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November 27, 2019

Via ECF

The Honorable Deborah A. Batts  
United States District Judge  
Southern District of New York  
500 Pearl Street, Room 2510  
New York, NY 10007-1312

**Re: *United Spinal Association et al. v. Board of Elections in the City of New York et al.*, Case No. 10-cv-5653 (DAB) (HBP): Final Progress Letter**

Dear Judge Batts:

Plaintiffs write pursuant to the Court's January 4, 2017 order (ECF No. 181) to update the Court on the New York City Board of Election's ("BOE") compliance with the Court's remedial order (October 18, 2012 Order, ECF No. 119; modified at October 13, 2013 Order, ECF No. 130) ("the Remedial Order") and to recommend that the Court permit the Remedial Order to expire as scheduled on December 31, 2019.

**1. When Plaintiffs Filed This Lawsuit in 2010, Significant and Pervasive Poll Site Barriers Prevented Voters with Disabilities From Voting Privately and Independently**

When Plaintiffs filed this lawsuit in 2010, poll workers received little to no accessibility training; ramps were missing, too steep, or made of dangerous materials such as crumbling plywood; and signage was missing or inaccurate. See Plaintiffs' Complaint, July 26, 2010, ECF No. 1 ¶¶ 52-55, 72-78; see also *Disabled in Action v. Bd. of Elections*, 752 F.3d 189, 192-93, 199-200 (2d Cir. 2014). As a result, voters with disabilities experienced significant difficulty in accessing the polls to cast their votes. As detailed in Plaintiffs' Complaint, at least one voter was unable to enter his poll site with his scooter due to stairs at the front entrance, and had to improvise a ramp with pieces of plywood that broke under the weight of his scooter. See Plaintiffs' Complaint ¶¶ 73-75. He ultimately entered his poll site only after bystanders lifted him up the stairs, and then had to exit the polling place via another improvised ramp made from a folding table. *Id.* ¶¶ 73-78. Another voter was unable to get up the steps to his polling place and was forced to vote on the sidewalk outside, with no guarantee that his vote would even be counted. *Id.* ¶¶ 60-64. Barriers persisted throughout the first several years of monitoring, including temporary ramps that were never delivered or delivered but not set up. See

Plaintiffs' Letter to the Court, March 4, 2016, ECF No. 161 at 4-5; Plaintiffs' Letter to the Court, December 1, 2016, ECF No. 174 at 3-4. Even as late as November 2016, a lip at the door prevented one voter from getting into her poll site independently, and she had to ask others to lift her wheelchair over the lip to get into her poll site. Declaration of Cheri Rosen, Jan. 19, 2017, ECF No. 186 ¶¶ 4-8. This Court found, and the Second Circuit agreed, that these conditions denied New Yorkers with disabilities meaningful access to the BOE's election program and violated Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. See August 8, 2012 Order, ECF No. 105 at 30; *Disabled in Action*, 752 F.3d at 202.

## **2. Since 2010, the BOE Has Significantly Improved Poll Site Accessibility**

In the seven years since the Court issued its Remedial Order, the BOE has made significant progress to ensure the physical accessibility of polling places throughout New York City. Plaintiffs have observed a marked decrease in both the number and severity of accessibility-related election day complaints, and a corresponding increase in the BOE's day-of responsiveness to these complaints. Although the BOE continues to face certain challenges—many of them significant, as set forth below, including the inaccessibility of the majority of New York City public schools—Plaintiffs believe that the BOE should move forward without Plaintiffs' and the Court's continued oversight.

### ***a. The BOE Has Increased its Internal Capacity to Address Accessibility Concerns Through Hiring and Training***

As directed by the Court, the BOE has trained its surveyors and poll workers in poll-site accessibility, has utilized election-day accessibility monitors, and has analyzed complaints from those monitors and the public to identify and solve problems for future elections. See October 18, 2012 Order, ECF No. 119 ¶¶ 3, 7, 17; June 10, 2016 Order, ECF No. 167. As a result of Plaintiffs' monitoring of the Remedial Order, the BOE has also hired two full-time accessibility coordinators and arranged intensive trainings for its external ramp vendors. See BOE's Letter to the Court, Dec. 2, 2019, filed concurrently. Additionally, the BOE has worked with the Court-appointed expert, Evan Terry Associates, LLC ("ETA") to produce a series of accessibility-related poll worker training videos<sup>1</sup> and analyze the BOE's election-day performance, and has contracted with multiple third-party experts to train the BOE's own poll site worker trainers on accessibility issues. Consequently, Plaintiffs have observed a decrease in the number and severity of complaints from voters with disabilities on election days. This suggests that the BOE has indeed increased its capacity to address these issues, which was the goal of the Remedial Order.

