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

REPLY BRIEF FOR APPELLANTS

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Whether Appellants Have a Right to Appeal the District Court's Denial of their Motion for Partial Dismissal as a Matter of Right Pursuant to Iowa Code Section 670.4A(4).

II. Whether the Iowa Municipal Tort Claims Act and its Provisions under Iowa Code Section 670.4A, including the Heightened Pleading Standard, are Applicable to Iowa Civil Rights Act Claims.

III. Whether 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 are Sufficiently Pled as to Meet the Heightened Pleading Standard Under Iowa Section 670.4A(3).

ARGUMENT

I. Iowa Code Section 670.4A(4) Grants Defendants an Appeal as a Matter of Right Because the District Court's Order Denied Defendants Qualified Immunity.

Iowa Code Section 670.4A codifies qualified immunity for municipal employees and officers. As part of the addition of Section 670.4A to the IMTCA, the legislature included subsection 4, which explicitly provides a right of immediate appeal for any denial of qualified immunity by the district court. Iowa Code § 670.4A(4). Subsection 4 ensures that the qualified immunity provided by Section 670.4A adequately provides its full intended protections against the burdens of litigation. *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.") (internal citations omitted); *Payne v. Britten*, 749 F.3d 697, 700–01 (8th Cir. 2014) ("The potentially lost benefits of qualified immunity include the costs and expenses of

litigation, and discovery in particular, which is a type of burden distinct from appeals and other lawyer-driven aspects of the case."). In their Appellee Brief, Plaintiffs contend that Defendants do not have a right of immediate appeal because the district court's finding that the heightened pleading standard did not apply to Plaintiffs' ICRA claims was not a denial of qualified immunity.[1] *See* Brief of Appellee at 15–16 (12/18/24). Plaintiffs' argument should be rejected.

In its order, the district court determined that the IMTCA did not apply to Plaintiffs' ICRA claims. D0025, *Ruling on Mot. for Part. Dismissal of Am. Pet.* at 3–5 (8/8/24). In so holding, the court denied that the qualified immunity protections of Section 670.4A, including the heightened pleading standard, applied *at all*. *See id.* The district court's decision held Defendants cannot avail themselves to the

[1] Plaintiffs have not timely objected to Defendants' appeal in the proper procedural manner provided by the Iowa Rules of Appellate Procedure. Rule 6.1006 provides that to challenge an appellant's filing of a document that the appellee contends fails to substantially comply with the appellate rules or which the appropriate appellate court lacks jurisdiction or authority to address, the appellee is to file a motion to dismiss complying with the requirements of Rule 6.1002(2) within a "reasonable time" after the grounds supporting the motion become apparent. Iowa R. App. P. 6.1006(1)(a). The inclusion of Plaintiffs' challenge of Defendants' appeal as a matter of right within their Appellee Brief does not meet those procedural requirements. In addition to not being filed as a separate motion to dismiss, Plaintiffs' argument has not been submitted within a reasonable time, coming almost four months since the filing of Defendants' notice of appeal. *See* Iowa R. App. P. 6.1006(1)(a)(3); *see also In re France's Estate*, 57 N.W.2d 198 (Iowa 1953) (noting Iowa's former version of the rule governing motions to dismiss in appellate court, R.C.P., Rule 348, required a motion to dismiss to be filed within *twenty days* after the record was filed.).

protections and immunities set forth in Section 670.4A. Under the district court's decision, Defendants are forced to endure the costs and burdens associated with the discovery and continued litigation of Plaintiffs' ICRA claims in spite of the contention that they should be dismissed with prejudice in accordance with Section 670.4A. The district court order thus unmistakably constitutes "*any* decision by the district court denying qualified immunity." Iowa Code § 670.4A (emphasis added).

