

A Complaint and Appeals Guidebook for Public Transit Agencies: A New Approach Using Mediation

Prepared by:

ADR Vantage, Inc.
1660 L Street, NW
Suite 510
Washington, DC 20036
(202) 296-2328 (V/TTY)
(202) 293-5915 (FAX)

Dianne Chasen Lipsey
Kathryn Shane McCarty
Martha Mummey
Jocelyn Miles

This material was produced with assistance derived from Project ACTION of Easter Seals, through a Cooperative Agreement with the U.S. Department of Transportation, Federal Transit Administration.

This document is disseminated under sponsorship of Project ACTION of Easter Seals in the interest of information exchange. Neither Project ACTION, Easter Seals, nor the Federal Transit Administration assumes liability for its contents or use thereof. The contents of this report reflect the opinion of the author.

Table of Contents

	<u>Page</u>
ACKNOWLEDGMENTS	iii
INTRODUCTION	1
CHAPTER ONE: Alternative Dispute Resolution: The Time is Right for Transit	4
CHAPTER TWO: The Basics of Mediation	10
CHAPTER THREE: Mediation in the ADA Complaint and Appeals Process	15
<u>STEP 1</u> Review and Assess the Existing ADA Complaint and Appeals Process	16
<u>STEP 2</u> Seek Customer and Staff Input	22
<u>STEP 3</u> Determine When and How to Use Mediation	30
<u>STEP 4</u> Tap into the Mediator Community	38
<u>STEP 5</u> Incorporate a Mediation Program into the ADA Complaint and Appeals Process	44
<u>STEP 6</u> Evaluate the Effectiveness of the Process	52
CHAPTER FOUR: Final Summary	54
CHAPTER FIVE: Other Uses of Mediation in Transit Settings	59
<u>APPENDICES</u>	62
Professional Services Agreement for Mediators	63
Best Practices for Facilitators or Mediators in Agreement-Seeking Processes	66
Matrix of the Complaint and Appeals Process for RideSource	67
Flow Chart for the RideSource Complaint and Appeals Process	70

ACKNOWLEDGMENTS

The authors gratefully acknowledge the contributions of the following individuals during the course of this project:

Eugene/Springfield, Oregon

Lane Transit District

- α Dave Kleger, Board Member
- α Phyllis Loobey, General Manager
- α Mark Pangborn, Assistant General Manager
- α Stefano Viggiano, Director of Planning
- α Micki Kaplan, Senior Planner

Lane Council of Governments/RideSource Service

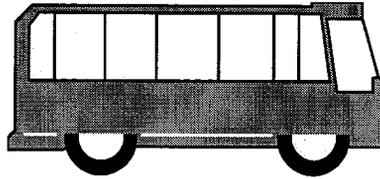
- α Terry Parker, Senior Planner and Manager of Special Transportation Services, Lane Council of Governments
- α Karen Tarnow, Planner and Mediator, formerly with Lane Council of Governments
- α Fred Stoffer, President of Special Mobility Services (SMS), Beth Mulcahy, David Braunschweiger, Glen Adams, and the entire SMS staff

Community Members

- α Members of the Special Transportation Fund Advisory Committee
- α Members of the mediation community

Atlanta, Georgia

- α Richard Simonetta, General Manager/CEO, Metropolitan Atlanta Rapid Transit Authority (MARTA)
- α Carolyn Wylder, Executive Vice President, Operations and Development, MARTA
- α Jack L. Stephens, Executive Vice President, Customer Development, MARTA
- α Nat Ford, Senior Vice President, Operations, MARTA
- α Jerome Beasley, Director, Bus Transportation, MARTA
- α Lynne Griffith, Former General Superintendent for ADA Paratransit Services, MARTA
- α Sharon Crenshaw, Assistant Superintendent for ADA Paratransit, MARTA
- α Rebecca Reumann, Eligibility Specialist, MARTA



INTRODUCTION

Mediation is a form of Alternative Dispute Resolution (ADR) that is gaining in popularity as a preferred method for resolving customer complaints ranging from small informal disagreements to complex civil rights violations. It is the process in which a neutral third party (i.e., mediator) facilitates a dialogue between disputants, enabling those individuals to determine for themselves the best solution. In many arenas, mediation is replacing or being used with more established ADR methods — arbitration and public participation — because mediation is more flexible, confidential, often less costly, and offers the possibility of greater satisfaction among the parties.

Applications for the use of ADR abound within the transit industry. This guidebook, however, focuses specifically on the use of mediation to resolve complaints arising from ADA paratransit service, particularly decisions related to eligibility certification, suspension of service, or circumstances that can limit access to paratransit service. Public transit systems must offer riders or applicants an opportunity to appeal such actions and this guidebook offers a new approach to resolving those types of customer complaints.

This guidebook describes how mediation can be used as part of the ADA complaint and appeals process. These recommendations are based on the results of a project directed by *ADR Vantage, Inc.*, a Washington, DC-based consulting firm, with funding from Project ACTION. The purpose of the project was to design and implement a model complaint and appeals process to enhance customer service, offer a more effective complaint resolution system, and comply with U.S. Department of Transportation's (DOT) ADA regulations

regarding ADA appeals. The model ADA complaint and appeals process resulting from this project was developed in partnership with the RideSource paratransit service operated by the Lane Council of Governments (LCOG) for the Lane Transit District in the Eugene/Springfield area of Oregon. Their paratransit contractor, Special Mobility Services (SMS) based in Portland, Oregon, was also a very important partner. The second site for this project was the Metropolitan Atlanta Rapid Transit Authority (MARTA) in Atlanta, Georgia where the paratransit service is operated directly by MARTA.

The guidebook illustrates how to use mediation as an effective tool in managing ADA paratransit appeals. It will guide the reader through the process of determining whether or not mediation can be effective, particularly cost-effective in one's own operations; where dispute resolution intervention can be most beneficial; how to revise an existing ADA Appeals process to include mediation; and how to identify and work with local mediators. It also provides management guidance and tools for incorporating a mediation component into the Appeals process.

Although the primary content of the guidebook applies to mediation and the ADA Appeals process, it also introduces the reader briefly to other ways to use mediation within public transit agencies.

Who Should Use the Guidebook

The guidebook offers ADA paratransit managers a step-by-step guide for using mediation to resolve eligibility and no-show service suspension complaints.

It will be especially relevant for the ADA paratransit manager who is:

- concerned that the present appeals process may be too cumbersome and time consuming;
- concerned that the appeals process will not produce adequate results;
- considering changes to the eligibility certification process;
- planning to recertify existing paratransit riders; and/or

- interested generally in managing complaints and disputes in ADA paratransit or fixed-route service.

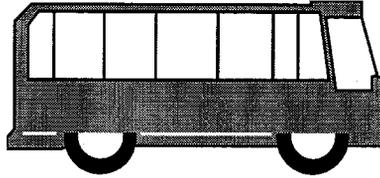
How the Guidebook is Organized

Chapter One, *Alternative Dispute Resolution: The Time is Right for Transit*, provides background to help the reader understand what ADR encompasses, how it can be applied within the transit industry, and how federal ADA enforcement agencies have embraced the use of mediation to encourage voluntary compliance. Chapter Two, *The Basics of Mediation*, offers the reader an understanding of the principles and structure of mediation that, together with later chapters, will prepare the reader for the specific application of mediation within the ADA complaints and appeals process for paratransit service. Chapter Three, *Mediation in the ADA Complaint and Appeals Process*, explains the step-by-step activities needed to implement an appeals process using mediation. The six steps include:

- Review and assess the existing ADA complaint and appeals process;
- Seek customer and staff input;
- Determine when and how to use mediation;
- Tap into the mediator community;
- Incorporate a mediation program into the ADA Complaint and Appeals process; and
- Evaluate the effectiveness of the process.

Chapter Four, *Final Summary*, highlights of the six implement steps found in Chapter 3. This chapter provides a quick checklist approach to redesign the ADA complaint and appeals process by incorporating the use of mediation as a key component. If the reader is looking for a comprehensive overview of the assessment and implementation phases, this chapter will be helpful.

Chapter Five, *Other Uses of Mediation in Transit Settings*, provides an overview of other applications for mediation within the public transit industry, along with other ADR resources for the reader to utilize.



CHAPTER ONE: ALTERNATIVE DISPUTE RESOLUTION: THE TIME IS RIGHT FOR TRANSIT

In 1991, U.S. Department of Transportation (DOT) regulations implementing the Americans with Disabilities Act (ADA) incorporated complementary paratransit services requirements. Until that time, public transit agencies had been approaching transportation for individuals with disabilities in a variety of ways under their prior Rehabilitation Act (i.e., Section 504) obligations. Some had chosen to retrofit fixed-route systems making buses accessible to people using wheelchairs; some had chosen to operate a demand-response paratransit service, often as a targeted reservation service for individuals with disabilities and senior citizens; and others had offered a combination of both. The ADA defined the obligation of public transit agencies to provide equal access to public transportation as a federal civil right. The DOT regulations defined that right to include access to fixed-route bus, rail, and complementary paratransit services for individuals unable to use the fixed-route system due to the severity of their disability.

Recent nationwide surveys of adults with disabilities have noted that improvements in access to public transportation are among the most important results of ADA implementation¹. Stories from individuals throughout the country provide new accounts of freedom, independence, and opportunities that have

¹ *Voices of Freedom: America Speaks Out on the ADA*, Washington, DC: National Council on Disability, July 26, 1995.

resulted from increased access to public transportation. Evidence further shows that not only are more people using transit and paratransit services, but that they are using the system more frequently².

Since enactment of the ADA, transit agencies have moved toward full compliance, devoting significant time and resources to construct ADA paratransit services comparable to fixed-route systems in accordance with the ADA requirements. In many cases, transit agencies established entirely new paratransit divisions with new vehicles, drivers, contractors, and procedures. Among the new procedures required for all transit systems were policies and procedures for certifying rider eligibility, for managing no-shows, and for allowing riders or applicants to appeal any resulting service restrictions.

As transit systems approached full compliance with the ADA complementary paratransit provisions during 1996-1997, several important trends led transit operators to explore new communication and service delivery approaches. These trends included:

- increased number of eligible riders;
- increased demand for trips by individual eligible riders;
- increased need to make use of the most appropriate mode of transportation available; and
- reduced federal operating assistance availability to help finance transit systems as a whole.

These trends continue to push transit systems to re-examine and modify their ADA paratransit services, including the eligibility certification criteria. Increasingly, public transit operators with guidance from national disability organizations have come to realize their ADA paratransit operation must “recertify” existing riders and should continue recertification on a regular basis.

Changes to service delivery, more strict adherence to no-show policies, more rigorous eligibility requirements, and recertification of existing riders are

² *Achieving Independence: The Challenge for the 21st Century*, Washington, DC: National Council on Disability, July 26, 1996.

widely expected to lead to increased complaints from paratransit riders, family members, and case managers.

The Need for an Alternative for Paratransit Appeals

Although an agency's appeals procedure may meet the requirements of the ADA paratransit regulations, it may not encourage the open and thoughtful communication that can lead to fair and appropriate decisions. Often paratransit applicants or riders feel compelled to bring evidence to the appeals hearing, assuming incorrectly that if they can simply prove they have a disability, they can convince the hearing officer or appeals panel of their desperate need for the service. Often the case they make, while clearly demonstrating a need for transportation, fails to meet the ADA eligibility requirements necessary for them to be eligible for ADA paratransit services. Furthermore, an appeals hearing, even when the appeals panel is comprised of peers, can be intimidating. The result can be that the applicant or rider often leaves feeling confused, frustrated, and "wronged."

