THE SUPREME COURT OF IOWA
No. 24–0700
Dubuque County Case No. LACV115304

PARENT FATHER DOE and PARENT MOTHER DOE, parents and next 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

APPELLEES' BRIEF

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ROUTING STATEMENT

This case should be transferred to the Court of Appeals because the case can be resolved using the application of existing legal principles and the case presents issues appropriate for summary disposition. Iowa R. Civ. P. 6.1101.

NATURE OF THE CASE

Plaintiffs filed their Petition at Law on October 17, 2023. (D0002, Petition (10/17/23)). Plaintiffs' Petition asserts three counts against the Defendants, a claim of negligence, breach of fiduciary duty, and loss of consortium. (D0002, Petition (10/17/23)). On October 20, 2023, Plaintiffs filed an application to restrict access to records, protected information form, and proposed order to permit them to file without disclosing Plaintiffs' names. (D0005, M. Restrict Access (10/20/23)). On October 30, 2023, the Court entered its Order to restrict access, and on November 1, 2023, its Order to elevate the case security. (D0011, Order to Restrict Access (10/30/23); D0012, Order to Elevate Security (11/1/23)).

On November 14, 2023, Defendants filed their Motion to Dismiss on the basis Iowa law does not permit anonymous filings and that Plaintiffs had failed to comply with the heightened pleading requirement of Iowa Code 670.4A. (D0017, M. to Dismiss (11/14/23)). Pursuant to Iowa Rule 1.421, if the grounds exist for lack of personal jurisdiction and failure to state a claim at the time of a pre-answer motion to dismiss, then such "shall be contained in a single motion and only one such motion

assailing the same pleading shall be permitted". Iowa R. Civ. P. 1.421. Accordingly, all grounds were raised in Plaintiffs' motion to dismiss.

Plaintiffs filed their Resistance and Brief on November 29, 2023. (D0031 and D0032, Resistance and Brief (11/29/23)). Defendants submitted their Response on November 27, 2023.[1] (D0030, Response (11/27/23)). Oral argument on the motion was held on January 8, 2024, and the Court entered its ruling ordering the case dismissed on April 8, 2024. (D0036, Dismissal Order (4/8/24)).

Plaintiffs filed their Notice of Appeal on April 29, 2024.

STATEMENT OF FACTS

On a motion to dismiss, the court accepts as true the petition's well-pleaded factual allegations, but not its legal conclusions. *Hedlund v. State*, 875 N.W.2d 720, 724 (Iowa 2016). Accordingly, the following facts are taken directly from the Petition. Plaintiffs assert that Minor Doe was a student at Drexler Middle School in Farley, Iowa. (D0002, Petition at 2 (10/17/23)). On January 12, 2023, Minor Doe was in industrial arts technology class under the supervision of a teacher. (D0002, Petition at 2 (10/17/23)). Minor Doe was then, without advanced warning, hit over the head with a board and assaulted by another student in the class. (D0002, Petition

[1] There appears to be an issue with the e-file stamps, as the response would have been filed after Plaintiff's Resistance.

at 2 (10/17/23)). Minor Doe did not have any prior controversy or known issues with the other student and was mostly unfamiliar with that student. (D0002, Petition at 3 (10/17/23)). Plaintiffs allege there was some past history of issues with the student that was known to the school. (D0002, Petition at 3 (10/17/23)). Plaintiffs allege the District did nothing to protect Minor Doe, and that Minor Doe did not receive appropriate medical attention after the incident. (D0002, Petition at 3 (10/17/23)). They further claim that the parents were not notified by the school, rather, the parents learned of the incident from Minor Doe who contacted them from the office. (D0002, Petition at 3 (10/17/23)). After a long wait, the nurse attended to Minor Doe and provided her two ibuprofen. (D0002, Petition at 3 (10/17/23)). Plaintiffs allege ongoing medical issues as a result of the classroom incident. (D0002, Petition at 4 (10/17/23)).

ARGUMENT

I. THE DISTRICT COURT DID NOT ERR IN HOLDING THAT JURISDICTION HAS NOT BEEN CONFERRED DUE TO PLAINTIFFS FILING OF A "DOE" PETITION.

