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Emergency Preparedness for State and Local Governments

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1

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The Laws

- Rehabilitation Act of 1973
- Americans with Disabilities Act of 1990
- Stafford Act of 1988
- Post Katrina Emergency Management Reform Act of 2006
- Fair Housing Act Amendments of 1988
- Architectural Barriers Act of 1968

2

The Rehabilitation Act of 1973 [sections 504 & 508]

- Applies to state and local governments receiving federal funding
- Prohibits discrimination on basis of disability
- Federal agencies **must** make their electronic and information technologies accessible to people with disabilities

The Americans with Disabilities Act (ADA)

- **Title II:**
- Applies to all State and Local Governments
- Before, During and After a Disaster:
- **Effective Communication**
- **Physical Accessibility**
- **Programmatic Accessibility**

Post Katrina Emergency Management reform act of 2006

- Requires the President to issue regulations that prohibit discrimination based on disability in disaster assistance
- (Sec. 213) Amends the Stafford Act to direct the Administrator of FEMA to appoint a Disability Coordinator to ensure that the needs of individuals with disabilities are being properly addressed in emergency preparedness and disaster relief

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, and Hurricanes Katrina, Sandy, Harvey and Irma
- Litigation has shaped state and local governments' and schools' duties under the ADA

What's Required

- Slide ten: Effective communication
- Announcements: include real-time captioning and American Sign Language interpreters on screen and visible
- Talk to your local news reporters and videographers ahead of time
- Produce both written and verbal communication
- Ensure that alert systems are 508 compliant and work
- Apps on smart phones
- Alert messages on websites
- Alerts sent through phones and e-mails

7

Accessible Transportation

- Create a Memorandum of Understanding (MOU) with agencies that oversee:
 - School buses
 - Paratransit vans and vehicles
 - Taxi cabs
 - Train systems
 - Airlines
- Provide accessible transport during evacuation, to and from a shelter, to and from medical facilities, and upon return to places of stay
- Modify policies to allow pets and emotional support animals on board

8

Service and Assistance Animals

- animals
- **Service animals must** be allowed in all entities facilities/vehicles where the public can go
- **Emotional support animals must** be allowed in shelters or other housing options
- Try to co-locate individuals with their animals
- Partner with your local Department of Health to create onsite medical services for all animals
- Service animals, and emotional support animals should **NEVER** be left behind or separated from their owner

9

Physical and programmatic access

- Identify local accessible buildings prior to a disaster
- Identify multiple shelters across neighborhoods
- Create a tier system to rate accessibility of buildings
- Allows for individuals to look at list of identified buildings to see what level of accessibility is offered
- Path of travel
- Ensure an individual can enter and exit the shelter
- Ensure an individual can move around the shelter and access all programs, bathrooms, food areas, water fountains, and telephones
- Modify policies and procedures as needed

10

Applying multiple laws

- Reinforce that there are multiple laws that apply during a disaster to all staff and volunteers
- Ensure that staff, all agencies, and volunteers are:
- Educated on the area's disaster preparedness plan
- Fully trained in resources available in the community
- Trained on disability rights laws
- During planning and preparation stays, include all laws that are applicable
- State anti-discrimination laws may also apply

11

Emergency Preparedness Litigation – State and Local Governments

12

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
- Parties developed a Mass Care and Shelter Plan Annex to be incorporated into Oakland's emergency preparedness plan.

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

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

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
- 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

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

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/>

Emergency Preparedness – New York City

Brooklyn Center for Independence v. Bloomberg

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

- 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
- 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

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
- Instead of ordering specific remedy, the Court:
 - Directed parties to confer with one another and with DOJ
 - If parties cannot reach an agreement, Court will impose remedies, and possibly have a second trial on this issue
- DOJ's statement of interest: www.ada.gov/brooklyn-cil-brief.doc

