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This Note reviews the history, structure, and purpose of 42 U.S.C. § 1983 and the Individuals with Disabilities Education Act (IDEA). It then describes how the two statutes intersect and interact. Next, this Note examines the existing split in the U.S. Courts of Appeals regarding the availability of § 1983 as a remedy for violations of the IDEA. This Note ultimately contends that Congress intended § 1983 suits to prevail under the IDEA and argues that school districts will be deterred from violating the statute’s provisions if such suits are allowed to proceed.

INTRODUCTION

A child with dyslexia enrolled as a second-grade student in the Jersey City Public Schools in September 1988.1 Because his learning disability was never diagnosed by the school district, the student was still unable to read, write, and spell as a twenty-year-old tenth grader. In 1997, three years before the student began receiving special educational services, his grandmother filed a complaint with the New Jersey Department of Education (NJDOE) on behalf of the student and others similarly situated. After an investigation, the NJDOE issued a report concluding that the school district was out of compliance with the Individuals with Disabilities Education Act (IDEA)2 because it had failed to demonstrate that it was meeting the needs of classified disabled pupils. Despite this finding, the student was not granted any immediate relief.

In 2001, the student brought a § 19833 action seeking monetary damages, claiming that his rights under the IDEA were violated.4 In 2007, ten years after proceedings were initiated, the U.S. Court of Appeals for the Third

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2. 20 U.S.C. §§ 1400–1487 (2000); see infra Part I.A.
4. Jersey City, 486 F.3d at 793; see infra Part II.C.2.
Circuit held that the student “[d]id not allege[] an actionable violation of his rights under the IDEA.”5

Today, questions of whether children with disabilities are receiving the level of education guaranteed to them by law persist, as does the question of the appropriate remedy when their rights have been violated. The unsettled issue of whether a plaintiff can sustain a § 1983 action to enforce rights guaranteed by the IDEA has created a split among the U.S. Courts of Appeals.6 Part I of this Note reviews the history, structure, and purpose of 42 U.S.C. § 1983 and of the IDEA. It then describes how the two statutes intersect and interact. Part II examines the current split among the Courts of Appeals and highlights the Third Circuit’s recently revised approach to IDEA rights under § 1983. Finally, Part III of this Note contends that Congress intended § 1983 damages actions to prevail under the IDEA. This Part also argues that by allowing § 1983 suits to proceed under the IDEA, school districts will be deterred from violating it, resulting in increased compliance with the statute and, ultimately, increased quality in education for the disabled.


A. Overview of the IDEA

1. Origins

Two decades after the U.S. Supreme Court declared education to be “perhaps the most important function of state and local governments,”7 more than “half of the Nation’s 8 million disabled children were not receiving appropriate educational services.”8 In the early 1970s, two cases, Mills v. Board of Education of District of Columbia9 and Pennsylvania Association for Retarded Children v. Pennsylvania10, commonly referred to as “landmark” decisions in education disability rights, caught the attention of the public, and called for change in the laws governing the education of students with disabilities.11 At the time these cases were decided, laws in Pennsylvania and Washington D.C., permitted public schools to deny admission to children with an I.Q. below seventy until they reached the age

5. Jersey City, 486 F.3d at 806; see infra Part II.C.2.
6. See infra Part II.
of eight.\textsuperscript{12} In response, the courts held that disabled youth had a constitutional right to a free public education.\textsuperscript{13}

In 1975, newly alerted to this crisis in public education, Congress conducted a study revealing that “the educational needs of 82 percent of all children with emotional disabilities went unmet.”\textsuperscript{14} Congressional research indicated that 1.75 million of the 8 million children with disabilities were not receiving any educational services, and that 2.5 million disabled youth were not receiving an appropriate education.\textsuperscript{15} In addition to spending billions of dollars annually on an ineffective education system, the government was spending billions on care for adults with disabilities in long-term public institutions.\textsuperscript{16}

Students with disabilities who were not excluded from the system were often either assigned to separate classrooms or left in mainstream classes—undiagnosed and not learning.\textsuperscript{17} Not surprisingly, as a result of their frustration with the system, some of these disadvantaged youth were dropping out of school—at great cost to their parents and society.\textsuperscript{18} As a result of these startling findings, Congress passed the Education for All Handicapped Children Act, the IDEA’s predecessor, in 1975.\textsuperscript{19} In 1990, the Act was revised and given its current name.\textsuperscript{20}

2. Objectives

The ultimate goal of the IDEA is “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living.”\textsuperscript{21} The statute offers federal funds to states, localities, and other educational agencies that implement its provisions.\textsuperscript{22} In order to receive funds, Congress requires that state and local educational agencies under the IDEA\textsuperscript{23} establish procedures to ensure that a free, appropriate education is available to all children with disabilities residing in that locality between the ages of three and twenty-one.\textsuperscript{24} One such procedure is the development

\textsuperscript{12} See id. at 311 n.75.
\textsuperscript{13} See id. (citing Kern Alexander & M. David Alexander, American Public School Law 440 (5th ed. 2001)).
\textsuperscript{14} Honig v. Doe, 484 U.S. 305, 309 (1988) (citation omitted).
\textsuperscript{16} See id. at 8–9.
\textsuperscript{17} See Terry Jean Seligmann, A Diller, a Dollar: Section 1983 Damage Claims in Special Education Lawsuits, 36 Ga. L. Rev. 465, 472–73 (2002).
\textsuperscript{18} See id. at 473; Bouchard, supra note 11, at 312.
\textsuperscript{19} See Bouchard, supra note 11, at 312.
\textsuperscript{20} See id. at 313.
\textsuperscript{22} See id. § 1412(a).
\textsuperscript{23} See id. § 1400(d)(1)(C).
\textsuperscript{24} Id. § 1412(a)(1)(A).
of an individualized education program (IEP) for each child with a
disability. The IEP sets out the child’s educational performance, establishes
annual goals, and describes the educational program designed to enable the
child to meet those individualized goals. In addition, the statute calls for
children with disabilities to be educated in the least restrictive environment.
Only when the severity of the disability “is such that education in regular
classes with the use of supplementary aids and services cannot be achieved
satisfactorily” should a child be removed from the regular educational
environment.

3. Processes

The IDEA process begins with a “referral” for an evaluation, as the
school system has an obligation to try to identify those children within their
district who may have disabilities—a process called “child find.”
Children may also be evaluated at the request of a parent. The results of
the evaluation are studied by a task force composed of parents and school
district personnel. If the evaluation indicates a disability and a need for
special services, an IEP will be prepared that specifically describes the
child’s needs, placement, and educational goals, to which the parent must
consent. If no disability is identified, the student will not be eligible for
services under the IDEA. A parent can appeal the findings or may seek
an independent evaluation.

4. Procedural Safeguards

The IDEA established a system of procedural safeguards to guarantee
parents of disabled children direct participation in the process. Section
1415(a) provides for “procedures . . . to ensure that children with
disabilities and their parents are guaranteed procedural safeguards with
respect to the provision of free appropriate public education.” In addition
to being guaranteed direct participation in the special education process,
parents have the right to receive an impartial due process hearing after filing
a complaint relating to the school’s provision of a free, appropriate

25. See id. §§ 1401(11), 1414(d)(1)(A).
26. Id. § 1412(a)(5)(A).
27. Id. § 1412(a)(3); see Seligmann, supra note 17, at 474.
28. 34 C.F.R. § 300.301(b) (2007).
29. See Seligmann, supra note 17, at 475.
30. Otherwise, the last placement of the child that was agreed upon remains effective
until a new agreement is reached. This is codified in the IDEA’s “stay-put” provision at 20
31. See Seligmann, supra note 17, at 475.
33. See id. § 1415.
34. Id. § 1415(a).
education. The hearing must be held and the decision must be issued promptly—generally within forty-five days. Both the parents and the school can seek administrative review of the hearing. Finally, either party may file a civil action in state or federal court and obtain relief, if appropriate. The term “appropriate relief” has included injunctive and declaratory relief, attorneys’ fees, reimbursement for educational expenses, and compensatory education.

