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Accessing Employment and Transportation: The Role of The New York City Mayor's Office for People With Disabilities

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**ACCESSING EMPLOYMENT AND TRANSPORTATION:
THE ROLE OF THE NEW YORK CITY MAYOR’S
OFFICE FOR PEOPLE WITH DISABILITIES**

Holly Jeanine Boux & Michael Ashley Stein***

Introduction1259

I. The Core: Employment-Focused Policies1264

 A. Context: Under- and Unemployment of Persons with
 Disabilities1264

 i. Rates and Policies Regarding Under- and
 Unemployment of Persons with Disabilities1264

 ii. Causes of Under- and Unemployment of Persons with
 Disabilities.....1268

 B. MOPD’s Interventions Regarding the Under- and
 Unemployment of Persons with Disabilities.....1269

 C. Policy Evaluation: Key Strengths of MOPD’s
 Employment Initiatives1272

 i. Best Practice: Building on Preexisting Resources and
 Positioning MOPD as a Coordinating Agency.....1272

 1. Preexisting Resources Available to Job-Seeking
 New Yorkers with Disabilities1272

 2. MOPD as a Coordinating Agency within a Web of
 Preexisting Resources1275

 ii. Best Practice: Embracing the “Business Relations
 Model”1276

 iii. Best Practice: Supporting Internships in
 High-Growth, Well-Paying Sectors1278

 D. Policy Evaluation: Areas for Improvement within
 MOPD’s Employment Policies1280

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i. The Underperformance of, and Structural Issues with, the 55-a Program	1280
ii. Refining MOPD's Outward-Facing Employment Policies	1283
1. MOPD Policies Sideswipe, Rather Than Directly Target, Disability-Related Stigma.....	1283
2. The Absence of Intersectionality from MOPD Programs' Design.....	1285
3. MOPD's Narrow Focus on Hiring Overlooks Common Issues with Retention and Promotion of Workers with Disabilities	1285
iii. The Unanswered Question of Scalability	1286
E. Elements Essential to Transposing MOPD's Employment-Focused Policies to Other Cities.....	1287
i. Implementation within a Large, and Largely Accessible, City	1288
ii. Overlapping Policies within Civil Society and at Other Levels of Government	1289
iii. Dedicated Leadership	1290
iv. Policies Informed by Best Practices and the Local Environment.....	1291
II. A Wider Circle: Employment-Related Policies and Contextual Factors.....	1291
III. Transportation's Intersection with Inclusion and Employment	1294
A. Transportation in NYC.....	1298
B. Public Transportation's Key Accessibility Problems and Government Responses	1303
i. Key Policy Problem and Attempted Solutions: The Inaccessibility of Public Transportation's Physical Infrastructure	1303
1. Government Responses to Public Transportation's Inaccessible Infrastructure	1308
2. MOPD's Collaborative Role in Improving the Physical Infrastructure of the City's Public Transportation System.....	1310
3. Technology as a Work-Around to Inaccessible Physical Infrastructure: MOPD's Outward-Facing Role as Information Resource	1312
ii. Key Policy Problem and Attempted Solutions: Intersectionality, Discrimination, and Transportation Worker Training	1313

1. Intersectionality and Public Transportation in NYC	1313
2. Government Responses to the Interrelation of Transportation, Intersectionality, and Inaccessibility	1318
3. Opportunity for Growth: MOPD’s Potential Role as an Intersectional Anti-Stigma Resource ...	1320
C. Essential Lessons from MOPD’s Public Transportation Accessibility Efforts	1323
IV. Comparative Policy Evaluation: Expanding MOPD’s Employment-Focused Innovations to Employment-Related Barriers.....	1324
Conclusion.....	1331
Appendix	1333

INTRODUCTION

This Article explores the central role the New York City Mayor’s Office for People with Disabilities (MOPD) plays in plans and programs designed to make New York City (NYC or the City) more accessible and inclusive for persons with disabilities.¹ In operation since 1973, MOPD is the liaison between NYC’s government and the disability community.² MOPD has multiple responsibilities.³ These include working with other City agencies to formulate and implement policies relating to people with disabilities; acting as a public advocate for them; overseeing City compliance with disability-related laws; coordinating, developing, and promoting disability-related programs; and liaising between the City and public and private agencies, entities, and individuals in relation to relevant programs.⁴ MOPD also consults with City agencies on “all policies affecting the employment of people with disabilities.”⁵ Because

1. *See generally What We Do*, MAYOR’S OFF. FOR PEOPLE WITH DISABILITIES, <https://www1.nyc.gov/site/mopd/about/about.page> [<https://perma.cc/FC5D-9PGE>] (last visited Sept. 16, 2020).

2. *See id.*

3. In the executive order establishing these duties, then-Mayor David N. Dinkins also renamed the NYC Mayor’s Office for the Handicapped as MOPD, and established MOPD’s Director as immediately accountable to the First Deputy Mayor. *See Exec. Order No. 17 — September 7, 1990, Establishment of the Mayor’s Office for People with Disabilities*, MAYOR’S OFF. FOR PEOPLE WITH DISABILITIES, <https://www1.nyc.gov/site/mopd/about/executive-order-no-17-september-7-1990.page> [<https://perma.cc/LV8X-PYR7>] (last visited Sept. 15, 2020).

4. *See id.*

5. *Id.*

MOPD has been involved in plans and programs to make the City more accessible for persons with disabilities for over half a century, we focus on how MOPD and its longtime director, Commissioner Victor Calise,⁶ have worked over the past decade to increase employment opportunities and plan more accessible public transportation systems.

Gainful work is particularly crucial not only to accessibility, but also as a critical part of the broader but interrelated campaign for the social inclusion of persons with disabilities. Defining this inclusion can be challenging, as social connections can be amorphous, shaped by a wide and complex array of factors.⁷ However, two recurring themes are essential. Social inclusion involves an interpersonal dimension (e.g., social interaction, relationships, and networks) and a community dimension (e.g., access to community facilities and community participation).⁸ Employment is central to both; it allows people to access their community by being able to afford to use its amenities, and to develop relationships and social networks in the workplace.

Evaluating MOPD's employment-related interventions makes for a particularly interesting case study for several reasons. First, because of MOPD programs' variety. The City's size, resources, and social and economic diversity allow MOPD to operate multiple, highly varied initiatives concurrently.⁹ Because they are all run within one city, this affords a unique opportunity to assess multiple ongoing programs while holding constant possibly spurious explanations for success.¹⁰ Second, evaluating MOPD's notably diverse programs can benefit researchers and policymakers by supplementing an academic literature which is thin on

6. See Victor Calise, *Commissioner*, MAYOR'S OFF. FOR PEOPLE WITH DISABILITIES, <https://www1.nyc.gov/site/mopd/about/commissioners-bio.page> [https://perma.cc/4LJ2-FV7J] (last visited Sept. 16, 2020).

7. For the work of a foundation broadly focusing on this issue, see SAMUEL CTR. FOR SOC. CONNECTEDNESS, <https://www.socialconnectedness.org/> [https://perma.cc/YQ5C-WLVJ] (last visited Aug. 28, 2020).

8. See Stacy Clifford Simplican et al., *Defining Social Inclusion of People with Intellectual and Developmental Disabilities: An Ecological Model of Social Networks and Community Participation*, 38 RSCH. DEVELOPMENTAL DISABILITIES 18, 20, 27 (2015). Both dimensions are essential for inclusion; for instance, "even if someone had a high number of friendships, their level of social inclusion would be deficient if they had no access to the community." *Id.* at 20.

9. See MAYOR'S OFF. FOR PEOPLE WITH DISABILITIES, ACCESSIBLENYC: AN ANNUAL REPORT ON THE STATE OF PEOPLE WITH DISABILITIES LIVING IN NEW YORK CITY 39 (2019) [hereinafter 2019 ACCESSIBLENYC REPORT], <https://www1.nyc.gov/assets/mopd/downloads/pdf/accessible-nyc-2019.pdf> [https://perma.cc/BL2V-MVKL].

10. Among the factors held constant because of the single location of this study are regional or other geographic factors, and political factors such as partisanship.

research exploring “the actual use and implementation” of disability-employment strategies.¹¹

Third, studying MOPD’s involvement in the disability-employment policy space is useful because the incidence of unemployment of persons with disabilities in NYC reflects, but is slightly better than, nationwide trends — while the City is exceptional in many respects, on this variable it is relatively representative. Over 440,000 New Yorkers between ages 18 and 64 have a disability,¹² and only 139,294 of them are employed,¹³ meaning an employment rate of 31.65%. This rate is comparable to, but a few percentage points better than, the national employment rate of working-age persons with disabilities, which is 29%.¹⁴ The remaining New Yorkers with disabilities are either unemployed (6.26%) or “not in the labor force” (62.08%);¹⁵ both figures are, again, comparable to national rates of 10.7% and 63.8%, respectively.¹⁶ Because of this relative representativeness, NYC’s policies could be instructive for other

11. Michele C. McDonnell, *The Relationship between Employer Contact with Vocational Rehabilitation and Hiring Decisions about Individuals Who Are Blind or Visually Impaired*, 83 J. REHAB. 50, 51 (2017).

12. U.S. CENSUS BUREAU, 2017: ACS 5-YEAR ESTIMATES SUBJECT TABLES, TABLE S1810, https://data.census.gov/cedsci/table?q=S1810&g=0100000US_0500000US36005,36047,36061,36081,36085&tid=ACSST5Y2017.S1810&hidePreview=true [<https://perma.cc/WZL3-22HY>] (last visited Sept. 16, 2020) (these are pre Covid-19 figures). Overall, approximately 11% of the total population of the City — just over 900,000 people — has a disability. *See id.* This is lower than the 19% overall rate of disability in the U.S. population. *Nearly 1 in 5 People Have a Disability in the U.S., Census Bureau Reports*, U.S. CENSUS BUREAU (July 25, 2012), <https://www.census.gov/newsroom/releases/archives/miscellaneous/cb12-134.html> [<https://perma.cc/EUD4-FNUM>]. However, the 11% figure includes those who are 65 years of age and older, thus it is less relevant to employment-related interventions than working-age estimates, whereas the City’s figures closely align with national averages.

13. U.S. CENSUS BUREAU, 2017: ACS 5-YEAR ESTIMATES DETAILED TABLES, TABLE C18120 [hereinafter CENSUS, TABLE C18120], https://data.census.gov/cedsci/table?q=Table%20C18120&g=0100000US_0500000US36005,36047,36061,36081,36085&tid=ACSDT5Y2017.C18120&hidePreview=false [<https://perma.cc/3BW8-RNYB>] (these are pre Covid-19 figures).

14. *See* ACCENTURE, GETTING TO EQUAL: THE DISABILITY INCLUSION ADVANTAGE 4 (2018), https://www.accenture.com/_acnmedia/PDF-89/Accenture-Disability-Inclusion-Research-Report.pdf [<https://perma.cc/VCM8-5VSW>] (last visited Aug. 28, 2020) (analysis based on 2018 Bureau of Labor Statistics Data).

15. CENSUS, TABLE C18120, *supra* note 13. “Not in labor force” is “a residual category that includes all persons old enough to be included in the universe, but who do not fit . . . [the] definitions of labor force participation (employed or unemployed).” *Employment Status, IPUMS USA*, https://usa.ipums.org/usa-action/variables/EMPSTAT#comparability_section [<https://perma.cc/8AY7-H3UC>] (last visited Aug. 28, 2020).

16. ACCENTURE, *supra* note 14, at 4.

urban areas with similarly sky-high rates of under- and unemployment of persons with disabilities. However, the City's several-point advantage over the average is also promising because it highlights that NYC has been able to more effectively support residents with disabilities seeking employment than other locales; for instance, through *employment-focused* programs (discussed in Part I of this Article), or other mechanisms, which we characterize as *employment-related*, such as the presence of a robust — if often inaccessible — public transportation network that persons with disabilities can use to get to their places of employment.

This Article conceptualizes the relationship between these two types of policies and the variables impacting their success in terms of overlapping circles. This can be seen in Figure 1 in the Appendix; MOPD's city-level, employment-focused policies are at the circles' intersection, and they most directly impact the employment of persons with disabilities in NYC. However, they exist within two broader, overlapping circles, or policy-contexts: *employment-focused* policies of higher and lower forms of government as well as related civil society projects (which are discussed in Part I of this Article), and *employment-related* city-level factors and policies.

The relevance of *employment-related* mechanisms to the question of what is driving the City's marginal successes in the employment area highlights that policies promoting the hiring and training of persons with disabilities cannot alone ensure that employment is accessible. Rather, barriers to employment extend beyond individual choices made by employers or employee training programs to include deep-rooted structural barriers.¹⁷ Following observations that successful employment-focused policies depend on broader programs of accessibility and inclusion — prominently, successful accessible transportation policies¹⁸ — Parts II, III, and IV of this Article expand the scope of analysis beyond what are usually considered employment policies to also examine MOPD's generation of and support for accessible, transportation-focused policies within NYC.

Because accessible transportation is critical to employment-focused policies' success, this Article frames transportation as an employment-related policy area and centers inaccessible transportation's implications for employment. However, the implications of accessible transportation reach far beyond employment, as “[t]ransportation and

17. See Samuel R. Bagenstos, *The Future of Disability Law*, 114 YALE L.J. 1, 23 (2004).

18. See, e.g., JUDITH HEUMANN, BEING HEUMANN: AN UNREPENTANT MEMOIR OF A DISABILITY RIGHTS ACTIVIST 18–20 (2020) (discussing the impact of the accessible D.C. Metro system).

mobility play key roles in the struggle for civil rights and equal opportunity in the disability community.”¹⁹ As with employment, accessible transportation is not only useful as an end in itself, but also essential to social inclusion; people need accessible transportation to get to spaces within their communities where they can then participate in communal life, including work, and stay connected to friends, family, and broader social networks. Policies promoting employment and accessible transportation can, in turn, have a cyclical effect on accessibility and inclusion. People with disabilities who can get to community spaces and afford the programming offered therein are then in the position to demand that these spaces and programs also be accessible, facilitating and encouraging inclusion in a broader array of spaces and social networks.

Examining MOPD’s role as it relates to these policies, we observe that it has been far less active in its design and implementation of transportation-focused policies than it has been regarding innovative employment-focused policies. Part of this can be explained by the differential governmental structure in these two policy areas. Although there is some limited overlap with state and federal disability and employment policies, MOPD largely has a free hand in designing, implementing, and choosing private and public partners with which to collaborate in the employment policy area. This is not the case, however, regarding transportation. Rather, New York State has significant authority over the City’s transportation systems. Key modes of transportation, including subways and buses, are run by the Metropolitan Transportation Authority (MTA) and are thus largely the state’s responsibility, meaning MOPD, as a City agency, has far less authority and flexibility to innovate within this policy space. Reflecting this, with transportation MOPD has taken a backseat to other agencies and their transportation initiatives, and MOPD has followed these other agencies’ centering of NYC’s transit systems’ physical infrastructure as the focus for system improvement efforts. We, however, argue that it could be productive for MOPD to broaden its focus and take a more proactive — if necessarily collaborative — approach to this policy area.

With an eye towards using MOPD’s programs as a model for other cities, this Article concludes by discussing lessons that can be learned from MOPD’s campaign to improve employment and transportation for persons with disabilities in the City, both of which are ultimately tied to the core civil rights project of improving accessibility and inclusion. We

19. *Equity in Transportation for People with Disabilities*, AM. ASS’N PEOPLE WITH DISABILITIES, <http://www.civilrightsdocs.info/pdf/transportation/final-transportation-equity-disability.pdf> [https://perma.cc/DMC4-HWWD] (last visited Sept. 15, 2020).

argue that, as currently structured, MOPD's employment-focused programs tackle only one type of barrier to employment — the type standing in the way of the hiring and training of persons with disabilities. As Part I discusses, while MOPD's policies in this area could serve as a useful model for similar cities, this narrow focus is not enough to sufficiently ameliorate the dire employment situation many New Yorkers with disabilities experience. Rather, as this Article suggests in Parts III and IV, MOPD should expand its understanding of what is needed to improve employment to factor in issues related to structural barriers apart from the hiring and training process, including inaccessible transportation. Ultimately, a core challenge that spans these areas is breaking down the separation into silos of employment, transportation, and other accessibility-related policies. Recognizing and accounting for their interconnected nature is needed to truly ameliorate the problem of under- and unemployment of New Yorkers with disabilities, which itself is essential to achieving “social inclusion [which] improves lives — for people with and without disabilities.”²⁰

I. THE CORE: EMPLOYMENT-FOCUSED POLICIES

A. Context: Under- and Unemployment of Persons with Disabilities

i. Rates and Policies Regarding Under- and Unemployment of Persons with Disabilities

Compared to non-disabled workers, Americans with disabilities are “strikingly under-employed.”²¹ While 75% of working-age persons without disabilities participate in the paid workforce,²² this figure plummets to 29% for the 15.1 million working-age Americans with disabilities.²³ Employment rates vary by disability type,²⁴ but “persons with more severe . . . disabilities [generally] encounter greater difficulty

20. Simpican et al., *supra* note 8, at 22.

21. ACCENTURE, *supra* note 14, at 4.

22. “Working age” is defined as between 16 and 64 years old. *See id.*

23. *Id.* Overall, Americans with disabilities comprise about 19% of the American population, or 56.7 million people. *Nearly 1 in 5 People Have a Disability in the U.S., Census Bureau Reports*, *supra* note 12.

24. For instance, only 32.3% of persons with a visual difficulty are employed — 10.7% are unemployed and 63.8% are not in the labor force at all. McDonnell, *supra* note 11, at 50. Comparatively, 75.5% of people who identify a hearing difficulty as their most limiting disability are in the paid labor force. Vidya Sundar et al., *Striving to Work and Overcoming Barriers: Employment Strategies and Successes of People with Disabilities*, 48 J. VOCATIONAL REHAB. 93, 99 (2018). Meanwhile, only 29.6% of people who identify lower limb mobility as their most limiting disability are employed. *See id.* at 99.

securing employment than their less disabled”²⁵ peers, with the former experiencing higher rates of under- and unemployment. Intersectional discrimination also impacts a disabled person’s likelihood of finding employment, e.g., women with disabilities are less likely to be represented in the workforce than similarly situated men,²⁶ and employment rates are particularly low for Black persons with disabilities.²⁷

These employment rate disparities are widespread.²⁸ And they are notoriously “sticky,” changing little regardless of the policy solutions thrown at them.²⁹ In the United States, it has been 47 years since the Rehabilitation Act³⁰ “mandated affirmative action and equal employment opportunity (EEO) requirements for federally funded employers.”³¹ Moreover, it has been 30 years since the Americans with Disabilities Act (ADA)³² extended civil rights protections from

25. R. Bryan Kennedy & Nicole K. Harris, *Employing Persons with Severe Disabilities: Much Work Remains to Be Done*, 42 J. EMP. COUNSELING 133, 136 (2005). Kennedy and Harris include “deafness, blindness, missing extremities, mental retardation, partial paralysis, complete paralysis, convulsive disorders, mental illness, and distortion of the limb or the spine” as severe disabilities, lumping other conditions into the “less disabled” category. *Id.*

26. See, e.g., Chon-Kyun Kim, *Comparative Perspectives on Disability Employment Policy*, 15 INT’L REV. PUB. ADMIN. 27, 30 (2011); *Economic News Release: Table A-6. Employment Status of the Civilian Population by Sex, Age, and Disability Status, Not Seasonally Adjusted*, U.S. BUREAU LAB. STAT. (Sept. 4, 2020), <https://www.bls.gov/news.release/empstat.t06.htm> [<https://perma.cc/MLJ5-58ZB>].

27. See U.S. DEP’T OF LAB., ECONOMIC PICTURE OF THE DISABILITY COMMUNITY PROJECT: KEY POINTS ON DISABILITY AND OCCUPATIONAL PROJECTIONS TABLES (2014), <https://www.oecd.org/Downloads/Disability%20Employment%2020141022-KeyPoints.pdf> [<https://perma.cc/EWD2-EXLA>] (numbers based on CEA analysis of the Census Bureau’s 2010–2012 American Community Survey, matched to the Bureau of Labor Statistics’ 2012–2022 occupational projections).

28. See Matthew C. Saleh & Susanne M. Bruyère, *Leveraging Employer Practices in Global Regulatory Frameworks to Improve Employment Outcomes for People with Disabilities*, 6 SOC. INCLUSION 18, 18 (2018) (arguing these disparities exist in low-, middle-, and high-income states, regions, and countries).

29. Under- and unemployment rates of persons with disabilities do fluctuate in response to broader economic conditions. For instance, the unemployment rate for persons with a disability went from 15.2% in January 2010 to 9.0% in January 2019; similarly, the unemployment rate for persons without a disability went from 10.4% in January 2010 to 4.2% in January 2019. *Data Retrieval: Labor Force Statistics (CPS): Table A-6. Employment Status of the Civilian Population by Sex, Age, and Disability Status, Not Seasonally Adjusted*, U.S. BUREAU LAB. STAT. (Feb. 19, 2020), <https://www.bls.gov/webapps/legacy/cpsatab6.htm> [<https://perma.cc/45X5-6DML>] (under “TOTAL, 16 years and over,” check off the “unemployment rate” for both “persons with a disability” and “persons with no disability” columns; then click “retrieve data”).

30. 29 U.S.C. §§ 701–794 (1973).

31. Kennedy & Harris, *supra* note 25, at 134.

32. 42 U.S.C. §§ 12101–12213 (1990). Congress passed the Americans with Disabilities Act in 1990. *The Americans with Disabilities Act of 1990*, EQUAL EMP. OPPORTUNITY

employment discrimination in the private sector to workers with disabilities.³³ It required, among other things, that employers go beyond nondiscrimination to provide reasonable accommodations to enable the employment of qualified individuals with disabilities.³⁴

The ADA was intended to be an “emancipation proclamation” for people with disabilities.³⁵ It has profound symbolic value as the articulation of a national “policy of inclusion for individuals with disabilities in employment, public accommodations, public services, and other essential domains of modern life”³⁶ and — in conjunction with state- and city-level antidiscrimination laws — has brought about improvements in access.³⁷ Indeed, a majority of U.S. states, as well as many cities, have statutes that echo the ADA’s goals, making it illegal to discriminate against people with disabilities in employment and elsewhere.³⁸ New York’s Human Rights Law, for instance, makes it unlawful for employers to discriminate on the basis of disability.³⁹

But the ADA failed to substantially improve access to employment; people with disabilities still “experience lower workforce participation rates and higher poverty rates than their nondisabled peers.”⁴⁰ These

COMM’N,

<https://web.archive.org/web/20200102185135/https://www.eeoc.gov/eeoc/history/35th/1990s/ada.html> [<https://perma.cc/LF54-XM8Z>] (last visited Aug. 31, 2020).

33. See Kennedy & Harris, *supra* note 25, at 134.

34. See Mark A. Rothstein, *Innovations of the Americans with Disabilities Act: Confronting Disability Discrimination in Employment*, 313 J. AM. MED. ASS’N 2221, 2222 (2015).

35. See Michael Ashley Stein, *Same Struggle, Different Difference: ADA Accommodations as Antidiscrimination*, 153 U. PA. L. REV. 579, 581 (2004) (citing Senators Harkin and Kennedy as having first applied this phrase to the ADA).

36. Rothstein, *supra* note 34, at 2222.

37. See William A. Erickson et al., *Disability-Inclusive Employer Practices and Hiring of Individuals with Disabilities*, 28 REHAB. RSCH. POL’Y & EDUC. 309, 309 (2014).

38. See Kim, *supra* note 26, at 28.

39. See N.Y. EXEC. LAW § 296 (McKinney 2019). Applying to employers with four or more employees, New York’s law covers more cases than the federal ADA, which applies to employers with 15 or more employees. See Davin P. Cellura, *Disability Discrimination*, N.Y.C. BAR (June 2020), <https://www.nycbar.org/get-legal-help/article/employment-and-labor/disability-discrimination/> [<https://perma.cc/W3D3-Q6NF>]. Other states have similar legislation that prohibits employment discrimination against individuals with disabilities. See, e.g., MASS. GEN. LAWS ch. 151B (2014) (prohibiting employment discrimination against “qualified handicapped persons” and covering some private employers and medical conditions not covered by the ADA).

