ELECTRONICALLY FILED JUL 26, 2024 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA
No. 24-0700
Dubuque County Case No. LACV 115304

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

Plaintiffs/Appellants,

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/Appellees.

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

APPELLANTS REPLY BRIEF AND ORAL ARGUMENT REQUEST

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CERTIFICATE OF SERVICE

I, Richard A. Pundt, hereby certify that on the 26th day of July 2024, I served the above Appellants' Reply Brief on the other parties of this appeal via EDMS to the following counsel for said parties:

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CERTIFICATE OF FILING

I, Richard A. Pundt, hereby certify that the attached Appellants' Reply Brief was filed on the 26th day of July 2024, via EDMS to the Clerk of the Supreme Court, Supreme Court of Iowa, Judicial Branch Building, 1111 E. Court St., Des Moines, IA 50319.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because: - this brief contains 5,673 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903.

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 based on Word 14 in Times New Roman font.

_/s/_*Richard A. Pundt*_____ __7/26/2024_____
(Signature) (Date)

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RESPONSE TO APPELLEE STATEMENT OF FACTS

The Defendants, in their rendition of the facts (*Appellees' Brief*, pp. 8-9), set forth a diminished version of factual allegations of the detailed Petition filed in this case that Plaintiffs provided in order to satisfy the specific requirements of Iowa Code §670.4A and to pin-point the particulars of the "who, what, when, where, and how" of the case. Plaintiffs made a special effort to properly frame the heightened pleading requirements of the Iowa Municipal Tort Claims Act. In the Defendants' rendition of the facts (*Appellees' Brief*, pp. 9-10), they recite only 9 of the 34 detailed factual allegations set forth in Plaintiffs' Petition (D0002, *Petition*, pp. 1-4, 17 Oct 2023).

Regarding the "who", there is no doubt as to the identities of the defendants, who are specifically named [D0002, *Petition*, pars. 1,7, 8, 9, 10, 17 Oct 2023]. In regard to the identity of Plaintiffs and their particular "who", the Petition is so detailed in terms of what happened to a specific student (Minor Doe) that it is evident that only one student (Minor Doe) fit into the detailed allegations relative to a specific student, date, time, location, classroom, teacher, incident, event, injury, parental concern and parental request to see the school videos, inability to return to school, as well as, specific injuries as a result of the incident [D0002, *Petition*, pars. 4, 5, 6, 11, 12, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33]. The identity of Minor Doe is clear.

In regard to the "what", the Plaintiffs have also pled in specific detail the events that are unique to this matter as to what happened regarding events of January 12, 2023 when Minor Plaintiff, a fifteen-year-old, was present at Drexler Middle School (Defendants' school), while attending an industrial arts class, was hit over the head with a large board by another student, while the school staff failed to do anything to prevent the incident [D0002, *Petition*, pars. 2, 11, 12, 13, 14, 15, 16, 17, 19, and 20, 17 Oct 2023].

In regard to the "when", the Plaintiffs have specifically pled that the events at issue occurred on the 12th day of January 2023 [D0002, *Petition*, pars. 2, 12, and 14, 17 Oct 2023]. In regard to the "where", the Plaintiff specified that all relevant events regarding the incident happened on the property of the Western Community School District middle school in Farley, Iowa while Minor Plaintiff was in an industrial arts ("woods") class [D0002, *Petition*, pars. 1, 7, 11, 12, 13, 14, 17, 18, and 19, 17 Oct 2023].

In regard to the "how", including how the injuries to Minor Doe came about and how those injuries were allowed to occur, relate to the Defendants failures to follow the applicable and relevant laws, which the petition sets forth in particular detail including the recitation of the eight specific legal obligations which were not followed by the Defendants, and which were known and established at the time of the incident that caused the injuries to the Plaintiffs [D0002, *Petition*, pars. 17, 18,

19, 20, 21, 22, 23, 24, 25, 26, 30, 35, including and particularly, subparagraphs 35 (a) through 35 (h), along with pars. 36 and 37, 17 Oct 2023].