The Iowa Supreme Court has previously determined that a district court's denial of the application of a qualified immunity statute affords the defendants the right to immediate appeal. In *Carver-Kimm v. Reynolds*, the district court denied application of a nearly identical qualified immunity statute, Iowa Code Section 669.14A,[2] on the basis that it would be improper retroactive application of the statute. 992 N.W.2d 591, 596 (Iowa 2023). The defendants appealed pursuant to the statute's provision granting a right of immediate appeal. *Id.* at 596; *see* Iowa Code § 669.14A(4). In response, the plaintiff filed a motion to dismiss arguing the defendants could not appeal the district court decision as a matter of right. *See Carver-Kimm*, No. 22-0005, *Appellee Motion to Dismiss* (Jan. 10, 2022). The Iowa Supreme Court denied the plaintiff's motion and accepted the defendants' immediate

[2] Iowa Code Section 669.14A is identical to Iowa Code Section 670.4A, except that Section 669.14A applies to state employees instead of municipal officers and employees. *Compare* Iowa Code § 669.14A *with* Iowa Code § 670.4A.

appeal without interlocutory application. *Carver-Kimm*, No. 22-0005, *Order: Motion to Dismiss Denied* (Feb. 14, 2022). Like in *Carver-Kimm*, immediate appeal is permitted by Iowa Code § 670.4A(4) in this case because the district court's decision not to apply the qualified immunity statute constitutes a decision denying qualified immunity.

Additionally, the district court's application of the heightened pleading standard to Plaintiffs' negligent supervision and training claim and non-ICRA claims against Defendant Halupnik are similarly appealable as a matter of right.[3] The heightened pleading standard is a qualified immunity protection provided by Section 670.4A. Allowing Plaintiffs' non-ICRA claims to move forward without being sufficiently pled in accordance with that standard compromises Defendants' qualified immunity under Section 670.4A and acts as a denial of the same. This is especially true considering that "[f]ailure to plead a plausible violation or failure to plead that the law was clearly established . . . shall result in dismissal with prejudice." Iowa Code § 670.4A(3). Accordingly, a defendant's challenge of the district court's application of the heightened pleading standard has been previously accepted without interlocutory application. *See Brinkman v. City of Des Moines*, 997 N.W.2d 894, at *1 (Table), No. 22-1192 (Iowa Ct. App. 2023) (challenging whether the

[3] Plaintiffs do not address the immediate appealability of these claims. *See* Brief of Appellee at 15–16.

plaintiff's second amended petition was sufficiently pled in accordance with the requirements of Section 670.4A); *see also Carver-Kimm v. Reynolds*, 992 N.W.2d 591, 596, No. 22-0005 (Iowa 2023) (challenging whether the plaintiff's second amended petition met Iowa Code Section 669.14A's identical heightened pleading requirements).

Defendants challenge the district court's denial of qualified immunity under Section 670.4A. As such, Defendants have a statutory right to immediate appeal.

II. The IMTCA and its Provisions under Iowa Code Section 670.4A are Applicable to ICRA Claims.

A. The Provisions of the IMTCA Apply to ICRA Claims Brought Against Municipalities and Their Officers and Employees.

Regarding the definition of "tort" in the IMTCA, Plaintiffs contend constitutional provisions and statutes are just examples of different sources of duty for which a breach of duty may arise. *See* Brief of Appellee at 19. However, even under Plaintiffs' reasoning, ICRA claims fall within the definition of "tort" by creating a statutory duty not to discriminate based on certain protected classes. Moreover, the IMTCA's definition of "tort" does not provide statutes only as an example of a source of a duty or a right. Instead, the definition includes "every civil wrong" including but not restricted to "*breach of duty whether statutory* . . . or denial or impairment of *any right* under *any* constitutional provision, *statute* or rule of law." Iowa Code § 670.1(4); *see also State v. Bishop*, 132 N.W.2d 455, 458 (Iowa 1965)

("'Any' means all or every."). This all-encompassing definition was an intentional expansion by the legislature of the claims to be included within the umbrella of the IMTCA.[4] *See Baldwin v. City of Estherville*, 929 N.W.2d 691, 697 (Iowa 2019); *Meyer v. Herndon*, 419 F. Supp. 3d 1109, 1133 (S.D. Iowa 2019). The IMTCA's definition of "tort" does not equate to the common law meaning of the word; instead, the legislature intentionally chose to define its use within the IMTCA. The IMTCA's definition of "tort" not only includes claims traditionally treated as torts, but also claims outside of that common-law definition, including other breaches of duty or other denials or impairments of rights. That definition is binding. *See State v. McCollaugh*, 5 N.W.2d 630, 623 (Iowa 2024) ("When the general assembly chooses to act as its own lexicographer, we are normally bound by its definitions, even if they do not coincide with the dictionary or common law definition.").

