IN THE SUPREME COURT OF IOWA

No. 24-1351

BENJAMIN FOGLE and AMANDA FOGLE, on behalf of minor child P.F.,

Plaintiffs-Appellees,

v.

CLAY ELEMENTARY SCHOOL – SOUTHEAST POLK COMMUNITY SCHOOL DISTRICT, DIRK HALUPNIK, ANDREA BRUNS, AND CARLA RIVAS, individually and in their official capacities with Southeast Polk Community School District

Defendants-Appellants.

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POL COUNTY, IOWA
HONORABLE MICHAEL D. HUPPERT, DISTRICT COURT JUDGE

APPELLEES' BRIEF

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ROUTING STATEMENT

This case should not be retained by the Iowa Supreme Court. Despite their effort to maintain this claim, Appellants do not have an immediate right to appeal. The district court's denial of Appellants' Motion to Dismiss was not a denial of qualified immunity under Iowa Code section 670.4A. Instead, the denial found that claims brought under chapter 216, the Iowa Civil Rights Act ("ICRA"), are not subject to the pleading standards set forth in chapter 670, the Iowa Municipal Tort Claims Act ("IMTCA"). The court reached this conclusion based on case law, the plain language of the statutes, and legislative intent.

Further, this is not an issue of first impression because, as mentioned, Iowa case law and statutes clearly lay out the inapplicability

of the heightened pleading standard in chapter 670 to Iowa Civil Rights Act claims. Both the ICRA and the IMTCA have existed together for over half a century without any court finding they are tied together. Iowa courts have analyzed ICRA claims and claims subject to the IMTCA in many cases without ever reaching the conclusion Appellants ask for. As such, this is not an issue of first impression.

NATURE OF THE CASE

Plaintiffs-Appellees Amanda and Benjamin Fogle brought this action on behalf of their minor child P.F (hereinafter, collectively, "Appellees" and individually, "P.F.," "Ben," and "Amanda"), against Defendants-Appellants Clay Elementary School – Southeast Polk Community School District, Dirk Halupnik, Andrea Bruns, and Carla Rivas (hereinafter, collectively, "Appellants" and individually, "SEP" or "Clay Elementary," "Mr. Halupnik," "Ms. Bruns," and "Ms. Rivas"). The claims in this case arise from allegations of discrimination and harassment P.F. faced while attending Clay Elementary as a fifth-grader.

Defendants-Appellants filed a Motion for Partial Dismissal of Plaintiffs' claims, arguing, in relevant part, that Plaintiffs' ICRA claims

did not meet the heightened pleading standard required in Iowa Code section 670.4A(3), that Plaintiffs' claims against Defendant Halupnik were not sufficiently pled under the same standard, and that Plaintiffs' Negligent Training and Supervision claim was not sufficiently pled. The District Court denied the motion, in relevant part, finding the Plaintiffs' ICRA claims are not subject to the IMTCA based on relevant case law and statutory interpretation. Further, the Court declined to dismiss Plaintiffs' claims against Defendant Halupnik or Plaintiffs' Negligent Training and Supervision claim because those claims met the heightened pleading standard.

Appellants claim they were denied qualified immunity under Iowa Code section 670.4A(4), despite the district court never making such a ruling. Under that false assumption, Appellants now appeal the denial, asserting they have an automatic right to do so.

STATEMENT OF THE FACTS

Clay Elementary is an educational institution located in Polk County, Iowa with its headquarters located in Pleasant Hill, Iowa. (Attachment to D0017, First Am. Pet. ¶ 4 (5/16/2024)). At all times material, Mr. Halupnik was the Superintendent of SEP, Ms. Bruns was

the Principal at SEP's Clay Elementary, and Ms. Rivas was a fifth-grade teacher employed at SEP's Clay Elementary. (Attachment to D0017 at ¶¶ 5-7).

P.F. was a fifth-grader at Clay Elementary during the 2022-2023 school year. (Attachment to D0017 at ¶ 14). At the beginning of the 2022-2023 school year, P.F. began to get verbally harassed about his sexual orientation, clothing, and friend group. (Attachment to D0017 at ¶ 16). The verbal attacks led to physical assaults on at least four (4) occasions by Z.M., another student in P.F.'s fifth-grade class. (Attachment to D0017 at ¶ 17). Z.M. bit P.F. in his genital area while standing in line in the lunchroom on or about January 17, 2023. (Attachment to D0017 at ¶ 20). Multiple teachers at SEP, including Ms. Goodnight, witnessed the incident. (Attachment to D0017 at ¶ 22). Despite being aware of the incident, SEP failed to notify Appellees Ben or Amanda. (Attachment to D0017 at ¶ 23). After finding out about the incident, Amanda contacted Ms. Rivas, who told her it was an accident. (Attachment to D0017 at ¶ 24).

On or about February 1, 2023, Z.M. went up to P.F., put his mouth over P.F.'s genital area, and smiled afterwards. (Attachment to D0017 at

¶¶ 25-26). Ms. Goodnight witnessed this incident as well and called it an accident once again. (Attachment to D0017 at ¶ 27). After this incident, Ms. Bruns called Amanda to inform her what happened, and Amanda demanded an in-person meeting, where a "safety plan" was discussed and allegedly implemented. (Attachment to D0017 at ¶¶ 28-30).

P.F.'s "safety plan" failed to adequately protect P.F., as he still had class with Z.M. (Attachment to D0017 at ¶ 31). On or about April 3, 2024, P.F. was at a water fountain when Z.M. began making sexually explicit gestures behind him. (Attachment to D0017 at ¶¶ 33-34). P.F. reported this to Ms. Rivas, who did nothing. (Attachment to D0017 at ¶ 35). In turn, SEP failed to contact Amanda or Ben about this incident. (Attachment to D0017 at ¶ 36).

On or about April 27, 2023, Z.M. grabbed P.F.'s genital area while he was at recess and P.F. immediately reported this to Ms. Rivas. (Attachment to D0017 at ¶¶ 37-38). Ms. Rivas blamed P.F. for standing too close to a ladder and SEP again failed to notify Amanda or Ben. (Attachment to D0017 at ¶¶ 38-39). SEP claimed the camera footage was too pixelated and therefore did not implement any discipline or take any further steps to protect P.F. (Attachment to D0017 at ¶ 42). Clearly,

Appellants were aware of P.F.'s sex and sexual orientation and the harassment he faced because of it.