Because of Defendants' compressed rendition of the facts, Plaintiffs felt compelled to provide the foregoing Reply with references to the original details of the comprehensive petition which well-exceeds the typical notice pleading. Plaintiffs submit that the petition filed in this case with its detailed factual allegations is in full compliance with the requirements of *Hedlund* and *Nahas*.

REBUTTAL ARGUMENT

I. THE DISTRICT COURT ERRED AND SHOULD BE REVERSED FOR ITS DISMISSAL OF THE "DOE" PETITION FOR NONCOMPLIANCE UNDER I.R.CIV. P. 1.201 AND I.R.CIV. P. 1.302 INSTEAD OF APPLYING HEIGHTENED SECURITY REQUIREMENTS UNDER THE IOWA RULES OF ELECTRONIC PROCEDURE AND RELEVANT CASE AUTHORITY.

Defendants commence their argument and justification for the district court's dismissal by reciting I.R.Civ.P. 1.201 and I.R.Civ.P. 1.302 (*Defendants' Brief*, pp. 11); however, those rules are no longer controlling in every case. In fact, those rules do not control this case. I.R.Elec.P. 16.103 mandates that the Electronic Rules of Procedure control in this matter.

Additionally, the case of *Krebs v. Town of Manson*, 256 Iowa 957, 960, 129 N.W.2d 744, 746 (1964), cited as authority by Defendants, focused on the fact that

the original notice in that case did not contain a statement relative to the nature of the cause of action and was, therefore, defective. There is no issue with the original notice in this case and of critical importance is the fact that *Kreb*, rendered in 1964, was decided well before the Iowa Rules of Electronic Procedure which were enacted 2009 and made fully effective in 2015.

Chapter 16 of the Iowa Rules of Electronic Procedure, particularly I.R.Elec.P. 16.101(1), dictates that the rules of the chapter govern the filing of all documents in the Iowa Judicial management system, which includes the petition filed in this case. Additionally, and of significant importance in this case, is I.R.Elec.P. 16.103 which specifically states that "…to the extent these rules are inconsistent with any other Iowa court rule, the rules in this chapter govern electronically filed cases…" Therefore, I.R.Civ.P. 1.201 and I.R.Civ.P. 1.302 must give way to the Rules of Electronic Procedure.

This point was further substantiated by the Iowa Court of Appeals in *State v Mendoza*, Case No. 22-1811 (Iowa Ct. App. 9-27-23) at p. 5, where the Court, when addressing a conflict between the electronic rule and other specific rules of procedure, stated, "…the electronic filing rules directly address this issue. Iowa Rule of Electronic Procedure 16.103 states that in electronically filed cases such as this one, the rules of electronic procedure control when they are inconsistent with other Iowa court rules." The ruling in *Mendoza* is consistent with the ruling by the

Iowa Supreme Court *in Concerned Citizens of Se. Polk Sch. Dist. V. City Dev. Bd. of State*, 872 N.W.2d 399, 401 (Iowa 2015) where the Court noted that the electronic transition began in 2009, was completed statewide in 2015, and the new rules were to govern the new process. While *Concerned Citizens* was decided on other matters relating to the timeliness of an appeal, the point is that the new electronic procedures were to govern other previously enacted rules.

The Defendants assert that there is nothing in the Electronic Rules that permit a party to proceed anonymously (*Appellees' Brief*, pp.13); however, and in a like manner, there is nothing in the rules that prohibit a party from proceeding anonymously. It is because of this dilemma that the Plaintiffs have cited both *Riniker v. Wilson*, 623 N.W.2d 220 at 227 (Iowa 2000) and *John Doe and James Doe v. Gill*, Case No. 18-0504 (Iowa Ct. App. 2019) at pp. 26-27 in Plaintiffs' initial brief since those cases address the need to balance the relative interests of the parties and the public in regard to an anonymous filing.

Because of Defendants' assessment of *Riniker and Doe v. Gill* (*Appellees' Brief*, pp. 13-14), both cases merit further review as set forth below; however, first, it is worthy to note that the Defendants' Brief (pp. 12) discusses I.R.Elec.P. 16.602(4). In regard to that rule, it is particularly important to note that the "names of children" are protected information as are the "home addresses" under I.R.Elec.P. 16.604(9), also cited by Defendants. In the event the Plaintiffs had

listed the names of the parents in this case, the last name of Minor Doe, and subsequently her home address, would be ascertainable thereby defeating the electronic rules in terms of exposing the minor child's identity. There would also be the exposure and liability for non-compliance of the Electronic Rules.