B. Section 1983 of the Civil Rights Act of 1871

Section 1983 of Title 42 of the U.S. Code is part of the Civil Rights Act of 1871. Its goal was to provide remedies for civil rights violations against African Americans after the Civil War. Although the statute’s primary purpose was to remediate the activities of the Ku Klux Klan, the bill also provides a remedy to claimants seeking redress for violations by individuals acting under color of law who refuse to enforce a state law. After its passage, few lawsuits were filed using § 1983. However, beginning in the 1960s and continuing today, the statute is commonly used to redress a wide array of rights violations and provides the basis for most of the litigation against local governments and officials acting under color of law. Section 1983 provides, in part,

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

35. Id. § 1415(f).
36. 34 C.F.R. § 300.515(a) (2007).
37. 20 U.S.C. § 1415(g).
38. Id. § 1415(i)(2).
42. See, e.g., Burlington Sch. Comm. v. Mass. Dep’t of Educ., 471 U.S. 359, 369–70 (1985) (providing tuition reimbursement to the parents for the private school education costs they incurred during the time that their challenge to the public school district was under review, and noting that, without reimbursement, remedial rights under the IDEA would be only an “empty victory”); see also Seligmann, supra note 17, at 479–81 & nn.77–93. Congress codified the Burlington framework in the 1997 amendment to IDEA. See Perry A. Zirkel, Compensatory Education Under the Individuals with Disabilities Education Act: The Third Circuit’s Partially Mis-Leading Position, 110 Penn St. L. Rev. 879, 890 (2006).
43. See, e.g., Miener v. Missouri, 800 F.2d 749, 753 (8th Cir. 1986) (reasoning that a compensatory education is a natural result of Burlington and should not turn on the parent’s ability to pay the costs); see also Seligmann, supra note 17, at 481–82.
44. See Bouchard, supra note 11, at 304.
45. See id.
47. See id.
48. See Bouchard, supra note 11, at 304.
other person within the jurisdiction thereof to the deprivation of any
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 . . . . 49

Section 1983 creates remedies and not substantive rights. 50 When the
bill was first enacted, § 1983 was primarily used to remedy constitutional
rights violations. 51 The Supreme Court, with limitations, has since
determined that § 1983 can be used to redress a variety of federal statutory
rights violations as well. 52

Violation of a federal statute by itself does not guarantee the availability
of § 1983; 53 rather, the relevant statutory provision must confer an
individually enforceable right. 54 Once it has been determined that such a
right exists, it is presumptively enforceable by § 1983. 55 However, this
presumption may be rebutted by a showing that the relevant provision
alleged to have been violated expressly 56 or implicitly 57 forecloses a
remedy under § 1983.

In addition to bringing suits based on both the “Constitution and laws,”
plaintiffs can also bring a § 1983 claim against a “person.” 58 The Supreme
Court has held that officials of a governmental body may be sued under §
1983, and that, for purposes of § 1983 litigation, a municipality (and
municipal governmental institutions) constitutes a “person.” 59 Therefore,
local school districts can be sued for monetary, declaratory, or injunctive
relief. 60 Local and state officials may be sued in their “personal” capacity
under § 1983 to impose personal liability on the officer for actions
occurring under color of state law and with the badge of state authority. 61

51. See Bouchard, supra note 11, at 305.
52. See id.
53. See id. at 305 n.27.
“absent clear direction to the contrary by Congress, the federal courts have the power to
award any appropriate relief in a cognizable cause of action brought pursuant to a federal
statute”).
56. Gonzaga, 536 U.S. at 284 n.4 (citing Wright v. City of Roanoke Redevelopment & Housing
Authority, 479 U.S. 418, 423 (1987)). Gonzaga cited Wright for the proposition that Congress
can foreclose a § 1983 remedy via “specific evidence from the statute itself.” Id.
57. Id. at 285 n.4 (citing Blessing v. Freestone, 520 U.S. 329, 341 (1997)). Gonzaga
cited Blessing for the proposition that Congress can also foreclose a § 1983 remedy by
creating a “comprehensive enforcement scheme that is incompatible with individual
enforcement under § 1983.” Id.
58. See Bouchard, supra note 11, at 306.
59. See Monell v. N.Y. City Dep’t of Soc. Servs., 436 U.S. 658, 690 (1978); Bouchard,
supra note 11, at 307.
60. See Monell, 436 U.S. at 690; Bouchard, supra note 11, at 307.
Wenkart, supra note 46, at 315. States and state officials cannot be sued in their official
capacity because of sovereign immunity under the Eleventh Amendment, except where a
Furthermore, courts have found officials liable under a theory of supervisory liability based on a supervisor’s own acts or omissions, including failure to remedy, gross negligence, or deliberate indifference. Thus, a parent of a disabled child can pursue a § 1983 claim against a special education director.

Courts may award monetary, declaratory, and injunctive relief under § 1983 as well as attorneys’ fees. The Supreme Court has also allowed an award of punitive damages under the statute in a proceeding against an individual where the official acted with malicious intent or willful disregard of a plaintiff’s rights.

C. The Supreme Court’s Rejection of the Use of § 1983 in IDEA Claims and Congress’s Subsequent Actions

In 1984, the Supreme Court ruled in Smith v. Robinson that the IDEA was the exclusive avenue through which a parent could pursue relief for its violations. In Smith, parents of a disabled student brought a lawsuit to recover attorneys’ fees under 42 U.S.C. § 1988 after prevailing on their claim involving a financial dispute over the child’s educational placement. The Court opined that because the IDEA was a “comprehensive scheme” set up by Congress to assist the states in providing a free, appropriate public education to students with disabilities, allowing a plaintiff to circumvent IDEA’s remedies would be inconsistent with Congress’s intent. The Court reasoned that “it would also run counter to Congress’ view that the needs of handicapped children are best accommodated by having the parents and the local education agency work together to formulate an individualized plan for each handicapped child’s education.”

The plaintiffs also asserted claims under § 1983, which the Court rejected. “We do not lightly conclude that Congress intended to preclude reliance on § 1983 as a remedy for a substantial equal protection claim,” the
Court offered.74 “Since 1871, when it was passed by Congress, § 1983 has stood as an independent safeguard against deprivations of federal constitutional and statutory rights,” it continued.75 Nonetheless, the Court held that where the IDEA applied, the only avenue through which it could be enforced was the administrative remedies it provided.

The dissent in Smith argued that § 1983 was an appropriate means of relief in IDEA cases.76 The dissent reasoned that, in order to determine whether § 1983 is available to claimants suing to enforce rights under the IDEA, “each provision must be read together with the [IDEA]” so as to preserve “those aspects of § . . . 1983 that are not in irreconcilable conflict with the [IDEA].”77 The dissent noted that the Court failed to adhere to “well-established principles of statutory interpretation” when it effectively repealed § 1983 without finding support in the language or legislative history of the IDEA.78 Finally, the dissent suggested that Congress clarify its position by revisiting the subject.79

In 1986, Congress acted on the dissent’s invitation and added § 1415(l) to the IDEA, which reads,

> Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and 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, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) of this section shall be exhausted to the same extent as would be required had the action been brought under this subchapter.81

Because the amendment expressly mentions the U.S. Constitution, Title V of the Rehabilitation Act, and “other Federal laws protecting the rights of children with disabilities,” the provision overturned Smith’s broad holding that the IDEA provided the exclusive means through which a claimant’s wrongs could be remedied.82

The amendment did not specifically mention § 1983. The legislative history of the amendment, however, explicitly mentions § 1983.83 Therefore, the heart of the controversy lies in whether § 1415(l) effectively

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74. Id.
75. Id.
76. See id. at 1030 (Brennan, J., dissenting).
77. Id. at 1023–24.
78. Id. at 1030.
79. Id. at 1031.
80. This provision was originally codified at 20 U.S.C. § 1415(f) (2000). This Note refers to it at its present location in the U.S. Code, § 1415(l).
82. See Bouchard, supra note 11, at 321; Seligmann, supra note 17, at 492–93.
overruled Smith’s narrow holding that the IDEA is comprised of a comprehensive remedial scheme that implicitly forecloses § 1983 relief. Despite Congress’s intent to clarify its position regarding the IDEA and other laws, its silence since the passage of the 1986 amendment to the IDEA has resulted in much perplexity among the courts, and a split among the U.S. Courts of Appeals.\footnote{See Bouchard, \textit{supra} note 11, at 322.}

While the Supreme Court has not addressed the issue of the availability of § 1983 for IDEA violations since Smith, it has addressed the scope of rights under the IDEA. In \textit{Winkelman v. Parma City School District},\footnote{127 S. Ct. 1994 (2007).} decided in 2007, the Supreme Court held that parents have rights under the IDEA, and are therefore entitled to prosecute IDEA claims on their own behalf.\footnote{See \textit{id.} at 2006.} The Court “disagree[d] that the sole purpose driving IDEA’s involvement of parents is to facilitate vindication of a child’s rights. It is not a novel proposition to say that parents have a recognized legal interest in the education and upbringing of their child.”\footnote{\textit{Id.} at 2003 (citing \textit{Pierce v. Soc’y of Sisters}, 268 U.S. 510, 534–35 (1925)).}

