IN THE SUPREME COURT OF IOWA

No. 24-1352

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

Plaintiffs-Appellees,

v.

SOUTHEAST POL 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 POL COUNTY, IOWA
HONORABLE COLEMAN MCALLISTER, DISTRICT COURT JUDGE

APPELLEES' BRIEF

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STATEMENT OF THE ISSUES

I. Whether Appellants have a Right to Appeal the District Court's Denial of their Motion for Partial Dismissal as a Matter of Right When there was no Denial of Qualified Immunity.

II. Whether the District Court Correctly Ruled Appellees' Iowa Civil Rights Act Claims are not Subject to the Heightened Pleading Standard of the Iowa Municipal Tort Claims Act.

III. Whether Appellees Sufficiently Pled their Non-Iowa Civil Rights Act Claims against Mr. Halupnik and Ms. Casner to Survive the Heightened Pleading Standard of the Iowa Municipal Tort Claims Act.

ROUTING STATEMENT

This case should not be retained by the Iowa Supreme Court. Despite their effort to maintain this claim, Appellants do not have an immediate right to appeal. The district court's denial of Appellants' Motion to Dismiss was not a denial of qualified immunity under Iowa Code section 670.4A. Instead, the denial found that claims brought under chapter 216, the Iowa Civil Rights Act ("ICRA"), are not subject to the pleading standards set forth in chapter 670, the Iowa Municipal Tort Claims Act ("IMTCA"). The court reached this conclusion based on caselaw, the plain language of the statutes, and legislative intent.

Further, this is not an issue of first impression because, as mentioned, Iowa case law and statutes clearly lay out the inapplicability of the heightened pleading standard in chapter 670 to Iowa Civil Rights

Act claims. Both the ICRA and the IMTCA have existed together for over half a century without any court finding they are tied together. Iowa courts have analyzed ICRA claims and claims subject to the IMTCA in many cases without ever reaching the conclusion Appellants ask for today. As such, this is not an issue of first impression.

NATURE OF THE CASE

Plaintiffs-Appellees Ashley and Ryan Hall brought this action on behalf of their minor child A.H. The claims in this case arise from allegations of discrimination and harassment A.H. faced while attending Southeast Polk Junior High School ("SEP") as a seventh-grader. Defendants-Appellants filed a Motion for Partial Dismissal of Plaintiffs' claims, arguing, in relevant part, that Plaintiffs' ICRA claims did not meet the heightened pleading standard required in Iowa Code section 670.4A(3) and that Plaintiffs' claims against Defendants Halupnik and Casner were not sufficiently pled under the same standard. The District Court denied the motion, in part, finding the Plaintiffs' ICRA claims are not subject to the IMTCA based on relevant caselaw and statutory interpretation. Further, the Court declined to dismiss Plaintiffs' claims against Defendants Halupnik and Casner.

Appellants claim they were denied qualified immunity under Iowa Code section 670.4A(4), despite the district court never making such a ruling. Under that false assumption, Appellants now appeal the denial, asserting they have an automatic right to do so.

STATEMENT OF THE FACTS

Plaintiffs-Appellees Ashley Hall and Ryan Hall, on behalf of minor child A.H. (hereinafter, collectively, "Appellees" and individually, "A.H.," "Ashley," and "Ryan"), filed their Petition on February 14, 2024. Appellees' Petition asserted various claims against Defendants Southeast Polk Junior High School – Southeast Polk Community School District, Dirk Halupnik, Joseph Horton, Michael Dailey, Jacob Bartels, and Georgia Casner (hereinafter, collectively, "Appellants" and individually, "SEP" or "SEP Junior High," "Mr. Halupnik," "Mr. Horton," "Mr. Dailey," "Mr. Bartels," and "Ms. Casner").

Specifically, Appellees brought one (1) statutory claim pursuant to Iowa Code Section 280.28 (Count I), one (1) claim of Breach of Fiduciary Duty (Count VII), and one (1) claim of Negligence (Count VIII) which are asserted against all of the aforementioned Appellants. Further, Appellees brought two (2) claims of supervisor liability, namely,

Negligent Training and Supervision against SEP, Mr. Halupnik, Mr. Horton, and Mr. Dailey and Respondeat Superior against SEP (Counts IX-X). Finally, Appellees brought five (5) claims of violations of Iowa Code Chapter 216, the Iowa Civil Rights Act ("ICRA"). (Counts II-VI).

Appellees' five (5) ICRA claims are discrimination in educations claims and are identified as: Count II – Disability Discrimination; Count III – Sex Discrimination; Count IV – Sex and Disability Harassment; and Count V – Failure to Accommodate against SEP and Count VI – Aiding and Abetting Education Discrimination against the individually named Defendants. Appellees set forth, in extensive detail, the claims against Appellants in their lengthy Amended Petition. (Attachment to D0025, First Am. Pet.). Some of the facts and claims are as follows.

SEP is an educational institution located in Polk County, Iowa with its headquarters located in Pleasant Hill, Iowa. (Attachment to D0025, First Am. Pet. ¶ 4 (4/30/2024)). At all times material, Mr. Halupnik was the Superintendent of SEP, Mr. Horton was the Assistant Superintendent of SEP, Mr. Dailey was the Principal at SEP's Junior High, Mr. Bartels was the Assistant Principal at SEP's Junior High, and

Ms. Casner was a math teacher employed at SEP's Junior High. (Attachment to D0025, First Am. Pet. ¶¶ 5-9).

