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3rd Circuit Eliminates Individual Liability for Violations of Special Ed Law

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In a landmark decision in the first half of 2007, the 3rd U.S. Circuit Court of Appeals confirmed that parents and their children with special needs could receive compensatory damages from state and local educational agencies for violations of federal special education law. In that same decision, however, the court of appeals made it impossible for parents and children to impose personal liability on individual defendants.

On May 24, in *A.W. v. the Jersey City Public Schools*, the 3rd Circuit held that students with disabilities and their parents may not seek redress under 42 U.S.C. Section 1983 for violations of the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act. The IDEA requires that all school districts receiving federal funds provide a free and appropriate public education (FAPE) to students in their jurisdiction. Section 504 prohibits discrimination against individuals with disabilities by public school districts receiving federal funds. Courts have interpreted the anti-discrimination provisions of the Rehabilitation Act to create an affirmative obligation, analogous to the mandate in the IDEA, to provide a FAPE.

A.W. abrogated the holding in *W.B. v. Matula*, which stated that students with disabilities and their parents could sue under Section 1983 for violations of the IDEA and Section 504. The practical



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impact of *A.W.* is to eliminate individual liability for damages for violations of federal laws related to special education. The *A.W.* court explicitly recognized that the IDEA creates an express private right of action against school districts (or other institutional defendants) for “such relief as the court determines is appropriate, [including] attorneys’ fees, tuition reimbursement and compensatory education.” Similarly, the Rehabilitation Act contains an implied private right of action for compensatory damages.

After *Matula*, students with disabilities and their parents had the option of seeking to impose personal liability, through Section 1983, on individual defendants who violated federal special education law. Pursuant to *A.W.*, compensatory damages remain an available remedy for violations of the IDEA and Section 504, but there is

no mechanism for imposing individual liability for those statutory violations.

In *A.W.*, a child with dyslexia alleged that the Jersey City School District failed to provide him with a free and appropriate public education by violating its duty under the IDEA to locate and identify all students with disabilities. *A.W.* also brought claims against the director of the Office of Special Education Programs for New Jersey and the coordinator of compliance in their personal capacities, seeking to hold them liable under Section 1983. The director and coordinator both raised the defense of qualified immunity. Consequently, the court had to examine the threshold question of whether the alleged statutory violation was actionable under Section 1983.

A.W. confirmed that there is no question that the IDEA creates an express private right of action for appropriate relief “including attorneys’ fees, reimbursement for a private educational placement, and compensatory education.” *Matula* had concluded that this provision did not supplant remedies available under Section 1983. In so holding, *Matula* relied upon 20 U.S.C. Section 1415(f) (currently codified at 20 U.S.C. Section 1415(l)), which provides that nothing in the IDEA “shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, title V of the Rehabilitation Act of 1973, or other Federal statutes protecting the rights of children and youth with disabilities.”

The *A.W.* court wrote that post-*Matula*, reasonable minds in the courts of appeal

differed as to whether IDEA precluded resort to Section 1983. The 2nd, 7th and 8th circuits allowed actions under Section 1983 to enforce the IDEA. On the other hand, the 4th Circuit reasoned that Section 1983 is a general remedial statute, “and mentions neither disability nor youth,” according to *Sellers v. School Bd. of Manassas, Virginia*. Thus, IDEA Section 1415(l), which preserves remedies under the Constitution, the Rehabilitation Act or other statutes protecting the rights of children with disabilities, was not designed to safeguard the right to sue under Section 1983.

Likewise, the 10th Circuit, in *Padilla v. School Dist. No. 1*, commented that twice since the passage of Section 1415(l), the U.S. Supreme Court had referenced the IDEA as an enforcement scheme precluding a Section 1983 remedy.

The 3rd Circuit did not rely solely upon this split in the circuits to support its reversal of *Matula*. Ultimately, *A.W.* held that the U.S. Supreme Court’s decision in *City of Rancho Palos Verdes v. Abrams*, a case arising under the Telecommunications Act of 1996 (TCA), mandated reconsideration and reversal of its previous holding. The TCA imposed limitations on state and local governmental authority to regulate the location, construction and modification of wireless communication facilities. Any person adversely affected by a state or local government’s violation of the TCA can bring an action in any court of competent jurisdiction. The plaintiff in *Rancho Palos Verdes* alleged that the city’s denial of

permission to construct an antenna tower violated the TCA and sought relief under Section 1983.

Rancho Palos Verdes held that when a federal statute has an express private remedy, as did the TCA, there is a presumption of a congressional intent to preclude relief under Section 1983. If a federal statute provides an express, private means of redress, the Supreme Court will presume that Congress did not intend to leave open the more expansive remedies under Section 1983. A plaintiff can overcome this presumption only by citing to statutory text indicating that its remedy is designed to complement, rather than supplant, Section 1983.

As explained above, without question, the IDEA creates an express private cause of action and remedies. Thus, with respect to IDEA, *A.W.* easily concluded that the reasoning in *Matula* is no longer viable after *Rancho Palos Verdes*.

The analysis of the Rehabilitation Act was more complicated, but ultimately led to the conclusion that the statute creates a private right of action for damages that precludes resort to Section 1983. The Rehabilitation Act incorporates the “remedies, procedures, and rights” of the Title VI of the Civil Rights Act of 1964.” Title VI, unlike the IDEA, does not create an express private right of action in the statute itself. However, in *Barnes v. Gorman* the Supreme Court has concluded that Title VI includes an implied private right of action.

The *A.W.* court acknowledged that the

provisions of Title VI incorporated into Section 504 are “far less detailed than the IDEA’s remedial scheme.” Nonetheless, through adoption of the remedies in Title VI, Congress created “a private, judicial remedy for violations of the statute” that supplanted liability under Section 1983.

Other courts of appeals have held that the remedial scheme in Title VI incorporated into Section 504 is comprehensive enough to preclude resort to Section 1983 to remedy statutory violation. Similarly, appellate courts have found that an almost identical remedial scheme, in the Title IX Educational Amendments of 1972, precluded action under Section 1983 for statutory violations. Thus, even in the absence of an express private cause of action, administrative remedies combined with an implied private right of action can be sufficiently comprehensive to preclude the remedy of suits under Section 1983. Accordingly, *A.W.* held that the Rehabilitation Act, like the IDEA, creates a statutory cause of action that supplants the remedies supplied by Section 1983.

Because *A.W.* recognizes that plaintiffs can sue directly under the IDEA and the Rehabilitation Act and seek appropriate relief, the case will not preclude continued litigation seeking damages for these violations. However, by eliminating the availability of relief under Section 1983, *A.W.* precludes the imposition of personal liability for violations of federal laws governing special education on individual defendants. •