The parents in \textit{Winkelman} based their argument for enforceable rights under the IDEA on a comprehensive reading of the Act, arguing that “[t]aken as a whole, . . . the Act leads to the necessary conclusion that parents have independent, enforceable rights.”\footnote{\textit{Id.} at 1999.} The Supreme Court agreed with their reasoning.\footnote{Id. at 2003.} The Court referred to its discussion of statutory interpretation in a 2006 case that considered the language of the Federal Tort Claims Act.\footnote{\textit{Id.} at 2000.} In that case, \textit{Dolan v. U.S. Postal Service}, the Court opined that “[t]he definition of words in isolation . . . is not necessarily controlling in statutory construction. . . . Interpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis.”\footnote{\textit{Dolan v. U.S. Postal Serv.}, 546 U.S. 481, 486 (2006).} The \textit{Winkelman} Court then engaged in a comprehensive analysis of the IDEA’s statutory scheme to reach its conclusion.\footnote{\textit{Winkelman}, 127 S. Ct. at 2000–05.}

The Supreme Court agreed that parents enjoy independent, enforceable rights under the IDEA, and that it would be “inconsistent with the statutory scheme to bar them from continuing to assert these rights in federal court.”\footnote{\textit{Id.} at 2002.}

A number of cases have presented courts with the question of whether to allow a § 1983 action to proceed for the purpose of enforcing rights under the IDEA. The courts’ interpretations of the 1986 addition of § 1415(1) to the IDEA vary: The U.S. Courts of Appeals for the First, Fourth, Ninth, and Tenth Circuits have held that § 1983 cannot be used to remedy a violation of the IDEA.94 The U.S. Courts of Appeals for the Second, Seventh, and Eighth Circuits have allowed such suits to proceed.95 The Third Circuit previously had allowed § 1983 actions as an appropriate remedy for an IDEA violation.96 But, in 2007, the Third Circuit reversed its prior holding, ruling instead that the 1986 amendment did not give claimants a remedy under § 1983.97 Part II.A examines the circuit court decisions that have been favorable to allowing § 1983 to enforce rights under the IDEA. Part II.B explores the circuit court decisions that have precluded § 1983 relief under the IDEA. Finally, Part II.C focuses on the Third Circuit’s route to its recent reversal in Jersey City.

A. Decisions Favorable to Using § 1983 to Enforce Rights Under the IDEA

The Second, Seventh, and Eighth Circuits have held that, with the 1986 amendment to the IDEA, Congress intended that IDEA rights be enforceable under § 1983.98

1. Seventh Circuit: Marie O. v. Edgar

In Marie O. v. Edgar,99 four infants with disabilities brought an action on behalf of themselves and 26,000 other children living in Illinois who were not receiving early intervention services despite their eligibility. The Seventh Circuit relied on § 1415(1) to reach the conclusion that § 1983 is an available remedy for IDEA violations. The court held that, not only did

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95. See, e.g., Marie O. v. Edgar, 131 F.3d 610, 622 (7th Cir. 1997); Digre v. Roseville Schs. Indep. Dist. No. 623, 841 F.2d 245, 259 (8th Cir. 1988); Mrs. W. v. Tirozzi, 832 F.2d 748, 755 (2d Cir. 1987).
98. See supra note 95 and accompanying text. But see Heidemann v. Rother, 84 F.3d 1021, 1033 (8th Cir. 1996) (holding that § 1983 actions are not available to enforce rights under the IDEA, but failing to either mention or cite to Digre).
99. 131 F.3d 610 (7th Cir. 1997).
Congress not intend to foreclose resort to § 1983, “but it actually provided for its availability to enforce the IDEA.”

The preschool-age children brought their suit under Part C of the IDEA, which sets up a federal program by which funds are allocated to states to provide early intervention services to developmentally delayed infants and toddlers from birth through age two. In order to receive these funds, a state must prove that it has set up a comprehensive system in which it implements these interventions. The State of Illinois began participating in 1987 and received more than $34 million in federal funds during the ten-year period between then and 1997, when this case was decided. However, despite receiving the funds, Illinois was not in full compliance with the statute until 1996. In 1993, the Auditor General of Illinois reviewed the state’s progress and found that many children were not being served and instead were placed on waiting lists for early intervention services, like the four infant plaintiffs.

The plaintiffs, as a class, sought declaratory and injunctive relief under § 1983. In 1996, the U.S. District Court for the Northern District of Illinois held that plaintiffs had a claim under 42 U.S.C. § 1983 to enforce their rights under Part C of the IDEA. The defendants, however, continued to contest the holding, arguing that a § 1983 action to enforce rights under the IDEA was barred.

The defendants argued that Part C had not yet been enacted when the IDEA was amended in 1986 to include § 1415(l). However, the Seventh Circuit held that “not only did Congress not intend to foreclose resort to § 1983 in Part [C], but it actually provided for its availability to enforce the IDEA.” The court reasoned that, “[a]s the parties agree, § 1415([l]) was enacted for the express purpose of ensuring that § 1983 claims would be available to enforce the IDEA.” The express language of the provision referred to the entire Chapter 33 of Title 20 of the U.S. Code (the entire

100. *Id.* at 622.
101. At the time this case was decided, the relevant portion of IDEA was referred to as Part H. On June 4, 1997, the Individuals with Disabilities Education Act Amendments of 1997 were enacted. Pub. L. No. 105-17, 111 Stat. 37 (amending 20 U.S.C. §§ 1400–1487). Part C’s effective date was July 1, 1998. This Note refers to the relevant portion of the IDEA as Part C, despite the case’s reference to Part H.
103. *Id*.
104. *Id.* at 613.
105. *Id.* at 613–14.
106. *Id.* at 614.
107. *Id.* at 611–12.
108. *Id.* at 618.
109. *Id.* at 614.
110. See *id.* at 619.
111. *Id.* at 622.
112. *Id.*
IDEA, including Part C), so there was no need for Congress to refer to whether an action was permissible under § 1983 expressly in Part C.113

2. Eighth Circuit: Digre v. Roseville Schools Independent District No. 623

Similarly, in Digre v. Roseville Schools Independent District No. 623,114 in which a parent brought a § 1983 damages action to enjoin the Roseville School District from placing her son in a special education program pending a determination of his proper educational status at a due process hearing, the Eighth Circuit held that § 1983 was available to remedy both constitutional and IDEA violations.

The plaintiff student, Sean Digre, a boy of above-average intelligence, was reported to have exhibited behavioral problems in his sixth grade class, and was referred to the school district’s child study team for evaluation. The team found that Digre was argumentative with peers and did not abide by school rules and regulations. As a result, they suggested that changes be made to his educational program.115 Reluctantly, the child’s mother, Sharon Digre, consented to special education in May 1985.116 By mid-1986, it was clear that her son was not responding well to his program, which required him to spend half of each day in specialized classes.117 The school district’s team agreed to place him in regular education classes when he returned to eighth grade in the fall.118

Instead of returning to his school district the following year, Digre moved with his father and enrolled in a different district, where he was placed in regular education. When he moved back with his mother one month later, she attempted to reenroll her son in mainstream education, but the school asserted its right to continue his special education program.119 Although the district offered to reevaluate Digre, his mother refused to consent. She filed a lawsuit to preliminarily enjoin the school district from placing her son in special education, claiming protection under the stay-put provision of the IDEA.120

Digre did not return to public school.121 While the U.S. District Court for the District of Minnesota held that plaintiffs could not recover under § 1983, the Eighth Circuit held that the amended § 1415(l) of the IDEA

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113. Id.
114. 841 F.2d 245 (8th Cir. 1988).
115. Id. at 248.
116. Id.
117. Id.
118. Id.
119. Id.
120. Id. The stay-put provision of the IDEA requires that unless the state or local educational agency and the parent or guardian otherwise agree, the child will remain in the then-current educational placement while proceedings under the provision are pending. Id.
121. Id. at 249.
superseded the Supreme Court’s holding in Smith.\textsuperscript{122} Thus, the plaintiff was entitled to bring a § 1983 action based on violations of the IDEA.\textsuperscript{123}

3. Second Circuit: \textit{Mrs. W. v. Tirozzi}

The Second Circuit also has allowed § 1983 claims to enforce rights under the IDEA to proceed,\textsuperscript{124} finding that Congress so intended.\textsuperscript{125}

In 1987, in \textit{Mrs. W. v. Tirozzi}, the Second Circuit found that § 1983 was available for a violation of the IDEA.\textsuperscript{126} At the time the action was commenced, Diedre W. was a minor with emotional, intellectual, and gross motor disabilities. Nathan B. was also a minor at the time, diagnosed with autism and mental retardation. In 1985, the parents of the disabled youth, along with Connecticut Legal Services, brought a proceeding on their own behalf and on the behalf of other disabled youth against the Connecticut State Board of Education, its members, and the Connecticut Commissioner of Education.\textsuperscript{127} Their complaint alleged that the school districts violated the IDEA\textsuperscript{128} by failing to provide an adequate psychologist, and failing to conduct triennial evaluations of the disabled children.\textsuperscript{129} The board responded that both Diedre and Nathan had been evaluated in excess of the special education regulations under the IDEA, and furthermore, that evaluations by school psychologists are not mandated under the requirements of the statute.\textsuperscript{130} The plaintiffs asserted that the board’s response failed to comply with the complaint resolution procedure because the board did not communicate with the parents during the investigation, nor did it provide them with an opportunity to present relevant information.\textsuperscript{131} The parents also argued that they had not been afforded an opportunity to raise their complaints in a due process hearing under § 1415(b)(2) of the IDEA.

