Overturning *Matula*: How the Third Circuit Court of Appeals Will Impact Other Courts' Decisions on the Availability of § 1983 as a Remedy for IDEA Violations

Sara Tussey*

* J.D. Candidate, The Dickinson School of Law of the Pennsylvania State University, 2009; B.A. English, The Pennsylvania State University, 1999.

I. INTRODUCTION

In order to understand whether damages are appropriate under the IDEA, consider the following situation. A child with Attention-Deficit/Hyperactivity Disorder[1] enters the first grade at his local public school and soon begins to exhibit disruptive behavior. He has trouble completing his work and occasionally urinates or defecates in his pants. The other children tease him because of his problems.[2] The parents of the child request that the school evaluate the child under the Individuals with Disabilities Education Act ("IDEA")[3] and that the school provide the child with special education services. The school determines that the child is not eligible and refuses to provide any services to the child.[4] The parents take advantage of all administrative remedies provided under the IDEA[5], but the school board still refuses to provide educational services to the child. Therefore, the parents file a complaint in district court alleging a violation of the IDEA. They include in this complaint a claim under 42 U.S.C. § 1983,[6] seeking compensatory and punitive damages for the IDEA violation. Few defendants or courts would argue against awarding the parents an injunction forcing the school to provide the child with an appropriate education or reimbursement of educational costs, if the parents can prove an IDEA violation.[7] However, the parents feel that

1. *See generally* Helen Simmons & Ann York, *Recognising the Signs of ADHD*, PRACTICE NURSE, Dec. 15, 2006, at 15. Attention-Deficit/Hyperactivity Disorder ("ADHD") is a behavioral disorder which manifests in childhood. Problematic behaviors include pervasive inattention, hyperactivity, and impulsivity. *See id.*

2. *See generally* W.B. v. Matula, 67 F.3d 484, 488 (3d Cir. 1995). *Matula* involved a child with Attention Deficit Hyperactivity Disorder who had difficulty in class and was teased by classmates for his "bathrooming problem". *Id.*

3. *See* Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1500 (2006).

4. *See Matula*, 67 F.3d at 489. In *Matula*, the Child Study Team which reviewed the child's needs, determined that the student's academic performance was at or above grade level. *Id.* For this reason, they concluded that he was not classifiable under the IDEA and therefore not eligible for services. *Id.*

5. *See* 20 U.S.C. § 1415 (2006). The IDEA provides procedural safeguards to protect the interests of disabled children. *See id.* Before filing a civil action, plaintiffs must have a hearing before the state or local educational agency and exhaust the appeals process under the IDEA. *See id.*

6. *See* 42 U.S.C. § 1983 (2006). Section 1983 allows a plaintiff to receive damages, including compensatory and punitive damages, when a state actor deprives him of rights under the Constitution or a federal law. *See id.*; Carlson v. Green, 446 U.S. 14, 22 (1980).

7. *See* Sch. Comm. of Burlington, Mass. v. Dep't of Educ. of Mass., 471 U.S. 359, 370 (1985). Appropriate relief under the IDEA may include an injunction to educate the child in a private institution at public expense or to reimburse a party for the cost of a private school where necessary to provide the child with a free appropriate public education. However, these reimbursements should not be characterized as "damages," as they are merely paying expenses which they should have been paying all along. *See id.*

the school board should also pay compensatory and punitive damages, which are not available under the IDEA.[8] Therefore, the parents file a claim under § 1983, which does allow compensatory and punitive damages. The parents and child have faced humiliation and frustration. The child is not receiving a free appropriate public education. Therefore, they feel entitled to compensatory and punitive damages. On the other hand, the school district may not be in a financial position to pay a large damage award. The question facing the court is whether to award compensatory and punitive damages, which may make the parents and child feel whole, punish the school board, and deter this and other school boards from violating the IDEA in the future.

The United States courts of appeals, including the Third Circuit Court of Appeals, have struggled with this question over the last twenty years.[9] In 1995, the Third Circuit held, in *W.B. v. Matula*,[10] that § 1983 can be used by parents and children seeking monetary damages for statutory violations of the IDEA.[11] In the years following *Matula*, the United States courts of appeals were split evenly on this issue.[12] In 2007, the Third Circuit revisited the *Matula* decision in *A.W. v. Jersey City Public Schools*.[13] The court reversed its earlier holding and decided that § 1983 cannot be used in conjunction with the IDEA.[14] The Third Circuit was the first federal court of appeals to explicitly overturn an earlier holding on the availability of § 1983 as a remedy for IDEA violations.[15]

This Comment will discuss the impact the Third Circuit has had on the availability of § 1983 remedies for IDEA violations. The Third Circuit's decision in *Matula* affected and furthered the initial split among the federal courts. The recent decision in *Jersey City* will now begin to bring an end to this disagreement. Part II of this Comment gives background information on the IDEA and the federal cases which have discussed § 1983 as an available remedy for IDEA violations. Part II.A explains how the IDEA works and how parents and children can bring a complaint against a school board. Part II.B discusses § 1983 and the

8. *See* Sellers v. Sch. Bd. of Manassas, 141 F.3d 524, 527 (4th Cir. 1998) (holding that compensatory and punitive damages are not available under the IDEA); Heidemann v. Rother, 84 F.3d 1021, 1033 (8th Cir. 1996) (stating that general and punitive damages are not available under the IDEA); *Burlington*, 471 U.S. at 370 (stating that reimbursement of expenses is not the same as damages).

9. *See* discussion *infra* Part II.C.

10. 67 F.3d 484 (3d Cir. 1995).

11. *See Matula*, 67 F.3d at 494.

12. *See* discussion *infra* Part II.C.

13. *See* A.W. v. Jersey City Pub. Sch., 486 F.3d 791, 792 (3d Cir. 2007) (en banc).

14. *See id.* at 803.

15. *See id.* at 792.

reasons plaintiffs choose to file a § 1983 claim for an IDEA violation. Next, Part II.C illuminates the disagreement among the federal courts of appeals. Part II.C.1 relates the arguments presented by circuit courts which allow § 1983 remedies for IDEA violations, while Part II.C.2 advances the opposing viewpoint against allowing § 1983 remedies. Part II.D explains the Third Circuit's recent decision in *A.W. v. Jersey City Schools*.

Part III of this Comment analyzes the Third Circuit's impact on the issue of whether § 1983 remedies are available for IDEA violations. Part III.A discusses the impact that the Third Circuit's initial decision in *Matula* had in creating a split among the federal courts of appeals. Part III.A.1 provides the Third Circuit's reasons for deciding to allow § 1983 remedies for IDEA violations in *Matula*. This part also analyzes the arguments that could have been presented to allow the Third Circuit to deny § 1983 remedies in that case. Part III.A.2 will examine the impact the *Matula* decision had on other federal courts of appeals, as well as the impact the decision would have had if the court had decided it differently. Next, Part III.B demonstrates the impact the Third Circuit's decision in *Jersey City* will have and has already had on other courts. Part III.B.1 explores the Third Circuit's reasons for hearing *Jersey City* and overturning their earlier decision in *Matula*. Part III.B.2 proposes the great impact this recent decision will have on other courts and the future availability of § 1983 for IDEA violations. Finally, Part IV offers a conclusion on the importance and future implications of the Third Circuit's recent decision in *Jersey City*.

II. BACKGROUND

A. The Individuals with Disabilities Education Act

In 1975, Congress enacted the Individuals with Disabilities Education Act ("IDEA"),[16] formerly known as the Education of the Handicapped Act ("EHA"),[17] which addresses educational needs of disabled children.[18] Congress's purpose in enacting the statute was to ensure that all children with disabilities would have access to a "free

16. *See* Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1500 (2006). Congress enacted the IDEA under its spending power. *See* U.S. CONST. art. I, § 8.

17. *See* Education of the Handicapped Act, Pub. L. No. 101-476, 104 Stat. 1141 (1990). Congress changed the name from the Education of the Handicapped Act ("EHA") to the Individuals with Disabilities Education Act ("IDEA") in 1990. However, courts will often use EHA and IDEA interchangeably when discussing the Act. *See also* W.B. v. Matula, 67 F.3d 484, 491 (3d Cir. 1995) (explaining the history of the IDEA and stating that "EHA" and "IDEA" will be used interchangeably).

