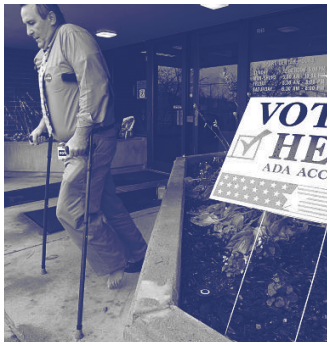

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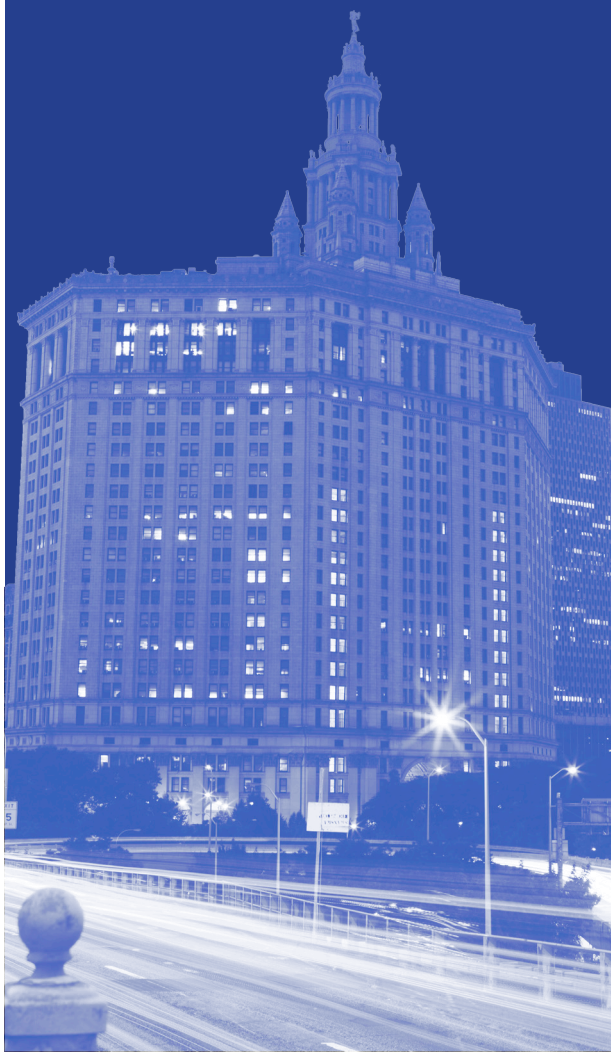

POLICY REPORT:

IMPROVING VOTING ACCESS FOR NEW YORKERS WITH DISABILITIES

New York City Public Advocate
Letitia James and
The Center for Independence of the
Disabled in New York

CID-NY

JULY 2014

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EXECUTIVE SUMMARY

New York City has over 900,000 people living and working with disabilities.[1] As the Public Advocate is a member of the Voter Assistance Advisory Commission ("VAAC") within the Campaign Finance Board ("CFB"), ensuring that all voters have access to the right to vote carries great importance. The VAAC was created to determine how voter's assistance can be improved in New York City, identifies groups who are underrepresented, and provides the CFB with recommendations. The Office of the Public Advocate and the Center for Independence of the Disabled in New York ("CIDNY") analyzed the current policies and practices of the New York City Board of Elections ("NYC BOE") and New York City Department of Education ("NYC DOE") to improve voting access at polling sites in schools for persons with disabilities. This investigation determined that many accessibility issues remain unresolved due to the lack of specific agreements and standards between the NYC BOE and NYC DOE. The authors recognize that there is a federal district court order that has been recently upheld by the 2nd Circuit Court of Appeals. This investigation led to recommendations that will further ensure that NYC BOE comply with the federal court order.[2]

Many of the accessible issues noted by the Office of the Public Advocate and CIDNY are issues that can be easily and inexpensively resolved. For example, at a recent poll site, the door leading to the accessible ramp was locked while the neighboring unlocked door did not allow access to the accessible ramp. The poll site simply needed to unlock the door leading to the accessible ramp. The common barriers identified include those allowing access to poll sites and privacy concerns at poll sites.

