



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200, ROOM 1545
SAN FRANCISCO, CA 94102

January 24, 2023

VIA ELECTRONIC MAIL

Dr. Angelica Loera Suarez
President
Orange Coast College
2701 Fairview Road
Costa Mesa, California 92626
asuarez@occ.cccd.edu

Re: OCR Complaint No. 09-21-2357

Dear Dr. Suarez:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Orange Coast College (College). The Complainant alleged that the College discriminated against her daughter (the Student) on the basis of disability.¹ Specifically, OCR investigated whether the College required the Student to pay a surcharge for single occupancy, on-campus housing she needed due to her disability.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability under any program or activity receiving Federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a public entity and a recipient of Federal financial assistance from the Department, the College is subject to Section 504 and Title II.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Complainant and the College. After careful review of the information gathered in the investigation, OCR concluded that the preponderance of the evidence supports a conclusion that the College failed to comply with Section 504 and Title II and their implementing regulations with regard to the issue OCR investigated.

Legal Standards

¹ OCR previously provided the College with the identity of the Complainant and Student. We are withholding their names from this letter to protect their privacy.

The Section 504 regulations at 34 C.F.R. §104.4(a) and (b) provide 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. The Section 504 regulations at 34 C.F.R. §104.43(a) also provide 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 in housing or other postsecondary education aid, benefits, or services. In addition, the Section 504 regulation at 34 C.F.R. §104.45(a) requires a recipient that provides housing to its nondisabled students provide comparable, convenient, and accessible housing to students with disabilities at the same cost as to nondisabled students.

The Title II regulations at 28 C.F.R. §35.130(a) provide that no qualified individual with a disability shall, on the basis of disability, be excused 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. The Title II regulations at 28 C.F.R. §35.130(b)(7)(i) also provide 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 modifications would fundamentally alter the nature of the service, program, or activity. This provision applies to all areas of the institution's programs and activities including those unrelated to academics or academic standards such as library programs, financial aid, registration, and counseling. Whether or not a particular modification or service would fundamentally alter the program is determined on a case-by-case basis. While cost may be considered, the fact that providing a service to an individual with a disability would result in additional cost does not of itself constitute an undue burden on the program.

In addition, the Title II regulations at 28 C.F.R. §35.130 (f), state that a public entity may not place 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 Act or this part.

Facts

The College states on its website that it is the first and only community college in Southern California to offer on-campus student housing, which is available at "The Harbour at Orange Coast College" (The Harbour).² The Harbour offers fully furnished, on-campus apartments to over 800 residents ranging in floor plans from studios to four-bedroom apartments.³

The College told OCR that it does not operate or own The Harbour. The Harbour is owned by a limited liability corporation that operates as a non-profit entity, and is managed by a private, third-party property management agent. The College explained to OCR that it has a Memorandum of Understanding with The Harbour, which focuses on sharing information in order to engage in student conduct procedures.

² <https://prod.orangecoastcollege.edu/services-support/gec/housing-and-homestay.html>

³ <https://theharbourocc.com/features>; <https://theharbourocc.com/floorplans>

A review of publicly available information indicates a close association and partnership between the College and The Harbour. For example, the complete name for The Harbour includes the name of the College, “The Harbour at Orange Coast College.” The Harbour is located on the College campus for the benefit of College students.⁴ The Harbour is featured prominently on the College’s website as its only on campus student housing, with a message from the College’s Director of Housing and Residential Education (College Housing Director) describing the many benefits to College students of living at The Harbour.⁵ The Harbour’s Resident Handbook contains the College logo, and it states that residents of The Harbour are subject to College policies governing student conduct, with extensive cites to and summaries of College policies and procedures.⁶

The Student is an individual with a disability and is registered with the College’s Disabled Student Programs & Services (DSPS). The Student uses a wheelchair and sought on-campus housing for the 2021-2022 school year to attend in-person classes. On May XX, 2021, the Student inquired about residing at The Harbour and stated her need for a private room and bathroom due to her disability. On May XX, 2021, The Harbour responded that, while one-bedroom units were sold out, two other floor plan options offer a private room and bathroom: the studio and two-bedroom single apartments⁷. On May XX, 2021, the Student applied for a studio apartment (single occupancy) and indicated on the application that she will “most likely require assistance from a nurse daily for medical needs” and that she is “wheelchair bound 24/7.” In May 2021, the Student entered into a one-year lease agreement for a studio apartment starting in August 2021 at the rate of \$2,050 per month.

