IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
District Judge Gordon P. Gallagher

Civil Action No. 25-cv-01407-GPG-CYC

ERIC SINCLAIR,

Plaintiff,

v.

SCHOOL DISTRICT NO. 1 a/k/a DENVER PUBLIC SCHOOLS;
DENVER PUBLIC SCHOOLS BOARD OF EDUCATION; and
SHAWNE ANDERSON, in his individual capacity,

Defendants.

ORDER

Before the Court are a Motion to Strike Official Capacity Claims Against Individual Defendants (D. 16) and Defendants' Motion to Dismiss (D. 19). The Court GRANTS the motion to strike as it is uncontested (*see* D. 24). The Court GRANTS IN PART the motion to dismiss for the following reasons.

I. FACTS

This civil action arises from a school shooting at East High School.[1] In January 2023, a student, A.L., applied and was admitted to East High School (D. 1 at ¶¶ 88, 94). A.L. had previously been expelled from Overland High School after police found an AR-15 assault rifle, two fully loaded magazines, a zip-lock bag with spent shells, boxes of ammunition, and a silencer in his bedroom (*id.* at ¶ 81). A.L. was convicted of a class 2 misdemeanor for possession of a

[1] The Court draws the operative facts as set forth in the unredacted version of the Complaint and Jury Demand (D. 18).

Large Capacity Magazine, received a sentence of supervised probation and counseling, and was expelled from Overland High School for the remainder of the 2021–2022 school year (*id.* at ¶¶ 84, 86). After A.L. started classes at East High School, Defendant Shawn Anderson, the Assistant Principal, created a safety plan requiring A.L. to participate in daily verbal check-ins with Mr. Anderson himself (*id.* at ¶ 96).

On Thursday, March 2, 2023, another East High School student sent a text to Mr. Anderson with a picture of what appeared to be a gun in A.L.'s pocket (*id.* at ¶ 101). Mr. Anderson brought A.L. to the office and searched his backpack but did not find a weapon (*id.* at ¶ 102). When Mr. Anderson informed A.L. that a campus safety officer would search his person, A.L. became agitated and fled the school (*id.* at ¶ 103). The Denver Police Department were contacted to visit A.L.'s home, but A.L.'s father refused the police access to the home to search A.L.'s room (*id.* at ¶ 105). The following Monday, March 6, Mr. Anderson held a meeting with A.L. and his father during which he adjusted A.L.'s safety plan to require that Mr. Anderson conduct a daily search of A.L.'s backpack (*id.* at ¶¶ 110–111). Mr. Anderson agreed, however, that he would not search A.L.'s person (*id.* at ¶ 112).

On March 23, 2023, A.L. entered the school at about 9:41 am and asked Jerald "Wayne" Mason, a dean at East High School, to see Mr. Anderson (*id.* at ¶ 125). Mr. Mason radioed Mr. Anderson, who did not respond (*id.*). Plaintiff Eric Sinclair, the Dean of Culture at East High School, noticed that Mr. Anderson did not respond to the radio call and walked to meet A.L. (*id.*). He asked A.L. what he needed, and A.L. responded that he needed Mr. Anderson to search his backpack (*id.*). At the time, Mr. Sinclair was not aware of A.L.'s history with guns or that there was a safety plan in place (*id.* at ¶¶ 98, 115, 117). Mr. Sinclair took A.L. into Mr. Anderson's

