

# BARD COLLEGE

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*A College of the Liberal Arts and Sciences*

*Executive Vice President and Director  
Center for Civic Engagement*

April 30, 2021

The Honorable Marcus Molinaro  
County Executive  
Dutchess County

Re: Violations of Election Law by Dutchess County Board of Elections  
Regarding District 5 in Red Hook

Dear County Executive Molinaro:

I am writing on behalf of Election@Bard and in consultation with Caring Majority Rising to call your attention to the ongoing misconduct of the Dutchess County Board of Elections (the “Board”) in breaching its duty to designate a polling location in District 5 in Red Hook that complies with all applicable law, and particularly with the Americans With Disability Act. In so doing, the Board is undercutting your Think Differently initiative that serves as a moral and practical model throughout New York State.

As you know, the Bertelsmann Campus Center at Bard (“Bard”) successfully served as a polling location for District 5 in Red Hook on November 3, 2020. It did so pursuant to the Order of October 23, 2020 of Judge Rosa, following a lawsuit outlining numerous legal challenges that have been shared with you about the unsuitability of St. John’s Barrytown and advantages of the Bard site for student voters, the Bard community, and disabled voters. Since then, the Board failed to meet its statutory deadline of March 15, 2021 for designating a polling location for District 5. Instead, the Board has fomented confusion by issuing Voting Cards informing District 5 voters that “YOUR POLLING PLACE HAS BEEN CHANGED” to St. John’s Episcopal Church (when no such designation has been made, timely or otherwise) while the Board’s website states that both Bard and St. John’s Episcopal Church (the “Church”) are the locations for District 5. Election@Bard will address these issues in due course.

This letter focuses on the Board’s ongoing disregard for the Americans With Disabilities Act (“ADA”), and thus by extension for persons with disabilities in District 5. The Board’s ongoing insistence upon the Church ignores the Church’s track record of non-compliance with the ADA regarding parking, main entrance ramp and restrooms.<sup>1</sup>

I know you are familiar with the long history of public complaints about the inaccessibility of the Church for students, faculty, and members of the Bard Community, and for the disability rights community alike, many of which appear at <https://cce.bard.edu/community/election/voting-rights/>

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<sup>1</sup> The Church’s restrooms were non-compliant with the ADA prior to recent construction at the Church. Due to the Board’s failure to conduct the requisite post-construction survey, we do not know whether there are now compliant restrooms.

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In the most recent litigation, Commissioner Haight tried to slough off the issue of noncompliance with the ADA by saying:

Suffice it to say that the issues raised by Bard's employees are ones that intrinsically require a close assessment of the facts. Sure, it's *possible* that there is a technical ADA issue that the Board of Elections has not yet noticed at a designated polling place, but how is the Court supposed to pass on this when Petitioners have not raised this claim with the Board of Elections. [emphasis in original]

It is the Board's responsibility to ensure ADA compliance for the voting locations it designates. I ask you, the County Executive dedicated to protecting the interests of persons with disabilities in District 5: Would those voters regard the lack of public transportation, handicap parking, entrance accessibility and accessible restrooms as mere "technical" deficiencies?

I urge you to review the Church's "ADA Checklist for Polling Places Survey Form" dated March 11, 2019, available here (found on page 73 of our filing: <https://tools.bard.edu/wwwmedia/files/8850342/79/FullFiling.pdf>). It reeks of contempt for the law it purports to cover. It thumbs its nose at 17 of the 37 survey questions with the entry "N/A." The surveyor failed to answer the entire ramp compliance section, although the ramp is the only way to enter the building. The Board should be held to account and made to disclose:

- Who reviewed this "Survey?"
- Who authorized the surveyors to ignore the 17 questions left "N/A?"
- Who advised the Board that these questions need not be answered?
- What training did the surveyors have regarding the applicable requirements of the ADA?
- Did the Board ask the surveyors why they felt those 17 questions were "N/A?" If not, why not? If so, what did the surveyors say?
- Did the surveyors review the "ADA Checklist for Polling Places" published by the U.S. Department of Justice in preparing the Survey? <https://www.ada.gov/votingchecklist.pdf>
- Did the Board review this ADA Checklist after receiving the Survey?
- How did the Board determine that the Church is ADA-compliant upon a review of the Survey?
- What has the Board done to ensure that future ADA surveys will not be similarly flawed?
- Having been placed on notice of the severe insufficiencies of the Survey, what steps has the Board taken to confirm whether the Church is ADA compliant in connection with its recent issuance of Voting Cards informing District 5 voters that their polling place has been changed to the Church?

