

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Karen Abbott,  
  
Plaintiff,

Court File No. \_\_\_\_\_

vs.

**COMPLAINT  
JURY TRIAL DEMANDED**

Independent School District 518,  
  
Defendant.

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Plaintiff Karen Abbott, by her undersigned counsel, and for her Complaint against Defendant Independent School District 518, respectfully states as follows:

**PARTIES**

1. Plaintiff Karen Abbott (“Plaintiff” or “Abbott”) is an individual who resides in the City of Sioux Falls, County of Minnehaha, State of South Dakota.
2. Defendant Independent School District 518 (“Defendant” or “ISD 518”) is a Minnesota school district located in the City of Worthington, County of Nobles, State of Minnesota.

**JURISDICTION AND VENUE**

3. This is an action brought to remedy Defendant’s retaliation against Abbott in violation of the Minnesota Whistleblower Act, Minn. Stat. § 181.931, *et seq.*

4. This Court has original jurisdiction over this lawsuit pursuant to 28 U.S.C. § 1332(a) in that the amount in controversy exceeds \$75,000.00 exclusive of interests and costs, and the matter in controversy is between citizens of different states.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Defendant resides in this judicial district, and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this judicial district.

### **FACTS**

#### **I. Abbott's Employment With ISD 518**

6. ISD 518 hired Abbott on June 15, 2017 as a Special Education Teacher; in that role, she reported to Barry Fischer ("Fischer"), the Principal of Worthington Area Learning Center ("WALC") in Worthington, Minnesota.

7. Abbott holds a teaching license in South Dakota, and at the time of her hire, WALC secured a Learning Disabilities variance for one year to allow time for Abbott to enroll in a special education licensing program.

8. As a Special Education Teacher, Abbott taught students who qualified for special education services and Individual Education Plans ("IEPs") under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.* ("IDEA").

9. IEPs are written statements of the educational program designed to meet a student's individual education needs. Students that qualify for special education services must have an IEP. IDEA regulations provide specific guidelines for the creation and alteration of IEPs, including the initial qualifying evaluation, the makeup of a student's IEP team, the initial IEP team meeting to create an IEP, and the procedures for changing

a student's IEP. The IDEA requires written parental consent to conduct initial evaluations and to accept special education services for their child. *See* 34 C.F.R. § 300.300.

## **II. Abbott's Observations of IDEA Violations By ISD 518 Administration And Staff**

10. From the start of Abbott's employment and during the 2017-2018 school year, she observed violations of the IDEA and conduct resulting from a culture of bias against the special education program by several WALC administrators, teachers, and staff. More specifically, Abbott observed and reported that: (1) most IEPs were incorrect or contained deficiencies; (2) ISD 518 failed to follow the IEPs with respect to student schedules (*e.g.*, a student is supposed to have math with a special education teacher, but was placed in general education math), accommodations (*e.g.*, a seat at the front of the class is reserved for a special education student to minimize distractions), and modifications (*e.g.*, a special education student's exam has 10 questions compared to a general education student taking the same exam with 50 questions); and (3) ISD 518 failed to follow IDEA regulations with respect to changing IEPs.

## **III. Abbott Openly Objects To ISD 518 IDEA Violations And Discriminatory Practices Against Special Education Students**

11. On September 7, 2017, Abbott made her first report of deficient/incorrect IEPs and incorrect student schedules to her mentor, Vickie Lord Anderson ("Anderson"), a Special Education Teacher at Worthington Middle School.

12. Abbott also began reporting her concerns of the District's policies and treatment of the special education students (described below) to her therapist, Christine Ellis ("Ellis") on September 20, 2017.

13. On September 29th, Abbott texted Anderson, and informed her that she was having a difficult time with the way the students were being treated and felt like she was about to cry. Anderson called Abbott and suggested that they meet with Deb Stoll ("Stoll"), the Special Education Director at WALC, to discuss.

14. On October 2, 2017, Abbott met with Anderson and Stoll. During that meeting, Abbott again reported the Defendant's violations of the IDEA – specifically, that Defendant's IEPs had incorrect federal settings,<sup>1</sup> and a student with federal setting two<sup>2</sup> was supposed to only have one or two classes with Abbott, but was in her classroom all day with the exception of Abbott's planning period.

