommodations, if any, regarding informing people with disabili-

ties, seniors and people with chronic mental illness and substance abuse of laboratory findings, if necessary? What resources (persons, programs, agencies, plans, etc.) currently exist?

10. What are the special issues that need to be considered in terms of dealing with mass fatalities including activating a Disaster Mortuary Team (DMORT) when people with disabilities, seniors and people with chronic mental illness and substance abuse are involved? What resources (persons, programs, agencies, plans, etc.) currently exist?
11. What are the specific training needs, if any, for PHSS staff, disaster workers/emergency responders, hospital and health system staff, and others in terms of addressing the unique considerations of people with disabilities, seniors and people with chronic mental illness and substance abuse in the event of a bioterrorist incident? What resources (persons, programs, agencies, plans, etc.) currently exist?

APPENDIX I

**Final Report of the
New Mexico Task Force
on Emergency Preparedness and Response
for Targeted Populations**

December 2008



■ Task Force Members

Anne Pascarelli Barraza

Bureau of Health Emergency Management,
Epidemiology and Response Division, New Mexico Department of Health

Mary Beresford

Governor's Commission on Disability

Anthony Cahill

Division of Disability and Health Policy, Center for Development and Disability, University of
New Mexico School of Medicine

Kristin Doellinger Jones

Behavioral Health Services Division
Human Services Department

Susan J. Eastman

Administrative Services Division, New Mexico Human Services Department

Evonne Gantz

Response and Recovery Bureau
Department of Homeland Security and Emergency Management

Marjolaine Greentree

Bureau of Health Emergency Management
Epidemiology and Response Division, New Mexico Department of Health

Joan Murphy

Bureau of Health Emergency Management
Epidemiology and Response Division, New Mexico Department of Health

Jeffrey Phillips

Response and Recovery Bureau
Department of Homeland Security and Emergency Management,

Michael Spanier

Office of the Secretary, New Mexico Aging and Long-Term Services Department

Lynne Anker-Unnever

Aging Network Division, New Mexico Aging and Long-Term Services Department

**The opinions and recommendations contained in this report
are those of the authors, and do not reflect the official posi-
tion of the agencies listed above.**

■ Table Of Contents

List of Acronyms Used in This Report.....	2
Executive Summary.....	3
Background.....	5
Introduction.....	5
Mission and Organization of the Task Force.....	5
Conclusions.....	9
Annexes	
1. Work Group One: Individuals Housed in Institutions and Wards of the State...	11
2. Work Group Two: People with Disabilities.....	14
3. Work Group Three: People with Chronic Mental Illness and/or Substance Use Disorders	21
4. Work Group Four: Other Vulnerable Populations	29

■ List of Acronyms Used In This Report

Acronym	Title/Description
BHC	Behavioral Health Collaborative
BHEM	Bureau of Health Emergency Management
BHPC	Behavioral Health Planning Council
BHSD	Behavioral Health Services Division
CCP	Crisis Counseling Program
CMHS	Center for Mental Health Services
COOP	Continuity of Operations Plan
CORD	Consumer Organization Recognizing Diversity
CYFD	Children Youth and Family Department
DDPC	New Mexico Developmental Disabilities Planning Council
DHSEM	Department of Homeland Security and Emergency Management
DOH	New Mexico Department of Health
FEMA	Federal Emergency Management Administration
HIPAA	Health Insurance Portability and Accountability Act
HSD	Human Services Department
ISP	Immediate Services Program
LC	Local Collaborative
LISW	Licensed Independent Social Worker
LPCC	Licensed Professional Clinical Counselor
MHP	Mental Health Professional
PED	Public Education Department
PFA	Psychological First Aid
PHERA	Public Health Emergency Response Act
PHI	Public Health Information
RSP	Regular Services Program
RTC	Residential Treatment Center
SAMHSA	Substance Use and Mental Health Services Administration
SBHC	School Based Health Center
SE	Statewide Entity
SNS	Strategic National Stockpile

■ Executive Summary

In December of 2006, the State Director of the Department of Homeland Security and Emergency Management (DHSEM) formalized the ***New Mexico Task Force on Emergency Preparedness and Response for Targeted Populations***. The mission of the Task Force was “to ensure functional needs of targeted populations are recognized and fully integrated into emergency preparedness and response in New Mexico.” Letters of endorsement were sent to Cabinet Secretaries and Directors of public and non-profit organizations requesting their support and a commitment of staff participation to examine plans and identify issues for specific targeted populations.

The Task Force created four Work Groups to explore existing plans and activities as they speak to the functional needs of different populations requiring additional assistance in a state emergency or disaster. They addressed the needs of the following populations:

- Individuals Housed in Institutions and Wards of the State
- People with Disabilities
- People with Chronic Mental Illness and/or Substance Use Disorders
- Other Vulnerable Populations (i.e., the healthy elderly, homeless, and children not with their parents or guardians at the time of a disaster, i.e. “unaccompanied children”)

After an initial orientation to emergency management policies at the Federal and State levels, the Work Groups met periodically to review current plans, including the ***New Mexico Department of Health Emergency Operations Plan*** and its ***Pandemic Influenza Emergency Response Appendix***, and the ***New Mexico All-Hazard Emergency Operations Plan***. They were to identify gaps and make recommendations to address those gaps. The Work Groups then presented their findings to the Task Force. This report presents those findings and recommendations.

Five cross-cutting issues emerged from their deliberations:

1. the need to identify individuals with specific response needs before an event occurs;
2. the need for pre-disaster planning by organizations and individuals to ensure uninterrupted services and supplies;
3. the need to identify and bring into the planning process community resources as partners;
4. the need for public education and risk communication addressing potential threats and hazards with training in individual, family and emergency preparedness; and
5. the need to reduce or eliminate ambiguity in organizational roles and responsibilities in supporting and delivering services to the targeted populations.

The recommendations contained in this report highlight needed changes in written policies across numerous state agencies, as well as practices and services of emergency management agencies and other organizations.

For these recommendations to be put into practice, two things are necessary.

1. A detailed implementation plan that identifies specific agencies and individuals who have statutory authority to implement the changes.
2. A mechanism to coordinate and facilitate the implementation of recommendations.

■ Background

Introduction

The Task Force on Emergency Preparedness and Response for Targeted Populations was the result of two prior events.

- **Working Conference on Emergency Management and Individuals with Disabilities and the Elderly:** Representatives from New Mexico's Department of Health (DOH), Aging and Long-Term Services Department (ALTSD), the Department of Homeland Security and Emergency Management (DHSEM), the Developmental Disabilities Planning Council and the University of New Mexico's Center for Development and Disability served as state delegates or speakers at the *Working Conference on Emergency Management and Individuals with Disabilities and the Elderly* in Washington DC sponsored by the U.S. Department of Health and Human Services and the U.S. Department of Homeland Security in 2006.

The conference brought together Governor-appointed State teams with key disability and aging experts to work toward the integration of efforts within state emergency management policies and plans. After returning to New Mexico, conference participants met to create a process to assess the extent to which state emergency management plans incorporated the needs and priorities of people with a wide range of physical and cognitive disabilities.

- **First New Mexico Task Force:** Many of those who had participated in the *Working Conference* had also been members of a DOH Task Force that had assessed the extent to which the needs of people with a wide range of physical and cognitive disabilities were being included in statewide emergency preparedness planning activities. The 2004 report of the first Task Force¹ made a number of recommendations for changes to existing policies as well as new activities to ensure that these needs were addressed. A new Task Force will build upon the work of the earlier group to identify progress that had been made as well as gaps that remained.

