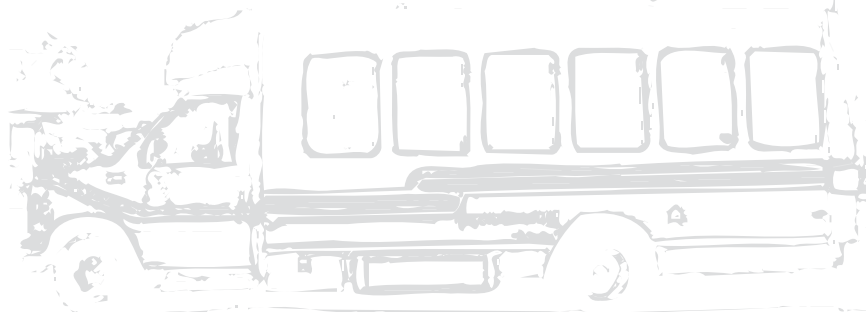




**Transportation
Rights for
People with Disabilities
Under the
Americans
with Disabilities Act**



California's Protection & Advocacy System
www.disabilityrightscalifornia.org

Transportation Rights for People with Disabilities under the Americans with Disabilities Act

Table of Contents

Chapter 1: The Americans with Disabilities Act (ADA) in General

1. What is the Americans with Disabilities Act (ADA)?2
2. Which Federal agencies are responsible for enforcing the ADA?2
3. Who does the ADA apply to?.....2

Chapter 2: ADA Terms and Definitions

1. How is the word “disability” defined under the ADA?3
2. How is “mental impairment” defined under the ADA?3
3. Does drug or alcohol addiction qualify as a disability?3
4. What does “substantially limit” mean?3
5. What is a “major life activity”?4
6. What does “has a record of such an impairment” mean?.....4
7. What does it mean to be “regarded as having such an impairment”?.....4
8. What is a “fixed route system”?4
9. What is a “demand responsive system”?.....5
10. What is “intercity rail transportation”?5
11. What is “light rail”?5
12. What is “over-the-road bus”?5
13. What is “paratransit”?.....5
14. What are a “wheelchair” and a “common wheelchair”?5

Chapter 3: The ADA and Public Transportation

1. What is public transportation?.....7
2. Why is this?7
3. How is public transportation defined under the ADA?.....7
4. Can I be forced to use a “special or separate system” if I don’t want to?.....7
5. What if I don’t want to use the regular buses and prefer to use paratransit? Do I have a choice?.....8
6. Are there reasons to limit the number of people using paratransit services?.....8

7. How many systems are included in the term “public transportation” under the ADA?.....8

Chapter 4: Accessibility of Public Transportation Facilities

1. Do transportation facilities need to be accessible?.....9
2. Do existing buildings have to be made accessible?9
3. What does the term to the maximum extent possible mean?9
4. What is the definition of a light or rapid rail key station?.....10
5. Are public entities required to maintain the accessibility features of vehicles and facilities?.....10

Chapter 5: Fixed Route

1. What is a fixed route system?.....11
2. What is “deviated route system?”11
3. Can I be required to use special transportation services for persons with disabilities?11
4. Can a public transit system require that I sit in a certain spot?.....11
5. What is “priority seating”?12
6. I use a scooter. Can a bus driver require me to transfer to a seat at any time?12
7. If I use a mobility device like a wheelchair, do I have to sit in the designated areas?12
8. What are the rules that determine how many spots must be provide for mobility device users?12
9. I use a mobility device. How do I know if it will fit on the lift?.....12
10. How do I know if my mobility device fits this requirement? Don’t all mobility devices made since 1990 meet these requirements?.....12
11. Does the 48-inch length requirement include my footrests?.....13
12. What if I do not have footrests? Can a fixed route system refuse to let me ride?13
13. Is an electric scooter or other mobility device a common wheelchair?.....13
14. Does my wheelchair have to be secured if the transit provider says so?13
15. What kinds of securement equipment must be provided?.....13
16. My wheelchair can’t be secured. Can I still ride the bus?.....14
17. What are the ADA rules for the maintenance of lifts?14
18. Can I bring my service animal into a transit vehicle or facility?14
19. I use a respirator. Can I be denied a ride on the bus?.....14

20.	Can I be required to bring someone, like a personal care attendant, with me when I ride a city bus?	14
21.	The bus drivers are sometimes rude to me. Can I do anything about this?	14
22.	The drop-in center where I go to for mental health assistance is on a bus route. The drivers sometimes refuse to pick me up. Does the ADA permit this?	15
23.	Some bus drivers have refused to assist me with the securement devices. Can they do that?	15
24.	Is a driver required to announce stops?	15
25.	Does the driver have to use his/her own voice or can mechanical means be used?	15
26.	What does the ADA require the driver to do when announcing stops for people who are hearing impaired?.....	16
27.	Can I be asked to leave the bus because someone “thinks” that I am bothering other passengers?	16
28.	It takes me a long time to board a bus and the driver rushes me. Can the driver do this?	16
29.	Is the bus driver required to assist me on the bus?	16
30.	Can I be charged more to ride a city bus if I have a disability?	16
31.	Does the ADA require public transit systems to have discount fares for people with disabilities?	16
32.	Does any law require a transit provider to offer discount fares to people with disabilities?	17

Chapter 6: Vehicles

1.	I have heard that public transportation must be accessible to individuals with physical disabilities. Is this true?.....	19
2.	My city has a fixed route system, what are the rules regarding purchase or lease of new accessible vehicles?.....	19
3.	What are the rules regarding purchase of or lease of new vehicles for demand responsive systems (i.e. dial-a-ride)?.....	19
4.	What is considered an equivalent level of service?.....	20
5.	What does the phrase readily accessible and useable by individuals with disabilities mean?	20
6.	Do used vehicles have to readily accessible and useable by persons with disabilities?	21
7.	What does good faith effort mean?	21
8.	What about historical vehicles, do they have to be accessible?	21

- 9. My city already has accessible vehicles, but they do not conform to ADA, do they have to retro fit them?21

Chapter 7: Paratransit

- 1. How does the ADA determine that a paratransit service provides “equivalent service” to a fixed route system?23
- 2. What is a demand response system?23
- 3. What are the criteria for determining ADA paratransit eligibility?24
- 4. What is the process that the transit provider must use to determine who is ADA paratransit eligible and who is not?.....24
- 5. I’ve never tried to use a city bus. How do I know if I qualify?.....24
- 6. Will I have to have a medical examination?25
- 7. Who will pay for this examination?25
- 8. Is it difficult to get paratransit service if you have an “invisible” disability?.....25
- 9. What should I do if I want to apply for paratransit service?25
- 10. When does the 21-day period begin?26
- 11. Does this apply to re-certifications as well?.....26
- 12. What if I’m denied eligibility?26
- 13. What do I do if I disagree with the eligibility conditions under which I must use the service?26
- 14. What is the appeal process according to the ADA?26
- 15. Will I have to go through the application process every year?27
- 16. What if I’m denied eligibility when I’m re-certified?27
- 17. Will I continue to be served by paratransit if I am appealing a re-certification eligibility denial?.....27
- 18. What happens if I lose my appeal?.....27
- 19. What kind of service must paratransit provide?27
- 20. Under what circumstances can I be suspended from paratransit service”?27
- 21. What are “missed trips”?27
- 22. How many “missed trips” can I have before I’m suspended?.....28
- 23. For how long can I be suspended?28
- 24. Can I be suspended for other reasons besides “missed trips”?28
- 25. What is the paratransit trip “suspension process”?28
- 26. Can I appeal a suspension of paratransit services?.....28
- 27. Can I be suspended because I have a psychiatric disability?29
- 28. How much will I have to pay for each ride?29
- 29. Why can I be charged more to ride paratransit service?29

30.	Can paratransit refuse my ride request because of my “trip purpose”?	29
31.	During what hours is paratransit required to provide service?.....	29
32.	Our regular city bus doesn’t run on the weekends. Is my paratransit service required to run on the weekends?	29
33.	What does the ADA say about scheduling paratransit rides?	29
34.	Do I have to make advanced reservations?	30
35.	I am having difficulty getting through on the telephone to make my ride requests. Can I be made to wait on hold for a long period?.....	30
36.	What is the difference between an “agency ride” and an “ADA ride”?	30
37.	What is subscription service?	30
38.	Are the paratransit providers required to offer subscription service?	31
39.	Why can’t the transit companies give more than 50% to subscription service?	31
40.	How do I make a ride request?	31
41.	What is the “two-hour window”?	31
42.	Can you give an example?.....	32
43.	When I call in for a ride, I am often given a “capacity denial”. Can the paratransit service do this?	32
44.	Can I travel between transit districts on paratransit?	32
45.	Is there any way that I can go into another district?.....	32
46.	What is “visitor status”?	32
47.	How can I apply for “visitor status”?	33
48.	Do I have to register as a regular paratransit user in the new area where I am a visitor?	33
49.	How long can I be on visitor status?	33
50.	Where can I travel on paratransit?.....	33
51.	Will my personal care attendant have to pay a fare to ride with me?	33
52.	Does the transit provider have the right to require my attendant to have some kind of “transit ID”?.....	33
53.	Can I bring a friend with me?.....	34
54.	Can the transit provider make rules about who can ride with me?	34
55.	Can I bring my service animal?.....	34
56.	I can not climb steps and I do not use a mobility device. May I use the lift on a paratransit bus?.....	34
57.	Do paratransit systems have to submit an annual plan to the federal government?	34
58.	I use a mobility device. Are there any rules letting me sit in my chair in either a forward or backward position?.....	35