Ironically, the Defendants (*Appellees' Brief*, pp. 13) state that, "(T)he rules ***would allow*** the names of minor children to be protected and are typically represented by initials." (emphasis added). First of all, that is an admission that the names of children must be protected, and secondly, the Defendants seem to be stating that if initials had been used instead of "Doe", somehow the Petition would have been acceptable. However, there is no special rule or allowance that initials of the children may be used over the use of "Doe". The use of children's initials is an accepted pleading practice which typically occurs in guardianships, estates, conservatorships, juvenile court, and criminal matters that involve minors. However, typically in civil litigation in most jurisdictions including Iowa, pleadings that involve minors use the term "Doe" and proceed without objection when the party's identity is known, as in this case.

In this case, as noted above, the Defendants in this matter definitely knew the identity of the Plaintiffs since no other student would fit within the description set forth in the Petition. Therefore, the Defendants' claim that they needed to know the identities of Plaintiffs as a party in interest before they could respond to the

Petition (*Appellees' Brief*, pp. 15) fails to have any merit. Also, as was pointed out through the Plaintiffs' exhibit filings before the District Court, the Defendants knew the identities of the Plaintiffs before the lawsuit was filed due to the email chains between the Plaintiffs and Defendants and due to the correspondence between counsel for the parties.[1]

It is understood in *Rucker v. Taylor*, 828 N.W.2d 595, 598-99 (Iowa 2013), cited by the district court [D0036, *Order*, 10 Jan 2024], on review of a decision by the district court regarding a motion to dismiss, that "…ordinarily, the pleadings in the case form the outer boundaries of the material subject to evaluation in a motion to dismiss." However, and as in *Rucker,* there are exceptions to the rule which included certain "affirmative actions" taken by the plaintiff to effectuate service in that case. In a like manner in this case, the Plaintiffs took "affirmative action" through the email chains between the parties and the exchange of letters between

[1] [D0023, Ex. 10, Pape Email Chain, (11-28-23); D0020, Ex. 11, Butler Email Chain (11-28-23); D0019, Ex. 3, June 8, 2023 Letter between counsel (11-28-23)]; D0027, Ex. 4, July 10, 2023 Letter between counsel (11-28-23)]; D0025, Ex. 5, Aug. 28, 2023 Letter between counsel (11-28-23)]; D0028, Ex. 6, Oct. 20, 2023)]; Letter between counsel (11-28-23)]; D0026, Ex. 7, Oct. 28.2023 Letter between counsel (11-28-2023)]: D0022, Ex. 8, Oct. 28, 2023 Lertter between counsel (11-28-23)]; D0029, Ex. 9, 11-17-2023 Letter between counsel (11-28-23)]; and D0023, Ex. 10, 2023 Letter between counsel (11-28-22023)].

legal counsel in order to advise the Defendants and Defendants' counsel of the forthcoming petition and cause of action (See footnote 1).

The foregoing leads the discussion back to *Riniker v. Wilson*, 623 N.W.2d 220, 226 (Iowa Ct. App. 2000) and *Doe v. Gill*, 18-0504 (Iowa Ct. App. 2019). While *Riniker* acknowledged that there was no set rule allowing for "Doe" petitions, the Court noted that the Iowa courts have allowed, without comment, the use of "Jane Doe" pleadings, citing *Doe v. Cherwitz*, 518 N.W.2d 362 (Iowa 1994), *Doe v. Johnson*, 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 1997), and *Doe v. Iowa R. Land Co*., 54 Iowa 657, 7 N.W.2d 118 (1880), *Riniker, Id.* 226.

