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Britney Wilson

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Britney Wilson

Title II of the Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities in the provision of public services, including transportation.¹ Discrimination occurs when a “public entity which operates a fixed route system . . . fail[s] to provide . . . paratransit and other special transportation services to individuals with disabilities.”² The ADA requires that paratransit services be “comparable to the level of designated public transportation services provided to individuals without disabilities,”³ and the ADA regulations establish the “minimum service criteria” required under the Act.⁴

Less than twenty percent of subway stations in New York City are accessible to people with disabilities.⁵ As a result, many elderly and disabled New Yorkers rely on paratransit transportation—rides that transport passengers who are unable to use the fixed route system—to get around.⁶ New York City’s paratransit service, Access-a-Ride, has long been the subject of intense criticism.⁷ The New York City division of the Metropolitan Transportation Authority, New York City Transit (NYC Transit), administers the Access-a-Ride program.⁸ NYC Transit contracts with private carrier companies who use an array of accessible vehicles to provide service.⁹ By analyzing three primary complaint areas among Access-a-Ride users—late or “no show” rides, unreasonable lengths of travel time, and lack of travel flexibility¹⁰—this article will examine how the vagueness of the ADA and its regulations about the meaning of “comparable” service has left riders vulnerable to Access-a-Ride’s interpretation of the mandate to provide paratransit transportation.

The ADA and Paratransit

Courts have acknowledged that “the text of the ADA itself offers little guidance” on what would make a paratransit service comparable to the level of public transportation available to people without disabilities.¹¹ The regulations suggest that paratransit services are generally considered to be comparable as long as there is a procedure to determine who gets to use them, they operate at the same times as other forms of public transportation, and there are no restrictions placed on where or for what purpose people with disabilities can travel.¹² Courts have stated that “paratransit service was not intended to be a comprehensive system of transportation for individuals with disabilities, “. . . [it] is intended simply to provide to individuals with disabilities the same mass transportation service opportunities everyone else gets, whether they be good, bad, or mediocre.”¹³ But Access-a-Ride users’ complaints illustrate how such limited interpretations of comparability under the ADA, its regulations, and in the courts have led, in many instances, to the failure to provide people with disabilities with the same opportunities everyone else gets—good, bad, or mediocre.

Lack of Travel Flexibility

One of the main critiques that Access-a-Ride users have of the service is its lack of flexibility.¹⁴ Access-a-Ride users must schedule their trips by 5 pm of the day before they want to travel.¹⁵ At the time users schedule a trip, they are given a computer-generated pick up time based either on the time they requested to be picked up (known as a “pick up time”) or the time they need to arrive at their destinations (known as an “appointment time”).¹⁶ Unlike public transportation users without disabilities, if an Access-a-Ride user does not have every place she needs or wants to go the next day planned out before 5 pm of the day before, she cannot travel. There is no mechanism for requesting a ride the same day. Also, unlike a public transportation user without a disability, who can choose to leave an event early or leave work late, there can be no unexpected or spontaneous changes for Access-a-Ride users. Access-a-Ride users who want to cancel trips scheduled for the same day they are traveling are required to do so two hours in advance or risk penalties that may affect their service eligibility.¹⁷

Similarly, the ADA regulations do not reflect great concern for the maintenance of flexibility in the lives of people with disabilities. At the time the regulations were promulgated, interpretations of the comparability requirement focused largely on the need to develop a ride scheduling plan to maximize efficiency and prevent people from being denied rides due to capacity constraints, by at least guaranteeing rides to people who requested them in advance.¹⁸ As one court explained, “while overcrowding may prevent fixed route passengers from boarding particular buses or trains, all the passengers have to do is wait a little longer for the next bus or train to come, whereas there is no next bus or train for paratransit riders.”¹⁹ Thus, the ADA regulations require providers to offer rides to all eligible paratransit users who have reserved trips at least 24 hours in advance.²⁰ They do not, however, say that riders should only be allowed to travel if they have scheduled their trips 24 hours in advance. Therefore, what began as an attempt to address “capacity constraint” concerns has morphed into an Access-a-Ride rule that constrains users’ capacity for spontaneity or flexibility.

