

**SETTLEMENT AGREEMENT
UNDER THE AMERICANS WITH DISABILITIES ACT
BETWEEN
THE UNITED STATES OF AMERICA
AND
NEW JERSEY TRANSIT
DJ#204-48-305**

BACKGROUND

1. The parties to this Settlement Agreement (“Agreement”) are the United States of America and New Jersey Transit (“NJ Transit”).
2. The matter was initiated by a complaint received by the United States Department of Justice. The complainant alleged that he uses NJ Transit’s paratransit service, but he experienced lengthy delays or denials of service.
3. The United States and NJ Transit have reached an agreement that is in the parties’ best interests, and that the United States believes is in the public interest, to resolve this matter on mutually agreeable terms. The parties have therefore voluntarily entered into this Settlement Agreement, as set forth below.

TITLE II COVERAGE AND DETERMINATIONS

4. The Attorney General of the United States, through the U.S. Attorney’s Office for the District of New Jersey (“USAO”), is authorized under the ADA to determine NJ Transit’s compliance with Title II of the ADA and Title II’s implementing regulations. The USAO is authorized to investigate the allegations in this matter pursuant to 42 U.S.C. § 12133 and 28 C.F.R. §§ 35.171 and 35.190(e).
5. NJ Transit is a provider of public fixed route transportation in New Jersey and is a “public entity” within the meaning of the ADA, 42 U.S.C. § 12131(1), 28 C.F.R. § 35.104, and 49 C.F.R. § 37.3, and is, therefore, subject to Title II of the ADA, 42 U.S.C. § 12131 *et seq.*, and its implementing regulations, 49 C.F.R. Part 37 and 28 C.F.R. Part 35.
6. Under the ADA, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. 42 U.S.C. § 12132.
7. Each public entity operating a fixed route system shall provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed route system. 42 U.S.C. § 12143; 49 C.F.R. § 37.121(a). To be deemed comparable to fixed route service, a complementary paratransit system shall meet the requirements for eligibility standards, eligibility process, visitor service, type of service, service criteria, and subscription service found at 49 C.F.R.

§§ 37.123-37.133. 42 U.S.C. § 12143; 49 C.F.R. § 37.121(b). NJ Transit's ADA complementary paratransit service is called Access Link Paratransit Service ("Access Link").

8. A public entity shall not limit the availability of paratransit services to eligible individuals by, *inter alia*, having an operational pattern or practice that significantly limits the availability of serve to ADA paratransit eligible persons. 49 C.F.R. § 37.131(f)(3). Such patterns or practices include, but are not limited to, substantial numbers of significantly untimely pickups for initial or return trips, substantial numbers of trip denials or missed trips, and substantial numbers of trips with excessive trip lengths. 49 C.F.R. § 37.131(f)(3)(i). Operational problems attributable to causes beyond the control of the entity (including, but not limited to, weather or traffic conditions affecting all vehicular traffic that were not anticipated at the time a trip was scheduled) are not a basis for determining whether such a pattern or practice exists. 49 C.F.R. § 37.131(f)(ii); *c.f.* Transportation for Individuals with Disabilities, 56 Fed. Reg. 45584 (Sept. 6, 1991) (A pattern or practice may exist where scheduling practices fail to consider regularly occurring traffic conditions, such as rush hour).
9. A public entity shall schedule and provide paratransit service to eligible individuals at any requested time on a particular day in response to a request for service made the previous day. 49 C.F.R. § 37.131(b). A public entity shall not require eligible individuals to schedule a trip to begin more than one hour before or after the individual's desired departure time. 49 C.F.R. § 37.131(b)(2).
10. The Federal Transit Administration issued a Circular, FTA C 4710.1, on November 4, 2015, available at www.transit.dot.gov/regulations-and-guidance/fta-circulars/americans-disabilities-act-guidance-pdf. That Circular provides guidance regarding how to carry out the provisions of the ADA, Section 504 of the Rehabilitation Act, and the implementing regulations. That Circular also provides guidance regarding paratransit capacity constraints, including untimely pickups, excessive trip lengths, untimely drop-offs, and poor telephone performance.
11. The complainant alleged that he uses NJ Transit's Access Link paratransit service, but the service has capacity constraints that significantly limits the availability of the service, including poor telephone performance and untimely pickups and drop-offs.
12. Based on this review and a broader review of NJ Transit's policies and practices regarding Access Link, the United States identified issues with Access Link's noncompliance with the ADA's non-discrimination requirements. Specifically, NJ Transit Access Link has capacity constraints that significantly limit the availability of service to ADA paratransit eligible persons, including a substantial number of trips with late pickups, a significant number of trips with late drop-offs, a significant number of trips that were excessively long, and excessive telephone call wait times in violation of 49 C.F.R. § 37.131(f)(3).
 - a. During the one-month period reviewed, approximately 13.1 percent of pickups were Late Pickups.