In *Riniker*, the Court also accepted as persuasive the argument of Wilson and noted the need for a type of balancing test when assessing the relative interest of the parties and whether a party may proceed anonymously, *Id.* 227. In citing *Riniker,* the court in *Doe v. Gill* reversed the district court relative to the use of a "Doe" petition while applying the "balancing test" discussed in *Riniker* when the court agreed with the plaintiffs that a provision allowing for privacy is less meaningful, "…if the party seeking a remedy for the wrongful disclosure of their status is forced to further broadcast this private information in order to obtain relief." *Doe Id.* 6. As already discussed in Plaintiffs' Appellants' Brief, (pp. 27-

28), *Doe v. Gill* is directly analogous since in both that case and in this case, there are legal requirements mandating confidentiality – Iowa Code §141A.9(1) in *Doe v. Gill* and the Rules of Electronic Procedure in this matter.

The district court in this case erred through its dismissal when it improperly applied I.R.Civ.P. 1.201 and I.R.Civ.P. 1.302 instead of applying the Electronic Rules of Procedure. 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 Id,* 3 (citing *Winneshiek Mut. Ins. Ass'n v. Roach*, 132 N.W.2d 436, 443 (Iowa 1965)). Certainly, it was expected that the district court should have taken judicial notice of the I.R.Elec.P. since the Rules were of common knowledge and "capable of accurate and ready determination by resort to a source whose accuracy cannot reasonably be questioned." Iowa Rules of Evid. 5.201. The district court should be reversed for the reasons set forth above.

II. THE DISTRICT COURT ERRED AND SHOULD BE REVERSED FOR ITS DISMISSAL OF THIS CASE UNDER IOWA CODE SECTION 670.4A SINCE THE PLAITNIFFS' PETITION IN IN FULL COMPLIANCE WITH THE STATUTE AND THE CASE AUTHORITY.

Preservation of Error/Standard of Review:

Plaintiffs/Appellants' initial brief specifically noted that the questions presented for appeal were inter-related (*Appellants' Brief*, pp. 18). Accordingly, Plaintiffs/Appellants provided an inclusive statement relative to Preservation of Error (*Appellants' Brief*, pp. 19) and a comprehensive statement regarding the Standard for Review (*Appellants' Brief*, pp. 21). Additional such statements would have been redundant and superfluous.

Argument:

At the outset of Defendants' Statement of Facts, (*Defendants' Brief*, pp. 8-9), they recite a portion of the Supreme Court's opinion in *Hedlund v. State*, 875 N.W.2d 720, 724 (Iowa 2016) regarding the court accepting as true the petitions well-pleaded, factual allegations. What is equally important from a reading of *Hedlund*, also at 724, is that the standard of review of a district court's ruling on a motion to dismiss is for corrections of errors at law. Both points are of critical importance in this matter. First, the Petition filed in this case is accurately detailed and well-pled in regard to the factual allegations, most of which the Defendants

overlooked in their rendition of the facts, as noted. Second, the standard of review in this matter relative to the dismissal by the district court is for corrections of errors at law, which is precisely the matter to be considered in regard to this appeal since the petition is in full compliance with Iowa Code §670.4A and the relevant case authority, which the district court misread and misapplied.

In both the district court's Order [D0036, *Order Re: Motion to Dismiss*, pp. 3-4, 8 Apr. 2024] and the Defendants' Brief [*Appellees' Brief*, pp. 17-18], emphasis is placed upon the Supreme Court's decision in *Nahas v. Polk Cnty*., 991 N.W.2d 770, 776-77 (Iowa 2023). Both the district court and the Defendants fail to acknowledge that the Court in *Nahas* allowed two of the pled theories to proceed while the pleadings in *Nahas* were not nearly as detailed as the Petition in this case. In this regard, it is worthy to consider how the Plaintiffs have fulfilled the requirements of particularity, the clearly established legal requirements, and plausibility in this case, all consistent with Iowa Code §670.4A and *Nahas*.

Particularity:

First, in regard to the matter of "particularity," the Petition in this case, as noted, details the necessary factual elements that fulfill this requirement. In regard to the Defendants, the "who" are specifically identified [D0002, *Petition*, pars. 1, 7, 8, 9, 10, 17 Oct 2023]. In terms of the Plaintiffs, the "who" are identified with

specificity in such manner that no other parties would fit within the allegations [D0002, *Petition*, pars. 2, 11, 12, 13, 14, 15, 16, 17, 19, and 20, 17, Oct 2023].