Unreasonable Lengths of Travel Time

Access-a-Ride customers are also often forced to endure “hours[-]long trips around the city” before reaching their destinations.²¹ Access-a-Ride emphasizes that it is a “shared ride,” meaning that riders should expect to pick up and drop off other passengers before they get where they’re going.²² For example, the service tells customers to anticipate a “maximum ride time” of 1 hour and 5 minutes to travel a

distance between 3 and 6 miles.²³ Much to their customers' detriment, Access-a-Ride does not specify where passengers can expect to be taken during their time spent traveling—en route to their destination or in the opposite direction. It also does not specify in what order, geographical or chronological, according to time spent on the ride, they can expect to be dropped off.

The minimum service criteria in the ADA regulations prohibit “operational pattern[s] or practice[s] that significantly limit[] the availability of service” including “[s]ubstantial numbers of trips with excessive trip lengths,”²⁴ but neither the statute nor the regulations elaborate on the meaning of “substantial” or “excessive.” However, the Federal Transit Administration (FTA) states that “[a] paratransit trip should be comparable in length to an identical trip on the fixed route system, including the time necessary to travel to the bus stop, wait for the bus, actual riding time, transfers, and travel from the final stop to the person’s ultimate destination.”²⁵ However, unlike Access-a-Ride users, people without disabilities presumably would be traveling in the geographic direction of their destinations while doing all of these things, and would not be subject to pre-planned routing decisions that could lengthen their travel time.

Late or “No-Show” Rides

Finally, Access-a-Ride is often late and sometimes does not show up at all.²⁶ An audit conducted by the New York City Comptroller found that “more than 31,000 riders” were left stranded in 2016.²⁷ The ADA requires that “response time” be “comparable, to the extent practicable,” to public transportation services that people without disabilities use, and the minimum service criteria prohibits “[s]ubstantial numbers of significantly untimely pickups for initial or return trips” and “[s]ubstantial numbers of trip denials or missed trips.”²⁸ The statute does not clarify the meaning of “to the extent practicable” and the regulations do not define “substantial,” “significant” or “untimely” or establish any criteria for defining those terms.

Access-a-Ride builds in an automatic 30-minute wait period “for traffic or delays” before rides can even be considered late.²⁹ While the ADA regulations state that conditions beyond the control of the paratransit provider, such as traffic and weather, will not be included when determining whether a pattern of significant untimely or missed trips exists, it does not expressly allow for a built-in wait period in anticipation of these conditions. Instead, the lack of clarity around what constitutes untimeliness has allowed Access-a-Ride to create its own mechanism that conveniently decreases the likelihood of its lateness being deemed “substantial” or “significant.”

Evidence suggests that the generality of both the comparability requirement and the minimum service criteria was intentional. Commenters on the Notice on Proposed Rulemaking that ultimately became the ADA regulations reportedly thought “it would be better to take a less specific approach to comparability” in order to allow local governments the freedom to develop systems that would meet the needs of

their disabled populations.³⁰ The absence of explicit standards and definitions in the ADA and its regulations about what comparability means, what it would entail, and how to ensure and monitor that it is achieved has left local governments, and in the case of Access-a-Ride—private contractors’—too much wiggle room. The ADA regulations required public entities to submit an initial plan for compliance with the paratransit requirement by 1992.³¹ They are also required to submit annual updates to these plans,³² but plans without concrete standards upon which to base them are bound to be limited in their effectiveness.

Conclusion

The requirement that paratransit services be “comparable to the level of designated public transportation services provided to individuals without disabilities” is promising but incomplete. While localities may be better suited to determine how specific services operate, there should be certain explicit standards and elements of comparable transportation—like flexibility, timeliness, and length of travel time—(developed by or in consultation with people with disabilities) that apply to all paratransit users. These standards should be based on a reassessment of how paratransit is currently working in comparison to public transportation for people without disabilities in order to better ascertain the meaning of “comparable.” Finally, there should be a federal system to oversee the implementation of paratransit service plans based on those clearer standards.

