

**Hurricane Evacuation Sheltering Reimbursement  
DR-4337 – Hurricane Irma**

**Background**

Historically, many Florida public schools submitted applications directly to FEMA for reimbursement for the facilities, transport and associated staff for opening and operating the shelters during declared disasters. This approach allowed for the public school systems to be directly reimbursement of their costs from FEMA. FDEM has recently questioned this approach and the responsibility for shelter operations and has requested a response to the following questions:

- 1) For the purposes of 44 C.F.R. §206.223(a)(3), who has legal responsibility for hurricane evacuation sheltering conducted in Florida public schools?
- 2) Which, if any, of four scenarios best comports with the Stafford Act, 44 CFR Part 206, and all applicable provisions of Florida law?
  - a. County - The County as the Applicant: The County absorbs the non-FEMA reimbursable cost of one half of the non-federal cost share, plus any amounts not ultimately reimbursed by FEMA and FDEM;
  - b. School district - The School district as the Applicant: The School district absorbs the Unreimbursed Costs;
  - c. Either - Either the County or the School district as the Applicant: The Applicant absorbs the Unreimbursed Costs.
  - d. State - The State of Florida as the Applicant: The State of Florida absorbs the Unreimbursed Costs as well as its half of the non-federal cost share.

This issue has been raised recently by Florida counties and public school systems. In September 2017, many counties in Florida were severely impacted by Hurricane Irma and had to operate shelters for extended periods of time. Many of the impacted counties and associated public school systems requested FDEM and FEMA for direction on: 1) which of the costs associated with sheltering are considered to be reimbursable under the Public Assistance (“PA”) Program, and 2) which entity is considered the eligible applicant according to Federal statute.

The following sections of this document provide answers to the above questions and further discussion related only to DR-4337 Hurricane Irma, and do not relate to any prior disasters. The team that reviewed the information provided by FDEM and other relevant information included former FEMA professionals, including several with experience with audit and oversight responsibilities for FEMA PA grants as part of the DHS OIG. The responses to the questions are based on their experience, with consideration of the relevant FEMA regulations and information provide on Florida law, and do not constitute legal advice or legal opinions.

**Responses**

***1) For the purposes of 44 C.F.R. §206.223(a)(3), who has legal responsibility for hurricane evacuation sheltering conducted in Florida public schools?***

While mass evacuation and congregant sheltering is often required as the result of a Federally-declared disaster and can be located within or outside the areas designated in the disaster declaration and its amendments, the issue at hand is what legal governmental jurisdiction in the designated area has or should have the legal responsibility for coordinating mass evacuations and sheltering operations for that jurisdiction.

At a minimum, mass evacuation and congregant sheltering work must met each of the following three general criteria in 44 CFR 206.223(a) to be eligible for FEMA public assistance (PA) funding:

- Be required as a result of the declared incident;
- Be located within the designated area, with the exception of sheltering and evacuation activities; and
- Be the legal responsibility of an eligible Applicant.

Disaster declarations are made at the State level and identify those areas within the State that are eligible for financial assistance. The State becomes the grant recipient and the local jurisdictions within the designated areas (counties) that performed eligible emergency work or sustained disaster damages eligible for PA funding and can submit Requests for Public Assistance that when approved by FEMA, make them grant subrecipients.

While some counties in the State of Florida argue that that sheltering responsibilities should be the responsibility of a local school board or district and not a county, FEMA evaluates whether the applicant requesting the assistance either had **jurisdiction over the area or the legal authority** to conduct the work related to the request at the time of the incident (see page 21 of FEMA's Public Assistance Program and Policy Guide January 2018; hereafter referred to as PAPPG). Further, FEMA provides PA funding to local government applicants for costs related to emergency congregant sheltering which occurs in facilities with large open spaces, such as schools, churches, community centers, armories, or other similar facilities (page 67 of the PAPPG). FEMA's evaluation of an applicant's jurisdiction over this area should consider the applicant's authority to coordinate mass evacuation and sheltering within and outside the designated area including mutual aid provided by schools, churches, community centers, armories, or other similar facilities. Coordination of County-wide (rather than by school district) mass evacuation and sheltering would be consistent with most of the core capabilities identified in FEMA's Response Mission Area which houses "the capabilities necessary to save lives, protect property and the environment, and meet basic human needs after an incident has occurred." Applicable core capabilities within this mission area include:

- Planning,
- Public Information and Warning,
- Operational Coordination
- Critical Transportation
- Environmental Response/Health and Safety
- Logistics and Supply Chain Management
- Mass Care Services
- Operational Communications
- Public Health, Healthcare, and Medical Services
- Situational Assessment

In addition, some Florida counties believe that while there is no clear definition of legal responsibility in 44 CFR, clear explanations are provided in FEMA's PAPPG. Based on explanations within the PAPPG and because Florida statutes define legal duties and responsibilities of school districts during non-emergency periods and emergency periods, an argument was made for school districts having the responsibility for sheltering operations prior to seeking reimbursement through FEMA's Public Assistance Program. However, this argument also recognizes that (1) currently, sheltering is a shared responsibility of the county and the school board, and (2) each entity is assigned specific functions which emphasizes the shared nature of the burden by requiring each agency to coordinate with each other.

While these shared "legal" responsibilities and specific functions have not been delineated in the documentation provided by the counties, either entity (a county or school district) could be charged with ensuring coordinated and consistent delivering of the sheltering operation. This would be consistent with the National Incident Management System (NIMS) which defines operational systems, including the Incident Command System (ICS), Emergency Operations Center (EOC) structures, and Multiagency Coordination Groups (MAC Groups) that guide how personnel work together during incidents and is applicable to all incidents, from traffic accidents to major disasters. However, for major disasters, counties are better equipped to ensure the coordinated and consistent delivering of the sheltering operations through its EOC structures and MAC Groups. Lastly, even though both entities may have some responsibility over the sheltering response operation, nothing precludes FEMA from determining that a county has the primary jurisdiction over the area and that the school districts' legal responsibilities under Florida Statutes, discussed below, are to provide shelters and staff when requested by the county's emergency management agency.

Some counties also argue that that because Florida Statutes § 252.38 (1)(d), states "the district school board or school boards in the affected area **SHALL** participate in emergency management by providing facilities and necessary personnel to staff such facilities" (emphasis added), it is the school board's responsibility to provide these services and is responsible for requesting reimbursement. The argument goes on to say that to interpret this line of statute as giving the county the legal responsibility for shelter work that takes place in school district facilities would lend itself to a coinciding argument that all emergency work in Florida would be the responsibility of the Division of Emergency Management.

The quote above, fails to include complete statute language which states that the school board or school boards shall participate in emergency management upon the request of the director of a local emergency management agency. Nothing in this statute precludes a county from being assigned jurisdiction over the sheltering area and requesting that the school districts provide the sheltering facilities and staff as required by the statute. In addition, allowing a county the legal responsibility to coordinate shelter operation that takes place in school district facilities and through the county (through a mutual aid request) in no way implies that all emergency work (Category A – Debris Removal and Category B – Emergency Protective Measures) would be the responsibility of the Division of Emergency Management (see page 58 of the PAPPG for eligible emergency protective measures).

The 2018 Statewide Emergency Shelter Plan summarizes Florida Statutes § 252.38 with the following statement:

“Safeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state. This places the duty for evacuating and sheltering at-risk citizens during an emergency or disaster upon county governing boards (i.e., Board of County Commissioners). To expand and expedite locally available resources to meet an emergency need, the Legislature directed that during a declared state or local emergency, district [school] boards will upon request participate in emergency management by providing facilities, personnel, equipment and vehicles.”

Expanding and expediting locally available school resources does not obviate the County Commissioners’ duty for evacuating and sheltering at-risk citizens during an emergency or disaster.