[1]Center for Independence of the Disabled, New York (CIDNY). (2011, June). Disability Matters: Unequal Treatment and the Status of People with Disabilities in New York City and New York State at p. 7 [Report] http://www.cidny.org/resources/News/Reports/Disability%20Matters.pdf

[2]United Spinal Ass'n v. Bd. of Elections in City of New York, 882 F. Supp. 2d 615, 617 (S.D.N.Y. 2012) aff'd sub nom. Disabled in Action v. Bd. of Elections in City of New York, 752 F.3d 189 (2d Cir. 2014). The Circuit Court affirmed the District Court's order finding that the NYC BOE restricted the right to vote for disabled voters. The Circuit Court affirmed that the NYC BOE must make all poll sites accessible on Election Day, have an ADA coordinator at each polling site that is trained by a third-party, mutually agreed to by the parties and an accessibility checklist to be used by the ADA coordinators on-site on Election Day.

EXECUTIVE SUMMARY (CONT'D)

Lack of accessible sites, including school sites, unfairly burdens the ability of voters with disabilities to exercise their right to vote. The Office of the Public Advocate in partnership with CIDNY determined how these issues might be remedied in anticipation of the Fall 2014 General Elections.

Source: CIDNY (June 2014). Poll Site Entrance on June 24, 2014. From the point of view of the unlocked and opened door: to the left of the photo is stairs, to the top of the photo is a ramp. The limited space from the opened door does not allow access to the ramp. Furthermore, the ramp was not ADA compliant due to the ramp's landing having insufficient space. Had the fourth door nearest to the accessible ramp be opened, or at least unlocked, the entrance would have been accessible, though the ramp would remain incompliant.

INTRODUCTION

NYC BOE makes use of roughly 1,400 polling sites in New York City, of which 700 are NYC DOE schools. CIDNY surveyed 80 polling sites in the five boroughs during the November 5, 2013 General Election. One-third of the sites surveyed during this election were New York City public school buildings. Of the public schools surveyed on this Election Day, 40 percent had barriers to accessibility.[3] The most common barriers found in this survey, as well as in past surveys, were inadequate signage, non-ADA compliant ramps, narrow doorways, and poorly placed voting machines.[4] Additionally, many voters with disabilities have agreed and named the same common barriers found in CIDNY's survey.[5] Furthermore, some poll sites were too small to properly accommodate Ballot Marking Devices ("BMD"), which were placed in corners and other locations that prevented voters from identifying or using the machines, thereby creating an unequal voting experience.[6]

The Office of the Public Advocate and CIDNY inspected six sites (Exhibit A) on June 24, 2014 during the federal primary election held in New York City on June 24, 2014 for the congressional seats in districts 3, 5, 7, 13 and 15. The Office of Public Advocate and CIDNY identified inadequate signage and poorly placed voting machines as the primary problems for voters with disabilities. In addition, the BMD machines and Americans with Disabilities Act ("ADA") privacy booths lacked the mandated clearance space for disability access and voter privacy. The sites visited also lacked adequate and clear signs indicating the location of the accessible ramps and voting room. Furthermore, we found paths that did not meet the ADA requirements.

[3]Center for Independence of the Disabled, New York (CIDNY). (2013, Nov. 5). November 5, 2013 Poll Site Survey Report at p. 1 [Report]. Retrieved from http://www.cidny.org/resources/Poll%20Site%20Survey%20Report%2011-5-2013.pdf
[4]November 5, 2013 Poll Site Survey Report at p. 1
[5]November 5, 2013 Poll Site Survey Report at p. 5
[6]November 5, 2013 Poll Site Survey Report at p. 6

INTRODUCTION (CONT'D)

Source: CIDNY (June 2014). Poll Site BMD Location on June 24, 2014. BMD is placed in accordance with the schematics; however this lacks sufficient clearance space.