15. Additionally, during this meeting Abbott objected to other conduct she considered to be detrimental to the best interests of her students. For example, Abbott experienced frequent interruptions from WALC office secretaries during student instruction time for the purpose of calling a student to Fischer's office, usually for purportedly disciplinary reasons. The subsequent discipline for absences was imposed

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<sup>1</sup> Reference to federal instructional settings, which breaks down a child's special education needs on a scale of 01-08. One of the purposes for federal settings is to ensure that students are learning in the least restrictive environment.

<sup>2</sup> A student with federal instruction setting 02 receives education in a resource room. Students with setting 02 are outside of the regular classroom 21-60% of the school day. See [https://arcminnesota.org/content/uploads/sites/3/2016/06/Arc-Guide-to-LRE-in-Special-Education-and-Federal-Setting\\_June-2016-2.pdf](https://arcminnesota.org/content/uploads/sites/3/2016/06/Arc-Guide-to-LRE-in-Special-Education-and-Federal-Setting_June-2016-2.pdf).

without Abbott's knowledge or presence, despite it being Defendant's policy for the special education teacher to be present for disciplinary actions. Abbott explained she had repeatedly requested to be present for discipline of her students, but had been ignored.

16. Stoll stated she would talk to Fischer about Abbott's concerns and that one of them would speak with Abbott further. Indeed, after the October 2<sup>nd</sup> meeting (described below), Abbott was hopeful that Stoll was going to address the issues, but instead her working conditions deteriorated.

17. Neither Stoll nor Fischer ever followed up with Abbott about the report she made during the October 2, 2017 meeting. However, after this meeting Fischer began routinely interrupting Abbott's classes, sometimes several times a day. Indeed, the frequency of Fischer's interruptions increased as Abbott continued reporting ISD 518's IDEA violations.

18. On October 5, 2017, two students were called to Fischer's office for discipline due to absenteeism without being accompanied by Abbott. Approximately three weeks earlier, Abbott learned that Fischer delegated the power to decide whether an absence was excused or unexcused to his secretary, Rhina Galvez ("Galvez"), which Abbott called into question at the time. This created multiple issues for Abbott in her role. First, many special education students have cognitive challenges preventing them from understanding what they are told. As the special education teacher, Abbott's responsibility was to help maximize and facilitate the education experience, including attending disciplinary actions. Second, Galvez openly used biased criteria in her disciplinary decisions, especially against older special education students, to make her

determinations. Specifically, Galvez used the prior year's record of absenteeism or tardiness to determine whether she would mark a special education student excused or unexcused. Frustrated that this conduct continued after her initial reports, Abbott informed Stoll of the issue and asked to revisit the student's IEPs to determine whether the students' absenteeism was due to their disabilities – which is permissible under the IDEA. Stoll became agitated and stated to Abbott: “You can't do that. These kids have to play by the rules like everyone else and need to get to school on time, we're not excusing them!” Later that afternoon Galvez verbally attacked Abbott for questioning her attendance policies, which persisted until Abbott finally asked her to leave the room. Kylie Vis (“Vis”), Abbott's paraprofessional, witnessed this interaction

19. Abbott became increasingly concerned about retaliation from Fischer as she continued to advocate for her students. For example, On October 6, 2017, Abbott emailed school guidance counselor, Jamie Wahl (“Wahl”), and expressed concern that she would lose her job if she tried to intervene in any way.

