

# **AMERICANS WITH DISABILITIES ACT PLAN**

Including policies regarding General ADA Requirements, Reasonable Modifications,  
No Shows, and a Suspension Appeals Process

*for*

## **The Otter Express**

**A program of Productive Alternatives Inc.**

**Approved by:**

Productive Alternatives

**Date Approved:**

November 11, 2024

**ADA Contact Information**

Name & Title: Kayla Sullivan, Director of Transportation

Mailing Address: 1225 N. Tower Rd, Fergus Falls, MN 56537

Phone Number: 218-998-3002

Email Address: kaylas@productivemn.org

**Reasonable Modification Contact Information**

Title: Angie Danielson

## I. Introduction and Purpose

The Americans with Disabilities Act of 1990 (ADA) requires that individuals with disabilities receive the same level of service as non-disabled individuals. Services that are “separate but equal” are not acceptable. Section 504 prohibits discrimination on the basis of disability in any program or activity receiving Federal financial assistance.

This ADA policy is written to establish operating and service guidelines and procedures for the implementation of the requirements of the Americans with Disabilities Act of 1990 (ADA), the U.S. Department of Transportation (U.S. DOT) regulations for implementing ADA (49 CFR Parts 27, 37 and 38), and any applicable state laws and regulations. The Otter Express operates a demand-response service and complies with ADA requirements with respect to such services.

### **ADA Policy Statement**

It is the policy of The Otter Express to comply with all the legal requirements of federal and state laws and regulations as they pertain to individuals with disabilities. If state laws and federal regulations are contradictory, the federal ADA regulations prevail. The transit system provides quality transportation services without discrimination to all persons including individuals with disabilities. Discrimination on the basis of disability against any person by transit system employees will not be condoned or tolerated.

**Goals:** Service is provided in a manner that meets the following goals:

1. Provides safe, accessible, and dignified services to all persons, including individuals with disabilities.
2. Expedites the safe and efficient boarding, securing, transporting, and alighting of all passengers, regardless of mobility status.
3. Accommodates a wide range of mobility aids within the confines of available vehicles and commercial standard equipment.

**Applicability:** This policy applies to all transit system employees, services, facilities, and vehicles. It applies equally to all persons needing and/or using the services provided by the system.

### **Definitions:**

*Disability:* With respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

*Fixed Route Service:* Operates along a prescribed route according to a fixed (regular) schedule.

*Mobility Device:* A device that is designed to assist an individual with disabilities with locomotion. Examples include wheelchairs, canes, crutches, and walkers. Also called mobility aid.

*Securement Area or Station:* A designated location for riders using wheelchairs, equipped with a securement system.

*Securement Device, Equipment or System:* Equipment used for securing wheelchairs against uncontrolled movement during transport.

*Service Animal:* Any guide dog, signal dog, or other animal that has been individually trained to work or perform tasks for an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

*Wheelchair:* A mobility aid belonging to any class of three- or more- wheeled devices, usable indoors, designed or modified for and used by individuals with mobility impairments, whether operated manually or powered.

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## **II. General Guidance and Procedures for Implementing Policy**

### **Recruitment and Employment**

As stated in the transit system's personnel policies, the agency is an Equal Opportunity Employer (EOE) and fully complies with ADA in its recruitment, hiring, and continued employment practices.

### **Facility and Vehicle Accessibility**

The transit system administrative facility, passenger facilities, and vehicles shall meet or exceed the requirements of 49 CFR Parts 27, 37 and 38 and requirements of the State of Minnesota. If state requirements do not meet federal requirements, the federal ADA regulations prevail. All vehicles purchased for fixed route, route deviation, and demand responsive service will be accessible. Vehicles purchased for demand response service will only be non-accessible to the extent that the demand response system, when viewed in its entirety, provides the same level of service for individuals with disabilities as for individuals without disabilities.

The Otter Express does not operate any vehicles in the fleet that are non-accessible.

The Otter Express has certified and will certify that when requesting and receiving inaccessible vehicles, that service is equivalent and has reviewed policies and operating procedures to ensure that service is available in the same area, at the same times, with the same response time, and for the same trip purposes for all types of riders. This includes riders with disabilities who use wheelchairs as well as others who may need accessible vehicles. The Otter Express monitors daily operations to ensure compliance

with policies and operating procedures and that the service is equivalent. Whenever, The Otter Express expects to obtain or plans to obtain inaccessible vehicles The Otter Express will gather and closely analyze service data to determine if service is the same for all riders. The transit system will conduct an analysis of service equivalency prior to the acquisition of any inaccessible vehicles for demand-responsive service.

