



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

June 15, 2017

W. Taylor Reveley III
President
College of William and Mary
P.O. Box 8795
Williamsburg, Virginia 23187-8795

Re: OCR Complaint No. 11-17-2097
Resolution Letter

Dear President Reveley:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on XXXX, against the College of William & Mary (the College). The complaint alleges that the College discriminated against students with disabilities, by requiring such students, who are assigned to a non-air-conditioned dormitory, to provide their own air conditioner at their own expense, even if the student has been approved to receive an air conditioner as an accommodation.

Jurisdiction

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.

In its investigation, OCR reviewed information and documentation submitted by the Complainant and the College. During the course of its investigation, the College expressed willingness to resolve this complaint prior to the conclusion of OCR's investigation, pursuant to Section 302 of OCR's *Case Processing Manual*.

Background

OCR reviewed documentation indicating that the College has established policies and procedures regarding the provision of services for students with disabilities. These policies state that the College will provide appropriate academic adjustments and other programmatic accommodations to qualified students with disabilities to ensure access to educational opportunities, programs, and activities in the most integrated setting available. The policies also state that the College will not charge students with disabilities a fee for the provision of approved appropriate academic adjustments and other programmatic accommodations.

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

OCR reviewed information about the College’s on-campus housing, including its policies and procedures, which are published on College’s Office of Housing website. With respect to air-conditioning, the website states generally that some on-campus residence halls are not air-conditioned; however, the room rates do not vary based on whether a residence hall has central air-conditioning or not. The College informed OCR that students requesting air-conditioning as an accommodation for a disability engage in an interactive accommodation process with the Director of the Office of Student Accessibility Services to discuss whether the student is best accommodated by living in a centrally air-conditioned residence hall, or whether the student prefers to obtain a window air-conditioning unit. Alternatively, if a student requires air-conditioning for medical reasons, but may not qualify as being an individual with a disability, and the student has not been assigned to a centrally air-conditioned residence hall or otherwise requires a window air-conditioning unit¹, then the student can send their medical documentation directly to the College’s Student Health Center to obtain approval to bring a window air-conditioning unit. The website states that the College will install the window air-conditioner at no additional cost to the student.² The College acknowledged to OCR that students with disabilities, who require window air conditioning units as a housing accommodation, have done so at their own cost.³

Legal Standards

Section 504 prohibits people, on the basis of disability, from being excluded from participation in, being denied the benefits of, or otherwise being subjected to discrimination by recipients of federal financial assistance or by public entities. 34 C.F.R. § 104.4. Section 504 prohibits affording individuals with disabilities an opportunity to participate in or benefit from aids, benefits, and services that is 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, 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

¹ The College explained that even if a residence hall has central air-conditioning, the hall may not receive central air-conditioning for the entire academic year. Therefore, some students may require a window air-conditioning unit for occasions when such a residence hall does not receive central air-conditioning.

² The College’s website <http://www.wm.edu/offices/residencelife/oncampus/residencehalls/acapproval/index.php> states, “In order to maintain the safety and condition of our buildings, we require that all student owned room air conditioners on campus either be inspected for safe and secure installation by Facilities Management staff or be installed by Facilities Management staff. Because this is mandatory, there will be no charge for this service.”

³ The College identified XXXX student in which the College paid for the student’s window air-conditioning unit based on XXXX. XXXX SENTENCE REDACTED XXXX. Accordingly, the Director of Student Accessibility Services determined it would be best to make sure that a window air-conditioning unit was purchased, installed, and tested in advance of the student’s arrival.

accommodations for students with disabilities is, as a whole, comparable to that of students without disabilities. 34 C.F.R. §104.45.

Analysis

Based on the investigation to date, OCR has a concern that the College's policy or practice of requiring students, who have been approved to receive air-conditioning as a disability-related housing accommodation, to purchase and bring their own air-conditioning unit to a residence hall.

In accordance with Section 302 of the OCR *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the institution expresses an interest in resolving the complaint and OCR determines that it is appropriate to resolve the issues under investigation with an agreement during the course of an investigation. Before OCR completed its investigation with respect to the allegation, the College expressed an interest in voluntarily resolving this case. In light of the College's willingness to address the concerns identified by OCR without further investigation, OCR determined entering into a voluntary resolution agreement was appropriate.

Conclusion

On June 14, 2017, the College agreed to implement the enclosed Resolution Agreement (Agreement), which commits the College to take specific steps to address the identified areas of concern. The Agreement entered into by the College is designed to resolve the issues of concern. Under Section 302 of OCR's *Case Processing Manual*, a complaint will be considered resolved and the College deemed compliant if the College enters into an agreement that, fully performed, will remedy the identified areas of concern. OCR will monitor closely the College's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the College has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II with regard to the issues raised. As stated in the Agreement entered into by the College on June 14, 2017, if the College fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the College written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint. 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 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 College's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Jeanette Tejada Bustos, the OCR attorney assigned to this complaint, at 202-453-6084 or jeanette.tejadabustos@ed.gov.

Sincerely,

/s/

Letisha Morgan
Team Leader, Team II
District of Columbia Office
Office for Civil Rights

Encl.