A. Preservation of error.

"It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal." *33 Carpenters Constr., Inc. v. State Farm Life & Cas. Co.*, 939 N.W.2d 69, 75 (Iowa 2020) quoting *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

Defendants agree that error has preserved on the basis the issue has been raised in Defendants' motion to dismiss and ruled on by the district court.

B. Scope and Standard of review.

Defendants agree that on appeal, the Court reviews a district court's ruling on a motion to dismiss for correction of errors at law. *Hedlund v. State*, 875 N.W.2d 720, 724 (Iowa 2016). "For purposes of reviewing a ruling on a motion to dismiss, we accept as true the petition's well-pleaded factual allegations, but not its legal conclusions." *Id*. quoting *Shumate v. Drake Univ.,* 846 N.W.2d 503, 507 (Iowa 2014).

C. Argument.

Under Iowa law, every action must be prosecuted in the name of the real party in interest. Iowa R. Civ. P. 1.201. The Original Notice must also contain the names of the parties. Iowa R. Civ. P. 1.302. "An original notice which does not contain the matter required by [IRCP 1.302] is fatally defective and does not confer jurisdiction over the party served with such defective notice." *Krebs v. Town of Manson*, 256 Iowa 957, 960, 129 N.W.2d 744, 746 (1964).

Plaintiffs filed their Petition at Law and Original Notice identifying Plaintiffs as "Parent Father Doe and Parent Mother Doe parents and next friend for: Minor Doe, and Individually, on their own behalf, as parents". (D0002, Petition (10/17/23)). Plaintiffs contend in their brief that our Iowa Rules of Electronic

Procedure "controls over other procedural rules including I.R. Civ. P. 1.201 and 1.302", and therefore they should be permitted to proceed anonymously. However, nothing in the electronic rules permits them to do so. The rules provide:

> 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.

Iowa R. Civ. P. 16.103. For confidential information, the rules provide:

> Protected information includes the following:
> 1. Social security numbers.
> 2. Financial account numbers.
> 3. Dates of birth.
> 4. Names of minor children.
> 5. Individual taxpayer identification numbers.
> 6. Personal identification numbers.
> 7. Other unique identifying numbers.
> 8. Confidential information as defined in rule 16.201.

Iowa R. Civ. P. 16.602.

> A filer may redact the following information from documents available to the public unless the information is required by law or is material to the proceedings:
> 1. Driver's license numbers.
> 2. Information concerning medical treatment or diagnosis.
> 3. Employment history.
> 4. Personal financial information.
> 5. Proprietary or trade secret information.
> 6. Information concerning a person's cooperation with the government.
> 7. Information concerning crime victims.
> 8. Sensitive security information.
> 9. Home addresses.

Iowa R. Civ. P. 16.604.

While our Rules allow for the names of minor children to be redacted, there is no similar protection for individuals who are bringing the claim on behalf of the minor. The electronic rules do not authorize the Plaintiffs in this case to proceed anonymously. The rules would allow the names of minor children to be protected and are typically represented by initials.

Plaintiffs further argue that Iowa precedent, citing to *Riniker v. Wilson*, 623 N.W.2d 220 (Iowa Ct. App. 2000) and *Doe v. Gill*, 927 N.W.2d 693 (Iowa Ct. App. 2019), have found applying a balancing test to be persuasive, however, no such rule allowing a party to proceed anonymously has been recognized. In *Riniker*, the court noted that Iowa law does not specifically provide for Jane Doe petitions. *Riniker v. Wilson*, 623 N.W.2d 220, 226 (Iowa Ct. App. 2000). The Plaintiffs in that case argued that there had been some prior cases filed as "Doe" petitions. *Id*. Therefore:

> Rinikers argue the Iowa Supreme Court implicitly has approved "Doe" petitions by virtue of the Iowa "Doe" cases. We disagree. The cases make no mention of the procedure, if any, followed by plaintiffs in filing a "Doe" petition. It is impossible to determine from these cases whether the "Doe" party obtained prior approval from the district court to proceed anonymously. The issue was never raised in these cases, and we refuse to interpret the court's silence as an implicit approval of such petitions.
>
> Wilson urges this court to establish a rule requiring those filing "Doe" petitions to first obtain prior court approval.
>
> ***

