

# ACCESSIBLE EVACUATION PLANS IN HIGHER EDUCATION: EQUAL EGRESS AND THE AMERICANS WITH DISABILITIES ACT

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## I. INTRODUCTION

People with disabilities are disproportionately affected by disasters. “Congress, and other agencies . . . [have] 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.”<sup>1</sup>

Many institutions of higher education in the United States were founded decades or even centuries ago. While building and renovation projects are often ongoing at many of these schools, older buildings remain prominent on many college and university campuses.<sup>2</sup> These older buildings, especially multistory ones, can present unique challenges in emergency evacuation planning. Even if a building has been renovated or built since the passage of the Americans with Disabilities Act (“ADA”) in 1990, buildings often have a single accessible route into the building and thus a single accessible route out of the building.<sup>3</sup> There may be only one accessible path of travel between floors in multistory buildings, usually an elevator or other electricity-dependent lift. If emergencies cause the elevator or lift to be

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<sup>1</sup> *Brooklyn Ctr. for Indep. of the Disabled v. Bloomberg*, 980 F. Supp. 2d 588, 598 (S.D.N.Y. 2013).

<sup>2</sup> SIGHTLINES, STATE OF FACILITIES IN HIGHER EDUC.: 2015 BENCHMARKS, BEST PRACTICES & TRENDS 5 (2015), <http://www.sightlines.com/wp-content/uploads/2015/11/The-State-of-Facilities-in-Higher-Education-2015-Benchmarks-Best-Practices-Trends.pdf>.

<sup>3</sup> See THE ACCESS BOARD, ADAAG MANUAL: A GUIDE TO THE AMERICANS WITH DISABILITIES ACT ACCESSIBILITY GUIDELINES 20 (June 2004), <http://www.adainfo.org/sites/default/files/ADAAG-Manual.pdf>.

taken out of service, having that as the only means of exiting the upper stories of the building poses a significant threat to the life safety of people with disabilities.

While it is difficult to find reliable statistics on the number of people with disabilities among the faculty and staff of higher education institutions, there is information available about the number of students with disabilities. Information compiled in 2004 by the Institute for Higher Education Policy found that approximately 10% of all students in higher education have some form of disability.<sup>4</sup>

The types of disabilities relevant to this Article are those that may impact the ability of a student to evacuate a building. About 29% of students with disabilities reported some sort of mobility or orthopedic disability, and 5% reported being blind or having vision impairment.<sup>5</sup> These are the two types of disabilities most likely to face significant barriers in emergency evacuations. In addition to these two groups, 15% of students with disabilities reported health problems as their type of disability, and 15% listed “other” as their type of disability.<sup>6</sup> Each of these categories could contain people with disabilities that would affect their ability to evacuate a building without a reasonable accommodation or assistance.<sup>7</sup>

Higher education institutions must consider their legal obligations to provide effective emergency evacuation planning for people with disabilities, especially the ability to safely evacuate people with disabilities from multistory buildings. This Article considers whether colleges and universities have an affirmative obligation to consider disability-specific needs in the evacuation planning process

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<sup>4</sup> THOMAS R. WOLANIN & PATRICIA E. STEELE, THE INST. FOR HIGHER EDUC. POLICY, HIGHER EDUCATION OPPORTUNITIES FOR STUDENTS WITH DISABILITIES: A PRIMER FOR POLICYMAKERS 20 (2004).

<sup>5</sup> *Id.* at 10.

<sup>6</sup> *Id.*

<sup>7</sup> This Article focuses only on the physical process of evacuation. *See infra* Part IV. In addition to the issues noted in this Article, people with a wide range of disabilities and health conditions may also be negatively impacted by the lack of inclusive emergency planning at colleges and universities. *See* Sheenah Mische & Amy Wilkerson, *Disaster and Contingency Planning for Scientific Shared Resource Cores*, 27 J. OF BIOMOLECULAR TECH. 4, 9 (2016).

and the necessity of implementing emergency plans that ensure people with disabilities have equal access to life-saving evacuation procedures.

## II. METHODOLOGY

This Article examines the existing emergency response plans of colleges and universities that are members of the Association of American Universities.<sup>8</sup> This group of schools was chosen for several reasons. First, given the large number of higher education institutions in the United States, it was necessary to limit the number of schools surveyed. Second, institutional members of the Association of American Universities demonstrate a great deal of variety, encompassing public and private institutions of all sizes and in a wide variety of geographical settings.<sup>9</sup> Because this analysis considers only U.S. law, the two Canadian members of the Association of American Universities were excluded, leaving a study group of sixty colleges and universities.