In 1982, Connecticut Legal Services filed a separate complaint with the board on behalf of Dale V. and all other disabled youth in the same school, raising several IDEA violations.\textsuperscript{132} As a result of the perceived inadequacies of Connecticut’s treatment of their complaints, the plaintiffs commenced a § 1983 action in the U.S. District Court for the District of Connecticut seeking declaratory and injunctive relief.\textsuperscript{133} The defendant
school board asserted that the plaintiffs had no private right of action under § 1983.134 Opining that the IDEA is a “comprehensive remedial statute,” the district court held that “no private right of action lies against defendants.”135

However, the Second Circuit reversed, holding that § 1983 could be used as a remedy for IDEA violations.136 In a hearty discussion of the availability of § 1983 federal jurisdiction to enforce federal statutory violations, the court held that “[i]n light of [the 1986 amendment’s] clear legislative history . . . parents are entitled to bring a § 1983 action based on alleged violations of the [IDEA] or the Due Process and Equal Protection clauses of the federal Constitution.”137 Citing a host of cases and conducting a thorough examination of the House and Senate reports, the court reasoned that the 1986 amendment, by enacting a nonexclusivity provision, “expressly overruled Smith” by “codifying a congressional purpose long in place which Congress believed the Supreme Court had misinterpreted.”138

In 2002, fifteen years after Tirozzi, the Second Circuit in Weixel v. Board of Education of New York139 reinstated the plaintiff’s § 1983 claim because she stated causes of action under the IDEA,140 indicating that Tirozzi was still very much alive in the Second Circuit.

B. Decisions Unfavorable to Using § 1983 to Enforce Rights Under the IDEA

The First, Third, Fourth, Ninth, and Tenth Circuits all have held that § 1983 cannot be used to enforce rights conferred by the IDEA.141 Generally, the circuit courts have reached holdings barring § 1983 claims by relying on the Supreme Court’s decision in Smith and rejecting the notion that Congress’s subsequent amendment opened the door to § 1983 claims.142

134. Id.
135. Id.
136. Id. at 755.
137. Id.
138. Id. at 754–55.
139. 287 F.3d 138 (2d Cir. 2002).
140. Id. at 151. In a pro se pleading of startling facts, Rose Weixel contended that she was denied a free, appropriate, public education when the school prevented her from taking advanced math and science classes due to her chronic absences from school as a result of her chronic fatigue syndrome and fibromyalgia. Id. at 142–45.
141. See Blanchard v. Morton Sch. Dist., 509 F.3d 934, 937 (9th Cir. 2007), cert. denied, 128 S. Ct. 1447 (2008).
1. First Circuit: *Diaz-Fonseca v. Puerto Rico*

In 2006, in *Diaz-Fonseca v. Puerto Rico,* the First Circuit held that a parent could not use § 1983 to bypass the IDEA’s remedial structure. Citing circuit precedent in *Nieves-Márquez v. Puerto Rico,* the court reasoned that, “if federal policy precludes money damages for IDEA claims, it would be odd for damages to be available under another vehicle... where the underlying claim is one of violation of IDEA.”

The court further explained that allowing the plaintiffs to claim money damages under § 1983 “would subvert... the overall scheme that Congress envisioned for dealing with educational disabilities,” and would undermine the purpose of the IDEA, which is to provide a free, appropriate public education to disabled youth.

The court’s analysis of the caveat set out in 20 U.S.C. § 1415(l) was that Congress, in amending the IDEA, intended to ensure that the IDEA did not restrict rights and remedies “that were already independently available through other sources of law.” Because the plaintiffs’ case turned entirely on the statutory rights guaranteed by the IDEA, the court concluded that the plaintiffs could not circumvent the remedial structure in the statute by suing under § 1983 to enforce those rights.

2. Fourth Circuit: *Sellers v. School Board of Manassas, Virginia*

Similarly, in *Sellers v. School Board of Manassas, Virginia,* the Fourth Circuit held that the 1986 amendment to the IDEA “reveal[ed] no intent that parties be able to bypass the remedies provided in [the] IDEA by suing instead under section 1983 for an IDEA violation,” reasoning that the purpose of the IDEA’s procedural mechanisms was to restore education rights—not to “provide a forum for tort-like claims of educational malpractice.”

In *Sellers,* the school system failed to diagnose Kristopher Sellers’s learning and emotional disabilities for many years. In fact, he was a high

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143. 451 F.3d 13 (1st Cir. 2006).
144.  Id. at 28.
145. 353 F.3d 108 (1st Cir. 2003) (holding that the only monetary awards available under the IDEA are “[a]wards of compensatory education and equitable remedies that involve the payment of money, such as reimbursements to parents for expenses incurred on private educational services to which their child was later found to have been entitled”).
146.  *Diaz-Fonseca,* 451 F.3d at 28 (quoting *Nieves-Márquez,* 353 F.3d at 125).
147.  *Id.* at 29 (quoting Frazier v. Fairhaven Sch. Comm., 276 F.3d 52, 63 (1st Cir. 2002)).
148.  *Id.* (citing *Nieves-Márquez,* 353 F.3d at 125).
149.  *Id.*
150.  See *id.* at 28–29.
151. 141 F.3d 524 (4th Cir. 1998).
152.  *Id.* at 530.
153.  *Id.* at 527.
154.  *Id.* at 525.
school student when he was finally classified as entitled to special education services.\textsuperscript{155} His lawsuit stated that his test scores “should have alerted” the defendant school board of the need to evaluate Sellers much earlier.\textsuperscript{156} Sellers finally began receiving special education services after an IDEA administrative hearing, but a hearing officer determined that he was unable to award compensatory and punitive damages to the Sellers.\textsuperscript{157} After review by a state-level officer who reached the same conclusion, the Sellers filed suit in the U.S. District Court for the Eastern District of Virginia, seeking monetary damages under 42 U.S.C. § 1983 for violations of the IDEA.\textsuperscript{158} The Sellers claimed that the defendant school board neglected its duty to identify and evaluate the child after being alerted to his condition by his fourth-grade test scores.\textsuperscript{159} They also claimed that he had not been provided with a free, appropriate public education because he did not receive any special education services until the 1995 to 1996 school year, when he was in high school.\textsuperscript{160} As a result of these continued violations of the IDEA, the Sellers claimed they were entitled to monetary damages under 42 U.S.C. § 1983.

In holding that the Sellers could not seek monetary damages under § 1983, the Fourth Circuit first discussed the Supreme Court’s decision in \textit{Smith}, concluding that the IDEA is the exclusive avenue through which a disabled child and her aggrieved parents can pursue their claim.\textsuperscript{161} In response to the Sellers’ argument that the 1986 amendment to the IDEA that was enacted as a result of \textit{Smith} “demonstrat[ed] a clear congressional intent that plaintiffs once again be permitted to sue under section 1983 for IDEA violations,” the court opined that no such intent existed upon a closer reading of the provision because “it simply fails to mention section 1983.”\textsuperscript{162} Notwithstanding its concession that the amendment preserved the right of plaintiffs to bring a § 1983 action for constitutional violations, the court made clear that the amendment does not permit plaintiffs to sue under § 1983 for violations of the IDEA, which are “statutory in nature.”\textsuperscript{163} Moreover, it clarified that nothing in § 1415(l) effectively overruled \textit{Smith}.\textsuperscript{164}

