



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
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NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
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August 9, 2011

Dr. John F. Schwaller
President
State University of New York at Potsdam
44 Pierrepont Avenue
Potsdam, New York 13676

Re: Case No. 02-11-2062
State University of New York at Potsdam

Dear Dr. Schwaller:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) with respect to the above-referenced complaint filed against the State University of New York at Potsdam. The complainant alleged that the University discriminated against her client (the Student), on the basis of her disability, when in or around November 2010, the University required the Student to pay a surcharge on the dormitory room it provided to the Student as an accommodation for her disability.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The University is a recipient of financial assistance from the Department and is a public postsecondary educational institution. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504 and the ADA.

In its investigation, OCR interviewed the Student and University administrators. OCR also reviewed documentation the complainant and the University submitted. OCR made the following determinations.

The complainant alleged that in November 2010, the University required the Student to pay a surcharge of \$725 per semester for the double room that she received without a roommate as an

accommodation for her disability, Reflex Sympathetic Dystrophy (RSD). The regulation implementing Section 504, at 34 C.F.R. §104.43(a), provides that no qualified individual with a disability shall, on the basis of disability, be subjected to discrimination regarding housing. The regulation implementing the ADA, at 28 C.F.R. §35.130(f), prohibits a public entity from imposing a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the ADA.¹

OCR determined that the University has a variety of housing options from which students may choose. These options include living in a “medical single;” a standard double; a triple; a suite; a “super single” located either in a double room or a suite;² an apartment; or a townhouse.

OCR determined that the University’s 2010-2011 Housing Registration Process states that students who have a medical condition may apply for a “medical single” by submitting a request in writing with appropriate supporting documentation to the Campus Life Office. The documentation must include a note from a licensed health care provider, and must describe the nature of the condition and why it necessitates having a single room. OCR determined that a “medical single” is a single room approximately 50-60% the size of a standard double. This size single room is not otherwise available to non-disabled students; however, the University’s Dean of Students (the Dean) stated that if all medical singles are not utilized in a semester by students with disabilities, non-disabled students may occupy these rooms at the same rate paid by students with disabilities.

OCR determined that on November 6, 2010, the Student contacted the University’s Campus Life Office to inquire about the possibility of receiving a single room for the upcoming semester as an accommodation for her disability.³ OCR further determined that the Student submitted a letter from a physician, dated November 17, 2010, stating that the Student has RSD in her left leg that leads to “occasional flares that decrease her mobility and affect her ability to concentrate....” The physician further wrote that “[s]leep deprivation or increased stress increases the frequency of her RSD flares. It is therefore medically indicated to have private room accommodations.”

OCR determined that on November 23, 2010, the Director of Campus Life (CL Director) conferred with the Director of Student Health (SH Director) about whether the Student’s diagnosis justified the accommodation request. OCR determined that the SH Director advised the CL Director to seek additional information from the Student to support her request.

The CL Director advised OCR that he did not request additional information from the Student; but nonetheless, at the end of November 2010, offered the Student a medical single in Lehman Hall for the upcoming semester. The CL Director stated that the Student declined this offer, stating that Lehman Hall was farther from her classes than her current dorm, Knowles Hall, and

¹ OCR has interpreted this provision as applicable to Section 504 as well. See Dear Colleague Letter to the Honorable David A. Levy, dated May 7, 1993.

² A super single is a double room occupied by one student.

³ OCR determined that for the fall 2010 semester, the Student lived in a standard double room with a roommate.

her disability affected her mobility.⁴ The CL Director stated that he subsequently offered the Student a standard double room without a roommate in Knowles Hall. OCR determined that the Student agreed to move into the room in Knowles Hall; and on December 15, 2010, signed a form entitled “2010-2011 Academic Year: Request for Single.” OCR determined that the CL Director also signed this form on that date, with the inscription “for medical reasons per [CL Director].” The form states that the cost of this room was \$3,560 per semester.

OCR determined that the cost of a standard double room was \$2,785 per semester, per student. OCR determined that the standard cost of living alone in a standard “super single” was \$3,560 per semester. OCR further determined that the cost of a medical single was \$2,835 per semester. Accordingly, OCR determined that the University charged the Student the amount it would charge a non-disabled student who requested to live alone in a standard double room, rather than the charge for a medical single.

The CL Director asserted that it charged the Student \$3,560 instead of \$2,835, because the University did not treat this as a disability accommodation request. Rather, the CL Director asserted that it treated the Student’s request as a regular request to live alone in a double room, because the Student had rejected his offer to provide a medical single in Lehman Hall. The CL Director asserted that since the Student had not previously made a request for a dorm room within close proximity to her classes, or provided medical documentation to support such a request, her request to live alone in a double room in Knowles Hall was not supported by her documentation. OCR determined, however, that contrary to the University’s assertions, it treated the Student’s request for a private room in Knowles Hall as a request for an accommodation of her disability and did not otherwise advise the Student that her request to live alone in a room in Knowles Hall would not be treated as a request for an accommodation. This is evident by the CL Director’s notation on the form that the University provided the room to the Student “for medical reasons per [CL Director].”

Furthermore, OCR determined that the University charges disabled students living in a medical single \$50 per semester more than they would pay to live in a standard double with a roommate (\$2,835 instead of \$2,785). OCR determined that this \$50 is a surcharge for students with disabilities who are not able to live in a standard double with a roommate, which violates the regulation implementing the ADA.

On August 8, 2011, the University agreed to implement the enclosed resolution agreement, which addresses the above-mentioned compliance concerns. OCR will monitor implementation of the resolution agreement. If the University fails to implement the terms of the resolution agreement, OCR will resume its investigation.

This letter sets forth OCR’s determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR’s formal policy statements are approved by a duly authorized OCR official and made available to

⁴ The Student denied that the CL Director offered her a medical single in Lehman Hall at the end of November 2010. The Student asserted that she and the CL Director had a hypothetical conversation about the possibility of her moving to Lehman Hall, during which she stated that she would prefer to remain in Knowles Hall because Lehman Hall was farther from her classes.

the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

It is unlawful to harass or intimidate an individual who has filed a complaint or participated in actions to secure protected rights.

Under the Freedom of Information Act, 5 U.S.C. § 552, it may be necessary to release this letter and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect to the extent provided by law, personally identifiable information that if released, could constitute an unwarranted invasion of personal privacy.

If you have questions regarding OCR's determination, please contact Genara C. Necos, Compliance Team Attorney, at (646) 428-3828 or genara.necos@ed.gov; or David Hensel, Compliance Team Attorney, at (646) 428-3778 or david.hensel@ed.gov.

Very truly yours,

/s/

Timothy C. J. Blanchard

Enc.

cc: Dona Bulluck, Esq.