For the ADA paratransit manager, the existing appeals hearing may satisfy the ADA requirement and may be sustained if challenged legally. However, the time and resources involved in an appeal and/or a legal challenge strongly points to the need for a better alternative. To satisfy lingering issues and to resolve disputes, an appeals process should provide the opportunity for a full and fair conference between the applicant/rider and the appropriate transit official, as intended in the ADA regulations. It should offer the applicant/rider the opportunity to understand the basis for eligibility and factors influencing the decision regarding his/her certification, while offering the transit system a process that is consistent and free from special pleadings -- pleadings that often lead to exceptions that go beyond the eligibility requirements and can subvert the eligibility certification process.

The National Perspective on the Use of ADR

Since the beginning of the decade, approaches to managing customer complaints in the public sector have been changing. This shift has coincided with the introduction and increased use of ADR methods to minimize conflict and resolve disputes. Additionally, the Americans with Disabilities Act of 1990 was the first civil rights statute to promote the use of ADR strategies to encourage voluntary compliance.

Because of evolving trends in ADA paratransit service nationwide, officials at the Federal Transit Administration within the U.S. DOT were especially interested in exploring the use of ADR applications, specifically mediation, to ADA paratransit complaint processes. In addition to responding to a nationwide trend, FTA officials, Project ACTION staff, *ADR Vantage, Inc.*, and other partners in this project realized that mediation offers transit systems and persons with disabilities the opportunity to work together on options and solutions that are consistent with the spirit and intent of the ADA.

Section 513 of the Americans with Disabilities Act
Alternative Means of Dispute Resolution

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, fact-finding, mini-trials, and arbitration, is encouraged to resolve disputes arising under this Act.

The Benefits of Mediation over Arbitration for ADA Paratransit Service

Arbitration is the most familiar ADR tool to transit officials. Although arbitration has been used for decades to settle labor-management contract disputes, mediation is viewed as more effective for resolving ADA service disputes and is increasingly recognized as a successful, cost-effective tool among public sector managers.

Mediation has many benefits over arbitration. In mediation the parties, not the arbitrator, decide on acceptable terms of an agreement. This increases the potential for the parties to be heard and for the complaints to be resolved satisfactorily. Mediation offers the opportunity for the rider/applicant to present their case in a safe, neutral setting and to feel their issues are being heard; Mediation presents an opportunity for the rider/applicant to understand the ADA eligibility requirements and the constraints of the ADA paratransit system. Mediation offers transit officials the opportunity to help the applicant identify appropriate transportation options while not necessarily certifying them for ADA paratransit service. Mediation offers the possibility that the paratransit operator will obtain new information that may cause him/her to reconsider the original decision.

The Advantages of Mediation in the ADA Paratransit Appeals Process

Mediation is often chosen as the most appropriate form of ADR, because it offers the potential to streamline complaint processes; keep administrative costs to a minimum; and resolve complaints with a high degree of satisfaction among the participants.

Potential to streamline the process. An ADA paratransit complaint often can be resolved more quickly, since an extensive staff investigation is usually unnecessary. As demonstrated in the ADA Complaints and Appeals Project, dispute resolution methods also can provide effective information sharing and

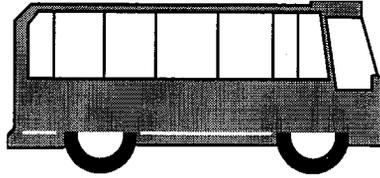
greater understanding among the rider/applicant and the paratransit provider. For example, the RideSource Operations Manager in Eugene, separated from the original eligibility decision, can either resolve the matter informally through the manager's review process or can refer it to mediation, eliminating the need to involve other staff or managers.

Potential to save on costs. Although most mediators charge a fee for their services, successful mediations are often completed in a matter of hours, usually requiring only the participation of the transit official closest to the decision, and little, if any, preparation time. Even when the complaint is not successfully resolved, it can set the stage for much less costly appeals based on the information exchanged during the mediation.

Potential to resolve a complaint. Although a resolution is not assured, mediation has been used successfully in many arenas involving civil rights. The U.S. Department of Justice routinely refers selected ADA complaints to mediation, the majority of which are settled. Because the applicant/rider is empowered to help find viable solutions, more acceptable ones often result.

Additional benefits of mediation are often cited as follows:

- Mediation is not intimidating and is generally viewed as "fair" to both parties;
- Mediation identifies new options and solutions that may be acceptable to the parties;
- Mediation produces an agreement that, if consistent with the ADA, may be binding; and
- Mediation provides outcomes that transit board members and elected officials can often support.



CHAPTER TWO: BASICS OF MEDIATION

Mediation is a process that uses a neutral third party (i.e., mediator) to facilitate discussion, joint understanding, and problem solving. Mediation has a defined structure to move the parties through a productive, resolution-oriented process.

The Phases of Mediation

It typically follows a five-phase process: pre-mediation; stage setting; issue identification; option generating; and joint decision-making. The mediation phases are defined below.

Pre-mediation phase. The mediator contacts both parties to explain the process, identifies key issues, helps parties identify who should be present for the session, handles the logistics of the mediation session(s), and establishes a rapport with both parties. Sometimes the mediator will use this phase to begin to identify key issues. This phase is particularly important for helping the parties develop trust in the process and the mediator.

Stage setting phase. This phase begins with the mediator's opening remarks. This is the first joint meeting with the parties, and typically, all parties are at the mediation table. The mediator will use this phase to put the parties at ease. He or she will set a pace and tone to help parties get comfortable and will review the mediation process, discuss ground rules, and clarify that mediation is voluntary.

Issue identification phase. The purpose of this phase is to identify and clarify issues and to begin to understand the interests of the parties. The mediator provides a safe, supportive environment for each party to speak uninterrupted about the issue and to respond to the opening statement of the other party. The mediator asks clarifying questions and summarizes information presented by the parties during the initial joint session. Before moving to the next phase, the mediator reviews all issues raised at this time. Additional issues often arise during later discussions, so the mediator will return to the issue identification and clarification phase in order to discuss all pertinent issues.

Option generating phase. Once the issues are clarified, it frequently becomes easier to see possible solutions. The mediator assists both parties begin to explore options, steering them toward their primary interests, not their positions. In the initial part of this phase, the mediator encourages brainstorming to identify all possible options. This is the creative part of the process, often producing the option that can resolve the complaint.

Joint decision-making phase. Once options are shared, the parties jointly evaluate each option to determine which options will address the issues, whether they can agree on a solution, and how to act upon the solution. The mediator assists the parties in drafting a written agreement that reflects the agreed upon options. The agreement is usually detailed enough to show dates, outcomes, and identifies responsible parties. Once drafted, both parties sign it and retain a copy.

The Role of the Mediator

The mediator serves as the neutral facilitator or catalyst for joint understanding, option building, and potential resolution. The mediator facilitates the dialogue through active listening, questioning, and exploring options with the parties. The mediator helps the parties revisit, rephrase, and reframe their views of the issues and potential solutions. The mediator decides whether and when to

change the format of the discussion, such as the use of joint or individual sessions. The mediator is skilled at identifying issues that are blocking resolution and helping the parties find alternative options.

A mediator does not act as judge or arbitrator. She or he will not make a final decision or determine the outcomes. Professional mediators are bound by a code of ethics that will guide their role and the process they follow.

The Role of the Parties

The parties represent the divergent sides of a dispute and will participate in the mediation with the goal of resolving the dispute. Each party should approach mediation with an open mind, be willing to listen attentively, and should be willing to seek greater understanding in order to develop plausible solutions. Although parties often cannot envision acceptable solutions before entering mediation, they often discover them during the mediation process. Mediation is hard work for the parties and requires their commitment to find a resolution.

Generally, in ADA paratransit cases, the party representing the transit agency would be someone with knowledge of the issues and the particular details of this case (i.e., someone close to the source of the dispute). However, in these cases, as with many others, the party representing the transit agency must come to the mediation with full settlement authority — the ability to negotiate a final offer. This is particularly important to ensure trust in the process and good faith negotiations. This sometimes requires more than one representative from the transit agency. If full settlement authority cannot be granted to the representative in mediation due to the structure and hierarchy of the transit agency, then the transit representative must have access to the individual with such authority during the mediation— via phone or in person. The person with full settlement authority, such as the agency’s legal counsel, may participate in the mediation, along with the ADA paratransit staff.

It is not uncommon for the complaining party to bring a family member, friend, or advocate to the mediation. In some cases, he or she may bring an

attorney. During the pre-mediation phase, the mediator will work with the parties to ensure that the appropriate representatives will be present and to clarify the roles of each participant during the mediation.

Unique Factors in Mediating ADA Paratransit Disputes

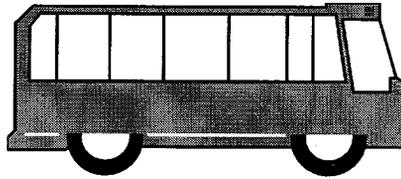
There are four factors that may make an ADA-based mediation unique from others: the "rights-based" nature of the complaint; the mediation approach; the accessibility of the session(s); and the involvement of other participants during the mediation.

Rights-based nature of the complaint. Because the ADA is a federal civil rights statute, there is a delicate balance between mediating an acceptable solution and protecting the civil rights of the aggrieved party. The transit agency must be conscientious about a resolution that does not limit individual rights and the mediator should know the ADA and protect the rights of the complainant.

Mediation approach. The mediation approach should be a facilitative and interactive session that reflects the appeals processes outlined in the DOT regulations implementing the ADA. This approach, rather than an evaluative one, helps the parties develop the ability to work together toward a solution.

Accessibility of mediation session. Mediation programs and private mediators are responsible for making accommodations to ensure that persons with the disabilities can effectively assess and participate in the mediation session. Accommodations, such as large print material, the opportunity to take needed breaks, or assistive listening devices, might be needed for parties in mediation. The physical setting – mediation room, restrooms, caucus rooms, routes of travel — also may need to be altered or moved to assure accessibility. It is important for the mediator to recognize that the transit representative also may have a disability that requires accommodation.

Participation of other parties. Disability advocates, care providers, job coaches, or family members are often interested in participating in ADA mediations. The mediator should be aware of this and decide what role these parties will play in mediation. Will they be silent observers, occasional spokespersons, or advocates during the session? A pre-mediation discussion with the other participant will help to determine his or her role in advance.



CHAPTER THREE: MEDIATION IN THE ADA COMPLAINT AND APPEALS PROCESS

In the ADA Complaints and Appeals Project in Eugene/Springfield, Oregon, *ADR Vantage, Inc.*, introduced a six-step review and design process to help the *RideSource* program staff systematically determine whether to modify the existing complaint process and if so, how to do so. The six-step model provides a comprehensive framework for integrating mediation into an existing ADA appeals process consistent with the requirements of the U.S. Department of Transportation's ADA regulations.