For example, during one of the site visits, one poll coordinator informed BOE that the schematics at a particular polling site did not allow sufficient clearance for the BMDs consistent with ADA requirements. During the 2013 General Election, the same poll worker chose to deviate from the NYC BOE. According to the poll coordinator, the BOE representative insisted on strict compliance with the schematics and did not address the ADA issues.

APPLICABLE ACCESSIBILITY LAWS

Several provisions of law govern NYC BOE and NYC DOE's accessibility obligations in public schools. Under New York State Election Law § 4-104, the local board of elections may select a public school location as a polling site, and the local school district "must make available a room or rooms which the board or body designating such building [NYC BOE] determines are accessible to physically disabled voters . . . ." N.Y. Elec. Law § 4-104 (McKinney). Additionally, a New York State law passed in 2010 required that all poll sites within the state be surveyed for accessibility by the end of 2012. In addition to statutory obligations, in 2012, a federal district court ruled that NYC BOE had violated the ADA for failing to provide adequate access for voters with disabilities and ordered the NYC BOE to remedy accessibility barriers at its poll sites throughout New York City.

CURRENT STATE OF ACCESSIBILITY

Based on research conducted by the Office of Public Advocate and CIDNY, significant polling site accessibility issues remain, including failure to display proper and/or adequate signage and improper placement of voting machines. The cause of these issues can be traced back to the need for better coordination between NYC BOE and NYC DOE and leadership by the NYC BOE to ensure compliance. Ultimately, NYC BOE has the burden to ensure that NYC DOE complies with its instructions for Election Day protocol, and it does not appear that NYC BOE is fulfilling this obligation.

In discussions with the Office of Public Advocate, NYC BOE insists that it has made all of its sites accessible by either replacing inaccessible sites with accessible locations, or making permanent construction changes to existing poll sites with up to $1,716,354 of a federal grant distributed through the federal Help America Vote Act of 2002 (HAVA). According to information NYC BOE provided to the Office of the Public Advocate, to date, of the 700 public schools used as poll sites, NYC BOE has moved 70 inaccessible poll sites to 96 accessible poll sites and has completed construction with HAVA funding on 47 sites. NYC BOE also stated that 31 schools are due to receive HAVA funding in the near future for construction necessary to bring those schools into compliance. We were unable to determine whether barriers have been removed and ADA violations remedied as of this writing.

Schools Pending HAVA Funding

Construction

PS 178 – Kings County	PS 71 – Bronx	PS 146 – Queens
PS 309 – Kings County	PS 91 – Bronx	PS 63 – Queens
PS 67 – Kings County	PS 12 – Bronx	PS 104 – Queens
PS 20 – Kings County	JHS 127 – Bronx	PS 192 – Queens
PS 328 – Kings County	PS 53 Annex – Bronx	PS 171 – Queens
PS 292 – Kings County	JHS 135 – Bronx	PS 18 – Queens
PS 75 – Manhattan	PS 60 – Bronx	PS 191 – Queens
PS 32 – Bronx	PS 4 – Bronx	Bayside HS – Queens
MS 143 – Bronx	PS 26 – Bronx	PS 56 – Queens
Bronx Regional HS – Bronx	PS 61 – Bronx	PS 124 – Queens
IS 2 – Richmond County		

Source: New York City Board of Elections (June 2014).

CURRENT STATE OF ACCESSIBILITY (CONT'D)

Accessibility problems remain relating to how voting machines and materials are placed throughout voting sites, apart from necessary infrastructure improvements at school polling sites to bring them into compliance with the ADA. CIDNY and the NYC BOE indicated that there have been circumstances in which the voting machines and other materials have been moved around or even placed outside of the school by NYC DOE officials.

