

# ORIGIN TO DESTINATION SERVICE IN ADA PARATRANSIT

DOOR-TO-DOOR SERVICE IS REQUIRED WHEN NECESSARY

THIS SERIES OF TOPIC GUIDES INCLUDES:

- 1** Equipment Maintenance
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- 4** Telephone Hold Time in ADA Paratransit
- 5** Origin To Destination Service in ADA Paratransit
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A Series of  
Topic Guides  
for Transit  
Agencies,  
Riders, and  
Advocates on  
the Americans  
with Disabilities  
Act (ADA) and  
Transportation

The series is available at <http://dredf.org/ADAtg>

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## INTRODUCTION

This Topic Guide on Origin to Destination Service in ADA Paratransit<sup>3</sup> addresses Guidance from the U.S. Department of Transportation (DOT) on origin to destination service. The Guidance explains the Americans with Disabilities Act (ADA) obligation for transit agencies when paratransit riders need assistance beyond the curb, due to their disabilities. After a discussion of the DOT Guidance and its implications for ADA paratransit service, subsequent sections address what else riders and advocates need to know, including the rider's role, and what else transit agencies need to know.

The Topic Guide Series on ADA Transportation is for transit agencies, public transit riders, and disability advocates. The Topic Guides bring together the requirements of the ADA and DOT ADA regulation, Federal Transit Administration (FTA) determinations, and best operational practices on each topic. The Federal Transit Administration enforces the ADA in the area of publicly funded transit. Readers who wish to understand the most authoritative and up-to-date interpretations of ADA transportation requirements may wish to check both the text and endnotes of this Topic Guide to find specific FTA determinations on issues related to the DOT Origin to Destination Guidance.

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### **FTA determinations in ADA compliance reviews indicate key transit agency requirements and responsibilities.**

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The determinations FTA makes in its ADA compliance reviews indicate key transit agency requirements and responsibilities that are important for transit agencies to implement. In each ADA compliance review, FTA *Findings* are the basis for corrective actions by the transit agency. FTA *Recommendations* identify one possible way to address the Findings. Many of the reviewed agencies have implemented service improvements since the time of their reviews. The FTA ADA compliance reviews may be found in full at: [www.fta.dot.gov/civilrights/ada/civil\\_rights\\_3899.html](http://www.fta.dot.gov/civilrights/ada/civil_rights_3899.html), or go to [www.fta.dot.gov/ada](http://www.fta.dot.gov/ada) and select FTA ADA Compliance / ADA Compliance Review Final Reports.

The Topic Guide series on ADA Transportation also draws information from many other sources, including DOT Disability Law Guidance; FTA ADA Letters of Finding and Bulletins; Transportation Research Board and National Council on Disability publications; National Transit Institute courses; Easter Seals Project ACTION publications and Distance Learning Sessions; American Public Transportation Association draft Recommended Practices; and the recommendations of nationally recognized ADA paratransit operators, planners, and researchers on the best operational practices for implementing the ADA requirements.

## THE RIGHT TO ASSISTANCE BEYOND THE CURB (When Necessitated by Disability)

The Americans with Disabilities Act (ADA) classifies complementary paratransit service as origin to destination service. The ADA allows transit agencies to establish whether, or in what circumstances, they will provide door-to-door service or curb-to-curb service. In door-to-door service, the vehicle operator (driver) offers assistance from the rider's door to the vehicle, and comparable assistance at the destination. In curb-to-curb service, assistance is not provided until the rider reaches the curb. In either case, the driver is required to assist riders to enter and exit the vehicle.<sup>4</sup>

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**DOT requires transit agencies with curb-to-curb service to still provide assistance to riders who need it due to a disability.**

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The original U.S. Department of Transportation (DOT) ADA regulation, promulgated in 1991, expressly introduced the requirement for origin to destination service [49 C.F.R. § 37.129(a) and 49 C.F.R. Part 37, App. D, § 37.129]. On September 1, 2005, DOT released formal Disability Law Guidance on the subject of Origin to Destination Service.<sup>5</sup> This Guidance explains that the DOT interpretation of its ADA regulation requires transit agencies that adopt a policy of curb-to-curb service as the standard service mode must still provide additional assistance to riders who need it on the basis of disability.<sup>6</sup> This Guidance, which is available at [www.fta.dot.gov/civilrights/ada/civil\\_rights\\_3891.html](http://www.fta.dot.gov/civilrights/ada/civil_rights_3891.html), states:

The Department's ADA regulation, 49 CFR §37.129(a), provides that, with the exception of certain situations in which on-call bus service or feeder paratransit service is appropriate, "complementary paratransit service for ADA paratransit eligible persons shall be origin-to-destination service." This term was deliberately chosen ... to emphasize the obligation of transit providers to ensure that eligible passengers are actually able to use paratransit service to get from their point of origin to their point of destination.

[It complies with the ADA] for a transit provider to establish either door-to-door or curb-to-curb service as [their] basic mode of ... service. Where the local planning process establishes curb-to-curb service as the basic paratransit service mode, however, ***provision should still be made to ensure that the service available to each passenger actually gets the passenger from his or her point of origin to his or her destination point.*** To meet this origin to destination

requirement, service may need to be provided to some individuals, or at some locations, in a way that goes beyond curb-to-curb service.

