

The following article tells a story of a rare teacher who fought teacher abuse in the courts and ended up winning. Her win was for much more than herself; as long as districts can silence teachers by abusing them, children remain vulnerable pawns for White Chalk Criminals that operate above the law. In addition, this is just one more piece of proof that teacher abuse is embedded in this fraudulent culture running our schools. Until the public insists it stops, it will remain the most valuable tool in our EducRAT\$' arsenal for perpetuating White Chalk Crime. NAPTA

<http://www.examiner.com/examiner/x-19093-Seattle-Special-Needs-Issues-Examiner~y2009m11d3-Special-Ed-teacher-wins-retaliation-suit-for-flagging-IDEA-noncompliance#>

Special Ed teacher wins retaliation suit for flagging IDEA non-compliance

November 3, 1:03 PM ▪ [Seattle Special Needs Issues Examiner](#) ▪ Shelley Dillon

A California special education teacher has won a suit for retaliation because she spoke out about the limited services provided to her special education students. According to an article in [Disability Scoop](#), Susan Barker was a resource specialist in Riverside, Calif. in 2005 when she raised red flags about the limited services provided to students with disabilities in the school district and that the school district was "non-compliant to federal and state laws".

She made a formal complaint to the U.S. Department of Education's Office for Civil Rights. At that time, she says, her superiors in the school district began to retaliate and made the work environment "intolerable".

Barker says her colleagues stopped communicating by phone and e-mail, excluded her from staff meetings, limited her responsibilities and changed her work location. As a result, she alleged in a lawsuit against the school district that she was "constructively terminated" in August 2006 because her employer "subjected her to an intolerable work environment."

She took the school district to court, which concluded that she lacked standing to sue because she does not have a disability and was claiming retaliation for advocating on behalf of her students under section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

On appeal, however, the U.S. Court of Appeals for the Ninth Circuit said

otherwise, asserting that educators do have the right to claim retaliation if they are acting on behalf of their students.

More about this case:

District employee had right to sue for retaliation for asserting disabled students rights under ADA and § 504 of the Rehabilitation Act

The U.S. Court of Appeals for the Ninth Circuit (CA, OR, WA, AZ, MT, ID, NV, AK, HI, GU, MP) has ruled that a special education teacher has standing to bring a retaliation suit against a school district for her asserting the rights of disabled students under Title II of the Americans with Disabilities Act (ADA) and § 504 of the Rehabilitation Act (§ 504).

Susan Barker was employed by the Riverside County Office of Education (RCOE) as a Resource Specialist Program teacher for students with disabilities. Barker became embroiled in a dispute with RCOE over the level of services the school district was providing to disabled students. She eventually filed a complaint with the U.S. Department of Education's (ED) Office for Civil Rights (OCR) charging RCOE was failing to provide disabled students with a free appropriate public education as required under state and federal law. She claimed that RCOE officials retaliated against her for filing the OCR complaint by taking several adverse employment actions against her that made the work environment intolerable. Because of that environment Baker alleges she resigned and was, thus, constructively terminated. She filed a complaint with OCR charging RCOE with retaliation. OCR subsequently issued a ruling that RCOE had retaliated against Baker in violation of § 504 and ADA. Baker filed suit in federal district court in California alleging RCOE had violated the anti-retaliation provisions of both § 504 and ADA by retaliating against her after she advocated on behalf of her students with disabilities. The district court dismissed Baker's suit on the ground that she did not have standing to sue under either statute.

The Ninth Circuit reversed the lower court and remanded the case for further proceedings. It concluded that the anti-retaliation provisions of both § 504 and ADA grant "standing to non-disabled people who are retaliated against for attempting to protect the rights of the disabled." The appeals court began its analysis of the § 504 retaliation claim by examining the statutory language of § 504's anti-retaliation provision. It found that the provision had been incorporated from the anti-retaliation provision in Title VI of the Civil

Rights Act. It rejected RCOE's argument that standing to bring suit under the provision is limited to those persons with disabilities. It pointed out that neither § 504 nor its anti-retaliation provision contain "language requiring such individuals to have disabilities in order to have standing." It also noted neither provision "requires the protected individual to have any "close relationship to a disabled person," as RCOE had asserted. It found that giving such broad reach to the anti-retaliation provision was "consistent with Congress's statutory goal to protect the rights of the disabled." While acknowledging that it was not controlling authority, the appeals court pointed to OCR's conclusion upon completion of investigation that "[a]dvocacy on behalf of disabled students on issues related to their civil rights, and the filing of [Office for Civil Rights] complaints, are protected activities under Section 504 and Title II" as persuasive authority. Regarding the ADA claim, it stated, "As in our analysis of section 504 of the Rehabilitation Act, the language employed in the anti-retaliation provisions of Title II does not evince a congressional intent to limit standing to individuals with disabilities." In addition it found that the regulations implementing the ADA's anti-retaliation provisions reinforced the conclusion that Baker had standing. It also determined that the district court had erred in concluding that Baker would have standing to sue only under Title I of the ADA because Baker was not asserting that she had been discriminated against by her employer on the basis of a disability, but rather she was asserting the rights of disabled students to public services covered by Title II.

Baker v. Riverside County Office of Educ., No. 07-56313 (9th Cir. Oct. 23, 2009)

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