



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

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DIVISION OF SOCIAL JUSTICE  
CIVIL RIGHTS BUREAU

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**VIA EMAIL**

Dear Colleague:

The New York State Office of the Attorney General (“OAG”) is committed to protecting the rights of all eligible voters to participate fully and meaningfully in the electoral process. During this upcoming election, it is critical to preserve all means by which New Yorkers may exercise their right to vote.

As it has done every year since 2012, OAG currently operates a statewide hotline to assist New Yorkers with a wide variety of issues encountered during the voting process. For the upcoming election, OAG anticipates an increase in voter turnout,<sup>1</sup> making it crucial to manage long lines at poll sites and support voters with disabilities at such sites. These issues are particularly critical given that more than 20% of New Yorkers have a disability,<sup>2</sup> including nearly one million people in New York City.<sup>3</sup>

Our office writes to provide guidance to local Boards of Elections in New York (“BOEs”) that are managing poll sites with long lines, on assisting voters who have disabilities so that they may cast their ballot safely and effectively consistent with applicable law and best practices. Our office issued similar guidance in advance of the 2020 general election.

**Legal Obligations**

As you are aware, both federal and New York State law require that voters with disabilities be provided with reasonable accommodations to ensure meaningful access to voting.<sup>4</sup> This

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<sup>1</sup> Adam Gabbatt, *US midterm elections: early voting on track to match 2018 record*, THE GUARDIAN (Oct. 23, 2022), <https://www.theguardian.com/us-news/2022/oct/23/us-midterm-elections-early-voting>.

<sup>2</sup> Centers for Disease Control and Prevention, Disability & Health U.S. State Profile Data for New York (Adults 18+ years of age), <https://www.cdc.gov/nbddd/disabilityandhealth/impacts/new-york.html>.

<sup>3</sup> Office of the New York State Comptroller, *Employment Trends for People with Disabilities in New York City* (Oct. 2019) (citing U.S. Census data that “there were 930,100 people with disabilities living in New York City in 2017, representing 11 percent of the total population”), <https://www.osc.state.ny.us/files/reports/osdc/pdf/report-7-2020.pdf>.

<sup>4</sup> With regard to federal law, both Title II of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973 prohibit discrimination on the basis of disability, which prohibition includes the affirmative

obligation requires more than an “assurance that voters with disabilities are able to cast a ballot in some way, shape, or form.”<sup>5</sup> In other words, voters with disabilities “need not prove that they have been disenfranchised or otherwise completely prevented” from accessing the ballot box to establish a violation of the law,<sup>6</sup> only that they have been denied “meaningful access to the benefit that [the BOE] offers.”<sup>7</sup> Here, the relevant benefit is not simply access to the franchise, but the myriad ways in which New Yorkers are permitted to exercise this right, including by voting in person.<sup>8</sup> Therefore, although absentee ballot access has been expanded throughout the COVID-19 pandemic,<sup>9</sup> such access does not obviate the need for BOEs to provide reasonable accommodations to voters on-site at polling places, including those with long lines, in order to provide voters with disabilities the meaningful access to which they are entitled.<sup>10</sup>

BOEs must also consider a range of other statutory and regulatory requirements that bear on voters’ experiences at the polls, including ensuring that there are sufficient “voting systems, election workers and election resources” at each polling site.<sup>11</sup> With regard to long lines in particular, for any polling sites where voters are waiting longer than 30 minutes, BOEs must “deploy such additional voting equipment, election workers and other resources necessary to reduce the wait time to less than 30 minutes as soon as possible but no later than the beginning of the next day of early voting.”<sup>12</sup>

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obligation to make reasonable accommodations. See 42 U.S.C. § 12132; 28 U.S.C. § 794(a); *Disabled in Action v. Bd. of Elections in City of New York*, 752 F.3d 189, 197 (2d Cir. 2014). With regard to New York State law, local Boards of Election must, among other things, ensure that “[e]ach polling place shall be accessible to citizens with disabilities and comply with the accessibility guidelines of the Americans with Disabilities Act of 1990,” N.Y. Elec. Law § 4-104 (McKinney), and “conspicuously post” “a voter’s bill of rights describing voter’s rights under applicable federal and state law, including the right of accessibility and alternate language accessibility,” *id.* § 8-104. The State Board of Elections has also established new supports for voters with visual impairments seeking an absentee ballot. See <https://absenteeballot.elections.ny.gov/home/accessible>.

<sup>5</sup> *United Spinal Ass’n v. Board of Elections in City of New York*, 882 F. Supp. 2d 615, 623 (S.D.N.Y. 2012).

