

OFFICE OF THE STATE AUDITOR

DIANA DIZOGLIO

Official Audit Report – Issued April 7, 2023

Merrimack Valley Regional Transit Authority

For the period October 1, 2019 through September 30, 2021



OFFICE OF THE STATE AUDITOR

DIANA DIZOGLIO

April 7, 2023

Noah Berger, Administrator
Merrimack Valley Regional Transit Authority
85 Railroad Avenue
Haverhill, MA 01835

Dear Mr. Berger:

I am pleased to provide to you the results of the enclosed performance audit of the Merrimack Valley Regional Transit Authority. As is typically the case, this report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, October 1, 2019 through September 30, 2021. As you know, my audit team discussed the contents of this report with agency managers. This report reflects those comments.

A separate, limited version of this report will be released publicly that excludes one issue regarding information that we believe may be a threat to cybersecurity.

I appreciate you and all your efforts at the Merrimack Valley Regional Transit Authority. The cooperation and assistance provided to my staff during the audit went a long way toward a smooth process. Thank you for encouraging and making available your team. I am available to discuss this audit if you or your team have any questions.

Sincerely,



Diana DiZoglio
Auditor of the Commonwealth

cc: Gina Fiandaca, Secretary of Transportation of the Massachusetts Department of Transportation
Angela Cleveland, Advisory Board Chair of the Merrimack Valley Regional Transit Authority

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LIST OF ABBREVIATIONS

ADA	Americans with Disabilities Act
CFR	Code of Federal Regulations
IT	information technology
MVRTA	Merrimack Valley Regional Transit Authority
RTA	Regional Transportation Authority

EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Merrimack Valley Regional Transit Authority (MVRTA) for the period October 1, 2019 through September 30, 2021.

In this performance audit, we determined whether MVRTA delivered on-time paratransit services required by the Americans with Disabilities Act (ADA) in accordance with its procedures and whether MVRTA ensured First Transit's investigations and responses to ADA paratransit complaints, submitted by riders or the general public, were in compliance with federal law, MVRTA's "Special Transportation Services Inc., ADA Procedures," and the "[Merrimack Valley Area Transportation Company] Customer Complaint Procedures"?

Below is a summary of our finding and recommendation, with links to each page listed.

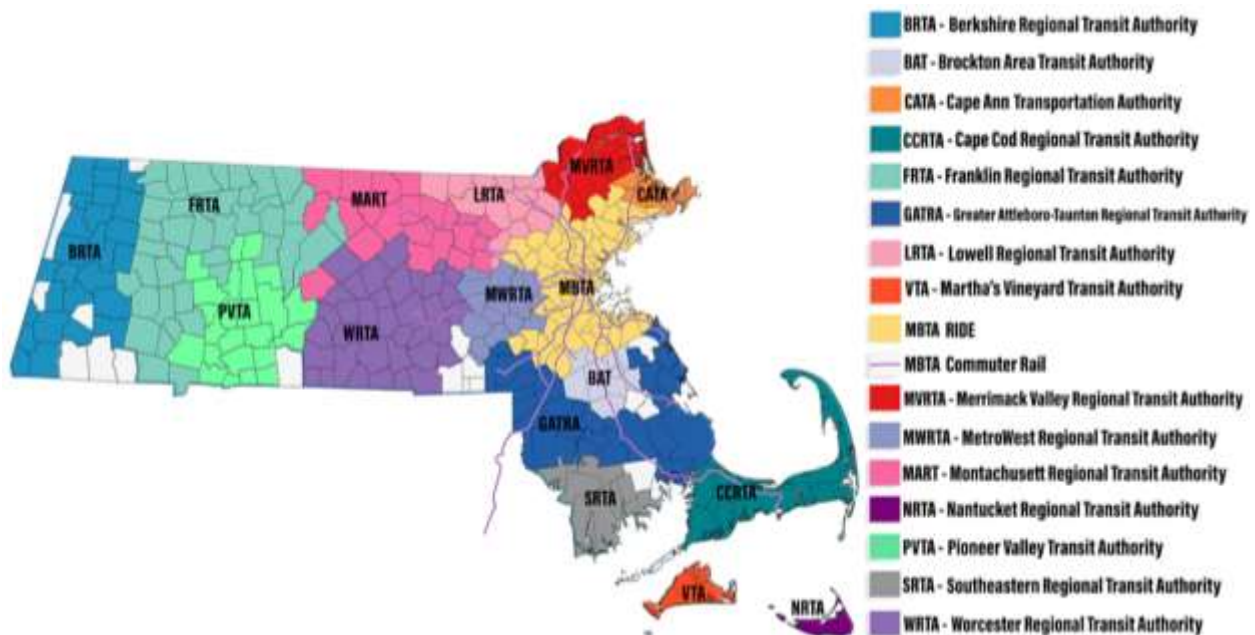
Finding 1 Page <u>9</u>	MVRTA did not follow required procedures for processing ADA paratransit complaints.
Recommendations Page <u>10</u>	<ol style="list-style-type: none">1. MVRTA should ensure that complainants receive acknowledgements of their complaints within 24 hours.2. MVRTA should ensure that First Transit amends its ADA paratransit complaint processing procedures to require follow-up responses.