A.H. Suffers from Attention Deficit Hyperactivity Disorder ("ADHD"), which led to SEP setting forth an Individual Education Plan ("IEP") for her. (Attachment to D0025, First Am. Pet. ¶ 18, 20). Clearly, Appellants were aware of A.H.'s disability. At the beginning of the 2022-2023 school year, Appellants labeled A.H. as a "problem" due to her disabilities, IEP, and required accommodation. (Attachment to D0025, First Am. Pet. ¶ 22). Appellants then neglected to follow A.H.'s IEP, leading to her academic performance to decline and miss school. (Attachment to D0025, First Am. Pet. ¶ 23-25, 35). Ms. Casner specifically scolded A.H. in front of the entire class for her voice being loud, yelled at A.H., refused to allow A.H. to leave the room when she was being yelled at, and failed to follow A.H.'s IEP repeatedly. (Attachment to D0025, First Am. Pet. ¶ 26-27, 32). SEP was made aware of Ms. Casner's conduct by Appellees. (Attachment to D0025, First Am. Pet. ¶ 28-33).

In addition to the discrimination by SEP employees, A.H. was also being harassed and bullied by fellow students at SEP. (Attachment to

D0025, First Am. Pet. ¶ 38). The bullying consisted of chasing A.H. through hallways, physically threatening A.H., physically assaulting A.H., a verbally assaulting A.H. by calling her derogatory slurs regarding her physical appearance and disabilities. (Attachment to D0025, First Am. Pet. ¶ 39-40, 46-48, 50-51, 59, 63, 67-68, 72). Appellees attempted multiple times to seek the help from Appellants, contacting different SEP employees and even the police. (Attachment to D0025, First Am. Pet. ¶ 42-44, 49-52, 55-58, 61-62, 65, 73-74). Appellants told Appellees they were putting a safety plan in place to protect A.H., but that safety plan was not followed and A.H. was still harassed and even physically assaulted, despite Ashley and Ryan complaining about the continued harassment and failures of Appellants. (Attachment to D0025, First Am. Pet. ¶ 53-54, 64). Appellants failed to properly act, causing A.H. to suffer physical, mental, and emotional pain and suffering. (Attachment to D0025, First Am. Pet. ¶ 79).

On or about March 18, 2024, Appellants collectively filed their Pre-Answer Motion for Partial Dismissal of Plaintiffs' Petition. (D0014, Mot. for Part. Dismissal of Plts.' Pet. (3/18/2024)). Appellants moved for dismissal on all of Appellees' ICRA claims (Counts II-VI), Appellees' Iowa

Code Section 280.28 claim (Count I), and Appellees' Negligent Training and Supervision claim (Count IX). (*See* D0014, Mot. for Part. Dismissal of Plts.' Pet.). In addition, Appellants moved for dismissal on all of Appellees' claims against Mr. Halupnik and Ms. Casner. (*See* D0014, Mot. for Part. Dismissal of Plts.' Pet.).

On April 30, 2024, the Appellees moved to amend their Petition to add additional facts, which was granted. (D0025, Mot. to Amend Pet. (4/30/2024)). With this Motion, Appellees filed their Amended Petition. (Attachment to D0025, First Am. Pet.). On May 10, 2024, the Appellants renewed their Motion to Dismiss on the same claims as before. (*See* D0027, Mot. for Part. Dismissal of Am. Pet. (5/10/2024)).

The district court denied Appellants' motion, in relevant part, on August 8, 2024. (D0033, Ruling on Ds' Mot. for Partial Dismissal (8/8/2024)). The dismissal was based on the grounds that Appellees' Iowa Civil Rights Act claims are not subject to the heightened pleading standard of the Iowa Municipal Tort Claims Act. (D0033, Ruling on Ds' Mot. for Partial Dismissal p. 7-10). There was no denial of qualified immunity. On November 8, 2024, Appellants filed their Brief and Amended Brief. (Appellants' Amended Br. (11/8/2024)). Appellants claim

they are seeking their appeal as a matter of right under Iowa Code section 670.4A(4) for denial of qualified immunity. (Appellants' Amended Br. p. 14).

Appellees now resist Appellants' appeal on the grounds (1) they have no matter of right to appeal the district court's order, (2) the district court correctly held ICRA claims are not subject to the IMTCA, and (3) the claims against Mr. Halupnik and Ms. Casner have been sufficiently pled.

ARGUMENT

Appellants are seeking an appeal on the grounds the district court allegedly erred in holding, as many courts have prior held, that the Iowa Municipal Tort Claims Act ("IMTCA") provisions do not apply to Iowa Civil Rights Act ("ICRA") claims and that Plaintiffs' claims against Defendants Halupnik and Casner were sufficiently pled. (Amended Brief of Appellant p. 15, 23). To the contrary, the IMTCA does not apply to ICRA claims and never have. Further, Appellees have sufficiently pled their claims against Appellants Halupnik and Casner. Accordingly, this Court should not grant this appeal.

I. Appellants Are Not Entitled to Appeal the District Court's Denial of Their Motion for Partial Dismissal as There Was No Denial of Qualified Immunity.

Appellants claim they were denied the protection of qualified immunity afforded by Iowa Code section 670.4A(4). (Appellants' Br. 14). Iowa Code section 670.4A(4) states that any denial of qualified immunity by the district court "shall be immediately appealable." Iowa Code § 670.4A(4). The district court's ruling on Appellants' Motion to Dismiss states the following: "Because the Court finds the IMTCA's heightened pleading standard does not apply to the Halls' ICRA claims, the District's motion to dismiss Counts II-VI based on that pleading standard shall be denied. The Court concludes that the Amended Petition is sufficient to survive a notice-pleading standard for these Counts." (D0033, Ruling on Ds' Mot. for Partial Dismissal p. 10). The question the court was answering was "whether the heightened pleading standard imposed by the [IMTCA] applies to claims under the [ICRA]." (D0033, Ruling on Ds' Mot. for Partial Dismissal at p. 7). There was no ruling on whether the Appellants are entitled to qualified immunity, but a ruling on whether the heightened pleading standard contained in the IMTCA applies to Appellee's ICRA claims, which it was determined it does not. Because

there was no denial of qualified immunity under 670.4A, there is no right to appeal. Therefore, Appellants may apply to this Court for permission to appeal, and Appellants' Brief should be treated as such an application for the reasons stated above.