Appellees attempted multiple times to seek help from Appellants, contacting different SEP employees and even the police and Department of Human Services. (Attachment to D0017 at ¶¶ 24, 28-29, 40, 43). Appellants told Appellees they were putting a safety plan in place to protect P.F., but that safety plan did not adequately protect P.F. or was not adequately followed and P.F. was still harassed and even physically assaulted. (Attachment to D0017 at ¶¶ 30-335, 37-38). Appellants failed to properly act, causing P.F. to suffer physical, mental, and emotional pain and suffering. (Attachment to D0017 at ¶ 46).

Appellees filed their Petition on January 24, 2024. (D0004, Pltfs.' Pet (1/24/2024)). Specifically, Appellees brought one (1) statutory claim pursuant to Iowa Code Section 280.28 (Count I), one (1) claim of Breach of Fiduciary Duty (Count V), and one (1) claim of Negligence (Count VI) asserted against all Appellants. Further, Appellees brought two (2) claims of supervisor liability, namely, Negligent Training and Supervision against SEP, Mr. Halupnik, and Ms. Bruns and Respondeat Superior against Clay Elementary (Counts VII-VIII). Finally, Appellees

brought three (3) claims of violations of Iowa Code Chapter 216, the ICRA, including Sex Discrimination, Sex Harassment, and Aiding and Abetting. (Counts II-IV).

On or about March 18, 2024, Appellants collectively filed their Pre-Answer Motion for Partial Dismissal of Plaintiffs' Petition. (D0007, Mot. for Part. Dismissal of Plts.' Pet. (3/18/2024)). Appellants moved for dismissal on all of Appellees' ICRA claims (Counts II-IV), Appellees' Iowa Code Section 280.28 claim (Count I), Appellees' Negligent Training and Supervision claim (Count VII), and all claims against Mr. Halupnik. (*See* D0007).

On May 16, 2024, the Appellees moved to amend their Petition to add additional facts, which was granted. (D0017, Mot. to Amend Pet. (5/16/2024)). With this Motion, Appellees filed their Amended Petition. (Attachment to D0017, First Am. Pet. (5/16/2024)). On May 23, 2024, the Appellants renewed their Motion to Dismiss on the same claims as before. (*See* D0019, Mot. for Part. Dismissal of Am. Pet. (5/23/2024)).

The district court denied Appellants' motion, in relevant part, for Counts II-VII on August 8, 2024. (D0025, Ruling on Ds' Mot. for Partial Dismissal (8/8/2024)). The dismissal was based on the grounds that

Appellees' ICRA claims are not subject to the heightened pleading standard of the IMTCA and Appellees sufficiently pled their claim of Negligent Training and Supervision and all claims against Mr. Halupnik. (D0025 at p. 3-5, 9-12). There was no denial of qualified immunity. On November 19, 2024, Appellants filed their Brief. (Appellants' Br. (11/19/2024)). Appellants claim they are seeking their appeal as a matter of right under Iowa Code section 670.4A(4) for denial of qualified immunity. (Appellants' Br. p. 14).

Appellees now resist Appellants' appeal on the grounds (1) they have no matter of right to appeal the district court's order, (2) the district court correctly held ICRA claims are not subject to the IMTCA, and (3) their Negligent Training and Supervision claim and all clams against Mr. Halupnik have been sufficiently pled.

ARGUMENT

Appellants are seeking an appeal on the grounds the district court allegedly erred in holding, as many courts have prior held, that the Iowa Municipal Tort Claims Act ("IMTCA") provisions do not apply to Iowa Civil Rights Act ("ICRA") claims and that Plaintiffs' claims against Defendant Halupnik and their Negligent Training and Supervision claim

were sufficiently pled. To the contrary, the IMTCA does not apply to ICRA claims and never has. Further, Appellees have sufficiently pled their claims against Appellant Halupnik and their claim of Negligent Training and Supervision. Accordingly, this Court should not grant this appeal.

I. Appellants Are Not Entitled to Appeal the District Court's Denial of Their Motion for Partial Dismissal as There Was No Denial of Qualified Immunity.

Appellants claim they were denied the protection of qualified immunity afforded by Iowa Code section 670.4A(4). (Appellants' Br. p. 14). Iowa Code section 670.4A(4) states that any denial of qualified immunity by the district court "shall be immediately appealable." Iowa Code § 670.4A(4). The district court's ruling on Appellants' Motion to Dismiss states the following: "For these reasons, the court concludes that the heightened pleading requirements within the IMTCA are not applicable to the plaintiffs' claims under the ICRA (Counts II, III, and IV) and the defendants' motion is denied as to these counts." (D0025 at p. 5). The court reasoned that the IMTCA does not apply to the ICRA because (1) the definition of "tort" is not broad enough to include the type of claims brought under the ICRA (claims for "discrimination or unfair

practices"), (2) ICRA preemption prevents common law tort claims from being brought for the same act, (3) the two laws have coexisted for over half a century and Iowa courts have always recognized a difference between the two, and (4) the legislature clearly did not intend the two to be tied together. (D0025 at p. 4-5). The district court never mentions qualified immunity or its applicability. There was no ruling on whether the Appellants are entitled to qualified immunity, but a ruling on whether the heightened pleading standard contained in the IMTCA applies to Appellee's ICRA claims, which it was determined it does not. Because there was no denial of qualified immunity under 670.4A, there is no right to appeal. Therefore, Appellants may apply to this Court for permission to appeal, and Appellants' Brief should be treated as such an application for the reasons stated above.

