

IN THE SUPREME COURT OF IOWA  
Supreme Court No. 24-0700  
regarding  
County of Dubuque No. LACV115304

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PARENT FATHER DOE and PARENT MOTHER DOE parents and next of  
friend for: MINOR DOE, and INDIVIDUALLY, on their own behalf, as parents,

Plaintiffs,

vs.

WESTERN DUBUQUE COMMUNITY SCHOOL DISTRICT, JESSICA PAPE  
IN HER OFFICIAL CAPACITY, DAN BUTLER IN HIS OFFICIAL  
CAPACITY, and SCOTT FIRZLAFF IN HIS OFFICIAL CAPACITY,

Defendants.

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APPEAL FROM THE IOWA DISTRICT COURT  
FOR DUBUQUE COUNTY  
THE HONORABLE MONICA ZRINYI ACKLEY

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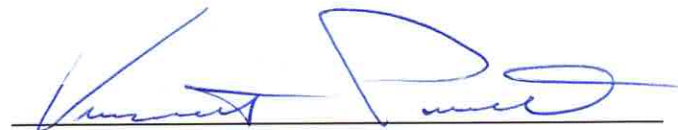
**PLAINTIFFS' BRIEF AND ORAL ARGUMENT REQUEST**



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## CERTIFICATE OF FILING

I, Richard A. Pundt, hereby certify that the attached Plaintiff's Proof Brief was filed on the 12th day of June 2024, via EDMS to the Clerk of the Supreme Court, Supreme Court of Iowa, Judicial Branch Building, 1111 E. Court Street, Des Moines, IA 50319. Attachments containing protection for confidentiality under Iowa Rules of Electronic Procedure are being identified as confidential and are being filed under the confidentiality provision of the appropriate Rules.

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## ISSUES PRESENTED FOR REVIEW

- I. WHETHER THE DISTRICT COURT ERRED AND SHOULD BE REVERSED IN ITS DISMISSAL OF THE “DOE” PETITION IN THIS MATTER CITING NONCOMPLIANCE UNDER I.R. CIV. P. 1.201 AND I.R. CIV. P. 1.302 INSTEAD OF APPLYING THE HEIGHTENED SECURITY REQUIREMENTS UNDER IOWA RULES OF ELECTRONIC PROCEDURE AND THE RELEVANT CASE AUTHORITY.
- II. WHETHER THE DISTRICT COURT ERRED AND SHOULD BE REVERSED IN ITS DISMISSAL THIS CASE UNDER IOWA CODE SECTION 670.4A WHEN THE PLAINTIFFS’ PETITION IS IN FULL COMPLIANCE WITH THE STATUTE AND CASE AUTHORITY.
- III. WHETHER THE DISTRICT COURT ERRED AND SHOULD BE REVERSED IN REGARD TO ITS DISMISSAL OF THE NEGLIGENCE CLAIM AS SET FORTH BY IN THE PLAINTIFFS’ PETITION WHEN THE NEGLIGENCE CLAIM IS PROPERLY PLED IN DETAIL AND IN COMPLIANCE WITH IOWA LAW.
- IV. WHETHER THE DISTRICT COURT SHOULD BE REVERSED IN REGARD TO THE CLAIM OF FIDUCIARY DUTY AS SET FORTH

IN PLAINTIFFS' PETITION SINCE THE CLAIM IS PROPERLY  
AND FULLY PLED AS REQUIRED UNDER IOWA LAW.

### **ROUTING STATEMENT**

The juxtaposition of the Iowa Rules of Electronic Procedure, particularly I.R. Elec. P. 16.103 in relationship to I.R. Civ. P. 1.201 and I.R. Civ. P. 1.302, does not appear to have been addressed by the Supreme Court. Additionally, a pleading standard relative to detailed content for satisfaction of Iowa Code §670.4A remains in flux. These two issues, in addition to the required pleading detail necessary for a negligence claim under §670.4A and the required pleading detail necessary for the assertion of a fiduciary duty relationship, are present in this appeal. Consequently, the Plaintiffs believe retention by the Iowa Supreme Court would be appropriate in this case.

### **STATEMENT OF THE FACTS/NATURE OF THE CASE**

The Plaintiffs are the parents and next of friend of Minor Doe, who, during a classroom assault, was attending the Drexler Middle School, which is a part of the Western Dubuque Community School District in Farley, Iowa. The Defendants include the Western Dubuque School District and several of the district's employees. The action in this matter was brought under Iowa Rules of Electronic Procedure, therefore, "Doe" designations were used to allow Plaintiffs to be in compliance with the rules [D0002, *Petition*, pp. 1-3, para. 1-18, 17 Oct 2023].

In order to comply with electronic filing requirements, a very detailed and descriptive petition was filed in this case to allow the Defendants to identify the Plaintiffs, especially Minor Doe, without divulging her name. By filing a detailed petition with allegations that are totally unique to the minor, the Plaintiffs provided detailed and significant information so that the Defendants would know the identities of Plaintiffs without there being any unnecessary disclosure to the general public of identities.

In the detailed petition with unique references to Minor Doe without disclosing her name, the Plaintiffs set forth particulars that are so specific that the Defendants would know the identities of the Plaintiffs. The following are included in the unique pleadings: (1) the incident in question happened at the Drexler Middle School which is under that authority of the Defendant, Western Dubuque Community School District [D0002, *Petition*, pp. 1, para. 1 and pp. 2, para. 4, 17 Oct 2023]; (2) the incident happened on the 12<sup>th</sup> day of January 2023 [D0002, *Petition*, pp. 1, para. 2 and pp. 2, para. 13-14, 17 Oct 2023]; (3) Minor Doe was 15 years of age and attended Drexler Middle School [D0002, *Petition*, pp. 1, para. 1 and pp. 2, para. 11-12, 17 Oct 2023]; (4) Minor Doe was in eighth grade [D0002, *Petition*, pp. 2, para. 12, 17 Oct 2023]; (5) on the 12<sup>th</sup> day of January 2023 Minor Doe was in a “woods” class under the supervision of teacher, Jared Diers [D0002, *Petition*, pp. 2, para. 14, 17 Oct 2023]; (6) while in class on that day, Minor Doe

was hit over the head with large board wielded by another student [D0002, *Petition*, pp. 3, para. 17, 17 Oct 2023]; (7) the student assailant had a past history of behavioral issues [DKT D0002, *Petition*, pp. 3, para.17, 17 Oct 2023]; (8) the officials of Defendants knew of the assailants past history [D0002, *Petition*, pp. 3, para. 18, 17 Oct 2023]; (9) after the incident Minor Doe was taken to the office of the school principal where she remained alone for some time [D0002, *Petition*, pp. 3, para. 21-22, 17 Oct 2023]; (10) after the incident, Plaintiffs, as parents of Minor Doe, were not contacted [D0002, *Petition*, pp. 3, para. 23, 17 Oct 2023]; (11) a school nurse was dispatched to the principal's office to examine Minor Doe [D0002, *Petition*, pp. 4, para. 25, 17 Oct 2023]; (12) Minor Doe was sent back to the classroom after receiving two ibuprofen tablets [D0002, *Petition*, pp. 4, para. 24-25, 17 Oct 2023]; (13) Plaintiff, Mother Doe, came to school to take Minor Doe to the hospital [D0002, *Petition*, pp. 4, para. 27-28, 17 Oct 2023]; (14) Plaintiffs, Mother Doe and Father Doe, requested a viewing of the surveillance footage but were denied access [D0002, *Petition*, pp. 4, para. 30, 17 Oct 2023]; and (15) Minor Doe missed school due to injuries sustained [D0002, *Petition*, pp. 4, para. 32, 17 Oct 2023]. The foregoing details clearly allow the Defendants to identify Minor Doe and Parents Doe. There is no excuse for Defendants to state otherwise as the Defendants had the ability to examine their school records in the event of any issue regarding the identifying the Plaintiffs. To force the Plaintiffs to publicly disclose

the identity of Minor Doe or her parents in this matter would serve no purpose other than: (a) to create violations of the Iowa Rules of Electronic Procedure, and/or (b) unnecessarily expose Minor Doe to possible public ridicule, contempt, harassment, ignominy, and bullying by the other students.

As is evident from the foregoing rendition of the detailed factual scenario as set forth in the Petition in this case, the identity of the Plaintiffs is so totally and uniquely described that it would be impossible for the Defendants to be unable to determine the identity of who was bringing the lawsuit. Even the poorest of school records would be a source of identifying the parties in interest. Plaintiffs and Plaintiffs' counsel were duty bound under the Iowa Rules of Electronic Procedure to file the petition in the manner as was done. For the Defendants to assert, as they have in this case, that the identities of Plaintiffs needed to be disclosed in order for Defendants to properly respond to the filed Petition is unfounded and serves no other purpose than to create an unnecessary dilemma between the Rules of Electronic Procedure 16.103 on the one hand and I.R. Civ. P. 1.201 and 1.302 on the other hand and delay the judicial process in this matter.