The Court may grant an application for interlocutory appeal if (1) the ruling involves substantial rights, (2) the ruling will materially affect the final decision, and (3) determination of the issue will better serve the interests of justice. *Banco Mortgage Co. v. Steil*, 351 N.W.2d 784, 787 (Iowa 1984). But it grants interlocutory appeals sparingly. *Knauss v. City of Des Moines*, 357 N.W.2d 573, 576 (Iowa 1984). Only exceptional circumstances where the interests of sound and efficient judicial administration are best served warrant granting interlocutory appeal. *Banco Mortg. Co.*, 351 N.W.2d at 787. As such, the party seeking to appeal at an early stage of the district court proceedings has the heavy burden to show that the likely benefit to be derived from early appellate review outweighs the detriment and therefore satisfies the requirement that the interests of justice be better served. A trial should not be postponed to litigate an issue that would be ordinarily raised on appeal following a judgment, if a judgment is obtained. Only where there is a

substantial basis for a difference of opinion and immediate appellate resolution of the issue will materially advance the progress of the litigation is an interlocutory appeal appropriate. *Banco Mortg. Co.*, 351 N.W.2d at 787. Otherwise, the Court should let a matter proceed to trial and review the question if a judgment results. *See* Iowa R. App. P. 6.103(3).

The Appellants' issues fail to meet the requirements for interlocutory appeal. There was no denial of qualified immunity, thus no denial of substantive rights. Further, the interests of justice would not be served by determining the issues here because this Court and many others have declined to apply the IMTCA to ICRA claims and because the issue of presenting enough facts against Mr. Halupnik and Ms. Casner are issues to be decided after litigation has ensued, and discovery has been completed.

The Court should not grant interlocutory appeal for this issue and, instead, the application should be denied.

II. The District Court Correctly Ruled Appellees' Iowa Civil Rights Act Claims are not Subject to the Heightened Pleading Standard of the Iowa Municipal Tort Claims Act.

A. Standard of Review.

The court reviews a motion to dismiss for correction of errors at law. *Nahas v. Polk County*, 991 N.W.2d 770, 775 (Iowa 2023). The court must "accept as true the petition's well-pleaded factual allegations, but not its legal conclusions." *Id.* (quoting *Benskin, Inc. v. W. Bank*, 952 N.W.2d 292, 298 (Iowa 2020)).

B. The IMTCA does not apply to Appellees' ICRA claims, and therefore Appellees have sufficiently pled their claims.

A review of Iowa caselaw, the relevant statutes, and the legislature's intent clearly show claims brought under the ICRA are not subject to the IMTCA. Starting with the statutory interpretation, Appellants rely on the statutory definition of "tort" provided in the act:

> "Tort" means every 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 complete definition of "tort" is vital in considering the IMTCA's applicability. The types of actions defined as torts are separated by a semi-colon—negligence, error or omission, and breach of duty. As seen in

the emphasized section above, statutory and constitutional provisions factor in only as examples of different sources from which a breach of duty may arise.

Furthermore, the Iowa Supreme Court has analyzed a tort claim as separate and distinct from ICRA claims. In *Carver-Kimm v. Reynolds*, the court held public policy claims are not governed by the ICRA and are instead a tort based in common law. 992 N.W.2d 591, 603 (Iowa 2023). The court made it clear that public policy tort claims and ICRA claims are not interchangeable: "We have never declared that the wrongful discharge tort mirrors an Iowa Civil Rights Act claim. And more particularly, we have never determined that the scope of liability in the Iowa Civil Rights Act also applies to the common law tort." *Id*. The court noted that the ICRA provides a wider scope of liability than common law torts, which, again, are analyzed under different standards. *Id*.

The *Carver-Kimm* Court's statement should not come as a surprise considering the ICRA has repeatedly been found to preempt common law tort claims. *See, e.g. Borshel v. City of Perry*, 512 N.W.2d 565, 567-68 (Iowa 1994); *Channon v. United Parcel Serv*., 629 N.W.2d 835, 838 (Iowa 2001).

Additionally, the Court in *Smidt v. Porter* held the plaintiff's tort claims brought *in addition to* ICRA claims were preempted by the ICRA and therefore could not be brought. 695 N.W.2d 9, 17 (Iowa 2005). They wrote, "[i]n *Channon*, as here, the plaintiff pled a tort in addition to her ICRA claim." *Id.* (quoting *Channon*, 629 N.W.2d at 858). Clearly, ICRA claims are not, and historically have not been, considered torts nor are they analyzed under similar procedural standards and requirements.

Even more contradictory to Appellants' argument, in *Sutton v. Council Bluffs Water Works* the Court went into depth about the definition of "tort" contained within the IMTCA. 990 N.W.2d 795, 797-98 (Iowa 2023). The Court defined the term "every civil wrong" at the beginning of the definition to mean its common usage: "an intentional act resulting in harm (an intentional tort), an act involving wrongful conduct that inadvertently results in harm (negligence), and an act resulting in harm for which, because of the hazards involved, the law imposes strict liability." *Id.* at 798. Those are all traditionally understood torts. Because strict liability claims are tort claims, the Court found Water Works could be held liable. *Id.* The court did not expand the definition of torts to

include anything which has not traditionally been understood as a tort, and this court should not do so now. *Id.*

Next, the procedural and jurisdictional requirements of the ICRA further support a finding of exclusivity of claims brought under the ICRA, which are separate and apart from claims brought under IMTCA. The ICRA states that a person claiming a violation "must" go through the complex administrative agency process before seeking relief in court. *Northrup v. Farmland Industries, Inc.*, 372 N.W.2d 193, 196 (Iowa 1985); Iowa Code § 216.16(1) (2024). As a prerequisite to obtaining an administrative release that allows for a civil rights lawsuit to be filed, "[a] person claiming to be aggrieved by an unfair or discriminatory practice must initially seek an administrative relief by filing a complaint with the commission in accordance with section 216.15." Iowa Code § 216.16(1).