The aforementioned federal court ruling from 2012 held that the NYC BOE is required to provide ADA coordinators at each polling site during elections. It is unclear whether NYC BOE has provided ADA coordinators at each polling site for all elections since the court order. As a result of BOE's failure to comply with this court order -- along with its concomitant failure to clearly delineate responsibility -- there is continued confusion about whether NYC BOE or NYC DOE is responsible for issues such as accessibility of the school space and lack of space due to unexpected room assignment changes. NYC BOE has acknowledged that it has little to no control over sites once materials have been shipped to schools and it lacks adequate poll workers to inspect every voting site within the City at the time it opens.

Rather than sending workers to poll sites to ensure ADA compliance, NYC BOE sends information notices out to all principals and custodians of schools with poll sites concerning relevant information regarding Election Day procedures. Additionally, NYC BOE asserts that it relies on NYC DOE to notify its employees of the appropriate procedures. But even based on NYC BOE's own information, some NYC DOE employees stated that they were unaware of Election Day procedures, which create significant and serious accessibility concerns. NYC BOE has attempted to rectify this issue by notifying all principals and custodians by sending information packages at least a month prior to the June 24, 2014 federal primary election. The package included the following:

- Room assignment;
- Request that all pathways and the accessible entrance be unlocked and clear of obstructions;
- List of the equipment being provided, the schematics of the pathway to the designated room; and
- Schematics of the designated room with the exact measurements and placements of the machines and other polling material.

One of NYC BOE's primary goals by sending these packages is to deter last minute changes to the schematics of poll sites. It claims that the packages will help ensure that all principals and custodians will be fully informed ahead of Election Day and that there will be ample time to bring any concerns to the attention of NYC BOE. The NYC BOE received 17 requests from NYC DOE to change the designated poll room for the 2014 federal primary, and five of those requests were accommodated.

RECOMMENDATIONS

All voters must have access to poll sites. Implementation of a few measures can ensure that all voters have an equal and fair opportunity to access their right to vote in future elections.

I. MOU Between NYC BOE and Designated Poll Sites

A Memorandum of Understanding ("MOU") between the NYC BOE and all designated polling sites must be implemented -- including those at NYC DOE facilities. This has been recommended as a "best practice" by the New York State Board of Elections.[7] An MOU would ensure that the obligations of the NYC DOE and the NYC BOE are made clear in general and as to each specific poll site. Though a federal court order requires the NYC BOE to bring its polling sites into compliance with the ADA and all poll sites must be accessible. The MOU should stipulate that personnel at poll sites on Primary and Election Days allow use of the rooms specified by NYC BOE unless a change is otherwise approved.

Source: CIDNY (June 2014). Poll Site BMD Location on June 24, 2014. No sign outside indicating where the accessible entrance is located.

The MOU must clearly require pathways to be clear of obstructions, doors to access the poll site must be unlocked during polling hours, and poll equipment must remain in the designated room for the entire duration of the Election Day. The MOU should further identify who bears the burden to ensure that the poll site is in compliance with the ADA, federal and state election laws. The MOU should include a provision allowing NYC DOE to file a room change request with NYC BOE at least seven days prior to the date of the election with a reason justifying the request.

[7] New York State Board of Elections. (undated). Non-Technical Guide Describing Standards for Poll Site Accessibility at p. 113 [Report]. Retrieved from http://www.cidny.org/resources/Non-Technical%20Guide%20Describing%20Standards%20for%20Poll%20Site%20Accessibility.pdf

RECOMMENDATIONS (CONT'D)

NYC BOE should then consider the request and make its determination based on whether another acceptable room is available and would permit the polling site to be fully ADA compliant. BOE should grant usage of that room and provide a new schematic that takes the configuration of the selected space into account, if another room is acceptable and compliant with the ADA. NYC BOE should provide reasoning if room change requests are denied. The MOU should also state a consequence for failing to comply with the terms of the MOU, determined and agreed to by both the NYC BOE and NYC DOE. By having an agreed MOU between each designated poll site and the NYC BOE, NYC BOE is more likely to be in compliance with NYS Election Law § 4-104 and the ADA.