Evacuation plans were gathered by internet and phone research. Only readily accessible plans were considered, with readily accessible being defined as being available either on the school's website with predictable search terms (e.g., "building evacuation" or "emergency evacuation") or by phone with only a single phone call to the public safety agency at the school. Online plans requiring the entry of a password or other login credentials were excluded, as were plans not made available to the general public. These exclusions were made because it is necessary for information on emergency procedures to reach all those who could benefit from them, including students and faculty with limited time to search for the procedures and visitors to the campus who would not have login credentials to access private areas of the school's website.

Each available plan was evaluated for effectiveness and legal sufficiency. Effectiveness was determined by compliance with current best practices, including the National Council on Disability's guidance

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<sup>8</sup> *Member Institutions and Years of Admission*, ASS'N OF AM. UNIVS., <https://www.aau.edu/about/default.aspx?id=16710> (last visited Sept. 26, 2016).

<sup>9</sup> *Id.*

based on post 9/11 research,<sup>10</sup> academic research on effective inclusive emergency preparedness, and effectiveness standards indicated in case law. Legal sufficiency was determined by compliance with the ADA,<sup>11</sup> section 504 of the Rehabilitation Act,<sup>12</sup> and the interpretation of these statutes in case law.

### III. THE LEGAL STANDARD

The specific application of the ADA to emergency planning and response is a recent topic in case law. Currently, the issue has been considered in depth only by two jurisdictions, the Central District of California in *Independent Living Center of Southern California v. City of Los Angeles*,<sup>13</sup> and the Southern District of New York in *Brooklyn Center for Independence of the Disabled v. Bloomberg*.<sup>14</sup>

The topic of accessible emergency planning, however, is not a new concept in ADA compliance. The creation or modification of an accessible emergency response has often been included in Department of Justice consent decrees and settlement agreements, including a number of settlement agreements with colleges and universities.<sup>15</sup> And, unlike the immunity granted to many of the activities of public entities during disaster and emergency situations, the development of emergency plans in advance of an actual emergency does not qualify for emergency response immunity.<sup>16</sup>

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<sup>10</sup> See generally NAT'L COUNCIL ON DISABILITY, SAVING LIVES: INCLUDING PEOPLE WITH DISABILITIES IN EMERGENCY PLANNING (2005) (compiling "information on the development and implementation of federal laws, policies, programs, and initiatives that affect people with disabilities.").

<sup>11</sup> See Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101-12213 (2013) (amended 2008).

<sup>12</sup> Rehabilitation Act, 29 C.F.R. § 1614.203 (2002).

<sup>13</sup> *Indep. Living Ctr. of S. Cal. v. City of L.A.*, 973 F. Supp. 2d 1139 (C.D. Cal. 2013).

<sup>14</sup> *Brooklyn Ctr. for Indep. of the Disabled v. Bloomberg*, 980 F. Supp. 2d 588 (S.D.N.Y. 2013).

<sup>15</sup> *Disabled Patriots of Am., Inc. v. S & S Realty Ltd.*, No. 1:05 CV 2496-CAB, 2006 WL 1473114, at \*1, \*2, \*6 (N.D. Ohio May 28, 2006) (describing the settlement agreement between the United States of America and the University of Chicago under Title III of the ADA).

<sup>16</sup> *Armstead v. Nagin*, No. 05-6438, 2006 WL 3861769, at \*15 (E.D. L.A. Dec. 29, 2006).

Public and private educational institutions operate under slightly different legal standards. Public institutions are governed by implementing regulations for Title II of the ADA,<sup>17</sup> and private institutions are governed by implementing regulations for Title III.<sup>18</sup> Both types of schools are required to follow the requirements of section 504 of the Rehabilitation Act if they receive federal funding, which all schools in the study sample do.<sup>19</sup>

The fact that all of the schools in this study receive some form of federal funding equalizes the obligations for both public and private institutions because the obligations under Title II of the ADA and under section 504 of the Rehabilitation Act are functionally identical.<sup>20</sup> 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.”<sup>21</sup> As a result, the emergency evacuation plans considered in this Article will be judged against the Title II/section 504 standard.

Emergency preparedness plans are rarely designed with the intent to discriminate against people with disabilities. Given the unique challenges of evacuation planning for people with disabilities, a plan that appears neutral on its face can still produce discriminatory results and give rise to legal action.<sup>22</sup> One example of a facially neutral policy would be a building evacuation plan that directs evacuation from higher stories of a multistory building on the use of stairs when the elevator is out of service. While this plan does not openly discriminate against people whose disabilities prevent them from using stairs, it has the discriminatory effect of providing no actual effective means of evacuation for individuals with those disabilities.

Beyond the problems with these “one size fits all” plans, a facially neutral policy that has a disparate impact on people with

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<sup>17</sup> 28 C.F.R. § 35.101 (1991).

<sup>18</sup> *Id.* § 36.102.

<sup>19</sup> *Id.*

<sup>20</sup> *Henrietta D. v. Bloomberg*, 331 F.3d 261, 272 (2d Cir. 2003).

