IN THE SUPREME COURT OF IOWA

No. 24-1351

District Court No. CVCV066682

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

Plaintiffs-Appellees,

v.

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

Defendants-Appellants.

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

BRIEF FOR APPELLANTS

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ROUTING STATEMENT

This appeal should be retained by the Iowa Supreme Court as it presents a substantial issue of first impression which is of broad public importance requiring prompt and ultimate determination by the high court. Iowa R. App. P. 6.1101(2)(c), (d). In 2021, the Iowa General Assembly passed Senate File 342, which, in part, added Section 670.4A to the Iowa Municipal Tort Claims Act ("IMTCA"), Iowa Code Chapter 670. Section 670.4 codified qualified immunity for public employees and officers and set forth a specific heightened pleading requirement for claims brought under the IMTCA. The enactment of the new law has resulted in a newfound need for district courts to determine what claims fall under the IMTCA as to be subject to this new heightened pleading requirement. In particular, district courts throughout the state have been repeatedly tasked with determining whether the IMTCA, including its heightened pleading requirement, applies to Iowa Civil Rights Act ("ICRA") claims, resulting in conflicting holdings.

In this case, Plaintiffs have brought several ICRA claims against Defendants. Resolution of these claims requires the determination of whether those claims are subject to the IMTCA and its heightened pleading requirement. This is an issue which the Iowa Supreme Court has yet to address. This case thus presents a prime opportunity for the Court to rule on this issue and save future inconsistent interpretation and application.

This case is being appealed at the same time as a separate, similar matter, *Hall v. Southeast Polk Community School District, et. al.*, LACL157986, which also deals with alleged student on student harassment within the Southeast Polk Community School District and is being handled by the same plaintiffs' and defense counsel. *Fogle* and *Hall* present the identical issue of the IMTCA's application to ICRA claims, such that judicial efficiency may be served by consolidating the appeals to some degree.

NATURE OF THE CASE

Plaintiffs Benjamin and Amanda Fogle, on behalf of their minor child P.F., filed an Amended Petition at Law and Jury Demand alleging eight counts relating to P.F.'s alleged treatment while attending Clay Elementary School as a fifth-grade student. Plaintiffs' action includes multiple Iowa Civil Rights Act claims. Defendants filed a Motion for Partial Dismissal, arguing, in part, that Plaintiffs' ICRA claims, Plaintiffs' negligent training and supervision claim, and all of

Plaintiffs' claims as asserted against Defendant Halupnik individually were not sufficiently pled under Iowa Code Section 670.4A(3), requiring dismissal with prejudice. The Motion for Partial Dismissal was denied as to the ICRA claims based on the District Court's conclusion that the IMTCA's heightened pleading standard does not apply to ICRA claims.

Defendants appeal the district court's determination that the IMTCA, including Section 670.4A and its heightened pleading requirement, is not applicable to ICRA claims. Defendants additionally appeal denial of their Motion for Partial Dismissal as to Plaintiffs' failure to sufficiently plead, under the heightened pleading standard, their negligent training and supervision claim against all Defendants and their breach of fiduciary duty and negligence claims against Defendant Halupnik.

STATEMENT OF THE FACTS

On January 24, 2024, Plaintiffs Benjamin and Amanda Fogle, on behalf of their minor child P.F., filed a Petition against the above-captioned Defendants asserting claims relating to P.F.'s alleged treatment while attending Southeast Polk Community School District's Clay Elementary School. (See generally D0004, Pet. (1/24/2024)). On March 18, 2024, Defendants filed a motion for dismissal of several of Plaintiffs' claims. (*See generally* D0007, Mot. for Part. Dismissal (3/18/2024)). On May 16, 2024, prior to hearing on the motion, Plaintiffs filed an

unresisted motion for leave of court to amend their Petition with a proposed Amended Petition. (*See generally* D0017, Mot. for Leave to Amend, Am. Pet. (5/16/2024)). That same day, the Court granted Plaintiffs' motion and adopted Plaintiffs' Amended Petition. (*See generally* D0018, Order Granting Mot. for Leave to Amend (5/16/2024)).

