



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

XXXX

Via Email: tas6n@eservices.virginia.edu

Teresa A. Sullivan, President
Office of the President
University of Virginia
PO Box 400224
Charlottesville, Virginia 22904-422

RE: OCR Complaint No. 11-17-2144
Resolution Letter

Dear Ms. Sullivan:

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 (the Department) received on XXXX against the University of Virginia (the University). The Complainant alleges that the University discriminates against students on the basis of disability. Specifically, the complaint alleges that the University always charges students with disabilities the single room rate for single rooms received as an accommodation.

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. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the University receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

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.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.43(a), provides that a qualified person with a disability may not be excluded from participation in, denied the benefits of, or otherwise

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

subjected to discrimination in any postsecondary aids, benefits, or services on the basis of disability. The regulation at § 104.44(a) requires a university to modify its academic requirements as necessary to ensure that such requirements do not discriminate or have the effect of discriminating on the basis of disability against a qualified student with a disability. The regulation at § 104.44(d) requires a university to ensure that no qualified individual with a disability is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

Universities may establish reasonable requirements and procedures for students to provide documentation of their disability and request academic adjustments and auxiliary aids and services.¹ Students are responsible for obtaining disability documentation and for knowing and following the procedures established by the university. Once the student has provided adequate notice and documentation of his/her disability and the need for modifications due to the disability, the university must provide the student with appropriate academic adjustments and auxiliary aids and services that are necessary to afford the student an equal opportunity to participate in a school's program. However, the university is not required to make adjustments or provide aids or services that would result in a fundamental alteration of the university's program or impose an undue burden.

In determining what modifications are appropriate for a student with a disability, the university should familiarize itself with the student's disability and documentation, explore potential modifications, and exercise professional judgment. The question of whether a university has to make modifications to its academic requirements or provide auxiliary aids is determined on a case-by-case basis. Section 504 envisions a meaningful and informed process with respect to the provision of modifications, e.g., through an interactive and collaborative process between the university and the student. If a university denies a request for a modification, it should clearly communicate the reasons for its decision to the student so that the student has a reasonable opportunity to respond and provide additional documentation that would address the university's objections.

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 Title II regulation, at 28 C.F.R. § 35.130(f), prohibits a public college or university from imposing a surcharge on a particular individual with a disability or a group of individuals with disabilities to cover the cost of measures that are required to provide that individual or group with nondiscriminatory treatment. OCR has interpreted this provision as applicable to Section 504 as well.

Factual Background

¹ The Section 504 regulation addressing post-secondary education refers to "academic adjustments and auxiliary aids." When the term "accommodations" is used in this document, it refers to academic adjustments and auxiliary aids as those terms are used in 34 C.F.R. § 104.44.

The complainant alleged that the University discriminates, on the basis of disability, by having a practice that may have the effect of imposing a surcharge on students with disabilities requesting single dormitory rooms as an accommodation for a disability. Specifically, the complainant alleged that the University has a practice of always charging a single room rate to students who need a single room to accommodate a disability.

According to the University's website², the Student Disability Access Center (SDAC) receives requests, reviews documentation, and works with Housing and Residence Life to facilitate accommodation requests. OCR spoke with the Assistant Director for the SDAC, the Director of SDAC, the Associate Vice-President for Student Affairs, the University's Counsel, and the University's Equal Opportunity Officer. During the call, University staff explained that students with disabilities who are in need of a single room as an accommodation make the requests to the SDAC. It was also explained that, similar to a request for any disability-related academic accommodation, the University and the student engage in an interactive process for determining the appropriate accommodation. With respect to the rates charged for students requesting a single room accommodation, University staff stated that students are charged the standard rate for the style of room. For example, if a student receives a single room accommodation, he/she will pay the same single room rate for that particular dorm that any other student would pay. Staff noted that freshman housing has one rate, regardless of room style. However, upper classmen (returning students) housing has many variations. For these students, the University charges rates based on the room style (e.g., single, double, etc.), and these students pay the same amount that any other student who requested the room would pay.

Based on the University's assertions, OCR has concerns that the University's stated practice regarding the cost of housing accommodations is inconsistent with Section 504 and Title II, in that it has the effect of potentially subjecting students requesting housing accommodations to a surcharge. Specifically, the University's statement indicates that it may require students with disabilities to pay a higher cost for a particular housing accommodation than he/she would have paid for housing had his/her disability not prevented him/her from living in other available housing on campus.

On July 14, 2017, the University expressed an interest in taking voluntary actions to resolve OCR's concerns pursuant to Section 302 of OCR's *Case Processing Manual*.

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the University signed the enclosed Resolution Agreement on December 4, 2017 which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with the allegation 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 the case. Failure to implement the Agreement could result in OCR reopening the complaint.

² See <https://sdac.studenthealth.virginia.edu/accommodation-and-services>

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, 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 Kendra Riley, the OCR attorney assigned to this complaint, at 202-453-5905 or Kendra.Riley@ed.gov.

Sincerely,

/s/

David Hensel
Team Leader, Team III
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Catherine Spear, Associate Vice President
Office for Equal Opportunity and Civil Rights