In addition to the Defendants' efforts to unnecessarily impose a conflict between the Iowa Rules of Electronic Procedure, particularly I.R. Elec. P. 16.103, on the one hand and I.R. Civ. P. 1.201, and 1.302 on the other hand, the Defendants also sought and received a dismissal by the District Court in regard to

Iowa Code §670.4A when, again, reference to the Plaintiffs' pleadings establishes that there was, and is, no basis for dismissal.

In the petition filed by the Plaintiffs, a detailed rendition of certain allegations establishes that Plaintiffs are in full compliance with the requirements of §670.4A, particularly in reference to heightened scrutiny. In regard to satisfying the requirements of Iowa Code §670.4A, the Plaintiffs specifically pled that the Defendants recognized their legal requirements prior to the incident involving Minor Doe. For example, the Petition states that the Defendants "...had certain policies and procedures in place as outlined in Defendants 'Board Policies'..." [D0002, *Petition*, pp. 4, para. 30, 17 Oct 2023]. Use of the word "had" makes it clear that the Defendants recognized certain obligations that were in place before the incident causing injuries to Minor Doe. The Plaintiffs then specifically state that one or more of those policies and procedures that the Defendants had in place "...were not applied in this matter in one or more of the following ways:" [D0002, *Petition*, pp. 4, para. 35, 17 Oct 2023]. From that point forward, the Plaintiffs set forth eight (8) separately detailed references to the very legal obligations that Defendant themselves recognized in particular publications that were authored, promulgated and set in place by the Defendants as renditions of the legal obligations and duties that were embraced by the Defendants.

In the subparts of paragraph 35 of the petition in this matter, the Plaintiffs specifically refer the Defendants to their own specific policy statements that delineate their legal obligations. For example, subparagraph 35(a) relates specifically, to Defendants “Anti-Bullying/Anti-Harassment policy [D0002, *Petition*, pp. 4, para. 35(a), 17 Oct 2023]; subparagraph 35(b) refers to the “Code of Ethics” of the Defendants [D0002, *Petition*, pp. 4, para. 35(b), 17 Oct 2023]; subparagraph 35(c) refers to the “Administrator Code of Ethics” of the Defendants [D0002, *Petition*, pp. 4, para. 35(c), 17 Oct 2023]; subparagraph 35(d) refers to the “School Board’s Code of Student Conduct” of the Defendants [D0002, *Petition*, pp. 4, para. 35(d), 17 Oct 2023]; subparagraph 35(e) refers to the “Student Illness or Injury at School” guidelines of the Defendants [D0002, *Petition*, pp. 4, para. 35(e), 17 Oct 2023]; subparagraph 35(f) refers to “Child Abuse Reporting” of the Defendants [D0002, *Petition*, pp. 4, para. 35(f), 17 Oct 2023]; subparagraph 35(g) refers to “Program At-Risk Students” of the Defendants [D0002, *Petition*, pp. 4, para. 35(g), 17 Oct 2023]; and 35(h) refers to the “District Emergency Operations Plans” of the Defendants [D0002, *Petition*, pp. 4, para. 35(h), 17 Oct 2023].

From the prospective of Plaintiffs, it is difficult to imagine a more detailed or better way to comply with the requirements of Iowa Code §670.4A that the Plaintiffs have by reciting the exact legal obligations that the Defendants

themselves recognized and set forth Defendant's legal requirements that Defendants knew they must follow.

### **JURISDICTIONAL STATEMENT**

The District Court in this matter had jurisdiction over the claims asserted by Plaintiffs as a result of the Petition filed in this case. [D0002, *Petition*, 17 Oct 2023]. Plaintiffs' cause of action was asserted under heightened security due to the age and circumstances of the minor child in her claim against the Defendant school district and its employees [D0002, *Petition*, 17 Oct 2023; D0003, *Motion for Heighted Security Under Rules 16.602 & 16.604*, 14 Oct 2023; D0004, *Protected Information Form*, 24 Oct 2023; D0005, *Application to Restrict Access to Records*, 20 Oct 2023; D0006, *Protected Information Form*, 20 Oct 2023; and D0011, *Order to Restrict Access to Records*, 30 Oct 2023].

The Defendants in this case filed a Motion to Dismiss the Petition while asserting that Iowa Rules Civ. P. 1.201 and 1.302 had not been met and that the true identity of minor Plaintiff and her parents needed to be provided [D0017, *Motion to Dismiss*, 14 Nov 2023]. The Defendants' Motion also asserted non-compliance with Iowa Code §670.4A. Plaintiffs responded by filing a Resistance to the Motion to Dismiss [D0032, *Resistance*, 27 Nov 2023], a supporting brief [D0031, *Brief in Support of Resistance to Motion*, 29 Nov 2023], and a supplemental brief [D0034, *Supplemental Brief*, 4 Dec 2023].



In Plaintiffs' Resistance to the Motion to Dismiss, Plaintiffs noted in their brief to the District Court that the Iowa Rules of Electronic Procedure 16.602, 16.04, and 17.10 needed to be applied in this particular case [D0031, *Brief in Support of Resistance to Motion*, pp. 4-16, 29 Nov 2023 and D0034, *Supplemental Brief*, pp. 9-12, 4 Dec 2023]. Plaintiff also set forth the details which demonstrated full compliance with Iowa Code §670.4A [D0031, *Brief in Support of Resistance to Motion*, pp. 12-18, 29 Nov 2023 and D0034, *Supplemental Brief*, pp. 7-9, 4 Dec 2023]. On April 8, 2024, the District Court entered its Order Re: Motion to Dismiss [D0036, *Order Re: Motion to Dismiss*, 8 Apr 2024]. The Plaintiffs filed a timely appeal [D0037, *Notice of Appeal*, 29 Apr 2024].

This appeal is presented by Plaintiffs Father Doe and Mother Doe, as parents and next of friend for Minor Doe, in an action against Defendants, which includes the Western Community School District and certain named officials and employees of the school district. The bases for the underlying causes of action relate to an assault against Minor Doe while she was attending class at the Drexler Middle School which is a part of the Western Community School District. The appeal challenges a Dubuque County District Court's Order of April 8, 2024 that granted Defendants' Motion to Dismiss [D0036, *Order Re: Motion to Dismiss*, 8 Apr 2024].

Due to the age of Minor Doe and due to the violent nature of the assault against Minor Doe [D0002, *Petition*, pp. 2, para. 11-14 and pp. 2, para. 15-16, 17 Oct 2023]. Plaintiffs filed a Motion for “heightened security” in this matter [D0001, *Motion to Heighten Security Level*, 17 Oct 2023]. Plaintiffs also presented a proposed Order for “heightened security” [D0007, *Proposed Order*, 20 Oct 2023] and Protected Information Form [D0006, *Protected Information Form*, 20 Oct 2023 and D0004, *Protected Information Form*, 24 Oct 2023].

On October 30, 2023, the District Court entered an Order for “heightened security” [D0011, *Order to Restrict Access to Records*, 30 Oct 2023]. Then on November 1, 2023, the District Court entered an Order denying the Motion to Elevate the cause to heightened security [D0012, *Other Order RE: Motion to Elevate Case Security*, 1 Nov 2023].

As noted, the issues on appeal in this matter relate to a cause of action brought by the Plaintiffs who were utilizing the heightened security requirements of the Iowa Rules of Electronic Procedure relative to identity protection for a minor, and under a detailed pleading of claims under Iowa Code §670.4A. Claims sounding in negligence and breach of fiduciary duty are also asserted in this case.

The four (4) interrelated questions presented on this appeal include: (1) whether the District Court erred in dismissing the case under I.R. Civ. P. 1.201 and 1.302 instead of applying the mandated Iowa Rules of Electronic Procedure,

particularly I.R. Elec. P. 16.103; (2) whether the District Court erred in dismissing the case when Plaintiffs' detailed pleadings met or exceeded the heightened pleading requirements of Iowa Code §670.4A as reflected in existing case authority; (3) whether the District Court erred in dismissing the negligence claim when Plaintiffs' detailed pleadings followed the requirements of heightened pleading requirements; and (4) whether the District Court erred when Plaintiffs' claim under the principles of fiduciary duty were properly pled pursuant to Iowa case authority.

In regard to this appeal, the appellate courts have jurisdiction by virtue of the dismissal by the District Court under Iowa Rule 6.103(1) and due to the fact that a relevant statute (Iowa Code Chapter 670.4A allows for an immediate appeal (670.4A(4)), which, arguably should apply in the case of dismissal of a claim under the statute.

#### **A. Preservation of Error**

The Plaintiffs, as father and mother of a minor child, filed a timely and particularly detailed Petition of fifty-four (54) paragraphs with numerous subparagraphs that delineated the specific factual elements as well as the legal obligation of the Defendant that included the Western Dubuque Community School District, its officers, and specifically named employees [D0002, *Petition*, 17 Oct 2023].