For instance, the nature of a particular individual's disability or adverse weather conditions may prevent him or her from negotiating the distance from the door of his or her home to the curb. A physical barrier (e.g., sidewalk construction) may prevent a passenger from traveling between the curb and the door of his or her destination point. In these and similar situations, to ensure that service is actually provided "from the user's point of origin to his or her destination point," ***the service provider may need to offer assistance beyond the curb***, even though the basic service mode for the transit provider remains curb-to-curb. [Emphasis added]

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**An inflexible policy denying service beyond the curb is not appropriate.**

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The Guidance concludes:

Under the ADA rule, ***it is not appropriate for a paratransit provider to establish an inflexible policy that refuses to provide service ... beyond the curb in all circumstances. On an individual, case-by-case basis, paratransit providers are obliged*** to provide an enhancement to service when it is needed and appropriate to meet the origin-to-destination service requirement. We recognize that making individual, case-by-[case] judgments may require additional effort, but ***this effort is necessary to ensure that the origin-to-destination requirement is met***. [Emphasis added]

The Federal Transit Administration reinforced this conclusion in an ADA compliance review:

MTS's policy for level of passenger assistance for MTS Access and ADA Suburban Paratransit service is curb-to-curb service. According to its *Frequently Asked Questions* brochure, "clients requiring door-to-door service will not have their needs met on MTS Access/ADA Suburban Paratransit." This policy does not comply with the DOT ADA regulations (49 CFR § 37.129(a)) that require service on an "origin-to-destination" basis, which is further clarified in the DOT Guidance on Origin-to-Destination Service (issued September 1, 2005). In practice, most paratransit vehicle operators said that they do provide door-to-door service to riders who need additional assistance.<sup>7</sup>

## LIMITATIONS ON THIS RIGHT

In the Origin to Destination Guidance, DOT made it clear that this is not an unlimited right. The Guidance also states:

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### Fundamental alteration or undue burdens are not required.

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Transit providers are not required to take actions ... that would fundamentally alter the nature of the service or create undue burdens. In this respect, the Department interprets the scope of transit providers' origin to destination service obligation analogously to the general obligations of public entities under the ADA to provide program accessibility.

For example, ... [d]rivers would not have to provide services that exceed "door-to-door" service (e.g., go beyond the doorway into a building to assist a passenger). Nor would drivers, for lengthy periods of time, have to leave their vehicles unattended or lose the ability to keep their vehicles under visual observation ... These activities would come under the heading of "fundamental alteration"<sup>8</sup> or "undue burden."<sup>9</sup>

## IS ADVANCE NOTICE NECESSARY?

The DOT Guidance also states:

It would be reasonable for the transit provider to ask for advance notice from the passenger of a need for this assistance. ... In the case of a passenger who sought this assistance on a regular basis, this notice could be provided as part of the application process for paratransit eligibility or at the time that a change in circumstances made regular provision of assistance necessary. In the case of a passenger who sought this assistance on an occasional basis, we think that asking for advance notice at the time of reservation for the trip would be reasonable and consistent with the next-day service requirement of the [ADA]. ***If a passenger did not provide this notice, the transit provider would still need to make its best efforts to provide the needed assistance.*** [Emphasis added]

## TRANSIT POLICIES AND OPERATIONAL ISSUES

In meeting this ADA requirement, transit agencies need to make two key decisions:

1. Whether to provide door-to-door service as their standard service mode, for all trips, or only when needed by the rider, and
2. Regardless of their decision on the first question, what policies to establish regarding how to provide the required door-to-door service, considering many factors including safety and the need for vehicle operators to maintain effective control over the vehicle.

### DECISION #1:

#### WHETHER TO PROVIDE DOOR-TO-DOOR SERVICE FOR ALL TRIPS

The DOT Guidance on Origin to Destination Service permits a transit agency to establish a basic curb-to-curb policy and make exceptions to that policy for people whose disabilities necessitate additional service, or to provide door-to-door service for all trips.

Providing door-to-door service only on an as-needed basis adds to the operational complexity of paratransit operations. The need for assistance beyond the vehicle must be determined and accurately recorded during the trip booking process. Then it must be accurately transmitted to drivers. Inconsistencies in providing assistance can contribute to missed connections and missed trips. As one General Manager stated:

Prior to adopting universal door to door service, our system provided service to the door upon the passenger's request. ... We discovered that having the service be variable (some passengers got door to door, others got curb to curb) caused significant reliability problems. Passengers would wait at the door because this is where they were dropped off, [but] the driver who was picking up the passenger would be waiting at the curb because he/she was not aware that the passenger had been taken to the door by the first operator; or the driver understood that the passenger would be waiting at a different door. Even in our relatively small system, we discovered that communication between our ... operators and our dispatchers to share specialized passenger information was difficult and resulted in numerous missed trips and no-shows. ... By having consistent service standards we can more effectively train and inform our operators to deliver reliable service.<sup>10</sup>

Research conducted before the DOT Origin to Destination Guidance was released showed that approximately 50 percent of transit agencies provided door-to-door service, so the number today is likely to be higher.<sup>11</sup> The vast majority of drivers in curb-to-curb systems say they provide door-to-door assistance when it is needed, as part of customer service and also for



practical reasons. As the National Council on Disability pointed out, general effectiveness is not increased if drivers must wait until a rider notices that the vehicle has arrived, or watch someone struggle rather than assist the person.<sup>12</sup>

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**Door-to-door service can be operationally efficient as well as customer-friendly.**

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Thus, a full-time door-to-door policy can be both customer-friendly and operationally efficient. It can actually reduce travel times, because the driver can locate the rider sooner; assist the rider to enter the vehicle more quickly; and avoid missing the rider, which can cause significant scheduling problems if a vehicle must return to pick the person up. Door-to-door service can have a positive impact on on-time performance.

## **DECISION #2: WHAT LOCAL POLICIES TO ESTABLISH TO IMPLEMENT THE NEEDED DOOR-TO-DOOR SERVICE**

Whether or not transit agencies choose to provide door-to-door service as their standard mode for all rides or only as needed, they should still establish local policies regarding how to carry out the door-to-door service they do provide under the DOT Guidance on Origin to Destination Service.