Stage agency emergency roles and responsibilities are identified by DHSEM within the ***New Mexico All-Hazards Emergency Operations Plan***. DHSEM has the authority to task other state agencies during state emergencies or disasters. DHSEM's State Director fully endorsed the Task Force on Emergency Response and Preparedness for Targeted Populations. In soliciting support from the Cabinet Secretaries and Directors of public and non-profit organizations, he asked that one or more staff members serve on the Work Groups to examine emergency plans and identify issues for specific targeted populations.

Mission, Goals, Organization and Mandate of the Task Force

The mission, goals, organization and mandate of the Task Force were developed in the context of New Mexico's emergency management system. The concept of operations is in alignment with the National Incident Management System (NIMS) and Incident Command System (ICS) that describe how the state will respond in an emergency.

¹ Marcy Davis and Anthony Cahill, ***Including The Needs and Priorities Of People With Disabilities, Seniors, People Who Are Chronically Mentally Ill And People Who Are Chronic Substance Abusers In Public Health Emergency Preparedness***. Albuquerque: Center for Development and Disability, 2004.

Mission

The mission of the Task Force was to ensure functional needs of targeted populations are recognized and fully integrated into emergency preparedness and response in New Mexico.

Goals

The Task Force developed three primary goals:

1. to assess existing plans for preparedness and response to determine whether they adequately incorporate the needs of multiple groups that will require additional functional and/or medical support during an emergency;
2. to make recommendations for changes to these plans where necessary in order to better meet the needs of citizens who will require such support; and
3. to ensure implementation capacity through identifying specific parties accountable, action steps required, and training and exercise integrated into existing emergency management activities

In developing goals, objectives and work plans, the Task Force considered the emerging definition of "special needs" by the U.S. Department of Homeland Security (DHS), which has been endorsed by the U.S. Department of Health and Human Services (HHS).

Draft Definition of "Special Needs" April 2007

Developed by the DHS/NRP (National Response Plan) Special Needs Work Group and endorsed by HHS

"Before, during and after an incident members of this population may have additional needs in one or more of the following functional areas: maintaining independence, communication, transportation, supervision, and medical care. Individuals in need of additional response assistance may include those who:

- *have disabilities;*
- *live in institutionalized settings;*
- *are elderly;*
- *are from diverse cultures;*
- *have limited English proficiency or who are non-English speaking;*
- *are children; or*
- *are transportation disadvantaged."*

Individuals in these groups often have specific disaster-related needs requiring additional assistance or capabilities. This definitional framework is a function-based approach that allows planners to plan for a predictable and specific set of functional support needs and establishes parameters for resource allocation. Notably, this definition satisfies a key recommenda-

tion from the Department of Homeland Security's *Nationwide Plan Review*² calling on the federal government to develop a consistent definition of the term 'special needs'

This approach establishes a flexible framework that addresses a broad set of common function-based needs irrespective of specific diagnosis, statuses, or labels (e.g., children, the elderly, etc.). For example:

- **Maintaining Independence** – Individuals in need of support that enables them to be independent in daily activities may lose this support during the course of an emergency or a disaster situation. This may include lost or damaged durable medical equipment (wheelchairs, walkers, scooters, and essential supplies –catheters, ostomy supplies, etc.). By supplying needed support/devices individuals will be able to maintain their independence.
- **Communication** - Individuals who have limitations that interfere with the receipt of and response to information will need that information provided in formats they can understand and use. They may not be able to hear verbal announcement, see directional signage, or understand how to get assistance due to hearing, vision, speech, cognitive or intellectual limitations, or limited English proficiency
- **Transportation** – Individuals who cannot drive due to the presence of a disability or who do not have a vehicle will require support for successful evacuation such as, availability of accessible vehicles (e.g., lift equipped or vehicle suitable for transporting individuals who uses oxygen) or information about how/where to access mass transportation used to assist in evacuation.
- **Facilitation and Supervision** – Before, during, and after an emergency or a disaster, individuals may lose the support of caregivers, family, or friends or may be unable to cope in a new environment; have conditions such as dementia, Alzheimer's Disease and psychiatric conditions (schizophrenia, intense anxiety); and unaccompanied children will require supervision to make decisions affecting their welfare.
- **Medical Care** - Individuals who are not self-sufficient or do not have or have lost adequate support from caregivers, family, or friends may need assistance with: managing unstable, terminal or contagious conditions that require observation and ongoing treatment; managing intravenous (IV) therapy, tube feeding, and vital signs; receiving dialysis, oxygen, and suction administration; managing wounds; and operating power-dependent equipment to sustain life. These individuals require support of trained medical professionals.

Organization

Roles and responsibilities of the Task Force and the Work Groups were clearly defined.

As the coordinating body, the Task Force:

1. Identified leaders of each work group;

² U.S. Department of Homeland Security, *Nationwide Plan Review Phase Two Report*, 2006.

2. developed their scope of work;
3. ensured they had a basic understanding of emergency operations before beginning their work;
4. determined common areas of assessment between the groups to avoid duplication of effort;
5. served as a resource for Work Group chairs and members; and
6. integrated recommendations into this final report.

The Task Force created four Work Groups, each co-chaired by a member of the Task Force and a subject matter expert. These were:

Work Group One: Individuals Housed in Institutions and Wards of the State: individuals incarcerated in state and local penal institutions; individuals incarcerated in juvenile detention centers and other youth centers; foster children in foster homes; and children in group homes managed by the Children, Youth and Families Department;

Work Group Two: People with Disabilities: individuals with a variety of cognitive and physical disabilities residing in the community and in institutions such as nursing or group homes who will require additional functional and/or medical support;

Work Group Three: People with Chronic Mental Illness and/or Substance Use Disorders: people living in the community and group homes who have chronic mental illness and/or substance use disorders; and,

Work Group Four: Other Vulnerable Populations: groups including elderly individuals living in the community who may require additional assistance during an emergency; children under the age of consent not living at home or not with their parents or legal guardians at the time an emergency occurs; pregnant women; and, the homeless.

Mandate

The Work Groups were asked to develop the following:

Needs Assessment: Each Work Group was asked to assess the extent to which existing emergency response plans addressed the needs of the target populations of the Work Group and to identify gaps in those plans.

Recommendations: Based on the needs assessment, each Work Group was asked to develop recommendations for changes to existing plans that would address identified gaps. Work Groups were asked to develop recommendations that were actionable and had measurable indicators.

■ Conclusion

While the subject areas of the four Task Force Work Groups were significantly different, a number of cross-cutting issues are clearly evident.

Identification of Individuals: Identification of individuals with specific response needs, where they are located, and how best to serve them during an emergency is a critical issue. Options include a community-based approach, use of information from health care and durable medical equipment providers, and use of client lists from state health and disability program listings.

Pre-Disaster Planning: Planning by agencies is a crucial need for all of the targeted populations discussed in this report. Third party payers, pharmacies, health care and behavioral health providers, disability organizations, correctional institutions and others must develop specific emergency response plans to support their clients with uninterrupted services, including provision of medications. In addition, individuals and/or their caretakers should have personal preparedness plans to mitigate the effects of the disaster.

Inclusion of Community-Based Organizations: Existing community-based resources can play a valuable role in the preparedness, response and recovery phases of disasters. These resources need to be identified and integrated into existing state emergency response plans.