office to wait, where A.L. told Mr. Sinclair that he could check A.L.'s backpack if he wanted to (*id.* at ¶ 126). Mr. Sinclair searched the backpack and found nothing but noticed a bulge in the front pocket of A.L.'s hoodie (*id.* at ¶¶ 126–127). A.L. saw Mr. Sinclair looking at the bulge and asked if he was looking at his phone (*id.* at 127). Mr. Sinclar responded yes, but it did not look like a phone (*id.*). A.L. then grabbed Mr. Sinclair's hand and put it on the outside of the hoodie, saying "here, touch it" (*id.*). Upon feeling the object, Mr. Sinclair immediately knew it was a gun and became alarmed (*id.*). In an attempt to keep A.L. in the room because Mr. Sinclair knew there were hundreds of students just across the hall for an assembly, Mr. Sinclair told A.L. they could just wait for Mr. Anderson (*id.* at ¶ 128). A.L. became more aggressive and insisted he was leaving into the hallway, so Mr. Sinclair blocked the exit (*id.*). In a blur, A.L. pulled the gun, and Mr. Sinclar began struggling for control of the gun (*id.* at ¶ 129). At some point, Mr. Sinclair radioed for help, and Mr. Mason rushed into the room (*id.*). A.L. then fired multiple shots at Mr. Sinclair, hitting him in the abdomen, posterior chest, and thigh, and fired two shots at Mr. Mason (*id.*). A.L. immediately fled the school in his car (*id.* at ¶ 129). As a result of the shooting, Mr. Sinclair suffered serious psychological damage and bodily injury, including irreparable damage to his spleen, and had to undergo emergency surgery (*id.* at ¶¶ 135–141).

Mr. Sinclair filed the instant action on March 26, 2025, against Denver Public Schools (DPS), the Denver Public Schools Board of Education (the Board), and Shawne Anderson, in his individual capacity (D. 18). Mr. Sinclair brings five claims for violation of the Fourteenth Amendment and one claim for violation of the Clair Davis School Safety Act, C.R.S. § 24-10-106.3 (*id.*). He argues that Defendants' admission of A.L. to East High School, its handling of the threat A.L. posed, and its customs and practices were unreasonable and created the danger that

A.L. would shoot him or other members of the East High School community. Defendants move to dismiss all claims, arguing that Mr. Sinclair does not adequately plead that they created the danger to Mr. Sinclair, Mr. Anderson is entitled to qualified immunity, the Claire Davis School Safety Act claim is barred by the Colorado Workers' Compensation Act, and the Board of Education is not a proper defendant (D. 19).

II. LEGAL STANDARD

Under Rule 12(b)(6), a court may dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true and interpreted in the light most favorable to the non-moving party, to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Additionally, the complaint must sufficiently allege facts supporting all the elements necessary to establish an entitlement to relief under the legal theory proposed; however, a complaint may be dismissed because it asserts a legal theory not cognizable as a matter of law. *Forest Guardians v. Forsgren*, 478 F.3d 1149, 1160 (10th Cir. 2007); *Golan v. Ashcroft*, 310 F. Supp. 2d 1215, 1217 (D. Colo. 2004). A claim is not plausible on its face "if [the allegations] are so general that they encompass a wide swath of conduct, much of it innocent," and the plaintiff has failed to "nudge [the] claims across the line from conceivable to plausible." *Robbins v. Oklahoma*, 519 F.3d 1242, 1247 (10th Cir. 2008) (quoting *Twombly*, 550 U.S. at 570). In assessing a claim's plausibility, legal conclusions contained in the complaint are not entitled to the assumption of truth. *See Kansas Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1214 (10th Cir. 2011). The standard, however, remains a liberal pleading standard, and "a well-pleaded complaint may proceed even if it strikes

a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely." *Dias v. City & Cty. of Denver*, 567 F.3d 1169, 1178 (10th Cir. 2009) (citation modified).

Qualified immunity is immunity from suit and not a mere defense to liability. *Estate of Reat v. Rodriguez*, 824 F.3d 960, 964 (10th Cir. 2016) (citation omitted). Thus, at this stage of the litigation, the plaintiff must (1) allege a violation of a constitutional right and (2) the right must be clearly established at the time of the defendant's alleged misconduct. *Keith v. Koerner*, 707 F.3d 1185, 1188 (10th Cir. 2013). "The factual allegations must be specific and non-conclusory, and sufficient for a district court to determine that those facts, if proved, demonstrate the defendant is not entitled to qualified immunity." *Currier v. Doran*, 242 F.3d 905, 912 (10th Cir. 2001) (citation and internal quotations omitted). Asserting qualified immunity via a motion to dismiss "subjects a defendant to a more challenging standard of review than would apply on summary judgment." *Peterson v. Jensen*, 371 F.3d 1199, 1201 (10th Cir. 2004). When reviewing a motion to dismiss under the lens of qualified immunity, the court should not dismiss a complaint under Rule 12(b)(6) "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Id.* (citation omitted).