In regard to "what", the Petition details that Plaintiff Minor Doe, at age 15, was present at Drexler Middle School while attending a "woods" class when hit over the head with a board by another student and while the school staff failed to act to prevent the incident or to follow established school legal requirements resulting in no one calling the parents or bothering to follow medical protocols. [D0002, *Petition*, pars. 2, 11, 12, 13, 14, 15, 16, 17, 19, 20, and 35, 17 Oct 2023]. The "when" is established to be the 12th day of January, 2023 [D0002, *Petition*, pars. 2, 12, and 14, 17 Oct 2023]; and the "where" is set forth with details identifying the property of the Defendants at Farley, Iowa [D0002, *Petition*, pars. 1, 7, 11, 12, 13,14, 17, 18, and 19, 17 Oct 2023].

The "how" includes allegations that the Defendants recognized their legal obligations through the policies and procedures that Defendants had in place at the time of the incident [D0002, *Petition*, par. 35 preamble, 17 Oct 2023]. The Petition then alleges through subparagraphs 35(a) through 35(h) that Defendants failed to apply those policies and procedures in "one or more" of the detailed ways that included: "Anti-Bulling" violation of the School Board's "Code of Ethics", the School Board's "Administrative Code of Ethics", the School Board's "Code of Student Conduct", the School Board's "Student Illness or Injury At School"

guidelines, the School Board's "Child Abuse Reporting" procedures, the School Board's "Program for At-Risk Students", and the School Board's "District Emergency Operations Plans". [D0002, *Petition*, par. 35, including subparagraphs 35(a) through 35(h), 36, and 37, 17 Oct 2023]. Each of these specific allegations were taken from the published and publicly available websites of the Defendants.

In regard to the series of Defendants' websites that set forth the Defendants' legal obligations, as delineated and incorporated into paragraph 35, and the subparts of the Petition filed in this case, [D0002, *Petition*, pp. 4-5, pars. 35(a) - 35(h); *Appellants' Brief*, pp. 24-46, footnote 1 and; D0031, *Plaintiffs' Initial District Court Brief*, footnotes 4-11, 04 Dec 2023], it should be noted that the Defendants have apparently redirected, removed, or "taken down" the websites to which reference is made in the Petition and briefing. However, the Plaintiffs did capture the content of the websites of the Defendants at the time the Petition was filed in this case; therefore, the content of the referenced websites is available at a secure site and when accessed demonstrate that the Defendants made specific references to Iowa and federal statutes that related to each of the legal policies and procedures set for in paragraph 35 of Plaintiffs' petition.[2] The websites, which are

[2] **Western Dubuque Community School District websites as of October 2023**:
Notice of Section 504 Student and parental Rights:
https://pundtlawoffice.secureclientfile.com/s/TiwP7KQmA2icaxb
Anti-Bullying/Anti-Harassment Policy:

referenced in paragraph 35 of the Petition [D0002, *Petition*, pp. 4-5, par. 35, 17 Oct. 2023] with Defendants' "key words" incorporated and used by Plaintiffs set forth the legal obligations of the Defendants that were clearly established at the time of the alleged violations and to which Plaintiffs made specific reference as to the violations by the Defendants in the Petition. Particularity has been established.

Law clearly established at time of the violation:

In regard to the Defendants' websites, as noted above, and as an example of a particular legal obligation of Defendants that was clearly established at the time of the violations alleged, the Petition used Defendants' own "key words"

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https://pundtlawoffice.secureclientfile.com/s/aeS68kGpptopo5e
Code of Ethics:
https://pundtlawoffice.secureclientfile.com/s/wck85JQMSaCMY73
Administrator Code of Ethics:
https://pundtlawoffice.secureclientfile.com/s/4SHgcKtBCcLoX5J
Responsibilities of the Board:
https://pundtlawoffice.secureclientfile.com/s/N8pycBjfZAjTea8
Child Abuse Reporting:
https://pundtlawoffice.secureclientfile.com/s/qH3NCocNobcNPaZ
Student Conduct:
https://pundtlawoffice.secureclientfile.com/s/LDr2MRN9zWinnZA
Student Illness or Injury at School:
https://pundtlawoffice.secureclientfile.com/s/98TBTKJW6xwrYAH
Program for At-Risk Students:
https://pundtlawoffice.secureclientfile.com/s/SxLpFJ7jYFfZ8MS
District Emergency Operations Plan:
https://pundtlawoffice.secureclientfile.com/s/S9xjBmJmNYfsRFZ

