



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

Headquarters

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

FEB 06 2012

Mr. Phillip A. Washington
General Manager
Regional Transportation District
1600 Blake Street
Denver, CO 80202

Dear Mr. Washington:

Thank you for your response to the Federal Transit Administration's (FTA) Americans with Disabilities Act of 1990 (ADA) Complementary Paratransit Service Review of the Regional Transportation District (RTD) which was performed from August 31—September 4, 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 RTD would have an opportunity to provide comment, following which a final report would be released. RTD's comments were to be included in the attachments to the final report.

Upon receiving RTD's comments to the draft report on January 9, 2011, this report is now considered a Final Report. 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 to two years since our onsite review and that changes have likely occurred in RTD's transit program. We appreciate the cooperation and assistance that you and your staff have provided us during this review. A corrective action plan will be developed in consultation with RTD, and FTA will work diligently with RTD 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 RTD from the corrective action phase, please inform FTA within 30 days of the corrective actions RTD 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:

4.2 ADA Complementary Paratransit Eligibility

1. The interpretation of Category 3 in the Appeal Hearing Guidelines is incorrect. The RTD guidelines state "Category 3 eligibility is intended to be a very narrow exception to the general rule that difficulty traveling to or from boarding or disembarking locations is not a

basis for eligibility. In other words, the whole route from a person's home to a bus stop cannot be considered, ONLY the bus stop area itself can be considered. For example, a person in a wheelchair or with a visual impairment might have difficulty if a bus stop is rock or gravel." In fact, Category 3 eligibility outlined in the DOT ADA regulations at 49 C.F.R. § 37.123 specifically recognizes that the interaction between an individual's disability and architectural and environmental barriers may prevent an individual from traveling to or from a boarding location; such individuals would be eligible where such barriers exist along the route to and from the bus stop.

2. Instructions given to Appeal Committee members in the Appeal Hearing Guidelines include an incorrect interpretation of ADA paratransit eligibility for individuals with epilepsy or seizure conditions. The guidance suggests that epilepsy does not "interfere with (a person's) innate ability to use fixed route service." Certain types of seizure conditions, which cause a loss of consciousness, severe fatigue, and disorientation, can prevent travel on fixed route services.
3. RTD's conditional eligibility category of Unfamiliar Trips or Infrequent Trips does not appear to comply with regulatory definitions of eligibility. Under DOT ADA regulations at 49 C.F.R. § 37.123, it is a rider's current actual ability, not his/her potential to be travel trained to make a trip by fixed route services that must be considered when making decisions about ADA paratransit eligibility. Even if a trip is travel trainable, until the rider is successfully trained to make the trip by fixed route, ADA paratransit must be provided. Even if a person makes several trips to a specific location via paratransit, this does not imply that he/she knows how to make the trip by fixed route. Riders with this type of conditional eligibility should be contacted and their eligibility revised accordingly.
4. Trip-specific conditional eligibility, which limits eligibility to specific purposes (such as trips to or from work or to dialysis), is not consistent with the DOT ADA regulations at 37.123 as explained in Appendix D to Part 37 of the DOT ADA regulations, since it inappropriately limits service to specific trip purposes and locations rather than considering an applicant's ability to travel to origins and destinations throughout the service area. A rider who cannot get to or from work by fixed route because of certain travel barriers could face those same barriers when traveling to other locations throughout the service area. It seems unlikely that there would be a barrier that would only apply to one specific trip purpose or one specific location. It would be more appropriate to first set the conditions of eligibility and then apply them to trips requested. Similarly, a person who cannot use fixed route service because of severe fatigue caused by renal disease or dialysis treatment could be prevented from making trips by fixed route to places other than just a dialysis treatment center for the same reasons. Such trip-specific eligibility would only be appropriate in cases when severe fatigue is only experienced immediately after the treatment but at no other times. Many persons with renal disease also experience severe fatigue at times other than just immediately following treatment. It would be more appropriate to grant conditional eligibility when severe fatigue prevents travel by fixed route rather than to tie eligibility to a specific trip purpose or location.
5. Letters of determination sent to riders determined to have temporary eligibility do not include information about the right to appeal or the appeal process. Since a temporary determination limits the level of eligibility granted, under DOT ADA regulation 49 C.F.R. § 37.125(g), riders must have an opportunity to appeal these decisions and should be informed of the appeal process.