40. Erickson et al., *supra* note 37, at 309. See generally WILLIAM A. ERICKSON ET AL., CORNELL UNIV. EMP. & DISABILITY INST., 2012 DISABILITY STATUS REPORT: UNITED STATES (2014), https://www.disabilitystatistics.org/StatusReports/2012-PDF/2012-StatusReport_US.pdf [<https://perma.cc/NQP6-LSC3>].

disparities have only grown since the onset of the Great Recession.⁴¹ Early evidence from the COVID-19 pandemic indicates a similar disparity potentially developing as a result of job losses associated with the pandemic; between March and April of 2020, the number of working-age people with disabilities who were employed decreased by 20%, while the number of working-age people without disabilities who were employed decreased by 14%.⁴² Ultimately, “[i]n many ways, increasing the labor force participation rate of people with disabilities remains the unfinished business of the ADA and . . . state nondiscrimination law.”⁴³

It is critical to note that these employment disparities are not isolated from other issues. Employment is the “pathway out of deep poverty and into the mainstream of the American middle class.”⁴⁴ The fact that households with an adult member with a disability earn, on average, 38.4% less than households without an adult member with a disability, is centrally tied to the fact that Americans with disabilities experience poverty at twice the rate of those without disabilities.⁴⁵ Indeed, “Americans with disabilities experience poverty at rates unseen by any other subpopulation of the country.”⁴⁶ Under- and unemployment can also cause stress, creating new health problems and exacerbating existing

41. Arun Karpur, Sara A. VanLooy & Susanne M. Bruyère, *Employer Practices for Employment of People with Disabilities: A Literature Scoping Review*, 28 REHAB. RSCH. POL'Y & EDUC. 225, 225 (2014). However, employment prospects for persons with disabilities can worsen even as the national economy booms — during the 1990s, a decade with generally low unemployment, employment and earnings for people with disabilities declined. See Mary E. McLaughlin, Myrtle P. Bell & Donna Y. Stringer, *Stigma and Acceptance of Persons with Disabilities: Understudied Aspects of Workforce Diversity*, 29 GRP. & ORG. MGMT. 302, 303 (2004).

42. Press Release, Kessler Found., nTIDE April 2020 Jobs Report: COVID Recession Hits Workers with Disabilities Harder (May 8, 2020) [hereinafter Kessler Found., nTIDE April 2020 Jobs Report], <https://kesslerfoundation.org/press-release/ntide-april-2020-jobs-report-covid-recession-hits-workers-disabilities-harder> [https://perma.cc/7P4A-C8M3].

43. *A Joint Resolution or Executive Order to Encourage States to Be Model Employers of People with Disabilities*, EMP. ASSISTANCE & RES. NETWORK ON DISABILITY INCLUSION 4 (June 26, 2019), http://www.askearn.org/wp-content/uploads/2019/06/EARN_State_Model_Employer.pdf [https://perma.cc/LJ3L-ADFW].

44. *Fulfilling the Promise: Overcoming Persistent Barriers to Economic Self-Sufficiency for People with Disabilities Before the S. Comm. on Health, Educ., Lab. & Pensions*, 113th Cong. 2 (2014) [hereinafter *Fulfilling the Promise*].

45. See ELIZABETH WHITEHOUSE, KYLE INGRAM & BOBBY SILVERSTEIN, THE COUNCIL OF STATE GOV'TS & NAT'L CONF. OF STATE LEGISLATURES, WORK MATTERS: A FRAMEWORK FOR STATES ON WORKFORCE DEVELOPMENT FOR PEOPLE WITH DISABILITIES 10 (2016), http://www.ncsl.org/Portals/1/Documents/employ/Work_Matters_Report.pdf [https://perma.cc/8N7K-VML8].

46. See *Fulfilling the Promise*, supra note 44, at 6.

ones,⁴⁷ lead to “depression, anxiety, physical ailments, such as stomachaches and headaches, and even suicide,”⁴⁸ and have a negative effect on quality of life, self-sufficiency, and self-worth.⁴⁹ Thus, it is unavoidable that “disability employment is a human rights issue.”⁵⁰ Further, the under- and unemployment of persons with disabilities has a ripple effect on communities, as low employment rates among people with disabilities mean “the pool of qualified talent available to employers is reduced, tax revenue is lessened, and society loses aggregate productivity.”⁵¹

ii. Causes of Under- and Unemployment of Persons with Disabilities

The causes of high rates of under- and unemployment of persons with disabilities are multifactorial, including supply- and demand-side factors related to this employment gap.⁵² These include individual factors (including health, functional capacity, skills, and career interests), environmental and contextual factors (including labor market trends, employer characteristics such as commitment to hire and accommodate people with disabilities, and organization size⁵³ and contractor status),⁵⁴ and social and policy-related factors (including stigma and prejudice, the structure of unemployment and other assistance, and lack of accessible transportation).⁵⁵ Further, underemployment is connected to — but not fully explainable by — educational attainment; “[a]cross all levels of

47. *See id.* at 6.

48. Connie R. Wanberg, *The Individual Experience of Unemployment*, 63 ANN. REV. PSYCH. 369, 370–71 (2012).

49. *See* Celestin Hategeka et al., *Association of Unemployment and Informal Care with Stigma in Multiple Sclerosis*, 21 INT’L J. MS CARE 214, 215 (2019); *see also* Wanberg, *supra* note 48, at 371.

50. Karpur et al., *supra* note 41, at 238.

51. *Governor Cuomo Signs Executive Order Establishing Commission to Create Employment First Policy for New York*, N.Y. STATE GOVERNOR ANDREW M. CUOMO (Sept. 17, 2014), [hereinafter *Cuomo*], <https://www.governor.ny.gov/news/governor-cuomo-signs-executive-order-establishing-commission-create-employment-first-policy-new> [<https://perma.cc/86YU-2KV5>].

52. *See* Erickson et al., *supra* note 37, at 323.

53. Large and midsize organizations are particularly likely to have implemented disability-inclusive policies. *See id.*

54. As a result of Section 503 of the Rehabilitation Act, federal contractors are far more likely to implement a variety of disability-inclusive policies and practices than organizations without federal contracts. *See id.*

55. *See* Sundar et al., *supra* note 24, at 94.

education in 2018, persons with a disability were much less likely to be employed than were their counterparts with no disability.”⁵⁶

A robust finding is that this employment gap is not due to the preferences of persons with disabilities — most unemployed people with disabilities would prefer to be in the workforce but are not because they cannot find work.⁵⁷ For instance, 95% of youth with disabilities expect to definitely get a paid job, “yet employment statistics suggest this positive outlook does not translate into actual employment.”⁵⁸ An ambition gap does not cause this unemployment problem; “[p]eople with disabilities are striving to work, as indicated by the 68.4 percent who are currently working, or looking for work, or have worked since the onset of disability.”⁵⁹

B. MOPD’s Interventions Regarding the Under- and Unemployment of Persons with Disabilities

Over the past few decades, many efforts — both public and private — have been undertaken to address, and hopefully improve, this inequity in employment. To understand these efforts, it is essential to “zoom in” from the predominant national-level analyses of unemployment rates to one that is more local. While the majority of employment metrics focus on state or national outcomes, “interventions typically are delivered through the local schools, agencies, employers, and families that serve a particular community.”⁶⁰ This Article “zooms in” on the multiple interventions currently being implemented in the City, in particular, those implemented by MOPD and described in its AccessibleNYC

56. Press Release, Bureau of Lab. Stat., Persons with a Disability: Labor Force Characteristics Summary (Feb. 26, 2020), <https://www.bls.gov/news.release/disabl.nr0.htm> [<https://perma.cc/CNR8-G3PA>].

57. See Erickson et al., *supra* note 37, at 309.

58. *Id.*; see also MARY WAGNER ET AL., U.S. DEP’T OF EDUC., NAT’L CTR. FOR SPECIAL EDUC. RSCH. & INST. OF EDUC. SCIS., PERCEPTIONS AND EXPECTATIONS OF YOUTH WITH DISABILITIES: A SPECIAL TOPIC REPORT OF FINDINGS FROM THE NATIONAL LONGITUDINAL TRANSITION STUDY-2 (NLTS2) 67 (2007), <https://ies.ed.gov/ncser/pdf/20073006.pdf> [<https://perma.cc/RGD6-TQW9>].

59. ANDREW J. HOUTENVILLE ET AL., KESSLER FOUND., KESSLER FOUNDATION: 2015 NATIONAL EMPLOYMENT & DISABILITY SURVEY 3 (2015), https://kesslerfoundation.org/sites/default/files/filepicker/5/KFSurvey15_Results-secured.pdf [<https://perma.cc/B3UG-KDBN>].

60. Erik W. Carter et al., *Engaging Communities in Identifying Local Strategies for Expanding Integrated Employment during and after High School*, 121 AM. J. ON INTELL. & DEVELOPMENTAL DISABILITIES 398, 413 (2016).

Reports.⁶¹ Within the “employment” section of its fourth and most recent AccessibleNYC Report, which details and evaluates the state of people with disabilities in the City, MOPD highlights six programs that it currently administers:⁶² (1) the NYC: *ATWORK* program, (2) the Business Development Council, (3) the Talent Coalition, (4) the ability Academy, (5) the 55-a Program, and (6) the Partnerships for Inclusive Internships.⁶³

Among these programs, the 55-a Program is uniquely inwardly focused. Originating from New York State Civil Service Law § 55-a,⁶⁴ it authorizes NYC to identify positions that can be performed by qualified “physically or mentally disabled persons” and to appoint qualified disabled workers to these positions without requiring the worker to take a qualifying exam.⁶⁵ There is a limit of 700 positions that can be designated as 55-a positions at any one time,⁶⁶ and this program has two state-level counterparts that allow for non-competitive hiring for persons with disabilities⁶⁷ and veterans with disabilities⁶⁸ into state government positions.⁶⁹

The Partnerships for Inclusive Internships (PII) is more expansive. Like the 55-a Program, it seeks to place a modest number of individuals with disabilities in City positions,⁷⁰ but as an internship program funded by the Taft Foundation and run through a partnership between the NYC Department of Social Services and AHRC NYC, the PII relies on extensive external support.⁷¹ The City contributes internship opportunities across the Human Resources Administration and

61. See MAYOR’S OFF. FOR PEOPLE WITH DISABILITIES, <https://www1.nyc.gov/site/mopd/index.page> [<https://perma.cc/2BS3-YE5L>] (last visited Aug. 23, 2020).

62. See 2019 ACCESSIBLENYC REPORT, *supra* note 9, at 37. There are many related initiatives ongoing in New York City, but this Article focuses on those that MOPD highlighted.

63. See *id.* at 37–49. “Job seeker engagement” is also listed as a “key topic,” but it is not a program, *per se*. Rather, it is a summary of the number of job seekers “engaged” by NYC: *ATWORK*. See *id.* at 42.

64. N.Y. CIV. SERV. LAW § 55-a (McKinney 2014).

65. See *id.* § 55-(a).

66. See *id.* § 55-a(1).

67. See *id.* § 55-b.

68. See *id.* § 55-c.

69. See *Governor’s Program to Hire Individuals and Veterans with Disabilities*, N.Y. STATE, DEP’T CIV. SERV., <https://www.cs.ny.gov/rp55/> [<https://perma.cc/ZLU8-C9CC>] (last visited Aug. 23, 2020).

70. In the case of the PII, its goal for its first year was to place a minimum of 30 interns in positions, including “clerical, data entry, IT, accounting, and social service placements.” 2019 ACCESSIBLENYC REPORT, *supra* note 9, at 49.

71. See *id.* at 48–49.

Department of Homeless Services to the program, while the AHRC brings its extensive experience in securing employment for people with disabilities.⁷²

Unlike the PII and 55-a programs, the other four MOPD programs assessed in the 2019 AccessibleNYC Report seek to secure employment for New Yorkers with disabilities outside government.⁷³ However, as with the PII, with these programs MOPD has positioned itself as an intermediary between the supply (potential employees) and demand (potential employers) sides of the employment equation. For instance, the Business Development Council (BDC) focuses on the demand side; a group of over 90 members from a variety of industries as well as City government,⁷⁴ the BDC meets quarterly to discuss the recruitment of employees with disabilities and to meet with job seekers.⁷⁵ On the other hand, the Talent Coalition focuses on the supply side; it is made up of over 60 non-profit, university,⁷⁶ and community groups that provide candidates seeking employment.⁷⁷ Meanwhile, *NYC: ATWORK* and the abilITy Academy bridge the supply and demand gap. *NYC: ATWORK* is a broad program that screens job seekers with disabilities and uses “relationship managers” — people who maintain contact with the job-seekers and provide them with guidance — to assist them in the job hunt, while the abilITy Academy is more targeted and provides a small cohort of students with a tuition-free, six-month cybersecurity training program, followed by internships that position participants for full-time employment.⁷⁸

72. *See id.*

73. These four programs are presented in the report as standalone programs. Elsewhere they are framed as connected; e.g., MOPD describes the abilITy Academy as “powered by *NYC: ATWORK*.” *See* Press Release, Mayor’s Off. for People with Disabilities, Mayor’s Office for People with Disabilities Launches the abilITy Cisco Academy Powered by *NYC: ATWORK* — the First Cyber Security Training for People with Disabilities (Sept. 21, 2018) [hereinafter Press Release, abilITy Launch] (on file with author). While the relationship between these programs is not entirely clear, this Article analyzes each program separately where possible.

74. These industries include “finance and business services, hospitality and related services, transportation, retail, [and] technology.” 2019 ACCESSIBLENYC REPORT, *supra* note 9, at 40.

75. *See id.* at 41.

76. CUNY Leads, St. John’s University, Fordham University, New York University, Pace University, and Columbia University are all participants in the Talent Coalition. *See id.* at 41.

77. The Talent Coalition meets quarterly to discuss recruitment events and best practices, and is developing a best practices handbook. *See id.*

78. *See id.* at 42–45.

C. Policy Evaluation: Key Strengths of MOPD's Employment Initiatives

MOPD's programs show promise as strategies to reduce the under- and unemployment of persons with disabilities in the City, reflecting literature-supported best practices in several ways. First, they build upon preexisting programs, making MOPD a hub of connection. Second, they ensure supply- and demand-side needs are addressed. Third, by developing internships, these programs embrace empirically supported methods of challenging stigma and encouraging the hiring of workers with disabilities.

i. Best Practice: Building on Preexisting Resources and Positioning MOPD as a Coordinating Agency

A key finding from the literature on employment and persons with disabilities is that “systems change efforts often persevere on pinpointing existing barriers to employment and lamenting the absence of needed resources to effect change.”⁷⁹ MOPD's programs have sidestepped this common problem: while many programs fail to identify and connect with the breadth of assets already available within their community,⁸⁰ MOPD has effectively built upon many resources already available to job seekers.

1. Preexisting Resources Available to Job-Seeking New Yorkers with Disabilities

Focusing on the wealth of available resources was a productive choice for MOPD because its city-level programs do not operate in a vacuum. Rather, they interact with a dense web of related programs operated by private-sector, civil society, and governmental actors in and around New York. These range from the hyper-local to the national: locally, many civil society groups — often run by people with disabilities or their families⁸¹ — operate employment programs at the micro-scale, connecting clients with local employment opportunities.⁸² Similarly,

79. Carter et al., *supra* note 60, at 399.

80. *See id.*

81. The AHRC, for example, is a “family governed organization” dedicated to supporting those with intellectual and developmental disabilities. *About*, AHRC N.Y.C., <https://www.ahrcnyc.org/about/> [<https://perma.cc/K6WG-8RYK>] (last visited Aug. 29, 2020).

82. For instance, the Staten Island Center for Independent Living (SICIL) — a multi-service not-for-profit provider of services to individuals of all ages and levels of disability, primarily staffed and governed by individuals who have personal experience with disability — works with Workforce1 to help SICIL consumers in finding employment opportunities in and around the City. *See* STATEN ISLAND CTR. FOR INDEP. LIVING,

many companies run programs to hire, train, and retain employees with disabilities.⁸³ Reflecting how “noticeable changes in outcomes are unlikely to occur apart from simultaneous investments in partnerships with employers, civic groups, community leaders, families, and others residing in a community,”⁸⁴ MOPD has brought these varied types of actors into the fold simultaneously, by including employers through the BDC, and others through the Talent Coalition.

Multiple state-wide and federal programs also overlap with these local initiatives. For instance,⁸⁵ aligning with MOPD’s goals, the Governor’s

<http://www.siciliving.org/> [<https://perma.cc/WAP5-9Y7V>] (last visited Aug. 29, 2020). SICIL also offers its clients vocational counseling. *See id.* Workforce1 is a career center operated by the City’s Department of Small Business Services that connects New Yorkers — with or without disabilities — to job opportunities in the City. *See Find the Job That’s Right for You*, ACCESS NYC, <https://access.nyc.gov/programs/workforce-1/> [<https://perma.cc/F4QC-R4X4>] (last visited Sept. 16, 2020).

83. The impact of these in-house policies can be expansive, as some of these programs are run by multinational companies with vast resources, workforces, and influence. For example, Disability:IN lists over 185 corporate partners committed to disability inclusion and equality, including some of the most recognized corporations in the world, such as Apple, Coca-Cola, Facebook, Marriott, Nike, and Toyota. *See Corporate Partners*, DISABILITY:IN, <https://disabilityin.org/who-we-are/corporate-partners/> [<https://perma.cc/MF6C-UW6L>] (last visited Aug. 29, 2020). However, data on whether these programs have led to hiring, retention, or promotion of employees with disabilities are unavailable.

84. Carter et al., *supra* note 60, at 399; *see also* James R. Thompson et al., *How the Supports Paradigm Is Transforming the Developmental Disabilities Service System*, 2 INCLUSION 86 (2014).

85. Other New York State policies relevant to the employment of persons with disabilities include tax benefits for businesses employing people with disabilities. *See* N.Y. STATE OFF. FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, EMPLOYABILITY HANDBOOK 9 [hereinafter EMPLOYABILITY HANDBOOK], <https://opwdd.ny.gov/system/files/documents/2020/01/employability-handbook.pdf> [<https://perma.cc/5H3P-8M66>] (last visited Aug. 29, 2020). These include the NYS Workers Employment Tax Credit, the NYS Workers with Disabilities Tax Credit, and the Disabled Access Tax Credit. *See id.* The state’s “Olmstead Plan” also prioritizes competitive integrated employment as foundational to broader community integration. *See Cuomo*, *supra* note 51. Further, the state has programs targeted at giving New Yorkers with developmental disabilities access to employment. *See Employment Services*, N.Y. STATE, OFF. FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, <https://opwdd.ny.gov/types-services/employment-services> [<https://perma.cc/D8AM-345Y>] (last visited Aug. 29, 2020). New York State is also part of the state-run, federally funded Disability Employment Initiative, which is comprised of 55 projects in 30 states that, since 2010, have entered into cooperative agreements with the U.S. Department of Labor to implement strategic approaches to support employment services for individuals with disabilities. *See DEI Grant Information — Factsheet*, WORKFORCE GPS (July 21, 2020), <https://disability.workforcegps.org/resources/2019/03/11/14/20/DEI-Grant-Information> [<https://perma.cc/R5YF-6RDB>]. And, like the 55-a Program, the New York State Civil Service Commission can designate up to 1,200 positions usually filled through competitive examination to be filled noncompetitively through the appointment of qualified persons

“Employment First” Commission⁸⁶ seeks to “increase the employment rate of individuals with disabilities by 5% . . . and engage 100 businesses in adopting policies and practices that support the integrated employment of individuals with disabilities.”⁸⁷ The latter, however, is a particularly modest goal, given that there are more than 200,000 businesses located in the City alone.⁸⁸ New Yorkers can also access federally run disability employment programs; for instance, employers and employees can use the Disability and Employment Community of the WorkforceGPS online employment program and database to find workers and employment opportunities, respectively.⁸⁹

Thus, New Yorkers with disabilities can access employment-related resources on multiple levels. Prospective employees could begin their search online through the Disability and Employment Community within the federal WorkplaceGPS website.⁹⁰ Or, they could visit a New York State Career Center,⁹¹ all of which have access to the federally funded but state-run Disability Employment Initiative services.⁹² Finally, they could reach out to local civil society groups, many of which provide lists

with disabilities. See N.Y. CIV. SERV. LAW § 55-b (McKinney 2014). Similarly, 500 positions can be designated to be filled by qualified veterans with disabilities. See *id.* § 55-c.

86. *Cuomo, supra* note 51.

87. N.Y. STATE EMP. FIRST COMM’N, REPORT AND RECOMMENDATIONS 1, 12 (2015), https://www.nyess.ny.gov/docs/employment_first_march2015_final.pdf [<https://perma.cc/S6SR-WF5T>].

88. OFF. OF THE MAYOR ET AL., SMALL BUSINESS FIRST (2017), <https://www1.nyc.gov/assets/smallbizfirst/downloads/pdf/small-business-first-report.pdf> [<https://perma.cc/5PWV-EGFG>]. The Employment First Commission’s Report, however, describes this goal as “aggressive.” N.Y. STATE EMP. FIRST COMM’N, *supra* note 87, at 1, 12.

89. See *Disability and Employment*, WORKFORCEGPS, <https://disability.workforcegps.org/home/> [<https://perma.cc/JGK8-2M7A>] (last visited Aug. 29, 2020). Other federal programs include, inter alia, the federal government’s own hiring programs — “[m]ost Federal agencies have a Selective Placement Program Coordinator, a Special Emphasis Program Manager (SEPM) for Employment of Adults with Disabilities, or equivalent, who helps to recruit, hire and accommodate people with disabilities at that agency.” *Disability Employment*, U.S. OFF. PERS. MGMT., <https://www.opm.gov/policy-data-oversight/disability-employment/> [<https://perma.cc/92Q8-9E4E>] (last visited Aug. 29, 2020).

90. *Disability and Employment, supra* note 89.

91. N.Y. State Career Center Locator, N.Y. STATE, <https://labor.ny.gov/career-center-locator/> [<https://perma.cc/2XH6-MNPZ>] (last visited Aug. 29, 2020).

92. *Disability Employment Initiative*, N.Y. STATE, DEP’T LAB., https://labor.ny.gov/workforcenypartners/dpn_dei.shtm [<https://perma.cc/G7FG-PKGG>] (last visited Aug. 29, 2020).

of disability-friendly employers,⁹³ serve as links to disability-friendly employers,⁹⁴ or prominently include employment-related links on their websites.⁹⁵

2. MOPD as a Coordinating Agency within a Web of Preexisting Resources

Understanding the resources available to job-seeking New Yorkers with disabilities is critical to understanding why MOPD's employment policies are a productive innovation. Rather than undertaking the costly, redundant process of reinventing these programs — some of which have been serving New Yorkers with disabilities for decades⁹⁶ — MOPD frames itself as a point of connection and clarity, and as “uniquely positioned to convene businesses, Community Based Organizations (CBOs), government agencies, workforce and vocational rehabilitation entities to work collaboratively to build a groundbreaking career pathways strategy.”⁹⁷

Giving job-seeking New Yorkers with disabilities the streamlined resource of a single agency is a key benefit provided by MOPD. The NYC: *ATWORK* program particularly embodies this benefit, which gives prospective employees assistance in their job search process, and for up to a year post-hiring.⁹⁸ Job seekers with disabilities already carry multiple burdens, including facing disability-related stigma in the application process,⁹⁹ poverty, and feelings of low self-esteem that accompany unemployment.¹⁰⁰ Time spent navigating the labyrinthine web of preexisting programs and agencies costs prospective workers with

93. See, e.g., *Job Opportunities for People with Disabilities*, CTR. FOR INDEP. DISABLED, NY, <https://www.cidny.org/findjobs/> [<https://perma.cc/P98X-PKVY>] (last visited Aug. 29, 2020).

94. See, e.g., *Job Connection Center*, AHRC N.Y.C., <https://www.ahrcnyc.org/services/work/preparing/job-connection/> [<https://perma.cc/E69V-2BEP>] (last visited Aug. 29, 2020).

95. See, e.g., *Employment*, CTR. FOR INDEP. DISABLED, NY, <https://www.cidny.org/employment/> [<https://perma.cc/N6ZF-SZGA>] (last visited Aug. 29, 2020); *Employment Resources*, SELF-ADVOCACY ASS'N N.Y. STATE, <https://sanys.org/what-we-do/resources/employment-resources/> [<https://perma.cc/KRF9-TM5Z>] (last visited Aug. 29, 2020) (providing links from the SANYS website — which focuses on the organization's goal of promoting awareness and recognition of the civil rights of people with developmental disabilities — to resources addressing employment needs).

96. The AHRC of NYC has been serving New Yorkers with developmental disabilities for over 70 years. See *Our History*, AHRC N.Y.C., <https://www.ahrcnyc.org/about/history/> [<https://perma.cc/9ZD9-LGTZ>] (last visited Aug. 29, 2020).

97. 2019 ACCESSIBLE NYC REPORT, *supra* note 9, at 38.

98. See *id.* at 42–43.

99. See Sundar et al., *supra* note 24, at 95.

100. See Hategeka et al., *supra* note 49, at 215.

disabilities time and energy, and adds unnecessary confusion to an already stressful process. MOPD's streamlining of this process productively alleviates this added burden.

The *NYC: ATWORK* program has the additional benefit of giving job-seeking clients access to a broader informal network than they have as individuals. A very robust finding from the literature on employment is that informal networks play a particularly important role in finding a job,¹⁰¹ and a substantial proportion of job seekers in the United States secure jobs through social networks.¹⁰² If *NYC: ATWORK* clients are able to go beyond their own personal connections — which might be limited if they have struggled to secure employment — to access the well-developed social and professional network of MOPD and its staff, this could have a positive impact on the job searches of *NYC: ATWORK* clients. Ultimately, if the *NYC: ATWORK* program can continue to evolve into a hub between the many programs and actors currently in the disability-employment space, it could serve as an efficient tool for job-seeking New Yorkers with disabilities, rather than being merely another virtual job board in an already crowded space.

ii. Best Practice: Embracing the “Business Relations Model”

By bringing together employer- and employee-focused programs, MOPD is following the best practice of the “dual customer approach,” or the “business relations model.”¹⁰³ This approach emphasizes that vocational rehabilitation (VR) agencies tasked with helping people with disabilities obtain employment must pay attention to individuals they serve *and* develop long-term relationships with businesses, as “employers who have talked to a VR professional about hiring people with disabilities are much more likely to have hired someone.”¹⁰⁴ Many employers view this approach favorably and report that repeated contact with VR professionals helps them hire people with disabilities.¹⁰⁵

One example of MOPD's successful embrace of the Business Relations Model is its cooperation with Microsoft. In Fall 2019, Microsoft and

101. See Wanberg, *supra* note 48, at 379.

102. See Axel Franzen & Dominik Hangartner, *Social Networks and Labour Market Outcomes: The Non-Monetary Benefits of Social Capital*, 22 EUR. SOC. REV. 353, 363 (2006).