59.	Can I file a complaint with the transit provider about the quality of the service?	35
60.	What are the requirements for training of bus drivers?.....	35
61.	What are the grievance procedures if I have a comment or a complaint?	35
62.	If I have a complaint that involves an ADA issue, can I file a complaint outside of the transportation agency?	36

Chapter 8: Other Forms of “Public” Transportation

1.	What is light rail?	37
2.	How many cars on a light or rapid rail system have to be accessible? ...	37
3.	What about light rail trains on the street? Do they have to be accessible?	37
4.	Do inaccessible light rail cars have to be retrofitted?	37
5.	What is commuter rail?.....	38
6.	Do commuter rail cars have to be useable by and accessible to individuals with disabilities?	38
7.	How many cars on a light or rapid rail system have to be accessible? ...	38
8.	If cars are not accessible do they need to be retrofitted?	38
9.	What is a Ferry?.....	38
10.	Do ferries operated by a public transit system need to be made useable by and accessible to individuals with disabilities?.....	38
11.	What is a passenger vessel?.....	39
12.	Do passenger vessels operated by public transit also have to be useable by and accessible to individuals with disabilities?.....	39
13.	Do privately owned taxis have to be made useable by and accessible to individuals with disabilities?	39
14.	Does a taxi service have to provide accessible vehicles?.....	40
15.	Can a taxi service refuse to give me a ride because I have a disability?.....	40
16.	Do airport shuttles have to be made accessible?	40
17.	What is meant by “provides transportation services, but is not primarily engaged in the business of transporting people?”	41
18.	Does my university transit system have to be accessible?	41

Chapter 9: How to Document Problems with Public Transportation

1.	What do I do if I think a public transit system has violated my rights under the ADA?.....	43
2.	How do I file a complaint with the public transit agency?.....	43
3.	What if I don’t know the name of the public transit agency?	44

4.	Is there a deadline for filing a complaint with the local transit agency?	44
5.	How do I file an administrative complaint with the Federal Transit Administration (FTA)?	44
6.	How do I file a complaint with the federal Department of Justice (DOJ)?.....	46
7.	How do I know whether to file a complaint with the FTA or the DOJ?	46
8.	Is there a time deadline for filing a complaint with the FTA or the DOJ?	46
9.	What else can I do about my transportation problems?	46
10.	Is there a deadline for filing a lawsuit?	47

Attachments to Chapter 9

- Transportation Problem Documentation Form
- Federal Transit Administration, Office of Civil Rights Complaint Form
- Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973 Discrimination Complaint Form

Chapter 10: Unmet Transit Needs and the Transportation Development Act (TDA)

1.	What if my transit agency is not meeting the needs of individuals with disabilities (not enough bus routes, partransit is always late, etc.).	54
2.	What are the transit agency’s responsibilities?	54
3.	What does the social services advisory council do?	54
4.	How does the social services advisory council know what needs are unmet?.....	55
5.	How will I know when an unmet needs hearing is being held?.....	55
6.	What is meant by “unmet transit needs” and “reasonable to meet”?.....	55
7.	How can attending unmet transit needs hearings help?	55

TRANSPORTATION RIGHTS FOR PEOPLE WITH DISABILITIES UNDER THE AMERICANS WITH DISABILITIES ACT

Chapter 1

THE AMERICANS WITH DISABILITIES ACT (ADA) IN GENERAL

INTRODUCTION

Disability Rights California is a non-profit organization that advocates for the rights of people with disabilities. We provide information, referrals, short-term assistance, technical assistance and, as our resources permit, direct representation. We help people with developmental, sensory, physical and psychiatric disabilities. Disability Rights California is funded mostly through grants: Federal and State. Our advocacy involves many anti-discrimination issues like housing, employment, benefits, and of course, transportation.

People take transportation for granted. We go to school, work, shopping and recreation. We expect to be able to do all these things, and more. We never think twice about getting into a car or on a bus; unless we have a disability.

For those people who have physical, sensory, psychiatric or cognitive disabilities, transportation is a “key” that opens many doors to an independent lifestyle. But, do we as people with disabilities have a right to transportation? If we do, what kind of transportation do we have a right to? What kind of services can we expect?

This manual will explain your rights as a person with a disability to public transportation under the Americans with Disabilities Act (ADA).

With this manual, Disability Rights California wants you to learn what your rights are to “public transportation”. This manual includes information about your access to “public transportation”, like city buses, light rail and paratransit service. You will also discover how other forms of transportation, like shuttles and taxis, fit into the ADA picture of “public transportation”.

After reading this manual, you will be able to file complaints against transit entities. You will learn how to file formal complaints with the federal agencies.

You will know what your rights are and when to call other disability rights organizations, like Disability Rights California, for help. We hope that you find this useful.

1. What is the Americans with Disabilities Act (ADA)?

The Americans with Disabilities Act (ADA) is a civil rights law signed by President George Bush on July 26, 1990. 42 United States Code (USC) §12101 and following. It is the “Bill of Rights” for people with disabilities. The ADA contains four parts. They cover the areas of employment, public accommodations (including transportation services provided by private companies), state and local government services (including public transportation services), and telecommunications. Various parts of the ADA were phased into law at different times. The section of the ADA that relates to public transportation is found in Title II. The Department of Transportation (DOT) wrote regulations that defined the rights stated within Title II. These regulations or rules can be found in 49 Code of Federal Regulations (CFR) §§ 27, 37 & 38. These rules became fully effective on January 26, 1997. Since the date that the regulations were written, there has been one major revision in 1996. Case law has been slow to interpret these regulations.

2. Which Federal agencies are responsible for enforcing the ADA?

The main federal agency responsible for enforcement of the ADA is the Department of Justice (DOJ). However, specific agencies such as the Department of Transportation (DOT) and the Federal Transit Administration Office (FTA) Office of Civil Rights directly enforce Title II and its regulations implementing transportation.

3. Who does the ADA apply to?

The ADA forbids any private business and commercial enterprise or any state or local government agency from discriminating on the basis of disability. What makes the ADA different from other federal or state anti-disability discrimination laws is that there are no requirements that the entity receive any state or federal money. The ADA does have certain safeguards for very small businesses, but in general provides broad coverage against discrimination on the basis of disability.

TRANSPORTATION RIGHTS FOR PEOPLE WITH DISABILITIES UNDER THE AMERICANS WITH DISABILITIES ACT

Chapter 2

ADA TERMS AND DEFINITIONS

1. How is the word “disability” defined under the ADA?

Under the ADA, “disability” means that an individual has:

- a. A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- b. A record of such an impairment; or
- c. Is regarded as having such an impairment. 49 CFR § 37.3.

2. How is “mental impairment” defined under the ADA?

Mental impairment means any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities; but does not include homosexuality or bisexuality.

49 CFR § 37.3.

3. Does drug or alcohol addiction qualify as a disability?

The term physical or mental impairment includes those persons with drug and alcohol addiction. However, the ADA specifically excludes those persons currently engaged in the illegal use of drugs. 49 CFR § 37.3.

4. What does “substantially limit” mean?

The term substantially limits means:

- An individual who is unable to perform a major life activity that the average person in the general population can perform; or
- Is significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as

compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity. *See e.g.*, 29 CFR § 1630.2(j).

5. What is a “major life activity”?

The phrase “major life activity” means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and work. 49 CFR § 37.3.

6. What does “has a record of such an impairment” mean?

The phrase “has a record of such an impairment” means you have a history of, or have been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities. 49 CFR § 37.3.

7. What does it mean to be “regarded as having such an impairment”?

The phrase “regarded as having such an impairment” means:

- You have a physical or mental impairment that does not substantially limit major life activities, but the impairment is treated by a public or private entity as a substantial limitation;
- You have a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward the impairment; or
- You do not have a physical or mental impairment that substantially limits major life activities, but is treated by a public or private entity as having a substantially limiting impairment. 49 CFR § 37.3.

TYPES OF TRANSPORTATION

8. What is a “fixed route system”?

Fixed route system is a system of transporting individuals (other than by aircraft), including the provision of designated public transportation service by public entities and the provision of transportation service by private entities, including, but not limited to, specified public transportation service, on which a vehicle is operated along a prescribed route according to a fixed schedule. 49 CFR § 37.3.

9. What is a “demand responsive system”?

Demand responsive system means any system of transporting individuals, including the provision of designated public transportation service by public entities and the provision of transportation service by private entities, including but not limited to specified public transportation service, which is not a fixed route system. 49 CFR § 37.3.

10. What is “intercity rail transportation”?

Intercity rail transportation means transportation provided by Amtrak. 49 CFR § 37.3.

11. What is “light rail”?

Light rail means a streetcar-type vehicle operated on city streets, semi-exclusive rights of way or exclusive rights of way. Service may be provided by step-entry vehicles or by level boarding. 49 CFR § 37.3.

12. What is “over-the-road bus”?

Over-the-road bus means a bus characterized by an elevated passenger deck located over a baggage compartment, such as Greyhound. 49 CFR § 37.3.

13. What is “paratransit”?

Paratransit means comparable transportation service required by the ADA for individuals with disabilities who are unable to use fixed route transportation systems. 49 CFR § 37.3.

