

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Nancy Alisberg, Hartford

File No. 2014-039

AGREEMENT CONTAINING CONSENT ORDER

This Agreement¹, by and between Patricia Mulhall and Timothy DeCarlo, of the City of Waterbury, County of New Haven, State of Connecticut and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177 (c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

ALLEGATION

1. Respondents Mulhall and DeCarlo are, respectively, the Democratic and Republican Registrars of Voters for the City of Waterbury at all times relevant to the instant Complaint.
2. The Complainant, as representative of the State of Connecticut Office of Protection and Advocacy for Persons with Disabilities (“OPA”), alleges that during the 2013 municipal general election, four polling sites in the City of Waterbury were out of compliance with the accessibility requirements for persons with disabilities enumerated in General Statutes §§ 9-168d, 9-168e, and 29-269 and § 9-242a-11 of the Regulations of Connecticut State Agencies.
3. The matter is an institutional complaint; there is no specific allegation that any particular individual was personally effected by any alleged noncompliance by the Respondents.
4. Specifically, the Complainant, on behalf of OPA, alleges that representatives of OPA did a compliance review of certain polling places in the City of Waterbury on the day of the 2013

¹ The following represents the Commission’s complete findings and conclusions based on those portions of the statement of complaint which the Commission could reasonably construe as alleging facts amounting to a specific violation of those laws within the Commission’s jurisdiction. Any statements within the Complaint not addressed herein either did not specifically allege a violation or alleged facts which if proven true would not have amounted to a violation within the Commission’s jurisdiction.

municipal general election. In her Complaint to the Commission, which was filed approximately 5 months after the election, she detailed issues alleged to have been found in 4 of the polling place locations in the city. They are detailed in the below. Complainant provided minimal evidence, but where such evidence was provided, it is indicated:

District 73-2 Polling Place – Blessed Sacrament School

- 1) No handicap spot in the parking lot
- 2) Poor exterior path conditions
- 3) Unstable wheelchair ramp at entrance (photograph of ramp provided)
- 4) Non-compliant hardware on the entrance door
- 5) No lowered wheelchair-accessible privacy booth available
- 6) AVS machine not placed within reach of the voter (photograph of AVS machine located on stack of tables included with Complaint)
- 7) No chair or headphones available by the AVS machine

District 71-3 – Tinker School

- 1) No handicap spot in the parking lot
- 2) Poor exterior path conditions (wide frame picture of exterior included, but unclear which areas were in need of repair)
- 8) Unstable wheelchair ramp at entrance with a greater than 1” threshold (photograph of ramp included with Complaint)
- 3) Non-compliant hardware on the entrance door
- 4) No lowered wheelchair-accessible privacy booth available
- 5) No headphones visible by the AVS machine

Districts 74-4 & 74-5 – Wendell Cross School

- 1) No handicap spot in the parking lot
- 2) Only a step at the main entrance and moderator unable to identify a wheelchair-accessible ramp
- 3) No headphones or privacy booth visible by the AVS machine
- 4) Elections officials unable to operate the AVS machine

District 75-4 – Washington School

- 1) Handicap spots in the parking lots missing proper signage, did not have the required painted striping, and were not of the correct dimensions
- 2) Poor exterior path conditions
- 3) Wheelchair ramp at entrance with a greater than 1” threshold
- 4) No headphones or privacy booth visible by the AVS machine

LAW

5. The accessibility rules for polling places are enumerated in General Statutes §§ 9-168d and 9-168e.
6. General Statutes § 9-168d reads as follows:
 - (a) On or before July 1, 1980, each polling place shall be made accessible to and usable by physically disabled persons by complying with the following standards of accessibility: (1) Doors, entrances, and exits used to gain access to or egress from the polling place shall have a minimum width of thirty-one inches; (2) temporary ramps shall be made available or curb cuts provided where necessary for accessibility to the entrance; (3) any stairs necessarily used to enter the polling place shall have a temporary handrail and ramp; (4) in the polling place, no barrier shall impede the path of the physically disabled to the voting booth.
 - (b) The registrars of voters in each town, or the legislative body of the town, shall select as polling places only those sites which meet the standards of accessibility required under the State Building Code, as revised pursuant to section 29-269, if applicable, or this section. The registrars of voters in each town shall file with the Secretary of the State either: (1) A certification, as prescribed by the Secretary of the State, that states that each polling place selected complies with the provisions set forth in this subsection, or (2) an application for waiver, as described in subsection (c) of this section.
 - (c) The registrars or such legislative body may select a site not meeting such standards if no available site within the voting district or town can reasonably be made accessible if an application for waiver is filed with

