



# Wisconsin Elections Commission

212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984  
(608) 266-8005 | [elections@wi.gov](mailto:elections@wi.gov) | [elections.wi.gov](http://elections.wi.gov)

December 6, 2021

Denise M. Everson  
1195 N. Lost Woods Rd.  
Oconomowoc, WI 53066

Frances Duncanson, Clerk  
Village of Osceola  
37100 Delafield Rd.  
Summit, WI 53066

**Sent via email to:** [deni-everson@hotmail.com](mailto:deni-everson@hotmail.com); [villageclerk@vil.osceola.wi.us](mailto:villageclerk@vil.osceola.wi.us)

Re: In the Matter of: Everson v. Village of Osceola (Case No.: EL 21-34)

Dear Ms. Everson:

This letter is in response to the verified complaint submitted by Denise Everson (“Complainant”) to the Wisconsin Elections Commission (“Commission”), alleging that the Village of Osceola (“Respondent”) has not complied with Wis. Stat. § 5.25(4)(a) which requires that each polling place be accessible to all individuals with disabilities. The complaint alleges that the Village’s polling place, located at 310 Chieftain Street, has an interior ramp that does not comply with standards of the Americans with Disabilities Act (“ADA”), which makes the polling place not accessible to persons with disabilities.

Complaints “...shall set forth such facts as are within the knowledge of the complainant to show probable cause to believe that a violation of law or abuse of discretion has occurred or will occur.” Wis. Stat. § 5.06(1). Probable cause is defined in Wis. Admin. Code § EL 20.02(4) to mean “the facts and reasonable inferences that together are sufficient to justify a reasonable, prudent person, acting with caution, to believe that the matter asserted is probably true.”

The Commission has reviewed the complaint and the Village of Osceola’s response. The Commission provides the following analysis and decision. In short, the Commission has determined that the Village of Osceola did violate Wis. Stat. § 5.25(4)(a), and by extension, the polling place accessibility requirements of the ADA. Therefore, the Commission finds that the Complainant did show probable cause to believe that a violation of law or abuse of discretion occurred with relation to the alleged polling place accessibility violations.

## Complaint Allegations and Response

On June 19, 2021, the Commission received a timely, sworn complaint from Ms. Everson describing the following conditions at the polling place which she believed did not comply with the ADA and the statutory requirement that each polling place must be accessible to all individuals with disabilities. Specifically, an interior ramp from the upper level of the space to

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*Administrator*  
Meagan Wolfe

the lower did not have appropriate railing or edge protection to prevent individuals from falling off the ramp.

On July 20, 2021, Clerk Duncanson filed a sworn response to the complaint. Her contention is that the ramp at the Village polling place at 310 Chieftain Street has a rise of only 6 inches and therefore is not subject to the handrail requirement. She added that there was a similar ADA complaint against this polling place in 2019 regarding the ramp inside 310 Chieftain Street. In the 2019 complaint, the Village of Osceola stated that they had placed tables on the side of the ramp to block the open side. The Village also contended that the ramp rise did not exceed six inches, which meant the Village did not need to install a handrail. The Commission concluded that the ramp was not subject to the handrail requirement and based its decision on ADA standards and the self-reported Village polling place audit survey.

Ms. Everson chose to file a sworn reply to Clerk Duncanson's response. In this reply, she addressed the fact that there was a table set up at the top of the ramp but it was not flipped on its side to guard the side of the ramp. Additionally, there were no tables set up at the bottom of the ramp to discourage people from dropping off the bottom edge of the ramp. Commission staff were also provided a video from the polling place, and it shows the Complainant tripping and falling over the exposed edge at the bottom of the ramp, where there was no table to serve as a barrier.

#### Commission Authority and Role in Resolving Complaints Filed Under Wis. Stat. § 5.06

Under Wis. Stat. §§ 5.05(1)(e) and 5.06(6), the Commission is provided with the inherent, general, and specific authority to consider the submissions of the parties to a complaint and to issue findings. In instances where no material facts appear to be in dispute, the Commission may summarily issue a decision and provide that decision to the affected parties. This letter serves as the Commission's final decision regarding the issues raised by Ms. Everson's complaint.

The Commission's role in resolving verified complaints filed under Wis. Stat. § 5.06, which challenge the decisions or actions of local election officials, is to determine whether a local official acted contrary to applicable election laws or abused their discretion in administering applicable election laws.

#### Commission Findings

Ms. Everson's complaint alleges that the Village of Osceola did not comply with ADA standards and Wis. Stat. § 5.25(4)(a) to ensure that the polling place was accessible to all individuals with disabilities. In applying the relevant statute, the Commission determines that the Respondent's polling place did not comply with the election laws and constituted an abuse of discretion.

Wis. Stat. § 5.25(4)(a) states as follows:

Each polling place shall be accessible to all individuals with disabilities. The commission shall ensure that the voting system used at each polling place will permit all individuals with disabilities to vote without the need for assistance and with the same degree of privacy that is accorded to nondisabled electors voting at the same polling place. This paragraph does not apply to any individual who is disqualified from voting under § 6.03(1)(a).

In determining whether a polling place meets the legal requirement of accessibility for persons with disabilities, the Commission relies on the standards established pursuant to the Americans with Disabilities Act, specifically those described in the *2010 ADA Standards for Accessible Design* (“*ADA Standards*”). While the Commission recognizes that in some instances compliance with the *ADA Standards* may not fully accommodate an individual at a specific location, that document serves as an objective measure of whether a municipality has complied with the mandate of Wis. Stat. § 5.25(4)(a) or has abused its discretion in administering that provision.

The following provision of the *ADA Standards* require a handrail on the ramp if the rise of the ramp is greater than 6 inches:

405.8 Handrails. Ramp runs with a rise greater than 6 inches (150 mm) shall have handrails complying with 505.

The Village’s polling place audit survey indicated that the ramp leading into the polling place contained a rise of less than 6 inches. However, this self-reported data was incorrect, and the ramp had a rise that was greater than 6 inches.

The inaccurate information provided by the Village was the Commission’s basis for its 2019 complaint decision. However, Commission staff still recommended the installation of a railing to the Village of Osceola at that time. Photographic evidence requested by the Commission for the current complaint’s record shows that a railing does need to be installed for the Respondent’s polling place to be ADA compliant. Additionally, edge protection may be required if the bottom rail does not prevent the passage of a 4-inch diameter sphere.

The Commission finds that the Complainant did show probable cause to believe that a violation of law or abuse of discretion occurred with relation to the Respondents’ failure to comply with the requirements of Wis. Stat. § 5.25(4)(a). The record supports a finding that the ramp rise is greater than 6 inches. The Commission, therefore, orders the Respondents to make all necessary changes to ensure the polling place at 310 Chieftain Street is ADA and Wis. Stat. Chapter 5 compliant.

### Commission Decision

Based upon the above review and analysis, the Commission finds probable cause to believe that a violation of law or abuse of discretion has occurred with regard to the village’s deficiencies in complying with the mandates of Wis. Stat. § 5.25(4)(a).

### Right to Appeal – Circuit Court

This letter constitutes the Commission’s resolution of this complaint. Wis. Stat. § 5.06(2). Pursuant to Wis. Stat. § 5.06(8), any aggrieved party may appeal this decision to circuit court no later than 30 days after the issuance of this decision.

If any of the parties should have questions about this letter or the Commission's decision, please feel free to contact me.

Sincerely,

**COMMISSION**

A handwritten signature in black ink that reads "Meagan R.M. Wolfe". The signature is written in a cursive style with a large, looped initial "M".

Meagan Wolfe  
Administrator

cc: Commission Members