14. What are a “wheelchair” and a “common wheelchair”?

A “wheelchair” is a mobility aid belonging to any class of three or four-wheeled devices, usable indoors, designed for and used by individuals with mobility impairments, whether operated manually or powered.

A “common wheelchair” does not exceed 30 inches in width and 48 inches in length measured two inches above the ground, and does not weigh more than 600 pounds when occupied. 49 CFR § 37.3.

TRANSPORTATION RIGHTS FOR PEOPLE WITH DISABILITIES UNDER THE AMERICANS WITH DISABILITIES ACT

Chapter 3

THE ADA AND PUBLIC TRANSPORTATION

1. What is public transportation?

Public transportation is usually thought of as a system used by the public, like a fixed route vehicle, or light rail train. Most people, including people with disabilities, don't realize that paratransit is part of a fixed route system.

2. Why is this?

Paratransit has been known by other names, including "dial-a-ride". It started out for those people who needed to get to medical appointments only. In order to use this "special" service, a person had to call in or "dial-a-ride". Dial-a-ride provided service to the elderly and the physically disabled only.

When the ADA became law, "paratransit" was created as a "safety net" for those persons with disabilities who can not use (fixed route) a regular city bus system because their disability prevents them from using the bus system either some of the time or all of the time. Paratransit (as a part of a fixed route system) must provide equivalent or complementary services to a regular city bus fixed route system.

3. How is public transportation defined under the ADA?

Public transportation includes designated transportation by bus, rail, or any other conveyance to the general public. It provides service on a regular and continuing basis. It does not include transportation for schools. It does not include transportation by aircraft, intercity or commuter rail transportation. 42 USC § 12141(2); 49 CFR § 37.3.

4. Can I be forced to use a "special or separate system" if I don't want to?

No. The ADA intends for people with disabilities to have equal access to the same services that people without disabilities have. If you can use the fixed route system,

then the transit authorities cannot force you to use a “special” or a segregated system based solely on your disability. 49 CFR § 37.5(b).

5. What if I don’t want to use the regular buses and prefer to use paratransit? Do I have a choice?

No. Having a disability does not automatically entitle you to use paratransit service. Inconvenience of the fixed route system does not determine your eligibility. You can under specific circumstances be determined “conditionally” eligible for paratransit services. If that happens, then there are specific conditions under which you can use either the regular bus or paratransit service. See *Chapter 7 Paratransit*. 42 USC § 12143; 49 CFR § 37.123(b).

6. Are there reasons to limit the number of people using paratransit services?

- Paratransit service is a segregated system. It is designed to only pick up persons with disabilities who meet ADA paratransit eligibility criteria.
- It is expensive to operate.
- The framers of the ADA wanted to provide “equal access” to all services as a “right” for people with disabilities. We have a right to live in a fully integrated setting just like everyone else.

7. How many systems are included in the term “public transportation” under the ADA?

There are two, fixed route (i.e. the regular bus system, including rapid and light rail) and demand responsive (i.e. dial-a-ride).

Fixed route is a public transportation system for transporting people that operates along a prescribed route according to a fixed schedule. 49 CFR § 37.3.

A demand response system means a public transportation system that is not a fixed route system, such as dial-a-ride. 49 CFR § 37.3; 42 USC 12141(1), (3).

TRANSPORTATION RIGHTS FOR PEOPLE WITH DISABILITIES UNDER THE AMERICANS WITH DISABILITIES ACT

Chapter 4

ACCESSIBILITY OF TRANSPORTATION FACILITIES

1. Do transportation facilities need to be accessible?

Yes. Any public transportation facility whose construction began after January 25, 1992, must be readily accessible to and useable by individuals with disabilities. 42 USC § 12146; 49 CFR § 37.41.

2. Do existing buildings have to be made accessible?

Yes. A public entity must operate public transportation programs or activities in existing facilities, so that when viewed in the entirety, the activity is readily accessible to and useable by individuals with disabilities. However, the ADA does not require a public entity to make structural changes in existing facilities unless the public entity is making other alterations to the facility or the facility is a light or rapid rail key station. 42 USC §121448(a); 49 CFR §37.61.

Whenever a public entity alters an existing facility or part of an existing facility after January 25, 1992, the alterations are to be made in such a manner that to the maximum extent possible the altered portions are readily accessible to and useable by individuals with disabilities. 42 USC §12147(a); 49 CFR §37.43.

Additionally, key stations in light and rapid rail systems must be made readily accessible to and useable by individuals with disabilities as soon as practicable, but in no case later than July 26, 1993. Extensions may be granted for a period up to July 26, 2020, provided that two-thirds of the key stations are made accessible by July 26, 2010. Any entity wishing to apply for an extension must have done so by July 26, 1992. 42 USC §12147(b); 49 CFR §37.47.

3. What does the term to the maximum extent possible mean?

This phrase applies to the occasional case where the nature of an existing facility makes it impossible to comply with applicable accessibility standards. In these

circumstances, the entity will provide the maximum physical accessibility feasible. 49 CFR §37.43(b).

4. What is the definition of a light or rapid rail key station?

Each public entity is to identify its key stations by taking into consideration the following criteria:

- a. Stations where passenger boarding exceed average passenger boarding by at least 15 percent, unless the station is near another accessible station;
- b. Transfer stations;
- c. Major interchange points with other modes of transportation;
- d. End stations, unless it is close to another accessible station; and
- e. Stations serving major activity centers, such as employment or government centers, etc. 49 CFR §37.47(b).

5. Are public entities required to maintain the accessibility features of vehicles and facilities?

Yes. Public entities are required to maintain accessibility features in operative condition. Accessibility features are to be repaired promptly. The entity must take reasonable steps to accommodate individuals with disabilities who would use the accessibility feature while it is out of order. 49 CFR §37.161.

TRANSPORTATION RIGHTS FOR PEOPLE WITH DISABILITIES UNDER THE AMERICANS WITH DISABILITIES ACT

Chapter 5

FIXED ROUTE

1. What is a fixed route system?

To most people, a “fixed route” system is also known as a city bus. It often uses large vehicles over 22 feet in length. It is a system that transports people on a predetermined route, at set times. The route goes from point A to point B in one direction and then goes back along this same route. 42 USC § 12141(3); 40 CFR § 37.3

2. What is “deviated route system?”

A deviated route system has the elements of both fixed route and paratransit systems. It is really a fixed route bus system that is allowed to go “off-route” when someone cannot use the regular bus stop. The distance that the route may be diverted is $\frac{3}{4}$ of a mile on each side of the city bus route. A deviated route system is generally found in rural communities. 47 CFR 37.131.

3. Can I be required to use special transportation services for persons with disabilities?

No. You cannot be required to use special transportation services (i.e. paratransit, wheelchair lift) so long as you are capable of using the same transportation as the public. 49 CFR 37.5(b).

4. Can a public transit system require that I sit in a certain spot?

No. The public transit system must offer priority seating for persons with disabilities, but cannot require a person with a disability to use designated “priority seating” if that person does not want to use those seats. 49 CFR 37.5(c).

5. What is “priority seating”?

Priority seating is seating that is designated for persons using mobility devices (i.e. wheelchairs, scooters, etc.). Priority seating allows persons using such devices to sit in their wheelchairs, scooter, etc. without having to physically transfer into another seat. People whose disability is less noticeable and who have mobility problems or need to sit close to the bus driver may also use priority seating.

6. I use a scooter. Can a bus driver require me to transfer to a seat at any time?

No. A bus driver cannot require you do transfer to a seat, but he can recommend that you do so.

7. If I use a mobility device like a wheelchair, do I have to sit in the designated areas?

It depends on the policies of the local transit company. The ADA gives transit providers flexibility to decide if they will require mobility device users to sit in designated spots. 49 CFR § 37.165(b).

8. What are the rules that determine how many spots must be provide for mobility device users?

The rules differ depending on the length of the vehicle. If the vehicle is over 22 feet in length, then there must be 2 designated spots for mobility device users. If the vehicle is less than 22 feet in length, then only 1 spot is required. 49 CFR 38.23(a).

9. I use a mobility device. How do I know if it will fit on the lift?

Mobility devices that meet the definition of a “common wheelchair” will fit on the lift. A "common wheelchair" does not exceed 30 inches in width and 48 inches in length, measures two inches above the ground, and does not weigh more than 600 pounds when occupied. 49 CFR §§37.16 and 37.3.

10. How do I know if my mobility device fits this requirement? Don’t all mobility devices made since 1990 meet these requirements?

Unfortunately, not all mobility devices made since 1990 meet these requirements because not all manufactures have implemented the standards into their production. The best way to know if your device meets the standards is to measure. To

measure the width, the comments in the regulations suggest measuring two inches above the floor, wheel-to-wheel.

11. Does the 48-inch length requirement include my footrests?

Maybe. The regulations do not specifically address footrests, but many advocate and transit providers do include footrests. Doing so can make things more difficult if you use a wheelchair that tilts back, thus raising and extending the distance of the footrests.

12. What if I do not have footrests? Can a fixed route system refuse to let me ride?

Maybe. The regulations permit the transit companies to make up rules to operate the fixed route system. Many of these rules of operation are based on state and local safety rules.

13. Is an electric scooter or other mobility device a common wheelchair?

If an electric scooter or other mobility device meets the physical specifications of a common wheelchair as defined by the DOT's ADA regulations, it must be treated as a common wheelchair. 49 CFR §37.3 Appendix D.