<sup>6</sup> *Hernandez v. New York State Bd. of Elections*, No. 20-CV-4003, 2020 WL 4731422, at \*7 (S.D.N.Y. Aug. 14, 2020) (alterations and internal quotation marks omitted).

<sup>7</sup> *Disabled in Action*, 752 F.3d at 198–99.

<sup>8</sup> *Id.* at 199; see also U.S. Dep’t of Justice, Civil Rights Division, Disability Rights Section, The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities (“While absentee balloting can be offered to voters with disabilities, it cannot take the place of in-person voting for those who prefer to vote at the polls on Election Day. Any alternative method of voting must offer voters with disabilities an equally effective opportunity to cast their votes in person.”), [https://www.ada.gov/ada\\_voting/ada\\_voting\\_ta.htm](https://www.ada.gov/ada_voting/ada_voting_ta.htm).

<sup>9</sup> N.Y. Election Law § 8-400(1)(b) (permitting a voter to apply for an absentee ballot if they are “unable to appear personally at the polling place of the election district in which they are a qualified voter because there is a risk of contracting or spreading a disease that may cause illness to the voter or to other members of the public”). Although certain absentee canvassing procedures have been challenged in state court, see *Amedure v. New York*, Index No. 2022-2145 (N.Y. Sup. Ct. 2022), the orders in that case have been stayed pending appeal and therefore currently have no legal effect, see *Amedure v. New York*, Case No. 2022-cv-1955 (N.Y. App. Div. 2022).

<sup>10</sup> *Westchester Disabled On the Move, Inc. v. Cty. of Westchester*, 346 F. Supp. 2d 473, 478 (S.D.N.Y. 2004) (“Failing to ensure that disabled individuals are able to vote in person and at their assigned polling places—presumably the most commonly used method of voting—could not reasonably be construed as consistent with providing ‘meaningful access’ to the voting process . . .”).

<sup>11</sup> New York Elec. Law § 4-104(6).

<sup>12</sup> 9 NYCRR 6210.19 (d)(1).

## **Best Practices**

There are a range of ways for BOEs to meet their legal obligations to provide meaningful access to voters with disabilities.<sup>13</sup> Because the law does not require the same accommodation for every voter with a disability, BOEs should instruct poll workers to conduct individualized assessments as to the needs of each voter with a disability, to determine the appropriate accommodation.<sup>14</sup> Accordingly, the response will depend on the circumstances. Nevertheless, OAG offers below a non-exhaustive list of best practices to consider in assisting voters with disabilities and implementing reasonable accommodations:

- Instructing one or more poll workers to monitor lines and announcing themselves as someone who can provide an accommodation to voters with disabilities;
- Providing clear and language-accessible signage throughout the polling location to inform voters with disabilities of the availability of accommodations;
- Providing voters with disabilities with chairs if they are unable to stand for long periods of time, wheel chairs or walkers, and assisting such voters as necessary as the line moves forward;
- Ensuring access to restrooms, including through “Port-a-Potties” if necessary;
- Implementing “placeholders” to wait in line in lieu of voters with disabilities;
- Maintaining separate, expedited lines for voters with disabilities; or
- Escorting voters with disabilities to the front of the line.<sup>15</sup>

In providing reasonable accommodations, BOEs should keep in mind the need to offer an accommodation that enables voters with disabilities to cast their ballots with privacy. Furthermore, accommodations should be implemented consistent with public health guidance concerning the COVID-19 pandemic, particularly given that voters with disabilities may in some instances be at higher-risk of severe illness if they become infected.<sup>16</sup>

Finally, to reduce crowding and lines, including for the benefit of voters with disabilities, BOEs may also consider providing additional staff and voter stations at poll sites, and extending early voting hours. Such changes should also be implemented in a manner that preserves equitable access to the franchise.

We continue to encourage New Yorkers who experience or witness issues at the polls to contact the NYAG’s Election Protection Hotline by either visiting <https://electionhotline.ag.ny.gov/> or by calling (866) 390-2992.

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<sup>13</sup> *Disabled in Action*, 752 F.3d at 197 (“A public entity may comply with the relevant requirements through such means as redesign or acquisition of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, and alteration of existing facilities.” (alterations omitted) (quoting 28 C.F.R. § 35.150(b)(1)).

<sup>14</sup> *Martinez v. Cuomo*, 459 F. Supp. 3d 517, 525 (S.D.N.Y. 2020).

<sup>15</sup> BOEs may, of course, also consider the extent to which providing curbside voting is an appropriate accommodation.

<sup>16</sup> Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19): People with Disabilities (“Most people with disabilities are not inherently at higher risk for becoming infected with or having severe illness from COVID-19. However, some people with disabilities might be at a higher risk of infection or severe illness because of their underlying medical conditions.”).

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