The methodology includes the following six steps:

- Step 1. Review and Assess the Existing ADA Complaint and Appeals Process
- Step 2. Seek Customer and Staff Input
- Step 3. Determine When and How to Use Mediation
- Step 4. Tap into the Mediator Community
- Step 5. Incorporate a Mediation Program into the ADA Complaint and Appeals Process
- Step 6. Evaluate the Effectiveness of the Process

Step 1: REVIEW AND ASSESS THE EXISTING ADA COMPLAINT AND APPEALS PROCESSES

Reviewing and assessing the existing customer complaint and ADA appeals process is fundamental before introducing a new organizational process, such as the inclusion of mediation into an existing complaint and appeals process. Any complaint can benefit from mediation, particularly when it occurs early in the course of a disagreement. There are four categories of complaints that are typical of the ADA paratransit service:

- Eligibility determination disagreements,
- Service suspension disagreements,
- Possible ADA compliance violations in service and delivery, and/or
- General service complaints.

Two of the four types of complaints are linked to a formal appeals process: service denial or service limitation through denied or conditional eligibility and suspended service. These types of complaints, where ADA violations potentially exist, are prime candidates for the use of mediation. In fact, the U.S. Department of Justice routinely refers alleged ADA violations cases against state and local governments to mediation. When initiating a review of current operations, determine whether a revised complaint process can reduce or better manage these types of ADA complaints. The elimination of these types of conflicts quickly will benefit both the rider and ADA paratransit staff.

Before launching a new complaint and appeals process, paratransit managers should:

- ✓ Review the current complaint process to determine if mediation is a desired addition
- ✓ Assess current complaints by nature and volume of complaints
- ✓ Assess organizational capacity for handling complaints

Public transit agencies beginning to recertify ADA paratransit eligibility are facing the potential for increases in complaints and ADA appeals. This is perhaps the most pressing warning signal that an organizational change may soon be needed; however, other service-related issues also could heighten the likelihood of increased complaints and ADA appeals.

Assess Current Complaints

Three critical factors should be considered when trying to determine whether the proposed mediation model is a desirable and appropriate tool. These factors included: (1) the nature of existing or anticipated complaints; (2) the trends in complaint volume; and (3) organizational capacity for handling complaints or ADA appeals. The following questions can help paratransit managers evaluate how data on the current nature and volume of rider complaints can influence the decision to make a change to the ADA complaint and appeals process.

- Q** What is the nature of current complaints? What do riders complain about – eligibility determinations, quality of the service, service policies, etc.?
- Q** What is the volume of current complaints? Are the existing grievance and ADA appeals processes adequate to meet current complaint volume?
- Q** Are there reasons to expect an increase in the volume of complaints in the near future?
- Q** What is the current organizational structure for handling complaints and appeals? Is that structure equipped to handle a significant increase in complaint volume?

The information used to answer these questions typically comes from complaint logs and files; staff and supervisor interviews; and interviews with members of the appeals panel, if one exists.

Nature of the Complaints. Unlike the fixed-route bus or rail service, the demand-response nature of the ADA paratransit service and its parameters necessitate more customer contact. While this can lead to a positive relationship between transit personnel and rider, it also can have an adverse effect, leading to greater misunderstanding. Given that, monitoring current operations from the vantage point of customer and applicant complaints is important. To do so, the agency should determine how to best categorize these customer service complaints and then determine which, if any, might be channeled into mediation.

The Number of Complaints. Trends in the number and type of complaints can be an important indicator for predicting future increases. For example, in Eugene, the RideSource service had a minimal number of complaints; yet, when the data showed a marked increase within a six-month time period, the paratransit administrator questioned whether the volume of complaints was on a steady increase. With recertification scheduled for 1998 – 1999, the paratransit administrator felt that it was timely to improve the current ADA Complaint and appeals process.

There are other key factors that can affect complaint volume and might be considered when trying to predict the incidence of complaints:

- An increase in ADA eligible riders and more trips may lead to more opportunities for service complaints.
- Reevaluating the ADA paratransit eligibility certification process may lead to changes that will result in additional complaints.
- Re-certification of existing ADA eligible paratransit riders will likely lead to complaints among riders whose eligibility status changes.
- Instituting new policies that may lead to suspended service, such as policies that define the number of missed trips or late cancellations and no-show policies also may contribute to general concerns and legitimate complaints.

An assessment tool combined with operational and complaint data can aid the manager in assessing accurately whether the addition of a mediation component could be potentially valuable.

The following checklist was designed to assist paratransit managers in their initial assessment of their current complaint and appeals process. It can provide a quick snapshot of how effective or ineffective the current ADA complaint process is operating. Items previously highlighted in this step, such as the number and type of complaints, have been incorporated into the following checklist.

Organizational capacity for handling the complaints or appeals. Another factor to evaluate is the current administration of the ADA appeals process. To begin, examine the existing customer service and complaint process used for ADA paratransit service. Determine whether any customer service changes are contemplated and if so, factor these into the assessment. The manager should consider how much time a complaint now takes to resolve, who must now get involved with the resolution, and what steps the transit agency staff take to make an eligibility determination. Some complaints, particularly those involving ADA eligibility or suspension of service, can be very time consuming and may involve numerous staff, including managers and legal counsel.

The current outcomes from the existing complaint and appeals process may be problematic for the paratransit manager in two ways. If the agency's original decision is overturned on appeal, then the staff can feel undermined, thereby undermining the agency efficiency and authority. Secondly, if the original decision is upheld on appeal, the complainant may try to obtain a different decision from a higher authority within the transit agency or to an elected official. A compelling reason to mediate is that the process requires both parties to gain some increased understanding and to resolve the conflict jointly. Furthermore, if a previous decision (e.g., eligibility) is overturned as a result of mediation, then typically the transit staff member who is aware of the rationale behind the original

decision has the opportunity to participate in revising the decision. Furthermore, transit board members and elected officials often can support readily the mediation process and the resulting outcomes.

ASSESSMENT CHECKLIST

This checklist can serve as a starting point to help the paratransit manager assess whether his/her current ADA complaint process is effective.

1. Which types and how many complaints are you now logging?

	<u>Type</u>	<u>Number</u>
• Challenges to the eligibility decision	___	___
• Challenges to a service suspension	___	___
• Paratransit service complaints	___	___
• ADA violations complaints	___	___
• Other complaints	___	___

2. How many people typically are involved when a complaint is filed that could lead to an appeal? _____

3. What is the average amount of cumulative staff time required to handle an ADA appeal? _____

4. Serious ADA complaints typically take _____ days to review and resolve.

5. What role does the advisory committee play? What feedback has the staff received from these participants about the appeal process?

6. Are the current grievance and ADA appeals processes adequate for meeting the current demand? _____ (y/n)

7. Are you expecting an increase in ADA complaints and/or challenges to eligibility determinations or service suspensions? _____

8. Check the following outcomes that you would like to achieve by using mediation as part of an ADA Complaints and Appeals Process?

- A process that can manage an increased volume of complaints. _____
- A reduction in staff time needed to resolve complaints and appeals _____
- A consistent Complaints & Appeals process that is understood by riders staff, management, board, and others. _____
- Decisions made that are consistent with ADA requirements and likely to hold-up to external pressure. _____

Step 2: SEEK CUSTOMER AND STAFF INPUT

Many transit officials have found that direct involvement of interested and affected stakeholders – riders, disability and aging advocates, and human services providers – to be very beneficial, so most agencies have created citizen advisory groups, including Elderly and Disability Advisory Committees to provide policy direction on ADA implementation of accessible transportation.

When planning for system changes, informed stakeholders can assist transit staff in tailoring new or revised procedures to address community needs. However, it's important that they are briefed thoroughly, so that they can gain an understanding of the current paratransit service organization and the ADA paratransit service requirements. Typically, if stakeholders feel they have influenced the design, they are more likely to be committed to the implementation of changes.

The stakeholders in Eugene became important supporters of system change. Stakeholder involvement provided an exchange of information between staff and stakeholders, each gaining additional insight.

Public transit agencies will need to seek input from riders, applicants, and other affected customers when exploring the development of a revised complaint and appeals process. Transit officials will need to:

- Develop an outreach and information dissemination plan
- Determine the role of the elderly and disabled advisory committee
- Gather information from riders, applicants, and other interested stakeholders
- Implement a collaborative approach to reviewing and implementing policy changes that involves direct input from stakeholders

Develop an Outreach and Information Dissemination Plan

Paratransit managers must begin by weighing the potential gain over the possible risk of seeking rider and other stakeholder involvement in the revising the ADA complaint and appeals process. The box in the following page covers many of the perceived risks and benefits of seeking such input.

An effective outreach plan should include an extensive list of interested stakeholders, organizations that serve people with disabilities – both advocacy and service-oriented entities, the Area Agency on Aging and its grantees, health care providers, and residential facilities serving elderly and individuals with disabilities.

Determine the Role of the Elderly and Disability Advisory

Benefits and Risks of Including Customers' Input in the Design of ADA Complaint and Appeals Process

Risks:

- Customers may voice perceived obligations unknown to the transit agency.
- Customers may use opportunity to vent anger and frustrations.
- Customers may feel intimidated or co-opted in face-to-face meetings.
- Customers may raise unrelated problems or issues that are beyond the scope of the ADA paratransit service and its provider.

Benefits:

- Customers feel empowered to help create positive changes.
- Transit management may build trust with its customers through active listening and implementing suggested changes.
- Transit agency may develop customer support for needed changes.
- Customer input may provide the opportunity for a broad range of suggestions and strategies to be identified and explored.

Committee

The missions, membership terms, and composition of the elderly and disability advisory committees of public transit agencies vary widely throughout the country. Most transit agencies have used the advisory committees as a sounding board for policy development and revisions. Some have used the committees to hear complaints regarding ADA paratransit service and then recommend actions to the transit staff and/or policy board. Others, like LCOG's *RideSource*, empowered its committee to serve as the formal appeals body -- to hear and rule on ADA paratransit service denials or suspension appeals.

Transit officials should revisit the role of their elderly and disabled advisory committees by answering the following:

- Q** Is it an appropriate and legally supportable role for the advisory committee to be the decision-maker in ADA appeals hearings?
- Q** How often do appointments change on the advisory committee? Are there regular opportunities to bring new members onto the committee?
- Q** What role can the advisory committee members have in conducting outreach into the elderly and disability networks?

TIP 1 - Involve the elderly and disabled advisory committee early during the initial discussion phases to learn their concerns and suggestions. In Eugene and Atlanta, the Elderly and Disability Advisory Committee members were essential to the implementation of the outreach and data collection efforts. Early involvement is essential to stakeholders' active participation and later "buy-in."

Gather Pertinent Information from Applicants, Riders, and Stakeholders

The paratransit manager should begin by identifying key stakeholder groups within the service area. The stakeholders will involve more than simply the current paratransit ridership. The categories of stakeholders for the RideSource program are highlighted in the following box.

TIP 2 - Use a post office box or an agency address that is not associated with the ADA paratransit service to enhance response rates. Also, guarantee confidentiality and anonymity.

Once the stakeholder groups have been identified, the manager must determine a methodology for collecting pertinent information from these stakeholders. Use several standard data collection methodologies in order to ensure a representative sampling. Seeking reliable information through a written questionnaire is often difficult with the paratransit ridership population, because riders and their families are often hesitant to respond; they are fearful of being

Categories of Stakeholders in the RideSource Transit Project

- **Riders/Current Users**
- **Applicants for the Service**
- **Resident Care Providers -- group homes, nursing homes**
- **Parents/Family Members**
- **Disability Advocates -- disability organizations, city & county ADA coordinators**
- **Senior Advocates -- legal service attorneys, senior/aging services case managers**
- **Employers**
- **Human Service Providers -- case managers**
- **Civil Rights Advocates -- volunteers for the city's Human Rights Commission**

perceived as complaining.