The Petition was filed under the mandates of the Iowa Rules of Electronic Procedure, particularly 16.101, 16.103, 16.201, and 16.602; and, accordingly, Plaintiffs filed: (a) a motion for heightened security [D0002, *Petition*, 17 Oct 2023]; (b) proposed Order for level one security [D0007, *Proposed Order for Heightened Security*, 20 Oct 2023]; (c) Protected Information Disclosure Form [D0006, *Protected Information Form*, 20 Oct 2023 and D0004, *Protected Information Form*, 24 Oct 2023]. In order to provide detailed identity of the Plaintiffs for the Defendants without unnecessarily disclosing minor Plaintiff's identity to the public, Plaintiffs provided extreme details of the events that happened at the Defendant's school so that there would be no doubt the Defendant as to who the Plaintiffs were [D0002, *Petition*, pp. 1-5, para. 1-37, 17 Oct 2023]. Incorporated into the Petition were detailed pleadings that set forth and satisfied the requirements of Iowa Code §670.4A [D0002, *Petition*, pp. 1-6, para. 3, 35(a-h), 36, 37, 40(a-h), 17 Oct 2023].

Defendants filed their Motion to Dismiss claiming that Plaintiffs were not in compliance with Iowa Rules of Civil Procedure 1.201 and 1.302 [D0017, *Motion to Dismiss*, 14 Nov 2023]. Defendants' Motion to Dismiss also challenged Plaintiffs' Petition adequately relate to pleadings under the requirement of Iowa Code §670.4A, Iowa Tort Claims Act [D0017, *Motion*

*to Dismiss*, 14 Nov 2023]. Plaintiffs filed their Resistance [D0030, *Response to Resistance to Motion to Dismiss*, 17 Nov 2023], Brief in Support of the Resistance [D0031, *Brief in Support of Resistance to Motion to Dismiss*, 29 Nov 2023], and [D0034, *Supplemental Brief*, 4 Dec 2023].

The District Court granted the Defendants' Motion to Dismiss on April 8, 2024 [D0036, *Order Re: Motion to Dismiss*, 8 Apr 2024]. The Plaintiff filed their appeal on April 29, 2024 [D0037, *Notice of Appeal*, 29 Apr 2024] since Plaintiffs properly raised the issues set forth in their appeal before the lower court, and now seek reversal of the District Court for its failure to properly apply the Iowa Rules of Electronic Procedure and for its failure to properly apply the statements required for a proper claim under Iowa Code §670.4A pursuant to case authority.

Error has been preserved by virtue of this timely appeal of the District Court's Order granting the Defendants' Motion to Dismiss, as well as, through the Plaintiffs' Resistance and briefs filed in response to the Motion to Dismiss; and pursuant to Iowa Code §670.4A which allows for an immediate appeal.

## **B. Standard for Review**

Although the District Court correctly stated that it is well established in Iowa that a motion to dismiss is only appropriate when the petition and

the allegations fail to demonstrate that there would be any right of recovery under any state of facts, the District Court failed to properly apply the findings of Iowa authority, including *Rees v. City of Shenandoah*, 682 N.W.2d 77, 79 (Iowa 2004). The Supreme Court in *Rees* emphasized that the petition need not allege ultimate facts that support each element of the cause of action but allegations that give the defendant “fair notice” of the claim asserted. Instead, the Defendant needed to be able to adequately respond to the petition, citing *Schmidt v. Wilkinson*, 340 N.W.2d 282, 283 (Iowa 1983). In *Rees*, I.d. 79, the Court noted that a petition complies with the “fair notice” requirement if it informs the defendant of the incident giving rise to the claim and the claim’s general nature, citing, *Soike v Evan Mathews & Co.*, 302 N.W.2d 841, 842 (Iowa 1981); and that the Plaintiff’s allegations are to be viewed “in the light most favorable to the Plaintiff with doubts reached in that party’s favor.”

The aforementioned standards, as set forth by the Iowa Supreme Court and the Iowa Court of Appeals were ignored, misread, and misapplied by the District Court in this case. Additionally, the District Court in this matter was also required to properly apply the Iowa Electronic Rules of Procedure. Those critical rules, which Plaintiffs cited in their briefs before the District Court, [D0031, *Brief in Support of Resistance to Motion*, pp.19-

23, 29 Nov 2023; and D0034, *Supplemental Brief*, pp. 9-11, 4 Dec 2023] regarding a minor were completely ignored by the District Court in its Ruling/Order. As the Supreme Court stated in *Turner v. Iowa State Bank & Trust Co. of Fairfield*, 743 N.W.2d 1, 3 (Iowa 2007): “On appeal we review a district court’s ruling on a motion to dismiss for correction of errors at law, citing Iowa R. App. P. 6.4 and *Mlynarik v. Bergantzel*, 675 N.W.2d 584, 586 (Iowa 2004). In the matter before the Court, the district court in its ruling [D0036, *Order Re: Motion to Dismiss*, pp. 2, 8 Apr 2024] not only failed to apply the Electronic Rules of Procedure, but ignored those rules completely. Therefore, the district court failed to comply with each and every one of the foregoing standards in assessing the comprehensive and specifically detailed petition filed in this cause by Plaintiffs. Plaintiffs have met every legal requirement with specificity; therefore, the case should not have been dismissed and the District Court should be reversed.

**I. BRIEF POINT ONE**

WHETHER THE DISTRICT COURT ERRED AND SHOULD BE REVERSED IN ITS DISMISSAL OF THE “DOE” PETITION IN THIS MATTER CITING NONCOMPLIANCE UNDER I.R. CIV. P. 1.201 and I.R. CIV. P. 1.302 INSTEAD OF APPLYING LEVEL ONE HEIGHTENED SECURITY REQUIREMENTS UNDER IOWA RULES

OF ELECTRONIC PROCEDURE AND THE RELEVANT CASE  
AUTHORITY.

**A. Brief Point I Argument.**

The District Court failed to apply the relevant Rules of Electronic Procedures and failed to apply the case authority presented by Plaintiffs in the briefs filed in this case. The first issue to be resolved by the District Court in this case related to whether an action could be brought as a “Doe” designation for a party in interest when the identity of a minor was required to be maintained as protected information under the Rules of Electronic Procedures.

Since July 2015, law suit case filings in Iowa have been required to strictly follow the Iowa Rules of Electronic Procedures with a particular emphasis on protected information that relates to the identity of minors. In responding to the Defendants’ Motion to Dismiss, Plaintiff brought to the District Court’s attention various rules under the Iowa Rules of Electronic Procedure that must be followed [D0031, *Brief in Support of Resistance to Motion*, pp. 19-23, 29 Nov 2023 and D0034, *Supplemental Brief*, pp. 9-11, 4 Dec 2023]. Plaintiffs also presented case authority regarding the necessity for this action to proceed as an anonymous party. The District Court, in its order, made no reference to the electronic filing rules regarding protected



information and ignored the impact of those Rules. The District Court also misapplied the assessment and findings of the Iowa Court of Appeals in *Riniker v. Wilson*, 623 N.W.2d 220 (Iowa 2000) and the other cases cited by Plaintiffs in the briefs presented.

As noted, the District Court's Order is devoid of any reference to heightened security filing requirements [D0036, *Order Re: Motion to Dismiss*, pp. 2, 8 Apr 2024]. While the District Court discussed I.R. Civ. P. 1.201 and 1.302, the court completely ignored each of the following rules that Plaintiffs' counsel, and the courts are compelled to follow:

I.R. Elec. P. 16.101(1). The rules in this chapter govern the filling of all documents in the Iowa Judicial management system (EDMS)...

I.R. Elec. P. 16.103. **“...To the extent these rules are inconsistent with any other Iowa court rule, the rules in this chapter govern electronically filed cases and cases converted to electronic filing.”**  
(emphasis added)

I.R. Elec. P. 16.201(1). *Confidential*. “Confidential” means court files, documents, or information excluded from public access by federal or state law or administrative rule, court rule, court order, or case law.

I.R. Elec. P. 16.601(1)(a). It is the responsibility of the filer to ensure that protected information is omitted or redacted from documents

before documents are filed. This responsibility exists even when the filer did not create the document.

I.R. Elec. P. 16.602. Protected information includes the following:

...4. Names of minor children...

(Note: Plaintiffs' counsel emphasized that the revelation of the family name of parents would disclose the identity of the minor, [D0031, *Brief in Support of Resistance to Motion to Dismiss*, pp. 8-9, 29 Nov 23].

Each of the foregoing rules forced the Plaintiffs and Plaintiffs' counsel to be especially mindful of not disclosing the name of Minor Doe or the family name of both Mother Doe and Father Doe since such disclosure would identify the minor. Since the courts must be equally mindful of the non-disclosure of the minor's name, Plaintiffs sought the guidance of the decisions by the courts in Iowa regarding anonymity and found that the courts did offer some guidance that was identified as a "balancing test." See *Riniker v. Wilson*, 623 N.W.2d 220, 227 (Iowa 2000), and *John Doe and James Doe v. Gill*, Case No. 18-0504 (Iowa Ct. App. 2019). In these cases, the courts noted that there are circumstances when a persuasive argument regarding anonymity could be made and in such instances the courts should

be required to balance the relative interests of the parties and the public in regard to an anonymous filing.