The ICRA goes on to state: "An action authorized under this section is barred unless commenced within ninety days after issuance by the commission of a release under subsection 2 of this section or within one year after the filing of the complaint, whichever occurs first." Iowa Code § 216.16(4).

In *Northrup*, the plaintiff argued he could bring a common law claim for wrongful discharge based on his alcoholism. 372 N.W.2d at 195. However, the only source for a public policy protecting alcoholism as a protected class was the ICRA's disability discrimination provisions. *Id.* at 196. The problem was that the remedial scheme set forth in the ICRA is mandatory: either you follow it or you cannot recover. *Id.* at 196-97; Iowa Code § 216.16(1); Iowa Code § 216.16(4). "It is clear from a reading of section [216.16(1)] that the procedure under the civil rights act is exclusive, and a claimant asserting a discriminatory practice must pursue the remedy provided by the act." *Northrup*, 372 N.W.2d at 197. Therefore, the court held "that any remedies to which Northrup may be entitled would lie solely under chapter [216] and his independent common-law action [could not] be recognized." *Id.*

The IMTCA has contradictory, less restrictive jurisdictional requirements. For instance, there is no administrative exhaustion requirement. *See generally* Iowa Code Chapter 670 (2024). Likewise, the IMTCA allows "a person who claims damages from any municipality . . . two years" to commence their civil action. Iowa Code § 670.5 (2024). Appellees anticipate Appellants would likely protest if they had relied

solely on Chapter 670's procedural requirements and foregone administrative exhaustion with the Iowa Civil Rights Commission. Similarly, the ICRA does not provide punitive damages. *See* Iowa Code § 216.15 (2024).

Conversely, the IMTCA allows for punitive damages against individual officers and employees. *See* Iowa Code § 670.12 (2024). Appellees would be shocked if Appellants conceded punitive damages were available in ICRA claims against their officers or employees despite their availability within the IMTCA statutory scheme. Furthermore, Appellees did not have to request the right to sue and bring their claims to district court to seek relief under the ICRA. Rather, the Commission is also empowered by the ICRA to adjudicate civil rights claims and award damages—at no point during that process would a complainant need to meet any pleading requirements of Chapter 670.

Again, the ICRA is preemptive over IMTCA claims. *See Smidt*, 695 N.W.2d at 17; *Channon*, 629 N.W.2d at 858. Appellants argue preemption is not pertinent here because "no action can arise solely from or under the IMTCA as to be subject to preemption." (Appellants' Br. p. 19). Appellants cite to *Sutton v. Council Bluffs Water Works* to support this

contention, yet that case does not support their argument. While it is true the IMTCA does not create new claims and therefore the IMTCA applies to underlying claims being asserted, preemption still affects *those* claims. In *Greenland v. Fairtron Corp.*, the Court laid this out clearly, stating "[p]reemption occurs unless the claims are separate and independent, and therefore incidental, causes of action." 500 N.W.2d 36, 38 (Iowa 1993). The Court goes on to plainly state "[t]he test is whether, in light of the pleadings, discrimination is made an element of the alternative claims." *Id.*

Additionally, the language of chapter 670.4A states qualified immunity and the heightened pleading standard applies to "claims brought under this chapter." Iowa Code § 670.4A. This clearly indicates there are some claims which would not be subject to IMTCA protections and which could be brought by other means, like claims brought under the ICRA.

To summarize, if a plaintiff wants to bring a claim *not* under the ICRA, but the *only* bad act was based on discrimination, that claim *would be* preempted by the ICRA, *even if* that claim was brought under another statute which *would* in turn be subject to the IMTCA. *See Greenland*, 500

N.W.2d at 38 ("We held the claims were preempted because the only wrongful, bad faith, or unfair act alleged was age discrimination") (quoting *Grahek v. Voluntary Hosp. Co-op Ass'n of Iowa, Inc.*, 473 N.W.2d 31, 34 (Iowa 1991)).

Because the ICRA is the exclusive statutory remedy for civil rights violations such as Appellees', its procedural and jurisdictional requirements should govern. The legislature has given individuals the power to pursue claims against municipalities under the ICRA without reliance on the IMTCA. *See generally*, Iowa Code Chapter 216 (2024). The laws are to be treated as separate and distinct.

In addition to the relevant Iowa caselaw which clearly shows ICRA claims are not subject to the IMTCA standards, Federal Courts have reached the same conclusion when analyzing the two. Almost fifteen (15) years ago, Judge John Jarvey addressed the IMTCA's inapplicability to ICRA claims:

> Furthermore, the Iowa Municipal Tort Claims Act does not bar Plaintiff's claim under the Iowa Civil Rights Act. The Iowa Municipal Tort Claims Act provides that "[e]xcept as otherwise provided in this chapter, every municipality is subject to liability for its torts . . ." Iowa Code § 670.2 (2005). Section 670.4(3) then provides a municipality with immunity from damages under certain circumstances. Defendants contend that they are entitled to immunity from damages

> under the "discretionary function exemption." *See* Iowa Code § 670.4(3) (2005). However, this provision removes immunity if the statute that deals with such claims imposes damages. *See* Iowa Code § 670.4(3) (2005); *Fink v. Kitzman*, 881 F. Supp. 1347, 1389 (N.D. Iowa 1995). Because the Iowa Civil Rights Act expressly allows for damages pursuant to Iowa Code section 216.15(8), the immunity provided by the Iowa Municipal Tort Claims Act is inapplicable to plaintiff's claim under the Iowa Civil Rights Act. *See id*. (refusing to apply the immunity provided by the Iowa Municipal Tort Claims Act to plaintiff's claim under the Iowa Civil Rights Act); *Bruning ex rel. Bruning v. Carroll Cmty. Sch. Dist.*, 486 F.Supp.2d 892, 918–19 (N.D. Iowa 2007) (applying the Iowa Municipal Tort Claims Act to the plaintiff's state law tort claims, but not to the plaintiff's claim under the Iowa Civil Rights Act). Thus, Defendants are not entitled to immunity under the Iowa Municipal Tort Claims Act.