Inviting riders and interested stakeholders to volunteer to participate in a telephone interview can be a useful data gathering technique. The targeted audience should include riders, family members, case workers, social service and medical providers, residential care providers, employers, and elderly and disability advocates. The major disadvantage is that respondents are self-selecting; yet, their responses can still offer useful insight into how the service is being perceived by end users. This information still can provide valuable insight into customer needs and the community culture surrounding these issues. The information gathered from *RideSource* was used to create the agendas for the stakeholder meetings that followed.

The tools used by the *ADR Vantage, Inc.* project staff included:

- Written surveys of riders;
- Oral interviews of riders, social service providers, employers, etc.;
- Oral interviews of drivers and other paratransit staff.

A sample survey for drivers follows:

Questions for Drivers

Before we begin I would like you to thank you for the information that you will provide me with today. It will be used to help improve the RideSource system, so please try to be as explicit as possible in your answers. Your name will remain confidential. This interview should take about 30 minutes.

1. About how many rides do you give per day? _____
2. Do you schedule return trips with the clients when they are dropped off or are they required to call the dispatcher when they are ready to be picked up? _____
3. What is the difference between assisted living riders and riders that live alone? _____

- Is one group faster at getting to and on the bus? _____
- Is one group more reliable? _____
4. Do you ever run outside the pick-up window? _____
5. If yes, How often? _____
6. How often do you have to wait for a rider?
Daily _____
Weekly _____
Monthly _____
7. How often are you waiting longer than 5 minutes? _____
8. Has the dispatcher ever ordered you to leave after you have seen that the rider is coming? _____
9. If yes, How often does this happened? _____
10. Does the weather have an impact on your schedule? _____
Is it more busy? _____
Does it take longer to load the passengers? _____
Do more riders wait indoors? _____
11. Do you ever receive questions or complaints from riders regarding conditional eligibility? _____
12. If yes, how do you usually respond? _____
13. Do you ever receive complaints regarding services? _____
14. If yes, how do you usually respond to these complaints? _____
15. Do the riders ever get emotional about service eligibility? How often? _____
16. How do you respond when this happens? _____
17. Do you have riders who ride with a personal assistant? How many? _____
18. Do you have riders that need extra help boarding, but don't have a personal assistant? _____
19. Do you ever help a rider board? How often? _____

Closing remarks:

Thank you for your time. Would you mind if we included your name in a list of drivers whom we might contact with follow-up questions? Again, your name would not be attached to any questionnaire.

Implement a Collaborative Approach

Once the implementation plan has been approved, review the existing information gathered through the surveys, interviews, and discussions with Advisory Committee members. This information will help to identify which individuals can best represent stakeholder interests. Contact these individuals or their respective organizations to invite them to participate in a series of briefings or orientation sessions. These sessions serve to enhance the data gathering and help identify major issues for the stakeholder forums, which will follow.

TIP 3: Remember to consult and brief the ADA paratransit staff as well as the riders and other stakeholders. If they feel uninformed and excluded from the dialogue, then their participation during the implementation phase becomes ever more challenging. In addition, staff will be asked questions by riders and Advisory Committee members about their views, so they should be fully informed about the process.

The stakeholder forums require extensive preparatory work. A list of stakeholders must be finalized. A facilitator must be selected -- ideally, a person who is not employed by the transit agency. A forum agenda must be crafted and the organizational logistics for the forum must be completed with a detail toward full accessibility for all participants. The purpose of the forums is to seek continued input from the parties with a direct stake in the revised complaint process. Typically, the series of forums are organized over a several month time span in order to exchange information, obtain feedback on strategies and policies, and evaluate the progress made throughout the process. The stakeholder forum should be designed to include no more than 25 - 30 participants.

During the first session, the facilitator poses questions derived from the data gathering phase which identifies key areas of complaint and difficulty with

the existing ADA complaint and appeals system. The following box provides an example of how to structure a forum to gather needed input on the existing ADA paratransit service. Participants are asked to characterize issues into the three categories provided: **start** (i.e., new initiatives), **stop** (i.e., candidates for change) and **continue** (i.e., no changes suggested).

STAKEHOLDER FORUM
June 18, 1997
9:30 a.m. – 2:00 p.m.
Lane Transit District Headquarters Bldg.
Springfield, OR

Continue

- Continue the way in which riders are notified of ride schedule
- Continue quality paratransit service

Stop

- Don't penalize riders in assisted housing when staff has not notified them of "no-show" postcards

Start

- Call riders when paratransit van has arrived and rider has not

During subsequent forums, stakeholders will frame possible solutions to the problems and issues identified during the first session. The information contributed by the stakeholders provides specific suggestions from people directly affected by the policy changes as well as insight into the emotions and perceptions surrounding these issues.

During the last session, stakeholders will review and provide comments on the proposed model process for handling an ADA eligibility and service

suspension complaint. The goal of this session is to determine if there are areas of agreement or consensus on the model process and its implementation plan.

Establishing objectives for the desired organizational change, such as inclusion of a model mediation component, helps guide the design and implementation phases. The objectives also provide the paratransit manager with a benchmark for evaluating the effectiveness of the changes. In Eugene, the following objectives for modifying the ADA complaint and appeals process emerged from the stakeholder forums. These objectives were introduced to the MARTA team and became the basis for decisions made by the MARTA staff. __

Objectives for the Mediation Component - Developed by Stakeholders

- Handle the complaint close to the source of the disagreement
- Intervene promptly but in a customer friendly way
- Provide a system that conveys objectivity
- Create a process that is consistent, yet flexible
- Create a customer friendly and supportive environment for complaint resolution

Step 3: DETERMINE WHEN AND HOW TO USE MEDIATION IN THE COMPLAINT PROCESS

The reason to build mediation into the ADA complaint and appeals process is to achieve better results. This proposed change should result in a complaint system that is more cost effective, speedier, and results in greater satisfaction and decisions that can be supported by the rider/applicant, transit management and the transit board. To design such a system, the manager must:

- Understand fully the appeals obligations under the ADA
- Determine which types of cases are appropriate for mediation

- Determine when within the process to refer cases to mediation
- Determine what happens to cases not referred to mediation
- Determine who has the authority to approve a mediated agreement

Understand Fully the Appeals Obligations under the ADA

The DOT regulations implementing the ADA paratransit provisions identify that all paratransit agencies must establish an administrative appeal process to allow all individuals whose paratransit eligibility was denied or determined to be conditional to obtain review of the decision. The provision provides an order and timetable through which each task must be completed (49 CFR §37.125(g)).

In addition, transit agencies are encouraged to provide a similar appeals process to review any decision which would result in a suspension of service. (§37.125(h)(3)).

Excerpts from the Paratransit Section of ADA Regulations

1. An agency has 21 days upon receipt of the Paratransit application to make a determination.
2. The denied applicant then has 60 upon receipt of the denial notice to request an appeal.
3. Upon receiving a request, the transit agency then begins gathering information. ADA does not specify time limit for the information-gathering step. The duration of this period is largely defined by the amount of time needed by the applicants, physicians or other professionals to complete assessments and/or submit information.
4. The appeals hearing must allow the paratransit applicant or rider to address an individual who has a separation of function . . .
5. If the agency has not made a decision within 30 days, however, the applicant shall be provided paratransit service until and unless a decision to deny the appeal has been made.

Determine the Types of Cases for Mediation

The ADA paratransit manager must decide when to use mediation as a complaint resolution tool. The paratransit staff can use the following questions to determine whether or not this case has a probability of settlement or might otherwise benefit if referred to a mediator.

Q *What is the nature of the complaint?*

Does the complaint involve an alleged ADA violation? Is there an opportunity to engage in some creative problem solving and/or seek greater joint understanding of the issue? If the complaint is related to service suspension or eligibility and there is an opportunity to resolve the complaint creatively, then it is ideally suited for mediation. If the complaint is an ADA violation, but it seems that there are no creative solutions, it still may be worth mediating. One of the benefits of mediation is the joint dialogue and enhanced understanding that emerges from the mediation. If the rider or applicant might benefit from such face-to-face dialogue using a mediator to facilitate the discussion, then the complaint should be seriously considered for referral to a mediator.

Q *What is the history of the grievance?*

How has the complaint been addressed thus far within the existing complaint process? Has the complaint been fully investigated? If the complaint has been reviewed by appropriate first-line staff and managers, but has not been fully investigated, then it is often a good time to refer this complaint to mediation. Instead of expending additional staff resources on the complaint, it could be beneficial and cost effective to use a mediator to try to resolve it.

Q *What is the history of the complaints from specific riders/applicants?*

Does this rider/applicant have a history of making bonafided ADA paratransit complaints? Have previous exchanges with the rider or applicant resulted in

productive discussions and outcomes? Regardless of whether the complaint was brought by a rider or applicant who is well-known to the transit agency or is unknown to the paratransit staff, the use of a mediator often is beneficial, because the mediator can enhance the rider's or applicant's confidence in an unbiased, participatory, and prompt resolution process.

Determine When, Within the Complaint Process, to Refer Cases to Mediation

The nature of mediation makes its use appropriate in various phases of the ADA complaint and appeals process. In fact, it could even be offered if the appeals process fails. For the appeals process described in the ADA regulations, an appropriate time to try mediation would be after it is clear that the disagreement cannot be resolved using usual methods and the rider or applicant requests an appeal. For some agencies, this might become the appeals process; for others, it might be employed to avoid an appeal.

For RideSource, the model involved three steps in resolving a disagreement over eligibility or suspension of service. A detailed matrix describing each step in more detail can be found in the appendices. Mediation was introduced as the step following the manager's review. The steps included:

- Manager's review;
- Mediation; and
- Administrative review.

The manager's review. Use the manager's review to eliminate the readily solvable cases. Designate a management level staff member to resolve differences resulting from misunderstanding or lack of information. The manager should have the ability to work with the eligibility certification staff, good communication skills, the authority to request additional information and reverse a decision, and an understanding of eligibility requirements sufficient to be able to explain them, sensitively, to potentially unhappy riders or applicants.

Mediation. Use mediation to resolve disagreements that are not resolved through the manager's review process. These cases and those from individuals who have lost confidence in the paratransit operation are appropriate cases for mediation. One of the following outcomes can be expected from the mediation process:

- The rider or applicant will understand the reason the original decision was made and agree to withdraw the complaint (i.e., case settled).
- The transit official will understand something about the rider or applicant's condition which will change the original decision, thereby allowing the complaint to be withdrawn (i.e., case settled).
- One or both parties will understand more about the other's needs and expectations; the original decision will stand but the complaint will be withdrawn (i.e., case settled).
- One or both parties will understand more about the other's needs and expectations, the original decision will stand and the complaint will be pursued outside of mediation (i.e., case not settled).
- Neither party will make progress in understanding the other and the complaint will be pursued outside of mediation (i.e., case not settled).

In every of the above outcomes except for the last one listed, the outcome might be considered a success by the manager. The first four potential outcomes result in greater understanding on the part of one or both parties and the first three potential outcomes would result in withdrawal of the complaint. In a case like that described in the fourth example, where the parties achieve greater understanding but the complaint does not settle, the parties retain a relationship which can help resolve the matter outside the mediation, prior to legal action or a complaint to the Federal Transit Administration.