Having a written document between both parties should eliminate the issues of unexpected room changes and barriers and follow the schematics set by NYC BOE. Furthermore, an MOU would place the burden for each requirement on a specific party; whether that is the BOE, DOE, school principal, poll coordinator, etc. Both the MOU and 2012 federal court order ensure that the rights of voters are protected. If the NYC BOE schematics are accurate, up to date and followed, then there would be no barrier issues and privacy issues due to limited space; the two main issues that voters with disabilities currently face beyond the inaccessibility of school facilities. Therefore, since many issues identified by voters with disabilities would be eliminated by the use of the designated room and ensuring that the accessible path remains accessible, these terms can be clearly placed on specific parties and thus place accountability.

Source: CIDNY (June 2014). Poll Site Main Voting Entrance on June 24, 2014. Two conflicting signs indicating where the accessible entrance is.

RECOMMENDATIONS (CONT'D)

II. Poll Site Inspections on Election Day

NYC BOE should increase the number of poll inspectors that visit poll sites to confirm and remedy, if necessary, any violations. If NYC BOE increases the number of inspectors that are sent out prior to the election and within the first few hours of Election Day, then the violations could be corrected more quickly and the volume of violations corrected could increase. For example, if the room in a school being used for voting is one other than the one designated by NYC BOE, there is an advantage for this being corrected prior to the opening of the polling station rather than the violation being brought to the attention of the NYC BOE during the polling hours when the room assignment cannot be corrected.

Currently, the number of NYC BOE inspectors varies depending on the election and the number of sites that are used. Furthermore, having more inspectors check that barriers are not blocking the accessible pathway in the course of the day is beneficial. In current practice, the poll coordinator at each site or their designee must check the pathway for obstructions and other such violations every two hours using a court-ordered checklist developed by CIDNY. NYC BOE and NYC DOE should work together to ensure that the sites are compliant with all laws. NYC DOE could also assist with the inspections by also checking for barriers and other such violations throughout the day to ensure a safe school environment for those schools used as poll sites.

III. Increased Training and Designated ADA Coordinators

NYC BOE should also improve the training that the poll inspectors receive to enable the inspectors to evaluate as many sites as possible on Election Day. The role of the NYC BOE poll inspectors can be strengthened by NYC BOE building a relationship with the New York City Campaign Finance Board's Voter Assistance Advisory Commission (this Board now encompasses the Voter Assistance Commission by creating the Voter Assistance Advisory Committee), and perhaps the poll workers being trained by the Board. In addition to further training of poll inspectors, NYC BOE should mandate that ADA coordinators be on site during all elections as required by the 2012 federal court order.

IV. Outreach Programs on Voting Rights

NYC BOE should increase its outreach programs to ensure that all voters are aware of their voting rights. Poll workers must increase awareness of the BMDs, their accessibility features and the fact that the machines are available to everyone who wishes to use them. Further, voters should be informed of whom to inform if their rights have been violated so that the violation can be remedied in a timely manner. All NYC BOE poll workers and inspectors should be fully informed on all voting rights and learn to identify all disabilities, not only those that are visibly apparent. NYC BOE should include information on how to report a complaint on the main page of their website, as well as at the poll sites.

RECOMMENDATIONS (CONT'D)

V. Clear and Accurate Schematics

The Office of the Public Advocate and CIDNY observed first-hand issues with the placement of voting machines and other materials in accordance with the schematics provided to the poll coordinators by NYC BOE. From the poll sites visited on June 24, 2014 for the federal primary, there were poll coordinators stating that they were following the exact schematic provided for the voting machines, despite there being concerns. For example, there was a BMD machine placed in a location according with the schematics, even though there was merely half the mandated clearance space for a wheelchair. NYC BOE states that the schematics are created by CIDNY-trained surveyors. Therefore, it is unknown whether the schematics are inaccurate or whether the poll coordinators are having difficulty interpreting them correctly. Regardless, this is an issue that needs to be corrected to deter further concerns if NYC BOE would like for the poll coordinators to continue to abide by the schematics provided.

