

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND
THE CITY OF DAYTON AND THE DAYTON POLICE DEPARTMENT
DJ NO. 204-58-251**

I. BACKGROUND

1. This Settlement Agreement (Agreement) is entered into by and among the United States of America and the City of Dayton and the Dayton Police Department (DPD).

2. The United States Department of Justice (Department) is responsible for administering and enforcing Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-12134.

3. DPD is a public entity within the meaning of the ADA, 42 U.S.C. § 12131(1), and is therefore subject to the requirements of Title II of the ADA.

4. The Department initiated this matter based on a complaint filed with the United States against DPD alleging discrimination on the basis of disability. Complainant is paraplegic and uses a wheelchair for mobility. During a traffic stop DPD officers ordered him to exit his car so that they could conduct a discretionary “free air sniff” for drugs using a dog. Complainant then told the officers that he could not get out of his car because he is paraplegic, did not have his wheelchair with him in his car, and that he could be injured if required to exit the car. He also asked the officers to call a supervisor. The officers did not call a supervisor. The officers knew that Complainant did not have his wheelchair. The officers forcibly pulled Complainant out of the car, threw him on the ground, handcuffed him, and dragged him to the police car causing injury.

5. The Department’s investigation substantiated that: a) DPD provided Complainant with unequal and ineffective services by ordering him to exit and forcibly removing him from the vehicle without a mobility aid, 28 C.F.R. §§ 35.130(b)(1)(ii), (iii), and b) DPD failed to reasonably modify policies, practices, and procedures to avoid discrimination. 28 C.F.R. § 35.130(b)(7). The Department contends that reasonable modifications were available to the DPD. For example, DPD officers could have: 1) obtained a wheelchair, or paramedic assistance, to allow the Complainant to safely exit the vehicle; 2) conducted the free-air sniff with the Complainant in the vehicle with additional measures to protect officer safety; or 3) used their judgment to not conduct the discretionary free air sniff at that time.

6. The United States and DPD agree that it is in the Parties’ best interests, and the United States believes it is in the public interest, to resolve this matter by entering into this Agreement.

II. DEFINITIONS

7. The term “law enforcement activities” includes all police interactions with the public, including during street interactions, taking and responding to complaints or calls for

assistance, vehicle stops and searches, arrests, detentions, interviews, interrogations, emergency responses, enforcing laws, and other duties.

8. The term “DPD personnel” includes all DPD employees involved in law enforcement activities.

9. The term “mobility disability” refers to mobility impairments that substantially limit one or more major life activities, including waling and standing. 42 U.S.C. § 12102(1)(A)-(2)(A).

III. GENERAL RELIEF

10. DPD shall comply with the requirements of Title II of the ADA and its implementing regulation, including by:

- i. not excluding individuals with disabilities, on the basis of disability, from participation in or denying them the benefits of services, programs, or activities, or otherwise subjecting them to discrimination. 28 C.F.R. § 35.130(a);
- ii. affording qualified individuals with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is equal to that afforded to others. 28 C.F.R. § 35.130(b)(1)(ii);
- iii. providing qualified individuals with a disability with an aid, benefit, or service that is as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others. 28 C.F.R. § 35.130(b)(1)(iii); and
- iv. making reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modification would fundamentally alter the nature of the service, program, or activity. 28 C.F.R. § 35.130(b)(7).

IV. SPECIFIC RELIEF

11. Policies, Practices, and Procedures: Within 120 days of the effective date of this Agreement, DPD shall submit revised policies, practices, and procedures to the United States for its review and approval, which address DPD personnel interactions with individuals with mobility disabilities during all law enforcement activities, that include that:

- i. people with disabilities are entitled to a level of service equivalent to that provided to other persons; and
- ii. DPD personnel shall reasonably modify polices, practices, and procedures when necessary to avoid disability discrimination.

12. Implementation: Within 30 days of approval by the United States, DPD will adopt and implement the policies, practices, and procedures identified in Paragraph 11, and disseminate a copy to all DPD personnel. In addition, DPD will disseminate these policies to all new DPD personnel within 30 days of hire or retention.

13. Training: Within 30 days of receiving approval from the United States of the policies, practices, and procedures required under Paragraph 11 of this Agreement, and at least once annually throughout the term of this Agreement, DPD will provide training, by a trainer approved by the United States, on Title II of the ADA to all DPD police officers. The training shall include best practices for interactions with individuals with disabilities, including individuals with mobility disabilities, the obligation to make reasonable modifications, and the obligation to provide aids, benefits, or services equal to that afforded to others and that are as effective in affording equal opportunity.

