



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS  
400 MARYLAND AVENUE, SW  
WASHINGTON, DC 20202-1475

REGION XI  
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SOUTH CAROLINA  
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WASHINGTON, DC

November 18, 2021

*By Email: [swente@wfu.edu](mailto:swente@wfu.edu)*

Dr. Susan R. Wentz  
President  
Wake Forest University  
1834 Wake Forest Road  
Winston-Salem, NC 27109

RE: OCR Complaint No. 11-17-2111  
Resolution Letter

Dear Dr. Wentz:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education received on January 9, 2017 against Wake Forest University. The complaint alleges that the University discriminated against students on the basis of disability. Specifically, the complaint alleges that the University charges students with disabilities for the following approved housing accommodations: single rooms and access to a kitchen.

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.

During the investigation to date, OCR reviewed information provided by the Complainant and the University. Before OCR completed its investigation, the University expressed a willingness to resolve the allegation pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the school expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. The following is a summary of the evidence obtained by OCR during the investigation to date.

## **Legal Standards**

The regulation implementing Section 504, at 34 C.F.R. § 104.43(a), provides that no qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in any postsecondary education aid, benefit, or service, including housing. The regulation, at 34 C.F.R. § 104.45, also requires a college or university that provides housing to provide comparable, convenient, and accessible housing to students with disabilities at the same cost as to others. OCR interprets the Section 504 regulation to prohibit a college or university from imposing a surcharge on a particular individual with a disability or a group of individuals with disabilities to cover the costs of measures that are required to provide that individual or group with nondiscriminatory treatment.<sup>1</sup>

## **Factual Background**

The Complainant alleged that the University discriminates against students on the basis of disability by maintaining a policy of charging students who require a single room or kitchen as an accommodation for their disabilities the standard scheduled room rate for housing with those specifications.

The Complainant has not attended the University and did not identify any students at the University who were assessed a housing surcharge, as alleged. Nonetheless, the Complainant concluded that students with disabilities are charged an additional fee, or surcharge, for single occupancy rooms and rooms with a kitchen as an amenity that are essential to meet their disability-related housing needs based on his review of the University's website and a phone conversation with the Coordinator of Assignments that he alleged occurred on XXXXX. Specifically, the Complainant asserted that the University's website confirmed that the University's rates for single rooms and apartment-style housing was higher than other housing options. Additionally, he asserted that in a XXXXX phone call, the Coordinator of Assignments told him that students with disabilities who request a specific style of room or amenity within a room are always assessed the scheduled room rate, without exception.

The University's Office of Residence Life and Housing, which we will refer to as "the RL&H," provides oversight for University residential housing. During the 2017-2018 academic year, the University offered a three-tiered housing rate schedule based on the room style – namely single, double, and triple occupancy.<sup>2</sup> The University's apartments, which consisted of single and double rooms, were offered to students at the single occupancy rate, and rooms within suite-style living arrangements were either single or double occupancy and were assigned to students at the corresponding scheduled room rate. The rate for a single occupancy room exceeded that of a double or triple occupancy room.

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<sup>1</sup> OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation, which explicitly prohibits public colleges and universities from imposing such surcharges. 28 C.F.R. § 35.130(f). The regulation implementing Title III of the Americans with Disabilities Act of 1990, which applies to private colleges and universities and is enforced by the U.S. Department of Justice, contains a similar prohibition against surcharges at 28 C.F.R. § 36.301(c).

<sup>2</sup> The University noted that triple occupancy rooms were generally unavailable unless the student demand for housing exceeded the number of single and double occupancy rooms available.

While various on-campus residential halls and housing options are still offered to students, OCR reviewed the RL&H webpage and confirmed that during the current 2021-2022 academic year, the University continues to use a tiered room rate structure where, across the board, the rates are higher for single occupancy and apartment-style rooms as compared to the rate for a double occupancy room. According to the University, kitchens and other amenities are located in a variety of residence halls; there is not a separate fee or rate differential for rooms with kitchen access in the tiered housing rate schedule.

