Insights

Immunity under the Indiana Tort Claims Act ("ITCA") unavailable to government entity after student murdered away from school premises

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The Case

In *Murray v. IPS*[1], the mother and father of a student shot and killed near the school, during school hours, alleged Indianapolis Public Schools and Arlington Community High School (collectively, the "School") were negligent for failing to properly supervise and monitor the student, despite the School's knowledge that the student was frequently truant, and had an active Indiana Department of Child Services case file. Specifically, the decedent's parents alleged that the School had a duty to take measures preventing him from returning to the street during school hours, and that its failure to do so amounted to negligence.

At the trial court level, the School successfully argued that its failure to implement a policy (here, an attendance policy) fell within the ITCA's immunity provisions. Reversing judgment for the School, the Court of Appeals found immunity unwarranted.

The ITCA's Limits on Recovery, Notice Requirements, and Immunity

Typically, claims against local units of government that sound in tort, such as negligence, are subject to the ITCA[2]. Besides limiting recovery to seven hundred thousand dollars, individually, and five million dollars in the aggregate[3], a party suing a local unit of government must comply with the ITCA's notice requirements, which, in the case of a political subdivision, require the plaintiff to provide notice to the governing body of the political subdivision and the Indiana political subdivision risk management commission within one hundred eighty days after the loss occurs[4]. Failure to substantially comply with the ITCA's notice requirements bars the claim[5].

The ITCA enumerates certain claims for which a local unit is immune from liability, including, among others, temporary conditions of public roadways resulting from weather[6], performance of a discretionary function[7], and, of interest in this case, adoption and enforcement of (or failure to adopt and enforce) a law or public school policy[8].

The School's Failure to Implement a "Policy" did not give rise to Qualified Immunity

Arguing that its failure to detain the student was, in effect, failing to implement an attendance policy, the School argued it was entitled to immunity pursuant to Ind. Code § 34-13-3-3(8)[9]. However, because school authorities owe a duty to exercise reasonable care and supervision for the safety of children under their control, a school may be liable if it fails to meet these obligations[10] . Thus, the Court reasoned, plaintiff's claim that the School breached its duty by "failing to properly supervise and monitor [its] students during school hours" did not implicate failing to adopt a policy (which could give rise to immunity), and instead went to the general duty owed by the School to supervise the student until he was released to his parents or the authorities[11]. As a

result, the School's immunity from liability pursuant to the ITCA was inapplicable[12].

Ramifications and Considerations

Since the ITCA modifies common law negligence claims, it will be narrowly construed by the courts[13]. That means a claim for qualified immunity must be clearly provided by the ITCA, and be squarely applicable to the facts at-hand. Specifically, it seems, a claim for immunity for failure to adopt or enforce a law or policy pursuant to Ind. Code § 34-13-3-3(8) must be directly in response to a plaintiff's complaint alleging the same, and must not implicate duties otherwise already owed a citizen by the local unit.

Looking forward, local units of government would do well to proactively monitor risks in order to reap the benefits of immunity. For example, does a local unit's oversight of a public park, government-sponsored social function, school, or public building fail to take into consideration duties the local unit owes to visitors, invitees, citizens, and other individuals? Considering these duties may be separate and distinct from policies or laws the local unit could enact, failing to address the same could result in liability for which immunity is not available.

Instead, by focusing on litigation and risk-avoidance, the cautious local unit should seek out and address areas of exposure prior to an incident occurring. Doing so may avoid the harm and subsequent lawsuit in the first place. However, even if a lawsuit is eminent, by being proactive, a local unit may demonstrate that it met its duty owed, so that the only claim left might be adoption and enforcement of (or failure to adopt and enforce) a law or public school policy – for which the local unit may be entitled to immunity.

If you would like additional information, please contact attorneys **Christopher W. Bloomer**.

Disclaimer. The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have.

[1] *Murray v. IPS*, No. 18A-CT-1955, 2018 WL 6615191, at *1 (Ind. Ct. App. Dec. 18, 2018).
[2] Ind. Code § 34-13-3-1.
[3] Ind. Code § 34-13-3-4.
[4] Ind. Code § 34-13-3-8.
[5] *Snyder v. Town of Yorktown*, 20 N.E.3d 545, 553 (Ind. Ct. App. 2014) (finding plaintiff failed to comply – let along substantially comply – with the ITCA's notice requirements).
[6] Ind. Code § 34-13-3-3(3); Van Bree v. Harrison Cty., 584 N.E.2d 1114, 1118 (Ind. Ct. App. 1992) (county not liable for ice accumulation as it did not have opportunity to correct the issue prior to plaintiff's accident).
[7] Ind. Code § 34-13-3-3(7); Smith v. Ciesielski, 975 F. Supp. 2d 930, 943 (S.D. Ind. 2013) (city's hiring, supervision, and retention of the defendant police officers fell within scope of ITCA's discretionary function immunity).
[8] Ind. Code § 34-13-3-3(8).
[9] *Murray*, 2018 WL 6615191, at *3.
[10] Id. at *4.
[11] Id. at *4.
[12] Id. at *4.
[13] Id. at *3.