OCR reviewed documentation which indicates that over a six-or-seven-week period starting in June 2021, the Complainant made multiple attempts, without success, to get in touch with The Harbour’s resident services manager (The Harbour Resident Manager) to discuss the Student’s housing accommodation needs, including information about the studio apartment and photographs in order to determine what modifications to the apartment, if any, needed to be requested. When the Complainant did not receive a response from The Harbour Resident Manager, she emailed a College counselor as well as the College Housing Department, asking for help to begin the process for arranging accommodations for the Student.

On July XX, 2021, The Harbour Resident Manager finally responded to the Complainant. She apologized for the delay and acknowledged the Complainant’s frustration in being unable to reach her but offered no explanation or reason for her lack of response.

On August X, 2021, the Complainant sent a lengthy email to The Harbour Resident Manager, with a copy to the College Housing Director, to request an accommodation that the Student be charged the rate of \$1,080 (instead of \$2,050) for the studio apartment. The Complainant stated that \$1,080 is the amount that a “typical student without a disability would pay for housing” at The Harbour. The Complainant explained the Student’s disabilities in significant detail, including the Student’s need for a private living space to take care of personal hygiene related to her disability as well as the Student’s need for a shower space that can accommodate the Student’s wheelchair. The

⁴ While The Harbour welcomes applications from non-students, College students receive placement priority and leasing contracts are designed with student residents in mind. <https://theharbourocc.com/faq>.

⁵ <https://prod.orangecoastcollege.edu/services-support/housing/index.html>

⁶ <https://prod.orangecoastcollege.edu/services-support/housing/docs/2021-2022-hre-handbook.pdf>

⁷ A two-bedroom single apartment allow both residents to have his/her own bedroom and bathroom.

Complainant stated that, but for the Student's disability, the Student would "live on campus with roommates just as most student[s] do" and that the Student should not be "required as a result of her disability to pay an increased rate for her accommodations." The Complainant offered to provide medical documentation to support the accommodations request. The same day, The Harbour Resident Manager responded that the Complainant's request would be reviewed by The Harbour's fair housing team.

A week later in a letter to the Student dated August X, 2021, The Harbour responded to the Complainant's accommodations request. The letter stated that The Harbour does not have apartments with a roll-in shower, but one could be installed for the Student "subject to your agreement to reimburse us for the cost of modification for the roll-in shower," which The Harbour estimated to be at least \$2,000 plus the cost of installation and freight. With respect to the request for rent reduction from \$2,050 to \$1,080 per month, the letter stated, "[W]e do not believe reducing your rent would be a reasonable accommodation," as "[r]ent reductions are generally not considered as accommodations for a disability and, in this case, it would pose an unreasonable financial burden on the owner to incur nearly \$12,000 of loss on an agreed contract." The Harbour concluded the letter by offering to discuss "options for termination or delegation" of the Student's lease if The Harbour is not suitable for her needs.

The College Housing Director was provided a copy of The Harbour's August X letter. On the same day, August X, 2021, she emailed the Director of DSPS and attached a copy of the letter, asking for his feedback. Her email to the DSPS Director stated, "I was copied on the determination today and had concerns about the response. Specifically, cost of the modifications to the building to accommodate for a roll-in shower are proposed to be charged to the resident and she was also denied the reduced rent request as she requires the privacy of a studio apartment for her personal hygiene processes."

Later the same day, the College Housing Director emailed The Harbour's property management agent. She wrote, "I reviewed the letter I am concerned by the response—especially given [the Complainant and the Student] did not receive one for 6+ weeks.... I spoke with our DSPS office regarding the determination made in this case and was advised that if they were reviewing such a request, they would consider the adjusted rental cost a reasonable accommodation if supported by the medical provider." Regarding the roll-in shower, the College Housing Director wrote, "We understand that this may not be required per Fair Housing law, but from a campus perspective this could be considered an accommodation per universal design standards." Two days later on August XX, 2021, the property management agent replied, "I am unsure of DSPS's knowledge or familiarity with reviewing and administering requests for accommodation under the Fair Housing Act.... [D]eterminations will be made accordingly by [the property management company's] Legal and Fair Housing review team who are specialists in administration of this Act."

