

OUTLINES ON THE AMERICANS WITH DISABILITIES ACT (ADA)

by the Disability Rights Education and Defense Fund (DREDF)

TRANSPORTATION

(Titles II and III)

I. Publicly Funded Transportation

Publicly funded transportation means transportation by bus or rail or any other conveyance, other than air travel, that provides the general public with general or special service on a regular and continuing basis. Includes boats, ships, ferries. Air travel is excluded because it is covered by the Air Carrier Access Act of 1986. Requirements effective October 7, 1991 unless otherwise stated.

A. Publicly Funded Buses (fixed route)

1. Newly Purchased Buses

- a. It is discrimination for a public entity to purchase or lease a new fixed route bus vehicle, for which a solicitation was made later than August 25, 1990, if the vehicle is not readily accessible to and usable by individuals with disabilities
- b. Fixed route transit service operates along a prescribed route according to a fixed schedule, in contrast with demand response transit service, where a vehicle is dispatched or routed in response to a potential rider's request
- c. "Accessible" means that vehicles must comply with technical standards in the Department of Transportation regulations. Full-sized buses must have a lift or other means of providing access to wheelchair users as well as a minimum of two wheelchair securement devices. Lift platforms must be thirty inches (30") by forty-eight inches (48"). These

standards also require accessibility features to assist persons with other disabilities including mobility impairments, sensory impairments, and cognitive impairments

- d. Over-the-road buses (OTRB's) acquired by public entities must comply with these requirements. OTRB's are buses with an elevated passenger deck located over a baggage compartment. The temporary exception OTRB's obtained by *private* entities does not apply to public entities
- e. Retrofitting of previously purchased buses not required. Public transit bus fleets will become accessible gradually over time, as old buses are replaced
- f. Narrow temporary exception from purchasing accessible buses if lifts are unavailable

2. Used Buses

- a. If a public entity purchases or leases a used bus after August 25, 1990, the entity must make demonstrated good faith efforts to purchase or lease an accessible vehicle. Demonstrated good faith efforts include:
 - i. Bid must specify accessible vehicles
 - ii. Nationwide search
 - iii. Advertisement in trade publication
 - iv. Contract transit trade organizationMust maintain records for 3 years
- b. It does not meet the good faith efforts requirement to purchase inaccessible used buses just because they are less expensive

3. Remanufactured Buses

- a. If a public entity remanufactures a vehicle or purchases a remanufactured vehicle after August 25,

1990, so as to extend its useful life for five years or more, the vehicle must be accessible to the maximum extent feasible

- b. A remanufactured vehicle is a vehicle which has been structurally restored and has had new or rebuilt major components installed to extend its service life for at least 5 years

4. Requirements Can't Be Evaded Through Private Contracts

- a. A private entity that purchases or leases vehicles for use, or in contemplation of use, under contract with a public entity shall acquire accessible vehicles in all situations in which the public entity itself would be required to do so
- b. The public entity must ensure that the percentage of accessible vehicles in the overall fleet (including those of the private entity) is not diminished as a result of the contract

5. Providing Non-Discriminatory Service

NOTE: These requirements apply to privately funded transit providers as well as publicly funded ones, except as specified below

- a. Maintenance
 - i. General Maintenance Requirements
 - a) Transit agencies must maintain in operative condition those features of facilities and vehicles necessary to make the facilities and vehicles accessible. Accessibility features shall be repaired promptly
 - b) When an accessibility feature is out of order, the entity must take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature

