

# SEPTA

## CUSTOMIZED COMMUNITY TRANSPORTATION

### ADA PARATRANSIT

### SHARED-RIDE PROGRAM PARATRANSIT

#### DISRUPTIVE BEHAVIOR/DIRECT THREAT POLICY

*“If a person is violent, seriously disruptive, or engaging in illegal conduct...the provider may, consistent with established procedures for all riders, refuse to carry the passenger.” [49CFR 37.5 App. D]*

*“...a person who poses a significant risk to others may be excluded [from service] if reasonable modifications to the public accommodation’s policies, practices, or procedures will not eliminate that risk. “ [29CFR 36.208]*

Outlined here is SEPTA’s administrative process for sanctioning ADA and Shared-Ride Program riders who engage in violent, seriously disruptive or illegal conduct (“*conduct offenses*”) while using SEPTA CCT service, and/or who pose a significant risk to others (“*direct threat*”).

#### **1. Definitions**

**Conduct** prohibited under these headings includes:

- Destruction of public property (the vehicle, and/or its furnishings; SEPTA facilities)
- Doing violence to others or to oneself
- Behavior that is seriously unruly, seriously disruptive, threatening, or frightening to others
- Behavior that interferes with the safe operation of the vehicle
- Violating SEPTA’s service animal policy by failing to control one’s service animal
- Violating SEPTA operating rules governing the provision of transportation system-wide
- Engaging in illegal conduct.
- Other conduct judged by SEPTA to represent an actual or potential threat to the health, safety or wellbeing of oneself, the operator, other passengers, and/or SEPTA personnel

**“Direct threat”** is defined by Federal regulations as posing a “significant risk to others”. This includes both **safety issues** and **highly infectious diseases or conditions** such as TB, when and if “reasonable modifications to ... policies, practices or procedures will not eliminate ... risk.”

Regarding **involuntary non-violent behavior that is disability-related and which does not pose a direct threat** (such as involuntary verbal outbursts), U. S. Department of Transportation ADA Regulations state in 49 CFR Sec. 37.5b (“Nondiscrimination”): *It is not discrimination under this part for an entity to refuse to provide service to an individual with disabilities because that individual engages in violent, seriously disruptive, or illegal conduct. However, an entity shall not refuse to provide service to an individual with disabilities solely because the individual’s disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience employees of the entity or other persons.* The Preamble to 49 CFR Sec. 37.125h states an important reminder: *...it is only in very few and compelling situations that an entity is entitled to refuse service to an otherwise eligible person....*

**With regard to ‘direct threat’**, U. S. Department of Justice regulations state in 28 CFR Sec. 36.208b: *In determining whether an individual poses a direct threat to the health or safety of others, a public accommodation must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.*

## 2. Regulatory Basis

- A. **ADA RIDERS:** US Dept. of Justice and US Dept. of Transportation regulations as cited in Sec. 1 above.
- B. **SRP RIDERS:** Decisions about refusing service to SRP riders are left *to County Coordinators' discretion*. SRP Program regulations contain no prohibition against requiring riders to be accompanied by an attendant. This policy applies to both ADA and SRP riders.

## 3. Responsibilities

- A. **Only SEPTA has the right to suspend service or impose sanctions on riders.** Contract carriers are required to protect their own and Authority vehicles and property, document all incidents, and report these *promptly* to SEPTA. Carriers are prohibited from taking formal or informal action to sanction any rider.
- B. **SEPTA is responsible for recording all incidents in riders' files.**
- C. Carrier and SEPTA staff must be mindful of the **critical importance of maintaining confidentiality** concerning information about riders' identity, personal circumstances, disability status, etc.

## 4. "Due Process" Requirement

In suspending service "for cause", SEPTA CCT's **Appeals Policy** and process must be followed. SEPTA must provide administrative due process to the customer, as follows:

- A. Adequate documentation must be on file to support the decision that a cause for suspension has been identified and carefully investigated, and that action is warranted.
- B. If sanctions are imposed, the customer must be notified ahead of time in writing or in accessible format.
  - If an immediate sanction is imposed, a verbal notification must be swiftly followed by the required written or accessible format notice.
- C. The notice must identify the basis for the proposed action with specifics and describe the proposed sanction. It must notify the customer of his/her right to appeal and how to file an appeal.
- D. Decisions must be subject to appeal in a hearing before the Independent Appeals Board. The Board's decision is final and binding. In that hearing:
  - The rider has the right to present written and oral information and arguments.
  - The rider has the right to representation or to bring a supporting person.
  - Relevant records and personnel must be made available to the rider.
  - Other persons can testify.