### **Certification of Equivalent Service – Appendix C to Part 37**

The Otter Express certifies that its demand responsive service offered to individuals with disabilities, including individuals who use wheelchairs, is equivalent to the level and quality of service offered to individuals without disabilities. Such service, when viewed in its entirety, is provided in the most integrated setting feasible and is equivalent with respect to:

- (1) Response time;
- (2) Fares;
- (3) Geographic service area;
- (4) Hours and days of service;
- (5) Restrictions on trip purpose;
- (6) Availability of information and reservation capability; and
- (7) Constraints on capacity or service availability.

In accordance with 49 CFR 37.77, public entities operating demand responsive systems for the general public which receive financial assistance under 49 U.S.C. 5311 or 5307 must file this certification with the MnDOT OTAT before procuring any inaccessible vehicle. Such public entities not receiving FTA funds shall also file the certification with the MnDOT OTAT. This certification is valid for no longer than one year from its date of filing.

Kayla Sullivan

*Name of authorized official*

Director of Transportation

*Title*

*Kayla Sullivan*

*Signature*

### **Vehicle and Route Assignment**

☒ All demand response vehicles operated by The Otter Express are accessible and persons with disabilities, including wheelchair users, can board any vehicle.

### **Maintenance of Accessible Features**

Accessibility features on vehicles, including lifts, ramps, wheelchair securement devices and public address systems, will be maintained in operative condition. The preventive maintenance program of The Otter Express provides for regular and frequent maintenance checks of these features as well as preventive maintenance as recommended by the equipment manufacturers. In addition, the lift must be cycled as part of each pre-trip inspection.

### **Inoperative Lifts and Ramps**

Drivers are required to report lift or ramp failures immediately. Vehicles with inoperative lifts will be removed from service and replaced with an accessible vehicle until the inoperative lift is repaired. For vehicles equipped with ramps, it may be possible to continue in service as long as the ramp can be and is deployed manually when necessary. If an inoperative ramp cannot be (or is not) deployed manually, the transit agency will apply the policy for a vehicle with an inoperative lift.

### **Wheelchair Accommodation**

All accessible vehicles meet or exceed the requirements of 49 CFR Part 38. Transportation providers are required to carry a wheelchair and its user, as long as the lift can accommodate the size and weight of the wheelchair and its user, and there is space in the securement area for the wheelchair on the vehicle without blocking the aisle. If a vehicle lift/ramp and securement area can accommodate a wheelchair (or other mobility device), The Otter Express will transport the device (and its user).

An individual who uses a wheelchair that, when occupied, exceeds the weight rating of the vehicle lift/ramp, will be offered the opportunity to board and disembark from the vehicle separately from the wheelchair. However, transit agency personnel are not permitted to operate a passenger's wheelchair (i.e. a motorized wheelchair). The individual may travel with another individual who can assist with operating the unoccupied wheelchair to maneuver it on and off the lift/ramp.

### **Boarding**

Drivers and scheduling practices will provide adequate time for a passenger with a disability to board and/or disembark the vehicle, which includes adjusting the schedule if necessary and waiting for passengers to be seated before moving the vehicle. Only a properly trained transit system employee can operate the lift or ramp and secure the wheelchair in the securement station. Passengers may board facing toward or away from the vehicle.

### **Wheelchair Securement**

☒ The Otter Express requires that all wheelchairs be secured. Drivers should not allow a passenger to ride if they are not secured properly unless the securement system will not accommodate the wheelchair. Drivers cannot deny a passenger a ride based on the inability to secure the wheelchair unless legitimate safety requirements cannot be met. However, drivers must warn the passengers of the danger of riding in a non-secured wheelchair. Passengers who refuse to allow their wheelchairs to be secured may be denied service.

Securement of wheelchairs is the responsibility of the driver. Drivers are trained in the proper operation of all securement equipment based on the equipment manufacturer's specifications. Drivers will listen to and respect riders' instructions on how to secure their equipment. Drivers cannot be expected to be familiar with each and every wheelchair type that may come aboard, and securement attachment points may differ

by wheelchair manufacturer. The rider may be in the best position to instruct the driver on how to properly secure their mobility device.

If the securement system is not compatible with the wheelchair the passenger is using, the driver will still make an attempt to safely secure the wheelchair. If the wheelchair cannot be secured because of the wheelchair design, the passenger still has the right to ride in the vehicle.

Drivers must secure wheelchairs in the designated securement area only, even if the passenger wants their mobility device to be secured in a non-designated area. The wheelchair is not allowed to block the aisle.

In cases where an individual using a wheelchair attempts to board and requires use of a securement location that is currently occupied by another passenger that is not using a wheelchair, the driver will ask that passenger to allow the individual using a wheelchair to use the securement position.