> We find persuasive Wilson's argument courts should be required to balance the relative interests of the parties and the public before granting a plaintiff permission to proceed anonymously. We decline, however, Wilson's invitation to retrospectively impose such a rule on these plaintiffs. We leave it up to the legislature and/or our supreme court to establish rules regarding the use of "Doe" plaintiff petitions in the courts of this state. *See State v. Rhomberg,* 516 N.W.2d 803, 805 (Iowa 1994) ("A proposed change in the law, if desired, is in the province of the legislature."); *Caylor v. Employers Mut. Cas. Co.,* 337 N.W.2d 890, 894 (Iowa App.1983) ("As the law stands, however, no such provision has been made by the legislature, and it is not the province of the court to enact such a provision.").

Id. at 226-227.

Accordingly, the Court in *Riniker* acknowledged there was no such rule allowing for "Doe" petitions, and that while they found persuasive that perhaps a balancing test should be utilized, they declined to adopt such and left it to the legislature. Since then, Defendants can only find one Iowa case where it was discussed whether a party could proceed anonymously and approved. In that case, the court held the plaintiff could proceed anonymously because the basis of the claim was an HIV diagnosis, which by statute is confidential and protected information. *Doe v. Gill*, 927 N.W.2d 693 (Iowa Ct. App. 2019). However, no such statute exists for the present case.

Plaintiffs in their brief also make general arguments that disclosing the Plaintiffs' names would serve no purpose other than to expose Plaintiffs to possible

ridicule and that they have pled sufficient facts that any Defendant should know who is bringing the litigation. Such arguments could be made in any case. Any Plaintiff could argue that they do not want their identity to be made public because a host of reasons: that they live in a small town, are suing their employer, would disclose their injuries, would identify them as litigious, etc. However, our statutes mandate the name of a Plaintiff to be disclosed. As held by the district court, "[t]he policy behind these requirements is so the defendants know who is bringing suit against them and whether or not there are viable challenges to standing, jurisdiction and venue." (D0036, Dismissal Order p. 2 (4/8/24)). Plaintiffs' argument that they should just be able to plead enough facts to notify defendants of who is likely bringing suit creates uncertainty. Parents of minors may not have standing. Minors could have guardians. Or lawsuits could be filed in which Defendants would be left to assume who was filing it, but assumed wrong and someone who truly had no standing filed the lawsuit. To avoid these uncertainties, and because a defendant has the right to know who is suing them, our rules provide that every suit must be filed in the name of the real party in interest.

Simply stated, there is no rule or Iowa case precedent that allows Plaintiffs to proceed anonymously, and the decision of the district court should be affirmed.

II. THE DISTRICT COURT DID NOT ERR IN DISMISSING PLAINTIFFS' PETITION ON THE BASIS OF IOWA CODE 670.4A.

A. Preservation of error.

Plaintiffs do not provide a separate section indicating error preservation on their second issue. However, dismissal due to Iowa Code 670.4A has been preserved on the basis the issue had been raised in Defendants' Motion to Dismiss and ruled on by the district court.

B. Scope and Standard of review.

Plaintiffs do not provide a separate section indicating the standard and scope of review on their second issue. However, it is the same as above and Defendants agree that on appeal, the Court reviews a district court's ruling on a motion to dismiss for correction of errors at law. *Hedlund v. State*, 875 N.W.2d 720, 724 (Iowa 2016). "For purposes of reviewing a ruling on a motion to dismiss, we accept as true the petition's well-pleaded factual allegations, but not its legal conclusions." *Id*. quoting *Shumate v. Drake Univ.,* 846 N.W.2d 503, 507 (Iowa 2014).