- c) Isolated or temporary interruptions in service or access due to maintenance or repairs are not considered discrimination, but a pattern of such interruptions could be considered discrimination.
- ii. Additional Maintenance Requirements for Publicly Funded Bus Transportation Agencies
 - a) Transit agencies must establish a system of regular and frequent maintenance checks of lifts sufficient to determine if they are operative
 - b) Transit agencies must ensure that vehicle operators report, by the most immediate means available, any failure of a lift to operate in service
 - c) When a lift is discovered to be inoperative, the agency must take the vehicle out of service before the beginning of the vehicle's next service day and ensure that the lift is repaired before the vehicle returns to service
 - d) Exception if no spare vehicle is available so taking the vehicle out of service will reduce service to the general public
 - i) Agency may keep the vehicle in service with inoperable lift for no more than five days, if agency serves an area of 50,000 or less population
 - ii) Agency may keep the vehicle in service with inoperable lift for no more than three days, if agency serves an area of over 50,000 population

- iii) If headway to next accessible vehicle exceeds 30 minutes, agency must promptly provide alternative transportation

b. Lift and Securement Use

- i. All common wheelchairs and their users shall be transported in transit agency's vehicles, even if securement (tie-down) doesn't accommodate a particular wheelchair
- ii. Common wheelchairs are any wheelchairs which fit on a lift which complies with DOT's technical standards (which require a 30" by 48" lift). This includes virtually all wheelchairs and three-wheeled scooters
- iii. Transit agency is not required to allow wheelchair users in places other than designated securement areas and may require that wheelchair user permit wheelchair to be secured. But if securement system cannot accommodate a particular wheelchair, transportation cannot be denied to the wheelchair user
- iv. Passenger may not be required to use seatbelt unless all passengers are so required
- v. Transit agency may not require a wheelchair user to transfer to a regular seat
- vi. Driver must assist with securement device when necessary or upon request
- vii. Transit agency must permit individuals with disabilities who do not use wheelchairs, including standees, to use a vehicle's lift or ramp to enter the vehicle

c. No Bus Stop Discrimination

Transit agency may not refuse to permit a passenger who uses a lift to board or disembark from a vehicle at any designated stop, unless:

- i. The lift cannot be deployed at that stop
- ii. The lift will be damaged if it is deployed at that stop, or
- iii. All passengers are precluded from using the stop due to temporary conditions at the stop which are not under the control of the transit agency

d. Training

Each transit agency must ensure that personnel are trained to proficiency.

e. Other Service Provision Requirements

- i. Transit agency may not require individual with disability to use designated priority seats. Drivers must ask others to move from designated priority seats or securement locations if needed
- ii. On fixed route systems, stops must be announced at:
 - a) Transfer points with other fixed routes
 - b) Other major intersections and destination points
 - c) Intervals along a route sufficient to permit individuals with visual impairments and other disabilities to be oriented to their location
 - d) Any requested stop
- iii. Transit agency must ensure that accessibility-related equipment or features are used when needed

6. Paratransit is Required

a. General Rule

- i. It is discrimination under the ADA and Section 504 of the Rehabilitation Act of 1973 for a public entity which operates a fixed route system to fail to ensure that paratransit is provided to individuals with disabilities who cannot use the fixed route system. Paratransit systems were required to fully comply with all regulations by January 1997
- ii. Service is not required beyond the point of undue financial burden
- iii. Solely commuter bus systems are exempt. Commuter bus service means fixed route bus service which is characterized by:
 - a) Service predominantly in one direction during peak periods
 - b) Limited stops
 - c) Use of multi-ride tickets
 - d) Routes of extended length, usually between the central business district and outlying suburbs

b. Eligibility (Functionally-based; residency not a factor)

- i. Category 1 - "Can't navigate the system"

Includes a person who is unable, due to a physical or mental impairment (including a vision impairment), to board, ride, or disembark from an accessible vehicle without assistance. This category will include, for example, persons with cognitive disabilities if they do not know where to get off the bus or how to go to their destination from the bus stop. It will include blind persons who have no

mobility training in order to navigate the route to their destination

ii. Category 2 - "Needs accessible bus"