Settlement Agreement Approved 2015

- City to hire a **Disability and Access and Functional Needs Coordinator** – lead EE responsible for overseeing plans
- **Disability Community Advisory Panel** – provide feedback on a regular basis regarding City's plans/proposed revisions
- By Sept '17, City will have at least 60 shelters that are physically and programmatically accessible
- By Aug '17, City to create a **Post-Emergency Canvassing Operation** - survey households after a disaster to assess/identify needs of pwd by going door-to-door and send resource requests (including food, water, electricity, med care, med equipment).
- Develop accessible transportation plans during emergencies
- **NYC/ADA High Rise Building Evacuation Task Force** to create a work plan, which will be implemented in next 3 years

<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)

- Plaintiffs sued D.C. under the ADA, Rehab Act and D.C. Human Rights Act for failing to address needs of pwds in emergencies
- **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

21

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
- **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 emergency personnel on needs of pwds
 - Failed to reserve personnel to assist pwds
 - Inadequate communication to pwds as to where accessible evacuation assistance could be found within the airport
- **Status:** Parties are currently engaged in settlement negotiations

22

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Accessible 911 Services

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

- NAD and three 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
- **Court:** Allowed case to proceed (denied motion to dismiss)
 - Plaintiffs stated a claim under the ADA b/c they cannot use the 911 system outside their homes or areas without high-speed Internet access – case now in discovery

23

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Emergency Preparedness Litigation – Schools

24

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Emergency Preparedness in the School Setting – Importance of Plan

Shirey v. City of Alexandria School Board
229 F.Supp. 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.
- **School remedy:** School worked with students, parents, faculty and police and fire personnel to develop emergency evacuation plan for pwds. Safe room established for pwds and faculty member with a cell phone. If evacuation needed, emergency personnel would rescue students from safe room. Training done on plan and practice drills were run.

25

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

- **Second Incident:** An unplanned fire drill occurred and the newly implemented Emergency Preparedness Plan was not executed properly. Plaintiff was left alone when designated person evacuated non-disabled students.
- **Court:**
 - First incident - violation of ADA because school board had not developed plan to evacuate students with disabilities from school 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.

26

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)c

- Complaint against the Marilton School = School for Deaf and Hard of Hearing students
- 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
 - Were left unaware of some emergencies
- **Sept. 2016: Settlement Agreement (select terms)**
 - New visual PA system w/ 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

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

- Flashing alarm system to differentiate between evacuations and shelter-in-place situations
- Flashing doorbells on classroom doors along with peepholes or windows in the doors
- ASL interpreter in the command center during emergencies
- 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/

Where to begin


- Bring community members with disabilities, the aging population, and those with Access and Functional Needs to the planning table
- Create goals and initiatives based off of the feedback from the community
- Work with local emergency management agencies, volunteers, and partners
- Identify the largest barriers facing the whole community
- Meet frequently to ensure plans, policies, and practices are up-to-date and the most effective for when a disaster occurs

29

Community Partners


- Community Independent Living Centers (CIL)
- The Developmental Disability Council
- Grass Roots Disability Rights Organizations
- Protection and Advocacy Agency
- Local Veterans groups
- Local UCEDD (University Centers for Excellence in Developmental Disabilities, Education, Research and Service)
- Local student-run disability groups
- Senior Wellness Centers

30

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Federal Agency Guidance on Emergency Preparedness for People with Disabilities

31

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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**, United States Department of Justice Civil Rights Division,
<https://www.ada.gov/emergencyguideprt.pdf>
 - Title II Checklist: Emergency Management, Department of Justice,
<https://www.ada.gov/pccatoolkit/chap7emergencymgmtadd1.pdf>

32

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

33

Highlights from DOJ Resources on Emergency Preparedness and PWDs

- Use multiple methods of communication (visual & audio)
- Favorable view of voluntary, confidential registries to identify pwds who need assistance, but not required
- Shelter accessibility
 - All aspects accessible - including parking lots, entrances, sleeping and dining areas, toilet and bathing areas
 - Publicize info about accessibility important
 - Training of shelter staff is critical
 - Service animals should be permitted
- Including pwds in planning process is key

34


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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>

35

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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 pwds, 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

See also info from the Department of Homeland Security:
<https://www.ready.gov/individuals-access-functional-needs>

36

Contact Information

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- U.S. Department of Justice (DOJ)
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- www.ada.gov

37

QUESTIONS?

38