Peters v. City of Council Bluffs, 2009 WL 6305733, *7 (S.D. Iowa May 5, 2009).

The *Peters* court concluded, as shown in the passage above, that IMTCA immunity, specifically discretionary function immunity, did not apply to ICRA claims under the express language of both the IMTCA and the ICRA. *Id*. The court did not have to address the issue of whether the IMTCA in general applies to ICRA claims because that was not the issue presented to it. *Id*. However, the court did cite a case which applied the IMTCA to state law tort claims but not ICRA claims. *Id*. (citing to *Bruning ex rel. Bruning v. Carroll Cmty. Sch. Dist.*, 486 F.Supp.2d 892,

918–19 (N.D. Iowa Apr. 19, 2007)). Clearly, the court felt ICRA claims were not included in the definition of "torts" which the IMTCA governs over.

Furthermore, the United States District Court for the Southern District of Iowa, the same court that decided *Peters*, articulated the inapplicability of the IMTCA to ICRA claims 14 years later. Judge Locher found ample evidence from Iowa case law and statutes showing the legislature did not intend the IMTCA to apply to ICRA claims, and thus declined to do so in *Dickey v. Mahaska Health Partnership*, 705 F.Supp.3d 883 (S.D. Iowa Dec. 7, 2023). Judge Locher pointed out both the ICRA and the IMTCA have co-existed for more than half a century and Iowa courts have never tied them together. *Id.* at 891. Since the inception of both Acts, Iowa courts have decided ICRA claims, like employment discrimination, against municipalities "more times than are worth listing." *Id.* (citing to a list of Iowa cases doing such). Further, after analyzing the statutory language and legislative intent, it was abundantly clear that ICRA claims are separate from claims subject to the IMTCA. *Id.* at 891-93.

Appellants attack *Dickey*, claiming (1) the court ignored the definition of "tort" defined within the IMTCA, (2) discrimination claims are tortious, and (3) the Iowa Supreme Court has not limited IMTCA applicability to only traditional torts. (Appellants' Br. p. 21-22).

Starting with Appellant's first attack on *Dickey*, the Appellant falsely declares the court failed to give notice to the definition of a "tort." The court in *Dickey* examined the definition the IMTCA has provided for tort and concluded it would not go against the plain meaning of the word when it used traditional tort law terminology like "negligence," "nuisance," and "breach of duty." *Dickey*, 705 F.Supp.3d at 892; *see* Iowa Code § 670.1(4). Noting that the legislature included "every civil wrong" within the definition, there is clear language indicating the legislature intended torts as Iowa courts have long held it to mean. *Id.*; *see State v. Adams*, 810 N.W.2d 365, 370 (Iowa 2012) ("[W]e assume the legislature is familiar with the existing state of the law when it enacts new legislation."). The *Dickey* court found it doubtful that "the Legislature intended to deviate from that long history by including non-torts in the definition of 'tort,' as 'a statute will not be presumed to overturn long-established legal principles, unless that intention is clearly expressed or

the implication to that effect is inescapable.'" 705 F.Supp.3d at 892 (quoting *Victoriano v. City of Waterloo*, 984 N.W.2d 178, 182 (Iowa 2023)).

Second, although discrimination may be tortious in nature, the IMTCA was not intended to apply to every single tortious act. If that were the case, the ICRA claims would always be subject to the IMTCA, which, as mentioned, the two have long co-existed without ever being tied together. *See id*. Further, the protections provided to municipalities under Iowa Code section 670.4A only apply to "a claim brought under this chapter." Iowa Code § 670.4A. As articulated above, ICRA claims are not brought under chapter 670. Appellants' claim that ICRA claims should be considered torts for the purpose of receiving IMTCA protections confuses the law.

Responding to Appellants' last attack on *Dickey*, the *Nahas* decision did not overrule over half a century of precedent with its ruling that claims of breach of duty under Iowa Code sections 21 and 22 did not meet the heightened pleading standard of 670.4A. The court in *Nahas* applied the IMTCA heightened pleading standard to the plaintiff's claims of violation of Iowa Code section 21.3, for a governmental body holding a closed meeting, and Iowa Code section 22.7, for a governmental body

failing to maintain the confidentiality of a record. 991 N.W.2d at 783. Iowa Code section 670 defines a tort to include actions based on breach of duty, whether that duty is statutory or otherwise created. Iowa Code § 670.1(4). The plaintiff in *Nahas* alleged a breach of duty, which is a tort, and therefore is subject to the IMTCA. 991 N.W.2d at 783.

Additionally, Iowa Code sections 21 and 22 do not have independent and specific procedural requirements to bring claims for violations. *See* Iowa Code § 21.6; *see also* Iowa Code § 22.5; *cf* Iowa Code § 216.15(13). Claims brought for violations of Iowa Code chapters 21 and 22 have also been subject to qualified immunity protections before, while ICRA claims have historically not been. *See Nahas*, 991 N.W.2d at 783; *see Bruning*, 486 F.Supp.2d at 918-19. Claims under the ICRA are not the same as breach of duty claims brought for a violation of Iowa Code chapter 21 or 22.

The caselaw and plain statutory language and intent shows ICRA claims were not meant to be subject to the IMTCA. To hold otherwise would go against over half a century of precedent that has analyzed the ICRA and IMTCA separately despite having the opportunities to make such a ruling.

