

Legal Opinion: GME-0012

Index: 9.206

Subject: Use of Recreational Facilities by Children

September 29, 1992

Mr. David Gillespie  
Executive Manager  
Camelot Square Mobile Home Park  
3001 South 288th  
Federal Way, Washington 98003

Dear Mr. Gillespie:

This responds to your August 7, 1992 letter, which requests information about which types of restrictions on the use of swimming pools and recreation rooms by children are legal and which are illegal under the Fair Housing Act ("the Act").

The Act prohibits housing discrimination because of familial status, except in housing which qualifies as "housing for older persons" as defined in section 807(b) of the Act and 24 C.F.R. Part 100, Subpart E. Discrimination against families with children in the terms, conditions, or privileges of sale or rental, or in the provision of services or facilities in connection with the sale or rental, is prohibited by section 804(b) and 24 C.F.R. 100.65 (1992).

An individual who believes he or she has been injured by a violation of the Act may file a complaint with the Department of Housing and Urban Development ("HUD"). 42 U.S.C. 3610. This letter describes the factors the Department would consider in evaluating whether policies are discriminatory, if someone were to file a complaint with the Department alleging that your policies violate the Act. However, an individual may file a lawsuit in Federal district court or state court without going through the HUD process. 42 U.S.C. 3613. Since the Department's determinations are not binding on courts faced with similar situations, I cannot give you complete assurance as to what policies are or are not permissible.

The Department believes that housing providers may not impose rules which unreasonably limit the use of privileges, services, or facilities associated with a dwelling because of familial status. 24 C.F.R. 100.65(b). However, the Department does not believe that Congress intended the Act to preclude housing providers from implementing reasonable health and safety rules. 24 C.F.R. Ch. I, Subch. A, App. I at 877 (1992). Accordingly, if an individual were to file a complaint alleging that rules limit the ability of families with children to use the common facilities of a mobile home park, the Department would consider the facts of the specific case, including the rationale for the rules, the breadth of the limitations the rules place on families with children, and whether the rules are mandated pursuant to a state or local requirement

and, if so, whether those state or local requirements are reasonable.

Concerning pool rules, you indicate that you have been advised by the Seattle Regional Office of Fair Housing and Equal Opportunity ("FHEO") that "adult only" swim times for seniors and adults with small children are prohibited, and that requiring adult supervision and written authorization from a parent or guardian for children under age 14 to use a pool is also prohibited. You assert that Washington State health regulations require that children under 12 be accompanied by a "responsible adult" at a pool and also require persons ages 13 to 17 to be accompanied by "two people" at a pool. You suggest that the Act be amended specifically to allow housing providers to: (1) comply with State Health Department regulations, (2) restrict up to 30 percent of the hours which a pool is open for adult use, and (3) require that a parent or guardian designate, in writing, an adult supervisor to accompany a child to a pool.

Rules which restrict children from using swimming pools during certain hours could prevent families with children from having full use and enjoyment of the premises. To be lawful, a housing provider must have a health or safety reason for excluding families with children from using a pool during certain hours. Your letter does not indicate any circumstances that would necessitate a restriction on pool hours for health or safety reasons. In contrast, requiring a responsible adult to supervise young children and provide written designation of an adult supervisor are policies which appear more tailored to protect legitimate health and safety interests and appear less problematic. However, I would suggest that, with respect to rules requiring supervision, you consider less discriminatory alternatives such as revising the policy to require nonswimmers to be accompanied by a responsible swimmer.

I have enclosed a consent order which the Department has entered into, Secretary v. Huie (HUDALJ 06-89-0401-1), as well as a determination of reasonable cause and charge of discrimination, Secretary v. Lerner (Case No. 09-89-1172-1). These cases show two situations in which the Department made a reasonable cause determination that rules limiting the use of pools by children violate section 804(b) of the Act and 24 C.F.R. 100.65(b)(4).

As far as the relationship between state or local health regulations and the Act, it should be noted that if a housing provider limits his or her pool rules to those required pursuant to state or local health regulations, the Department would consider this factor when making a determination where a complaint is filed.

Concerning recreation room rules, you indicate that you have been advised by HUD's Seattle Regional Office of FHEO that you may not maintain a separate "adult" and children's game room. You also indicate that the equipment in the adult's game room is being "trashed by the young people." You suggest that the Act be amended to allow housing providers to restrict the use of game and recreation rooms and equipment by age, "as long as all age groups have access to similar game/rec rooms and equipment."

As with swimming pools, rules which restrict children from using recreation or game rooms could prevent families with children from having full use and enjoyment of the premises. To be lawful, the housing provider must have a health or safety reason for excluding families with children from using those facilities. Your letter does not indicate any circumstances that would necessitate a restriction on the use of such facilities for health or safety reasons. However, there is no reason under the Act why individuals who damage recreation room property may not be excluded from such facilities, pursuant to a general policy applicable to all persons regardless of age. Furthermore, a policy which would require a responsible adult to supervise children in game or recreation room facilities would appear more tailored to protect legitimate health and safety interests and appear less problematic. I have enclosed a determination of no reasonable cause in *Fernandez v. Kastes* (Case No. 04-89-0350-1), which illustrates one situation in which the Department determined that it was reasonable and non-discriminatory for a landlord to require adult supervision of children under the age of 18.

I hope that this information will be of assistance to you.

Very sincerely yours,

Frank Keating  
General Counsel

Enclosures