

## 2008 Pace Blue Ribbon Committee Report

### 3.0 Federal ADA Guidelines

At the second BRC meeting in July 2008, Counsel for the BRC, Michael J. Zalewski, delivered a short presentation entitled "Paratransit and the Law" discussing the legal requirements with which a Paratransit provider must comply under Federal Law. Zalewski entertained questions from BRC members about the requirements and provided supplementary materials at proceeding meetings at the request of BRC members. Melinda Metzger, Deputy Executive Director Pace Revenue Services, followed Zalewski's presentation with a description of Pace's efforts to ensure the delivery of Paratransit service that complies with Federal Law. Below are both Zalewski's and Metzger's presentations as presented to the BRC at the July 2008 meeting.

As defined by the Code of Federal Regulations, Title 49, Transportation, Part 37. Transportation Services for Individuals with Disabilities (ADA). The following Paratransit requirements are a summary of this section.

Paratransit requirements:

- 49 CFR 37.121- Paratransit must be comparable to the level of service provided to individuals without disabilities who use the fixed route system.
- 49 CFR 37.129(a): Complementary Paratransit service shall be origin to destination service.
- 49 CFR 37.131(a): Paratransit providers must provide service to origins and destinations within corridors with a width of  $\frac{3}{4}$  of a mile on each side of a fixed route. (Jen: let's talk about this requirement: there is some more to it, but I'm not sure it would be relevant to the report you are writing.)
- 49 CFR 37.131(b): Paratransit providers must schedule and provide Paratransit service to any eligible person at any requested time on a particular day in response to a request for service made the previous day. Reservations can be taken by agents or mechanical means.
  - Reservation service shall be available during at least all normal business hours of the provider's administrative offices, as well as during times, comparable to normal business hours, on a day when the provider's offices are not open before a service day.
- The entity may negotiate pickup times with the rider, but the provider cannot schedule a trip to begin more than hour before or after the rider's desired departure time.
- The entity may permit advance reservations to be made up to 14 days in advance of a rider's desired trips. When the entity changes its reservation system, it must comply with the public participation requirements of the regulations.

49 CFR 37.131(c): The fare for a trip charged to a rider shall not exceed twice the full fare that would be charged to an individual paying the full fare for a trip of similar length, at a similar time of day, on the entity's fixed route system.

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49 CFR 37.131(d): The provider may not place trip restrictions or priorities based on trip purpose

49 CFR 37.131(e): The service must be available throughout the same hours and days as the provider's fixed route service.

49 CFR 37.131(f): The provider shall not limit the availability of Paratransit service to eligible riders in any of the following ways:

- 1) restrictions on the number of trips a rider can take;
- 2) waiting lists for access to the service;
- 3) any operational pattern or practice that significantly limits the availability of service to eligible riders.

Such patterns or practices may include:

- a) substantial numbers of significantly untimely pickups for initial or return trips;
- b) substantial numbers of trip denials;
- c) substantial numbers of trips with excessive trip lengths.

49 CFR 37.133: Subscription service is not prohibited under the federal regulations, so long as the subscription service does not absorb more than fifty percent of the number of trips at any given time of the day, unless there is non-subscription capacity.

### Paratransit and the Law

A discussion of the requirements of the American with Disabilities Act as applied to Paratransit providers, the federal regulations, and other applicable laws.

By Michael J. Zalewski, Esq.

### Paratransit laws originate from several different primary sources:

- The Americans with Disabilities Act ("ADA"), also known as 42 U.S.C. 12101 *et. seq.*
- The Rehabilitation Act of 1973, also known as 29 U.S.C. 794 *et. seq.*
- The Code of Federal Regulations ("C.F.R"), issued by the United States Department of Transportation
- The Illinois Regional Transportation Authority Act, 70 ILCS 3615 *et. seq.*

### The ADA requirements

■ Paratransit services must be:

- "comparable to the level of designated public transportation services provided to individuals without disabilities."
- in the case of response time, "comparable, to the extent practicable, to the level of designated public transportation services provided to individuals without disabilities using such systems."

42 U.S.C. 12143 (a)

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#### The ADA Requirements: Standard to Implement Paratransit Rules

- The ADA set forth the standards for the U.S.D.O.T. to implement Paratransit rules, and required that the rules include the following mandates.
  - Serve individuals with disabilities, along with a personal care assistant and one companion.
  - Provide Paratransit and special transportation services in the service area of any public entity which provides a fixed-route system...
  - Establish minimum service criteria for determining the level of services provided.
- 42 U.S.C. 12143(c)

#### The ADA Requirements: Standards to Implement Paratransit Rules (cont'd)

- The ADA also ensures that the regulations require Paratransit providers provide an initial plan to the United States Secretary of Transportation which discusses creation and implementation of the provider's plan.
- 42 U.S.C. 12143(d)(1-3); 49 C.F.R. 37.135(c)(1)

The Code of Federal Regulations

- The United States Secretary of Transportation has codified rules which the ADA requires.
- The regulations governing Paratransit services are discussed in 49 C.F.R. 37.1 *et. seq.*

