



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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April 13, 2023

Via E-mail Only to: Jennifer.Emling@legacytraditional.org

Ms. Jennifer Emling
Superintendent
Legacy Traditional Schools-Nevada
325 Inflection Street
Henderson, Nevada 89011

Re: Legacy Traditional School–Henderson, NV
OCR Reference No. 10231062

Dear Superintendent Emling:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has resolved the above-referenced complaint against the Legacy Traditional School–Henderson, NV (School), opened for investigation on February 1, 2023. OCR investigated whether the School discriminated against a student (hereinafter, “the Student”), on the basis of disability by:

- (1) failing to provide the Student with a XXXXXXXXXXXXXXX, as required in his Individualized Education Plan for XXXXXXXXXXXXXXX during the beginning of the 2022-2023 school year; and
- (2) failing to determine in a timely manner whether the Student required additional special education and related aids and services.

As explained below, prior to completion of OCR’s investigation, the School expressed an interest in voluntarily resolving the complaint and signed the enclosed Voluntary Resolution Agreement (agreement) to address the complaint allegation.

OCR investigated this case under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504), and the regulations that implement that statute at 34 C.F.R. Part 104. This federal

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civil rights law prohibits discrimination based on disability in programs and activities receiving federal financial assistance. OCR also investigated this case under the authority of Title II of the Americans with Disabilities Act of 1990, and the regulations that implement that statute at 28 C.F.R. Part 35, which prohibits disability discrimination by public entities. The School receives federal financial assistance from this Department and is a public entity, therefore, it is required to comply with these laws.

The Section 504 implementing regulation, at 34 C.F.R. § 104.33(a), states that a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

The Section 504 implementing regulation, at 34 C.F.R. § 104.33(b), states that, for the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that: (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met; and (ii) are based upon adherence to procedures that satisfy the requirements of 104.34, 104.35, and 104.36.

The Section 504 implementing regulation, at 34 C.F.R. § 104.35(a), states that a recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

The Section 504 implementing regulation, at 34 C.F.R. § 104.35(c), states that in interpreting evaluation data and in making placement decisions, a recipient shall: (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered; (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (4) ensure that the placement decision is made in conformity with 104.34.

The Section 504 implementing regulation, at 34 C.F.R. § 104.35(d), states that a recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A re-evaluation procedure consistent with the Individuals with Disabilities Education Act (IDEA) is one means of meeting this requirement.

Title II has regulations that are interpreted consistent with Section 504 and its implementing regulations.

OCR's investigation to date indicated that: (1) the Student was not provided with XXXXXXXX during the beginning of the 2022-2023 school year; and (2) the parent made requests for additional services for the Student related to the Student's disability, and, several months after the request, the School had not made a decision regarding the requested services.

In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint allegations and OCR determines that it is appropriate to resolve the issues under investigation with an agreement during an investigation. In this case, the School requested to resolve the allegations before OCR concluded its investigation. Based on the School's willingness to comprehensively address the concerns identified by OCR without further investigation, OCR has determined that it is appropriate to enter into a Voluntary Resolution Agreement. Subsequent discussions with the School resulted in the enclosed agreement.

When fully implemented, the agreement will address the evidence obtained and the allegations investigated.

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.

This concludes OCR's investigation of the complaint. The complainant may have the right to file a private suit in court regardless of OCR's determination.

Please be advised that the School may not harass, coerce, intimidate, or discriminate against any individual because the individual 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, we 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.

OCR will monitor the implementation of the agreement and will close the monitoring of the agreement when OCR determines that the School is in compliance with the terms of the agreement and the statute and regulations at issue in this case.

Thank you for the cooperation that you and your staff extended to OCR staff in resolving this complaint. If you have any questions, please feel free to contact Lauren Boothe, Attorney, by telephone at (202) 987-1250, or by e-mail at Lauren.Boothe@ed.gov.

Sincerely,

Paul Goodwin
Supervisory Attorney

cc: Honorable Jhone Ebert
Office of the Superintendent
Nevada Department of Education
Via E-mail Only to: rebecca.williams@doe.nv.gov

XXXXXXX
Director of Exceptional Student Services
Vertex Education
Via E-mail Only to: XXXXXXXXXXXX

XXXXXXXXXX
Vice President of Exceptional Student Services
Vertex Education
Via E-mail Only to: XXXXXXXXXXXX

Enclosure: Voluntary Resolution Agreement