

## Employer's 'Stirring Up' Testimony Allows Plaintiff To Pursue Section 504 And ADA Claims

April 3, 2017 | [Employment Discrimination, Currents - Employment Law](#)

A case out of the U.S. District Court for the Western District of Tennessee provides a useful reminder that employers must exercise caution when responding to reports of potential protected activities. The case, *Hicks v. Benton County Board of Education*, involved a special education aide who spoke to special education parents about services their students failed to receive. Upon learning this information, the principal instructed the plaintiff to cease talking directly to parents concerning what was going on in the program and to instead follow the district's chain of command to address program concerns. Despite this instruction, the aide continued to speak directly to parents regarding concerns about the special education program. The aide claimed that she truthfully responded to parents' questions about the services rendered to their children in the classroom. The district declined to renew the aide's contract the following year and the aide pursued retaliation claims under Section 504 and the Americans with Disabilities Act (ADA). In denying summary judgment, the court focused on the fact that not only could the aide's conversations with parents about the program qualify as advocacy, but the district's decision not to renew her employment for the following year could be an adverse action. Most notably, the principal's deposition testimony stated that the aide was "stirring up" trouble by sharing information the principal believed to be confidential. The court found that the principal's testimony suggested he declined to renew the aide's employment because of her advocacy. In the court's view, "a reasonable jury could conclude that the spectre of not being rehired would dissuade a reasonable person from engaging in the protected activity at issue in this case." Holding that the aide pleaded viable claims for retaliation under Section 504 and the ADA, the District Court denied the district's motion for judgment. In the end, *Hicks* makes clear that employers must use caution when responding to questions regarding employment decisions, and that consulting with legal counsel throughout the process is advisable.

### RELATED PRACTICE AREAS

- Arbitration and Grievances
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- ADA
- ADA requirements
- Americans with Disabilities Act
- special education