There is another reason why an additional review of the *John Doe and James Doe v. Gill* case is significant and that is due to the fact when additional legal requirements are present, it would be necessary for the court to engage in a “balancing test,” as was used in *Riniker*. In *Doe v. Gill*, the Court was confronted with the legal requirements of Iowa Code §141A.9(1) which dealt with the confidentiality of medical records in reference to an Acquired Immune Deficiency Syndrome (AIDS). In the instant case before the Court, there is also an additional legal requirement that must be assessed. That additional legal requirement relates to the identity of a minor and the application of the Iowa Rules of Electronic Procedure. As explained in the foregoing, there are specific statutes or rules that offer special protection. That is where the “balancing test” as described in *Riniker* and *John Doe/James Doe* cases must be considered and applied. Additionally, and most particularly, as noted above, the Rules of Procedure 1.102 and 1.302 must give way to I.R. Elec. P. 16.103. Requiring the identity of a real party in interest does not mean that the identity of a minor must be made to the general public if the identity is already known to the parties in litigation. If so, it would defeat the purpose of the electronic filing rules and would likely

result in a minor being exposed to the public for no reason other than to potentially create ridicule, contempt, public ignominy, harassment, or some other unworthy or sordid reason. That is why I.R. Elec. P. 16.103 controls over other procedural rules including I.R. Civ. P. 1.201 and 1.302. The District Court was wrong in its failure to consider and apply I.R. Elec. P. 16.103, as well as, the other Rules of Electronic Procedure.

In the case before the Court, the detail of the Petition at Law included such specific information that the Defendants were, and are, able to identify the minor child and her parents without the need for specific names being inserted to the petition. As previously noted in this case, there are unique particulars that include the following: (a) the incident happened at the Drexler Middle School [D0002, *Petition*, pp. 1, para. 1 and pp. 3, para. 17, 17 Oct 2023]; (b) the incident happened on the 12<sup>th</sup> day of January 2023 [D0002, *Petition*, pp. 1, para. 1 and pp. 2, para. 12-14, 17 Oct 2023]; (c) the incident occurred under Iowa Code §670 [D0002, *Petition*, pp. 1, para. 3 and pp. 2, para. 7, 17 Oct 2023]; (d) minor child was 15 years of age attending the Drexler Middle School [D0002, *Petition*, pp. 2, para 11, 17 Oct 2023]; (e) minor child was in the eighth grade [D0002, *Petition*, pp. 2, para. 12, 17 Oct 2023]; (f) on the 12<sup>th</sup> day of January 2023 the minor child was attending a “woods” class under the supervision of teacher Jared Diers [D0002,

*Petition*, pp. 2, para. 14, 17 Oct 2023]; (g) on the 12<sup>th</sup> day of January 2023, the minor child was hit over the head with a large board by another student [D0002, *Petition*, pp. 3, para 15, 17 Oct 2023]; (h) the injured minor child was taken from the classroom to the office of school principal, Firzloff [D0002, *Petition*, pp. 3, para. 22, 17 Oct 2023]; (i) while in the office of the school principal a nurse came to the principal’s office to assess the minor [D0002, *Petition*, pp. 4, para. 25, 17 Oct 2023]; (j) after an examination by the nurse, the minor was taken back to the classroom [D0002, *Petition*, pp. 4, para. 26, 17 Oct 2023]; and (k) the minor was taken from the school by her mother to hospital [D0002, *Petition*, pp. 4, para. 27-28, 17 Oct 2023].

The foregoing unique and detailed pleadings make it abundantly clear to the Defendants the identity of the minor child. There is no other child that fit within those descriptive allegations. Therefore, there is no reason for the minor child’s name or the name of her parents to be inserted into the petition. To do so would bring unwarranted attention to the minor child and that is precisely what the Iowa Rules of Electronic Procedure are designed to protect in terms of the identity of a minor child not being disclosed to the general public. The “balancing test” as used and applied in the *Riniker* and *John Doe and James Doe* should have been applied by the district court in

this matter in order for the District Court to be compliant with the Iowa Rules of Electronic Procedure.

As in *Riniker*, the district court and the Defendants were, and are in this case, able to determine from the petition alone the identity of minor plaintiff in this case due to the detailed and unique content set forth within the petition. It is fair to say that no other student would fit the above noted factual scenario as detailed in the petition that related to the 12<sup>th</sup> day of January 2023 at the Drexler Middle School when a 15-year-old was hit over the head with a board by another student while in a woods class under the supervision of a teacher named Diers, then taken to the principal Firzlauff's office, received attention by the school nurse, taken back to class, and taken from the school for medical treatment by the minor's mother. Those allegations within that factual scenario are so detailed and specific that the Defendants' records and personnel would clearly and specifically identify the minor student Plaintiff. Additionally, the District Court and the Defendants were able to see the same detail in Plaintiffs' briefs filed in this matter where the Plaintiffs provided a reiteration the detailed information to once again alert the court and the Defendants of the specific identity of the Plaintiffs, particularly the minor appellant known as Minor Doe, thereby eliminating the need for the appellants to be identified by name in the

pleadings, while allowing Plaintiffs to remain in full compliance with the Iowa Rules of Electronic Procedure.

The District Court, in its order, stated that the Court should only consider the allegations contained in the petition and that courts “...*generally* do not consider facts outside the pleadings in evaluating a motion to dismiss” [D0036, *Order Re: Motion to Dismiss*, pp. 3, 8 Apr 2024]. In this case, there was no reason to go outside the facts, except for consideration of the relevant Rules. As noted above, the petition contains such detail and particulars that the minor and the minor’s parents were, and are, known to Defendants. Any disclosure of the actual names would violate the Iowa Rules of Electronic Procedure and would serve no purpose other than to wrongfully expose the identity of the minor to members of the public, including students, teachers, and others for no useful reason. With this in mind, the District Court needed to consider and apply the various applicable sections of the Iowa Elec. R.P., particularly I.R. Elec. P. 16.103.

On appeal, consideration may also be given to whether the District Court has correctly interpreted a statute. *L.F. Noll Inc. v. Eviglo*, 816 N.W.2d 391, 393-394 (Iowa 2012). The same should be said in regard to the District Court’s failure to properly read and apply the applicable Rules of

Electronic Procedure. It would seem that would be most particularly true in the application of I.R. Elec. P. 16.103:

“To the extent these rules are inconsistent with any other Iowa court rule, the rules in this chapter govern electronically filed cases and cases converted to electronic filing.”

As the Supreme Court stated in *Turner v. Iowa State Bank & Trust Co. of Fairfield*, 743 N.W.2d 1, 3 (Iowa 2007): “On appeal, we review a district court’s ruling on a motion to dismiss for correction of errors at law, citing Iowa R. App. P. 6.4 and *Mlynarik v. Bergantzel*, 675 N.W.2d 584, 586 (Iowa 2004). Additionally, the courts may also take judicial notice of certain facts for the purpose of considering them regarding a motion to dismiss. *Turner v. Iowa State Bank & Trust Co. of Fairfield*, *Id.*, 3 (citing *Winneshiek Mut. Ins. Ass’n v. Roach*, 132 N.W.2d 436, 443 (Iowa 1965)). Certainly, it is expected that the court could take judicial notice of the I. R. Elec. P. Under the Rules, the court may take judicial notice of matters of common knowledge or those “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Iowa Rules of Evid. 5.201.

In this matter, the District Court stated in reference to the requirements of the original notice is to identify the names of the real parties



in interest, “The policy behind these requirements is so the defendants know who is bringing the suit against them and whether or not there are viable challenges to standing, jurisdiction, and venue” [D0036, *Order Re: Motion to Dismiss*, pp. 2, 8 Apr 2024]. Here, the Defendants knew the identities of the parties from the detail of the pleadings, and the written briefs. This case is similar to the *Riniker* and *John Doe/James Doe* cases cited above where the courts were able to conclude that no prejudice resulted from *Riniker*’s or *John Doe*’s failure to amend and change party names before the eve of trial. Plus, as in *Riniker*, the defendants’ counsel knew the identities of the plaintiffs when service was effectuated and the day the petition was filed. That is true in this matter, as well, when consideration is properly given to the detail of the petition, as noted above. The policy and purpose behind the requirements so that a defendant knows who is bringing the suit are satisfied in this matter to the point where the district court should have applied the “balancing test” as suggested in the *Riniker* and *John Doe/James Doe* cases cited.

