



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION II

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April 11, 2017

John Ettling, Ph.D.
President
State University of New York, College at Plattsburgh
Office of the President
159 Hawkins Hall
101 Broad Street
Plattsburgh, New York 12901

Re: Case No. 02-17-2008
State University of New York, College at Plattsburgh

Dear Dr. Ettling:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), in the above-referenced complaint filed against the State University of New York, College at Plattsburgh (the College). OCR investigated the complainant's allegation that the College discriminates on the basis of disability, by effectively imposing a housing surcharge on single dormitory rooms provided as an accommodation for a student's 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). Additionally, OCR is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the 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 College is a recipient of financial assistance from the Department and is a public post-secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504 and the ADA.

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity that receives or benefits from Federal financial assistance. Further, the regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(4), states that a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability.

In addition, 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 in a postsecondary education program or activity.

The regulation implementing the ADA, at 28 C.F.R. § 35.130(a), states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. Further, the regulation implementing the ADA, at 28 C.F.R. § 35.130(b)(3)(i) states that a public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability. Section 35.130(b)(7)(i) states that a public entity shall 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. Additionally, the regulation, 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.

In its investigation, OCR interviewed College staff and reviewed documentation that the complainant and the College submitted. OCR made the following determinations.

The complainant alleged that the College discriminates on the basis of disability, by effectively imposing a housing surcharge on single dormitory rooms provided as an accommodation for a student's disability. Specifically, the complainant alleged that, according to its published policies and room rates for academic year 2016-2017, the College made single dormitory rooms available only to students who needed a single room to accommodate a disability, and charged a room rate for the single rooms which was higher than the standard double room rate.

OCR determined that for academic years 2015-2016 and 2016-2017, approximately 2,300 or forty-five percent of the College's 5,300 students lived in on-campus housing, in twelve residence halls,¹ with around eighty percent living in standard double rooms. Six of the College's twelve residence halls were renovated and carried higher room rates.² Students could also select a triple room at a lower room rate (three students in a standard double room), or a double-as-single room (available to seniors or graduate students) at a higher rate. The College had a small number of apartments with kitchenettes in one of the non-renovated residence halls, with room rates slightly higher than standard rooms. Three of the renovated residence halls and part of a fourth contained suites rather than hallway-style rooms; room rates in the renovated halls were the same for both styles.

Additionally, the College had a limited number of designed single rooms in non-renovated halls, apartments, renovated halls, and suites. The College stated that all designed single rooms, sometimes referred to as "medical singles," were reserved for students with disabilities or medical needs. One of the College's non-renovated residences, Adirondack Hall, had specialized accommodations for students with disabilities, such as automatic door openers and rooms for students with mobility impairments, including designed singles.

The College's 2015-2016 and 2016-2017 Housing Manuals stated that students with a demonstrated medical need should request a single room by submitting an explanation and documentation from their physician to the Student Health Center. The Student Health Center reviewed all submissions and notified the housing office of

¹ The twelve residence halls included Adirondack, Banks, deFredenburgh, Harrington, Hood, Kent, Macdonough, Maccomb, Mason, Moffitt, Whiteface, and Wilson.

² The six renovated halls were deFredenburgh, Harrington, Hood, Macdonough, Mason, and Moffitt.

each student's approved accommodation(s), which the housing office implemented.³ Returning students were required to submit verification of their medical need for a single room each academic year. For academic year 2015-2016, the College assigned sixty-seven students to designed single rooms based on an approved disability accommodation, including two students approved for double-as-single rooms. For academic year 2016-2017, the College assigned seventy-six students to designed single rooms based on an approved disability accommodation, including seven students approved for double-as-single rooms.⁴

OCR reviewed the College's housing policies, forms, and application materials for academic years 2015-2016 and 2016-2017. The College's 2015-2016 Housing Manual indicates on page 5 that students who have a medical need for a single room will have to pay additional rent if placed in a double-as-single room. Similarly, the College's 2015-2016 "Request to Rent a Designed Single Room" form refers to medical singles and states that students must pay additional rent for single rooms "above the double occupancy rate for that hall." The same form for 2016-2017 does not contain a reference to medical single rooms, but because the College's housing materials elsewhere state that single rooms are reserved for students with disabilities,⁵ the form conveys that students with disabilities who are approved for single rooms will have to pay a surcharge above the cost of a double room in the same hall.

The College's Assistant Director of Housing stated to OCR that all students were charged the published room rates during academic years 2015-2016 and 2016-2017, regardless of whether the housing was provided as an approved disability accommodation and a lower cost room could have otherwise been provided, in violation of the regulation implementing Section 504, at 34 C.F.R. §§ 104.4(a), (b)(4) and 104.43(a), and the regulation implementing the ADA, at 28 C.F.R. §§ 35.130(a), (b)(3)(i) and (f).

On April 11, 2017, the College signed the enclosed resolution agreement to resolve the above-referenced compliance issues. OCR will monitor the implementation of the agreement.

This letter should not be interpreted to address the College's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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 the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document 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, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

³ Students could also obtain housing accommodations through similar processes with the College's Student Support Services office for students with disabilities, or through Psychological Services, as appropriate. OCR determined that most applications for single rooms during academic years 2015-2016 and 2016-2016 were handled by the Student Health Center.

⁴ OCR determined that the College approved all student requests for single rooms based on disability or medical need during academic years 2015-2016 and 2016-2017.

⁵ For example, the College's 2016-2017 Housing Manual, section II.D.3, states that "[t]he College has a limited number of designed single rooms available for students who have a demonstrated medical need."

If you have any questions, please contact Alexander Artz, Compliance Team Attorney, at (646) 428-3901 or alexander.artz@ed.gov; David Krieger, Compliance Team Attorney, at (646) 428-3893 or david.krieger@ed.gov; or Anna Moretto Cramer, Compliance Team Leader, at (646) 428-3826 or anna.moretto.cramer@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXX XXX XXX, Esq.