the Secretary of the State and approved by the Office of Protection and Advocacy for Persons with Disabilities. An application for waiver shall be filed at least sixty days prior to the date on which the primary or election will be held. The Secretary of the State shall, within seven days after receipt of any such application, refer the application to said office of protection and advocacy. Said office shall, within thirty days, review the application and inform the Secretary of the State of its approval or disapproval. The Secretary of the State shall notify the applicant for waiver of such approval or disapproval within seven days after the secretary is so informed.

7. General Statutes § 9-168e reads as follows:

If space is available at a polling place, the registrars of voters or legislative body of the town in which the polling place is located shall designate two or more parking spaces for motor vehicles (1) which display the special parking identification card or bear the special set of number plates provided for in section 14-253a or (2) which are operated by infirm persons who are sixty-five years of age or older and who do not qualify for such a card.

8. General Statutes § 29-269 is incorporated by reference above, and reads:

(a) The State Building Inspector and the Codes and Standards Committee shall revise the State Building Code to be in substantial compliance with the provisions of the Americans with Disabilities Act of 1990, as amended, 42 USC 12101 and the Fair Housing Amendments Act of 1988, as amended, 42 USC 3600. The provisions of this subsection and the State Building Code as from time to time revised pursuant to this section shall control the design, construction and arrangement of all buildings and building elements, constructed under permits issued on or after October 1, 1975, and all buildings or building elements constructed or substantially renovated by the state, any municipality or any other political subdivision of the state, the architectural design of which was commenced on or after October 1, 1977, except buildings which have been approved by the Department of Housing and Urban Development as being in conformance with federal standards for housing for the elderly and physically handicapped and for

which a permit was issued prior to June 9, 1976, to ensure accessibility thereto and use by the physically handicapped.

(b) Any variation of or exemption from any provision of (1) the State Building Code relating to accessibility to, and use of, buildings and structures by persons with disabilities, (2) subsection (g) of section 14-253a, (3) section 29-273, or (4) section 29-274, shall be permitted only when approved by the State Building Inspector and the director of the Office of Protection and Advocacy for Persons with Disabilities acting jointly. Any person, agent of the state, municipality or any other political subdivision of the state may apply to the State Building Inspector to vary or set aside standards incorporated in the State Building Code pursuant to the provisions of subsection (a) of this section. The State Building Inspector, within seven days of receipt of any such application, shall forward a copy of such application to said director, who shall, within thirty days of receipt, review the application, and acting jointly with the State Building Inspector, render a decision to accept or reject the application in whole or in part. The State Building Inspector and said director may approve a variation of or exemption from any such standard or specification when they jointly determine that it would not be feasible or would unreasonably complicate the construction, alteration or repair in question. Such determination shall be in writing, shall state the reasons therefor and if it sets aside any such standard or specification, a copy of such determination shall be sent to said director. Any person aggrieved by any such decision may appeal to the Codes and Standards Committee within thirty days after such decision has been rendered.

(c) Regulations or codes made or amended by authority of this section shall, after a public hearing called for that purpose by the State Building Inspector not less than thirty days before the date of such hearing, be filed by the State Building Inspector with the Secretary of the State in accordance with the provisions of chapter 54 and he shall thereafter make copies available to persons having an interest therein.

(d) If any regulation is set aside by a court of competent jurisdiction, such ruling shall affect only the regulation, standard or specification included in the ruling and all other regulations, standards or specifications shall remain in effect.

