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

REPLY BRIEF FOR APPELLANTS

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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' 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).

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. Plaintiffs' argument should be rejected.

In its order, the district court determined that the IMTCA did not apply to Plaintiffs' ICRA claims. *See* D0033, Ruling on Mot. for Part. Dismissal of Am. Pet. at 8–10 (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 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

[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).

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. *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 appeal without interlocutory application. *Carver-Kimm*, No. 22-0005, *Order: Motion to Dismiss Denied* (Feb. 14, 2022). Like in *Carver-Kimm*,

[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.

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' tort claims against Defendant Halupnik and Casner are similarly appealable as a matter of right.[3] The heightened pleading standard is a qualified immunity protection provided by Section 670.4A. Allowing those claims to move forward without being sufficiently plead 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 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)

[3] Plaintiffs' do not address the immediate appealability of those claims pursuant to Section 670.4A(4). *See* Brief of Appellee at 15–16.

(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. 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.").

The cases cited by Plaintiffs discussing the ICRA's preemption of common law tort claims thus fail to support exclusion of the ICRA claims from the IMTCA's 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. Moreover, as noted

[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)).

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 18–20. 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).

Plaintiffs also 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 20–21. But *Sutton* actually works to undermine 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 term "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 scope of the IMTCA. As such, they are included.

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 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 now does. 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 either of 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 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 Plaintiffs' ICRA claims.

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

Defendants did not raise the issue of the application of the Section 670.4A's heightened pleading standard to Plaintiffs' ICRA claims 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.

i. Plaintiffs' Sex and Disability Discrimination Claims Fail to Meet the Heightened Pleading Standard.

In order to establish a prima facie claim of disability discrimination under the ICRA, Plaintiffs must demonstrate that: (1) A.H. is an individual with a disability; (2) she is qualified to participate in the applicable program with or without reasonable accommodations; and (3) she was denied the benefits of the program because of her disability. *Chiropractic v. Davenport Civil Rights*

Comm'n, 850 N.W.2d 326, 334 (Iowa 2014). To prove a claim of sex discrimination, Plaintiffs must establish: (1) "[A.H.] was a member of a protected class"; (2) "[A.H.] suffered an adverse action at the hands of defendants in pursuit of [her] education"; (3) "[A.H.] was qualified to continue in pursuit of [her] education"; and (4) "[A.H.] was treated differently from similarly situated students outside [her] protected class." *See Rowles v. Curators of U. of Missouri*, 983 F.3d 345, 355 (8th Cir. 2020) (quotation omitted). To prove the causation element of their claims of discrimination, Plaintiffs must show A.H.'s sex and/or disability 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 disability discrimination under the ICRA . . . the plaintiff must demonstrate the adverse . . . action was motivated by the defendant's discriminatory intent."); *see also Huss v. State*, 927 N.W.2d 696 (Table), at *5 (Iowa Ct. App., Feb. 6, 2019) (noting the requirement of the plaintiff to prove her impairment was a motivating factor in the defendants' actions as to support her disability discrimination claim). In relation to Plaintiffs' discrimination claims, the focus is on the motivations of the Defendants, not the underlying students accused of harassing behavior.

Plaintiffs' disability and sex discrimination claims are not sufficiently backed by the pleaded facts. Nothing in the Amended Petition demonstrates that

the School District took any action or made any omission based upon A.H.'s diagnosis of ADHD/anxiety or because of her status as a female. Plaintiffs make conclusive allegations that the School District's failure to adhere to A.H.'s IEP, accommodate her disability and prevent harassment were related to A.H.'s disability and sex. *See* Attachment to D0025, Am. Pet. ¶¶ 36–37 (4/30/2024)). But the Amended Petition fails to allege facts to support this conclusion. In attempting to support the existence of a discriminatory motive, Plaintiffs refer to allegations that the School District labeled A.H. as a "problem" and commented Plaintiffs' complaints were "too much." *See* Attachment to D0025, Am. Pet. ¶¶ 37. But not only is no context provided for these alleged statements,[5] Plaintiffs fail to plead any facts demonstrating that they were in any way connected to Defendants' alleged actions in this case or related to A.H.'s disability or sex. *See* Attachment to D0025, Am. Pet. ¶¶ 22, 37. Moreover, while Plaintiffs allege Defendant Casner's actions toward A.H. were also based on A.H.'s disability and sex, no specific factual allegations in Plaintiffs' Amended Petition support that conclusion. *See* Attachment to D0025, Am. Pet. ¶¶ 26–27. Defendant Casner telling A.H. her voice is "loud and annoying" and yelling at A.H. in a side room are insufficient