P.F. attended Clay Elementary School as a fifth-grade student during the 2022-2023 school year.[1] (Attachment to D0017, Am. Pet. at ¶¶ 1, 14, 16 (5/16/2024)). P.F. is male. (*See* Attachment to D0017 at ¶¶ 1, 14, 16). Plaintiffs' Amended Petition alleges that, during the school year, P.F. was bullied and harassed by other students on the basis of his sex. (*See* Attachment to D0017 at ¶¶ 16–18). Specifically, Plaintiffs allege other students "verbally harass[ed] P.F. regarding his sexual orientation based upon his clothing and social friend group." (Attachment to D0017 at ¶¶ 16). Plaintiffs allege that this verbal harassment escalated to physical assaults on four occasions by another male student within P.F.'s fifth grade class, who allegedly: (1) "bit P.F. several times in his genital area" while waiting in the lunch line; (2) "put his mouth over P.F.'s genital area" at recess; (3) approached P.F. from behind and made "sexually explicit gestures to

[1] As this case is at the initial pleading stage, the facts presented to the Court are those included in Plaintiffs' Amended Petition. Defendants dispute most of the factual recitation therein but recognize the state of the record and the presumption that all facts set forth in Plaintiffs' Amended Petition are presumed true for purposes of evaluating Defendants' Motion for Partial Dismissal. *See Haupt v. Miller*, 514 N.W.2d 905, 907 (Iowa 1994).

P.F.'s backside"; and (4) grabbed "P.F.'s genital area" while climbing a ladder on the playground. (Attachment to D0017 at ¶¶ 20, 25–26, 33–34, 37).

Plaintiffs contend they notified the School District of the alleged bullying but that the School District failed to take measures to address the bullying and protect P.F. (Attachment to D0017 at ¶¶ 19, 44). Plaintiffs allege that teachers Danielle Goodnight[2] and Defendant Carla Rivas improperly characterized the first two events as accidents; that Rivas blamed P.F. for the fourth incident because "it was P.F.'s fault for standing to [sic] close to the ladder;" that despite Defendant Principal Andrea Bruns, Defendant Rivas and Danielle Goodnight knowing about the conduct and the School District implementing a safety plan to separate the two students, Defendants failed to comply with the safety plan and did not adequately separate the students; and that Defendants failed to properly notify Plaintiffs regarding continued incidents. (Attachment to D0017 at ¶¶ 22–24, 27, 30–31, 35–36, 38–39, 45, 48).

Plaintiffs' eight-count Amended Petition named the Southeast Polk Community School District, Dirk Halupnik (Superintendent), Andrea Bruns (Principal), and Carla Rivas (teacher). (*See* Attachment to D0017 at p. 1). Plaintiffs set forth claims of (1) bullying; (2) sex discrimination; (3) sex harassment; (4) aiding and abetting; (5) breach of fiduciary duty; (6) negligence; (7) negligent

[2] Goodnight was not named in Plaintiffs' lawsuit.

training and supervision; and (8) respondeat superior. (*See* Attachment to D0017 at ¶¶ 51–151).

Defendants filed a Motion for Partial Dismissal. (*See generally* D0019, Mot. for Part. Dismissal of Am. Pet. (5/23/2024)). The motion sought dismissal of Plaintiffs' bullying claim, sex discrimination claim, sex harassment claim, aiding and abetting claim, and negligent training and supervision claim for failing to sufficiently plead such claims as to meet the heightened pleading standard required by Iowa Code Section 670.4A(3). (*See* D0029 at ¶¶ 30, 38–51). The motion alternatively sought dismissal of Plaintiffs' bullying claim, aiding and abetting claim, and respondeat superior claim for failing to state claims upon which relief could be granted. (*See* D0029 at ¶¶ 19–29, 31–37). Defendants' motion also argued Defendant Halupnik should be dismissed entirely because none of the claims asserted against him individually met Section 670.4A's heightened pleading requirement. (*See* D0029 at ¶¶ 53–55). The district court dismissed Plaintiffs' bullying claim, but otherwise denied the motion. (D0025, Ruling on Mot. for Part. Dismissal of Am. Pet. at p. 13 (8/8/2024)). In rejecting the motion to dismiss as to Plaintiffs' discrimination and harassment claims, the district court held the IMTCA and its heightened pleading requirement do not apply to Iowa Civil Right Act claims. (*See* D0025 at p. 3–5). The district court also found Plaintiffs' negligent

training and supervision claim and claims against Halupnik individually met the heightened pleading standard. (*See* D0025 at p. 9–12).

