IN THE SUPREME COURT OF IOWA

No. 24-1352

District Court No. LACL157986

ASHLEY HALL and RYAN HALL, on behalf of minor child A.H.,

Plaintiffs-Appellees,

v.

SOUTHEAST POLK JUNIOR HIGH SCHOOL – SOUTHEAST POLK COMMUNITY SCHOOL DISTRICT, DIRK HALUPNIK, JOSEPH HORTON, MICHAEL DAILEY, JACOB BARTELS, and GEORGIA CASNER, 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 COLEMAN MCALLISTER, DISTRICT COURT JUDGE

AMENDED BRIEF FOR APPELLANTS

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II. Whether Plaintiffs' Breach of Fiduciary Duty and Negligence Claims as Asserted Against Defendants Halupnik and Casner are Sufficiently Pled as to Meet the Heightened Pleading Standard Under Iowa Code Section 670.4A(3).

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 and 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, *Fogle v. Southeast Polk Community School District, et. al.*, CVCV066682, 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. *Hall* and *Fogle* 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 Ashley and Ryan Hall, on behalf of their minor child A.H., filed an Amended Petition at Law and Jury Demand alleging ten counts relating to A.H.'s alleged treatment while attending Southeast Polk Junior High School as a seventh-grade student. Plaintiffs' action includes multiple Iowa Civil Rights Act claims. Defendants filed a Motion for Partial Dismissal, arguing, in part, that several of Plaintiffs' ICRA claims, as well as each of Plaintiffs' claims as asserted against Defendants Halupnik and Casner, 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 their non-ICRA claims against Defendants Halupnik and Casner under the heightened pleading standard.

STATEMENT OF THE FACTS

On February 14, 2024, Plaintiffs Ashley and Ryan Hall, on behalf of their minor child A.H., filed a Petition against the above-captioned Defendants asserting claims relating to A.H.'s alleged treatment while attending Southeast Polk Junior High School. (*See generally* D0002, Pet. (2/14/2024)). On March 18, 2024, Defendants filed a motion to dismiss several of Plaintiffs' claims. (*See generally* D0014, Mot. for Part. Dismissal (3/18/2024)). On April 30, 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* D0025, Mot. for Leave to Amend, Am. Pet. (4/30/2024)). On May 1, 2024, the Court granted Plaintiffs' motion and adopted Plaintiffs' First Amended Petition. (*See generally* D0026, Order Granting Mot. for Leave to Amend (5/1/2024)).

A.H. attended Southeast Polk Junior High School as a seventh-grade student during the 2022-2023 school year.[1] (Attachment to D0025, Am. Pet. at ¶¶ 1, 16–17 (4/30/2024)). A.H. is female and is served by an Individual Education Plan (IEP), which aims to assist A.H. in her education. (Attachment to D0025, Am. Pet. at ¶¶ 20–21). Pertinent to this appeal, Plaintiffs' Amended Petition alleges that during the school year, the School District Defendants allowed A.H. to be exposed to verbal and physical bullying while on school grounds. (*See generally* Attachment to D0025, Am. Pet. at ¶¶ 38–79).

Plaintiffs allege A.H. was subjected to verbal bullying from various students which Plaintiffs contend included degrading and derogatory slurs and comments "regarding [A.H.'s] physical appearance and A.H.'s receipt of special education services." (Attachment to D0025, Am. Pet. at ¶ 40). More specifically, Plaintiffs contend one particular student, L.L., threatened to slit A.H.'s neck, told A.H. she wanted her dead, threatened to hunt A.H. down, and threatened to physically assault A.H. (Attachment to D0025, Am. Pet. at ¶¶ 40, 46, 50). Plaintiffs also allege other

[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).

students called A.H. names, including "bitch," "pussy," "dumb," and "ugly." (Attachment to D0025, Am. Pet. at ¶¶ 47–48, 67).

Plaintiffs' allege the verbal abuse escalated to physical abuse on three occasions, wherein: (1) two students, R. and L.C., chased A.H. down the hallway screaming at A.H. to fight them; (2) the same two students waited outside A.H.'s classroom and one of the two students physically assaulted A.H. while the other student videotaped the incident; and (3) A.H. was physically assaulted in the lunchroom by another, separate student, Student A. (Attachment to D0025, Am. Pet. at ¶¶ 59, 63, 68).