C. Argument.

Iowa Code Chapter 670 applies to any tort brought against a municipality (including a school district), which includes any claim for injury to a person, negligence, or breach of duty. I.C.A. § 670.1. For such claims against a municipality, the Iowa Legislature has changed the pleading requirement, heightening it, because the doctrine of qualified immunity is that important to

society. Even before the legislature passed Iowa Code 670.4A, the Iowa Supreme Court noted that the key purpose of qualified immunity is to avoid costly litigation, and that legislative goal is thwarted when claims subject to immunity are allowed to proceed. *Nelson v. Lindaman*, 867 N.W.2d 1, 7 (Iowa 2015). Qualified immunity is "an entitlement not to stand trial or face the other burdens of litigation." *Id*. quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526, 105 S.Ct. 2806, 2815, 86 L.Ed.2d 411, 425 (1985). The United States Supreme Court often holds the same, and has even stated that they "stress that lower courts 'should think hard, and then think hard again' when addressing qualified immunity because such claims often should not be permitted to proceed to trial." *D.C. v. Wesby*, 583 U.S. 48, 62, 138 S. Ct. 577, 589, 199 L. Ed. 2d 453 (2018).

Iowa Code 670.4A provides:

> 3. A plaintiff who brings a claim under this chapter alleging a violation of the law must state with particularity the circumstances constituting the violation and that the law was clearly established at the time of the alleged violation. Failure to plead a plausible violation or failure to plead that the law was clearly established at the time of the alleged violation shall result in dismissal with prejudice.

With the passage of Iowa Code 670.4A heightening the pleading requirement, our Iowa legislature has taken the position that whether the law is clearly established needs to be established when filing the Petition, otherwise dismissal is mandated.

The Iowa Supreme Court has recently addressed the heightened requirements under 670.4A:

> 2. *Section 670.4A(3)'s new procedural requirements.* Historically, Iowa is a notice pleading state. *See Young v. HealthPort Techs., Inc.*, 877 N.W.2d 124, 127 (Iowa 2016) ("Under our notice-pleading standards, nearly every case will survive a motion to dismiss for failure to state a claim upon which any relief may be granted." (citing *Smith v. Smith*, 513 N.W.2d 728, 730 (Iowa 1994))). As such, a petition need not allege ultimate facts that support each element of the cause of action. The petition, however, must contain factual allegations that give the defendant "fair notice" of the claim asserted so the defendant can adequately respond to the petition. A petition complies with the "fair notice" requirement if it informs the defendant of the incident giving rise to the claim and of the claim's general nature.
> *Rees v. City of Shenandoah*, 682 N.W.2d 77, 79 (Iowa 2004) (citations omitted) (quoting *Schmidt v. Wilkinson*, 340 N.W.2d 282, 283 (Iowa 1983)).
>
> Defendants may file preanswer motions to dismiss for plaintiffs' "[f]ailure to state a claim upon which any relief may be granted." Iowa R. Civ. P. 1.421(1)(*f*). "A court should grant a motion to dismiss 'only if the petition on its face shows no right of recovery under any state of facts.' " *Young*, 877 N.W.2d at 127 (quoting *Tate v. Derifield*, 510 N.W.2d 885, 887 (Iowa 1994)). In the past, we have explicitly declined to replace our notice pleading system with the heightened pleading standards that federal courts use. *Hawkeye Foodservice Distrib., Inc. v. Iowa Educators Corp.*, 812 N.W.2d 600, 607 (Iowa 2012). But the legislature may impose heightened pleading requirements for specific types of claims. *See, e.g.*, *Meade v. Christie*, 974 N.W.2d 770, 779 (Iowa 2022) (recognizing heightened pleading requirements imposed under director shield statute for claims against corporate directors).

> The IMTCA now places a heightened pleading requirement on plaintiffs who bring claims against municipal corporations or those corporations' employees or officers. Iowa Code § 670.4A(3). This heightened pleading requirement has three features. First, plaintiffs "must state with particularity the circumstances constituting the violation." *Id.* Second, plaintiffs must plead "a plausible violation" of the law. *Id.* Third, they also "must state ... that the law was clearly established at the time of the alleged violation." *Id.* Ultimately, section 670.4A provides that the failure to plead a plausible violation or that the law was clearly established will "result in dismissal with prejudice." *Id.*

Nahas v. Polk Cnty., 991 N.W.2d 770, 776–77 (Iowa 2023).

