



Much More Than Masks:

Legal Issues Facing
People with Disabilities
and Who Can Help

By Lauren E. Godshall



While the effects of the coronavirus pandemic and ensuing shutdown cannot be overstated, the impact of both on people affected by disability was immediate and sweeping.

Aisha Johnson, executive director of Families Helping Families NOLA, a nonprofit resource center for individuals with disabilities and their families in Orleans, Plaquemines and St. Bernard parishes, reported an almost overwhelming uptick in calls for help.¹ “Parents were having trouble with home schooling their children without computers or Internet; therapies weren’t being conducted. Parents with disabilities themselves couldn’t navigate online school issues or handle their own children’s therapy even if it was offered via Zoom, so kids were going without therapy. IEP (individualized education plan) services weren’t being delivered. Even the lack of masks, gloves, adult diapers and wipes became a problem for our families.” However, she continued, “we are adjusting to the new normal, finding supplies and reorganizing services, and the Governor’s office will be dropping off masks for us to distribute.”

Rising to meet the needs of this crisis, Louisiana organizations like Disability Rights Louisiana and Southeast Louisiana Legal Services — already providing legal services to this population on a daily basis, even before the added complications of a pandemic and shutdown — have responded, providing information and advocacy.

Benefits and Legal Rights in a Crisis

Disability Rights Louisiana

Disability Rights Louisiana (formerly the Advocacy Center of Louisiana) is a nonprofit organization that protects and advocates for the human and legal rights of all children, adults and seniors with disabilities. The group has been extremely active during the COVID-19 crisis in monitoring care facilities for individuals with developmental disabilities, while also responding to the immediate needs of their client population.

Disability Rights Louisiana has developed a detailed list, “Common COVID-19 (Coronavirus) Related Benefits Questions & Answers,” available at: <https://disabilityrightsla.org/common-covid-19-coronavirus-related-benefits-questions-answers/>.

This list answers common questions relating to existing benefits, and what new benefits people might be eligible for during the COVID-19 crisis. This document includes information related to stimulus payments, unemployment insurance, SNAP, SSI, Social Security, Medicaid and tax filing, along with links to numerous outside resources. The list is written in clear, step-by-step language and is regularly updated. For example, the unemployment insurance section begins with an explanation of who is eligible for federal Pandemic Unemployment Assistance and further explains how to apply and how unemployment assistance may (or may not) affect other benefits like Social Security disability insurance and Medicaid.

Several disability rights programs are offering direct assistance during the coronavirus crisis (and afterwards), including the Work Incentives Planning & Assistance (WIPA) program for people who are currently receiving Social Security disability benefits or SSI and who are currently

working, want to work, or were working and were laid off as a result of COVID-19. WIPA staff can help eligible people understand how different kinds of income impact their public benefits.

In addition, the Financial Access Inclusion & Resources (FAIR) program works with people who have disabilities, who have been released from incarceration in the last 10 years, who want to work, and who live in Orleans or Jefferson parishes. FAIR staff can help people address barriers to employment and financial security by helping with tasks like applying for public benefits, setting up bank accounts, understanding how different kinds of income impact public benefits, applying for jobs and learning how to manage bills.

Southeast Louisiana Legal Services

Southeast Louisiana Legal Services (SLLS) is a nonprofit organization that provides free, civil legal aid to low-income people in six offices across 22 parishes throughout southeast Louisiana. The offices are located in Baton Rouge, Covington, Hammond, Harvey, Houma and New Orleans. The SLLS client population, which includes many people with disabilities, has been hit hard by both the health care and economic issues proliferating in the wake of the pandemic, and SLLS has responded with help in many ways, beginning with a COVID-19 Legal Helpline (1-844-244-7871) so people with legal problems arising from COVID-19 can call for legal help.

SLLS also developed numerous “FAQs” responding to specific issues, such as “Stimulus Payments for SSI, Social Security and VA Recipients” (<https://slls.org/7716-2/>), “SNAP (Food Stamps)” (<https://slls.org/snap/>) and “What are my rights to a safe workplace with COVID-19 around?” (<https://slls.org/safeworkplaceincovid19/>). Given the changing legal landscape as agencies respond to the crisis, these FAQs are updated regularly.

The organization also regularly posts “Know your Rights” videos on its Facebook page, explaining eviction issues, tax filing, how to avoid tax scams, among other topics (https://www.facebook.com/SLLSHelps/?ref=page_internal).

SLLS is also looking immediately ahead at the lifting of local eviction moratorium,

noting that “as stay-at-home orders are lifting, SLLS is preparing to defend against an onslaught of eviction proceedings, to protect vulnerable workers whose unemployment benefits are threatened, to ensure that low-income families in our area can access health care, food, and other essentials.”²

Special Education When Schools Are Closed

When schools closed, 93,000 Louisiana students with varying disabilities — autism, Down syndrome, speech and vision impairments and others — were suddenly sent home.³

Federal law requires that schools providing educational opportunities to the general student population during a school closure also ensure that students with disabilities have equal access to the same opportunities.⁴ Schools have scrambled to react with varying success. According to Families Helping Families NOLA, the lack of home computers and tablets, reliable Internet and parental ability to handle online therapy and online learning have all presented barriers. The Louisiana Department of Education has attempted to fill the void with lists of resources for parents and schools, available at: <https://www.louisianabelieves.com/students-with-disabilities>.