Public Education: Public information and risk communication are critical elements of effective disaster response. Individuals, families, caregivers, and staff of institutions need information concerning how to prepare for emergencies, including evacuation and sheltering-in-place.

Organizational Issues: Clarification of roles and responsibilities of response agencies to ensure that targeted populations are supported efficiently in emergencies.

The recommendations contained in this report highlight needed changes in written policies across numerous state agencies, as well as practices and services of emergency management agencies and other organizations. For these recommendations to be put into practice, two things are necessary.

1. A detailed implementation plan needs to be created that identifies specific agencies and individuals who have statutory authority to implement the changes. In cases in which applicable statutory authority is not already identified, a decision has to be made concerning what organization will be given responsibility for implementing the change.
2. A mechanism needs to be created to coordinate and facilitate the implementation of recommendations that have relevance to more than one targeted population.

■ Annexes

The Annexes of this report contain the findings of each of the Work Groups. Because each Work Group examined different sets of documents and developed differing priorities, the focus of each Work Group as well as the format of their report varies. However, each section identifies gaps in current knowledge as well as recommendations to address those gaps.

Annex 1, Work Group One Individuals Housed in Institutions and Wards of the State

■ Work Group Members

Jeff Phillips
New Mexico Department of Homeland Security and Emergency Management

Evonne Gantz
New Mexico Department of Homeland Security and Emergency Management

Susan Eastman
New Mexico Human Services Department

Work Group members acknowledge the contributions of those whose initial discussions contributed to the report:

Marcey Davis
New Mexico Department of Health

Candis Stoddard
New Mexico Corrections Department

Michael Kear
New Mexico Children, Youth and Families Department

■ Introduction

In reviewing the issues involved in emergency preparedness and response among the population of Individuals housed in institutions as well as wards of the State, it was soon understood that the initiative went beyond seeing how these sub-populations fit into an existing plan. The Work Group decided to refocus its activities on assessing the integrity of multiple institutional plans, and defining how that might be accomplished. [Note: In this report, the term “Facilities” refers to institutions managed and operated by the State of New Mexico.]

■ Issues, Gaps and Recommendations

Issue One: Are Facilities’ emergency plans current and adequate?(Preparedness)

Gap:

Do all Facilities have an emergency plan? Are the plans current? Are they updated regularly? Do the plans address all hazards, sheltering-in-place, evacuations, etc.? Are there any regulations, requirements, or guidelines that determine what these plans should address?

Recommendations:

1. Research Federal regulations, policies and guidelines concerning Facility emergency plans.
2. Review and update the emergency plans using these documents.
3. Establish a revision schedule for the plans
4. Develop a training program for shelter managers and others involved in sheltering that incorporates policy changes and guidance from federal agencies regarding the inclusion of individuals.

Issue Two: Links Between the New Mexico All Hazard Emergency Operations Plan (NMEOP) and Individual Facility Emergency Plans (Preparedness)

Gap:

Are Facilities' emergency plans in alignment with the NMEOP? Does the NMEOP adequately address issues, such as evacuation and sheltering-in-place, in Facility plans?

Recommendation:

5. Review Facility emergency plans and the NMEOP. If needed, revise Facility plans to address all hazards identified in the NMEOP and/or revise the NMEOP to address Facilities' issues such as evacuation and sheltering-in-place.

Issue Three: Training (Preparedness)

Gap:

Are staff at each Facility trained on the emergency plan?

Recommendation:

6. Conduct training each year to familiarize staff with the Facility's emergency plan and conduct drills and exercises each year to test Facility plans.

Issue Four: Evacuation (Response)

Gap:

Do Facility plans describe evacuation procedures, including possible evacuation locations? Are any agreements (such as Memoranda of Agreement or MOAs) needed to use other facilities during an evacuation? Are there procedures to bring back-up copies (digital or hard copy) of Facility and individual vital records during an evacuation?

Recommendation:

7. Assess Facilities' emergency plans to ensure that they describe evacuation procedures, including adequate transportation and evacuation locations. Identify evacuation locations and complete Memorandums of Agreement for alternate Facility use. Ensure Facilities' plans include vital records issues.

Issue Five: Sheltering-in-Place (Response)

Gap:

Do Facility plans describe shelter-in-place procedures, including procurement procedures for supplies, medications, etc.? Do plans address staffing issues for an extended incident?

Recommendations:

8. Assess plans to ensure that they contain shelter-in-place procedures, procurement procedures, and staffing policies. Develop checklist of supplies and medications needed. Ensure procurement procedures are in place.

Issue Six: Revisions to Facility Emergency Plan After an Incident (Preparedness)

Gap:

Are Facility emergency plans revised after an incident to reflect lessons learned?

Recommendations:

9. Develop procedure to ensure that Facilities complete an After Action Report & Improvement Plan after each incident to capture lessons learned. Revise the Facility emergency plan to incorporate best practices and areas for improvement, as described in the After Action Report & Improvement Plan, from the incident.

Annex 2, Work Group Two People With Disabilities

■ Work Group Members

Tanya Baker-McCue
Family & Community Partnerships Division, Center for Development and Disability

Anne Barraza
Bureau of Health Emergency Management, New Mexico Department of Health

Anthony Cahill
Disability and Health Policy Division, Center for Development and Disability, University of New Mexico

Bert Dennis
Developmental Disabilities Supports Division, New Mexico Department of Health

Tom Dillon
New Mexico Commission for Deaf and Hard of Hearing Persons

Dwayne Merritt
Rio Arriba Office of Emergency Management and New Mexico Emergency Management Association

Carol Merovka
Division of Health Improvement, New Mexico Department of Health

John McNabb
New Mexico Commission for the Blind.

Lisa McNiven
New Mexico Governor's Commission on Disability

Clara Holguin
Brain Injury Association of New Mexico

Tom Truby
Developmental Disabilities Supports Division, New Mexico Department of Health

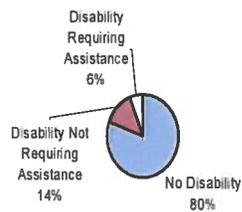
Clara Holguin
Brain Injury Association of New Mexico

Yvonne Hart
Office of Disability & Health, New Mexico Department of Health

■ Introduction

Some 20%, or about 300,000 of adult, non-institutionalized New Mexicans report having some type of physical or cognitive disability. Of these, about 80,000 report requiring assistance.

