



**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

October 31, 2022

By email only to president@XXXXX.edu

XXXXX
President
XXXXX
XXXXX
XXXXX, Virginia XXXXX

Re: Case No. 11-22-2187
XXXXX

Dear President XXXXX:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of this complaint filed against the University of Virginia. The Complainant alleged that the University discriminated against him on the basis of disability. Specifically, the complaint alleged that the University discriminated against the Complainant when it failed to engage in the interactive process before denying his request for an accommodation of University housing with a private bathroom for the 2022-2023 academic year.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 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 that receive federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, 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. The University receives federal financial assistance from the Department of Education is a public entity, so OCR has jurisdiction over it pursuant to Section 504 and Title II.

In reaching a determination, OCR reviewed documents provided by the Complainant and the University, and interviewed University staff. After carefully considering all of the information obtained during the investigation, OCR found sufficient evidence of a violation of Section 504 and Title II, which the University agreed to resolve through the enclosed resolution agreement.

OCR's findings and conclusions are discussed below.

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

www.ed.gov

Legal Standard

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 subjected to discrimination in any postsecondary aids, benefits, or services on the basis of disability, including housing.

The Title II regulation, at 28 C.F.R. § 35.130(b)(7) requires a public college or university to 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 the modifications would fundamentally alter the nature of the service, program, or activity.

Schools may establish reasonable requirements and procedures for students to provide documentation of their disability and request reasonable modifications. Students are responsible for obtaining disability documentation and for knowing and following the procedures established by the school. Once the student has provided adequate notice and documentation of his/her disability and the need for modifications due to the disability, the school must provide the student with appropriate reasonable modifications that are necessary to afford the student an equal opportunity to participate in the school's program.

In determining what modifications are appropriate for a student with a disability, the school should familiarize itself with the student's disability and documentation, explore potential modifications, and exercise professional judgment. The question of whether a school has to modify its policies, practices, or procedures is determined on a case-by-case basis. OCR generally does not substitute its judgment for that of qualified educators and professionals regarding modifications. Instead, OCR reviews relevant factual evidence to determine whether a school acted in a reasonable manner and whether it took appropriate steps consistent with Section 504 and Title II in making decisions regarding a student's eligibility for reasonable modifications. The school and the student should engage in an individualized process to determine appropriate modifications. If a school 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 school's objections.

The Section 504 regulation, at 34 C.F.R. § 104.45, further provides that a college or university receiving funding from the Department that provides housing to its students without disabilities will provide comparable, convenient, and accessible housing to students with disabilities at the same cost as to others. It adds that such housing shall be available in sufficient quantity and variety so that the scope of students with disabilities' choice of living accommodations is, as a whole, comparable to that of students without disabilities.

Facts

The Complainant enrolled as a student in the University's XXXXX Program for the 2022-2023 academic year. On XXXXX, the Complainant contacted the University's Student Disability Access Center (SDAC) and spoke with a coordinator about the process for applying for accommodations, including the XXXXX accommodation of a XXXXX, due to his disabilities,

including XXXXX. The coordinator informed him of the process for applying for a XXXXX accommodation through SDAC and Housing and Residence Life (HRL), and scheduled a phone call appointment for the Complainant to speak with the SDAC Director about his accommodation request on XXXXX.

According to the University's policies, the SDAC receives requests, reviews medical documentation, and works with HRL to facilitate students' accommodation requests. A student applying for a XXXXX accommodation must submit a XXXXX application to HRL and a Request for Housing Modification form to SDAC, as well as a verification of disability form. The policy also notes that "priority will go to students who submit the housing accommodation forms by the published deadlines" and if a request is not made by that deadline, the University will do "whatever it can to meet the accommodation needs, but it will be subject to room availability."

The deadline for applying for graduate housing was XXXXX. On XXXXX, the Complainant spoke with the SDAC XXXXX about applying for a housing accommodation and explained that he had difficulty submitting documentation online and instead mailed it to SDAC. The Complainant told the XXXXX he would be submitting an application for a housing accommodation to SDAC and HRL for a XXXXX and the XXXXX stated that she would speak with HRL about housing availability. On XXXXX, HRL informed the SDAC Director that there were no more one bedroom units available.

The Complainant submitted his application requesting a XXXXX on XXXXX. The application stated that due to his disabilities, the Complainant "will need a XXXXX including a XXXXX." The same day, the SDAC XXXXX spoke with the Complainant and acknowledged receipt of his housing application form but informed him that the SDAC had still not received his disability documentation. The SDAC Director also informed the Complainant that there were limited rooms available and that HRL had told her that his housing accommodation request would likely not be met.