The Court may grant an application for interlocutory appeal if (1) the ruling involves substantial rights, (2) the ruling will materially affect the final decision, and (3) determination of the issue will better serve the interests of justice. *Banco Mortgage Co. v. Steil*, 351 N.W.2d 784, 787 (Iowa 1984). But it grants interlocutory appeals sparingly. *Knauss v. City of Des Moines*, 357 N.W.2d 573, 576 (Iowa 1984). Only exceptional

circumstances where the interests of sound and efficient judicial administration are best served warrant granting interlocutory appeal. *Banco Mortg. Co.*, 351 N.W.2d at 787. As such, the party seeking to appeal at an early stage of the district court proceedings has the heavy burden to show that the likely benefit to be derived from early appellate review outweighs the detriment and therefore satisfies the requirement that the interests of justice be better served. A trial should not be postponed to litigate an issue that would be ordinarily raised on appeal following a judgment, if a judgment is obtained. Only where there is a substantial basis for a difference of opinion and immediate appellate resolution of the issue will materially advance the progress of the litigation is an interlocutory appeal appropriate. *Banco Mortg. Co.*, 351 N.W.2d at 787. Otherwise, the Court should let a matter proceed to trial and review the question if a judgment results. *See* Iowa R. App. P. 6.103(3).

The Appellants' issues fail to meet the requirements for interlocutory appeal. There was no denial of qualified immunity, thus no denial of substantive rights. Further, the interests of justice would not be served by determining the issues here because this Court and many

others have declined to apply the IMTCA to ICRA claims and because the issue of presenting enough facts against Mr. Halupnik and on the claim of Negligent Training and Supervision are issues to be decided after litigation has ensued, and discovery has been completed.

The Court should not grant interlocutory appeal for this issue and, instead, the application should be denied.

II. The District Court Correctly Ruled Appellees' Iowa Civil Rights Act Claims are not Subject to the Heightened Pleading Standard of the Iowa Municipal Tort Claims Act.

A. Standard of Review.

The court reviews a motion to dismiss for correction of errors at law. *Nahas v. Polk County*, 991 N.W.2d 770, 775 (Iowa 2023). The court must "accept as true the petition's well-pleaded factual allegations, but not its legal conclusions." *Id*. (quoting *Benskin, Inc. v. W. Bank*, 952 N.W.2d 292, 298 (Iowa 2020)).

B. The IMTCA does not apply to Appellees' ICRA claims, and therefore Appellees have sufficiently pled their claims.

A review of Iowa case law, the relevant statutes, and the legislature's intent clearly shows claims brought under the ICRA are not subject to the IMTCA.

1. The statutory language

Starting with statutory interpretation, Appellants rely on the statutory definition of "tort" provided in the IMTCA:

> "Tort" means every civil wrong which results in wrongful death or injury to person or injury to property or injury to personal or property rights and includes but is not restricted to actions based upon negligence; error or omission; nuisance; *breach of duty, whether statutory or other duty or denial or impairment of any right under any constitutional provision, statute or rule of law*.

Iowa Code § 670.1(4) (emphasis added).

The complete definition of "tort" is vital in considering the IMTCA's applicability. The types of actions defined as torts are separated by a semi-colon—negligence, error or omission, and breach of duty. As seen in the emphasized section above, statutory and constitutional provisions factor in only as examples of different sources from which a breach of duty may arise.

Contradictory to Appellants' argument, in *Sutton v. Council Bluffs Water Works* the Court went into depth about the definition of "tort" contained within the IMTCA. 990 N.W.2d 795, 797-98 (Iowa 2023). The Court defined the term "every civil wrong" at the beginning of the definition to mean its common usage: "an intentional act resulting in

harm (an intentional tort), an act involving wrongful conduct that inadvertently results in harm (negligence), and an act resulting in harm for which, because of the hazards involved, the law imposes strict liability." *Id.* at 798. Those are all traditionally understood torts. Because strict liability claims are tort claims, the Court found *Water Works* could be held liable. *Id.* The court did not expand the definition of torts to include anything which has not traditionally been understood as a tort, and this court should not do so now. *Id.*

Furthermore, the Iowa Supreme Court has analyzed a tort claim as separate and distinct from ICRA claims. In *Carver-Kimm v. Reynolds*, the court held public policy claims are not governed by the ICRA and are instead a tort based in common law. 992 N.W.2d 591, 603 (Iowa 2023). The court made it clear that public policy tort claims and ICRA claims are not interchangeable: "We have never declared that the wrongful discharge tort mirrors an Iowa Civil Rights Act claim. And more particularly, we have never determined that the scope of liability in the Iowa Civil Rights Act also applies to the common law tort." *Id.* The court noted that the ICRA provides a wider scope of liability than common law torts, which, again, are analyzed under different standards. *Id.*

The *Carver-Kimm* Court's statement should not come as a surprise considering the ICRA has repeatedly been found to preempt common law tort claims. *See, e.g. Borshel v. City of Perry*, 512 N.W.2d 565, 567-68 (Iowa 1994); *Channon v. United Parcel Serv.*, 629 N.W.2d 835, 838 (Iowa 2001).

Additionally, the Court in *Smidt v. Porter* held the plaintiff's tort claims brought *in addition to* ICRA claims was preempted by the ICRA and therefore could not be brought. 695 N.W.2d 9, 17 (Iowa 2005). They wrote, "[i]n *Channon*, as here, the plaintiff pled a tort in addition to her ICRA claim." *Id.* (quoting *Channon*, 629 N.W.2d at 858). Clearly, ICRA claims are not, and historically have not been, considered torts nor are they analyzed under similar procedural standards and requirements.

2. Procedural and jurisdictional requirements

Next, the procedural and jurisdictional requirements of the ICRA further support a finding of exclusivity of claims brought under the ICRA, which are separate and apart from claims brought under IMTCA. The ICRA states that a person claiming a violation "must" go through the complex administrative agency process before seeking relief in court. *Northrup v. Farmland Industries, Inc.*, 372 N.W.2d 193, 196 (Iowa 1985);

Iowa Code § 216.16(1) (2024). As a prerequisite to obtaining an administrative release that allows for a civil rights lawsuit to be filed, "[a] person claiming to be aggrieved by an unfair or discriminatory practice must initially seek an administrative relief by filing a complaint with the commission in accordance with section 216.15." Iowa Code § 216.16(1).

The ICRA goes on to state: "An action authorized under this section is barred unless commenced within ninety days after issuance by the commission of a release under subsection 2 of this section or within one year after the filing of the complaint, whichever occurs first." Iowa Code § 216.16(4).