OVERVIEW OF AUDITED ENTITY

Massachusetts Regional Transit Authorities

Chapter 161B of the Massachusetts General Laws established regional transit authorities (RTAs) and defined the roles and responsibilities for these authorities, the municipalities in which they operate, and the Commonwealth. According to Chapter 161B of the General Laws, RTAs are controlled by the municipalities in which they operate. Each RTA is governed by an advisory board composed of elected officials from the community (e.g., city manager or mayor), as well as one representative of the disabled commuter population¹ and one representative of the local rider community. The advisory boards appoint administrators, establish bylaws, and approve budgets and changes to RTA services.

Section 53 of Chapter 6C of the General Laws makes the Rail and Transit Division of the Massachusetts Department of Transportation “responsible for overseeing, coordinating and planning all transit and rail matters throughout the commonwealth,” including intercity buses, the Massachusetts Bay Transportation Authority, and RTAs.



Source: Massachusetts Department of Transportation—Rail and Transit Division (<https://www.mass.gov/info-details/public-transportation-in-massachusetts>)

1. According to Section 5 of Chapter 161B of the General Laws, “This representative shall be mobility impaired, have a family member who is mobility impaired, be a caretaker of a person who is mobility impaired or work for an organization that serves the needs of the physically disabled.”

Currently, there is a network of 15 RTAs operating in the Commonwealth, in addition to the transit services provided by the Massachusetts Bay Transportation Authority. These RTAs serve a total of 272 cities and towns outside the greater Boston area. RTAs are funded through a combination of state appropriations, federal grants, local governments, fares, and other sources. State appropriations for the 15 RTAs increased from approximately \$80 million in fiscal year 2018 to approximately \$94 million in fiscal years 2021 and 2022.

Americans with Disabilities Act—Required Paratransit Services

The Americans with Disabilities Act (ADA) of 1990 recognized that some individuals' disabilities prevent them from using a fixed-route transit system. Section 37(F) of Title 49 of the Code of Federal Regulations (CFR), which covers the transportation and related stipulations of ADA, states,

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.

The above regulation also establishes minimum levels of service that RTAs must provide for complementary paratransit services.

Merrimack Valley Regional Transit Authority

The Merrimack Valley Regional Transit Authority (MVRTA) was established in 1974 as one of the original transit authorities created by Chapter 161B of the General Laws. During our audit, MVRTA told us that its mission is the following:

To provide mobility services to support the efforts of both the public and private sector to enhance the development of the region's economy and its assets in jobs, education, healthcare, recreation and culture to the Merrimack Valley. MVRTA will meet the needs of our passengers by providing safe, dependable, affordable, and convenient services by well trained, qualified, professional staff.

MVRTA's operations are overseen by an advisory board. MVRTA's administrator, hired by the advisory board, is responsible for the day-to-day administration of the agency.

During our audit period, MVRTA contracted with First Transit, a private operating company, to provide transit management and operations service for its fixed-route² bus and demand response transportation

2. Fixed-route transportation services have established routes, schedules, and stops.

services³ provided to paratransit riders and the older population. Merrimack Valley Area Transportation Company is the operator and is a wholly owned subsidiary of First Transit.

