



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD, SUITE 310  
DENVER, CO 80204-3582

REGION VIII  
ARIZONA  
COLORADO  
NEW MEXICO  
UTAH  
WYOMING

November 8, 2016

Executive Director William Gregory  
Legacy Traditional School  
3201 South Gilbert Road  
Chandler, Arizona 85286

Re: Legacy Traditional School  
Case Number: 08-16-1249

Dear Mr. Gregory:

We have completed our investigation of the above-referenced complaint filed on March 22, 2016, against Legacy Traditional School (the School), alleging discrimination on the basis of disability. Specifically, the Complainant alleged the School failed to provide his son (Student) a free appropriate public education (FAPE) by failing to implement his Section 504 plan when it placed air fresheners in his classroom.

We conducted an investigation under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation, which prohibit discrimination on the basis of disability in programs and activities funded by the U.S. Department of Education (Department); and Title II of the Americans with Disabilities Act (Title II) and its implementing regulation, which prohibit discrimination on the basis of disability by public entities. The School is subject to Section 504 and Title II because it is a recipient of Federal financial assistance from the Department and a public entity.

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports or is insufficient to support the conclusion. In the investigation, we carefully considered information the Complainant provided, data submitted by the District, the District's response to the complaint, and witness interviews. Based on a preponderance of the evidence, we find that there is sufficient evidence to establish that the District discriminated against the Student as alleged. This letter explains our findings.

**1. Failure to provide the Student a FAPE by failing to implement his Section 504 plan when it placed air fresheners in his classroom.**

The Section 504 regulations, specifically, 34 Code of Federal Regulations (C.F.R.) § 104.33, requires public school districts to provide a FAPE to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids

and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of 34 C.F.R. §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. OCR interprets the Title II regulations, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

The Student was placed on a Section 504 plan on September 11, 2015 for his respiratory condition, and the plan stated that air fresheners should not be placed in the Student's classroom. Internal emails and witness interviews indicate that an air freshener was erroneously placed in the Student's classroom in December 2015 or January 2016. The Principal told OCR that she simply made a mistake in that at the time she thought the Section 504 plan only prohibited air fresheners that gave off particulates. The Complainant stated that the parents discovered this on February 17, 2016 and complained to the School. The School removed the air fresheners from all classrooms within days.

### *Conclusion*

Because we found sufficient evidence to substantiate the allegation that the School failed to implement the Student's Section 504 plan, we conclude that there is sufficient evidence to find that the District is in noncompliance with Section 504 and Title II.

On November 4, 2016, we received the School's signed Resolution Agreement (copy enclosed). When the Agreement is fully implemented, the allegations will be resolved consistent with the requirements of Section 504 and Title II and their implementing regulations. OCR will monitor the School's implementation of the Agreement through periodic reports demonstrating the terms of the Agreement have been fulfilled. We will promptly provide written notice of any deficiencies with respect to the implementation of the terms of the agreement and will promptly require actions to address such deficiencies. If the School fails to implement the Agreement as specified, OCR may initiate administrative or judicial proceedings as described in the Agreement.

Please note a complainant may have the right to file a private suit in federal court whether or not OCR finds a violation. The School is prohibited from intimidating or harassing anyone who files a complaint with our office or who takes part in an investigation.

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 School 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 Complainant 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, personal information, which, if released, could constitute an unwarranted invasion of privacy.

If you have any questions or concerns about our findings, you may contact Danée Attebury, the investigator assigned to this complaint at (303) 844-XXXX.

Sincerely,

/s/

Danée Attebury  
Acting Team Leader

Enclosures – Resolution Agreement

cc: Diane Douglas, Superintendent of Public Instruction