103. See McDonnall, *supra* note 11, at 50. The terms “dual customer approach” and “business relations model” are often used interchangeably in the literature. See, e.g., *id.* For clarity, we will refer to this approach as the business relations model.

104. *Id.* at 50, 55.

105. See Erickson et al., *supra* note 37, at 312.

MOPD hosted the “inaugural NYC Access and Employment Week,”¹⁰⁶ built around a job fair held at the Microsoft Technology Center in Times Square, with “[n]early 30 businesses and over 150 jobseekers with disabilities participat[ing].”¹⁰⁷ Framed as the “inaugural” event in a “partnership” between Microsoft and MOPD,¹⁰⁸ this recruitment event targeted NYC: *ATWORK* participants, connecting this “specific group of qualified candidates with disabilities to an array of open positions in their respective fields of interest.”¹⁰⁹ This partnership demonstrates MOPD’s achievement of two key Business Relations Model goals — longevity of the relationship between the VR agency and the business, and giving VR agency clients key opportunities to fill empty positions — both of which are associated with positive employment outcomes.¹¹⁰ This collaboration also serves as an example of how such relationships can be mutually beneficial. For NYC: *ATWORK*, the benefits of this partnership include access to companies willing to interview prospective workers with disabilities. Microsoft, meanwhile, benefits from the opportunity to highlight their accessibility offerings to a wide range of interested groups, showcasing their products’ accessibility and their

106. See Yvette White, *Accessibility and Employment for All: Key Resources for Job Seekers and Employers*, MICROSOFT BUS. BLOGS (Oct. 17, 2019), <https://cloudblogs.microsoft.com/industry-blog/microsoft-in-business/general/2019/10/17/accessibility-and-employment-for-all-key-resources-for-job-seekers-and-employers/> [https://perma.cc/3LL3-FTL4].

107. Press Release, Mayor’s Off. for People with Disabilities, Mayor’s Office for People with Disabilities Held Largest Employee Recruitment Event for People with Disabilities Ever Held in New York City (Oct. 23, 2019) [hereinafter Press Release, Largest Recruitment Event], <https://www1.nyc.gov/assets/mopd/downloads/pdf/MOPD-Holds-Largest-Recruitment-Event-10-23-2019.pdf> [https://perma.cc/DA8C-F5T5].

108. On MOPD’s primary webpage about Access and Employment week, Microsoft and MOPD share top billing for the event, described as “[a] product of” both MOPD and Microsoft. See *Access and Employment Week*, MAYOR’S OFF. FOR PEOPLE WITH DISABILITIES, <https://web.archive.org/web/20200101234547/https://www1.nyc.gov/site/mopd/events/access-and-employment-week.page>.

109. Press Release, Largest Recruitment Event, *supra* note 107. Employer-side participants included Norwell Health and TD Bank. See *id.*

110. The hiring outcomes of this event are not available, so the success of this particular event cannot be evaluated.

programs for hiring workers with disabilities¹¹¹ as part of NYC Access and Employment Week’s programming.¹¹²

iii. Best Practice: Supporting Internships in High-Growth, Well-Paying Sectors

A key barrier to improving the employment rate of persons with disabilities is the perception that employees with disabilities are less capable than non-disabled employees.¹¹³ Indeed, in one survey of managers and HR professionals, over half of the respondents “agreed that discrimination is a reason that some employers don’t hire workers with disabilities.”¹¹⁴ Unfortunately, many studies echo these findings, highlighting the “persistence and pervasiveness of attitudinal barriers

111. See Microsoft, *Microsoft Autism Hiring Program*, YOUTUBE (Oct. 2, 2017), https://www.youtube.com/watch?v=XUAsU_zQVMo [<https://perma.cc/BXU9-84AP>]. Microsoft has at least three programs focused on hiring workers with disabilities. First, the Autism Hiring Program has, since 2015, recruited individuals on the Autism spectrum, adjusting interviewing techniques to allow prospective employees to “show their true colors and abilities.” See *id.* Second, the Supported Employment Program supports hiring people with intellectual/developmental disabilities via Microsoft’s Real Estate and Facilities vendor ecosystem. See *Supported Employment Program*, MICROSOFT, <https://www.microsoft.com/en-us/procurement/diversity-sep.aspx?activetab=pivot%3aprimaryr5> [<https://perma.cc/2TDU-MJAZ>] (last visited Aug. 18, 2020). Supported Employees have been hired into over 30 different job types, including reception or office assistant, groundskeeper, food service worker, and laboratory technician. See *id.* Third, the Disability Hiring Program is Microsoft’s broadest disability-employment program, hiring people with disabilities into full-time roles across Microsoft. See *Inclusive Hiring for People with Disabilities*, MICROSOFT, <https://www.microsoft.com/en-us/diversity/inside-microsoft/cross-disability/hiring.aspx> [<https://perma.cc/8RXV-YCPV>] (last visited Aug. 18, 2020). Chief Accessibility Officer Jenny Lay-Flurrie heads these programs and has spoken at length about how her deafness has impacted her career. See Jennifer Warnick, *Jenny Lay-Flurrie: Talk to the Hand!*, MICROSOFT (Apr. 21, 2014), <https://news.microsoft.com/stories/people/jenny-lay-flurrie-2014.html> [<https://perma.cc/YW2K-DDNC>].

112. *Access and Employment Week: Schedule of Events*, MAYOR’S OFF. FOR PEOPLE WITH DISABILITIES, <https://www1.nyc.gov/site/mopd/events/schedule-of-events.page> [<https://perma.cc/GXA9-MCS8>] (last visited Aug. 18, 2020).

113. One survey of potential employers found they often believe “a worker with a disability ‘doesn’t pull his own weight,’ ‘can’t do the job 100%,’ or ‘might not have the same capacity’ as other workers.” H. Stephen Kaye, Lita H. Jans & Erica C. Jones, *Why Don’t Employers Hire and Retain Workers with Disabilities?*, 21 J. OCCUPATIONAL REHAB. 526, 527–29 (2011). Other common concerns these researchers found included possible costs of accommodation, lack of awareness about how to accommodate workers with disabilities, concerns about “being stuck” with workers who cannot be disciplined or fired because of the possibility of a lawsuit, and difficulties assessing applicants’ abilities to perform job tasks. See *id.*

114. *Id.* at 534. Embodying this finding, one respondent stated, “I think that people with disabilities can’t do the same things as people without disabilities.” *Id.* at 531.

encountered by people with disabilities.”¹¹⁵ These negative, stereotypical attitudes in turn drive discriminatory practices.¹¹⁶

Internship programs are a productive way to mitigate discriminatory biases, because they “provide[] low risk and mutually beneficial awareness-raising about the qualifications and abilities of people with disabilities.”¹¹⁷ This strategy is viewed favorably by employers, who describe disability-targeted internship programs as a helpful recruitment strategy.¹¹⁸ With two internship programs — the abilITy Academy and the PII — MOPD has embraced this best practice. The former provides tuition-free training in networking and cybersecurity, and upon program completion, graduates earn an industry-recognized Cisco certification and a paid internship.¹¹⁹ This program mitigates possible employer bias by placing well-qualified interns in positions where they can demonstrate their abilities,¹²⁰ which increases their chances of being hired full-time; this could, in turn, have a ripple effect on the business’s hiring as the employer sees the value and competence of workers with disabilities. Further, the abilITy Academy does not just give graduates a job; participants earn a key qualification for, and entry to, a high-growth, high-pay sector, giving them a path to a fulfilling career, making it not only less likely that they will be *unemployed* in the future, but also less likely that they will be *underemployed*.¹²¹ The PII also connects workers with disabilities to internships, but these positions are within City government. As with the success of the abilITy Academy, the PII has shown potential, surpassing its annual target of 30 internships by placing 36 interns in under six months — three of whom have been hired full-time.¹²²

115. See, e.g., Carter et al., *supra* note 60, at 414.

116. See Kaye et al., *supra* note 113, at 533–34.

117. Erickson et al., *supra* note 37, at 325.

118. See *id.* at 312.

119. *Welcome to the abilITy Cisco Academy*, INST. FOR CAREER DEV., <http://www.icdnyc.org/eligibility-it-academy> [<https://perma.cc/GQD3-MCKU>] (last visited Aug. 18, 2020).

120. See Kaye et al., *supra* note 113, at 535.

121. Demand for cybersecurity professionals has jumped in recent years. See, e.g., *Global Cybersecurity Outlook 2019*, INDEED (Apr. 25, 2019), <http://blog.indeed.com/2019/04/25/cybersecurity-outlook-2019/> [<https://perma.cc/296K-V9QJ>].

122. See Press Release, Mayor’s Off. for People with Disabilities, DSS-AHRC Internship Program to Connect New Yorkers with Disabilities with Employment Opportunities Places 36 Interns in First Six Months (Nov. 6, 2019) [hereinafter Press Release, 36 Interns in First Six Months], https://www1.nyc.gov/assets/hra/downloads/pdf/news/press_releases/2019/PII-Announcement.pdf [<https://perma.cc/7X5N-RAUW>].

**D. Policy Evaluation: Areas for Improvement within MOPD's
Employment Policies**

While MOPD's employment programs embody best practices for increasing employment for persons with disabilities, there are three areas where there is room for improvement as these policies continue to mature. First, the 55-a Program is practically and structurally problematic. Second, MOPD's outward-facing programs could be improved by directly targeting stigma, foregrounding intersectionality, and addressing employment-related concerns other than hiring. Third, it is unlikely that these programs, as structured, are scalable.

i. The Underperformance of, and Structural Issues with, the 55-a Program

The 55-a Program allows up to 700 qualified¹²³ persons with disabilities to be appointed to City civil service positions without having to take the exam that non-disabled workers need to take to fill the same positions.¹²⁴ Critically, although the 55-a Program creates opportunities to work in competitive class positions, “the Program does not provide all of the protections of a competitive class title” and converting to permanent employment requires applicants to pass a civil service exam, be appointed from an eligible employment list, and complete a probationary period.¹²⁵ Finally, 55-a Program appointments “are discretionary for each City agency.”¹²⁶

Positively, this program targets “structural or institutional discrimination, which is one of the major obstacles to the equalisation of opportunities for disabled people.”¹²⁷ The 55-a Program, like the 55-b and 55-c Programs, is based on the idea that beyond employing workers with disabilities, such “policies have the added benefit of demonstrating to private sector employers the viability and effectiveness of employing people with disabilities,”¹²⁸ thus, state and local government should be

123. See *The 55-a Program*, OFF. CITYWIDE DIVERSITY & EEO 4, https://www1.nyc.gov/assets/dcas/downloads/pdf/employment/55a_program_booklet.pdf [<https://perma.cc/VV48-QADX>] (last visited Aug. 18, 2020). “Qualified” applicants must be certified as having a disability, and their skills, education, or experience must meet the qualifications of the position, meaning they can do the job, either with or without accommodation. See *id.* at 3.

124. See *id.*

125. *Id.* at 6.

126. *Id.* at 4.

127. Malcolm Sargeant, Elena Radevich-Katsaroumpa & Alessandra Innessi, *Disability Quotas: Past or Future Policy?*, 39 ECON. & INDUS. DEMOCRACY 404, 411 (2018).

128. *State as Model Employer Policies*, NAT'L CONF. STATE LEGISLATURES (Dec. 19, 2017),

“modeling [the] of hiring of people with disabilities.”¹²⁹ In practice, however, the 55-a Program is not achieving these goals.

Firstly, while the City is statutorily limited to designating 700 positions as 55-a eligible, it has not come close to placing 700 55-a employees into NYC’s government. Rather, in 2019 there were 381 55-a employees throughout NYC government,¹³⁰ down from 435 employees that participated in 2017,¹³¹ and 425 in 2016.¹³² In conjunction with the City’s Department of Citywide Administrative Services (which is responsible for administering the 55-a Program), MOPD has held events encouraging City agencies to hire employees into 55-a positions.¹³³ However, this has resulted in only incremental increases in workers hired to 55-a positions. To increase the number of 55-a positions filled, MOPD could follow the lead of federal programs; e.g., when efforts to hire more persons with disabilities at a highly technical federal installation stalled, researchers suggested the rehabilitation specialists tasked with improving recruitment be given specialized training and management incentives be created to encourage proactivity.¹³⁴ Similarly, *NYC: ATWORK* specialists could be given more training in the City’s personnel system, which would give them greater insight into where their clients might best fit within NYC’s government. Creating programs incentivizing more 55-a placements could also be helpful; this can be as simple as “articulated statements by top leadership about the priority of recruitment and hiring of people with disabilities,”¹³⁵ which is a practice “strongly related to predicting the hiring of individuals with disabilities.”¹³⁶

<http://www.ncsl.org/research/labor-and-employment/state-as-model-employer-policies.aspx> [<https://perma.cc/P8MZ-A5Y6>].

129. N.Y. STATE EMP. FIRST COMM’N, *supra* note 87, at 1, 13.

130. 2019 ACCESSIBLENYC REPORT, *supra* note 9, at 46.

131. MAYOR’S OFF. FOR PEOPLE WITH DISABILITIES, ACCESSIBLENYC: AN ANNUAL REPORT ON THE STATE OF PEOPLE WITH DISABILITIES LIVING IN NEW YORK CITY 25 (2017), https://www1.nyc.gov/assets/mopd/downloads/pdf/accessiblenyc_2017.pdf [<https://perma.cc/NQF5-UMUH>].

132. MAYOR’S OFF. FOR PEOPLE WITH DISABILITIES, ACCESSIBLENYC: AN ANNUAL REPORT ON THE STATE OF PEOPLE WITH DISABILITIES LIVING IN NEW YORK CITY BY THE MAYOR’S OFFICE FOR PEOPLE WITH DISABILITIES 26–27 (2016), https://www1.nyc.gov/assets/mopd/downloads/pdf/accessiblenyc_2016.pdf [<https://perma.cc/5M83-ER3B>].

133. *See id.* at 47. For instance, in 2018 these offices held a “Citywide 55-a Symposium” and a “Diversity Career Fair” to increase agency participation in this program. *See id.* A similar career fair was held in 2019, and during 2019, MOPD also used the *NYC: ATWORK* program to directly refer pre-screened candidates for 55-a City positions, a tactic which resulted in the filling of four City positions. *See id.* at 47–48.

134. *See* Kennedy & Harris, *supra* note 25, at 137.

135. Erickson et al., *supra* note 37, at 325.

136. *Id.* at 324.

Even with such improvements, structural problems with the 55-a Program would likely remain: with the 700-position limit, the 55-a Program establishes a de facto quota system where 55-a workers are temporary, while non-55-a employees — in the same positions — are permanent. This non-permanence might dissuade managers reticent to repeat a job search from filling an open position with a 55-a appointee. While non-permanence can be beneficial for job seekers with disabilities in the context of internships, internships do not bring the same lack of stability as 55-a appointments because internships are generally for pre-determined time periods, while 55-a appointments are open-ended. This difference might explain why the PII program exceeds expectations, while the 55-a Program underperforms.

This temporary versus permanent dichotomy arguably also sends negative messaging about the equality of employees with disabilities. Far from being a New York-specific problem, the possibility of negative messages being sent by such policies has been at the heart of debates about disability-related quotas. Some scholars defend quotas, arguing they are associated with higher rates of employment for persons with disabilities; e.g., France's comparatively high rate of employment of persons with disabilities¹³⁷ is attributable at least partially to France's quota system, which requires public and private entities to include 6% of disabled people within their total workforce,¹³⁸ and levies fines on organizations that fail to fulfill their quota.¹³⁹ However, scholars critical of quotas argue that “they isolate disabled people as different, who need work reserved for them because they are unable to compete with persons without a disability,”¹⁴⁰ their efficacy is unproven,¹⁴¹ and employers “are

137. “Comparatively high” is still an abysmally low 54% employment rate among those aged 20 to 64 with disabilities. Susan Corby, Laura William & Sarah Richard, *Combating Disability Discrimination: A Comparison of France and Great Britain*, 25 EUR. J. INDUS. RELATIONS 41, 42 (2019).

138. *See id.* at 44.

139. This levy varies with organization size. *See id.* at 45 (noting that in 2019, it was “400 times the hourly minimum wage per ‘missing’ disabled employee for organizations with 20–199 employees, 500 times the hourly minimum wage for organizations with 501–749 employees and 600 times for organizations with 750 plus employees”). It also varies over time, increasing when employers make less improvement. *See id.* The impact of the quota is mixed. *See id.* (detailing that “[i]n 2012, 22 percent of private sector companies paid the full levy; 27 percent met the quota fully by directly employing disabled workers, 11 percent had an approved agreement [such agreements set out how an entity will promote the employment of disabled people], while 40 percent . . . paid the levy in part”).

140. Sargeant et al., *supra* note 127, at 416.

141. Looking at quotas in very different contexts — Russia, Italy, and the United Kingdom — some researchers argue it is not possible to show the effectiveness of quota policies in isolation from other policies. *See id.* at 404–05.

disposed to resenting and circumventing” them.¹⁴² Usefully, the latter observation might explain the City’s continuing inability to hit the 700-position limit. The 55-a Program exemplifies concerns that quotas

send out a mixed message both to employers and to those with a disability. On the one hand, they are told that the employment of people with disabilities is desirable but, on the other hand the message is that disabled workers are unable to compete for jobs on equal terms.¹⁴³

In the 55-a Program, workers with disabilities do not compete on equal terms and are given less stable employment, undermining the argument that their employment is of equal value. And, because the Program gives agencies the discretion to opt out, the employment benefits associated with the French quota model, which enforces compliance, are not realized here. Therefore, while well-intended, the 55-a Program’s structure incorporates the drawbacks of quotas while failing to realize quota programs’ benefits.

ii. Refining MOPD’s Outward-Facing Employment Policies

The four policies seeking to secure outside-government positions for New Yorkers with disabilities — the NYC: *ATWORK* program, the BDC, the Talent Coalition, and the ability Academy — are well-structured to achieve their core goal of securing employment for New Yorkers with disabilities. However, there are several areas where they could be productively refined.

1. MOPD Policies Sideswipe, Rather Than Directly Target, Disability-Related Stigma

As discussed above, persons with disabilities face stigma in employment.¹⁴⁴ All four outward-facing MOPD policies indirectly challenge disability-related stigma by modeling to employers that persons with disabilities are capable employees. But given the endurance, pervasiveness, and deleteriousness of disability-related stigma,¹⁴⁵ it would be useful to also challenge stigma head-on. Further, because the impact of anti-disability stigma varies depending on disabling condition,¹⁴⁶ it is

142. *Id.* at 408.

143. *Id.* at 414 (internal citation omitted).

144. See McLaughlin et al., *supra* note 41, at 307.

145. See Kaye et al., *supra* note 113, at 533–34.

146. “For example, people react more negatively to persons with drug and alcohol addictions than to those with sensory impairments, who are in turn viewed more negatively than are persons with physical disabilities.” McLaughlin et al., *supra* note 41, at 308 (citation omitted).

particularly crucial this stigma be directly challenged if MOPD wants to ensure that persons of all disability types benefit from their initiatives.¹⁴⁷

Anti-stigma trainings could be done in person — for instance, as a regular component of BDC meetings.¹⁴⁸ Or they could be included online alongside accessibility resources. For instance, the main page of Business Accessibility NYC, an online resource to help small business owners understand accessibility,¹⁴⁹ highlights three topics: opening an accessible business, making a business accessible, and dealing with an ADA lawsuit.¹⁵⁰ Adding a link encouraging the hiring of employees with disabilities — particularly one that answers common questions and provides information about trainings for those interested in hiring such workers — could be a low-cost way to improve the hiring of workers with disabilities.¹⁵¹ Such a link could also mitigate the stigma-reinforcing effects of the prominence of the “Dealing with an ADA Lawsuit” button. This button is a useful resource and a reminder that accommodating people with disabilities is not a mere social nicety, but a legal requirement of antidiscrimination policies. But emphasizing ADA-liability risks, particularly while failing to also highlight the benefits of diversity and inclusion, could reinforce employers’ worries that “employing a worker with a disability puts them at risk of a lawsuit or a formal discrimination complaint . . . or perhaps at legal and financial risk should a workplace injury or accident occur,”¹⁵² and the common business practice of considering disability only in the context of legal compliance.¹⁵³

147. See McDonnell, *supra* note 11, at 50. For instance, talking with employers specifically about blind or visually impaired workers is particularly crucial as “most employers simply do not know enough about how a blind/visually impaired person could perform the jobs they have to consider them for employment.” *Id.* at 54.

148. Such trainings may already be part of the BDC’s meetings, although if so, this is not clear from the Report’s summary of BDC activities. See 2019 ACCESSIBLENYC REPORT, *supra* note 9, at 41.

149. Press Release, Mayor’s Off. for People with Disabilities, Mayor’s Office for People with Disabilities and Department of Small Business Services Release Accessibility Resource to Assist Small Business Owners (Nov. 14, 2019), <https://www1.nyc.gov/site/mopd/about/empowering-accessibility-pr-11-15-2019.page> [<https://perma.cc/TY3B-QZGW>].

150. See *Accessibility Compliance: Tips for New York City Small Businesses*, BUSINESSACCESSIBILITY.NYC, <https://www.businessaccessibility.nyc/> [<https://perma.cc/65VU-S6HE>] (last visited Sept. 17, 2020).

151. See Kaye et al., *supra* note 113, at 533–34. Improving training for, and providing information to, supervisors and managers on disability issues was the most common suggestion for how to improve hiring and retention of workers with disabilities among the human resources professionals and managers Kaye, Jans, and Jones surveyed. See *id.*

152. *Id.* at 534.

153. See JIM FRUCHTERMAN & JOAN MELLE, BENETECH, EXPANDING EMPLOYMENT SUCCESS FOR PEOPLE WITH DISABILITIES 6 (2018),

2. *The Absence of Intersectionality from MOPD Programs' Design*

MOPD's programs — particularly the PII and the Talent Coalition — are inclusive of a broad range of groups from the disability community. But MOPD does not explicitly address concerns about intersectionality. Have MOPD programs successfully placed intersectionally disadvantaged New Yorkers in high-quality employment positions? From publicly available data, this is unclear,¹⁵⁴ and within the employment section of the 2019 AccessibleNYC Report, diversity among persons with disabilities is only mentioned once, in passing.¹⁵⁵

Yet, employment outcomes for people with disabilities vary by characteristics such as age, gender, race, ethnicity, marital status, and education.¹⁵⁶ As it is unclear whether MOPD's programs account for these factors, a more granular assessment of whether MOPD's policies are reaching intersectionally marginalized New Yorkers with disabilities could be a productive first step towards improving and refining these policies. Making it a priority to include NYC groups that foreground intersectional representation and disability in the Talent Coalition could also ensure that MOPD's programs are benefitting *all* New Yorkers with disabilities.

3. *MOPD's Narrow Focus on Hiring Overlooks Common Issues with Retention and Promotion of Workers with Disabilities*

While unemployment of persons with disabilities is a critical problem, it is not the only employment-related challenge workers with disabilities face. Among those that have jobs, 42% of employees with disabilities have experienced misjudgment, 31% have experienced insults, 20% have experienced avoidance, and 14% have experienced discomfort.¹⁵⁷ Similarly, 48% of employees with disabilities feel that their ideas which would drive company value have not received endorsement, compared to only 38% of employees without disabilities who feel this way.¹⁵⁸ And,

<https://benetech.org/wp-content/uploads/2018/11/Tech-and-Disability-Employment-Report-November-2018.pdf> [<https://perma.cc/UP95-4BQG>].

154. See 2019 ACCESSIBLENYC REPORT, *supra* note 9, at 41.

155. In the discussion of the abiliTy Academy's inaugural cohort, the report mentions the cohort was comprised of "16 students diverse in backgrounds, education, skills and disability." *Id.* at 45.

156. See Sundar et al., *supra* note 24, at 94.

157. LAURA SHERBIN ET AL., CTR. FOR TALENT INNOVATION, DISABILITIES AND INCLUSION: US FINDINGS 1, 5 (2017), https://www.talentinnovation.org/_private/assets/DisabilitiesInclusion_KeyFindings-CTI.pdf [<https://perma.cc/EY5D-Y8KF>].

158. *Id.* at 6.