Defendants sought an appeal as a matter of right under Iowa Code Section 670.4A(4) for denial of qualified immunity.

ARGUMENT

I. The Iowa Municipal Tort Claims Act and its Provisions under Iowa Code Section 670.4A, including the Heightened Pleading Requirement, Apply to Iowa Civil Rights Act Claims.

A. Standard of Review & Issue Preservation.

This Court reviews a district court's ruling on a motion to dismiss for correction of errors at law. *Iowa Individual Health Ben. Reinsurance Ass'n v. State Univ. of Iowa*, 876 N.W.2d 800, 804 (Iowa 2016). Error was preserved on the issue of the applicability of the IMTCA and its heightened pleading standard to ICRA claims because the issue was raised and decided by the district court in connection with Defendants' Motion for Partial Dismissal. (*See generally* D0019; D0022, Reply Brief (6/7/2024); D0025; *see also Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is 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.")).

B. The District Court Erred in Holding that the Iowa Municipal Tort Claims Act and its Provisions under Iowa Code Section 670.4A, including the Heightened Pleading Requirement, Do Not Apply to Iowa Civil Rights Act Claims.

In 1967, the Iowa General Assembly adopted the Iowa Municipal Tort Claims Act ("IMTCA"), which sets parameters and limitations on lawsuits against municipalities and their officers and employees. *Harryman v. Hayles*, 257 N.W.2d 631, 633 (Iowa 1977); *see also Johnson v. Humboldt Cty.*, 913 N.W.2d 256, 264 (Iowa 2018). The IMTCA determines when and how municipalities, and their officers and employees, are subject to suit. *Rivera v. Woodward Resource Ctr.*, 830 N.W.2d 724, 727 (Iowa 2013) (private citizens may sue a municipality and its employees "only in the manner and to the extent to which consent has been given by the legislature."). In 2021, the Iowa legislature passed, and the governor signed, Senate File 342, which among other things, added Section 670.4A to the Iowa Code. 2021 IA. Legis. Serv. Ch. 183 (S.F. 342). This new section establishes a qualified immunity defense to claims brought under Chapter 670 and sets forth a heightened pleading requirement for claims asserted against municipalities and their officers and employees. Iowa Code § 670.4A(1), (3).

The district court erred in holding that the IMTCA, and its newly enacted heightened pleading requirement, does not apply to Plaintiffs' Iowa Civil Rights Act claims. By its express terms, the IMTCA makes a municipality[3] liable for its torts and those of its officers and employees, acting within the scope of their

[3] The IMTCA includes school districts in its definition of "municipality." Iowa Code § 670.1(2).

employment or duties. Iowa Code § 670.2. The IMTCA broadly defines "Tort" to mean:

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

Iowa Code § 670.1(4) (emphasis added). The Iowa Civil Rights Act provides statutory rights to individuals that protect them from discrimination and harassment on the basis of protected class status. *See* Iowa Code § 216.9. Plaintiffs allege a "denial or impairment" of P.F.'s rights under the ICRA. Thus, in accordance with the plain language of the statute and the legislature's definition of "tort" therein, the IMTCA encompasses Plaintiffs' ICRA claims.

In holding that the IMTCA did not apply, the district court failed to properly consider the definition of tort as provided by the legislature in the statute. "In construing legislative intent, [courts must] look first to see if the legislature has defined the words it uses." *State v. Velez*, 829 N.W.2d 572, 580 (Iowa 2013); *see also Dingman v. City of Council Bluffs*, 90 N.W.2d 742, 746 (Iowa 1958) ("We have long recognized the rule that where the language of the statute is plain and unambiguous and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself . . . If the language given its plain and rational meaning is precise and

free from ambiguity, no more is necessary than to apply the words used in their natural and ordinary sense in connection with the subject considered."). Here, the legislature chose a definition of tort to include claims alleging a denial or impairment of any right under *any statute*. *See* Iowa Code § 670.1(4). ICRA claims are clearly embraced by this unambiguous definition.