It is also important that, when considering a motion to dismiss, courts assess the petition “in the light most favorable to the plaintiffs, and all doubts and ambiguities are resolved in plaintiff’s favor.” *Robbins v. Heritage Acres*, 578 N.W.2d 262, 264 (Iowa Ct. App. 1998). A petition must

contain factual allegations sufficient to provide the defendant with “fair notice” of the claim asserted. A petition satisfies the “fair notice” standard “if it informs the defendant of the incident giving rise to the claim and of the claim’s general nature.” “The only issue when considering a motion to dismiss is the ‘petitioner’s right of access to the district court, not the merits of his allegations.’” *Hawkeye Foodservice Distribution, Inc. v. Iowa Educators Corp.*, 812 N.W.2d 600, 609 (Iowa 2012) (*Rieff v. Evans*, 630 N.W.2d 278, 284 (Iowa 2001)). See also: *Cutler v. Klass, Whicher & Mishne*, 473 N.W.2d 178, 181 (Iowa 1991) (“Both the filing and the sustaining [of motions to dismiss] are poor ideas.”). From the cited cases and the detailed recapitulation of the statements contained in the Petition in this case, it is apparent that the District Court acted improperly by granting a dismissal of this matter, especially by its failure to apply the electronic rules.

A final note regarding the matter of a “Doe” pleading is important especially since the District Court stated that it found no viable or credible support or the plaintiffs to proceed anonymously. [D0036, *Order Re: Motion to Dismiss*, pp. 2, 8 Apr 2024]. Although Iowa law does not specifically provide for “Doe” petitions, as noted in the *Riniker* and *John Doe James Doe* cases noted above, it is apparent that Iowa courts have allowed the use of “Doe” pleadings in regard to the “balancing test” mentioned. For other

similar cases, See *Doe v. Cherwitz*, 518 N.W. 2d 362 (Iowa 1994); *Doe v. Johnston*, 476 N.W.2d 28 (Iowa 1991); *Doe v. Iowa State Bd. of Physical Therapy and Occupational Therapy Exam'rs*, 320 N.W.2d 557 (Iowa 1982); *Doe v. Ray*, 251 N.W. 2d 496 (Iowa 1977). There is a basis in Iowa for the plaintiffs in this matter to proceed with the “Doe” designation. As the Court noted in *Heather K by Anita K. v. City of Mallard, Iowa*, 887 F. Supp. 1249, 1256 (N.D. Iowa 1995), the court should make a careful review of “...all the circumstances of a given case and then decide whether the customary practice of disclosing the plaintiff’s identity should yield to the plaintiff’s privacy concerns.” Also, as in *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9<sup>th</sup> Cir. 2000), it was noted that the court must balance the need for anonymity against the general presumption that parties’ identities are public information and the risk of unfairness to the opposing party. In the case before the Court, there was no element of unfairness to the defendant school district or to the other defendants. In fact, the Defendants in this matter failed to demonstrate any matter of unfairness in their motion, brief, or otherwise, that would demonstrate any element of unfairness or that Defendants did not know the identity of Plaintiffs.

With full consideration given to the uniqueness of a minor pursuant to the Iowa Rules of Electronic Procedure, coupled with the fact that there is

neither a statutory or case authority prohibition against a “Doe” or otherwise anonymous party proceeding, it would seem that the “balancing test,” as discussed above has merit, especially since the identity of the Plaintiffs are set forth in such detail that the Defendants could easily deduce the identity of the real party in interest. This is especially so, as in this case, where the Defendants know the identity of the Plaintiffs and fail to show any prejudice or other disadvantage by allowing the Plaintiffs in this matter to proceed with “Doe” designations.

It must not be overlooked that an underlying requirement in this case, as noted above, is in reference to I. R. Elec. P. 16.103; therefore, there is a mandate that other rules that are inconsistent with the electronic filing rules, which would include I. R. Civ. P. 1.201 and I. R. Civ. P. 1.302, *must* give way to the protection accorded to a minor and the minor’s identity, which would include the last name of the parents, in this case. For this reason, as well as the other reasons cited, the district court should be reversed and the Plaintiffs should be permitted to proceed in this case anonymously under a “Doe” designation.

## **II. BRIEF POINT TWO**

WHETHER THE DISTRICT COURT ERRED AND SHOULD BE  
REVERSED IN ITS DISMISSAL OF THIS CASE UNDER IOWA CODE

SECTION 670.4A WHEN THE PETITION OF PLAINTIFFS IS IN FULL COMPLIANCE WITH THE STATUTE AND CASE AUTHORITY.

**B. Brief Point II Argument.**

Under the pleading requirements of IMTCA §670.4A(3), it is understood that several factors must be present in the pleading. The three (3) essential factors include: First, plaintiffs “must state the particular circumstances constituting the violation.” Second, plaintiffs must plead “a plausible violation” of the law. Third, the plaintiffs also, must state...that the law was clearly established at the time of the alleged violation.” *Nahas v. Polk County*, 991 N.W.2d 770, 777 (Iowa 2023). The Plaintiffs in this matter were aware of these requirements, as noted in paragraphs 3, 35 (preamble), 35(a), 35(b), 35(c), 35(d), 35(e), 35(f), 35(g), and 35(h) of their Petition [D0002, *Petition*, p.1, par 3, pp.4-5, pars. 35 and subparts, 17 Oct 2023]. That is precisely why Plaintiffs presented a very detailed petition that set forth the proper aspects of particularity, plausibility and that the law was established at the time of the violations.

In this regard, Plaintiffs pled in paragraph 35 of the Petition [D0002, *Petition*, pp. 4-5, para. 35a, 17 Oct 2023] a specifically detailed reference to Defendants’ prior knowledge of their obligations with particular reference to the policies and procedures of the Defendants as authored and presented by

Defendants in their “Board Policies.” Paragraph 35 of the petition then specifically states that those obligations were not followed in this case by enumerating eight separate particulars identified in the subparts a through ‘h’ of paragraph 35 of the Petition. The pleading makes it clear that Defendants promulgated through a document identified as “Board Policies” various legal obligations of the Defendants [D0002, *Petition*, pp. 4, para. 35, 17 Oct 2023]. Then the Defendants detailed those legal obligations as separate standards for the Defendants to follow, that included: “Anti-Bulling/Anti-Harassment Policy” (sub paragraph 35 (a)) [D0002, *Petition*, pp. 4, para. 35a, 17 Oct 2023]; “Code of Ethics” (subparagraph 35(b)) [D0002, *Petition*, pp. 4, para. 35b, 17 Oct 2023]; “Administrator Code of Ethics” (subparagraph 35(c)) [D0002, *Petition*, pp. 4, para. 35c, 17 Oct 2023]; “Code of Student Conduct” (subparagraph 35 (d)) [D0002, *Petition*, pp. 5, para. 35d, 17 Oct 2023]; “Student Illness or Injury at School” (subparagraph 35 (e)) [D0002, *Petition*, pp. 5, para. 35e, 17 Oct 2023]; “Child Abuse Reporting” (subparagraph 35 (f)) [D0002, *Petition*, pp. 5, para 35f, 17 Oct 2023]; “Program for At-Risk Students” (subparagraph 35 (g)) [D0002, *Petition*, pp. 5, para. 35g, 17 Oct 2023]; and actions in a “...reasonable and prudent manner consistent with the standards applicable

to the situation under Iowa law” (subparagraph 35 (h)) [D0002, *Petition*, pp. 5, para. 35h, 17 Oct 2023].

In order to assess the first two factors of particularity and plausibility, a review of those elements is in order. In *Nahas v. Polk County*, 991 N.W.2d 770, 782-783 (Iowa 2023), while applying the relevant pleading standards of particularity and plausibility, the Court determined that *Nahas* met those pleading obligation in both his Count I alleging libel per se and his Count VI alleging civil conspiracy. In reference to Count I, the Court found that *Nahas* asserted sufficient allegations that informed the defendant that the termination letter was the basis for the libel claim which the Court noted was particular and plausible, and in regard to *Nahas*’ conspiracy claim, Count IV, the Court noted that there was sufficient particularity and plausibility when the plaintiff alleged that two or more ‘of the defendants combined to defame the plaintiff. The Court reversed the lower court on these two counts. By comparison, the Plaintiffs in this matter set forth far more detail relating to each of the Plaintiffs’ claims against the Defendants than *Nahas* did in that Polk County case.

An example of the detail of Plaintiffs’ pleadings is set forth in the prior brief point, Issue One. As noted there, the identity of the minor plaintiff, also known as Minor Doe, was particularly unique to the matters

alleged so that the Defendants had clear knowledge of the Plaintiffs' identity since the particular allegations of specific paragraphs of the Petition (1, 2, 3, 7, 11, 12, 14, 15, 22, 25, 26, and 28) [D0002, *Petition*, pp. 1-4, 17 Oct 2023] made clear the identity of the minor plaintiff to the Defendants without violating any of the particulars of the I. Elec. R. P. and while satisfying the need to identify the party in interest for Plaintiffs. The specific nature and detail of those paragraphs and allegations are so unique to minor plaintiff that in the history of the Defendants, it would not be possible for any party, other than minor Plaintiff, to fit within the referenced allegations in this case, or within the Defendants' records. Even if the Defendants' records are most rudimentary, the identify the minor plaintiff in this cause would be unique to her and no one else. There is no question that the Defendants knew the identity of the minor plaintiff and her parents in this case. Coupled with that knowledge, attention now turns to the other details of the petition that relate to Plaintiffs' compliance with the requirements of heightened scrutiny of Iowa Code §670.4A.