“[e]ven though employees with disabilities are as likely to report being [as] ambitious as employees without disabilities (80% vs. 79%), they’re more likely to feel stalled in their careers [57% vs. 44%].”¹⁵⁹

However, MOPD policies summarized in AccessibleNYC almost exclusively focus on hiring and training. This narrow focus does not align with best practices as suggested by the literature; rather, “key actions for attracting, hiring, *retaining and advancing* diverse talent”¹⁶⁰ must go beyond hiring. Best practices for building and benefiting from an inclusive workplace require employers to “encourage and progress persons with disabilities.”¹⁶¹ Therefore, “[c]ompanies must offer mentoring and coaching initiatives, as well as skilling/re-skilling programs, to ensure that persons with disabilities continue to grow and succeed. Persons with disabilities should occupy roles at all levels, including top leadership positions.”¹⁶² By supporting *NYC: ATWORK* participants for a year after hiring, MOPD does offer some post-hiring support to employees with disabilities. But expanding programs on both the supply and demand side that emphasize employee advancement and the importance of anti-stigma work beyond hiring would make MOPD’s programs more attentive to the needs of employed New Yorkers with disabilities.

iii. The Unanswered Question of Scalability

A key challenge for MOPD’s employment programs is scalability, as currently, these programs are all quite small. The *NYC: ATWORK* program resulted in 263 placements last year, while the ability Academy’s inaugural cohort included 16 students.¹⁶³ The PII placed 36 program participants in City internships over the course of six months,¹⁶⁴ and the 55-a Program had 381 participants when the 2019 AccessibleNYC Report was published.¹⁶⁵ Outside these programs, the *NYC: ATWORK* program ran the “largest employee recruitment event for people with disabilities ever held in New York City” by including 150 job seekers,¹⁶⁶

159. *Id.* This problem is not confined to the United States — “[p]lacement in roles with little growth potential may be what leaves most Japanese employees with disabilities feeling disadvantaged. Only 15% of [the sampled Japanese] employees . . . (vs. 27% in the US) feel like they’re being promoted quickly.” *Id.* at 19.

160. ACCENTURE, *supra* note 14, at 10 (emphasis added).

161. *Id.*

162. *Id.* at 11.

163. See 2019 ACCESSIBLENYC REPORT, *supra* note 9, at 41, 45.

164. See Press Release, 36 Interns in First Six Months, *supra* note 122.

165. See 2019 ACCESSIBLENYC REPORT, *supra* note 9, at 46.

166. Press Release, Largest Recruitment Event, *supra* note 107.

and the BDC and Talent Coalition include over 90 and 60 members, respectively.¹⁶⁷

But, there are approximately 300,000 New Yorkers with disabilities who are of working age and not employed.¹⁶⁸ And MOPD's programs are highly personalized and labor intensive. For instance, the NYC: *ATWORK* program includes both phone and in-person screenings and assigns a relationship manager to each participant.¹⁶⁹ This program has expanded to include an online Job Board and an online system to track jobseeker profiles to manage and facilitate the process,¹⁷⁰ and MOPD intends to expand its programs by replicating the ability Academy "model in other sectors by connecting with businesses to identify where the demand for qualified employees is greatest."¹⁷¹ But even with more academies and a recently streamlined 55-a Program,¹⁷² it is unlikely MOPD's programs, as currently structured, will move the needle on the high rate of unemployment for New Yorkers with disabilities.

E. Elements Essential to Transposing MOPD's Employment-Focused Policies to Other Cities

Ultimately, the six employment-related programs run by MOPD considered herein have the capacity to improve the employment prospects of job-seeking New Yorkers with disabilities — at least those job-seekers who are directly served by MOPD. Even if these programs do not currently have the capacity to effectively tackle the extent of the problem of under- and unemployment of New Yorkers with disabilities, as the programs mature, they do have the potential to expand and serve as models to those interested in establishing similar programs.

Criticizing MOPD's employment programs for lack of scalability might be fair, but it also misses a key benefit of these programs — their potential as model programs. Many researchers argue that "[g]reatly increasing the hiring of people with disabilities requires large-scale social change."¹⁷³ Because of the relatively high profile of MOPD and its access to important media and business institutions, its programs can influence this social change by demonstrating that workers with disabilities are eminently capable of working in a variety of industries and loudly publicizing these

167. See 2019 ACCESSIBLENYC REPORT, *supra* note 9, at 40–41.

168. CENSUS, TABLE C18120, *supra* note 13.

169. See ACCESSIBLENYC 2019, *supra* note 9, at 42.

170. See *id.* at 43.

171. Press Release, ability Launch, *supra* note 73.

172. See 2019 ACCESSIBLENYC REPORT, *supra* note 9, at 46.

173. FRUCHTERMAN & MELLEA, *supra* note 153, at 12.

workers' success. For instance, the abilITy Academy trains and places, at most, a couple dozen New Yorkers with every Academy. But, by publicizing the successful placement of well-trained interns in growing and lucrative industries, the abilITy Academy can impact a far larger audience, demonstrating to the technology sector the desirability of employees with disabilities, and to prospective employees with disabilities that this sector might be for them. Similarly, by pairing with industry leaders such as Microsoft — as MOPD did with their inaugural NYC Access and Employment Week during 2019¹⁷⁴ — MOPD can take advantage of businesses' common tendency to engage in the competitive market strategy of imitating leaders as a way for followers to catch up with the leader.¹⁷⁵ By highlighting Microsoft's hiring of persons with disabilities, MOPD can signal to other businesses that hiring workers with disabilities is a desirable business strategy.

Considering these programs as a model, the key question becomes how transposable are they? Like NYC, other cities also ask, "how do we construct a world that embraces inclusion and the necessary supports for people with disabilities to live as fully as possible in their communities?"¹⁷⁶ For those cities, MOPD's programs offer a model,¹⁷⁷ but to effectively transpose MOPD's programs, four key ingredients are likely required: a large city, overlapping employment policies at other levels of government, dedicated leadership, and policies informed both by best practices and local needs.

i. Implementation within a Large, and Largely Accessible, City

In the "current zeitgeist where public expenditures are constantly at risk of cutbacks,"¹⁷⁸ MOPD's policies are particularly attractive. Rather than building costly programs from scratch, MOPD built a framework of public-private partnerships, and sat as a coordinator between existing

174. See White, *supra* note 106; see also *supra* Section I.C.ii.

175. See Jan-Micheal Ross & Dmitry Sharapov, *When the Leader Follows: Avoiding Dethronement through Imitation*, 58 ACAD. MGMT. J. 658, 658 (2015).

176. Faye Ginsburg & Rayna Rapp, *Crippling the New Normal: Making Disability Count*, 11 ALTER EUR. J. DISABILITY RSCH. 179, 183 (2017).

177. Reflecting the value of cross-city modeling and learning from experience regarding what does and does not work within the city-level disability policy space, some American cities have already begun to organize to use each other's programs as models and resources. An informal coalition of leaders from several dozen mayoral disability offices — including New York City's Commissioner Calise — meets several times per year via phone, and has met at least once in person, to stay abreast of city disability policy innovations. See E-mail from Victor Calise, Comm'r, Mayor's Off. for People with Disabilities, to Michael Stein (June 20, 2020) (on file with author).

178. Ginsburg & Rapp, *supra* note 176, at 183.

groups — connecting interested employers with potential employees in NYC: *ATWORK*, and finding external sources of funding to finance internships inside and outside City government with the ability Academy and the PII. An essential element of MOPD’s success in this role was the preexistence of two communities: a robust business community willing to collaborate with MOPD on the demand side, and a robust and organized civil society on the supply side. Without these communities, there would have been more friction in setting up MOPD as a connecting “hub,” and it would have been costlier to find employees with disabilities needing employment and provide them with employment opportunities.¹⁷⁹

NYC’s other accessibility policies, such as those related to transportation,¹⁸⁰ are also essential to the success of MOPD’s employment programs. The City has a fully accessible bus fleet, and a relatively robust Building Code, ensuring that New Yorkers with disabilities can actually get to and into potential workplaces.¹⁸¹ Cities without such policies and amenities would be far more limited in the positions to which they could connect workers with disabilities, particularly mobility-related disabilities. These cities should be mindful that when it comes to access, employment is not a stand-alone issue.

ii. Overlapping Policies within Civil Society and at Other Levels of Government

In addition to the City’s flourishing civil society and business communities, MOPD’s location within NYC also allowed it to benefit from the overlap in local, state, and federal disability-employment policies. Employment-related resources at each of these levels were accessible to New Yorkers, regardless of MOPD’s efforts. Redundancy gave MOPD the flexibility to experiment within the disability-employment policy space; regardless of the success or failure of MOPD efforts, these pre-existing programs would endure as a safety net serving New Yorkers with disabilities seeking employment. MOPD could

179. On the issue of cost, there is no evidence that success of these programs is likely to turn New York into a “magnet” for workers with disabilities. While there does not appear to be any research directly on the question of disability-related migration following policy innovation, studies assessing the impact of policy change on migration have found little evidence of this phenomenon. See Aaron L. Schwartz & Benjamin D. Sommers, *Moving for Medicaid? Recent Eligibility Expansions Did Not Induce Migration from Other States*, 33 *HEALTH AFFS.* 88, 88 (2014).

180. See Carter et al., *supra* note 60, at 400 (finding that when considering local employment outcomes for persons with disabilities, transportation is a core concern alongside more employment-centric issues).

181. See *id.*; see also 2019 *ACCESSIBLENYC REPORT*, *supra* note 9, at 12–13.

innovate, knowing New Yorkers with disabilities seeking employment would not be left resource-less should the City's policies fail to develop as hoped. Cities or states with a less well-developed safety net of alternative policies might consider being more conservative with their innovations, lest unsuccessful programs leave residents with disabilities worse off; however, all American cities do have access to the federal system's WorkforceGPS system, and the Disability and Employment community therein, as a backstop.¹⁸²

The benefits of overlapping policies should not be overstated, for the success of MOPD initiatives is also constrained by outside programs. Most obviously, federal social service programs notoriously contain "the 'benefits cliff,' where working persons with disabilities lose vital social services if they obtain, in some cases, \$1 more than the cut-off for services. This cruel cycle keeps people with even moderate disabilities out of employment and dependent on social services,"¹⁸³ and there is not much MOPD can do to fully resolve this bind.

iii. Dedicated Leadership

MOPD was successful in innovating and implementing multiple policies simultaneously partly because of Commissioner Calise's strong and experienced leadership, and because there was strong support for these programs from the Mayor's Office.¹⁸⁴ While it is impossible to be sure this was essential to MOPD's success — the case study model does not allow for such conclusions — that strong, committed leadership is essential to the success of programs geared at improving employment for workers with disabilities is a robust finding in the literature.¹⁸⁵ This dedicated leadership does not necessarily require securing vast amounts of government funding — indeed, a core strength of MOPD's programs is that they used external funding, e.g., with the PII, and cost-efficiently served as a connection between existing programs and interested actors, rather than being too reliant on taxpayer funds. Yet, it is unlikely such success could be achieved without similarly committed leadership.

182. See *Disability and Employment*, *supra* note 89.

183. REY FUENTES, COUNCIL OF STATE GOV'TS, A SURVEY OF STATE DISABILITY POLICY, 2010, at 20 (2010), https://knowledgecenter.csg.org/kc/system/files/Disability_Survey.pdf [<https://perma.cc/BC7R-ESC9>].

184. The AccessibleNYC Report opens with a statement of commitment from Mayor de Blasio, that "[w]e will not rest until our bold progressive goals are fully realized so that all New Yorkers are able to live independently in their communities with the resources they need to thrive." 2019 ACCESSIBLENYC REPORT, *supra* note 9, at 6.

185. See Erickson et al., *supra* note 37, at 325.

iv. Policies Informed by Best Practices and the Local Environment

A key lesson of MOPD's success is that MOPD enacted literature-supported best practices, including internships and public-private partnerships, but it did so in a way that was informed by the local environment.¹⁸⁶ Somewhat ironically, the observation that policymakers should not be overly reliant on professional literature if it means turning a blind eye to facts on the ground is, itself, a literature-supported best practice; "agencies, schools, and other organizations often identify intervention ideas from within the professional literature, borrow them from other locales, or adapt them from model demonstration projects. However . . . practices found effective elsewhere may not adequately reflect the unique contexts of other individual communities."¹⁸⁷ With its employment policies, MOPD effectively used the fact that key industries and their leaders are centered within the City, and wisely built programs around this — most notably, the Business Development Council. Similarly, it productively made use of the fact that NYC is home to civil society groups that are decades old, and relied on and learned from those groups' established practices, rather than wasting resources reinventing them. Similar approaches could likely work with community and business leaders in other large, wealthy cities, but it would be challenging to adopt them in rural or small-town environments. This does not mean MOPD's example is useless to these locations; rather, the more distinguishable from New York these locations are, the more necessary it is to follow MOPD's lead and "consider[r] local context in the design and implementation of systems change efforts."¹⁸⁸

II. A WIDER CIRCLE: EMPLOYMENT-RELATED POLICIES AND CONTEXTUAL FACTORS

Policies geared at tackling the underemployment of persons with disabilities by supporting and encouraging their training and hiring do not operate in a vacuum. These policies are important, particularly as employer discrimination is a key barrier to employment,¹⁸⁹ but the success of city-level *employment-focused* policies — such as those specifically targeting hiring and promoting New Yorkers with disabilities

186. *See supra* Section I.C.

187. Carter et al., *supra* note 60, at 399.

188. *Id.* at 414.

189. *See* Bagenstos, *supra* note 17, at 25.

— is also impacted by federal and state *employment-focused*¹⁹⁰ policies and federal, state, and city-level, *employment-related* policies and conditions.

That successful city-level, employment-focused policies are contingent upon contextual factors and robust employment-related policies reflects findings that “[w]hile employer attitudes, willingness to pay for work-place accommodations, and a number of unobservable factors may influence employment outcomes . . . differences in state and local economic, policy, or other environmental characteristics play an important role in shaping employment opportunities for people with disabilities.”¹⁹¹ The policies and contextual variables that influence access to employment are numerous; living in a high drug-use or high violent-crime neighborhood,¹⁹² higher state Supplemental Security Income supplement amounts,¹⁹³ lack of accessible transportation,¹⁹⁴ denial of health benefits,¹⁹⁵ and higher population density are all associated with lower employment rates for persons with disabilities.¹⁹⁶ Even weather conditions can function as barriers to employment.¹⁹⁷ These factors combine with broader cultural and policy contexts to influence programs for, and rates of, employment of persons with disabilities.¹⁹⁸ When combined, they “paint a picture of lower employment rates in urban areas”¹⁹⁹ for persons with disabilities — although among individuals with disabilities who *are* employed, “living in a metropolitan area and having high levels of access to public transportation [a]re associated with higher earnings.”²⁰⁰ And, the impact

190. For instance, state-level tax benefits for businesses employing people with disabilities. EMPLOYABILITY HANDBOOK, *supra* note 85, at 9; *see also* N.Y. CIV. SERV. LAW § 55-b (McKinney 2014) (concerning noncompetitive employment application processes for prospective New York State employees with disabilities). Federal resources include, *inter alia*, the Disability and Employment Community within the federal WorkplaceGPS website. *See Disability and Employment*, *supra* note 89.

191. Purvi Sevak et al., *State and Local Determinants of Employment Outcomes among Individuals with Disabilities*, 29 J. DISABILITIES POL’Y STUD. 119, 119 (2018).

192. *See id.* at 120, 124. However, the estimated magnitude for violent crime was very small. *See id.*

193. *See id.* at 126.

194. *See* Sundar et al., *supra* note 24, at 94.

195. *See id.* at 101.

196. *See* Sevak et al., *supra* note 191, at 123–24.

197. *See id.* at 120.

198. *See* Martha McGaughey & David Mank, *State Policy Innovation and Systems Change: The Context for the Supported Employment Initiative*, 11 J. DISABILITY POL’Y STUD. 202, 208 (2001) (“Economics, political culture, cultural identity, taxation policy, and other factors provide th[is] context . . .”).

199. Sevak et al., *supra* note 191, at 124.

200. *Id.* at 126. Sevak et al. noted that “[t]he fact that the relationship between these variables is positive for one employment outcome and negative for another seems

of these variables fluctuates according to individual characteristics, including disability type,²⁰¹ gender, age, race, ethnicity, educational attainment,²⁰² and marital and veteran statuses.²⁰³

The finding that external environments influence employment rates for persons with disabilities, and that these are not only a matter of individual characteristics' interaction with employer decisions, is "consistent with the social model of disability, which posit[s] that an individual's medical condition or impairment, assistive devices, *and* characteristics of his or her physical, social, policy, and economic environments are major determinants of participation in social activities such as employment."²⁰⁴ It is also consistent with the literature-suggested best practice of improving employment outcomes by looking beyond employment-focused policies, as, for many persons with disabilities, such policies do not lower enough barriers to allow them to take advantage of hiring- or training-based programs. Rather, "many individuals with disabilities face significant barriers to employment that operate well before they are ever in a position to be discriminated against by an employer."²⁰⁵ Moreover, the ADA's prohibition on discrimination, even in combination with its accommodation mandate in the workplace, "do[es] not require the employer to provide in-home personal-assistance services or transportation to enable an individual with a disability to get to work."²⁰⁶ This observation about the ADA's limits also rings true for MOPD's employment-focused policies; they might reduce discrimination

counterintuitive. However, the factors associated with higher earnings may restrict labor demand and hence be associated with lower rates of employment." *Id.*

201. For instance, employment outcomes of individuals with ambulatory disabilities have been found to be mostly related to environmental variables. *See id.* at 126. More specifically, for individuals with spinal cord injuries, "suburban compared to urban areas [are] associated with a better probability of employment." Amanda L. Botticello, Yuying Chen & David S. Tulsky, *Geographic Variation in Participation for Physically Disabled Adults: The Contribution of Area Economic Factors to Employment after Spinal Cord Injury*, 75 SOC. SCI. & MED. 1505, 1510 (2012). The authors note this is likely because of increased rates of individual transportation and accessibility of vocational services. *See id.* Conversely, few of these variables are significant predictors of employment success for individuals with hearing and vision disabilities. *See* Sevak et al., *supra* note 191, at 126.

202. *See* Sevak et al., *supra* note 191, at 124. This is not a simple, linear relationship; rather, "[o]ddly, a 20% higher concentration of high school graduates [in a given area] was associated with 5% fewer hours worked and 15% lower earnings[, while e]arnings were slightly higher with a greater concentration of college graduates." *Id.* at 125.

203. *See id.* at 124.

204. *Id.* at 119–20. Importantly, this does not mean individual variables are *not* important — Sevak et al. found "no environmental variables were as strongly associated with outcomes as individual health and personal characteristics." *Id.* at 127.

205. Bagenstos, *supra* note 17, at 25.

206. *Id.* at 3, 4.

— a crucial barrier to knock down — but they do little to address broader impediments to employment.²⁰⁷

Usefully, MOPD’s policy portfolio already extends beyond employment. For instance, in conjunction with other City agencies and civil society groups, MOPD tackles accessibility issues related to the physical environment and local amenities — both of which are environmental factors that impact employment for individuals with disabilities.²⁰⁸ The AccessibleNYC reports discuss many of these activities’ specifics alongside MOPD’s employment-focused programs; specifically, the 2019 edition contains sections on transportation, financial empowerment, housing, health, technology, access, and education.²⁰⁹ All of these policies are crucial to the City and MOPD’s shared goal of achieving “equity and inclusion for our fellow New Yorkers with disabilities and to visitors with disabilities.”²¹⁰ But they also profoundly influence the physical, social, policy, and economic environments that researchers have found to be powerful determinants of New Yorkers with disabilities’ access to employment.

III. TRANSPORTATION’S INTERSECTION WITH INCLUSION AND EMPLOYMENT

Building on observations that *employment-related* policies powerfully shape the success of *employment-focused* policies, Part III of this Article focuses on one type of policy that falls in the former category: transportation. Inaccessible transportation is a barrier to employment, and key to accessibility, social inclusion, and civil rights for persons with disabilities.²¹¹

207. See Michael Ashley Stein & Penelope J. S. Stein, *Beyond Disability Rights*, 58 HASTINGS L.J. 1203, 1205–06 (2007) (arguing a disability human rights paradigm that “combines the type of civil and political rights provided by antidiscrimination legislation . . . with the full spectrum of social, cultural, and economic measures . . . bestowed by many human rights treaties” must be adopted to “account[] for factors normally exogenous to civil rights laws and ensure[] that individuals can flourish and participate in their societies”).

208. See Sevak et al., *supra* note 191, at 120.

209. See 2019 ACCESSIBLENYC REPORT, *supra* note 9, at 3–5. Indicating an even broader commitment to accessibility, the report opens with Mayor de Blasio’s support of MOPD efforts to “ensur[e] that accessibility is at the forefront of *all* City policies and programs.” *Id.* at 6 (emphasis added).

210. *Id.* at 13.

211. Other topics discussed in the 2019 AccessibleNYC Report are also relevant to employment-related outcomes. For example, “[i]ndividuals with more education spend more time in market work, less time in leisure, and less time in tertiary activities than those with less education.” Carrie L. Shandra, *Disability as Inequality: Social Disparities, Health Disparities, and Participation in Daily Activities*, 97 SOC. FORCES 157, 162 (2018). Similarly, access to healthcare is crucial to maintain steady employment. See Bagenstos, *supra* note 17, at 26; see also Sundar et al., *supra* note 24, at 101 (finding that denial of

As only 1 in 20 Americans usually works from home,²¹² transportation's intersection with employment has always been clear: most days, most workers commute from home to work. The many jobs that *cannot* be performed remotely account for approximately 60% of U.S. employment and include, e.g., dentists, carpenters, and positions involving handling machinery or equipment, or outdoor activities.²¹³ Before the COVID-19 outbreak upended workplace patterns, only 7% of the civilian workforce in the United States had access to telework, a group largely composed of highly paid managers and other white-collar professionals.²¹⁴ Following experiences with telework during the pandemic, remote work and flexible work arrangements may become seen as standard options for all workers, rather than as accommodations for workers with disabilities, and the proportion of workers with access to flexible workplace arrangements once the pandemic is over could increase.²¹⁵ But unless such changes transpire, the fact remains that for most people, a barrier to accessible transportation is a barrier to work.

health insurance was one of the barriers to disability-related employment least likely to be overcome).

212. Andrew Van Dam, *The Fastest Growing Commute Is No Commute at All*, WASH. POST (Sept. 28, 2019, 8:00 AM), <https://www.washingtonpost.com/business/2019/09/28/fastest-growing-commute-is-no-commute-all/> [https://perma.cc/N2W2-U76V].

213. Rakesh Kochhar & Jeffrey S. Passel, *Telework May Save U.S. Jobs in COVID-19 Downturn, Especially among College Graduates*, PEW RSCH. CTR. (May 6, 2020), <https://www.pewresearch.org/fact-tank/2020/05/06/telework-may-save-u-s-jobs-in-covid-19-downturn-especially-among-college-graduates/> [https://perma.cc/5VK7-GXMZ]; see also JONATHAN I. DINGEL & BRENT NEIMAN, BECKER FRIEDMAN INST., HOW MANY JOBS CAN BE DONE AT HOME? 4–5 (2020) (observing that “[m]anagers, educators, and those working in computers, finance, and law are largely able to work from home. Farm, construction, and production workers cannot.” Moreover, “[t]here is significant variation in the share of jobs that can be done at home across US cities. . . . [E.g., m]ore than 45 percent of jobs in San Francisco, San Jose, and Washington, DC could be performed at home, whereas this is the case for 30 percent or less of the jobs in Fort Myers, Grand Rapids, and Las Vegas. . . . [H]owever, across all metropolitan areas, the share of jobs that can be performed at home is strongly positively correlated with median household income . . . and [a city’s] share of residents who attained a college degree (0.71) and negatively correlated with its home ownership rate (-0.31) and its share of residents who are white (-0.12”).

214. See Drew Desilver, *Before the Coronavirus, Telework Was an Optional Benefit, Mostly for the Affluent Few*, PEW RSCH. CTR. (Mar. 20, 2020), <https://www.pewresearch.org/fact-tank/2020/03/20/before-the-coronavirus-telework-was-an-optional-benefit-mostly-for-the-affluent-few/> [https://perma.cc/6UR8-2K3J].

215. See Kessler Found., nTIDE April 2020 Jobs Report, *supra* note 42; see, e.g., Alex Kantrowitz, *Twitter Will Allow Employees to Work at Home Forever*, BUZZFEED NEWS (May 12, 2020, 12:08 PM), <https://www.buzzfeednews.com/article/alexkantrowitz/twitter-will-allow-employees-to-work-at-home-forever> [https://perma.cc/4BY5-XR3V]. Twitter has already committed to this policy. See *id.*

Improving transportation is critical for those seeking to lower unemployment because workers cannot reach their workplaces.²¹⁶ Moreover, improving transportation infrastructure can reduce unemployment.²¹⁷

Workers with disabilities are even more reliant on occupationally related transportation than other groups, because fewer workers with disabilities have jobs allowing them to work from home, relative to those without disabilities.²¹⁸ Yet, persons with disabilities — who comprise 20% of the population — “represent approximately 40% of the 15 million people in the United States who have difficulty getting adequate transportation services.”²¹⁹ While “[w]e all need transportation to travel to job interviews, commute to work, and participate in work-related trainings,”²²⁰ research into employment-related barriers for persons with disabilities often notes such barriers are not limited to “stigma from coworkers and employers, and hiring discrimination.”²²¹ They also “include[e] a lack of transportation, [and a] lack of accessibility.”²²² As the Center for Independence of the Disabled, NY (CIDNY) — a grassroots, nonprofit organization that seeks to enhance opportunities for all people with disabilities to direct their own lives — argues, “[t]ransportation is the second biggest barrier to employment for people

216. See Pedro Nicolaci da Costa, *There’s a Major Hurdle to Employment That Many Americans Don’t Even Think about — and It’s Holding the Economy Back*, BUS. INSIDER (Jan. 27, 2018, 8:00 AM), <https://www.businessinsider.com/lack-of-transport-is-a-major-obstacle-to-employment-for-americas-poor-2018-1> [<https://perma.cc/EA8Z-B7RH>].