In *Northrup*, the plaintiff argued he could bring a common law claim for wrongful discharge based on his alcoholism. 372 N.W.2d at 195. However, the only source for a public policy protecting alcoholism as a protected class was the ICRA's disability discrimination provisions. *Id.* at 196. The problem was that the remedial scheme set forth in the ICRA is mandatory: either you follow it or you cannot recover. *Id.* at 196-97; Iowa Code § 216.16(1); Iowa Code § 216.16(4). "It is clear from a reading of section [216.16(1)] that the procedure under the civil rights act is

exclusive, and a claimant asserting a discriminatory practice must pursue the remedy provided by the act." *Northrup*, 372 N.W.2d at 197. Therefore, the court held "that any remedies to which Northrup may be entitled would lie solely under chapter [216] and his *independent* common-law action [could not] be recognized." *Id.* (emphasis added).

The IMTCA has contradictory, less restrictive jurisdictional requirements. For instance, there is no administrative exhaustion requirement. *See generally* Iowa Code Chapter 670 (2024). Likewise, the IMTCA allows "a person who claims damages from any municipality . . . two years" to commence their civil action. Iowa Code § 670.5 (2024). Appellees anticipate Appellants would likely protest if they had relied solely on Chapter 670's procedural requirements and foregone administrative exhaustion with the Iowa Civil Rights Commission.

Additionally, Appellees would be shocked if Appellants conceded punitive damages, which are available within the IMTCA statutory scheme, were available in ICRA claims against their officers or employees, which the ICRA does not provide for. *See* Iowa Code § 670.12; *see also* Iowa Code § 216.15. Furthermore, Appellees did not have to request the right to sue and bring their claims to district court to seek

relief under the ICRA. Rather, the Commission is also empowered by the ICRA to adjudicate civil rights claims and award damages—at no point during that process would a complainant need to meet any pleading requirements of Chapter 670.

Furthermore, the ICRA is preemptive over IMTCA claims. *See Smidt*, 695 N.W.2d at 17; *Channon*, 629 N.W.2d at 858. Appellants argue preemption is not pertinent here because "no action can arise solely from or under the IMTCA as to be subject to preemption." (Appellants' Br. p. 19). Appellants cite *Sutton* to support this contention, yet that case does not back their argument. While it is true the IMTCA does not create new claims and therefore the IMTCA applies to underlying claims being asserted, preemption still affects *those* claims. In *Greenland v. Fairtron Corp.*, the Court laid this out clearly, stating "[p]reemption occurs unless the claims are separate and independent, and therefore incidental, causes of action." 500 N.W.2d 36, 38 (Iowa 1993). The Court goes on to plainly state "[t]he test is whether, in light of the pleadings, discrimination is made an element of the alternative claims." *Id.*

Additionally, the language of chapter 670.4A states qualified immunity and the heightened pleading standard applies to "claims

brought under this chapter." Iowa Code § 670.4A. This clearly indicates there are some claims which would not be subject to IMTCA protections and which could be brought by other means, like claims brought under the ICRA.

To summarize, if a plaintiff wants to bring a claim *not* under the ICRA, but the *only* bad act was based on discrimination, that claim *would be* preempted by the ICRA, *even if* that claim was brought under another statute which *would* in turn be subject to the IMTCA. *See Greenland*, 500 N.W.2d at 38 ("We held the claims were preempted because the only wrongful, bad faith, or unfair act alleged was age discrimination") (quoting *Grahek v. Voluntary Hosp. Co-op Ass'n of Iowa, Inc.*, 473 N.W.2d 31, 34 (Iowa 1991)).

Because the ICRA is the exclusive statutory remedy for civil rights violations such as Appellees', its procedural and jurisdictional requirements should govern. The legislature has given individuals the power to pursue claims against municipalities under the ICRA without reliance on the IMTCA. *See generally*, Iowa Code Chapter 216 (2024). The laws are to be treated as separate and distinct.

3. The purpose of the IMTCA and the purpose of the ICRA

In addition to the clear statutory language and extensive case law, the purpose of the ICRA and the purpose of the IMTCA are different and can both be served independently. *Dickey*, 705 F.Supp.3d at 893. As Appellants point out, private citizens can sue a municipality and its employees but "only in the manner and to the extent to which consent has been given by the legislature." *Rivera v. Woodward Resource Ctr.*, 830 N.W.2d 724, 727 (Iowa 2013). This was the purpose in enacting the IMTCA, to allow such claims to go forward. Where Appellants go wrong, however, is applying this law too broadly.

The Court in *Rivera* reached this conclusion for the issue in front of it: *tort* claims against a municipality. *Id*. *Tort* claims, which were already a cause of action independent of the IMTCA, can now be brought by private citizens pursuant and subject to the parameters set forth by the legislature. *Id*. Appellees' ICRA claims are not tort claims, and if Appellees did try to assert them as tort claims they would be preempted from doing so by the ICRA, thus rendering the IMTCA inapplicable to such claims. *Greenland*, 500 N.W.2d at 38; *see Smidt*, 695 N.W.2d at 17 (stating how a tort claim is brought in addition to ICRA claims).

Conversely, the ICRA has permitted citizens to bring claims of discrimination against municipalities independent of the IMTCA being enacted. *See Dickey v. Mahaska Health Partnership*, 705 F.Supp.3d 883, 891 (S.D. Iowa Dec. 7, 2023). (citing a string of Iowa cases addressing ICRA discrimination claims against municipalities). The IMTCA, therefore, does not affect ICRA claims. Appellees brought their claim pursuant to the ICRA, not under common law torts which would then be subject to the IMTCA.