18. *See* 20 U.S.C. § 1400(c)-(d) (2006).

appropriate public education."[19] Under the IDEA, states must submit a plan to the Secretary of Education showing that they each have policies and procedures in place that will ensure disabled children's rights to receive a free appropriate public education.[20]

A child seeking special education services under the IDEA is first evaluated by either the state or local education agency to determine whether the child is disabled and to discern the child's educational needs.[21] After the applicable educational agency has evaluated the child, the parents and school personnel create an individualized education program (IEP).[22] An IEP is a written statement describing the child's disability, the effect of the disability on the child's progress and involvement in the general education curriculum, the annual academic and functional goals for the child, and the progress toward those goals.[23] The IEP also describes the special education services that the school district will provide to the child.[24]

Once the school implements an adequate IEP, the child theoretically should be receiving a free appropriate public education under the IDEA. However, if the child is not receiving a free appropriate public education, the IDEA includes procedural safeguards intended to remedy the situation.[25] If a disabled child, or his parents, feels that the school has violated the IDEA, then that individual may present a complaint to the state or local educational agency.[26] The state or local educational agency will conduct an impartial due process hearing.[27] If the hearing is held by the local educational agency, then the parties may choose to appeal to the state educational agency.[28] If a hearing is initially heard by or appealed to the state educational agency, it will result in a final decision.[29] Parties may not bring a civil action based on the complaint until they have exhausted the administrative procedures under the IDEA.[30] A party bringing a civil action based on an IDEA violation may seek remedies under the IDEA itself, or may seek additional remedies under "other

19. *Id.* § 1400(d)(1).
20. *See* 20 U.S.C. § 1412.
21. *See id.* § 1414(a).
22. *See id.* § 1414(d).
23. *See id.*
24. *See id.*
25. *See id.* § 1415.
26. *See id.* § 1415(b)(6).
27. *See id.* § 1415(f).
28. *See id.* § 1415(g).
29. *See id.*
30. *See id.* § 1415(i)(2)(A). A party who has received a final decision under the procedures of the IDEA may bring a civil action seeking remedies in any state court or federal district court. *See id.*

Federal laws protecting the rights of children with disabilities."[31] These federal laws include the Constitution, the Americans with Disabilities Act of 1990, and Title V of the Rehabilitation Act of 1973.[32]

B. Section 1983 and the IDEA

Plaintiffs cannot seek compensatory or punitive damages under the IDEA.[33] However, damages are available under § 1983 for violations of some federal statutes.[34] Section 1983[35] does not create new rights.[36] Instead, § 1983 "creates a species of tort liability in favor of persons who are deprived of rights, privileges or immunities secured to them by the Constitution."[37] Damages for § 1983 claims are generally determined according to the principles of common law torts and are intended to compensate plaintiffs for injuries caused by the deprivation of their constitutional rights.[38]

Plaintiffs can use § 1983 to remedy statutory violations, provided that the statute being violated does not fall within one of two

31. *Id.* § 1415(l).

32. *Id.; see also* Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213 (2008) (discouraging discrimination against disabled persons); Rehabilitation Act of 1973, 29 U.S.C. §§ 701-796 (2008) (empowering disabled persons to maximize employment, self sufficiency, and integration into society).

33. *See, e.g.*, Sellers v. Sch. Bd. of Manassas, 141 F.3d 524, 527 (4th Cir. 1998) (holding that compensatory and punitive damages are not available under the IDEA); Heidemann v. Rother, 84 F.3d 1021, 1033 (8th Cir. 1996) (stating that damages are not available under the IDEA).

34. *See, e.g.*, Carlson v. Green, 446 U.S. 14, 22 (1980) (holding that punitive damages are available under § 1983).

35. Section 1983 provides:

> Every person who, under color of any statute, ordinance regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

42 U.S.C. § 1983 (2006).

36. *See* Maine v. Thiboutot, 448 U.S. 1, 6 (1980); *see generally*, Jack M. Beermann, *Why do Plaintiffs Sue Private Parties Under Section 1983*, 26 CARDOZO.L.REV. 9 (2004) (discussing available relief under § 1983 and why plaintiffs choose to bring a claim based on § 1983 with or instead of claims based on other laws).

37. Memphis Cmty. Sch. Dist. v. Stachura, 477 U.S. 299, 306 (1986) (internal citations omitted).

38. *See id.*

exceptions.[39] The first exception applies to federal statutes in which Congress explicitly forecloses § 1983 enforcement in the language of the statute itself.[40] This exception does not apply to the IDEA, as the IDEA does not explicitly include or preclude § 1983 remedies.[41] The second exception applies to federal statutes that have a comprehensive remedial scheme which implies that Congress intended to foreclose all other remedies.[42]

In *Smith v. Robinson*,[43] the Supreme Court decided whether the IDEA fit into this second exception to § 1983 availability.[44] In *Smith*, the plaintiff filed claims for relief under the IDEA, § 504 of the Rehabilitation Act,[45] and § 1983, among others.[46] The main issue was the award of attorney's fees, which were not yet available under the IDEA.[47] The plaintiff argued that the language of § 1983, which protects "rights, privileges, or immunities secured by the Constitution and laws," included the IDEA as one of those laws.[48] Therefore, the plaintiff argued, attorney's fees should be available for IDEA violations under § 1983.[49]

The Court rejected this argument and determined that the IDEA provided a comprehensive remedial scheme, indicating Congress's intent to foreclose other remedies.[50] This comprehensive scheme included all the claims for relief brought under laws other than the IDEA.[51] In its holding, the Court explicitly concluded that § 1983 claims could not be brought to remedy IDEA violations.[52] The dissent in *Smith* invited Congress to revisit the matter and clarify the availability of damages under "other laws" for IDEA violations.[53]

In response to the *Smith* Court's holding and the dissent's invitation to revisit the issue of IDEA remedies, Congress held hearings and

39. *See* Wright v. City of Roanoke Redevelopment & Hous. Auth., 479 U.S. 418, 423-24 (1987).
40. *See id.* at 423.
41. *See* 20 U.S.C. § 1415(l) (2006).
42. *See Wright*, 479 U.S. at 423.
43. 468 U.S. 992 (1984).
44. *See* Smith v. Robinson, 468 U.S. 992, 1009-10 (1984).
45. *See* 29 U.S.C. § 794 (2006).
46. *See Smith*, 468 U.S. at 994-95.
47. *See id.* at 995.
48. *Id.* at 1005; 42 U.S.C. § 1983.
49. *See Smith*, 468 U.S. at 1003. Plaintiffs also brought claims based on § 504 of the Rehabilitation Act and the Due Process and Equal Protection Clauses of the Fourteenth Amendment. *See id.* at 994.
50. *See id.* at 1009.
51. *See id.*
52. *See id.* at 1013.
53. *See id.* at 1030-31 (Brennan, J., dissenting) ("Congress will now have to take the time to revisit the matter.").

amended the IDEA.[54] The congressional reports on the amendment specifically discussed *Smith* as the catalyst for the amendment.[55] However, the reports focused mainly on the availability of attorneys' fees and the availability of remedies under § 504 of the Rehabilitation Act.[56] Congress added § 1415(l) to the IDEA as part of this amendment.[57] This section explicitly allows parties to seek "remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities."[58] The provision does not explicitly include § 1983 as an available remedy.[59]

The new provision's lack of specificity regarding § 1983 leaves room for advocacy. Parties seeking to support an expansive interpretation could argue that the amendment completely overturned *Smith* and, therefore, § 1983 may be used to remedy IDEA violations.[60] On the other hand, the opposition could argue that § 1983 is not expressly included in the amendment and is still not an available remedy.[61] The split among the United States courts of appeals emerged from these two arguments.[62]

54. *See* S. REP. NO. 99-112 (1985), *as reprinted in* 1986 U.S.C.C.A.N. 1798; H.R. REP. NO. 99-296 (1985); 99 Pub. L. No. 99-372, 100 Stat. 796 (1986).

55. *See* S. REP. NO. 99-112, at 2 (1985), as *reprinted in* 1986 U.S.C.C.A.N. 1798, 1799 (explaining the holding in *Smith* and stating amendment is response to *Smith*'s dissent, which invited Congress to revisit the remedies under the IDEA); H.R. REP. NO. 99-296, at 4 (1985) (quoting dissent from *Smith* explaining one intended consequence of amendment is to "re-establish statutory rights repealed by the U.S. Supreme Court in *Smith v. Robinson*").

56. *See* S. REP. NO. 99-112, at 13 (1985), *as reprinted in* 1986 U.S.C.C.A.N. 1798, 1803; H.R. REP. NO. 99-296, at 4 (1985); H.R. REP. NO. 99-687, at 5 (1986) (Conf. Rep.), *as reprinted in* 1986 U.S.C.C.A.N. 1807, 1808.

57. *See* Handicapped Children's Protection Act of 1986, Pub. L. No. 99-372, 100 Stat. 796 (1986). The amendment also added a provision which awarded attorney's fees under the IDEA. *See* 20 U.S.C. 1415(i)(3).

58. 20 U.S.C. § 1415(l); *see* Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 (2006); Title V of Rehabilitation Act of 1973, 29 U.S.C. §§ 790-799 (2006).

59. *See* 20 U.S.C. § 1415(l).

60. *See generally* Terry Jean Seligmann, *A Diller, A Dollar: Section 1983 Damage Claims in Special Education Lawsuits*, 36 GA. L. REV. 465, 501 (2002) (discussing courts' reasoning in upholding § 1983 claims for IDEA violations based on the nonexclusivity language of the statute).

61. *See generally id.* at 500-01 (discussing the reasoning used by courts to hold that § 1983 damages are not available for IDEA violations because the statute does not explicitly include § 1983).

62. *See generally* Allan G. Osborne, Jr., *Can Section 1983 Be Used to Redress Violations of the IDEA?*, 161 ED. LAW REP. 21, 24-32 (2002) (explaining the circuit split and summarizing key cases on each side).