On August XX, 2021, the Complainant responded to The Harbour's August X letter. She clarified that she never requested a roll-in shower as an accommodation for the Student and that a traditional tub and a curtain closure would suffice. With respect to the denial of the rent reduction, the Complainant wrote that she was appealing this decision. She asserted that the denial is discriminatory and contested The Harbour's position that a cost reduction of about \$1,000 per month was unduly financially burdensome.

On the following day, an attorney for the property management agent sent the Student a letter, dated August XX, 2021. OCR notes that this letter is substantially similar to The Harbour's August X letter to the Student. Notable differences include an acknowledgement that pursuant to the Complainant's email on the prior day, the Complainant is no longer requesting a modification to the bathroom for a roll-in shower. The letter also denied any allegation of disability discrimination. The letter stated, "We firmly deny that [The Harbour] or any of our employees or representatives have discriminated against you in any way.... We will also gladly respond to any legal body that may inquire regarding your requests and/or our policies."

In August 2021, the Student moved into the studio apartment at The Harbour. The Harbour did not reduce the Student's monthly rent that the Complainant had requested as an accommodation. The Complainant subsequently requested a modified rental payment plan as an accommodation, which the property management agent approved, whereby the Student was granted a temporary, partial deferred payment schedule for the August and September rent while the Student was waiting for her financial aid disbursement.

On August XX, 2021, the Complainant emailed the College President, asserting that the Student is being discriminated against on the basis of disability because she is required to pay a surcharge for the studio apartment that she needs based on her disability. There is no documentation of the College President's response to the Complainant's email.

In September 2021, the College approved the Student to receive a \$600 monthly rental credit for the 2021-2022 academic year.

In its written response to OCR, the College denied that it discriminated against the Student on the basis of disability, that the Student was required to pay a surcharge for the studio apartment, or that she requested a specific type of on-campus housing (i.e., a private room and bathroom) as an accommodation for a disability. The College indicated to OCR that The Harbour declined to reduce the Student's rent from \$2,050 to \$1,080 per month because the Student had already signed the lease agreement and because the rent reduction was not deemed to be a reasonable accommodation for a disability; in lieu of a rent reduction, the Student received other assistance in the form of \$600 monthly rental credit and a partial, deferred payment schedule.

More recently, on December XX, 2022, OCC informed OCR that the Student requested for her caretaker to have access to The Harbour and The Harbour verbally agreed.

The Harbour's Frequently Asked Questions (FAQ) regarding reasonable accommodations and modifications for residents with disabilities states, in relevant part, that depending on the circumstances, residents may have to pay for an accommodation or modification related to their disability. The FAQ explains that "some physical modifications to individual apartment homes may require the resident to pay for the modification and/or to restore the apartment after move-out."

Analysis

Under the Section 504 and Title II regulations, the College may not discriminate against students based on disability directly or through contractual, licensing, or other arrangements. 34 C.F.R. §

104.4(b)(1); 28 C.F.R. § 35.130(b)(1). Here, OCR found that the College discriminated against the Student through its contract and arrangement with a third party, the organization that owns and operates The Harbour.

Although the College does not own or manage The Harbour, the College offers a housing program for its students through an arrangement with The Harbour, and therefore, the College must ensure that The Harbour does not discriminate against its students with disabilities. Specifically, the full name of The Harbour includes the College's name and the College's logo is used in The Harbour's handbook. In addition, The Harbour is featured prominently on the College's web site as on-campus student housing, and the web site promotes the benefits of living at The Harbour. Furthermore, the residents of The Harbour are subject to College's policies governing student conduct, and the College's students also receive priority for housing at The Harbour.

Despite this arrangement, after The Harbour declined to provide the requested housing accommodations, the College failed to fully engage in an interactive process to determine how the Student would access the housing program through The Harbor without discrimination. Once a recipient receives notice that a student with a disability needs an accommodation, it has an obligation to engage in an interactive process concerning the student's disability and related needs. Specifically, Section 504 requires recipients to provide housing to its disabled students that is comparable, *including at the same cost*, as the housing that it provides to its nondisabled students. Similarly, Title II states that a public entity *may not place a surcharge* on a particular individual with a disability to cover the costs of measures, including program accessibility, that are required to provide that individual with nondiscriminatory treatment.

