



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

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December 13, 2017

Kerry Walk, Ph.D.  
President  
Marymount Manhattan College  
221 East 71st Street  
New York, New York 10021

Re: Case No. 02-17-2389  
Marymount Manhattan College

Dear President Walk:

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 Marymount Manhattan College (the College). The complainant alleged that the College discriminated against her, on the basis of her age, by denying her request to reside in College housing in spring 2017.

OCR is responsible for enforcing the Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.*, and its implementing regulation at 34 C.F.R. Part 110, which prohibit discrimination on the basis of age in programs and activities receiving financial assistance from the Department. The College is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under the Age Discrimination Act.

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

The complainant alleged that the College discriminated against her, on the basis of her age (xxx), by denying her request to reside in College housing in spring 2017. The complainant stated that by electronic mail message (email) to the College's Senior Assistant Director of Transfer Admission (the director) on January xxx, 2017, shortly after her admission to the College as a transfer student, the complainant inquired about the availability of on-campus housing. The complainant stated that by email the following day, the director informed her that the College's housing policy restricts on-campus housing to students under 23 years old, instructed the complainant to seek housing elsewhere, and provided her with suggestions for off-campus alternatives. As a result, the complainant did not submit an application for College housing. The

complainant stated that she was unable to find and maintain appropriate and affordable housing, which forced her to stop attending classes at the College in xxxxxxx. The complainant stated that she did not intend to return to the College.

The regulation implementing the Age Discrimination Act, at 34 C.F.R. §110.10, provides in relevant part that no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. The regulation, at 34 C.F.R. § 110.12, permits a recipient to take an action otherwise prohibited by § 110.10 if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of the program or activity. There are four required elements to meet this exception: (a) age is used as a measure or approximation of one or more other characteristics; (b) the other characteristic or characteristics must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; (c) the other characteristic or characteristics can be reasonably measured or approximated by the use of age; and, (d) the other characteristic or characteristics are impractical to measure directly on an individual basis. Normal operation is defined at 34 C.F.R. § 110.11 as the “operation of a program or activity without significant changes that would impair its ability to meet its objectives.” To qualify for the normal operation exception, an explicit use of age must meet all four elements of the exception. There is no statutory objective exception for the establishment of eligibility for student housing based on age applicable to the College.<sup>1</sup>

OCR determined that the College’s housing policy (the policy) provides for on-campus housing to students ages 16-23. Students younger than 16, or older than 23, are not eligible for on-campus housing. Therefore, the policy uses age as a factor in determining eligibility for a College program.

In academic year 2016-2017, approximately 1,840 students were enrolled in the College; of these, 59 (3%) were over the age of 23. The College provided on-campus housing in two facilities to approximately 767 students; this did not include any students under the age of 16 or over the age of 23.<sup>2</sup>

The College asserted that its policy limiting eligibility for housing based on age furthers the College’s educational objectives and has a direct and substantial relationship to the normal operation of the College’s housing program. The College asserted that the purpose of the housing program is to assist younger students in making wise educational and personal choices, avoiding poor educational and personal choices, and learning to socialize into the “larger post-graduate world”; to help students feel a connection to campus; and, to facilitate enrollment of students from other states or other countries who may have difficulty finding a place to live. The College also asserted that its policy is based on the “obvious differences in maturity, experience,

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<sup>1</sup> A statutory objective, also defined at 34 C.F.R. § 110.11, is any purpose of a program or activity expressly stated in any federal statute, state statute, or local statute or ordinance adopted by an elected, general purpose legislative body.

<sup>2</sup> The living arrangements in both buildings are apartment or suite style for four to seven students, with two or three bedrooms adjoining a common space, and two to four students in each bedroom. The College does not offer single rooms. Students who are not eligible for on-campus housing based on their age are provided with information regarding off-campus housing options.

life skills, socialization, peer dynamics and other attributes across age groups”; and that students who recently graduated from high school have dramatically different needs and levels of development from older, non-traditional students like the complainant. The College asserted that housing older non-traditional students with students younger than 23 would likely create conflict that the resident assistants would be unable to manage, and “greater social isolation” because the students may have little in common, and may have different schedules, responsibilities, and priorities. The College expressed concern about the unequal power dynamics between a non-traditional student and a younger student. The College further stated that the policy is consistent with the policies at many post-secondary institutions that require students below a certain age to live on campus.<sup>3</sup>