## 5. Mandatory Administrative Progression in Addressing Conduct Offenses and Direct Threats:

### A. Severity of Incident:

- (1) **Level One Offenses:** This category principally includes conduct that interferes with the safe operation of a vehicle or conduct offenses that do not threaten others.
  - Fare evasion or fare non-payment related incident
  - Use of alcohol or other illicit substance
  - Equipment tampering
  - Actions which impede or deny other rider's access to service
  - Threatening/abusive telephone calls; intentionally tying up telephone lines
  - Fraudulent use of paratransit service
    - Using another individual's ID number
    - Providing false information for the purpose of obtaining service

- Interfering with the safe operation of the vehicle; **Examples** include but are not limited to:
  - Disruptive behavior (ex. yelling, throwing items, banging on windows, etc.)
  - Removing seat belt; leaving seat
  - Loud, abusive language; loud music
  - Littering, creating an unsanitary environmental condition
  - Smoking, having an open flame
  - Failure to follow direction of operator
  - Other unsafe conduct (determined at SEPTA's discretion)

(2) **Level Two Offenses:** This category principally includes circumstances representing direct threat and may result in refusal of further paratransit service. Conduct that threatens the safety or wellbeing of others includes but is not limited to:

- Assault of driver or other passenger(s)
- Physical aggression or intimidation
- Verbal or Sexual harassment
- Serious health-related conditions or conduct impacting public health
  - Examples include but are not limited to bed bugs, TB or other contagious conditions, spitting, urinating/defecating, discharge of bodily fluids, open wounds
- Failure to maintain control of a service animal
- Vandalism/Destruction or damage to property
- Unauthorized operation (or attempt to operate) a SEPTA vehicle
- Serious infractions of SEPTA operating rules
- Any criminal conduct

## B. Required SEPTA/Carrier Responses; Penalties

### Level One Response:

- Carrier response
  - Driver must report and supervision must document incident
  - Carrier must report incident to SEPTA Dispatch immediately.
- SEPTA response
  - Control Center informs rider of infraction, advises that a Customer Service representative will contact them, and notifies if future trips are being suspended; provides information to Customer Service.
  - Customer Service records incident in rider's file; issues letter informing rider of violation and penalty (if any).

### Penalties for Level One Offenses

On 1<sup>st</sup> offense: Customer Service issues warning notification letter notifying rider of incident and advising of SEPTA policy and informing that if another incident occurs, sanctions will be imposed as follows:

- 2<sup>nd</sup> offense (within 2 years): 14 day Suspension (subject to appeal)
- 3<sup>rd</sup> offense (within 2 years): 30 day Suspension (subject to appeal)
- Subsequent offenses (within 2 years): 90 day Suspension (subject to appeal); further suspensions up to and including refusal of service will be determined at the exclusive discretion of Director of Operations and/or Chief Operating Officer or designee.

### Level Two Response:

- Carrier response
  - Driver must report and supervision must document incident
  - Carrier must report incident to SEPTA Dispatch immediately.

- SEPTA response
  - Control Center informs rider of infraction, advises that a Customer Service representative will contact them, and notifies if future trips are being suspended; provides information to Customer Service.
  - Customer Service records incident in rider's file; issues letter informing rider of violation and penalty (if any).

### **Penalties for Level Two Offenses**

- Level Two Offenses will result in immediate suspension pending outcome of investigation; offenders may be subject to additional suspension up to and including permanent suspension and possible criminal prosecution.
- Cases of infectious disease or other health related conduct will result in suspension until documentation attests that contagion is no longer a risk.
- Suspensions to be issued as follows:
  - 1<sup>st</sup> offense: 30 day service suspension (subject to appeal)
  - 2<sup>nd</sup> offense (within 5 years): 90 day service suspension (subject to appeal)
  - Subsequent offenses (within 5 years): Further suspensions up to and including refusal of service will be determined at exclusive discretion of Director of Operations and/or Chief Operating Officer or designee.

### **5. Contingency to refusal of service**

*A requirement for an attendant is inconsistent with the general nondiscrimination principle that prohibits policies that unnecessarily impose requirements on individuals with disabilities that are not imposed on others....If an entity may legitimately refuse service to someone, it may condition service to him on actions that would mitigate the problem. [49 CFR 37.5 App. D]*

- A. In the case of subsequent and repeated offenses, SEPTA may offer continued service provided the individual be accompanied by a Personal Care Attendant. This offer is a contingency to lengthy suspension or refusal of service if such a remedy will mitigate future conduct violations.
  - Contingency to be offered in letter informing rider of penalty
  - Contingency may not be offered if presence of an attendant cannot reasonably eliminate risk of recurrence.
- B. If it has been determined that a rider may be refused transportation and rider has accepted and agreed to service contingent upon conditions set by SEPTA, SEPTA will not transport rider when they are not accompanied by an attendant.
- C. Offer of contingency and conditions of service provision may be reviewed when SEPTA receives adequate documentation that effective steps have been taken to mitigate further conduct violations.
  - SEPTA will permit rider to resume travel without Personal Care Attendant upon receipt of satisfactory proof of action taken and sustained efficacy of action.
  - Further conduct incidents will result in refusal of service

### **6. Conduct offenses by Attendants or Companions**

In the case of a customer with an aggressive, threatening, or disruptive Personal Care Attendant or companion, USDOT regulations permit the following:

- A. Denial of transportation to offending party should they seek to accompany eligible rider on a CCT vehicle as a companion or PCA.
  - Eligible rider must be given advanced written notice indicating party is not permitted to accompany them on CCT vehicles due to the specified actions by him/her.
- B. SEPTA, Carrier, or both may seek to prosecute the offending party