[5] Plaintiffs only allege in a conclusory manner that these statements were related to A.H.'s disability and sex. No other allegations provide enlightenment regarding who specifically made the statements, when they were made, where they were made, in what situation they were made, or what the context of the statements were in general. *See* Attachment to D0025, Am. Pet. ¶¶ 22, 37.

allegations to support a plausible claim of discrimination simply because A.H. had a disability and was a female.

Defendants do not contest that Plaintiffs have plead the School District took, or failed to take, certain actions in connection with A.H. The problem with Plaintiffs' Amended Petition is that it is missing particular facts showing a plausible basis that any of the conduct alleged to have been taken, or not taken, by the School District was motivated by A.H.'s sex or disability. *See Rowles,* 983 F.3d at 355; *Garcia*, 604 F. Supp. 3d at 773–74. Plaintiffs further do not allege that the School District treated similarly situated students not within A.H.'s protected classes any differently than A.H.

Plaintiffs' Amended Petition presents the exact type of unsupported, conclusory claims that the legislature enacted the heightened pleading standard to prevent against. Because the Amended Petition fails to allege with particularity, plausible claims of disability and sex discrimination against the School District, those claims fail to meet the heightened pleading requirement and are subject to dismissal with prejudice.

ii. Plaintiffs' Sex and Disability Harassment Claims Fail to Meet the Heightened Pleading Standard.

To establish an actionable harassment claim in the area of education, Plaintiffs must show (1) A.H. is a member of a protected class; (2) she suffered unwelcome conduct; (3) the conduct was due to the protected class and (4) the

harassment was sufficiently severe and pervasive as to alter the conditions of her education and create an abusive educational environment. *See Doe v. Perry Cmty. Sch. Dist.*, 316 F. Supp. 2d 809, 833–34 (S.D. Iowa 2004). In addition, Plaintiffs must show that the School District knew or should have known about the conduct and failed to take prompt remedial action. *See id.* In other words, for the School District to be held liable, Plaintiffs must show the School District was "deliberately indifferent" to the harassment. *See id.*; *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 A.H. "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.").

To the extent Plaintiffs allege sex and disability harassment premised upon

Defendants' own actions, Plaintiffs' fail to plead plausible claims. As provided in reference to Plaintiffs' discrimination claims, Plaintiffs fail to allege particular facts showing that any of the actions taken by Defendants were motivated by A.H.'s sex or disability.

Likewise, the Amended Petition also does not allege particular facts supporting that any of the underlying student-on-student harassment allegedly suffered by A.H. was in any way motivated or based upon her sex or disability. Alleged bullying by students L.L., L.C., R., and Student A form the primary basis of the harassment allegedly suffered by A.H. *See generally* Attachment to D0025, Am. Pet. But Plaintiffs do not allege with particularity facts that the actions allegedly taken by those students were motivated by A.H.'s sex or disability. None of the comments or actions attributed to any of these individuals relate or reference A.H.'s participation in a special education program or were sexual in nature. *See* Attachment to D0025, Am. Pet. ¶¶ 40, 46, 50, 59, 63, 68.

