



Colorado
Cross-Disability
Coalition

Nothing about us, without us.

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RTD VIOLATES THE AMERICAN'S WITH DISABILITIES ACT Disabilities Rights Group Files Lawsuit in Federal District Court

The Colorado Cross-Disability Coalition ("CCDC") filed a lawsuit today in Federal District Court in Denver, CO. CCDC alleges that the Regional Transportation District ("RTD") fails to ensure that passengers with disabilities who require the use of wheelchairs and other mobility devices have access to legally required wheelchair seating locations, commonly referred to as securement areas.

The problem has become so bad that CCDC member Douglas Howey, who requires the use of a wheelchair, while riding RTD buses has filmed the issue. Mr. Howey's videos and commentary can be found on [Youtube](#).

Pamela Carter, a CCDC member who uses a wheelchair and her companion, Paul Stewart, who also uses a wheelchair, allege RTD refused to allow them to ride the bus together because people who did not use wheelchairs or mobility devices were sitting in the buses wheelchair locations and refused to move. They were left sitting at the curb waiting for another bus that would not arrive for another half hour. The temperature was in the 90's and there was no shade. Then, on the next bus, it happened again!

"The bus is full. That's what they tell us," said CCDC executive director Julie Reiskin, who also requires the use of a motorized wheelchair and who is a frequent RTD user. "The driver says she can't board me because the wheelchair securement areas are full," she said, "When, in truth, those wheelchair securement areas are occupied by non-disabled passengers with strollers, rolling carts or other large objects."

Under the Americans with Disabilities Act ("ADA") [RTD cannot discriminate against, deny benefits and services to or exclude individuals with disabilities from its transportation](#)

services. Specifically, on fixed route buses, RTD must provide buses with wheelchair lifts and ramps and wheelchair securement devices in specific areas on the bus that are large enough for a wheelchair to ride and be out of the aisle.

The lawsuit alleges that RTD's policies and practices permit people who do not have disabilities to sit in those locations. CCDC also alleges it has fought this battle with RTD at least three times before. Here is the ADA regulation at issue:

Location and size. The securement system shall be placed as near to the accessible entrance as practicable and shall have a clear floor area of 30 inches by 48 inches. Such space shall adjoin, and may overlap, an access path.

...

Securement areas may have fold-down seats to accommodate other passengers when a wheelchair or mobility aid is not occupying the area, provided the seats, when folded up, do not obstruct the clear floor space required.

49 C.F.R. § 38.23(2).

The problem is this: each RTD bus is equipped with two wheelchair seating locations; these are known as securement areas. These locations are required by law for the sole purpose of accommodating passengers who use wheelchairs who have no other option regarding where they sit. In order to access the wheelchair locations, a passenger using a mobility device must enter the bus using a wheelchair lift or ramp and must pass through an aisle where other passengers are seated to reach the wheelchair locations. Often, passengers seated in these front seats either have to move from the seats or lift their legs up onto the seat to allow a passenger who uses a wheelchair to board. In these wheelchair locations, RTD buses are equipped with fold down seats so that other passengers may sit there when there are no wheelchair users on the bus. RTD allows non-disabled passengers to bring large objects on the bus such as grocery carts, strollers, and other objects that are so large they obstruct aisles. Because of the extra space the wheelchair locations provide, these non-disabled passengers routinely occupy those seats. RTD refuses to tell these people who occupy the wheelchair securement areas when they board that they may have to collapse their strollers or move to the back of the bus if necessary to allow a passenger who uses a wheelchair to sit in the wheelchair securement area. RTD's own policy on their website says the following:

Stroller Policy

Every day thousands of passengers board RTD buses and trains. Many of these passengers need the priority seating and securement area to access transit. Please follow our guidelines when sharing limited space on public transit.

Acceptable stroller size

Maximum size for an uncollapsed stroller is 48" long by 36" wide. A stroller should be equipped with an operable brake and should be capable of being stowed out of the aisle. Strollers that are not being occupied by children must be collapsed and stowed. If a bus or train is full, all strollers must be collapsed and stowed.

Using priority seating and securement areas

If the stroller fits within RTD's size requirements, then passengers can occupy the priority seating and securement area. However, if the bus is full or may become full or a disabled or elderly passenger boards, passengers must be prepared to move towards the rear of the bus or train and stow away the stroller.

Individuals with disabilities, who cannot carry their children, and children with disabilities, who need to remain in a stroller, may remain seated in the priority seating and securement area.

Using the lift to board a bus

The bus driver will kneel the bus, deploy the lift or extend the ramp upon request. You may still be required to collapse your stroller once on board.

RTD does not even follow their own policies!