The administrative review. This should be a disciplined and narrow review used merely as a means for a senior manager or legal counsel staff to ensure the agreement reflects the agency's obligations under the ADA. Because cases involving ADA paratransit services involve civil rights, transit managers will want to ensure that any agreement will maintains their commitment to ADA compliance. As previously stated, the person representing the transit agency in the mediation should have sufficient authority to negotiate for the agency; therefore, the administrative review should not be used to overturn mediation agreements where the manager or legal counsel subsequently determines that the transit agency has extended its obligations or for other reasons.

TIP 4: Here are some key elements that should be factors in the decisions made about how to use mediation.

- **Try to resolve complaints close to the source -- Resolving the complaint at the lowest possible managerial level empowers staff to make an initial decision and those directly involved in the matter can be involved in the resolution.**
- **Design the process to be consistent but allows flexibility for decisions to be based on factors unique to the individual.**
- **Build in features that ensures the rider or applicant and the transit manager feels the process is fair, neutral, and safe. The rider or applicant must feel he or she can be safe from retribution despite his or her complaint. The transit staff must feel that he or she will participate in any decision to reverse or reconsider an earlier decision - that the process has integrity.**

Determine What Happens to Cases that are not Mediated

A principle characteristic of mediation is that it is a voluntary process. Even when programs require mediation, the only requirement is that people try it, not that they must mediate until settlement is reached. The need to offer riders

or applicants an alternative to mediation in cases involving ADA paratransit services is guaranteed by the ADA regulations which require that riders or applicants have access to an appeals process. If they choose not to mediate, they must be given the option of having another way to appeal. That appeal, however, can be simplified from that used by many transit systems. Rather than institute a hearing, the transit system can offer a simple administrative appeal, as an alternative for those not wishing to mediate, those not appropriate for mediation, and those for whom mediation is not successful.

This review would include the following features:

- Separation of functions -- ensure that the staff permanently assigned to this role would have no involvement in the initial decision;
- A review of the applicant's or rider's complaint and file;
- An opportunity for the rider or applicant to be heard and to present information and arguments; and
- A decision rendered within thirty days.

Determine Who has the Authority to Mediate and Approve a Mediated Agreement

There are at least two key players in the mediation process for the transit agency. These include the person(s) who are identified to participate in the mediation on behalf of the agency, at least one of whom should have the authority to negotiate for the agency; and the person(s) designated to perform the administrative review or Appeals process described above.

Transit agency representatives in the mediation would usually involve an individual close enough to the dispute to understand it, to be able to offer feasible options to resolve it, and to understand what will be needed to comply. It may be necessary, however, to involve one or more additional representatives, including the staff who made the original decision, if his or her experience in the

dispute will be important to the resolution; and/or more senior staff, if needed to ensure authority to negotiate for the agency.

TIP 5: Involving the staff person closest to the dispute can assure that he/she accepts the final outcome. It also may be important if inappropriate behavior by that staff member is being claimed.

Administrative review and appeals representative should have sufficient understanding of the ADA paratransit provisions to be able to review the settlement agreement for compliance. The representative does not have to be an attorney but the agency should be comfortable with his or her understanding of how the agency's attorney(s) have interpreted the regulations for the agency. It may also be advisable to either select only one or very few people to conduct this function as a way to better assure consistency.

TIP 6: In the case of RideSource, the administrative review and the administrative appeals were assigned to one person, who served as the liaison between the Lane Transit District and the RideSource contractor. Paratransit managers could also perform these functions as long as there is a sufficient separation in function from the original decision-makers.

Step 4: TAP INTO THE MEDIATOR COMMUNITY

Unlike other professionals hired by public transit agencies to assist the agency meet its objectives, such as attorneys or public relations consultants, mediators are hired by the agency to be neutral in helping conflicting parties reach agreement. They are committed, by their ethical guidelines, to act impartially, to promote self-determination in mediation outcomes and to maintain

confidentiality. Mediators are not empowered to make judgments or determine the outcomes on behalf of the transit agency or the rider; cannot be biased toward either party; and cannot discuss the nature or content of the mediation proceedings if the conflict goes to litigation. To establish relationships with local mediators, the transit agency will need to:

- Determine appropriate mediator qualifications
- Determine procurement methods
- Locate qualified mediators
- Provide orientation and training
- Ensure quality control

Determine Mediator Qualifications

Given the complexity of ADA paratransit cases and the long-term consequences of settlement agreements, transit agencies should consider and agree on a set of mediator qualifications. The following are generally accepted minimum qualifications:

- 30 - 40 hours of general mediation training;
- 2 - 5 years of mediation experience;
- 8 hours of continuing education coursework in mediation annually;
- A commitment to ethical guidelines such as those of the Society of Professionals in Dispute Resolution (SPIDR).

In addition to the minimums, transit agencies should identify appropriate specific qualifications such as those adopted by *RideSource*:

- Experience mediating cases involving civil rights;
- Experience with persons with disabilities and/or experience mediating cases involving disability issues; and

- Completion of an orientation/training course on the paratransit operation.

TIP 7- Consult with the State Office of Dispute Resolution if your state has one or a local community mediation center for ideas on the mediator standard and qualifications within your state.

Determine the Procurement Method

The transit agency has two different options for hiring qualified mediators to handle ADA Complaints and Appeals: (1) contracting for service with a mediation agency; or (2) creating a mediator roster which would include the names of qualified mediators that the transit agency could hire as needed. The pilot sites for the ADA Complaint and appeals project each chose a different approach, so both have been tried successfully.

When contracting for services with a mediation agency, the transit agency should seek information on the agency, such as:

- Past experience with similar types of disputes;
- Evidence of satisfactory contract fulfillment;
- Corporate capabilities demonstrating sufficient access to mediators with qualifications specified;
- Demonstration of those qualifications in response to a request for proposal; and
- Client references.

The following page includes sample a sample scope of work for a mediator hired by a public transit agency. A complete Professional Services Agreement (i.e., contract) for mediators and Best Practices attachment are included in the appendices.

TIP 8: If it is difficult to identify sufficient numbers of mediators with adequate practical experience, consider conditioning the qualifications by requiring less experienced mediators to co-mediate a number of cases with more experienced mediators on a pro-bono basis, before mediating on his/her own. This allows for diversification and expansion of the roster without lowering qualification standards.

Mediator's Scope of Work
Sample provided by LCOG

1. Conduct pre-mediation interviews with the appellant or his/her representative and other parties to the mediation to:
 - identify who needs to participate in the mediation;
 - educate the parties about mediation and gain their willingness to participate;
 - gain an understanding of the issues and interests of the parties;
 - help the parties to identify their interests and develop a productive strategy for participating in the mediation;
 - design a format and schedule for the mediation that meets with individual needs; and
 - schedule the mediation.
2. Conduct the mediation.
3. Should one or more party be unwilling to participate in the mediation or should an agreement fail to be reached through the mediation, complete and submit to LCOG the Mediator's Report that summarizes the efforts undertaken to convene the mediation and the reasons the mediation either could not be convened or did not result in an agreement.
4. At the completion of the mediation, submit to LCOG the signed mediation agreement and withdrawal of appeal (if there is one) and a completed Mediator's Report.

Locate Qualified Mediators

Community mediation centers available in many metropolitan areas can assist in identifying potential mediators. Other sources might include:

- The state and local bar associations;
- The headquarters of the Society of Professionals in Dispute Resolution (SPIDR) in Washington, DC, or a local chapter; and
- University-based conflict resolution centers/programs.

Provide Orientation and Training for Mediators

Even highly skilled mediators will need an orientation to the public transit system and specifically to ADA paratransit operations. The orientation or training session can vary in length from a half-day orientation session to a multi-day training session. Trainers should have extensive expertise in the ADA and ADA paratransit services specifically. The transit agency may want the trainer to include opportunities to observe the mediators' skills and style, such as in a "mock" mediation or role play. This information could then be factored into transit agency's discussions about mediator qualifications. Furthermore, the completion of the transit-sponsored orientation or training session can become a prerequisite for consideration as a qualified mediator for the roster or for a referral.

In the ADA Complaint and Appeals Project in Eugene, the completion of the ADA paratransit training session was used as an essential screening component for the mediator roster. Local mediators were invited to participate in the day-long training free of charge. Through lecture, case scenarios, and role-plays, prospective mediators were given an overview of the ADA followed by an orientation to the specific ADA paratransit provisions of the DOT regulation and a detailed overview of the *RideSource* service. The training team comprised of staff from *ADR Vantage, Inc.* and the Lane Council of Governments represented expertise in mediation, the regulatory requirements of the ADA, and paratransit operations.

STEP 5: INCORPORATE A MEDIATION PROGRAM IN THE ADA COMPLAINTS AND APPEALS PROCESS

To ensure the greatest likelihood for success, the paratransit manager should be aware of and prepare for the organizational impact, such as:

- ✓ Secure management and legal approval of the changes and implementation plans
- ✓ Restructure organizational procedures and staff roles
- ✓ Modify written policies
- ✓ Inform and train staff on new procedures
- ✓ Notify the public of the changes

Secure Approval from Transit Management and Legal Counsel

Transit management and the legal counsel each have an important stake in the agency's response to the ADA requirements. Managers typically are concerned with factors such as cost in time and resources and impact on customer satisfaction. Additionally, they will share an interest with the legal counsel in how the proposed changes will affect the agency's legal position. They will look specifically for answers to the following questions:

- Q** Does the new appeals process meet the FTA regulations as 49 C.F.R. § 37.125?
- Q** Is the new plan likely to result in better outcomes than is currently possible?
- Q** How will the transit agency be able to assure quality and accountability?

Paratransit managers should keep their managers informed throughout the process and prepare a focused presentation for upper management, legal counsel, and the transit board to outline the elements of the effort, answer

TIP 9: Remember! Transit management and all agency decision-makers should agree to use mediation. Generally, transit management would guide paratransit managers on the timing of meeting with the Board and legal counsel. This can vary depending on the agency.

questions, and secure organizational support, prior to implementing changes.

A thorough legal review of how mediation will be used in the eligibility certification appeals process is especially important to ensure that the process is consistent with the agency's approach to compliance with the appeals provisions of the ADA regulations.

Restructure Staff Roles and Organizational Procedures

The success of an ADA Complaint and Appeals Project can hinge on the appointment of key staff and effective data collection, particularly as it relates to the monitoring of complaints. The key staff positions include the mediation coordinator; the management reviewer (paratransit management); and the eligibility certification staff.

Tip 10: In some parts of the country, the person who performs the management review also might be called an ombudsperson.

The mediation coordinator will manage the mediation contract(s) and/or roster, and the mediation referral and evaluation process. This will not require a full time person. Considerations in selecting a mediation coordinator would include identifying someone with:

- an interest in dispute resolution;
- the ability to work with staff and gain their respect; and
- the authority to commit agency resources.

The management reviewer will review the challenged eligibility or service suspension decisions directly with the applicant or rider to ensure all information has been gathered and considered. He or she will assist the applicant or rider to understand the decision or guide the staff toward consideration of additional information. The management reviewer should be able to resolve disagreements that result in minor oversights or miscommunication.

Furthermore, the management reviewer should be involved in the project as the model is being developed and should participate in discussions such as:

- when and who should interview an applicant or rider; and
- circumstances for referring a case to mediation.

As with the mediation coordinator, the management reviewer can be assigned this role as a compliment to other duties but should generally have excellent interpersonal, problem solving, and communication skills as well as an interest in performing this role.

