



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

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April 11, 2017

Dr. Katherine Conway-Turner
President
State University of New York, Buffalo State College
1300 Elmwood Avenue
Cleveland Hall 517
Buffalo, New York 14222

Re: Case No. 02-17-2011
State University of New York, Buffalo State College

Dear Dr. Conway-Turner:

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, Buffalo State College (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 the College charged a single room rate to students who needed a single room to accommodate a disability who would otherwise pay the charge for a double room; and, to students who needed medical single rooms to accommodate a disability, a rate higher than other designed single rooms on campus.

OCR determined that for academic years 2015-2016 and 2016-2017, the College's on-campus housing capacity was approximately 2,600. The students living on campus were primarily (80 percent) freshmen and sophomores, who were required to live there unless their primary residence was within 35 miles. About 73 percent of students in campus housing lived in double rooms. The College had eleven residence halls: nine corridor and suite-style halls, which almost exclusively featured double rooms;¹ the Student Apartment Complex (STAC), which had only apartment-style single rooms; and the Moore Complex, which had apartment-style singles and doubles, and a small number of apartments for families. A total of 53 medical single rooms were available on campus, in Cassety (3), Porter (16), STAC (24), and Moore (10).

The College's Housing and Residence Life policies and procedures for 2015-2016 and 2016-2017, and the College's Weigel Health Center policies and procedures, stated that students requesting a single room for medical reasons should submit a letter from their medical provider stating their diagnosis and their request for a medical single room to the Weigel Health Center. The Weigel Health Center reviewed all submissions and completed a "medical single form" notifying Residence Life for each student approved for a medical single, which Residence Life implemented. The College's Housing Director stated to OCR that the College offers students rooms that meet their accommodation (e.g., if approved for a single room, the student would receive a placement in a single room). Residence Life worked with students approved for single room accommodations to try and meet their preferences for the building they preferred, including Moore and STAC, if possible.

For academic year 2015-2016, fourteen students resided in single rooms on campus based on an approved disability accommodation; eight of these students were assigned to medical single rooms in Cassety or Porter

¹ These nine halls include Cassety, Neumann, Perry, and Porter, which are corridor-style residences, and North Wing, Tower 1, Tower 2, Tower 3, and Tower 4, which are suite-style residences.

Halls at the medical single rate;² three were assigned to apartment-style single rooms in Moore at the Moore single room rate; and three were assigned to apartment-style single rooms in STAC, at the STAC single room rate. For academic year 2016-2017, twenty-three students resided in single rooms on campus based on an approved disability accommodation; eleven of these students were assigned to medical single rooms in Cassety or Porter Halls at the medical single rate;³ three were assigned to apartment-style single rooms in Moore at the Moore single room rate; three were assigned to apartment-style medical single rooms in Moore⁴ at the medical single rate;⁵ and six were assigned to apartment-style single rooms in STAC.

The Director of Housing stated to OCR that the College charged all students the published room rates during academic years 2015-2016 and 2016-2017,⁶ 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) and 104.43(a), and the regulation implementing the ADA, at 28 C.F.R. §§ 35.130(a), (b)(3) 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.

² OCR determined that at least two of these students were approved by Weigel Health Center for a medical single as a disability accommodation, placed in a medical single (in Porter and Cassety), and charged the medical single room rate.

³ The data response indicates that one of these students assigned to a medical single in Porter Hall was charged the rate for a double room in the same hall.

⁴ OCR determined that at least one of these students was approved by Weigel Health Center for a medical single as a disability accommodation, placed in a medical single in Moore, and charged the medical single room rate.

⁵ The College stated that medical single rooms in Moore differ from other single rooms in the same complex because they are on the ground floor, and the bedrooms, kitchens, and bathrooms are slightly larger.

⁶ The only exceptions were prorated rates for students who moved during the semester, and credits for student placed in a triple room (three students in a standard double) for an entire semester.

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 X XXX, Esq.