Plaintiffs contend they filed complaints with the School District, but that Defendants failed to respond to protect A.H. from further bullying. (Attachment to D0025, Am. Pet. at ¶¶ 43–45, 51, 56–58, 64, 70). Plaintiffs state a safety plan was implemented to limit A.H.'s interactions with the various students involved in the harassment but that the safety plan was never followed and contact between A.H. and the other students continued. (Attachment to D0025, Am. Pet. at ¶¶ 40, 46, 50).

Plaintiffs' ten-count Amended Petition named as Defendants the Southeast Polk Community School District, Dirk Halupnik (Superintendent), Joseph Horton (Associate Superintendent), Michael Dailey (Principal), Jacob Bartels (Assistant Principal), and Georgia Casner (math teacher), with the individual Defendants being name "individually and in their official capacities." (*See* Attachment to D0025, Am.

Pet. at p. 1). The Amended Petition set forth claims of (1) bullying; (2) disability discrimination under the ICRA; (3) sex discrimination under the ICRA; (4) sex and disability harassment under the ICRA; (5) failure to accommodate under the ICRA; (6) aiding and abetting under the ICRA; (7) breach of fiduciary duty; (8) negligence; (9) negligent training and supervision; and (10) respondeat superior. (*See* Attachment to D0025, Am. Pet. at ¶¶ 80–211).

Defendants filed a Motion for Partial Dismissal of Plaintiffs' Amended Petition. (*See generally* D0027, Mot. for Part. Dismissal of Am. Pet. (5/10/2024)). The motion sought dismissal of Plaintiffs' bullying claim, disability discrimination claim, sex discrimination claim, sex and disability harassment claim, aiding and abetting claim, and negligent training and supervision claim for failing to meet the heightened pleading standard required by Iowa Code Section 670.4A(3). (*See* D0027 at ¶¶ 35, 43–60). The motion alternatively sought dismissal of Plaintiffs' bullying and aiding and abetting claim for failing to state a claim upon which relief could be granted. (D0027 at ¶¶ 25–34, 36–42). Defendants' motion also argued Defendants Halupnik and Casner should be dismissed entirely because none of the claims as asserted against them meet Section 670.4A's heightened pleading requirement. (D0027 at ¶¶ 61–67). The district court dismissed Plaintiffs' bullying claim for failure to state a claim and dismissed the negligent supervision and training claim for failure to meet the heightened pleading standard, but otherwise denied the

motion. (D0033, Ruling on Mot. for Part. Dismissal of Am. Pet. at p. 13 (8/8/2024)). In rejecting the motion to dismiss as to Plaintiffs' ICRA discrimination and harassment claims, the District Court held the IMTCA and, its heightened pleading standard, does not apply to Iowa Civil Rights Act claims. (D0033, Ruling at p. 7–10). The District Court denied dismissal of Defendants' Halupnik and Casner. (*See* D0033, Ruling at p. 13).

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* D0027; D0031, Reply Brief (5/28/2024); D0033; *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) (holding 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 do not apply to Iowa Civil Rights claims against

municipalities and their employees. By its express terms, the IMTCA makes municipalities[2] liable for its torts and those of its officers and employees, acting within the scope of their 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 A.H.'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

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

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 broad definition of tort to include claims alleging a denial or impairment of any right under *any statute*. *See* Iowa Code § 670.1(4). Statutory ICRA claims are clearly embraced by this unambiguous definition.

Ignoring the plain language of the statute, the district court instead looked toward the timing of the creation of the IMTCA, noting the ICRA was already in effect and authorized suits under the statute against the State of Iowa and political subdivisions. (D0033, Ruling at p. 8–9). But this reasoning fails to undermine IMTCA application to ICRA claims. In fact, that the creation of the IMTCA, and the inclusion of the expansive definition of "tort," occurred after the ICRA had already been enacted serves to further support IMTCA application. *See* 1965 Iowa Acts Ch. 121. 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 from its application within the statute. *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). But the legislature did neither. Moreover, the fact that the ICRA already separately provided authorization of suits against public bodies does not mean the IMTCA is not applicable to claims pursuant to the ICRA. In *Nahas v. Polk County*, the Iowa Supreme Court applied the IMTCA's heightened pleading requirement to claims against a municipality under Iowa Code Chapter 21[3] and 22[4], despite both statutes already separately providing authorization for enforcement of its provisions against a governmental body. 991 N.W.2d 770, 783–84 (Iowa 2023); s*ee* Iowa Code §§ 21.6; 22.5. That Chapters 21 and 22 statutorily authorize suit against public entities did not prevent application of the IMTCA's heightened pleading requirement.