The **eligibility certification staff** are critical to the Complaint and appeals process. These staff are essential customer service representatives, particularly when the rider is being recertified or the applicant doesn't understand the certification process. In the pilot project, the eligibility certification staff took part in conflict management training to learn how to improve their own communication skills to help problem solve. If unable to assist the applicant in understanding the process or the reason for a decision, the eligibility certification staff would refer the applicant or rider to the management reviewer.

TIP 11: Ensuring eligibility staff and other staff who interact with the public have had training in disability sensitivity and conflict management will help prevent disputes.

Complaint tracking is an essential operational function that can be assigned to either the management reviewer or the mediation coordinator. Either or both staff could have a role in tracking and reporting complaints as they progress. A sample tracking form entitled *Complaint Checklist* can be found on the following page. This form is currently being used in Eugene by the RideSource staff. The reader should note that the complaint tracking form has been redesigned to complement the three step model for complaints and appeals that was developed in Eugene. The three steps include: manager's review, mediation, and administrative appeal. These steps have been described in detail in Step 3 and in the appendices.

The results from the *Complaint Checklist* from are tallied and reported to the RideSource administrative manager on a monthly basis. This gives the agency accountability for managing complaints and a warning that a complaint seems headed for mediation or an administrative appeal.

Modify Written Policies and Publications

Written policies will require modification to reflect the inclusion of mediation into the revised complaint system. The revised policies should be inserted into existing customer guidebooks or other documents describing the paratransit processes to the public. In addition, the paratransit manager will need to review internal policies, procedures, and memoranda that inform staff and management of how the revised process will work. New procedures should provide the organizational structure for the mediation component.

These will include:

- A complaint tracking system;
- Management review procedures;
- Medical review guidelines;
- Referrals to mediators; and
- Evaluation criteria to determine the effectiveness of the mediations.

COMPLAINT CHECKLIST

NAME: _____

ACTION:

INQUIRY (Tracked by SMS)

SMS hears from applicant/rider regarding decision

SMS initiates manager's review

- PT evaluation (date set/date conducted)

- in-person interview (date set/date conducted)

- more info from applicant (date requested/date received)

- other: _____

SMS sends manager's review decision letter

APPEAL (Tracked by LCOG)

LCOG receives written request to appeal

Mediator contacted

Mediator contract is finalized

Mediator's first attempt to contact applicant

Mediator's first successful contact with applicant (may be same as above)

Mediation scheduled (date mediation scheduled, not date mediation held)

First mediation session

Last mediation session (may be same as above)

Appeal withdrawn? Yes No

ADMINISTRATIVE APPEAL (Tracked by LCOG)

Case forwarded to LCOG for Administrative Decision

In-person interview (date scheduled/date held)

File reviewed

Sends administrative appeal decision letter

Inform and Train Staff on New Procedures

The paratransit staff, both internal and contracted, should receive an extensive briefing and possibly training to support them in their new roles. The entire RideSource staff received an extensive briefing on the project, its goals, and the operational outcomes. Additionally, a one-day training session on managing conflicts and RideSource policy changes was provided to all staff, including the eligibility certification specialists, schedulers, dispatchers, vehicle operators, and support staff. The course was offered on two separate dates to accommodate varying work schedules. The training was designed to inform them about the planned system changes, engage them in discussion regarding their roles in managing disputes, and give them exercises to help build their conflict management skills.

Notify the Public

Informing riders and key stakeholders about changes is key to minimizing misunderstandings and protect civil rights. The *Ride Guide* for RideSource was modified to reflect the latest policy changes. It was then sent out to all current riders and others on the mailing list. At that time staff also began sending the revised *Ride Guide* to new applicants. The following samples include the revised no-show policy and the complaint and appeals process as outlined in the *Ride Guide* produced by RideSource.

TIP 12: Remember! Written materials notifying the public of ADA paratransit policy changes must be available in alternative formats.

What are my options if I am denied eligibility or only allowed conditional eligibility?

If you disagree with a decision made by *RideSource*, you have the right to appeal that decision. However, before appealing, you are encouraged to request a review of the decision by a *RideSource* manager.

Appealing a Decision

Step 1: Review of a Decision

At your request, a *RideSource* manager will conduct an independent review of your eligibility determination. Your request must be made within 60 days of receiving the notice of a decision. The manager will review your file and, if necessary, will gather additional information. You may be asked to participate in an in-person interview or to be evaluated by a physical therapist if you have not already done.

Step 2: Appealing a Decision

To appeal the eligibility determination, you will need to make a written request for an appeal within 60 days of receiving the notice of decision. Most appeals are addressed through mediation. See the *RideSource Appeals Process* brochure for specific information on appealing a decision and mediation.

How do I appeal a no-show?

You will receive notice of each no-show recorded for a ride you missed. If your service is being suspended due to a series of no-shows, you can request a review of the decision by calling *RideSource* at 682-5566 within 14 days of receiving the notice of suspension. A *RideSource* manager will review your file and talk with you and others to gather additional information.

If you are still dissatisfied with the review decision, you may appeal. Send your written appeal to:

RideSource Appeals / Lane Council of Governments
125 East Eighth Ave.
Eugene, OR 97401

STEP 6: EVALUATE THE EFFECTIVENESS

The focus of this step is on the effectiveness of mediation in resolving customer complaints associated with the ADA paratransit service. The ADA paratransit manager will need to develop evaluation tools for monitoring:

- ✓ the degree to which the complaint was resolved
- ✓ the timeliness of the complaint resolution
- ✓ the cost of mediations
- ✓ the degree of satisfaction among the parties with the outcome(s), process and confidentiality.

The reader might ask why were these evaluation criteria recommended. These are the elements that other mediation programs typically evaluate, including those operated under the auspice of state courts. Most often, lawyers, judges, and affected parties cite four reasons why mediation is viewed as an effective dispute resolution tool. Mediation tends to be:

- more cost effective than other administrative processes;
- more expedient,
- more confidential, and
- more satisfying, for those involved -- both for public transit staff and customers.

When designing an evaluation tool, consider the issues of cost and timeliness are complementary. These can be measured by comparing of the cost of the mediator to the amount of staff time used and the associated personnel costs incurred to handle the appeal internally. In addition to documenting the staff hours versus the mediator's hours used to resolve the complaint, the lag time between when the complaint was filed and when it was resolved also should be examined.

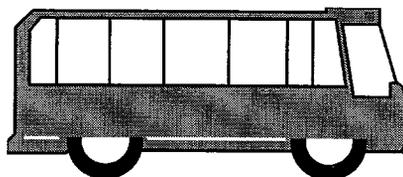
With the following evaluation tools, the paratransit manager can monitor and evaluate the effectiveness of mediation as a complaint resolution tool:

- Exit surveys of participants -- riders, applicants, and staff;
- Evaluation from the mediator on insights and general comments on the process; and
- Post-mediation evaluation follow-ups conducted six months later to determine if mediated outcomes are still acceptable.

Exit surveys often are used to determine the parties' level of satisfaction with the mediation process, its outcomes, and the confidentiality provisions of the mediation. Interestingly, among the mediation evaluation statistics available to date, over 90% of the respondents rated the mediation process as highly satisfactory, regardless of the outcome, and a process that they would choose in the future if it were offered.

Mediators also should be asked to provide written evaluations on their observations of how well the process worked. Mediators cannot disclose confidential information relied during the mediation nor provide extensive commentary on the mediation.

Follow-up surveys for the rider or applicant with complaint are another tool for gathering additional insights. Post mediation evaluations allow the participants time for reflection as well as a chance to assess whether mediated outcomes are being or were implemented in a timely manner.



CHAPTER FOUR: FINAL SUMMARY

This guidebook has provided the reader with a detailed summary of the steps to take in order to modify one's ADA complaint and appeals process by incorporating a mediation component. This chapter summarizes the six steps for assessing and implementing a mediation component into an ADA complaint and appeals process as outlined in Chapter 3. It is presented in an action plan format with a list of objectives for each step followed by a tool kit of resources, key questions, or action items.

OVERVIEW OF THE SIX-STEP PROCESS

Step 1. Review and Assess the Existing ADA Complaint and Appeals Process

Paratransit managers will need to review and assess the existing process before initiating any revisions. There are three key components to such a review:

- ✓ Review the current complaint process to determine if mediation is a desired addition;
- ✓ Assess current complaints by examining trends, such as the nature and volume of complaints;
- ✓ Assess organizational capacity for handling complaints and identify new service initiatives that might impact customer complaints, such as recertification of eligibility or new service policies.

Step 2. Seek Customer and Staff Input

Step two is very important in laying the foundation for change. Both riders and staff will have invaluable information on the aspects of the paratransit operation that are working well and where change might be needed. When considering a change to the ADA Complaint and appeals process, the paratransit manager will want to:

- ✓ Develop an outreach and information dissemination plan;
- ✓ Determine the role of the elderly and disabled advisory committee;
- ✓ Gather information from riders, applicants, and other interested stakeholders;
- ✓ Implement a collaborative approach to reviewing and implementing policy changes that involves direct input from stakeholders.

The ADA paratransit manager will also want to develop methods for gathering information. Types of tools used to seek input from staff, paratransit riders, applicants, and interested community stakeholders in the RideSource Complaint and Appeals project are as follows:

- Written surveys;
- Oral interviews;
- Orientation sessions to identify potential stakeholders;
- Stakeholder forums; and
- General information dissemination, such as newsletter updates.

Step 3. Determine When and How to Use Mediation

After the paratransit manager has determined that the mediation component will be incorporated in the ADA Complaint and appeals process, then he or she will need to conduct an assessment of how and when to apply this new option. Fundamental issues will need to be addressed in order to redesign the complaint process successfully. A paratransit manager will need to:

- ✓ Understand fully the appeals obligations under the ADA;
- ✓ Determine which types of cases are appropriate for mediation;

- ✓ Determine where, within the process, to refer cases to mediation;
- ✓ Determine what will happen to cases not referred to mediation; and
- ✓ Determine who has the authority to approve a mediated agreement.

There are a series of questions that can assist the paratransit manager in making the determinations outlined above:

- Q** Have the appropriate transit staff, including legal counsel, reviewed the proposed ADA Complaint and appeals process to ensure compliance with the DOT regulatory requirements?
- Q** In determining when to use mediation, have the following questions been concerned before making the mediation referral -- What is the nature of the complaint? What is the history of the grievance? What is the history of the complaints from specific riders or applicants?
- Q** What role should paratransit staff continue to play in resolving rider or applicant complaints? How is "separation of function" requirement met within the proposed revisions? How will the administrative review function be handled if a mediation component is added?
- Q** What option(s) for resolution does the applicant or rider have if he or she does not chose to mediate his or her complaint?

Step 4. Tap into the Mediator Community

To ensure that mediators are hired and trained to provide mediation services as needed, the paratransit manager will have to work with other staff in the public transit agency to:

- ✓ Determine appropriate mediator qualifications;
- ✓ Determine procurement methods;
- ✓ Locate qualified mediators;
- ✓ Provide orientation and training; and
- ✓ Ensure quality control.

The paratransit manager will need tools for identifying, selecting, and ensuring qualified mediators. The following are tools commonly used to tap into the mediation community:

- Consult with the State Office of Dispute Resolution or a local community mediation center to learn about mediator qualifications within your state;
- Review state qualifications and determine if the transit agency wishes to supplement the requirements by setting its own standards;
- Work the procurement staff to draft a contract, scope of work, and set compensation rates for mediators;
- Notify local mediators about contract opportunities and select a vendor for these services;
- Once a vendor has been selected or a roster has been created, decide whether to provide an orientation or training session on ADA paratransit operations, so mediators will have a context for disputes and possible options for resolution.