Because a higher standard of liability—a showing of purposeful discrimination—is required to prevail on a constitutional equal protection claim as opposed to a violation of the IDEA (which is achieved by simply showing a failure to provide a free, appropriate public education), the court

\begin{itemize}
  \item \textsuperscript{155} See id.
  \item \textsuperscript{156} Id.
  \item \textsuperscript{157} See id. at 526.
  \item \textsuperscript{158} Id.
  \item \textsuperscript{159} Id. at 525.
  \item \textsuperscript{160} Id. at 526.
  \item \textsuperscript{161} Id. at 529–30.
  \item \textsuperscript{162} Id. at 530.
  \item \textsuperscript{163} Id. (citing Maine v. Thiboutot, 448 U.S. 1, 4 (1980)).
  \item \textsuperscript{164} Id.
\end{itemize}
felt vindicated in its interpretation.\textsuperscript{165} Therefore, the court reasoned, because the Supreme Court has not classified education as a fundamental right,\textsuperscript{166} and because it has not yet classified disabled persons as a suspect class,\textsuperscript{167} “a plaintiff in this context would have to prove that a school board’s decision was without any rational basis,”\textsuperscript{168} and it is therefore easy to see why Congress would intend to subject school districts to more severe penalties under § 1983 “for their more culpable constitutional failures, yet not for breaches of [the] IDEA.”\textsuperscript{169} And despite the Sellers’ argument that the legislative history of § 1415(l) revealed Congress’s explicit intent to permit disabled children to pursue IDEA violations via § 1983, the court found that a closer look uncovers Congress’s intent to restore constitutional rights under the IDEA to plaintiffs.\textsuperscript{170} Moreover, because the IDEA was enacted pursuant to the Spending Clause, the court opined, § 1415(l) must be subject to the rule articulated by the Supreme Court in \textit{Pennhurst State School & Hospital v. Halderman:}\textsuperscript{171} “[I]f Congress desires to condition the States’ receipt of federal funds, it must do so unambiguously . . . .”\textsuperscript{172} Therefore, if Congress intended plaintiffs to be able to sue under § 1983 for violations of the IDEA, it would have had to say it with clarity.\textsuperscript{173}

3. Tenth Circuit: \textit{Padilla v. School District No. 1}

In \textit{Padilla v. School District No. 1,}\textsuperscript{174} the Tenth Circuit agreed with the reasoning in Sellers that the amendment to the IDEA “may not provide the basis for § 1983 claims.”\textsuperscript{175} In \textit{Padilla}, the plaintiff, a physically and developmentally disabled child, asserted that she was denied the behavioral programming, augmentative communication, and tube feeding services that were identified in her IEP by the Denver school district.\textsuperscript{176} She further argued that she was subjected to a “windowless closet, restrained in a stroller without supervision” by the defendants, and that on one of these occasions, she “tipped over and hit her head on the floor, suffering serious physical injuries, including a skull fracture and exacerbation of a seizure disorder,” which caused her to miss

\begin{thebibliography}{9}
\bibitem{} Id. at 530–31.
\bibitem{} Id. at 531 (citing San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 33–37 (1973)).
\bibitem{} Id. (citing City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 445–46 (1985)).
\bibitem{} Id.
\bibitem{} Id.
\bibitem{} Id. at 530–31.
\bibitem{} 451 U.S. 1, 17 (1981).
\bibitem{} \textit{Sellers}, 141 F.3d at 532 (quoting South Dakota v. Dole, 483 U.S. 203, 207 (1987) (internal quotation marks omitted)).
\bibitem{} See \textit{id.} at 532.
\bibitem{} 233 F.3d 1268 (10th Cir. 2000).
\bibitem{} \textit{Id.} at 1273,
\bibitem{} \textit{Id.} at 1271.
\end{thebibliography}
school for the rest of the year.\textsuperscript{177} During that year, the plaintiff did not receive homeschooling, further denying her a free, appropriate public education.\textsuperscript{178} After moving to a different school district in August 1997, the student requested an administrative hearing in February 1998.\textsuperscript{179} After her request was denied by the hearing officer because she lived outside of the district, she filed suit in the U.S. District Court for the District of Colorado alleging under § 1983 that the school district had violated her rights under the IDEA by denying her a free, appropriate public education, and specifically seeking monetary damages.\textsuperscript{180} The district court dismissed the plaintiff’s § 1983 claim as to one of the individual defendants, but denied the defendants’ motion to dismiss in all other respects.\textsuperscript{181}

In this case of first impression, the Tenth Circuit reasoned that the district court’s decision was flawed because it presupposed that § 1983 monetary damages were available under the IDEA, primarily relying on the decisions of other circuit courts.\textsuperscript{182} Agreeing with the Fourth Circuit in Sellers, the court here supported its position that monetary damages under § 1983 were not available to plaintiffs to enforce rights under the IDEA using post-Smith Supreme Court precedent.\textsuperscript{183} According to the court, Wright v. City of Roanoke Redevelopment & Housing Authority acknowledged that Congress intended to preclude § 1983 remedies to enforce IDEA violations because of the independent judicial remedies written into the statute,\textsuperscript{184} and Blessing v. Freestone discussed Smith as “one of only two cases in which it had ‘found a remedial scheme sufficiently comprehensive to supplant § 1983.’”\textsuperscript{185} The court ultimately shared the Fourth Circuit’s conclusion that the 1986 amendment to the IDEA did not effectively overrule Smith, as evidenced by these two cases.\textsuperscript{186}


In September 2007, the Ninth Circuit issued a very brief opinion in which it held that the “comprehensive enforcement scheme of the IDEA evidences Congress’s intent to preclude a § 1983 claim for the violation of rights

\textsuperscript{177} Id. (internal quotation marks omitted).
\textsuperscript{178} Id.
\textsuperscript{179} Id.
\textsuperscript{180} Id.
\textsuperscript{181} Id.
\textsuperscript{182} Id. at 1272.
\textsuperscript{183} Id. at 1273. The court refers to two cases decided after the enactment of § 1415(f) in which the Supreme Court cited Smith “as an example of an exhaustive legislative enforcement scheme that precludes § 1983 causes of action.” Id. These cases are Blessing v. Freestone, 520 U.S. 329 (1997), and Wright v. City of Roanoke Redevelopment & Housing Authority, 479 U.S. 418 (1986).
\textsuperscript{184} Id. (citing Wright, 479 U.S. at 427).
\textsuperscript{185} Id. at 1273–74 (citing Blessing, 520 U.S. at 347).
\textsuperscript{186} Id.
under the IDEA.”\textsuperscript{187} But the recent Ninth Circuit case varied somewhat from the typical IDEA § 1983 claim, in that a parent sued for emotional distress and lost income experienced during the time she was petitioning the school district for special services under the IDEA for her autistic son. Previously, the Ninth Circuit had held that, because the parent had brought suit on her own behalf rather than on behalf of her minor son, no administrative remedies existed. The U.S. District Court for the Western District of Washington held on remand that Cheryl Blanchard had no individual rights under the IDEA.\textsuperscript{188} However, in light of the Supreme Court’s recent decision in \textit{Winkelman},\textsuperscript{189} which held that parents have individually enforceable rights under the IDEA,\textsuperscript{190} the circuit court reversed the district court’s finding that parents did not have individually enforceable rights under the IDEA,\textsuperscript{191} but held that the IDEA “does not contemplate the remedy Blanchard seeks and in that regard creates no right enforceable under § 1983.”\textsuperscript{192} The Ninth Circuit referred to the “thoughtful, well-reasoned opinion of the Third Circuit” earlier that year in its simple statement rejecting the use of § 1983 to enforce rights under the IDEA.\textsuperscript{193} No further analysis, reasoning, or precedent was offered by the court.\textsuperscript{194}

\textbf{C. The Third Circuit’s Route}

The Ninth Circuit relied on the Third Circuit’s en banc ruling in \textit{Jersey City}\textsuperscript{195} that a § 1983 action may not be brought against public school officials to enforce rights under the IDEA.\textsuperscript{196} However, what was unusual about the Third Circuit’s decision was that it reversed its own precedent.\textsuperscript{197} Previously, the Third Circuit held in \textit{W.B. v. Matula}\textsuperscript{198} that § 1983 was an appropriate avenue of relief for IDEA violations.\textsuperscript{199} But the court rejected the \textit{Matula} rule twelve years after its inception.

\begin{footnotesize}
\begin{enumerate}
\item[188.] \textit{See id.} at 936 (citing Blanchard v. Morton Sch. Dist., 420 F.3d 918, 922 (9th Cir. 2005)).
\item[189.] 127 S. Ct. 1994 (2007) (holding that parents enjoy rights under the IDEA and are entitled to bring IDEA claims on their own behalf).
\item[190.] \textit{Id.} at 1999.
\item[191.] Blanchard, 509 F.3d at 936.
\item[192.] \textit{Id.} at 938.
\item[193.] \textit{Id.} at 937.
\item[194.] \textit{See id.} at 937–38.
\item[195.] 486 F.3d 791 (3d Cir. 2007) (en banc) (holding that a § 1983 action was not available to enforce rights under the IDEA).
\item[196.] Blanchard, 509 F.3d at 937–38.
\item[197.] \textit{See Jersey City}, 486 F.3d at 792–93.
\item[198.] 67 F.3d 484 (3d Cir. 1995).
\item[199.] \textit{Id.} at 495.
\end{enumerate}
\end{footnotesize}
1. The Original Rule: *Matula*

In 1995, the Third Circuit held that a § 1983 damages action may be brought against public school officials to enforce rights under the IDEA. In its ruling, the court opined that “there is strong suggestion” that Congress did not intend to preclude such relief when it enacted the IDEA, citing its prior holding in *Board of Education v. Diamond*, the “plain language of § 1983,” and the text and history of the IDEA.