### ***b. ETA is on Track to Develop an Accessibility Plan for Every Active Poll Site by the End of the Year***

The Remedial Order also directed the BOE, in conjunction with ETA, to survey and develop an election-day accessibility plan for every poll site it uses. See October 13, 2013 Order, ECF No. 130 ¶¶ 8-11. Currently, all but one of the nearly 1,300 active

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<sup>1</sup> ADA Poll Worker Training Videos, BOARD OF ELECTIONS IN THE CITY OF NEW YORK, <https://www.vote.nyc.ny.us/html/workers/adapollworkertraining.shtml>.

poll sites in New York City are now on track to have a completed survey and plan.<sup>2</sup> To date, ETA has produced final reports for 1249 out of 1269 active poll sites. The BOE has assured Plaintiffs that 100% of active poll sites will have final ETA reports by the end of the current monitoring period, December 31, 2019, and has agreed to provide final confirmation of completion before the end of the year.

The BOE has implemented the temporary remedies in each poll site plan on a rolling basis as they have become available since 2015. As noted above, Plaintiffs have observed that the BOE's capacity for implementing these plans has increased over time, as problems are worked out and snags are incorporated into plans for the next election. Plaintiffs also note that the BOE's relationship with the New York City Department of Education ("DOE") has improved, such that there are fewer significant problems like school principals refusing to allow poll workers to use assigned rooms. See Plaintiffs' Letter to the Court, Aug. 24, 2015, ECF No. 156 at 30. All of these factors have contributed to a decrease in the number and severity of complaints from voters with disabilities on election days.

### **3. The BOE Continues to Face Poll-Site Accessibility Challenges, Including Some that are Beyond the Scope of This Order**

However, the BOE continues to face challenges in creating poll-site accessibility on election days. Some poll site coordinators continue to resist utilizing the accessible floor plans, despite routine training (and election-day admonition) to the contrary. The signage that the BOE uses to indicate accessible paths is still imperfect, particularly during rain and wind, although it has gradually improved through measures such as the creation of a one-page signage guide distributed to poll workers at every poll site and the use of reusable zip ties to post the signs more securely. The BOE will need to continue to work on these problems.

Some of the challenges that the BOE faces go beyond the scope of this remedial order yet still impact poll site accessibility. For example, the underlying inaccessibility of most DOE schools forces the BOE to spend significant time and resources on temporary, election-day remedies. The majority of active poll sites that are located in DOE and New York City Housing Authority ("NYCHA") facilities would be greatly improved by the provision of permanent accessibility solutions—particularly ramps, handrails, and signage—rather than relying on the BOE's temporary solutions, which are often more costly and burdensome and only provide access to buildings on election days. Although ETA has identified such permanent solutions for every site pursuant to the Remedial Order (October 13, 2013 Order, ECF No. 130 ¶ 13), those entities have not engaged in any systemic effort to implement those solutions. This resistance to permanent solutions leaves voters with temporary solutions—currently utilized in more than 95% of active poll sites—that are rarely as sturdy or perfectly finished as permanent solutions would be, and require the BOE to continually set up and then take away accessible features from buildings that should be accessible every day.

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<sup>2</sup> ETA found that one active poll site, Fairview Owners Corp. in Queens, is inaccessible, even with temporary accessibility measures. The BOE is currently exploring its options for this site, including working with the property owner to install permanent accessibility solutions or relocating election districts. Plaintiffs request that the BOE include the updated status of Fairview Owners Corp in its end-of-year letter to the Court confirming the completion of all final poll site surveys.

Additionally, the DOE often still fails to fully cooperate with the BOE by refusing to clear out furniture from poll rooms or unlock accessible entrances. See Exhibit A, Excerpts from the BOE's Election Incident Reports, Feb. 26, 2019. Further, the election day poll worker salaries set by the City of New York are too low to attract sufficient candidates and prevent attrition, leading to poll worker shortages on election days.

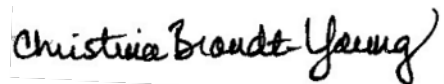
Although these problems impact the ability of New Yorkers with disabilities to vote, their solutions lie outside the scope of the Remedial Order and will need to be resolved independently thereof.

#### **4. Conclusion**

Despite these challenges, the BOE has improved poll site accessibility over the past seven years of monitoring. Since 2017, Plaintiffs have not been informed of any voter being unable to access a poll site in ways that were common before the Remedial Order was made. While glitches remain and poll sites in New York City still face accessibility challenges—and will continue to do so unless the DOE commits to remedying the systemic inaccessibility of its public schools—it is time to find out whether the BOE's seven years of cultural and workflow shifts around accessibility will be maintained without continued Court oversight.