<sup>21</sup> *Id.*

<sup>22</sup> *See, e.g., Griggs v. Duke Power Co.*, 401 U.S. 424, 430 (1971); *Prewitt v. U.S. Postal Serv.*, 662 F.2d 292, 301 (5th Cir. 1981).

disabilities is a violation of the ADA and section 504 of the Rehabilitation Act.

While this legal standard was not previously unknown in disability rights litigation, it was restated in *City of Los Angeles*, with the court stating that the ADA “applies with equal force to facially neutral policies that discriminate against individuals with disabilities.”<sup>23</sup> The court found in this case that despite the facially neutral policy, the policy produced discriminatory results, stating:

Plaintiffs . . . have provided substantial evidence demonstrating that individuals with disabilities lack meaningful access to the City’s emergency preparedness program due to the City’s failure to address or provide for their unique needs . . . . Accordingly, the Court finds that Plaintiffs are 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.<sup>24</sup>

Both the *City of Los Angeles* and *Brooklyn* cases further affirm that ADA/section 504 covered entities are required to provide meaningful access to emergency preparedness and response programs.<sup>25</sup> The ADA creates this affirmative obligation for both governments and private entities to ensure equal access to programs and services for people with disabilities.<sup>26</sup> The necessity of appropriately accommodating people with disabilities in multistory building evacuations is discussed in the *Brooklyn* case.<sup>27</sup> The court rejected the

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<sup>23</sup> *Cmtys. Actively Living Indep. & Free v. City of L.A.*, No. CV 09-0287 CBM (RZx), 2011 WL 4595993, at \*12 (C.D. Cal. Feb. 10, 2011).

<sup>24</sup> *Id.* at \*13-15.

<sup>25</sup> See generally *Brooklyn Ctr. for Indep. of the Disabled v. Bloomberg*, 980 F. Supp. 2d 588 (S.D.N.Y. 2013) (invalidating an emergency preparedness program that did not provide the meaningful access required by the ADA); *Cmtys. Actively Living Indep. & Free*, 2011 WL 4595993, at \*12 (finding that the emergency preparedness program did not provide meaningful access required by the ADA).

<sup>26</sup> *Cmtys. Actively Living Indep. & Free*, 2011 WL 4595993 at \*17.

<sup>27</sup> *Bloomberg*, 980 F. Supp. 2d at 596.

idea that people with disabilities could be evacuated from the building on an “as needed” basis when emergencies occurred and squarely placed the burden of effective evacuation on the city government to undertake advance planning to anticipate the needs of people with disabilities and minimize last minute determinations on evacuations.<sup>28</sup> The court directly addressed this issue, stating:

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<sup>29</sup>, such *ad hoc* accommodations are both legally inadequate and practically unrealistic.<sup>30</sup>

It is necessary to determine, then, what standard of effectiveness building evacuation plans must meet. The gold standard is that the plan produces equal access to services, which, in the case of building evacuation, means people with disabilities are able to exit the building with the same degree of safety as people without disabilities.<sup>31</sup>

It is also clear from both the *City of Los Angeles* and *Brooklyn* cases that proactive planning for inclusive evacuation is essential to create an adequately effective plan.<sup>32</sup> Guidelines for effective plans can be found in a variety of sources. In addition to resources provided by federal agencies,<sup>33</sup> significant academic research has been conducted on effective emergency planning for people with disabilities.<sup>34</sup> This research, in addition to the resources provided by the Department of

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<sup>28</sup> *Id.* at 620.

<sup>29</sup> CALIF stands for “Communities Actively Living Independent and Free.”

<sup>30</sup> *Bloomberg*, 980 F. Supp. 2d at 643-44 (citing *Cmtys. Actively Living Indep. & Free*, 2011 WL 4595993 at \*14).

<sup>31</sup> *Bloomberg*, 980 F. Supp. 2d at 602.

<sup>32</sup> *See* *Indep. Living Ctr. of S. Cal. v. City of L.A.*, 973 F. Supp. 2d 1139, 1147, 1149 (C.D. Cal. 2013); *see also* *Brooklyn Ctr. for Indep. of the Disabled v. Bloomberg*, 980 F. Supp. 2d 588, 658-59 (S.D.N.Y. 2013).

<sup>33</sup> *See, e.g.*, U.S. DEP’T OF EDUC., ACTION GUIDE FOR EMERGENCY MANAGEMENT AT INSTITUTIONS OF HIGHER EDUCATION (2009).

<sup>34</sup> *See, e.g.*, Keith M. Christensen, Martin E. Blair, & Judith M. Holt, *The Built Environment, Evacuations, and Individuals with Disabilities*, 17 J. OF DISABILITY POL’Y STUD. 249 (2007).

Justice,<sup>35</sup> the National Council on Disability,<sup>36</sup> and the National Fire Protection Association,<sup>37</sup> is useful in evaluating the effectiveness of a plan because it establishes tested best practices.