After moving to Hackettstown, New Jersey, in the summer of 1991, and before the start of school, the plaintiff parent, identified as W.B., met with the defendant, the principal of the elementary school, to discuss her child E.J.’s behavioral problems. E.J. was placed in the codefendant teacher’s first-grade class in September 1991. Shortly thereafter, the teacher reported that E.J. exhibited a “variety of disruptive behaviors,” including fighting with other students, and making continuous noises. She also reported that E.J. frequently urinated and defecated in his pants, and that the other children were teasing him as a result. At this time, the teacher informed W.B. that E.J. exhibited symptoms of Attention Deficit Disorder/Attention Deficit Hyperactivity Disorder (ADHD). In October, W.B. met with the teacher, the chief school administrator, and the person responsible for compliance with the IDEA and § 504 of the Rehabilitation Act regarding her son’s behavioral and academic problems. None of the school officials referred E.J. for an evaluation or discussed the entitlement of special education services with W.B.

E.J. was diagnosed with ADHD later in the fall of 1991 by a private therapist. However, because school officials believed that ADHD did not qualify a child for special education services under the IDEA or § 504, the school refused W.B.’s initial request for evaluation. The school ultimately relented and approved W.B.’s request after W.B. presented the director of the Mansfield Child Study Team with a memorandum from the Assistant Secretary of the U.S. Department of Health and Human Services indicating that ADHD was indeed a qualifying condition. Finally, in April 1992, the school concluded that E.J. was entitled to special education.

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200. Id.
201. 808 F.2d 987 (3d. Cir. 1986) (holding that parents were not precluded from seeking compensatory damages).
203. Id. at 488.
204. Id.
205. Id.
206. Id.
207. Id.
208. Id.
209. Id.
210. Id. at 488–89.
211. Id. at 489.
services under § 504 of the Rehabilitation Act. However, despite this finding, the school did not begin providing such services. Rather, school officials refused W.B.’s request that the school fund an independent evaluation.

As a result, W.B. brought her first IDEA administrative proceeding before the New Jersey Office of Administrative Law to demand an independent evaluation, an IEP, a classification of E.J. as “neurologically impaired,” costs, and fees. The independent evaluation was performed in July. In addition to ADHD, E.J. was diagnosed with Tourette’s syndrome and a severe form of obsessive-compulsive disorder, confirming W.B.’s suspicions that school officials had not correctly identified her son’s problems.

Despite the diagnosis and his continuing problems, E.J. did not receive special education services in the following year. The school continued to refuse to classify E.J. as neurologically impaired, finding that instead he was “perceptually impaired”—a significant distinction because that meant E.J. qualified for a lower level of services. In April 1993, after nearly ten days of hearings, W.B. and the board settled. W.B. finally prevailed on her request for classification of her son as neurologically impaired, and the development of an IEP—but not without an “enormously burdensome struggle,” the court noted. W.B. commenced a proceeding in the U.S. District Court for the District of New Jersey in July 1993, naming nine defendants in their personal and official capacities, alleging causes of action under § 1983 for violation of the IDEA and seeking compensatory and punitive damages for denying her son a free, appropriate public education. The district court ultimately entered summary judgment in favor of the defendants, finding that the administrative hearing “unambiguously provide[d] for the full resolution of the dispute between the parties.” W.B. appealed to the Third Circuit.

Citing to Senate and House reports, the Third Circuit reasoned that in enacting § 1415(l) of the IDEA, “Congress specifically intended that

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212. The Mansfield Child Study Team found that because E.J.’s academic performance was on or above grade level, he was not entitled to special education services under the IDEA. Id.
213. Matula, 67 F.3d at 489.
214. Id.
215. Id.
216. Id.
217. Id.
218. Id.
219. Id. at 490.
220. Id. at 490–91.
221. Id. at 491 (citation omitted).
222. See id.
IDEA] violations could be redressed by § 504 and § 1983 actions,” finding that § 1983 supplied a private right of action in the case.225 Regarding the availability of damages, the court first examined the legislative history and the text of § 1983 and the IDEA, opining that “nothing in the text or history [of IDEA] suggest[s] that relief under IDEA is limited in any way.”226 The court discussed the split among the circuit courts involving this issue, and citing its precedent in Diamond, concluded that a disabled child could not be precluded from seeking monetary damages in such an action. It cautioned, however, that a district court considering such a remedy may do better in awarding compensatory education rather than monetary damages for pain and suffering.227

2. The Reversal: Jersey City

In a similarly grounded lawsuit, A.W., a New Jersey public school student with dyslexia, enrolled as a second-grade student in the Jersey City Public Schools in September 1988 and allegedly made little progress in reading, writing, and spelling until May 2000.228 Because his learning disability was never diagnosed by the school system, A.W. did not receive special education services from September 1988 to May 2000, despite the fact that he was eligible under the IDEA.229 During that time, however, the school district received federal funds under the IDEA.230

Twelve years after he first enrolled in the Jersey City Public School District, A.W. was still unable to read, write, and spell, as a twenty-year-old tenth grader.231 In January 2000, he finally obtained an independent educational evaluation and was diagnosed with dyslexia.232 The school district, in response, created an IEP for him, which included special education services in the areas of reading, writing, and spelling instruction.233

Three years before A.W. began receiving special educational services, A.W.’s grandmother (his legal guardian at the time) had filed a complaint with the NJDOE on behalf of A.W. and others similarly situated.234 It was through this complaint that the NJDOE and its employees first learned of A.W.’s case.235 The department conducted an investigation and issued a report in June 1998, finding that the school district was out of compliance

225. Matula, 67 F.3d at 494.
226. Id.
227. Id. at 495.
229. Id.
230. Id.
231. Id.
232. Id.
233. Id.
234. Id.
235. Id.
with the IDEA because it was unable to demonstrate that its reading curricula could be adapted for students with special needs.236

Despite the NJDOE’s finding of the district’s noncompliance, A.W. was not awarded relief.237 As a result, he asserted in the federal lawsuit that the NJDOE “knew or reasonably should have known of his dyslexia, and should have known that an educational program effective at remediating his condition should have been implemented.”238 The New Jersey district court, relying on Matula, found that the plaintiff had put forth a valid § 1983 claim and should be given the opportunity to substantiate it through discovery.239 In 2005, the district court denied the defendants’ motion for summary judgment in respect to the § 1983 claims, finding that the IDEA could be enforced through § 1983 based on Matula.240

However, the Third Circuit, sitting en banc, overruled its own precedent in Matula and reversed the court below, holding that “A.W. [did] not allege[] an actionable violation of his rights under the IDEA.”241 To reach that conclusion, the court reexamined Congress’s intent when it amended the IDEA in 1986 to include § 1415(l), revisiting the legislative history it reviewed in Matula, the current split among the circuit courts regarding this question, and the 2005 Supreme Court decision in City of Rancho Palos Verdes v. Abrams.242

The court acknowledged that, in Matula, it had interpreted Congress’s enactment of § 1415(l) in response to the Supreme Court’s decision in Smith as “mak[ing] clear that actions can be maintained under the Constitution or under federal laws protecting the rights of children with disabilities notwithstanding the fact that the IDEA also protects these rights.”243 While noting that it “[w]as not alone in this view at the time,” the en banc court explained that, following Matula, “reasonable minds have differed as to the correctness of [its] interpretation of the congressional reaction to [Smith] embodied in § 1415(l).”244

The court adopted the reasoning of the Fourth and Tenth Circuits in Sellers245 and Padilla246 that the provision at issue does not refer to § 1983, but rather references substantive rights.247 In Sellers, the Jersey City court

236. Id.
237. Id.
238. Id.
239. Id. at *8–9.
242. See id. at 796–803.
243. Id. at 796.
244. Id. at 797.
246. 233 F.3d 1268 (10th Cir. 2000) (holding that, as a matter of first impression, § 1983 actions are precluded to enforce rights under the IDEA).
247. See Jersey City, 486 F.3d at 797–98.
explained, the Fourth Circuit determined that the relevant language in the amended provision—“other statutes protecting the rights of disabled children”—could not refer to § 1983 because it does not refer specifically to “disability nor youth” but instead “speaks generally.” The Fourth Circuit’s interpretation of the legislative history also differed greatly from the Third Circuit’s previous interpretation in Matula in its conclusion that the House report’s express reference to § 1983 only intended that disabled youth and their parents utilize the statute to redress constitutional violations under the IDEA. The court further explained that the Tenth Circuit, in Padilla, agreed with the Fourth Circuit in its reasoning, and cited two post-1986 amendment Supreme Court decisions, Blessing and Wright, that referenced the IDEA as a comprehensive remedial scheme that precludes a § 1983 remedy. These analyses, the court reasoned, coupled with the Supreme Court’s discussion of the use of § 1983 to redress violations of federal statutory rights in Rancho Palos Verdes, “tipped the scales . . . definitively.”