The University informed OCR that at the time the complaint was filed and continuing through the present, all undergraduate first-year, second- year, and third-year students are required to live in and are guaranteed campus housing. OCR's review of University student housing records for the 2016-2017 academic year and the University's website confirmed that first-year students are randomly assigned their residential housing location and roommates; however, first-year students may indicate a preference for a double or single room and requests may be granted based on room availability. Second and third-year students, on the other hand, self-select their housing, including, the residence hall, room style, and roommate(s) during the housing selection process.

OCR reviewed the University's housing accommodation process, which the University provided to OCR and makes available on its website. At the time this complaint was filed, the University explained that students with disabilities who are in need of a single room or a kitchen as a housing accommodation complete a housing accommodation request form and submit it to the University to initiate the accommodation process. Thereafter, to determine the appropriate accommodation, the University reviews the accommodation request, medical information and any other supporting information that the student has submitted, and then RL&H staff engage in discussion with the student to determine an appropriate housing assignment that meets the individual student's particular disability-related needs. If the housing request form is submitted in a timely manner, student with disabilities who request a housing accommodation self-select their housing accommodation prior to the start of the housing selection process.

With respect to the room rates charged for students requesting a single room or kitchen accommodation, the University stated that students with an approved housing accommodation are charged the standard rate for the room style. For example, students with disabilities who receive single occupancy rooms are charged the same single room rate as students without disabilities who live in a single occupancy room. The University provided, and OCR reviewed, data showing the room rates charged to students with disabilities with approved housing accommodations during the 2016-2017 academic year. The housing data supported the University's statement that the standard room rate is charged to students with approved disability-related housing accommodations. During a call on September 9, 2021, the University's Deputy General Counsel confirmed that the University's continued practice is to charge students with or without an approved disability-related housing accommodation based on the style of the room.

### **Analysis**

To avoid the potential imposition of a housing surcharge on a student who is approved to live in a single room or have access to a kitchen as a disability accommodation, a university should

make an individualized determination of the appropriate room rate to charge the student. Usually, an individualized determination would necessitate a determination regarding where the student would have lived and what rate the student would have been charged but for the disability accommodation; if that rate is lower than the rate the student is assigned to as an accommodation, then, generally, the university should charge the lower rate in order to prevent a surcharge.

Based on the University's assertions, OCR has concerns that the University's stated practice regarding its room rate assessments for students seeking disability-related housing accommodations is inconsistent with Section 504. Specifically, the University's statements and data about housing charges indicate that it may require a student to pay a higher cost for a particular disability-related housing accommodation than the student would have paid for housing had a disability not prevented him/her from living in other available campus housing.

On September 21, 2021, the University expressed an interest in taking voluntary action to resolve OCR's concerns pursuant to Section 302 of OCR's *Case Processing Manual*.

### **Conclusion**

On November 17, 2021, the University signed the enclosed Resolution Agreement which, when fully implemented, will address the allegation investigated. The provisions of the agreement are aligned with the allegation and the information obtained during OCR's investigation and are consistent with applicable law and regulation. The agreement requires the University to review and revise all relevant policies, procedures, and practices, as necessary, to ensure that students with disabilities with approved housing accommodations are not charged a higher residential room rate because of the need for accommodation. Additionally, the agreement requires the University to assess the rates charged to students with disabilities who were approved to receive a particular type of room as an accommodation during the 2019-2020 and 2021-2022 academic years and provide reimbursement of housing costs to students, where appropriate. Please review the enclosed agreement for further details. OCR will monitor the University's implementation of the agreement until the University has fulfilled the terms of the agreement.

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. OCR would like to make you aware that individuals who file complaints with OCR 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, assists, or participates in a proceeding under a law enforced by OCR. 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 Melanie Barr-Brooks at 202-245-8135 or [Melanie.Brooks@ed.gov](mailto:Melanie.Brooks@ed.gov) or Sara Clash-Drexler at 202-245-8097 or [Sara.Clash-Drexler@ed.gov](mailto:Sara.Clash-Drexler@ed.gov), the OCR attorneys assigned to this complaint.

Sincerely,

Dan Greenspahn  
Team Leader, Team #1  
District of Columbia Office  
Office for Civil Rights

Enclosure

cc: Dina Marty, University Deputy General Counsel ([dmarty@wfu.edu](mailto:dmarty@wfu.edu))