(e) Notwithstanding the provisions of subsection (b) of this section, a variation or exemption from the State Building Code shall not be required to construct a visitable feature in a residential home. For purposes of this section, “visitable feature” means (1) interior doorways that provide a minimum thirty-two inch wide unobstructed opening, (2) an accessible means of egress, as defined in Appendix A to 28 CFR Part 36, or (3) a full or half bathroom on the first floor that is compliant with the provisions of the Americans with Disabilities Act of 1990, as amended, 42 USC 12101.

9. Section 9-242a-11 of the Regulations of Connecticut State Agencies, which sets out certain criteria for the organization of polling places and requires, in pertinent part:

... At least one voting booth in each voting district shall be accessible to persons with disabilities. ...

10. General Statutes § 9-247 requires that all tabulators, including AVS systems, be tested and functional by the open of polls and reads

The registrars of voters shall, before the day of the election, cause test ballots to be inserted in each tabulator to ensure that each tabulator is prepared and read and cause each other voting system approved by the Secretary of the State for use in the election, including, but not limited to, voting devices equipped for individuals with disabilities that comply with the provisions of the Help America Vote Act, P.L. 107-25, as amended from time to time, to be put in order in every way and set and adjust the same so that it shall be ready for use in voting when delivered at the polling place. Such registrars of voters shall cause each voting system to be in order and set and adjusted, to be delivered at the polling place, together with all necessary furniture and appliances that go with the same, at the room where the election is to be held, and to be tested and operable not later than one hour prior to the opening of the polling place. (Emphasis added.)

INVESTIGATORY FINDINGS

Response

11. The overall response in this matter was swift and generally comprehensive. Generally, the Respondents do not deny most of the alleged conditions in the parking lot and entranceway of the above polling places. They assert generally that it has always been their understanding that Waterbury has operated for many years, before either of the registrars began their service, under a waiver for the conditions alleged. However, they also admit that when they sought a copy of such waiver from the Secretary of the State's Office ("SOTS"), SOTS was unable to find either a certificate or waiver as required by General Statutes § 9-168d. After discovering that their understanding was incorrect, and without prompting by Commission staff, they set about to seek funds and resources from the City of Waterbury to correct the issues identified, where they found such conditions to exist.
12. In their initial response to the Complaint on or about May 1, 2014, the Respondents indicated that all but the District 73-2 polling place were city-owned buildings and that they would work diligently with the Mayor's office to address the exterior and entryway facility concerns addressed by the Complaint. They asserted that they would reach out to the parish regarding the District 73-2 polling place at Blessed Sacrament School to address the concerns as well.
13. The Respondents asserted also that they would work with the moderators in each of the allegedly affected polling places to not only try to determine the veracity of the allegations regarding the AVS machines and the accessible privacy booths, but also asserted that they would be implementing a retuned training of the moderators that emphasizes the necessity to properly set up the polling places to address the needs of all voters. The Respondents indicated that it was their aim to address and correct all of these issues by the August 2014 primary or the November 2014 general election at the latest.
14. After conducting a review of the records of the election and interviewing the moderators of each of the polling places, the Respondents submitted a response on or about July 11, 2014 addressing the allegations related specifically to the AVS machines. Each moderator provided statements in which they indicate that the AVS machines were set up, tested, and operational on the date in question. Importantly, the Respondents included the test faxes from each of the polling places, indicating that the machines were in operational order at the time the polls were opened on that day. The Respondents also indicated that there was no evidence of incidents of any voter being turned away or otherwise unreasonably delayed

because of any deficiencies with the AVS machines. The Respondents were unable to verify or specifically deny the allegations concerning a lack of a lowered booth at Tinker School and Blessed Sacrament or the allegations regarding headphones and the AVS machines. However, in an August 1, 2014 follow-up response the Respondents indicated that on August 5, 2014 the moderators would be required to attend a mandatory training, ahead of the August 12, 2014 primary, in which all of these issues would be addressed with the moderators.