Because the ICRA claims are not subject to the heightened pleading standard or qualified immunity under chapter 670, Appellees' pleading obligation was to comply with Iowa's notice-pleading standard. A petition "need not alleged ultimate facts that support each element of the cause of action . . . [but] must contain factual allegations that give the defendant 'fair notice' of the claims asserted so the defendant can adequately respond." *Rees v. City of Shenandoah*, 682 N.W.2d 77, 79 (Iowa 2004) (quoting *Schmidt v. Wilkinson*, 340 N.W.2d 282, 283 (Iowa 1983)). A petition provides fair notice "if it informs the defendant of the incident giving rise to the claim and of the claim's general nature." *Id*.

Appellees Amended Petition clearly meets this requirement. It goes beyond simply stating the incidents giving rise to the claims and instead provides a much more detailed explanation of the nature of the claims. (*See* D0002, Plts.' Amended Petition).

C. Alternatively, if the IMTCA applies to Appellees' claims, each claim was sufficiently pled to meet the requirements.

If this Court chooses to find the IMTCA does apply to Appellees' ICRA claims, the claims are still sufficiently pled to meet the heightened pleading requirements.

Chapter 670 requires a plaintiff to state their claim "with particularity the circumstances constituting the violation." Iowa Code § 670.4A(3). The second step is to plead "a plausible violation" of the law. *Id*. Lastly, a plaintiff must state that "the law was clearly established at the time of the alleged violation." *Id*. A claim is pled with particularity when it states the who, what, when, where, why, and how. *Nahas*, 991 N.W.2d at 781. An allegation is plausible if it "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. at 782 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). It is not a probability requirement, but a requirement to present sufficient facts so that the court can infer more than the mere possibility that the defendants are liable. *Id*.

1. Sex and Disability Discrimination

A review of the amended forty (40) page petition shows exactly what is required under the heightened pleading standard laid out in *Nahas*.

WHO: The Appellees have identified who the actors were, specifically giving names of individuals that engaged in the discrimination harassment and that knew of the discrimination, harassment and bullying A.H. was being subjected to because of her sex,

disabilities and requests for accommodations, i.e. L.L, R. (unknown last name), L.C., A (unknown last name) Halupnik, Horton, Dailey, Bartels and Casner. (Amended Petition ¶¶40-41, 59-60, 68-69, 101-105, 119-123).

WHAT: The Appellees have identified multiple instances as to what occurred. (Amended Petition ¶¶ 19-40, 48, 50, 56-72, 83, 85-89, 107-113, 117-118, 125-129).

WHEN: The Appellees identified multiple dates as to when the discrimination and harassment occurred. (Amended Petition ¶¶ 22, 24-27, 31-33, 38, 44, 46, 49-52, 56-59, 62-64, 67-68, 70).

WHERE: As outlined in the Amended Petition, the events described occurred at Southeast Polk Junior High School located at 8325 NE University Ave, Pleasant Hill, Iowa 50327 during the majority of the 2022-2023 school year. (Amended Petition ¶ 17). Further, the Appellees have outlined the events that also occurred on social media. (Amended Petition ¶¶ 46, 49).

HOW: The Appellees have sufficiently outlined how sex and disability discrimination have occurred in their amended petition and have alleged the elements needed to be successful on their claims for sex

and disability discrimination. (Amended Petition ¶¶ 19-40, 48, 50, 56-72, 83, 85-89, 100-115, 117-131).

The district court and this Court would be able to draw on its judicial experience and knowledge to reasonably reach the conclusion Appellants committed a violation under the facts Appellees have presented. *See Nahas*, 991 N.W.2d at 781-82. It is more than a mere possibility the Appellants committed a violation of chapter 216 with their discriminatory conduct, and that their conduct was based on A.H.'s sex and disability. *See id*. As A.H.'s disability and sex were repeatedly attacked and was the basis of her discrimination, and because Appellants knew, Appellees have sufficiently pled their claims.

If the Court finds Appellees' ICRC claims fall within the heightened pleading standard, the Appellees have sufficiently pled their claims.

2. Sex and Disability Harassment

For most of the same reasons Appellees' sex and disability discrimination claims survive, so do the Appellees' sex and disability harassment. Under the *Nahas*, who, what, when, where, how, the Appellees provided the following in their Amended Petition:

WHO: The Appellees have identified who the actors were, specifically giving names of individuals that engaged in the harassment and that knew of the harassment and bullying A.H. was being subjected to because of her sex, disabilities and requests for accommodations, i.e. L.L, R. (unknown last name), L.C., A (unknown last name) Halupnik, Horton, Dailey, Bartels and Casner. (Amended Petition ¶¶40-41, 59-60, 68-69, 135-140).

WHAT: The Appellees have identified multiple instances as to what occurred. (Amended Petition ¶¶ 19-40, 48, 50, 56-72, 83, 85-89,133-147).

WHEN: The Appellees identified multiple dates as to when the harassment occurred. (Amended Petition ¶¶ 22, 24-27, 31-33, 38, 41-44, 46-52, 56-59, 62-64, 66-68, 70).

WHERE: As outlined in the Amended Petition, the events described occurred at Southeast Polk Junior High School located at 8325 NE University Ave, Pleasant Hill, Iowa 50327 during the majority of the 2022-2023 school year. (Amended Petition ¶ 17). Further, the Appellees have outlined the events that also occurred on social media. (Amended Petition ¶¶ 46, 49).

HOW: The Appellees have sufficiently outlined how sex and disability harassment have occurred in their amended petition and have alleged the elements needed to be successful on their claims for sex and disability harassment. (Amended Petition ¶¶ 19-40, 46-48, 50, 56-72, 83, 85-89, 133-148).