Ignoring the plain language of the statute, the district court instead found that the ICRA's preemptive nature worked to preclude application of the IMTCA, stating "Iowa courts have . . . found that there is a difference between a tort claim and a claim brought pursuant to the ICRA . . . . the exclusive nature of the remedy under the ICRA prohibits the bringing of a common-law tort action based on the same act that formed the basis for the ICRA claim." (D0025 at p. 4). This is an improper entwining of ICRA preemption with IMTCA applicability. Defendants do not dispute that the ICRA generally preempts separate claims which are premised upon the same discriminatory conduct for which the ICRA protects and which are not "separate and independent" causes of action based on different conduct. *See Greenland v. Fairtron Corp.*, 500 N.W.2d 36, 38 (Iowa 1993). But such preemption is not pertinent to the application of the IMTCA because the IMTCA does not create new or distinct causes of action and, therefore, no action can arise solely from or under the IMTCA as to be subject to preemption. *See Sutton v. Council Bluffs Water Works*, 990 N.W.2d 795, 797 (Iowa 2023) ("The [IMTCA] 'does not

expand any existing cause of action or create any new cause of action against a municipality.'") (quoting Iowa Code § 670.4(3)). Rather, a claim subject to the IMTCA must arise from some other source separate from the IMTCA. *See Venckus v. City of Iowa City*, 930 N.W.2d 792, 809–10 (Iowa 2019) ("The substance of any legal claim asserted under the IMTCA must arise from some source—common law, statute, or constitution—independent of the IMTCA."). The IMTCA determines when and how municipalities and their employees and officers are subject to suit; it does not provide substantive rights. Because the IMTCA does not provide any substantive rights or separate causes of action, Section 670.4A(3)'s requirement that a claim be brought "under this chapter" simply means the IMTCA must apply to the underlying claim being asserted. *See* Iowa Code § 670.4A(3). In short, the ICRA does not preempt IMTCA application because the IMTCA does not create any new cause of action; it instead applies to existing claims.

The district court relied on a non-binding opinion, *Dickey v. Mahaska Health Partnership*, to support its holding. 705 F. Supp. 3d 883 (S.D. Iowa 2023); *see* D0025 at p. 5). In *Dickey*, the Court found the IMTCA's heightened pleading requirement did not apply to ICRA claims,[4] strongly relying on the assertion that

[4] It is uncertain why the court in *Dickey* analyzed the issue of the heightened pleading standard's applicability to the plaintiff's ICRA claims given that the claims were still required to meet the federal pleading standard, which the Iowa Supreme Court has found equivalent to Section 670.4A's heightened pleading standard. *Nahas v. Polk County*, 991 N.W.2d 770, 781 (Iowa 2023).

the legislature's use of the language "torts" in the Act, including in its title, "weighed heavily" against application of the IMTCA to ICRA claims; claims which the court asserted were not "torts" under the word's traditional definition. *Id.* at 891–93. The analysis in *Dickey* is faulty in three respects.

First, the court in *Dickey* ignored the definition of tort given by the legislature within the IMTCA, instead speculating that the legislature actually meant a more traditional version of the word. *Id.* at 891. However, "[o]rdinarily, where the legislature defines its own terms and meanings in a statute, the common law and dictionary definitions which may not coincide with the legislative definition must yield to the language of the legislature." *State v. Steenhoek*, 182 N.W.2d 377, 379 (Iowa 1970). "The court does not speculate as to the probable legislative intent apart from the words used in the statute." *State v. Iowa Dist. Ct. For Monroe Cnty.*, 630 N.W.2d 778, 781 (Iowa 2001); *see State v. Welton,* 300 N.W.2d 157, 160 (Iowa 1981) ("when a statute is plain and its meaning is clear, courts are not permitted to search for meaning beyond its expressed terms"); *see also T & K Roofing Co. v. Iowa Dep't of Educ.,* 593 N.W.2d 159, 163 (Iowa 1999) (the title of a statute cannot limit the plain meaning of the text). Thus, the court's analysis was improper.