14. Does my wheelchair have to be secured if the transit provider says so?

Maybe. It depends on whether there is a legitimate reason why your chair cannot be secured. If the reason is because the tie-down system on the bus is missing or the straps are broken, you cannot be refused a ride. Similarly, if your wheelchair cannot be secured because it is physically impossible to restrain the chair, this too is a legitimate reason for the device not to be secured. The ADA regulations allow transit providers liberty to make the rules concerning operations and safety. 49 CFR § 37.165(c)(3).

15. What kinds of securement equipment must be provided?

All ADA-compliant vehicles are required to have a two-part securement system, one to secure the common wheelchair, and a seatbelt and shoulder harness for the wheelchair user. 49 CFR § 38.23(d). Vehicles over 22 feet in length are required to have enough securement locations and devices to secure two common wheelchairs, while vehicles 22 feet and under must be able to accommodate at least one common wheelchair. 49 CFR §38.23(a).

16. My wheelchair can't be secured. Can I still ride the bus?

Yes. You can not be denied a ride even if your wheelchair or scooter can't be secured. 49 CFR § 37.165 (d).

17. What are the ADA rules for the maintenance of lifts?

There are 4 rules. First, there must be a system of regular maintenance checks of lifts by the transit provider and the maintenance personnel to determine if lifts are working correctly. Second, these checks must be done frequently. Third, a lift that malfunctions must be reported immediately. The bus must then be taken out of service and repaired before it's next service day. Fourth, if there is no other bus to replace the inoperative bus, and keeping it out service would reduce transportation services, then the bus may be kept in service. However, the repairs must be done within 5 days (if the service area is fewer than 50,000 people), or 3 days (if the service area is greater than 50,000 people) from the day the lift was discovered to be inoperative. 49 CFR §37.163.

18. Can I bring my service animal into a transit vehicle or facility?

Yes. Bus drivers must allow service animals to accompany persons with disabilities on buses and in facilities. 49 CFR § 37.167(d).

19. I use a respirator. Can I be denied a ride on the bus?

No. The transit company cannot prevent you from riding the bus with a respirator or with portable oxygen. 49 CFR § 37.167(h).

20. Can I be required to bring someone, like a personal care attendant, with me when I ride a city bus?

No. A public transit system cannot make you bring an attendant with you when you ride a bus. 49 CFR 37.5(e)

21. The bus drivers are sometimes rude to me. Can I do anything about this?

Yes. Each public entity must ensure that their personnel are trained to proficiency. This means the transit provider can operate vehicles and equipment properly and safely. People with disabilities must be treated in a respectful and courteous manner. Bus drivers must pay proper attention to the differences among individuals with disabilities. 49 CFR §37.173; 49 CFR §37.11. If you are treated rudely, you can file a complaint with the bus company.

Complaint procedures vary depending on the transportation agency. You should contact your local agency's customer service department to find out how you would file a complaint. See *Chapter 9 Filing Complaints* to find out more information about filing complaints.

22. The drop-in center where I go to for mental health assistance is on a bus route. The drivers sometimes refuse to pick me up. Does the ADA permit this?

No. The ADA does not permit a bus driver to refuse a ride based solely on your disability. This is illegal conduct and you can complain to the bus company. 49 CFR §37.5(a),(h).

Complaint procedures vary depending on the transportation agency. You should contact your local agency's customer service department to find out how you would file a complaint. See *Chapter 9 Filing Complaints* to find out more information about filing complaints.

23. Some bus drivers have refused to assist me with the securement devices. Can they do that?

No. The company must ensure that the drivers and other personnel are using accessibility-related equipment or features. When necessary, or if asked, the company personnel shall assist the rider with securement devices, ramps, and lifts. 49 CFR §37.167(e); 49 CFR §37.165 (f).

24. Is a driver required to announce stops?

Yes. The driver must announce transfer points, major intersection, destination points and intervals along the route in a manner sufficient to permit persons with visual impairments to be oriented to their location. A driver must also announce any stop when requested to do so by a person with a disability. 49 CFR §37.167(b).

25. Does the driver have to use his/her own voice or can mechanical means be used?

The driver can use either his/her own voice or mechanical devices so long as the announcements can be heard inside as well as outside of the bus. 49 CFR §37.167 Appendix D.

26. What does the ADA require the driver to do when announcing stops for people who are hearing impaired?

Drivers must use note pads for communicating with persons with hearing disabilities. Also, the transit company may use mechanical devices for deaf or hearing-impaired individuals to read where the major intersections and transfer points are along the route. 49 CFR 37.167(f).

27. Can I be asked to leave the bus because someone “thinks” that I am bothering other passengers?

Generally, no. Sometimes people with psychiatric disabilities talk loudly or act in an angry manner. If these actions or other actions are caused by your disability, then the bus driver can not ask you to leave the bus. However, there is conduct where the driver can ask you to leave. Such conduct includes: (1) causing the driver to operate the bus in an unsafe manner, (2) doing something that might hurt another person on the bus, (3) engaging in an illegal activity. 49 CFR §37.5(h).

28. It takes me a long time to board a bus and the driver rushes me. Can the driver do this?

No. You must be given enough time to board or disembark from the bus. 49 CFR §167(i).

29. Is the bus driver required to assist me on the bus?

Yes. The driver is required to offer you assistance with lifts, ramps, and securement devices. The driver has to help you even if it means leaving his/her seat. 49 CFR §37.165. The driver is not required to lift you or your belongings.

30. Can I be charged more to ride a city bus if I have a disability?

No. You cannot be charged more to ride a city bus because you have a disability. 49 CFR § 37.5(d). However, you can be charged more for the demand response system. Also, known as a paratransit system. 49 CFR §37.131.

31. Does the ADA require public transit systems to have discount fares for people with disabilities?

No. The ADA does not require discount fares for people with disabilities.

32. Does any law require a transit provider to offer discount fares to people with disabilities?

Yes, under both federal and state laws. The Urban Mass Transportation Act, a federal law, requires discount fares in urban areas of 50,000 or more people for persons with physical disabilities during off peak hours. This discount must be at least 50% of the fare price. 49 CFR §1604(m). California state law requires that where discount fares are offered to seniors, then discounts must also be offered to people with physical or mental disabilities. Public Utilities Code (PUC) §99155. Some transit companies require that a person have a transit identification card. PUC §99155.

TRANSPORTATION RIGHTS FOR PEOPLE WITH DISABILITIES UNDER THE AMERICANS WITH DISABILITIES ACT

Chapter 6

VEHICLES

1. I have heard that public transportation must be accessible to individuals with physical disabilities. Is this true?

Yes. Under the ADA, an individual with a disability cannot be excluded from participation in or denied the benefit of transportation services run by a city, county or other local government. The ADA requires that public transportation be accessible to individuals with physical disabilities, however there are many rules regarding accessibility standards, including rules regarding when and whether accessible vehicles are required. 42 USC §12132; 49 CFR §37.5.

2. My city has a fixed route system, what are the rules regarding purchase or lease of new accessible vehicles?

All new vehicles, including buses and rail vehicles, purchased or leased after August 25, 1990, must be readily accessible and useable by individuals with disabilities. A public transit authority may only purchase or lease a new bus that is not readily accessible to and useable by individuals with disabilities if it receives a waiver from the Urban Mass Transportation Act Administrator. 42 USC §§12142(a), 12145; 49 CFR §§37.79, 37.71(b).

3. What are the rules regarding purchase of or lease of new vehicles for demand responsive systems (i.e. dial-a-ride)?

A public transit authority is required to purchase or lease new demand responsive vehicles that are readily accessible to and useable by individuals with disabilities; unless the system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that it provides to individuals without disabilities. 42 USC §12144; 49 CFR §37.77(a),(b).

4. What is considered an equivalent level of service?

A demand responsive system provides an equivalent level of service, if the service available to individuals with disabilities is provided in the most integrated setting appropriate to the needs of the individuals and is equivalent to the service provided other individuals with respect to the following service characteristics:

- 1) Response time,
- 2) Fares
- 3) Geographic area of service,
- 4) Hours and days of service,
- 5) Restrictions or priorities based on trip purpose,
- 6) Availability of information and reservations capability; and
- 7) Any constraints on capacity or service availability.

42 USC §12144; 49 CFR §37.77(c)

5. What does the phrase readily accessible and useable by individuals with disabilities mean?

It depends on the size of the vehicle. If the vehicle is over 22 feet in length it must have at least two securement positions, those under 22 feet must have at least one. Vehicles over 22 feet must also have a public address system which permits the driver to announce stops and provide other passenger information.

All public transportation vehicles must have the following to be considered accessible and useable by individuals with disabilities:

A lift capable of lifting 600 pounds with a platform surface of at least 30 inches by 48 inches with handrails on two sides, or a ramp allowing access to the vehicle.

- Floor areas must be covered with slip resistant surfaces.
- Contrast strips on all step edges and lift or ramp edges.
- Seats in the front of the vehicle must be designated as priority for persons with disabilities.

- Interior hand rails and stanchions are required to assist passengers in getting on and off the vehicle and moving around inside.
- Specific requirements must be followed concerning sign size and lightening to assist persons with low vision.

49 CFR §§38, 37.3(m), 37.7, 37.9.

6. Do used vehicles have to readily accessible and useable by persons with disabilities?

Maybe. All used vehicles (including buses and rail vehicles) purchased or leased after August 25, 1990, must be readily accessible and useable by individuals with disabilities. 42 USC §12142(b); 49 CFR §§37.73, 37.87. However, a public transit authority can purchase a used vehicle that is not accessible if they are unable to obtain an accessible vehicle after *good faith effort* to do so. 42 USC § (b); 49 CFR §§37.73, 37.87.

