



U.S. Department
of Transportation
**Federal Transit
Administration**

Headquarters

East Building, 5th Floor – TCR
1200 New Jersey Avenue, SE
Washington, DC 20590

MAR 01 2012

Ron Iwen
Director
Kenosha Area Transit
4303 39th Avenue
Kenosha, WI 53144

Dear Mr. Iwen:

This letter concerns the Federal Transit Administration's (FTA) Americans with Disabilities Act of 1990 (ADA) Complementary Paratransit Service Review of Kenosha Area Transit (KAT), which was performed from May 18-21, 2009. FTA would like to thank you and your staff for the cooperation provided during the review. At that time, you were informed that FTA would issue a draft report of the findings, on which KAT would have an opportunity to provide comment, following which a final report would be released. KAT's comments were to be included in the attachments to the final report.

FTA provided KAT an opportunity to comment on the draft report by December 30, 2011. Since KAT elected not to provide comments on the draft report, this report is now considered final. A copy so marked is enclosed for your records. As of the date of this letter, the Final Report became a public document and is subject to dissemination under the Freedom of Information Act of 1974.

FTA recognizes that it has been over two years since our review and that changes have likely occurred in KAT's transit program. We appreciate the cooperation and assistance that you and your staff have provided us during the review. A corrective action plan will be developed in consultation with KAT, and FTA will work diligently with KAT to ensure compliance with DOT ADA regulations.

Contained within this letter is a summary of the findings of noncompliance made in the report. In order to expeditiously close-out your review and release KAT from the corrective action phase, please inform FTA within 30 days of the corrective actions that KAT will undertake in response to the findings. When providing proposed corrective actions, include the planned and actual completion date of the corrective action, the current status and contact person for each corrective action, and all supporting documentation.

OPEN FINDINGS:

4.1 ADA Complementary Paratransit Service Criteria

1. Public information about Care A Van's service area is not consistent with staff statements. According to the Care A Van brochure, on Monday to Saturday, service is available to any destination east of I-94. However, staff confirmed that service is also available in a small area

west of I-94 that is $\frac{3}{4}$ -mile of a KAT bus route. In addition, two KAT routes have destinations east of I-94 but appreciably beyond the city limits. Section 37.131(a) of the DOT ADA regulations require that complementary paratransit be provided to origins and destinations within corridors with a width of $\frac{3}{4}$ of a mile on each side of each fixed-route. The corridor includes an area with a $\frac{3}{4}$ -mile radius at the ends of each fixed route. It is not clear whether service is available within $\frac{3}{4}$ -mile of these bus routes.

2. The DOT ADA regulations at 49 C.F.R. § 37.131(c) states that paratransit fare be no more than double the non-discounted fixed route fare for a similar trip. The streetcar fare is \$1.00. Therefore, any Care A Van trip with both origin and destination within $\frac{3}{4}$ -mile of the two different streetcar stations should have a fare no more than two times the streetcar fare: \$2.00. Alternatively, KAT can develop its own methodology for determining an area in which the comparable fixed route trip would most likely be taken on the streetcar instead of the full-fare fixed route system. If KAT elects to develop its own methodology, it must be broad enough to encompass trips between all origins and destinations that a reasonable fixed route rider is likely to take using the streetcar.

4.2 ADA Complementary Paratransit Eligibility

1. At the time of the on-site review, the KAT ADA paratransit application form and related materials were not available in accessible formats. The DOT ADA regulations at section 37.125(b) require that that all information related to eligibility and the eligibility determination process must be made available in accessible formats upon request. Appendix D explains that accessible formats may include, but are not limited to: large print, electronic file on CD (individuals using a screen reader on a computer to read files may need Microsoft Word files rather than Acrobat PDF files), audiotape, or Braille. KAT staff stated that it is prepared to make the ADA complementary paratransit application form and related materials available in accessible formats upon request, but individuals are not informed that they may request an application in an alternate format.
2. KAT staff stated that it is aware of the requirement to provide visitors with eligibility for 21 days during a 365-day period and are prepared to grant visitor eligibility accordingly. However, the draft New ADA Certification Policy dated December 6, 2007, used to describe the eligibility-determination process to those who request an appeal of their eligibility decision, states that visitors with documentation from another transit system or a physician will be granted eligibility for the first 21 days of their visit and must submit an application for full eligibility after that time. Section 37.127(e) requires that KAT make service available for any combination of 21 days in a 365-day period. The policy fails to state other aspects of visitor eligibility, including that visitors who do not have documentation of eligibility from another transit system may be asked to provide documentation of their place of residence and their disability, if the latter is not apparent, and that KAT shall accept a certification from these such individuals that they are unable to use fixed route transit.
3. Individuals who are granted temporary eligibility are not provided with information about the process for appealing a decision to deny or limit ADA paratransit eligibility. Since temporary eligibility is a condition or limitation on the rider's eligibility, the notification letter should inform individuals of the right to appeal the decision, as required by §37.125(d) of the DOT ADA regulations.
4. The letter in use at the time of the on-site review notifying applicants of a denial of eligibility did not include the specific reasons for the decision or information on how to appeal the denial. The letter stated that the applicant was not prevented from using fixed route service. The DOT ADA regulations at § 37.125(d) require that determinations of eligibility must be in

writing and if applicants are found to be ineligible, the determination must state the specific reasons for the finding. Appendix D explains that a mere recital that the applicant can use fixed route transit is not sufficient.

