

Review of Emergency Preparedness Litigation

ADA National Network
Learning Session
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Equip for Equality

Outline of Today's Presentation

- Background on emergency preparedness and the ADA
- Emergency preparedness litigation against state and local governments
- Emergency preparedness litigation against schools
- Federal agency guidance on emergency preparedness for people with disabilities and other resources
- Questions

Background on Emergency Preparedness

- When ADA was passed in 1990 – no specific references to emergency preparedness
- Title II covers state and local governments – but nothing addressing making programs and activities related to emergencies accessible
- ADA passed before major emergencies like 9/11, Hurricane Katrina and Sandy Hook shooting
- Litigation has clarified state and local governments' and schools' duties under the ADA

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Emergency Preparedness Litigation – State and Local Governments

Emergency Preparedness Litigation – Oakland

California Foundation for Independent Living Centers v. City of Oakland

C07-04608 (Alameda County Superior Court filed Aug. 9,
2007)

- Plaintiffs filed suit against the City Oakland alleging violations of the Rehabilitation Act and state law
- Plaintiffs alleged that defendants' emergency management plan did not take into consideration the needs of pwds
- Shortly after filing suit, the parties negotiated a settlement agreement

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Emergency Preparedness Litigation – Oakland

California Foundation for Independent Living Centers v. City of Oakland

- Parties developed a Mass Care and Shelter Plan Annex to be incorporated into Oakland's emergency preparedness plan.
- Copies of the Complaint, Settlement Agreement and Plan Annex can be found at:
<http://dralegal.org/case/california-foundation-for-independent-living-centers-cfilc-et-al-v-city-of-oakland-et-al/>

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CFILC v. Oakland – Plan Annex Highlights

Under the Plan Annex, the City of Oakland will:

- Provide voice/text emergency notifications through public access television network, including accessibility statement in emergency notifications
- Identify vendors for durable medical equipment for emergencies
- Establish “functional needs coordinators” at shelters to identify and assist individuals with disabilities
- Make available ASL interpreters or remote video interpreters for deaf and hard of hearing individuals in emergency shelters

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CFILC v. Oakland – Plan Annex Highlights (cont.)

- Evaluate all emergency shelters for physical and programmatic accessibility
- Adopt transportation procedures for evacuation of people with disabilities
- Update/improve City’s Geographic Information System for identifying and locating people with disabilities during emergencies
- Establish a medical shelter for people with disabilities who can’t be adequately served in other emergency shelters

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Emergency Preparedness Litigation – Los Angeles

Communities Actively Living Independent and Free v. City of Los Angeles, et al

2011 WL 4595993 (C.D. Cal. 2011)

- Plaintiffs filed suit against the City and County of Los Angeles alleging violations of the ADA, Rehab Act and state law
- Plaintiffs alleged that defendants are in violation of the law because their emergency preparedness plans fail to address the unique needs of people with disabilities

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Emergency Preparedness Litigation – Los Angeles

Communities Actively Living Independent and Free v. City of Los Angeles, et al

- Plaintiffs reached settlement with County
<http://dralegal.org/case/communities-actively-living-independent-and-free-calif-et-al-v-city-of-los-angeles/>
- Plaintiffs did not reach a settlement with the City, so Plaintiffs filed a motion for summary judgment

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CALIF v. LA – Ruling against City of Los Angeles

Court Ruling: Summary judgment for the Plaintiffs

- Emergency procedures was a program benefitting citizens of L.A.
- Those procedures violated the ADA by effectively excluding people with disabilities from receiving those benefits

Court Findings:

- No provision for alerting people with cognitive or auditory disabilities
- No plans for evacuating or temporarily housing pwds

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CALIF v. LA – Ruling against City of Los Angeles

Significance: First court ruling to find governmental entity legally liable under ADA to citizens with disabilities for failing to address their needs in event of emergency

DOJ Statement of Interest:

https://www.ada.gov/briefs/calif_interest_br.pdf

Court Order: City required to hire an expert and revise the City's emergency preparedness program -

<http://dralegal.org/case/communities-actively-living-independent-and-free-calif-et-al-v-city-of-los-angeles/>

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Emergency Preparedness – New York City

Brooklyn Center for Independence v. Bloomberg

980 F.Supp.2d 588 (S.D.N.Y. 2013)

- Disability advocacy organizations and individuals with disabilities filed class action against Mayor and City
- Alleged that NYC failed to plan for the needs of people with disabilities in large scale disasters
- November 2013: Court opinion finding that NYC violated ADA with inadequate emergency preparedness plan
 - ❖ First opinion, post-trial, finding that a gov't's emergency preparedness violated the ADA and Rehab Act

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Emergency Preparedness – New York City