15. In a follow-up responses on August 28, 2014 the Respondents detailed how the OPA concerns regarding exterior and entranceway conditions were addressed for the August 12, 2014 primary and what remained outstanding (indicated in italics). The issues were addressed as follows:

District 75-4 – Washington School

- 1) New compliant stable ramp developed and installed by the Department of Public Works (Photographic evidence of installed ramp provided)
- 2) 3 main unstable walkway areas patched with asphalt (Photographic evidence of new asphalt patches provided)
- 3) 2 temporary handicap parking spots of the correct dimensions created, marked out, and properly advertised as such
- 4) *Door hardware unchanged as of Primary, but doors were kept open permanently during all hours of voting*

District 71-3 – Tinker School

- 1) New compliant stable ramp developed and installed by the Department of Public Works (Photographic evidence of installed ramp provided)
- 2) One permanent handicap spot installed, one additional temporary spot installed during primary
- 3) Exterior walkway paving torn up and replaced with new pavement all the way up from the sidewalk to the entrance
- 4) *Door hardware unchanged as of Primary, but doors were kept open permanently during all hours of voting*

Districts 74-4 & 74-5 – Wendell Cross School

- 1) 2 temporary handicap parking spots installed

- 2) *Mayor's office promised that ramp would be finished by August primary, but it was not completed by that date. (see below; it was installed for the General Election)*

District 73-2 Polling Place – Blessed Sacrament School

Even though Blessed Sacrament is a private, parochial institution, the Respondents were able to secure funding from the City of Waterbury, as well as permission from the parish, to make certain improvements. By the primary, the following was the status at this polling place:

- 1) 2 temporary handicap parking spots installed
- 2) *No work done on exterior path by the primary.*
- 3) *No change to wheelchair ramp used for entrance*
- 4) *Door hardware unchanged as of Primary, but doors were kept open permanently during all hours of voting*

16. In a follow-up responses on October 27, 2014 the Respondents detailed how the OPA concerns regarding exterior and entranceway conditions were addressed for the November 4, 2014 General Election and what remained outstanding (indicated in italics). The issues were addressed as follows:

District 75-4 – Washington School

- 1) New compliant stable ramp developed and installed by the Department of Public Works (Photographic evidence of installed ramp provided)
- 2) 3 main unstable walkway areas patched with asphalt (Photographic evidence of new asphalt patches provided)
- 3) 2 temporary handicap parking spots utilized as in the primary
- 4) *The door hardware will be changed out to complaint hardware during the summer of 2015, in time for the September primaries*

District 71-3 – Tinker School

- 1) New compliant stable ramp developed and installed by the Department of Public Works (Photographic evidence of installed ramp provided)
- 2) One permanent handicap spot installed, one additional temporary spot installed during primary

- 3) Exterior walkway paving torn up and replaced with new pavement all the way up from the sidewalk to the entrance
- 4) *The door hardware will be changed out to complaint hardware during the summer of 2015, in time for the September primaries*

Districts 74-4 & 74-5 – Wendell Cross School

- 1) 2 temporary handicap parking spots installed
- 2) New compliant stable ramp developed and installed by the Department of Public Works

District 73-2 Polling Place – Blessed Sacrament School

Even though Blessed Sacrament is a private, parochial institution, the Respondents were able to secure funding from the City of Waterbury, as well as permission from the parish, to make certain improvements. By the primary, the following was the status at this polling place:

- 1) 2 temporary handicap parking spots installed
- 2) New compliant stable wooden ramp developed and installed by the Department of Public Works
- 3) *The City of Waterbury has obtained permission from the parish to amend the path leading to the polling place door and change out the door hardware and will complete the work during the summer of 2015 and in time for the September primaries.*

COMMISSION ANALYSIS AND CONCLUSIONS

AVS Machine Allegations

17. Turning first to the question of the Complainant's allegations regarding potentially non-functioning AVS machines, there is insufficient evidence to support an allegation that any of the polling places lacked a functioning AVS machine. The faxes included by the Respondents are independent, third-party evidence that the AVS machine was functioning at the open of polls. The third party vendor that works with the Secretary of the State, Inspiration Vote Systems, sends these faxes out to test that the machines are functioning at the time the polls opened. Here, the test faxes confirm that all of the machines were operational, as required by General Statutes § 9-247. This allegation is dismissed.

