

July 7, 2017

Rev. Joseph M. McShane
President
Fordham University
441 East Fordham Road
Bronx, New York 10458

Re: Case No. 02-17-2106
Fordham University

Dear Reverend McShane:

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 complaint filed against Fordham University. The complainant alleged that the University discriminates on the basis of disability, by (a) charging higher rates for single rooms in the University's residence halls, even if a student requires a single room as an accommodation for a disability; and, (b) requiring all students who need air conditioners in their dorm rooms to provide their own air conditioners and pay costs associated with electricity usage and/or electrical upgrade charges, even if the student requires air conditioning to accommodate a 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). The University is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504.

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.

In its investigation, OCR interviewed University 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 charging higher rates for single rooms in the University's residence halls, even if a student requires a single room as an accommodation for a disability. In support of his allegation, the complainant provided OCR with a copy of the University's published residence hall room rates, which indicated that single rooms are charged at a higher rate than double rooms. The complainant also asserted that he contacted a XXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX at the Office of Residential Life at the University's Rose Hill campus, who informed him that the University always charges the single room rate for single rooms, even if a student needs a single room to accommodate a disability.

OCR determined that the University has two main campuses; the Rose Hill campus and the Lincoln Center campus.¹ The University offered housing at both campuses.²

For academic years 2015-2016 and 2016-2017, the University offered on-campus housing at the following residence halls at the Rose Hill campus: Alumni Court South (dorm 1); Loschert Hall (dorm 2); Martyrs' Court LaLande and Goupil (dorm 3); Faber Hall (dorm 4);³ Finley Hall (dorm 5); Martyrs' Court Jogues Hall (dorm 6); Loyola Hall (dorm 7); Queen's Court (dorm 8); Tierney Hall (dorm 9); Walsh Hall (dorm 10); O'Hare Hall (dorm 11); Campbell Hall (dorm 12); and Salice-Conley Hall (dorm 13). The University also offered off-campus housing near Rose Hill campus in Arthur House (dorm 14); Terra Nova (dorm 15); Hughes House (dorm 16); and Arthur 2 House (dorm 17). The University offered 553 single rooms at the Rose Hill campus.⁴ In total, the aforementioned residences at Rose Hill campus contained housing for approximately 3,400 students.

¹ The Rose Hill campus is in the Bronx, and Lincoln Center campus is in Manhattan. Students may live only in the campus where their school and/or division is located. The following are located at the Rose Hill campus: Fordham College at Rose Hill; the Gabelli School of Business; a division of the School of Professions and Continuing Studies; and the Graduate School of Arts and Sciences and Religion and Religious Education. The following are located at the Lincoln Center campus: Fordham College at Lincoln Center; a division of the School of Professional and Continuing Studies; the School of Law; the Graduate Schools of Education and Social Service; and the Fordham School of Business.

² The University also has a campus in Westchester, New York, but does not provide any housing at this location.

³ The University offered housing to students at dorm 4 beginning in academic year 2016-2017.

⁴ This includes 97 rooms that are available only to student residential assistants.

For academic years 2015-2016 and 2016-2017, the University also offered on-campus housing at two residence halls at the Lincoln Center campus, McKeon Hall (dorm 18) and McMahan Hall (dorm 19). The University also offered off-campus housing near Lincoln Center campus at Wilshire Plaza (dorm 20). The University offered 316 single on-campus rooms at its Lincoln Center campus.⁵ In total, the aforementioned residences at Lincoln Center campus contained housing for approximately 1,385 students.

For academic year 2015-2016, the cost per academic year for rooms in Rose Hill and Lincoln Center campus residence halls was as follows:

Rose Hill

	Single Room	Double Room	Triple Room	Converted Triple Room ⁶
Dorms 1-3, 5	\$12,550	\$11,205	\$11,205	\$8,660
Dorms 6-7	\$12,700	\$11,355	\$11,355	\$8,810
Dorm 8	N/A	\$11,405	\$11,405	\$8,860
Dorm 9	N/A	\$11,355	\$11,355	N/A
Dorm 10	N/A	\$11,515	\$11,515	N/A
Dorms 11-13	\$13,280	\$11,950	\$11,950	N/A
Dorms 14-17	\$12,190	\$11,110 ⁷	N/A	N/A

Lincoln Center

	Single Room	Double Room	Triple Room	Converted Triple Room
Dorm 18	N/A	\$11,885	\$11,885	N/A
Dorm 19	\$17,605	\$15,065	N/A	N/A

For academic year 2016-2017, the cost per academic year for rooms in Rose Hill and Lincoln Center campus residence halls was as follows:

Rose Hill

	Single Room	Double Room	Triple Room	Converted Triple Room
Dorms 1-5	\$12,930	\$11,545	\$11,545	\$8,660
Dorms 6-7	\$13,080	\$11,695	\$11,695	\$8,810
Dorm 8	N/A	\$11,745	\$11,745	\$8,810
Dorm 9	N/A	\$11,695	\$11,695	N/A
Dorm 10	N/A	\$11,865	\$11,865	N/A
Dorms 11-13	\$13,680	\$12,265	\$12,265	N/A
Dorms 14-17	\$12,560	\$11,445 ⁸	N/A	N/A

⁵ This includes 31 rooms that are available only to student residential assistants.

⁶ A converted triple room is a double room assigned to three students. Dorms 1-3 and 6-8 offered converted triple rooms.

⁷ Dorm 17 does not have double rooms.

⁸ As stated above, dorm 17 does not have double rooms.