Includes a person such as a wheelchair-user who can use an accessible bus but wants to travel on a route that is still inaccessible (not served by accessible buses)

iii. Category 3 - "Specific Impairment-Related Condition"

a) Includes a person who has a specific impairment-related condition which prevents the individual from traveling to a boarding location or from a disembarking location

b) The interaction of the impairment-related condition with environmental barriers (distance, terrain, weather) or architectural barriers not under control of the transit agency may form the basis for eligibility. For example, an individual who uses a wheelchair may be able to negotiate a trip to the bus stop up a moderately sloped hill on a summer day, but not in the winter after a heavy snowfall. Then the user would be eligible for paratransit

iv. Trip eligibility

Eligibility may vary for different trips or at different times

v. At least one associate may also ride with a paratransit-eligible individual. Transit agencies are encouraged to allow additional riders on a space-available basis. If the disabled individual must travel with a personal attendant, the attendant does not count as the one associate

- c. Paratransit Service Criteria
 - i. #1 - Service Area
 - a) Includes corridors that extend 3/4 mile on each side of fixed route
 - b) Includes small areas in core service area which are surrounded by corridors
 - c) Outside core service area, may be widened up to 1 1/2 miles on each side of fixed route
 - d) Service must be provided from any point in any of the corridors to any point in the same corridor or in any other corridor
 - ii. #2 - Response Time
 - a) Transit agency must provide paratransit if ride is requested at any time on the previous day ("next day service")
 - b) Transit agency must make reservation service available at least during all normal business hours, as well as during those same hours on days when the transit agency's offices are not open, if it is a day before a service day (e.g. Sunday)
 - c) Transit agency may not require individual to schedule a trip more than an hour before or after desired departure time
 - d) Advance reservations beyond one day
 - iii. #3 - Fares
 - a) May not exceed twice the full fixed route fare (not discounted fare)

- b) Higher fares permitted for bulk trips guaranteed to social service agencies
 - c) One associate at same fare as eligible rider. If an attendant is needed in order to travel, the attendant rides for free
 - iv. #4 - No Trip Purpose Restrictions
 - v. #5 - Hours and Days of Service
Must be same as fixed route service
 - vi. #6 - No Capacity Constraints
 - a) No restrictions on number of trips
 - b) No waiting lists
 - c) No operational patterns or practices which significantly limit the availability of service, including substantial numbers of significantly untimely pickups, trip denials, missed trips, or trips with excessive lengths
 - vii. Extra Note: Subscription Service
May not absorb more than 50% of trips available at a given time of day, unless there is non-subscription capacity left over
- d. Eligibility Determination Process
 - i. The basics
 - a) All information in accessible formats
 - b) May include functional evaluation or testing of applicants
 - c) Written documentation of eligibility must be provided to applicants are deemed eligible

- d) Eligibility determinations must be completed within 21 days or applicant has "presumptive" eligibility
- e) Recertification permitted
- ii. Visitors
 - a) May use paratransit for 21 days if have eligibility documentation from another city
 - b) If have no eligibility documentation from another city, may use paratransit for 21 days in 365 day period if have documentation of residence and of disability (if disability is not apparent)
- iii. Administrative Appeals Process
 - a) Can appeal any limit on eligibility
 - b) Transit agency may require appeals to be filed within 60 days of denial of eligibility
 - c) Appeals process must include opportunity to be heard and present information and arguments
 - d) Decision must be made by someone uninvolved with the initial decision to deny eligibility
 - e) Written notice of the result must be provided, with reasons stated
 - f) Transit agency not required to provide service during determination of appeal. However, if transit agency has not decided within 30 days of completion of appeal process, service must be provided until/unless decision to deny appeal is issued