MVRTA provides transportation services to 16 member cities and towns of Merrimack Valley: Amesbury, Andover, Boxford, Georgetown, Groveland, Haverhill, Lawrence, Merrimac, Methuen, Newbury, Newburyport, North Andover, North Reading, Rowley, Salisbury, and West Newbury. All complementary paratransit and demand response services provided during the audit period were managed by MVRTA using a transit software called ADEPT.⁴

ADA Paratransit Complaints

ADA paratransit complaints are complaints related to ADA-required paratransit services. According to 49 CFR 27.13, transportation programs that receive federal funding must adopt complaint procedures and designate a responsible employee to coordinate these procedures.

ADA paratransit service complaints, submitted by riders and the general public, can be made by telephone, email, mail or in person to First Transit's main office. First Transit personnel record all complaints using the Merrimack Valley Area Transportation Company Incident/Complaint Form with information from the complainant and, if they are ADA paratransit complaints, send the complaints to the First Transit director of paratransit operations. Within 24 hours of receipt, the First Transit director of paratransit operations informs the complainant that the complaint is being reviewed. The First Transit director of paratransit operation investigates the complaint and determines whether the complaint warrants further action. The director of paratransit operations makes a follow-up response in the form of a phone call, an email, or letter to let the complainant know the outcome of the complaint within three business days, if the complainant requested a follow up.

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3. Demand response transportation services are non-fixed route services that must be requested by riders and scheduled by dispatchers through a transportation service.
 4. ADEPT is an industry demand response software developed by StrataGen that facilitates scheduling and dispatching paratransit and on-demand transportation.

MVRTA Paratransit Ridership Information

The table below summarizes MVRTA's paratransit information for fiscal years 2019, 2020, and 2021.

	Fiscal Year 2019	Fiscal Year 2020	Fiscal Year 2021
Number of Active Riders	1,333	1,182	758
Number of Trips	87,012	71,087	43,862
Number of Miles	908,899.09	660,321.89	494,941.60
Number of Drivers	8–22 daily	8–22 daily	8–22 daily
Number of Vehicles Used	8–22 daily	8–22 daily	8–22 daily

MVRTA Funding Sources

In fiscal years 2020 and 2021, MVRTA received revenue from a variety of sources, including federal, state, and local assistance and partnerships/contracts. The table below shows the types of funding MVRTA received during the audit period.

Type of Funding	Fiscal Year 2019	Fiscal Year 2020	Fiscal Year 2021
State and Contract Assistance	\$ 6,836,168	\$ 7,253,008	\$ 7,509,613
Local Assistance	3,742,632	4,043,582	4,144,672
Federal Assistance	4,629,793	5,000,807	4,450,095
Fixed-Route Income	1,139,583	912,126	563,882
Paratransit Income	188,801	131,098	79,361
Other Revenue*	1,268,073	1,394,679	1,075,517
Total	<u>\$17,805,050</u>	<u>\$18,735,300</u>	<u>\$17,823,140</u>

* Other revenue is from advertising, miscellaneous sources, and interest.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Merrimack Valley Regional Transit Authority (MVRTA) for the period October 1, 2019 through September 30, 2021.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in the audit findings.

Objective	Conclusion
1. Does MVRTA deliver paratransit services required by the Americans with Disabilities Act (ADA) on time in accordance with MVRTA's "Special Transportation Services Inc., ADA Procedures"?	Yes
2. Does MVRTA ensure that all ADA paratransit complaints are investigated and responded to as required by Section 27.13(b) of Title 49 of the Code of Federal Regulations (CFR); MVRTA's "Special Transportation Services Inc., ADA Procedures;" and the "[Merrimack Valley Area Transportation Company] Customer Complaint Procedures"?	No; see Finding <u>1</u>

To achieve our audit objectives, we gained an understanding of MVRTA's internal control environment related to the objectives by reviewing applicable agency policies and procedures, as well as conducting inquiries with MVRTA's employees and management. We evaluated the design of controls over ADA-required paratransit services and ADA paratransit complaints.

We performed the following procedures to obtain sufficient, appropriate audit evidence to address the audit objectives.

On-Time Performance

To determine whether MVRTA delivered ADA-required paratransit services on time in accordance with its “Special Transportation Services Inc., ADA Procedures,” we analyzed 100% of the trips⁵ taken by ADA-required paratransit riders during the audit period.