Plaintiffs cite to *Sutton v. Council Bluffs Water Works*, 990 N.W.2d 795 (Iowa 2023) to try and artificially limit the scope of the definition of "tort" under the statute. *See* Brief of Appellee at 19–20. But *Sutton* actually works to undermine

[4] The original IMTCA, enacted in 1967, defined a "tort" covered by the act as "every civil wrong which results in wrongful death or injury to person or injury to property and includes but is not restricted to actions based upon negligence, breach of duty, and nuisance." *Meyer v. Herndon*, 419 F. Supp. 3d 1109, 1133 (S.D. Iowa 2013) (quoting *Baldwin v. City of Estherville*, 929 N.W.2d 692, 697 (Iowa 2019); 1967 Iowa Acts ch. 405 § 1 (codified at Iowa Code § 613A.1(3) (1971)). The IMTCA was amended several years later to become what it is now, the present configuration of the statute. *Id.* (citing 1974 Iowa Acts ch. 1263, § 2 (codified at Iowa Code § 613A.1(3) (1975))).

Plaintiffs' restrictive reading of the definition. *Sutton* did not limit the term "every civil wrong" to an intentional tort, negligence and strict liability, as Plaintiffs contend, but provided that the term "includes, for instance" those actions. *Id.* at 798. More importantly, *Sutton* went on to explain the breadth of the definition of "tort" and the scope of the IMTCA's application: "The adjective *every* that precedes 'every civil wrong' also suggest the broadest conception of the term—all species of civil wrongs that aren't exempted elsewhere in the statute are included." *Id.* (emphasis in original). *Sutton* supports the plain reading of the definition. Nowhere in the statute are ICRA claims exempted from the scope of the IMTCA. As such, they are included.

The cases cited by Plaintiffs discussing the ICRA's preemption of common law tort claims also fail to support exclusion of the ICRA claims from the IMTCA definition of "tort" and are simply not applicable to this issue. That ICRA claims have been treated as separate from "common-law torts" is not indicative of whether they are included within the umbrella of the IMTCA. As noted in Defendants' initial Appellant Brief, Defendants do not dispute that the ICRA has been found to preempt common-law tort claims which are premised upon discriminatory conduct and are not "separate and independent" causes of action. But that preemption, and the applicable decisions analyzing the issue, are not pertinent to the application of the IMTCA because the IMTCA does not create new or distinct causes of action as to

be subject to the preemption referred to by Plaintiffs' cited case law. *See* Am. Brief of Appellant at 20–21, 24. In other words, the ICRA claims which are the subject of this appeal are not "alternative claims" as contemplated by the Court in those decisions. *See, e.g., Greenland v. Fairtron Corp.*, 500 N.W.2d 36, 38 (Iowa 1993).

While the ICRA provides for its own administrative requirements, this fails to undermine the IMTCA's applicability. Again, Plaintiffs misunderstand the IMTCA's statutory role. The IMTCA does not create a separate, alternative cause of action, it sets forth the actions—from other independent sources—which may be permissibly brought against municipalities and their officers and employees. *Id.* at 797; *Venckus v. City of Iowa City*, 930 N.W.2d 792, 809–10 (Iowa 2019). The underlying administrative exhaustion requirements of the ICRA still remain, are applicable, and are not inconsistent with the IMTCA. And while the IMTCA permits punitive damages to be asserted in some situations, the underlying action to which the IMTCA applies must permit punitive damages in the first place. The fact that the ICRA does not allow punitive damages while the IMTCA does (in some applications), does not mean the two statutes are exclusive of one another.

Nor is it determinative that there is limited Iowa case law analyzing the two statutes together. Only very recently did the legislature codify qualified immunity in the IMTCA for the first time, with Section 670.4A becoming effective June 17, 2021. *Nahas v. Polk County*, 991 N.W.2d 770, 776, 778 (Iowa 2023) (citing 2021 Iowa

Acts ch. 183, § 14). Prior to the enactment of this amendment, there was little reason to raise the IMTCA in relation to ICRA claims because the IMTCA did not provide the protections it does now. The lack of case law tying the two statutes together thus is not indicative of an understanding that they are mutually exclusive of one another. The recent influx of district court cases analyzing the applicability of the IMTCA's heightened pleading standard to ICRA claims since the enactment of the qualified immunity statute is illustrative of that. *See, e.g.*, *Archer v. Polk County, et al.*, LACL155650 (Iowa Dist. Ct., Polk County, Feb. 10, 2024); *Hilson v. Waukee Cmty. Sch. Dist.*, LACV043937 (Iowa Dist. Ct., Dallas County, July 24, 2023).