In a similar fashion as in identifying the party in interest, the Plaintiffs in this case, through the detailed petition of fifty-four (54) paragraphs with numerous subparts, have provided allegations of: (1) particular circumstances constituting the violations by the Defendants under Iowa



Code §670.4A; (2) the plausible violations by the Defendants under Iowa Code §670.4A; and (3) allegations of the violations the law that were clearly established at the time of the incidents in this matter. With these requirements in mind, the Plaintiffs have been particularly mindful of the balance of interests between the litigating parties as set forth by the Supreme Court particularly in regard to the Court’s requirement that fair notice be provided to a defendant of the claims against them. *Nahas v. Polk County*, 991 N.W. 2d 770, 776 (Iowa 2023). Plaintiffs are also mindful that, “Qualified immunity balances two important competing interests – ‘the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.’” *Minor v. State*, 819 N.W.2d 383, 400 (Iowa 2012) (quoting *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)).

In regard to the particular circumstances and plausible items constituting violations by the Defendants in this, Plaintiffs draw special attention to the following facts: while Minor Doe was attending a “woods” class under the supervision of teacher, Jared Diers [D0002, *Petition*, pp. 2, para. 14, 17 Oct 2023]; Minor Doe was assaulted and sustained a head injury [D0002, *Petition*, pp. 3, para. 15, 17 Oct 2023]; at the time the history of the

assailant was unknown [D0002, *Petition*, pp. 3, para. 16-17, 17 Oct 2023]; at the time of the assault nothing was done by Defendants to prevent the assault or injury [D0002, *Petition*, pp. 3, para. 19, 17 Oct 2023]; neither parent of Minor Doe was contacted about the incident so Minor Doe contacted Father Doe [D0002, *Petition*, pp. 3, para. 23, 17 Oct 2023]; proper medical care was not provided [D0002, *Petition*, pp. 4, para. 25-26, 17 Oct 2023]; the Defendants were uncooperative [D0002, *Petition*, pp. 4, para. 30, 17 Oct 2023]; Defendants had policies and procedures in place prior to the incident regarding legal obligations [D0002, *Petition*, pp. 4, para. 35, 17 Oct 2023] but failed to follow and/or apply the procedures regarding the legal obligations [D0002, *Petition*, pp. 4, para. 35 and pp. 5, para. 35, 17 Oct 2023].

In regard to the matter that the law was clearly established at the time of the violation by the Defendants, attention is drawn to the following details of paragraph 35 of the Petition and its subparts a-h [D0002, *Petition*, pp. 4, para. 35a-35c, and pp. 5, para. 35, 17 Oct 2023]. Paragraph 35 of Plaintiffs' petition sets forth with particularity the fact that the relevant law was clearly established prior to the incident, that those legal obligations were embraced, promulgated, and implemented by the Defendants as Defendants set those obligations forth in their "Board Policies" [D0002, *Petition*, pp. 4, para. 35,

17 Oct 2023]. Then, with that knowledge and recognition of obligations in place, the Defendants failed to apply those legal obligations in this case. As noted, the first part of paragraph 35 states: “Defendant Western Community School District *had certain policies and procedures outlined* in the “Board Policies” (emphasis added). This allegation makes it abundantly clear that the school district *had* policies and procedures that related to the legal obligations of the Defendants in place before the injuries to Minor Plaintiff were sustained.

Then, and as specifically set forth in the sub-paragraphs of par. 35 of the petition in this case, these “Board Policies” that were violated are set forth greater detail as provided in subparagraphs a-h of paragraph 35. The sub-paragraphs of par. 35 detail the specific legal policies and violations that the Defendant Western Community School District failed to follow as it had promulgated, including: “Anti-Bullying/Anti-Harassment Policy” [D0002, *Petition*, para. 35a, 17 Oct 2023], “Code of Ethics” [D0002, *Petition*, para. 35b, 17 Oct 2023], Administrative Code of Ethics” [D0002, *Petition*, para. 35c, 17 Oct 2023], “School Board’s Code of Student Conduct” [D0002, *Petition*, para. 35d, 17 Oct 2023], “Student Illness or Injury at School” [D0002, *Petition*, para. 35e, 17 Oct 2023], “Child Abuse Reporting” [D0002, *Petition*, para. 35f, 17 Oct 2023], “Program for At-Risk Students”

[D0002, *Petition*, para. 35g, 17 Oct 2023], and “District Emergency Operations Plans” [D0002, *Petition*, para. 35h, 17 Oct 2023].

Therefore, in regard to Iowa Code §670.4A, Plaintiffs were confident that by referring to the specific promulgated rules and regulations of the Defendants “Board Policies” and then specifically enumerating the legal standards promulgated by Defendants that were violated as detailed in paragraphs 35(a) through 35(h) of the petition, the Plaintiffs were drawing on the best method of alerting the Defendants and the Court to the fact that Defendants knew of their legal requirements under §670.4A(3). By pleading as the Plaintiffs have, they satisfied the statutory requirements by setting forth: (1) the fact that Defendants knew their legal obligations, (2) the legal obligations were in place before the incident that injured Minor Doe, and (3) the Defendants failed to follow their own rules and regulations in this matter that they set forth and recognized as their legal obligations to the Plaintiffs.

Those policies as set forth in the petition are properly detailed reference material which are an integral part of the violations of eight specific legal obligations that the Defendants embraced in their own publications as legal obligations. In the Plaintiffs’ briefs filed in tandem with the Resistance to the Motion to Dismiss before the District Court, the Plaintiffs detailed how the referenced subparagraphs to para. 35 of the

Petition as noted above, were included as referenced in the petition, specifically relating to particular linked materials authored by the Defendant, Western Community School District, in regard to the legal obligations recognized by the Defendants.<sup>1</sup> In each of those references that directly

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<sup>1</sup> See paragraph 35 (a) of the Petition [D0002, *Petition*, 17 Oct 2023], and the following link to Western Dubuque Community School District (hereinafter WDCSD): 104 Anti-Bullying-Anti-Harassment\_201688154051702.pdf (wdbqschools.org) that sets forth both federal and state code sections.

<sup>1</sup> See paragraph 35 (b) of the Petition, and the following link to WDCSD [https://www.wdbqschools.org/Downloads/204%20Code%20of%20Ethics\\_201688154052530.pdf](https://www.wdbqschools.org/Downloads/204%20Code%20of%20Ethics_201688154052530.pdf)

See Paragraph 35(c) of the Petition, and the following link to WDCSD: [https://www.wdbqschools.org/Downloads/305%20Administrator%20Code%20of%20Ethics\\_20168815405615.pdf](https://www.wdbqschools.org/Downloads/305%20Administrator%20Code%20of%20Ethics_20168815405615.pdf)

<sup>1</sup> See paragraph 35 (d) of the Petition and the following link to WDCSD: [https://www.wdbqschools.org/Downloads/503\\_1\\_Student\\_Conduct\\_20168815413765.pdf](https://www.wdbqschools.org/Downloads/503_1_Student_Conduct_20168815413765.pdf)

<https://www.wdbqschools.org/CodeofConduct.aspx>

See paragraph 35 (e) of the Petition and the following link to WDCSD:

<https://www.wdbqschools.org/Downloads/5074StudentIllnessorInjuryatSchool.pdf>

<https://www.wdbqschools.org/HealthServices.aspx>

<sup>1</sup> See paragraph 35 (f) of the Petition and the following link to WDCSD:

[https://www.wdbqschools.org/Downloads/402\\_2%20Child%20Abuse%20Reporting\\_20168815405715.pdf](https://www.wdbqschools.org/Downloads/402_2%20Child%20Abuse%20Reporting_20168815405715.pdf)

See paragraph 35 (g) of the Petition and the following link to WDCSD:

[https://www.wdbqschools.org/Downloads/604\\_4%20Program%20for%20At-Risk%20Students\\_20168815418750.pdf](https://www.wdbqschools.org/Downloads/604_4%20Program%20for%20At-Risk%20Students_20168815418750.pdf)

<https://www.wdbqschools.org/At-RiskCoordinator.aspx#:~:text=Students%20attending%20classes%20at%20any,success%20in%20the%20educational%20setting>

See paragraph 35 (g) of the Petition and the following link to WDCSD:

[https://www.wdbqschools.org/Downloads/604\\_4%20Program%20for%20At-Risk%20Students\\_20168815418750.pdf](https://www.wdbqschools.org/Downloads/604_4%20Program%20for%20At-Risk%20Students_20168815418750.pdf)

<https://www.wdbqschools.org/At-RiskCoordinator.aspx#:~:text=Students%20attending%20classes%20at%20any,success%20in%20the%20educational%20setting>

relate to the sub-paragraphs of para. 35, various federal and state laws are acknowledged by the Defendants in their published materials [D0031, *Brief in Support of Resistance to Motion*, pp. 14-18, 29 Nov 2023].

