



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

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May 22, 2018

Dr. Zvi Szafran  
President  
State University of New York at Canton  
34 Cornell Drive  
Canton, New York 13617

Re: Case No. 02-18-2057  
State University of New York at Canton

Dear Dr. Szafran:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), with respect to the above-referenced complaint filed against the State University of New York at Canton (the University). The complainant alleged that the University discriminates on the basis of disability, by effectively imposing a housing surcharge on medical single and medical double dormitory rooms provided as an accommodation for a student's disability, in one of the University's dormitories, Kennedy Hall.<sup>1</sup>

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

<sup>1</sup> When OCR initially opened this allegation for investigation on February 2, 2018, it noted the complainant's concern that housing surcharges were imposed on students with disabilities in the Grasse River Suites. OCR learned that the University changed the name of Grasse River Suites to Kennedy Hall in 2015.

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 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 effectively imposing a housing surcharge on medical single and medical double dormitory rooms provided as an accommodation for a student's disability, in one of the University's dormitories, Kennedy Hall. Specifically, the complainant alleged that the University charged students who needed a medical single or medical double room in Kennedy Hall to accommodate a disability, a rate higher than other designated single or double rooms on campus. In support of the allegation, the complainant noted that the University published a document entitled "Medical Housing Process," which stated in pertinent part that "[t]he cost for a medical single or medical double room is billed at the regular double room rate. The cost of a medical single or medical double room in [Kennedy Hall] is billed at the regular rates for that building."<sup>2</sup>

OCR determined that for academic years 2016-2017 and 2017-2018, the University housed approximately 1,200 students on campus. The University has five residence halls: Kennedy Hall, which consists exclusively of suites and houses approximately 300 students,<sup>3</sup> and four traditional residence halls that housed the remaining 900 students on campus (Mohawk Hall, Smith Hall, Rushton Hall, and Heritage Hall). Each traditional residence hall includes two or three rooms designed for single occupancy, with the remainder of the rooms designed for double occupancy. The University's Director of Residence Life (the director) advised OCR that the number of students who request on-campus housing frequently exceeds the designed occupancy of the five

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<sup>2</sup> The Medical Housing Process is published at the top of a form students are required to complete in order to request a medical single or medical double room on-campus housing assignment to accommodate a disability. See [http://www.canton.edu/residence\\_life/pdf/medical\\_housing\\_process.pdf](http://www.canton.edu/residence_life/pdf/medical_housing_process.pdf) (last visited April 19, 2018).

<sup>3</sup> Kennedy Hall was the most recently built residence hall on campus. Each suite in Kennedy Hall has its own full kitchen, living room (with air conditioning), shared bathroom, and between one and four rooms designed for single or double occupancy. The director advised OCR that nearly all students' first choice for housing is Kennedy Hall.

residence halls; and when this occurs, some students in traditional residence halls are placed in designated double rooms that are converted to triple rooms.<sup>4</sup>

The cost per semester for a double room in one of the four traditional residence halls was \$3,550 in 2016-2017 and \$3,675 in 2017-2018.<sup>5</sup> The cost per semester for a single room in one of the four traditional residence halls was \$5,250 in 2016-2017 and \$5,400 in 2017-2018. The cost per semester for a double room or a single room in a Kennedy Hall suite was \$4,700 in 2016-2017 and \$4,850 in 2017-2018.

For academic years 2016-2017 and 2017-2018, the University’s “Medical Housing Process” (the process) required that students requesting a housing arrangement to accommodate a disability, including a single room or a double room, submit their requests in writing to the Residence Life Office and provide a completed Medical Housing Form signed by their health care provider. The director advised OCR that once a request and supporting documentation was received, it was reviewed by the University’s Medical Housing Committee (the committee), consisting of the director; Director of Accommodative Services; Director of Health Center; and, Director of Counseling. The director stated that, generally, it was his practice to contact students approved for a disability housing accommodation via telephone to determine their residence hall preference.

The director advised OCR that pursuant to the process for academic years 2016-2017 and 2017-2018, if a student was approved for a single or double room to accommodate a disability, and selected a traditional residence hall as their preference, they were only charged the traditional residence hall double room rate. If the student selected Kennedy Hall as their preference, they were charged the Kennedy Hall room rate; as they could have been accommodated in a single or double room in a traditional residence hall. The director advised OCR that if a student was approved for a kitchen, air conditioning, or other room feature only available in Kennedy Hall to accommodate a disability, the University’s practice was to place the student in Kennedy Hall and charge the less expensive, traditional residence hall double room rate.

OCR determined that during academic years 2016-2017 and 2017-2018, three students (students A, B, and C) requested disability accommodations on their Medical Housing Forms that could only be provided in Kennedy Hall.<sup>6</sup> The director advised OCR that these three students were placed in medical single rooms in Kennedy Hall for the semesters they requested, but that all three students were charged the published room rates for a Kennedy Hall single room rather than the less expensive, traditional residence hall double room rate. The director stated that the University did not maintain records reflecting the specific disability housing accommodations that the committee approved for each student; therefore, the University was unable to advise OCR whether the committee had determined that these students’ requests could have been accommodated in a traditional residence hall, but these students opted to pay a higher cost to live in Kennedy Hall.

On May 21, 2018, the University entered into the enclosed agreement with OCR to resolve this allegation without further investigation. OCR will monitor the implementation of the resolution agreement.

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<sup>4</sup> The director advised OCR that during academic year 2017-2018, students in on-campus housing represented 108% of the designed occupancy rate. The director stated that the residence halls can accommodate this number of students by converting double rooms to triple rooms, and still follow applicable housing codes.

<sup>5</sup> Students who were housed in triple rooms in one of the traditional residence halls were charged the standard double room rate and were credited the prorated difference between a double room and a triple rate three times throughout the semester. Students in triple rooms received a credit every five weeks for as long as there was a third person in the room. In academic year 2016-2017, the credit was \$133.33, and in academic year 2017-2018, the credit was \$141.66. If the third roommate left the double room, the remaining occupants received no further triple room credits.

<sup>6</sup> Student A requested a medical single that could only be provided in Kennedy Hall for the spring 2017, fall 2017, and spring 2018 semesters. Students B and C both specifically requested a medical single room in Kennedy Hall for the fall 2017 and spring 2018 semesters.

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 about OCR's determination, please contact David Krieger, Senior Compliance Team Attorney, at (646) 428-3893 or [david.krieger@ed.gov](mailto:david.krieger@ed.gov); or Andy Artz, Senior Compliance Team Attorney, at (646) 428-3901 or [alexander.artz@ed.gov](mailto:alexander.artz@ed.gov).

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.

cc: XXXX XXXX, Esq.