Additionally, the District Court reasoned that the ICRA's preemptive nature worked to preclude application of the IMTCA, stating "Iowa courts have held that, generally speaking, the ICRA preempts tort law . . . It therefore makes sense that the ICRA would preempt the IMTCA." (D0033, Ruling at p. 9). Such reasoning is an improper entwining of ICRA preemption with IMTCA applicability. Defendants do

[3] Iowa Code Chapter 21 specifies the requirements surrounding the meetings of governmental bodies. *See generally* Iowa Code Ch. 21.

[4] Iowa Code Chapter 22 pertains to access and examination of public records. *See generally* Iowa Code Ch. 22.

not dispute that the ICRA generally preempts separate common law 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 additionally reasoned that application of the IMTCA's heightened pleading requirement would remove jurisdiction over ICRA claims from the Iowa Office of Civil Rights, but did not explain how this loss of jurisdiction conclusion was reached. (D0033 at p. 9). The underlying administrative exhaustion requirements of the ICRA are applicable and are not inconsistent with the IMTCA.

Defendants anticipate Plaintiffs may rely on non-binding authority from the United States District Court for the Southern District of Iowa in an attempt to support their argument of non-applicability. *See Dickey v. Mahaska Health Partnership*, 705 F. Supp. 3d 883 (S.D. Iowa 2023). In *Dickey*, the Court found the IMTCA's heightened pleading requirement did not apply to ICRA claims,[5] strongly relying on the assertion that 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.

[5] 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*, 991 N.W.2d at 781.

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) (stating 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 and its heightened pleading requirement to claims residing under the traditional definition of tort. Rather, the Court in *Nahas* 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. *See* 991 N.W.2d at 783. 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 intentional discrimination. 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. *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 *Peters* 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.

The statutory language is unambiguous. The definition of tort claims upon which the IMTCA applies includes claims asserting ICRA violations. 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' Breach of Fiduciary Duty and Negligence Claims as Asserted Against Defendants Halupnik and Casner 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' breach of fiduciary duty and negligence claims under the heightened pleading standard because the issue was raised and decided by the district court in connection with Defendants' Motion for Partial Dismissal. (*See generally* D0027; D0031; D0033); *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 v. Polk County, 991 N.W.2d 770, 779 (Iowa 2023) (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' Claims of Breach of Fiduciary Duty and Negligence as Asserted Against Defendants Halupnik and Casner are Not Sufficiently Pled Under the Heightened Pleading Requirement

In their motion, Defendants argued all of Plaintiffs' claims asserted against Defendants Halupnik and Casner failed to meet the heightened pleading standard. 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 and negligent supervision and training claims for failure to state a claim. (D0033, Ruling at p. 13). Plaintiffs did not dispute the heightened pleading requirement applies to their breach of fiduciary duty and

negligence claims. (D0029, Resistance to Mot. for Part. Dismissal at p. 29–32 (5/20/2024)). The court allowed both claims to proceed against Defendants Halupnik and Casner. (D0033, Ruling at p. 13). Both claims, as asserted against Halupnik and Casner individually, fail to meet the heightened pleading requirement under Section 670.4A(3).

"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. Eveleth*, 688 N.W.2d 803, 811 (Iowa 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 Defendants breached their fiduciary duty by failing to adequately prevent, respond and investigate the bullying A.H. allegedly suffered. (*See* Attachment to D0025, Am. Pet. 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.* Plaintiffs allege Defendants knew or reasonably should have known about the alleged bullying A.H. was suffering and failed to act reasonably in responding to it. (*See* Attachment to D0025 at ¶¶ 182–198).

i. Plaintiffs' Breach of Fiduciary Duty and Negligence Claims Against Defendant Halupnik Fail to Meet the Heightened Pleading Requirement.