Step 5. Incorporate a Mediation Program in the ADA Complaint and Appeals Process

In order to ensure a smooth transition after adding the mediation program to the complaint process, the paratransit manager should:

- ✓ Secure management and legal approval of the changes and implementation plans;
- ✓ Restructure organizational procedures and staff roles;
- ✓ Modify written policies;
- ✓ Inform and train staff on new procedures; and
- ✓ Notify the public of the changes.

Successful programs require planning ahead. The paratransit managers should develop tools to ease the transition. Action items for ensuring a successful program include the following:

- Discuss this initiative with upper management and legal counsel staff to win their approval on the legality of the proposed changes and the staffing structure needed to achieve that objective.
- Consider the three key staff roles – coordinator, management reviewer, and eligibility certification staff -- needed to ensure effective management of this program.

- Revise written policies and procedures to reflect administrative and/or managerial changes and inform the staff about these revised policies and organizational structure.
- Notify the ridership and interested public via ride guides, newsletters, and other mailings about the policy and organizational changes.

Step 6. Evaluate the Effectiveness of the Process

Without an evaluation component in the newly implemented program, there will be no way to determine if the set goals have been met. The paratransit manager will need to develop tools to measure:

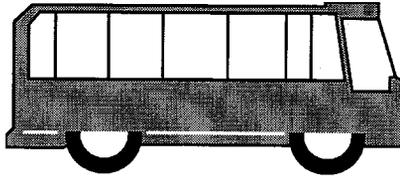
- ✓ the cost effective over other administrative processes;
- ✓ the time-savings in terms of staff resources;
- ✓ the level of satisfaction with the process among the riders or applicants and paratransit staff.

Evaluation tools can include:

- Exit surveys of participants -- riders, applicants, and staff;
- Evaluation from the mediator on insights and general comments on the process; and
- Post-mediation evaluation surveys, usually conducted six months later, to determine if mediated outcomes are still acceptable.

SUMMARY

This chapter was intended to serve as a quick reference summary for ADA paratransit managers. By reviewing the six-step process listed above, the manager should be able to determine illustrates how to use mediation as an effective tool in managing ADA paratransit appeals. To summarize, the guidebook was written to assist paratransit managers determine whether or not mediation can be effective in their operation; and if so, how to revise an existing ADA complaint and appeals process to include a mediation component.



CHAPTER FIVE: OTHER USES OF MEDIATION IN TRANSIT SETTINGS

To this point the focus of the Guidebook has been on a single application of mediation to the public transit industry (i.e., ADA Paratransit Complaints and Appeal Process). The objective was to provide ADA paratransit managers with a targeted document through which to learn in detail about the purpose and process of mediation and how it can improve an ADA Complaint and appeals Process. There are potentially numerous applications of mediation for paratransit as well as fixed-route transit. These can be used as complement to customer relations, to minimize conflict, and to resolve complicated issues in constructive ways, outside of litigation.

How Else Can Mediation be Used within Transit Operations

Mediation is a very versatile tool for many types of complaints and disputes. Once the system is established and relationships are in place with area mediators, managers can begin exploring other uses. Within the ADA paratransit arena, mediation can also be used for the following types of disputes:

Quality of service complaints. Paratransit systems are relatively new for many transit systems. The scheduling, dispatching, length of trip, staff abilities, and other factors may all result in complaints from riders. The manner in which some of these factors are handled may or may not represent a violation of the ADA regulations. Whether or not an ADA violation is alleged, mediation can be an

effective means for resolving these types of complaints. Through mediation the rider may be educated about what is realistic to expect and the transit agency may learn about how policy interpretations affect riders and be alerted to real or perceived ADA violations. Mediation may also lead to creative solutions.

Alleged ADA violations. Many public entities establish grievance procedures to ensure riders have an opportunity to remedy a problem before it escalates to a legal challenge. Rider complaints surface around such issues as trip denials, companion riders, and service animals. These types of complaints can be appropriate for mediation. Through mediation, riders and transit officials can reach mutually satisfactory solutions that often would not be introduced in more formal proceedings.

In the fixed-route bus and rail systems, complaints and lawsuits may arise from such issues as verbal stop identification, elevator and lift maintenance, wheelchair securement, and driver and rider behavior. Each of these issues bears on ADA compliance and represents potential for disagreement. As with paratransit, fixed-route transit operators can use mediation to resolve real or alleged ADA violations. Some transit systems also are beginning to see the benefit of using mediation to resolve:

- complaints involving injury or damage;
- disagreements with vendors or contractors; and
- employee and labor grievance procedures

How to Learn More about Mediation and Alternate Dispute Resolution

It is important for paratransit managers to tailor and modify the practices advocated in this guide to their unique systems. Some managers may want to delve more deeply into the background of conflict resolution and mediation. The following are sources used for the ADA Complaint and Appeals Project staff:

- ***Resolving Conflict: Strategies for Local Government***, edited by Margaret S. Herman, Washington, DC: International City/County Management Association, 1994.
- ***Settling Disputes, Conflict Resolution In Business, Families, and the Legal System***, Linda R. Singer, Boulder, CO: Westview Press, 1990.
- ***Designing Conflict Management Systems***, Cathy Costantino and Christina Sickles Merchant, San Francisco: Jossey-Bass Publishers, 1996.
- ***Collaborative Approaches to Decision Making and Conflict Resolution for Natural Resources and Land Use Issues***, Karen Tarnow, Peter Watt, and Donna Silverberg, Salem: Oregon Department of Land Conservation and Development, June 1996

The *ADR Vantage*, Inc. staff is available to provide additional information and technical advice and they can be reached at:

ADR Vantage, Inc.
1660 L Street, NW
Suite 510
Washington, DC 20036
(202) 296-2328 (V/TTY)
(202) 293-5915 (FAX)
Email: ADRVantage@aol.com

APPENDICES

- ❑ **Sample Professional Services Agreement for Mediators**
- ❑ **Best Practices for Facilitators or Mediators in Agreement Seeking Processes**
- ❑ **Matrix of the RideSource Complaint and Appeals Process**
- ❑ **Flow Chart for the RideSource Complaint and Appeals Process**

**SAMPLE PROFESSIONAL SERVICES AGREEMENT
TO FURNISH MEDIATION SERVICES**

Provided by Lane Council of Governments, Eugene, Oregon

THIS AGREEMENT, entered into by and between the LANE COUNCIL OF GOVERNMENTS, hereinafter referred to as LCOG, and _____, hereinafter referred to as MEDIATOR, whose address is _____.

Section I. Term

The agreement term is _____ through _____.

Mediation cases will be assigned on an as needed basis. No work shall commence until authorized as described in Section II. There is no guarantee for work under this contract.

Section II. Authorization to Work

All work under this contract must be authorized in writing by LCOG. An authorization letter shall be issued for each mediation case. Work completed prior to or without issuance of an authorization letter shall not be compensated. The authorization letter will specify the case and establish the term for which work is authorized for that mediation. Compensation for authorized work will occur as described in Section IV.

Section III. Scope of Work

See Attachment A.

Section IV. Compensation

The MEDIATOR agrees to perform the work described in this agreement for a total amount not to exceed \$375.00 per case. LCOG will make payment to the MEDIATOR within 30 days of receiving completed invoice. Progress payments will be made no more frequently than monthly.

If the work includes convening a mediation, as indicated by an Agreement to Mediate signed by all parties, the MEDIATOR will be compensated \$375.00 upon completion of the scope of work. If the work does not include convening a mediation, the MEDIATOR will be compensated at a rate of \$60.00 per hour for time spent on relevant portions of the scope of work.

Section V. Personnel

All of the services required hereunder will be performed by the MEDIATOR.

Section VI. Termination of Agreement for Cause by LCOG

If, through any cause, the MEDIATOR fails to fulfill in a timely and proper manner the MEDIATOR'S obligations under this agreement, or if the MEDIATOR violates any of the terms of this agreement, LCOG shall thereupon have the right to terminate this agreement or terminate authorization to work on a mediation case by giving written notice to the MEDIATOR of such termination and specifying the effective date thereof. If at the time of termination the MEDIATOR is actively working on a case, the MEDIATOR shall be compensated for documented time spent fulfilling the obligations of this agreement at a rate of \$60.00 per hour, not to exceed \$375.00 per

case, regardless of whether a mediation was convened, and all finished or unfinished non-confidential documents and reports prepared by the MEDIATOR shall become LCOG property.

Notwithstanding the above, the MEDIATOR shall not be relieved of liability to LCOG for damages sustained by LCOG by virtue of any breach of the agreement by the MEDIATOR, and LCOG may withhold any payments to the MEDIATOR for the purpose of setoff until such time as the exact amount of damages due LCOG from the MEDIATOR is determined.

Section VII. Termination for Convenience of LCOG

LCOG may terminate this agreement or authorization to work on a mediation case at any time by giving written notice to the MEDIATOR of such termination and specifying the effective date thereof. In that event, all finished or unfinished non-confidential documents and reports shall become LCOG property. If the agreement is terminated by LCOG as provided herein, and if at the time of termination the MEDIATOR is actively working on a case, the MEDIATOR shall be paid the minimum rate of \$60.00 per hour, not to exceed \$375.00 per case, regardless of whether a mediation was convened.

Section VIII. Termination of Agreement for Cause by Mediator

If the MEDIATOR is actively working on a case and determines that, in accordance with *Best Practices for Facilitators or Mediators in Agreement Seeking Processes* (adopted by the Society of Professionals in Dispute Resolution; attached for reference as Attachment B) and after consulting with LCOG to determine whether other solutions are possible, it is inappropriate to continue with the mediation, the MEDIATOR shall thereupon have the right to terminate work on the mediation by giving written notice to LCOG of such termination and specifying the effective date thereof. In any event, the MEDIATOR shall be compensated for documented time spent fulfilling the obligations of this agreement at a rate of \$60.00 per hour, not to exceed \$375.00 per case, regardless of whether a mediation was convened, and all finished or unfinished non-confidential documents and reports prepared by the MEDIATOR shall become LCOG property.

Section IX. Changes

LCOG and the MEDIATOR may agree from time to time upon changes in the scope of the services to be performed hereunder. Such changes, including any increase or decrease in the amount of the MEDIATOR'S compensation, which are mutually agreed upon by and between LCOG and the MEDIATOR, may be incorporated in written amendments to the agreement. Such amendments will specify whether the changes apply to all mediation cases or only to a specific mediation case.

Section X. Interest of Members of LCOG and Others

No officer, employee of LCOG, and no member of its governing body, shall: (a) participate in any decision relating to this agreement which affects his/her personal interest or the interest of any corporation, partnership, or association in which he/she is, directly or indirectly, interested; or (b) have any interest, direct or indirect, in this agreement or the proceeds thereof.

Section XI. Assignability

The MEDIATOR shall not assign any interest in this agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of LCOG thereto; but the claims for money due or to become due to the MEDIATOR from LCOG under this agreement may be assigned to a bank, trust company or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to LCOG.

Section XII. Indemnity

The MEDIATOR shall defend and hold harmless the Lane Council of Governments, its officers, agents, employees and members from all claims, suits or actions resulting from the activities, conduct, errors or omission of the MEDIATOR.