The Epic Struggle for People Who Use Wheelchairs to Ride on Buses

As set forth in the Complaint, no public buses were accessible for many years. A law called the Rehabilitation Act of 1973 mandated that no public service that receives federal financial assistance can discriminate against people with disabilities. RTD and most other transportation companies have always received some federal funding but nothing changed.

In 1978, disabled members of an organization known as Americans Disabled for Accessible Public Transportation ("ADAPT") protested their lack of access to RTD's buses. Many of the

protestors were people with disabilities who require the use of wheelchairs. Some of them threw themselves from their wheelchairs onto the street in front of RTD buses to prevent them from moving. Their protest that day shutdown RTD's operations and their message was received. These protesters became known as the "Gang of 19". There is now a plaque at the bus stop on the south side of Colfax in between Lincoln and Broadway honoring their efforts and determination for sending this important message.

However, it was not until 1990 when the Americans with Disabilities Act passed that all transportation systems were required to be accessible. This too required an extraordinary effort by disabled activists from around the country, who lobbied Congress and President George H. W. Bush. The ADA was the result.

CCDC and RTD have a long history.

[CCDC filed a lawsuit in the year 2000 to make RTD comply with the ADA.](#) That lawsuit resulted in a [court ordered consent decree](#) under which RTD was required to develop and implement a computerized system to track inoperable or faulty wheelchair lifts, complaints about securement systems functioning and improper driver conduct. RTD was required to inspect and cycle wheelchair lifts on buses before putting them in service. The Consent Decree provided procedures for dispute resolution for improper conduct by bus operators.

The Consent Decree also required mandatory training and retraining of bus operators to ensure compliance with the order and the ADA. CCDC provided extensive training to both RTD and its contractors for all five years. See Exhibit 1 to the [Consent Decree](#). CCDC staff and members who use wheelchairs and who were RTD users provided training on topics such as, "What is Disability," "Disability Rights: Parity not Charity," and "Customer Service and Disability." Training went so well that RTD and some of the contractors requested that CCDC continue providing training for years after the Consent Decree expired.

CCDC Community Liaison Jaime Lewis, who uses a wheelchair and rides RTD, provided training and coordinated trainers for those years. "It was like a partnership," Mr. Lewis said. "RTD bus operators seemed to really appreciate our perspective. Also, we gained a lot by understanding how they have to comply with RTD rules."

It also required monitoring to ensure compliance, fees, costs and damages to be paid, and a damages provision for recovering money damages for future violations.

"In those days, the issues were a bit different" said CCDC Legal Program Director. "When

we filed suit in 2000, drivers would blatantly ignore passengers who use wheelchairs waiting for the bus by driving by them at bus stops without stopping. Repeated broken wheelchair lifts' were also a big issue when that case was filed."

The Consent Decree was in place from 2001 until 2006. If customers who use mobility devices had complaints, there was a dispute resolution process to solve it. If RTD was at fault, it paid a penalty.

But sometime around 2007, services changed.

"Suddenly, it seemed like every time one of our members who uses a wheelchair tried to board a bus at busy times, they were told, 'the bus is full,'" said Julie Reiskin. Most of the time, if the driver simply requested that passengers move back from the securement areas or move out of the fold down seats, there was plenty of room for passengers who use wheelchairs to board."

There are only two locations where passengers who use wheelchairs can sit on most RTD buses. CCDC discovered that often it was nondisabled passengers with large objects like grocery carts or strollers who were seated on the fold-down seats on RTD buses.

"There is nothing necessarily wrong with RTD allowing large objects on the bus," said Williams, "but not if doing so impedes access to the securement areas for passengers who need to sit there and have no choice. Many other transportation providers do not allow large objects on the bus and require that strollers be collapsed before boarding."

CCDC devoted a large amount of time in 2007 communicating with and working with RTD on demonstrating the problem and on developing policies to be implemented to meet RTD's goal of letting everyone ride. CCDC's Legal Program and Executive Director met with RTD on numerous occasions. There are cameras on most buses. CCDC and RTD reviewed videos of driver conduct in cases where bus operators told waiting passengers who use wheelchairs, "The bus is full." The videos often showed that there was room for a passenger who uses a wheelchair.

RTD changed its policies in 2007 to address CCDC's complaints. RTD claimed it had implemented a code that bus operators could use to notify RTD that a passenger who uses a wheelchair was left behind because the securement areas were full. Under these new policies, a bus operator was not supposed to leave the bus stop in these circumstances until cleared to do so by a supervisor or dispatcher. In CCDC's experience, this never happens

when a person in a wheelchair is left behind, but it was in their policies.

For a while, this issue seemed to subside. CCDC received far fewer complaints.

But something changed again in 2010.