The heightened pleading requirements of particularity and plausibility require the same pleading as the Federal Rules of Civil Procedure. *Id*. at 781. This requires the pleading of the who, what, when, where, and how. *Id*. "Allegations that are vague or conclusory are insufficient." *Id*. "Likewise, an allegation pleaded on information and belief does not satisfy the particularity standard unless the allegation 'set[s] forth the source of the information and the reasons for the belief.'" *Id.*

Here, there is no mention in Plaintiffs' Petition that any law was clearly established at the time of the alleged violations for any of their claims. Plaintiffs allege in their resistance that they met that pleading requirement by stating that the Defendants violated School Board policies. Plaintiffs appear to combine the second and third pleading requirement. Plaintiffs allege facts in their petition of an alleged violation (1st heightened pleading requirement), the Board policy they allege was

violated (2nd heightened pleading requirement), but then argue that since they allege a violation of Board policy, it must be clearly established.

To establish that the law is clearly established is not done merely by pointing to a statute, policy or rule. For example, a common qualified immunity case involves allegations that a police officer used excessive force. A plaintiff's claim does not survive simply by arguing the US Constitution prohibits the use of excessive force. Rather, a plaintiff must show the factual scenario presented to the public official was clearly established prohibiting their conduct, such as the suspect was fleeing away from the officer and therefore no longer posed a threat, so use of deadly force was not authorized as established by case law. Our federal and state courts have held:

> To be clearly established, preexisting law must make the unlawfulness of the officials' conduct apparent so that they have "fair and clear warning" they are violating the constitution; qualified immunity therefore protects "all but the plainly incompetent or those who knowingly violate the law." *Id.* at 551–52. Because qualified immunity protects officials who make bad guesses in gray areas, *Littrell v. Franklin*, 388 F.3d 578, 582 (8th Cir. 2004), it gives them breathing room to make reasonable but mistaken judgments. *Blazek v. City of Iowa City*, 761 F.3d 920, 922 (8th Cir. 2014).

Estate of Walker v. Wallace, 881 F.3d 1056, 1060 (8th Cir. 2018).

> The doctrine of qualified immunity shields officials from civil liability so long as their conduct " 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.' " *Pearson v. Callahan,* 555 U.S. 223, 231, 129 S.Ct. 808, 172 L.Ed.2d 565 (2009) (quoting *Harlow v. Fitzgerald,* 457

> U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982)). A clearly established right is one that is "sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Reichle v. Howards,* 566 U.S. ——, ——, 132 S.Ct. 2088, 2093, 182 L.Ed.2d 985 (2012) (internal quotation *12 marks and alteration omitted). **"We do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate."** *Ashcroft v. al–Kidd,* 563 U.S. 731, 741, 131 S.Ct. 2074, 179 L.Ed.2d 1149 (2011). Put simply, qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs,* 475 U.S. 335, 341, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986).
>
> "We have repeatedly told courts ... not to define clearly established law at a high level of generality." *al–Kidd, supra,* at 742, 131 S.Ct. 2074. The dispositive question is "whether the violative nature of *particular* conduct is clearly established." *Ibid.* (emphasis added). This inquiry " 'must be undertaken in light of the specific context of the case, not as a broad general proposition.' " *Brosseau v. Haugen,* 543 U.S. 194, 198, 125 S.Ct. 596, 160 L.Ed.2d 583 (2004) (*per curiam*) (quoting *Saucier v. Katz,* 533 U.S. 194, 201, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001)).

Mullenix v. Luna, 577 U.S. 7, 11–12, 136 S. Ct. 305, 308, 193 L. Ed. 2d 255 (2015)(bolded for emphasis). The Iowa Supreme Court has held:

> Qualified immunity operates to immunize [public officials] from liability where "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known," and in doing so "balances two important 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 responsibly." *Pearson,* 555 U.S. at 231. Whether a right is clearly established depends upon

> "whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Saucier,* 533 U.S. at 202.
>
> "Officials are not liable for bad guesses in gray areas; they are liable for transgressing bright lines." *Davis v. Hall,* 375 F.3d 703, 712 (8th Cir.2004). In other words, qualified immunity protects [public officials] from liability when a reasonable officer in their position would have believed their actions to be proper.