4. Federal case law

In addition to the relevant Iowa case law, Federal Courts have reached the same conclusion regarding IMTCA's inapplicability to ICRA claims. Almost fifteen (15) years ago, Judge John Jarvey addressed such:

> Furthermore, the Iowa Municipal Tort Claims Act does not bar Plaintiff's claim under the Iowa Civil Rights Act. The Iowa Municipal Tort Claims Act provides that "[e]xcept as otherwise provided in this chapter, every municipality is subject to liability for its torts . . ." Iowa Code § 670.2 (2005). Section 670.4(3) then provides a municipality with immunity from damages under certain circumstances. Defendants contend that they are entitled to immunity from damages under the "discretionary function exemption." *See* Iowa Code § 670.4(3) (2005). However, this provision removes immunity if the statute that deals with such claims imposes damages. *See* Iowa Code § 670.4(3) (2005); *Fink v. Kitzman*, 881 F. Supp. 1347, 1389 (N.D. Iowa 1995). Because the Iowa Civil Rights Act expressly allows for damages pursuant to Iowa Code

> section 216.15(8), the immunity provided by the Iowa Municipal Tort Claims Act is inapplicable to plaintiff's claim under the Iowa Civil Rights Act. *See id*. (refusing to apply the immunity provided by the Iowa Municipal Tort Claims Act to plaintiff's claim under the Iowa Civil Rights Act); *Bruning ex rel. Bruning v. Carroll Cmty. Sch. Dist.*, 486 F.Supp.2d 892, 918–19 (N.D. Iowa 2007) (applying the Iowa Municipal Tort Claims Act to the plaintiff's state law tort claims, but not to the plaintiff's claim under the Iowa Civil Rights Act). Thus, Defendants are not entitled to immunity under the Iowa Municipal Tort Claims Act.

Peters v. City of Council Bluffs, 2009 WL 6305733, *7 (S.D. Iowa May 5, 2009).

Clearly IMTCA immunity does not apply to ICRA claims under the express language of both the IMTCA and the ICRA. *Id*. The court did not have to address the issue of whether the IMTCA in general applies to ICRA claims because that was not the issue presented to it. *Id*. However, the court did cite a case which applied the IMTCA to state law tort claims but not ICRA claims. *Id*. (citing to *Bruning ex rel. Bruning v. Carroll Cmty. Sch. Dist.*, 486 F.Supp.2d 892, 918–19 (N.D. Iowa Apr. 19, 2007)). It is apparent the court felt ICRA claims were not included in the definition of "torts" within the IMTCA.

Furthermore, the Court again articulated the inapplicability of the IMTCA to ICRA claims last year. Judge Locher found ample evidence

from Iowa case law and statutes showing the legislature did not intend the IMTCA to apply to ICRA claims, and thus declined to do so in *Dickey*. *See generally* 705 F.Supp.2d 883. Judge Locher pointed out both the ICRA and the IMTCA have co-existed for more than half a century and Iowa courts have never tied them together. *Id*. at 891. Since the inception of both Acts, Iowa courts have decided ICRA claims, like employment discrimination, against municipalities "more times than are worth listing." *Id*. (citing to a list of Iowa cases doing such). After analyzing the statutory language and legislative intent, it was abundantly clear that ICRA claims are separate from claims subject to the IMTCA. *Id*. at 891-93.

Appellants attack *Dickey*, claiming (1) the court ignored the definition of "tort" defined within the IMTCA, (2) discrimination claims are tortious, and (3) the Iowa Supreme Court has not limited IMTCA applicability to only traditional torts. (Appellants' Br. p. 21-22).

First, the Court in *Dickey* examined the definition the IMTCA has provided for "tort" and concluded that because it uses traditional tort law terminology, like "negligence," "nuisance," and "breach of duty," the Court would not go against the plain meaning of the words and apply the

definition to non-torts. *Dickey*, 705 F.Supp.3d at 892; *see* Iowa Code § 670.1(4). Noting that the legislature included "every civil wrong" within the definition, there is clear language indicating the legislature intended torts as Iowa courts have long held it to mean. *Id.*; *see State v. Adams*, 810 N.W.2d 365, 370 (Iowa 2012) ("[W]e assume the legislature is familiar with the existing state of the law when it enacts new legislation."). The *Dickey* court found it doubtful that "the Legislature intended to deviate from that long history by including non-torts in the definition of 'tort,' as 'a statute will not be presumed to overturn long-established legal principles, unless that intention is clearly expressed or the implication to that effect is inescapable.'" 705 F.Supp.3d at 892 (quoting *Victoriano v. City of Waterloo*, 984 N.W.2d 178, 182 (Iowa 2023)).

Second, although discrimination may be tortious in nature, the IMTCA was not intended to apply to every single tortious act. If that were the case, ICRA claims would always be subject to the IMTCA, which, as mentioned, the two have long co-existed without ever being tied together. *See id.* Further, the protections provided to municipalities under Iowa Code section 670.4A only apply to "a claim brought under this chapter."

Iowa Code § 670.4A. As articulated above, ICRA claims are not brought under chapter 670 and Appellants' argument confuses the law.

Lastly, the *Nahas* decision did not overrule over half a century of precedent with its holding. The court in *Nahas* applied the IMTCA heightened pleading standard to the plaintiff's claims of violation of Iowa Code sections 21.3 and 22.7. 991 N.W.2d at 783. Iowa Code section 670 defines a tort to include actions based on breach of duty, whether that duty is statutorily or otherwise created. Iowa Code § 670.1(4). The plaintiff in *Nahas* alleged a breach of duty, which is a tort, and therefore is subject to the IMTCA. 991 N.W.2d at 783.

Additionally, Iowa Code sections 21 and 22 do not have independent and specific procedural requirements to bring claims for violations. *See* Iowa Code § 21.6; *see also* Iowa Code § 22.5; *cf* Iowa Code § 216.15(13). Claims brought for violations of Iowa Code chapters 21 and 22 have also been subject to qualified immunity protections before, while ICRA claims have historically not been. *See Nahas*, 991 N.W.2d at 783; *see Bruning*, 486 F.Supp.2d at 918-19. Claims under the ICRA are not the same as breach of duty claims brought for a violation of Chapters 21 or 22.

The case law and statutory language shows ICRA claims are not subject to the IMTCA. To hold otherwise would go against half a century of precedent that has analyzed the ICRA and IMTCA separately.