### **Seat Belt Usage**

☑ are required for ALL passengers. Seat belt requirement under Minnesota State Statutes 169.686, a properly adjusted and fastened seat belt, including both the shoulder and lap belt when the vehicle is so equipped, shall be worn by the driver and passengers. The Otter Express has available seatbelt extenders, should a passenger require or request.

### **Driver Assistance**

Drivers will make themselves available to assist individuals with disabilities and will assist upon request of the passenger. Drivers will assist a passenger with using the vehicle ramp, lift and/or securement systems using the accessibility-related equipment and features on their vehicles. It is the policy of The Otter Express that all wheelchairs be secured by the 4-point floor system to anchor the wheelchair to the floor. It is mandatory that all passengers are secured with seat belts.

### **Use of Lift or Ramp by Individuals Not Using a Mobility Device**

The driver will deploy the lift or ramp for any individual, with or without a disability who is not using a mobility device to board or alight the vehicle upon request.

### **Accommodation of Other Mobility Devices**

Mobility devices that are not wheelchairs, but which are primarily designed for use by individuals with mobility impairments, will be accommodated to the extent that the ADA-compliant lift or ramp and securement areas can safely do so. However, these devices are the responsibility of the individual passenger and must be secured in a manner that does not interfere with the safe operation of the vehicles and the transport of other passengers.

### **Transfer to Fixed Seating**

All passengers using wheelchairs have an option of transferring to fixed seating once on board the vehicles. Drivers may recommend, but never require, wheelchair users to transfer to fixed seating. No waivers are allowed to be required.

### **Accommodation of Portable Oxygen**

Individuals are allowed to travel with respirators and portable oxygen supplies on board, consistent with applicable U.S. DOT rules on the transportation of hazardous materials in 49 CFR Subtitle B, Chapter 1, Subchapter C.

### **Priority Seating**

With the exception of the wheelchair securement stations, the transit system does not require any passenger to sit in designated seating.

Priority seating for seniors and individuals with disabilities is to be designated by permanent signage in each vehicle. In cases where an individual with a disability requests use of priority seating that is currently occupied by another passenger, the driver will ask that passenger to move so as to allow the individual with a disability use of the priority seating. In cases where a wheelchair user requires the use of a securement location, the driver will ask any passenger (including other passengers with disabilities) to vacate the securement location.

### **Service Animals**

In compliance with 49 CFR Part 37, the transit system allows trained service animals to accompany passengers with disabilities. The driver will not ask for proof of the qualifications of the animal but may ask only the following questions: if the animal is a service animal required because of a disability and what tasks the animal has been trained to perform. The Otter Express does not impose species or breed restrictions. However, any animal which is not under the passenger's control, or which becomes a direct threat to the health or safety of other passengers may be restricted from riding.

Emotional support animals or "comfort animals" are not service animals within the context of the US DOT ADA regulations. The Otter Express may transport support or comfort animals, and these types of animals must be contained and controlled by the animal owner by being on a leash, secured in a kennel, etc. The animal may not be a threat to the driver or any passenger.

### **Alighting**

It is the responsibility of the driver to determine that the location for passenger alighting is safe. For drivers to determine safe locations for pick up and drop off, ramps and wheelchair paths must be clear of snow, ice, parked cars, trash and other obstructions. For fixed route and demand response services, the driver will allow a passenger who uses the lift or ramp to alight at any stop, unless the lift or ramp cannot be deployed, will be damaged if deployed, or conditions at the stop would present unsafe conditions for

all passengers. Only the driver will unsecure the wheelchair and operate the lift or ramp to return the passenger to the ground level.

### **Staff Training**

All drivers and transit system staff are trained to proficiency in use of accessibility equipment, the operating policies related to each of the service requirements described, and in properly and respectfully assisting and treating individuals with disabilities with sensitivity. Mechanics are also trained to properly maintain lifts and other accessibility equipment.

### **Rider Information**

All printed informational materials are made available in accessible formats upon request, for example, large print for individuals with low vision or audio for blind individuals, as well as accessible electronic formats.

### **Personal Care Attendants**

Under the ADA, an agency cannot require a passenger to have a personal care attendant (PCA). If a PCA accompanies a passenger, the PCA will ride free of charge. A family member or friend is not considered a PCA, unless that individual is acting in that capacity.

### **Stop Announcements**

☒ The Otter Express does not operate a deviated-fixed route.