### ***Local Policies Vary***

Most door-to-door policies do not allow the vehicle operator to go into the dwelling or otherwise go out of sight of the vehicle, or lose effective control over the vehicle, particularly if there are other riders on board. The most common ways to define “effective control over the vehicle” are losing sight of the vehicle, or traveling more than a certain distance from the vehicle. A distance of 150 feet is typical; that is the policy of MetroAccess in Washington D.C., for example.<sup>13</sup>

But there is a great deal of variation among transit agencies. For example, one agency reported that, according to its policy, “Drivers are ... instructed to not go through any door (although they can open public doors and announce their presence).”<sup>14</sup> And the MetroAccess policy states, “At public entrances, drivers may open the first exterior door to announce their arrival (and if the entrance has a second door nearby that leads to a waiting area, drivers may open the second door to announce their arrival).”<sup>15</sup> By contrast, in one small California city, vehicle operators will go upstairs to an upper-floor office to let a rider know they’re there.<sup>16</sup>

If transit agencies are concerned that riders who remain on the vehicle will put the vehicle into motion, they are encouraged to investigate ways vehicles can be secured if the driver leaves for short periods of time. For example, DART First State (Delaware) paratransit buses can be safely secured in this circumstance. Another possible variation for transit systems is to establish a policy that drivers must keep vehicles in sight if there are other riders on board. If there are no other riders and the driver can secure the vehicle, then the line of sight isn't necessary.

As one ADA paratransit Executive Director reported:

Our providers do not have strict policies of keeping visual sight of the vehicle—that really is not possible in an urban area—they don't get too far away—but they might have to go around a corner or into the lobby of a building to announce their arrival. We have found there is more risk in leaving someone at the curb, than in leaving the sight line of the vehicle for a minute.<sup>17</sup>

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**Situations that lie outside the policy may often be accommodated informally.**

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Even for transit providers with clear policies, situations that lie outside the policy may often be accommodated informally with riders. For example, riders sometimes arrange for a nearby location where the van can get to the curb or get off the street, if parking is unavailable.

Local door-to-door policies often include other limitations, based on the transit agency policy about what actions drivers can safely perform. The most common is “door-to-door, and will assist riders who use manual wheelchairs up or down one step or curb.” Some systems allow two steps, although rarely more.

Other issues typically addressed in transit agency policies are what is an adequate path of travel and whether any weather conditions may pose limits. Policies should also address more general disability non-discrimination principles such as what constitutes a direct threat to others (significant risk of substantial harm) or legitimate safety risk,<sup>18</sup> what constitutes a fundamental alteration,<sup>19</sup> and what constitutes communications access (including auxiliary aids and services),<sup>20</sup> as well as common examples of how to apply them.

### ***Identifying Passengers***

Best operational practices in identifying passengers are also important to effectively implement the DOT Disability Law Guidance on Origin to Destination Service. For example,

one paratransit rider who is blind reported an incident when she was waiting at length for a ride at a busy street, only to discover, after a kind passer-by aided her, that her van was parked right in front of her. The driver said he got there early and had just been waiting; yet he had not spoken to her.<sup>21</sup> The driver should have gotten out of the vehicle and asked if anyone was waiting for paratransit. Good policies for identifying passengers and helping passengers identify vehicles are particularly important for many riders with vision and cognitive disabilities as well as other disabilities, and in situations including inclement weather and low light that make it difficult to identify waiting vehicles. Reasonable assistance is sometimes needed to make the connection between vehicle operator and passenger, in addition to providing physical assistance.

### ***Operational Judgment Needed***

All these provisions should be incorporated into formal local policy and made part of vehicle operator training. Even with thorough training, vehicle operators will need to exercise some operational judgment while on the street. This is comparable to many other jobs, from security to school teaching, wherein situations will arise that could not be predicted in advance. Training should provide as much basic understanding as possible, and include when to rely on back up from a dispatcher or superintendent.

### **ADDITIONAL EXAMPLES: WHEN IS DOOR-TO-DOOR SERVICE REQUIRED?**

To augment the above information regarding transit agency requirements and policies, the following questions present additional examples that illustrate how to apply the DOT Origin to Destination Service Guidance.

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**Many transit agencies will provide assistance up or down one step or curb.**

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#### **A. STEPS — RIDER USING WHEELCHAIR**

##### **Must a paratransit vehicle operator help a wheelchair user down a flight of steps?**

A flight of steps presents too great a risk of harm (direct threat) and is not required. Many transit agencies will provide assistance up or down one step or curb, and a few will provide assistance up or down two steps or, in rare cases, more steps. For example, the Massachusetts

Bay Transit Authority (MBTA) in Boston will assist riders who use manual wheelchairs over one curb and/or step.<sup>22</sup> Similarly, New York City Transit will help riders up or down the curb or one step.<sup>23</sup> These are good customer service policies.

## B. STEPS — AMBULATORY RIDER WITH MOBILITY DISABILITY

**If a rider walks with limited mobility, must a paratransit vehicle operator help him or her up and down steps?**

**Yes.** Assistance up and down the steps of the vehicle as well as steps going to and from the vehicle would be reasonable assistance for someone who needs it due to a disability, assuming other safety policies (such as maintaining effective continuing control of the vehicle) are not compromised.

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**Moving objects may be required, but not extensive work to clear a path.**

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## C. CLEAR PATH OF TRAVEL

**A customer requested door-to-door service, but his accessible entrance is blocked by debris, tree branches, a garbage can, and children's toys. Can the transit agency require the customer or his family to provide a clear path of travel?**

The vehicle operator is not required to do extensive work to clear a path of travel, which would be a fundamental alteration of ADA paratransit service. But a more easily performed action, such as moving one or two objects out of a wheelchair user's path, would be required.

