



Understanding the Impact of SB213: The Claire Davis Act and School Safety – What You Need to Know

Outline

- Duty to Protect?
- Introduction of SBs 213/214
- 2015 Legislative Session
- Governmental Immunity (how it works)
- School Employee Liability (then and now)
- 214 Committee (the task ahead)
- Next Steps

Bath Township Massacre – 1927 (44 dead; 58 injured)



Columbine – 1999 (15 dead; 21 injured)



Platte Canyon – 2006 (2 dead)



Virginia Tech – 2007 (33 dead; 23 injured)



Sandy Hook – 2012 (27 dead; 2 injured)



Arapahoe – 2013 (2 dead)



National Gun Debate

In the wake of these tragedies the debate has intensified over the role of guns in American society as well as the efforts of the government to protect students at school



Duty to Protect?

Are Schools Obligated to Protect Students from the Violent Acts of Third Parties?

- “Failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause.” – *DeShaney v. Winnebago County Dep’t of Soc. Servs.*, 489 U.S. 189, 197 (1989)
- Decisions should not “suggest that public schools as a general matter have such a degree of control over children as to give rise to a constitutional duty to protect.” – *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 655 (1995)

How Has This Unfolded in Colorado Prior to SB213?

- *Castaldo v. Stone*, 192 F. Supp. 2d 1124 (D. Colo. 2001) the court dismissed the Plaintiff's claims (motion for summary judgment) holding that the Plaintiff did not make the required showing of an underlying constitutional violation; and, Harris and Klebold, not school officials, were the moving force behind Plaintiff's injuries

Senate Bill 213

- School Districts, Charter Schools, and their employees now have a statutorily created obligation to exercise reasonable care to protect students, faculty, and staff from harm resulting from acts committed by another person when the harm is reasonably foreseeable, while such students, faculty, and staff are within school facilities or school-sponsored activities

Senate Bill 214

The SB214 Committee has been charged with studying and evaluating the implementation of SB213, including consideration of:

- Any statutory provisions that may require modification to reflect local community characteristics and standards;
- Any steps that a school district or charter school may take to satisfy its duty of reasonable care

Governmental Immunity

Colorado Governmental Immunity Act (CGIA)

C.R.S. §§ 24-10-101 through 120

A “limited” immunity (tort claims ... with exceptions!)

Rationale for immunity?

- Unlimited liability could disrupt or prohibit the delivery of essential public services
- Taxpayers bear the fiscal burden
- Public employees should be provided with protection

Protections for public employers and public employees

The basic principle: a public entity (and, public employees) shall be immune from liability in all claims for injury which lie in tort or could lie in tort (C.R.S. § 24-10-106)

School Employee Liability

Has Employee Liability Changed?

Pre-SB213:

- “A public employee shall be immune from liability ... which lies in tort or could lie in tort ... arisin[g] out of an act or omission of such employee occurring during the performance of his duties and within the scope of his employment unless the act or omission causing such injury was willful and wanton ...” – C.R.S. § 24-10-118(2)(a).

Post-SB213:

- “An employee of a public school, school district, or charter school is not subject to suit ... in his or her individual capacity unless the employee’s actions or omissions are willful and wanton.” – C.R.S. § 24-10-106.3(4).

214 Committee and the Work Ahead

HOW TO MAKE SCHOOLS SAFER?

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