The College provided no research or other basis in support of the policy or for its conclusion that greater conflict would ensue if students older than 23 were allowed in on-campus housing. Rather, the director provided information about numerous instances of conflict between students living in on-campus housing, all of whom fall within the age range permitted by the policy. This included an anecdote involving a student near the upper age limit who experienced conflict while living on campus; however, according to the director, the conflict was addressed and “everyone got used to each other.” The director also provided an anecdote regarding a xxx-year old student, not in student housing, who expressed concerns regarding social isolation because she did not have things in common with her younger peers.

OCR determined that with respect to element (a) of the exception to 34 C.F.R. § 110.10, the policy employs age as a measure or approximation of one or more other characteristics; specifically, of social and emotional maturity, and maturity of judgment, as well as life experience. Further, OCR determined that with respect to element (c) of the exception to 34 C.F.R. § 110.10, these other characteristics are impractical to measure directly on an individual basis. OCR determined, however, that with respect to element (b) of the exception to 34 C.F.R. § 110.10, the College provided no information to support that the other characteristics must be measured or approximated in order for the normal operation of the program or activity to continue. The College stated that the age restrictions allowed the normal operation of the program to continue to assist students in making wise educational and personal choices, avoiding poor educational and personal choices, and learning to socialize into the “larger post-graduate world”; to help students feel a connection to campus; and, to facilitate enrollment of students from other states or other countries who may have difficulty finding a place to live. The College provided no information to support that only students between the ages of 16 and 23 needed assistance in these areas. The College did not provide information indicating that the practical considerations of including students without respect to age would frustrate the normal operation of the program. Additionally, the College provided no support for its assertion that significant and unresolvable conflict would occur by having older students on campus. Rather, the College informed OCR that its housing department is accustomed to fielding complaints, and resolving roommate disputes. Therefore, OCR determined that the College did not meet element (b) set forth in the regulation, at 34 C.F.R. § 110.12.

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<sup>3</sup> The College provided examples of other college’s policies; many of which mandated the inclusion of younger students in campus housing, but did not prohibit non-traditional students from living in campus housing. The College provided two examples of other colleges that do not permit students over a certain age to live in campus housing.

During the course of OCR's investigation, the College expressed interest in voluntarily resolving this case. On December 4, 2017, the College voluntarily entered into the enclosed resolution agreement to resolve the complainant's allegation, in accordance with Section 302 of OCR's Case Processing Manual. OCR will monitor the implementation of the agreement. When OCR concludes that the College has fully and effectively implemented the terms and obligations of the agreement and is in compliance with the statutes and regulations at issue in the case, OCR will terminate its monitoring and close the case. If the College fails to implement the agreement, OCR will resume its investigation.

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 has the right, pursuant to the regulation implementing the Age Discrimination Act, at 34 C.F.R. § 110.39, to file a civil action for injunctive relief in federal court following the exhaustion of administrative remedies. Administrative remedies are exhausted if: (1) 180 days have elapsed since the complainant filed the complaint with OCR, and OCR has made no finding, or (2) OCR issues any finding in favor of the recipient. A civil action can be brought only in a United States district court for the district in which the recipient is found or transacts business. A complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but these costs must be demanded in the complaint filed with the court. Before commencing the action, the complainant shall give 30 days' notice by registered mail to the Secretary of the Department of Education, the Secretary of the Department of Health and Human Services, the Attorney General of the United States, and the recipient. The notice shall state the violation of the Age Discrimination Act, the relief requested, the court in which the action will be brought, and whether or not attorney's fees are demanded in the event the complainant prevails. The complainant may not bring an action if the same alleged violation of the Age Discrimination Act by the same recipient is the subject of a pending action in any court of the United States.

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.

If you have any questions regarding OCR's determination, please contact Andy Artz, Compliance Team Attorney, at (646) 428-3901 or [alexander.artz@ed.gov](mailto:alexander.artz@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

Encl.

cc: xxxxxxxxxxxxxxxx, Esq.