Figure One: Disability in New Mexico

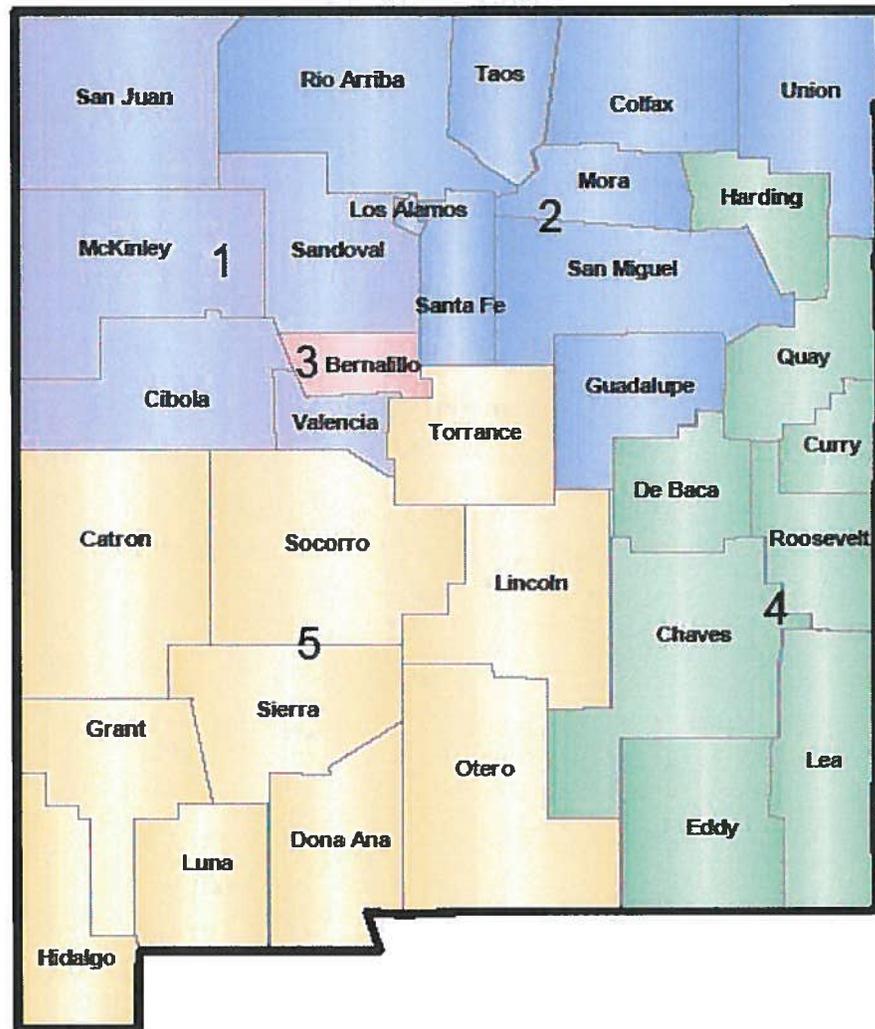


Disability is more-or-less equally distributed throughout New Mexico's population.

Figure Two: Disability In New Mexico's Public Health Regions And Bernalillo County

Northeast: 25.1%
Southeast: 26.3%
Southwest: 24.4%
Bernalillo County 24.2%
Northwest: 24.5%

PHD Regions



Region 1: San Juan, McKinley, Sandoval, Cibola and Valencia;

Region 2: Rio Arriba, Taos, Colfax, Union, Los Alamos, Santa Fe, Mora, San Miguel and Guadalupe;

Region 3: Bernalillo County;

Region 4: Harding, Quay, DeBaca, Curry, Roosevelt, Chaves, Eddy and Lea;

Region 5: Torrance, Catron, Socorro, Lincoln, Grant, Sierra, Hidalgo, Luna, Doña Ana and Otero.

Effective July 1, 2005

Work Group Activities – Summary

Work Group Two of the Task Force on Emergency Preparedness for Targeted Populations convened to assess the needs for persons with disabilities during emergency preparedness and response, and to review existing plans for gaps.

The Work Group divided its recommendations into three categories; Preparedness, Response, and Recovery, consistent with the phases of disaster. Findings indicate identification of individuals, especially by emergency managers, is extremely difficult and one of the most pressing concerns of responders. Other major challenges included continuity of services without interruption during an emergency, re-unification of individuals separated by an emergency, and re-establishment of daily routines and services.

Recommendations of the Work Group follow.

Issue One: Identification of Individuals with Specific Emergency Response Needs (Preparedness)

Gap:

Emergency managers currently have no way to identify individuals with specific response needs, where they are located, and what their response needs are. In Rio Arriba County for example, there is an option to include this information on county residential forms. However, there is no database or other resource that provides more complete or reliable information. How and where should information about people with disabilities gleaned from several disparate sources be kept and maintained?

Questions that need to be addressed: include WHO (or what agency/ organization) collects the information, WHAT information is needed and WHO should maintain the information?

Recommendation 1-1:

Information could be solicited via a “community approach” such as 911 call centers; or utility and equipment vendors. Also, information could be requested in monthly utility bills. Public transit systems usually have some information about individual transport needs.

The State of New Mexico maintains a complete list of community provider agencies that serve people on the Developmental Disabilities (DD) Waiver and individuals on the DD Waiver. Other possible sources of data include home health care providers; medical equipment suppliers; county-based community health councils; NMDOH Aging and Long Term Services Department, Medically Fragile Waiver and, DD Supports Division (DDSD) Statewide Training Database at the Center for Development and Disability (CDD) at the University of New Mexico (UNM).

Public transportation agencies, such as Santa Fe Ride, maintain records of individuals who have submitted Certification of ADA Paratransit Eligibility forms. The information on the form indicates if the individual is accompanied by service animals and/or service attendants, if a chair assistive device is required, if a func-

tional capacity study has been performed, as well as complete contact information including physical location and mailing address.

Work with multiple State agencies and selected county emergency managers to develop a pilot project that creates a database to identify and locate individuals with specific response needs. The database could also include a registry of county/community-based resources and services for the disabled population.

Gap:

There is a pressing need for connecting disabled individuals/groups and emergency responders.

Recommendation 1-2:

A campaign to persons with disabilities that poses questions, such as: "Do You Know your Emergency Manager, Fire Department, etc....?" or "What do local emergency responders need to know about YOU?"

Public Service Announcements and year-round marketing efforts to increase awareness that pre-disaster planning could be critical to one's chances of survival.

Gap:

Persons with disabilities need information about how to prepare for evacuation and how to shelter-in-place (short-term, i.e., snow storm vs. long-term, i.e., pandemic influenza)

Recommendation 1-3:

There are numerous sources of information to assist individuals and organizations with development of preparedness plans; there is no reason to reinvent the wheel. Efforts need to focus on dissemination and marketing campaigns, grassroots training and technical assistance programs. The DOH Bureau of Health Emergency Management and the UNM Center for Development and Disability are collaborating on an outreach training program for county-based Community Health Councils that includes this topic.

Develop a PSA campaign; emphasize the need to reach out to a neighbor who has response needs; target the faith-based community to participate in the effort to identify individuals.

Issue Two: Services for Individuals with Specific Needs (Response)

Gap:

All individuals, especially those with disabilities, must have continuation of services without interruption during an emergency. For persons with disabilities, these would include Social Security, Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), Medicare/Medicaid, prescriptions, medical supplies and equipment (i.e., oxygen, etc.), as well as availability or provision of basic subsistence items, such as food and water.

Recommendation 2-1:

Contact needs to be made with third party payers and pharmacies (chain and independent) to develop a process to prepare for emergencies and ensure uninterrupted services. Entities could work together to devise a strategy for ensuring that clients are permitted to have one month extra supply of prescriptions and other critical supplies.

The UNM Poison Center is performing a statewide inventory of pharmaceuticals and developing a “just-in-time” procedure for providing information on product availability that can be used during an emergency. Perhaps this activity can be integrated as one component of the solution to this gap.

Gap:

Persons with disabilities and their caretakers need to share a common denominator of skills needed during response, and when moving from response to recovery. Although persons with disabilities are always dealing with the unpredictable, the “newly” disabled would likely encounter more problems in a response situation than others.

Recommendation 2-2:

Emergency planners and managers, disability agencies and individual persons with disabilities could provide education about the specifics of preparedness, especially, the personal skills and required tasks required for mitigation of the effects of an emergency.

Each individual must identify exactly what they need and how to communicate these needs to the resources (services) and/or persons who can meet them.

Gap:

Inclusion of third party payers in this educational process is vital. A process for establishing two-way education between individuals and providers is needed.