Plaintiffs fail to plead sufficient facts showing Defendant Halupnik is 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 A.H. The only factual allegations concerning Halupnik are that he is the superintendent of the School District and that he labeled A.H. as a problem.[6] (*See* Attachment to D0025, Am. Pet. at ¶¶ 5, 22). Notably, Plaintiffs do not plead particular facts showing that 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 personally 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 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 Halupnik had any special relationship with A.H., apart from any other student, as to even 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,

[6] This allegation alleges Defendant Halupnik, among the other individual Defendants and other teachers, labeled A.H. as a "problem" due to her disabilities, IEP, and required accommodations. (*See* Attachment to D0025 at ¶ 22). No other information, facts or context is provided regarding this alleged labeling, thus failing to meet the particularity requirement of heightened pleading standard.

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) (holding 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.

ii. Plaintiffs' Breach of Fiduciary Duty and Negligence Claims Against Defendant Casner Fail to Meet the Heightened Pleading Requirement.

Plaintiffs similarly fail to plead sufficient facts showing Defendant Casner is individually liable to Plaintiffs' breach of fiduciary duty and negligence claims. Plaintiffs' references to Casner and her alleged actions and inactions are sparse. Such allegations are limited to Casner scolding A.H. in front of the classroom, calling her voice loud and annoying, yelling at A.H. in a side room and refusing to allow her to leave, and that Casner was sent an email from Plaintiff Ashley Hall regarding the

bullying and harassment A.H. was experiencing. (Attachment to D0025, Am. Pet. at ¶¶ 26–27, 44).

Such allegations fail to demonstrate any plausible breach of duty towards A.H. by Casner. Plaintiffs' fail to demonstrate how Casner failed to protect A.H. from the alleged bullying as to hold Casner individually liable. There are no allegations that any of the harassing conduct occurred in Defendant Casner's class, while Casner was present or while Casner personally was responsible for supervising A.H. Nor do Plaintiffs plead particular facts demonstrating how Casner failed to act to protect A.H. or otherwise what she should have done differently which would have prevented the alleged harassment. Simply because Casner was one of A.H.'s teachers, does not mean there is a basis to include her in this lawsuit.[7] Plaintiffs' limited allegations against Defendant Casner are insufficient to meet the heightened pleading standard. Accordingly, Plaintiffs' fiduciary duty and negligence claims against Casner should be dismissed.

CONCLUSION

For the reasons expressed above, Defendants request that this Court find the district court erred in determining the IMTCA and its heightened pleading requirement do not apply to Plaintiffs' ICRA claims and remand the case to the

[7] Under this logic, any of A.H.'s teacher could be included in this action, whether or not they were present, or responsible for supervising A.H., at the time of any of the alleged harassing acts.

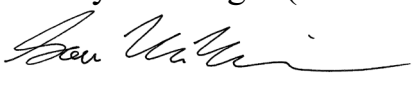
district court for the determination of whether Plaintiffs' disability discrimination claim, sex discrimination claim, sex and disability harassment claim, and aiding and abetting claim meet the heightened pleading requirement as alleged in the Amended Petition. Further, Defendants request this Court reverse the district court's finding that Plaintiffs' fiduciary duty and negligence claims against Defendants Halupnik and Casner meet the heightened pleading requirement and grant the Defendants' motion to dismiss in that regard, dismissing those claims with prejudice. Defendants further request the Court grant any and all other relief it deems appropriate.

REQUEST FOR ORAL ARGUMENT

Defendants respectfully request to be heard in oral argument.

Respectfully Submitted,

Lindsay A. Vaught (AT0010517)



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CERTIFICATE OF FILING/SERVICE

I hereby certify that on November 8th, 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 Ashley and Ryan Hall, by way of their counsel, Christopher Stewart. Pursuant to Rule 16.315(1)(b), this constitutes service of this Brief on Plaintiffs-Appellees Ashley and Ryan Hall 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(1)(*i*) and 6.903(1)(*g*)(1) because this brief has been prepared in proportionally spaced type face using Times New Roman in 14 size font and contains 5,707 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*i*)(1).

Dated this November 8th, 2024.

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