## D. DOORS, RAMPS

**Does the Origin to Destination Guidance require opening a door for a rider, such as at the dialysis unit?**

**Must a vehicle operator push a manual wheelchair user up a ramp, even if the ramp complies with the ADA?**

**Yes.** These are both actions that the DOT Origin to Destination Guidance requires, if the rider needs them. Opening the first exterior door to a dialysis unit or other public waiting space

would be required, if needed by the rider. However, pushing a person up an excessively steep slope that presents too great a risk of harm (direct threat) is not required.

## E. CARRYING PACKAGES

### **Does the DOT Guidance on Origin to Destination Service require a driver to carry groceries and other packages?**

If a rider needs door-to-door service because of his or her disability, and is carrying packages that would be allowable on the fixed route service, then the DOT Origin to Destination Guidance would require vehicle operators to carry a limited amount of groceries and other packages, if needed by the rider. Though the need for assistance with carrying packages is not, in and of itself, a basis for ADA paratransit eligibility.

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**Pushing someone through snow may be required.**

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## F. SNOW

### **Does the Origin to Destination Service Guidance require pushing someone through snow?**

**Yes.** This is the kind of action that was contemplated by the Guidance when it discussed adverse weather conditions.<sup>24</sup> In some situations, such as deep snow or very icy conditions, it may be a fundamental alteration or direct threat, and therefore not required. But there are many other circumstances, such as one or two inches of snow, where the operator can reasonably assist the person to reach the vehicle. However, a vehicle operator is not required to shovel a rider's driveway or walkway.

## G. DOORBELL

### **Must the vehicle operator ring at the apartment door?**

**Yes.** Going to the outside door of a building is required. And yes, knocking or ringing the doorbell at the outside building door can be part of required door-to-door service, particularly if needed to communicate to the rider that the vehicle has arrived.

## H. TWO STAFF PERSONS

**If needed door-to-door service requires two transit agency staff persons to come on the vehicle, rather than one vehicle operator, is that required?**

**No.** This would be a fundamental alteration of ADA paratransit service and is not required.

## I. LONG STEEP CURVED DRIVEWAY

**A paratransit eligible person has a long, steep, curved driveway that he is too frail to walk down. The driver would lose sight of the vehicle if she went up the driveway to the customer. What is required in this situation?**

Ideally, the transit agency and the rider would communicate about this condition before the vehicle arrives. Some extremely steep slopes could be too dangerous to assist someone down. Some curved driveways could require the vehicle operator to lose sight of the vehicle, which some transit agencies disallow. But it may not reach the level of fundamental alteration or direct threat for the driver to go part way. Perhaps someone else at home or on site could do the rest. If the driver radios in and says she can't go all the way to the door, the dispatcher would likely call the rider to see if there is someone who can assist him to where the driver can meet them both.

## WHAT ELSE RIDERS AND ADVOCATES NEED TO KNOW

### THE RIDER'S ROLE

The rider has a role to play as transit agencies implement the Origin to Destination Service Guidance. Riders should be prepared and watch for vehicles when they are able to do so. Assisting the transit agency with prompt boarding of vehicles can help to ensure better on-time performance that benefits all riders.

Riders, disability advocates, and transit agencies should all work to ensure that the best practices in origin to destination service (many of which are described in this Topic Guide) are implemented. Riders are important sources of information about service quality and can help transit agencies with service monitoring efforts. And as the National Council on Disability has shown, disability advocates can play an important role in improving the performance of their transit agencies.<sup>25</sup>

## THE DRIVER'S ROLE

Riders and advocates should understand the role of the ADA paratransit vehicle operator (driver) under the Origin to Destination Service Guidance. While the DOT Guidance does require assistance to and from the vehicle, if needed by the rider, the driver does not assume the role of a personal attendant. For example, a driver cannot wait with a rider at the destination. Also, a transit agency is allowed to restrict drivers from entering a building.

Riders are encouraged to note the examples in this Topic Guide describing what driver actions are not required, and what limitations the transit agency may impose. These sections above describe limitations on required door-to-door service: *Additional Examples: When is Door-to-Door Service Required?* (p. 11), *Limitations on this Right* (p. 7), and *Decision #2: What Local Policies to Establish to Implement the Needed Door-to-Door Service* (p. 9).

## ENFORCEMENT OF YOUR ADA RIGHTS

If you think your transit agency is not in compliance with the ADA, there are several avenues available for enforcement. You may pursue them in any order; you are not required to use them in the order listed below.

### **1. File a local complaint**

You can file a complaint with your local transit agency and/or otherwise communicate with local agency staff. Transit agencies are required to have procedures to receive, resolve, maintain records of, and report on complaints.<sup>26</sup> It is best to file the complaint quickly, as soon as possible after the problem, and keep a copy of it. Include as many details as possible (who, what, when, where, and so on). Find the transit agency Customer Service department or ADA Coordinator to learn how to submit the complaint. Transit agencies usually have one or more of the following options for filing complaints: by e-mail, through their websites, by telephone, and/or by postal mail. If the issue remains unresolved after allowing a reasonable amount of time for a response, you can file a complaint with the Federal Transit Administration in Washington D.C. and show your local complaint records. [Also see *File an ADA complaint in Washington, D.C.* below, p. 16.]

### **2. Engage in local advocacy**

You can also engage in a variety of efforts to advocate for changes by your local transit agency.