#### IV. THE STUDY

##### A. *Factors Identified for Evaluation and Prevalence*

Precise analysis is required to determine the potential effectiveness of an emergency evacuation plan for people with disabilities. This analysis is similar in nature to a traditional effectiveness evaluation for any emergency plan.<sup>38</sup>

Each aspect of the plan must be considered to determine its effectiveness both as an individual plan component and as part of the overall plan. A breakdown in any one component of an emergency plan can lead to the failure of the entire plan. The primary difference in analyzing disability-related plans is that the analysis must include all potential types of disabilities that might be affected by the hazards being considered. For the purposes of this Article, the three most concerning and regularly encountered features of building evacuation plans will be considered.

##### B. *General Statistics*

Of the sixty schools included in the sample, fifty-five had readily available building evacuation plans that contained some mention of disability. Forty-two of these plans could be considered multihazard plans.<sup>39</sup> The remaining plans only addressed fire safety. Twenty-nine

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<sup>35</sup> See, e.g., *Title II Checklist (Emergency Management)*, ADA BEST PRACTICES TOOL KIT (2007).

<sup>36</sup> See, e.g., NAT'L COUNCIL ON DISABILITY, *SAVING LIVES: INCLUDING PEOPLE WITH DISABILITIES IN EMERGENCY PLANNING* (2005).

<sup>37</sup> See, e.g., NAT'L FIRE PROT. ASS'N, *EMERGENCY EVACUATION PLANNING GUIDE FOR PEOPLE WITH DISABILITIES 3* (2016).

<sup>38</sup> See generally U.S. Dep't of Homeland Sec., *Emergency Response Plan*, READY.GOV, <https://www.ready.gov/business/implementation/emergency> (providing a guide to develop and assess an emergency response plan) (last visited Mar. 6, 2017).

<sup>39</sup> Multihazard plans are emergency plans designed to address more than one potential emergency. For example, one plan may address responses to fire, severe weather, and earthquakes. The schools that did not have multihazard plans readily

schools provided templates for building managers to fill in as they develop their building's evacuation plan. Of these templates, twenty-two of them had predetermined text to address disability access in building evacuation. The high rate of boilerplate text regarding disability access in evacuation plans is concerning. Generic language of this type does not allow for the individualization of the plan to address each building's unique structural situation and the needs of the individuals who frequent the building.

### C. *Wait for Rescue/Areas of Refuge*

Fifty-one of the plans evaluated (92%) directed people with disabilities to wait in the building to be rescued, either by sheltering in place or going to designated areas of refuge.<sup>40</sup> Areas of refuge are by far the most common element in disability-specific building evacuation plans. Areas of refuge are defined by section 1007.6 of the International Building Code ("IBC"),<sup>41</sup> which is referenced and incorporated into the 2010 ADA Standards for Accessible Design.<sup>42</sup> Requirements for areas of refuge in the IBC include a minimum size for the area, fire resistant qualities, and two-way communication devices.<sup>43</sup> However, many of the areas in which people with disabilities are encouraged to wait for rescue are not IBC compliant areas of refuge. As such, they may not contain some of the required elements, including the required two-way communication devices.<sup>44</sup>

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available were: Brown University, Carnegie Mellon University, Emory University, Harvard University, Indiana University-Purdue University Indianapolis, Iowa State University, New York University, Rutgers University, Stony Brook University, Texas A&M University, University of Michigan, University of Rochester, University of Virginia, University of Wisconsin–Madison, and Vanderbilt University.

<sup>40</sup> All schools except: Brandeis University, Brown University, Cornell University, University of Virginia, University of Wisconsin–Madison, Washington University, and Yale University.

<sup>41</sup> MEANS OF EGRESS §§ 1007.6, 1007.8 (OR. STRUCTURAL SPECIALTY CODE 2010).

<sup>42</sup> 28 CFR §§ 35.151, 35.36 (2010).

<sup>43</sup> MEANS OF EGRESS §§ 1007.6, 1007.8 (OR. STRUCTURAL SPECIALTY CODE 2010).

<sup>44</sup> *E.g.*, Massachusetts Institute of Technology:

If horizontal evacuation is not possible, staff will assist disabled individuals to the nearest enclosed stairway that is free from smoke and tell the person to remain there until help arrives (Fire Department, MIT Police Department, etc.). If possible, we will send someone to dial 100 to inform MIT Police Department of the

In practice, areas of refuge often fail to provide an effective means of evacuation for people with disabilities. To analyze the usefulness of areas of refuge, it is necessary to establish three areas that must function correctly to assure the effective evacuation of a person with disabilities from an area of refuge. First, the person must be able to reach the area of refuge. This assumes two things: that the path is not blocked by debris, fire, smoke, or some other obstruction caused by the emergency situation, and that some other preexisting cause, such as building construction, has not obstructed the accessible route to the designated area of refuge.

