



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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January 24, 2018

Via email only

Robert G. Duffett, Ph.D.
President
Eastern University
1300 Eagle Road
St. Davids, PA 19087

RE: OCR Complaint Nos. 03-17-2078 and 03-17-2378

Dear Dr. Duffett:

This letter is to advise you of the resolution of the above-referenced complaints filed with the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) against Eastern University (the University). The Complainant alleged that the University discriminates against individuals with disabilities with regard to housing by:

1. Requiring students to provide their own air conditioning units in non-air conditioned housing when air conditioning is needed as a disability-related accommodation;
2. Failing to waive fees for disability-related housing accommodations permitting students to move in early due to disabilities;
3. Maintaining a practice or policy that charges a default rate for housing that is required as part of an accommodation for a student with a disability; and
4. Failing to provide disability-related single room accommodations due to an inadequate supply of single rooms available in the University's housing program.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. Because the University receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Section 504.

Before OCR completed its investigation, the University expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Legal Standards

The Section 504 regulation provides that no qualified person 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 under any program or activity which receives Federal financial assistance. 34 C.F.R. § 104.4. Section 504 also prohibits recipients from affording individuals with disabilities an opportunity to participate in or benefit from aids, benefits, and services that are unequal to the opportunity afforded others. 34 C.F.R. § 104.4(b)(1)(ii). 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. 34 C.F.R. § 104.4(b)(1)(iv).

Section 504 also contains specific provisions that prohibit discrimination on the basis of disability in postsecondary education programs and activities, including housing. 34 C.F.R. §§ 104.41, 104.43, 104.44, and 104.45. Specifically, a postsecondary recipient that provides housing to its students without disabilities shall provide comparable, convenient, and accessible housing to students with disabilities at the same cost as to others, and such housing shall be available in sufficient quantity and variety so that the scope of the choice of living accommodations for students with disabilities is, as a whole, comparable to that of students without disabilities. 34 C.F.R. § 104.45. OCR and several courts have also required recipients to assume the cost of providing auxiliary aids and services that are necessary to ensure the participation of individuals with disabilities in recipient programs and activities. 34 C.F.R. § 104.44(d).

Factual Background

OCR reviewed information regarding the University's process for providing disability-related modifications to housing arrangements. OCR found evidence that students are permitted to bring their own air conditioning units, when they are approved for this as an accommodation, but are assigned to a non-air conditioned dorm. The University reported that this was an exception to its existing policy, which does not permit students to bring air conditioning units. The University noted that when a student could not secure an air conditioning unit but was approved for this accommodation, the University would locate a unit for that student.

OCR also reviewed information showing that the University has a practice of charging students the cost of a single room (as opposed to a lower cost of other housing options) even though the single room is an accommodation for a disability. The University did not yet provide information about how it handles billing and charges for other types of housing accommodation requests.

OCR's investigation to date did not reveal evidence that the University charges students who are approved for early arrival as a disability-related accommodation, nor did OCR find evidence showing that the University has a practice of denying single room accommodations due to lack

of availability. Information from the University demonstrates a past practice of turning double rooms or triple rooms into singles when necessary.

Request to Resolve Complaints through a Voluntary Resolution Agreement

Prior to the completion of OCR’s investigation, the University asked to resolve these complaints pursuant to Section 302 of OCR’s *Case Processing Manual* (CPM). Thus, OCR did not conduct interviews, nor did OCR reach a finding on any of the Complainant’s allegations. On January 16, 2018, the University submitted the enclosed signed resolution agreement (the Agreement) to OCR. When fully implemented, the Agreement will resolve the allegations raised in these complaints. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information discussed above that was obtained during OCR’s investigation, and are consistent with applicable law and regulation. OCR will monitor the University’s implementation of the Agreement until the University is in compliance with the statutes and regulations at issue in these complaints. Failure to implement the Agreement could result in OCR reopening the complaints.

This concludes OCR’s investigation of the complaint. 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 must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the University’s cooperation in the resolution of this complaint. If you have any questions, please contact Andrea DelMonte, the OCR attorney assigned to this complaint, at 215-656-8554 or andrea.delmonte@ed.gov.

Sincerely,

/s/

Melissa M. Corbin

Team Leader
Philadelphia Office
Office for Civil Rights

Enclosure

cc: Jacqueline Irving, Interim Provost for Student Development