

ADA: General Nondiscrimination & Provision of Service

Nondiscrimination

- “No Entity Shall Discriminate Against an Individual With a Disability in Connection With the Provision of Transportation Service.”

49 CFR 37.5(a)

Nondiscrimination

- Examples of Common Discriminatory Practices
 - Refusing to provide service because of a person's disability
 - Requiring individuals with disabilities to use seat belts or shoulder harnesses when other riders on the same vehicle are not also required to do the same

Nondiscrimination

- Examples of Common Discriminatory Practices
 - Requiring wheelchairs users to wear a special body belt as a condition of using lifts
 - Requiring riders who board a vehicle with a service animal to first disclose the nature of their disability to receive transportation

Nondiscrimination

- Examples of Common Discriminatory Practices
 - Requiring adults to accompany children under a certain age in order to use complementary paratransit service without having the same age requirement to ride the fixed route system
 - Prohibiting an individual with a disability from serving as a personal care attendant (PCA) for another rider with a disability

Nondiscrimination

- Examples of Common Discriminatory Practices
 - Imposing special charges for providing required services to individuals with disabilities
 - Refusing service due to insurance company conditions or insurance rates predicated on the absence of individuals with disabilities

Nondiscrimination

- Service Denial Due to Rider Conduct
 - It is not discrimination for an entity to refuse to provide service to an individual with disabilities because that individual engages in:
 - Violent
 - Seriously disruptive
 - Illegal conduct
 - Represents a direct threat to health or safety of others

Nondiscrimination

- Service Denial Due to Rider Conduct
 - seriously disruptive, illegal, violent behavior
 - Meant to be a high standard
 - Appearance or involuntary behavior that offends or inconveniences other passengers does not meet this threshold
 - To be “seriously disruptive” the condition must disrupt the provision of service
 - Most common scenario - passengers with hygiene issues

Nondiscrimination

- Service Denial Due to Rider Conduct
 - Determining a direct threat to others
 - Individual assessment, based on reasonable judgment
 - Determine probability that potential injury will occur
 - Do not presume certain conduct will occur based on a specific disability

Nondiscrimination

- Service Denial Best Practices
 - Provide written notice before imposing denials
 - Allow for periodic reconsideration for changed conditions or circumstances

Provision of Service

- Keeping Accessibility Equipment in Good Working Order
 - Lifts should be repaired promptly
 - Must make alternative means to accommodate individuals with disabilities in event of equipment failure
 - Requirement extends beyond lifts
 - Any equipment that facilitates use/access of the transit service

Provision of Service

- Keeping Accessibility Equipment in Good Working Order
 - Vehicles must be removed from revenue service before the beginning of the next service day and it must be repaired before the vehicle is returned to service

Provision of Service

- Keeping Accessibility Equipment in Good Working Order
 - What if the agency does not have a spare accessible vehicle?
 - If the agency would otherwise be forced to reduce service, it may keep the vehicle in service:
 - For up to five days in rural areas (less than or equal to 50k population)
 - For up to three days in urban areas (greater than 50k population)

Provision of Service

- Accommodating Passengers Using Wheelchairs
 - Wheelchair definition:
 - A mobility aid belonging to any class of three- or more wheeled devices, usable indoors, designed or modified for and used by individuals with mobility impairments, whether operated manually or powered
 - Must transport any wheelchair that the vehicle can accommodate consistent with legitimate safety requirements

Provision of Service

- Legitimate safety requirements
 - The combined weight of chair and passenger does not exceed lift specifications
 - But the wheelchair is of a size that would block an aisle or interfere with safe evacuation of passengers in an emergency

Provision of Service

- Cannot understate a lift's weight capacity
- Any transit agency policy requiring wheelchairs to be equipped with specific features (i.e. brakes) or be in a specific state of repair is not permitted

Provision of Service

- Securement of Wheelchairs
 - An agency cannot refuse to transport a rider only because the wheelchair cannot be secured to the satisfaction of the transit agency

Provision of Service

- Dwell Time
 - The transit agency must ensure that adequate time is provided to allow individuals with disabilities to complete boarding or disembarking from the vehicle

Provision of Service

- Deployment of Lifts
 - Transit agency cannot refuse to permit a passenger who uses a lift to disembark from a vehicle at any designated stop, unless
 - The lift cannot be deployed
 - The lift will be damaged if it is deployed
 - Temporary conditions at the stop, not under the control of the entity, preclude the safe use of the stop by passengers

Provision of Service

- Deployment of Lifts
 - Standees have the right to use lifts
 - Cannot seek waivers from standees or wheelchair users who require use of the lift
 - May have a policy that wheelchair users face a certain direction while using the lift, but it is ultimately the rider's decision which direction they choose to face

Provision of Service

- Respirators and Portable Oxygen
 - Must be allowed to use while riding
 - Cannot require that they be secured in a particular spot on vehicle

Provision of Service

- Service Animals
 - Definition: An animal that is individually trained to work or perform tasks
 - DOT rules apply (not DOJ)
 - Permissible to ask 2 questions:
 - Is this animal a service animal required because of a disability?
 - What work or task has it been trained to perform?