- b. During the one-month period of trips that had identified an appointment time, approximately 39.4 percent of drop-offs were Late Drop-Offs.
- c. During the one-month period reviewed, approximately 25 percent were Excessively Long Trips.
- d. During the one-week period reviewed, approximately 40 percent of the telephone call wait times to schedule a trip were in excess of two minutes and approximately 63 percent of telephone call wait times to check on the status of a trip were in excess of two minutes.

DEFINITIONS

- 13. The term “Appointment Time” shall mean the communicated time at which the ADA paratransit certified person has a scheduled obligation at his or her destination, such as a medical appointment or the start of work.
- 14. The term “Early Drop-Off” shall mean when an NJ Transit Access Link vehicle arrives to the destination prior to the On-Time Drop-Off Window.
- 15. The term “Excessively Long Trip” shall mean any NJ Transit Access Link trip where the time from pickup to drop-off is more than 20 minutes longer than the transportation time would be from origin to destination if traveled using NJ Transit’s Fixed Route system.
- 16. The terms “Fixed Route System” and “Fixed Route” mean a system of transporting individuals (other than by aircraft), on which a vehicle is operated along a prescribed route according to a fixed schedule, as defined in 49 C.F.R. § 37.3.
- 17. The term “Late Drop-Off” shall mean when an NJ Transit Access Link vehicle arrives to the destination after the On-Time Drop-Off Window.
- 18. The term “Late Pickup” shall mean when an NJ Transit Access Link vehicle arrives after the On-Time Pickup Window and the ADA paratransit eligible person is transported to their destination.
- 19. The term “Missed Trip” shall mean when a trip is requested, confirmed, and scheduled, yet does not take place due to NJ Transit Access Link; a Missed Trip may occur when (1) a NJ Transit Access Link vehicle arrives and leaves before the beginning of the Pickup Window without picking up the rider and without any indication from the rider that they no longer want to make the trip; (2) the NJ Transit Access Link vehicle does not wait 5 minutes within the Pickup Window and the vehicle departs without the rider; (3) the NJ Transit Access Link vehicle arrives after the end of the Pickup Window and departs without picking up the rider; or (4) the NJ Transit Access Link vehicle does not arrive at the pickup location.

20. The term “On-Time Pickup Window” shall mean a 30-minute period beginning at the negotiated pickup time to 30 minutes after the negotiated pickup time (0/+30 minutes). If the vehicle arrives within this window, this an “On-Time Pickup.”
21. The term “On-Time Drop-Off Window” shall mean the 30-minute period starting 30-minutes before the Appointment Time and no later than the Appointment Time.
22. The term “Requested Pickup Time” shall mean the original time that the NJ Transit Access Link eligible person requests to be picked up to commence their trip.
23. The term “Scheduled Pickup Time” shall mean the agreed upon time between NJ Transit Access Link and the ADA paratransit eligible person that the passenger will be picked up to commence their trip.
24. The term “Untimely Drop-Off” shall mean any trip that is an either an Early Drop-Off or a Late Drop-Off.