5. Appellees meet the notice-pleading requirements

Because Appellees' ICRA claims are not subject to the heightened pleading standard or qualified immunity under chapter 670, Appellees' pleading obligation was to comply with Iowa's notice-pleading standard. A petition "need not alleged ultimate facts that support each element of the cause of action . . . [but] must contain factual allegations that give the defendant 'fair notice' of the claims asserted so the defendant can adequately respond." *Rees v. City of Shenandoah*, 682 N.W.2d 77, 79 (Iowa 2004) (quoting *Schmidt v. Wilkinson*, 340 N.W.2d 282, 283 (Iowa 1983)). A petition provides fair notice "if it informs the defendant of the incident giving rise to the claim and of the claim's general nature." *Id.*

Appellees Amended Petition clearly meets this requirement. It goes beyond simply stating the incidents giving rise to the claims and instead provides a much more detailed explanation of the nature of the claims. (*See* Attachment to D0017).

C. Alternatively, if the IMTCA applies to Appellees' claims, each claim is sufficiently pled to meet the requirements.

If this Court chooses to find the IMTCA does apply to Appellees' ICRA claims, the claims are still sufficiently pled to meet the heightened pleading requirements.

Chapter 670 requires a plaintiff to state their claim "with particularity the circumstances constituting the violation." Iowa Code § 670.4A(3). The second step is to plead "a plausible violation" of the law. *Id*. Lastly, a plaintiff must state that "the law was clearly established at the time of the alleged violation." *Id*. A claim is pled with particularity when it states the who, what, when, where, why, and how. *Nahas*, 991 N.W.2d at 781. An allegation is plausible if it "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. at 782 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). It is not a probability requirement, but a requirement to present sufficient facts so that the court can infer more than the mere possibility that the defendants are liable. *Id*.

1. Sex Discrimination

A review of the amended one hundred and fifty-one (151) paragraph petition shows exactly what is required under the heightened pleading standard laid out in *Nahas*.

WHO: The Appellees have identified who the actors were, specifically giving names of individuals that engaged in the discrimination and harassment and that knew of the discrimination, harassment and bullying P.F. was being subjected to because of his sex, i.e. Z.M., Halupnik, Bruns, and Rivas. (Attachment to D0017 at ¶¶ 5-7, 17-18, 24, 28-30, 35, 38, 40-42, 56-59, 71-74).

WHAT: The Appellees have identified multiple instances as to what occurred. (Attachment to D0017 at ¶¶ 16-50, 69-82).

WHEN: The Appellees identified multiple dates as to when the discrimination and harassment occurred. (Attachment to D0017 at ¶¶ 16, 20, 25, 30, 33, 37, 41, 45, 53).

WHERE: As outlined in the Amended Petition, the events described occurred at Clay Elementary School during the majority of the 2022-2023 school year. (Attachment to D0017 at ¶¶ 4, 14, 16).

HOW: The Appellees have sufficiently outlined how sex discrimination has occurred in their amended petition and have alleged the elements needed to be successful on their claims for sex discrimination. (Attachment to D0017 at ¶¶ 16-50, 69-82).

The district court, and this Court, are able to draw on its judicial experience and knowledge to reasonably reach the conclusion Appellants committed a violation under the facts Appellees have presented. *See Nahas*, 991 N.W.2d at 781-82. It is more than a mere possibility the Appellants committed a violation of chapter 216 with their discriminatory conduct, and that their conduct was based on P.F.'s sex. *See id*. As P.F.'s sex was the basis of his discrimination, and because Appellants knew, Appellees have sufficiently pled their claims.

If the Court finds Appellees' ICRC claims fall within the heightened pleading standard, the Appellees have sufficiently pled their claims.

2. Sex Harassment

For most of the same reasons Appellees' sex discrimination claim survives, so does the Appellees' sex harassment claim. Under the *Nahas*, who, what, when, where, how, the Appellees provided the following in their Amended Petition:

WHO: The Appellees have identified who the actors were, specifically giving names of individuals that engaged in the harassment and that knew of the harassment and bullying P.F. was being subjected to because of his sex, i.e. Z.M., Halupnik, Bruns, and Rivas. (Attachment to D0017 at ¶¶ 5-7, 17-18, 24, 28-30, 35, 40-42, 56-59, 71-74).

WHAT: The Appellees have identified multiple instances as to what occurred. (Attachment to D0017 at ¶¶ 16-50, 84-97).

WHEN: The Appellees identified multiple dates as to when the harassment occurred. (Attachment to D0017 at ¶¶ 16, 20, 25, 30, 33, 37, 41, 45, 53).

WHERE: As outlined in the Amended Petition, the events described occurred at Clay Elementary School during the majority of the 2022-2023 school year. (Attachment to D0017 at ¶ 4, 14, 16).

HOW: The Appellees have sufficiently outlined how sex harassment has occurred in their amended petition and have alleged the elements needed to be successful on their claims for sex harassment. (Attachment to D0017 at ¶¶ 16-50, 84-97).

Further, the actions alleged here were severe and pervasive enough to survive a motion to dismiss. In determining whether actions alleged

are severe or pervasive, a party must "prove he or she 'subjectively perceived the conduct as abusive' and that 'a reasonable person would also find the conduct to be abusive or hostile.'" *Simon Seeding & Sod, Inc. v. Dubuque Human Rights Commission*, 895 N.W.2d 446, 469 (Iowa 2017) (citing *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993)). In the employment setting, this includes the balancing of the following elements:

> (1) the frequency of the conduct, (2) the severity of the conduct, (3) whether the conduct was physically threatening or humiliating or whether it was merely offensive, and (4) whether the conduct unreasonably interfered with the employee's job performance. These factors and circumstances must disclose that the conduct was severe enough to amount to an alteration of the terms or conditions of employment. Thus, hostile-work-environment claims by their nature involve ongoing and repeated conduct, not isolated events.

Id. at 469.