Provision of Service

- Service Animals
 - Refusal to transport is warranted if the animal:
 - Poses a direct threat to the health or safety of others
 - Creates a seriously disruptive atmosphere, or
 - Is otherwise not under the rider's control

Reasonable Modifications

- Reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination, unless they can demonstrate that doing so would fundamentally alter the nature of the service, program, or activity

Reasonable Modifications

- Exceptions
 - Accommodation Would
 - Be a fundamental alteration the nature of the service
 - Create a direct threat to the health or safety of others
 - Passenger is able to fully use the transportation entity's service without accommodation

Reasonable Modifications

- Individuals Making a Request
 - Must be a qualified individual with a disability (per ADA definition)
 - Should describe the requested modification
 - Need not identify the request or use the term “reasonable modification” in order to be considered
 - Should be requested in advance, if possible

Reasonable Modifications

- Individuals Making a Request
 - Where a request for modification cannot practicably be made and determined in advance:
 - Operating personnel of the entity shall make a determination of whether the modification should be provided at the time of the request
 - Operating personnel may consult with the entity's management before making a determination to grant or deny the request

Monitoring Provision of Service

- Agency should have a process to monitor employees for compliance with service provisions
 - Field Observation
 - “Secret Shoppers”
 - Camera footage

Complaints

Complaints

- Agency Required to Establish a Complaint Policy
 - Designation of responsible employee responsible for implementing all aspects of ADA compliance
 - Name, address, telephone number, and email
 - Sufficiently advertised—web/other
 - Complaints apply to all aspects of ADA, not just complementary paratransit
 - Policy must be available in alternative formats (don't confuse with Title VI)

Complaints

- No Regulatory Training Requirements
 - Designated employee is responsible for ensuring the agency's compliance with ADA
 - Should be trained on ADA/Reasonable accommodation rule
 - Should have authority to make key operational decisions

Complaints

- Must sufficiently advertise to the public the process to file an ADA-related complaint
- The process should enable the “prompt and equitable” resolution of complaints
 - “Prompt” is not defined but indicates a time period in which complaints will be resolved
 - “Equitable” means due process

Complaints

- Response to complaint must be promptly communicated, including specific reasons for the determination

Complaints

- Due Process
 - Must have a process by which a dissatisfied complainant can appeal
 - Separation of authority: the individuals hearing the appeal must be different than those who made original determination

Complaints

- Elements of the Response
 - Response decision
 - Reasons for the response
 - Appeals procedures
- Documentation
 - Notification does not have to be in writing
 - Copies of internal documentation maintained for one year
 - Summary of all complaints must be maintained for five years

Common Title VI Issues

Common Issues

- Adopting Another Agency's Plan Without Making It Your Own
- Notice
 - Not Posted at All Places Listed in the Plan
 - Not Posted in Public Places
- Lack of Evaluation in Outreach Efforts
 - How is public feedback actually being used and considered?

Common Issues

- Four Factor Analysis
 - Use of Improper Demographics
 - Ethnicity in Lieu of Language Spoken
 - Failure to Find Data in Census/American Community Survey
 - Failure to Use the Most Recent Census/American Community Survey Data

Common Issues

- Safe Harbor
 - Confusion that Safe Harbor is 5% Population or 1,000 People, Whichever is Higher, When in Fact it is Whichever is Lower
 - Not Translating All LEP Languages Above the Threshold or Not Justifying the Reason for Not Translating

Common Issues

- Complaint Process
 - No Information on How to File a Complaint Readily Available to the Public
 - No Formal Processes for
 - Tracking Complaints
 - Investigating Complaints
 - Resolving Complaints
 - Lack of Complaint Recordkeeping
 - Failure to Report Complaints to Primary Recipient

Common Issues

- Expanding Title VI Notice
 - Expanding the Title VI Notice Language Beyond Race, Color, and National Origin

Common Issues

- Website Links
 - Broken Website Links to Access the Title VI Plan and Complaint Form
 - Failure to Update the Website With the Most Recent Plan

Common Issues

- Not Revising Title VI Plan On FTA Request
 - FTA Issues “Concur” Letters
 - Often, the Concurrence is Conditional on Making Additional Changes
 - Not Making Appropriate Revisions Prior to Next Review Often Results in a Deficiency

Common Issues

- Opportunity for Public Involvement
 - Failure to Provide Early and Continuous Opportunity for Public Input
 - Language Assistance Needs
 - Availability of Language Assistance
 - Public Education on Title VI Protections
 - Fare Changes
 - Major Service Changes (major service change policy is by route not system)

Common Issues

- Translation of Vital Documents
 - Failure to Verify Accuracy of Translation
 - Failure to Translate Vital Documents

Common Issues

- Three Year Update Requirement
 - Failure to Prepare the Required Three Year Update (at least 60 days prior to expiration)
 - Failure of the Entity to Formally Approve the Update
 - Failure to Update the LEP Section
 - Reliance on Outdated Demographic Data

Title VI Plan Updates

- GDOT is currently collecting updated Title VI Plans from all subrecipients that receive pass-through FTA funding from GDOT
- GDOT PMs will be reaching out if they have not yet received your updated Title VI Plan
- Concurrence letters are starting to go out this week for subrecipients that are in compliance
- RLS and Associates will reach out if any changes need to be made in your Draft Title VI Plans that you have submitted to their FTP site
- Please submit a single PDF to GDOT with your final, locally adopted Title VI policy and minutes from your Board meeting as soon as they are approved