20. On October 12, 2017, Abbott conducted her first IEP meeting with Wahl, Fischer, and general education teacher Ray Lowry (“Lowry”), for an adult student who was set to graduate on November 2, 2017, but fell behind due to severe depression and anxiety. During this meeting, Abbott stated that the student's IEP provided for accommodations and modifications to his assignments. Specifically, a general education teacher must provide shortened assignment and accept late work for full credit no matter when it came in. The student's business teacher, Sheri Harder (“Harder”), objected to the IEP requirement that she accept the student's late assignments. Through the month and

into November, Fischer and Stoll ignored Abbott's attempts to enforce the student's IEP requirements. Fischer condoned Harder's disregard of the student's IEP until Abbott was able to convince Lindsay Jenniges ("Jenniges"), the Worthington Senior High School social worker, to assist her with this issue. Jenniges contacted Cheron Doyscher ("Doyscher"), head of the high school special education department, who in turn, contacted Fischer to inform him that the accommodations and modifications specified in an IEP must be followed under the IDEA. Only then did Fischer require Harder to accept the student's late assignments for credit; however, he did not require Harder to honor the modification of shortening the student's assignments, pursuant to the student's IEP. Thus, Fischer continued to knowingly and willingly violate the IDEA.

#### **IV. Defendant Retaliates Against Abbott Leading To Her Constructive Termination**

21. On October 17, 2017, Fischer informed Abbott that he had removed her from the "Problem Solving Team" – *i.e.*, the team that helps general education teachers who are concerned that students may need special education services develop interventions before a special education evaluation process is commenced. Fischer told Abbott that he believed she "had her hands full" and was therefore replacing her on the Problem Solving Team with Wahl (who has no special education or teaching experience). Abbott was the only individual Fischer removed from the Problem Solving Team. Abbott never complained of her position on the Problem Solving Team, and neither Fischer nor anyone else had ever discussed Abbott's workload with her as it pertained to the team.

22. During the week of October 30, 2017, Abbott continued to report Harder's failure to follow the aforementioned-student's IEP to Fischer and Stoll, because the student was expected to graduate at the end of the week. Fischer again brushed off Abbott and said that he would "check into" the issue. Stoll was similarly dismissive, and stated she would talk to Fischer. Ultimately, Harder changed the student's grade, but did so in a way that could be viewed as embarrassing and degrading to the student (*e.g.*, Harder wrote, "Turned in very late on 11/1/17. Grade changed per IEP ~ "MODIFIED GRADING"). Harder refused to honor the mandated IEP accommodations and modifications, enter grades that would allow the student to graduate, and required the student to stay after school to complete missing work even though he had done enough to graduate. Only after Abbott repeatedly and directly raised the legal requirement to follow IEPs to Harder, Stoll, Fischer, Jenniges (who contacted Doyscher), and Doyscher (who contacted Fischer) did Harder give the student enough points to graduate. Nevertheless, Fischer stated he was not going to require Harder to follow the rest of the accommodations/modifications, and that Abbott needed to "let go" of the issue.

23. On November 3, 2018, Harder confronted Abbott in her classroom and berated her for insisting that she comply with the student's IEP – to the point of Abbott breaking down in tears. Harder refused to leave Abbott's room until Abbott picked up the phone to call for help. Vis witnessed Harder's verbal attack on Abbott.

24. On November 7, 2017, Abbott met with Fischer and Stoll to discuss Harder's behavior. Although Abbott objected to Harder's verbal attack on her, Fischer and Stoll refused to discuss the incident during this meeting. Instead, Fischer told Stoll



that general education teachers should not have to make the IEP accommodations and modifications they deemed “unnecessary,” and stated he wanted to rewrite students’ IEPs to accommodate the teachers. Stoll agreed, stating that Abbott could make these changes. Abbott refused, and pointed out to Fischer and Stoll that making changes to IEPs without parental consent violates the IDEA. Stoll disagreed with Abbott.

25. On November 8, 2017, Fischer and Stoll moved forward with their plan, and Stoll requested an IEP meeting be set to change a student's schedule, against Abbott’s objection. Fischer scheduled an IEP meeting which did not include the parent or student of transition age. Abbott emailed Stoll and objected to making a change in the schedule. In a follow up telephone call, Stoll made the decision to change the student’s schedule regardless of Abbott’s concerns and desire to involve the parents in this decision, as parental consent is required. Stoll was firm in her decision to make the change and decided that no IEP meeting was needed, and had it canceled by Fischer.