Here, P.F. was physically assaulted at least four (4) times over a three-four (3-4) month period. (Attachment to D0017 at ¶¶ 20, 25-26, 33-34, 37). Courts within the Eighth Circuit have found similar actions to which P.F. complains of to be sufficient for a harassment claim. "All instances of harassment need not be stamped with signs of overt discrimination to be relevant under Title VII if they are part of a course

of conduct which is tied to evidence of discriminatory animus." *Carter v. Chrysler Corp.*, 173 F.3d 693, 701 (8th Cir. 1999). "Harassment alleged to be because of sex need not be explicitly sexual in nature." *Id.* Further, "verbal abuse, violence, or physical aggression may constitute sexual harassment, and that such need not be explicitly sexual in nature." *Hocevar*, 223 F.3d at 731 (citing *Quick v. Donaldson Co., Inc.,* 90 F.3d 1372, 1379 (8th Cir. 1996)).

The actions above also clearly altered P.F.'s learning and school environment. He was forced to adhere to a safety plan, which clearly did not work based upon the continued harassment, threats and assaults (Attachment to D0017 at ¶¶ 20, 25-26, 33-34, 37) and P.F.'s academic performance and physical, mental and emotional well-being declined. (Attachment to D0017 at ¶ 46, 50).

This is sufficient evidence required to withstand a motion to dismiss, even under the IMTCA heightened pleading standard.

III. Appellees' Negligent Training and Supervision Claim and Appellees' Non-ICRA Claims against Mr. Halupnik are Sufficiently Pled to Meet the Requirements of the Heightened Pleading Standard.

A. Standard of Review.

The court reviews a motion to dismiss for correction of errors at law. *Nahas*, 991 N.W.2d at 775. The court must "accept as true the petition's well-pleaded factual allegations, but not its legal conclusions." *Id.* (quoting *Benskin*, 952 N.W.2d at 298).

B. Heightened Pleading Standard.

As already laid out previously, Chapter 670's three requirements include (1) the plaintiff state their claim with particularity, (2) to plead a plausible violation of the law, and (3) the law be clearly established at the time of the violation. Iowa Code § 670.4A(3). A claim is pled with particularity when it states the who, what, when, where, why, and how. *Nahas*, 991 N.W.2d at 781. An allegation is plausible if it "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 782 (quoting *Ashcroft*, 556 U.S. at 678). It is not a probability requirement. *Id.*

C. Appellees' Negligent Training and Supervision claim meets the heightened pleading standard.

Appellees allege SEP, Mr. Halupnik, and Ms. Bruns failed to properly supervise or train Ms. Rivas and, in doing so, P.F. was subjected to continued and relentless bullying, discrimination, and harassment. (Attachment to D0017 at ¶¶ 137-145). When viewing the allegations set forth as a whole, Appellees' allegations are specific enough to allow the court to infer more than the possibility the Appellants negligently trained and supervised Ms. Rivas.

Iowa law recognizes the tort of negligent training, retention, and supervision, under which an employer must exercise reasonable care in the training and supervision of "individuals, who, because of their employment, may pose a threat of injury to members of the public." *Godar v. Edwards*, 588 N.W.2d 701, 709 (Iowa 1999). An employer is liable for the negligence of an employee while the employee is acting within the scope of his or her employment. *Godar*, 588 N.W.2d at 705. Scope of employment is defined as:

> those acts which are so closely connected with what the servant is employed to do, and so fairly and reasonably incidental to it, that they may be regarded as methods, even

> though quite improper ones, of carrying out the objectives of employment.

Riniker v. Wilson, 623 N.W.2d 220, 231 (Iowa Ct. App. 2000).

The following elements are required: (1) an employment relationship existed between the employee and the defendant employer; (2) defendant employer knew, or in the exercise of ordinary care should have known, of the employee's incompetence, unfitness, or dangerous characteristics; and (3) the employee's incompetence, unfitness, or dangerous characteristics were a cause of damage to the plaintiffs. *Godar*, 588 N.W.2d at 708-09.

In order to be successful on a claim of negligent training and supervision against a supervisor, Appellees must show the supervisor(s), here SEP, Mr. Halupnik, and Ms. Bruns "failed to exercise ordinary care to prevent the foreseeable misconduct of its employee." *Raleigh v. Indep. Sch. Dist. No. 625*, 275 N.W.2d 572, 576 (Minn. 1978).

Here, it is undisputed SEP is the employer of Mr. Halupnik, Ms. Bruns, and Ms. Rivas, who were employed by SEP at all times material hereto. (Attachment to D0017 at ¶¶5-7). Appellees' Amended Petition alleged numerous instances where P.F. reported incidents of abuse, bullying, discrimination, and harassment while at Appellants'

educational institution. (Attachment to D0017 at ¶¶19, 24, 32, 35, 38, 40, 43, 50). These include notification to SEP, Ms. Bruns, and Ms. Rivas, amongst other teachers and agencies. This clearly evidences Appellants' continued knowledge of P.F.'s exposure to bullying, discrimination, and harassment at the hands of other students. Despite this, nothing was done, and P.F. continued to be relentlessly bullied, discriminated against, and harassed. (Attachment to D0017 at ¶¶13-50).

Appellants claim Appellees failed to set forth with particularity what training and supervision was lacking. (Appellants' Br. p. 26). Specifically, Appellants cite to a standard used in negligent supervision cases at the summary judgment stage, which is different than the motion to dismiss stage. (Appellants' Br. p. 35). At summary judgment there must be "testimony establishing the standard of practice for training employees for the job at issue." *Alcala v. Marriott Intern., Inc.*, 880 N.W.2d 699, 709 (Iowa 2016). The Court in *Alcala* found the record was "devoid of testimony as to the standard for training for the job at issue and devoid of testimony as to how the training fell short," thus reversing the jury verdict in the Plaintiff's favor. *Id.* at 710. The Court reached this

conclusion after reviewing the entire record, the expert testimony, and all other facts proven. *Id*. at 709-710.

This case is still at the very early stages, where no discovery has been completed and no experts have been designated. The standard is set under Chapter 670, and it only requires (1) the plaintiff state their claim with particularity, (2) to plead a plausible violation of the law, and (3) the law be clearly established at the time of the violation. Iowa Code § 670.4A(3).