You may be able to obtain assistance from local, state, and national disability rights organizations, including:

- Your state’s Protection and Advocacy agency, which you can find by going to <http://ndrn.org> and scrolling down to the “Get help in your state” section, or by calling 202/408-9514 (or by TTY, 202/408-9521).
- Your local Center for Independent Living (CIL), which you can find by going to [www.ilru.org/html/publications/directory/index.html](http://www.ilru.org/html/publications/directory/index.html) or calling 713/520-0232 (Voice/TTY). You can also find CILs by going to [www.ncil.org/directory.html](http://www.ncil.org/directory.html).

In some cities, the disability community and the transit agency have succeeded in building a collaborative relationship in which they work together to improve transit service for people with disabilities.

### **3. File an ADA complaint in Washington, D.C.**

You can file a complaint with the Office of Civil Rights of the Federal Transit Administration (FTA) in Washington, D.C., by:

- Filling out and sending the Rider Complaint Form at [www.fta.dot.gov/civilrights/ada/civil\\_rights\\_3889.html](http://www.fta.dot.gov/civilrights/ada/civil_rights_3889.html)
- Going to the FTA ADA website at [www.fta.dot.gov/ada](http://www.fta.dot.gov/ada) and selecting ADA Technical Assistance / File an ADA Complaint with the FTA
- Sending a complete letter to:

Director  
FTA Office of Civil Rights  
East Building – 5th Floor, TCR  
1200 New Jersey Ave. SE  
Washington, D.C. 20590

Include as many details as possible (who, what, when, where, and so forth), including a record of ongoing ADA violations you believe have occurred. As the FTA Office of Civil Rights states on the Rider Complaint Form:

You should include specific details such as names, dates, times, route numbers, witnesses, and any other information that would assist us in our investigation of your allegations. Please also provide any other documentation that is relevant to this complaint.<sup>27</sup>

### **4. File a lawsuit**

The other method of enforcing the ADA is to file a lawsuit.



## OTHER RESOURCES

You will find many other resources on the FTA ADA website at [www.fta.dot.gov/ada](http://www.fta.dot.gov/ada). You may also contact the FTA Office of Civil Rights by e-mail at [FTA.ADAAssistance@dot.gov](mailto:FTA.ADAAssistance@dot.gov) or by telephone at 202/366-4018 or 888/446-4511 (or by TTY at 800/877-8339).

In addition to providing technical assistance via telephone and e-mail, the FTA Office of Civil Rights conducts ADA compliance reviews of several transit agencies every year. These are posted on the FTA ADA website at [www.fta.dot.gov/civilrights/ada/civil\\_rights\\_3899.html](http://www.fta.dot.gov/civilrights/ada/civil_rights_3899.html).

Additional resources may be available from a variety of local, state, and national disability rights organizations.

## WHAT ELSE TRANSIT AGENCIES NEED TO KNOW

### PUBLIC INPUT IN THE PLANNING PROCESS

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**Include public input when revising policies.**

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If transit agencies revise their rider assistance policies, this should include full public input. Rider assistance is a key element of ADA paratransit service design, and the public should be consulted on the proposed policy changes in detail.

### DETERMINING WHEN ASSISTANCE IS NEEDED

If transit agencies decide to provide door-to-door assistance on an as-needed basis, they need a process for determining when assistance is needed. The DOT Origin to Destination Guidance suggests that this might be done as part of the eligibility process or the trip reservations process. The Guidance also indicates that transit agencies may request advance notice of the need for assistance, but even if assistance is not requested in advance, best efforts to provide the assistance are required.

There may be riders for whom assistance beyond the curb is appropriate in most situations. In these instances, the eligibility process might be used to identify the needs. For example, the application form might ask if assistance beyond the curb is sometimes or always needed. The same questions could be asked in any interviews conducted. Then, any identified needs can be entered into the main rider record. They should then be included on all trip booking records.

Transit agencies should be aware that the eligibility process will not identify all needed assistance for every situation that will arise throughout a rider's term of eligibility. A rider's need for assistance will vary from location to location. Also, a rider who does not anticipate the need for assistance when applying for eligibility may still have situations arise when assistance is necessary. Therefore, the eligibility process is best seen as the time when the need for assistance might first be identified—it should not be used as the only way that assistance may be requested.

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### **The eligibility process will not identify all needed assistance.**

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Beyond the eligibility process, transit agencies that choose to provide assistance beyond the curb on an as-needed basis should develop procedures for recording assistance requests during the trip booking process, and then for including this information on run manifests. It is recommended that reservationist scripts include a specific question such as: "Will you need driver assistance getting to and from the vehicle?" or "Will you need door-to-door assistance?" Rider responses should be entered into the comments fields on the trip-booking screen. If the eligibility process has determined that assistance is needed and it automatically appears on the trip-booking screen, it is still a good idea for reservationists to confirm the need by a statement such as: "I see you will need driver assistance to and from the vehicle."

## **ASSESSING OBSTACLES TO PROVIDING ASSISTANCE**

Transit agencies should establish procedures for promptly investigating specific pickup and drop-off locations as vehicle operators identify problems, in order to determine the best location to perform an alternate pickup or drop-off. For example, a driver might encounter a situation where the path of travel has barriers that prevent safe assistance to or from the door, such as a steep slope or more than the maximum number of steps allowed. When these situations occur, road supervisors should be used to assess the site and determine whether or not assistance can be safely provided. If assistance cannot be provided, this should be brought to the rider's attention and alternatives for providing service should be explored (e.g. another entrance or defined meeting point). Once assessed and resolved, the information should then be captured and automatically recalled when trips are booked to or from this same location in the future. Note that this is not a new process for paratransit providers. Agencies already use road supervisors to assess pickup and drop-off locations that drivers learn vehicles cannot safely access (for example, alleys, low overhangs, narrow roads, and so forth).