C. The Split Among the United States Courts of Appeals Before A.W. v. Jersey City Public Schools

After the congressional amendment in 1986, the United States courts of appeals confronted the issue of whether § 1983 provided additional remedies for IDEA violations. Between 1986 and 1997, three circuits, the Second, Third, and Seventh, explicitly held that plaintiffs could use § 1983 in conjunction with the IDEA.[63] In this same time period, three circuits, the Fifth, Sixth, and Eleventh, implied the availability of § 1983, but did not issue definitive holdings allowing the use of § 1983.[64] The Eighth Circuit was split within itself and the issue remained unsettled.[65]

Between 1996 and 2006, the circuit courts began a trend in opposition to these earlier holdings. During these years, three circuit courts, the First, Fourth, and Tenth, held that plaintiffs could not use § 1983 as a remedy for alleged IDEA violations.[66] As of 2006, twenty years after the congressional amendment to the IDEA that added § 1415(l), the circuit courts were evenly split. There were three circuits on each side of the split, and five circuits undecided or refusing to decide the issue.[67] The Ninth Circuit made no ruling on the issue.

63. *See* Marie O. v. Edgar, 131 F.3d 610, 622 (7th Cir. 1997) (holding that Congress provided for § 1983 availability to enforce the IDEA); W.B. v. Matula, 67 F.3d 484, 494 (3d Cir. 1995) ("Congress specifically intended that [IDEA] violations could be redressed by § 504 and § 1983 actions."); Mrs. W. v. Tirozzi, 832 F.2d 748, 755 (2d Cir. 1987) ("[P]arents are entitled to bring a § 1983 action based on alleged violations of the [IDEA].").

64. *See* N.B. v. Alachua County Sch. Bd., 84 F.3d 1376, 1379 (11th Cir. 1996) (implying the availability of § 1983 for an alleged IDEA violation, but holding that administrative remedies must first be exhausted and declining to rule on the availability of § 1983); Crocker v. Tenn. Secondary Sch. Athletic Ass'n, 980 F.2d 382, 387 (6th Cir. 1992) (stating that a plaintiff could bring a § 1983 claim, but holding that damages were unavailable for other reasons); Angela L. v. Pasadena Indep. Sch. Dist., 918 F. 2d 1188, 1193 n.3 (5th Cir. 1990) (dicta) (stating that parties "may continue to allege violations of 42 U.S.C. § 1983" in conjunction with alleged IDEA violations).

65. *Compare* Digre v. Roseville Sch. Indep. Dist. No. 623, 841 F.2d 245, 250 (8th Cir. 1988) (holding that the plaintiff was entitled to bring a § 1983 action based on alleged violations of the IDEA), *with* Heidemann v. Rother, 84 F.3d 1021, 1033 (8th Cir. 1996) (holding that punitive and compensatory damages were not available under § 1983 for IDEA violations).

66. *See* Diaz-Fonseca v. Puerto Rico, 451 F.3d 13, 28 (1st Cir. 2006) ("[Section] 1983 cannot be used to escape the strictures on damages under the IDEA."); Padilla v. Sch. Dist. No. 1 of Denver, 233 F.3d 1268, 1274 (10th Cir. 2000) (holding that § 1983 is not available for IDEA violations); Sellers v. Sch. Bd. of Manassas, 141 F.3d 524, 529 (4th Cir. 1998) ("[P]arties may not sue under § 1983 for an IDEA violation.").

67. *See* discussion *infra* Parts II.C.1, II.C.2.

1. The Cases Allowing § 1983 Remedies for IDEA Violations

In 1986, soon after the passage of the congressional amendment, the Third Circuit heard *Board of Education v. Diamond*.[68] In *Diamond*, the court determined that the congressional amendment to the IDEA overruled the Supreme Court's holding in *Smith*.[69] However, in deciding *Diamond*, the Third Circuit did not directly confront the issue of whether § 1983 could be used for IDEA violations.[70]

A year later, the Second Circuit Court of Appeals cited to *Diamond* when it decided *Mrs. W. v. Tirozzi*.[71] In *Tirozzi*, a group of parents brought § 1983 claims for IDEA violations, on behalf of their disabled children.[72] The decision explained the history of the IDEA and Congress's reasons for the amendment.[73] The Second Circuit agreed with *Diamond* that the congressional amendment to the IDEA had overturned the Supreme Court's ruling in *Smith v. Robinson*, that the IDEA's comprehensive remedial scheme precluded § 1983 claims.[74] Therefore, the Second Circuit held that parties were entitled to bring § 1983 actions based on IDEA violations.[75]

In 1995, the Third Circuit Court of Appeals heard *W.B. v. Matula* and held that plaintiffs could use § 1983 claims to seek damages for IDEA violations.[76] In *Matula*, a disabled child's mother filed a § 1983 claim based on an alleged IDEA violation. To decide whether the § 1983 claim was appropriate, the court examined the history of the IDEA, the Supreme Court's holding in *Smith*, and the legislative history of the congressional amendment to the IDEA.[77] The Third Circuit then pointed to *Diamond* to show that it had already held that the congressional amendment overruled *Smith*.[78] Based on statements in the legislative

68. 808 F.2d 987 (3d Cir. 1986).

69. *See id.* at 995. In *Diamond*, the plaintiff student suffered from congenital physical abnormalities and required private education, which was paid for by the public school. The school changed the child's educational placement, which resulted in a deterioration of his skills. The court ordered the school to reimburse educational expenses, to continue a residential placement in a private school, and redraft his Individualized Education Program. They reversed and remanded a dismissal of a claim for damages. *See id.*

70. *See id.* at 993-94.

71. *See* Mrs. W. v. Tirozzi, 832 F.2d 748, 752 (2d Cir. 1987).

72. *See id.*

73. *See id.* at 755.

74. *See id.*

75. *See id.*

76. *See* W.B. v. Matula, 67 F.3d 484, 494 (3d Cir. 1995).

77. *See id.* at 493-94.

78. *See id.* at 494.

record, the court found that Congress specifically intended for § 1983's availability to redress IDEA violations when enacting the amendment.[79]

In 1997, the Seventh Circuit Court of Appeals decided *Marie O. v. Edgar*[80] and agreed with the Second and Third Circuits that § 1983 claims are available for IDEA violations.[81] In *Edgar*, four disabled children filed a class action suit, including a § 1983 claim, for alleged IDEA violations.[82] Like the two circuit courts which had previously decided this issue, the Seventh Circuit looked at the ruling in *Smith* and the legislative response to that ruling.[83] The court determined that Congress responded to *Smith* by adding 20 U.S.C. § 1415(l) to the IDEA.[84] After a close reading of § 1415(l), the Seventh Circuit determined that Congress intended for § 1983 claims to be utilized to enforce the IDEA.[85] Therefore, the court held that § 1983 claims were available for IDEA violations.[86]

The Seventh Circuit was the last federal court of appeals to explicitly decide that § 1983 claims are allowed for IDEA violations. However, during the time between the Second Circuit deciding *Tirozzi* in 1987 and the Seventh Circuit deciding *Edgar* in 1997, four other circuit courts of appeals decided cases involving plaintiffs with § 1983 claims based on IDEA violations.[87] However, the Fifth, Sixth, and Eleventh Circuits decided their cases based on separate issues, and did not resolve § 1983 availability.[88] The Eighth Circuit allowed a § 1983 claim, but later held, inconsistently, that a plaintiff could not bring a § 1983 claim.[89]

In 1990, the Fifth Circuit decided *Angela L. v. Pasadena Independent School District*,[90] which primarily dealt with whether a

79. *See id.* ("[I]n enacting [§ 1415(l)], Congress specifically intended that [IDEA] violations could be redressed by § 504 and § 1983 actions, as the legislative history reveals."); *see also* S. REP. NO. 99-112, at 2 (1985), *as reprinted in* 1986 U.S.C.C.A.N. 1798, 1799; H.R. REP. NO. 99-687, at 7 (1986)(Conf. Rep.), *as reprinted in* 1986 U.S.C.C.A.N. 1807, 1809; H.R. Rep. No. 99-296, at 4 (1985).

80. 131 F.3d 610 (7th Cir. 1997).

81. *See* Marie O. v. Edgar, 131 F.3d 610, 621 (7th Cir. 1997).

82. *See id.* at 611.

83. *See id.* at 620-21.

84. *See id.* at 621.

85. *See id.* at 622.

86. *See id.* at 621.

87. *See* Digre v. Roseville Sch. Indep. Dist. No. 623, 841 F.3d 245, 247 (8th Cir. 1988); N.B. v. Alachua County Sch. Bd., 84 F.3d 1376, 1379 (11th Cir. 1996); Crocker v. Tenn. Secondary Sch. Athletic Ass'n, 980 F.2d 283, 287 (6th Cir. 1992); Angela L. v. Pasadena Indep. Sch. Dist., 918 F.2d 1188, 1188-89 (5th Cir. 1990).

88. *See* cases cited *supra* note 64.

89. *See* cases cited *supra* note 65.