Drivers started passing by waiting passengers who use wheelchairs without stopping. This was one of the complaints that prompted the lawsuit in 2000. Once again, RTD drafted a policy to address this issue. If a driver had a full bus, the driver was required to stop and open the door and explain to the waiting passenger who uses a wheelchair that the bus is full. In the alternative, drivers could put a sign on the front of the bus notifying passengers that the bus would not pick up additional passengers.

And again in 2012.

All over again, CCDC received numerous complaints regarding RTD riders who use wheelchairs being refused transportation when people sitting in the securement areas did not need to be there.

“This was too much,” said Julie Reiskin. “We thought we had covered this issue, and it was resolved.” Again, CCDC found itself diverting resources from its work to address RTD’s inability to implement and enforce its own policies.

Once again, CCDC found itself meeting with RTD officials, corresponding with lawyers, reviewing recordings, etc.

This time, RTD beefed up its policies even more. RTD told CCDC it was using their new policies in all refresher trainings with bus operators. In part, the new policies said:

ACTION

Do not assume or state that the bus is too crowded to board a passenger with a mobility device until you have taken the following steps:

- Look first to see if other passengers are blocking the securement area, or access to the securement area. Disabled passengers using mobility devices have priority in the securement area. If a passenger with a baby stroller, large object, or package is utilizing a securement area, politely ask them to move towards the back, or find another seat and assist if necessary.

- Politely ask those passengers blocking access to move. A good phrase to use is "I need to use these seats to allow a passenger with a disability to board please."
- Be sure to thank all passengers for their cooperation.
- When you are at a bus stop with both able-bodied passengers and passengers using mobility devices, you must clear the securement area to accommodate the passenger in a wheelchair. It is not acceptable to allow the able-bodied passengers to board, leaving insufficient space for the passenger with a disability.
- Once sufficient space is made available to board the passenger, deploy the lift, board the passenger, and then continue on the route.
- Never blame the passenger for delays, inconveniences or imply that the passenger is holding up the bus. Keep your interactions polite and respectful.

The following steps should be taken, if the other passengers are unable or unwilling to move:

- Remember that you cannot physically force other passengers to move. However, it should be clearly and politely stated that you expect them to move if possible.
- Do not leave the bus stop until cleared to do so by the dispatcher or supervisor.
- The dispatcher will provide you with information on how the passenger will be accommodated. You must relay this information to the passenger.
- Offer them a courtesy transfer.
- You must provide your name, bus number, or bus number slip upon request without fail.
- Only after following these steps are you to proceed.

Once again, RTD assured CCDC it was doing everything it could to comply with the ADA. RTD even posted additional signs on buses advising passengers with strollers that they might need to collapse their strollers if the bus was getting full to accommodate passengers who need to use the securement areas.

If drivers actually were trained on these policies and complied, CCDC believed there would be an improvement. "Never blame the passenger . . ." was very important to CCDC.

"Often when a bus operator stops where a passenger using a wheelchair is waiting, the driver will yell, 'We got a wheelchair. You all gotta move. I can't leave until we board the wheelchair,'" said Kevin Williams. "Or worse, more offensive language like, 'There's another wheelchair. That's going to slow us down. You might want to get off and board the next bus coming behind me.'"

Then came 2013.

Douglas Howey, mentioned above, is a CCDC member who completed CCDC's advocacy training course. As said, Mr. Howey uses a wheelchair, and RTD is his main method of transportation. Mr. Howey has been very vocal about RTD allowing objects on the bus that block or prohibit access to the wheelchair securement areas. As set forth in the Complaint, Mr. Howey has provided extremely detailed complaints to RTD about his experiences riding the bus. That is why Mr. Howey felt compelled to create YouTube pages to demonstrate how insufficient RTD's policies and procedures are regarding access to securement areas. See [Douglas Howey RTD-Denver Needs to Find its way back to ADA](#). These videos show the following:

[RTD Denver has lost its way-away from ADA](#): Driver unconcerned about abandoned stroller blocking the aisle next to the securement area preventing Mr. Howey from exiting the bus. Another passenger in a wheelchair lifts the stroller to allow Mr. Howey to exit.

[2013 07 10 0 SouthBound 1209](#): Large cart occupying securement area. Passenger in wheelchair boards with attendant. Without an attendant or helper, passengers in wheelchairs cannot strap in and secure their wheelchairs when other large objects take up the securement areas.

[2013 07 10 Large Strollers](#): Woman asked to collapse her stroller and take it to the rear of the bus. The woman does collapse the stroller only to expand it again and take up the securement area on a bus that was to become very full.

[2013 07 10 1644 Blocking the Aisle](#): Stroller completely blocking the aisle.

[2013 07 10 1206 0 South Large Object](#): Large object in the securement area. If the securement area is needed, these objects are left in the aisle.

[2013 07 13 Strollers Everyday](#): A Woman with child seated on the bus with her uncollapsed stroller occupying the securement area.