Instead, Plaintiffs specifically identify only a couple of offensive names[6] which A.H. was allegedly called by an unidentified group of students. *See* Attachment to D0025, Am. Pet. ¶ 47–48. Plaintiffs argue this is sufficient to show discriminatory motivation. *See* Brief of Appellee at 37–38. But such names, while disrespectful, are hardly indicative of a discriminatory motive, especially in the

[6] These names are alleged to be "bitch," "pussy," "dumb," and "ugly." *See* Attachment to D0025, Am. Pet. ¶¶ 48.

school setting. *See Kriss v. Sprint Communications Co*., Ltd., 58 F.3d 1276, 1281 (8th Cir. 1995) (holding that rude gender-specific vulgarities such as "bitch," "do not furnish much proof of gender discrimination."); *see also Oncale v. Sundown Offshore Servs., Inc.*, 523 U.S. 75, 80 (1998) (harassment is not automatically discriminatory because of sex merely because the words used have sexual content or connotations). Moreover, Plaintiffs fail to attribute these comments to the students whose actions form the substantial basis of her harassment claim. *See* Attachment to D0025, Am. Pet. ¶ 47 (identifying the students that allegedly called A.H. names as "a group of Defendants' students"). As such, even assuming arguendo that these offensive names can be said to indicate a discriminatory motivation, they fail to allege that any of the actions toward A.H. by L.L., L.C., R., and Student A, were based on the same motivation. Instead, in that case, the comments themselves would represent the only conduct which was discriminatorily motivated.

Occasional name-calling is not "so severe, pervasive, and objectively offensive" as to support Plaintiffs' harassment claim. "It is not enough to show . . . that a student has been teased . . . or called offensive names." *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 652 (1999) (citations and quotations omitted). Rather, in reference to student-on-student harassment in education, the Supreme Court has instructed:

> Courts . . . must bear in mind that schools are unlike the adult workplace and that children may regularly interact in a manner that would be unacceptable among adults. Indeed . . . students are still learning how to interact appropriately with their peers. It is thus understandable that, in the school setting, students often engage in insults, banter, teasing, shoving, pushing, and gender-specific conduct that is upsetting to the students subjected to it. Damages are not available for simple acts of teasing and name-calling among school children, however, even where these comments target differences in gender. Rather, in the context of student-on-student harassment, damages are available only where the behavior is so severe, pervasive, and objectively offensive that it denies its victims the equal access to education . . .

Davis v. Monroe County Bd. of Educ., 526 U.S. 629, 651–52 (1999). The specific words alleged by Plaintiffs are insufficient to support a plausible claim of severe or pervasive harassment as to deny A.H. equal access to education. *See id.*; *Estate of Barnwell v. Watson*, 880 F.3d 998, 1002–03, 1006–07 (8th Cir. 2018) (affirming grant of summary judgment on sexual harassment in education claim where a student was called "fruity" and a "faggot" and bullied because of perceptions about his sexuality); *Lam v. Curators of the Univ. of Missouri at Kansas City Dental School*, 122 F.3d 654, 657 (8th Cir. 1997) (finding student's single exposure to distasteful videotape did not support sexual harassment). Even in the workplace setting, such actions would fail to support viable harassment. *See, e.g.*, *White v. State*, 5 N.W.3d 315, 320–22, 326–28 (Iowa 2024) (holding various sexual and offensive comments made in the workplace by coworkers were not sufficient to support a viable sexual harassment claim); *Singletary v. Missouri Dept. of*

Corrections, 423 F.3d 886, (8th Cir. 2005) (holding colleagues' use of racial epithets in reference to the plaintiff did not a create a hostile work environment and stating "our cases require that a plaintiff show more than [a] few occurrences over a course of years"); *Casper v. Gunite Corp.,* 221 F.3d 1338 (7th Cir. 2000) (holding in a disability harassment case that five comments over a 14-month period calling the plaintiff a "dumb ass" and "Rick Retardo" and commenting negatively on the plaintiffs reading and writing abilities were not sufficiently severe or pervasive); *Abraham v. Abington Friends School*, 215 Fed. Appx. 83, at *2 (3d Cir. 2006) (five alleged instances of name-calling did not rise to the level of type of severe and pervasive conduct required to establish a harassment claim).