90. 918 F.2d 1188 (5th Cir. 1990).

disabled child could recover attorney's fees.[91] The court determined that the plaintiff was entitled to attorney's fees under the IDEA, making a § 1983 claim unnecessary.[92] However, the Fifth Circuit stated, in dicta, that parties could continue to bring claims under § 1983 for alleged IDEA violations.[93] The court noted that the congressional amendment to the IDEA had overturned the Supreme Court's ruling in *Smith*, and § 1983 claims were permitted for IDEA violations.[94]

The Sixth Circuit Court of Appeals implied § 1983 availability when it decided *Crocker v. Tennessee Secondary School Athletic Association* in 1992.[95] In *Crocker*, a disabled student transferred to a new school where he was not immediately allowed to participate in certain sporting events due to the School Athletic Association's transfer rule.[96] The student alleged that the school's decision was a violation of the IDEA and included a § 1983 claim in his complaint.[97] The Sixth Circuit determined that the IDEA is meant to ensure an education, not to ensure participation in sporting events.[98] The court found that the plaintiff could not recover damages under the IDEA and was therefore precluded from recovering damages under § 1983.[99] This ruling implies that if the plaintiff could have recovered damages under the IDEA, he may have been allowed to recover damages under § 1983 as well.[100]

In 1996, the Eleventh Circuit Court of Appeals decided *N.B. v. Alachua County School Board*,[101] which similarly implied that plaintiffs could bring § 1983 claims based on IDEA violations.[102] In *Alachua*, a disabled child brought a civil action alleging an IDEA violation, including a § 1983 claim, without first seeking administrative remedies available under the IDEA.[103] The Eleventh Circuit held that the plaintiff could not pursue a § 1983 claim in this case because she had not exhausted the IDEA's administrative procedures.[104] Therefore, the court

91. *See* Angela L. v. Pasadena Indep. Sch. Dist., 918 F.2d 1188, 1188-89 (5th Cir. 1990).
92. *See id.* at 1196-97.
93. *See id.* at 1193 n.3.
94. *See id.*
95. *See* Crocker v. Tenn. Secondary Sch. Athletic Ass'n, 980 F.2d 382, 387 (6th Cir. 1992).
96. *See id.* at 383-84. Under the transfer rule, students who transferred from one member school to another member school were ineligible to participate in specified sports for one year unless the transfer was due to a residence change. *See id.* at 384.
97. *See id.*
98. *See id.* at 386-87.
99. *See id.* at 387.
100. *See id.*
101. 84 F.3d 1376 (11th Cir. 1996).
102. *See* N.B. v. Alachua County Sch. Bd., 84 F.3d 1376, 1379 (11th Cir. 1996).
103. *See id.* at 1378.
104. *See id.* at 1379.

declined to rule on the availability of § 1983 for IDEA violations.[105] The Eleventh Circuit noted that plaintiffs may not file suit under § 1983 until they have exhausted the administrative remedies under the IDEA.[106] The court's statement implies that plaintiffs may file suit under § 1983 if they have followed the administrative procedures under the IDEA.[107]

In 1988, the Eighth Circuit decided *Digre v. Roseville Schools Independent District No. 623*,[108] which involved a parent of a disabled child who brought a § 1983 claim as part of an action for an alleged IDEA violation.[109] The court discussed the Supreme Court's holding in *Smith* and the legislative history of the congressional amendment to the IDEA.[110] Based on this discussion, the court determined that plaintiffs could bring § 1983 actions based on alleged IDEA violations.[111] While the court agreed with the Second, Third, and Seventh Circuits in this instance, the Eighth Circuit has not been consistent in its holdings regarding the availability of § 1983 to redress alleged IDEA violations.[112]

2. The Cases Denying § 1983 Claims for IDEA Violations

In 1996, the Eighth Circuit Court of Appeals decided *Heidemann v. Rother*,[113] where a disabled child and parent sought general and punitive damages under § 1983 for an alleged IDEA violation.[114] The Eighth Circuit held that § 1983 did not allow plaintiffs to receive punitive and compensatory damages for IDEA violations.[115] In making this decision, the court did not discuss its earlier, inconsistent holding in *Digre v. Roseville Schools Independent District No. 623*.[116] In *Digre*, the Eighth Circuit held that § 1983 claims were permissible in conjunction with IDEA violations.[117] In *Heidemann*, the court determined that general and

105. *See id.* at 1378.
106. *See id.*
107. *See id.* at 1379.
108. 841 F.2d 245 (8th Cir. 1998).
109. *See* Digre v. Roseville Sch. Indep. Dist. No. 623, 841 F.2d 245, 247 (8th Cir. 1988).
110. *See id.* at 250.
111. *See id.*
112. *Compare Digre*, 841 F.2d at 250 (holding that plaintiffs could bring § 1983 actions based on IDEA violations), *with* Heidemann v. Rother, 84 F.3d 1021, 1023 (8th Cir. 1996) (holding that punitive and compensatory damages were not available under § 1983 for IDEA violations).
113. 84 F.3d 1021 (8th Cir. 1996).
114. *See Heidemann*, 84 F.3d at 1025.
115. *See id.* at 1033.
116. *See id.*; Digre v. Roseville Sch. Indep. Dist. No. 623, 841 F.2d 245 (8th Cir. 1988).
117. *See supra* text accompanying notes 108-12.

punitive damages are not available under the IDEA.[118] Therefore, the Eighth Circuit held that the plaintiff could not use § 1983 to receive damages for the alleged IDEA violation.[119] The Eighth Circuit has not resolved this issue, and the matter remains unsettled. However, *Heidemann* was the beginning of a trend in the circuit courts, away from § 1983 availability for IDEA violations.

In 1998, the Fourth Circuit Court of Appeals decided *Sellers v. School Board of Manassas*,[120] which involved a disabled child and his parents suing for compensatory and punitive damages under the IDEA and § 1983.[121] The plaintiff partially relied on *Matula* in trying to convince the court to allow § 1983 damages for the alleged IDEA violation.[122] The Fourth Circuit was not persuaded by the reasoning in *Matula*.[123] The Fourth Circuit instead found that § 1983 is not an available remedy for alleged IDEA violations for two reasons.[124]

The first reason for the court's decision was the comprehensive remedial scheme in the IDEA.[125] The Fourth Circuit cited the Supreme Court's ruling in *Smith v. Robinson*, finding that the IDEA's comprehensive remedial scheme showed Congress's intent to preclude § 1983 claims for IDEA violations.[126] The court then looked at the congressional amendment to determine whether the amendment had overturned the holding in *Smith*.[127] The provision Congress added, 20 U.S.C. § 1415(l), does not explicitly include § 1983 as one of the laws available to redress IDEA violations.[128] Section 1415(l) allows plaintiffs to use "other Federal laws protecting the rights of children with disabilities" besides the laws explicitly listed.[129] The Fourth Circuit explained that § 1983 is a general statute, which does not speak of youth or disability, and could not be considered an "other" federal law protecting the rights of disabled children.[130] Therefore, the court reasoned, § 1415(l) does not implicitly include § 1983 claims.[131] For these reasons, the court determined that the congressional amendment had not overturned *Smith's* holding on the availability of § 1983 for

118. *See Heidemann*, 84 F.3d at 1033.
119. *See id.*
120. 141 F.3d 524 (4th Cir. 1998).
121. *See* Sellers v. Sch. Bd. of Manassas, 141 F.3d 524, 525 (4th Cir. 1998).
122. *See id.* at 529.
123. *See id.*
124. *See id.* at 529-32.
125. *See id.* at 529.
126. *See id.* at 529-30; *see also* Smith v. Robinson, 468 U.S. 992, 1009 (1984).
127. *See Sellers*, 141 F.3d at 530.
128. *See id.*; *see also* 20 U.S.C. § 1415(l) (2006).
129. 20 U.S.C. § 1415(l).
130. *See Sellers*, 141 F.3d at 530.
131. *See id.*

IDEA violations.[132] Therefore, the Fourth Circuit believed that the reasoning in *Smith* was still persuasive and that the comprehensive remedial scheme of the IDEA precludes § 1983.[133]

The second reason the Fourth Circuit denied the § 1983 claim is based on a rule of interpretation used for statutes like the IDEA.[134] In *Pennhurst State School & Hospital v. Halderman*,[135] the Supreme Court announced a rule of interpretation for statutes enacted under the spending power.[136] The Court explained that these statutes are much like contracts between the federal and state governments.[137] The states must voluntarily and knowingly accept the terms of the contract.[138] In order to put a condition on the receipt of federal money, the statute must be unambiguous.[139] Since Congress enacted the IDEA under its spending power, the Fourth Circuit decided that this rule of interpretation applied to the IDEA.[140] Therefore, the IDEA must be unambiguous about the availability of § 1983 claims.[141] The court noted that § 1415(l) "fails to state, or even imply that [§] 1983 suits may be brought for IDEA violations."[142] The court determined that this omission was significant and, therefore, the IDEA was ambiguous on whether § 1983 claims were available.[143] Due to this lack of clarity, the states could not have voluntarily and knowingly accepted the consequences.[144] Based on these reasons, the Fourth Circuit held that § 1983 damages were not available under the ambiguous language and comprehensive remedial scheme of the IDEA.[145]

In 2000, the Tenth Circuit Court of Appeals decided *Padilla v. School District No. 1 of Denver*,[146] where a disabled child included a § 1983 claim in her action based on an alleged IDEA violation.[147] The Tenth Circuit held that § 1983 is not available to redress violations of the IDEA.[148] The court examined the Supreme Court's holding in *Smith* and

132. *See id.*
133. *See id.*
134. *See id.* at 530-31.
135. 451 U.S. 1 (1981).
136. *See* Pennhurst State Sch. & Hosp. v. Halderman, 451 U.S. 1, 17 (1981).
137. *See id.*
138. *See id.*
139. *See id.*
140. *See Sellers*, 141 F.3d at 532.
141. *See id.*
142. *Id.*
143. *See id.*
144. *See id.*
145. *See id.*
146. 233 F.3d 1268 (10th Cir. 2000).
147. *See* Padilla v. Sch. Dist. No. 1 of Denver, 233 F.3d 1268, 1270 (10th Cir. 2000).
148. *See id.* at 1274.