7. What does good faith effort mean?

Good faith effort includes at least the following steps:

- An initial solicitation for accessible vehicles;
- A nationwide search for accessible vehicles; and
- Advertising in trade publications and contacting trade associations.

49 CFR §§37.73(c, d), 37.87(c, d).

8. What about historical vehicles, do they have to be accessible?

No. A vehicle does not have to be accessible to and useable by individuals with disabilities if the vehicle is included on the Nation Registry of Accessible Places and making it readily accessible to and useable by individuals with disabilities would significantly alter its historical character. 42 USC §12142(c)(2); 49 CFR §§37.75(d), 37.83(d).

9. My city already has accessible vehicles, but they do not conform to ADA, do they have to retro fit them?

No. The ADA does not require retro fitting of any vehicle for fixed route systems. 42 USC §12142; 49 CFR §37.71

TRANSPORTATION RIGHTS FOR PEOPLE WITH DISABILITIES UNDER THE AMERICANS WITH DISABILITIES ACT

Chapter 7

PARATRANSIT

1. How does the ADA determine that a paratransit service provides “equivalent service” to a fixed route system?

Paratransit systems must mimic the fixed route system. A paratransit system must provide service equal to what the fixed route system provides in the following areas:

- a. Response time;
- b. Fares;
- c. Geographic areas;
- d. Hours of the day;
- e. Days of the week;
- f. Restrictions or priorities based on trip purpose;
- g. Availability of information and reservations capability; and
- h. Any constraints on capacity or service availability.

42 USC §12144; 49 CFR 37.77(c).

2. What is a demand response system?

It is any public transit system that doesn't run along set routes at specific times; i.e. dial-a-ride or paratransit service. 49 CFR 37.3.

3. What are the criteria for determining ADA paratransit eligibility?

The ADA regulations have three categories for ADA paratransit eligibility. They are:

- a. Someone who because of their disability can not independently board, ride or disembark from an accessible fixed route bus;
- b. Some one who can not use the fixed route system because that system is not fully accessible. Either the vehicles on the route that the person wants to use are not accessible, or the stop is not accessible, or the person's mobility device can not fit on the lift of the fixed route bus;
- c. Some one who because of their disability when combined with environmental factors, such as heat or cold, can not use a fixed route bus all the time. ADA paratransit eligibility can be both trip specific and may be either permanent or temporary.

42 USC 12143(c)(1)(A); 49 CFR 37.123(e).

If an individual meets the eligibility criteria for some trips and not others, the individual is ADA paratransit eligible for only those trips in which he or she meets ADA paratransit criteria. 49 CFR §37.123(b).

Individuals may also be ADA paratransit eligible on the basis of permanent or temporary disability. 49 CFR §37.123(c).

4. What is the process that the transit provider must use to determine who is ADA paratransit eligible and who is not?

The transit provider must look at how you board, ride, and disembark the regular city bus. The key to the determination is whether or not your disability prevents you from using a fixed-route system all or some of the time.

The ADA requires that the transit provider strictly limit the ADA paratransit eligibility to individuals that meet ADA paratransit criteria (see question #3 above). However, the process may not impose unreasonable administrative burdens on applicants, and may not involve "user fees" or application fees.

5. I've never tried to use a city bus. How do I know if I qualify?

The best answer that can be provided in this manual is to advise you to consider what movements, cognitive skills and other physical and mental abilities it would

take for you to use a regular city bus. If your disability “prevents” you from doing this without help from another, then it’s possible you may qualify for paratransit services.

6. Will I have to have a medical examination?

Maybe. Providing the transit company with a doctor’s note may be enough. Or going through a “functional assessment” offered by the transit provider may be another alternative. 49 CFR §37.125.

7. Who will pay for this examination?

If you are asked specifically to have a medical evaluation, then the paratransit company will be financially responsible.

8. Is it difficult to get paratransit service if you have an “invisible” disability?

Yes. It should not be, but unfortunately, Disability Rights California’s experience is that people with “hidden” disabilities have difficulty obtaining paratransit certification. The transit providers have difficulty understanding how someone with a non-visible disability, like a mental health disability for example, can prevent them from using the city bus.

9. What should I do if I want to apply for paratransit service?

Because the ADA is liberal in letting the transit company make its own operational rules, most paratransit companies have their own application process; some companies have a written application. Others have an interview process. That process can be in the form of an in-person interview or a telephone interview. We suggest that you contact the paratransit provider and ask for the application process.

All information about the process, materials necessary to apply for eligibility, and notices and determinations concerning eligibility should be made available in accessible formats, upon request. Individuals may also request reasonable accommodations for the application process if one is needed.

49 CFR §37.125(b), (c), and (d).

Once you complete the application, the transit provider has 21 days to make the decision. The decision must be in writing and state the reasons for the decision. If the decision is not made within the 21 day period, you are considered

“presumptively” eligible until a decision is made. You also have a right to receive all the information, application, notices and determinations concerning your eligibility in accessible formats. 49 CFR §37.125(b),(c),(d).

10. When does the 21-day period begin?

The 21-day period begins when the transit provider considers the application complete. 49 CFR §37.125(c).

11. Does this apply to re-certifications as well?

Yes. If the decision isn’t made within the 21-day period, then your current eligibility category continues until a decision is reached. 49 CFR §37.125(c),(f).

12. What if I’m denied eligibility?

Under the ADA, you have the right to appeal. 49 CFR §37.125(g).

13. What do I do if I disagree with the eligibility conditions under which I must use the service?

You have the right to appeal the conditions imposed on you. 49 CFR §37.125(3).

14. What is the appeal process according to the ADA?

The transit provider must provide an administrative appeal process for people who have been denied service or who disagree with the conditions of eligibility. The denial must be written and it must state the reason(s) for the denial.

You have a minimum of sixty days to file a request for an appeal. You must be able to present evidence, written or verbal, of your disability and how it impacts your ability to use fixed route service. You may chose to be represented by someone else. You have the right to present witnesses and to cross-examine the transit provider’s witnesses.

The rest of the process is left to the discretion of the company. A written decision must be sent to you stating the reasons for the decision within thirty days of the hearing. However, if the transit provider has not made a decision within 30 days of the completion of the appeal process, the transit provider shall provide paratransit service from that time until and unless a decision to deny the appeal is issued. 49 CFR §37.125 (g)(1) & (3).

15. Will I have to go through the application process every year?

Maybe. The transit provider has the right under the ADA to re-certify riders. Usually it's not more than once a year. 49 CFR §37.125(f).

16. What if I'm denied eligibility when I'm re-certified?

If you disagree with the denial, you have the right to appeal. 49 CFR §37.125(g).

17. Will I continue to be served by paratransit if I am appealing a re-certification eligibility denial?

Yes. Pending the outcome of the appeal, your current eligibility status will remain in tact.

18. What happens if I lose my appeal?

The regulations are silent as to what other administrative steps you may take. In most cases, you can file an administrative complaint with the Federal Transit Administration (FTA) or you can take other legal actions (see *Chapter 9 Filing Complaints*).

19. What kind of service must paratransit provide?

You are entitled to "origin-to-destination" service. At the very least, that is "curb-to-curb" service. Many transit providers offer "door-to-door" service. Transit providers may provide what is called "feeder" service to other public transportation service, like a shuttle service, for those persons who are eligible for Category 2 or 3. 49 CFR §37.129(a)(b)(c).

You are entitled to the same standard of service as someone who rides a regular city bus. 49 CFR §37.121(a).

20. Under what circumstances can I be suspended from paratransit service?"

You can be suspended by the paratransit provider if they can show that you have a "pattern or practice" of missed trips. 49 CFR §37.121 Appendix D; §37.125(h).

21. What are "missed trips"?"

A missed trip is where you had a reserved ride and did not cancel timely or were not present when the bus arrived to pick you up. You can not be suspended for

trips that were missed due operator error or other factors beyond your control. 49 CFR §37.121 Appendix D; §37.125(h)(1).

22. How many “missed trips” can I have before I’m suspended?

That varies from provider to provider. It’s usually a “reasonable” number in a month or a quarter of a year. 49 CFR §37.125(h).

23. For how long can I be suspended?

It’s usually a “reasonable” period, determined by the transit entity. 49 CFR §37.125(h).

24. Can I be suspended for other reasons besides “missed trips”?

Yes. Suspensions can be issued for the following reasons:

- Failing to cancel rides within the “window” as required by the transit company;
- Repeated lateness;
- Conduct that is harmful to others, including the driver, and yourself.

The transit provider must establish that a “pattern or practice” exists. These types of suspensions can be appealed as described above.

25. What is the paratransit trip “suspension process”?

- You must be notified in writing before your service is suspended. The notification must state the reasons for the suspension.
- You must be provided with an opportunity to be heard (an appeal).
- You must be notified in writing about the decision.

49 CFR §37.125(h)(2)

26. Can I appeal a suspension of paratransit services?

Yes. You can appeal a suspension of service. The transit provider must follow the same requirements as outlined for a denial of paratransit eligibility. The suspension will be postponed pending the outcome of the appeal. 49 CFR §37.125(h)(3).

27. Can I be suspended because I have a psychiatric disability?

No. You cannot be suspended simply because you have a psychiatric disability. However, if your conduct makes it difficult for the driver to drive the bus or could cause injury to another passenger, then the transit provider could suspend your service. However, you have the right to appeal the suspension as described above. 47 CFR §37.125(h)(3).

