



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

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April 11, 2017

Dr. Harvey G. Stenger  
President  
Binghamton University  
State University of New York  
4400 Vestal Parkway East  
Binghamton, New York 13902

Re: Case No. 02-17-2010  
State University of New York, Binghamton University

Dear Dr. Stenger:

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, Binghamton University (the University). OCR investigated the complainant's allegation that the University 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 University 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. The regulation implementing the ADA, at 28 C.F.R. § 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 University submitted. OCR made the following determinations.

The complainant alleged that the University discriminates on the basis of disability, by imposing a housing surcharge on single dormitory rooms provided as an accommodation for a student's disability. Specifically, the complainant alleged that the University charged a room rate for "documented and approved medical singles," provided as an accommodation for a student's disability, which was higher than the rates for double and triple rooms on campus.

OCR determined that for academic years 2015-2016 and 2016-2017, the University's on-campus housing capacity was approximately 7,400; the student population was around 19,000. The students living on campus were primarily freshmen and sophomores; freshmen were required to live on campus unless they had a local primary residence. The University had seven residence halls: College in the Woods, Dickinson, Hinman, Mountainview, Newing, Hillside and Susquehanna. More than half of the beds on campus were in double rooms, but there were a substantial number of single rooms (about 1800), and three of the residence halls had a total of 200 beds in designed triple rooms.

The University offered "documented and approved medical single" rooms in all of the residence halls except the Hillside and Susquehanna apartments. In total, during academic year 2015-2016, the University offered twenty-three room types, each with its own rate per semester; during 2016-2017 there were twenty-one room types.<sup>1</sup> The rate for a documented and approved medical single room was more expensive than any other room type except three: single rooms in Newing that stayed open during breaks, super singles in Hillside and Susquehanna, and family apartments in Susquehanna.

The University's Residence Life and Services for Students with Disabilities policies for 2015-2016 and 2016-2017 stated that students requesting a single room as a disability accommodation should submit current, comprehensive disability documentation from a qualified professional to the office of Services for Students with Disabilities (SSD). SSD reviewed each student's submission and notified the housing office of the student's approved accommodations. The University stated that its housing office offered students with disabilities multiple housing options that met their approved accommodation (e.g., if approved for a single room, the student would receive offers for placement in a single room); and in every case, notified the student that other

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<sup>1</sup> For example, during both academic years, Newing offered rates for single, double, and triple rooms, and also rates for single, double, and triple rooms that stayed open during breaks.

options were available if they were not satisfied.<sup>2</sup> As a result, some students with disabilities selected single rooms, or medical single rooms, based on preference rather than on disability-based necessity.

For academic years 2015-2016 and 2016-2017,<sup>3</sup> forty-three students with disabilities eligible for a disability-related housing accommodation of some kind were placed in single rooms or medical single rooms. OCR determined that at least two of these students were placed in a medical single room because their approved disability accommodation required that they be placed in a medical single room.

The University did not provide information about the rates that particular students with disabilities were charged during academic years 2015-2016 and 2016-2017. The University stated that SSD occasionally instructed the housing office to deviate from the published room rate based on a disabled student's approved accommodation. The University stated, however, that for academic years 2015-2016 and 2016-2017, all students who were placed in medical single rooms were charged the published room rate for documented and approved medical single rooms, 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) and (b)(4)(i) 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 University 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 University'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 University 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 that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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<sup>2</sup> The University stated that the housing office frequently accommodates student requests for room changes or preferences from disabled and non-disabled students.

<sup>3</sup> The University provided a single list of students with disabilities approved for disability-related housing accommodations for the two academic years combined.

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

Sincerely,

/s/

Timothy C.J. Blanchard

Enc.

cc: XXX X XXX, Esq.