- We requested and received from MVRTA the ride data from ADEPT for all ADA-required paratransit trips that occurred during our audit period. Our population consisted of 81,204 scheduled ADA-required paratransit trips that included 74,633 completed trips, 4,127 no-shows, and 2,444 late cancelations by riders.
- We assessed the rate of on-time performance by comparing actual pickup and promised pickup times for each trip to calculate the number of early, on-time, and late trips.

ADA Paratransit Complaints

To determine whether MVRTA investigated and responded to ADA paratransit complaints in accordance with 49 CFR 27.13; MVRTA’s “Special Transportation Services Inc., ADA Procedures;” and the “[Merrimack Valley Area Transportation Company] Customer Complaint Procedures,” we analyzed all 25 ADA paratransit complaint forms processed by MVRTA during the audit period.

- We reviewed the ADA paratransit complaint forms to determine the following:
 - whether a complaint log number was created and assigned for each complaint received;
 - whether each complainant was notified within 24 hours that the complaint was received and is being reviewed;
 - whether each complaint received was reviewed and investigated;
 - whether a complainant requested a follow-up response after the investigation; and
 - whether each complainant received a response from the First Transit director of paratransit operations in the form of a phone call, email, or letter advising of the outcome within three business days.
- In addition, we interviewed MVRTA paratransit employees and reviewed the MVRTA website to determine whether the process for filing a complaint (including the name, address, phone number, and email address of the employee designated for handling complaints) was advertised to the public and accessible by individuals with disabilities.

5. The Federal Transit Administration considers no show and late cancelations to be trips for the purpose of calculating on-time performance.

Data Reliability

To assess the reliability of the ride data from ADEPT, we interviewed the MVRTA director of information technology (IT) and the First Transit director of paratransit operations, who were responsible for the oversight of ADEPT and its data. We identified a number of IT general control issues we believe warrant MVRTA's attention; we have disclosed these issues in the "Other Matters" section of this report.

In addition, we obtained a list of all individuals who applied for ADA-required paratransit services during the audit period from the First Transit director of paratransit operations. We verified that there were no duplicates or dates outside the audit period. We randomly selected a sample of 20 ADA-required paratransit applicants from the ADEPT ADA-required paratransit service applicants list and traced each applicant's name, address, date of birth, and ADA-required paratransit service eligibility status to the ADA-required paratransit service application forms for accuracy. We then randomly selected 20 ADA-required paratransit service applications from First Transit's ADA-required paratransit service applications records drawer and traced each applicant's name, address, date of birth, and ADA-required paratransit service eligibility status to ADEPT data to verify completeness.

We obtained the First Transit monthly complaint logs for, and ADA paratransit complaint reports filed during, the audit period. We matched each complaint report to the log and noted agreement of the incident date and log number. We also noted whether the complaint in the complaint log was related to ADA-required paratransit, the vendor, the date logged, and First Transit's determination of whether the complaint warranted further action.

Based on the results of the above procedures, we determined that the data were sufficiently reliable for our audit.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Merrimack Valley Regional Transit Authority did not follow required procedures for processing Americans with Disabilities Act paratransit complaints.

The Merrimack Valley Regional Transit Authority (MVRTA) did not follow required procedures for processing Americans with Disabilities Act (ADA) paratransit complaints. Specifically, complainants did not receive an acknowledgement of the complaint within 24 hours, and First Transit employees did not always document follow-up response requests from, and follow-up responses to, complainants.

We examined the 25 ADA paratransit complaints received during the audit period and noted the following:

- Seven of 25 complainants did not receive acknowledgements of their complaints within 24 hours.
- Six of 25 complaints did not have follow-up responses to the complainants documented.

By not ensuring that it follows required procedures for its ADA paratransit complaint process, MVRTA may not resolve significant issues regarding its transportation services in a timely manner or at all. This could negatively impact the quality of services that MVRTA provides its ADA-required paratransit customers.

Authoritative Guidance

Section 27.13(b) of Title 49 of the Code of Federal Regulations states, regarding establishing complaint procedures for programs that receive federal financial assistance,

Adoption of complaint procedures. A recipient [MVRTA, in this case] shall adopt procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part . . . The procedures shall meet the following requirements: . . .