the subsequent congressional amendment.[149] It also looked at Supreme Court cases involving statutes similar to the IDEA.[150] In doing so, the Tenth Circuit found that the Supreme Court did not view the congressional amendment as overturning *Smith*'s holding regarding § 1983 claims.[151] The *Padilla* court specifically cited two Supreme Court cases, *Blessing v. Freestone* and *Wright v. Roanoke Redevelopment & Housing Authority*, as evidence of this view.[152] In both of these cases, the Court was deciding whether a § 1983 claim was appropriate based on a federal law.[153] In *Blessing*, a group of mothers sued Arizona's child support agency under § 1983 to enforce Title IV-D of the Social Security Act.[154] In *Wright*, tenants of a low income housing project brought a § 1983 claim based on the Brooke Amendment of the Housing Act of 1937.[155] In these cases, the Court determined whether the federal law at issue precluded § 1983 claims.[156] In both cases, the Supreme Court cited to *Smith v. Robinson* and used the IDEA as an example of a statute with a remedial scheme that is so comprehensive as to preclude § 1983 claims.[157] The comparison with the IDEA resulted in a finding that neither the Social Security Act nor the Brooke Amendment to the Housing Act had remedial schemes as comprehensive as the IDEA.[158] Therefore, in both cases, § 1983 claims were possible.[159] The Tenth Circuit used these two cases as evidence that the Supreme Court considered *Smith* "to be alive and well insofar as it asserts that § 1983 may not be used to remedy IDEA violations."[160] Based on this evidence, the Tenth Circuit held that § 1983 claims were not available to redress IDEA violations.[161]

In 2006, the First Circuit Court of Appeals decided *Diaz-Fonseca v. Puerto Rico*,[162] in which a disabled child and her parent brought a § 1983

149. *See id.* at 1273.
150. *See id. See also* Blessing v. Freestone, 520 U.S. 329 (1997); Wright v. Roanoke Redevelopment & Hous. Auth., 479 U.S. 418 (1987).
151. *See id.*
152. *See id.* at 1273-74; *see also Blessing*, 520 U.S. at 347-48; *Wright*, 479 U.S. at 423-24.
153. *See Blessing*, 520 U.S. at 332; *Wright*, 479 U.S. at 419.
154. *See Blessing*, 520 U.S. at 332; Title IV-D of the Social Security Act, 42 U.S.C. § 651-669b.
155. *See Wright*, 479 U.S. at 419; Brooke Amendment of the Housing Act, 42 U.S.C. § 1401.
156. *See Blessing*, 520 U.S. at 347-48; *Wright*, 479 U.S. at 423-24.
157. *See Padilla*, 233 F.3d at 1273; *Blessing*, 520 U.S. at 347-48; *Wright*, 479 U.S. at 423-24.
158. *See Blessing*, 520 U.S. at 347-48; *Wright*, 479 U.S. at 423-24.
159. *See Blessing*, 520 U.S. at 347-38; *Wright*, 479 U.S. at 423-24.
160. *Padilla*, 233 F.3d at 1274.
161. *See id.*
162. 451 F.3d 13 (1st Cir. 2006).

claim for an alleged IDEA violation.[163] The First Circuit held that § 1983 was not available for violations of the IDEA.[164] To make this decision, the court looked at a previous case, *Nieves-Marquez v. Puerto Rico*,[165] in which it held that punitive and general compensatory damages were not available in a private action based on an IDEA violation.[166] Since the court had already held that money damages are not available under the IDEA, the First Circuit rejected the argument in *Diaz-Fonseca* that damages should be available under § 1983 for an IDEA violation.[167] It explained that allowing plaintiffs to obtain money damages under § 1983 "would subvert . . . the overall scheme that Congress envisioned for dealing with educational disabilities, as well as the purpose of the IDEA, which simply is to ensure [free appropriate public education]."[168] The court decided that if a case turned entirely on statutory rights created by the IDEA, then § 1983 could not be used.[169]

D. The Third Circuit Court of Appeals Overturns W.B. v. Matula

In 2007, the Third Circuit Court of Appeals revisited the issue of the availability of § 1983 claims for IDEA violations in *A.W. v. Jersey City Public Schools*.[170] Eleven years earlier, in *W.B. v. Matula*, the Third Circuit held that a plaintiff could bring a § 1983 claim predicated on an IDEA violation.[171] The court noted in *Jersey City* that it was not alone in this reasoning at the time they decided *Matula*.[172] However, since *Matula*, other courts had criticized the Third Circuit's decision and a circuit split had occurred.[173] The Third Circuit specifically mentioned the convincing arguments of the Fourth and Tenth Circuits in not allowing § 1983 remedies.[174] This reasoning from the other Circuits may

163. *See* Diaz-Fonseca v. Puerto Rico, 451 F.3d 13, 19 (1st Cir. 2006).
164. *See id.* at 28.
165. 353 F.3d 108 (1st Cir. 2006).
166. *See* Nieves Marquez v. Puerto Rico, 353 F.3d 108, 124 (1st Cir. 2006).
167. *See Diaz-Fonseca*, 451 F.3d at 28.
168. *Id.* at 29 (citing *Nieves-Marquez*, 353 F.3d at 125) (internal quotations omitted).
169. *See id.*
170. *See* A.W. v. Jersey City Pub. Sch., 486 F.3d 791, 792 (3d Cir. 2007) (en banc).
171. *See supra* text accompanying notes 76-79. In *Matula*, the court reasoned that the congressional amendment to the IDEA had overturned the Supreme Court's decision in *Smith*. Accordingly, the *Matula* court held that plaintiffs could bring § 1983 claims based on IDEA violations. *See* W.B. v. Matula, 67 F.3d 484, 493-95 (3d Cir. 1995).
172. *See Jersey City*, 486 F.3d at 797 ("[W]e were not alone in this view at the time, as we cited to numerous other courts' opinions. . . .").
173. *See id.* at 797-98 (recognizing that the Fourth and Tenth Circuits disagreed with the decision in *Matula*).
174. *See id.* at 798-99; *see* Padilla v. Sch. Dist. No. 1 of Denver, 233 F.3d 1268, 1273-74 (10th Cir. 2000) ("[T]he Supreme Court considers *Smith* to be alive and well insofar as it asserts that [§] 1983 may not be used to remedy IDEA violations."); Sellers

have caused the Third Circuit to question *Matula*.[175] However, the Supreme Court's reasoning in *City of Rancho Palos Verdes v. Abrams*[176] convinced the Third Circuit to reconsider the availability of § 1983 claims for IDEA violations.[177]

In 2005, the Supreme Court decided *Rancho Palos Verdes*, which concerned a § 1983 action brought in relation to a violation of the Telecommunications Act.[178] The Court determined that § 1983 was not available to remedy violations of statutory rights where the statute had a comprehensive remedial scheme.[179] To make this decision, the Supreme Court engaged in an analysis of § 1983 availability for statutory violations.[180] The Court recognized that, if a plaintiff can demonstrate that he is entitled to individual rights under a federal statute, there is a rebuttable presumption that the right is enforceable under § 1983.[181] The presumption can be defeated by showing that Congress did not intend for § 1983 claims to be available.[182] One way to prove that Congress did not so intend, is to show that the statute has a comprehensive remedial scheme.[183] The Court cited to *Smith v. Robinson* and the IDEA as an example of a comprehensive remedial scheme.[184] If there is a comprehensive remedial scheme, a plaintiff must show a "textual indication, express or implicit, that the remedy is to complement, rather than supplant, § 1983."[185]

In *Jersey City*, the Third Circuit applied this reasoning from *Rancho Palos Verdes* to determine whether Congress intended § 1983 as a remedy for IDEA violations.[186] The court examined the administrative procedures of the IDEA and determined that the IDEA has a comprehensive remedial scheme.[187] The court then looked for a textual indication that § 1983 should still be available despite the comprehensive

v. Sch. Bd. of Manassas, 141 F.3d 524, 529 (arguing that the IDEA's comprehensive remedial scheme precludes § 1983 actions for IDEA violations).

175. *See Jersey City*, 486 F.3d at 798-99 (noting that the court "would have been conflicted as to whether to revisit" the availability of § 1983 for IDEA violations based solely on the arguments of the other circuit courts).

176. 544 U.S. 113 (2005).

177. *See id.* at 799-800 (explaining their reliance on *City of Rancho Palos Verdes v. Abrams* in making the decision to overturn their earlier holding).

178. *See* City of Rancho Palos Verdes v. Abrams, 544 U.S. 113, 118 (2005).

179. *See id.* at 121.

180. *See id.* at 120-22.

181. *See id.* at 119-20.

182. *See id.* at 120.

183. *See id.* at 121-22.

184. *See id.*

185. *See id.* at 122.

186. *See* A.W. v. Jersey City Pub. Sch., 486 F.3d 791, 802 (3d Cir. 2007) (en banc).