### **Complaint Procedure**

All complaints of discrimination on the basis of disability will be forwarded to the Director of Transportation Kayla Sullivan for prompt and objective investigation. In addition, The Otter Express will submit all complaints received within 10 days, to the MnDOT Office of Transit and Active Transportation (OTAT) Compliance Coordinator, at which time further investigation occurs to determine the extent of the complaint and under which class. OTAT will provide the transit system with a written response to the complaint and any actions required, in a timely manner.

The Otter Express will promptly communicate its response to the complaint allegations, including its reasons for the response, to the complainant. The response will be documented. Internal corrective actions may include specialized training for staff, corrective processes or procedures, or disciplinary action will be taken for behavior prohibited by this policy, up to and including termination of employment.

Documentation of each complaint will be kept on file for a minimum of one year, and a summary of all complaints will be kept for at least five years. This meets DOT regulations that require FTA grantees to maintain all complaints of noncompliance with 49 CFR Part 27 for one year, and a record of all such complaints, which is permitted to be in summary form, for five years.



## Reasonable Modification Policy

The purpose of the reasonable modification policy is to ensure that The Otter Express offers equal and effective opportunities and access to public transportation services for persons with disabilities and full compliance with the provisions of the Title II of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973.

This policy applies to all safety-sensitive transportation vehicle operators including full, part time, casual/substitutes/seasonal, and those staff that may be required to operate the vehicle. For the purposes of this section, the term reasonable accommodation shall be interpreted in a manner consistent with the term “reasonable modifications” as set forth in the Americans with Disabilities Act Title II regulations at 28 CFR 35.130(b)(7), and not as it is defined or interpreted for the purposes of employment discrimination under Title I of the ADA (42 U.S.C. 12111–12112) and its implementing regulations at 29 CFR part 1630.

The Otter Express is committed to providing equal access and opportunity to individuals with disabilities in all programs, services and activities. The Otter Express recognizes that in order to have equally effective opportunities and benefits, individuals with disabilities may need reasonable modifications to policies and procedures. The Otter Express will adhere to all applicable federal and state laws, regulations and guidelines with respect to providing reasonable modifications, as necessary, to afford equal access to programs for persons with disabilities. The Otter Express does not discriminate on the basis of disability in admission to, participation in, or receipt of services and benefits under any transit program or activity. The Otter Express will take appropriate steps to ensure that persons with disabilities have an equal opportunity to participate.

No individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of The Otter Express, or be subject to discrimination by The Otter Express.

A reasonable modification is a change or exception to a policy, practice, or procedure that allows persons with disabilities to have equal access to programs, services, and activities. The Otter Express will make reasonable modifications to policies, practices, and procedures when necessary to ensure access to transit services for individuals with disabilities, unless:

- ◆ Making the accommodation would fundamentally alter the nature of the public transportation service.
- ◆ Making the accommodation would create a direct threat to the health or safety of other passengers.
- ◆ The individual with a disability is able to fully use The Otter Express service without the accommodation being made.

- ◆ Making the accommodation creates an undue financial burden on the transit system.

#### ELIGIBILITY CRITERIA

The Otter Express provides Door to Door Service, an individual is eligible to be considered to receive a reasonable modification if that individual has:

- ◆ A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- ◆ A record of such impairment; or
- ◆ Has been regarded as having such impairment.

#### REQUESTS FOR REASONABLE MODIFICATION

The Otter Express shall make information about how to contact The Otter Express to make requests for reasonable modifications readily available to the public through its website, brochures, and other rider policy guidelines. The Otter Express shall follow these procedures in taking requests:

- a. Individuals requesting modifications shall describe the modification to service needed in order to use the service. Door through Door services and/or the carrying or delivering of package(s) will not be considered a reasonable modification.
- b. Individuals requesting modifications are not required to use the term “reasonable modification” when making a request. Personnel at The Otter Express will determine if the request represents a reasonable modification and proceed in accommodating the request accordingly.
- c. Whenever feasible, The Otter Express requests that individuals make such requests for modifications before The Otter Express is expected to provide the modified service.
- d. Where a request for modification cannot practicably be made and determined in advance (e.g., because of a condition or barrier at the destination of a, route deviation, demand response, paratransit, or fixed route trip of which the individual with a disability was unaware until arriving), operating personnel shall make a determination of whether the modification should be provided at the time of the request. Operating personnel may consult with The Otter Express management before making a determination to grant or deny the request.

Requests for accommodation may be made either orally or in writing. The reasonable accommodation process begins as soon as the request for accommodation is made. The request can be submitted in any written format. Alternative means of filing a request, such as personal interviews, phone calls, or taped requests, will be made available for persons with disabilities if unable to communicate their request in writing or upon request.