Second, if the emergency is a situation that is actively spreading, such as a fire or hazardous materials incident, people with disabilities must be able to effectively isolate the area of refuge by shutting the required fire doors. The ability to do this relies on the assumption that the person with the disability has the physical ability to shut heavy fire doors and that the doors have not been damaged by the emergency.<sup>45</sup>

The third necessary factor is that rescuers must be notified that there is a person awaiting rescue, where that person is, and what their evacuation needs are. If the area of refuge complies with the IBC requirements,<sup>46</sup> the person with the disability may be able to contact rescuers via the two-way communication device. The effectiveness of this relies on two things. First, the communications device must be functioning despite the emergency situation.<sup>47</sup> Second, the person requesting rescue assistance must be able to use the type of

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stairway and floor location.

EDWIN L. THOMAS & DAVID ROYLANCE, EMERGENCY PREPAREDNESS PLAN 4 (2007). “As soon as a fire alarm sounds, the physically impaired person is to be quickly moved to reasonable safety, preferably to an enclosed room or space that smoke or flames cannot easily enter.” *On-Campus Emergencies*, CARNEGIE MELLON UNIV. DIV. OF STUDENT AFFAIRS. “UM Fire Inspectors will assist in identifying an accessible location that is preferably near a stairwell and fire rated. It is an advantage if these locations have a phone for communication.” UNIV. OF MICH. DIV. OF PUB. SAFETY & SEC., EVACUATION, EMERGENCY OPERATIONS PLAN HAZARD GUIDELINES 3 (2013).

<sup>45</sup> E.g., An earthquake may cause structural damage preventing the fire doors from closing properly, and the earthquake may also cause a fire in the building.

<sup>46</sup> MEANS OF EGRESS §§ 1007.6, 1007.8 (OR. STRUCTURAL SPECIALTY CODE 2010).

<sup>47</sup> §§ 1007.6, 1007.8.

communication device provided in the area of refuge. If there is no communication device in the designated area, the person with the disability must rely on others evacuating the building or personal communication devices to alert rescuers of their presence and evacuation needs. These issues present a high risk of failure. Other people evacuating during an emergency may be panicked and forget to notify responders about the need for evacuation promptly, accurately, or at all. Personal communication devices like cell phones may be left behind during an evacuation or not function properly because of the emergency.

Some plans suggest local emergency response agencies be informed prior to an emergency situation that a person with a disability will require evacuation assistance. While this sort of notification to responding agencies can be beneficial in office environments where people in the building are in predictable locations, it is much less useful in the higher education environment where faculty and students move around frequently during the day. Without a detailed schedule of the movements of all the people with disabilities on the campus, it would be nearly impossible for emergency responders to predict where any particular person with a disability might be at any given time. The risk that comes with breakdown of communication between a person in an area of refuge and responding agencies is seen in this narrative from a wheelchair user: "I have juvenile rheumatoid arthritis and use a wheelchair. We had a bomb threat at work, which was very scary. Everyone evacuated, but I was still left on the third floor by the stairwell for the firefighters to come get me. But, no one came."<sup>48</sup> Without a way to communicate with responders, there was no chance for an effective evacuation for this person except to eventually struggle down the stairs without assistance. If this person had not been able to do that, they would have been left to die if there was in fact a bomb in the workplace.

In addition, the areas identified as areas of refuge for people with disabilities to wait may not necessarily comply with the IBC standards for communication. One plan at a major state university suggests that for areas of refuge, "[i]t is an advantage if these locations

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<sup>48</sup> WHITE, ET AL., RESEARCH & TRAINING CTR. ON INDEP. LIVING, NOBODY LEFT BEHIND 3 (July 2007).

have a phone for communication.”<sup>49</sup>

Fourth, rescuers must be able to reach the person requesting assistance and effectively evacuate him or her. As emergency situations develop, normal means of ingress into the affected building may become difficult or impossible to access, especially if specialized equipment is needed to evacuate the waiting person. This problem becomes greater if responders access the area of refuge and then find they must retrieve another piece of equipment to safely evacuate the person with the disability. As time progresses, the ability to safely access and evacuate the person waiting for assistance may decrease, especially during emergencies that may affect the overall integrity of the structure.

Finally, all this must happen before the person with disability is significantly harmed or killed by the emergency situation. A large or widespread emergency event, or even a period of high demand on emergency services, can significantly delay the initial response to an emergency.<sup>50</sup> If the presence and location of the person needing evacuation assistance is not efficiently communicated to responders, it may take even longer for responders to reach the people waiting in areas of refuge. In unstable situations, by the time the responder arrives at the area of refuge, the person awaiting assistance may already have died or been seriously injured.<sup>51</sup> This is especially true when the areas of refuge are not compliant with the IBC standards. These noncompliant areas may not provide adequate structural protection for the people with disabilities who use these areas as their primary means of emergency safety. For example, an area of refuge that does not have fire doors, or possibly no doors at all, will provide very little shelter to people with disabilities seeking shelter in that area during a fire, and the people in that area may be overcome by fire or smoke before rescuers reach them.