Here, the Student required a single occupancy apartment due to her disability and requested a rent reduction of about \$1,000 per month to make her rent comparable to that paid by students who have the option of living in shared housing. The Harbour denied the request in a letter dated August X, 2021. The College later offered a partial rent reduction to the Student but did not ensure that the Student was not discriminated against because she still paid more than nondisabled students living in shared housing.

OCR also found that the College's arrangement with The Harbour appears to require that students pay for the costs of modifications required for accessibility. Here, there was communication between The Harbour and the Complainant about whether the bathroom would accommodate the Student's wheelchair. The Harbour told the Complainant that it would install a roll-in shower if the Complainant paid for it, which The Harbour estimated at over \$2,000; the Complainant responded that a roll-in shower was not necessary. If a roll-in shower was necessary to make the bathroom accessible to the Student, the College would need to ensure that such accommodation was provided in a non-discriminatory manner. Instead, The Harbour's stated policy requires that residents with disabilities may have to pay for their accommodations or modifications. The College's arrangement therefore violates the regulations implementing Section 504 and Title II.

As such, the College failed to adopt and institute any mechanism or procedures to ensure that its program to provide on-campus housing through an arrangement with The Harbour was not discriminating against students with disabilities.

In addition, the College's response to the Complainant's complaints of disability discrimination violated Section 504 and Title II. The Section 504 regulations, at 34 C.F.R. § 104.7(b), require a

recipient employing 15 or more persons to adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging disability discrimination. The Title II regulations, at 28 C.F.R. § 35.107(b), similarly require a public entity employing 50 or more persons to adopt and publish grievance procedures that provide for the prompt and equitable resolution of disability discrimination complaints. OCR evaluates the appropriateness of a recipient's response to notice of disability discrimination by examining reasonableness, timeliness, and effectiveness. What constitutes a reasonable response will differ depending upon the circumstances. However, in all cases the recipient must conduct an impartial inquiry designed to reliably determine what occurred. The response must be tailored to stop the discrimination, remedy the effects of the discrimination, and take steps to prevent the discrimination from recurring. Here, on August XX, 2021, the Complainant emailed the College President alleging disability discrimination stemming from the denial of the rent reduction, but OCR did not receive any documentation from the College demonstrating that it responded to this complaint.

By a preponderance of the evidence and for the reasons stated above, OCR determined, in accordance with OCR's *Case Processing Manual* (CPM) subsection 303(b)⁸ that the College was not in compliance with the regulations implementing Section 504 and Title II.

To address OCR's findings, on January 18, 2023, the College entered into the enclosed resolution agreement (Agreement). Under the Agreement, the College will develop a written housing procedure to ensure that students with disabilities are provided an equal opportunity to participate in, and benefit from, housing opportunities at The Harbour in compliance with Section 504 and Title II. The Agreement also requires the College review its publications to ensure that they are consistent with Section 504 and Title II, to provide training to College and The Harbour staff on the housing procedures, self-monitor its housing accommodation/modification process, and reduce the Student's rental amount to the cost of a 2 Bed/2 Bath double occupancy apartment.

Overall Conclusion

This concludes the investigation of this complaint.

Based on the commitments made in the enclosed Agreement, OCR is closing the investigation of this complaint as of the date of this letter and notifying the Complainant concurrently. When fully implemented, the Agreement is intended to address the complaint allegations. OCR will monitor the implementation of the Agreement until the College is in compliance with the terms of the Agreement and the statutes and regulations at issue in the case.

OCR's determination in this matter 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

⁸ See OCR's Case Processing Manual (July 18, 2022), <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

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.

Please be advised that the College may not harass, coerce, intimidate, discriminate, or otherwise retaliate against any individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a separate retaliation complaint with OCR.

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

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Civil Rights Attorney Nezhia Burkes at Nezhia.Burkes@ed.gov.

Sincerely,

/s/

Naghmeh Ordikhani
Team Leader

Nezhia Burkes
Civil Rights Attorney

Enclosure

Copy to: Shannon Quihuiz, Associate Dean, Student Relations & Title IX (via email)