[D0002, *Petition*, pp. 4, par. 35(a), e.g. "Anti-Bullying/Anti-Harassment Policy", 17 Oct 2023] (see link: https://pundtlawoffice.secureclientfile.com/s/aeS68kGpptopo5e). When accessed, the first sentence of Defendants' legal policy statement provides the following language, "The Western Dubuque Community School District is committed to providing…," therefore, there is no doubt that the statement belongs to the Defendants. At the end of the third page of the Defendants Anti-Bullying/Anti-Harassment Policy statement is a "Legal Reference" to: 20 U.S.C. §1221-1234i, 29 U.S.C. §794, 42 U.S.C. §2000d-2000d-7, 42 U.S.C. §12101 2 et. seq., Iowa Code §216.9; §280.28; §280.3, §281, and I.A.C. §12.3(6). *Morse v. Frederick*, 551 U.S. 393 (2007).

The forgoing is a single example of Plaintiffs setting forth the Defendants' "keyword" reference to Defendants' legal obligations that were clearly established at the time of the incident described in the Petition as the 12th day of January 2023 since the dates of approval, review, and revisions are included at the bottom of the last page of the linked material authored and presented by the Defendants. As Plaintiffs alleged in the first part of paragraph 35 of the Petition, "The Defendant Western Community School District ***had certain policies and procedures outlined*** in the Board Policies…" in place and clearly established at the time of January 12, 2023. That statement makes it clear that the law was in place before the specific

allegations of failure to act are asserted (subparagraphs 35(a) – 35(h), [D0002, *Petition*, pp. 4-5, par. 35, 17 Oct 2023]. Iowa Code §670.4A does not require a petition to contain specific code sections but, instead, a reference to the fact that the law was clearly established which is precisely what paragraph 35 of the Petition does through its mention of certain "key words" used by the Defendants themselves relative to Defendants' legal obligations set forth at Defendants' websites.

Also, as noted in Appellants' initial Brief (pp. 46), in ruling on a motion to dismiss, it is appropriate for courts to consider documents to which reference is made in an initial pleading. See: *Karon v. Elliot Aviation*, 937 N.W.2d 334, 347-348 (Iowa 2020), *King v. State*, 818 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). The key words used in each case of paragraph(s) 35 of the Petition (initial pleading) had a direct reference to a legal obligation of the Defendants with Defendants' knowledge since, in each case, the key words reflected the Defendants' own policies and procedures. The Defendants authored statements of their legal obligations which Defendants published on their websites as recitations of their legal obligations under the law. Defendants then used the "key words" as noted in paragraph 35 of the Petition to the linked material that detailed Defendants' legal obligations. The key words were used by Plaintiffs in paragraph

35 of the Petition to refer to Defendants' legal obligations with sufficient particularity to satisfy the requirement of Iowa Code §670.4A(3) which, as noted, does not require the citation of specific statutes but a pleading reference to the fact that the law was clearly established which is satisfied by the allegations of paragraph 35.

Plausibility:

In this case, the plausibility standard has been met since a reasonable review and assessment of the allegations of the violations by the Defendants, as set forth in paragraph 35 of the Petition, expose the Defendants to liability that resulted in the injuries to Minor Doe in this case. The allegations are set forth with such clarity that it is evident that the lack of proper supervision by Defendants' employee over the events of the classroom where another student hit Minor Doe over the head with a board during a "woods" class becomes the focal point of the ultimate injuries to Minor Doe. From the pleadings it is apparent that nothing was done by Defendants' school personnel to prevent the incident. The pleadings also make it abundantly clear that none of the school personnel attended to Minor Doe' injuries on an immediate basis or called Minor Doe's parents or provided appropriate medical attention.

