



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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August 23, 2017

IN RESPONSE, PLEASE REFER TO: 03172021/03172071

Dr. Karen M. Whitney, President
Clarion University of Pennsylvania
202 Carrier
840 Wood Street
Clarion, PA 16214

Dear President Whitney:

This is to notify you of the resolution of the above-referenced complaints filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Clarion University (the University). You alleged that the University discriminates on the basis of disability because it 1) does not waive supplemental fees for single rooms for students who require them as an accommodation for their disabilities, and 2) imposes a housing surcharge on dormitory rooms with kitchen facilities which are provided as an accommodation for a student's 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 or activities receiving financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990, as amended (Title II), 42 U.S.C. § 12131, et seq., and its implementing regulations at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. The University is a recipient of financial assistance from the Department and a public entity. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504 and Title II.

Legal Standards

The regulation implementing Section 504, at 34 C.F.R. §§104.4(a), 104.41 and 104.43(a),(c) provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any postsecondary education program or activities, including housing, of a recipient of Federal financial assistance.

The regulation implementing Section 504, at 34 C.F.R. § 104.45, provides that a Section 504 recipient that provides housing to its nondisabled students must provide comparable, convenient, and accessible housing to disabled students at the same cost as to others. Housing for disabled students must be available in sufficient quantity and variety so that the scope of their choice of living accommodations is, as a whole, comparable to that of nondisabled students. The regulation further states that such housing shall be available in sufficient quantity and variety so that the scope of the student with disability choice of living accommodations is, as a whole, comparable to that of a nondisabled student.

The regulation implementing Title II, at 28 C.F.R. §§35.130(a), (b), and 35.164, likewise provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any postsecondary education program or activities, including housing, of a recipient of Federal financial assistance. An individual with a disability, or a class of individuals with disabilities, may be provided with a different or separate aid, benefit, or service only if doing so is necessary to ensure that the aid, benefit, or service is as effective as that provided to others. 28 C.F.R. § 35.130(b)(1)(iv). People with disabilities must have equal access to recipients' programs, services, or activities unless doing so would fundamentally alter the nature of the programs, services, or activities, or would impose an undue burden. 28 C.F.R. § 35.164.

Moreover, Title II prohibits public entities from placing a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures that are required to provide that individual or group with the nondiscriminatory treatment required by Title II. 28 C.F.R. § 35.130(f).

Factual Background

OCR's review of the University's housing policies and procedures found that they address the provision of housing to students with disabilities; however, they do not include whether or how the University will charge a student for a housing accommodation provided as a result of a disability. The University's fee structure of varying rates per building and room type is silent as to waiver of cost due to accommodation.

Based on OCR's preliminary investigation, the University charges students the standard rate for the type of room the student occupies, regardless of disability. OCR reviewed student information for the 2015-16 and 2016-17 school years and confirmed that students were generally charged the standard room rate for the room type to which they were assigned, with the exception of single room accommodations that may be charged at the double occupancy rate. While there is no increase to the standard room rate, surcharge or supplemental fee for students with a disability, there is generally no reduction or waiver to the rate if the room type is required as an accommodation.

Request to Resolve Complaint through a Voluntary Resolution Agreement

Under OCR procedures, a complaint may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint by signing a Resolution Agreement and OCR determines that such a resolution is appropriate. The provisions of the Resolution Agreement must be aligned with the complaint allegations, the information obtained in the investigation to date, and be consistent with applicable regulations. Such a request does not constitute an admission of a violation on the part of the University, nor does it constitute a determination by OCR of any violation of our regulations.

Consistent with OCR's procedures, on January 13, 2017 for case 03172021 and February 6, 2017 for case 03172071, the University requested to resolve the complaints through a Resolution Agreement. On August 21, 2017, the University signed this Agreement. As is our standard practice, OCR will monitor the University's implementation of the Agreement, a copy of which is enclosed. Accordingly, OCR is concluding its investigation of the complaint as of the date of this letter.

This letter is not intended nor should it be construed to cover any other issues regarding the University's compliance with Section 504 and Title II, which may exist and are not discussed

herein. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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 Complainant may file another complaint alleging such treatment.

If you have any questions or concerns, please call me at (215) 656-8522.

Sincerely,

/s/

Vicki Piel
Team Leader/Supervisory Attorney
Philadelphia Office

Enclosure

cc: Marta Sanon, Esq. (via email)