Recommendation 2-3:

Education and continued dialogue about mass sheltering needs to be undertaken. In the near future, the Federal Emergency Management Agency (FEMA), rather than the American Red Cross will be the lead agency for this response function. At the federal level, a new Target Capability, *Functional and Medical Support Sheltering*, is near completion. Dialogue needs to continue with both agencies to ensure that “populations requiring support,” to the extent possible, can be accommodated in the least restrictive environment (e.g., a general population shelter). When provision of such support cannot be reasonable accommodated, these individuals will be sheltered in a Functional and Medical Support Shelter (F&MSS).”

(From: *Functional and Medical Support Sheltering*, final draft, April 2007)

Issue Three: Transitioning from Response to Recovery (Recovery)

Gap:

Re-establishment of personal contacts, daily routines and basic services, especially transportation, is critical to the ability to recover from an emergency

Recommendation 3-1:

Planning for recovery from a specific event should start at the beginning of response via the Incident Command System (ICS), used locally and at the State level, for managing emergencies. Specific training in the importance of early planning for recovery of persons with disabilities should be provided to local emergency managers and other responders at all levels. Responses to past events should be closely studied via review of available After-Action Reports and, as indicated, appropriate changes and amendments to State and local emergency operations plans should be implemented.

Recommendation 3-2:

Planning for recovery, in general, should be incorporated immediately into statewide emergency planning efforts. Local governments, service providers, responders, and emergency management personnel need to make a special effort to incorporate the needs of persons with disabilities in this activity.

Annex 3, Work Group Three People with Chronic Mental Illness and/or Substance Use Disorders

■ Work Group Members

Novia Baxter
New Mexico Department of Health

Kim Cobbs
Children Youth and Families Department

Donna Divincenzo
ValueOptions New Mexico

Kristin Doellinger Jones
New Mexico Human Services Department

Deborah Fickling
New Mexico Human Services Department

Justin Friedman
Children Youth and Families Department

Patricia Gallegos
Region Two – Behavioral Health Local Collaborative

Michael Hock
ValueOptions New Mexico

Joan Murphy
New Mexico Department of Health

Susan Nelsen
Office of School and Adolescent Health

Regina Roanhorse
Region Six – Behavioral Health Local Collaborative

Shela Silverman
Mental Health Association of New Mexico

Introduction

Effective July 1, 2007, the Behavioral Health Services Division (BHSD) administered by the New Mexico Department of Health (NMDOH) was transferred to the NM Human Services Department (NMHSD). This transfer was the result of House Bill 371a: "Transfer Behavioral Health Services Division" that was approved by the State's legislature and signed by Governor Richardson. With this action, HSD was identified as the new entity to provide oversight of state-provided behavioral health services and assumed the role of State Mental Health Authority (SMHA). Management of substance abuse prevention services remained within DOH.

The purpose of this transfer was to ensure inclusion of mental health and substance abuse services as part of the State's strategy to close the uninsured gap and to create more options for use of Medicaid funding for behavioral health services. The transfer of responsibilities from DOH to HSD is part of Governor Bill Richardson's initiative to help streamline mental health and substance abuse services for adults.

The State behavioral health system consists of the Interagency Behavioral Health Purchasing Collaborative ("The Collaborative"), the State's statutory legal entity charged with oversight of New Mexico's behavioral health delivery system. The Collaborative represents the 17 State entities that were individually providing behavioral health services prior to 2004 when the new system was created. It is a unique public policy initiative intended to mitigate fragmentation of services, increase service quality and improve consumer outcomes. The Collaborative replaces oversight of services via several departments with coordination via a single entity, and replaces multiple advisory bodies into one statutory advisory body, the Behavioral Health Planning Council (BHPC). The Collaborative also consolidates multiple contracting mechanisms and administrative infrastructures under a single service provider Statewide Entity (SE), currently ValueOptions of New Mexico. The SE is responsible for maintaining the New Mexico behavioral health provider network and managing the service delivery system.

The Collaborative supports development of local behavioral health collaboratives in each of New Mexico's 13 judicial districts, plus a number, as appropriate, for the State's tribes and pueblos. Local Collaboratives create and sustain partnerships among customers, family members, advocates, local agencies, and community groups. They also identify service needs, help develop a range of resources, and ensure the responsiveness and relevance of behavioral health services for those affected by behavioral health concerns.

Work Group Activities - Summary

Work Group Three of the Task Force on Emergency Preparedness for Targeted Populations convened to assess the needs for persons with serious mental illness and substance use disorders during emergencies, and the consequences of gaps in services.

Findings of the Work Group indicate a need for closer collaboration of individual State agencies with the Behavioral Health Collaborative. Development of a strategic plan is recommended with assurance that the strategic plan can be translated into an active work plan. This work plan should address the needs not only of individuals currently utilizing mental health services, but also all individuals who may experience emotional effects from a disaster and need to be returned to their pre-disaster level of functioning. It is necessary to have clear delineation of agency roles and plans to ensure that behavioral efforts are well coordinated.

Recommendations of the Work Group follow.

■ **Issues, Gaps and Recommendations**

Issue One: Psychosocial Response Annex to the New Mexico DOH Emergency Operations Plan

Gap:

To date, the *Psychosocial Response Annex to the New Mexico Department of Health Emergency Operations Plan* has not been finalized. Identification of response agencies and their specific roles and responsibilities have not been defined. Populations affected by the *Annex* are individuals with serious mental illness and/or substance use disorders, either in recovery or needing recovery services, as well as members of the general population who have experienced emotional effects of a disaster.

Because the roles and responsibilities of the HSD Behavioral Health Services Division, DOH Bureau of Health Emergency Management, Behavioral Health Collaborative, the Statewide Entity and other response agencies are not articulated, there may be confusion among responders, and delay or interruption of services for consumers of behavioral health services.

Recommendation One:

The development of a standing Work Group on Disaster Behavioral Health Planning is recommended. Members of the Group would include representatives from the above entities, the State's Department of Homeland Security and Emergency Management (DHSEM), and others, as appropriate. The Group would provide technical assistance with development of the *Psychosocial Response Annex*. One of the first activities of the Group would be identification of the agencies statewide to provide psychosocial services in a disaster, and the roles and responsibilities of each. Due to transfer of the State Mental Health Authority (SMHA) to HSD, another important activity is identification of the lead agency for development and maintenance of the *Psychosocial Response Annex*.

Issue Two: Articulation of Response Roles and Responsibilities of Statewide Entity

Gap:

Response roles and responsibilities of the Statewide Entity must be fully articulated in its contractual obligations with the State.

Recommendation Two:

Behavioral health disaster response roles and responsibilities must be specified in the contract between the State and the Statewide Entity (SE) for administration and management of State-provided behavioral health services. Performance of these roles and responsibilities should be monitored and assessed annually by the Collaborative. This information should be developed by the agencies, cited above, in Recommendation One.

Issue Three: Relationship between Tribal Entities and State behavioral health response planning

Gap:

The State's *Psychosocial Response Annex* does not address how behavioral health response will be provided to tribal members in New Mexico. Clarification of federal and state relationships relating to emergency response with the tribes and Indian Health Service is needed.

Recommendation Three:

The Disaster Behavioral Health Work Group should include representation from the local tribal collaborative to address this issue. Compliance with the State's Tribal Consultation Policy should be considered during deliberations.

Issue Four: Provider Plans for Emergency Preparedness

Gap:

It is not known which, if any, behavioral health providers maintain emergency response plans. If no plans are in place, there may be problems and delays with service delivery and continuity of care for consumers in need of behavioral health services during an emergency.