### INTERACTIVE PROCESS

When a request for accommodation is made, The Otter Express and the individual requesting an accommodation must engage in a good faith interactive process to determine what, if any accommodation shall be provided. The individual and The Otter Express must communicate with each other about the request, the process for determining whether an accommodation will be provided, and the potential accommodations. Communication is a priority throughout the entire process.

### TIME FRAME FOR PROCESSING REQUESTS TO PROVIDE REASONABLE MODIFICATION

The Otter Express will process requests for reasonable accommodation and then provide accommodations, where appropriate, in as short a time frame as reasonably possible. The Otter Express recognizes, however, that the time necessary to process a request will depend on the nature of the accommodation(s) requested and whether it is necessary to obtain supporting information.

### GRANTING A REASONABLE MODIFICATION REQUEST

As soon as The Otter Express determines that a reasonable accommodation will be provided, that decision shall be immediately communicated to the individual. When adequate time is provided, this notice must be in writing in order to maintain the required information for reporting purposes. When granting a request is communicated orally The Otter Express will follow up in writing. Upon request, alternative means of response will be provided.

In choosing among alternatives for meeting nondiscrimination and accessibility requirements with respect to new, altered, or existing facilities, or designated or specified transportation services, The Otter Express shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate to the needs of individuals with disabilities.

### DENIAL OF REASONABLE MODIFICATION REQUEST

As soon as The Otter Express determines that a request for reasonable accommodation will be denied, The Otter Express will communicate the basis for the decision immediately. When adequate time is provided, this notice will be in writing to the individual requesting the modification. Any denial communicated orally will be followed up in writing. The explanation for the denial will clearly state:

- ◆ The specific reasons for the denial;
- ◆ Any alternative accommodation that may create the same access to transit services as requested by the individual; and

- ◆ The opportunity to file a complaint relative to The Otter Express decision on the request.

#### COMPLAINT PROCESS

The Otter Express has a process for investigating and tracking complaints from qualified individuals. These procedures shall be posted on The Otter Express website and will be provided to any individual where The Otter Express has denied a request for accommodation. The process and any forms necessary to file a complaint are readily available from the web. Alternative means of filing complaints, such as personal interviews, phone calls, or taped requests, will be made available for persons with disabilities if unable to communicate their request in writing or upon request.

Any person who believes she or he has been discriminated against in obtaining a reasonable modification may file a complaint by completing and submitting a The Otter Express's Reasonable Modification Complaint Form. The Otter Express investigates complaints received no more than 30 days after receipt. The Otter Express will process complaints that are complete. The Otter Express will work with MnDOT OTAT to determine resolution in the process. Once the complaint is received, the complainant will receive an acknowledgement of receipt. If more information is needed to resolve the complaint, The Otter Express may contact the complainant. The complainant has 30 business days from the date of the letter to send requested information to The Otter Express.

If The Otter Express is not contacted by the complainant or does not receive the additional information within 30 business days, The Otter Express may administratively close the complaint. In addition, a complaint may be administratively closed if the complainant no longer wishes to pursue their case.

After The Otter Express investigates the complaint and has consulted and received direction from MnDOT OTAT, a decision will be rendered in writing to the complainant. The Otter Express will issue either a Letter of Closure or Letter of Finding.

- ◆ **Letter of Finding** – This letter will summarize the complaint, any interviews conducted regarding the complaint and explains what actions will be taken by The Otter Express to address the complaint.
- ◆ **Letter of Closure** – This letter will explain why The Otter Express has determined that the complaint does not merit accommodation under the Americans with Disabilities Act and that the complaint will be closed.

If the complainant disagrees with the decision of The Otter Express, an opportunity to appeal the decision may be pursued provided the complaint files notice of appeal within 21 days of the initial decision of The Otter Express. At any time, the complainant has the right to file a complaint directly with MnDOT,

through their website complaint section, through the Motor Carrier website, or through the Ombudsman website.

In the event of appeal, the complainant will be granted all due process, including the ability to present additional evidence, present the case in person during an appeal hearing, and to be represented by counsel.

DESIGNATED EMPLOYEE

The Otter Express shall designate one official within the organization responsible for processing reasonable modification requests and handling complaints. This individual is:

Angie Danielson  
The Otter Express  
1225 N. Tower Rd, Fergus Falls, MN 56537  
(218) 998-3002

RECORD RETENTION

The Otter Express will maintain all records related to reasonable modification requests and denials for at least three (3) years.

## **No Show Policy**

This policy is intended to address the actions by habitual abusers of service scheduling and provide clear protocols for addressing passengers who fail to show for their scheduled trip without properly canceling the trip. This policy is intended to address those repeat offenders, and not the occasional incident that may occur with some passengers.