The Third Circuit relied heavily on Rancho Palos Verdes to reach its conclusion that § 1983 is not available to plaintiffs seeking to enforce rights under the IDEA. The Court, in Rancho Palos Verdes, examined the intersection of § 1983 damages and the Telecommunications Act (TCA) in the context of an amateur radio operator who was denied a “conditional-use permit” to build a radio tower on his property. The radio operator alleged that the denial of the use permit violated several provisions of the TCA, and he therefore sought injunctive relief under the Act as well as money damages and attorneys’ fees under §§ 1983 and 1988.

In its reasoning, the Supreme Court reiterated that a plaintiff must first establish that the “federal statute creates an individually enforceable right,” and that this demonstration creates “a rebuttable presumption that the right is enforceable under § 1983.” However, a “defendant may defeat this presumption by demonstrating that Congress did not intend that

248. Id. at 798 (citing Sellers, 141 F.3d at 530).
249. See id.
250. For a discussion of Blessing, see supra note 57.
251. For a discussion of Wright, see supra note 56.
252. Jersey City, 486 F.3d at 798–99.
253. Id. at 799.
254. 544 U.S. 113 (2005) (holding that § 1983 may not be used to enforce federal statutory limitations on local zoning authority).
255. The Telecommunications Act of 1996 seeks to promote competition and produce higher quality telecommunication services. The Act largely imposes limitations on local and state governments to regulate the location, construction, and modification of these facilities. Rancho Palos Verdes, 544 U.S. at 115–16. The Act provides for a judicial remedy in the case that its provisions are violated by a State or local government, or “any instrumentality thereof.” 47 U.S.C. § 332(c)(7)(B)(v) (2000).
257. See id. at 117–18.
258. Id. at 120 (citing Gonzaga Univ. v. Doe, 536 U.S. 273, 285 (2002)).
259. Id. (quoting Blessing v. Freestone, 520 U.S. 329, 341 (1997)).
remedy for a newly created right."\textsuperscript{260} The Court deduced, in a statement that would heavily influence the en banc Third Circuit, that “evidence of such congressional intent may be found directly in the statute creating the right, or inferred from the statute’s creation of a ‘comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983.’”\textsuperscript{261} “The crucial consideration,” the Court noted, “‘is what Congress intended.’”\textsuperscript{262}

Because the parties conceded that the telecommunications statute at issue conferred an individually enforceable right, the case turned on whether Congress intended the judicial remedy provided for in the TCA to coexist with an alternative remedy available under § 1983.\textsuperscript{263} Despite the Court’s conclusion that it did not,\textsuperscript{264} the Court expressly refused to hold (despite the urging of the federal government and the City of Rancho Palos Verdes as amici) that the “availability of a private judicial remedy . . . conclusively establishes[] a congressional intent to preclude § 1983 relief.”\textsuperscript{265} Instead, the Court drew a distinction between “merely indicative of” and “conclusively establishes” in reference to this analysis, noting that “[t]he ordinary inference that the remedy provided in the statute is exclusive can surely be overcome by textual indication, express or implicit, that the remedy is to complement, rather than supplant, § 1983.”\textsuperscript{266}

Despite the Supreme Court’s refusal in \textit{Rancho Palos Verdes} to hold that the presence of a private judicial remedy within a statute “conclusively establishes” a congressional intent to preclude § 1983 relief, the en banc Third Circuit in \textit{Jersey City}, without citing any authority, interpreted \textit{Rancho Palos Verdes} to have “upended the \textit{Blessing} ‘presumption,’ with the inclusion of a private remedy being the pivotal factor.”\textsuperscript{267}

\begin{enumeratenumeric}
\item Id. (citing Smith v. Robinson, 468 U.S. 992, 1012 (1984)).
\item Id. (quoting \textit{Blessing}, 520 U.S. at 341).
\item Id. (quoting \textit{Smith}, 468 U.S. at 1012).
\item See id.
\item The Court reached its narrow holding that the TCA precluded § 1983 relief by eliciting congressional intent from a textual comparison of the statute of limitations for a TCA claim and a § 1983 claim. Justice Stephen G. Breyer filed a concurring opinion joined by Justices Sandra Day O’Connor, David H. Souter, and Ruth Bader Ginsburg that praised the Court for “wisely reject[ing] the Government’s proposed rule that the availability of a private judicial remedy \textit{conclusively establishes} . . . a congressional intent to preclude . . . § 1983 relief.” See \textit{id.} at 127 (Breyer, J., concurring) (internal quotation marks omitted). Justice John Paul Stevens concurred in a separate opinion in order to call attention to “[t]wo flaws in the Court’s approach.” \textit{id.} at 130 (Stevens, J., concurring). In addition to his belief that the Court did not diligently recognize the “strength of [the Court’s] normal presumption that Congress intended to preserve, rather than preclude, the availability of § 1983 as a remedy for the enforcement of federal statutory rights,” he bluntly stated that “the Court incorrectly assumes that the legislative history of the statute is totally irrelevant.” \textit{id.} at 130–31.
\item Id. at 122.
\item Id.
\item See A.W. v. Jersey City Pub. Schs., 486 F.3d 791, 801 (3d Cir. 2007) (en banc).
\end{enumeratenumeric}
III. DEFENDING THE ENFORCEABILITY OF IDEA RIGHTS UNDER § 1983

As evidenced by the text, structure, and legislative history of the 1986 amendment to the IDEA, not only did Congress not intend to foreclose avenues to § 1983, it actually called for its availability to enforce the IDEA.268 In holding otherwise, courts have failed to consider the legislative history as well as the need for a deterrent to violations of the IDEA. While the Third Circuit recently ruled that § 1983 actions were not available to enforce the IDEA,269 a holding which the Ninth Circuit subsequently found persuasive, such holdings should not carry weight because the Third Circuit misinterpreted the Court’s holding in Rancho Palos Verdes. A close reading of Rancho Palos Verdes reveals that the Supreme Court expressly left open the possibility of § 1983 damages actions to enforce IDEA violations, contrary to the Third Circuit’s analysis. Rather, the conclusion that § 1983 damages actions should be available to claimants who seek to enforce rights under the IDEA flows naturally from the Supreme Court’s 2007 holding in Winkelman that both parents and their disabled youth enjoy individual, substantive, enforceable rights under the IDEA.270 Finally, a host of policy considerations, such as deterrence, school disincentives for complying with the IDEA, and the disproportionate number of disabled youths who are left denied—sometimes for years—also support this conclusion.

A. The Legislative History of § 1415(l)

By enacting § 1415(l),271 Congress specifically intended that IDEA violations could be redressed by § 1983 actions, as revealed by the legislative history of the amendment.272 The amendment clearly was passed to correct Smith’s erroneous construction of the original congressional intent and a number of courts have recognized—and continue to recognize—that the 1986 amendment effectively overruled Smith.274

The Senate report includes a lengthy discussion of Smith, and favorably discusses the dissenting opinion, including its plea for “Congress . . . to take the time to revisit the matter.”275 The House conference report explicitly states, “[i]t is the conferees’ intent that actions brought under 42 U.S.C. 1983 are governed by this provision.”276 Additionally, as the Matula court

269. See supra Part II.C.2.
270. See supra notes 85–93 and accompanying text.
271. See supra notes 80–83 and accompanying text.
273. See supra Part I.C.
274. See supra notes 111–12, 136–38, 223–26 and accompanying text.
notes, the House report explicitly states that “[c]ongresional intent was ignored by the U.S. Supreme Court when . . . it handed down its decision in [Smith],” and further adds that “since 1978, it has been Congress’ intent to permit parents or guardians to pursue the rights of handicapped children through [IDEA], section 504, and section 1983.” 277 Thus, § 1415(l) was enacted to “reaffirm, in light of [Smith], the viability of section 504, 42 U.S.C. § 1983, and other statutes as separate vehicles for ensuring the rights of handicapped children.”278 Far from precluding a § 1983 action predicated on the IDEA, the 1986 amendment explicitly offered its approval for such actions. Therefore, despite the fact that the text of the amendment does not include a specific mention of § 1983, such actions are appropriate under the IDEA.279

In Tirozzi,280 the Second Circuit relied on the legislative history of § 1415(l) to reach its conclusion that a § 1983 action is available to remedy violations of the IDEA.281 The court explained that Congress’s aim in amending the IDEA after Smith was to allow resort to other judicial remedies for claims based on the IDEA.282

Finally, the Third Circuit initially agreed, in Matula, that the legislative history of § 1415(l) confirmed Congress’s intent to allow § 1983 monetary damages actions to proceed under the IDEA.283 Not until Jersey City, in which the court interpreted the Supreme Court’s decision in Rancho Palos Verdes, did the Third Circuit find that § 1983 damages actions were precluded under the IDEA.284 However, the en banc reversal of the Third Circuit’s former precedent is problematic.