The Plan points out that district public schools are the primary source of public shelter during tropical weather related emergencies, currently accounting for about 97 percent of statewide hurricane evacuation shelter space, and presumes that public schools (1) will be used as hurricane evacuation shelters, and often staffed by district personnel and (2) will be opened as shelters regardless of the storm’s forecasted intensity and track. The Plan further points out that Florida Statutes § 252.385(4)(a) says,

“Public facilities, including schools, post-secondary education facilities, and other facilities owned or leased by the state or local governments, but excluding hospitals, hospice care facilities, assisted living facilities, and nursing homes, which are suitable for use as public hurricane evacuation shelters shall be made available at the request of the local emergency management agencies. The local emergency management agency shall coordinate with these entities to ensure that designated facilities are ready to activate prior to a specific hurricane or disaster. Such agencies shall coordinate with the appropriate school board, university, community college, state agency, or local governing board when requesting the use of such facilities as public hurricane evacuation shelters.”

**Conclusion:** It is within FEMA’s authority to scope and fund emergency protective measures in a manner that assures the maximum impact on saving lives and protecting property. While both a county and a school district may have shared legal responsibilities for providing shelters and staff, primary responsibility should be vested in a county since it is better equipped to ensure the coordinated and consistent delivering of County-wide sheltering operations by using NIMS concepts such as Emergency Operations Center (EOC) structures, and Multiagency Coordination Groups (MAC Groups) that guide how personnel work together during incidents. While public schools are the primary source of public shelters, this conclusion is consistent with Florida’s 2018 Statewide Emergency Shelter Plan which places the duty for evacuating and sheltering at-risk citizens during an emergency or disaster upon county governing boards (i.e., Board of County Commissioners) with the local government emergency management agency requesting that suitable public facilities (including schools) be made available for use as public hurricane evacuation shelters

**2) Which, if any, of the following four scenarios best comports with the Stafford Act, 44 CFR Part 206, and all applicable provisions of Florida law?**

- a) SCENARIO #1 (Mutual Aid: County as Applicant)**
- b) SCENARIO #2 (No Mutual Aid: School District as Applicant)**
- c) SCENARIO #3 (No Mutual Aid: Both County and School District can be an Applicant)**
- d) SCENARIO #4 (Mutual Aid: State as applicant)**

Some counties have been informed that direct FEMA reimbursement of sheltering costs will no longer be available to the school districts but will be treated as county-requested mutual aid and reimbursed to the districts based on invoices and supporting documentation provided to the county. Some counties raised concerns that such a change will have an immediate financial impact on them. However, there should be little financial impact if mutual aid documentation from the districts is provided in a timely manner to the County. Irrespective of the financial impact of sheltering operations, the operation itself should comport with the core capabilities for FEMA's Response Mission Area which houses those capabilities necessary to save lives, protect property and the environment, and meet basic human needs after an incident has occurred.

Based on the conclusion of the first question that legal responsibility is shared but counties are better equipped to coordinate the consistent delivery of a County-wide sheltering operation that adheres to the 2018 Emergency Shelter Plan and uses NIMS concepts such as Emergency Operations Center (EOC) structures, and Multiagency Coordination Groups (MAC Groups), making Scenario #1 the most appropriate approach to meet a county's sheltering needs. In fact, when an applicant such as a county does not have sufficient resources to respond to an incident, it may request resources from another jurisdiction through a "mutual aid" agreement. We understand that school districts are required by State statutes to provide shelter facilities and staff when requested by a local emergency management agency, resulting in a mutual aid agreement between the two entities that would likely differ from those agreements with entities that had no statutory requirement to provide resources when requested. Nonetheless, some sort of mutual aid agreement would be needed to establish the terms under which assistance is provided between two or more jurisdictions within a state and between states. These agreements facilitate access to potentially needed resources, both prior to and following incidents or planned events and set the parameters by which the mutual aid provider is reimbursed for its services.

However, given that the 2018 Emergency Shelter Plan requires that Board of County Commissioners be responsible for evacuating and sheltering at-risk citizens during an emergency or disaster and if FDEM accepts that the legal responsibility for sheltering rests with the county, it should consider designating counties as mutual aid requesters and school districts as mutual aid providers along with other public facilities that help meet a county's evacuation and sheltering needs for future disasters.