28. How much will I have to pay for each ride?

You can only be charged twice what you would pay if you were riding a regular city bus. 49 CFR §37.131(c).

29. Why can I be charged more to ride paratransit service?

The reason that you can be charged more is because it's a more expensive system to run.

30. Can paratransit refuse my ride request because of my "trip purpose"?

No. The transit provider can not restrict your ability to ride based on the purpose of the ride. 49 CFR §37.131(d).

31. During what hours is paratransit required to provide service?

The transit provider must operate the same hours of the day and days of the week as a regular city bus. 49 CFR §37.131(c)(2).

32. Our regular city bus doesn't run on the weekends. Is my paratransit service required to run on the weekends?

No. Paratransit service must run on the same days of the week as the regular city bus. But, the transit provider can always give more service than is required by the ADA. 49 CFR §37.131(c)(2).

33. What does the ADA say about scheduling paratransit rides?

A transit provider must provide next-day service. Reservations may be taken by agents, or by mechanical means. If reservations are taken, then they must be taken during all regular business hours of the transit provider. If the provider of service is closed the day before a service day, then the system may negotiate pick-up times with you. 42 USC §12143(a); 49 CFR §37.131(b).

34. Do I have to make advanced reservations?

No. When the ADA regulations were first implemented in 1991, advanced reservations were required. In 1996 however, the requirement to make advance reservations was removed. Now, advanced reservations are an option for the paratransit service, but they are not necessary. 49 CFR 37.131(b)(4).

35. I am having difficulty getting through on the telephone to make my ride requests. Can I be made to wait on hold for a long period?

No. All operations, including calling in to make ride reservations, are subject to ADA requirements. The ADA may be violated if you are made to wait a long time to arrange a trip. An ADA violation is generally proven by showing that the transit provider has “a pattern or practice” of a particular abuse, i.e. keeping people waiting for a long time on the telephone. The practice has to demonstrate that it prevents someone from exercising their rights to public transportation. But, one incident (or even a few) does not necessarily mean that the ADA has been violated. Disability Rights California suggests that people with disabilities document the incidents that occur in order to show that there is a pattern or practice of violating the ADA.

36. What is the difference between an “agency ride” and an “ADA ride”?

The paratransit company is allowed to contract privately with agencies to provide specific rides to persons with disabilities. Usually, it involves an agency giving the paratransit service a list of names and the agency pays the transit company directly. The individual does not choose where to go and may not be ADA certified for paratransit.

In order to get an ADA ride you must be “paratransit eligible” or “certified” ADA paratransit eligible. You pay for ADA rides. The choice of where you can go is determined by you. 49 CFR §37.139(c)(2).

37. What is subscription service?

Subscription service may be offered to individuals who have repeated trips to the same destination during a limited period. This eliminates the need for you to call in daily for a ride reservation. Some persons with disabilities find it helpful if they are going back and forth to work, to college, etc. 49 CFR §37.133.

38. Are the paratransit providers required to offer subscription service?

No. This service is optional for the transit provider. If the transit provider does offer this type of ride, then the following applies:

- The transit provider can not offer more than 50% of its rides as subscription service;
- The service may place you on a waiting list. This is the only time the ADA permits waiting lists.

49 CFR 37.133(b)(c).

39. Why can't the transit companies give more than 50% to subscription service?

If the transit provider obligated itself to more than 50% subscription service, then there would not be any trips available for daily trips. The ADA tries to create “equal” service to the fixed route service. The 50% rule was developed to balance the difficulties someone with disabilities might have calling in daily with the need to make more rides available to everyone. 49 CFR §37.133.

40. How do I make a ride request?

When you call in to make your request, make sure that you have the address of where you are going. The reservationist may only ask questions that have to do with where you are going and the time you want to be picked up. A regular city bus driver does not ask passengers why they are going somewhere. Therefore, a paratransit provider can not ask you about the purpose of your trip. Some providers insist that you make multiple calls for rides if you are making a round-trip or multi-legged trip. The paratransit provider is allowed a lot of flexibility in rulemaking to ensure operations run smoothly. 49 CFR §37.121(a). Make sure that you ask for a copy of the transit providers rules of operation and consumer guidelines.

41. What is the “two-hour window”?

The two-hour window is the time frame that a ride may be negotiated. You must tell the reservationist, also known as a call-taker, the time that you wish to be picked-up. The call-taker may look at rides that are available one hour before your requested time or one hour after that time. 49 CFR §37.131(b)(2).

42. Can you give an example?

Let's say you have a doctor's appointment at 11:30 am. If you ask for a pick-up time of 9:00 a.m., you can be offered a ride as early as 8:00 am or as late as 10:00 am. Whenever you are trying to make a decision about times, make sure that you factor in ride sharing, the late-time that the provider allows for unexpected problems and how long the trip will actually take. If the provider states in its rules of operation that they have a fifteen-minute late window, then you must consider that when negotiating a ride.

43. When I call in for a ride, I am often given a "capacity denial". Can the paratransit service do this?

No. There can be no restrictions on the number of trips you can take. You can not be placed on a waiting list or be subjected to any other practice that limits the availability of paratransit service. 49 CFR §37.131(f).

44. Can I travel between transit districts on paratransit?

Maybe. A transit district is not required by the ADA to provide services into another transit district unless the transit provider sends a fixed route bus there, or there is an agreement between districts.

45. Is there any way that I can go into another district?

Yes. If you need to go into another district's area, let's say the next county, you may be able to arrange for a "transfer". Your paratransit provider can drop you off at a designated spot and the other paratransit service can pick you up. This is quite common where transit districts share a common county or city boarder. It can get complicated because not every paratransit system has the same hours of operation as the "home" paratransit service and you must make a "reservation" in the other district. You also must become a "visitor" in that new district. "Visitor" status is not hard to get. Going into another district can become expensive too. Not every paratransit service charges the same amount.

46. What is "visitor status"?

Under the ADA, "visitor status" entitles you to use your paratransit eligibility while visiting another area. 49 CFR §37.127.

47. How can I apply for “visitor status”?

You can call the paratransit service in the other location. Ask them for “visitor” status. The requirements that they have may vary from your home district. These requirements may include asking you to prove you are a resident in your “home” area, or provide certification that you are currently a paratransit eligible rider. 49 CFR §37.127(b).

48. Do I have to register as a regular paratransit user in the new area where I am a visitor?

No. The new district is not allowed to force you to register as a “regular” paratransit rider during the visiting period. 49 CFR §37.127(e).

49. How long can I be on visitor status?

In any 365-day period, you may be a “visitor” in one district for up to 21 days. This 21-day period need not be consecutive days. You can have many 21-day periods each in a different district. 49 CFR §37.127(e).

50. Where can I travel on paratransit?

The ADA requires a paratransit vehicle to go everywhere the regular city or county bus systems travels, and includes a width of three-quarters of a mile on each side of the route. 49 CFR §37.131(a)(1). If you have a rail system in the service area, then paratransit service is required three-quarters of a mile around each station and up to one and one-half miles for end or outlying stations. 49 CFR §37.131(a)(2).

51. Will my personal care attendant have to pay a fare to ride with me?

No. The regulations state that personal care attendants (PCA) ride free when accompanying a rider with a disability. 49 CFR §37.123(f)(1)(i).

52. Does the transit provider have the right to require my attendant to have some kind of “transit ID”?

Maybe. The ADA regulations do not discuss this. Some transit providers have tried to force this on consumers. However, most people with disabilities have multiple PCA’s (including family members). It is unlikely that any requirements would be successful because it would be a burden on the consumer.

53. Can I bring a friend with me?

Yes. Under the ADA, you can bring a friend just like you could if you were riding a regular bus. But unlike bringing a PCA, your friend would have to pay the same fare as you do. 49 CFR 37.123(f).

As a practical matter, you should notify the transit provider when you call in to make a ride request that you are bringing a friend or PCA. By telling the transit provider, then you will be sure that there's enough room for your PCA or friend.

54. Can the transit provider make rules about who can ride with me?

Yes. The transit provider has a lot of flexibility to make rules that impact the operation of the company. However, they can not prevent you from bringing a friend who uses a wheelchair. They may not have a vehicle that can take your friend's wheelchair at the time you want to be picked up. So, you may need to negotiate the trip. Make sure that you read all the rules about bringing friends on a trip. Those rules are supposed to be in writing in a format that you can easily understand.

55. Can I bring my service animal?

Yes. You are allowed to bring your service animal with you on board the paratransit vehicle. 49 CFR 37.167(d).

56. I can not climb steps and I do not use a mobility device. May I use the lift on a paratransit bus?

Yes. Like persons riding a regular city bus, you can ask to use the lift. 49 CFR 37.165(g).

57. Do paratransit systems have to submit an annual plan to the federal government?

No. In 1996, the regulations changed regarding paratransit plans. Since transit providers had to be in full compliance with all ADA regulations by January 26, 1997, the Federal government no longer felt it was necessary for each paratransit provider to create annual plans. 42 USC §12143(c)(7); 49 CFR §37.135(a),(b)

58. I use a mobility device. Are there any rules letting me sit in my chair in either a forward or backward position?

Yes. These rules are based on the size of the vehicle and when the vehicle was purchased. Most of these rules should be in place now that the January 26, 1997 compliance date is past. For more details, see the chapter on VEHICLES. 42 CFR §38.23(d)(4).