5. The draft New ADA Certification Policy states that an applicant denied eligibility may appeal the decision by submitting a request within 30 days to the Director of Transportation for the City of Kenosha. Section 37.125(g)(1) requires that an applicant have at least 60 days to appeal.
6. The Director of Transportation and the Manager of Elder & Disability Services in the Kenosha County Department of Human Services, Division of Aging & Disability Services hear eligibility appeals. The DOT ADA regulations at 49 C.F.R. § 37.125(g)(2) require that the eligibility appeal process includes a separation of functions, to ensure that someone not involved in the initial determination make the appeal decision. In addition, the person who decides the case on appeal, to the extent practicable, should not be a member of the same office or a supervisor or subordinate of the individual who made the original decision.
7. KAT's sample determination letters in use at the time of the on-site review did not include all of the elements required by § 37.125(d) of the DOT ADA regulations. The letters must be revised to include all of the required elements.
8. The file for the single applicant who appealed a denial of eligibility during the period July 2008 to May 2009 lacked documentation of key milestone dates in the process and did not include a copy of a letter notifying her of the outcome of the appeal hearing and providing specific reasons for the decision. Section 37.125(d) of the DOT ADA regulations require that written notification of the appeal decision and the reasons for it must be provided to the applicant.
9. KAT's late cancellation policy considers cancellations to be late—and the equivalent of a no-show—if made less than three hours before the scheduled pickup. Section 37.125(h) of the DOT ADA regulations allow transit systems to suspend service to riders for a reasonable period of time if they establish a pattern or practice of missing scheduled trips. Penalties for late cancellations may only be used if the late cancellation is the functional equivalent of a no-show. The effects of a late cancellation must be operationally equivalent to a no-show in terms of the negative impact on the service. FTA does not view a cancellation three hours prior to a scheduled ride as having the same level of operational impact as a no-show. The slack time created by a cancellation that far in advance can be used to make room for the addition of other trips.
10. KAT's written no-show policy at the time of the on-site review stated that suspensions of service would be imposed on riders who no-show three times in a period of 30 days. Considering only three no-shows in a one-month period as grounds for suspension unreasonably limits service to ADA eligible customers, discourages use of the service, and unfairly penalizes regular riders. Appendix D to the DOT ADA regulations states that suspension of service for no-shows are intended to prevent "a pattern or practice of 'no-shows'" and further notes, "a pattern or practice involves intentional, repeated or regular actions, not isolated, accidental or singular incidents." It is likely that a frequent rider could amass three no-shows in a 30-day period without meeting the definition of pattern and practice. In addition, the regulation states that trips missed by the transit provider cannot be counted against the rider and only those no-shows within the rider's control can be counted against the rider.

11. Section 37.125(h)(2) of the DOT ADA regulations requires that before suspending service, the transit provider must the rider an opportunity to be heard and present evidence and arguments. Based on a review of a sample of KAT's letters notifying customers of suspension of service for violation of the no-show policy, it appears that KAT schedules the start of the suspension period prior to the end of the period for filing an appeal. In addition the letters did not include notification that the proposed suspension or other sanction is stayed pending the outcome of the appeal under § 37.125(h)(3).
12. KAT allows seven days from the date that a rider receives a letter notifying him of a proposed suspension for no-shows for him to appeal the suspension. In prior compliance reviews, FTA has stated that this is not a reasonable time period and that a transit agency must allow at least 15 days from the date of the letter for a rider's appeal.

4.4 Trip Reservations and Scheduling

1. There were no written policies available to riders concerning the following: negotiating pickup times; pickup windows; requesting trips by appointment time; late cancellation policies; no-shows; will-calls; or subscription service.

4.5 Service Performance

1. Section 37.131(f)(3)(i)(A) of the DOT ADA regulations prevents transit providers from limiting the availability of paratransit service by a pattern or practice of a substantial number of significantly untimely pickups, drop-offs or arrivals. KAT had no written performance standard for on-time pickups or for on-time drop-offs. The KAT operations manager stated that the window for an on-time pickup extends from 15 minutes before the requested time to 15 minutes after (± 15). Not all drivers were familiar with the standard, nor does either KAT or KAC monitor on-time performance.

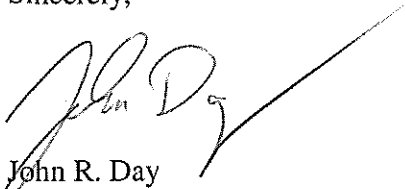
4.6 Resources

1. There is no one in the KAC office accepting trip requests on Sunday. KAC relies on an answering machine to accept trip requests for Monday service. KAC does not schedule and confirm any trips requested on Sunday until Monday morning. Section 37.131(b)(2) permits a transit provider to negotiate pickup times with individual riders, but cannot require scheduling of a trip to begin more than one hour before or after their desired departure time. While relying on an answering machine to take trip requests is acceptable, the lack of confirmation

until Monday does not comply with the DOT regulations when it affects trip scheduling beyond what is permitted by the regulations.

Please provide your responses within 30 days of this letter. Should you have any questions about the enclosed report or this letter, please contact Mr. Aaron Meyers of my staff at (202) 366-3055, or via email at aaron.meyers@dot.gov. Thank you

Sincerely,



John R. Day
ADA Team Leader
FTA Office of Civil Rights

Enclosure

cc: Linda Ford, Acting Director, FTA Office of Civil Rights
Marisol Simon, Regional Administrator, FTA Region 5
Monica McCallum, Regional Operations Division Chief
Donald Allen, Regional Civil Rights Officer, FTA Region 5
David Chia, Planners Collaborative