

SETTLEMENT AGREEMENT

BETWEEN

THE UNITED STATES OF AMERICA

AND THE STATE OF COLORADO PEACE OFFICERS STANDARDS AND TRAINING BOARD

DEPARTMENT OF JUSTICE COMPLAINT NUMBER 205-13-19

I. BACKGROUND

1. The parties to this Settlement Agreement (Agreement) are the United States of America (United States) and the State of Colorado Peace Officers Standards and Training Board (P.O.S.T. Board).

2. The P.O.S.T. Board is a department, agency, special purpose district, or other instrumentality of the State of Colorado and is, therefore, a public entity within the meaning of 42 U.S.C. § 12131(1)(B), and 28 C.F.R. § 35.104, and subject to Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12115 et seq. (ADA).

3. The U.S. Department of Justice (Department) is authorized to investigate the complaint in this matter to determine whether the P.O.S.T. Board acted in compliance with Title II and the Department's regulation implementing Title II, to issue findings, and, where appropriate, to negotiate and secure voluntary compliance agreements. The Department is also authorized, under 42 U.S.C. § 12133, to bring a civil action enforcing Title II of the ADA should the Department fail to secure voluntary compliance. 28 C.F.R. §§ 35.172, and 35.190(b)(6).

4. Under the ADA, the P.O.S.T. Board cannot administer its licensing program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability. 28 C.F.R. § 35.130(b)(6). Further, the P.O.S.T. Board must make 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 modifications would fundamentally alter the nature of the service, program, or activity. 28 C.F.R. § 35.130(b)(7).

5. Mr. Nathan Buxton, an applicant seeking certification as a peace officer in the State of Colorado, alleged that the P.O.S.T. Board denied his requests for accommodation during the administration of the P.O.S.T. certification examination. After his requests for accommodations were denied, Mr. Buxton took and failed the P.O.S.T. certification examination.

6. Mr. Buxton alleges that the P.O.S.T. Board's denial of his requests for reasonable accommodation violated the ADA.

7. The P.O.S.T. Board denies that it discriminated against Mr. Buxton in violation of the ADA.

8. In order to resolve this matter without engaging in protracted litigation, the parties have agreed to settle this matter according to the terms set forth below. This Agreement shall not be construed as an admission of liability by the P.O.S.T. Board.

II. TERMS OF AGREEMENT

A. General Relief

9. The P.O.S.T. Board agrees that it will not administer its licensing or certification services to applicants seeking certification as a peace officer in the State of Colorado in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, including failing to provide reasonable accommodations to qualified candidates for the written P.O.S.T. examination.

10. The P.O.S.T. Board shall provide reasonable accommodations to qualified applicants with disabilities seeking certification as a peace officer in the State of Colorado who need accommodations to take the P.O.S.T. examination. An accommodation request may be denied when the requested accommodation is not reasonable.

11. Within sixty (60) days from the date of entry of this Agreement, the P.O.S.T. Board shall adopt and implement written policies, practices, or procedures regarding reasonable accommodation for qualified individuals with disabilities seeking certification as a peace officer in the State of Colorado to take the P.O.S.T. examination. These policies and procedures shall, at a minimum, include the following information:

- (a) Description of the manner in which a candidate can make a request for reasonable accommodation because of disability;
- (b) Contact information for the person or persons authorized to receive requests for reasonable accommodation;
- (c) All requests for reasonable accommodation will be reviewed and considered promptly;
- (d) After receiving a request for reasonable accommodation, a P.O.S.T. Board representative will either:
 - (i) grant the request; or
 - (ii) initiate a discussion with the candidate to determine whether the individual has a disability for which he or she needs accommodation and to explore what accommodations may be available. The P.O.S.T. Board may, if necessary, request medical documentation to determine whether the individual has a disability for which the requested accommodation is necessary; and
- (e) The P.O.S.T. Board will make good faith efforts to provide a response to a request for accommodation, in writing, no later than forty-five (45) days from the date the request is received.

12. The P.O.S.T. Board will ensure that qualified individuals with disabilities who request accommodations related to the P.O.S.T. examination may take the examination at any location where the examination is administered. Requests for physical or structural accommodations will be provided only at the Offices of the Colorado Attorney General unless off-site locations voluntarily agree to the accommodation.

13. The P.O.S.T. Board agrees to consult with personnel in the Colorado Office of Examination Services (OES) or other persons with the requisite expertise whenever the P.O.S.T. Board and its staff lack the expertise to evaluate disability-based requests for test accommodations.

14. Within ten (10) days from the date upon which the P.O.S.T. Board implements the policies and procedures set forth in paragraph 11, above, the P.O.S.T. Board shall:

- (a) Publicize the policies and procedures by posting those policies and procedures at locations in all buildings and facilities used for posting equal employment opportunity information to individuals seeking certification as a peace officer in the State of Colorado and on any website used by the P.O.S.T. Board to communicate such notices or policies;
- (b) At each examination site, provide a notice of contact information to request ADA accommodations for P.O.S.T. written examinations; and
- (c) Place copies of the P.O.S.T. Board ADA policy on the P.O.S.T. Board web site.

15. Within thirty (30) days from the date upon which the P.O.S.T. Board implements the policies and procedures set forth in paragraph 11, above, the P.O.S.T. Board shall provide appropriate training regarding the requirements of the ADA to all individuals authorized to receive and consider requests for reasonable accommodation made by candidates for the P.O.S.T. examination.

B. Relief for Nathan Buxton

16. The P.O.S.T. Board shall arrange for Mr. Buxton to audit the entire academic portion of the Law Enforcement Training Academy at Arapahoe Community College, free of charge. Mr. Buxton will be eligible to audit courses at Arapahoe Community College commencing the Fall semester of 2008, but may defer enrollment for up to one academic year. It is understood that Mr. Buxton will not receive any college credit as a result of auditing any of these courses.