59. Can I file a complaint with the transit provider about the quality of the service?

Yes. Every paratransit provider is required by both Section 504 of the Rehabilitation Act and the ADA to have a grievance procedure in place. The procedure should be published in writing and available in alternate formats when asked by the public. 28 CFR §35.107; 49 CFR §37.11 Appendix D.

60. What are the requirements for training of bus drivers?

The ADA does not state what has to be taught or how many hours a driver should be trained. The only statement that the ADA regulations make about training is that drivers have to be trained to proficiency. 49 CFR 37.173.

61. What are the grievance procedures if I have a comment or a complaint?

Grievance procedures vary depending on the transit agency and the paratransit service provider. You should contact your local agency to find out how to file a complaint. Most agencies will require you to provide the following information:

- Name, address and telephone number of complainant
- Location and date of problem
- Description of problem
- bus number (if appropriate)
- time of day
- employee name, and any persons involved or witnesses

When you speak to the agencies customer service department, be sure to ask how issues are resolved, if there are any timelines for resolution, who will notify you

when the issue has been resolved, and who you should contact if you are not satisfied with the resolution.

62. If I have a complaint that involves an ADA issue, can I file a complaint outside of the transportation agency?

It is a good idea to deal directly with the transportation agency and paratransit service provider, because they are in the best position to resolve the issue. However, if you are having a difficult time getting the agency to resolve your issue, or your local agency does not have a grievance procedure in place, you can file a complaint with the Federal Transit Administration (FTA) or the federal Department of Justice (DOJ). See *Chapter 9 Filing Complaints* for more information about filing complaints with the FTA or DOJ and other legal remedies.

TRANSPORTATION RIGHTS FOR PEOPLE WITH DISABILITIES UNDER THE AMERICANS WITH DISABILITIES ACT

Chapter 8

OTHER FORMS OF “PUBLIC” TRANSPORTATION

LIGHT RAIL

1. What is light rail?

Light rail is defined as a street car vehicle operated on city streets, semi-exclusive rights of way, or exclusive rights of way. Light rail service may be provided by step-entry vehicles or level boarding. 49 CFR 37.3.

2. How many cars on a light or rapid rail system have to be accessible?

As of July 25, 1995, all trains with two or more cars must include at least one car that is readily accessible and useable by individuals with disabilities, including individuals who use wheelchairs. 42 USC §12148(b); 49 CFR §37.93(c).

3. What about light rail trains on the street? Do they have to be accessible?

Yes. Light rail designed for and operated on pedestrian malls, city streets, or other areas where level boarding is not practicable shall provide wayside or car-borne lifts, mini-high platforms, or other means of access for individuals with disabilities including persons using wheelchairs. 49 CFR §§38.71(b)(2), 38.73 (b or c).

4. Do inaccessible light rail cars have to be retrofitted?

No. ADA regulations do not require that inaccessible light rail cars be retrofitted. However, if portions of the vehicle are modified in any way that might affect accessibility, each sub portions should comply, to the extent practicable, with the accessibility regulations of the ADA. 49 CFR 38.71(c).

COMMUTER RAIL

5. What is commuter rail?

Commuter rail transportation is defined as a short-haul rail passenger service operating in urban and suburban areas. Commuter rails may cross geographical boundaries of a state. 49 CFR 37.3.

6. Do commuter rail cars have to be useable by and accessible to individuals with disabilities?

Yes. New, used and remanufactured commuter rail cars, must be accessible to and useable by individuals with disabilities. 36 CFR § 1192.91

7. How many cars on a light or rapid rail system have to be accessible?

As of July 25, 1995, all trains with two or more cars must include at least one car that is readily accessible and useable by individuals with disabilities, including individuals who use wheelchairs. 42 USC §12148(b); 49 CFR §37.93(c).

8. If cars are not accessible do they need to be retrofitted?

Maybe. If portions of the car are modified in such a way that it affects or could affect accessibility, each modified portion must comply, to the extent practicable, with the applicable access portions of the ADA regulations. There is no requirement that inaccessible cars be retrofitted with lifts, ramps or other boarding devices. 36 CFR § 1192.91

FERRIES AND OTHER PASSENGER VESSELS

9. What is a Ferry?

A ferry is defined as a vessel that is limited in its use to carrying deck passengers or vehicles or both, operates on a short run on a frequent schedule between two points over the most direct water route, other than in ocean or coastwise service, and is offered as a public service. 49 CFR 171.8.

10. Do ferries operated by a public transit system need to be made useable by and accessible to individuals with disabilities?

Yes. All vehicles that are part of the public transit system must comply with ADA standards. 42 USC §12141(2); 37 CFR §37.3; 49 CFR §37.95 Appendix D.

11. What is a passenger vessel?

A passenger vessel is defined as:

- A vessel subject to any of the requirements of the International Convention for the Safety of Life at Sea, 1974, which carries more than 12 passengers;
- A cargo vessel documented under the laws of the United States and not subject to that Convention, which carries more than 16 passengers;
- A cargo vessel of any foreign nation that extends reciprocal privileges and is not subject to that Convention and which carries more than 16 passengers; and
- A vessel engaged in a ferry operation and which carries passengers.

12. Do passenger vessels operated by public transit also have to be useable by and accessible to individuals with disabilities?

Yes. All vehicles that are part of the public transit system must comply with ADA standards. 42 USC §12141(2); 37 CFR §37.3; 49 CFR §37.95 Appendix D.

TAXIS

13. Do privately owned taxis have to be made useable by and accessible to individuals with disabilities?

Maybe. Providers of taxi service are not required to purchase or lease accessible automobiles. 49 CFR 37.29.

However, when a provider of taxi service purchases or leases a vehicle other than an automobile, the vehicle is required to be accessible unless the service available to individuals with disabilities, including individuals who use wheelchairs, is provided in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to:

- Response time;
- Fares;
- Geographic area of service;
- Hours and days of service;

- Availability of information;
- Reservations capability;
- Any constraints on capacity or service availability;
- Restrictions priorities based on trip.

49 CFR §37.105; 49 CFR §37.29.

14. Does a taxi service have to provide accessible vehicles?

No. A provider of taxi service is not required to purchase vehicles other than automobiles and automobiles are not required to be accessible. If the taxi service purchases vehicles other than automobiles, they are required to be accessible.
49 CFR §37.29.

15. Can a taxi service refuse to give me a ride because I have a disability?

No. Private taxi service cannot discriminate against individuals with disabilities by refusing to provide service to individuals with disabilities who can use taxi vehicles, refusing to assist with the stowing of mobility devices, or charging higher fares or fees for carrying individuals with disabilities and their equipment.
49 CFR §37.29.

AIRPORT SHUTTLES

16. Do airport shuttles have to be made accessible?

Yes. A public accommodation that provides transportation services, but that is not primarily engaged in the business of transporting people, is required to remove transportation barriers in existing vehicles and rail passenger cars used for transporting individuals where such removal is readily achievable. 29 CFR § 36.310; 2 CFR § 36 Appendix B.

If you are being transported by a private agency or the public transit agency to the airport (ex. paratransit, a “Cloud 9” shuttle, or a city bus) or another agency that *is* in the business of transporting people, this is not considered an airport shuttle and the company would be subject to the regulations in Chapters 3, 5, 6, and 7 of this manual.

17. What is meant by “provides transportation services, but is not primarily engaged in the business of transporting people?”

This statement describes a public entity which is primarily engaged in a business other than transportation, but provides a demand response system to transport its clients, customers, or employees. 2 CFR § 36 Appendix B.

UNIVERSITY TRANSIT SYSTEMS

18. Does my university transit system have to be accessible?

Yes. A public university operated transportation system is held to the same standard as a commuter bus service because it is considered a public entity that provides transportation services, but is not primarily engaged in the business of transporting people. Private university operated transportation systems are held to a very similar standard. 29 CFR § 36.310; 2 CFR § 36 Appendix B; 49 CFR 37 Appendix D.

In addition to the regulations described above, all accessible vehicles must comply with the standards described in Chapter 6 of this manual.

TRANSPORTATION RIGHTS FOR PEOPLE WITH DISABILITIES UNDER THE AMERICANS WITH DISABILITIES ACT

Chapter 9

HOW TO DOCUMENT PROBLEMS WITH PUBLIC TRANSPORTATION

1. What do I do if I think a public transit system has violated my rights under the ADA?

You can file a complaint with the public transit agency (28 CFR §35.107), a complaint with the Federal Transit Administration (FTA) or the federal Department of Justice (DOJ) (28 CFR §§35.170(c), 35.171, 35.190; 49 CFR §37.11), or file a private lawsuit (42 USC §12133). You do not need to file any one of these first. You do not need to wait for whichever you started first to be finished before starting another action.

2. How do I file a complaint with the public transit agency?

Make sure that you know the transit company's rules, policies and procedures prior to making a complaint. Check their consumer handbook.

Before you make a complaint with the transit agency, make sure that you have the essential information at hand:

- Name of the driver;
- Bus number;
- Route number;
- Date & time of the incident; and
- Details of what happened.

It's sometimes very difficult to write down these things as they happen. Disability Rights California recommends you use a format similar to the *Transportation*

Problem Documentation Form at the end of this chapter. This form will help you focus on the potential ADA issues.

When you are ready to make the complaint directly to the transit agency, make sure that you write down the name of the individual taking the complaint. If you have difficulty in writing things down, have someone else help you; a friend, relative, a personal care attendant.