The referenced legal obligations set forth by Plaintiffs in subparagraphs 35(a) through 35(h) in the Petition are exactly the proper and sufficient references to the legal obligations and the violations that satisfy the requirement of Iowa Code §670.A4. The referenced material is taken directly from the Defendants' own publications regarding the laws they were obligated to follow and which Plaintiffs have alleged the Defendants failed to follow in regard to the injuries sustained by the minor plaintiff. From a reading of relevant case law, it is proper for Plaintiffs to make such a reference in pleadings. Therefore, and in regard to a motion to dismiss, a court may consider documents and matters, particularly the law as incorporated into the complaint by reference. See: *Karon v. Elliot Aviation*, 937 N.W.2d 334, 347-348 (Iowa 2020), *King v. State*, 88 N.W.2d 1, 6, n.1 (Iowa 2012) and *Hallett Constr., Co. v. Iowa State Highway Comm'n*, 261 Iowa 290, 295, 154 N.W.2d 71, 74 (1967). That is exactly what the Plaintiffs did in paragraph 35 and its subparts 35(a) through 35(h).

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RiskCoordinator.aspx#:~:text=Students%20attending%20classes%20at%20any,su  
ccess%20in%20the%20educational%20setting

The second part of the lead sentence of paragraph 35 of the Petition in regard to the legal obligations, states “... that were not followed in this matter in one or more of the following ways:” This verbiage and reference clearly identify the legal obligations that the school district **had** in place but **were not followed** in this matter. The eight subparts of paragraph 35 specifically refer to eight separate legal obligations that the Defendants and school district had in place but did not follow in this matter.

In its Order, the District Court completely misstated Plaintiffs allegations of paragraph 35. In the first paragraph of the District Court’s “Order” portion of its ruling on page 6 when referring to paragraph 35, the District Court completely changed the language of paragraph 35 and stated: “All of the recitations made in paragraph 35 as to the Board Policies that were alleged **to not have been implemented** by the school district...” [D0036, *Order Re: Motion to Dismiss*, pp. 6, 8 Apr 2023]. That is exactly the opposite of what is pled by the Plaintiffs. As noted above, the Plaintiffs specifically stated that the school district **had** policies in place **but were not applied in this matter** in one or more of the following ways.” The Petition does not say, as the district court misstated “...**policies that were alleged to not have been implemented...**” That statement is completely, incorrectly

stated. The District Court completely “disarranged” the structure and meaning of the allegation of paragraph 35.

Not only does Plaintiffs’ petition state that the Defendants *had* board policies in place but failed to apply those policies *in this matter*, and at that point the Plaintiffs’ petition specifically refers to eight particular legal obligations, as enumerated, that the Defendants failed to follow in this case. This was also brought to the District Court’s attention in the briefs that the Plaintiffs filed before the District Court with specific references to the various web sites of the Defendants that detail and embrace each of the legal obligations that Plaintiffs set forth in paragraphs 35 (a) through 35 (h) of the Petition [D0031, *Brief in Support of Resistance to Motion*, pp. 13-17, 29 Nov 2023].

The only way that the District Court could possibly come to the conclusions that it did was to misread and misstate what the Plaintiffs’ petition alleged in detail in this matter. Plaintiffs are in full compliance with the heightened pleading requirements of Iowa Code §670.4A. For this reason, as well as, for the reasons set forth above along with the authority cited, the District Court should be reversed.



### **III. BRIEF POINT THREE**

WHETHER THE DISTRICT COURT ERRED AND SHOULD BE REVERSED IN REGARD TO ITS DISMISSAL OF THE NEGLIGENCE CLAIM AS SET FORTH IN THE PETITION SINCE THE NEGLIGENCE CLAIM IS PROPERLY PLED IN DETAIL AND IN COMPLIANCE WITH IOWA LAW.

#### **C. Brief Point III Argument.**

The ruling by the District Court in regard to the dismissal of the negligence claim in this case, should be reversed since, with all due respect, the District Court based its ruling on the same erroneous reading of the pleadings, as well as, an incorrect reading of the case holdings that the District Court cited in reference to heightened pleading requirements under Iowa §670.4A. In regard to the negligence claim, the District Court totally ignored the totality of the properly pled allegations, which must be read together for a complete grasp of the claims made. By the District Court isolating specific paragraphs of the petition without regard for the rest of the pleading, the District Court forced itself into an erroneous decision and rendered a decision that is contrary to case holdings that include cases cited by the District Court in its opinion.

The District Court should be reversed in regard to its decision to dismiss the negligence claim asserted in this matter. In the District Court's Order of April 8, 2024, the District Court, on its own improper initiative, isolated paragraph 40 from the rest of the petition instead of reading paragraph 40 of the petition with the other allegations of the petition [D0036, *Order Re: Motion to Dismiss*, pp. 5, 8 Apr 2024]. In doing so, the District Court improperly concluded and stated that there were no facts to support the assertions made by the Plaintiffs [D0036, *Order Re: Motion to Dismiss*, pp. 5, para. 4, 8 Apr 2024]. Then the District Court compounded the problem by stating: "There is no assertion as to what protections are required under the law. There are no assertions as to the measures to ensure safety under the law" [D0036, *Order Re: Motion to Dismiss*, pp. 5, 8 April 2024]. By making those statements as a part of its ruling, it is apparent that the District Court ignored paragraphs 35, 36, 37, 38, and 39, as well as the rest of the petition particularly in regard to those specific allegations that set forth the required protections under the law as recognized by the Defendants and as pled relative to ensuring the safety of Minor Doe under the law.

As Plaintiffs have set forth in the previous brief point, detailed assertions were made in the Petition as to what protections were required under the law [D0002, *Petition*, pp. 4-5, para. 35, 17 Oct 2023]. Plaintiffs

also set forth allegations relative to both the measures regarding safety and the duty of care through paragraphs 36 (knowledge of President of the School Board), and 37 (knowledge of the Superintendent of the school district) [D0002, *Petition*, pp. 5, 17 Oct 2023]. Plaintiffs then set forth the duty of care owed to the Plaintiffs in par. 38 [D0002, *Petition*, pp. 5, 17 Oct 2023], and, the requirement to assure safety in par. 39. [D0002, *Petition*, pp. 5, 17 Oct 2023]. Plaintiffs also provide specifics in regard to details regarding classroom environment in para. 40(a); adequate supervision in para. 40(b); need to protect from a dangerous student in para. 40(c); protection from a dangerous condition in para. 40(d); failure to ensure safety in para. 40(e); failure to provide proper medical care in para. 40(f); failure to contact parents of injury in para. 40(g); and failing to act in a reasonable and prudent manner in para. 40(h) [D0002, *Petition*, pp. 5-6, 17 Oct 2023]. Each of these allegations are a part of the same petition that sets for the legal obligations enumerated in paragraph 35 and its subparts.

In its Order in this matter, the District Court cites and attempts to rely upon *Nahas v. Polk County*, 991 N.W.2d 770, 782-783 (Iowa 2023) by taking out of context the Supreme Court's statement in *Nahas* at p. 776 [D0036, *Order Re: Motion to Dismiss*, pp.3, 8 Apr 2024]. At that point in *Nahas*, *Id* 776-783, the Supreme Court was referring to acceptable

allegations by referring to *Ambassador Press, Inc. v. Durst Image Tech. U.S., LLC*, 949 F3d 417, 421-422 (8<sup>th</sup> Cir. 2020). It is at that point in the opinion in *Nahas* where the reflection on vague and conclusory statements were made. It's also at that point in *Nahas* while referring to *Ambassador Press* where the Supreme Court notes that the plaintiff's allegation relating to the performance of a printer in that case *must have been false because* the printer performed so poorly. The Supreme Court in *Ambassador* then states that instead of alleging factual content, there was only an assertion of falsity that was not supported by factual allegations. Neither the reference to *Nahas* by the District Court nor any reference to *Ambassador Press* is appropriate without assessing what was fully stated by the Courts in *Nahas* and *Ambassador Press*. Once that is done, it becomes evident that the Plaintiffs in this matter set forth a properly pled petition with specific and related details that prevent dismissal.

The detailed allegations by the Plaintiffs in this case should be taken as a whole, which if done, fully satisfy the standards set forth in *Nahas* and *Ambassador Press*. In fact, in a careful examination of *Ambassador Press*, to which the *Nahas* Court relied, it should be noted that the Eighth Circuit set forth the legal standard for a proper complaint (Petition), and stated:

“...a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”

*Ashcroft v Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”

In this matter, once the Petition is examined with the plausibility of the claim as a whole and not in terms of the plausibility of each individual allegation, as the District Court attempted on page 5 of its Order in this matter [D0036, *Order Re: Motion to Dismiss*, p. 5, 8 Apr 2024], it is more than apparent that the Plaintiffs detailed petition in this case fully satisfies the standard that the Eighth Circuit was explaining in *Ambassador Press* and as recited by the Supreme Court in *Nahas*. In regard to such an assessment by taking the pleadings as a whole, thereby including all of the allegations as set forth by Plaintiffs in their petition, including the detailed references to the legal obligations of the Defendants as assessed in the foregoing Brief Point, it is of special note that the District Court not only completely misread paragraph 35 of the petition, as discussed in the preceding Brief Point, but also that the District Court was wrong to isolate paragraphs 38, 39, 40 (and eight subparts), 41, 42, and 43 in order to rule as it did.