Samsara v. Squires, 881 N.W.2d 470, *8 (Iowa Ct. App. 2016).

The factual basis of Plaintiffs' claim is that minor Plaintiff was assaulted by another student in "woods" class. The Petition acknowledges that the teacher was present in the class. (D0002, Petition p. 2 (10/17/23)). But Plaintiffs allege there was some greater need to supervise, protect the student, ensure safety, assure medical attention, and inform the parent. (D0002, Petition p. 6 (10/17/23)). The question remains what more was required that is so clearly established under Iowa law that Appellees should have done providing supervision, medical care, or notification requirements? These requirements must be clearly established that it is placed beyond debate, that only the plainly incompetent would neglect to do so. Yet, Plaintiffs do not cite to any case law tending to show that such alleged requirements, as they argue, were clearly established. Nor is there even a bare bones allegation in the Petition stating their alleged requirements are clearly established. Accordingly, as held by the district court:

> There is nothing referenced or cited that places the district officials in a position to have knowledge of any such obligation of heightened scrutiny for Minor Doe while in the presence of the other minor. Nor are there any citations as to a law, administrative code, or constitutional requirement for a specific level of protection, provision of medical attention, or disclosure of information relating to the other minor.

(D0036, Dismissal Order p. 5 (4/8/24)).

Plaintiffs have failed as a matter of law to satisfy the heightened pleading requirement, and the legislature mandates dismissal.

III. THE DISTRICT COURT DID NOT ERR IN DISMISSING PLAINTIFFS' NEGLIGENCE CLAIM.

It is unclear to the undersigned why there are separate sections for issue two and issue three. Issue two discusses dismissal of all claims on the basis of Iowa Code 670.4A, which would include Plaintiffs' negligence claims. Plaintiffs' arguments in their brief in support of issue three include allegations that the district court read paragraph 40 of their Petition in isolation, when they believe the Petition when read in its entirety meets the pleading requirements. The district court's order clearly indicates Plaintiffs did not meet the pleading requirements, which has already been discussed in the section above.

Plaintiffs also argue that pursuant to *Ambassador Press, Inc. v. Durst Image Tech. U.S., LLC*, 949 F.3d 417 (8th Cir. 2020), all that is required is for a plaintiff to plead sufficient factual matter to state a claim to relief that is plausible on its face.

Plaintiffs further argue that the Iowa Supreme Court in *Nahas* cited the holding in *Ambassador* with approval. To be clear, the only citation the Iowa Supreme Court made to *Ambassador* in *Nahas* was in support of the legal position that "[a]llegations that are vague or conclusory are insufficient." *Nahas v. Polk Cnty.*, 991 N.W.2d 770, 781 (Iowa 2023). The 8th Circuit in *Ambassador* was not considering any heightened pleading requirement under Iowa Code 670.4A, specifically the requirement that the law must be clearly established.

IV. THE DISTRICT COURT DID NOT ERR IN DISMISSING PLAINTIFFS' BREACH OF FIDUCIARY DUTY CLAIM.

A. Preservation of error.

Plaintiffs do not provide a separate section indicating error preservation on their fourth issue. However, dismissal on the basis of Iowa Code 670.4A has been preserved because the issue has been raised in Appellees' motion to dismiss and ruled on by the district court.

B. Scope and Standard of review.

Plaintiffs do not provide a separate section indicating the standard and scope of review on their fourth issue. However, it is the same as above and Defendants agree that on appeal, the Court reviews a district court's ruling on a motion to dismiss for correction of errors at law. *Hedlund v. State*, 875 N.W.2d 720, 724 (Iowa 2016). "For purposes of reviewing a ruling on a motion to dismiss, we accept as true the

petition's well-pleaded factual allegations, but not its legal conclusions." *Id*. quoting *Shumate v. Drake Univ.,* 846 N.W.2d 503, 507 (Iowa 2014).