Always try to talk to someone who can make a decision. Keep records of all your telephone calls with the transit company. Keep copies of all written correspondence between you and the transit company. This may be needed if the issue can not be resolved quickly and you decide to make a formal FTA complaint.

3. What if I don't know the name of the public transit agency?

You should be able to find the name of your local public transit agency in the telephone book. It is usually in the "yellow pages" in the first few pages of the book under public transportation. You should also find a list of numbers so that you can contact the agency if you need more information in order to file your complaint.

4. Is there a deadline for filing a complaint with the local transit agency?

No. However it is a good practice to file complaints timely so that the facts can still be investigated and matters corrected. If you wait too long, memories will have faded and circumstances may have changed. If you want money from the local transit agency, you must file what is called a "Government Tort Claim" within 6 months in order to ask for money. Ask the transit agency for the proper form to file if this is what you want.

In addition there are time limits on when you can file a complaint with a federal agency or go to court. If you think you may need to file with a federal agency or go to court, you should file with the local transit agency promptly.

5. How do I file an administrative complaint with the Federal Transit Administration (FTA)?

Filing an administrative complaint with the Federal Transit Administration (FTA) Office of Civil Rights is one option people with disabilities have when they believe the public transportation system has violated the ADA. See the end of this chapter for a sample copy or link to the FTA complaint form.

The FTA will not consider a complaint unless it is supported with enough documentation to establish:

- The ADA violation, fixed route or paratransit, is so extreme that one incident is sufficient; or
- There are many incidences that have happened and show “a pattern or practice” which violates the ADA.

If people can join to document ADA violations, so much the better. There is strength in numbers. Most people do not know what information is needed to support an FTA complaint. This chapter provides one method of documentation. Other methods can work as well. Other systems for tracking problems with a transit provider include keeping calendars, logs, talking into tape recorders or having others act as scribes.

The FTA wants to see complaints over a period of time. The length of time depends on the type of violation alleged. Other factors to consider include:

- Is this a fixed route or paratransit problem?
- Does the person have the transit providers guidelines, “the dos and don’ts” of consumers’ rights and responsibilities?
- Does the person fear retaliation?
- Can the person document the problems or will third parties be involved?
- Does the person understand what “equal access” to public transportation means?

The FTA form is not difficult for most people to fill out. The problem will be substantiating the facts. In addition, the FTA is not necessarily consumer friendly. It will not act immediately. It will not take away money from the transit provider. The FTA may require the transit provider to perform certain tasks within an agreed upon time. A decision by the FTA will not prevent a person from suing in court. However, if a suit is filed before the FTA finishes an investigation, the FTA will stop its investigation pending the outcome of the case.

6. How do I file a complaint with the federal Department of Justice (DOJ)?

Filing a complaint with the DOJ is similar to filing one with the FTA. You will need to include the same information. See the end of this chapter for a sample or link to the DOJ complaint form.

7. How do I know whether to file a complaint with the FTA or the DOJ?

Generally the FTA is the primary federal agency responsible for taking transportation complaints. The good thing about filing with a federal agency is that it does not matter where you file, the federal agencies are responsible for sending your complaint to the proper agency for review.

8. Is there a time deadline for filing a complaint with the FTA or the DOJ?

Yes. You must send a written complaint to the FTA or DOJ within 180 days of the incident you are complaining about. 28 CFR §35.170(b). If you file past the time limit, the federal agency will decide if you have a good reason for filing a complaint late. Good reasons include such things as, illness or other incidents that prevented you from filing. No knowing there was a time limit is generally not a good reason for missing the time limit. It is best to file as soon as you can.

9. What else can I do about my transportation problems?

Armed with all the written documentation from the many complaints that you've made to the transit provider, you've decided it's time to let others know how you and others feel about the problems with public transportation. You can take the following steps:

- Go to the City Council, Board of Supervisors, or other local transit advisory agency.
- File a complaint in Small Claims Court. Make sure that you've filed a "claim against a government agency" within 6 months of the alleged wrong doing if appropriate first.
- Contact other disability rights groups.
- Get the media's attention.
- Contact Disability Rights California for assistance.

- File a lawsuit using a lawyer.

10. Is there a deadline for filing a lawsuit?

You can file a lawsuit at anytime and do not need to file a complaint with the local transit agency or with the FTA or DOJ. The ADA does not establish a timeline for filing a lawsuit and state law controls the timeline. In California, you should file a lawsuit within one year of the incident you are complaining about. You may file a lawsuit in small claims court, state or federal court. If you file a lawsuit in state court, including small claims court, you will generally need to include state laws that have been violated in your lawsuit. You should contact Disability Rights California or an attorney for advice on how to do this. Disability Rights California has another publication that explains how to file disability discrimination complaints in small claims court by using state law. You may want to contact Disability Rights California and obtain this publication if you plan to file a lawsuit in small claims court.

Attachments to Chapter 9

- **Transportation Problem Documentation Form**
- **Federal Transit Administration, Office of Civil Rights, Complaint Form:** <http://www.fta.dot.gov/office/civil/adacf.htm>
- **Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, Discrimination Complaint Form:** <http://www.usdoj.gov/crt/ada/t2cmpfrm.htm>

TRANSPORTATION PROBLEM DOCUMENTATION FORM

(Page 1 of 2)

PASSENGER'S NAME: _____

ADDRESS: _____

TELEPHONE #: _____

DATE / TIME OF COMPLAINT OR PROBLEM: _____

NAME OF PERSON COMPLETING FORM: _____

BUS STOP/PICK-UP &/OR DROP OFF LOCATIONS: _____

✓ ANY THAT APPLY TO YOU

Problems with Getting a Ride from Paratransit

Pick-up too early

Pick-up too late

Pick-up time unavailable

Return time not available

Would not make reservation for any time

Could not make **any** reservations when I called 2 days ahead

Could not make **any** reservations when I called 1 day ahead

Other

Problems with Driver / Route (Driver's Name: _____ Bus #: _____)

Dropped off – unsafe/inaccessible Paratransit dropped off too late

Didn't use wheelchair securement device correctly

Lift didn't work

Bus did not stop at bus stop

Other:

DESCRIBE WHAT HAPPENED
(Include names of people you spoke with if possible and
dates of all actions.)

ADDITIONAL COMMENTS: _____

WHAT TO DO WITH THIS FORM?

- Send/Call or Fax It To:
- Your Local Fixed Route, Demand Responsive or Transit Provider
- Use This Form to Aid You in Completing the Public Transit System's Complaint Form, the FTA or the DOJ Complaint Form
- Use it to Document Ongoing Problems for a Lawsuit

KEEP A COPY

TRANSPORTATION RIGHTS FOR PEOPLE WITH DISABILITIES UNDER THE AMERICANS WITH DISABILITIES ACT

Chapter 10

UNMET TRANSIT NEEDS AND THE TRANSPORTATION DEVELOPMENT ACT (TDA)

1. What if my transit agency is not meeting the needs of individuals with disabilities (not enough bus routes, paratransit is always late, etc.).

Under the Transportation Development Act (TDA) transit agencies must meet the needs of transit dependent individuals like seniors, persons with disabilities, and persons who are financially disadvantaged. Transit agencies must fulfill this responsibility before they can use funding from the state government, supplied through the TDA, for streets and roads.

2. What are the transit agency's responsibilities?

Each transit agency must establish a transportation planning agency. In turn, the transportation planning agency must establish a social services transportation advisory council for each county. PUC §§99214, 99401 and 99238.

3. What does the social services advisory council do?

The social services advisory council must:

- Annually help identify the transit needs in its area, including unmet transit needs and unmet transit needs that are reasonable to meet setting up new public transportation or specialized transportation, or by expanding existing services.
- Annually review and recommend action by the transportation planning agency for its area.

- Advise the transportation planning agency about major transit issues, including issues about coordinating and consolidating specialized transportation services.

PUC §99238.

4. How does the social services advisory council know what needs are unmet?

The transportation planning agency is required under the TDA to get community input from “transit dependent” and “transit disadvantaged” individuals. It does this by having the social services advisory council hold unmet needs hearings. The unmet needs hearings must obtain broad community participation and, if possible, should be rotated among various communities within the social services advisory council’s jurisdiction. PUC §99238.5.

5. How will I know when an unmet needs hearing is being held?

The TDA requires each transportation planning agency to announce unmet needs hearings, including the date, time, and location, in the newspaper at least 30 days prior to the hearing. PUC § 99238.5.

You can also contact your local transportation planning agency to find out when and where the unmet needs hearings will be held. You can find out who your transportation planning agency is by contacting your local transit provider.

6. What is meant by “unmet transit needs” and “reasonable to meet”?

The TDA requires that each local planning agency define the terms “unmet needs” and “reasonable to meet”. PUC § 99401.5(c). The local planning agency is required to document this definition by resolution or within their meeting minutes. You can get a copy of the definitions from the transportation planning agency.

Under the TDA, the fact that there are no resources to meet an unmet transit need can not be the sole reason for finding that a transit need is not reasonable to meet. Additionally, an agency cannot determine whether needs are reasonable by comparing unmet transit needs with the need for streets and roads. PUC § 99401.5 (c).

7. How can attending unmet transit needs hearings help?

Transportation planning agencies are required under the TDA to identify unmet transit needs and meet those that are reasonable to meet. If your transit needs are

not being met, this is a great way to make it known. Transportation development agencies develop regional transportation plans and they are required to consider the needs of riders with disabilities when making the plans.