There is both case law and statutory authority that establishes a requirement that school district has a legal obligation relative to supervision, medical care, or

notification requirements. See: *Mitchell v. Cedar Rapids Community School District*, 183 N.W.2d 689, 702 (Iowa 2013), where an Iowa school district was held to be responsible not only for the duty of reasonable supervision but even for the supervision of and injuries to students after hours. See also: *Kinzer v. Independent School District of Marion,* 129 Iowa 441, 105 N.W. 686. Additionally, Iowa Code §274.1 and, particularly, §274.7 provide that "(T)he affairs of each school district is to be under the control of elected board of directors…" and §279.8 requires that "the board shall make rules for its own government and that of the…pupils…and require the performance of duties…imposed by law and the rules." In *Mitchell*, the Court also noted that the scope of liability was in the proper purview of the jury in tort cases.

The Defendants in this case had sufficient supervision and control over the classroom activity and behavior to prevent the incident that caused the injuries to Minor Doe. In this case, the Defendants failed to exercise proper care and control as the Defendants failed to properly handle the entire situation.

As a final note, the dismissal with prejudice in this particular case is an overly harsh measure to the Plaintiffs, especially when the Plaintiffs went to extraordinary efforts to be in compliance with Iowa Code §670.4A by detailing the recognized legal obligations that were embodied in Defendants own regulations and procedures as Plaintiff set forth in paragraph 35 of the Petition. At no point in

the statute does it state that a specific code section (federal or state) needs to be set forth. Iowa Code §670.4A(3) simply states that there should be an allegation of a violation of law, which is exactly what paragraph 35 of the Petition in this matter details. If the courts in Iowa decided that the actual statutes (either federal or state) to which paragraph 35 makes reference should be specifically stated, the Court should make such a pronouncement in order for this case and all other such cases to be able to proceed with that guidance since the legislature didn't provide any such guidance in Iowa Code § 670.4A.

Accordingly, since Iowa is now imposing the federal pleading standards to tort claims against municipalities, including school districts, a review of relevant federal cases is appropriate in terms to dismissal. In federal courts, the general rule is to freely permit plaintiffs to amend their complaint/petition, "once as a matter of course." (See *Law Offices of David Freydin, P.C. v. Chamara*, 24 F.4th 1122, 1133 (7th Cir. 2022) quoting *Arin-Golf, LLC v. Village of Arlington Heights*, 631 F.3d 818, 823 (7th Cir. 2011)). Ordinarily, a party must be given at least on opportunity to amend before the district court dismisses the complaint." (*Corsello v. Lincare, Inc*., 428 F.3d 1008, 1014 (11th Cir. 2005)). Since the Iowa legislature did not state with particularity that a specific statute needed to be provided in order for a party to be in compliance with Iowa Code §670.4A, the Plaintiff should not be penalized nor should any other prospective plaintiff.

Therefore, if the Court believes that reference to actual statutes must be a part of a petition instead of a reference to the general law that was violated as in paragraph 35 of Plaintiffs' Petition in this matter, a remand would be in order with instructions to the district court that the Plaintiffs must set forth the actual statutes instead of the general legal obligations that a particular Defendant recognizes such as in paragraph 35 of the Petition, e.g., "Anti-Bulling/Anti-Harassment" policy, the School Board's "Administrative Code of Ethics", "School Board Code of Student Conduct", "Student Illness or Injury at School" guidelines, "Child Abuse Reporting", etc. In consideration of the above, the district court should be reversed, or, at least, reversed with an appropriate remand.

III. 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.

The reason the Plaintiffs separately address the negligence issue is because the district court addressed it separately. Division I of the Petition stands as general allegations and Division II of the Petition was specifically pled as a negligence division that incorporated the allegations of Division I, which is common practice. The designation was as Divisions and not separate Counts, as if separate charges. Therefore, since the allegations of Division I, particularly paragraph of 35 of the

Petition, related to the negligence claims, it was difficult to understand the statement by district court that, "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 Apr 2024]. That was the reason Plaintiffs stated in their Brief Point III that the district court based its ruling regarding negligence on the same erroneous reading of the pleadings as discussed in the earlier brief point (*Appellants' Initial Brief*, pp. 49-53). The point of the citation to *Ambassador Press, Inc. v. Durst Image Tech. U.S., LLC*, 949 F3d 417, 421-422 (8th Cir. 2020) in the initial Appellants' Brief was to point out that "(a) claim is plausible when 'the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."[3]