The Complainant emailed his disability documentation to the SDAC Director on XXXXX. The documentation included a letter from a physician dated XXXXX stating: "XXXXX." On XXXXX, the Complainant emailed the XXXXX of HRL about his housing accommodation application and requested that HRL meet his accommodation of a XXXXX or find an alternative housing option that could meet his accommodation. The HRL XXXXX responded that HRL would be noting the Complainant's extenuating circumstances and accommodation needs but that the University does not "have space available that meets your needs." She stated that HRL had been assigning room since XXXXX and all of the one-bedrooms had been assigned. She also provided the Complainant with a link to information on the University's website about off grounds housing.

The Complainant then emailed the HRL XXXXX on XXXXX, requesting an explanation of the housing assignment process and an understanding of why his accommodation could not be met. The HRL XXXXX responded to the Complainant on XXXXX and explained that the priority application for housing was XXXXX and by the time the Complainant submitted his application, all of the one-bedroom apartments had been contracted. She added that "since [the Complainant has] a need for a one-bedroom apartment and [the University has] none available," she is not sure

what the Complainant would suggest as a resolution. She stated that HRL would keep him updated “if another student should decide not to attend [the University] and cancel their housing, but unfortunately that is not likely to occur.”

However, on XXXXX, the Complainant emailed the XXXXX and stated that he had received an automated email notification from HRL that two-bedroom units were still available. He asked to be considered for a two-bedroom with a fee waiver for one of the bedrooms as an alternative to his original accommodation request. The HRL XXXXX wrote to the Complainant on XXXXX that all the graduate housing had been assigned so she could not assign him a two-bedroom apartment and “in the process deny housing to two other graduate students that applied for housing before [the Complainant] did,” but if they reach his name on the waitlist, they will let him know. According to the HRL XXXXX, she considered undergraduate housing for the Student, but it was full. In XXXXX 2022, the Complainant moved into off-campus housing for the 2022-2023 academic year because nothing was available on campus that fit his disability-related needs.

The University indicated that undergraduate housing options were filled as of XXXXX, graduate one-bedrooms were assigned by XXXXX, and no fully vacant multi-unit apartments were available by XXXXX. The University confirmed that HRL put the Student on the waitlist for housing in the order his application was received, along with all other students applying for graduate housing.

On XXXXX, OCR spoke with the Complainant, who confirmed that he is currently living in off campus housing far from campus and that his commute to the University includes a XXXXX walk on a XXXXX to a XXXXX, where he takes a public bus to campus. The Complainant noted that this commute was particularly challenging because his disability sometimes necessitated fast access to a XXXXX, which was not always possible when walking or on a public bus. He further noted that his disability sometimes delayed his commute to campus, resulting in tardiness.

Analysis

OCR determined that the Complainant first contacted SDAC to request a housing accommodation of a XXXXX on XXXXX and submitted his application with the required medical documentation to support the request by XXXXX. OCR found that the University denied the request on XXXXX without engaging in an individualized process to determine whether there were alternative accommodations available that could accommodate the Complainant’s disability-based housing needs. For example, despite the fact that the Complainant never limited his request to a single room, the University did not consider whether any private, two-bedroom units were available that would be an appropriate accommodation until after the Complainant explicitly inquired about them on XXXXX, which was five days after the last two bedroom apartment unit was assigned. As such, OCR finds that XXXXX room accommodations were available to the Complainant as of XXXXX but were not considered as an alternative reasonable modification.

Additionally, although the Complainant missed the housing application deadline of XXXXX, the University confirmed to OCR that it did not place him at the top of the waitlist once his application materials were received on XXXXX. This is evidenced by the University’s decision to deny the Complainant’s housing accommodation request on XXXXX because two other graduate students

had applied for two bedroom housing before the Complainant did, even though this housing was otherwise available. As a result, the University failed to provide the Complainant with an appropriate reasonable modification necessary to afford the Complainant an equal opportunity to participate in the school's program. Thus, OCR found sufficient evidence to conclude that the University denied the Complainant an equal opportunity to participate in the University's programs in violation of Section 504 and Title II.

Conclusion

On XXXXX, the University agreed to implement the enclosed Resolution Agreement, which, when fully implemented, will address the identified violations. OCR will monitor the University's implementation of the agreement until the University is in compliance with the terms of the agreement and the statutes and regulations at issue.

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 against the University 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, OCR will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We appreciate the University's cooperation in the resolution of this complaint. If you have any questions, please contact the OCR attorneys assigned to this complaint, Sebastian Amar at Sebastian.Amar@ed.gov, and Amy Fellenbaum at Amy.Fellenbaum@ed.gov.

Sincerely,

XXXXXX
XXXXXX, XXXXXX
XXXXXX
XXXXXX

Enclosure

cc: XXXXXX
XXXXXX