6. RTD's Request for Appeal of Access-A-Ride Eligibility Determination Form requests a statement from the applicant on why he or she does not agree with the determination. The DOT ADA regulations at 49 C.F.R. 37.125(g) state that applicants have the right to be heard (in person). Appellants should not be required to explain the reasons for their disagreement in writing in order to have an appeal scheduled.
7. RTD's policy to suspend riders who incur four or more no-shows or late cancellations in a 30-day period does not consider the frequency of no-shows and late cancellations and may not always define a pattern or practice of missing scheduled trips, as required by DOT ADA regulations at 49 C.F.R. § 37.125(h). Four no-shows or late cancellations (two round trips) by a rider who travels every day to and from work as well as other locations is very different from the same number of no-shows and late cancellations by a rider who travels only occasionally. The policy does not consider the trip-making history of the rider and the extent of no-shows and late cancellations compared to the total number of trips scheduled.
8. RTD's proposed letters to riders notifying them of a suspension of service due to a pattern or practice of late cancellations or no-shows do not inform riders that no-shows that were beyond their control, including no-shows caused by system or operator error, are not counted against them. Under DOT ADA regulations at 49 C.F.R. § 37.125(h), the transit provider must provide the rider the specific basis for the proposed suspension, including the definition of a no-show, so as to fully inform the rider that only no-shows within their control are counted against them for purposes of a suspension in service.

4.4 Trip Reservations Process

1. Under DOT ADA regulations at 49 C.F.R. § 37.131(b), transit providers shall schedule and provide paratransit service to any ADA paratransit eligible person at any requested time on a particular day in response to a request for service made the previous day. For RTD riders scheduling a trip between midnight and 3 a.m., a caller must call at least 2 days in advance (e.g., Monday for a trip on Wednesday at 1 a.m.) because the late evening vehicle runs of Access-A-Ride operate past midnight—to as late as 3 a.m. the following morning—so it considers the period between midnight and 3 a.m. as part of the previous day. This scheduling practice is noncompliant with federal regulations requiring RTD to provide next day scheduling.

4.5 Service Performance

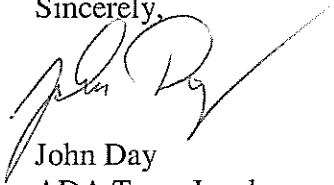
1. RTD's on-time performance standard is to make at least 93 percent of all pickups on time. There is some inconsistency in the way that on time and late trips are defined. On-time trips appear to be those where the pickup takes place within or before the 30-minute pickup window negotiated with riders. However, trips are not considered to be late until the pickup is more than 15 minutes after the end of the 30-minute pickup window. RTD reports on-time pickup performance to include trips that are performed up to 15 minutes after the end of the 30-minute pickup window.
2. RTD defines no-shows and missed trips in a manner that appears to be consistent with DOT ADA regulations. However, the actual suspension policy can easily result in suspensions of service where a true pattern or practice of missing scheduled trips does not exist. In addition, inconsistencies surrounding the definition of on-time and late vehicle arrivals create confusion about whether a trip not taken is a no-show (chargeable to the

rider) or a missed trip (chargeable to RTD). This is particularly problematic in terms of the coding of trips not taken by riders when the vehicle arrives from 1–15 minutes after the end of the 30-minute on-time window.

3. RTD has not established a formal on-board travel time standard for the Access-A-Ride service. The informal standard is that Access-A-Ride trips should be no more than twice the fixed route travel time. The policy that no paratransit trip should exceed two times the amount of time a similar fixed route trip would take is inconsistent with DOT ADA regulations at 49 C.F.R. § 37.121, concerning comparable travel time.

Please provide your response 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 Day
ADA Team Leader
FTA Office of Civil Rights

Enclosure

cc: Linda Ford, Acting Director, FTA Office of Civil Rights
Monica McCallum, Regional Operations Division Chief, FTA Office of Civil Rights
Rebecca Tanrath, Regional Civil Rights Officer, FTA Region 8
Terry Rosapep, Regional Administrator, FTA Region 8
David Chia, Planners Collaborative, Inc.