187. *See id.*

remedial scheme.[188] Section 1415(l) of the IDEA does not explicitly list § 1983 as one of the available laws to redress IDEA violations.[189] Additionally, the *Jersey City* court could find no implicit inclusion of § 1983 in the IDEA.[190] Therefore, the Third Circuit agreed with the Fourth and Tenth Circuits, as well as the reasoning in *Smith*, that the IDEA's comprehensive remedial scheme precludes § 1983 actions.[191] The Third Circuit stated that "we are now convinced that our ruling in *Matula* is no longer sound" and, therefore, overturned its earlier holding.[192]

III. ANALYSIS

When the Third Circuit Court of Appeals decided *W.B. v. Matula* in 1995, the issue of § 1983 availability for IDEA violations was largely unsettled among the United States courts of appeals.[193] At the time, the Second Circuit and the Eighth Circuit were the only courts of appeals which had decided the issue.[194] The lack of discussion on the availability of § 1983 claims based on IDEA violations gave the Third Circuit the opportunity to have a significant impact on other courts.[195] If the Third Circuit had decided differently in *Matula*, the circuit split regarding § 1983 availability would likely not have occurred.[196] Now that the Third Circuit has reconsidered its earlier holding and reversed *Matula*, other circuits may revisit this issue and end the disagreement over the availability of § 1983 claims for IDEA violations.[197]

A. W.B. v. Matula*'s Impact on the Circuit Split Regarding the Availability of § 1983 Claims for IDEA Violations*

In *W.B. v. Matula*, the Third Circuit Court of Appeals relied heavily on the legislative history of the congressional amendment to the IDEA to

188. *See id.* at 803.
189. *See* 20 U.S.C. § 1415(l) (2006).
190. *See Jersey City*, 486 F.3d at 803.
191. *See id.*; *see also* Smith v. Robinson, 468 U.S. 992, 1009 (1984); Padilla v. Sch. Dist. No. 1 of Denver, 233 F.3d 1268, 1274 (10th Cir. 2000); Sellers v. Sch. Bd. of Manassas, 141 F.3d 524, 529 (4th Cir. 1998).
192. *Jersey City*, 486 F.3d at 799.
193. *See* discussion *supra* Part II.C.1.
194. *See* Digre v. Roseville Sch. Indep. Dist. No. 623, 841 F.2d 245, 250 (8th Cir. 1988) (holding that plaintiff was entitled to bring a § 1983 action based on an IDEA violation); Mrs. W. v. Tirozzi, 832 F.2d 748, 755 (2d Cir. 1987) (holding that § 1983 actions were appropriate for IDEA violations).
195. *See, e.g.*, Padilla v. Sch. Dist. No. 1 of Denver, 233 F.3d 1268, 1273 (10th Cir. 2000) (citing *Matula* when noting the circuit split); Sellers v. School Board of Manassas, 141 F.3d 524, 529 (4th Cir. 1998) (explaining that the plaintiff's case relied partially on *Matula*).
196. *See* discussion *infra* Part III.A.2.
197. *See* discussion *infra* Part III.B.2.

hold that Congress intended availability of § 1983 remedies for IDEA violations.[198] The court did not discuss other arguments for or against § 1983 availability and there is the possibility that neither party advanced additional arguments.[199] However, if the Third Circuit had considered other arguments that could have been made at the time, it may have decided that § 1983 was precluded by the IDEA.[200] If the Third Circuit had held that the IDEA precluded § 1983 claims and that § 1983 damages were not available for IDEA violations, then the circuit split might not have happened at all.[201]

1. The Arguments Which Could Have Persuaded the Third Circuit Court of Appeals to Deny § 1983 Claims for IDEA Violations in *W.B. v. Matula*

When the Third Circuit Court of Appeals decided *Matula*, it focused mainly on the legislative history of the congressional amendment to the IDEA.[202] This focus led the court to determine that the congressional amendment had overturned *Smith v. Robinson*, and § 1983 claims were available to enforce the IDEA.[203] By focusing on the legislative history of the amendment, the Third Circuit ignored a number of other arguments which could have applied to the issue.

There are three arguments which would have compelled a different result. The first argument uses Supreme Court precedent regarding statutes enacted under the spending power to preclude § 1983 damages based on IDEA violations. The second argument discusses how the different standards of liability for statutory and constitutional violations can help determine legislative intent. The third argument invokes a public policy against forcing school boards to pay large damage awards. The court could have used these arguments to bolster a decision against allowing § 1983 claims for IDEA violations.

The first argument deals with the interpretation of statutes, like the IDEA, which were enacted under Congress' spending power.[204] In the 1981 case of *Pennhurst State School & Hospital v. Halderman*, the Supreme Court gave a rule on how statutes enacted under the spending

198. *See* W.B. v. Matula, 67 F.3d 484, 493-94 (3d Cir. 1995).

199. *See generally id.* (discussing legislative history of congressional amendment to IDEA as the main reason for their holding that section 1983 claims are available for IDEA violations).

200. *See* discussion *infra* Part III.A.1.

201. *See* discussion *infra* Part III.A.2.

202. *See Matula*, 67 F.3d at 493-94.

203. *See id.*

204. *See* U.S. CONST. art. I, § 8 cl. 1.

power should be interpreted.[205] The Court explained that Congress's power to legislate pursuant to the spending power results in legislation that is much like a contract.[206] The *Pennhurst* court stated that the "legitimacy of Congress' power to legislate under the spending power rests on whether the State voluntarily and knowingly accepts the terms of the 'contract.'"[207] Therefore, any statute enacted under the spending power must clearly state its requirements for federal funding to enable states to knowingly choose whether to comply with the statute.[208]

The *Matula* court did not discuss the *Pennhurst* Court's rule of interpretation in making its decision. However, three years after *Matula*, the Fourth Circuit discussed this method of interpretation in *Sellers v. School Board of Manassas* when it determined that § 1983 claims are not available for IDEA violations.[209] The *Sellers* court reasoned that § 1983 permits damages, whereas the IDEA does not.[210] Permitting damages through § 1983 for IDEA violations would subject states to much higher damages than what is available through the IDEA itself. If Congress had intended this result, it would have needed to clearly state the availability of § 1983 in order to allow states to knowingly choose such open-ended liability.[211] *Pennhurst* was decided fourteen years before *Matula*,[212] and the Third Circuit arguably should have used the *Pennhurst* rule of interpretation to analyze the IDEA. If it had employed this rule of interpretation, the Third Circuit would have discovered that the IDEA does not clearly state that § 1983 is an available remedy for IDEA violations.[213]

A second argument the *Matula* court could arguably have used to decide that the IDEA precludes § 1983 is based on the different standards of liability for statutory and constitutional violations. Liability for statutory violations under the IDEA is relatively low, whereas liability for constitutional violations can be much higher. The *Matula* court did not discuss the discrepancy in allowing § 1983 damages for statutory violations. In *Sellers*, the Fourth Circuit did discuss the different standards of liability to bolster its decision that § 1983 was not available as a remedy for IDEA violations.[214] While the Third Circuit decided

205. *See* Pennhurst State Sch. & Hosp. v. Halderman, 451 U.S. 1, 17 (1981).
206. *Id.*
207. *Id.*
208. *Id.*
209. *See* Sellers v. Sch. Bd. of Manassas, 141 F.3d 524 (4th Cir. 1998).
210. *See id.* at 532.
211. *See Sellers id.* at 531-32 (applying the rule stated by the Supreme Court in *Pennhurst*, 451 U.S. at 17).
212. *See Pennhurst*, 451 U.S. at 17.
213. *See supra* text accompanying notes 141-45.
214. *See Sellers*, 141 F.3d at 531.

Matula three years before *Sellers*, the same argument would have applied.

This argument examines the differences in liability between an IDEA violation and an Equal Protection Clause violation. A school district violates the IDEA when it fails to provide a free appropriate public education to a disabled child.[215] The disabled child need only prove that he was not receiving a free appropriate public education to prove a statutory IDEA violation.[216] If the disabled child successfully proves a statutory IDEA violation, he may receive remedies under the IDEA.[217] However, a school district violates the Equal Protection Clause of the United States Constitution when it *intentionally* discriminates against disabled children.[218] Section 1983 remedies become available if a disabled child can prove a violation of the Equal Protection Clause, which involves a much more difficult standard of proof than a statutory violation.[219]

In order to prove a constitutional violation, the child and his parents must show purposeful discrimination by the school district against disabled children.[220] If a plaintiff proves intentional discrimination, then he will have to additionally show that the discrimination was without rational basis. The rational basis standard applies because disabled children are not a protected class and education is not a fundamental right.[221] Rational basis is a difficult standard for a plaintiff to overcome because it requires the plaintiff to prove that a school board had no rational basis for the decision.[222] Due to this high standard, a disabled child will find it difficult to prove purposeful discrimination and prevail on a constitutional claim against a school board.[223] It is much easier for a plaintiff to prove that he is not receiving a free appropriate public education than it is to prove intentional discrimination. Therefore, a § 1983 claim based on a constitutional violation would be less likely to occur, whereas a § 1983 claim, including compensatory and punitive damages, based on a statutory violation would be more common.