Recommendation Four:

Providers who have emergency response plans in place should be identified, and their plans reviewed. An emergency response plan template should be developed and training provided statewide in plan development, maintenance, and testing. The template should be posted on the websites of the Collaborative and the Statewide Entity. A mechanism for ongoing review of plans to maintain consistency among providers' protocols statewide and with State-level response plans should be developed and implemented.

Issue Five: Opioid Treatment Plans

Gap:

Opioid treatment plans, based upon the State's Opioid Treatment Program Regulations, are not included in the State's *Psychosocial Response Annex*. The potential impact of this gap could be a disruption in service to clients and duplication of efforts by providers.

[Definition: Opioid /opi-oid/ (o'pe-oid)

1. Any synthetic narcotic that has opiate-like activities but is not derived from opium.
2. Any of a group of naturally occurring peptides, e.g., enkephalins, that bind at or otherwise influence opiate receptors, either with opiate-like or opiate antagonist effects.

Sources:

Dorland's Medical Dictionary for Health Consumers. Saunders, 2007.
The American Heritage® Medical Dictionary, Houghton Mifflin Company. 2007.]

Recommendation Five:

The State Methadone Authority and its project leader for Opioid Replacement Treatment should develop a plan to provide uninterrupted dispensing of medication during an emergency. This plan should be included in the *Psychosocial Response Annex*. Individual provider response plans should include procedures for dispensing of opioids consistent with the State's Opioid Treatment regulations and the *Psychosocial Response Annex*.

Issue Six: Distribution of Medications during an Emergency

Gap:

Related to Issue Four, there are also no existing plans for dispensing of behavioral health-related medication during an emergency. This is of particular concern for individuals with behavioral health disorders who have complex medication regimens.

Recommendation Six:

The lead agencies cited in Recommendation One need to develop policies and procedures for providing uninterrupted access to medications for individuals with behavioral health disorders in order to mitigate the psychological effects of the disaster. This information should be included in and consistent with the *Psychosocial Response Annex*

Issue Seven: Peer Networks and Supports Plan

Gap:

Inclusion and participation of consumers and consumer-operated services are not reflected in current disaster behavioral health response planning.

Recommendation Seven:

Consumer leaders should be included in statewide disaster behavioral health response planning. Groups and individuals who could participate in this planning include, but are not restricted to: the Statewide Entity, Recovery and Resiliency services; the HSD Office of the Behavioral Health Ombudsman; consumers working in State agencies that coordinate services relating to substance use, co-occurring disorder; and others.

Issue Eight: Consumer Preparedness

Gap:

There is a lack of personal preparedness among consumers of behavioral health care services. In the case of significant medical surge, lack of personal consumer preparedness may result in extreme hardship, disorientation, substance use relapse, psychosis, and potential violent reaction to responders.

Recommendation Eight:

Training in personal preparedness, including development of evacuation and transportation plans, and identification of locations for re-unification of separated family members should be developed and provided on a regular basis throughout the Behavioral Health Regions. Recipients of training could be behavioral health provider agencies, consumers, community networks, family members, peer specialists, Behavioral Health Planning Council and other entities, as appropriate. This training could be developed collaboratively by the lead agencies with participation of other appropriate entities, and conducted by Local Collaboratives in their geographical areas. Personal preparedness can provide self-sufficiency during the first hours and days of an emergency.

Issue Nine: Crisis Counseling Training

Gap:

One goal of the Federal Emergency Management Agency (FEMA) and Substance Abuse and Mental Health Services Administration (SAMHSA) Crisis Counseling Program (CCP) is to develop State cadres of individuals to serve as regional contacts or leads for delivery of the FEMA/SAMHSA model of crisis counseling services in the event of a federally-declared disaster. The CCP supports short-term interventions with individuals and groups experiencing emotional reactions to disasters. Presently, there are no CCP crisis counseling teams in New Mexico.

Recommendation Nine:

It is recommended that representatives from the following organizations, and others, as appropriate, be invited to participate in statewide Crisis Counseling training:

1) Statewide Entity provider network; 2) Local Collaboratives; 3) Peer Specialists and Consumers; and, 4) Faith-Based Organizations. These individuals should be indigenous to their communities and culturally connected to the populations they would be serving.

Development of training should be coordinated by the lead agencies with participation of Local Collaboratives. Teams should be registered in the State's health emergency worker registry, NMservices, which is managed by the DOH Bureau of Health Emergency Management.

Issue Ten: Psychological First Aid

Gap:

Few individuals in New Mexico are trained in Psychological First Aid, a federally recognized model for providing emotional support that is similar in concept to First Aid for physical health and a component of the FEMA/SAMHSA Crisis Counseling model (see: Recommendation Nine). It is used immediately following an emergency or disaster to mitigate increased or future emotional reactions. Any individual may be trained in Psychological First Aid; it is not limited to licensed or trained behavioral health professionals. The lack of individuals who are familiar with Psychological First Aid diminishes the ability of New Mexicans to emotionally support family, friends and community members in the event of an emergency or disaster

Recommendation Ten:

In tandem with Recommendation Nine, a plan to provide Psychological First Aid training statewide should be developed. Trained individuals who are willing serve as volunteers in a disaster should be registered in the State's emergency health worker registry, NMservices.

Issue Eleven: Public Information

GAP:

There is a need for pre-disaster development of targeted public information for individuals with behavioral health needs, their families, support networks, and providers. This

information needs to address how to provide self-care, how to access information, and how to be included in response services.

Potential barriers to effective communication with persons with behavioral health disorders revolve around isolation and difficulties with comprehension or interpretation.

Recommendation Eleven:

The lead agencies should develop information and messages targeted to behavioral health consumers, their families and providers that can be included in the State's risk communications plans. Training should also be provided to the State Public Information Officers (PIOs) about the importance of this information and methods for its dissemination.

Issue Twelve: Health Insurance Portability and Accounting Act (HIPAA) – Personal Health Information

Gap:

It is not known if there are plans in place for the preservation of and access to personal health information for those who need to access behavioral health services during an emergency.

Recommendation Twelve:

State HIPAA Coordinators should review policies and procedures to determine if there are continuity of operations protocols to protect personal health information and to continue uninterrupted access to this information during an emergency. If plans do not exist, they should be developed and disseminated to consumers and providers.

Issue Thirteen: Incident Command Structure for Behavioral Health Response

Gap:

Behavioral health is not integrated into the State's incident command infrastructure for emergency management.

Recommendations Thirteen:

The Disaster Behavioral Health Work Group should work with the Department of Homeland Security and Emergency Management (DHSEM) to determine the appropriate roles and responsibilities of behavioral health authorities within the State's response infrastructure. Training in the Incident Command System (ICS) is also recommended lead behavioral health agencies and for individual behavioral health responders.

Issue Fourteen: Behavioral Health Responder Preparedness

Gap;

In the event of an emergency, behavioral health responder capacity may be impacted due to anxiety about their families, personal work obligations or other matters. There is a lack of information and training relating to the importance of personal safety and health of responders.

Recommendation Fourteen:

Training in personal emergency preparedness and stress management needs to be developed and provided to behavioral health responders statewide.

Issue Fifteen: School Response Plans

Gap:

Few guidelines exist for responding to the disaster-related behavioral health needs of children in the New Mexico schools.