- iv. Suspension for Pattern of Missing Scheduled Trips
 - a) Transit agency may suspend eligibility for people who establish a pattern of missing scheduled trips (“no shows”)
 - b) Trips missed by the individual for reasons beyond his or her control may not be basis for suspension
 - c) Before suspension, transit agency must notify individual in writing, citing with specificity the basis of the proposed suspension
 - d) Individual may appeal the suspension, using the appeals process described above. The suspension is stayed pending the outcome of the appeal
- e. Paratransit Service Plan
 - i. Transit agencies were required to submit and begin implementation of paratransit service plan by January 26, 1992 and submit annual update by each January 26
 - ii. Each plan was to provide full compliance by no later than January 26, 1997 (or earlier if DOT so stipulated)
 - iii. Plans were required to include yearly milestones that provided for measurable, proportional progress toward full compliance
 - iv. Transit agency violated the ADA if:
 - a) It failed to submit and begin implementation of a plan
 - b) Plan didn't conform to ADA
 - c) A DOT-approved plan wasn't followed

- v. There were extensive public participation requirements during preparation of each year's plan
 - vi. Joint plans from transit agencies that coordinated their service could be submitted
 - vii. Disapproved plans were required to be amended and resubmitted within 90 days and include public participation
 - viii. Transit agency needn't duplicate service already provided in the community
 - ix. Annual updates were required until January 26, 1997; annual certifications thereafter
 - f. Waiver (changed to time extension) for undue financial burden could be requested
 - i. Burden-related costs must be strictly attributable to ADA-required paratransit
 - ii. If granted, transit operator must first consider reducing quantity of trips before quality
 - g. Other current paratransit providers are encouraged to maintain their service
7. Demand-Response Transit Systems for the General Public
- a. Includes systems such as state or county social service agency transportation, state-funded employer van pools, some suburban transit systems
 - b. It is discrimination for such systems to purchase or lease a new vehicle after August 25, 1990 that is not accessible, unless the system, when viewed in its entirety, provides a level of service to individuals with disabilities **equivalent** to the level of service provided to the general public
 - c. "When viewed in its entirety" means that when all aspects of the system are analyzed, services are provided to individuals with disabilities in the most

integrated setting appropriate to the needs of the individual and are equivalent to services provided to other individuals, in terms of:

- i. Service area
- ii. Response time
- iii. Fares
- iv. Hours and days of service
- v. No trip purpose restrictions
- vi. No capacity constraints
- vii. Accessible information and communications

8. Architectural Access to Transit Facilities

- a. New facilities must be accessible after January 26, 1992
- b. Alterations -- Same as Title III (but no elevator exception)
- c. Existing facilities -- system must be accessible when viewed in its entirety except wheelchair access not required unless facility is a key station (see Rail requirements), after January 26, 1992

9. Other Types of Publicly Funded Transit Service

- a. University transportation -- no paratransit requirement
- b. Vanpools -- same as general public demand response
- c. Airport transportation Systems -- no paratransit requirement
- d. Employer-provided transportation -- covered under Title I
- e. Recreation vehicles -- covered under Title III

B. Publicly Funded Rail

1. Intercity Rail (Amtrak)

a. Cars

- i) One accessible car per train within five years
- ii) Within five years, must have same number of wheelchair-user spaces as cars on train
- iii) Within ten years, must have twice the number of wheelchair-user spaces as cars on train
- iv) No more than four spaces (two to park wheelchair, two to fold and store wheelchair) per car
- v) Accessible dining car to adjoin an accessible passenger car

b. Stations -- all must be accessible within 20 years

2. Commuter, Rapid, and Light Rail

a. Existing Cars -- one accessible car per train within five years

b. New Cars -- must be accessible after August 25, 1990

c. Key Stations

- i. Must be made accessible as soon as practicable but no later than July 26, 1993
- ii. This may be extended to 30 years (for rapid and light rail) or 20 years (for commuter rail) if extraordinarily expensive structural modifications are necessary (raising entire passenger platform or installing elevator)
- iii. Designating key stations
 - a) Transit agency must submit key station plan by July 26, 1992