C. Argument.

As an initial matter, Plaintiffs' breach of fiduciary duty claim was dismissed on the basis Plaintiffs failed to identify that the law was clearly established under Iowa Code 670.4A, which has already been addressed above in brief point one. In addition, Plaintiffs breach of fiduciary duty claim was also dismissed on the basis Plaintiffs failed to meet the heightened pleading requirement that the Plaintiffs state with particularity the circumstances constituting the violation and pleading "a plausible violation" of the law.

Under Iowa law, "[a] fiduciary relationship exists between two persons 'when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation." *Vos v. Farm Bureau Life Ins. Co*., 667 N.W.2d 36, 52 (Iowa 2003). Factors used to determine whether a fiduciary relationship exists include "the acting of one person for another; the having and the exercising of influence over one person by another; the reposing of confidence by one person in another; the dominance of one person by another; the inequality of the parties; and the dependence of one person upon another." *Id*. 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 when there is a reposing of faith, confidence and trust, and the placing of reliance by one upon the judgment and advice of another. *Weltzin v. Cobank, ACB*, 633 N.W.2d 290, 294 (Iowa 2001). A few examples of fiduciary relationships include "an attorney and client, guardian and ward, principal and agent, and executor and heir." *Vos*, 667 N.W.2d at 52.

In *Lindemulder v. Davis County Community School Dist.*, the Court of Appeals held that the general relationship between a school and its employees and students is insufficient to generate a fiduciary relationship. *Lindemulder v. Davis County Community School Dist.*, 2016 WL 1679835 at * 6 (Iowa Ct. App. 2016). This is because the general relationship between a school and its students does not give the school "greater influence or dominance over [the particular student], or lead [the particular student] to depend on the School District to a degree greater than any other student, as is required for the finding of a fiduciary relationship." *Id.*

Plaintiffs argue in their brief that whether a fiduciary relationship exists is a fact question. However, this argument fails to acknowledge their heightened pleading requirements. Plaintiffs' Petition simply indicates the general relationship between all students and a district. Plaintiffs plead no facts as to why or how there was a special relationship between Minor Doe and the Appellees giving rise to a fiduciary relationship. The district court held accordingly, finding there were no

assertions of any special relationship, confidence, faith, or trust to create a fiduciary relationship. (D0036, Dismissal Order p, 5-6 (4/8/24)). In their resistance to the motion to dismiss, Plaintiffs argued the school board policies created a special relationship. But those simply apply to all students. Plaintiffs in their brief now argue Defendants were in a position of trust, dominance and control, but still fail to argue any facts other than these vague, conclusory statements. Iowa law does not recognize a fiduciary relationship due to the general relationship between a student and a district. There must be something more to establish that kind of relationship, which Plaintiffs failed to plead, and continue to fail to identify. Accordingly, Plaintiffs have failed to meet their heightened pleading requirement under Iowa Code 670.4A.

CONCLUSION

The district court's dismissal should be affirmed as "Doe" petitions are not permitted under our rules and all claims should be dismissed on the basis Plaintiffs have failed to comply with the heightened pleading requirements of Iowa Code 670.4A

REQUEST FOR SUBMISSION WITHOUT ORAL ARGUMENT

Defendants respectfully request submission without oral argument on this matter.

Respectfully Submitted,

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ATTORNEY CERTIFICATE OF COST

The undersigned certifies that the cost of printing and duplicating paper copies of briefs in final form was $0.00.

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CERTIFICATE OF COMPLIANCE

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 in font size 14 of Times New Roman type style.

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this entire brief, including portions otherwise excludable for purposes of word count, contains only **4,955** words.

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SWISHER & COHRT, PLC

CERTIFICATE OF FILING AND SERVICE

I, Dustin T. Zeschke, hereby certify that I have filed the attached Proof Brief of Defendants-Appellees, by electronically filing a copy with the Electronic Document Management System on the 15th day of July, 2024, which will electronically serve the parties and attorneys of record.

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