Recommendation Fifteen:

The NM Public Education Department (PED), in collaboration with the DOH Office of School and Adolescent Health, and the agencies listed in Recommendation One should provide guidance to school districts in development of disaster behavioral health plans.

Issue Sixteen: Behavioral Health Response Planning for clients of NM Children, Youth and Families Department (CYFD)

Gap:

CYFD provides services and support to multiple populations of children, youth and families who may experience a range of disaster-related behavioral health needs.

Recommendation Sixteen:

CYFD should have representation on the Work Group on Disaster Behavioral Health Planning and be an integral partner in behavioral health response planning.

Annex 4, Work Group Four Other Vulnerable Populations

■ Work Group Members

Lynne Anker-Unnever (Co-Chair)
New Mexico Aging & Long-Term Services Department

Judy Baca
New Mexico Children, Youth & Families Department

Lynn Christiansen
New Mexico Department of Health

Joie Glenn
New Mexico Association for Home & Hospice Care

Jeff Repichowski
Human Services Department

Jennifer Rodgers
New Mexico Public Education Department

Julie Rosen
Albuquerque Health Care for the Homeless

John Sweeney (Co-Chair)
New Mexico Children, Youth & Families Department

Patricia Tupper
New Mexico Aging & Long-Term Services Department

Tracy Wohl
New Mexico Aging & Long-Term Services Department

■ Introduction

As part of New Mexico's Task Force on Emergency Preparedness & Response for Targeted Populations, the Work Group on Other Vulnerable Populations focused on individuals living in the community who may require additional assistance during an emergency. The Work Group's target populations included children who are not with their parents or legal guardians at

the time an emergency occurs; the elderly; persons experiencing homelessness; and persons receiving public assistance.

The group included representatives from the Aging & Long-Term Services Department, Children, Youth & Families Department, Human Services Department, Public Education Department, Department of Health, NM Association for Home and Hospice Care, and Albuquerque Health Care for the Homeless.

The group was charged with reviewing two documents – the *NM Pandemic Influenza Emergency Response Appendix (to the NM DOH Emergency Operations Plan)* and the *NM All-Hazard Emergency Operations Plan*. The group conducted a review of these two plans to determine if they sufficiently addressed the needs of the Work Group's target populations and to identify any gaps that existed in the plans. The Work Group made recommendations regarding changes and additions that could be made to the existing plans to address the identified gaps. The Workgroup's recommendations are as follows.

"A nation is judged by how it treats its most vulnerable citizens".

■ Recommendations

Specific recommendations were made for each of the reviewed plans and forwarded to the respective organizations. It was recognized that many of the identified gaps transcended any particular plan. In addition to recommending that the Department of Homeland Security and Emergency Management and the Department of Health make revisions to annotate sections, the group recommended that their observations be considered within the context of all emergency plans.

Hence, the overriding recommendation to address the needs of other vulnerable populations is that all responsible parties assess and review their emergency plans with particular attention to:

1. Education Regarding Emergency Preparedness:

- Childcare providers
- Homecare providers
- Parents and families

2. Identification of Vulnerable Population Groups with Special Functional Needs (relating to closure, evacuation, continuity of services, alert notification) in the following categories:

- Senior Centers
- Schools
- Border Area
- Homeless
- Home Health Care

3. Ensuring Continuity of Services:

- Distribution Plans (i.e., medicine, vaccines, antivirals)
- Altered Standards of Care

Needs of Vulnerable Populations in Group Centers/Homes
Coordinated Use of Volunteers

4. Developing Communication Systems:

Contingency mechanisms (i.e., for homeless, if network goes down, etc.)
and in Care Centers
Conveyances for sign language

5. Training of State Personnel:

Emergency Operations Plans

APPENDIX J

- BC Coalition of People with Disabilities. (2008). A Road Map to Emergency Planning for People with Disabilities; for community organizations, first responders, government programs and other stakeholders.
<http://www.disabilityalliancebc.org/docs/emergpreproadmap.pdf?LanguageID=EN-US>
- BC Coalition of People with Disabilities. (2008). The Search for Inclusivity and Accessibility: A Review of Provincial Emergency Planning Guidelines and Training.
http://www.disabilityalliancebc.org/docs/searchforinclusivity_col.pdf?LanguageID=EN-US
- BC Coalition of People with Disabilities. (2013). Creating Safe Communities: Local [Canadian] Government's Legal Duty to Accommodate People with Disabilities in Emergency Response.
<http://www.disabilityalliancebc.org/docs/dutytoaccomodate-web.pdf>
- BC Coalition of People with Disabilities; Emergency Preparedness for People with Disabilities Committee, Medical Needs Task Force. (2009). A Shared Responsibility: the need for an inclusive approach to emergency planning for people with disabilities.
<http://www.disabilityalliancebc.org/docs/asharedresponsibility.pdf?LanguageID=EN-US>
- Columbia University, Earth Institute, National Center for Disaster Preparedness. (2007). Emergency Preparedness: Addressing the Needs of Persons with Disabilities.
<http://academiccommons.columbia.edu/item/ac%3A155353>
- Commonwealth of Massachusetts, Department of Health. (2013) Preparing for Effective Communication and Assistive Technologies in Emergencies: Guidance for Local Emergency Planners.
<http://www.mass.gov/eohhs/docs/dph/emergency-prep/risk-communication/assistive-technologies-in-emergencies.pdf>
- Connecticut Developmental Disabilities Network. (2007). A Guide for Including People with Disabilities in Disaster Preparedness Planning. http://www.ct.gov/ctcdd/lib/ctcdd/guide_final.pdf
- Davis, E., and Mincin, J. (2005). Incorporating Special Needs Populations into Emergency Planning and Exercises. Nobody Left Behind: Disaster Preparedness for Persons with Mobility Impairments.
<http://www.nobodyleftbehind2.org/findings/pdfs/JMFinal072105.pdf>
- Department of Homeland Security, Federal Emergency Management Agency. (2011). A Whole U.S. Community Approach to Emergency Management: Principles, Themes, and Pathways for Action.
http://www.fema.gov/media-library-data/20130726-1813-25045-0649/whole_community_dec2011_2.pdf
- Florida Vulnerable Populations Communications Work Group. (2009). Communication Considerations for Vulnerable Populations: Before, During and After a Disaster.
<http://www.floridahealth.gov/programs-and-services/emergency-preparedness-and-response/healthcare-system-preparedness/vulnerable-populations/documents/comms-resource-guide.pdf>