### DEFINITIONS

No-show – Any passenger who is unavailable for pick-up of a scheduled trip that has not notified The Otter Express to cancel that trip. Trips in which passengers will not be picked up due to circumstances related to service will not be considered a no-show.

### NO-SHOW PROCEDURE

The transit operator will wait for passengers for 3 minutes beyond the scheduled pickup time. Passengers who do not make themselves available within that window will be considered a no-show. Passengers who no-show will have the return trip as well as any other portions of the trip automatically canceled. Passengers must call into dispatch if the return ride is still needed.

Upon permission to continue without the passenger, the transit operator is to record the arrival time, departure time, and vehicle mileage on the Daily Manifest.

Scheduled trips are to be cancelled at least one (1) hour prior to the time of the trip request. Any scheduled trip not cancelled within that window will be considered a no-show and will be logged as such. A no-show designation for a trip will be monitored to determine the habitual nature of no-shows associated with a passenger.

Exceptions may be made for passengers who are unduly delayed due to medical appointments or procedures and other circumstances beyond their control. The passenger will be required to contact The Otter Express as soon as practicable following the missed trip and a new driver will be dispatched as soon as possible if applicable.

### HABITUAL NO-SHOW PROCEDURE

Passengers who have no-shows equal to or greater than 25% of the scheduled trips in a thirty (30) day period will be provided a written warning. In order to be subject to a warning or suspension, a passenger must have booked a minimum of three (3) trips or more in a calendar month. Example: If a passenger books five (5) trips and no-shows 25% of the time, they will be in violation of the no-show policy and subject to the progressive corrective action plan.

A passenger will be subject to the progressive corrective action plan only if both the minimum number of trips booked and the minimum number of no-shows are reached during a calendar month. All suspension periods will begin on a Monday.

The length of a passenger's suspension will adhere to the progressive corrective action plan described as followed:

- First violation in a rolling 30 day period, one (1) week Suspension.
- Second violation in a rolling 30 day period, two (2) week Suspension.
- Third violation in a rolling 30 day period, three (3) week Suspension.
- Fourth violation in a rolling 30 day period, four (4) week Suspension.

All penalties imposed under this policy are first subject to an appeals process (see Suspension Appeals Process). Before any suspension, the potentially affected individual will receive written notice that transportation service will be suspended beginning seven (7) days from the date of notice. The individual will receive a copy of the appeals process that details passenger rights in this situation. The written notice of suspension will contain instructions and materials necessary to challenge or appeal the suspension decision.

The Otter Express will continue to serve passengers appealing pending suspensions until all appeals have been settled. For passengers who do not choose to appeal, suspensions will commence on the date specified in the written notice.

Subscription/Standing Order reservations may be denied upon a second suspension in any consecutive 12-month period. Privileges may be reinstated without guarantee of the original subscription/standing order.

At no time will The Otter Express require, charge, or bill a passenger when they violate the No Show policy for the passenger trip or any penalties.

## **Suspension Due to Direct Threat to the Health or Safety of Others**

Americans with Disabilities Act (ADA): FTA C 4710.1 Circular Section 2.2.7, § 37.5(h) permits agencies to refuse service to individuals with disabilities if they engage in violent, seriously disruptive, or illegal conduct, or if they pose a direct threat to the health or safety of others.

### SERVICE DENIAL DUE TO RIDER CONDUCT

“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, or represents a direct threat to the health or safety of others. 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” (§ 37.5(h)).

### DETERMINING A DIRECT THREAT

The Otter Express may refuse to transport individuals who pose a significant risk to the health or safety of others. The definition of “direct threat” is intended to be interpreted consistently with the parallel definition in the Department of Justice regulations. That is, Part 37 does not require a public entity to permit an individual to participate in or benefit from the services, programs, or activities of that public entity when that individual poses a direct threat to the health or safety of others. In determining whether an individual poses a direct threat to the health or safety of others, The Otter Express 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 or the provision of auxiliary aids or services will mitigate the risk. Presuming certain conduct will occur based on specific disabilities is not appropriate. For example, it is incorrect to presume all riders with particular psychiatric disabilities will behave in a violent manner that constitutes a direct threat to others. The definition of direct threat refers to a direct threat to other individuals and not to the person with the disability.

### STEPS TO TAKE BEFORE REFUSING SERVICE

Before refusing service to an individual with a disability, The Otter Express will make reasonable attempts to resolve issues with riders or, if appropriate, caregivers or guardians. The Otter Express will document the incident or incidents leading to the service denial, substantiating how such an incident rises to the level of seriously disruptive or a direct threat. The Otter Express will provide the rider with a written warning before denying service.