215. *See* 20 U.S.C. § 1415 (2006).
216. *See id.*
217. *See id.*
218. *See* U.S. CONST. amend. XIV, § 1.
219. *See* Carlson v. Green, 446 U.S. 14, 22 (1980).
220. *See, e.g.*, Washington v. Davis, 426 U.S. 229, 239 (1976) (requiring an Equal Protection claim to be supported by evidence of purposeful discrimination).
221. *See* City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 445-46 (1985) (holding that disabled persons are not a protected class); San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 37 (1973) (holding that education is not a fundamental right).
222. *See* Sellers v. Sch. Bd., 141 F.3d 524, 530-31 (4th Cir. 1998) (discussing use of rational basis standard in this context).
223. *See id.*

Congress could not have intended liability for statutory IDEA violations to be the same as the much more difficult to prove constitutional violations. This implicit intent is shown by the much higher standard of proof required for constitutional violations. If the *Matula* court had analyzed these burdens of proof, then it would arguably have decided that the discrepancy was too large and, therefore, Congress could not have intended for § 1983 damages to be available for IDEA violations.

A final argument the Third Circuit could have discussed to disallow § 1983 claims, or to bolster one of the previous arguments against § 1983 claims, concerns the public policy involved in the issue. Good public policy would disallow § 1983 damages for statutory IDEA violations in order to protect school boards from large damage awards. Allowing plaintiffs to use § 1983 exposes school boards to high financial liability in any situation where a disabled child feels that the education being provided is inappropriate or below standard. Public schools are financed by tax money. Large damage awards could put more pressure on the school and the taxpayers. A large damage award could force local governments to raise taxes in the school districts to pay for the liability. Great liability could also cause the school district to cut costs in other areas, such as sports, art or music curriculum. This result would affect more children and could negatively impact their educational opportunities.

Some could argue that compensatory and punitive damages are aimed at deterring other possible defendants from violating the IDEA.[224] Arguably, denying these damages could allow school boards to ignore the needs of their disabled students because they have no fear of punishment. However, this argument must fail. The threat of litigation expenses and possible reimbursement of educational costs related to IDEA violations should be enough to deter school boards, as well as the possible denial of federal funding if they do not follow the IDEA.[225] Large damage awards may deter school districts from intentional violations; however, IDEA violations can be inadvertent or the result of a mistaken administrator. The school boards involved in these cases are rarely acting intentionally to deny an education to the student, and damages do not deter unintentional or inadvertent behavior.

224. *See* Memphis Cmty. Sch. Dist. v. Stachura, 477 U.S. 299, 307 (1986) (explaining that deterrence can operate through a mechanism of compensatory damages, in addition to punitive damages).

225. *See* 20 U.S.C. § 1412 (2006) (requiring states to adhere to the IDEA in order to receive certain federal funds); Sch. Comm. of Burlington, Mass. v. Dep't of Educ. of Mass., 471 U.S. 359, 370 (1985) (holding that a school must reimburse costs if private education is necessary for a free appropriate public education).

For these reasons, good public policy should disallow damages against school boards. The remedies under the IDEA are fair and are aimed at helping the disabled plaintiff receive a free appropriate public education.[226] Congress is unlikely to want to expose school boards to high financial liabilities, which would benefit a few students, when the effect would be felt by many.

In *Matula*, the Third Circuit did not discuss any of these arguments. Instead they focused on legislative history and held that § 1983 claims were available for IDEA violations.[227] If the court had analyzed the IDEA as enacted under the spending power, discussed the differing liability for statutory and constitutional violations, or delved into the public policy issues at hand, they would arguably have held against the availability of § 1983 claims for IDEA violations.

2. The Consequences of the Decision in *W.B. v. Matula*

In 1995, three different circuits allowed § 1983 claims based on IDEA violations.[228] The following year, the Eighth Circuit decided *Heidemann v. Rother*, in which it did not explicitly overturn its earlier decision allowing § 1983 claims, but did decide that § 1983 was not an available remedial avenue for an IDEA violation.[229] A year later, in 1997, the Seventh Circuit became the final court to side with the Second and Third Circuits in deciding that § 1983 was available to remedy the IDEA.[230] The Seventh Circuit came to this decision based partly on the arguments advanced by the Second and Third Circuits.[231] Therefore, if the Third Circuit had used any of the available arguments to hold against allowing § 1983 claims, the Seventh may have followed its reasoning. This possible outcome would have left the Second Circuit as the only remaining court allowing § 1983 claims for IDEA violations. However, the Third Circuit did allow the § 1983 claim in *Matula*, and, by the end of 1997, there were three circuits allowing § 1983 as a remedy for IDEA violations.[232]

In 1998, the Fourth Circuit Court of Appeals heard *Sellers v. School Board of Manassas*, in which the plaintiffs relied on the argument from

226. *See id.* § 1400(d)(1) (declaring purpose of ensuring free appropriate public education for all disabled children).

227. *See* W.B. v. Matula, 67 F.3d 484, 493-94 (3d Cir. 1995).

228. *See Matula*, 67 F.3d at 494; Digre v. Roseville Sch. Indep. Dist. No. 623, 841 F.2d 245, 250 (8th Cir. 1988); Mrs. W. v. Tirozzi, 832 F.2d 748, 755 (2d Cir. 1987).

229. *See* Heidemann v. Rother, 84 F.3d 1021, 1033 (8th Cir. 1996) (holding that Section 1983 damages were not available for IDEA violations).

230. *See* Marie O. v. Edgar, 131 F.3d 610, 622 (7th Cir. 1997).

231. *See id.* at 620.

232. *See* cases cited *supra* note 63.

Matula.[233] The Fourth Circuit cited to *Matula* and then very strongly disagreed with its reasoning.[234] The Fourth Circuit went on to hold that § 1983 remedies were not available for IDEA violations.[235] Later courts followed the reasoning in *Sellers* to determine that the IDEA precluded § 1983 claims.[236] By 2006, there were three circuits on each side of the split and a number of undecided courts.[237]

However, if *Matula* had produced a different result, then the Third Circuit would likely have been a fourth circuit holding that § 1983 was not an available remedy for IDEA violations. This possible outcome would have left only two courts on the other side of the split. Further, if the Seventh Circuit had found the Third Circuit's arguments convincing, and held against § 1983 remedies, there would have been five circuits denying § 1983 claims for IDEA violations. The Second Circuit would be the only remaining court allowing § 1983 remedies. If the Second Circuit was the only remaining court holding on one side of the issue, it would likely have been convinced by the other five circuits to reconsider the issue and decide against the availability of § 1983.

If the *Matula* court had considered additional arguments besides the legislative history of the congressional amendment to the IDEA, it may have decided to deny the § 1983 claim for the alleged IDEA violation. This decision would have caused the issue to be settled much more quickly among the other circuits, which would have likely been as persuaded by the Third Circuit's reasoning, as they were by the Fourth Circuit's reasoning in *Sellers*.[238] The Third Circuit had the opportunity to end this circuit split before it began. However, the Third Circuit had no evidence that the decision would have this kind of significance.

B. The Impact A.W. v. Jersey City Schools *Will Have on Other Courts Deciding the Availability of § 1983 Claims for IDEA Violations*

The Third Circuit's decision to revisit the issue is as significant as its earlier holding denying § 1983 damages. The court's holding in *Matula* helped to create a circuit split. The recent holding in *Jersey City*

233. *See* Sellers v. Sch. Bd. of Manassas, 141 F.3d 524, 529 (4th Cir. 1998).
234. *See id.*
235. *See id.*
236. *See, e.g.*, Diaz-Fonseca v. Puerto Rico, 451 F.3d 13, 28 (1st Cir. 2006) (using reasoning from and citing to *Sellers* to determine that section 1983 actions are appropriate for IDEA violations); Padilla v. Sch. Dist. No. 1 of Denver, 233 F.3d 1268, 1272-73 (10th Cir. 2000) (using same reasoning as and citing to *Sellers* in deciding not to allow a section 1983 claim for an IDEA violation).
237. *See supra* text accompanying notes 63-66.
238. *See* cases cited *supra* note 235.

will likely end the circuit split on availability of § 1983 claims for IDEA violations.

1. The Third Circuit's Decision to Revisit the Availability of § 1983 for IDEA Violations

The Third Circuit discussed numerous reasons for rehearing the issue of whether § 1983 can be used to redress IDEA violations, but its foremost reason was the recent Supreme Court decision in *City of Rancho Palos Verdes v. Abrams*.[239] The court also pointed to the circuit split regarding this issue, as well as the negative treatment its earlier reasoning in *Matula* received from the Fourth and Tenth Circuits.[240] These combined reasons caused the Third Circuit to reconsider, and ultimately overturn, its earlier decision in *Matula*.[241]

In *Jersey City*, the Third Circuit began its opinion by stating that it was reexamining its holding in *Matula* in light of the Supreme Court's reasoning in *Rancho Palos Verdes*.[242] However, the Third Circuit did not have to wait this long to reexamine the holding. Supreme Court precedent existed in 1995, when the Third Circuit decided *Matula*, that would have led the Third Circuit to the conclusion that § 1983 damages were not available in conjunction with the IDEA.[243] Moreover, since 1995, other circuits had held that § 1983 is not available. At any time in the twelve years between *Matula* and *Jersey City*, the Third Circuit could have reexamined its holding in light of those courts' reasoning.