217. See SMART GROWTH AM., RECENT LESSONS FROM THE STIMULUS: TRANSPORTATION FUNDING AND JOB CREATION 2 (2011), <https://smartgrowthamerica.org/app/legacy/documents/lessons-from-the-stimulus.pdf> [<https://perma.cc/MV3J-HFAN>] (“Putting or keeping public transportation in communities with high unemployment produces up to 2.5 times more jobs than putting public transportation in communities with low unemployment.”).

218. See STEPHEN BRUMBAUGH, U.S. DEP’T OF TRANSP., ISSUE BRIEF: TRAVEL PATTERNS OF AMERICAN ADULTS WITH DISABILITIES 3 (2018), <https://www.bts.gov/sites/bts.dot.gov/files/docs/explore-topics-and-geography/topics/pasenger-travel/222466/travel-patterns-american-adults-disabilities-11-26-19.pdf> [<https://perma.cc/G9EM-VUP3>]. More specifically, 7.5% of workers with disabilities have these types of jobs, versus 14.3% of workers without disabilities. *Id.* at 3.

219. Jill L. Bezyak et al., *Public Transportation: An Investigation of Barriers for People with Disabilities*, 28 J. DISABILITY POL’Y STUD. 52, 52 (2017).

220. *Transportation*, DEP’T LAB., OFF. DISABILITY EMP. POL’Y [hereinafter *Transportation*, DEP’T LAB.], <https://www.dol.gov/odep/topics/Transportation.htm> [<https://perma.cc/MR6A-YDYA>] (last visited Sept. 7, 2020).

221. Shandra, *supra* note 211, at 160.

222. *Id.*

with disabilities.”²²³ For persons with travel-limiting disabilities, the implications of inaccessible transit include the fact that this group is less likely to have jobs than those without this disability type.²²⁴ Accessible, reliable transportation is necessary to bridge this employment gap, and to ensure “Americans with disabilities can actively participate in the labor force and gain meaningful employment.”²²⁵

Beyond allowing people to get to work, “transportation is a requirement for full participation in a community.”²²⁶ Accessible transportation touches all aspects of life and “plays a pivotal role in providing access to opportunities supportive of independent living and full participation in society,” for instance, “access [to] health care, education, employment, shopping, recreational activities, and other public services.”²²⁷ It is, therefore, unsurprising that inaccessible transport is “a barrier to accessibility and social inclusion.”²²⁸ One example from a wheelchair-using New Yorker highlights what this social exclusion can look like in NYC; speaking with the *New York Times*, “[h]e said he regularly cancels social engagements if he finds there is no viable way to travel to a [subway] station with a working elevator.”²²⁹

Inaccessible transportation systems have political as well as social ramifications; a lack of transportation contributes to the political marginalization of individuals with disabilities.²³⁰ While people with disabilities deploy a variety of mitigation strategies to minimize the impact of transportation limitations,²³¹ the inadequacy of transportation systems often means some necessarily travel less frequently than peers without disabilities, and are thus socially and politically isolated.²³² This

223. *Reduced-Fare MetroCard*, CTR. FOR INDEP. DISABLED, NY (Aug. 9, 2017), <https://www.cidny.org/reduced-fare-metrocard/> [<https://perma.cc/VP4J-RX4W>].

224. See BRUMBAUGH, *supra* note 218, at 3.

225. *Transportation*, DEP’T LAB., *supra* note 220.

226. Bezyak et al., *supra* note 219, at 52.

227. Sarawut Jansuwan, Keith M. Christensen & Anthony Chen, *Assessing the Transportation Needs of Low-Mobility Individuals: Case Study of a Small Urban Community in Utah*, 139 J. URB. PLAN. & DEV. 104, 104 (2013).

228. Jessica Berg & Jonas Ihlström, *The Importance of Public Transport for Mobility and Everyday Activities among Rural Residents*, 8 SOC. SCIS. *1, *1 (2019).

229. Eli Rosenberg, *New York City’s Subway System Violates Local and Federal Laws, Disability Groups Say*, N.Y. TIMES (Apr. 25, 2017), <https://nyti.ms/2q32ZKu> [<https://perma.cc/3UM5-BCK8>].

230. See Jansuwan et al., *supra* note 227, at 104.

231. These strategies include, inter alia, asking others for rides, limiting travel to daytime, and using special transportation services such as dial-a-ride or reduced-fare taxis. See BRUMBAUGH, *supra* note 218, at 9.

232. See *id.* (surveying those with travel-limiting disabilities and finding that 70.6% report they have reduced their day-to-day travel, 21.6% report they have given up driving, and 14.4% report that they use public transit less often).

presents a “civil rights dilemma” in which “laws purport to level the playing field, but our transportation choices have effectively barred millions of people from accessing it.”²³³

A. Transportation in NYC

Transportation is a particularly complex policy area in NYC because of the size of the City’s population, the complexity of its transportation system, and the multiple governmental entities involved in running the system. With 8.4 million inhabitants, the City is the largest urban area in the country²³⁴ and has a correspondingly high population density.²³⁵ The NYC metropolitan area is far larger than the City itself, with a population of nearly 20 million people, and density varies throughout the region.²³⁶ Reflecting the millions of people who need to make their way around the City and the variable distances they need to travel, there are many modes of travel within the NYC metropolitan area.²³⁷ These include travel by foot, wheelchair, scooter, subway, bus, taxi, car (personally operated or driven by rideshare app operators, like for Uber or Lyft), tram, bike, ferry, and helicopter.²³⁸

The reality that the City’s multiple modes of transportation operate under the umbrella of an overlapping governance structure shapes the role MOPD plays in influencing the accessibility of transportation within the City; many agencies and governmental actors with competing

233. LEADERSHIP CONF. EDUC. FUND, WHERE WE NEED TO GO: A CIVIL RIGHTS ROADMAP FOR TRANSPORTATION EQUITY 2 (2011), <https://www.reimaginerpe.org/files/52846576-Where-We-Need-to-Go-A-Civil-Rights-Roadmap-for-Transportation-Equity.pdf> [<https://perma.cc/X6K4-3VKT>].

234. See *U.S. Cities Factsheet*, UNIV. MICH., CTR. FOR SUSTAINABLE SYS. (2020), <http://css.umich.edu/factsheets/us-cities-factsheet> [<https://perma.cc/ZKT4-3XHF>].

235. The average population density of the United States is 87 people per square mile, and 283 per square mile in the average U.S. metropolitan area; NYC’s population density is 27,012 people per square mile. *Id.*

236. See *State Population Total Changes and Components of Change: 2010–2019*, U.S. CENSUS BUREAU (Dec. 30, 2019), <https://www.census.gov/data/tables/time-series/demo/pepest/2010s-state-total.html> [<https://perma.cc/6ZUM-KBJ8>] (under “Population, Population Change, and Estimated Components of Population Change: April 1, 2010 to July 1, 2019 (NST-EST2019-alldata),” click “Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2019”).

237. See OFF. OF THE MAYOR, PLANYC: A STRONGER, MORE RESILIENT NEW YORK 175 (2013) [hereinafter PLANYC], http://s-media.nyc.gov/agencies/sirr/SIRR_spreads_Hi_Res.pdf [<https://perma.cc/SB9C-6CK8>].

238. See *NYC Transportation: Getting around NYC*, NYC GO.COM (May 7, 2010), <https://www.nycgo.com/articles/nyc-transportation-getting-around> [<https://perma.cc/5NMW-C8JT>].

responsibilities manage different elements of the City's transport system. Within the five boroughs, NYC's Department of Transportation is responsible for roads and certain highways, traffic signals, sidewalks, bridges, and the Staten Island Ferry.²³⁹ The New York State-controlled MTA "operates the nation's largest transit network and is responsible for the city's subway system, most of its buses, the Long Island Rail Road and Metro-North Railroad, and the tolled bridges and tunnels within the City."²⁴⁰ The Port Authority's responsibilities include, inter alia, the City's airports.²⁴¹ These authorities collaborate with agencies such as MOPD and the Taxi and Limousine Commission (TLC) to provide services to those in and around the City.

While ensuring the accessibility of private *and* public modes of transportation is crucial for the City to be accessible,²⁴² the bulk of

239. See PLANYC, *supra* note 237, at 177; see also *About DOT*, N.Y.C. DOT, <https://www1.nyc.gov/html/dot/html/about/about.shtml> [<https://perma.cc/ZXT4-DMTR>].

240. PLANYC, *supra* note 237, at 177.

241. See *id.* at 176. Adding another layer of complexity, the Port Authority is jointly controlled by the States of New Jersey and New York. See *id.* As illustration of how these systems interact, a trip via Amtrak from outside the City into Penn Station, followed by a transfer onto the subway and a walk of a few blocks involves passing through multiple jurisdictions and from a system run by a federal corporation, to one run by an authority under New York State control, to one run by the City. See *id.*

242. It is important to note that private transportation is crucial to NYC's accessibility, particularly in a context of deregulating and privatizing transportation systems. See Rachel Aldred & James Woodcock, *Transport: Challenging Disabling Environments*, 13 LOC. ENV'T 485, 486 (2008). Indeed, the City's involvement with transport accessibility goes beyond public transportation — recognizing that an accessible transportation system requires that all forms of transportation within the system be accessible, the TLC has "steadily increased the number of accessible vehicles in the yellow and green taxi fleet for people who have mobility, vision, hearing, and cognitive disabilities. Additionally, the agency's newly enacted rules have helped to increase the availability of wheelchair accessible vehicles in the for-hire vehicle (FHV) sector." 2019 ACCESSIBLENYC REPORT, *supra* note 9, at 20. Unlike the private sector's response to employment-focused policies — which has been relatively warm and quite collaborative — the private sector's response to, for instance, the TLC's 2017 mandate requiring a quarter of all trips provided by for-hire vehicles take place in wheelchair-accessible cars by mid-2023, has been characterized by considerable resistance at the corporate and individual levels (e.g., among drivers). See Dana Rubenstein, *New York City and Uber Reach Settlement on Wheelchair Accessibility*, POLITICO (June 13, 2018), <https://www.politico.com/states/new-york/city-hall/story/2018/06/13/new-york-city-and-uber-reach-settlement-on-wheelchair-accessibility-466459> [<https://perma.cc/J269-6HCK>].

Given the settlement between the City and rideshare programs Uber, Lyft, and Via, as well as the legal backlash in response to the City's requests that private sector actors ensure their transportation is sufficiently accessible, it is unclear what MOPD could do to improve the accessibility of private transportation within the City at this time. Nevertheless, inaccessibility of rideshare programs operating within the City certainly remains. See, e.g., N.Y. LAWS FOR PUB. INT., LEFT BEHIND: NEW YORK'S FOR-HIRE VEHICLE INDUSTRY CONTINUES TO EXCLUDE PEOPLE WITH

MOPD's transportation-related efforts appear to have focused on the public transportation sector.²⁴³ Thus we focus on public transportation as well. It is unsurprising MOPD's efforts focus here; (a) government has more room to innovate where the transportation at issue is owned and operated by the public, and (b) NYC's public transportation system is not only complex, it is also exceptional in both size and as a commuting tool. It has "North America's largest transportation network, serving a population of 15.3 million people in the 5,000-square-mile [metropolitan] area."²⁴⁴ The MTA is particularly daunting: it includes the largest bus fleet in the country and more subway and commuter rail cars than all other U.S. transit systems. The MTA network "provides around 2.6 billion trips each year, accounting for about one-third of the nation's mass transit users and two-thirds of its commuter rail passengers,"²⁴⁵ and had an operating budget of \$16.6 billion in 2018.²⁴⁶ While nationally, more people work from home than commute via public transit, this is not true for NYC, where over half of workers 16 years and older used public transit to get to work in 2018.²⁴⁷ Public transportation's importance is magnified

DISABILITIES 4 (2018),
<https://www.nylpi.org/wp-content/uploads/2018/05/Left-Behind-Report.pdf>
 [https://perma.cc/SGY4-DGZD] (testing Uber and Lyft's accessibility programs and finding major disparities in locating vehicles and wait times between wheelchair-accessible vehicle (WAV) and non-WAV requests. "Combined, the two apps located an available WAV in only 26% of attempts, while they located non-accessible Uber and Lyft vehicles 100% of the time").

243. This is based on MOPD's description of its transportation-related work as included in the 2019 AccessibleNYC Report, and as is described in the publicly available information about MOPD's activities on MOPD's website. *See generally Transportation, MAYOR'S OFF. FOR PEOPLE WITH DISABILITIES* [hereinafter *Transportation, MAYOR'S OFF. FOR PEOPLE WITH DISABILITIES*], <https://www1.nyc.gov/site/mopd/resources/transportation.page> [https://perma.cc/2FHT-RGBM] (last visited Sept. 1, 2020); *What We Do, supra* note 1.

244. *The MTA Network, METRO. TRANSP. AUTH.,* <https://new.mta.info/about-us/the-mta-network> [https://perma.cc/C6DS-CSVX] (last visited Sept. 17, 2020).

245. *Id.* These trips account "for about one-third of the nation's mass transit users and two-thirds of its commuter rail passengers." *Id.*

246. Dan Rivoli, *MTA Budget: Where the Money Goes*, DAILY NEWS (Feb. 13, 2018), <http://interactive.nydailynews.com/project/mta-spending/> [https://perma.cc/XY2D-98NK].

247. *See* U.S. CENSUS BUREAU, 2018: ACS 1-YEAR ESTIMATES SUBJECT TABLES, TABLE S0802,

https://data.census.gov/cedsci/table?q=ACSST1Y2018.S0802&g=0100000US_1600000US3651000&tid=ACSST1Y2018.S0802&moe=true&hidePreview=true [https://perma.cc/9V28-NTY4] (last visited Sept. 12, 2020). "Public transportation systems include a variety of transit options such as buses, light rail, and subways. These systems are available to the general public, may require a fare, and run at scheduled times." *Public Transportation System: Introduction or Expansion*, CTR. FOR DISEASE CONTROL, OFF. ASSOC. DIR. FOR POL'Y & STRATEGY (Oct. 19, 2018),

within the City's business districts, which are crucial to employment-seekers as so many jobs are located within this area, and where four-fifths of all rush-hour commuters use transit, compared to nearly 85% of U.S. workers who drive to work.²⁴⁸ Because public transit is so integral to New Yorkers' ability to travel, and rates of commuting by car are comparatively low,²⁴⁹ it is particularly essential that NYC's public transport system be accessible.

While the usage patterns of this infrastructure are in some ways highly predictable — each typical workday morning commuters nearly double Manhattan's population²⁵⁰ — in other ways they are highly variable. For instance, the mode of transportation commuters use varies strongly by community of residence: Bronx-, Brooklyn-, and Queens-residing commuters “overwhelmingly use the subway;”²⁵¹ Staten Island commuters favor the bus and, to a lesser degree, the ferry; Westchester commuters tend to use the railway; and New Jersey commuters more often use their own cars to get to work, compared to those who arrive at work in New York from other locations.²⁵² Complicating this analysis, many workers use multiple forms of transportation, and in the state with the highest rate of long commuters in the country,²⁵³ variability in

<https://www.cdc.gov/policy/hst/hi5/publictransportation/index.html> [https://perma.cc/8UTL-8NC6]. In 2018, the NYC subway system served 5.4 million passengers on an average weekday, while City Transit buses served 1.8 million passengers, and MTA Company buses served 392,617 passengers. See *Introduction to Subway Ridership*, METRO. TRANSP. AUTH., <http://web.mta.info/nyct/facts/ridership/> [https://perma.cc/FT9J-LGJB] (last visited Sept. 17, 2020).

248. *The MTA Network*, *supra* note 244.

249. According to the Census Bureau, of the 4,072,761 workers age 16 and over in the City, 909,776 used cars, trucks, or vans (not carpooling) in 2017, while 2,272,028 used public transportation (excluding taxicabs), and 186,153 used a carpool. U.S. CENSUS BUREAU, 2017: ACS 1-YEAR ESTIMATES SUBJECT TABLES, TABLE S0802, <https://data.census.gov/cedsci/table?q=ACSST1Y2017.S0802&g=312M400US356203651000&tid=ACSST1Y2017.S0802&hidePreview=true> [https://perma.cc/KSP3-NGWQ] (last visited Sept. 12, 2020).

250. See Sam Roberts, *Commuters Nearly Double Manhattan's Daytime Population*, *Census Says*, N.Y. TIMES (June 3, 2013, 11:56 AM), https://cityroom.blogs.nytimes.com/2013/06/03/commuters-nearly-double-manhattans-daytime-population-census-says/?_r=0 [https://perma.cc/L5KB-UPPZ].

251. John Metcalfe, *The Many Ways People Commute to New York*, CITYLAB (Sept. 26, 2016), <https://www.citylab.com/transportation/2016/09/manhattan-commutes-port-authority-bus-terminal-capacity-study/501515/> [https://perma.cc/5AYJ-8DZL].

252. See *id.* Workers from New Jersey, however, have more variable travel patterns than their peers. See *id.*

253. See Bryan Miller, *Extreme Commuting*, N.Y. TIMES (July 21, 2017), <https://www.nytimes.com/2017/07/21/realestate/extreme-commuting.html> [https://perma.cc/F4CE-7ATU] (observing that 16% of workers in New York State travel at least 60 miles each way to get to work).

commuting modes and durations among New Yorkers is high.²⁵⁴ The COVID-19 pandemic has also created massive variability and instability in NYC's transportation system — e.g., in the first month after COVID-19 shut down the City, over 90% of the subway ridership disappeared, and alongside it, the fare revenue from those riders, which could lead to slashing services and longer wait times, more breakdowns due to less investment in upkeep, or subway and bus line elimination to balance operating budgets.²⁵⁵

Another key axis of variability, travel time, varies not only by distance traveled but also by identity. For instance, “[i]t takes an additional five minutes for the average Hispanic and Asian/[Pacific Islander] New Yorker and an additional ten minutes for the average Black New Yorker to get to work as compared to the city average.”²⁵⁶ Further, “it takes New Yorkers with a disability an additional three minutes to get to work as compared to New Yorkers without a disability.”²⁵⁷ The inaccessibility of the City's public transport can, however, take much more time out of people with disabilities' days depending on their destination; as a 2017 lawsuit about the City's inaccessible subway stations observed, many local landmarks “require longer trips for people needing elevator access, including Columbia University's main campus, Hunter College, Mount Sinai Beth Israel, Brooklyn Hospital Center, Citi Field, the New York Stock Exchange, the Museum of Natural History, the Brooklyn Museum and Brooklyn Bridge Park.”²⁵⁸

254. See, e.g., *id.* (describing commuting routines of long-distance commuters to the City; for instance, one long-distance commuter travels by car, boat, and train, to get from Newburgh, N.Y., to her workplace by Grand Central Terminal).

255. See Winnie Hu & Christina Goldbaum, ‘The Worst Case Scenario’: New York's Subway Faces Its Biggest Crisis, N.Y. TIMES (Apr. 20, 2020), <https://www.nytimes.com/2020/04/20/nyregion/nyc-mta-subway-coronavirus.html> [<https://perma.cc/F7DS-6ASN>].

256. *Transportation*, WHERE WE LIVE NYC [hereinafter WHERE WE LIVE NYC], <https://wherewelive.cityofnewyork.us/explore-data/access-to-opportunity/transportation/> [<https://perma.cc/CG8C-CKBR>] (last visited Aug. 31, 2020). See generally Valerie Preston & Sara McLafferty, *Revisiting Gender, Race, and Commuting in New York*, 106 ANNALS AM. ASS'N GEOGRAPHERS 300, 304 (2016) (finding variance in commuting times due to race and gender “are associated with a complex mix of economic, social, and transportation factors that affect workers' residential and employment locations and the efficiency of travel between them”).

257. WHERE WE LIVE NYC, *supra* note 256. Given the low employment rates of New Yorkers with disabilities, the fact that inaccessible transportation can be a barrier to employment, and that unemployed workers were not counted, this data point is not overly revealing.

258. Rosenberg, *supra* note 229.

B. Public Transportation's Key Accessibility Problems and Government Responses

It is unsurprising that in a public transportation system the size, age, and complexity of New York's, there are multiple inadequacies with the system's accessibility as well as multiple actors trying to remediate these problems. This Section focuses on two key issues — the inaccessibility of the physical infrastructure of the City's public transport system, and non-physical infrastructure problems — and considers various public actors' responses to them.

i. Key Policy Problem and Attempted Solutions: The Inaccessibility of Public Transportation's Physical Infrastructure

A high-profile issue in NYC is the continuing inaccessibility of the physical infrastructure of the City's public transportation. One reason this is particularly problematic is that people with disabilities heavily rely on public transportation; specifically, “[p]eople age 18 to 64 with disabilities use local transit (buses, subways, and commuter rail) for a higher share of trips than people without disabilities.”²⁵⁹ This is tied to the fact that people of working age with disabilities are “less likely to own or have access to vehicles than people without disabilities.”²⁶⁰

Movements towards ensuring the accessibility of public transport's physical infrastructure have seen successes and failures. On the one hand, the 1990 passage of the ADA increased accessibility nationwide and within New York, “chang[ing] the landscape of public transit.”²⁶¹ Since then, there have been significant improvements in the accessibility of New York's public transit infrastructure: notably, New York City Transit's bus fleet is “100 percent accessible to customers who use wheelchairs,”²⁶² and the MTA recently opened an “Accessible Station Lab” in the Jay Street-MetroTech Station to test features “including both

259. BRUMBAUGH, *supra* note 218, at 3, 6.

260. *Id.* at 6. However, these data's applicability to NYC is debatable — the data are national, and vehicle ownership is lower in cities. For instance, nationally, 8.7% of occupied housing units have no vehicles available, while in the City, this figure stands at 54.6%. U.S. CENSUS BUREAU, 2018: ACS 1-YEAR ESTIMATES DATA PROFILES, TABLE DP04, https://data.census.gov/cedsci/table?q=DP04&g=0100000US_0100043US&tid=ACSDP1Y2018.DP04&hidePreview=true [<https://perma.cc/TTM2-4DYW>] (last visited Aug. 27, 2020). However, nationally, 33% of occupied housing units have one vehicle available, while in NYC this figure is 31.7%. *Id.*

261. Bezyak et al., *supra* note 219, at 52.

262. *Subway and Bus Ridership for 2019*, METRO. TRANSP. AUTH., <http://web.mta.info/nyct/facts/ffbus.htm> [<https://perma.cc/JM76-U3CS>] (last visited Aug. 31, 2020).

physical infrastructure and smartphone apps, all designed to make subway travel more accessible for riders of all abilities, including those with vision, hearing, mobility[,] or cognitive disabilities.”²⁶³ The Lab’s programs reflect best practices, which require policymakers to be mindful that access to “transportation for people with disabilities includes many aspects of accessibility. The diversity of disability means that transportation needs to consider cognitive, sensory, *and* physical and mobility access.”²⁶⁴ Indeed, at any one stop, accommodating a wheelchair user might require an elevator, accommodating a blind or limited-vision user might require well-maintained speakers²⁶⁵ and tactile blocks,²⁶⁶ and accommodating a user with mental health disabilities might require an easily navigable layout.²⁶⁷

On the other hand, inside and outside NYC, widespread barriers to accessibility remain.²⁶⁸ Nationally, many persons with disabilities describe their city’s public transportation system as inadequate; it does not get them where they need to go, when they need to get there, in a reasonable amount of time.²⁶⁹ Moreover, “while most transit vehicles are ADA-compliant, a smaller percentage of stations are ADA-compliant.”²⁷⁰ In the City, inaccessible stations — in particular, the lack of elevators in

263. *MTA Accessibility*, METRO. TRANSP. AUTH., <https://new.mta.info/accessibility> [<https://perma.cc/NUV6-VY5E>] (last visited Sept. 26, 2020).

264. *Transportation*, DEP’T LAB., *supra* note 220 (emphasis added); *see also* Bezyak et al., *supra* note 219, at 54 (observing there are “significant differences in the experience of barriers in public transportation according to type of disability”).

265. *See* Ruth F. Neal, *Minority Disabled and Public Transportation*, 4 TRANSP. EQUITY 1, 2, 8 (2001). This is crucial for deafblind users — for one such New York transit user, “riding [in] an older car is an exercise in desperately squinting at station names or asking strangers on the train where she is, because only new cars have a well-maintained speaker system that’s comprehensible through her hearing aids.” s. e. smith, *New York City Is a Nightmare for Disabled People*, VICE (July 17, 2018, 1:15 PM), https://www.vice.com/en_us/article/pawb7b/disabled-people-new-york-city-how-to-fix [<https://perma.cc/D9RN-FSP5>].