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<sup>49</sup> UNIV. OF MICH, EMERGENCY EVACUATION FOR PERSONS ON CAMPUS WITH DISABILITIES 5 (July 19, 2006).

<sup>50</sup> E.g., Matt Mulcahy, *911 Dispatch Delay May Have Contributed to Man's Death*, CNYCENTRAL (Nov. 17, 2015), <http://cnycentral.com/news/local/911-commissioner-5-minute-dispatch-delay-blamed-partly-for-fiery-death>; Ashley Luthern, *Chief Edward Flynn Said No Guarantees on Delayed 911 Responses*, J. SENTINEL (Oct. 12, 2015), <http://archive.jsonline.com/news/crime/chief-edward-flynn-said-no-guarantees-on-delayed-911-responses-b99595474z1-332261502.html>.

<sup>51</sup> Mulcahy, *supra* note 50.

In a situation like this, even a brief delay between the evacuation of people without disabilities and rescue for people with disabilities may prove to be too long for a person waiting in the area of refuge.

#### ***D. Evacuate After People Without Disabilities***

Like areas of refuge, plans that encourage or demand that people with certain disabilities wait until others evacuate pose significant problems. This element was a primary feature in twelve of the evaluated plans.<sup>52</sup> First, any plan which gives priority to a majority group over a minority group should raise a red flag for emergency planners. In the case of emergency evacuations, lives are at risk, and these plans place the safety of people with certain disabilities at a lower priority than the safety of people without disabilities. Practically, this approach to the evacuation of people with disabilities has two substantial flaws: it assumes that the situation will still permit evacuation of people who need assistance once all people without disabilities have evacuated, and it removes a large pool of potential assistants to help people with disabilities who may need assistance during the evacuation.

This approach is found in a number of plans and is often coupled with the use of areas of refuge. A common way of stating this is that it identifies both the action and the severe problem with its implementation; this example comes from the University of Chicago: "Individuals with mobility impairments who are able to walk independently or with assistance may be able to negotiate stairs. However, if danger is imminent, the individual should wait until heavy traffic has cleared before attempting the stairs."<sup>53</sup> The clear problem with this is that it asks people with disabilities to stand aside and not evacuate when danger is immediately threatening them. This is certainly not meaningful or equal access to evacuation, as it puts people

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<sup>52</sup> These schools are: University of Chicago, University of Rochester, University of Washington, University of Michigan, Indiana University–Purdue University Indianapolis, University of Missouri, The Ohio State University, California Institute of Technology, Carnegie Mellon University, Emory University, University of Minnesota Twin Cities, and Vanderbilt University.

<sup>53</sup> *Evacuation Procedures for Persons with Disabilities*, UNIV. OF CHI. (Oct. 2013), <http://safety.uchicago.edu/fire-life-safety/life-safety/evacuation-for-persons-with-disabilities/>.

with disabilities directly in harm's way in favor of a faster evacuation of people without disabilities.

***E. Placing the Burden on Disabled Persons to Plan for Emergencies***

It is not unusual for institutions of higher education to place all or most of the responsibility for evacuation planning on the person with the disability. This provision is present in eighteen of the evaluated plans, almost one-third of them.<sup>54</sup> This is a concerning trend, particularly because it places the responsibility of planning on people who do not have experience in developing emergency evacuation procedures. In addition, many students, young people, and people with intellectual or developmental disabilities may not have the interest or ability to develop their own effective emergency evacuation plan.

An example of this plan can be found in the evacuation procedures for Case Western Reserve University.<sup>55</sup> The plan states the following:

If you have a disability that may prevent you from properly following CWRU emergency procedures it is encouraged that you use the buddy system and build a personal support network. Talking about your unique situation with a roommate(s), or a co-worker(s) will help ensure that during an emergency your needs are not overlooked. Together you should review emergency procedures and devise a plan(s) specifically for how you can get the extra help that may be needed in a crisis.<sup>56</sup>

This plan places the entire burden of emergency planning on an

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<sup>54</sup> These schools are: Case Western Reserve University, Johns Hopkins University, Northwestern University, Rutgers University, Stony Brook University, University of California–Irvine, University of Chicago, University of Colorado–Boulder, University of Florida, University of Iowa, University of Kansas, University of Maryland–College Park, University of Michigan, University of Missouri, University of North Carolina–Chapel Hill, University of Pittsburgh, University of Washington, and Vanderbilt University.

<sup>55</sup> *Emergency Planning and Procedures Handbook for CWRU Employees*, CASE WESTERN RESERVE UNIV. EMERGENCY MGMT. (2010).