## VEHICLE OPERATOR TRAINING

Regardless of whether assistance is the norm or is provided on an as-needed basis, drivers should be trained on the transit agency policies and on how to provide assistance properly to and from the vehicle to riders with various types of disabilities.

## ENSURING VEHICLE OPERATORS HAVE INFORMATION ABOUT ASSISTANCE

It is important to ensure that the information collected in the eligibility and trip-booking processes is listed on run manifests or mobile data terminals (MDTs) for drivers. Vehicle operators should be trained to always check for these notes and instructions. If MDTs are used and trip information is transmitted electronically, it is important that drivers are trained to know where to look for this information. On many MDTs, special comments such as this are not listed on the primary screen; drivers must view a secondary screen to see them. Training should stress the importance of always checking this secondary screen at each and every pickup.

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**Record assistance information. Include it on run manifests and MDTs.**

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Thoroughness and consistency are critical if assistance is only to be provided as needed. If the policy is not consistently and thoroughly applied, riders may expect drivers to come to the door and may not look for vehicles to arrive. Missed connections and missed trips may be the result. FTA indicated the importance of thoroughness of recording and transmitting this information, stating in an ADA compliance review:

Finding: "COTA's policy of providing a base level of curb-to-curb service and then providing additional assistance as needed meets regulatory requirements. Most of the time the processes for recording and providing additional assistance appear to work. There was some evidence from riders and drivers that the need for additional assistance sometimes may not be requested or may not be recorded on run manifests. COTA may find it helpful to review and strengthen these procedures."

Recommendation: "COTA should consider highlighting in its public information the need for riders to indicate when they are booking trips if they require assistance beyond the vehicle. COTA also should consider strengthening procedures to record detailed information on the need for assistance during the

trip booking process. Finally, COTA should emphasize in driver retraining the need to provide additional assistance as noted on the schedules.”<sup>28</sup>

## EDUCATING RIDERS

For transit agencies that provide assistance only as needed, rider education is vital. Riders need to know that assistance must be requested and how to request it. This information should be included in Rider Guides, in “Helpful Tips” flyers, in rider newsletters, and even on phone recordings as riders wait on hold.

## USE OF TAXIS IN ADA PARATRANSIT SERVICE

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**Taxis providing ADA paratransit must follow the same policies.**

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Taxi companies that perform ADA paratransit service must also follow origin-to-destination policies and practices. Taxi drivers must receive the same training as paratransit vehicle operators to carry out the transit agency rider assistance policies.

## TRANSFERS MUST BE ATTENDED WHEN NEEDED BY RIDER

In another ADA compliance review, FTA found that transit agencies may not establish policies that require any and all riders to undergo unattended paratransit transfers between vehicles. Rather, FTA called for attended (direct vehicle to vehicle) transfers for riders who cannot be left unattended. The finding stated:

For paratransit trips that require a vehicle transfer, MTS’s policy allows a passenger to “be dropped off and left unattended for up to 1 hour at a transfer point. ... The drivers operate according to a schedule and cannot wait with clients for the next vehicle to arrive ...” This policy requires, de facto, that individuals who cannot be left unattended due to their disability must travel with attendants. This does not meet the DOT ADA regulatory criteria in § 37.5(e), which does not allow systems to require that individuals travel with attendants. It also does not meet the intent of § 37.123(e)(1), which does not consider a transit service to be accessible to individuals with disabilities if these individuals cannot use the service independently. It also does not meet § 37.129(a), which requires that service be “origin-to-destination.”<sup>29</sup>

## COMPLAINT INVESTIGATION

The thorough investigation of all complaints related to the use of ADA paratransit service is an important part of monitoring and compliance. Transit agencies should ensure that all rider complaints are recorded and investigated. Transit agencies are required to have procedures to receive, resolve, maintain records of, and report on complaints.<sup>30</sup>

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**Thorough complaint investigation is an important part of ADA compliance.**

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Transit agencies should provide timely responses to riders with information about the outcome of investigations. Transit systems should then use information obtained from investigations to address any performance issues and improve service, as an integral part of their ADA compliance effort.

## GENERAL RESOURCES FROM FTA

Many ADA resources are available on the website of the Office of Civil Rights of the Federal Transit Administration at [www.fta.dot.gov/ada](http://www.fta.dot.gov/ada). FTA Office of Civil Rights may be contacted by e-mail at [FTA.ADAAssistance@dot.gov](mailto:FTA.ADAAssistance@dot.gov) or by phone at 202/366-4018 or 888/446-4511 (or by TTY at 800/877-8339).

## ENDNOTES

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- 1 The authors of the Topic Guide Series on ADA Transportation are Marilyn Golden, Policy Analyst, Disability Rights Education & Defense Fund (DREDF) and Russell Thatcher, Senior Transportation Planner, TranSystems Corporation.

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The authors also extend appreciation to DREDF staff Ann McDonald-Cacho, Dave Nold, Julia Epstein, Linda D. Kilb, and Katie Keil.

- 2 This report was funded through a cooperative agreement between the Disability Rights Education & Defense Fund (DREDF) and the Federal Transit Administration (FTA), U.S. Department of Transportation. The views and policies expressed herein do not necessarily represent the views or policies of the Federal Transit Administration. The United States government assumes no liability for the contents or use of this report.
- 3 This Topic Guide discusses the provisions of the Americans with Disabilities Act (ADA) Department of Transportation (DOT) regulation at 49 C.F.R. § 37.129(a) and 49 C.F.R. Part 37, App. D, § 37.129, available at [www.fta.dot.gov/civilrights/ada/civil\\_rights\\_3906.html](http://www.fta.dot.gov/civilrights/ada/civil_rights_3906.html).
- 4 49 C.F.R. § 37.165(f) and 49 C.F.R. Part 37, App. D, § 37.165.