Privacy Booth Allegations

18. Turning next to the Complainant's allegations regarding the privacy booths, the Complainant alleges that the Respondents failed to include lowered privacy booths in either the District 73-2 or District 71-3 polling places, in violation of § 9-242a-11 of the Regulations of Connecticut State Agencies. After investigation, the Commission finds that there is insufficient evidence to support this allegation—other than the OPA's documentation of the issue, there are no other witnesses or documentary evidence to corroborate the charge. This allegation is dismissed.
19. However, the Commission notes that the Respondents were very concerned about the privacy booth allegations and have shown a willingness to improve polling place operations generally as concerns accessibility and will make efforts to assure that each polling place is sufficiently equipped and set up with the privacy booth required in § 9-242a-11 of the Regulations of Connecticut State Agencies.

Non-Available Headphones Allegation

20. It is questionable as to whether there is a specific violation here, even assuming the facts alleged. The July 2013 Moderator's Handbook for Elections and Primaries includes a detailed setup procedure for AVS machines, which includes having headphones available that may be used in lieu of the telephone receiver. However, there is no specific requirement regarding headphones in either the statutes or the regulations. It may be possible for the Commission to take up the phrase from General Statutes § 9-247 "to be put in order in every way and set and adjust the same so that it shall be ready for use in voting" and take it to imply that a failure to provide headphones means that a machine is not "in order in every way."
21. However, the Commission does not believe that § 9-247 reaches this far under the facts. As an initial matter, there is a strong argument that the headphones, while preferable or a best practice, are not essential to the effective operation of the AVS machine used in this state—the machine can take a user's selections and print a market ballot without the use of the headphones. Moreover, while it may be possible to push the interpretation to include all those items that the Secretary of the State's Office deems necessary, it is not clear from the Moderator's Handbook that the headphones, which are listed as an "option," could be reasonably included in the "necessary" list, even under a broad interpretation.

22. Finally, the above legal questions aside, the evidence found in this matter does not sufficiently support the allegations in any event. The Complainant alleges that the headphones were not available, but no other evidence corroborates this assertion. There was no evidence found that any voter requested and was denied use of the headphones at any particular polling place. This allegation is dismissed.

No Privacy Booths for AVS Machines Allegation

23. There is no requirement in the General Statutes or the Regulations to provide a privacy booth for an AVS machine. Indeed, the Moderator's Handbook does not even make such a recommendation. The voter's choices are executed by using a combination of the voter's input on the telephone keypad based on audio instructions that only the voter can hear. The voter should be offered a privacy sleeve just like any other voter, but there is no allegation here that a privacy sleeve was not available and/or offered to voters using the AVS system. This allegation is dismissed.

Allegations Concerning Issues Outside the Polling Places

24. Here, the Respondents do not dispute the allegations regarding accessibility issues occurring outside of the polling places. As such, the Commission concludes that the Respondents failed to fully meet the accessibility requirements of General Statutes §§ 9-168d and 9-168e at the 4 polling places listed in the Complaint.
25. Pursuant to Regulations of Connecticut State Agencies § 9-7b-48, in determining whether a civil penalty will be assessed, and if so, the amount of such civil penalty, the Commission shall consider, among other mitigating and aggravating factors:
- (1) the gravity of the act or omission;
 - (2) the amount necessary to insure immediate and continued compliance;
 - (3) the previous history of similar acts or omissions; and
 - (4) whether the person has shown good faith in attempting to comply with the applicable provisions of the General Statutes.
26. As an initial matter, there appears to be no evidence that the alleged issues at the four polling places had a material effect on any particular voter. Moreover, while the alleged conditions at the polling were not ideal, there was no evidence that they were of significant consequence or that the Respondents carelessly and/or recklessly disregarded well-known rules.

