



March 27, 2020

The Honorable Greg Abbott
Governor of Texas
Office of the Governor
P.O. Box 12428
Austin, TX. 78711-2428

Chief W. Nim Kidd
Texas Department of Emergency Management
1033 La Posada Dr. Ste. 370
Austin, TX. 78752-3832

Re: Notice of Failure to Comply with the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, Twenty-First Century Communication and Video Accessibility Act and Corresponding State Law

Dear Governor Abbott and Chief Kidd,

Disability Rights Texas is the federally designated legal protection and advocacy agency for people with disabilities in Texas.¹ Our mandate is to ensure people with disabilities understand and exercise their rights under the law, ensuring their full and equal participation in society.

Currently, counties and cities across Texas are issuing jurisdictional orders to better protect the population and respond to the COVID-19 pandemic. However, these notifications are not accessible.

Title II of the American with Disabilities Act (“ADA”) mandates that State and local governments notification methods, procedures, materials and equipment used to communicate information about emergencies be accessible.² This requirement applies to services and activities provided directly by the State and local government, as well as those provided by third parties. State and local governments must use notification methods that ensure every citizen will have the information necessary to abide by legal mandates, make sound decisions and take appropriate, responsible action. An ineffective method of communication denies equitable access to emergency services and notice of possible criminal sanctions.

In order to provide notice to the entire public about the current public health disaster, these orders and any information related to COVID must be accessible to individual with disabilities. For example, individuals who are deaf or hard of hearing will not receive information from a broadcast without ASL interpreters and open captioning. Individuals who are blind or have low vision cannot recognize visual cues and will need auditory supports when documents are subsequently posted on-line.

¹ Op. Tex. Att’y Gen. No. JC-0461 (2002).

² 42 U.S.C §12132; see generally, 28 C.F.R. §35.130, §35.139

Currently, it is being reported that not all broadcasts are being supported with interpreters and captioning, as well as documents posted on-line are not formatted correctly to utilize screen reading technology.

Accordingly, we write on behalf of each Texan with a disability to notify you that your Department of Emergency Management is not meeting its obligations under the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act (Section 504), Twenty-First Century Communications and Video Accessibility Act (CVAA) and corresponding state law. This failure, places the health and safety of many Texans at risk.

OVERVIEW OF THE ADA, SECTION 504, CVAA AND CORRESPONDING STATE LAW

Title II of the ADA stipulates that no 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.³

A State disaster declaration activates aspects of the State emergency plan and gives authority for emergency management jurisdictional officers to respond.⁴ In conjunction, local governments are also responding in addressing the needs of their respective communities and mitigating the impact of COVID-19. Thus, both State and local government are responsible for emergency operations when there are dangers presented by a disaster.⁵

COVID-19 creates a unique situation in that, the entire State of Texas and every municipality within Texas, is responding to the public health emergency. Thus, all notifications about COVID-19 issued by the State and any local government must be accessible to individuals with disabilities. Jurisdictional orders which contain criminal sanctions and are not accessible, denies due process without sufficient notice and are not legally enforceable.⁸

Section 504 of the Rehabilitation Act, also obligates entities receiving federal funds to prohibit discrimination based on disability and that solely by reason of her or his disability, cannot be excluded from the participation in, denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.⁶ The same analysis under ADA is applicable to 504. The inability of any individual with a disability to access any state and local notification, denies due process and the benefit of equitable emergency services.

The Twenty-First Century Communications and Video Accessibility Act (“CVAA”) updates federal communications law to increase the access of persons with disabilities to modern communications.⁷ The CVAA affords protections to individuals with disabilities in keeping up with the fast-paced technological changes that our society has witnessed and safeguards equitable access to broadband, digital and mobile innovation. Specific provisions of CVAA guarantee people with disabilities have access to emergency information.⁸

³ 42 U.S.C. §12132

⁴ Texas Government Code Ch. 418.015

⁵ Texas Government Code Ch. 418.011

⁶ 29 U.S.C. §794

⁷ 47 U.S.C. §153

⁸ 47 U.S.C. §105 and §201

Texas state law reinforces the ADA mandates under Chapter 121 of the Texas Human Resource Code. “[T]he policy of the state is to encourage and enable persons with disabilities to participate fully in the social and economic life of the state, to achieve maximum personal independence, to become gainfully employed, and to otherwise fully enjoy and use all public facilities available within the state.”⁹

Response measures for a disaster require effective communication and simply means, that whatever is written or spoken must be as clear and understandable to people with disabilities, as it is for people who do not have disabilities. Denying effective communication denies due process and any potential benefit from emergency services.

IMMEDIATE CALL TO ACTION

In sum, the State of Texas and Texas Department of Emergency Management (TDEM) is failing to provide sufficient notice and equitable emergency services to individuals with disabilities by failing to provide accessible notifications to all Texans.

We trust that you share our concerns and will take immediate steps to remedy the problems highlighted above. Given the imminent threat and emergent nature of the COVID-19, action must be taken to address this problem NOW.

We remind all units of government and jurisdictions, the Governor’s Office of People with Disabilities (GOPD), has provided information for broadcasters on the steps that need to be taken in order to [make sure information is accessible on their Facebook page](#).

(Full URL: <https://www.facebook.com/TexasCommitteeOnDisabilities/posts/2578164438978795>)

In addition [TDEM’s own Effective Communications toolkit](#), identifies ways to accommodate.

(Full URL: <https://www.preparingtexas.org/Resources/documents/TDEM%20Training/Tool%20Kit/Public%20Information/Effective%20Communications%20Toolkit%20v2.1.pdf>)

Adobe acrobat is also a remedy and the most common software program that creates Portable Document Files (PDFs). [Visit the Bureau of Internet Accessibility Website for more information](#).

(Full URL: <https://www.boia.org/blog/how-to-create-an-accessible-pdf-in-adobe-acrobat>)

In this unprecedented time in responding to COVID-19, accessible information is not only mandatory to safeguard the health and civil rights of individuals with disabilities, it is crucial in supporting the needs of the whole community. This is a critical time in Texas’ mitigation measures, we must ensure that no one is left without potentially lifesaving information.

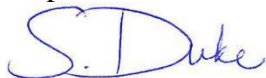
Jurisdictional orders and all public health information must be accessible.

Failure to remedy these current violations of the ADA, CVAA, Section 504 and state law, will result in legal action.

⁹ Texas Human resource Code Ch. 121.001

We look forward to your immediate response.

Stephanie Duke



Attorney/Equal Justice Works Disaster Recovery Legal Fellow

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PLEASE NOTE NEW MAILING ADDRESS

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CC: *Division Chief Gisela Ryan-Bunger*