III. ANALYSIS

A. The Board of Education is Not a Proper Defendant

Mr. Sinclair does not rebut Defendants' argument that the Board is an improper Defendant but rather asserts that the allegations against the Board should be construed as allegations against DPS (D. 27 at 19). Defendants do not object to this (D. 43 at 15). Therefore, the Court grants dismissal of the Board and construes Mr. Sinclair's allegations against it as allegations against DPS.

B. Shawne Anderson is Entitled to Qualified Immunity

While the Court finds that Mr. Sinclair has alleged a violation of his constitutional right to be free from a state-created danger of gun violence in a school setting[2] (discussed below), it also finds that this right was not clearly established at the time of Mr. Anderson's alleged misconduct. "For a constitutional right to be clearly established, its contours 'must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.'" *Hope v. Pelzer*, 536 U.S. 730, 739 (2002) (quoting *Anderson v. Creighton,* 438 U.S. 635, 640 (1987)). A plaintiff may show that a law was clearly established "by identifying an on-point Supreme Court or published Tenth Circuit decision" or by showing that "the clearly established weight of authority from other courts" found the law to be as the plaintiff maintains. *Cox v. Glanz,* 800 F.3d 1231, 1247 (10th Cir. 2015) (quotations omitted). While "[t]he qualified immunity doctrine does not require a case exactly on point," it does require that "in the light of pre-existing law the unlawfulness must be apparent." *Weise v. Casper,* 593 F.3d 1163, 1167 (10th Cir. 2010) (internal citations and quotations omitted).

The only case Mr. Sinclair identifies as indicating the right asserted is clearly established is *Armijo By and Through Chavez v. Wagon Mount Public School,* 159 F.3d 1253, 1262 (10th Cir. 1998) (D. 18 at ¶ 146; D. 27 at 15). *Armijo,* however, is too factually dissimilar to meet the clearly

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[2] Mr. Sinclair also asserts that he had a "clearly established substantive due process constitutional right to be free from a government actor's creation of danger from a private actor" (D. 18 at ¶ 146). However, this characterization of his asserted right is too broad. *See Mullenix v. Luna,* 577 U.S. 7, 12 (2015) ("We have repeatedly told courts . . . not to define clearly established law at a high level of generality. The dispositive question is whether the violative nature of *particular* conduct is clearly established. This inquiry must be undertaken in light of the specific context of the case, not as a broad general proposition." (internal citations and quotations omitted)); *Est. of Reat v. Rodriguez*, 824 F.3d 960, 965 (10th Cir. 2016), *as amended on reh'g in part* (Aug. 12, 2016) ("Though the elements of the state-created danger test are clearly established, it also must be clear to which fact scenarios and government actors we apply the test"). The Court instead focuses its analysis on Mr. Sinclair's more particularized assertion of a "right to be free from the government actor's creation of danger in the form of a troubled teenager with a gun" (D. 18 at ¶ 146).

established standard. *Armijo* concerned a sixteen-year-old special education student shooting himself at home after a school administrator dropped him off. 159 F.3d at 1256–1257. It did not concern gun violence on school premises or a threat posed by a student to another individual. *See* 159 F.3d at 1257. Thus, it is more aptly characterized as reflecting the right to be free from a state-created danger of gun violence at one's own hands and not particularly in a school setting. As Mr. Sinclair does not put forward any other case law supporting his asserted right, the Court finds that it was not clearly established and Mr. Anderson is entitled to qualified immunity on Mr. Sinclair's federal Constitutional claims.

