

Squeezing the Soul out of the ADA

The older the law gets, the more it is subverted

by CTR staff

The Americans with Disabilities Act (ADA) is approaching its seventh birthday, and there is much to celebrate. Great strides have been made in the public transportation field in vehicle and facility accessibility and complementary paratransit. In many communities, people with disabilities have access to meet their daily needs like never before.

Yet the full accessibility of public transportation remains a mirage. Somehow, the spirit of the act has been obscured by both its financial realities and inadequate compliance oversight. Increasingly, accessibility advocates are finding it difficult to identify the extent to which transit systems are in compliance with the ADA. Truly, any portrait of the ADA must be painted on two separate canvases.

Since its inception in 1990, two opposing themes have been played out with respect to ADA compliance. One scenario -- which is the most popular and has received the greatest play -- is that transit agencies are fully behind the ADA but that the major stumbling block to its implementation is a lack of funding. The other scenario -- which is favored by ADA compliance hawks (often dismissed as troublesome advocates) -- is that there are pressing ADA compliance issues that have been ignored by disability groups, transit systems and the federal government.

So how did we reach this point? Some argue that year-by-year, month-by-month the soul is being squeezed out of the ADA by a powerful collection of transit agencies and advocates bent on convincing Congress that implementation demands more funding for the transit industry. Meanwhile, ADA supporters worry that the disability rights community has back-pedalled on several critical ADA issues fearing a damaging backlash. Perhaps sensing that disability advocates are retreating, several community transportation professionals CTR talked to for this article argued that far too many transit agencies are slipping on ADA implementation or, at the very least, are complying with the letter of the law but not its spirit.

The Complete Picture -- Not so Pretty

At the seven-year mark, a realistic picture of transit's compliance with the ADA is starting to emerge -- from both the transit and disability community perspective. The ADA Paratransit Compliance Study, a Project ACTION report prepared by the Disability Rights Education and Defense Fund (DREDF) and Crain & Associates, Inc., sheds light on a dirty secret: transit is not complying with the ADA. The report

documents the level of ADA paratransit compliance, the quality of existing paratransit service and the relationship between transit agencies and disability advocates.

Most importantly, the report calls for a more effective tool to measure a transit system's compliance to ADA standards. Currently, the transit system is its own evaluator, submitting its ADA plan each year to the U.S. Department of Transportation (DOT). Such self-monitoring, however, is proving insufficient.

According to the study, what is reported in ADA plans can differ substantially from the service on the streets. For instance, according to a 1995 DOT report, 55 percent of fixed-route transit fleets were fully accessible. Yet, interviews with a broad sample of these agencies revealed that -- in practice -- only about 25 percent of fixed-route fleets are fully accessible.

Another example of a significant inconsistency is the official DOT ADA compliance report that says 100 percent of transit systems expect to be fully accessible by 2001. In harsh contrast, only half of the 52 transit systems interviewed for the DREDF stated that they expect to be fully accessible by 1999.

Further, the DREDF compliance study highlights the growing chasm between transit systems and the disability community. For instance, 92 percent of the sampled transit agencies believed that by last January they would be in full compliance with the ADA. Disability groups, however, were not so sanguine as only 38 percent of the of the 292 disability organizations surveyed agreed.

Equally remarkable are the distant perceptions of the two groups (transit agencies and disability advocates) when asked about the very nature of their relationship. While half the disability groups rated the relationship excellent or good, 96 percent of transit agencies did. Surely, such discrepancies signal potential pitfalls.

If ADA plans are to be the measuring stick of how well transit systems are meeting the needs of people with disabilities, compliance needs to be better demonstrated by transit agencies and with a far broader set of indicators. Absent from ADA progress reports, according to the DREDF study, are many vital service quality issues like timeliness, long telephone waits and poor driver attitudes. These customer service issues, while not specifically guided by ADA, discourage ridership and call into question the reliability of reported compliance. They also illustrate the dearth of spirit or soul in much ADA service. Even calling out stops, an absolute essential on fixed-route service for people with visual disabilities, is far too often ignored by many providers and is difficult to quantify in ADA compliance reporting.

Clearly, before the ADA can claim success in providing fully accessible transportation services, progress is necessary. While recognizing that a great many strides have been made, compliance with a number of the law's mandates lags behind. And though much of what follows in this article is based on a series of anecdotal interviews, rest assured that where there is smoke, there is fire.

Here are a few examples of what is being quietly talked about but rarely aired in public:

Transit Personnel Training

Everyone in the transit industry should know by now that transit agencies must train their personnel to proficiency. Likewise, people should know that the ADA regulations provide no specific standards for training and no additional funding.

So are transit agencies doing their best in this area? Many transit agencies are paying lip service to ADA training while the reality is that training is spotty if provided at all. Since there is little or no monitoring of transit agency compliance in this area, who is to say how well transit agencies are doing? This void leaves open abundant opportunity for acts of random noncompliance.