Plaintiffs were addressing the plausibility of the claim and that the claims need to be taken 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, as noted above. Otherwise, the arguments presented in the preceding brief point of this Reply Brief and in Brief Point II of the Appellants' initial brief are to be considered as to how

[3] The citation of *Ambassador Press, Inc. v. Durst Image Tech. U.S., LLC*, 949 F3d 417, 421-422 (8th Cir. 2020) at pp. 52-53 of Appellants initial brief paraphrased a statement by the Court instead of a direct quote and should have been so noted.

the Plaintiffs have satisfied the pleading requirements under Iowa Code §670.4A and for the negligence claim.

IV. 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.

While it is true that a "general relationship" between a school district and students does not of itself generate a fiduciary relationship, *Lindemulder v. Davis County Community School Dist.*, 2016 WL 1678935 (Iowa Ct. App. 2016). However, a fiduciary relationship does arise whenever there is a reposing of faith, confidence and trust and the placing of reliance by one upon the judgment of another, *Stotts v. Evelth,* 688 N.W.2d 803, 811 (Iowa 2004). As the detailed factual scenario in this case provides, this matter moved rapidly beyond any general relationship and into a specific relationship of faith, confidence, and trust where there was total reliance upon the school district once the assault occurred and a serious physical injury resulted.

The district court wrongfully found that the Plaintiffs' Petition did not assert any special relationship, confidence, faith, or trust that would constitute a fiduciary relationship [D0036, *Court Order,* pp. 5-6, 8 Apr 2024]. In rendering such a decision, the district court completely ignored certain key facts relative to: (1) the

injury to Minor Doe occurred on school premises, (2) the injury was sustained by Minor Doe while under the supervision of the Defendants, (3) that nothing was done to prevent the injury, (4) parents of Minor Doe were not contacted relative to the condition of Minor Doe, (5) that proper medical attention was not provided to Minor Doe, and (6) the injuries to Minor Doe were not properly handled or assessed [D0002, *Petition*, par 14, 15, 19, 20, 21, 22, 23, 24, 25, 26, and 29, pp. 2-4, 17 Oct 2023]. Each of these allegations assert a series of facts that remove the relationship between Minor Doe and Defendants from a "general relationship" to one of total faith, confidence, and trust where the Defendants were in total control of the premises when the assault occurred, and the resulting need for medical care. Neither Minor Doe nor Parents Doe were in any position to help in any regard.

The forgoing position is consistent with the discussions by both the plaintiffs and the defendants in *Mitchell v. Cedar Rapids Community School District,* 832 N.W.2d 689, 696 (Iowa 2013) where one discussion related to Restatement (Third) §40 cm. *l,* at 45 (2012) that addressed the affirmative duties and describing a school's duty as "applicable to risks that occur while the student is at school or otherwise engaged in school activities." The Defendants in this case were placed in the position of a fiduciary as the facts of the case unfolded, and it was reasonable for Defendants to understand that Minor Doe was no longer within a general relationship but a special fiduciary relationship with the Defendants due to the

events that took place. This is why a case of fiduciary relationship is intensely related to the facts of a given case. The district court should be reversed.

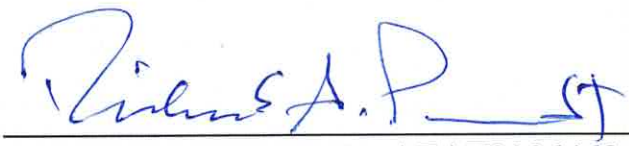
CONCLUSION

Based upon the foregoing arguments and authority cited, it is asserted that Iowa courts do allow "Doe" petitions, especially under the enactment of the Iowa Rules of Electronic Procedure and the "balancing test" as evaluated by the Iowa Courts. In this particular case the heightened pleading standards of Iowa Code §670.4A have been met. A fiduciary relationship has been properly pled and does apply in this case. The decision by the district court in this case should be reversed in its entirety.

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*

PROOF OF SERVICE AND CERTIFICATE OF FILING

I, Richard A. Pundt, certify that on July 26, 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 26th day of July 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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