C. Mr. Sinclair States a Claim for Fourteenth Amendment Substantive Due Process Violations Against DPS

The Fourteenth Amendment embodies, in part, "a substantive due process protection, which protects individuals from arbitrary acts that deprive them of life, liberty, or property." *Miller v. Campbell County*, 945 F.2d 348, 352 (10th Cir. 1991). Substantive due process protects persons from "deliberate government action that is arbitrary and unrestrained by the established principles of private right and distributive justice." *Doe v. Woodward*, 912 F.3d 1278, 1300 (10th Cir. 2019). "While state actors are generally only liable under the Due Process Clause for their own acts and not for private violence, there are two recognized two exceptions to this rule: (1) the special relationship doctrine; and (2) the 'danger creation' theory." *Uhlrig v. Harder,* 64 F.3d 567, 572 (10th Cir. 1995) (internal citation omitted). Under the danger creation theory, a state may be liable to an individual for injuries caused by a third party where the state created the danger that harmed the individual. *Id.* To prevail on a claim under the danger creation theory, a plaintiff must establish that "(1) the charged state entity and the charged individual actors

created the danger or increased plaintiff's vulnerability to the danger in some way; (2) plaintiff was a member of a limited and specifically definable group; (3) defendants' conduct put plaintiff at substantial risk of serious, immediate, and proximate harm; (4) the risk was obvious or known; (5) defendants acted recklessly in conscious disregard of that risk; and (6) such conduct, when viewed in total, is conscience shocking." *Currier v. Doran*, 242 F.3d 905, 918 (10th Cir. 2001). The Court finds that Mr. Sinclair's complaint adequately pleads sufficient facts to support each element.

1. DPS created the danger or increased Mr. Sinclair's vulnerability to the danger in some way.

DPS does not acknowledge or brief this element (*see* D. 19 at 4; D. 27 at 4). Therefore, the Court will not conduct an in-depth analysis but rather concludes that for the reasons stated in Mr. Sinclair's response brief, he has sufficiently pleaded this element (*see* D. 27 at 5–6).

2. Mr. Sinclair was a member of a limited and specifically definable group.

DPS concedes (for the purpose of this Motion only) that Mr. Sinclair, as an educator at East High School, was a member of a limited and specifically definable group (D. 19 at 4).

2. Defendants' conduct put him and other members of that group at substantial risk of serious, immediate, and proximate harm.

DPS does not address or contest that Mr. Sinclair pleads their conduct put him and other members of that group at substantial risk of serious harm – that risk being A.L. or another student using a gun (*see* D. 18 at ¶ 162).[3] Instead, DPS argues that the complaint "does not assert facts

[3] DPS's argument is focused on the risk posed by A.L. and does not address the broader asserted risk of any student using a gun.

showing the risk of harm was 'immediate and proximate'" (D. 19 at 5). DPS relies on *Castaldo v. Stone,* another school shooting Fourteenth Amendment case, for the proposition that a risk of future violence, even if "probably inevitable," is insufficient to satisfy the immediacy requirement. 192 F. Supp. 2d 1124 (D. Colo. 2001).

Aside from the fact that *Castaldo* is a non-binding, unpublished decision, it fails to carry the day because the facts are easily distinguishable from this case. In *Castaldo,* the court held that the risk presented to a student shot by another student on school grounds was not immediate and proximate because thirteen months had elapsed from when an initial complaint regarding the eventual shooters was filed with the police and the shooting. *Id.* at 1156. First, whereas in *Castaldo*, thirteen months passed between an initial complaint being made to the defendants and the shooting – with no intervening incidents – only three weeks passed between Mr. Anderson receiving a picture of A.L. with a supposed gun on March 2 and the shooting on March 23. Second, only three days (and zero school days) after the March 2 incident in which the facts indicate A.L. had a gun on his person, DPS allowed A.L. back to school without conducting a search of his person. Third, the students in *Castaldo* had not previously brought guns into the school, whereas evidence shows A.L. had a history of possessing and using guns and had brought a gun into a school on multiple occasions prior to shooting Mr. Sinclair, including just three weeks earlier. Fourth, Mr. Sinclair was put in the position of searching A.L. while unarmed and untrained specifically because A.L. allegedly brought a gun to the school weeks earlier. For these reasons, the Court finds DPS's argument unpersuasive and determines that Mr. Sinclair has pleaded facts sufficient to show the risk of A.L. using a gun for violence at East High School was immediate and proximate.