Plaintiffs' arguments are further undermined by the Iowa Supreme Court's application of the IMTCA to Iowa's open meetings and open records laws, codified at Chapters 21 and 22 respectively. Iowa's open meetings and open records laws were enacted the same year as the original IMTCA, in 1967. *See Burton v. Univ. of Iowa Hospitals & Clinics*, 566 N.W.2d 182, 187 (Iowa 1997) ("Iowa Code chapter 68A, the predecessor to chapter 22, was enacted in 1967.") (citing 1967 Iowa Acts ch. 106, §§ 1–8, 11.); *Des Moines Reg. & Trib. Co. v. Dwyer*, 542 N.W.2d 491, 504 (Iowa 1996) (Harris, J. dissenting) ("The open records law was enacted in 1967, the same year the open meetings law was adopted.") (citing 1967 Iowa Acts ch. 106). Defendants can locate no cases, prior to *Nahas v. Polk County*, analyzing the two statutes in relation to the IMTCA. Moreover, like the ICRA, Chapter 21 and 22 both

separately permit civil suits against governmental bodies—including municipalities, school districts and other political subdivisions of the state—for the enforcement of each chapter's provisions without reliance on the IMTCA. *See* Iowa Code § 21.6; Iowa Code § 22.10; *see also* Iowa Code § 21.2(1) (broadly defining "governmental body"); Iowa Code § 22.1(2) (same). And, like the ICRA, Chapter 21 provides its own limitations period for the bringing of these civil actions. Iowa Code § 21.6(3)(c); *see Short v. Green Bay Levee & Drainage Dist. No. 2*, 686 N.W.2d 235 (Table), at *2 (Iowa Ct. App. May 14, 2004) ("An action claiming a violation of chapter 21, the Iowa Open Meetings Law, must be 'brought within six months of the violation.'"). Yet, such factors did not prevent the Court in *Nahas* from finding the IMTCA applicable to claims brought pursuant to both Chapter 21 and Chapter 22. *See Nahas*, 991 N.W.2d at 783–84.

Most importantly, the IMTCA's application to both statutes confirms the IMTCA's definition of "tort" encompasses claims outside the reaches of the traditional, common law understanding of the word. Claims brought pursuant to Chapter 21 and 22 allege a breach of a duty, as well as a denial or impairment of a statutorily-provided right. For the very same reason, the IMTCA is applicable to Plaintiffs' ICRA claims, because they allege a breach of a statutory duty and/or a denial or impairment of a statutorily-provided right.

The express language used by the legislature in defining "tort" under the IMTCA covers ICRA claims. When the express language of a statute is plain and the meaning is clear, that language governs. *See Cianzio v. Iowa State Univ.*, No. 23-1371, 2024 WL 5100076, at *5 (Iowa Dec. 13, 2024) ("Generally, when we conclude the express language of the statute is plain and the meaning is clear, we need not proceed any further with our analysis"). As such, the IMTCA applies to ICRA claims.

B. Plaintiffs Have Failed to Sufficiently Plead Their Sex Discrimination and Sex Harassment Claims as to Meet the Heightened Pleading Standard Under Section 670.4A.

Defendants did not raise the issue of the application of Section 670.4A's heightened pleading standard to Plaintiffs' ICRA claims as part of their appeal because the district court, in finding the IMTCA did not apply, never analyzed Plaintiffs' ICRA claims under that standard. Should the Court decide to take on the issue as part of this appeal, Plaintiffs' ICRA claims fail to meet the heightened pleading standard.