Plaintiffs reference *Hiller v. Runyon*, 95 F. Supp. 2d 1016 (S.D. Iowa 2000) in support of their argument, but misleadingly omit significant, discriminatory actions taken by the defendant in that case which supported the court's denial of summary judgment, including: management berating, challenging and intimidating the plaintiff almost daily because of his disability and in response to requests for disability accommodations; management threatening to withhold accommodations; and management making it difficult for the plaintiff to request disability accommodations. *See Hiller*, 95 F. Supp. at 1022, 1024–1026. *Hiller* is not supportive of a plausible claim in this case, where the only actions arguably showing discriminatorily-motivated harassment is occasional name-calling.

"The Supreme Court has cautioned courts to be alert for . . . behavior that does not rise to the level of actionable harassment." *Al-Zubaidy v. TEK Indus., Inc.*, 406 F.3d 1030, 1038 (8th Cir. 2005). Plaintiffs' Amended Petition is indicative of a case without sufficient facts to support a plausible sex and disability harassment claim. Plaintiffs fail to plead particular facts demonstrating discriminatory motive. Moreover, any harassment that is arguably shown to have been motivated by A.H.'s sex or disability fails to support harassment which is sufficiently severe and pervasive. Plaintiffs therefore fail to meet the heightened pleading standard for their sex and disability claims and such claims should be dismissed with prejudice.

C. Plaintiffs Have Failed to Sufficiently Plead Their Breach of Fiduciary Duty and Negligence Claims as Asserted Against Defendants Halupnik and Casner as to Meet the Heightened Pleading Standard Under Section 670.4A.

i. Defendant Halupnik.

Plaintiffs appear to concede that they plead no facts demonstrating Defendant Halupnik was personally involved in the underlying actions which form the basis of Plaintiffs' claims or that he knew anything about the situation. *See* Brief of Appellee at 41–43. Instead, Plaintiffs assert Defendant Halupnik is subject to liability because he should have known of the underlying conduct 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.*

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 negligence and breach of fiduciary claims against Defendant Halupnik should be dismissed.

ii. Defendant Casner.

Simply because Defendant Casner was one of A.H.'s teachers and "connected" with A.H. does not provide sufficient factual support for any of Plaintiffs' claims against her. The heightened pleading standard requires plausible claims be set forth with particularity, providing the who, what, where, when, and how. *Nahas v. Polk County*, 991 N.W.2d 770, 781–82 (Iowa 2023). As Plaintiffs admit, they are not aware of the extent to which Defendant Casner knew or did not

know about the alleged bullying experienced by A.H. *See* Brief of Appellee at 43. And the Amended Petition does not set forth how Casner, individually, failed to protect A.H. Rather, Plaintiffs' assert their claims against Defendant Casner based upon her failure to protect A.H. are premised upon unknown, "assumed" interactions with A.H. *See id.* at 43. This is insufficient.

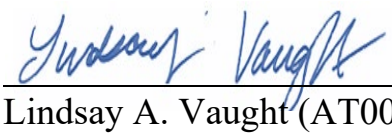
As are Plaintiffs' allegations regarding Casner's own actions toward A.H. The pleaded facts fail to plausibly establish that Casner had any special relationship with A.H. outside of the general relationship she had with other students. Nor are the actions exhibited by Casner sufficient to show a breach of any duty that may have existed.

Plaintiffs' allegations against Defendant Casner are insufficient to meet the heightened pleading standard on Plaintiffs' claims of negligence and breach of fiduciary duty.

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, as well as Plaintiffs' breach of fiduciary duty and negligence claims against Defendants Halupnik and Casner, fail to meet the heightened pleading requirement. As such, the district court erred in its ruling and Plaintiffs' claims should be dismissed with prejudice.

Respectfully Submitted,



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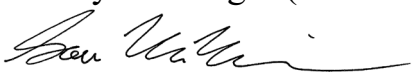

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CERTIFICATE OF FILING/SERVICE

I hereby certify that on December 27, 2024, 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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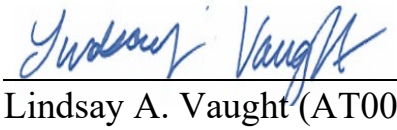
CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

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 5,910 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1).

Dated this December 27th, 2024.



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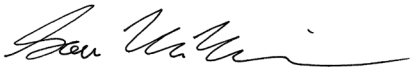

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