3. The risk of harm was obvious or known.

DPS admits they "were aware the student had previously possessed firearms" and that his possession of a firearm was an "actual risk known to them" (D. 19 at 7). However, they argue that "there are no facts alleged indicating the student had any propensity to use a firearm" [4] (*id.*). To the contrary, the complaint clearly states facts indicating the risk that A.L. or another student would use a firearm was both obvious and known. For starters, despite the normalization of guns in Denver schools that Mr. Sinclair documents in his complaint, common sense dictates that a student possessing a gun at school indicates an obvious risk that the student will use the gun (*see* D. 18 at ¶ 162). To say otherwise is to undermine the numerous Colorado and federal laws aimed at protecting students by prohibiting guns in schools (*see id.* at ¶¶ 21–29). Additionally, in December 2022, the Board issued a proclamation highlighting the risk of gun violence in schools and acknowledging an increase in gun violence within Colorado communities (*id.* at ¶ 55). In September 2022, the DPS Superintendent, Dr. Alex Marrero, acknowledged that gun violence in Denver schools was a "ticking time bomb" (*id.* at ¶ 54).

In regard to the risk that A.L. specifically would use a gun, the complaint alleges that DPS was aware of the circumstances leading up to A.L.'s expulsion from Overland High School, including a determination from the Aurora Police Department that he had been in possession of and firing a fully functional AR-15 rifle (*id.* at ¶¶ 83, 89). The Court finds these facts sufficiently indicate that the risk that A.L. would use a gun at East High School was both obvious and known.

[4] The alleged risk in the complaint is that A.L. or another student would use a firearm (D. 18 at ¶ 162 ("the obvious and known risk is that the student may use the gun"); *id.* at ¶ 172 ("the risk of being shot by a student with a gun")), which is distinguishable from Defendant's characterization of the alleged risk as A.L.'s "propensity" to use a gun.

4. Defendants acted recklessly in conscious disregard of that risk.

Recklessness in this context "includes an element of deliberateness—a *conscious* acceptance of a known, serious risk." *Archuleta v. McShan*, 897 F.2d 495, 499 (10th Cir. 1990). DPS argues that Mr. Sinclair fails to allege facts indicating recklessness because he does not demonstrate that Mr. Anderson was aware A.L. was looking for him on the morning of March 23, DPS's took steps to reduce the risk posed by A.L., and DPS took steps to put in place safety policies to replace the removed SROs (D. 19 at 8–9).

The Court finds that Mr. Sinclair adequately pleads recklessness. The complaint claims that despite DPS's knowledge of A.L.'s history with guns, they ignored DPS internal policies and admitted A.L. as a student at East High School and allowed him to attend the school without convening a Threat Appraisal Team, completing a Preliminary Information Gathering Form (PIG-F), or flagging A.L.'s profile for teachers and staff on Infinite Campus (D. 18 at ¶¶ 88–91, 94–95). Then, after the March 2 incident, "[d]espite having credible evidence that A.L. had carried a gun onto the East High School campus . . . the District and Defendant Anderson allowed A.L. to return to East High School with no discipline, no searches of his person, and no restrictions other than Defendant Anderson search A.L.'s backpack each morning" (*id.* at 114). Still, "the District and Mr. Anderson chose not to conduct a full threat appraisal or to flag A.L. in the system to allow administrators, faculty, and staff to appropriately work with A.L.," and "in violation of federal and state law, the District and Mr. Anderson chose not to suspend or expel A.L." (*id.* at ¶¶ 117–118).

The complaint further alleges that DPS "discouraged its school administrators . . . from referring students who brought guns to the campus to expulsion hearings or suspending those students, in violation of federal and state law," as well as DPS internal policies (*id.* at ¶¶ 171, 189).