<sup>56</sup> *Id.*

individual's personal ability to devise a plan for themselves, as well as the willingness of the person's friends and coworkers to be present and able to assist that person in an emergency.<sup>57</sup> This plan also raises concerns about the attitude of the emergency managers designing these plans. The plan quoted here is directed towards those whose disabilities might prevent them from "properly" evacuating a building.<sup>58</sup> An approach towards planning for the needs of people with disabilities must be developed from the perspective of inclusiveness, not by viewing one means of evacuation as "proper" and another as "improper."

There are two logistical problems with the suggested methods by which people with disabilities are directed to design their own plans, both of which are related to the unique physical environment of higher education. Unlike many workplaces or even high schools, institutions of higher education generally involve students, faculty, and staff frequently moving between buildings on the campus. If persons with a disability bore complete responsibility for developing all of their own building evacuation plans, they may need to develop three, four, or even more different plans each semester they were on campus. Also, some of these buildings will present special hazards, such as buildings that house hazardous chemicals. Individuals may not know every hazard contained in every building they visit and thus may not have the information necessary to effectively develop a comprehensive evacuation plan. The second logistical problem is closely related. Institutions of higher education often have a large number of visitors to their campuses, whether they are professionals or faculty visiting for conferences or research, tourists looking at museums, or families of students attending events. It is unrealistic to expect that each of these people who may have a disability will be able to anticipate every building they may enter, gather the necessary information about the facility, and construct an effective personal evacuation plan for each of those buildings.

Finally, it is not possible for an institution of higher education to relieve itself of the requirement to provide equal access in this manner. These entities all provide some degree of emergency evacuation

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

planning for people without disabilities and cannot simply refuse to provide equally effective access to people with disabilities. In *City of Los Angeles*, the court found that expecting people with disabilities to engage in personal emergency planning does not relieve a Title II entity of their responsibilities for planning: “The City provides a comprehensive emergency preparedness program and such program must be open and accessible to all of its residents. It is irrelevant for purposes of this action whether individuals should also personally plan and prepare for emergencies and/or disasters.”<sup>59</sup>

### F. *The Buddy System*

Over half of the plans surveyed encourage people with disabilities to rely on a “buddy system” or the assistance of fellow students, faculty, or staff to facilitate their evacuation.<sup>60</sup> The University of Colorado’s plan effectively highlights the difficulty and impracticability of this recommendation. The plan recommends that students, faculty, and staff with disabilities develop a group of assistants to help them with evacuation. This group of assistants should consist of the number of people required to successfully evacuate you plus at least two alternates. This is to account for those friends or coworkers that may be offsite.<sup>61</sup> The plan recommends that the group regularly practice the plan to solidify it and to identify any weaknesses in the

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<sup>59</sup> *Cmtys. Actively Living Indep. & Free v. City of L.A.*, No. CV 09-0287 CBM (RZx), 2011 WL 4595993, at \*12 (C.D. Cal. Feb. 10, 2011).

<sup>60</sup> These schools are: Case Western Reserve University, Cornell University, Georgia Institute of Technology, Indiana University–Purdue University Indianapolis, Michigan State University, The Ohio State University, Purdue University, Rutgers University, Stony Brook University, Texas A&M University, University at Buffalo, University of California–Berkeley, University of California–San Diego, University of California–Santa Barbara, University of Chicago, University of Colorado–Boulder, University of Iowa, University of Kansas, University of Maryland–College Park, University of Michigan, University of Missouri, University of Oregon, University of Rochester, University of Texas at Austin, University of Virginia, University of Washington, University of Wisconsin–Madison, Vanderbilt University, Washington University, and Yale University.

<sup>61</sup> See NAT’L FIRE PROT. ASS’N, EMERGENCY EVACUATION PLANNING GUIDE FOR PEOPLE WITH DISABILITIES 21 (2016), <http://www.nfpa.org/~media/files/public-education/by-topic/disabilities/evacuationguidepdf.pdf?la=en>. The other schools that use the buddy system have the same implementation problems but are less specific in the directions provided in the plan.

plan.<sup>62</sup>

We must imagine the impact of these directions on the average student. If a student is taking a regular fifteen-hour course load consisting of five three-hour classes, lives in the dorms, and regularly attends one extra-curricular activity, the student will need two assistants and two alternates in each place. If none of these assistants are available in more than one activity or class, which is possible, the student would need to recruit a total of twenty-eight trusted individuals who are physically capable of assisting them during an emergency evacuation. The student would also need to practice with all of these people on a regular basis. For a new college student, dealing with everything else that is expected of a college student, attempting to manage this sort of emergency preparedness responsibility is unlikely to produce an acceptable result.

This logistical difficulty aside, the “buddy system” has many potential points of failure. The designated rescuers could panic in an emergency and flee, multiple rescuers could be unavailable at the same time, or a rescuer could sustain an incapacitating injury in the course of the emergency. The plan is dependent on at least two of the four pre-identified responders being physically present, physically capable, and psychologically willing and able to assist during a disaster. This is problematic, especially when dealing with young adults who may not understand the seriousness of adequate preparation for such emergencies.