26. When Abbott was absent the following day, Stoll and Fischer conducted the IEP meeting anyway, making yet another change to the student’s schedule, without Abbott, the case manager, or the student of transition age and their parents—required members of an IEP team.

27. Meanwhile, Fisher continued to visit Abbott’s classroom multiple times a day – a practice in which Fischer did not engage with respect to any other teacher in the school. During one visit the week of November 27, 2017, Dr. Katie Clarke (“Clarke”), Director of Teaching and Learning, accompanied Fischer. The two informally reprimanded Abbott for allegedly being seven minutes late that morning and for another

teacher overhearing Abbott use a curse word, although it was said in private, during instruction time – completely away from any student’s earshot. Abbott then informed Clarke, in front of Fischer, that Fischer allowed other ISD 518 employees to harass and berate her – and that she believed this treatment was in retaliation for her repeated reports of IDEA violations within ISD 518. Clarke’s response was that Abbott needed to “follow the rules.” Abbott replied by stating that she *was* following the rules, at which point Clarke told her in substance to get in line with the way things were done at ISD 518.

28. At the start of the second semester Abbott objected to Stoll that she was teaching a student with a federal setting four, which she was not permitted to do given the needs of the student and her qualifications. Stoll instructed Abbott to just change the student’s IEP setting so the federal setting and the student’s schedule would align with what Abbott could teach. Abbott refused to follow Stoll’s illegal instruction.

29. In January 2018, the District’s retaliation against Abbott for her reports of – and refusal to participate in – illegal activity finally came to a head. One of Abbott’s students was diagnosed with Type 1 Diabetes and was hospitalized, missing several school days as a result. Because the student did not have a doctor’s note, Fischer and Galvez refused to excuse the student’s absence. In an effort to advocate for the student, Abbott referred this student, among others, to PACER (*i.e.*, a student advocacy group that provides assistance to children with all disabilities) for assistance, and informed Fischer of the same on January 9<sup>th</sup>. PACER can be viewed as problematic for districts that do not follow IEPs or the IDEA more generally, because the group will attend IEP meetings and ensure that IEPs and the laws surrounding them are being followed correctly.

30. Shortly after Abbott contacted PACER, Stoll informed Abbott that the deadline for her to be committed to getting a special education license had been moved to February 15, 2018, which contradicted Stoll's former statement that Abbott had the entire year to commit to getting her license. One of Stoll's purported reasons for moving the deadline was to post the position by February 15, 2018 and to fill it if necessary. However, Abbott's last day was January 23<sup>rd</sup>, and yet, the position was not posted until April 4<sup>th</sup>.

31. Within four (4) days of the call from PACER requesting student records, Fischer and Stoll began writing Abbott's formal reprimand.

32. On January 23, 2018, the same day PACER contacted Stoll for information regarding the above-mentioned student, Fischer met with Abbott and presented her with a notice of formal reprimand for "Due Process and Insubordination" dated January 16, 2017. Abbott was not notified of or given an opportunity to challenge any of the allegations contained in that reprimand, nor did she have a union representative present (even though she requested one).

33. The formal reprimand Abbott received amounted to a work of fiction. Faced with the choice of signing this retaliatory formal reprimand and remaining in a hostile work environment, on the one hand, or resigning, on the other hand, Abbott had no choice but to resign her position. Abbott submitted a resignation letter to ISD 518, dated January 24, 2018.

**V. Abbott Experienced Extreme Emotional Distress Due To Defendant's Actions**

34. Abbott steadfastly sought therapeutic assistance from Ellis to develop strategies to manage the stress and acrimony created by ISD 518 on numerous occasions, including October 4<sup>th</sup>, 12<sup>th</sup>, 18<sup>th</sup>, 26<sup>th</sup>, November 1<sup>st</sup>, 9<sup>th</sup>, 29<sup>th</sup>, 30<sup>th</sup>, and December 20<sup>th</sup>, 2017, and January 4<sup>th</sup>, 10<sup>th</sup>, 18<sup>th</sup>, and 24<sup>th</sup>, 2018, before ISD 518 constructively terminated her employment. Since the end of her employment with Defendant, Abbott sees Ellis twice per month to work through the harassment she endured, and continues to endure (which is addressed further below).

