

## Attention, Class: Seventh Circuit Finds Preferred Teaching Methods Not Protected Activity Under ADA And Section 504

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A former special education teacher, who claimed to have engaged in a protected activity when she defended her teaching methods following a negative performance evaluation, could not show that the school district discriminated against her when it terminated her. Finding no evidence of discrimination, the U.S. Court of Appeals for the Seventh Circuit affirmed the district court's grant of summary judgment in favor of the school in [Frakes v. Peoria School District No. 150](#). After receiving an "unsatisfactory" rating based on several deficiencies, including teaching performance, the teacher and 54 others were honorably dismissed pursuant to a reduction in force in accordance with Illinois law. The teacher filed a case against the school in federal court, asserting violations of Section 504 of the Rehabilitation Act of 1973. Section 504 is a sister statute to the Americans with Disabilities Act of 1990 (ADA). In the employment discrimination context, Section 504 mirrors the standards applied under Title I of the ADA. Her claim may have survived if she had set forth evidence that the school failed to provide a free, appropriate public education to students with disabilities by restricting necessary teaching methods identified in the student's Individualized Education Plan. Instead, the teacher claimed the discrimination was based on the school's refusal to accept her preferred method for educating students. In the end, the court determined the teacher failed to demonstrate that she engaged in a protected activity, holding that Section 504 protects assertions of right, not preferred, subjective teaching methods. Prior to making a termination decision, employers should consider whether a negative evaluation was based on preferred teaching methods and whether those methods were connected to providing a free, appropriate public education. If the answer to those questions is "yes," the employer may want to consider seeking legal counsel, as an adverse employment action could run afoul to Section 504.

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