27. The Commission's prior cases on this statute are only passably helpful as the few that exist occurred no later than 1994, prior to when the Commission has civil penalty jurisdiction in this area.² However, it should be noted that each of the five cases found involved allegations by the voters themselves, rather than an third party compliant not alleging any actual harm, such as here.
28. However, during the investigation of this matter, the Commission discovered that there appears to be a statewide lack of centralized, organized oversight in this area, one that has led to an apparent widespread misunderstanding of (and possible insufficient attention to) the accessibility requirements. For instance, while General Statutes § 9-168d requires each registrar to submit a certification of accessibility to the Secretary of the State's office, this practice appears to have not been followed for many years. There is no "certification" form that the Secretary of the State promulgates and distributes at present. The current practice appears to be that there is a polling place survey form promulgated by the Secretary of the State with instructions for registrars to review their polling places, which includes a review for accessibility. However, even this form is only distributed from time to time. The most recent survey form letter from the Secretary of the State was from 2004.
29. None of the above excuses a registrar from compliance with the letter of a statute, but the Commission believes that the above provides some institutional context and points out an area that may need improvement statewide.
30. Turning back to the specific facts here, the Commission recognizes that the Respondents have been especially attentive in addressing the issues enumerated in this Complaint brought by the Office of Protection & Advocacy. Many or most of the issues were addressed within a relatively short period of time after the filing of this Complaint—quickly and without protest. While some of the issues were not fully resolved by the next primary, some of that had to do with how late after the fact the matter was brought to the Respondents' attention (five months after the election) in addition to the institutional difficulty of securing municipal funds to perform the changes to the facilities (including a parochial institution).

² See *In the Matter of a Complaint by Alberta Richetelle, New Britain*, File No. 1994-251; *In the Matter of a Complaint by Matthew Alterio, Trumbull*, File No. 1992-209; *In the Matter of a Complaint by Susan Kniep, East Hartford*, File No. 1992-173; *In the Matter of a Complaint by Tony Clark, Willimantic*, File No. 1988-197; *In the Matter of a Complaint by James J. Collin, Bristol*, File No. 1988-113.

31. The Commission also takes notice that the Respondents have no prior history of similar acts or omissions before the Commission.

AGREEMENT

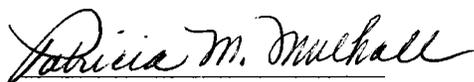
32. Considering the aforementioned aggravating and mitigating circumstances in this matter, the Commission recognizes that the Respondents have accomplished almost all of the work that the Commission would have sought to order them to complete. Accordingly, the Commission concludes and the parties agree that the appropriate remedy herein is a consent agreement in which the Respondent agrees to henceforth strictly comply with §§ 9-168d & 9-168e in the future and in lieu of a civil penalty, an agreement that the Respondents will continue the work in bringing the polling places into compliance with accessibility requirements by no later than the September 15, 2015 primary.
33. The Respondents admit all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. The Respondents shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
34. The Respondents waive:
- a. Any further procedural steps;
 - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this Agreement.
35. It is understood and agreed that this Agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is withdrawn and may not be used as an admission by the Respondents in any subsequent hearing, if the same becomes necessary.
36. Upon the Respondents' compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to these matters and these Respondents.

ORDER

IT IS FURTHER ORDERED THAT that Respondents Patricia Mulhall and Timothy DeCarlo will henceforth strictly comply with the requirements of General Statutes §§ 9-168d & 9-168e.

IT IS FURTHER ORDERED THAT that Respondents Patricia Mulhall and Timothy DeCarlo will bring the four polling place locations that are the subject of this Complaint into compliance with the accessibility requirements of General Statutes §§ 9-168d & 9-168e by no later than the September 15, 2015 primary, or, alternately, move any or all of said polling places to a location that complies with those statutes by such date.

The Respondent:



Patricia Mulhall
Waterbury, CT

Dated: June 11, 2015



Timothy DeCarlo
Waterbury, CT

Dated: 6/11/2015

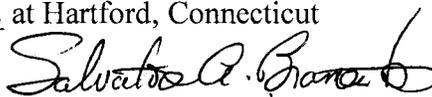
For the State of Connecticut:

BY: 

Michael J. Brandi, Esq.
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT

Dated: 6/23/15

Adopted this 25th day of June of 2015 at Hartford, Connecticut



Anthony J. Castagna, Chair
By Order of the Commission

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**RECEIVED
STATE ELECTIONS**

JUN 23 2015

ENFORCEMENT COMMISSION