- Interagency Coordinating Council on Emergency Preparedness and Individuals with Disabilities. (2012) <http://www.dhs.gov/interagency-coordinating-council-emergency-preparedness-and-individuals-disabilities>
- Jan. S., and Lurie, N. (2012). Disaster Resilience and People with Functional Needs. *The New England Journal of Medicine*, 367, 2272-2273. <http://www.nejm.org/doi/full/10.1056/NEJMp1213492>
- Kailes, J.I. (2005). Why and How to Include People with Disabilities in Your Emergency Planning Process? <http://www.nobodyleftbehind2.org/findings/pdfs/FinalWhyandHow.pdf>
- Kailes, J.I. (2014). Checklist for Integrating People with Disabilities and Others with Access and Functional Needs into Emergency Preparedness, Planning, Response and Recovery. Harris Family: Center for Disability and Health Policy. <http://www.jik.com/plancklst.pdf>
- Kailes, J.I., Enders A. (2006) Moving Beyond "Special Needs": A Function Based Framework for Emergency Management and Planning. <http://www.jik.com/HHS%20Special%20Needs%20 2 .pdf>
- Massachusetts Task Force on Emergency Preparedness and People Requiring Additional Assistance (2008). Recommendations. <http://www.mass.gov/anf/docs/mod/praa-recommendations-standard.doc>
- National Council on Disability. (2005) Saving Lives: Including People with Disabilities in Emergency Planning. <http://www.ncd.gov/publications/2005/04152005>
- National Council on Disability. (2009) Effective Emergency Management: Making Improvements for Communities and People with Disabilities. <http://www.ncd.gov/publications/2009/Aug122009>
- National Fire Protection Association. (2007) Emergency evacuation Planning Guide for People with Disabilities. <http://www.nfpa.org/~media/Files/Safety%20information/For%20consumers/Disabilities/evacuationguidePDF.pdf>
- National Organization on Disability. (2009) Functional Needs of People with Disabilities: A Guide for Emergency Managers, Planners and Responders. Emergency Preparedness Initiative. <http://nod.org/assets/downloads/Guide-Emergency-Planners.pdf>
- New Mexico Governor's Committee on Concerns of the Handicapped (renamed Governor's Commission on Disability). (2003) Report to the New Mexico Department of Health: Best Practices Model: Including the Needs of People with Disabilities, Seniors, and Individuals with Chronic Mental Illness in Emergency Preparedness and Planning. <http://www.naccho.org/topics/hdpd/healthdisa/upload/including-the-needs-of-people-with-disabilities-in-emergency-preparedness-and-planning-new-mexico.docx>
- Norwood, F. Inclusion Research Institute. (2011). Evacuation Study for People with Disabilities: Promising Practices for Evacuating People with Disabilities. <http://www.ohsu.edu/xd/research/centers-institutes/institute-on-development-and-disability/public-health-programs/upload/Promising-Practices-final-1-21-2011.pdf>

- Parsons, B.S., Fulmer, D. (2008) The Paradigm Shift in Planning for Special-Needs Populations. Emergency Management in Higher Education: Current Practices and Conversations; Papers from the 2007 FEMA Emergency Management Higher Education Conference accessed through U.S Department of Education's Readiness and Emergency Management for Schools Technical Assistance Center. http://rems.ed.gov/docs/specialneeds_paradigmshiftinginplanning_2007.pdf
- Public Safety Education Advisory Group, for Vulnerable and At-Risk Populations; Provincial Emergency Program, Emergency Management BC, British Columbia. (2008). Public Safety Education Plan for Vulnerable, At-risk and Multicultural Populations. <http://www.disabilityalliancebc.org/docs/publicsafetieducplan.pdf?LanguageID=EN-US>
- RAND: Public Health Preparedness: A Rand Health Initiative. (2009). Enhancing Public Health Emergency Preparedness for Special Needs Populations: A toolkit for State and Local Planning and Response. http://www.rand.org/content/dam/rand/pubs/technical_reports/2009/RAND_TR681.pdf
- Sorensen, B.V. (2006). Populations with Special Needs. Oak Ridge National Laboratory, Environmental Sciences Division prepared for the U.S. Department of Homeland Security, Chemical Stockpile Emergency Preparedness Program. http://emc.ornl.gov/publications/PDF/Population_Special_Needs.pdf
- Substance Abuse and Mental Health Services Administration. No date. Professional Research Topics: Disaster Preparedness and Recovery. <http://www.store.samhsa.gov/facet/Professional-Research-Topics/term/Disaster-Preparedness-Recovery>
- The Center on Aging, Stempel School of Public Health, Florida International University. (2007) Designing a Model All-Hazards Plan for Older Adults: The Role of the Aging Services Network in Assuring Community All-Hazards Readiness for Elders and Providing Assistance to Elders When Disasters Occur. <http://www.fcoa.org/FHCA%20-%20Model%20All-Hazards%20Plan%20for%20Older%20Adults%202007%20Seff,%20Rothman,%20et%20al.pdf>
- Transportation Research Board of the National Academies. Transit Cooperative Research Program. (2011). Report 150: Communication with Vulnerable Populations: A Transportation and Emergency Management Toolkit. http://www.tcrponline.org/PDFDocuments/TCRP_RPT_150.pdf
- U.S Department of Homeland Security, Federal Emergency Management Agency, Fire Administration. (2002) Orientation Manual for First Responders on the Evacuation of People with Disabilities. <http://www.usfa.fema.gov/downloads/pdf/publications/FA-235-508.pdf>
- U.S. Department of Education. (2008) Emergency Management Research and People with Disabilities: A Resource guide. <http://www2.ed.gov/rschstat/research/pubs/guide-emergency-management-pwd.pdf>
- U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Office of Public Health Preparedness and Response. (2010) Public Health Workbook To Define, Locate, and Reach Special, Vulnerable, and At-risk Populations in an Emergency. http://emergency.cdc.gov/workbook/pdf/ph_workbookFINAL.pdf

- U.S. Department of Health and Human Services, Office of Civil Rights. No date. Avoiding Disasters for the "Special Needs Population": Effective planning, response, and recovery for the special needs population, consistent with Federal civil rights laws [ppt].
<http://www.hhs.gov/ocr/civilrights/resources/specialtopics/emergencypre/eptrainingppt.pdf>
- U.S. Department of Homeland Security, Federal Emergency Management Agency and DHS Office for Civil Rights and Civil Liberties. (2008). Interim Emergency Management Planning Guide for Special Needs Populations, Comprehensive Preparedness Guide (CPG) 301.
http://www2.ku.edu/~rrtcpbs/resources/pdf/FEMA_CPG301.pdf
- U.S. Department of Homeland Security, Federal Emergency Management Agency. (2013) Integrated Public Alert and Warning System (IPAWS): Alerting the Whole Community: Removing Barriers to Alerting Accessibility. http://www.fema.gov/media-library-data/20130726-1920-25045-3137/alerting_whole_community_june2013_final.pdf
- U.S. Department of Homeland Security, Federal Emergency Management Agency. (2007). Accommodating Individuals with Disabilities in the Provision of Disaster Mass Care, Housing, and Human Services. <http://www.fema.gov/accommodating-individuals-disabilities-provision-disaster-mass-care-housing-human-services>
<http://www.fema.gov/news-release/2007/08/21/accommodating-people-disabilities-disasters-reference-guide-federal-law>
- U.S. Department of Homeland Security, Federal Emergency Management Agency. No date. Section 4: Non-Discrimination Principles of the Law. <http://www.fema.gov/iv-non-discrimination-principles-law>
- U.S. Department of Justice. (2007) ADA Best Practices Tool Kit for State and Local Governments. Seventh installment of the Toolkit; Chapter 7, Emergency Management under Title II of the ADA. <http://www.ada.gov/pcatoolkit/toolkitmain.htm>
- U.S. Department of Transportation: Office of Operations. No date. Evacuating Populations with Special Needs: Routes to Effective Evacuation Planning Primary Series.
<http://ops.fhwa.dot.gov/publications/fhwahop09022/fhwahop09022.pdf>
- University of New Mexico: Center for Development and Disability. No date. Tips for First Responders, 5th Edition. <http://cdd.unm.edu/dhpd/tips/tipsenglish.html>
- White, G.W., Fox, M.H., & Rooney, C. (2007) Report on Exemplary and Best Practices in Disaster Preparedness and Emergency Response for People with Disabilities. Nobody Left Behind: Disaster Preparedness for Persons with Mobility Impairments.
http://www.nobodyleftbehind2.org/findings/pdfs/bestpractices_3-21-072.pdf