As Access-a-Ride users’ complaints have shown, the failure to include more substantive consideration of what comparable transportation means has left many people with disabilities under and insufficiently served. In the case of Access-a-Ride at least, that responsibility has been redistributed a second time to contractors and private entities with their own interests and motives that may not always align with those of their customers.

Britney Wilson is an attorney and Bertha Justice Institute Fellow at the Center for Constitutional Rights. Read or listen to more of her experience as an advocate and paratransit user in her Longreads essay or her segment on This American Life (<https://longreads.com/2017/09/01/on-nycs-paratransit-fighting-for-safety-respect-and-human-dignity/>; <https://www.thisamericanlife.org/629/expect-delays/act-three-0>).

Endnotes

¹42 U.S.C. § 12132; see also 42 U.S.C. § 12142. Additionally, the requirements of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, which prohibits entities that receive federal aid from discriminating against individuals with disabilities are fulfilled as long as the entity complies with the requirements and regulations of the ADA. See *Tandy v. City of Wichita*, 208 F.Supp.2d 1214, 1220–21 (D. Kan. 2002), *aff’d in part, rev’d in part, on other grounds, dismissed in part*, 380 F.3d 1277 (10th Cir 2004) (“The relationship between [Title II of the ADA and Section 504 of the Rehabilitation Act]

in the context of transit transportation is that a recipient of Department of Transportation funds complies with its § 504 obligations by complying with ADA requirements”).

²⁴42 U.S.C. § 12143 (a).

³⁴42 U.S.C. § 12143 (a) (1).

⁴⁴42 U.S.C. § 12143 (c) (3); *see also* 49 C.F.R. § 37.123-37.133.

⁵Disability Rights Advocates, Center for Independence of the Disabled New York (CIDNY), et al. v. New York City Transportation Authority (NYCTA), et al. (N.Y. State Supreme Court), <http://dralegal.org/case/center-independence-disabled-new-york-cidny-et-al-v-new-york-city-transit-authority-nycta-et-al-ny-state-supreme-court/> (last visited Feb. 11, 2018).

⁶*See* Barone, Vincent, *MTA proposes Access-a-Ride improvements amid growing complaints*, AM New York, Jun. 21, 2017, <https://www.amny.com/transit/mta-proposes-access-a-ride-improvements-amid-growing-complaints-1.13754246> (last visited Feb. 11, 2018) (stating that there are 148,000 registered Access-a-Ride users); *see also* Center for Independence of the Disabled, New York, Access-a-Ride Fact Sheet, <https://www.cidny.org/transportation/> (last visited Feb. 11, 2018); 49 C.F.R. § 37.3 (defining paratransit as “comparable transportation service required by the ADA for individuals with disabilities who are unable to use fixed route transportation systems”).

⁷*See* Ramey, Corinne, *Flaws Cited in MTA Program for Disabled Travelers*, The Wall Street Journal, Jan. 21, 2018, <https://www.wsj.com/articles/flaws-cited-in-mta-program-for-disabled-travelers-1516564473> (last visited Feb. 11, 2018); Kanno-Youngs, Zolan, *MTA’s Access-a-Ride Program Fails Disabled Passengers, Audit Says*, The Wall Street Journal, May 17, 2016, <https://www.wsj.com/articles/mta-access-a-ride-program-fails-disabled-passengers-audit-says-1463532576> (last visited Feb. 14, 2018).

⁸MTA, Guide to Access-a-Ride Service, http://web.mta.info/nyct/paratran/guide.htm#what_is (last visited Feb. 13, 2018).

⁹*See supra*.

¹⁰*See supra*, note 5.