Second, while statutory discrimination claims have not been expressly described as a "tort" by an Iowa court, intentional discrimination is certainly

tortious in nature, with the statute creating the duty via legislation not to discriminate based on certain protected characteristics. It is for this reason that statutory discrimination claims are viewed as comparable to torts. *See United States v. Burke*, 504 U.S. 229, 250 (1992) (noting statutory causes of action for discrimination are viewed analogous to tort suits); *Curtis v. Loether*, 415 U.S. 189, 195 (1974) (recognizing action under discrimination statute sounded in tort); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 264 (1989) (O'Connor, J., concurring) (referring to Title VII as creating an employment "tort"); *see also Baker v. Weyerhaeuser Co.*, 903 F.2d 1342 (10th Cir. 1990) (treating sexual harassment as a tort); *Satanic Temple, Inc. v. Lamar Media Corp.*, No. 5:22-CV-05033, 2022 WL 17490499, at *5 (W.D. Ark. Dec. 6, 2022) (finding religious discrimination claim sounded in tort).

Third, the Iowa Supreme Court has not limited application of the IMTCA's heightened pleading requirement to statutory claims residing under the traditional definition of tort. Rather, the Court in *Nahas v. Polk County* applied the heightened pleading standard to claims alleging violations of Iowa's open meeting and open records laws, Iowa Code Chapters 21 and 22 respectively. 991 N.W.2d 770, 783 (Iowa 2023). Such claims can hardly be labeled as "torts" under the traditional meaning of the word and certainly are less tortious in nature than claims of discrimination and harassment. Yet, the Iowa Supreme Court applied the IMTCA's

heightened pleading standard to the two claims because the plaintiff alleged an impairment of a statutory right, which fit within the IMTCA's definition of "tort". *See id.*

The application of the IMTCA to the ICRA is also not novel as the district court claimed. (*See* D0025 at p. 4). *In Peters v. City of Council Bluffs*, the court recognized the plaintiff's ICRA claims were subject to the provisions of the IMTCA. No. 1:07-cv-00053, 2009 WL 6305733 (S.D. Iowa May 5, 2009). The court determined the IMTCA's discretionary function immunity did not apply to claims under the ICRA because the IMTCA expressly exempted that particular immunity when a more specific statute controlled liability. *Id.* at *7; *see* Iowa Code § 670.4(1) ("As to any of the following claims, a municipality shall be liable only to the extent liability may be imposed by the express statute dealing with such claims and, in the absence of such express statute, the municipality shall be immune from liability: . . . ."). The court's analysis of Section 670.4 of the IMTCA and whether the discretionary function immunity, in particular, applied to the plaintiff's ICRA claims under that section indicates an understanding that the IMTCA encompasses ICRA claims because such an analysis would be unnecessary if the IMTCA, as a whole, did not apply in the first place.

At the time the IMTCA was enacted, the ICRA was already in existence. *See* 1965 Iowa Acts Ch. 121. Yet, aware of the ICRA, the legislature chose to use an

expansive definition of "tort" which, by its language, encompasses ICRA claims. *See Ronnfeldt v. Shelby County Chris A. Myrtue Memorial Hospital*, 984 N.W.2d 418, 426 (Iowa 2023) (it is assumed when the legislature enacts statutes it is aware of the state of the law). If the legislature had intended for claims under the ICRA to be exempt from application of the IMTCA, it would have provided a less all-encompassing definition of tort, or otherwise would have provided the exemption of ICRA claims within the statute. But the legislature did neither. Although the ICRA provides for certain administrative requirements, such mandates are still applicable to claims against municipalities and not inconsistent with the IMTCA's requirements.

The statutory language is clear. The definition of tort claims upon which the IMTCA applies includes claims brought pursuant to the IMTCA. For the reasons set forth, the IMTCA and its qualified immunity provision and heightened pleading requirement apply to Plaintiffs' ICRA claims. The district court erred in finding otherwise.

II. Plaintiffs' Negligent Training and Supervision Claim as Asserted Against All Defendants and Plaintiffs' Breach of Fiduciary Duty and Negligence Claims as Asserted Against Defendant Halupnik Individually Are Not Sufficiently Pled as to Meet the Heightened Pleading Requirement Under Iowa Code Section 670.4A(3).