Instead of reading the allegations of the petition together, which, according to *Nahas* and *Ambassador Press*, is the correct process, the District Court utilized an incorrect application by completely “cherry

picking” portions of the pleadings and then misstating what was actually pled. The District Court should be reversed in regard to its dismissal of the negligence claims asserted in this case.

#### **IV. BRIEF POINT FOUR**

WHETHER THE DISTRICT COURT ERRED AND SHOULD BE REVERSED IN REGARD TO THE CLAIM OF FIDUCIARY DUTY AS SET FORTH IN THE PLAINTIFFS’ PETITION SINCE THE CLAIM IS PROPERLY AND FULLY PLED AS REQUIRED UNDER IOWA LAW.

##### **A. Argument for Brief Point Four**

In this case, the Plaintiffs have also asserted a claim against the Defendants regarding a breach of fiduciary duty. Under Iowa law, the courts do not foreclose the possibility of the existence of such a fiduciary duty so long as a proper set of facts are present. *Stotts v Evelth*, 688 N.W.2d 803 (Iowa 2004); *Lindemulder v. Davis Cmty. Sch. Dist.*, 884 N.W.2d 222 (table) 2016 WL 1679835 (Iowa Ct. App. Apr. 27, 2016). In fact, in *Stotts* at 811, the Court noted that since the circumstances giving rise to a fiduciary duty are so diverse, whether such a duty exists depends on the facts and circumstances of each case.

As noted, whether a fiduciary duty exists is a factual question. In the case before the Court, the Plaintiffs plead a particular circumstance

regarding the medical needs of Minor Doe resulting from the assault (Petition paragraphs 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 35(e), 35(f), and 35(h) [D0002, *Petition*, pp. 2-5, 17 Oct 2023]). Particular emphasis should be placed upon the legal requirements relative to safety as set forth in par. 35(e) relating to the Defendants “Student Illness or Injury at School” guidelines; par. 35(f) relating to Defendants “Child Abuse Reporting” guidelines; and par. 35(h) relating to Defendants “District Emergency Operations Plans” [D0002, *Petition*, pp. 5, 17 Oct 2023]. The fact that the Defendants in this case failed to render the necessary medical attention under the circumstances alleged certainly generated a set of factual matters that make this case unique and well within the definition of a fiduciary relationship since Defendants were in a position of trust, especially to assure and insure proper medical assistance upon which Minor Doe and Parents Doe relied. The situation, as alleged, demonstrates that the Defendants were in a position of dominance and control while Minor Doe was in a position of total reliance, trust, and expected protection/care.

The Court in *Stotts*, while citing *Mendenhall v. Judy*, 671 N.W.2d 452-453 (Iowa 2003), recited the definition of a fiduciary relationship to be that where one party “...is under a duty to act for the benefit of another as to matters within the scope of the relationship”. It is at that point where the

Court provided the following consideration of a fiduciary relationship as a very broad term (*Stotts*, at 811):

“...embracing both technical fiduciary relations and those informal relations which exist wherever one man trusts in or relies upon another. One founded on trust or confidence reposed by one person in the integrity and fidelity of another. A ‘fiduciary relation’ arises whenever confidence is reposed on one side, and domination and influence result on the other, the relation can be legal, social, domestic, or merely personal. Such relationship exists where there is a reposing of faith, confidence and trust, the placing of reliance by one upon the judgment and advice of the other.”

In consideration of the foregoing definition, the factual scenario outlined before the definition, and as set forth in the Petition filed in this case, it is apparent that this matter fits perfectly within the definition and required factual scenario to generate a claim of breach of fiduciary duty. Clearly in this matter, it is apparent that there was a relationship of trust where Minor Doe and her parents relied upon Defendants’ integrity and fidelity to do the right thing in terms of medical care, which were specifically stated in various policies and obligations of the Defendants. The case before the District Court fit perfectly within the definition set forth by the Iowa Supreme Court in the *Stotts* case.

In the District Court’s Order rendered on the 8<sup>th</sup> of April 2023 (final paragraph of p.5 of decision), in citing *Lindemulder v. Davis County Community School Dist.*, 2016 WL 1679835 (headnote 6), 884 N.W.2d 222 (table) [D0036,



*Order Re: Motion to Dismiss*, pp. 5, 8 Apr 2024], the Court stated that there was no special relationship with the school or the school district administrators. Then the District Court analogized the facts in *Lindemulder* to this case. That false analogy is an indication that the District Court confused the loose reference to supposed facts of the *Lindemulder* case with a situation with the specific and detailed facts of this case. In *Lindemulder*, the claims related to the intimate relationships between the minor and two staff members of the school district and not a direct relationship to the school or the school district administrators. However, in this matter, the relationship is directly between Minor Doe, the school, and school district since it is the school and school district that promulgated and published the legal obligations that Plaintiffs set forth in petition details in paragraphs 35(e) relating to the Defendants “Student Illness or Injury at School” guidelines, par. 35(f) relating to Defendants “Child Abuse Reporting” guidelines, and par. 35(h) relating to Defendants “District Emergency Operations Plans”. That is precisely why the Supreme Court in *Stotts*, *Mendenhall*, and even in *Lindemulder*, emphasized that each case involving a fiduciary relationship turns on the unique facts of a given case.

In this matter, the District Court misapplied the applicable findings of the Iowa Supreme Court and, accordingly, dismissed this case without proper basis. The District Court should be reversed on this Court, as well.

## CONCLUSION

The first matter of concern in regard to this appeal is the fact that the District Court failed to properly apply the heightened security requirements and the need to protect the identity of a minor child as required under the Iowa Rules of Electronic Procedure 16.103, as well as, the applicable law in respect to those rules. In its failure to do so, the District Court rendered a completely erroneous ruling relative to an acceptable instance when a party may properly plead anonymously.

In this case, the District Court also ignored essential factual matters pled in great detail by the Plaintiffs in such manner that made it necessary for the District Court to consider before a determination could be made whether there were issues of fact that needed to be assessed before turning attention to issues of law. The District Court also ignored key matters definitively pled that included known legal requirements of the Defendants that were recognized, promulgated, and published by Defendants relative to Iowa Code §670.4A before the injury to Minor Doe. The District Court also ignored and misstated detailed pleadings that Plaintiffs set forth that complied with the “fair notice” requirement which satisfied the heightened pleading requirements of the statute.

The District Court also attempted to “cherry pick” portions of the Petition instead of reading the allegations of the petition as a whole, thereby creating an improper and impossible rendition of the pleadings that related to the known and

accepted legal requirements relative to a negligence claim. In the methodology deployed by the District Court, the court subverted the total allegations of the petition and in the process rendered an incorrect ruling relative to the negligence claim.

In regard to the fiduciary duty claim asserted by Plaintiffs in this matter, the District Court lifted an isolated portion of decisions rendered by appellate courts instead of applying the full context of the higher courts relative to the standards for a fiduciary relationship. The result was an erroneous decision regarding the claim of breach of a fiduciary relationship.

In each of the four instances noted, the District Court was wrong and entered an erroneous decision that was not supported by any Iowa statute, or Iowa Rules of Electronic Procedure or any case authority. For the reasons stated the District Court should be reversed in each and every matter.

### **REQUEST FOR ORAL ARGUMENT**

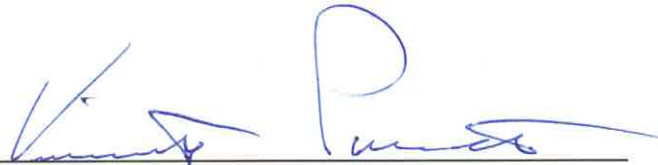
The Plaintiffs respectfully request oral argument in this matter.

Respectfully submitted,



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### CERTIFICATE OF COST

I, Richard A. Pundt, certify that there was no cost to reproduce copies of the preceding brief because the appeal is being filed exclusively in the Appellate Courts' EDMS system.

Certified by: /s/ Richard A. Pundt

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1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 11,738 words, excluding parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).
2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point font size in Times Roman type style.

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**PROOF OF SERVICE AND CERTIFICATE OF FILING**

I, Richard A. Pundt, certify that on June 12, 2024, I served this document by filing an electronic copy of this document with Electronic Document Management System to all registered filers for this case. A review of the filers in this matter indicates that all necessary parties have been and will be served in full compliance with the provisions of the Rules of Appellate Procedure.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 12th day of June 2024, I electronically filed the foregoing document with the Clerk of the Court by using the Iowa Judicial Branch electronic filing system which will send a notice of electronic filing to the following:

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