17. The P.O.S.T. Board agrees to provide reasonable accommodations to Mr. Buxton when he sits for the P.O.S.T. examination.

18. The P.O.S.T. Board agrees to waive the application processing fee and the examination fee for the next three P.O.S.T. examinations taken by Mr. Buxton.

19. To receive the relief provided to him under this Agreement, Mr. Buxton must execute the Waiver and Release of Claims form attached hereto as Exhibit 1. In consideration of the promises made in paragraphs 16-18 of this Agreement, the Department agrees that within thirty (30) days of the effective date of this Agreement, it will obtain Mr. Buxton's signature on the Waiver and Release of Claims form. The Department will mail the original signed Waiver and Release of Claims form to the P.O.S.T. Board within fifteen (15) days of the Department's receipt of the form from Mr. Buxton.

20. In consideration of the terms of this Agreement, the Department closes Complaint No. 205-13-19, except as provided in Section III of this Agreement.

III. RECORD RETENTION, IMPLEMENTATION AND ENFORCEMENT

21. The P.O.S.T. Board shall retain the following records during the term of this Agreement:

- (a) Copies of all policies and procedures implemented pursuant to paragraph 11, above;
- (b) All posted notices and posters displayed pursuant to paragraph 14, above; and
- (c) All documents that come into its possession relating to requests for accommodation from candidates for the P.O.S.T. examination; including documents reflecting the identity of the individual requesting accommodation; the date on which accommodation was requested; the identities of all individuals who participated in the decision to grant or deny the accommodation; all accommodations considered; whether the accommodation was granted or denied; and, if the accommodation was denied, each and every reason therefore.

22. The P.O.S.T. Board shall provide the United States with copies of all written policies, practices or procedures implemented pursuant to paragraph 11, above, within ten (10) days of the date upon which the policies, practices, and procedures are adopted.

23. The Department may review compliance with this Agreement at any time and may enforce this Agreement if the United States believes that it or any requirement thereof has been violated. If the United States believes that this Agreement or any portion of it has been violated, it will raise its concerns with the P.O.S.T. Board and the parties will attempt to resolve the concerns in good faith. The United States will give the P.O.S.T. Board thirty (30) days from the date it notifies the P.O.S.T. Board of any breach of this Agreement to cure that breach, prior to instituting any court action. If the parties are unable to reach a satisfactory resolution within that time frame, the United States may bring a civil action in federal district court to enforce this Agreement or Title II of the ADA, and may in such action seek any relief available under law.

24. Failure by the United States to enforce this entire Agreement or any provision thereof with regard to any deadline or any other provision herein shall not

be construed as a waiver of the United States' right to enforce other deadlines and provisions of this Agreement.

25. This Agreement constitutes the entire agreement between the parties, and no other statement, promise, or agreement, either written or oral, made by any of the parties or agents of any of the parties, that is not contained in this written Agreement, shall be enforceable regarding the matters raised herein.

26. This Agreement shall be in full force and effect for a period of three (3) years after the effective date of the Agreement. The effective date of this Agreement shall be the date of the last signature below.

27. 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 the P.O.S.T. Board shall engage in good faith negotiations in order 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.

Agreed and consented to:

FOR THE UNITED STATES OF AMERICA:

GRACE CHUNG BECKER
Acting Assistant Attorney General

BY: _____

John L. Wodatch, Chief
Allison Nichol, Deputy Chief
Philip L. Breen, Special Legal Counsel
Eugenia Esch, Trial Attorney
Disability Rights Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530
(202) 514-3816

Date: 3/19/08

FOR STATE OF COLORADO PEACE OFFICERS STANDARDS AND
TRAINING BOARD:

BY: _____

John W. Suthers,
Colorado Attorney General
P.O.S.T. Board Chairperson
Department of Law
1525 Sherman Street, 7th. Floor
Denver, CO 80203
303-866-5692

Date: 3/19/08

EXHIBIT 1

WAIVER AND RELEASE OF CLAIMS

For and in consideration of the acceptance of the injunctive relief offered to me by the State of Colorado Peace Officers Standards and Training Board (P.O.S.T. Board), pursuant to a Settlement Agreement between the United States of America and the P.O.S.T. Board:

I, Nathan Buxton, release and discharge the P.O.S.T. Board and its current, former, and future agents, employees, officials, and designees, of and from all legal and equitable claims, related to EEOC Charge No. 320-2004-01692162, which I filed with the Equal Employment Opportunity Commission. I further agree that I will not exercise my right to institute against the above entities any civil action alleging employment discrimination on the basis of EEOC Charge No. 320-2004-01692162.

I understand that the relief offered to me does not constitute an admission by the P.O.S.T. Board of the validity of any claim raised by me or on my behalf. I acknowledge that a copy of the Settlement Agreement between the United States and the P.O.S.T. Board resolving the matter between them has been made available to me. This Release constitutes the entire agreement between myself and the P.O.S.T. Board without exception or exclusion. This Release will be voidable in the event that the

P.O.S.T. Board fails to provide me with the relief set forth in the Settlement Agreement.

I have read this Release and understand the contents thereof and I execute this Release of my own free act and deed. I acknowledge that I have had the opportunity to discuss this matter with counsel of my choosing.

Signed this _____ day of _____, 2008.

Nathan Buxton

Sworn and subscribed to before me this ____ day of _____, 2008.

Notary Public

My commission expires: _____

[Cases & Matters by ADA Title Coverage](#) | [Legal Documents by Type & Date](#) | [ADA Home Page](#)

October 09, 2008