A. Standard of Review & Issue Preservation.

This Court reviews a district court's ruling on a motion to dismiss for correction of errors at law. *Iowa Individual Health Ben. Reinsurance Ass'n v. State Univ. of Iowa*, 876 N.W.2d 800, 804 (Iowa 2016). Error was preserved on the issue of the sufficiency of Plaintiffs' negligent training and supervision, breach of fiduciary duty, and negligence claims under the heightened pleading standard because the issues were raised and decided by the district court in connection with Defendants' Motion for Partial Dismissal. (*See generally* D0019; D0022; D0025; *see also Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is 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.")).

B. The Requirements of the Heightened Pleading Standard

The heightened pleading requirement under Iowa Code Section 670.4A(3) has three requirements:

> First, a plaintiff alleging a violation of the law must state with particularity the circumstances constituting the violation. Second, the statute requires the plaintiff to plead a plausible violation of the law. Third, the statute requires the petition plead that the law was clearly established at the time of the alleged violation.

Nahas, 991 N.W.2d at 779 (citing Iowa Code § 670.4A(3)). In *Nahas*, the Iowa Supreme Court interpreted the meaning of "particularity" and "plausibility" to require the same pleading standard as the Federal Rules of Civil Procedure. *Id.* at 781. "[P]articularity 'requires plaintiffs to plead who, what, when, where, and

how.'" *Id.* (quoting *Summerhill v. Terminix, Inc.*, 637 N.W.2d 877, 880 (8th Cir. 2011)). "Allegations that are vague or conclusory are insufficient." *Id.* A party's pleading of a fact "on information and belief" fails to satisfy the particularity standard unless the allegation "sets forth the source of the information and the reasons for the belief." *Id.* (quotation omitted). Regarding the "plausibility" requirement, the Court in *Nahas* explained:

> [A]n allegation is plausible insofar as it allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Plausibility determinations are highly context-specific, and they demand the reviewing court to draw on its judicial experience and common sense. Plausibility is not a probability requirement because plausibility demands more than a sheer possibility that a defendant has acted unlawfully. For example, a complaint that pleads facts that are merely consistent with a defendant's liability does not satisfy the plausibility standard. Likewise, a plaintiff is not entitled to relief if the court cannot infer more than the mere possibility of misconduct. In short, plaintiffs need to allege sufficient facts to show the defendants are liable for specific causes of action.

Id. at 781–82 (internal quotations and citations omitted).

C. Plaintiffs' Negligent Training and Supervision Claim is Not Sufficiently Pled Under the Heightened Pleading Standard

To establish a negligent supervision claim, a plaintiff must prove: (1) the employer knew or in the exercise of ordinary care should have known of its employee's unfitness at the time the employee engaged in wrongful or tortious conduct; (2) through the negligent supervision of the employee, the employee's incompetence, unfitness, or dangerous characteristics proximately caused injuries

to the plaintiff; and (3) there is some employment or agency relationship between the employee and the defendant employer. *Bandstra v. Covenant Reformed Church*, 913 N.W.2d 19, 41–42 (Iowa 2018) (citing *Estate of Harris v. Papa John's Pizza*, 679 N.W.2d 673, 680 (Iowa 2004)). "Negligent supervision is only actionable when 'the conduct that proper supervision . . . would have avoided is . . . actionable against the employee." *McCoy v. Thomas L. Cardella & Associates*, 992 N.W.2d 223, 228 (Iowa 2023). Relatedly, to prove negligent training, "[i]t is not enough to show the mistakes or negligent conduct of the employee; rather, to recover against the employer under a negligent training theory, evidence of a specific standard of care for training and its breach is required." *Alcala v. Marriott Int'l, Inc.*, 880 N.W.2d 699, 709 (Iowa 2016). Plaintiffs' fail to sufficiently plead their negligent training and supervision claim as to meet the heightened pleading standard.[5]

Count VII of Plaintiffs' Amended Petition states, in relevant part:

> Defendants breached their duty in the negligent and reckless training and supervision of Defendant Ms. Rivas in several ways, including, but not limited to:
>
> a. In failing to provide for P.F.'s welfare by failing to properly investigate claims of bullying;

[5] Plaintiffs do not dispute that the IMTCA's heightened pleading requirement applies to their negligent training and supervision claim. (D0021, Resistance at p. 29 (6/3/2024)).

b. In failing to provide for P.F.'s welfare by failing to respond to the needs of P.F in a timely and adequate manner;

c. In failing to provide for P.F.'s safety from bullying directed towards him at Clay Elementary School and failed to prevent harm to P.F.'s physical and mental wellbeing;

d. In failing to provide adequate support for P.F. following the numerous reports of bullying;

e. In failing to prevent contact between P.F. and his bully; and

f. In failing to provide a safe and secure learning environment for P.F.

