

August 31, 2017

Erik J. Bitterbaum, Ph.D.
President
State University of New York, College at Cortland
Miller Building, Room 408
P.O. Box 2000
Cortland, New York 13045

Re: Case No. 02-17-2071 and 02-17-2164
State University of New York, College at Cortland

Dear President Bitterbaum:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), regarding the above-referenced complaints filed against the State University of New York, College at Cortland (the College). In Case No. 02-17-2071, the complainant alleged that the College discriminates on the basis of disability, by charging a premium for wheelchair accessible single rooms with wheelchair accessible private bathrooms in Dragon Hall and Glass Tower (Allegation 1).¹ In Case No. 02-17-2164, the complainant alleged that the College discriminates on the basis of disability, by charging the published rate for air conditioned rooms in Dragon Hall and Glass Tower, regardless of whether a student needs an air conditioned room as an accommodation for a disability (Allegation 2).

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

¹ During OCR's evaluation of the complaint, the complainant alleged that the College discriminates on the basis of disability, by charging a premium for wheelchair accessible single rooms with private bathrooms in Glass Tower and charging a premium for single rooms with private bathrooms in Dragon Tower. During OCR's investigation of the complaint, OCR determined that all single rooms with private bathrooms in both Glass Tower and Dragon Hall are wheelchair accessible single rooms with wheelchair accessible private bathrooms.

Department and is a public postsecondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under both 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. Further, the regulation implementing Section 504, at 34 C.F.R. § 104.45(a), states that a recipient that provides housing to students without disabilities shall provide comparable, convenient, and accessible housing to students with disabilities at the same cost as to others. The housing must be available in sufficient quantity and variety so that the scope of choice of living accommodations for disabled students is, on the whole, comparable to that of nondisabled students.

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. OCR also reviewed documentation that the complainant and the College submitted. OCR made the following determinations.

With respect to Allegation 1, the complainant alleged that the College discriminates on the basis of disability, by charging a premium for wheelchair accessible single rooms with wheelchair accessible private bathrooms in Dragon Hall and Glass Tower. In support of his allegation, the complainant asserted that wheelchair accessible single rooms with wheelchair accessible private bathrooms are only available in Dragon Hall and Glass Tower, which are the most expensive

residence halls at the College and contain rooms that are more expensive than single or double rooms in “standard” residence halls. The complainant asserted that students requiring wheelchair accessible single rooms with wheelchair accessible private bathrooms are charged the published rate for these expensive rooms even if they require this type of room to accommodate a disability.

OCR determined that for academic years 2015-2016 and 2016-2017, the College offered on-campus housing in the following “standard” residence halls: Bishop Hall; Fitzgerald Hall; Hayes Hall; Hendrick Hall; Randall Hall; Shea Hall; Cheney Hall; DeGroat Hall; Alger Hall; Clark Hall; Higgins Hall; Casey Tower; and Smith Tower.² In addition, the College offered on-campus housing in Leadership House for students admitted and enrolled in a leadership course; and, on-campus housing in Glass Tower and Dragon Hall, which are the newest residence halls at the College and the only residence halls with air conditioning. The College also offered off-campus housing in West Campus Apartments. In total, the aforementioned residences contained housing for approximately 3,200 students.

For academic years 2015-2016 and 2016-2017, the cost per semester for rooms in a standard residence hall was as follows: \$4,535 for a single room; \$4,670 for a single room in a suite; \$5,035 for a “single in double” room;³ \$4,045 for a double room in a suite; and \$3,910 for a double, triple or “mandated triple”⁴ room. The cost per semester for single rooms in Dragon Hall was \$4,800; there is no published room rate for singles in Glass Tower. The cost per semester for double and triple rooms in Dragon Hall was \$4,170; and, for double, triple and “mandated triple” rooms in Glass Tower was \$4,065. Leadership House and West Campus Apartments consisted exclusively of single rooms, which cost \$3,680 and \$3,870, respectively. The majority of students lived in double or triple rooms in standard residence halls. While the College has over 200 single rooms available on campus, only seven wheelchair accessible single rooms with wheelchair accessible private bathrooms are available; two in Dragon Hall and five in Glass Tower.⁵

The College distributes housing assignments to students on August 1st of each year. Students requesting housing accommodations are directed to make such requests to the College’s Student Disability Services Office, Health Services Office, or Counseling Office, and provide medical documentation supporting the request by July 31st. Approved requests are then sent to the College’s Associate Director for Housing and Operations, Residence Life and Housing (assistant director), who is responsible for placing the student in appropriate housing. The assistant director informed OCR that if a student submits a housing accommodation request after the deadline, the College may not be able to provide the student with the specific requested housing accommodation (e.g., a single room or an air conditioned room), if none of the requested type of room remains available. In such cases, the requesting student is placed at the top of the waitlist

² The College also offered housing in Whitaker Hall, a standard residence hall, during academic year 2015-2016. Whitaker Hall was repurposed as an administrative building for academic year 2016-2017.