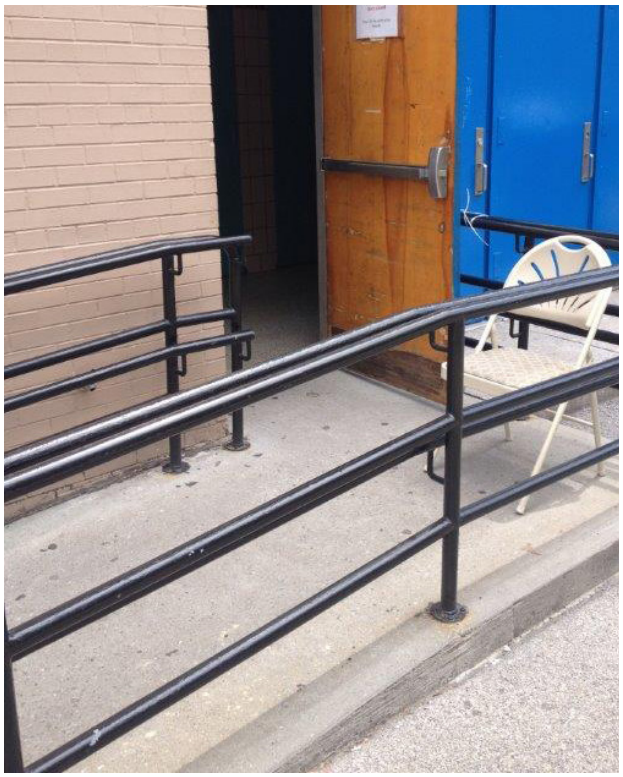
VI. Exit and Poll Surveys to Ensure Accountability

In addition to the court ordered assessment by a third party architectural expert, we encourage NYC BOE to conduct exit surveys for voters with disabilities as they exit the poll site. The survey should include questions of how the voters felt regarding their voting experience, if they were able to easily access the poll site, and whether they have any suggestions for increasing equality and access to voting in the future.

Completed NYC BOE Poll Site Field surveys should be sent to the Office of the Public Advocate to ensure that NYC BOE is checking all sites for accessibility compliance. Further, all poll sites need to be reassessed for accessibility on an annual basis.

CONCLUSION

Voting is a fundamental right in our electoral democracy and the means by which voters can communicate their concerns to their government. With over 900,000 people living in New York City with disabilities, the NYC BOE must resolve the issues and impediments that confront voters with disabilities. Failing to do so would disenfranchise a significant part of our community and discourage the disabled voters to be an active participant in their government. There are various organizations that NYC BOE can work with to ensure that these issues are addressed. Furthermore, NYC BOE should work with the City's Independent Living Centers to specifically address concerns raised by voters with disabilities. Ultimately, for polling sites located in NYC DOE schools, it is the responsibility of NYC BOE to ensure that their sites be accessible under NY Election Law § 4-104. Having an MOU between NYC BOE and the NYC DOE public schools used as poll sites, increased inspectors, comprehensive training and stronger outreach would greatly eliminate a large portion of concerns raised by voters with disabilities and would strengthen our electoral process to ensure fairness, transparency and equity.



Source: CIDNY (June 2014). Poll Site Accessible entrance on June 24, 2014. Chair on accessible ramp restricting the clearance space or a wheelchair to access the door.

Further, the Office of the Public Advocate will be closely monitoring the November 4, 2014 General Election for compliance. The Office of the Public Advocate in partnership with CIDNY will be observing sites that have historically been violating the ADA.