266. *See* Paul Mejía, *The First Tenji Block, Now a Common Sight around NYC, Was Installed on This Day in 1967*, GOTHAMIST (Mar. 18, 2019, 2:40 PM), <https://gothamist.com/arts-entertainment/the-first-tenji-block-now-a-common-sight-around-nyc-was-installed-on-this-day-in-1967> [<https://perma.cc/K4SK-UZYN>] (“[T]he Tenji block is a guidepost for blind and visually impaired residents. . . . On New York City subway platforms they are placed at the edge before the track and on stairways, with raised dots indicating ‘STOP.’”). These can “prove to be challenging for people with other disabilities — the dots and ridges can be challenging for someone on crutches to navigate, for instance.” *Id.*

267. *See* Bezyak et al., *supra* note 219, at 55. Such users report higher rates of inability to navigate the public transit system. *See id.*

268. *See id.* at 52.

269. *See id.* at 56.

270. BRUMBAUGH, *supra* note 218, at 6.

subway stations — has been a high-profile problem²⁷¹ that has sparked multiple lawsuits.²⁷² The lack of elevators impacts many individuals both within²⁷³ and beyond the disabled community — recently, a wave of articles was written about the subway system’s inaccessibility when a non-wheelchair using mother, Malaysia Goodson, died after falling down a flight of stairs while carrying her one-year-old daughter in a stroller.²⁷⁴ The elevator issue is a longstanding problem²⁷⁵ that reliably receives a large amount of press;²⁷⁶ indeed, the Disabled Riders Coalition has noted it draws the most attention when it focuses on broken subway elevators.²⁷⁷

New York’s subway is not only lacking in elevator access, it is exceptionally lacking; other American cities with large public transportation systems — albeit not as large as NYC’s — such as

271. See generally Rosenberg, *supra* note 229.

272. See, e.g., *The History of DRA’s Lawsuits against the NYC Metropolitan Transportation Authority*, DISABILITY RTS. ADVOCS., <https://dralegal.org/case/the-history-of-dras-lawsuits-against-the-nyc-metropolitan-transit-authority/> [<https://perma.cc/4JCY-5EWB>] (last visited Aug. 31, 2020).

273. “Of the nearly one million New Yorkers who have self-identified as living with disabilities, about 10% are estimated to use wheelchairs.” 2019 ACCESSIBLENYC REPORT, *supra* note 9, at 20.

274. See, e.g., James Barron, ‘*We All Need to Help*’: *Outrage and Empathy after a Mother’s Death on Subway Stairs*, N.Y. TIMES (Jan. 30, 2019), <https://www.nytimes.com/2019/01/30/nyregion/mother-falls-down-subway-stairs-death.html> [<https://perma.cc/J845-8W5D>]; Jugal K. Patel, *Where the Subway Limits New Yorkers with Disabilities*, N.Y. TIMES (Feb. 11, 2019), <https://nyti.ms/2E3AW6t> [<https://perma.cc/4TTC-MLA2>].

275. See Clyde Haberman, *Daunted by the Subway? Try It in a Wheelchair*, N.Y. TIMES (Jan. 30, 2007), <https://www.nytimes.com/2007/01/30/nyregion/30nyc.html> [<https://perma.cc/3JQN-FBV5>].

276. See, e.g., Rosenberg, *supra* note 229.

277. See Haberman, *supra* note 275. Interestingly, the group “discovered in a survey that a more dominant concern for wheelchair users [than elevators] is the gap between the train and the platform.” *Id.* Escalators also “have frequent outages: In 2015, there were . . . an average of 108.8 outages per escalator.” SARAH M. KAUFMAN, JOANNA SIMON & CALLOWAY HOPE ABOAF, NYU WAGNER, RUDIN CTR. FOR TRANSP. POL’Y & MGMT., BRINGING INNOVATION TO PARATRANSIT 17 (2017), <https://wagner.nyu.edu/files/faculty/publications/Bringing%20Innovation%20to%20Paratransit.pdf> [<https://perma.cc/SU6E-SXD4>]. These outages do not appear to capture media attention quite like elevator outages, however.

Boston²⁷⁸ and Washington, D.C.,²⁷⁹ are much more accessible on this measure.²⁸⁰ While D.C.'s subways are all wheelchair accessible,²⁸¹ “[o]nly

278. The Massachusetts Bay Transportation Authority (MBTA) has 149 subway stops. See *MBTA Stations*, MASS. BAY TRANSP. AUTH., <https://www.mbta.com/stops/subway> [<https://perma.cc/CM7X-TH24>] (last visited Aug. 31, 2020). Out of these, “five subterranean T stations and 32 street-level stops, most of them on the Green Line,” remain inaccessible. Miranda Suarez, *Advocates Say MBTA Riders Need Accessibility Now, Not Later*, WBUR (Apr. 3, 2019), <https://www.wbur.org/bostonomix/2019/04/03/advocates-say-mbta-riders-need-accessibility-now-not-later> [<https://perma.cc/462S-73SY>] (last visited Aug. 31, 2020).

279. “All stations have elevators and directional signs indicating elevator locations.” *Accessibility*, WASH. METRO. AREA TRANSIT AUTH., <https://www.wmata.com/service/accessibility/> [<https://perma.cc/LQF6-XEB7>] (last visited Aug. 31, 2020).

280. See Rosenberg, *supra* note 229. The City’s subways are some of the least accessible in the country, with the “lowest accessibility rate — 24 percent — among the country’s 10 largest transit systems.” *Id.*

281. Here, we describe stations with elevators as wheelchair accessible. But TransitCenter found that in 2018, 84% of NYC subway station elevators reported at least a week’s worth of outages. Clayton Guse, *NYC Subway Elevators Constantly Break Down: Report*, DAILY NEWS (Mar. 20, 2019, 8:08 PM), <https://www.nydailynews.com/new-york/ny-metro-elevators-performance-stats-mta-subway-20190321-xc5utix2xfq7fwg7sthhx45lq-story.html> [<https://perma.cc/44MY-Q6M6>]. This problem is not limited to New York. Across cities, broken elevators — which, of course, can render stations inaccessible — are a common problem, and one that makes commuting for people who need elevator service frustrating, slow, and unpredictable. The saga of a single elevator in Massachusetts’s MBTA system illustrates how this is a problem that occurs elsewhere and is one that sometimes takes years to fix. See Dialynn Dwyer, *Erin Murphy Commutes 3 Stops on the Red Line. Because an Elevator Is Closed, It Takes Her ‘Close to an Hour.’* BOSTON.COM (May 7, 2019), <https://www.boston.com/news/commute/2019/05/07/mbta-central-square-elevator-closed-for-repairs-impact> [<https://perma.cc/882U-J46C>]. MBTA elevator 861 — servicing the inbound track of the MBTA’s Red Line at the Central Square T station — closed for repairs in April 2018. See *id.* It was projected to reopen by April 2019. See *id.* However, it remained closed, sparking a Policy Order from the Cambridge City Council, requesting that the City Manager “instruct the City Solicitor to review whether the MBTA is out of compliance with the amended MBTA/BCIL settlement agreement through the delay in completion of the elevator replacement.” POLICY ORDER, POR 2019 #131, Cambridge City Council (2019), https://cambridgema.iqm2.com/Citizens/Detail_LegiFile.aspx?Frame=&MeetingID=2353&MediaPosition=&ID=8962&CssClass= [<https://perma.cc/KQQ2-27BV>]. The City Council invoked the MBTA’s 2006 settlement agreement with a group of customers and the Boston Center for Independent Living, who had filed a class-action lawsuit challenging the MBTA’s inaccessibility. See *History and Impact of MBTA/BCIL Settlement Agreement*, MASS. BAY TRANSP. AUTH., <https://www.mbta.com/accessibility/history> [<https://perma.cc/B3TM-H7SY>] (last visited Aug. 31, 2020). In the settlement agreement, the MBTA pledged to make several hundred million dollars in new capital investment, *LeClair v. Mass. Bay Transp. Auth.*, 300 F. Supp. 3d 318, 322 (D. Mass. 2018), specifically agreeing to replace elevator 861, see *Settlement Agreement* at 18, *Daniels-Finegold v. Mass. Bay Transp. Auth.*, C.A. No. 02 CV 11504 MEL (D. Mass. 2006). Despite the Council’s intervention, and the MBTA’s 2006 commitment to improving this elevator’s accessibility, elevator 861 did not reopen until April 2, 2020. See *SWA Initiatives — May*

about a quarter of New York City’s 472 subway stations are[,] . . . one of the lowest percentages of any major transit system in the world.”²⁸² This impacts some areas more than others; in Queens, there are seven consecutive stations without elevator access,²⁸³ “[n]ot a single subway station complies with the Americans with Disabilities Act in the three Queens neighborhoods [of Sunnyside, Woodhaven, and Astoria],”²⁸⁴ and, overall, “70 percent of Queens subway stations are inaccessible to people with disabilities.”²⁸⁵ Meanwhile, “if you are in a wheelchair or are unable to use the stairs or escalator, you can access only 17 percent of the subway stations in the Bronx, compared to 36 percent of stations in Manhattan.”²⁸⁶ This problem requires an enormous amount of resources to address — this is partly because of the system’s size²⁸⁷ and age²⁸⁸ — but spiraling costs of such renovations have been criticized as far higher than similar projects built elsewhere.²⁸⁹

2020, MASS. DEP’T TRANSP. (2020), <https://cdn.mta.com/sites/default/files/2020-05/2020-05-26-swa-initiatives-accessible.pdf> [https://perma.cc/4WHT-UEGH].

282. Emma G. Fitzsimmons & Rebecca Liebson, *M.T.A. Pledges \$5 Billion for Subway Elevators*, *Guess How Many.*, N.Y. TIMES (Oct. 7, 2019), <https://www.nytimes.com/2019/10/07/nyregion/mta-nyc-subway-elevators.html> [https://perma.cc/7979-TWTU].

283. *See id.*

284. Jonathan Sperling, *Entire Queens Neighborhoods Lack ADA-Accessible Subway Stations*, QUEENS DAILY EAGLE (May 22, 2019), <https://queenseagle.com/all/queens-neighborhoods-lack-ada-accessible-subway-stations> [https://perma.cc/NQQ2-K29P].

285. *Id.*

286. Allen Devlin, *Disabled in the Bronx? Good Luck Finding a Subway Station*, BRONX INK (Oct. 13, 2018), <http://bronxink.org/2018/10/13/27973-disabled-in-the-bronx-good-luck-finding-a-subway-station-you-can-use/> [https://perma.cc/LX4N-YAAC].

287. There are 736 rail and subway stations within the MTA system. *The MTA Network*, *supra* note 244.

288. *See* Fitzsimmons & Liebson, *supra* note 282.

289. *See* Henry Grabar, *Andrew Cuomo and the Curious Case of the \$81 Million Elevator*, SLATE (Sept. 20, 2019, 5:52 PM), <https://slate.com/business/2019/09/mta-elevators-are-the-perfect-example-of-new-yorks-cost-problems.html> [https://perma.cc/Y24P-LG4J]. A more extensive exploration of why New York subway construction projects are comparatively costly revealed “a host of factors have contributed to the transit authority’s exorbitant capital costs.” Brian M. Rosenthal, *The Most Expensive Mile of Subway Track on Earth*, N.Y. TIMES (Dec. 28, 2017), <https://nyti.ms/2pR3IIH> [https://perma.cc/GKY8-NVPW].

1. *Government Responses to Public Transportation's Inaccessible Infrastructure*

The multiple agencies and authorities responsible for the City's transportation infrastructure have responded to the challenge of subway-inaccessibility in two primary ways: (1) by providing alternative transportation and (2) by pledging to make the subway more accessible. The first solution is based primarily upon the Access-A-Ride (AAR) program, the largest paratransit service in the country, designed to serve those who cannot use New York's other transportation systems.²⁹⁰ In practice, the system serves a predominantly older clientele — 71% of AAR passengers are over 65 — and use is “often high in low- and middle-income neighborhoods . . . because the users cannot regularly afford taxis or private car services, and local subway service requires transfers to reach much of the city.”²⁹¹ This comes at a relatively high average cost to the MTA of \$58 per ride.²⁹² Users have many complaints about AAR's services, including the lack of reduced fees for those dependent on the service, “extraordinarily long” travel times, broken ramps on vehicles, and employees lacking sensitivity.²⁹³ Recent changes appear to have worsened this situation for many; reports from 2019 found “some riders sa[id] they can no longer count on on-time pickups and must ask to be picked up at least an hour earlier than necessary.”²⁹⁴

To ameliorate this situation, the MTA is evolving the AAR program so users take more trips in taxis and for-hire vehicles, but this strategy has

290. See 2019 ACCESSIBLENYC REPORT, *supra* note 9, at 23.

291. KAUFMAN, SIMON & ABOAF, *supra* note 277, at 7. However, AAR use fluctuates with variables beyond income as well — for some neighborhoods

high AAR usage . . . is primarily due to the location of a hospital or health center in the neighborhood. For example, East Harlem South has a median household income of \$26,136, but the local Mt. Sinai hospital is likely responsible for a large portion of the 65,700 pickups and drop-offs.

Id.

292. See 2019 ACCESSIBLENYC REPORT, *supra* note 9, at 24. This figure is from 2018. *Id.*

293. Elyse Wanshel & Lena Jackson, *New York City's Public Transit Is a Nightmare for People with Disabilities*, HUFFPOST (Oct. 9, 2018, 4:00 PM), https://www.huffpost.com/entry/new-york-public-transit-disabilities_n_5bae4cd1e4b09d41eba11f08 [<https://perma.cc/XMQ9-D2CK>].

294. James Barron, *Just like the Subway, Public Transit for New York's Disabled Riders Is Maddening*, N.Y. TIMES (May 15, 2019), <https://nyti.ms/2JntDdY> [<https://perma.cc/A7W4-D4W2>].

met limited success in its initial rollout.²⁹⁵ As part of this effort, an innovative app-based program launched in late 2017,²⁹⁶ allowing AAR users to use taxis or car services for only \$2.75 a ride in a manner similar to using Uber or Lyft.²⁹⁷ It was “wildly successful” among the 1,200 users who piloted the program,²⁹⁸ but because it was only available to less than 1% of registered AAR users, it did little to alleviate the majority of user woes.²⁹⁹ Indeed, this holds true even after the MTA promised to double the pilot to 2,400 users.³⁰⁰ More broadly, in 2016, the MTA began allowing AAR passengers to make reservations for taxis and for-hire vehicles one to two days in advance via phone or website, and later through an e-hail app.³⁰¹ This program was similarly successful, and users took more than 1.5 million cab rides during its first year — but these programs went appreciably over budget, adding tens of millions of dollars to MTA costs.³⁰²

The City’s public transit authorities’ second response to subway inaccessibility has been a commitment to construction; the City and MTA have pledged to make all stations accessible by 2034.³⁰³ Pursuing this goal, in 2018 NYC Transit appointed its first Senior Advisor for

295. See Jeanmarie Evely, *New MTA Plan to Put Disabled Riders in Taxis Is off to a Rocky Start*, *Users Say*, CITYLIMITS (Apr. 1, 2019), <https://citylimits.org/2019/04/01/mta-disabled-taxis/> [https://perma.cc/4GRX-MMMM].

296. See Paul Berger, *MTA Hit by \$321 Million Cost Increase for Paratransit Program*, WALL ST. J. (Nov. 25, 2018, 12:00 PM), <https://www.wsj.com/articles/mta-hit-by-321-million-cost-increase-for-paratransit-program-1543165200> [https://perma.cc/9KW2-E2HP].

297. See Press Release, Metro. Transp. Auth., *MTA Offers First Ever Real-Time, On-Demand Service for Access-A-Ride Users* (Nov. 13, 2017) [hereinafter *MTA Offers*], <http://www.mta.info/press-release/nyc-transit/mta-offers-first-ever-real-time-demand-service-access-ride-users> [https://perma.cc/NC8R-2DF3].

298. Clayton Guse, *MTA Extends Pilot Program That Gives Cheap Access-A-Ride Cabs to Disabled Riders*, DAILY NEWS (Mar. 17, 2019, 3:00 PM), <https://www.nydailynews.com/new-york/ny-metro-access-a-ride-e-hail-update-20190317-story.html> [https://perma.cc/6FAP-QPPA].

299. See Barron, *supra* note 294.

300. See Andy Byford, *The MTA’s Accessibility Promise: The Transit Authority Boss Outlines His Agency’s Commitment to Helping All People Get around New York City*, DAILY NEWS (Dec. 1, 2019, 5:00 AM), <https://www.nydailynews.com/opinion/ny-oped-the-mtas-accessibility-promise-20191201-eore2g6qbvbajnajwwedclqjmu-story.html> [https://perma.cc/KP94-8T7X].

301. See *MTA Offers*, *supra* note 297.

302. See Berger, *supra* note 296.

303. See Katie Pyzyk, *New York MTA Commits \$5.2b to Subway Accessibility*, SMART CITIES DIVE (Sept. 18, 2019), <https://www.smartcitiesdive.com/news/new-york-mta-commits-52b-to-subway-accessibility/563125/#:~:text=The%20MTA%20put%20its,to%20that%2C%22%20Wright%20said.&text=The%20Fast%20Forward%20plan%20pledged,of%20all%20stations%20by%202034> [https://perma.cc/XA4R-44RE]; smith, *supra* note 265.

Accessibility, disability rights advocate (and former Accessibility Program Manager of the NYC Taxi & Limousine Commission) Alex Elegudin.³⁰⁴ He set the ambitious goal of having the City’s public transit system not only meet, but go beyond, the ADA’s accessibility mandates.³⁰⁵ Meanwhile, the MTA announced a plan to build between 210 and 250 elevators and multiple ramps in 70 subway stations that do not have elevators, to ensure no subway user is “more than two stations away from a stop with an elevator or ramp.”³⁰⁶ This will mark a major improvement for the subway system’s accessibility, increasing the number of accessible stations from 110 to 180 — however, in a system with 472 subway stations, even after this major overhaul, the majority of stops will remain inaccessible for those needing elevator service.³⁰⁷

2. MOPD’s Collaborative Role in Improving the Physical Infrastructure of the City’s Public Transportation System

The work of ensuring the City’s transportation infrastructure is physically accessible is foregrounded by MOPD, framed as transportation’s defining issue, and depicted as having two components. First, the agencies collaborating on this issue will be “tackling and modifying a physical infrastructure that does not meet the everyday needs of people with disabilities.”³⁰⁸ Second, they will be “examining and getting involved in new infrastructure as it is being built . . . [to ensure] individuals with disabilities can use and access the various spaces, technologies, or programs from the beginning rather than adapt later as an afterthought.”³⁰⁹

With this introduction to the Transportation section of the 2019 AccessibleNYC Report, MOPD frames the inaccessible transport problem

304. See MTA New York City Transit Hires First-Ever Senior Advisor for Systemwide Accessibility, METRO. TRANSP. AUTH. (June 18, 2018), <http://www.mta.info/news/2018/06/18/mta-new-york-city-transit-hires-first-ever-senior-advisor-systemwide-accessibility> [https://perma.cc/PB25-MCR9]. He is tasked with improving AAR and implementing the Fast Forward Plan to expand accessibility. See *id.*

305. See Wanshel & Jackson, *supra* note 293.

306. Clayton Guse, *MTA Heads Say They’ve Nearly Finished Picking Locations for New Subway Elevators*, DAILY NEWS (Dec. 19, 2019, 6:19 PM) [hereinafter Guse, *Picking Locations*], <https://www.nydailynews.com/new-york/ny-mta-subway-accessibility-elevator-list-2019-12-19-3yb3axzizzchlj7mtbtbbvhku-story.html> [https://perma.cc/33YB-DAPJ].

307. See David Meyer, *MTA Testing New Accessibility Features at Jay Street ‘Lab,’* N.Y. POST (Oct. 17, 2019, 1:20 AM), <https://nypost.com/2019/10/17/mta-testing-new-accessibility-features-at-jay-street-lab/> [https://perma.cc/47J4-LL94].

308. 2019 ACCESSIBLENYC REPORT, *supra* note 9, at 20.

309. *Id.*

as revolving around the inaccessibility of the system’s *physical infrastructure*. In the discussion that follows this introduction, it considers over a dozen transportation-related topics, from largely private sector issues,³¹⁰ to public issues including the AAR program, subway accessibility, buses, plans to redesign the iRideNYC app, pedestrian ramps, porous sidewalks, plans to reduce traffic fatalities, the connected vehicle technology pilot project, and the NYC Ferry.³¹¹ Across the majority of these discussions, the focus remains on physical infrastructure and how it could be improved. A notable example is the Report’s discussion of buses, which is three sentences long and mentions only (a) that every City bus is accessible, (b) the Department of Transportation survey of bus stops to “identify those with physical accessibility challenges,” and (c) the merits of the survey.³¹²

In its work in the area of improving the physical infrastructure of NYC’s transportation to make it more accessible, MOPD has embraced a position suited to its structure and resources; rather than leading complex, very expensive projects,³¹³ MOPD has stepped into a secondary role. Exemplifying MOPD’s role are its efforts in the context of subway accessibility: MOPD was part of a large-scale, highly collaborative effort — involving the MTA, community advocates, the New York City Council, developers, and other City agencies including the Department of Transportation and City Planning — to use existing zoning tools to push through an expedited Uniform Land Use Review Procedure³¹⁴ in order to begin work to make 25 subway stations accessible.³¹⁵ This project usefully jump-started needed infrastructure improvements, but it required extensive cross-agency cooperation. Particularly in light of the budget required to make infrastructure changes — the MTA “believes it would cost about \$10 billion to bring the remainder of the system in line with the federal law”³¹⁶ — and because the MTA has an Advisor for

310. Those discussed are taxis, for-hire vehicles, the NYC Taxi and Limousine Commission’s new Office of Inclusion, bike share, and Central Business District Tolling. *See id.* at 20–23, 30, 35.

311. *See id.* at 20–35.

312. *See id.* at 28.

313. *See Guse, Picking Locations, supra* note 306. For instance, adding elevators to 66 subway stops is a major part of the MTA’s \$51.5 billion 2020–2024 capital plan. *See id.*

314. This “is a standardized procedure whereby applications affecting the land use of the city would be publicly reviewed. The Charter also established mandated time frames within which application review must take place.” *Applicant Portal: Step 5: Uniform Land Use Review Procedure (ULURP)*, DEP’T CITY PLAN., <https://www1.nyc.gov/site/planning/applicants/applicant-portal/step5-ulurp-process.page> [https://perma.cc/4GC3-9W8R] (last visited Sept. 2, 2020).

315. *See* 2019 ACCESSIBLENYC REPORT, *supra* note 9, at 27.

316. Rosenberg, *supra* note 229.

Systemwide Accessibility, whose work it would be inefficient for MOPD to duplicate, the relatively low level of MOPD policy innovation in this area makes sense as a strategic choice about where to invest MOPD's resources.

3. *Technology as a Work-Around to Inaccessible Physical Infrastructure: MOPD's Outward-Facing Role as Information Resource*

In addition to working with other agencies on infrastructure-related projects, MOPD has taken on an outward-facing role to help the public navigate physically inaccessible infrastructure. It shares this role with the MTA,³¹⁷ which provides transit users with information, including daily updates on which elevators, escalators, and power walks are out of service.³¹⁸ MOPD's own online transportation resources³¹⁹ — unmentioned in the AccessibleNYC Report — include links to the MTA's public information pages, but also go beyond MTA modes of transport; thus MOPD's online portal is more comprehensive than competing resources. By laying out the multiple public and private transportation options available to New Yorkers with disabilities, providing links to these services, and incorporating brief discussions of each mode of transportation's accessibility, MOPD productively lowers information costs for those with disabilities hoping to use the City's varied modes of public or private transportation. Moreover, it does so efficiently, by linking to pre-existing resources rather than rebuilding these sites.³²⁰ Echoing its success in the employment-focused policy space, here MOPD succeeds as an entity that is extremely capable of efficiently connecting people to needed resources.

317. See 2019 ACCESSIBLENYC REPORT, *supra* note 9, at 28.

318. See *Elevator and Escalator Status*, METRO. TRANSP. AUTH., <http://advisory.mtanyct.info/EEoutage/EEOutageReport.aspx?StationID=All> [<https://perma.cc/V85P-59FY>] (last visited Sept. 2, 2020).

319. See *Transportation*, MAYOR'S OFF. FOR PEOPLE WITH DISABILITIES, *supra* note 242.

320. For instance, in discussing the subway, MOPD's website notes, "[n]ot all subway stations are accessible for people with disabilities. Elevators for individuals with physical disabilities are available at select stations. Customer Service representatives are available 24 hours a day to help plan your trip," and then provides phone numbers for interested readers to contact if they have questions about Braille in the subway, to request a Braille subway map, or to request a large print subway map. *Metropolitan Transportation Authority (MTA)*, MAYOR'S OFF. FOR PEOPLE WITH DISABILITIES, <https://www1.nyc.gov/site/mopd/resources/metropolitan-transit-authority-mta.page> [<https://perma.cc/5Y3M-5HA6>] (last visited Sept. 2, 2020).

ii. Key Policy Problem and Attempted Solutions: Intersectionality, Discrimination, and Transportation Worker Training

Physical infrastructure is not the only problem that makes the City’s public transportation system inaccessible. Bias, stigma, and lack of knowledge or training on the part of transportation workers can make physically accessible infrastructure inaccessible in practice, and discourage or prevent persons with disabilities from using it.³²¹ For instance, while the MTA espouses the “100 percent accessible” claim regarding its buses, wheelchair users report having to show bus drivers how to operate a vehicle’s wheelchair lift.³²² Complicating this issue is intersectionality; the effects of lack of knowledge, anti-disability stigma, and other factors are highly variable and unlikely to be fixed by installing elevators or fixing AAR alone. These issues are crucial to address because without being mindful of the complications introduced by intersectionality, some New Yorkers with disabilities will continue to be *particularly* likely to face social exclusion, as well as unemployment, because of inaccessible transit.