¹¹*Anderson v. Rochester-Genesee Regional Transp. Auth.*, 337 F.3d 201, 208–09 (2d Cir. 2003).

¹²*Tandy*, 208 F.Supp.2d at 1222; *see also* 49 C.F.R. § 37.121(b) (stating “[t]o be deemed comparable to fixed route service, a complementary paratransit system shall meet the requirements of Sec. Sec. 37.123- 37.133 of this subpart”).

¹³*Fell v. Spokane Transit Authority*, 128 Wash.2d 618, 629 (1996) (internal citations and quotations omitted).

¹⁴*See supra*, note 4, Barone, Vincent, *MTA proposes Access-a-Ride improvements amid growing complaints*, AM New York, Jun. 21, 2017, <https://www.amny.com/transit/mta-proposes-access-a-ride-improvements-amid-growing-complaints-1.13754246> (last visited Feb. 13, 2018) (citing the vice president of paratransit’s comments that he’d heard users’ demands for greater ‘flexibility’ and discussing the “current 24-hour-in advance [scheduling] requirement”).

¹⁵MTA, Guide to Access-a-Ride Service, <http://web.mta.info/nyct/paratran/guide.htm#reserve> (last visited Feb. 13, 2018).

¹⁶*See supra*.

¹⁷MTA, Guide to Access-a-Ride Service, <http://web.mta.info/nyct/paratran/guide.htm#cancel> (last visited Feb. 13, 2018).

¹⁸*Anderson*, 337 F.3d at 209 (internal quotations and citations omitted).

¹⁹*Id.*

²⁰49 C.F.R. § 37.131 (b).

²¹*See, e.g., supra*, note 4, Barone, Vincent, *MTA proposes Access-a-Ride improvements amid growing complaints*, AM New York, Jun. 21, 2017, <https://www.amny.com/transit/mta-proposes-access-a-ride-improvements-amid-growing-complaints-1.13754246> (last visited Feb. 14, 2018).

²²MTA, Guide to Access-a-Ride Service, http://web.mta.info/nyct/paratran/guide.htm#what_is (last visited Feb. 14, 2018).

²³MTA, Guide to Access-a-Ride Service, <http://web.mta.info/nyct/paratran/guide.htm#RideTimes> (last visited Feb. 14, 2018).

²⁴49 C.F.R. § 37.131.

²⁵United States Department of Transportation, Federal Transit Administration, *Frequently Asked Questions, Civil Rights/ADA, At what point is a paratransit ride no longer comparable to fixed route based on the time spent traveling?*, https://www.transit.dot.gov/faq?combine=&term_node_tid_depth=2086 (last visited February 11, 2018).

²⁶*See supra*, note 5, Ramey, Corinne, *Flaws Cited in MTA Program for Disabled Travelers*, The Wall Street Journal, Jan. 21, 2018, <https://www.wsj.com/articles/flaws-cited-in-mta-program-for-disabled-travelers-1516564473> (last visited Feb. 14, 2018) (explaining that “[r]iders and advocates have long complained about Access-A-Ride which they say is frequently late to arrive or doesn’t show up altogether”).

²⁷Kanno-Youngs, Zolan, *MTA’s Access-A-Ride Program Fails Disabled Passengers, Audit Says*, The Wall Street Journal, May 17, 2016, <https://www.wsj.com/articles/mta-access-a-ride-program-fails-disabled-passengers-audit-says-1463532576> (last visited Feb. 14, 2018).

²⁸42 U.S.C. § 12143 (a) (2); 49 C.F.R. § 37.131.

²⁹MTA, Guide to Access-a-Ride Service, <http://web.mta.info/nyct/paratran/guide.htm#onTheDay> (last visited Feb. 14, 2018); 49 C.F.R. § 37.131.

³⁰Transportation for Individuals With Disabilities, 56 FR 45584-01, 1991 WL 171006 at 45600.

³¹49 C.F.R. § 37.135 (b).

³²49 C.F.R. § 37.135 (c).