On March 21, the U.S. Department of Education published a Supplemental Fact Sheet Addressing the Risk of COVID-19 While Serving Children with Disabilities.⁵ This fact sheet includes timelines for individual education programs (IEPs), eligibility determinations, reevaluations and due process hearings, and suggests that IEPs include contingency plans to anticipate how education goals will be met during school closures — a good idea moving forward, if unhelpful now. “Such contingent provisions may include the provision of special education and related services at an alternate location or the provision of online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities”

Both Disability Rights Louisiana and Families Helping Families (there are 10 FHF organizations across Louisiana) can assist parents seeking to understand their legal rights to amend their child’s specialized educational plans once schools reopen and to plan ahead for potential future closures.

Legal Rights to Medical Care

One terrifying aspect of a pandemic for people with disabilities is the specter of care rationing — *i.e.*, how hospitals allocate life-saving equipment when demand overwhelms supply. Louisiana’s pre-coronavirus guidance document, “State Hospital Crisis Standard of Care Guidelines in Disasters,” written in 2009 amid swine flu fears, previously allowed hospitals, when stretched to their absolute limit in terms of supplies and care, to consider a patient’s pre-existing disability status in determining how care was allocated.⁶ However, when it became clear in the early days of the COVID-19 spread in Louisiana that a shortage of ventilators was a real possibility, disability rights advocates and civil rights attorneys mobilized, writing letters to the state department of health and filing suit to ensure that vital medical care could not be rationed on the basis of disability.⁷ Now those guidance documents have been revised to reflect that medical care decisions need to be based on objective medical evidence and “not based on generalized assumptions about a person’s disability.”⁸ Importantly, the guidance document concludes that: “Persons with disabilities should not be denied medical care on the basis of stereotypes, assessments of quality of life, or judgments about a person’s relative ‘worth’ based on the presence or absence of disabilities or age.”

Even better, the spread of the virus reversed course following the stay-at-home orders, keeping Louisiana out of the crisis point where the need for ventilators and other equipment overwhelms the supply.

Conclusion

As the outgoing co-chair of the Louisiana State Bar Association’s Legal Services for Persons with Disabilities Committee, I wanted to point out with pride that many of the organizations and civil rights attorneys mentioned in this article, those people on the frontlines and doing the hard work of meeting complicated needs in a crisis, are members of the Legal Services for Persons with Disabilities Committee. If you are interested in the legal needs of people with disabilities or

would like to meet subject matter experts in the area, consider joining us. If you assist clients with disabilities, add yourself to the Disabilities Assistance Network, <https://www.lsba.org/Members/DANJoin.aspx>, so we can more effectively meet the needs of this population.

FOOTNOTES

1. Families Helping Families NOLA, <https://www.fhfnola.org/>.
2. <https://slls.org/covid19legalresponse/>.
3. Will Sentell, “For students with disabilities, coronavirus school closings bring extra challenges,” *The Advocate*, April 4, 2020. https://www.theadvocate.com/baton_rouge/news/coronavirus/article_f59ed1ae-74e9-11ea-af8c-03be15a30eb7.html.
4. 34 CFR §§ 104.4, 104.33 (Section 504) and 28 CFR § 35.130 (Title II of the ADA); see <https://www.wrightslaw.com/info/fape.svcs.covid-19.htm> for a fact sheet with information about schools’ legal requirements.
5. “Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak (March 2020),” at https://sites.ed.gov/idea/idea-files/q-and-a-providing-services-to-children-with-disabilities-during-the-coronavirus-disease-2019-outbreak/#citem_7096-289b.
6. Leslie Carde, “Disabilities rights group says state has remedied concerns about care rationing,” *The Lens*, April 10, 2020, <https://thelensnola.org/2020/04/10/disability-rights-group-says-state-has-remedied-concerns-about-care-rationing/>.
7. Andrea Gallo, “In doomsday coronavirus scenario, Louisiana hospitals would prioritize patients. See how it’d work,” *Nola.com*, April 24, 2020, https://www.nola.com/news/coronavirus/article_08230ed8-84a0-11ea-b04e-ff04bf5a5fd4.html.
8. LDH Guidance, April 16, 2020, <http://ldh.la.gov/assets/oph/Coronavirus/resources/providers/LDHMemo-bech.pdf>.

Lauren E. Godshall is a clinical instructor for the Tulane Environmental Law Clinic. She received a BA degree, high honors, in environmental sciences in 2000 from the University of California-Berkeley and her JD degree in 2003 from New York University School of Law. She is a former co-chair of the Louisiana State Bar Association’s Legal Services for Persons with Disabilities Committee. She has served as chair of the board of Families Helping Families of New Orleans, which provides services and advocacy for disabled people and their families, as well as on the board of the Down Syndrome Association of Greater New Orleans. (lgodshall@tulane.edu; 6329 Freret St., New Orleans, LA 70118)