ACTIONS TO BE TAKEN BY NJ TRANSIT

25. NJ Transit shall comply with Title II of the ADA, 42 U.S.C. §§ 12131 *et seq.*, and the implementing regulations at 28 C.F.R. Part 35 and 49 C.F.R. Part 37. That requirement includes, but is not limited to, addressing capacity constraints.
26. NJ Transit agrees not to engage in any act or practice, directly or through contractual, licensing, or any other arrangement, that has the effect of unlawfully discriminating against any individual with a disability and agrees to take appropriate steps to ensure compliance with the paratransit requirements of Title II and its implementing regulations. NJ Transit shall ensure that its agents, vendors, and service providers also comply with the paratransit requirements of Title II and its implementing regulations.

NJ Transit Access Link Paratransit Service

27. For NJ Transit Access Link rides scheduled by ADA paratransit eligible persons:
 - a. A vehicle operator shall wait at least five minutes within the On-Time Pickup Window before departing. If a rider is not present when the operator arrives, the driver will contact the dispatcher and await authorization prior to leaving a location. The dispatcher must confirm the vehicle and driver are at the correct location before the driver may leave. If after the passage of at least five minutes within the On-Time Pickup Window, the rider still fails to board, this will be counted as a Rider No-Show. If the NJ Transit Access Link vehicle arrives after the On-Time Pickup Window, and the passenger takes the trip, this will be counted as a Late Pickup. If the NJ Transit Access Link vehicle fails to arrive or arrives after the On-Time Pickup Window and the passenger cannot be found or declines the trip, this will be counted as a Missed Trip.

- b. The dispatcher shall log the date, time, location, rider name, and vehicle operator information in a “Rider No-Show/Missed Trip” log.
28. Within 60 days of the effective date of this Agreement, NJ Transit shall revise and update the NJ Transit Access Link website to specify that qualifying individuals with an Appointment Time may request a drop-off time or a pick-up time.
29. NJ Transit Access Link shall ensure training is provided for all current and newly hired employees who have responsibility for scheduling or dispatch or providing status updates on trips on the requirements of this Agreement, including that qualifying individuals with an Appointment Time may request a drop-off time or pick-up time. NJ Transit Access Link shall provide annual refresher training for all such employees.

Paratransit Performance Standards

30. Within six (6) months of the effective date of this Agreement, NJ Transit Access Link shall meet the following performance standards:
- a. Telephone Hold Times: NJ Transit Access Link shall ensure that , on a monthly basis, 85 percent (85%) of individuals calling into any of its paratransit telephone lines shall experience a telephone hold time of no longer than two (2) minutes; and 90 percent (90%) of individuals calling into any of its paratransit telephone lines shall experience a telephone hold time of no longer than five (5) minutes.
 - b. Trip Denials: NJ Transit Access Link shall not deny any trip requests by ADA paratransit eligible persons for rides within the ADA service area made at least the day before the trip.
 - c. Timeliness of Pickups/Drop-offs: NJ Transit Access Link shall meet the following standards for trips scheduled by ADA paratransit eligible persons for rides within the ADA service area:
 - i. At least 88 percent (88%) of all pickups, on a monthly basis, shall occur before or within the On-Time Pickup Window (i.e., within thirty (30) minutes of the scheduled pickup time); and
 - ii. At least 95 percent (95%) of all pickups, on a monthly basis, shall occur before or within the On-Time Pickup Window or up to thirty (30) minutes after the On-Time Pickup Window.
 - d. Missed Trips: NJ Transit shall not miss more than two percent (2%) of trips for ADA paratransit eligible persons for rides within the ADA service area in a single month.
31. Within 12 months of the effective date of this Agreement, NJ Transit Access Link shall meet the following performance standards:

- a. Telephone Hold Times: NJ Transit Access Link will meet, on a monthly basis, 95 percent (95%) of individuals calling into any of its paratransit telephone lines shall experience a telephone hold time of no longer than two (2) minutes; and 99 percent (99%) of individuals calling into any of its paratransit telephone lines shall experience a telephone hold time of no longer than five (5) minutes.
 - b. Timeliness of Pickups/Drop-offs: NJ Transit Access Link shall meet the following standards for trips scheduled by ADA paratransit eligible persons for rides within the ADA service area:
 - i. At least 94 percent (94%) of all pickups, on a monthly basis, shall occur before or within the On-Time Pickup Window (i.e., within thirty (30) minutes of the scheduled pickup time).
 - ii. At least 99 percent (99%) of all pickups, on a monthly basis, shall occur before or within the On-Time Pickup Window or up to thirty (30) minutes after the On-Time Pickup Window.
 - iii. NJ Transit Access Link shall provide, on a monthly basis, at least 95 percent (95%) of drop-offs within the thirty (30) minutes prior to the Appointment Time.
32. Within 24 months of the effective date of this Agreement, NJ Transit Access Link shall meet the following performance standards:
- a. Trip Length: NJ Transit Access Link shall not provide Excessively Long Trips for more than five percent (5%) of all trips by ADA paratransit eligible persons for rides within the ADA service area in a single month and no such trip shall exceed 60 minutes, comparable to regular fixed route service. In extreme or unusual circumstances where this may occur, NJ Transit Access Link shall document the reasons for and circumstances surrounding the excessively long trip and advise the United States within 30 days of the excessively long trip. After consultation with the United States, NJ Transit will take corrective action, if necessary, to prevent excessively long trips in the future subject to paragraph 37 of this Agreement.
 - b. NJ Transit Access Link shall not provide Excessively Long Trips for more than ten percent (10%) of all trips originating in any single region by ADA paratransit eligible persons for rides within the ADA service area in a single month and no such trip shall exceed 60 minutes, comparable to regular fixed route service. In extreme or unusual circumstances where this may occur, NJ Transit Access Link shall document the reasons for and circumstances surrounding the excessively long trip and advise the United States within 30 days of the excessively long trip. After consultation with the United States, NJ Transit will take corrective action, if necessary, to prevent excessively long trips in the future subject to paragraph 37 of this Agreement.

- c. NJ Transit Access Link shall not provide Excessively Long Trips to an individual paratransit eligible person for more than the greater of three trips or twenty percent (20%) of trips within a single month and no such trip shall exceed 60 minutes, comparable to regular fixed route service. In extreme or unusual circumstances where this may occur, NJ Transit Access Link shall document the reasons for and circumstances surrounding the excessively long trip and advise the United States within 30 days of the excessively long trip. After consultation with the United States, NJ Transit will take corrective action, if necessary, to prevent excessively long trips in the future subject to paragraph 37 of this Agreement.

Data Maintenance, Reporting Requirements, and Vouchers

33. NJ Transit shall maintain the following data and records:
 - a. ADA Paratransit Ridership. By month, for NJ Transit Access Link rides by ADA paratransit eligible persons, the number of: (1) trips requested; (2) trips scheduled; (3) trips denied; (4) trips cancelled; (5) trips provided; (6) Rider No-Shows; and (7) Missed Trips and (8) for each trip denied or missed by NJ Transit Access Link, the name of the rider affected.
 - b. Paratransit On-Time Performance. By month, for NJ Transit Access Link rides by ADA paratransit eligible persons, the number of: (1) On-Time Pickups; (2) Late Pickups; (3) Early Drop-offs (where an Appointment Time is known); (4) On-Time Drop-Offs (where an Appointment Time is known); and (5) Late Drop-Offs (where an Appointment Time is known). For each Late Pickup, Early Drop-off, or Late Drop-off, record: the number of minutes late or early, the name and contact information of the individuals for whom their pickup or drop-off was late or early, and the date the individual received courtesy tickets or equivalent account credit (if applicable).
 - c. Paratransit Ride Time. By month, for NJ Transit Access Link rides by ADA paratransit eligible persons, the number of Excessively Long Trips, and for each Excessively Long Trip: (1) the length of the on-board ride time; (2) the length of the comparable Fixed Route ride time; (3) the number of minutes by which the Excessively Long Trip exceeded the threshold for excessively long; and (4) the name and contact information of the rider subjected to the Excessively Long Trip, and the date the individual received courtesy tickets or equivalent account credit (if applicable).
 - d. Paratransit Telephone Wait Time. By month and in 30-minute increments, for NJ Transit Access Link requests for rides by ADA paratransit eligible persons, the number of: (1) incoming calls answered within 2 minutes; (2) calls answered between 2 and 5 minutes; and (3) calls answered after more than five minutes. For each certified Access Link user who was subjected to an excessively long telephone wait time, after verification by NJ Transit, NJ Transit will provide the certified Access Link user with up to two courtesy tickets or equivalent account credit for future trips on NJ Transit

Access Link. Certified Access Link users are limited to two courtesy tickets or equivalent account credit per day.