1. Intersectionality and Public Transportation in NYC

Importantly, accessibility of transportation varies by, but does not end with, disability type — disability intersects with other aspects of identity, making transportation *particularly* inaccessible to some disabled persons compared to others. It can be especially challenging for those with disabilities who are experiencing poverty to access transportation, and the challenges arising from inaccessible transit are compounded by high levels of under- and unemployment of workers with disabilities. For instance, the cost of owning a car makes unemployed individuals more vulnerable than others from a mobility perspective.³²³ Unrelated to any issues connected with the act of driving, or getting licensed to do so, or inaccessible features of vehicles, lower employment rates for persons with

321. See CECILIA FEELEY ET AL., RUTGERS, DETOUR TO THE RIGHT PLACE: A STUDY WITH RECOMMENDATIONS FOR ADDRESSING THE TRANSPORTATION NEEDS AND BARRIERS OF ADULTS ON THE AUTISM SPECTRUM IN NEW JERSEY 7, 38 (2015), https://www.autismnj.org/wp-content/uploads/2016/05/Detour_to_the_Right_Place_Technical_Report_2015.pdf [<https://perma.cc/7JXV-ZSWD>] (finding, among adults with autism spectrum disorder (ASD) who have taken public transit, approximately 40% have concerns about treatment by drivers, leading researchers to argue that “training for vehicle operators who transport adults with ASD should be improved”).

322. See Jeanmarie Evelly, *City Buses Are Wheelchair-Accessible, but Disabled Riders Still Face Obstacles*, CITY LIMITS (July 2, 2018) [hereinafter Evelly, *City Buses*], <https://citylimits.org/2018/07/02/city-buses-are-wheelchair-accessible-but-disabled-riders-still-face-obstacles/> [<https://perma.cc/CK7L-DH5E>].

323. See Berg & Ihlström, *supra* note 228, at *2.

disabilities mean they are likely to face additional mobility challenges “because they have lower levels of vehicle ownership and vehicle access and [disproportionately] live in low-income households.”³²⁴ This is an issue across all racial and ethnic groups — in every one, disability rates are highest in the lowest income groups.³²⁵ To be truly accessible, a transportation system must account for these disparities in wealth and income.

Like poverty, race and national origin also intersect with disability to impact transportation accessibility; notably, “41% of African Americans with a disability live on or below-poverty income,” making poverty and disability-related challenges profoundly racialized.³²⁶ Further, many persons are subjected to prejudice and discrimination based on their disability and race — for example, when buses routed through racially marginalized communities are the oldest and most pollution-generating of a city’s fleet and also have inoperable accessibility features, or when such transportation users encounter negative attitudes and behaviors of transportation providers due to their disability-related needs and their race.³²⁷

A particularly challenging barrier is the “perceived unwillingness on the part of public transportation personnel to accommodate minority individuals with disabilities and implement existing requirements for access to public transportation.”³²⁸ Language can compound this effect; people with disabilities who “speak English as a second language or who do not speak English at all face additional . . . barriers when attempting to use public transportation . . . [as] public transportation personnel [can

324. BRUMBAUGH, *supra* note 218, at 10.

325. See Elizabeth A. Courtney-Long et al., *Socioeconomic Factors at the Intersection of Race and Ethnicity Influencing Health Risks for People with Disabilities*, 4 J. RACIAL & ETHNIC HEALTH DISPARITIES 213, *5 (2017).

326. See Neal, *supra* note 265, at 2. Rates of disability vary by race; nationally, “Native Americans have the highest disability rate among working-age adults (16 percent), followed by blacks (11 percent), whites (9 percent), Hispanics (7 percent), and Asians (4 percent).” Martha Ross & Nicole Bateman, *Disability Rates among Working-Age Adults Are Shaped by Race, Place, and Education*, BROOKINGS (May 15, 2018), <https://www.brookings.edu/blog/the-avenue/2018/05/15/disability-rates-among-working-age-adults-are-shaped-by-race-place-and-education/> [https://perma.cc/E5AT-6Y3B]. Black and Hispanic people both exhibit wide ranges in their disability rates that vary from city to city, but “[i]n most places, as at the national level, blacks have higher disability rates than whites, up to 2.5 times greater.” *Id.*

327. See Neal, *supra* note 265, at 1.

328. NAT’L COUNCIL ON DISABILITY, LIFT EVERY VOICE: MODERNIZING DISABILITY POLICIES AND PROGRAMS TO SERVE A DIVERSE NATION 9 (1999), https://ncd.gov/rawmedia_repository/ac70261f_b1f1_473e_a558_0760aede6397.pdf [https://perma.cc/KXU3-FJMX].

be] less helpful to these minority individuals who speak limited or no English.”³²⁹

Gender also intersects with disability to make transportation specifically inaccessible to women with disabilities. Women have higher odds of mobility disability over time,³³⁰ and across most racial and ethnic groups, a higher percentage of women than men report having a disability.³³¹ Thus, it is more likely women will be para-transit system users or need accessible public transport. Women with disabilities — particularly women with intellectual disabilities (ID)³³² — are also more likely to be sexually assaulted than women without disabilities or men,³³³ including in transportation-related environments.³³⁴ The “mere perception of insecurity leads women with disabilities to constantly reorganize their lives to reduce danger, for example, by taking longer routes or leaving work early.”³³⁵ In this way, issues related to safety — which are tied to both disability *and* gender — impact transportation options and choices.³³⁶ This makes it harder for women with disabilities

329. *Id.* at 9–10.

330. See Philippa Clarke, Jennifer A. Ailshire & Paula Lantz, *Urban Built Environments and Trajectories of Mobility Disability: Findings from a National Sample of Community-Dwelling American Adults (1986–2001)*, 69 SOC. SCI. & MED. 964, 969 (2009).

331. See Courtney-Long et al., *supra* note 325, at *5 (2017). The group for whom this is not true is Asian-American women. See *id.*

332. See Joseph Shapiro, *The Sexual Assault Epidemic No One Talks About*, NPR (Jan. 8, 2018, 5:00 AM), [https://www.npr.org/2018/01/08/570224090/the-sexual-assault-epidemic-no-one-talks-ab](https://www.npr.org/2018/01/08/570224090/the-sexual-assault-epidemic-no-one-talks-about) out [<https://perma.cc/C9B7-KAL6>].

333. See ERIKA HARRELL, U.S. DEP’T OF JUST., BUREAU OF JUST. STAT., CRIME AGAINST PERSONS WITH DISABILITIES, 2009–2015 — STATISTICAL TABLES 3–4 (2017), <https://www.bjs.gov/content/pub/pdf/capd0915st.pdf> [<https://perma.cc/2L5A-6WPQ>]. Looking more broadly at victimization rates for serious, violent crime generally, as opposed to just sexual assault, the gap is not only gendered, it is also racialized. For Black, White, and Hispanic persons with disabilities, there is no statistically significant difference between victimization rates, while victimization rates for persons without disabilities do vary by race. See *id.* at 4.

334. See Antonio Iudidi, Laura Bertoli & Elena Faccio, *The ‘Invisible’ Needs of Women with Disabilities in Transportation Systems*, 19 CRIME PREVENTION & CMTY. SAFETY 264, 267–68 (2017).

335. *Id.* at 265.

336. Both women with and without disabilities adjust their transportation choices for safety; this is part of the “pink tax” — gender-based price discrimination — as safer transportation options are often costlier. See SARAH M. KAUFMAN, CHRISTOPHER F. POLACK & GLORIA A. CAMPBELL, NYU WAGNER, RUDIN CTR., THE PINK TAX ON TRANSPORTATION: WOMEN’S CHALLENGES IN MOBILITY 5–6 (2018), https://wagner.nyu.edu/files/faculty/publications/Pink%20Tax%20Report%202011_13_18.pdf [<https://perma.cc/977G-A7MT>]. For instance, a 2018 survey of New Yorkers found that more than half of female respondents were concerned about being harassed while using public transportation, compared to only one-fifth of male respondents. *Id.* at 5. The researchers concluded that women in the City

to overcome roadblocks to social inclusion, and can negatively impact their employment opportunities, compounding the “double employment jeopardy, disability discrimination and sexism,” that women with disabilities already face.³³⁷

Ultimately, gender — as with class, race, language, and other facets of identity, such as sexuality³³⁸ and gender identity³³⁹ — is relevant to

are more likely than men to change their behavior in order to avoid harassment . . . [and] that using alternative modes of transportation at night for safety reasons adds to monthly travel expenses for women. The median extra cost per month for men, due to safety reasons, is \$0. On the other hand, the median extra cost per month for women is \$26–\$50.

Id. at 6. These figures were exacerbated for women serving as caregivers, and “[m]ost survey respondents who take frequent caregiver trips add more than \$75 to their monthly travel expenses.” *Id.* at 7. Notably, this survey is not representative of New Yorkers generally. Compared to NYC demographics generally, respondents skewed young, white, college-educated, and were geographically concentrated in areas of the City that include the Upper West Side of Manhattan. *See id.* at 2. It also failed to measure of how disability impacts these patterns. *See id.* As one of the researchers observed, the women surveyed were “highly educated and had higher incomes. They could afford alternatives to public transportation. But lower-income women worried about their safety likely aren’t paying extra — because they can’t afford Lyft or Uber.” Kery Murakami, *Do Women Face a Transportation ‘Pink Tax’ in D.C.?*, WASH. POST (Dec. 6, 2018, 7:43 PM), <https://www.washingtonpost.com/express/2018/12/07/do-women-face-transportation-pink-tax-dc/> [<https://perma.cc/U2AD-C59U>]. As class intersects with disability, the same is likely true for many women with disabilities. It is also true that using a ride-sharing service does not guarantee safety. According to Uber, “it had reports of 3,045 sexual assaults during its rides in the United States in 2018, with nine people murdered and 58 killed in crashes.” Kate Conger, *Uber Says 3,045 Sexual Assaults Were Reported in U.S. Rides Last Year*, N.Y. TIMES (Dec. 5, 2019), <https://nyti.ms/2DS5mb3> [<https://perma.cc/5JPC-LWHY>]. Women with disabilities are not insulated from this violence. *See, e.g., Woman with Disability Sues Lyft, Alleging Sexual Assault*, NBC L.A. (Dec. 5, 2019, 6:39 PM), <https://www.nbclosangeles.com/news/local/woman-disability-sues-lyft-sexual-assault/2273273/> [<https://perma.cc/693N-M39W>] (describing a lawsuit brought by a disabled woman unable to drive and reliant on ride-hailing for transportation, who sued Lyft, alleging she was assaulted by a Lyft driver, and that Lyft failed to take adequate steps to protect its users).

337. Ari K. Mwachofi, *Gender Difference in Access and Intervention Outcomes: The Case for Women with Disabilities*, 31 *DISABILITY & REHAB.* 693, 693 (2009).

338. *See, e.g.,* M.V. LEE BADGETT, SOON KYU CHOI & BIANCA D.M. WILSON, UCLA SCH. OF LAW, WILLIAMS INST., *LGBT POVERTY IN THE UNITED STATES* 22 (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/National-LGBT-Poverty-Oct-2019.pdf> [<https://perma.cc/JFT6-K94N>] (“Disability status is . . . more common for LGBT people: 35.4% [for] lesbian and bisexual women and transgender people versus 24.3% for cisgender straight women, and 28.4% [for] gay and bisexual men and transgender people versus 19.5% for cisgender straight men.”).

339. A 2017 survey of LGBT users of public accommodations found 10.9% of transgender participants reported they avoided using public transportation, versus 4.1% of cisgender LGB respondents. *See* Sejal Singh & Laura E. Durso, *Widespread*

conversations about disability and accessible transportation. However, the impact of these “multiple selves — being raced, classed, gendered, AND disabled”³⁴⁰ — has been underexamined by the literature on disability and transportation, and ignored by official reports about the City’s transportation and its accessibility. Indeed, many theorists argue it has also been sidelined in the broader literature on disability, with “disastrous and sometimes deadly consequences for disabled people of color caught at the violent interstices of multiple differences.”³⁴¹ Ultimately, accessible transit is likely to be particularly important for those who are intersectionally marginalized within American society. The “persistent inequality in disability trajectories among racial/ethnic/gender groups”³⁴² means that they will be more likely to need accessible transportation, and to need it earlier, than average.

Discrimination Continues to Shape LGBT People’s Lives in Both Subtle and Significant Ways, CTR. FOR AM. PROGRESS (May 2, 2017), <https://www.americanprogress.org/issues/lgbtq-rights/news/2017/05/02/429529/widespread-discrimination-continues-shape-lgbt-peoples-lives-subtle-significant-ways/> [https://perma.cc/CU9B-Q2PW].

340. Nirmala Erelles & Andrea Minear, *Unspeakable Offenses: Untangling Race and Disability in Discourses of Intersectionality*, 4 J. LITERARY & CULTURAL STUD. 127, 128 (2010).

341. *Id.* at 128 (discussing “the brutal murder of a poor, elderly, overweight, disabled, black woman by several heavily armed police officers. Trapped at the intersections of multiple oppressive contexts, Eleanor Bumpurs’s tattered body was quite literally torn apart by her multiple selves”). For instance, “scholarship on deaf women tends to exclude the intersection of race and ethnicity.” Reshawna L. Chapple, *Toward a Theory of Black Deaf Feminism: The Quiet Invisibility of a Population*, 34 AFFILIA 186, 189 (2019). As Chapple observed in arguing for Black Deaf feminism, “[w]omen who are Black and D/deaf are a largely understudied group and are nearly invisible in all areas of scholarship.” *Id.* at 186. However, there are a few decades-old examples of disability’s analysis in the context of multiple oppressions. See e.g., Ayesha Vernon, *The Dialectics of Multiple Identities and the Disabled People’s Movement*, 14 DISABILITY & SOC’Y 385, 394–95 (1999). While research on transportation and intersectional marginalization including disability is thin, recent research *has* looked at disability, gender, race, and age in the context of workplace harassment, finding “various combinations of specific characteristics, that is, being female, being older, having a behavioral disability, racial minority status, and working for either a small or very large company seem to place individuals at higher risk of experiencing disability harassment.” Linda R. Shaw, Fong Chan & Brian T. McMahon, *Intersectionality and Disability Harassment: The Interactive Effects of Disability, Race, Age, and Gender*, 55 REHAB. COUNSELING BULL. 82, 88 (2012).

342. David F. Warner & Tyson H. Brown, *Understanding How Race/Ethnicity and Gender Define Age-Trajectories of Disability: An Intersectionality Approach*, 72 SOC. SCI. & MED. 1236, 1246 (2011). Functional impairment for Black women follows a pattern distinct from that experienced by other groups — Black women experience a more rapid accumulation of functional limitations through their mid-60s than do other groups. See *id.* at 1243–44.

2. *Government Responses to the Interrelation of Transportation,
Intersectionality, and Inaccessibility*

Because of how these multiple selves intersect with transportation, policymakers must be mindful of physical infrastructure’s shortcomings, but not to the exclusion of other problems and ways to improve transportation accessibility. Rather than just construction, “[i]mproving access to transportation requires travel trainings, coordination of resources, *and* trainings on rights.”³⁴³ As transportation workers can function as barriers to accessible transportation,³⁴⁴ taking an “infrastructure-plus” approach to transportation accessibility is essential — particularly for public transportation, on which people with disabilities are especially likely to rely.³⁴⁵

Seemingly acknowledging the intersection of disability and poverty, the MTA does have reduced fares for subway, bus, and rail customers — riders who are 65 or older, and those with “qualifying disabilities” can take advantage of reduced fares that are half the base fare.³⁴⁶ While a positive step, this program is imperfect, particularly when considered through the lens of how it helps — or does not help — New Yorkers with disabilities who commute to work. Reduced-Fare is not accepted during weekday rush hours by MTA express buses, by the Long Island Rail Road, or the Metro-North Railroad.³⁴⁷ However, the economic disadvantages persons with disabilities face still operate during rush hour. In juxtaposition stands the new Fair Fares program, which allows low-income New Yorkers to receive a 50% discount on subway and eligible bus fares, and can be used at any time of day,³⁴⁸ perhaps

343. *Transportation*, DEP’T LAB., *supra* note 220 (emphasis added).

344. *See, e.g.*, NAT’L COUNCIL ON DISABILITY, *supra* note 328, at 9.

345. BRUMBAUGH, *supra* note 218, at 6–7.

346. *See About Reduced-Fare MetroCards*, METRO. TRANSP. AUTH., <https://new.mta.info/fares-and-tolls/subway-bus-and-staten-island-railway/reduced-fare-metrocard> [<https://perma.cc/4QDG-ZK65>] (last visited Sept. 2, 2020).

347. *See id.* In structuring the program this way, the MTA is abiding by its obligations under federal law. *See* Tara N. Clark, *Understanding Half Fare/Reduced Fare Requirements*, NAT’L AGING & DISABILITY TRANSP. CTR. (Feb. 12, 2018), <https://www.nadtc.org/news/blog/understanding-half-farereduced-fare-requirements/> [<https://perma.cc/ZV5Y-YTKE>] (“Public transportation law requires public transportation agencies that receive Federal Transit Administration (FTA) funding under the Section 5307 Urbanized Area Formula Program to offer half fare or reduced fare to people with disabilities and seniors during off-peak hours for fixed-route services.”). The “peak hour” loophole is not a requirement; the MTA could expand the program to rush hours by declining to define peak and off-peak hours. *See id.* (“If a transit agency does not define peak and off peak service, all service will be deemed as ‘off peak’ and half fares are offered to people with disabilities and seniors at all times.”).

348. *See About — Fair Fares NYC*, CITY OF N.Y., <https://www1.nyc.gov/site/fairfares/about/about.page> [<https://perma.cc/VQN7-SHJ9>]

recognizing that low-income New Yorkers need to use their Fair Fares MetroCard to get to work. By limiting Reduced-Fare MetroCards for persons with disabilities to times ill-suited for those who need to get to work, lumping persons with disabilities into the reduced-fare program that serves those over 65, and denying New Yorkers who rely on Access-A-Ride’s paratransit services the ability to fully participate in the Fair Fares program,³⁴⁹ the Reduced-Fare structure needlessly impinges on New Yorkers with disabilities’ travel, especially work-related travel, and reinforces stereotypes about their unemployability.

Despite these weaknesses, and though it is available to all New Yorkers with qualifying disabilities and is not means-tested, the Reduced-Fare program nods to disability’s intersection with poverty.³⁵⁰ New York’s policy of charging AAR clients the same fare as any subway or bus passenger operates similarly — unlike other cities’ programs, that charge paratransit users more.³⁵¹ However, with most accessible subway stops in Manhattan, “rather than in more affordable locations deep in the outer boroughs of Brooklyn, Queens, the Bronx and Staten Island,”³⁵² the MTA and the City have a long way to go to make the public transit system accessible to New Yorkers experiencing the effects of disability and low income.

Regarding employee attitudes, studies of accessible transportation have repeatedly found that a common barrier for persons with disabilities is “inappropriate driver attitudes.”³⁵³ The MTA has committed to “[n]ew sensitivity training for all employees . . . with targeted training for station agents, Paratransit and bus operators, and others,” as part of their Fast Forward initiative.³⁵⁴ Promisingly, the program commits to providing

(last visited Sept. 2, 2020) (“Fair Fares NYC applications are open to eligible New Yorkers at or below the Federal Poverty Level (FPL) and who don’t have (and aren’t eligible for) discounted transportation from the MTA or the City.”). Like the reduced fare program, the Fair Fares program has restrictions related to express buses and commuter rail. See *It’s Easy to Use Your Fair Fares NYC MetroCard!*, DEP’T SOC. SERVS., <https://www1.nyc.gov/assets/fairfares/downloads/pdf/how-it-works/Fair-Fares-Palm-Easy-to-Use-E-S.pdf> [<https://perma.cc/A3ZU-DYAH>] (last visited Sept. 10, 2020).

349. See Jonathan Sperling, *Fair Fares Is Unfair for Disabled New Yorkers*, *Lawyers Say*, QUEENS DAILY EAGLE (Dec. 30, 2019), <https://queenseagle.com/all/fair-fares-is-unfair-for-disabled-new-yorkers-lawyers-say> [<https://perma.cc/KY85-JW8S>].

350. See *About — Fair Fares NYC*, *supra* note 348.

351. See Barron, *supra* note 294.

352. Wanshel & Jackson, *supra* note 293.

353. Bezyak et al., *supra* note 219, at 56.

354. *Accelerate Accessibility*, METRO. TRANSP. AUTH., <https://fastforward.mta.info/accelerate-accessibility> [<https://perma.cc/CQP5-FEMG>] (last visited Sept. 2, 2020).

“enhanced training for bus operators on the operation of wheelchair lifts.”³⁵⁵ Unfortunately, it does not show a similar commitment to reducing race- or language-related barriers to accessible transportation that intersect with disability to make public transportation especially inaccessible to persons with disabilities from racial and linguistic minority communities. The language used to advertise these trainings does not demonstrate any awareness of how the intersection of multiple identities, including and beyond disability, shapes the system’s accessibility, making it unlikely such trainings will knock down these barriers.

3. Opportunity for Growth: MOPD’s Potential Role as an Intersectional Anti-Stigma Resource

By focusing on physical infrastructure and failing to engage with disability-related stigma or intersectional issues related to the City’s public transportation and its accessibility, MOPD defines the system’s accessibility problems in an unnecessarily narrow way, and replicates other agencies’ failures to account for the diversity of disabled New Yorkers. The 2019 AccessibleNYC Report’s brief discussion of buses is illustrative of this problem — by looking only at bus stops’ “physical accessibility challenges,” reports of drivers being poorly trained on accessibility issues are ignored.³⁵⁶ Further, there is no discussion in the Report about how, beyond disability-type, transportation might be particularly challenging for some users.

This framing downplays findings from the literature that “reflect a need for changes to existing physical environments, systems, *and attitudes* to afford equal access and opportunity to public transportation.”³⁵⁷ Surveys of public transportation riders with disabilities have found that “three out of the top six barriers to public transportation experienced by people with disabilities were related to characteristics of the driver, including drivers not calling out stops, inappropriate driver attitude, and driver’s lack of knowledge.”³⁵⁸ Based on such findings, researchers observe there is a need to train drivers and other transportation personnel, and that transit authorities should pursue the knocking down of attitudinal barriers “through deliberate forward progress in public education and advocacy efforts.”³⁵⁹

355. *Id.*

356. *See, e.g.,* Evelly, *City Buses*, *supra* note 322.

357. Bezyak et al., *supra* note 219, at 56 (emphasis added).

358. *Id.*

359. *Id.* at 58.

This is not only true for passengers with mobility-related disabilities; based on similar findings regarding travelers with ID, researchers suggest that “for the general acceptance and understanding of people with ID as well as certain behaviors (i.e., slow communication or movement), various characteristics as well as different ways to interact with people with ID should be integrated in any additional training for bus drivers.”³⁶⁰ Although residents have raised these as problems within New York, these problems — and the literature-suggested best practices to mitigate them — are unmentioned in the 2019 AccessibleNYC Report.

This narrow framing also inadvertently defines some of MOPD’s most useful assets out of relevance to this area — namely, the wealth of connections MOPD has to a very diverse network of disability activists, groups, and communities within the City. MOPD effectively used its network to support its employment-related policies; this network could similarly provide MOPD with resources to innovate in the transportation policy space. MOPD also appears to have the room to do so, as there is little evidence the MTA is moving to effectively tackle the anti-disability stigma barrier to public transportation, particularly from an intersectional perspective. In 2018, Alex Elegudin noted that one of his goals as MTA Accessibility Chief was to improve “operational things like better training for all MTA staff on issues of ADA sensitivity and disability etiquette.”³⁶¹ In an opinion piece published in late 2019, however, Andy Byford, the MTA’s outgoing President,³⁶² described the MTA’s anti-stigma training efforts as “[r]efreshing sensitivity training for all NYC Transit employees in terms of supporting differently-abled customers.”³⁶³ Instead of committing to improving MTA staff training to account for how anti-disability bias from transit workers impacts intersectionally marginalized New Yorkers, Mr. Byford committed only to “refreshing sensitivity training.”³⁶⁴

360. Vera Tillmann et al., *Public Bus Drivers and Social Inclusion: Evaluation of Their Knowledge and Attitudes Toward People with Intellectual Disabilities*, 10 J. POL’Y & PRAC. INTELL. DISABILITIES 307, 312 (2013).