Section XIII. Interest of Mediator

The MEDIATOR covenants that he/she presently has no interest and shall not acquire any interest, direct or indirect, which conflicts in any manner or degree with the performance of services required to be performed under this agreement.

Section XIV. Confidentiality

Pursuant to State law, unless there is an agreement otherwise, mediation communications, and memoranda, work products and other materials contained in the case files of a mediator are confidential. However, a mediated agreement shall not be confidential.

Section XV. Officials Not to Benefit

No members of the Congress of the United States of America, and no Commissioner, Councilor or Board Member of any constituent of LCOG may receive any benefit from the services provided under this agreement. Violation of this section invalidates the agreement.

MEDIATOR

LANE COUNCIL OF GOVERNMENTS

Date

Date

**Best Practices for Facilitators or Mediators
in Agreement-Seeking Processes
(as adopted by SPIDR in January 1997)**

1. Facilitators or mediators should not participate in any process that is misrepresented as to its purpose or that is intended to circumvent legal requirements.
2. Facilitators or mediators should serve as advocates for the principles that underlie collaborative decision-making processes, including structuring and managing the process to ensure representation and effective participation by all key stakeholders, whatever their cultural, racial, religious or economic backgrounds.
3. Facilitators or mediators should not be advocates for any participant's point of view on any substantive issue.
4. Facilitators or mediators should protect the confidentiality of private communications with any of the participants.
5. Facilitators or mediators should gain the agreement of all participants to the ground rules for the process and to any subsequent modification to them. Once ground rules have been mutually agreed upon, facilitators or mediators should enforce them impartially.
6. Facilitators or mediators should address situations where it appears that any participant is not acting in good faith.
7. Facilitators or mediators should not be inhibited by any attempt of the sponsoring or funding agency to control the process through them, such as inhibiting their ability to communicate or manage communications with other participants. As a last resort, if the matter cannot be resolved satisfactorily, they should withdraw from the process.
8. Facilitators or mediators should advise the parties when, in their opinion, the process no longer appears to be meeting its objectives.
9. Facilitators or mediators should withdraw from the process if their continuing involvement is not acceptable to the group.
10. Facilitators or mediators should not be engaged to carry out other kinds of non-neutral activities for the sponsoring agency at the same time they are under contract to facilitate an agreement-seeking process. Facilitators or mediators should disclose when they have continuing or frequent contractual relationships with one or more of the participants.

RIDESOURCE COMPLAINT AND APPEALS PROCESS FOR LIMITED OR DENIED ELIGIBILITY OR SUSPENDED SERVICE

STEPS		CONSIDERATIONS
<p>1. Notice of Decision</p>	<p>RideSource applicant or rider is notified of eligibility or suspension status. Those who receive suspension notices or notice of less than full eligibility will be notified of their option to request a review of the decision and their right to appeal.¹</p> <p>The applicant/rider has a predetermined number of days from receipt of a decision to request a review or an appeal : 14 days for suspension notices, 60 days for eligibility determinations.^{2,3}</p> <p>At this point, the rider/applicant may either request a review (go to Step 2) or appeal the decision (go to Step 3).</p>	<p>¹The entity shall establish an administrative appeal process through which individuals who are denied eligibility or notified of an impending service suspension can obtain review of the decision. §37.125(g) and §37.125(h)(3)</p> <p>²For Eligibility Decisions: Provider may require that an appeal be filed within 60 days of denial of an individual's application. §37.125(g)(1)</p> <p>³For Suspensions: Because RideSource policy establishes that a service suspension will take effect 30 days after the rider is notified, a shorter appeal period (14 days) is necessary.</p>
<p>2. Manager's Review</p>	<p>Applicant/rider contacts the RideSource Operations Manager to request a review of the decision.⁴ The Operations Manager will review the case and work with the applicant/rider to obtain additional information in a timely manner.⁵ This may involve an in-person interview or an evaluation by a physical therapist.</p> <p>After all necessary information has been gathered, RideSource will render a review decision within 14 days and will notify the applicant/rider in writing. The applicant/rider will again be notified of their right to appeal. An appeal must be initiated within 14 days (suspension) or 60 days (eligibility) of receipt of the review decision.</p>	<p>⁴Applicants/riders are encouraged to request a manager's review rather than jumping right to an appeal. A manager's review supports the process goal of "keeping the complaint close to the source" and may be successful at resolving some conflicts.</p> <p>⁵There is no ADA-specified time limit for the information-gathering step. The duration of this period is largely defined by the amount of time needed by the applicants, physicians or other professionals to complete assessments and/or submit information.</p>

**RIDESOURCE COMPLAINT AND APPEALS PROCESS
FOR LIMITED OR DENIED ELIGIBILITY OR SUSPENDED SERVICE**

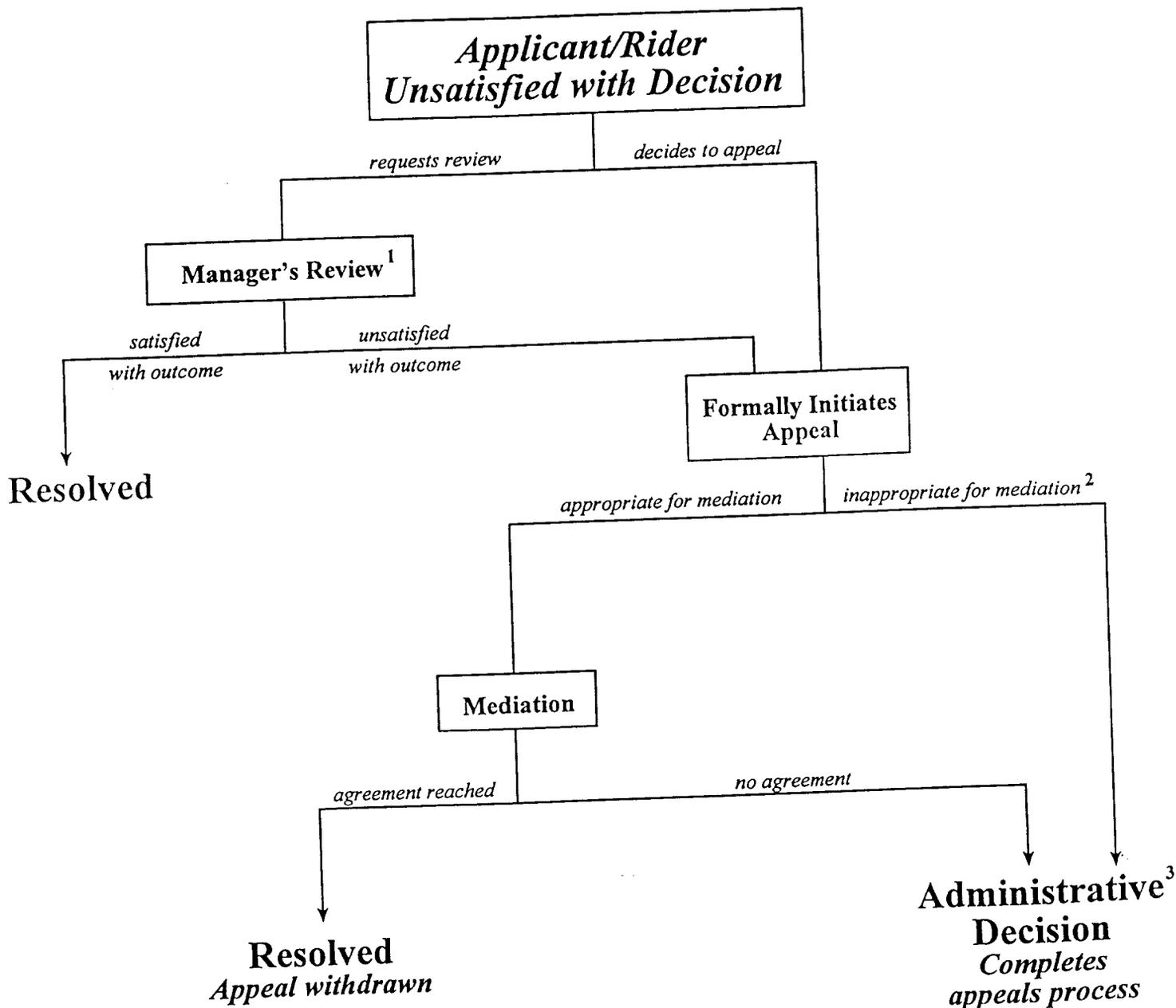
STEPS		
<p>3. Formally Initiating an Appeal</p>	<p>The applicant/rider will submit their request to appeal to LCOG. LCOG staff will follow established procedures to contract with a mediator from the roster for case development and mediation. The mediator will initiate contact with the rider/applicant within 14 days of LCOG's receipt of the request to appeal.</p> <p>If LCOG determines the case is not appropriate for mediation, the case will proceed directly to administrative appeal (Step 5).⁶</p>	<p>CONSIDERATIONS</p> <p>⁶Because mediation is an additional step in the required appeals process, LCOG retains the right to choose not to mediate certain cases. Such cases may involve intractable disputes or situations where one of the parties is unwilling or unable to participate in a productive manner. These cases will be will forwarded directly to Step 5 for an administrative decision.</p>
<p>4. Mediation</p>	<p>If mediation is successful at resolving the dispute, the appellant will be asked to withdraw their appeal. The mediated agreement will become final unless the Special Transportation Program Manager at LCOG identifies a concern.⁷</p> <p>RideSource will have up to 14 days following approval of the agreement to issue a decision in writing that reflects the mediated agreement.</p> <p>If the mediation is not successful, the case will proceed to the Special Transportation Program Manager at LCOG for administrative decision.</p>	<p>⁷Approval by the LCOG Program Manager is necessary to ensure that the agreement adequately upholds legal requirements and does not expose the SMS, LCOG or LTTD to liability. Because legal and liability issues will be addressed in the mediation, review by the LCOG Program Manager is expected to be a perfunctory sign-off.</p>

RIDESOURCE COMPLAINT AND APPEALS PROCESS FOR LIMITED OR DENIED ELIGIBILITY OR SUSPENDED SERVICE

STEPS	CONSIDERATIONS	
<p>5. Administrative Appeal</p>	<p>Administrative appeals will be processed by the Special Transportation Program Manager at LCOG.⁸ This process involves a review of the file and an opportunity for the appellant to be heard in-person.⁹</p> <p>The Program Manager will issue a decision within 14 days of that hearing, or within 14 days of the applicant's/rider's waiver of the opportunity to be heard.¹⁰</p> <p>This is the final step in an appeal.</p>	<p>⁸The ADA requires that administrative appeals be heard by someone with "separation of functions." This requirement is met by having the LCOG Program Manager conduct administrative reviews. §37.125(g)(2)</p> <p>⁹The ADA requires that the administrative appeal process include an opportunity for the applicant/rider to be heard and to present information and arguments. §37.125(g)(2)</p> <p>¹⁰The Appendix to §37.125 state that after the appeals process has been completed, the entity should make a decision within 30 days, and that service must be provided starting on the 31st day until and unless a decision is rendered. In support of its goal of prompt response, RideSource will commit to a shorter time period (14 days) for issuing decisions.</p>

RideSource Complaint and Appeals Process

For Eligibility Determinations and Service Suspensions



¹ May involve in-person interview or evaluation by physical therapist.

² If LCOG Program Manager determines appeal is not suited for mediation, appeal will proceed directly to Administrative Decision.

³ Decision made by LCOG Program Manager; appellant will have opportunity to be heard in-person.