- b) Plan must include significant involvement by disability community
- c) Key station criteria:
 - i) Stations where passenger boardings exceed average by at least 15%
 - ii) Transfer stations
 - iii) Major interchange points with other transportation
 - iv) End stations
 - v) Stations serving major activity centers
- d. Paratransit is required for rapid and light rail -- requirements same as for bus except:
 - i. Service area is circle with 1.5 mile diameter around each station. At end stations and other stations in outlying areas, may be widened to 3 mile diameter
 - ii. Transit agency must provide trips from any point in one circle to any point in another circle
 - iii. Eligibility the same as for bus paratransit except for second eligibility category: For rail, this category includes a person who can use an accessible rail system, but there is not yet one accessible car per train, or key stations have not yet been made accessible. Transit agency's obligation is only to provide transportation between circles centered on key stations

C. Enforcement -- same as Title II

II. Privately Funded Transit

NOTES: Providing Non-Discriminatory Service Requirements same as for publicly funded transit. Effective date for privately funded transit requirements is January 26, 1992 unless otherwise stated

A. Private Entities Primarily in the Business of Transportation
("Private Primarily")

Includes airport shuttle companies, charter bus companies, tour bus companies, private non-profit and for-profit paratransit providers, taxi's

1. Subject to all Title III requirements such as eligibility criteria, modification of policies, auxiliary aids and services, and readily achievable barrier removal
2. Fixed Route -- newly purchased or leased vehicles after August 25, 1990 must be accessible
3. Demand-Response -- newly purchased or leased vehicles must be accessible unless the system is accessible when viewed in its entirety
4. Taxi Service -- must be non-discriminatory but no structural requirements for vehicles

<u>PRIVATE "PRIMARILY"</u>		
<u>SYSTEM TYPE</u>	<u>VEHICLE TYPE</u>	<u>REQUIREMENT</u>
Fixed route	All new vehicles except auto, van w/less than 8, or over-the-road bus	Acquire accessible vehicle
Demand response	Same as above	Acquire accessible vehicle, or equivalency
Either fixed route or demand response	New vans, less than 8	Acquire accessible vehicle, or equivalency

<u>PRIVATE "NOT PRIMARILY"</u>		
<u>SYSTEM TYPE</u>	<u>VEHICLE TYPE</u>	<u>REQUIREMENT</u>
Fixed route	Over 16	Acquire accessible vehicle
Fixed route	16 or less	Acquire accessible vehicle, or equivalency
Demand response	Over 16	Acquire accessible vehicle, or equivalency
Demand response	16 or less	Equivalency

B. Intercity Bus Service and Over the Road Buses

1. Vehicle Requirements

- a. Large providers have six years, and small providers have seven years, before new vehicles must be accessible (possibility of one-year extension by President)
- b. Study conducted by Office of Technology Assessment to determine best way to provide access to over the road buses -- completed by July 26, 1993
- c. See other materials for subsequent requirements

2. Non-Discrimination Requirements for Intercity Bus Service

- a. Must transport all common wheelchairs without advance notice
- b. May not deny service and must provide boarding assistance to passengers with disabilities though may require 48 hours advance notice for boarding assistance only. If passenger does not give notice, reasonable effort must still be made to provide boarding assistance
- c. Mobility equipment will be stowed in passenger compartment if possible, or in baggage compartment,

and will take precedence over luggage boarding at the same stop

- d. Bus drivers must stop at accessible stations or rest stops to allow use of accessible restrooms if needed by passenger with disability

C. Private Entities Not Primarily in the Business of Transportation ("Private Not Primarily")

Includes hotel airport shuttle service, day care shuttle service, private non-profit human service agency transportation, car rental shuttle service, airport parking lot shuttle service

1. Fixed Route - Vehicle capacity over 16 -- Newly purchased or leased vehicles must be accessible
2. Fixed Route - Vehicle capacity under 16 -- newly purchased or leased vehicles must be accessible unless the system is accessible when viewed in its entirety.
3. Demand Response -- Service must be accessible unless the system is accessible when viewed in its entirety. Access may be provided by sharing vehicle with another provider, providing portable ramp, etc.

D. Enforcement -- same as Title III