35. In the middle of November 2017, Abbott noticed a rash began to develop on her right shoulder, which grew and spread down her back and onto her arms. On November 24, 2017, Abbott visited acute care to obtain a diagnosis and receive treatment for the rash. She informed her physician about the tremendous amount of stress she felt due to her employment with Defendant. Her doctor diagnosed her with Folliculitis, and prescribed an antibiotic. Nevertheless, the rash did not improve and spread to Abbott's legs.

36. On November 27, 2017, Abbott visited Johanna Gronewold ("Gronewold"), a physician's assistant for her primary doctor. Abbott informed Gronewold of the stress she was enduring at work, as well as her doctor's first diagnosis. Gronewold theorized that it could be a stress rash or scabies. Gronewold prescribed Prednisone, and Permethrin cream for scabies. Neither treatment had any effect on the rash.

37. On December 12, 2017, Abbott revisited Gronewold, and informed her that the stress at work was growing, and that she would cry nearly every day on her way home from work. Abbott's pulse was extremely high, and she was prescribed Xanax. Another physician's assistant at the clinic examined the rash, believed it could be fungal, and took a sample of it for testing (the tests were negative). Nevertheless, Abbott was prescribed a six-week course of anti-fungal medication in the event of a false-negative test result.

38. On December 26, 2017, Abbott had an appointment with a dermatologist. Her doctor immediately thought Abbott's rash was Guttate Psoriasis, which can be triggered by strep infection (which Abbott did not have) or stress. Abbott was prescribed a strong steroid cream, which did not immediately help the rash. However, after Abbott no longer worked for the District, the rash finally started to fade.

39. On April 2, 2018, Abbott had an appointment with Gronewold, because Abbott also experienced a sudden weight gain. The stress Abbott experienced raised her cortisol levels, and caused her to gain weight.

40. Abbott remains unemployed despite her best efforts to find suitable alternate employment

## **CAUSES OF ACTION**

### **COUNT I**

#### **I. Retaliation in Violation of the Minnesota Whistleblower Act, Minn. Stat. § 181.931, *et seq.***

41. Plaintiff incorporates the allegations of Paragraphs 1 through 40 as if fully re-stated herein.

42. Defendant, through its officials acting on their behalf and within the scope of their employment, engaged in unlawful employment practices involving Abbott in violation of the MWA, Minn. Stat. § 181.931 *et seq.* These practices include, but are not limited to, taking adverse action against Plaintiff which materially affected the terms, conditions, and privileges of her employment, and ultimately constructively terminating Abbott, because she reported facts constituting violations of the IDEA.

43. Defendant failed to take all reasonable steps to prevent retaliation based upon Abbott's reports from occurring.

44. Abbott's reports of violations of the IDEA were a motivating factor in her adverse treatment and termination.

45. Defendant's retaliatory conduct has deprived Abbott of equal employment opportunities and otherwise adversely affected her status as an employee.

46. The unlawful employment practices complained of above were intentional and were performed by Defendant with malice or reckless indifference to the MWA, which protects Abbott.

47. As a direct and proximate result of Defendant's illegal conduct, Abbott has suffered, and continues to suffer, emotional distress, humiliation, embarrassment, pain and suffering, loss of reputation, loss of enjoyment of life, lost wages and benefits, and has incurred attorneys' fees and expenses and other serious damages.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Karen Abbott prays for judgment against Defendant Independent School District 518, and for the following relief:

- A. Restitution in the form of back pay, with appropriate interest;
- B. Front pay and the monetary value of any employment benefits Abbot would have been entitled to by virtue of her continued employment with ISD 518;
- C. Prejudgment interest as allowed by law;
- D. Reasonable attorneys' fees and costs pursuant statute;
- E. Punitive damages; and
- F. Any further relief the Court deems fair and equitable.

**PLAINTIFF DEMANDS TRIAL BY JURY ON ALL COUNTS WHERE A JURY IS AVAILABLE.**

Dated: May 14, 2018

**HALUNEN LAW**

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