## V. RECOMMENDATIONS

One of the methods that has been shown to be effective in evacuating people with mobility disabilities is the use of assistive evacuation devices such as evacuation chairs. Only seven of the surveyed plans included the use of these devices as a possible method of evacuating people with disabilities.<sup>63</sup> The National Council on

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<sup>62</sup> *Id.* at 6.

<sup>63</sup> UNIV. OF WASH., UNIVERSITY OF WASHINGTON SEATTLE CAMPUS REPORT ON EMERGENCY PREPAREDNESS FOR SPECIAL NEEDS POPULATIONS 2, 11, 16-17 (Apr. 2006), [https://www.washington.edu/uwem/files/2014/10/Special\\_Needs\\_04\\_26\\_06.pdf](https://www.washington.edu/uwem/files/2014/10/Special_Needs_04_26_06.pdf).

Disability's 2009 report on effective preparedness for people with disabilities considers the use of evacuation devices to be a best practice.<sup>64</sup> The Federal Emergency Management Agency in its *Orientation Manual for First Responders* also includes the use of evacuation devices, along with a case study showing their effective use during the 2001 World Trade Center attacks.<sup>65</sup> Another paper evaluating the evacuation of people with disabilities after the World Trade Center attacks found that "[i]n this same event, several persons with mobility impairments were assisted by coworkers down flights of stairs to safety using evacuation chairs purchased by employers."<sup>66</sup>

Another promising method of accessible evacuation from multistory buildings that is not mentioned in any of the plans is the use of evacuation elevators. These are elevators that are designed to function in emergency situations during which traditional elevators may not work.<sup>67</sup> While the addition of these elevators may not be possible in certain existing structures, the addition of the evacuation elevators should be a consideration in the design of new multistory buildings.<sup>68</sup>

## VI. CONCLUSION

While the majority of the schools in this study included some mention of the needs of people with disabilities in their emergency evacuation plans, most of the strategies suggested in these plans do not provide people with disabilities equal access to safe evacuations. A cause of great concern is the focus many plans place on either not

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<sup>64</sup> *Effective Emergency Management: Making Improvements for Communities and People with Disabilities*, NAT'L COUNCIL ON DISABILITY (Aug. 12, 2009), <http://www.ncd.gov/publications/2009/Aug122009#ch28>.

<sup>65</sup> FED. EMERGENCY MGMT. AGENCY, *ORIENTATION MANUAL FOR FIRST RESPONDERS ON THE EVACUATION OF PEOPLE WITH DISABILITIES* 19 (Aug. 2002).

<sup>66</sup> Catherine Rooney & Glen W. White, *Consumer Perspective: Narrative Analysis of a Disaster Preparedness and Emergency Response Survey from Persons with Mobility Impairments*, 17 J. OF DISABILITY POL'Y STUD. 206, 207 (2007).

<sup>67</sup> Keith M Christensen et al., *The Built Environment, Evacuations, and Individuals with Disabilities*, 17 J. OF DISABILITY POL'Y STUD. 249, 251-52 (2007). See also David D. Dunlap, *Considering a Counterintuitive Path to Escape a Fire: The Elevator*, N.Y. TIMES (Mar. 18, 2015), <http://www.nytimes.com/2015/03/19/nyregion/in-new-york-city-elevators-become-an-option-in-emergency-evacuations.html>.

<sup>68</sup> Christensen, *supra* note 67, at 251-52.

evacuating people with disabilities at all or delaying their evacuation until people without disabilities have evacuated. The ADA and case law on inclusive emergency preparedness provide that to be compliant, people with disabilities must have equal access to the emergency services provided to people without disabilities.<sup>69</sup> Failing to provide for the actual and timely evacuation of people with disabilities is not meaningful access. Current best practices indicate that there are effective strategies for safely and quickly evacuating people with disabilities from multistory buildings, strategies which have been proven to be effective in other emergencies, such as the September 11, 2001, attacks on the World Trade Center. Institutions of higher education must take as much care for the lives of their students, faculty, staff, and visitors with disabilities as they do for the lives of people without disabilities. With recent case law confirming the responsibility of Title II entities and section 504 entities to prepare adequately for the needs of people with disabilities in emergencies, higher education institutions cannot neglect this critical aspect of preparedness any longer. Emergency planners in these schools must take into account industry best practices as well as the practical aspects of the implementation of their plans.

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<sup>69</sup> *ADA Best Practices Tool Kit for State and Local Governments, Chapter 7: Emergency Management Under Title II of the ADA, AMS.* WITH DISABILITIES ACT (Oct. 26, 2009), <https://www.ada.gov/pcatoolkit/chap7emergencymgmt.htm>.