Mr. Sinclair also argues that DPS decided to remove all SROs without providing "faculty and staff with the resources, training, and tools necessary to keep people safe while at school, in the absence of SROs" (*id*. at ¶ 49), and DPS provides no facts in support of their statement that they took steps to "put in place safety policies to replace those officers" (D. 19 at 9).

All of these allegations show that DPS was aware of the risk posed by A.L. having a gun in the school and were aware of procedures in place to mitigate that risk, yet they consciously did not follow those procedures. They also consciously chose to allow A.L. back to school without checking his person despite credible evidence that he had a gun on his person in school on March 2.

5. Defendants' conduct, when viewed in total, is conscience shocking.

"[T]o satisfy the 'shock the conscience' standard . . . the plaintiff must demonstrate a degree of outrageousness and a magnitude of potential or actual harm that is truly conscience shocking." *Uhlrig,* 64 F.3d at 573. "[W]hen applying this standard, [courts] 'bear in mind three basic principles highlighted by the Supreme Court in evaluating substantive due process claims: (1) the need for restraint in defining their scope; (2) the concern that § 1983 not replace state tort law; and (3) the need for deference to local policymaking bodies in making decisions impacting upon public safety.'" *Hernandez v. Ridley*, 734 F.3d 1254, 1261 (10th Cir. 2013) (quoting *Uhlrig*, 64 F.3d at 574).

While conscience shocking is undoubtedly a difficult standard to satisfy, the Court finds that Mr. Sinclair has pleaded facts sufficient to support his allegation that DPS's conduct is conscience shocking and to survive a motion to dismiss. Viewing DPS's conduct in total and viewing the facts in a light most favorable to Mr. Sinclair, DPS appears to have exhibited a

shocking disregard for the risk A.L. posed to an entire school full of children, faculty, and staff – as well as to himself. He had been expelled from Overland High School for possessing guns and ammunition, he was suspected of having a gun on March 2, and no measures aside from a daily backpack search conducted by an untrained staff member were implemented to prevent him from binging a gun into to the school. It is not hard to imagine the terror that students and the parents of other students at East High School would have felt if they had known of this chain of events. Especially in light of the information Mr. Sinclar provides regarding the rise of gun possession in Colorado schools (D. 18 at ¶¶ 51–53), the death of Luis Garcia by gun violence in front of East High School weeks earlier (*id.* at ¶ 65), A.L.'s history at Overland High School, and DPS's decision to remove the SROs, Mr. Sinclair has shown that Defendants seem to have knowingly opened the door for a mass shooting and/or outbreak of gun violence at East High School. This conduct is illogical, baffling, and plausibly conscience shocking.

D. Mr. Sinclair's Claire Davis School Safety Act claim is Barred by the Colorado Workers' Compensation Act

DPS argues that the Colorado Workers' Compensation Act (WCA) "precludes additional claims under Colorado law brought by a plaintiff against both her employer and a co-employee," barring Mr. Sinclaire's Claire Davis School Safety Act (CDSSA) claim because it is brought against both DPS and Mr. Anderson (D. 19 at 15).

The Court finds that Mr. Sinclair's injuries fall under the WCA, and his CDSSA claim is precluded. Under the WCA, an employee is entitled to compensation "[w]here the injury or death is proximately caused by an injury or occupational disease *arising out of* and in the course of the employee's employment and is not intentionally self-inflicted." C.R.S. § 8–41–301(1)(c)

(emphasis added). Injuries "result[ing] from an assault that is inherently connected to the employment or is attributable to neutral sources that are not personal to the victim or perpetrator" arise out of employment; however, "if the assault originates in matters personal to one or both of the parties," injuries are not considered as arising out of employment. *Horodyskyj v. Karanian*, 32 P.3d 470, 478 (Colo. 2001). As the *Horodyskyi* court explained, assaults originating in personal matters are "those in which the animosity or dispute that culminates in an assault is imported into the employment from [the] claimant's or tortfeasor's domestic or private life" and which "are unrelated to their respective work-related functions." *Id.* at 477 (internal citations and quotation marks omitted). Neutral source injuries, on the other hand, are those "not specifically targeted at a particular employee and [that] would have occurred to any person who happened to be in the position of the injured employee at the time and place in question." *Id. See also City of Brighton v. Rodriguez*, 318 P.3d 496, 504 (Colo. 2014) ("[I]njuries stemming from neutral risks . . . "arise out of" employment because they would not have occurred but for employment. That is, the employment causally contributed to the injury because it obligated the employee to engage in employment-related functions, errands, or duties at the time of injury.").