- 5 *Origin to Destination Service*, Disability Law Guidance, U.S. Department of Transportation, September 1, 2005, available at [www.fta.dot.gov/civilrights/ada/civil\\_rights\\_3891.html](http://www.fta.dot.gov/civilrights/ada/civil_rights_3891.html).
- 6 With regard to its legal authority, the DOT Disability Law Guidance on Origin to Destination Service states, "This guidance has been approved through the Department of Transportation's Disability Law Coordinating Council as representing the official views of the Department on this matter." DOT enforces the public transit provisions of the ADA, and its enforcement actions carry out the views in its Guidance.
- 7 In this ADA compliance review, FTA found that under the DOT ADA regulation and the DOT Guidance on Origin to Destination Service, a transit agency must provide door-to-door service when riders require this level of assistance. The FTA finding is above. The FTA recommendation stated:

Recommendation: "MTS should develop new policies that allow vehicle operators to provide door-to-door service when riders require this level of assistance. MTS should train operators to provide this assistance. MTS may note in rider files and on the operator manifests when this additional assistance would be needed."

Federal Transit Administration Compliance Review of Metropolitan Transit System (MTS), San Diego, California, *ADA Complementary Paratransit Service Compliance Review*, conducted February 5 – 8, 2008, Final Report dated June 4, 2009, pp. 31 and 32, available at [www.fta.dot.gov/civilrights/ada/civil\\_rights\\_3899.html](http://www.fta.dot.gov/civilrights/ada/civil_rights_3899.html).

- 8 A **fundamental alteration** is a modification that is so significant that it alters the essential nature of the services offered. See 42 U.S.C. §12182(b)(2)(a)(ii) and 28 C.F.R. § 36.302; and 42 U.S.C. § 12182(b)(2)(A)(ii), 28 C.F.R. §35.130(b)(7) and 28 C.F.R. Part 35, App. A, § 35.130(b)(7). See also *PGA Tour, Inc. v. Martin*, 532 U.S. 661 (2001), and additional potentially relevant judicial authority including *Burkhart v. Washington Metropolitan Transit Auth.*, 112 F.3d 1207 (D.C. Cir. 1997); *Melton v. Dallas Area Rapid Transit*, 391 F.3d 669 (5<sup>th</sup> Cir. 2004); and *Boose v. Tri-County Metropolitan Trans. Dist. of Oregon*, 587 F.3d 997 (9<sup>th</sup> Cir. 2009).
- 9 Certain obligations imposed by federal disability civil rights laws, such as Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, do not require actions that constitute an undue burden. **Undue burden** means significant difficulty or expense. Determination of what constitutes an undue burden must be made on a case-by-case basis, based on the resources of the covered entity. If a requested action is an undue burden, the

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covered entity must provide an alternative action that would not be an undue burden, if one exists, which would ensure, to the maximum extent possible, that individuals with disabilities receive the services offered by the covered entity. This “undue burden” concept was first identified in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), prior to the ADA. See also 42 U.S.C. § 12182(b)(2)(A)(iii), 28 C.F.R. §§ 36.104, 36.303, and 28 C.F.R. Part 36, App. B, §§ 36.104, 36.303; and 42 U.S.C. § 12134(b), 28 C.F.R. §§ 35.150(a)(3), 35.164 and 28 C.F.R. Part 35, App. A, § 35.150(a)(3). Additional potentially relevant judicial authority includes *Burkhart v. Washington Metropolitan Transit Auth.*, 112 F.3d 1207 (D.C. Cir. 1997), *Melton v. Dallas Area Rapid Transit*, 391 F.3d 669 (5<sup>th</sup> Cir. 2004), and *Boose v. Tri-County Metropolitan Trans. Dist. of Oregon*, 587 F.3d 997 (9<sup>th</sup> Cir. 2009).

- 10 Richard DeRock, General Manager, Link Transit, Wenatchee, Washington, *Comments on Department of Transportation Docket OST-2006-23985*, April 19, 2006, p. 4.
- 11 “Systems ... were asked to describe the level of driver assistance provided: curb-to-curb, door-to-door, or door-through-door. Respondents could check more than one answer. ... 50.8% indicated that service is provided door-to-door, and 6.7% each indicated that service was provided door-through-door or in some ‘other’ way. ... Most of the ‘other’ responses indicated that service is provided door-to-door upon request or on a ‘common sense’ basis.” Transit Cooperative Research Program (TCRP) Synthesis 60, *Practices in No-Show and Late Cancellation Policies for ADA Paratransit*, Transportation Research Board, National Academy of Sciences, Washington D.C., 2005 (research conducted in 2004), p. 10.
- 12 National Council on Disability, *The Current State of Transportation For People With Disabilities in the United States*, June 13, 2005, p. 80.
- 13 MetroAccess Door-to-Door Service Policy, Washington Metropolitan Area Transit Authority, 2008.
- 14 Richard DeRock, *op. cit.*, p. 4.
- 15 MetroAccess Door-to-Door Service Policy, *op. cit.*
- 16 Personal communication with a California disability services program director who wished to remain anonymous, May 2006.
- 17 Karen Hoesch, Executive Director, Access Transportation Systems, Pittsburgh, Pennsylvania, personal communication, January 3, 2007.