The Iowa Court of Appeals recently analyzed whether a plaintiff's petition alleging negligence against the City of Des Moines met this standard, particularly whether it met the "clearly established" requirement. *See Blanchard v. City of Des Moines*, 2024 WL 4965865 (Iowa Ct. App. Dec. 4, 2024). The Court found the plaintiff's allegations were not merely conclusory because he "described the city's duty to conform to a 'standard of conduct to protect others,' . . . [and] [h]e provided specific facts illustrating its failure to conform to that standard and specifically described his injury and its specific proximate cause." *Id*. at *3 (citation omitted). The plaintiff pled sufficient facts to show the law was clearly established, which did not require him to state the exact

specific standard. *Id.* Further, because the claim of negligence is well-rooted in common law and has a long history in Iowa courts, the Court found it hard to believe the law could be any more clearly established. *Id.*

Similar to the petition in *Blanchard*, Appellees alleged "As employer and supervisor, Defendants had a duty to exercise reasonable care in the training and supervision of individuals who, because of their employment, may pose a threat of injury to members of the public." *Cf id.* at *4; (Attachment to D0017 at ¶ 138). Appellees set forth six (6) ways in which SEP, Mr. Halupnik, and Ms. Bruns failed to train or supervise Ms. Rivas. (Attachment to D0017 at ¶143). At the beginning of each and every cause of action and the general factual allegations, Appellees set forth "Plaintiffs replead each preceding paragraph as if fully set forth herein." (Attachment to D0017 at ¶¶ 51, 68, 83, 98, 107, 118, 136, 146). In tying together the factual allegations set forth in Paragraphs 13-50 to the six (6) instances of alleged failures set forth in Count IX, Appellees have clearly satisfied IMTCA's heightened pleading requirement.

The district court correctly reached this conclusion based on Appellees' factual allegations providing a detailed narrative of how Appellants failed to intervene and act on P.F.'s behalf, including the

failure to properly train and supervise. Appellees pled sufficient facts to show how SEP, Mr. Halupnik, and Ms. Bruns did not comply with a standard that was clearly established at the time of their violation.

Finally, it is contrary to logic to assert Appellants' failure to stop P.F.'s bullying and Appellants' continued harassment and discrimination was not a cause of damage to P.F., Ben, and Amanda. The failure of Appellants forced P.F., through no fault of his own, to spend his lunches and recesses in the principal's office, causing P.F. to suffer severe physical, emotional, and mental distress. (Attachment to D0017 at ¶¶ 46, 50). Further, the Appellees have requested damages for these actions. (Attachment to D0017 at ¶ 145). Appellees claim for Negligent Training and Supervision meets the requirements under Chapter 670.

D. All claims against Defendant Halupnik are sufficiently pled.

Appellees have sufficiently pled their non-ICRA claims against Halupnik to meet the requirements of the IMTCA heightened pleading standard. As such, the Appellants' Motion to Dismiss on these grounds was correctly denied. This Court should hold the same.

Mr. Halupnik, as superintendent, surely is entrusted with duties to ensure bullying and harassment, including discrimination, does not occur

at the educational institution Mr. Halupnik oversaw. Therefore, his failure to do so exposes him to liability for said breach of duty and negligence. In both causes of action, Mr. Halupnik should have known about what was going on at SEP's elementary schools at all times material when P.F. was continuously subjected to verbal and physical abuse by students.

To determine the elements necessary to be successful on each of these claims is not proper at this stage on Appellants' Motion to Dismiss. Instead, all Appellees must do, even acknowledging the heightened pleading standard, is articulate the failures of SEP, its supervisors, and its employees which make a cognizable cause of action against them. *Young v. HealthPort Techs., Inc.*, 877 N.W.2d 124, 127 (Iowa 2016); Iowa Code § 670.4A(3).

Appellees do just that. For example, Appellees plead Mr. Halupnik was the Superintendent at all material times; Appellants were aware P.F. was being verbally harassed and physically assaulted; Appellants were aware P.F. had a safety plan in place, but that P.F. was still getting assaulted; and Appellees reported the repeated incidents of bullying and harassment to multiple employees at SEP so that Mr. Halupnik knew or

should have known of the incidents. (Attachment to D0017 at ¶¶ 4-7, 15-17, 19-31, 33-40, 43-48). In Count V and Count VI, Appellees pled all Appellants owed the required duty to Appellees and that their duty included caring for P.F.'s educational, physical, and mental wellbeing and safety. (Attachment to D0017 at ¶¶ 107-135). All of this, in the context of the entire Amended Petition, states the "who, what, when, where, why, and how," it allows the court to "draw on its judicial experience and common sense" to reach the conclusion Appellants committed the violation, and the violation was of a law that was "clearly established" at the time. *Nahas*, 991 N.W.2d at 781-82 (citing Iowa Code § 670.4A(3)); (*see* D0025 at p. 11-12) (finding the claims against Halupnik to be particular and plausible at the initial stages of litigation).

To determine Mr. Halupnik's involvement or failure to get involved as outlined within the Petition, is a proper issue to be determined as litigation ensues. At the very least, as a result of his supervisory position as Clay Elementary's Superintendent, Clay Elementary and the other Appellants' failures set forth in excruciating detail within Appellees' Petition properly exposes those who are in charge or were in a position to

stop the ongoing statutory violations, including Mr. Halupnik. The claims against Mr. Halupnik must remain.

CONCLUSION

For the reasons described herein, there was no error committed by the district court when denying Appellants' Motion to Dismiss. Said order was properly based on law and facts and Appellants' Appeal, serving as an Application for Interlocutory Review, should be denied and the matter should proceed to trial.

REQUEST FOR ORAL ARGUMENT

Appellees respectfully request to be heard in oral argument.

Respectfully Submitted,

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CERTIFICATE OF FILING/SERVICE

I hereby certify that on December 18, 2024, I electronically filed the foregoing Brief of Plaintiffs-Appellees with the Clerk of the Supreme Court by using the Electronic Document Management System, which will send a notice of electronic filing to Defendants-Appellants, by way of their counsel, Lindsay Vaught and Samuel McMichael. Pursuant to Rule 16.315(1)(b), this constitutes service of this Brief on Defendants-Appellants for purposes of Iowa Court Rules.

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CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(*i*) and 6.903(1)(*g*)(1) because this brief has been prepared proportionally spaced type face using Century Schoolbook in 14 size font and contains 8,178 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*i*)(1).

Dated December 18, 2024.

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