14. DPD will send the United States the name, qualifications, resume, and contact information of the individual or organization that it proposes to conduct the training, no later than 60 days after the effective date of this Agreement, for approval by the United States.

15. Complaint Reviews: Within 30 days of the effective date of this Agreement, DPD will designate one individual to review any written or oral complaint, charge, lawsuit, or other allegation made by, or on behalf of, a person with a disability, alleging noncompliance with, or alleging any actions that would be prohibited by, Title II or this Agreement. The designated individual will ensure that all such allegations are promptly reviewed, investigated, and addressed by appropriate action and the results of the review are provided in a timely manner to the complainant. The designated individual will be trained in and knowledgeable about the ADA and the terms of this Agreement and will investigate any complaint that DPD receives alleging that a person with a disability was discriminated against during a law enforcement activity.

16. Reporting Requirements: Every 6 months after the effective date of this agreement, DPD shall submit written reports including supporting documentation to the United States by e-mail to undersigned counsel, listing all steps taken during the reporting period to comply with each provision of this Agreement.

17. For the training required in Paragraph 13, DPD's first written report shall include: the date and time of each training; a copy of the agenda and materials (e.g., handouts, PowerPoint presentations) used for each training; the names and titles of the individuals who attended the training; and copies of the training sign-in sheets. For all subsequent reports, DPD shall include the same information, except DPD need not provide a copy of the agenda and materials unless they materially differ from the materials provided in the first report.

18. For all allegations received pursuant to Paragraph 15, DPD will provide the United States a copy of any written complaint (or, if an oral complaint was made, a description of the oral complaint) and a complete copy of the response made by DPD. The written report will include a description of the nature of the allegation, the names of the individuals bringing the allegation, all documentation possessed by DPD relevant to the allegation, and any corrective action taken as a result.

V. OTHER PROVISIONS

19. Effective Date: The effective date of this Agreement is the date of the last signature below.
20. Term: The duration of this Agreement will be 3 years from the effective date.
21. Reviewing Compliance: The United States may review DPD's compliance with this Agreement at any time. DPD will cooperate fully with the United States' efforts to monitor compliance with this Agreement, including by providing the United States with relevant documents and other reasonably requested information. If the United States believes that DPD has failed to timely comply with any requirement of this Agreement, or that any requirement has been violated, the United States will so notify DPD in writing and will attempt to resolve the issue in good faith. If the United States is unable to reach a satisfactory resolution of the issues within 30 days of the date it notifies DPD, the United States may file a civil action in the appropriate U.S. District Court to enforce this Agreement or take any other action to enforce Title II of the ADA.
22. This Agreement will not be construed as an admission by the City, DPD, or its officers and employees that they have engaged in any unconstitutional or illegal conduct. Nor is the City's and DPD's entry into this Agreement evidence of liability under the ADA or any other law. Further, this Agreement is enforceable only by the Parties and no other person or entity may bring an action to enforce it.
23. Severability: If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the United States and DPD shall engage in good faith negotiations to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.
24. Authority: The individuals signing this Agreement represent that they are authorized to do so on behalf of the respective entity for which they have signed.
25. Entire Agreement: This Agreement constitutes the entire Agreement between the United States and DPD on the matters raised herein and no other statement or promise written or oral, made by any party or agents of any party, that is not contained in this written Agreement shall be enforceable.
26. Other Violations: This Agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this Agreement, including any other potential claims regarding discrimination on the basis of disability. This Agreement shall have no impact upon the rights or claims of any individual who has made, or may make, claims against DPD, even for issues addressed herein. Nothing in this Agreement shall preclude the United States from filing a separate action under the ADA, or any other law, for any alleged violation not covered by this Agreement. Nothing in this Agreement relieves DPD of its obligation to comply with the requirements of the ADA.

AGREED AND CONSENTED TO:

FOR THE UNITED STATES OF AMERICA

Rebecca B. Bond
Chief

 /S/
Kevin J. Kijewski
Deputy Chief
Alyse Bass
Trial Attorney
Disability Rights Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Alyse.Bass@usdoj.gov

6/12/2023
Date

Kenneth L. Parker
United States Attorney

 /S/
Michael J.T. Downey
Ebunoluwa A. Taiwo
Civil Rights Coordinators
United States Attorney's Office for the Southern District of Ohio
221 E. Fourth Street, Suite 400
Cincinnati, OH 45202
USAOHS.CivilRights@usdoj.gov

6/8/2023

FOR THE CITY OF DAYTON AND THE DAYTON POLICE DEPARTMENT

/S/

Barbara J. Doseck
City Attorney
Director of the Law Department
City of Dayton
101 West Third Street
Dayton, Ohio 45402
barbara.doseck@daytonohio.gov

6/8/2023

Date