Election@Bard raised numerous issues about the Survey and the Church's non-compliance with the ADA in the lawsuit that led to the Court Order designating the polling location at Bard. You can read an analysis of non-compliance that we submitted in that lawsuit here: [last fall here](#)

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(<https://tools.bard.edu/wwwmedia/files/8850342/78/ADAReport.pdf>). You can also see a film vividly outlining the non-compliance here: (<https://www.youtube.com/watch?v=jbp69ILmCG8&t=4s>), and see a press conference arranged by Caring Majority Rising concerning disability issues, including in District 5, here (<https://www.youtube.com/watch?v=ZFp2C8bU7S0&t=2s>).

The Board has repeatedly ignored complaints about the Church's inaccessibility. Such documentation has appeared in numerous letters and documents and images submitted in cases before the New York State Supreme and Appellate Courts to which Commissioner Haight was party, as well as in images and documents easily available to the public (<https://cce.bard.edu/community/election/voting-rights/>). Furthermore, the Board is aware that, after this 2019 "Survey," the Church underwent significant renovations. Such renovations require a new ADA survey that the Board has failed to conduct despite being placed on notice repeatedly of its obligation to do so.

In response to my April 26, 2021 FOIL request, Election@Bard learned that Commissioner's Haight response to Commissioner Hannah Black's request for a new ADA Survey based on the evidence cited above was met with flagrant disregard; Commissioner Haight's full response to her email request voicing concern with the lack of ADA compliance was: "Says Who." The contempt for the ADA continues.

We understand that the Board is considering belatedly designating the Church as the District 5 polling location without a new ADA survey. Doing so would be a continuing violation of the Board's obligations. Accordingly, we request that you:

1. Demand that the Board fulfill its obligation to complete a new American with Disabilities Act Compliance review;
2. Ask the County District Attorney to investigate the circumstances of the 2019 "Survey" to determine whether anyone engaged in actionable misconduct in its preparation.
3. Investigate the issuance of the Voter Cards informing District 5 voters that "YOUR POLLING PLACE HAS BEEN CHANGED" to St. John's Episcopal Church when the Board made no such formal decision by the statutory deadline of March 15 (or thereafter).

Additionally, we ask that you take the following steps to ensure that this does not happen in the future:

1. Support ADA training for BOE officials.
2. Publicly ask the County Legislature to pass a resolution (or a law if feasible) supporting ADA compliance within all polling sites in the county.
3. State publicly that the County Legislature should only appoint Election Commissioners who are willing to comply by the ADA.

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4. Demand transparency and a) insist that the Board of Elections post its annual report to the state on its website and b) post ADA compliance forms for each polling site in the county so that citizens can identify false reports like that filed for D5 in Red Hook. If they refuse, you can post them on the County Executive website.

The challenges with ADA are just some of the many problems associated with the proposed polling place, which are articulated in more detailed in the attached letter to the Board of Elections which highlight a myriad of problems associated with St. John's Barrytown and the benefits of the Bard College Bertelsmann Campus Center Multipurpose Room. While you have maintained that, as County Executive, you should not be involved in determining polling sites, it is clearly your job as chief executive of the county to ensure that all county employees are following the law. That should particularly be the case when their conduct impacts society's most vulnerable, those protected by the ADA. In Fall 2020, you wrote, "I have consistently expressed my desire to ensure every poll site in Dutchess and NYS... meet ADA standards, at a minimum." Dutchess County, under your leadership, has established the Think Differently initiative that has influenced government practices across New York State, and I now branching beyond. We appreciate that leadership and are proud of the efforts made in Dutchess County to establish a more inclusive community. It is time to act on behalf of the community and support both the rule and spirit of the law and protect the rights of the disabled in Dutchess County and to continue to act as a leader across NYS.

Thank you for your consideration of this matter.

Yours sincerely,



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Cc: Election@Bard  
Caring Majority Rising  
Election Commissioner Eric Haight  
Election Commissioner Hannah Black  
County Representative Kris Munn

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