Take, for example, one medium-sized transit agency that openly acknowledges it has yet to provide any ADA training to its operators in six years. How could the transit agency get away with this? The ADA relies heavily on the complaint process and lawsuits, but in this particular community there apparently have been neither.

CTR spoke with many of the best ADA trainers around the country and they uniformly acknowledged that too many operators and transit personnel do not know ADA basics -- and it often shows in the service.

The Private Transportation Sector

How the private transportation sector is doing with respect to ADA compliance is virtually impossible to determine because there is no overall system for monitoring the industry and tracking compliance. In fact, there is little incentive for private operators to meet ADA requirements because, unlike publicly funded agencies, they cannot be stripped of vital funding. As a result, complaints about intercity bus, taxis, etc. go unaddressed.

The Federal Transit Administration (FTA), with no real penalty to hand down, has virtually no jurisdiction over private operators. The Department of Justice, however, views such issues as falling under the Department of Transportation (DOT). Obviously, some arm of the DOT needs to have its reach expanded beyond the FTA's to deal with the growing number of complaints against private agencies.

So what do we know about compliance issues in the private sector? Accessibility for over-the-road buses still has not been resolved and there are no final regulations on the street. What's more, there is virtually no national funding for training and technical assistance on ADA private transportation issues. Progress is painfully slow.

Public Participation

The ADA does require that every public transit agency have a public participation process as part of its ADA paratransit planning effort. Many agencies widely acknowledge that real public participation is nonexistent. This is corroborated by disability leaders.

One of the biggest stumbling blocks to participation is simply the lack of transportation. It stands to reason that if people with disabilities can't get a ride to work using public transportation, then participating in a public transit planning meeting is out of the question. And many members of the disability community who spoke with CTR say that if you ask for a ride, you won't get one.

The ADA does not require that transit agencies put people with disabilities on their policy boards. Yet if the ADA spirit were alive and well, you would surely find on almost every transit agency policy board, by now, one or more persons from the disability and aging community. In reality, only a handful of boards across the country have community advocate representation. And even in those systems that do, these advisory boards are often merely rubber stamp arms of the agency with scant incentive to push for change.

One of the most insidious developments occurring in public transportation since the passage of the ADA is the perception that the ADA is a program that needs to be separated from the rest of the organization's activities and programs. A real litmus test of the ADA spirit can be measured by asking some potentially embarrassing questions about the extent to which people with disabilities and disability interests have been given more than a perfunctory consideration at the policy, staffing and implementation levels. Often, the response is that ADA concerns are handled by the ADA coordinator or the ADA program -- a separate arm of the agency.

Employing People With Disabilities

The ADA is a civil rights law and not an affirmative action program. But what is the point of including extensive civil rights guarantees in the ADA to accommodate people with disabilities on the job when no one is hiring them? Today, there is a 75 percent unemployment rate for people with disabilities which represents an increase

of about 10 percent from the previous decade. Obviously, a vast pool of persons with disabilities who are capable of working, cannot find work. This is not progress.

With the outcry for more ADA paratransit funding, where is the public -- and disability community -- outrage and condemnation of this wasted human resource? Just walk through the corridors of any local transit agency, human services transit provider, the FTA or the transit associations and you will find very few (if any) people with disabilities -- especially at the top management level. (Unless, of course, the disabilities are hidden). One transit leader said to CTR that hiring people with disabilities can be risky because if you hire only one you might be accused of tokenism. Yet it all begins with hiring one and then providing real accommodation and opportunity.

Many people with disabilities who do work in the transit field will say -- off the record -- that there is a glass ceiling for promotion and they often feel discriminated against once they are hired. When transit agencies do think about hiring people with disabilities, they think about hiring people at entry-level positions only. Lawsuits in this arena have been scarce because even though the ADA prevents retaliation, people with disabilities are rightfully fearful.

Soul Searching

No one denies that progress has been made in making transit services accessible or that there are many devoted and effective ADA advocates both within the transit industry and the disability community. The real issue is that with the passage of time and the absence of true public disclosure about ADA implementation, the king has fewer and fewer clothes -- yet no one says a thing.

There cannot be legitimate cooperation and collaboration without a greater degree of honesty about these concerns; concerns which are steadily getting out of control. Any dialog about accessible transportation must begin with how can we make the ADA work, and not how can we get around the ADA.

The physical alterations to a transit system that make it accessible -- lifts/ramps on buses, curb cuts and handrails -- are ironically both the expensive and easy part. The daily accommodations -- like calling out stops, coordinating trips and sensitive operators -- are both priceless and golden. Yet these elusive everyday amenities embody the spirit too often lacking in public transportation.