The ICRA prohibits discrimination by an educational institution on the basis of a protected class in any program or activity. Iowa Code § 216.9. Plaintiffs allege sex discrimination and sex harassment against the School District. In analyzing a claim of discrimination or harassment in education, Iowa courts look to federal law. *Hulme v. Barrett*, 449 N.W.2d 629, 631 (Iowa 1989); *see Palmer Coll. of*

Chiropractic v. Davenport Civil Rights Comm'n, 850 N.W.2d 326, 333 (Iowa 2014).

To prove a claim of sex discrimination, Plaintiffs must establish (1) "[P.F.] was a member of a protected class"; (2) "[P.F.] suffered an adverse action at the hands of defendants in pursuit of [his] education"; (3) "[P.F.] was qualified to continue in pursuit of [his] education"; and (4) "[P.F.] was treated differently from similarly situated students outside [his] protected class." *Rowles v. Curators of U. of Missouri*, 983 F.3d 345, 355 (8th Cir. 2020) (quotation omitted). To establish the causation element of their claim for discrimination, Plaintiffs must show P.F.'s sex motivated Defendants' conduct. *See id.* (a plaintiff must show his or her protected status motivated the defendant's conduct); *Garcia v. Primary Health Car, Inc.*, 604 F. Supp. 3d 765, 773–74 (S.D. Iowa 2022) ("To succeed on a claim of . . . discrimination under the ICRA . . . the plaintiff must demonstrate the adverse . . . action was motivated by the defendant's discriminatory intent.").

To prove a valid sex harassment claim in the area of education, Plaintiffs must show that (1) P.F. was a member of a protected class; (2) he was subject to unwelcome harassment; (3) the harassment was based on sex; and (4) the harassment was sufficiently severe or pervasive so as to alter the conditions of P.F.'s education and create an abusive educational environment. *See Kinman v. Omaha Pubic School Dist.*, 94 F.3d 463, 467–68 (8th Cir. 1996) (abrogated on other grounds by *Gebster v. Lago Vista Independent School Dist.*, 524 U.S. 274 (1998)). Additionally, Plaintiffs

must show that the School District knew about the conduct and failed to take a prompt remedial action. *See id* at 469. In other words, for the School District to be held liable, Plaintiffs must show the School District was "deliberately indifferent" to the harassment. *See Doe v. Perry Cmty. Sch. Dist.,* 316 F. Supp. 2d 809, 833–34 (S.D. Iowa 2004); *see also Gebster v. Lago Vista Independent School Dist.*, 524 U.S. 274, 287, 292–93 (1998); *Ostrander v. Duggan*, 341 F.3d 745, 750 (8th Cir. 2003). The legal standard for harassment of a student based on sex requires Plaintiffs to demonstrate harassment of P.F. "that was so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victim's educational experience, that the victim-student is effectively denied equal access to an institution's resources and opportunities." *Davis ex rel. LaShonda D. v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 651 (1999); *Kinman v. Omaha Pub. Sch. Dist.*, 94 F.3d 463, 468 (8th Cir. 1996), overruled on other grounds by *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998) (student must show she was subject to unwelcome sexual harassment that was "sufficiently severe or pervasive so as to alter the conditions of her education and create an abusive educational environment.").

In support of their sex discrimination claim, Plaintiffs allege general, conclusory allegations contending that Defendants "engaged in a continuing pattern and practice of sex discrimination" against P.F., that this discrimination was "sufficiently severe, pervasive, and offensive," and that this discrimination "affected

a term or condition of P.F.'s education." Pl. Am. Pet. ¶¶ 70, 77–78. Similarly, in support of their harassment claim, Plaintiffs again allege general, conclusory allegations contending that Defendants "subjected P.F. to" and "engaged in a continuing pattern and practice of harassment," that "P.F.'s sex was a motivating factor in the harassment," that it was "sufficiently severe, pervasive and offensive," and that it "affected a term or condition of P.F.'s education." Pl. Am. Pet. ¶¶ 85, 92–93. However, Plaintiffs do not plead any facts supporting that the School District or its staff engaged in any discriminatory or harassing conduct. Specifically, nothing in the Amended Petition alleges particular facts that any actions taken by the School District or the individually named Defendants were on the basis of, or were motivated by, P.F.'s sex. Nor does the Amended Petition allege any facts that Defendants treated P.F. differently from similarly situated male students.

The facts alleged in Plaintiffs' Amended Petition fail to show discriminatory or harassing conduct on the part of Defendants as to support viable claims against them. As such, both claims should be dismissed with prejudice.