Brooklyn Center for Independence v. Bloomberg

- NYC's emergency plans for residents: "Impressive"
- NYC's system for people with disabilities: "Benign neglect"
 - ❖ No system for mass evac of pwds from high-rise bldgs
 - ❖ Lacks reliable and effective communication systems
- Advanced planning is critical – can't wait for disaster to occur to address needs of people with disabilities
- Special Needs Coordinator and Special Needs Advisory Committee had no real authority or influence
- NYPD and NYFD – no personnel for disability issues

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Brooklyn Center for Independence: Emergency Preparedness

- Additional violations of the ADA/Rehab Act:
 - ❖ Unaware which emergency shelters are accessible, and tells pwds that needs will not be met at shelters
 - ❖ No protocol to address needs of pwds in power outages
 - ❖ Relies on largely inaccessible public transit for evacuations
- **DOJ's statement of interest:**
www.ada.gov/brooklyn-cil-brief.doc
- Court did not order specific remedy, but ordered parties and DOJ to work out agreement

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Settlement Agreement Approved 2015

- Hire **Disability and Access and Functional Needs Coordinator**
- Establish **Disability Community Advisory Panel**
- Ensure at least 60 shelters are physically and programmatically accessible
- Create **Post-Emergency Canvassing Operation**
- Develop **accessible transportation plans** during emergencies
- Convene **NYC/ADA High Rise Building Evacuation Task Force**

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<http://www.dralegal.org/bcid-v-bloomberg>

Emergency Preparedness – Washington D.C.

United Spinal Association v. District of Columbia

1:14 cv-01528 (D.D.C. filed Sept. 9, 2014)

- Most recent challenge of a major city's emergency preparedness system
- Plaintiffs sued D.C. under the ADA, Rehab Act and D.C. Human Rights Act for failing to address needs of people with disabilities in emergencies
- Like NY, DC has an extensive emergency preparedness plan, but little focus on disability issues

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Emergency Preparedness – Washington D.C.

United Spinal Association v. District of Columbia

- **Complaint alleges that D.C. has failed to:**
 - ❖ Publicize info about accessible emergency shelters
 - ❖ Plan for emergency communications for people who are deaf or blind
 - ❖ Put emergency evacuation options in place
 - ❖ Plan for supply chain disruptions for medication and replacement of durable medical equipment
- **Status:** Parties are currently engaged in settlement negotiations – next up in court in April

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Emergency Preparedness at Airports – Sacramento

California Foundation for Independent Living Centers v. County of Sacramento

142 F. Supp. 3d 1035 (E.D. Cal. 2015)

- Plaintiffs alleged that Sacramento's airport evacuation procedures inadequately addressed the needs of people with disabilities
- Sacramento spent over \$1 billion renovating terminal
- Many areas out of compliance – not limited to emergency preparedness
- Plan acknowledges people with disabilities will have difficulty complying with evacuation directions, but doesn't provide any guidance or solutions

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Emergency Preparedness at Airports – Sacramento

- **Court:** Ruling for plaintiffs – first time ADA applied to airport emergency evacuation plans
 - ❖ No plan for evacuating pwds from the people mover
 - ❖ Failed to train personnel on needs of pwds
 - ❖ Failed to reserve personnel to assist pwds
 - ❖ Inadequate communication about accessible evacuation assistance within the airport
 - ❖ Inadequate incorporation of pwds into recovery plan
- **Status:** Parties currently engaged in settlement negotiations

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Accessible 911 Services

Enos v. State of Arizona 2017 WL 553039 (D. Az. Feb. 10, 2017)

- NAD and three deaf individuals sued State and various local governments that play a role in providing 911 services
- Current 911 services are inaccessible b/c plaintiffs can only call 911 with TTYs (now virtually obsolete) or via relay, which requires use of a high-speed internet connection
- Plaintiffs asked for the ability to send texts to summon emergency help or report an emergency

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Accessible 911 Services

- **Court:** Allowed case to proceed
 - ❖ Plaintiffs stated a claim under the ADA because they cannot use the 911 system outside their homes or areas without high-speed Internet access – case now in discovery
 - ❖ Plaintiffs had standing because not overly speculative that they would be harmed in the future
 - ❖ Rejected Arizona's argument that current system provides plaintiffs with meaningful access
 - ❖ Municipalities in 36 states provide texting for 911, - undercuts defense that texting option would be too difficult or expensive to implement

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Emergency Preparedness Litigation – Schools

Emergency Preparedness in the School Setting – Importance of Plan

Shirey v. City of Alexandria School Board
229 F.3d 1143 (4th Cir. 2000)

- A student with a mobility disability and her parents sued school board under ADA and Rehab Act over two instances in which student wasn't evacuated
- **First instance:** School received bomb threat and evacuated all ambulatory children. Students with disabilities left in school with an adult for 70 minutes after the bomb threat.
- **OCR:** Parents filed complaint with the Department of Justice Office of Civil Rights – which ordered a Plan of Correction.