Further, the actions alleged here were severe and pervasive enough to survive a motion to dismiss. In determining whether actions alleged are severe or pervasive, a party must "prove he or she 'subjectively perceived the conduct as abusive' and that 'a reasonable person would also find the conduct to be abusive or hostile.'" *Simon Seeding & Sod, Inc. v. Dubuque Human Rights Commission*, 895 N.W.2d 446, 469 (Iowa 2017) (citing *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993)). In the employment setting, this includes the balancing of the following elements:

> The objective determination considers all of the circumstances, including: (1) the frequency of the conduct, (2) the severity of the conduct, (3) whether the conduct was physically threatening or humiliating or whether it was merely offensive, and (4) whether the conduct unreasonably interfered with the employee's job performance. These factors and circumstances must disclose that the conduct was severe enough to amount to an alteration of the terms or conditions of employment. Thus, hostile-work-environment claims by

> their nature involve ongoing and repeated conduct, not isolated events.

Id. at 469.

Here, A.H. was harassed at least six (6) times over a three-four (3-4) month period. (Amended Petition ¶¶ 46, 48, 50, 59, 63, 68, 71). The conduct ranged from harassing comments to verbal threats and actual physical violence, which was clearly humiliating to A.H. as a seventh grader. (Amended Petition ¶¶ 46, 48, 50, 59, 63, 68, 71). Courts within the Eighth Circuit have found similar comments to which A.H. complains of to be sufficient for a harassment claim. "All instances of harassment need not be stamped with signs of overt discrimination to be relevant under Title VII if they are part of a course of conduct which is tied to evidence of discriminatory animus." *Carter v. Chrysler Corp*., 173 F.3d 693, 701 (8th Cir. 1999). "Harassment alleged to be because of sex need not be explicitly sexual in nature." *Id*. "[G]ender-specific epithets such as 'slut' and 'fucking women' can support an inference that the comments were motivated by gender. *Hocevar v. Purdue Frederick Co*., 223 F.3d 721, 731 (8th Cir. 2000) (citing *Williams v. General Motors Corp.,* 187 F.3d 553, 565–66 (6th Cir.1999)). Further, "verbal abuse, violence, or physical aggression may constitute sexual harassment, and that such

need not be explicitly sexual in nature." *Hocevar*, 223 F.3d at 731 (citing *Quick v. Donaldson Co., Inc.,* 90 F.3d 1372, 1379 (8th Cir. 1996)).

For the same reasons identified above for harassment based on sex, Appellees can also be successful on their disability discrimination claims. *See McConathy v. Dr. Pepper/Seven Up Corp.,* 131 F.3d 558, 563 (5th Cir.1998) (Finding a cause for disability-based harassment is "modeled after the similar claim under Title VII.").

In *Hiller v. Runyon*, the United States District Court for the Southern District of Iowa denied a motion for summary judgment on Plaintiff's disability harassment complaint where the Plaintiff was subjected to statements that he "could not perform," had a "pud" route and "physically got within six inches of Hiller's face" and the "abusive conduct continues for months." 95 F.Supp.2d 1016, 1026 (S.D. Iowa 2000).

Here, the Appellees are complaining of the comments and actions directed towards A.H., specifically her being a "problem" and being called a "pussy" and "dumb" and the failure of the Defendants to accommodate her disabilities and adhere to the safety plan to assist A.H.'s declining

education performance and disabilities. (Amended Petition ¶¶ 22, 46, 48, 50, 52-54, 59, 63, 68, 71).

The actions above also clearly altered A.H.'s learning and school environment. She was forced to adhere to a safety plan, which clearly did not work based upon the continued harassment, threats and assaults (Amended Petition ¶¶ 46, 50, 52-54, 59, 63-64, 68, 71, 76) and A.H.'s academic performance and physical, mental and emotional well-being declined. (Amended Petition ¶ 76).

This is sufficient evidence required to withstand a motion to dismiss, even under the IMTCA heightened pleading standard.

III. Appellees' Non-ICRA Claims against Mr. Halupnik and Ms. Casner Were Sufficiently Pled to Meet the Requirements of the Heightened Pleading Standard.

A. Standard of Review.

The court reviews a motion to dismiss for correction of errors at law. *Nahas*, 991 N.W.2d at 775. The court must "accept as true the petition's well-pleaded factual allegations, but not its legal conclusions." *Id.* (quoting *Benskin*, 952 N.W.2d at 298).

B. All claims against Defendants Halupnik and Casner were sufficiently pled.

Appellees have sufficiently pled their claims against Appellants Halupnik and Casner. All claims against Halupnik and Casner, other than the ICRA claims, have met the three requirements of the IMTCA heightened pleading standard. As such, the Appellants' Motion to Dismiss on these grounds was correctly denied. This Court should hold the same.

Chapter 670 requires a plaintiff to state their claim "with particularity the circumstances constituting the violation." Iowa Code § 670.4A(3). The second step is to plead "a plausible violation" of the law. *Id*. Lastly, a plaintiff must state that "the law was clearly established at the time of the alleged violation." *Id*. A claim is pled with particularity when it states the who, what, when, where, why, and how. *Nahas*, 991 N.W.2d at 781. An allegation is plausible if it "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. at 782 (quoting *Ashcroft*, 556 U.S. at 678). It is not a probability requirement, but a requirement to present sufficient facts so that the court can infer more than the mere possibility that the defendants are liable. *Id*.

As articulated above, the heightened pleading standard does not apply to Appellees' ICRA claims. *See supra* Sect. II.B. However, even if this court were to find it does, those claims have been sufficiently pled. *See supra* Sect. II.C.

Turning to Appellees' other claims against Appellants, Breach of Fiduciary Duty and Negligence, Appellees have pled enough facts to survive a motion to dismiss, even under chapter 670's heightened pleading standard.