#### RIGHT OF INDIVIDUALS TO CONTEST SERVICE DENIALS

Access to public transit is a civil right and inherent in any civil right is the opportunity for due process. This means providing an individual who is denied service the opportunity to contest that decision, correct the situation, and resume service. Service refusals cannot be permanent unless an individual continues to pose a direct threat to the health or safety of others. Riders must have the opportunity to subsequently present information to The Otter Express, demonstrating that issues have been resolved or presenting options to mitigate any problems, to have service reinstated. This also means providing a rider required to travel with an attendant the opportunity to appeal such a requirement. As with service refusals, riders have the right to subsequently provide information demonstrating they have addressed The Otter Express's concerns and can now travel without an attendant or propose other solutions that permit them to travel on their own. The Otter Express will follow the approved Suspension Appeals Process provided in this policy.

## **Suspension Appeals Process**

A suspension may result from violations of passenger behavior rules, violation of the no-show policy, or for other inappropriate or disruptive behavior. Regardless of the reason for suspension, each passenger has a right to appeal the decision through an appeals process.

Appeals must be submitted in writing to Kayla Sullivan, Director of Transportation, by mail at 1225 N. Tower Rd, Fergus Falls, MN 56537, or by email at [kaylas@productivemn.org](mailto:kaylas@productivemn.org) within 14 days of issuance/receipt of the determination letter. Written appeals must provide for the date of issue/incident and service suspension, circumstances involved in the issue/incident, passengers understanding of the suspension, suggested remedies passenger is offering in response to re-instatement of ridership. All passengers will be permitted to continue using service during the appeals process, unless it is established that the rider engaged in a violent, seriously disruptive, or illegal conduct, or if the rider poses a direct threat to the health or safety of others. The Otter Express management will inform all schedulers/dispatchers that the suspension is pending an appeal and to allow service to continue for the affected passenger. The Otter Express will provide all information to the MnDOT OTAT Compliance Coordinator for review and approval during the appeals process.

An Appeals Committee comprised of a mixture transit personnel will review all applicable information from The Otter Express and the involved passenger. To maintain separation of function the individual(s) who made initial determination will not be involved in hearing/determining appeals outcome. All passengers will be offered the opportunity to speak directly with Committee members and/or the Transit Manager regarding the submitted appeal and/or circumstances that led the suspension and subsequent appeal.

After a thorough review of all available information and testimony, the Appeals Committee will have 72 hours in which to issue a recommendation to sustain or reverse the suspension. The Committee recommendation will be forwarded to the Transit Manager and/or the assigned personnel for final review and implementation.

The Otter Express administration will have three (3) days to issue a final suspension decision in writing to the passenger involved. All final decisions will be implemented within seven (7) days of passenger notification. The appeal process will be resolved within 30 days of receipt of appeal request.

All communications will be made available in alternate format upon request.

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# ***ADA Complaint Form Procedure***

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## **Background**

The Americans with Disabilities Act of 1990 (ADA), provides protection that no individual with a disability shall on the basis of disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any federally funded program, service, or activity.

The Otter Express is committed to providing non-discriminatory service to ensure that no person is excluded from participation in, or denied the benefits of, or subjected to discrimination in the receipt of its services by providing protection that no individual with a disability shall on the basis of disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination as stated in the Americans with Disabilities Act of 1990 (ADA).

If you feel that you have been discriminated against, please provide the following necessary information to facilitate the processing of your complaint. If assistance is required to complete the form, or if you have questions, please do not hesitate to call the ADA Coordinator at 218-998-3002. **Once completed, return a signed and dated copy to:**

**Kayla Sullivan, Director of Transportation  
1225 N. Tower Rd, Fergus Falls, MN 56537**

*Note: The following information is necessary to assist us in processing your complaint. Should you require any assistance in completing this form, please call 218-998-3002.*

# ADA Complaint Form

<b>Section I:</b>				
Name:				
Address:				
Telephone (Home/Cell):			Telephone (Work):	
Email:				
Do you require an accessible format?	Large Print		Audio Tape	
	TTY/TDD		Other:	
<b>Section II:</b>				
Are you filing this complaint on your own behalf? *			Yes	No
*If you answered "yes" to this question, go to Section III.				
If not, please supply the name and relationship of the person for whom you are filing:				
Have you obtained permission from this person?			Yes	No
<b>Section III:</b>				
If you believe you were discriminated against based on a disability, please provide as much detail concerning the alleged discrimination.				
Date of Alleged Discrimination (Month, Day, Year): _____ Time: _____				
Transit Line/Route: _____ Vehicle ID or Name: _____ Location: _____				
Name(s) of Employee(s) involved: _____				
Explain as clearly as possible what happened and why you believe you were discriminated against. If more space is needed, please use the back of this form.				
_____				
_____				
_____				
_____				