(Attachment to D0017 at ¶ 143).

The Amended Petition fails to allege with any particularity what training or supervision was specifically lacking which would have prevented the alleged harassment. Further, without properly identifying the specific training or supervision lacking, Plaintiffs are unable to and do not allege how any absence or insufficiency of supervision or training was the proximate cause of P.F.'s alleged injuries. While Plaintiffs list several ways in which Defendants allegedly breached their duty as to the training and supervision of Rivas, none of the allegations actually support that claim. Instead, the allegations assert various ways in which Defendants allegedly failed to protect P.F. from the underlying *student* behavior. (Attachment to D0017 Am. Pet. ¶ 143). These allegations do not identify how

Defendants failed to adequately supervise or train Rivas, nor how such unspecified lack of supervision or training was a proximate cause of P.F.'s alleged injuries.

Plaintiffs allegations are insufficient to support a plausible negligent training and supervision claim under the heightened pleading standard. As such, the district court's ruling should be reversed and the claim dismissed with prejudice.

D. Plaintiffs' Breach of Fiduciary Duty and Negligence Claims as Asserted Against Defendant Halupnik are Not Sufficiently Pled Under the Heightened Pleading Requirement

In their motion, Defendants argued all of Plaintiffs' claims asserted against Defendants Halupnik failed to meet the heightened pleading standard. (D0019 at ¶¶ 53–55). Having found the IMTCA did not apply to Plaintiffs' ICRA claims, the district court did not apply the heightened pleading standard to those claims. Additionally, the district court dismissed Plaintiffs' bullying claim for failure to state a claim. (D0025 at p. 13). Defendants have already addressed the insufficiency of Plaintiffs' negligent training and supervision claim, generally, in Part II.C. of this Brief. In addition to that claim, Plaintiffs' other two non-ICRA claims asserted against Superintendent Halupnik individually—breach of fiduciary duty and negligence—fail to meet the heightened pleading requirement.[6]

"A fiduciary relationship is one in which a person is under a duty to act for the benefit of another as to matters within the scope of the relationship." *Stotts v.*

[6] Plaintiffs did not dispute the heightened pleading requirement applied to their breach of fiduciary duty and negligence claims. (D0021 at p. 37).

Eveleth, 688 N.W.2d 803, 811 (2004). "A 'fiduciary relation' arises whenever confidence is reposed on one side, and domination and influence results on the other; the relation can be legal, social, domestic, or merely personal." *Lindemulder v. Davis County Comm. Sch. Dist.*, 884 N.W.2d 222 (Table), at *5 (Iowa Ct. App. 2016) (quoting *Weltzin v. Cobank, ACB*, 633 N.W.2d 290, 294 (Iowa 2001) (citation omitted)). "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." *Id.* (quoting *Weltzin*, 633 N.W.2d at 294). In the school setting, a special relationship must be held with the student outside of the general relationship the school district has with all of its students. *See id.* at *6. Plaintiffs allege Superintendent Halupnik breached a fiduciary duty by failing to adequately prevent, respond and investigate the bullying P.F. allegedly suffered. (*See* Attachment to D0017 at ¶¶ 172–181).

"An actionable claim of negligence requires the existence of a duty to conform to a standard of conduct to protect others, a failure to conform to that standard, proximate cause, and damages." *Thompson v. Kaczinski*, 774 N.W.2d 829, 834 (Iowa 2009). "[S]chool districts have a duty of reasonable care in providing for the safety of students from the harmful actions of fellow students, a teacher, or other third persons." *Brokaw v. Winfield-Mt. Union Comm. Sch. Dist.*, 788 N.W.2d 386, 390–91 (Iowa 2010). "That duty, however, is limited by 'what

risks are foreseeable.'" *Id.* (citations omitted). "Wrongful activities will only be foreseeable 'if the district knew or in the exercise of reasonable care should have known of the risk that resulted in the occurrence.'" *Godar v. Edwards*, 588 N.W.2d 701, 708 (Iowa 1999) (citation omitted). "A defendant will not be held liable for negligence if he could not reasonably foresee that his conduct would result in an injury or if his conduct was reasonable in light of what he would anticipate." *Id.* The Amended Petition alleges Superintendent Halupnik knew or reasonably should have known about the alleged bullying P.F. was suffering and failed to act reasonably in responding to it. (*See* Attachment to D0017 at ¶¶ 182–198).