For the foregoing reasons, Plaintiffs respectfully recommend that this Court allow the Remedial Order to expire on December 31, 2019, **pending confirmation by the BOE to the parties and the Court that the BOE and ETA have finalized reports for all active poll sites by that date.**

Respectfully,



Christina Brandt-Young  
Disability Rights Advocates  
*Attorney for Plaintiffs*

# EXHIBIT A



Special Election Public Advocate - 02/26/2019

City	HASNO	Site Name	Address	Zip Code	Complaint Source	Complaint Comment	Complaint Solution	Borough Solution	
<b>Special Election</b>			<b>Queens</b>					<b>02/26/2019</b>	
Queens	10735	PS 161-Arthur Ashe School	101-33 124 Street	11419	Accessibility Complaint Log	The Accessible (back) door had alarms that were not turned off, making the door inaccessible as it had to remain shut.	Coordinator changed directional signage to direct all voters to the main entrance. BOE was notified of DOE issue.	BOE Poll Site Department will remind school that designated entrances must be unlocked with alarm turned off in future elections.	
Queens	10735	PS 161-Arthur Ashe School	101-33 124 Street	11419	ADA Checklist	No Accessibility Comment Reported	Not Applicable	Not Applicable	
Queens	10735	PS 161-Arthur Ashe School	101-33 124 Street	11419	Coordinator's Journal	No Accessibility Comment Reported	Not Applicable	Not Applicable	
Queens	10736	Young Womens Leadership School-Queens	150-91 87 Road	11432	Accessibility Complaint Log	Not Yet Received	Not Yet Received	Not Yet Received	
Queens	10736	Young Womens Leadership School-Queens	150-91 87 Road	11432	ADA Checklist	No Accessibility Comment Reported	Not Applicable	Not Applicable	
Queens	10736	Young Womens Leadership School-Queens	150-91 87 Road	11432	Coordinator's Journal	No Accessibility Comment Reported	Not Applicable	Not Applicable	



Special Election Public Advocate - 02/26/2019

City	HASNO	Site Name	Address	Zip Code	Complaint Source	Complaint Comment	Complaint Solution	Borough Solution
<b>Special Election</b>					<b>Queens</b>			<b>02/26/2019</b>
Queens	Q0100	PS 130	200-01 42 Avenue	11361	Accessibility Complaint Log	No Accessibility Comment Reported	Not Applicable	Not Applicable
Queens	Q0100	PS 130	200-01 42 Avenue	11361	ADA Checklist	No Accessibility Comment Reported	Not Applicable	Not Applicable
Queens	Q0100	PS 130	200-01 42 Avenue	11361	Coordinator's Journal	ADA privacy booths had to be adjusted due to floor plan not showing 2 6' Table	This incident has been reported to BOE.	BOE will send surveyors to account for addition objects is the room and revise the floor plan if necessary prior to the upcoming election.
Queens	Q0102	PS 162-John Golden	201-02 53 Avenue	11364	Accessibility Complaint Log	Lights on a privacy booth is diming out.	Coordinator moved the booth with the poor light and sated "plenty of other booths"	BOE will ensure the batteries to be changed and light to be tested prior to the upcoming election.
Queens	Q0102	PS 162-John Golden	201-02 53 Avenue	11364	ADA Checklist	Lunch room monitors moved desks and carts that blocks ADA Privacy booth several times.	The coordinator had to clear them up several times.	BOE Poll Site Department will contact the principal at this facility and remind them of ADA and election requirements.
Queens	Q0102	PS 162-John Golden	201-02 53 Avenue	11364	Coordinator's Journal	The accessibility door locks automatically. A permanent doorbell should be installed because BOE's doorbell is not loud enough when blower/HVAC is turn on.	This incident has been reported to BOE.	BOE Poll Site Dep't will remind school that school to ensure the access to the designated voting area for future elections as explicitly informed. Accessibility clerk will be reminded to keep door bell receiver close by the door.



Special Election Public Advocate - 02/26/2019

City	HASNO	Site Name	Address	Zip Code	Complaint Source	Complaint Comment	Complaint Solution	Borough Solution
<b>Special Election</b>			<b>Queens</b>				<b>02/26/2019</b>	
Queens	Q0119	PS 188-Kingsburry	218-12 Hartland Avenue	11364	Accessibility Complaint Log	No Accessibility Comment Reported	Not Applicable	Not Applicable
Queens	Q0119	PS 188-Kingsburry	218-12 Hartland Avenue	11364	ADA Checklist	No Accessibility Comment Reported	Not Applicable	Not Applicable
Queens	Q0119	PS 188-Kingsburry	218-12 Hartland Avenue	11364	Coordinator's Journal	No Accessibility Comment Reported	Not Applicable	Not Applicable
Queens	Q0121	PS 84-Steinway	22-45 41 Street	11105	Accessibility Complaint Log	1. Tables, chairs, toys, etc. obstructed pathway. 2. Cafeteria tables blocked BMD.	Coordinator removed all obstruction from pathway.	BOE Poll Site Department will remind the school to ensure the designated voting area for future elections as explicitly informed prior to the upcoming election.
Queens	Q0121	PS 84-Steinway	22-45 41 Street	11105	ADA Checklist	No Accessibility Comment Reported	Not Applicable	Not Applicable
Queens	Q0121	PS 84-Steinway	22-45 41 Street	11105	Coordinator's Journal	1. Cafeteria tables blocked BMD. An uncooperative custodian asked, "well what do you want me to do with them", after the coordinator asked them to remove them. 2. Missing information tables.	1. Privacy booths were moved into its proper space. ED/AD tables were in a side room providing more space for privacy booths.	BOE Poll Site Department will remind the school to ensure the designated voting area for future elections as explicitly informed prior to the upcoming election.