1. Mr. Halupnik.

As it pertains to Mr. Halupnik, as superintendent, he surely is entrusted with duties to ensure bullying and harassment, including discrimination, does not occur at the educational institution Mr. Halupnik oversaw. Therefore, his failure to do so exposes him to liability for said breach of duty and negligence. In both causes of action, Mr. Halupnik should have known about what was going on at SEP's Junior High at all times material when A.H. was continuously subjected to verbal and physical abuse by teachers and students.

To determine the elements necessary to be successful on each of these claims is not proper at this stage on Appellants' Motion to Dismiss.

Instead, all Appellees must do, even acknowledging the heightened pleading standard, is articulate the failures of SEP, its supervisors, and its employees which make a cognizable cause of action against them. *Young v. HealthPort Techs., Inc.*, 877 N.W.2d 124, 127 (Iowa 2016); Iowa Code § 670.4A(3).

Appellees do just that. For example, Appellees plead Mr. Halupnik was the Superintendent at all material times; he labeled A.H. as a "problem" due to her disabilities, IEP, and required accommodations; he, among with the other Appellants, failed to comply with the terms and conditions of A.H.'s IEP; and Appellees reported the repeated incidents of bullying and harassment to multiple employees at SEP so that Mr. Halupnik knew or should have known of the incidents. (D0002 Appellees' Amended Petition ¶¶ 5, 19-24, 38-44). In Count VII and Count VIII, Appellees pled all Appellants owed the required duty to Appellees and that their duty included caring for A.H.'s educational, physical, and mental wellbeing and safety. (*Id.* at Count VII, Count VIII). All of this, in the context of the entire Amended Petition, states the "who, what, when, where, why, and how," it allows the court to "draw on its judicial experience and common sense" to reach the conclusion Appellants

committed the violation, and the violation was of a law that was "clearly established" at the time. *Nahas*, 991 N.W.2d at 781-82 (citing Iowa Code § 670.4A(3)).

To determine Mr. Halupnik's involvement or failure to get involved as outlined within the Petition, is a proper issue to be determined as litigation ensues. At the very least, as a result of his supervisory position as SEP's Superintendent, SEP and the other Appellants' failures set forth in excruciating detail within Appellees' Petition properly exposes those who are in charge or were in a position to stop the ongoing statutory violations, including Mr. Halupnik. The claims against Mr. Halupnik must remain.

2. Ms. Casner.

As it pertains to Ms. Casner, there are indisputably enough factual allegations to support the district court's ruling allowing the claims against her to survive Appellants' Motion for Dismissal in light of the IMTCA. What is undisputed is Ms. Casner's position at SEP and her connection with and relationship with Appellees. Here, she was A.H.'s teacher. Therefore, it is assumed she had multiple interactions on a day-to-day basis on the relevant dates set forth in the Appellees' Petition.

(Plts.' Petition ¶¶16-23). This is enough to survive Appellants' Motion for Dismissal.

Furthermore, notwithstanding her alleged failures to ensure A.H. was safe from bullying while within SEP, there are sufficient facts of her own bullying, discrimination, and harassment propounded on A.H. Appellees' Petition clearly sets forth A.H.'s learning disability of Attention Deficit Hyperactivity Disorder ("ADHD"). (Plts.' Petition ¶17). As a result of her ADHD, A.H. struggles and/or needs assistance in the area of mathematics, implemented through an IEP. (Plts.' Petition ¶18).

Despite this, it is pled that not only Appellants, including Ms. Casner, failed to properly accommodate A.H. but on occasion Ms. Casner verbally assaulted A.H. by calling her voice loud and annoying and physically stood in the doorway of a classroom wherein Ms. Casner refused or precluded A.H. from leaving. (Plts.' Petition ¶¶20-22). Finally, it is pled, that upon hearing of these altercations between Ms. Casner and A.H., Ashley attempted to fix or remedy the problems facing A.H. and Ms. Casner failed to respond for weeks thereafter. (Plts.' Petition ¶23). This is enough, in light of the remaining factual allegations regarding Appellants' knowledge as a whole regarding the allegations

relevant to Appellees' Petition, to thereafter view the causes of action as cognizable and actionable against Ms. Casner.

To the extent that Ms. Casner knew or did not know about the bullying is again not proper in front of this Court at this time but is instead an issue of fact which has yet to be determined at this stage of the litigation. As litigation ensues, that answer may be answered. Regardless, Appellees have pled sufficient facts, showing the "who, what, when, where, why, and how" to allow the Court to "draw on its judicial experience and common sense" and reach the conclusion it is more than a mere possibility that Ms. Casner knew about the bullying. *See Nahas*, 991 N.W.2d at 781-82; Iowa Code § 670.4A(3). However, as of the date of this Resistance, the only issue which is important and relevant to Plaintiffs' Petition is Ms. Casner's involvement and connection with Plaintiffs, which is undisputed. Ms. Casner's claims must remain.

CONCLUSION

For the reasons described herein, there was no error committed by the district court when denying Appellants' Motion to Dismiss. Said order was properly based on law and facts and Appellants' Appeal, serving as

an Application for Interlocutory Review, should be denied and the matter should proceed to trial.

REQUEST FOR ORAL ARGUMENT

Appellees respectfully request to be heard in oral argument.

Respectfully Submitted,

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CERTIFICATE OF FILING/SERVICE

I hereby certify that on December 6, 2024, I electronically filed the foregoing Brief of Plaintiffs-Appellees with the Clerk of the Supreme Court by using the Electronic Document Management System, which will send a notice of electronic filing to Defendants-Appellants, by way of their counsel, Lindsay Vaught and Samuel McMichael. Pursuant to Rule 16.315(1)(b), this constitutes service of this Brief on Defendants-Appellants for purposes of 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 proportionally spaced type face using Century Schoolbook in 14 size font and contains 7,655 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*i*)(1).

Dated this December 6, 2024.

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