Plaintiffs fail to plead sufficient facts showing Defendant Halupnik is individually liable for Plaintiffs' breach of fiduciary duty and negligence claims. Plaintiffs' Amended Petition is almost entirely lacking in reference to Defendant Halupnik, and certainly does not provide sufficient factual support to support a plausible claim that he breached any duty owed to P.F. The only factual allegations concerning Halupnik are that he is the superintendent of the School District. (D0017 at ¶ 5). There are no particular facts demonstrating that Superintendent Halupnik was aware or should have known about the underlying conduct during the time it was occurring or that he was personally involved in any of the underlying incidents. Notably, Plaintiffs do not plead particular facts showing that Superintendent Halupnik personally knew or should have known about the alleged

bullying and harassment, how he knew or should have known about it, when he learned about it, or what actions he did or did not take in response to it. *See Nahas*, 991 N.W.2d at 781 (the heightened pleading requirement "requires plaintiffs to plead the who, what, when, where, and how."). Any allegations regarding Superintendent Halupnik' s knowledge are wholly conclusory without any facts underlying those assertions. *See id.* ("Allegations that are vague or conclusory are insufficient"). Additionally, none of Plaintiffs' allegations demonstrate that Superintendent Halupnik had any special relationship with P.F., apart from any other student, as to demonstrate the existence of a fiduciary relationship.

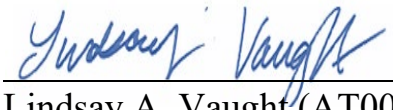
Defendant Halupnik has apparently been named in this action simply on the basis of his position as superintendent of the School District. But the School District, itself, is already named in this lawsuit. *See Luong v. House*, 669 F. Supp. 3d 735, 746 (S.D. Iowa 2023) ("Suits against officers in their official capacities are merely suits against the officer's employer."). Halupnik is not permitted to be held *individually* liable for actions within the School District simply due to his status as superintendent. *Haupt v. Miller*, 514 N.W.2d 905, 909 (Iowa 1993) (A director, officer, employee, or other agent of a corporation may be held personally liable only if they personally take part in the commission of the tort against a third party). Plaintiffs' Amended Petition does not plead facts sufficient to meet the heightened pleading requirement applicable to Plaintiffs' fiduciary duty and negligence claims

as asserted against Defendant Halupnik. As such, the district court erred in failing to dismiss those claims.

REQUEST FOR ORAL ARGUMENT

Defendants respectfully request to be heard in oral argument.

Respectfully Submitted,



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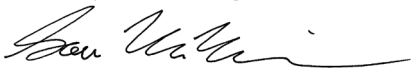

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CERTIFICATE OF FILING/SERVICE

I hereby certify that on November 19, 2024, I electronically filed the foregoing Brief of Defendants-Appellants with the Clerk of the Supreme Court by using the Iowa Electronic Document Management System, which will send a notice of electronic filing to Plaintiffs-Appellees Benjamin and Amanda Fogle, by way of their counsel, Christopher Stewart. Pursuant to Rule 16.315(1)(b), this constitutes service of this Brief on Plaintiffs-Appellees Benjamin and Amanda Fogle for purposes of the Iowa Court Rules.

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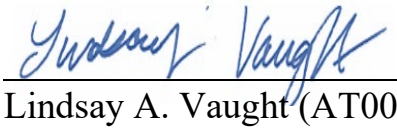
CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(g)(1) and 6.903(1)(i)(1) because this brief has been prepared in proportionally spaced type face using Times New Roman in 14 size font and containing 5,542 words, excluding the parts of the brief exempted by Iowa R. App. P. 6903(1)(i)(1).

Dated November 19, 2024.



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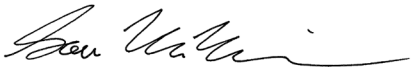

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