



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515
100 PENN SQUARE EAST
PHILADELPHIA, PA 19107-3323

REGION III
DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

November 22, 2017

IN RESPONSE, PLEASE REFER TO: 03172125

Dr. M. Christopher Brown II, President
Kentucky State University
400 East Main Street
Frankfort, KY 40601

Dear Dr. Brown:

This is to notify you of the resolution of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Kentucky State University (the University). The Complainant alleged that the University discriminates on the basis of disability by imposing a housing surcharge on single dormitory rooms 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 initial 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. While there is no increase to the rate, surcharge or supplemental fee for students with a disability, there is 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 October 4, 2017, the University requested to resolve the complaint through a Resolution Agreement. On November 16, 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 allegation 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: Lisa K. Lang, General Counsel