



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

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MICHIGAN
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August 20, 2019

Gabrielle A. Lincoff, Esq.
Associate Counsel
Office of General Counsel
Case Western Reserve University
10900 Euclid Avenue
Cleveland, Ohio 44106-7020

Re: OCR Docket #15-17-2050

Dear Ms. Lincoff:

This is to notify you of the disposition of the above-referenced complaint filed with the U.S. Department of Education's Office for Civil Rights (OCR) against Case Western Reserve University (the University), alleging discrimination on the basis of disability. Specifically, the complaint alleged that the University discriminates against students with disabilities in its housing program by charging students who need air conditioning as disability-related service a fee for use of an air conditioner.

OCR enforces Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104 (Section 504), which prohibit discrimination on the basis of disability by recipients of Federal financial assistance. As a recipient of such financial assistance from the U.S. Department of Education, the University is subject to this law. OCR, therefore, had jurisdiction to investigate this complaint.

During OCR's investigation, OCR interviewed the Complainant and University personnel, and reviewed documentation from the University and information on the University's website. Before OCR completed its investigation, the University asked to resolve this complaint voluntarily, and OCR determined that it was appropriate do so under Section 302 of OCR's Case Processing Manual (CPM).

Summary of Investigation to Date

According to the complaint, the University's website stated that "[i]nallation and use of non-University-supplied air-conditioning equipment is prohibited. Air conditioners may be requested for medical reasons subject to medical verification and approval from the Office of Disability Resources. A \$250 per semester surcharge applies to any student with an approved air conditioner." The Complainant also said that he spoke with an employee of the University's

housing department, who told him that all students are charged the same amount for air conditioning.

OCR reviewed the University's website on February 18, 2017, and February 21, 2018. At <https://students.case.edu/housing/housing/firstyear/chooseroom.html>, the website stated:

MEDICAL ACCOMMODATION

If you have an approved medical accommodation, please contact our office to discuss your assignment....If you feel you need a specific medical accommodation, please review the information from the Office of Disability Resources about obtaining approval for a medical accommodation.

15. AIR CONDITIONERS

Installation and use of non-University-supplied air-conditioning equipment is prohibited. Air conditioners may be requested for medical reasons subject to medical verification and approval from the Office of Disability Resources...A \$250 per semester surcharge applies to any student with an approved air conditioner.

As of August 2019, this web page had been changed and the paragraph about air conditioners no longer appeared.

In addition, the University provided OCR with copies of its policies related to the issues in question. The University's Disabilities Resources Policies and Procedures state:

Students needing non-academic accommodations such as housing modifications, special room assignments or housing releases, handicapped parking, responsive transportation, or other programmatic or physical access should follow the same guidelines for documentation as described [in a section of the same policies and procedures document]. Once a determination of reasonable accommodations is made, a staff member from Disability Resources will authorize the accommodation [sic] other University departments, as appropriate. **Students are responsible for following all required procedures for obtaining services or products from other University Departments** (e.g. completing a housing application, parking application, etc.).

The University also provided OCR with its Fall 2016 and Fall 2017 Air Conditioning Policies.

The Fall 2016 Air Conditioning Policy states:

As a general rule, air conditioners are not allowed in student rooms. Air conditioners are permitted when they are installed to accommodate a medical condition, and only upon the authorization from the Office for Disability Resources. All air conditioners must be installed by the University. The University will cover all costs associated with the air conditioners.

Students must contact the Office of Disability Resources...to begin the authorization process for an air conditioner....

The Fall 2017 air conditioning policy, titled “AIR-CONDITIONING UNITS” and incorporated into the University residence hall agreement as of the 2017-2018 year, states:

Students, who may have medical needs for air-conditioned air, may submit documentation and a request through Disability Resources. Disability resources will notify the Office of University Housing of any approved needs. If approved, students may bring a portable unit to campus as long as it meets certain guidelines.

1. Students are required to purchase and maintain their own, portable air conditioning unit....
2. Upon review and approval, Housing maintenance will block the window and provide a way for the student to attach the exhaust hose of the air-conditioner.

The Policy details the timeframe for requests and installation, describes the type of air conditioning unit that may be utilized, and states that students accept responsibility for any damage to the facility or student belongings that results from its use.

The University’s Residence Hall Agreement 2017-2018 states:

Air conditioners may be requested for medical reasons only subject to medical verification and approval from the Office of Disability Resources....The approved student must provide their own free-standing AC unit, per Housing guidelines.

OCR interviewed the University’s disability services director, who confirmed that the University’s policy previously posted at its website had been changed and that the University no longer charges a \$250 per semester surcharge for students with an approved air conditioner. She also confirmed the current policy—that students who need air conditioning for reasons related to disability are to bring their own air conditioning units, which the University installs.

Legal Standards and Analysis

The Section 504 implementing regulation prohibits recipient institutions from excluding qualified individuals with disabilities from participation in, denying them the benefits of, or otherwise discriminating against them on the basis of disability in their programs and activities, including, for postsecondary education recipient institutions, housing programs. 34 C.F.R. §§ 104.4(a) and 104.43(a). The Section 504 regulation also prohibits affording qualified individuals with disabilities an opportunity to participate in or benefit from aids, benefits, or 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). Further, the regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(4), states that a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability.

While OCR has not yet completed its investigation, evidence received to date indicates that the University requires students who need air conditioning as a disability-related aid or service to supply their own machines.

Voluntary Resolution and Conclusion

Under Section 302 of OCR's CPM, allegations under investigation may be resolved at any time when, prior to the issuance of a final investigative determination, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. In this case, the University expressed an interest in resolving the allegations prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On August 5, 2019, the University signed the enclosed Resolution Agreement which, when fully implemented, will address the allegation in the complaint. OCR will monitor the implementation of the Resolution Agreement.

This concludes OCR's investigation of the complaint and 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.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment. Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, OCR will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy. The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

OCR looks forward to receiving the University's first monitoring report by August 31, 2019. For questions about implementation of the Agreement, please contact Ms. Karla Ussery. She will be overseeing the monitoring and can be reached by telephone at (216) 522-2683 or by e-mail at Karla.Ussery@ed.gov. If you have questions about this letter, please contact me at (216) 522-7634.

Sincerely,

/s/

Donald S. Yarab
Supervisory Attorney/Team Leader

Enclosure