34. Within 90 days of the effective date of this Agreement, NJ Transit will submit the data and records identified in Paragraph 33 in an electronic format, to be identified, to the United States. Thereafter, each month, NJ Transit will submit the data and records identified in Paragraph 33 available to the United States upon request.
35. Initial Regular Report: Nine months following the effective date of this Agreement, NJ Transit shall provide the United States with a written report setting forth progress implementing the terms of this Agreement, including its compliance with the performance standards adopted pursuant to Paragraphs 30 to 32.
36. Subsequent Regular Report: For the term of this Agreement, on a monthly basis following the due date of the Initial Regular Report, NJ Transit shall provide the United States with a Subsequent Regular Report regarding its compliance with this Agreement, including its compliance with the performance standards adopted pursuant to Paragraphs 30 to 32 and a description of any modifications in the operation of the paratransit system.

IMPLEMENTATION

37. In consideration for entering this Agreement, the United States will refrain from undertaking further enforcement action relating to this compliance review or from filing a civil action alleging discrimination based on the allegations set forth above. However, the United States may review NJ Transit's compliance with this Agreement or Title II of the ADA at any time. If the United States believes that any portion of this Agreement has been violated, the United States will so notify NJ Transit in writing and will attempt to resolve the issue in good faith. If the United States is unable to reach a satisfactory resolution of the issue within 30 days of the date it notifies NJ Transit, the United States may file a civil action in federal district court to enforce the terms of this Agreement, or take any other action to enforce Title II of the ADA. NJ Transit may self-report non-compliance with this Agreement or inability to meet certain time frames or percentages to the United States without violating this Agreement. NJ Transit and the United States will attempt to resolve the issue in good faith.
38. Failure by the United States to enforce any provision in this Agreement is not a waiver of its right to enforce other provisions of this Agreement.
39. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the United States and NJ Transit shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.

40. This Agreement is applicable to and binding on NJ Transit, including its officers, agents, employees, and assigns.
41. The signatory for NJ Transit represents that they are authorized to bind NJ Transit to this Agreement.
42. This Agreement is the entire agreement between the United States and NJ Transit on the matters raised herein and no other statement, promise or agreement, either written or oral, made by any party or agents of any party, is enforceable. This Agreement can only be modified by mutual written agreement of the parties.
43. This Agreement is not intended to remedy any other potential violations of the NJ Transit or any other law that is not specifically addressed in this Agreement. Nothing in this Agreement relieves NJ Transit of its obligation to otherwise comply with the requirements of the ADA.
44. All documents and communications required to be sent to the United States under the terms of this Agreement shall be sent via electronic mail or U.S. mail to the following, unless specified otherwise by the United States:

Michael E. Champion
Assistant U.S. Attorney
Chief, Civil Rights Division
United States Attorney's Office
970 Broad Street, Suite 700
Newark, NJ 07102
E-mail: michael.campion@usdoj.gov

EFFECTIVE DATE/TERMINATION DATE

45. The effective date of this Agreement is the date of the last signature below.

46. The duration of this Agreement will be three years from the effective date.

AGREED AND CONSENTED TO:

Dated: December 22, 2022

FOR THE UNITED STATES

Philip R. Sellinger
United States Attorney

By: /s/ Michael E. Campion
Michael E. Campion
Assistant United States Attorney
Chief, Civil Rights Division
970 Broad Street, Suite 700
Newark, NJ 07102

Dated: December 21, 2022

FOR NEW JERSEY TRANSIT

By: /s/ Kevin S. Corbett
Kevin S. Corbett
President and CEO
NJ Transit