[2013 07 16 1041 Walker Oxygen Displaced](#): Elderly man with walker and Oxygen tank was displaced by a stroller.

[2013 07 18 1447 Large Suitcase](#): Suitcase occupying the securement area.

[20130722 1142 15L West BusID 9171](#): Large objects or strollers often block part or most of

the aisle. This creates dangerous situations on the bus and cause passengers in wheelchairs to be continually bumped and banged into by passengers maneuvering through the blocked aisle.

[20130722 1144 West BusID9171](#): A woman with a stroller is occupying the securement area. When a passenger using a large walker boards the bus, the driver does ask the woman to collapse and move her stroller. The woman initially refuses, and only moves after the driver states that she cannot move the bus until the man with the walker was seated in the securement area. These situations can be partially avoided if drivers tell passengers with strollers before they board, that they may be required to collapse and move strollers if the securement area is needed by a passenger with a mobility device.

[20130730 1011 15L West BusID9218](#): Handles of a stroller are almost completely blocking the aisle. The child is not using the stroller and is standing on the bus seat looking out the window.

[RTD Denver Discriminates on basis of Disability](#): Two strollers occupying the securement area almost completely block the aisle. The bus is not full, but because of the strollers blocking the aisle, passengers continually bump and bang into Mr. Howey as they pass. Only Mr. Howey is being bumped into because he has to sit in the securement area and the strollers are blocking the aisle. The owners of the strollers were not told upon boarding that they would have to collapse their strollers.

[RTD Denver spells ADA Backwards](#): Man with a walker is seated with his walker blocking the aisle because a stroller is occupying the securement area.

[RTD Denver Rejects Two Disabled People](#): A passenger using a wheelchair as a cart occupies the securement area. The driver denies access to the bus to other passengers who use wheelchairs. Using a fictional Federal "Large Object Act", Mr. Howey narrates the video and demonstrates why large objects are a problem for passengers with disabilities and why the ADA is so important to them.

[RTD Denver Groceries YES but Wheelchair NO](#): A man with a cane is seated in the seats by the securement area. The securement area is piled with grocery bags belonging, not the man with a cane, but to a woman seated in a different area of the bus. It is hard to imagine how the woman would be able to move the groceries if the securement area was needed by a passenger using a mobility device.

[RTD Denver If it fits in the aisle then come on board](#): Two passengers with wheelchairs are

seated in the securement area. After initially telling a woman with a stroller there is no room unless she wishes to collapse and stow the stroller, the driver allows the woman to board the bus with the stroller expanded and completely block the front aisle. Mr. Howey raises the issues of safety and whether the wheelchair passengers will be able to exit the bus with front aisle blocked.

Mr. Howey also attends RTD committee meetings and has brought these issues to RTD's attention on multiple occasions.

"CCDC's staff have had to drop everything we were working on because RTD refuses to let wheelchair users board the bus," said Julie Reiskin. "Each time, CCDC has devoted hours of time and resources in telling RTD how to comply with the ADA. Enough is enough. As we learned in 2000, a lawsuit is the only answer."

The ADA regulations require that transportation providers take steps to make those seating locations available when a passenger with a disability who uses a mobility device boards the bus. ADA regulations also require signs on all buses that say that the seats in the front of the vehicle are priority seats for persons with disabilities, and that other passengers should make such seats available to those who wish to use them. RTD has put into place written policies that are supposed to address this issue. However, the experiences of CCDC members who use mobility devices have demonstrated RTD's policies fail miserably.

As set forth in the complaint, CCDC's members who use mobility devices have experienced the following types of problems:

1. Drivers who tell them the bus is full when it is clear people using the wheelchair seating areas are not people who need them because they are using a wheelchair. When this happens, drivers often refuse to ask the people seated in wheelchair locations to yield those seats so the person using a wheelchair can board and ride. Often, our CCDC member is forced to argue with the driver about who should be seated in those areas in order to board the bus.
2. CCDC members who use mobility devices routinely experience bus operators complaining to passengers in the wheelchair locations that they must board someone in a wheelchair so they must move. When this happens, it creates hostility among passengers on the bus toward the person boarding who uses a wheelchair.
3. CCDC members who use mobility devices have ridden RTD buses when

passengers with strollers or other large objects block the aisles making it impossible for the person using the wheelchair to exit the vehicles

CCDC members have complained to RTD about these problems three times before. For some unknown reason, RTD continues to move away from providing training and policy implementation that allows passengers who use mobility devices to access the wheelchair locations.

“Sometimes it seems it takes a lawsuit to fix ADA violations.” Ms. Reiskin said. “RTD forced this litigation. This is the fourth time. CCDC cannot continue to divert its scarce resources to explain to RTD what it already knows.”