#### The Federal Regulations: Key Definitions

- Fixed route system: a system of transporting individuals ... on which a vehicle is operated along a prescribed route according to a fixed schedule.
- Demand responsive system: any system of transporting individuals which is not a fixed route system. 47 C.F.R. 37.3

#### The Federal Regulations: Key Definitions

- Paratransit: comparable transportation service required by the ADA for individuals with disabilities who are unable to use fixed route transportation systems.
- 49 C.F.R. 37.3

#### The federal regulations: Van pools

- According to 49 C.F.R. 37.31, van pool systems operated by public entities are subject to the requirements of the federal regulations pertaining to demand responsive systems.
  - The regulations also state that a van pool system is "deemed to be providing equivalent service to individuals with disabilities if a vehicle that an individual with disabilities can use is made available to and used by a vanpool..."
- 49 C.F.R. 37.31

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#### The Federal Regulations: Comparable Paratransit Service

- The federal regulations require that “each public entity operating a fixed-route system” must provide Paratransit services which are “comparable to the level of service provided to individuals without disabilities” who use a fixed route system.
- Furthermore, the federal government requires complementary Paratransit systems to meet the requirements of Sections 37.123 through 37.133 of the federal regulations. 49 C.F.R. 37.121(a) & (b)

#### The Federal Regulations: Types of Service

- Complementary Paratransit service must be “origin-to-destination service.”
- Paratransit providers may provide “on-call bus service or Paratransit feeder service” to an accessible fixed route, where the individual can then continue his or her trip using the fixed-route system. 49 C.F.R. 37.129 (a), (b)

#### The Federal Regulations: Service Areas

- Federal law requires that Paratransit providers offer services to origins and destinations within corridors with a width of three-fourths (3/4) of a mile on each side of the fixed route.
- Within a core service area, Paratransit providers must provide services to small areas surrounded by corridors.
- Outside of a core service area, Paratransit providers are allowed to establish corridors from 3/4 of a mile to 1 1/2 miles on each side of a fixed route based on local circumstances. 49 C.F.R. 37.131(a)(i-iv)

#### The Federal Regulations: Response Time

- Paratransit providers must schedule and provide services to any ADA Paratransit eligible person at any requested time on a particular day in response to a request from the previous day.
- Reservations can be made by reservation agents or mechanical means.
- The provider must make the reservation service available during all normal business hours and during comparable times when provider’s offices are not open.  
49 C.F.R. 37.131(b)(1-4)
- Providers may negotiate pickup times with individuals.
- The law prohibits providers from scheduling a trip to begin more than one hour before or after the “individual’s desired departure time.”  
49 C.F.R. 37.131(b)(1-4)

#### The Federal Regulations: Fare Restrictions

- Providers must charge no more than twice the full fare to an individual using the entity’s fixed-route system that the individual would pay at the same time of day for a trip of similar length.
- Providers are allowed to include transfer and premium charges.  
49 C.F.R. 37.131 (c)

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#### The Federal Regulations: Restrictions, Hours of Services, and Capacity Restraints

- Federal law prohibits the imposition of restrictions or priorities based on trip purpose.
  - Paratransit providers must offer services during the same hours and days as the provider's fixed-route system.
  - The regulations also prohibit the following:
    - Restrictions on the number of trips provided.
    - Waiting lists.
    - Patterns or practices that limit availability such as substantial numbers of untimely pickups, denials or missed trips, and trips with "excessive trip lengths."
- 49 C.F.R. 37.131(d-f)

#### The Anderson Case: A Judicial Interpretation of the Regulations

- In *Anderson v. Rochester-Genesee Regional Transportation Authority*, 337 F.3d 201 (2d Cir. 2003), the United States Court Appeals for the Second Circuit interpreted the regulations as applied to a public entity.
- The court held that while the regulations do require a Paratransit provider implement a plan with a goal of 100% next-day service, Section 37.131 "grants limited leeway for occasional failures..." *Id.* at 208.
- The court also stated that a Paratransit provider cannot be held liable for violating the regulations regarding next-day ride requests unless "it denies a substantial amount to constitute a pattern or practice." *Id.* at 212.

#### The Federal Regulations: Subscription Service

- Federal law allows subscription services offered by Paratransit providers, as long as the service fulfills the following criteria:
    - The subscription service may not absorb more than fifty percent of the number of trips available during a given day, unless there is non-subscription capacity.
    - Waiting lists and capacity constraints are permissible under the law for subscription service.
- 49 C.F.R. 37.133 (a), (b), & (c)

#### The Federal Regulations: Other Service Requirements

- Paratransit providers must also comply with the following legal requirements:
    - Paratransit providers must disseminate adequate information about Paratransit services through "accessible formats and technology."
    - Paratransit providers must ensure that enough time is provided for the individual with a disability to board or disembark from the vehicle.
- 49 C.F.R. 37.167 (f) & (i)

#### The Federal Regulations: Training Requirements

- Paratransit providers must ensure that personnel are trained to proficiently operate vehicles safely and "properly assist and treat individuals with disabilities who use the service in a respectful and courteous way..."
- 49 C.F.R. 37.173

Links to Federal ADA Laws:

[http://www.fta.dot.gov/civilrights/ada/civil\\_rights\\_5936.html](http://www.fta.dot.gov/civilrights/ada/civil_rights_5936.html)

[http://www.fta.dot.gov/civilrights/ada/civil\\_rights\\_3906.html](http://www.fta.dot.gov/civilrights/ada/civil_rights_3906.html)

### 3.1 State of Illinois Paratransit Guidelines

At the second BRC meeting in July 2008, Counsel for the BRC, Michael J. Zalewski, again delivered a short presentation entitled “Paratransit and the Law” discussing the legal requirements with which a Paratransit provider must comply under Illinois State Law. Zalewski entertained questions from BRC members about the requirements and provided supplementary materials at proceeding meetings at the request of BRC members. Melinda Metzger, Deputy Executive Director Pace Revenue Services, followed Zalewski’s presentation with a description of Pace’s efforts to ensure the delivery of Paratransit service that complies with Illinois State Law. Below are both Zalewski’s and Metzger’s presentations as presented to the BRC at the July 2008 meeting.

**The following highlights Illinois State law that directly impacts Pace Paratransit Services:**

## House Bill 656 – P.A. 95-708

### Transit Funding and Reform

#### Pace Suburban Bus

- New operating funds are divided 52% to suburbs and 48% to Chicago- previous split was 60% to Chicago and 40% to suburbs.
- The CTA pension shortfall is being solved entirely by the Real Estate Transfer Tax solely collected in Chicago- no money collected in the suburbs will be used for this bailout.
- The collar counties will receive an estimated \$120 million collectively to be spent at each county’s discretion on transit, road construction projects, and public safety via an additional ¼ cent sales tax collected in each county. Pace plans to work with each collar county to develop viable plans to use part of this funding for transit enhancements to benefit residents, communities, and businesses.
- As it relates to RTA governance, in addition to the Board Chairman, the RTA Board now contains one member from each collar county, five from suburban Cook, and five from Chicago. Previously, the board was comprised of five members from Chicago, four from suburban Cook, and three from the collar counties in addition to the Chairman.
- Pace receives 15% of the new funding- \$63 million- when the new Suburban Community Mobility Fund (SCMF) is factored in.
- ADA Paratransit operational costs are covered by the \$100 million in new funding allocated for this service. The RTA controls these funds and Pace must provide the RTA with annual budget projections. In 2008 Pace projected \$85 million in expenditures. The remaining \$15 million stays in a trust fund held by the RTA for future expenses. Pace must stay within its projected budget. If costs incurred are above what Pace projected, Pace must appeal the RTA for release of additional funds or absorb the shortfall in funding. Previously, Pace received roughly 10% of regional funds spent on transit. Based on the old formula, Pace would have only received approximately \$40 million.
- Under the new funding guidelines, ADA service will be funded at 100% of its operating costs. Previously, the state provided \$54 million and the remainder was funded from diverting money from fixed route operations.

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### 3.1 State of Illinois Paratransit Guidelines

#### Summary: Senate Bill 1920

1. Free rides on fixed routes for disabled persons eligible for the Circuit Breaker Program.
2. Adds the Commissioner of the Mayor's Office of Persons with Disabilities to the Pace Board. Also states the Chairman of Pace cannot be a resident of the City of Chicago.
3. Maintains the ADA fare box recovery ratio at 10% and exempts costs incurred in paying private contractors for capital expenses from the recovery rate calculation.
4. Requires collar counties to annually report expenditures and obligations of funds received through the county's portion of the RTA sales tax.
5. Requires public hearings prior to any increase in fares with notification to members of the General Assembly whose districts are impacted by the increase.
6. Corrects a drafting error and applies the 5% State match for RTA funds to the replacement tax.
7. Establishes a CTA retiree health care eligibility window period for individuals who have at least 25 years of service but less than 55 years of age.
8. Exempts the total cost of required free services from the fare box recovery ratio for downstate transportation providers.
9. Provides 65% operating reimbursement for downstate public transportation providers.

#### Illinois law: The Regional Transportation Authority Act

- Under 70 ILCS 3615/2.30, the Suburban Bus Board, or PACE, "shall operate or provide for the operation of all ADA Paratransit services by no later than July 1, 2006..." *Id.* at 3615/2.30(b)
- The statute also required the Regional Transportation Authority to conform to the following requirements:
  - Development of a plan for provision of ADA Paratransit services. *Id.* at 3615/2.30(c)
  - Compliance with the ADA and its implementing regulations. *Id.* at 3615/2.30(c)(1)

#### Illinois: The Regional Transportation Authority Act

- Illinois law also required PACE to fulfill the following criteria:
  - Transfer of all appropriate ADA Paratransit services from the Chicago Transit Authority. *Id.* at 3615/2.30(c)(2).
  - Provision for consistent policies throughout the region for various service criteria. *Id.* at 3615/2.30(c)(3).
  - Provision for performance standards, "with consideration of door-to-door service" *Id.* at 3615/2.30(c)(6).
  - Provision for a "system of dispatch for... Paratransit services..." *Id.* at 3615/2.30(c)(8).