When the Third Circuit originally heard *Matula*, there was no circuit split and little guidance from the Supreme Court or other circuit courts.[244] However, in 2006, when *Jersey City* came before the court, a substantial circuit split had developed on the issue and the Third Circuit had to reevaluate which side was correct. Since the Fourth Circuit had decided *Sellers* in 1998, a trend had started where courts were holding against the availability of § 1983 claims.[245] The Third Circuit's stated reason for returning to this issue was to reevaluate where it stood in light of the Supreme Court's reasoning in *Rancho Palos Verdes*.[246] However, the court also needed to reevaluate where it stood in light of the trend against § 1983 availability among the circuits. The Third Circuit found

239. *See* A.W. v. Jersey City Pub. Sch., 486 F.3d 791, 792 (3d Cir. 2007) (en banc).
240. *See id.* at 797.
241. *See id.* at 799.
242. *See id.* at 792.
243. *See* discussion *supra* Part III.A.1.
244. *See* discussion *supra* Part III.A.1.
245. *See* cases cited *supra* note 66.
246. *See Jersey City*, 486 F.3d at 792.

this issue important enough that it was reheard en banc in 2007.[247] This case allowed the Third Circuit to truly consider and to correctly decide the outcome.

The Third Circuit would likely have agreed with its earlier holding in *Matula* had it been the correct application of the law. However, the court decided that the law required the opposite decision. The court explained that it used the reasoning from *Rancho Palos Verdes* in coming to this decision, but, interestingly, the opinion does not fully explain the application of that case to the IDEA.[248] Instead, the court partially applied the reasoning from *Rancho Palos Verdes* and then abruptly stated that it "agree[d] with the reasoning of the . . . Fourth and Tenth Circuits, to say nothing of the Supreme Court in *Smith*."[249] This statement is important in two ways. First, the statement is a complete reversal of *Matula*, which held that the congressional amendment to the IDEA overturned the holding in *Smith*.[250] Second, the statement suggests that, while the court found the reasoning from *Rancho Palos Verdes* persuasive, it recognizes that the reasoning in *Matula* may have been incorrect. By agreeing with the Fourth Circuit, which decided *Sellers* in 1998, the court is agreeing with reasoning that could have been used to decide *Matula*.[251] Whatever the reasons may have been for revisiting § 1983 availability for IDEA violations, the Third Circuit was inspired to take its time and decide properly on this issue.

2. The Significance of the Third Circuit's Decision in *A.W. v. Jersey City Public Schools*

The Third Circuit's recent decision to overturn its earlier holding and deny § 1983 claims for IDEA violations will have a great impact on other courts deciding this issue in the future. At the beginning of 2007, there were three circuits on each side of the split.[252] When the Third Circuit switched sides in May 2007, it became the fourth circuit holding against availability of § 1983, leaving only two circuits still allowing § 1983 claims for IDEA violations. This tip in the balance of the split quickly affected the decisions rendered by the other circuits.

247. *See id*.

248. *See id.* at 803.

249. *Id. See Jersey City*, 486 F.3d at 802. The Third Circuit applied the reasoning from *Rancho Palos Verdes* only insofar as noting that the IDEA, similar to the Telecommunications Act discussed in *Rancho Palos Verdes*, does not give a textual indication that § 1983 is available. *See id.* The court then turned to a discussion of legislative history, which was not discussed in *Rancho Palos Verdes*. *See id.*

250. *See* W.B. v. Matula, 67 F.3d 484, 494 (3d Cir. 1995) (holding that the congressional amendment to the IDEA overturned the holding from *Smith v. Robinson*).

251. *See* discussion *supra* Part III.A.1.

252. *See* discussion *supra* Part II.C.

The Ninth Circuit consistently declined to decide on this issue during the years that the circuit split was evenly balanced. Then, in September 2007, the Ninth Circuit decided *Blanchard v. Morton School District*[253] and agreed with the First, Third, Fourth, and Tenth Circuits that § 1983 remedies were not available for an alleged violation of the IDEA.[254] The Ninth Circuit explained that it was "persuaded by the recent thoughtful, well-reasoned opinion of the Third Circuit."[255]

The Ninth Circuit Court of Appeals was the fifth circuit to decide against § 1983 availability, causing the circuit split to become five against two. Now that the split has become unbalanced, more federal courts of appeals are likely to follow the Third Circuit's recent decision. In December 2007, the Middle District of Florida, in the Eleventh Circuit, decided *Sammons v. Polk County School Board*.[256] Although it has implied § 1983 availability, the Eleventh Circuit Court of Appeals has never ruled definitively on this issue.[257] The *Sammons* court explained why it believed the Eleventh Circuit would now decide that § 1983 is not available to remedy IDEA violations.[258] To do so, the court pointed to *Holbrook v. City of Alpharetta*,[259] where the Eleventh Circuit held that § 1983 claims were not available for violations of the Americans with Disabilities Act or the Rehabilitation Act.[260] The *Sammons* court found that *Holbrook* was evidence that the Eleventh Circuit would not allow § 1983 claims for IDEA violations.[261] If the Eleventh Circuit decides to hear this issue, and the reasoning in *Sammons* is correct, then it will likely join the five circuits holding that § 1983 is not available for IDEA violations. A decision by the Eleventh Circuit would further unbalance the circuit split.

The Supreme Court has declined to hear this issue since its holding in *Smith v. Robinson*. It still views *Smith* as correct when it comes to the

253. 504 F.3d 771 (9th Cir. 2007).

254. *See* Blanchard v. Morton Sch. Dist., 504 F.3d 771, 774-75 (9th Cir. 2007).

255. *Id.* at 774.

256. Sammons v. Polk County Sch. Bd., 8:04-CV-2657-T-24 EAJ, 2007 U.S. Dist. LEXIS 90725 (M.D. Fla. Dec 10, 2007).

257. *See* N.B. v. Alachua County Sch. Bd., 84 F.3d 1376, 1379 (11th Cir. 1996) (implying the availability of § 1983 for an alleged IDEA violation after administrative remedies are exhausted, but declining to rule on whether Section 1983 would be available).

258. *See Sammons*, 2007 U.S. Dist. LEXIS 90725, at *12.

259. 112 F.3d 1522 (11th Cir. 1997).

260. *See* Holbrook v. City of Alpharetta, Ga., 112 F.3d 1522, 1530 (11th Cir. 1997) (holding that plaintiffs could not maintain a § 1983 claim in lieu of or in addition to a Rehabilitation Act or Americans with Disabilities Act claim).

261. *See Sammons*, 2007 U.S. Dist. LEXIS 90725, at *13.

availability of § 1983 for IDEA violations.[262] Therefore, the Supreme Court is unlikely to decide to rehear this issue. If the Court does decide to hear a case on the availability of § 1983 for IDEA violations, it will likely follow the reasoning in *Smith* and deny § 1983 claims.

IV. CONCLUSION

The Third Circuit's recent decision in *A.W. v. Jersey City Schools* has already had, and will continue to have, an impact on court decisions regarding whether § 1983 remedies are available for IDEA violations. The Third Circuit's decision to reexamine *Matula* and overturn that earlier holding will allow other previously undecided circuits to agree with its reasoning and join a majority of circuits holding against the availability of § 1983 remedies for IDEA violations. The Supreme Court will likely not hear a case on this issue, allowing the split to resolve itself. There is a possibility that the Second and Seventh Circuits, which still allow § 1983 availability, will reexamine their earlier holdings. The time is ripe for reconsideration in each of these circuits. If the Supreme Court does hear a case on the issue of § 1983 remedies for IDEA violations, then it will likely follow *Smith v. Robinson* and hold that § 1983 remedies are not available for IDEA violations.

There is a possibility that Congress could amend the IDEA again to include § 1983 remedies, however, an amendment is unlikely. Congress has not amended the IDEA to include § 1983 in the past twenty years that the courts of appeals have been deciding these cases, and so are unlikely to amend it now. Courts holding against § 1983 availability are still awarding appropriate relief to plaintiffs who prove IDEA violations.[263] Congress is unlikely to amend the IDEA so that these plaintiffs can also receive large damage awards, which are generally a windfall and have no impact on the educational needs of the child involved.[264] Additionally, Congress is unlikely to increase the burden on school boards by increasing the potential for large damage awards.

The Third Circuit's impact has been and will continue to be great. The Third Circuit has begun the process of agreement between the United States courts of appeals and had a hand in changing the

262. *See, e.g.*, City of Rancho Palos Verdes v. Abrams, 544 U.S. 113, 121 (2005) (discussing *Smith* and using IDEA as an example of a statute with a comprehensive remedial scheme that precludes § 1983 claims).

263. *See* Sch. Comm. of Burlington, Mass. v. Dep't of Educ. of Mass., 471 U.S. 359, 370 (1985) (holding that appropriate damages may include injunctive relief or reimbursement of educational expenses).

264. *See* Sellers by Sellers v. Sch. Bd. of Manassas, Va., 141 F.3d 524, 527-28 (4th Cir. 1998) (explaining that tort-like damages are inconsistent with the IDEA's statutory scheme and would be very difficult to measure); *Burlington*, 471 U.S. at 370 (stating that relief under the IDEA is meant only to ensure a free appropriate public education).

expectations and possibilities for parties involved in suits involving IDEA violations. The Third Circuit should be applauded for overturning its decision in *Matula* and taking the time to thoroughly think through this issue. In the future, the danger of large damage awards may no longer be a consideration when determining how to address the needs of disabled children. School districts will have one less financial difficulty to worry about and will be better able to focus on providing a solid education to all children.