The facts indicate that A.L. most likely would have shot any employee (aside from Mr. Anderson) who was in Mr. Sinclair's position, and Mr. Sinclair would not have been injured but for the fact that he was engaged in employment-related duties. There is no evidence that A.L. targeted Mr. Sinclair specifically; rather, the shooting is more aptly classified as a randomly violent act of a mentally disturbed individual. Nothing that Mr. Sinclair did or said and nothing about his person appeared to cause A.L.'s aggravation. Instead, the complaint states that A.L. instigated the shooting by grabbing Mr. Sinclair's hand and putting it on the gun (D. 18 at ¶¶ 126–127). Mr.

Sinclair attempted to defuse the situation, but A.L.'s hostility only escalated (*id.* at ¶¶ 128–129). A.L. also shot Mr. Mason – the only other person in the room – during the same encounter (*id.* at ¶ 129). Additionally, A.L. had a history with guns and subsequently took his own life (*id.* at ¶ 130), indicating that his decisions to bring a gun to school and to use the gun on Mr. Sinclair were a result of long-standing personal troubles. Therefore, the Court finds that Mr. Sinclair's injuries originated from a neutral source, and the WCA exclusivity provision does bars his CDSSA claim.

Mr. Sinclair argues that the CDSSA carved out an exception to the WCA exclusive remedy provision "for claims arising out of injury caused by an incident of school violence" because constructing the WCA as preempting the CDSSA "would make the CDSSA 'meaningless or absurd' as to all DPS faculty and staff" (D. 27 at 17). The Court is not persuaded. When presented with potentially conflicting statutes, Colorado courts "must adopt a construction that avoids or resolves potential conflicts, giving effect to all legislative acts, if possible." *Huber v. Colo. Mining Ass'n*, 264 P.3d 884, 892 (Colo. 2011). Defendants point out that the CDSSA and WCA can be reconciled by reading the CDSSA as waiving sovereign immunity for injuries resulting from privately motivated incidents of school violence, just not injuries resulting from incidents of school violence that were inherently connected to school employment or attributable to neutral sources (*see* D. 43 at 13–14). Prior to the CDSSA, school employees could not recover in tort for injuries resulting in privately motivated incidents of school violence because such claims were not waived under the Colorado Governmental Immunity Act (CGIA). *See* C.R.S. § 24-10-106.3(4) (waiving sovereign immunity under the CGIA for school districts for incidents of school violence). The Court is thus obligated to accept this reading. *See Huber,* 264 P.3d at 892; *Est. of Brookoff v. Clark*, 429 P.3d 835, 837 (Colo. 2018) ("[T]his court is 'not at liberty to carve out an exception'

that is absent from a statute" (quoting *Packard v. Packard,* 519 P.2d 1221, 1222 (Colo. App. 1974))).

IV. CONCLUSION

Accordingly, the Motion to Strike Official Capacity Claims Against Individual Defendants (D. 16) is GRANTED, and Defendant's Motion to Dismiss (D. 19) is GRANTED IN PART as to the Claire Davis Act claim; all federal Constitutional claims against Defendant Shawne Anderson; and Defendant Denver Public Schools Board of Education. It is FURTHER ORDERED that the clerk of the court shall strike Defendants Xochitl Gaytan, Auon'Tai M. Anderson, Scott Esserman, Michelle Quattlebuam, Carrie A Olson, Ph.D., Charmaine Lindsay, and Scott Balderman.

DATED March 25, 2026.

BY THE COURT:

Gordon P. Gallagher
United States District Judge