(3) The recipient [MVRTA, in this case] must promptly communicate its response to the complaint allegations, including its reasons for the response, to the complainant by a means that will result in documentation of the response.

The "[Merrimack Valley Area Transportation Company] Customer Complaint Procedures" states,

Upon receiving the complaint, and if a phone number has been provided, the Office Manager (OM) will contact the customer as soon as possible (but within 24 hours) to let him/her know that the complaint was received by the appropriate department manager, is in the process of being investigated, and that appropriate actions will be taken to correct the problem. The log number is given to the complainant.

If the complainant has requested a follow-up phone call or requests notification that action has been taken, or if the [assistant general manager, or AGM] determines that the situation warrants, the AGM does so after the investigation is completed.

MVRTA's "Special Transportation Services, Inc. ADA Procedures" states,

The Reservationist(s), Dispatcher(s), and the Receptionist are all responsible for taking ADA complaints. A complaint can be made either by the phone, email, or in person. Once the complaint is taken, and marked as an ADA complaint, complaints are sent to the Director of Paratransit Operations and the Assistant General Manager of Operations. . . .

The Director of Paratransit Operations makes a follow-up phone call or email letting the customer know the outcome of all valid complaints when contact information is available.

Reasons for Issues

MVRTA told us that it did not always send acknowledgments on time because of limited personnel availability.

According to First Transit's procedures for processing ADA paratransit complaints, there is no requirement to complete a follow-up response. Rather, responses are communicated upon complainant request.

Recommendations

1. MVRTA should ensure that complainants receive acknowledgements of their complaints within 24 hours.
2. MVRTA should ensure that First Transit amends its ADA paratransit complaint processing procedures to require follow-up responses.

Auditee's Response

Our only comment would be to note that based on the audit report, our paratransit director . . . has already initiated a meeting with her entire team, including reservationists, dispatchers, and receptionists, about the proper way to handle ADA complaints. While the responsibility for processing complaints has changed hands a few times over the review period, we have since standardized the process and are now reinforcing it. The meeting and plan for subsequent check-ins will ensure that we will all be on the same page and emphasize that this is a priority. The entire [MVRTA] team commits that all complaints will be handled within 24 hours and that all complainants get calls back. [The paratransit director] will also review our complaints on a weekly basis instead of monthly, so no complaints will fall through the cracks.

Auditor's Reply

Based on its response, MVRTA is taking measures to address our concerns on this matter.

OTHER MATTERS

The Merrimack Valley Regional Transit Authority has not established information technology policies and procedures to protect its information assets.

During our audit, we met with the Merrimack Valley Regional Transit Authority's (MVRTA's) information technology (IT) director to review its IT policies. According to its IT director, MVRTA has not established IT security policies to protect its information assets. Specifically, we noted the following:

- MVRTA had not established access controls for password configuration requirements, a password expiration or reset timeline, multifactor authentication, user identification and authentication procedures, or a period of inactivity time before computers are locked.
- MVRTA had not established controls to ensure that system users received cybersecurity awareness training.
- MVRTA had not established controls to ensure that there is management of system configuration changes or segregation of compatible duties.

The Commonwealth's Executive Office of Technology Services and Security's Enterprise Information Security Policy IS.000 establishes the high-level functions of an information security program and outlines information security requirements for all state agencies in the Executive Department to safeguard information assets. The policy includes various standards for user access, security, identification, and accountability controls. Further, the policy states that all employees should receive cybersecurity awareness training when hired and annually thereafter to educate them on their responsibility to help protect the confidentiality, availability, and integrity of information assets.

Section 2 of Chapter 7D of the Massachusetts General Laws states,

Notwithstanding any general or special law, rule, regulation, executive order, policy or procedure to the contrary, all executive department agencies shall, and other state agencies may, adhere to the policies, procedures and objectives established by the executive office of technology services and security with respect to activities concerning information technology.

MVRTA employees, under the oversight of the Department of Transportation, must comply with the Executive Office of Technology Services and Security's requirements.

MVRTA's absence of IT policies and procedures to safeguard its information assets exposes it to a higher-than-acceptable risk of viruses and malware, losses of sensitive data, unauthorized use of data,

and financial and/or reputation losses. We strongly recommend MVRTA develop IT policies in compliance with Executive Office of Technology Services and Security policies and standards to protect its information assets.