- 18 Federal disability civil rights laws, such as Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, do not require actions that pose a direct threat or compromise legitimate safety requirements. A **direct threat** is a significant risk to the health or safety of others that cannot be eliminated or reduced by a modification of policies, practices, or procedures, or by the provision of auxiliary aids and services. Legitimate safety requirements must be based on actual risks and facts about particular individuals, not on speculation, stereotypes, or generalizations about individuals with disabilities or on the basis of presumptions about what a class of individuals with disabilities can or cannot do. These concepts were elaborated in *Sch. Bd. of Nassau Cnty, Fla. v. Arline*, 480 U.S. 273 (1987), prior to the ADA. See also 42 U.S.C. § 12113(b) and 29 C.F.R. § 1630.2(r); 42 U.S.C. § 12182(b)(3) and 28 C.F.R. § 36.208; and 42 U.S.C. § 12182(b)(2)(A)(i), 28 C.F.R. § 35.130(b)(8) and 28 C.F.R. Part 35, App. A, § 35.130(b)(8). Additional potentially relevant judicial authority includes *Burkhart v. Washington Metropolitan Transit Auth.*, 112 F.3d 1207 (D.C. Cir. 1997), *Melton v. Dallas Area Rapid Transit*, 391 F.3d 669 (5<sup>th</sup> Cir. 2004), and *Boose v. Tri-County Metropolitan Trans. Dist. of Oregon*, 587 F.3d 997 (9th Cir. 2009).
- 19 Fundamental alteration, *op. cit.*
- 20 **Auxiliary aids and services** means measures to ensure **communication access** for people with impaired vision, speech, or hearing. See 42 U.S.C. § 12186(a)(1) and 49 C.F.R. § 37.167(f); 42 U.S.C. § 12182(b)(2)(a)(iii) and 28 C.F.R. § 36.303; and 42 U.S.C. § 12186(b) and 28 C.F.R. Subpart E, §§ 35.160 – 35.164. Additional potentially relevant judicial authority includes *Burkhart v. Washington Metropolitan Transit Auth.*, 112 F.3d 1207 (D.C. Cir. 1997); *Melton v. Dallas Area Rapid Transit*, 391 F.3d 669 (5<sup>th</sup> Cir. 2004); and *Boose v. Tri-County Metropolitan Trans. Dist. of Oregon*, 587 F.3d 997 (9th Cir. 2009).
- 21 Julie Carroll, Senior Attorney Advisor, National Council on Disability, Washington D.C., personal communication, February 23, 2009.
- 22 Massachusetts Bay Transit Authority, Riding the T, Accessible Services, *The Ride Guide*, available at [www.mbta.com/riding\\_the\\_t/accessible\\_services/default.asp?id=7112](http://www.mbta.com/riding_the_t/accessible_services/default.asp?id=7112).
- 23 New York City Transit, *Guide to Access-a-Ride*, available at [www.mta.info/nyct/paratran/guide.htm](http://www.mta.info/nyct/paratran/guide.htm).
- 24 Easter Seals Project ACTION Audio Conference, *Open Mic – What's on Your Mind – A General Session on the ADA*, November 9, 2005 with and Cheryl Hershey and David Knight, U.S. Department of Transportation, Federal Transit Administration, Office of Civil Rights.

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- 25 National Council on Disability, *op. cit.*, pp. 97 – 99.
- 26 This requirement is not in the DOT ADA regulation, but rather in what is called Part 27. Part 27 contains other transit agency obligations including the DOT regulation for Section 504 of the Rehabilitation Act of 1973, another disability rights law. Part 27, which is formally cited as 49 C.F.R. Part 27, is available at [www.fta.dot.gov/civilrights/ada/civil\\_rights\\_3907.html](http://www.fta.dot.gov/civilrights/ada/civil_rights_3907.html). The reporting requirement is at 49 C.F.R. § 27.13(b), 49 C.F.R. Subpart C, §§ 27.121 – 27.129.
- 27 Federal Transit Administration Office of Civil Rights, *Rider Complaint Form*, available at [www.fta.dot.gov/civilrights/ada/civil\\_rights\\_3889.html](http://www.fta.dot.gov/civilrights/ada/civil_rights_3889.html).
- 28 Federal Transit Administration Compliance Review of Central Ohio Transit Authority (COTA), Columbus, Ohio, *ADA Complementary Paratransit Service Compliance Review*, conducted February 6 – 9, 2007, Final Report dated November 15, 2007, pp. 31 – 32, available at [www.fta.dot.gov/civilrights/ada/civil\\_rights\\_3899.html](http://www.fta.dot.gov/civilrights/ada/civil_rights_3899.html).
- 29 In this ADA compliance review, FTA found that transit agencies may not require that all riders undergo unattended transfers between vehicles. The transit agency must provide attended transfers for riders who cannot be left unattended. The FTA finding is above. The FTA recommendation stated:

Recommendation: “MTS should revise its transfer policies to properly serve riders who cannot be left unattended, or who, because of their disability, are not able to independently transfer at the MTS transfer sites. MTS should not require these riders should to travel with attendants. MTS should provide either direct service or an attended transfer.”

Federal Transit Administration Compliance Review of Metropolitan Transit System (MTS), San Diego, California, *op. cit.*

- 30 This requirement is not in the DOT ADA regulation, but rather in what is called Part 27. Part 27 contains other transit agency obligations including the DOT regulation for Section 504 of the Rehabilitation Act of 1973, another disability rights law. Part 27, which is formally cited as 49 C.F.R. Part 27, is available at [www.fta.dot.gov/civilrights/ada/civil\\_rights\\_3907.html](http://www.fta.dot.gov/civilrights/ada/civil_rights_3907.html). The reporting requirement is at 49 C.F.R. § 27.13(b), 49 C.F.R. Subpart C, §§ 27.121 – 27.129.