

May 16, 2018

Dr. Helen J. Streubert
President
College of Saint Elizabeth
Santa Rita Hall, Floor 3
2 Convent Road
Morristown, New Jersey 07960

Re: Case No. 02-18-2081
College of Saint Elizabeth

Dear Dr. Streubert:

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 the College of Saint Elizabeth (the College). The complainant alleged that the College discriminates on the basis of disability, by requiring students to purchase their own air conditioning, humidifier, or air cleaner units when needed in a residence hall room 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 College 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 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 requiring students to purchase their own air conditioning, humidifier, or air cleaner units when needed in a residence hall room to accommodate a disability. In support of this allegation, the complainant cited a page of the College's website entitled "Accessibility Services – Residence Hall Medical Room/Medical Accommodations Requests," which, at the time the complaint was filed, stated in relevant part: "In those instances in which a student requests and receives permission for air conditioning, humidifier, or air cleaner in a residence hall room, based upon documented medical/health problems, the student is responsible for purchasing the unit" (policy 1). The complainant did not identify any specific student(s) who requested air conditioning, a humidifier, or an air cleaner in a residence hall room; or, provide any information regarding the College's response to any such request.

OCR determined that the College has two residence halls: Founders Hall, which has 213 rooms (dorm 1) and O'Connor Hall, which has 103 rooms (dorm 2). All 213 rooms in dorm 1, and 28 of 103 rooms in dorm 2, currently have air conditioning.¹

Students at the College requesting housing accommodations are directed to make such requests to the College's Coordinator of Disability Services and provide medical documentation supporting the request. The Coordinator of Disability Services then makes assignments of residence hall rooms in conjunction with the Director of Residence Life and Director of Health or Counseling, if applicable.

The College acknowledged that prior to March 1, 2018, policy 1 was in effect, and students who required air conditioning but resided in a dorm room without air conditioning, or required a humidifier or an air cleaner unit to accommodate a disability were responsible for purchasing such units.² For academic year 2016-2017, X students requested air conditioning as an accommodation for a disability and were required to purchase air conditioners. For academic year 2017-2018, X students requested air conditioning as an accommodation for a disability and

¹ Prior to February 2017, approximately only 71 of 213 rooms in dorm 1 had air conditioning. In February 2017, dorm 1 received an electrical upgrade, and the College received a "donation of air conditioners" that allowed it to provide air conditioning in all rooms in dorm 1.

² Pursuant to College policy in effect at the time, "[i]f the requesting student reside[d] in [dorm 1], the student may be relocated to another residence hall room to accommodate the electrical demands of the air conditioning unit."

X were required to purchase air conditioners; X of the X students did not need to purchase an air conditioner because they had done so previously for use during academic year 2016-2017. The College did not impose any installation, electrical upgrade, or other charges for use of these air conditioning units. No students requested humidifiers or air cleaner units to accommodate a disability for academic years 2016-2017 and 2017-2018.

As of March 1, 2018, the College revised policy 1 in relevant part as follows: “[i]n those instances in which a student requests and receives permission for air conditioning, humidifier, or air cleaner in a residence hall room, based upon documented medical/health problems, the College is responsible for supplying and installing the unit”.

Based on the foregoing, OCR determined that the College does not currently require students who need air conditioning, a humidifier, or air cleaner units in their dorm rooms to provide their own units, even if the student requires air conditioning, a humidifier, or an air cleaner unit to accommodate a disability. OCR determined, however, that during academic years 2016-2017 and 2017-2018, the College required students to purchase air conditioners even if those students required air conditioning to accommodate a disability, 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). On May 7, 2018, the College signed the enclosed resolution agreement to resolve this compliance issue. 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.

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

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: Edward G. Sponzilli, Esq.