Section IV		
Have you previously filed an ADA complaint with this agency?	Yes	No
Contact name:	Telephone number:	
Section V		
Have you filed this complaint with any other federal, state, or local agency, or with any federal or state court?		
<input type="checkbox"/> Yes <input type="checkbox"/> No		
If yes, check all that apply:		
<input type="checkbox"/> Federal Agency: _____	<input type="checkbox"/> Federal Court: _____	
<input type="checkbox"/> State Agency: _____	<input type="checkbox"/> State Court: _____	
<input type="checkbox"/> Local Agency: _____	<input type="checkbox"/> Local Court: _____	
Please provide contact information for the person you spoke to at the above agency:		
Name:	Title:	
Agency:		
Address:		
Telephone:		

**Important Notice:** To protect your rights, your complaint must be filed within 180 days following the date of the alleged discrimination. Failure to file within 180 days may result in dismissal of the complaint. You may attach any additional written materials or other information that you think is relevant to your complaint to this form.

Signature and date required below.

\_\_\_\_\_  
Signature of Person Filing Complaint

\_\_\_\_\_  
Date

If you need assistance completing this form, contact The Otter Express at (218)998-3002.

**Once completed, return a signed and dated copy to:**

**Kayla Sullivan, Director of Transportation  
The Otter Express  
1225 N. Tower Rd, Fergus Falls, MN 56537**

# Reasonable Modification Complaint Process

The Otter Express investigates complaints received no more than 30 days after receipt. The Otter Express will process complaints that are complete. Once the complaint is received, the complainant will receive an acknowledgement of receipt. If more information is needed to resolve the complaint, The Otter Express may contact the complainant. The complainant has 30 business days from the date of the letter to send requested information to The Otter Express.

If The Otter Express is not contacted by the complainant or does not receive the additional information within 30 business days, The Otter Express may administratively close the complaint. In addition, a complaint may be administratively closed if the complainant no longer wishes to pursue their case.

After The Otter Express investigates the complaint and has consulted and received directive from MnDOT OTAT, a decision will be rendered in writing to the complainant. The Otter Express will issue either a Letter of Closure or Letter of Finding.

- ◆ **Letter of Finding** – This letter will summarize the complaint, any interviews conducted regarding the complaint and explains what actions will be taken by The Otter Express to address the complaint.
- ◆ **Letter of Closure** – This letter will explain why The Otter Express has determined that the complaint does not merit accommodation under the Americans with Disabilities Act and that the complaint will be closed.

If the complainant disagrees with the decision of The Otter Express, an opportunity to appeal the decision may be pursued provided the complaint files notice of appeal within 21 days of the initial decision of The Otter Express.

In the event of appeal, the complainant will be granted all due process, including the ability to be present additional evidence, present the case in person during an appeal hearing, and to be represented by counsel.

# Reasonable Modification Complaint Form

## Part I

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_

Preferred contact method: ☐ Phone ☐ Email

Best time to contact you: \_\_\_\_\_

Additional Formats Needed:

☐ None

☐ TDD

☐ Other

☐ Large Print

☐ Audio Tape

## Part II

Are you filing this complaint on your own behalf?

☐ Yes – Proceed to Part III

☐ No – Please provide the name of and your relationship with this person:

Name of Individual: \_\_\_\_\_

Your Relationship: \_\_\_\_\_

Please explain why you have filed for a third party:

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Confirm:

☐ I have obtained permission of the aggrieved party to file this form on his or her behalf.

☐ I have not confirmed permission to file this form on behalf of the aggrieved party.

## Part III.

If you believe you were not heard in your reasonable modification request or did not receive the services you requested, please provide as much detail concerning the incident. The Otter Express investigates complaints received no more than 30 days after receipt.

Date of incident (Month, Day, Year): \_\_\_\_\_ Time: \_\_\_\_\_

Name(s) \_\_\_\_\_ of \_\_\_\_\_ Employee(s) \_\_\_\_\_ involved:

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☐ Through dispatching services

☐ Through operator request

Explain as clearly as possible what happened and why your reasonable modification request was not granted or did not receive the services you requested. If more space is needed, please use the back of this form.

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Signature and date required below.

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Signature of Person Filing Complaint

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Date

If you need assistance completing this form, contact The Otter Express at (218)998-3002.

**Once completed, return a signed and dated copy to:**

**Kayla Sullivan, Director of Transportation  
The Otter Express  
1225 N. Tower Rd, Fergus Falls, MN 56537**