ACKNOWLEDGEMENTS

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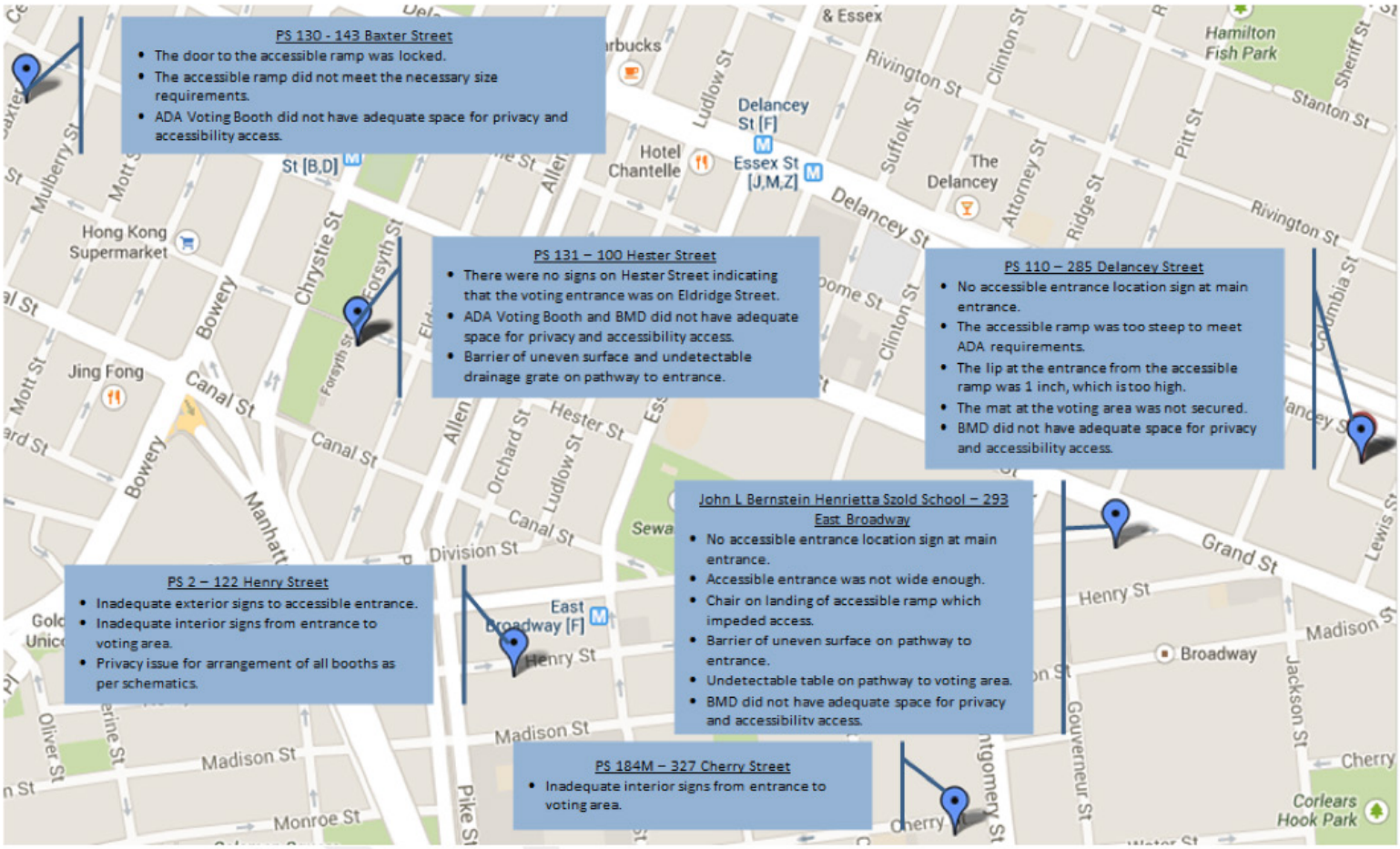
Exhibit A



Source: Google Maps (2014, June 30). Google Maps. [Webpage] maps.google.com

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