361. Seth McBride, *Alex Elegudin Named MTA’s First Accessibility Chief*, NEW MOBILITY (Aug. 21, 2018), <https://www.newmobility.com/2018/08/nyc-transit-accessibility-chief/> [https://perma.cc/VE8V-DWPY].

362. See Jim Dwyer, *How a Clash of Egos Became Bigger Than Fixing the Subway*, N.Y. TIMES (Feb. 3, 2020, 9:06 AM), <https://www.nytimes.com/2020/02/03/nyregion/cuomo-andy-byford-mta.html> [https://perma.cc/8EYY-UVN6].

363. Byford, *supra* note 300 (emphasis added).

364. *Id.*

Given MOPD's relationships with a diverse range of groups, and its demonstrated expertise in linking these groups to form productive coalitions, MOPD could push the MTA to go beyond "refreshing sensitivity training." For example, it could lead the development of training programs that teach transport service providers culturally and linguistically sensitive best practices for working with persons with varied disability types. As one user observed, "Access-A-Ride employees aren't even aware of some of these issues until they encounter them personally '[T]hey didn't know about it until they experienced it themselves. Personal experience always makes a difference.'"³⁶⁵ Statements from workers' representatives echo this user's observation that workers do not seem to understand there is a problem; for example, "John Paul Patafio, an officer with the Transit Workers Union which represents the city's bus drivers, [said to a reporter that] every operator is trained on how to use their wheelchair equipment, and that he doesn't generally hear complaints about drivers not knowing what to do."³⁶⁶ Since transportation agencies seem barely able to even recognize that this is an issue, using community resources to illuminate and address this problem could be a productive solution. An alternate strategy could involve fostering change from within: MOPD's position as the agency linking prospective employees to positions in City government could allow it to address worker ignorance via hiring. MOPD can do this in two ways. First, it could use the 55-a Program³⁶⁷ to place workers with disabilities — especially those interested in developing anti-bias training programs — in transportation agencies. Second, it could target these agencies for hiring persons with disabilities more generally, to not only improve service and accessibility of the system for its users, but also to ensure the system employs workers with disabilities at all levels. Both strategies could challenge anti-disability bias.

A very different strategy — geared at employment-related improvements specifically, but relevant to inaccessible transportation policy — could entail MOPD being mindful of the intersection of transportation and employment in administering their private sector employer-focused programs. In their work with BDC members, for instance, MOPD could highlight that workers with disabilities should, like their peers without disabilities, be considered for work-from-home positions. MOPD is well-positioned to pursue this type of strategy, which could immediately benefit workers hired into all positions, including

365. Wanshel & Jackson, *supra* note 293 (quoting disability advocate Eman Rimawi).

366. Evely, *City Buses*, *supra* note 322.

367. N.Y. CIV. SERV. LAW § 55-a (McKinney 2014).

managerial-level positions.³⁶⁸ However, this will not make transportation more accessible. As noted above, accessible transportation is a civil and human rights issue, and it is crucial for social inclusion; transport's inaccessibility must be challenged regardless of the success of employment-focused strategies.

C. Essential Lessons from MOPD's Public Transportation Accessibility Efforts

While there is room for MOPD's role to expand in the area of accessible public transportation, other cities can learn productive lessons from MOPD's work thus far in this policy space. First, essential to MOPD's limited role is the existence of the MTA's Advisor for Systemwide Accessibility. This "Accessibility Chief" is "responsible for implementing the accessibility-related aspects of the Fast Forward Plan, including expanding access to subways and buses and improving the Access-A-Ride paratransit service."³⁶⁹ Notably, the first and current Accessibility Chief, Alex Elegudin, is both a member of the disabled community and an experienced disability-rights advocate. He is thus particularly well-positioned to understand and highlight the concerns of the disability community to public transport decisionmakers. Mr. Elegudin has stated that:

The number one role of my job is to be a voice for the disability community. I have a seat at the table . . . and I want to inform myself of what people with disabilities really need, and the needs are different for every disability and in different regions of the city. I want to be that voice that brings everything together and creates a cohesive, unified plan to improve accessibility.³⁷⁰

His presence permits MOPD to focus its efforts elsewhere without having to be concerned that the disability community has no seat at the public transportation policy table. Cities that have offices analogous to MOPD, but do not have an actor within the public transport system with similar responsibilities as the MTA's Accessibility Chief (or that have such positions, but filled by persons without Mr. Elegudin's experience or connections), should consider assigning their MOPD-like offices this role,

368. See *supra* Sections I.C.i, II.D.ii.2–3 for a more in-depth discussion of MOPD's involvement in hiring, promoting, and retaining workers with disabilities and intersectionally marginalized workers.

369. Sarah Kaufman & Christopher Polack, *The State of Transit Accessibility*, NYU WAGNER, RUDIN CTR., <https://wagner.nyu.edu/rudincenter/2019/01/state-transit-accessibility> [https://perma.cc/5UVY-VN6V] (last visited Aug. 19, 2020).

370. McBride, *supra* note 361.

to ensure the disability community's voice is being heard by those making public transportation-related decisions.

Second, a key lesson from the City's experience is the importance of building accessible infrastructure, rather than relying on retrofitting. Prioritizing accessibility for new infrastructure as early as possible — especially “during the design and development process”³⁷¹ — is a takeaway for other cities, particularly those with less highly developed public transportation infrastructure than the major Northeast and Mid-Atlantic American cities. Taking an accessibility-first approach like the one MOPD now advocates, could save other cities looking to emulate MOPD's success appreciable time and money down the road, promote social inclusion immediately, rather than after-the-fact, and promote disability mainstreaming in policy.

Third, by turning a portion of its website into a user-friendly guide for those hoping to get around the City, MOPD has successfully positioned itself as an information resource. This clear, well-organized site is directed to those with accessibility-related travel questions, is more comprehensive than other agencies' guides, and could productively serve as a model for other cities hoping to provide similar resources to residents of, or visitors to, their cities. Rather than developing this site entirely from scratch, MOPD piggybacked on the work of other agencies by linking to their sites' accessibility pages. This likely saved significant development-related resources, as MOPD links to websites that others keep updated, which prevents MOPD from having to update its own site continually. If offices in other cities do not have these same high-quality external resources to draw upon, they might have to create them — which would be costly, but likely an investment in a useful resource — or coordinate the development of such sites with the relevant transportation authorities.

IV. COMPARATIVE POLICY EVALUATION: EXPANDING MOPD'S EMPLOYMENT-FOCUSED INNOVATIONS TO EMPLOYMENT-RELATED BARRIERS

Ultimately, MOPD's limited role in the transportation sector stands in stark contrast to its role as a policy-innovator for employment-focused policies. This difference is not only reflected in the 2019 AccessibleNYC Report but also on MOPD's website, which focuses heavily on employment while backgrounding transportation, despite the fact that

371. 2019 ACCESSIBLENYC REPORT, *supra* note 9, at 20.

MOPD does provide useful transportation resources.³⁷² Moreover, where it has been involved in transportation-related efforts, MOPD frames itself as playing a largely collaborative — rather than primarily innovative — role. For instance, in the 2019 Report MOPD emphasizes that “we as a city” are improving inaccessible transportation, and that “[t]hrough the Department of Transportation (DOT), the Taxi and Limousine Commission (TLC) and collaboration from other city and state agencies working with MOPD, the City has made a concerted effort to ensure that all New Yorkers . . . are able to navigate the city.”³⁷³

There are sound reasons for MOPD’s role to be more constrained regarding some areas of transportation policy than it was regarding employment-focused policies. Namely, the collective action and financial costs required to develop and implement physical infrastructure policies are incredibly high. MOPD innovated and implemented employment-focused policies without extensive cooperation from other agencies. Implementing transportation policies, however, demands cooperation with the agencies and authorities responsible for regulating or running the City’s transportation — some of which, unlike MOPD, are not even City government entities, but are New York State agencies and authorities, which can complicate cooperation as they operate under different administrations and serve different constituencies, and thus have competing goals. Innovating in the area of transportation thus *always* presents MOPD with government-related collective action costs that employment-focused policies largely do not. Further, the scale of transportation-related expenditures, at least for physical infrastructure, dwarfs the budget of MOPD’s employment-focused programs; a \$200,000

372. An entire section of MOPD’s website is dedicated to MOPD’s employment-related programs, a link to which is included on the site’s banner and is visible from every page of MOPD’s site. See *NYC: ATWORK*, MAYOR’S OFF. FOR PEOPLE WITH DISABILITIES, <https://www1.nyc.gov/site/mopd/employment/nyc-at-work.page> [<https://perma.cc/S3W4-FBDY>] (last visited Aug. 27, 2020). There is also a link to “Access and Employment Week” events under the site’s “Events” tab. See *Events*, MAYOR’S OFF. FOR PEOPLE WITH DISABILITIES, <https://www1.nyc.gov/site/mopd/events/events.page> [<https://perma.cc/2J5X-3ELT>] (last visited Sept. 17, 2020). Conversely, MOPD lists no MOPD initiatives specifically focused on transportation. See *Initiatives*, MAYOR’S OFF. FOR PEOPLE WITH DISABILITIES, <https://www1.nyc.gov/site/mopd/initiatives/initiatives.page> [<https://perma.cc/7LAP-FK6Q>] (last visited Aug. 27, 2020). And, their transportation-related resources are merely a subheading on a general page about resources. See *Resources*, MAYOR’S OFF. FOR PEOPLE WITH DISABILITIES, <https://www1.nyc.gov/site/mopd/resources/resources.page> [<https://perma.cc/UGB4-YTUZ>] (last visited Aug. 27, 2020).

373. 2019 ACCESSIBLENYC REPORT, *supra* note 9, at 20.

external grant launched *NYC: ATWORK*,³⁷⁴ but it costs \$81 million to build subway elevators.³⁷⁵ Because of the lower financial burden of MOPD's employment-focused policies, and MOPD's ability to secure external funding for these projects — the Partnership for Inclusive Internships Program is paid for by a grant from the Taft Foundation,³⁷⁶ and *NYC: ATWORK* is funded by grants from various external sources³⁷⁷ — the need for cross-agency cooperation and compromise for most employment-focused policies is very low.

Nevertheless, for MOPD's employment-focused policies to be as effective as possible, and available to as many New Yorkers with disabilities as possible, it is essential that the City's transportation systems be made fully accessible. This barrier to employment is also a barrier more generally to the City's accessibility and to the social inclusion of New Yorkers with disabilities. And it is entirely unaddressed by MOPD's current employment-focused policies. A particularly productive way to build upon MOPD's successful, efficient, employment-focused innovations and import some of this success into the transportation area could be to break down the policy “silos”³⁷⁸ that divide employment from transportation and other employment-related topics. Currently, MOPD “siloes” transportation and employment as discrete policy areas, artificially separating them, and rarely noting their connection. For instance, the 2019 AccessibleNYC Report's “Transportation” section mentions the importance of accessible transportation for employment only once.³⁷⁹ The “Employment” section, however, states that “[t]he City is committed to improving access to good jobs and increasing the

374. See Press Release, Kessler Found., Kessler Foundation Grants \$200,000 to the Mayor's Fund to Advance New York City (Jan. 18, 2017), <https://kesslerfoundation.org/press-release/kessler-foundation-grants-200000-mayors-fund-advance-new-york-city> [<https://perma.cc/WM8D-TYMG>].

375. See Grabar, *supra* note 289.

376. See 2019 ACCESSIBLENYC REPORT, *supra* note 9, at 48.

377. See *id.* at 39. While grant-funded *NYC: ATWORK* staff positions will be converted to permanent City-funded staff lines this year, that they were initially externally funded likely gave MOPD more flexibility on how to structure these positions than they would have had were these publicly funded all along. See *id.*

378. These are defined as the divisions between government programs or offices “working separate from each other, following different policy objectives and working to different time scales.” FRANCESCA FROY & SYLVAIN GIGUÈRE, BREAKING OUT OF POLICY SILOS: DOING MORE WITH LESS, LOCAL ECONOMIC AND EMPLOYMENT DEVELOPMENT 9 (2010).

379. This occurs in the section on Subway Accessibility, which notes, “[a]n accessible subway system benefits all New Yorkers. It [i]ncreases travel, which among other things increases employment opportunities and community interaction, all helping our city grow.” 2019 ACCESSIBLENYC REPORT, *supra* note 9, at 25.

number of people with disabilities who are employed,”³⁸⁰ and that it does so in several concrete ways.³⁸¹ Encouraging employers to hire workers with disabilities is carefully considered, as is connecting employees to these employers, while transportation is never mentioned as a barrier, nor is health care or education, despite voluminous evidence that these are issues at the root of high unemployment for persons with disabilities.³⁸²

This “siloining” is replicated on MOPD’s website; the transportation page does not mention employment,³⁸³ and the employment page does not mention transportation.³⁸⁴ Moreover, it is replicated in the AccessibleNYC Report, which, in some ways adopts a broad conception of “accessibility” — it considers built environments in discussions about the City’s accessibility, but also looks beyond the built environment. Indeed, the City’s innovative approach to working towards the inclusion of New Yorkers with disabilities and ensuring NYC is accessible to them — reflected and summarized in the AccessibleNYC Report — is uniquely comprehensive: it includes programs involving transportation, employment, financial empowerment, housing, health, technology, access, and education, framing all of these as critical to ensure the City’s accessibility.³⁸⁵ However, reflecting a narrower understanding of “accessibility,” the AccessibleNYC Report includes a section entitled “access,” which covers a variety of topics including building codes, whether tourists with disabilities can access the City’s famed tourist landmarks, and other evaluations of whether the City’s programs are usable by those with disabilities, and frames this as a topic independent of, and largely unrelated to, issues such as employment and even transportation.³⁸⁶

The distancing of transportation from employment undermines claims about the accessibility of MOPD’s employment-focused programs. For instance, in discussing the abillTy Academy, the 2019 Report highlights

380. *Id.* at 38.

381. *See id.* (“[B]y ensuring that the administration hires people with disabilities; by providing training to employers on how to engage with the disability community; and by providing technical assistance and information on reasonable accommodations to employers and removing barriers to employment.”).

382. *See, e.g.,* Shandra, *supra* note 211, at 160.

383. *See Transportation*, MAYOR’S OFF. FOR PEOPLE WITH DISABILITIES, *supra* note 243.

384. *See Employment*, MAYOR’S OFF. FOR PEOPLE WITH DISABILITIES, <https://www1.nyc.gov/site/mopd/employment/employment.page> [<https://perma.cc/3WGL-JMEW>] (last visited Aug. 27, 2020).

385. *See* 2019 ACCESSIBLENYC REPORT, *supra* note 9, at 3–5.

386. *See id.* at 4–5. This also reflects the broader definitional challenges related to “accessibility,” and the tension between understanding “access” as relating only to *physical* access, or requiring something more.

that the course is delivered “in a classroom that meets all students’ needs for accommodations.”³⁸⁷ But can this be the case for *all* students when, because of inaccessible transportation, some likely cannot *get to* the classroom? Scholars of employment and disability have long observed that “[s]ome people with disabilities who are willing and able to work cannot do so because of inadequate transportation,”³⁸⁸ but this remains implicit and unaddressed by MOPD’s current, narrowly framed employment-focused policies.

The practice of “siloiing” policy areas is not unique to MOPD; policy siloes are commonplace.³⁸⁹ However, they are problematic and costly, as the “issues and challenges facing local communities . . . require a holistic approach to be resolved.”³⁹⁰ The cost siloiing has on accessibility is evident by looking outside MOPD’s initiatives, to City projects run by other government entities. One recent, high-profile example of the bureaucratic failure that can result from siloiing is the inaccessibility of the recently opened Hunters Point Library, a branch of the Queens Public Library.³⁹¹ Described as an “architectural gem” by the *New York Times*’s architecture critic, the Library cost over \$40 million to build,³⁹² and is the first new library to be built in Queens in more than a decade.³⁹³ It also has several levels that are only accessible by stairs and a single elevator that must be shared among those who need it for mobility-related reasons and the many patrons with children and their strollers.³⁹⁴ The Queens Public Library argues that despite these issues, “[t]he building complies

387. *Id.* at 44.

388. NAT’L COUNCIL ON DISABILITY, THE CURRENT STATE OF TRANSPORTATION FOR PEOPLE WITH DISABILITIES IN THE UNITED STATES 19 (2005), https://ncd.gov/rawmedia_repository/afd954e1_161b_4524_ace5_38aefac854cc.pdf [<https://perma.cc/6F3R-3WR4>].

389. See FROY & GIGUÈRE, *supra* note 378, at 9 (“[They] are often taken for granted, [and] blamed on historical working relationships . . . and organisational cultures . . .”).

390. *Id.*

391. See *Hunters Point, QUEENS PUB. LIBR.*, <https://www.queenslibrary.org/about-us/locations/hunters-point> [<https://perma.cc/GB3R-XFZ5>] (last visited Aug. 31, 2020).

392. See Michael Kimmelman, *Critics Notebook: Why Can’t New York City Build More Gems like This Queens Library?*, N.Y. TIMES (Sept. 18, 2019), <https://www.nytimes.com/2019/09/18/arts/design/hunters-point-community-library.html> [<https://perma.cc/E5FT-3ERW>].

393. See Elizabeth Kim, *The New \$41 Million Hunters Point Library Has One Major Flaw*, GOTHAMIST (Oct. 3, 2019, 3:17 PM), <https://gothamist.com/news/new-41-million-hunters-point-library-has-one-major-flaw> [<https://perma.cc/P3QR-JFW2>].

394. See Sharon Otterman, *New Library Is a \$41.5 Million Masterpiece. But about Those Stairs.*, N.Y. TIMES (Nov. 5, 2019), <https://nyti.ms/2oNmWZT> [<https://perma.cc/7D3A-6UC8>].

with all building codes, including the ADA . . . [as] staff has been and will continue to retrieve books for customers, and [they] are going to offer devices that will allow customers to browse the materials available in those areas.”³⁹⁵ However, a lawsuit filed against the Library and the City counters that the Library’s design violates the ADA as it excludes people with mobility disabilities from a variety of its offerings — they are barred from using the three non-elevator accessible levels which include lounging and study space, reading and group meeting spaces with multi-level wooden seating, and the full use of the rooftop terrace and its “stunning views.”³⁹⁶ Either way, meeting the ADA’s baseline does not mean full accessibility — rather, “meeting legal requirements is a false standard [B]uildings can and should always be designed so that they offer the same *quality* of experience to everyone,”³⁹⁷ which the Library does not.³⁹⁸

While it is not yet clear what caused this failure, one expert speculates that it may have arisen as a result of putting off accessibility decisions — “until it was too late to resolve.”³⁹⁹ This would reflect a classic siloing failure. Rather than taking a holistic approach to design, those not directly tasked with accessibility seemingly did not consider it a priority.⁴⁰⁰ Conversely, those who were specifically responsible for accessibility may not have been consulted until too late.⁴⁰¹ This failure cannot be laid at one actor’s foot. It is a systemic shortcoming, and not only for patrons. Hunters Point Library’s inaccessibility also means

395. Kim, *supra* note 393.

396. Complaint at 2, 8–9, Jackson v. Queens Borough Pub. Libr., No. 19-cv-6656 (E.D.N.Y. Nov. 26, 2019).

397. Justin Davidson, *The Important Thing I Didn’t See at the New Hunters Point Library*, INTELLIGENCER (Oct. 4, 2019), <http://nymag.com/intelligencer/2019/10/iffy-accessibility-at-hunters-point-community-library.html> [<https://perma.cc/Z845-7UCV>].

398. Further, the design does not meet the International Federation of Library Associations and Institutions library accessibility checklist, which requires that all parts of a library be accessible. See Lisa Peet, *Hunters Point Library Confronts Accessibility Issues*, LIBR. J. (Nov. 4, 2019), <https://www.libraryjournal.com/?detailStory=hunters-point-library-confronts-accessibility-issues> [<https://perma.cc/Y3TV-TFRY>].

399. *Id.* (quoting Charles Higuera, Acting Director of Project Management at San Francisco Public Works).

400. For example, one senior partner at the architectural firm that designed the building referred to the inaccessibility complaints as a “small wrinkle in an incredibly successful project.” Otterman, *supra* note 394.

401. See Peet, *supra* note 398. As Sherry Machones, President of the American Library Association (ALA) Association of Specialized, Government, and Cooperative Library Agencies observed when reflecting upon this incident, “[s]o many people along the way failed their community.” *Id.*

current and prospective library employees cannot staff the inaccessible sections if, for instance, they are wheelchair users.

Siloing is a problem beyond NYC; it is a problem within the ADA itself. For instance, the “job-related” rule for accommodations under the ADA — which bifurcates accommodations into those that are, and those that are not, job-related — excuses employers from any duty to provide reasonable accommodations outside the workplace if those accommodations assist the recipients in non-workplace functions.⁴⁰² Despite the fact that providing such accommodations, say assistive technology, can facilitate getting to work and hence knock down a barrier to employment, the ADA’s strict dividing line prevents putting “people with disabilities in a position to apply and be qualified for jobs in the first place.”⁴⁰³

Siloing within the ADA does not stop with the lack of support for workers with disabilities getting to work. Rather, as a result of Title III’s public accommodation accessibility requirements, such bifurcation continues into the physical workplace. ADA Title III requires that places of public accommodation be made readily accessible.⁴⁰⁴ For workers with disabilities, this means that:

[S]ome employment-related accommodation costs should [likely] be subsumed by employers in their guise as owners or operators of those venues if they are otherwise ADA-compliant. . . . [For example, the owner of a store] would have been required to install an entry ramp as a reasonable modification even without the presence of a disabled employee.⁴⁰⁵

By siloing the public accommodation versus employment rationales for accessibility, the ADA encourages the building of only partially accessible spaces where public areas are designed to be accessible, but non-public spaces used only by employees are not. This siloing is hostile to potential employees with disabilities because it disincentivizes their hiring, which can come with “hard” costs (meaning, it can invoke readily quantifiable out-of-pocket expenses) to make inaccessible employee-used spaces accessible.⁴⁰⁶ Moreover, it incentivizes employer claims that workplace accommodations require significant difficulty or expense, and are thus an undue hardship that they should not be obligated to undertake.⁴⁰⁷ It is

402. See Bagenstos, *supra* note 17, at 36.

403. *Id.* at 23.

404. See Michael Ashley Stein, *The Law and Economics of Disability Accommodations*, 53 DUKE L.J. 79, 89 (2003).

405. *Id.*

406. See *id.* at 88.

407. See *id.* at 89, 100.

also inefficient, as the public accommodation versus employee accommodation split incentivizes the building of only partially accessible spaces which can later require expensive retrofitting, rather than the building of infrastructure that is entirely accessible from the start.⁴⁰⁸

Finally, siloing is also a problem related to intersectionality, and thus, workers themselves. This is evident in the 2019 AccessibleNYC Report and in the policies it summarizes and evaluates. In the Report’s executive summary, MOPD observes that “[o]ur City is committed to equity and inclusion for our fellow New Yorkers with disabilities and to visitors with disabilities.”⁴⁰⁹ But in the pages that follow, the only equity discussed is the equity between persons with and without disabilities. Missing is an evaluation of whether *all* New Yorkers with disabilities — across the City and among all races, classes, genders, sexualities, and gender identities — are equally benefiting from this project of inclusion. Since MOPD’s mandate is to “[e]nsure[] the rights and concerns of the disability community are included in all City initiatives and that City programs and policies address the needs of people with disabilities,”⁴¹⁰ it is unsurprising that disability is the identity upon which the Report focuses. However, it is not an identity separate from other aspects of our multiple selves, and to fully understand the barriers to employment faced by New Yorkers, it is crucial to understand how these intersect with, and are conditioned by, disability.

CONCLUSION

Ultimately, while MOPD’s employment-focused programs are innovative and efficient, it has not been able to import this success to its efforts regarding accessible transportation. While transportation policy development necessarily brings with it the costly process of cross-agency and cross-government collaboration, key movable barriers standing in the way of MOPD doing more in the transportation policy space include: (a) a narrow framing of transportation accessibility as revolving almost exclusively around physical infrastructure improvements; (b) costs — both collective action and financial — of changing transportation systems; and (c) policy siloing.

So how can MOPD play a more prominent role, and break out of siloing to address the deep-rooted barriers that make unemployment for persons with disabilities a more complex policy problem than initially meets the

408. The NYC subway system is illustrative of retrofitting’s inefficient and cost-prohibitive nature. *See supra* Section III.B.i.2.

409. 2019 ACCESSIBLENYC REPORT, *supra* note 9, at 13.

410. *What We Do*, *supra* note 1.

eye? It could begin by calling on its extensive network of connections within NYC's diverse community of persons with disabilities. It could learn from this community about how the deep-rooted barriers to employment, accessibility, and social inclusion impact their ability to secure employment, and how this varies based on the multiple selves of New Yorkers with disabilities, and it could make this data available. MOPD is well positioned to gather this crucial data, as it has connections to so many parts of the NYC disability community. By beginning with collecting this information, MOPD could both shape its next steps on the employment issue and help begin to dissolve the policy silos that have prevented the City from tackling the critical problem of unemployment among New Yorkers with disabilities in an intersectional and comprehensive way.

APPENDIX

Figure 1: City-Level MOPD Policies within the Broader Policy and Contextual Environment.