³ “Single in double rooms” are double rooms assigned to one student.

⁴ A “mandated triple” room is a double room assigned to three students. Students in these rooms pay the triple room rate but receive a rebate.

⁵ There are two wheelchair accessible single rooms with private bathrooms in Casey Tower; however, the bathrooms are not fully wheelchair accessible, because the showers each have a three-inch lip at the entrance to the shower.

for the requested room type, and the associate director works with the student to find a suitable alternative.

The College informed OCR that students approved to live in a single room as an accommodation for a disability are charged the double room rate applicable to the assigned residence hall. For academic years 2015-2016 and 2016-2017, xxxx disabled students (students xxxx) requested and were approved to receive wheelchair accessible single rooms with wheelchair accessible private bathrooms as accommodations. Students xxxx were placed in single rooms with private bathrooms in xxxx xxxxx and were charged the xxxxx xxxxx double room rate per semester, which is more than the double room rate for a standard residence hall. Student xxxx made xxx request after the July 31st deadline, when no rooms remained unassigned in Dragon Hall or Glass Tower. The associate director and student xxxx agreed that student xxxx xxxxx xxxx xxxxxxxx xxxxxxxx xx; student xxxx xxx charged the double room rate for a standard residence hall.

Based on the foregoing, OCR determined that wheelchair accessible single rooms with wheelchair accessible private bathrooms are only available in Dragon Hall and Glass Tower. The College does not make available to students with disabilities requiring wheelchair accessible single rooms with wheelchair accessible private bathrooms any rooms at the more common standard residence hall rates. A student requiring such a room as an accommodation for a disability will be charged the double room rate for Dragon Hall or Glass Tower, and such rate is higher than the double room rate in the more common standard residence halls. OCR determined that this violates the regulation implementing Section 504, at 34 C.F.R. §§ 104.4(a) and (b)(4), 104.43(a) and 104.45(a), and the regulation implementing the ADA, at 28 C.F.R. §§ 35.130(a),(b)(3)(i) and 7(i) and (f). On August 31, 2017, the College signed the enclosed resolution agreement to resolve these compliance issues. OCR will monitor the implementation of the resolution agreement.

With respect to Allegation 2, the complainant alleged that the College discriminates on the basis of disability, by charging the published rate for air conditioned rooms in Dragon Hall and Glass Tower, regardless of whether a student needs an air conditioned room as an accommodation for a disability. In support of Allegation 2, the complainant asserted that air conditioned rooms are only available in Dragon Hall and Glass Tower, which contain more expensive rooms than standard residence halls; and, the College charges disabled students who need to live in air conditioned rooms to accommodate a disability these more expensive room rates.

OCR determined that for academic year 2016-2017, the College offered air conditioned rooms only in Dragon Hall and Glass Tower, which, as stated above, contain the College's most expensive housing options. The associate director informed OCR that students who need air conditioned rooms cannot be accommodated in other residence halls, because windows in other residence halls cannot be opened wide enough to install an air conditioner.⁶ The College informed OCR that all students assigned to an air conditioned room are charged the published room rate, regardless of whether the student required an air conditioned room to accommodate a disability. During academic year 2016-2017, xxxx students were approved to receive air-

⁶ The College also offered air conditioned rooms in Whitaker Hall during academic year 2015-2016 at the standard residence hall rates, but Whitaker Hall was repurposed as an administrative building during academic year 2016-2017.

conditioned housing as an accommodation for a disability. xxxx of these students were placed in Glass Tower and xxxx in Dragon Hall; these xxxx students were charged the applicable published room rates for rooms in Glass Tower and Dragon Hall. xxx of the students opted to live in a non-air conditioned room in order to live with xxx preferred roommate. xxxx of the students made xxx request for air conditioned housing after the July 31st deadline, and all air conditioned rooms had already been assigned.⁷

Based on the foregoing, OCR determined that students who require air conditioned housing to accommodate a disability must live in one of the College's two most expensive residence halls; and, are charged the more expensive room rates even though the College does not make its less expensive housing options available to such students. OCR determined that this violates the regulation implementing Section 504, at 34 C.F.R. §§ 104.4(a) and (b)(4), 104.43(a) and 104.45(a), and the regulation implementing the ADA, at 28 C.F.R. §§ 35.130(a),(b)(3)(i) and (7)(i) and (f). On August 31, 2017, the College signed the enclosed resolution agreement to resolve these compliance issues. OCR will monitor the implementation of the resolution 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 a 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.

⁷ Similarly, xxx xxxxx requested an air conditioned room for academic year 2015-2016 after the July 31st deadline, and could not be accommodated until the spring 2016 semester because all air conditioned rooms had been assigned for the fall 2015 semester.

If you have any questions, please contact Amy Breglio, Compliance Team Attorney, at (646) 428-3942 or amy.breglio@ed.gov; or Lauren Numeroff, Compliance Team Attorney, at (646) 428-3895 or lauren.numeroff@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXX XXXXX, Esq.