



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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NEW YORK, NEW YORK 10005

RACHEL POMERANTZ
DIRECTOR
NEW YORK OFFICE

September 10, 2021

Sent by email only to Andrew.Hamilton@nyu.edu

Andrew D. Hamilton, Ph.D.
President
New York University
70 Washington Square South
New York, New York 10012

Re: Case No. 02-17-2026
New York University

Dear Dr. Hamilton:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), with respect to the complaint filed against New York University. The Complainant alleged that the University discriminates on the basis of disability, by imposing a housing surcharge on single dormitory rooms, and dormitory rooms with kitchens, air conditioning and other amenities, provided as accommodations for a student's disability.

OCR enforces 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 Department. The University is a recipient of financial assistance from the Department. Therefore, OCR has the authority to investigate this complaint under Section 504.

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity that receives or benefits from Federal financial assistance. 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.

In addition, 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 regarding housing in a postsecondary education program or activity. The regulation implementing Section 504, at 34 C.F.R. § 104.45(a), states that a recipient that provides housing to students without disabilities shall provide comparable, convenient, and accessible housing to students with disabilities at the same cost as to others. The housing must be available in sufficient quantity and

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variety so that the scope of choice of living accommodations for disabled students is, on the whole, comparable to that of nondisabled students.

In its investigation, OCR interviewed University staff. OCR also reviewed documentation that the Complainant and the University submitted. OCR made the following determinations.

The Complainant alleged that the University discriminates, on the basis of disability, by imposing a housing surcharge on single dormitory rooms, and dormitory rooms with kitchens, air conditioning and other amenities, provided as accommodations for a student's disability.

In support of his allegation, the Complainant asserted that single rooms are more expensive than double rooms; and students requiring a single room are charged the more expensive single room rate even if they require a single room to accommodate a disability. The Complainant further asserted that the University charges a higher room rate for rooms with kitchens, air conditioning and other amenities, even if a student needs such amenities to accommodate a disability.

OCR determined that for academic years 2015-2016 and 2016-2017, the University offered housing in 23 residence halls; of these, 21 offered air conditioning, and 16 offered kitchens, including all upperclass and graduate housing.¹ In all, the 23 residence halls contained housing for approximately 11,400 students. The University offered a variety of rooms at different rates, such as: "efficiency" or "shared" rooms for 2 or 3 persons in a studio or suite; private rooms in a suite; and private studios. In academic year 2015-2016, the University charged 23 different room rates, which ranged from \$3,971 per semester for an efficiency studio in a building without air conditioning or a kitchen, to \$13,580 per semester for an apartment-style private studio with a kitchen in an air-conditioned building. The median rate in academic year 2015-2016 was \$7,030 per semester; single rooms or studios were offered at nine different rates, with a median rate of \$9,247.

The University's Housing Application Procedure, which is outlined in the University's Informational Packet for Requesting Reasonable Housing Accommodations (the Informational Packet), states that all students seeking housing accommodations based on disability must complete the Reasonable Housing Accommodations Request Form and submit supporting documentation from a healthcare provider. The Reasonable Housing Accommodations Committee (the Committee), which includes representatives from the University's Moses Center for Students with Disabilities, the Student Health Center, and the Office of Residential Life and Housing Services (Housing), reviews each request and supporting documentation, notifies the student of the Committee's decision regarding the request, and submits approved accommodations to Housing. A student may appeal the Committee's decision if the Committee denies the request in whole or in part.

With respect to room selection, the University's Senior Director of Housing Services stated that new students are assigned to a room that meets their accommodation, taking into account the preferences the student expressed on their housing application, including a preference for lower-

¹ One additional residence hall offered a kitchen, but not air conditioning. During the course of OCR's investigation, the University informed OCR that this residence hall, Rubin, will be undergoing a number of renovations, including the installation of air conditioning, during academic year 2022-2023.

cost housing. For returning students, prior to the room selection process for students without disabilities, the University offers students with disabilities at least two options for rooms that meet their approved disability accommodations, taking into account other preferences stated in the student's housing application.² The student may select from the options offered, request another available room, or decline the offered rooms and enter the general room selection lottery.

For academic years 2015-2016 and 2016-2017, approximately 275 students were approved to receive housing accommodations for a disability. Housing accommodations approved during academic years 2015-2016 and 2016-2017 included: wheelchair accessible units; single rooms with air conditioning; private or limited share kitchens and/or bathrooms; and proximity to a campus building, dining hall or public transportation.

OCR reviewed the Informational Packet in effect for academic years 2015-2016 and 2016-2017, which stated that all Department of Housing room rates applied to students with disabilities; single rooms typically cost more than most typical shared rooms on campus;³ and “[k]itchen facilities, air conditioning and other amenities also affect room rates.”⁴ In the spring of 2017, the University revised the Informational Packet to exclude this quoted language and the statement that all Department of Housing room rates apply to students with disabilities. However, the Informational Packet for academic year 2020-2021 refers to the University's Housing Rates for Academic Year 2020-2021, without stating that the University may adjust the rate for housing provided as an approved accommodation.

The Senior Director of Housing Services acknowledged that during academic years 2015-2016 and 2016-2017, the University's practice was to charge all students the published room rate regardless of whether a certain room type and/or housing amenity was provided as an approved accommodation for a disability. He stated that the University could deviate from published room rates for students with disabilities; however, the University had not made any rate adjustments during academic years 2015-2016 and 2016-2017. The Senior Director of Housing Services stated that during academic years 2015-2016 and 2016-2017, the University engaged in individual assessments and accommodated student preferences based on inventory, e.g., by offering lower-cost rooms when available. OCR found that in all instances during academic years 2015-2016 and 2016-2017, disabled students requiring a single room, or a room with a certain amenity, as an accommodation for a disability were charged the published room rate. Such rates were, in some instances, higher than less expensive room options available to non-disabled students who did not require a single room, or a room with a certain amenity, to accommodate a disability.

The University expressed an interest in resolving the complaint and OCR determined that it was appropriate to do so. On September 9, 2021, the University signed the enclosed resolution agreement to resolve the complaint allegation. OCR will monitor the implementation of the resolution agreement.

² During the course of OCR's investigation, the University informed OCR that it had updated its practices to ensure that students with disabilities are provided at least one low-cost housing option.

³ Beginning in academic year 2016-2017, the University created lower cost single rooms in two residence halls that charged the same rates as shared rooms in the same buildings.

⁴ See Informational Packet, *available at*

https://www.nyu.edu/content/dam/nyu/amosCenter/documents/CSD_0211_Informational_Packet_for_Requesting_Reasonable_Housing_Accommodations.pdf (last visited September 9, 2021).

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 a right to file a private suit in federal court whether or not OCR finds a violation.

It is important for you to understand that the laws OCR enforces prohibit the University from harassing, coercing, intimidating, or discriminating against the Complainant because the Complainant filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another 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, it 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.

If you have any questions, please contact Sandy Araj, Compliance Team Attorney, at (646) 428-3879 or Sandy.Araj@ed.gov; David Krieger, Senior Compliance Team Attorney, at (646) 428-3893 or David.Krieger@ed.gov; or Andy Artz, Senior Compliance Team Attorney, at (646) 428-3901 or Alexander.Artz@ed.gov.

Sincerely,

/s/

Rachel Pomerantz

Encl.

cc: Brittany Schoepp-Wong, Esq.