III. 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 Do Not Meet the Heightened Pleading Standard

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

Plaintiffs' Amended Petition fails to demonstrate a plausible claim for the negligent training and supervision of Ms. Rivas under the heightened pleading standard. The lack of particularity supporting such a claim is apparent from the Amended Petition. Plaintiffs conclusively allege that Defendants negligently and recklessly trained and supervised Defendant Rivas, and that this was a cause of P.F.'s damages. However, there are no factual allegations setting forth the deficient supervision or training Ms. Rivas allegedly received, and no facts supporting how proper supervision or training would have avoided the underlying student-on-student behavior complained of. Moreover, the Amended Petition sets forth no facts showing how Ms. Rivas was unfit or incompetent to be a teacher or that the School District knew or should of known of any specific unfitness or incompetence.

The district court's decision in *Blanchard v. City of Des Moines*, 2024 WL 4965865 (Iowa Ct. App. Dec. 4, 2024) does not support Plaintiffs' position. For one, in *Blanchard*, the claim being assessed was a general negligence claim, not a negligent supervision and training claim which requires additional elements of proof. *Id.* at *3. More importantly, the district court noted that the plaintiff in that case had "provided specific facts illustrating [the defendant's] failure to conform to [the standard of care] and specifically described his injury and its specific proximate cause." *Id.* at *3. Here, as noted, while Plaintiffs set forth the general elements of a

negligent supervision or training claim, they fail to plead specific facts supporting those elements as to demonstrate a plausible claim.

The allegations set forth in Plaintiffs' Amended Petition are not sufficient to meet the IMTCA's heightened pleading standard in connection with Plaintiffs' negligent supervision and training claim. As such, Plaintiffs' claim must be dismissed with prejudice in accordance with Section 670.4A(3).

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

Plaintiffs appear to concede that they plead no facts demonstrating that Defendant Halupnik was personally involved in the underlying actions which form the basis of Plaintiffs' claims, that he knew anything about the situation, or that he had any special relationship with P.F. necessary to create a fiduciary duty. *See* Brief of Appellee at 45–48. Instead, Plaintiffs assert Defendant Halupnik is subject to liability simply based on his position as superintendent of the District, and contend that the determination of his actual involvement is to be determined as litigation ensues. *See id.* at 46–47.

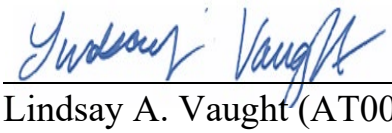
Under the heightened pleading standard, Plaintiffs must allege enough facts that the Court can "infer more than the mere possibility of misconduct." *Nahas*, 991 N.W.2d at 782. Standing only on Halupnik's position of superintendent to hold him liable is not sufficient to meet this standard. Under Plaintiffs' logic, any incident

involving any employee, staff or student at the School District would suffice to bring a plausible claim individually against Superintendent Halupnik, whether he was personally involved in the underlying action or not. This is not the law. Plaintiffs are not permitted to name Superintendent Halupnik in this action simply based upon his job title in order to try and discover sufficient facts supporting a plausible claim later in this litigation. Particular facts that support a plausible claim must be alleged at the pleading stage, and they have not been. As such, the breach of fiduciary duty and negligence claims against Defendant Halupnik should be dismissed with prejudice.

CONCLUSION

For the reasons provided in Defendants' initial Appellant Brief and in this Reply, the IMTCA and its heightened pleading requirement apply to Plaintiffs' ICRA claims, and those claims fail to meet the heightened pleading standard. Moreover, Plaintiffs' negligent supervision and training claim and Plaintiffs' breach of fiduciary duty and negligence claims as asserted against Defendant Halupnik also fail to meet the heightened pleading standard. As such, the district court erred in its ruling and Plaintiffs' claims should be dismissed with prejudice.

Respectfully Submitted,



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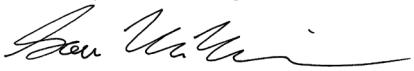

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CERTIFICATE OF FILING/SERVICE

I hereby certify that on January 8, 2025, I electronically filed the foregoing Reply Brief for 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 4,550 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*i*)(1).

Dated this 8th day of January, 2025.

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