**B. The Third Circuit’s Reliance on Rancho Palos Verdes**

In reversing its holding in Matula, which found a remedy for IDEA violation under § 1983, the Third Circuit in Jersey City relied heavily on the Supreme Court’s decision in Rancho Palos Verdes. However, that case dealt not with the IDEA, but rather with the Telecommunications Act of 1996.285 Therefore, the Rancho Palos Verdes case did not examine the relationship between the IDEA and § 1983.

In Jersey City, the Third Circuit claimed that, in finding a right to § 1983 damages in Matula, it had erroneously relied on Franklin v. Gwinnett County Public Schools, a case that “was not a § 1983 case at all; rather, it focused on whether damages could be recovered in an action to enforce

278. Id.
280. See supra Part II.A.3.
281. See supra Part II.A.3.
282. See supra Part II.A.3.
283. See supra Part II.C.1.
284. See supra Part II.C.2.
285. See supra notes 255–57 and accompanying text.
Title IX. Yet the Third Circuit gave the Rancho Palos Verdes decision considerable weight, despite the fact that the case did not involve the IDEA at all. Instead, Rancho Palos Verdes focused on whether an amateur radio operator who sought to provide wireless service to his community could recover damages in an action based on the TCA. As Justice Stephen G. Breyer remarked in his concurring opinion in Rancho Palos Verdes, “[t]he statute books are too many, federal laws too diverse, and their purposes too complex for any legal formula to provide more than general guidance.”

In placing so much emphasis on Rancho Palos Verdes, the Third Circuit cursorily rejected arguments that the legislative history, as interpreted by its sister courts—and that very court in Matula—revealed congressional intent that § 1983 was available to claimants seeking to enforce rights under the IDEA. Relegated to a footnote, the Jersey City court peremptorily noted the Supreme Court’s failure to survey the legislative history of the federal statute at issue. In a brief statement, the court quoted Justice John Paul Stevens’s disagreement with the Court’s analysis—“that the Court assumed ‘that the legislative history of the statute is totally irrelevant.’” Curiously, what the Third Circuit omitted from its terse summary of Justice Stevens’s opinion was the word “incorrectly.” In actuality, his statement reads: “[T]he Court incorrectly assumes that the legislative history of the statute is totally irrelevant.”

In fact, a close reading of Justice Stevens’s concurrence reveals that, although in agreement with the Court in the narrow result of its holding (that an individual may not enforce the TCA’s limitations on local zoning authority through a § 1983 action), Justice Stevens was concurring in the majority’s holding—that a defendant may defeat the presumption that a right is enforceable under § 1983 by a showing that Congress did not intend that remedy for a newly created right. Justice Stevens devoted nearly his entire opinion to two notions: first, that the Court had not properly acknowledged the strength of the Supreme Court’s normal presumption that Congress intended § 1983 to preserve rather than preclude remedies for the enforcement of federal statutory rights; and second, that the surveying of legislative history has been a necessary component of statutory interpretation employed by the Supreme Court for “nearly every case [it has] decided in this area of law.”

287. See supra Part II.C.2.
289. See supra Part II.C.2.
290. See Jersey City, 486 F.3d at 803 n.14.
291. Id. (noting Justice Stevens’s concurrence in Rancho Palos Verdes).
292. Rancho Palos Verdes, 544 U.S. at 131 (Stevens, J., concurring).
293. Id.
294. See id.
Furthermore, in a separate concurring opinion, Justice Breyer also discussed the importance of “context, not just literal text” when conducting statutory analysis to determine congressional intent.295 Justice Breyer examined both House and Senate reports and concluded that permitting § 1983 actions to prevail under the TCA would undermine principles of federalism.296 When examining the IDEA, the Supreme Court’s holding in Winkelman (the case giving parents enforceable rights under the IDEA) suggests the application of this principle to § 1983 claims relating to the IDEA. Just as the petitioners in the various cases discussed above had not been able to cite to a specific clause in § 1415(l) that expressly allows § 1983 damages suits predicated on the IDEA, the petitioners in Winkelman were unable to cite to any specific provision of the IDEA to support their argument.297 Therefore, the Supreme Court looked to a “comprehensive reading” of the statute.298 Allowing § 1983 actions to prevail under the IDEA is a natural extension of the Court’s holding, as it is a well-established principle that a “party aggrieved” is, by definition, entitled to a remedy.299 Both Winkelman and Rancho Palos Verdes indicate that the Court is leaning toward preserving § 1983 rather than precluding it.

C. Policy Arguments Supporting the Availability of § 1983 Actions Under the IDEA

School districts are likely to be encouraged to comply with the IDEA if § 1983 actions (notably for monetary damages) are available to claimants.300 Those courts that have found otherwise have made decisions based on “their own notions of sound public policy” as opposed to congressional intent at the time the 1986 amendment was passed.301 The disincentives for school personnel to provide a free, appropriate public education for all children with disabilities and the obstacles that face these children who challenge school districts in court must be taken into account.302

295. Id. at 127 (Breyer, J., concurring).
296. See id. at 128.
298. See id. at 2000; supra notes 88–92.
299. Id. at 2003.
300. See Seligmann, supra note 17, at 535 & n.349 (citing Gary S. Gildin, Dis-Qualified Immunity for Discrimination Against the Disabled, 1999 U. Ill. L. Rev. 897, 898) (noting that “[p]roponents of damages remedies sometimes argue that the threat of damages is needed to compel recalcitrant school systems to protect and implement the educational rights of children with disabilities”).
302. See id. (“Without an acknowledgment of the disincentives for school personnel to provide a [free, appropriate public education] for all children with disabilities and the obstacles facing children who challenge school districts in court, any judicial conclusion undergirded by public policy considerations will be myopic and ultimately flawed.”).
A disproportionate number of disabled youth live in poverty.\textsuperscript{303} Therefore, to parents, the award of costs may matter enormously. Without potential reimbursement, parents may well lack the services of experts entirely. As a matter of policy, the incentive of recovering monetary damages under § 1983 may enable parents to take the time to litigate these very often prolonged cases without worrying about recovering for loss or income.\textsuperscript{304}

Additionally, as discussed in \textit{Winkelman}, IDEA litigation requires that the child, as a result of his or her mental capacity (as a child or disabled person), have an agent throughout the process.\textsuperscript{305} In effect, there are two agents of a disabled child: the child’s attorney, and the plaintiff (the parent or guardian who brings the suit).\textsuperscript{306} The current status of IDEA litigation is that an attorney as agent can recover monetary damages—his fees—but a child’s other agent—his parent or guardian—cannot.\textsuperscript{307} The fact that a parent is unable to recover monetary damages creates a formidable burden for those seeking to challenge government misconduct.\textsuperscript{308}

Parents, like any litigants, will conduct a “cost-benefit analysis” that results in the decision to pursue the litigation or to acquiesce in the child’s IEP.\textsuperscript{309} Litigating these cases can take a lot of time and effort by the parent and child—and, in the case of \textit{Matula}, school districts have “myriad opportunities to prolong litigation if [they] stand[] firm in adhering to [their] proposed IEP.”\textsuperscript{310} Therefore, without providing a compensatory scheme for parents as well, there may be an incentive for school districts to prolong litigation until the parents can no longer litigate as a practical matter.\textsuperscript{311}

\textbf{CONCLUSION}

The circuits are split on the issue as to whether or not a § 1983 action should prevail to redress violations of the IDEA. A proper interpretation of


\textsuperscript{304} See Shannon, supra note 301, at 886–87.

\textsuperscript{305} See id. at 883–84.

\textsuperscript{306} Id. at 883.

\textsuperscript{307} Id.

\textsuperscript{308} See id. at 884.

\textsuperscript{309} Id. at 883–84.

\textsuperscript{310} Id. at 884.

\textsuperscript{311} See id.
§ 1415(f) and its legislative history supports the conclusion that it clearly authorizes § 1983 awards predicated under the IDEA. Furthermore, a host of policy arguments support this conclusion. Either Congress should act to clarify the 1986 amendment, or the Supreme Court should ultimately decide that a plaintiff may sue under § 1983 for a violation of the IDEA.