Emergency Preparedness in the School Setting – Importance of Plan

- **Plan of Correction:** School required to work with students, parents, faculty and police and fire personnel to develop emergency evacuation plan for students with disabilities. Safe room established for students with disabilities and designated faculty member with a cell phone. If evacuation needed, emergency personnel would rescue students from safe room.
- **Compliance:** School fully complied with the plan of correction

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Emergency Preparedness in the School Setting – *Shirey* case (cont)

- **Second Incident:** Unplanned fire drill and new Plan not executed properly. Plaintiff left alone when designated person evacuated non-disabled students.
- **Court:**
 - ❖ **First incident** - violation of ADA because no plan to evacuate students with disabilities in an emergency.
 - ❖ **Second incident** - no ADA violation. Board's plan was well developed and education and practice drills met ADA obligations. Imperfect execution of an emergency plan - not ADA violation as long as plan itself conformed to the ADA.

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Emergency Preparedness in the School Setting - Communication

Jagielski-Bazzell v. Los Angeles Unified Sch. Dist. 15-cv-2921 (C.D. Cal. filed April 20, 2015)

- ADA suit against the Marlton School - School for Deaf and Hard of Hearing students
- Filed by teachers who are deaf or hard of hearing (Title I)
- Emergency information announced over a standard PA system so deaf and hard of hearing teachers and staff:
 - ❖ Had no accessible information during some lockdowns/drills
 - ❖ Unaware of some emergencies
 - ❖ Unsure if they should evacuate or shelter in place

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Jagielski-Bazzell v. Los Angeles Unified Sch. Dist. (cont.)

Parties reached Settlement – select terms include:

- New visual PA system with large HD screens, scrolling LCD display, and video phones added to classrooms and common areas to communicate emergency messages and are capable of two-way communication with the front office
- Flashing doorbells on classroom doors along with peepholes or windows in the doors
- ASL interpreter in the command center during emergencies

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Jagielski-Bazzell v. Los Angeles Unified Sch. Dist. (cont.)

- Video in ASL describing emergency procedures at the school
- Meeting with first responders re: new procedures and equipment
- Two-way video camera at the entrance gate to the school allowing Deaf staff to communicate from gate
- Monetary relief of \$30,000 per plaintiff - total of \$150,000

www.equipforequality.org/news-item/settlement-agreement-addresses-emergency-preparedness-people-disabilities-school-setting/

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Federal Agency Guidance and Other Resources on Emergency Preparedness for People with Disabilities

Department of Justice Resources on Emergency Preparedness and PWDs

- Two main resources from the U.S. Department of Justice on emergency preparedness for people with disabilities
 - **Making Community Emergency Preparedness and Response Programs Accessible to People with Disabilities: An ADA Guide for Local Governments**
<https://www.ada.gov/emerpreguideprt.pdf>
 - **Title II Checklist: Emergency Management**
<https://www.ada.gov/pcatoolkit/chap7emergencymgmtadd1.pdf>

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Highlights from DOJ Resources on Emergency Preparedness and PWDs

- **Primary areas of concern for emergency preparedness and ADA compliance should be:**
 - notification
 - evacuation
 - emergency transportation
 - sheltering
 - access to medications, refrigeration and back-up power
 - access to mobility devices or service animals
 - access to information

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Highlights from DOJ Resources on Emergency Preparedness and PWDs

- Use multiple methods of communication
- Favorable view of voluntary, confidential registries to identify pwds who need assistance, but not required
- Shelter accessibility
 - All aspects of shelter should be accessible
 - Publicize info about accessibility important
 - Training of shelter staff is critical
 - Service animals should be permitted
 - Back-up generators
 - Effective communication
- Including pwds in planning process is key

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Dept. of Health and Human Services on Emergency Preparedness and PWDs

- U.S. Department of Health and Human Services, Office for Civil Rights has a publication that may be very helpful called:
 - **Avoiding Disasters for the Special Needs Population: Effective planning, response, and recovery for the special needs population, consistent with Federal civil rights laws**

<https://www.hhs.gov/sites/default/files/ocr/civilrights/resources/specialtopics/emergencypre/eptrainingppt.pdf>

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Highlights from HHS/OCR Resource on Emergency Preparedness and PWDs

In addition to the issues raised by DOJ (e.g. voluntary registry of pwws, accessible/multiple communication methods, and accessible shelters), HHS has a couple of additional recommendations:

- Have readily available or contract out for quick access to durable medical equipment, medications, and other supplies potentially necessary for individuals with disabilities.
- Secure necessary personnel, vehicles, and tools for accessible evacuation and transportation

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Additional Emergency Preparedness Resources

- ❖ **Department of Homeland Security:**
<https://www.ready.gov/individuals-access-functional-needs>
- ❖ **Portlight:** Inclusive disaster strategies
www.portlight.org
- ❖ **Partnership for Inclusive Disaster Strategies:**
www.disasterstrategies.org
- ❖ **Pacific ADA Center:** podcasts, webinars and other strategies – www.adapacific.org

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QUESTIONS?