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## Discrimination in Emergency Planning

### *Thoughts on the Los Angeles City case*

**A**s I mentioned in a recent [blog](#), a Federal judge has found that the City of Los Angeles' emergency preparedness program violated the Americans with Disabilities Act and various state statutes by failing to provide reasonable accommodations for people with disabilities.

This is the first such decision in the United States and will definitely have an impact on our emergency management programs. While I am not an attorney and cannot speak to the legal implications, I believe the underlying issues are rather straight forward and that as emergency managers we need to rethink how we accommodate people with disabilities in our programs.

### **The Case**

In January of 2009, Communities Actively Living Independent and Free (CALIF), a disability rights advocacy group, and an affected individual filed a class action suit in Federal court against Los Angeles City and Los Angeles County, alleging violations of various Federal and State statutes relating to people with disabilities.

At issue was whether or not the emergency management programs of the two jurisdictions adequately served the needs of some 800,000 individuals who live within Los Angeles city. The plaintiffs contended that the programs failed to address the unique needs of people with disabilities and as a result of this failure people with disabilities are disproportionately vulnerable in emergencies.

In June 2010, Los Angeles County and the plaintiffs agreed to a stay of action after agreeing to develop an access and functional needs annex to the county emergency plan.

In August, the plaintiffs requested a summary judgment against the city of Los Angeles, which was granted by the judge on February 11, 2011.

As a result of the granting of summary judgment to the plaintiffs, the case will not go to a full trial and the City of Los Angeles will participate in a settlement conference to determine what changes will be made to the city's preparedness program and how such changes will be implemented and monitored.

## The City's Response

In responding to the suit, the City of Los Angeles used a number of arguments that are fairly common in the emergency management community when we speak to elected officials. It's interesting to note that they didn't get very far with the judge.

The city argued that the plans in question were general in nature and not tactical and that details were contained in department level plans. However, the court found no record of how departments and agencies would assist people with disabilities. The judge noted that departments and agencies had not even assessed whether they had the capacity to respond to the needs of such individuals.

With regards to sheltering, for example, the city had only surveyed a fraction of its pre-identified shelters and could not say which were accessible. The city maintained that the Red Cross was responsible for shelters and had the responsibility for accommodating people with disabilities. However, the city did not have an agreement with the Red Cross that set forth specific responsibilities for people with disabilities and had no mechanism for inspecting and evaluating Red Cross policies and procedures at shelters.

The city argued that it could make ad hoc arrangements at the time of the disaster. However, the judge noted that the goal of emergency planning was to anticipate need and to minimize these types of ad hoc responses.

The city also argued that emergency preparedness was an individual responsibility. While the judge agreed with the importance of personal preparedness, she held that this was irrelevant as the issue being considered was

equal access to services. The judge held that the emergency preparedness program provided by the city must be open and accessible to all citizens.

This issue of equal access is a key point in this case. ADA case law has repeatedly recognized that even policies that are consistently enforced and appear on their face to apply equally to all can in fact violate ADA requirements if they place an undue burden on people with disabilities. For example, the fact that the city could not tell people with disabilities what shelter sites were accessible would place an undue burden on these people, even though shelter sites are open to all.

## What's It All Mean?

I believe it is important not to read too much into the judge's decision. This case was about reasonable accommodation and equal access and not about specific things that need to be included in your planning. Instead, we should focus on some of the underlying issues raised by the case.

1. *Take a programmatic rather than a plan-centric approach.* The judge, quite rightly, looked at this issue from a broad perspective and based her decisions on the principle that the jurisdiction has the ultimate responsibility for its citizens. She did not accept the material in the emergency operations plan at face value but asked to see evidence that accommodations for people with disabilities were actually being made and not just talked about.

This is consistent with the programmatic approach espoused under the Emergency Management Accreditation Program and

*NFPA 1600 Standard on Disaster/Emergency Management and Business Continuity Programs.* The message is clear: just writing a plan is not sufficient. You must have a program that ensures that what you write in your plan can actually be implemented by supporting departments and agencies.

2. *Assess your capacity to accommodate functional needs.* The judge pointed out in several places in the summary judgment that departments and agencies had not assessed their capacity to meet the needs of people with disabilities. For example, the jurisdiction could not state which shelter sites were accessible and which were not or whether there were sufficient specialized transportation resources to support an evacuation.

This suggests to me that now more than ever we need to think strategically. That is, we need to assess need, perform a gap analysis of our resources, and have a plan for closing that gap. I don't believe that we can ever really close those gaps given our limited resources but we certainly can acknowledge them and make a good-faith effort to improve.

3. *Focus on the basics.* The judge was clearly concerned about three main areas: notification and warning, evacuation and transportation, and sheltering and temporary housing. These are core response functions that we should be able to perform and providing reasonable accommodations in these activities is something we should already be doing.
4. *Respond to recommendations of advocacy groups.* In 2008, the city's own Department

on Disability had stated that the emergency preparedness program was seriously out of compliance and made several recommendations that included surveying shelters, developing a memorandum of understanding with the Red Cross, and including the Department in planning for the city's alert and notification system. These are the same issues cited by the judge in her summary judgment.

I'm certain that a number of my colleagues will rush out and begin preparing annexes addressing access and functional needs, an approach decidedly *not* called for in *CPG 101 Developing and Maintaining Emergency Plans*. Instead CPG 101 recommends incorporating access and functional needs throughout your planning and provides a series of checklist by function to help address functional needs (see Chapter 4).

We need to rethink this a bit. The case in Los Angeles, I believe, sends a clear message that written policies are not enough – you need to be able to show a good faith effort to implement them. This means that just developing an annex will not meet the requirement. Your specific annexes must address functional needs and supporting department and agency plans will need to do so as well.

If we consider this closely, I don't believe that the case in Los Angeles need hold any terrors for emergency managers. Our standards already require us to involve key stakeholders and to take a programmatic approach. Planning guidance from FEMA already recommends that we incorporate access and functional needs into our plans. In essence, all this case is saying is, "Do your job!" 