Lincoln Center

	Single Room	Double Room	Triple Room	Converted Triple Room
Dorm 18	N/A	\$12,235	\$12,235	N/A
Dorm 19	\$18,130	\$15,510	N/A	N/A

Additionally, the cost per academic year for dorm 20 in academic year 2015-2016 was \$24,350 for a one-bedroom apartment and \$20,700 for a studio apartment. The cost per academic year for dorm 20 in academic year 2016-2017 was \$25,100 for a one-bedroom apartment and \$23,100 for a studio apartment.

Students requesting housing accommodations are directed to make such requests to the University’s Director of Student Health Services (the director), and provide medical documentation supporting the request. Approved requests are then sent to the University’s Associate Director of Housing and Operations for the Rose Hill campus (Rose Hill associate director) or the Assistant Director of Housing and Operations for the Lincoln Center campus (Lincoln Center assistant director). The Rose Hill associate director and Lincoln Center assistant director assign students to rooms at their respective campuses based on the approved requests, outside of the room selection process.

The University informed OCR that students approved to live in a single room as an accommodation for a disability are always charged the single room rate applicable to the assigned residence hall. For academic years 2015-2016 and 2016-2017, XXXXXXXX disabled students requested and were approved to receive placement in single rooms as accommodations.⁹ These XXXXXXXX students were all assigned to single rooms, and were all charged the published single room rates.

Based on the foregoing, OCR determined that the University charged students the published single room rates during academic years 2015-2016 and 2016-2017, regardless of whether the single room 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), 104.43(a) and 104.45(a).

During the course of OCR’s investigation of the complaint, OCR also determined that on Xxxxx XX, 2016, the director received a request from a student (Student A) for a single room as an accommodation for a disability, but denied the request because no single rooms were available. The director did not make any determination as to whether the requested accommodation was necessary, thereby precluding the associate director from determining whether the accommodation could be fulfilled in another residence hall, in order to ensure that Student A was afforded an equal opportunity to participate in and benefit from the University’s programs and activities.

⁹ As of April 27, 2017, xxxxx students requested and were approved to receive placement in single rooms for academic year 2017-2018 as an accommodation for a disability. These xxxxx students are being charged the published single room rates for the applicable residence halls.

On July 6, 2017, the University signed the enclosed resolution agreement to resolve these compliance issues. OCR will monitor the implementation of the resolution agreement.

The complainant also alleged that the University discriminates on the basis of disability, by requiring all students who need air conditioners in their dorm rooms to provide their own air conditioners and pay costs associated with electricity usage and/or electrical upgrade charges, even if the student requires air conditioning to accommodate a disability. In support of his allegation, the complainant provided OCR with a copy of the University's "Housing 2013-2014: Air Conditioner Request" form, which states that "[s]tudents must request to bring their own air conditioner if they have a qualified medical condition"; that "[i]f a request is granted . . . [t]he student must provide their own air conditioning unit" that meets the University's specifications; and that "[s]tudents may be required to pay up to an additional \$700 to cover electrical upgrade charges" but "[s]tudents will definitely be charged \$350.00 for electricity usage for the year."

OCR determined that during academic years 2015-2016 and 2016-2017, the University provided air conditioning for all students in all but five of its residence halls.¹⁰ The University informed OCR that all students approved to receive air-conditioned housing as an accommodation for a disability are given the option to live in a residence hall with air conditioning, thereby making the purchase of a private air conditioner unnecessary. Students may nevertheless opt to live in a residence hall that does not have air conditioning, in which case the student would be responsible for providing his or her own air conditioner. During academic years 2015-2016 and 2016-2017, XX students were approved to receive air conditioning as an accommodation for a disability, but opted to live in residence halls without air conditioning; therefore, these students brought their own air conditioners.

OCR determined that despite the information contained in the Air Conditioner Request form, the University has not, as a matter of practice, charged any student requiring air conditioning the stated \$700 electrical upgrade fee beginning in academic year 2015-2016, even if the student opted to live in a residence hall without air conditioning and brought his or her own air conditioner. The University informed OCR that beginning in academic year 2015-2016, it also ceased charging students who required air conditioning as an accommodation for a disability the stated \$350 electricity usage fee; no electricity usage fee is added to the cost of air conditioned rooms and students who opt to live in a residence hall without air conditioning are no longer charged an electricity usage fee if they bring and use their own air conditioners. OCR did not find and the complainant did not provide any evidence to contradict this assertion. The University informed OCR that as of June 30, 2017, the University officially changed its policy, and revised its Air Conditioner Request form distributed to students, removing the language indicating that the University might impose charges for electricity usage and/or electrical upgrades.

Based on the foregoing, OCR determined that the University does not currently require students who need air conditioners in their dorm rooms to provide their own air conditioners and pay

¹⁰ There is no air conditioning in dorms 1, 2, 14 and 15 at Rose Hill campus, and in dorm 20 at Lincoln Center campus. The University informed OCR that in some buildings, air conditioning is only provided seasonally, but that the units are kept in year-round for students who are approved to receive air conditioning as an accommodation for a disability in those buildings.

costs associated with electricity usage and/or electrical upgrade charges, even if the student requires air conditioning to accommodate a disability, as alleged. OCR determined that the complainant's allegation is therefore resolved, and there are no current timely individual issues appropriate for further investigation and resolution. Accordingly, OCR will take no further action with respect to the complainant's allegation as it pertains to air conditioning, and has closed this allegation as of the date of this letter.

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 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.

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: Xxxx Xxxxx, Esq.