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IN THE SUPREME COURT OF IOWA

No. 25-0516
Polk County Case No. LACL153362

JODI E. SAFRIS and MICHAEL A. SAFRIS,
individually and as Co-Guardians and
Co-Conservators for R.R.S.,
Plaintiffs-Appellants,

v.

URBANDALE COMMUNITY SCHOOL DISTRICT,
Defendant-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE SAMANTHA GRONEWALD

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STATEMENT OF ISSUES

I. **WHETHER THE JURY'S VERDICT FINDING NEGLIGENCE BUT NO CAUSATION IS INCONSISTENT AND REQUIRES REVERSAL WHERE THE ONLY NEGLIGENCE THEORIES TRIED INVOLVED SUPERVISION FAILURES THAT, IF PROVEN, NECESSARILY CAUSED THE STUDENT-ON-STUDENT ASSAULTS.**

II. **WHETHER THE DISTRICT COURT ERRED IN REFUSING TO GIVE PLAINTIFF'S PROPOSED INSTRUCTION 23, WHICH ACCURATELY STATED THE HEIGHTENED STANDARD OF CARE OWED BY SCHOOLS TO STUDENTS UNDER IOWA LAW.**

III. **WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION IN EXCLUDING EVIDENCE OF THE BOARD OF EDUCATIONAL EXAMINERS' PROBABLE CAUSE FINDING WHERE THE DEFENSE OPENED THE DOOR BY ELICITING TESTIMONY THAT PRINCIPAL DEKRUYF PROPERLY HANDLED PRIOR NUDE PHOTO INCIDENTS.**

IV. **WHETHER DR. DROBAC'S EXPERT TESTIMONY WAS INADMISSIBLE WHERE SHE TESTIFIED TO ULTIMATE LEGAL CONCLUSIONS, VOUCHED FOR WITNESS CREDIBILITY, AND LACKED RELEVANT K-12 EDUCATIONAL EXPERTISE.**

V. **WHETHER THE DISTRICT COURT ERRED IN EXCLUDING STUDENT TESTIMONY ABOUT WIDESPREAD RUMORS REGARDING NUDE PHOTOGRAPHS WHERE THE TESTIMONY WAS OFFERED NOT TO PROVE THE TRUTH OF THE RUMORS BUT TO ESTABLISH THE SCHOOL'S CONSTRUCTIVE NOTICE THROUGH THE PERVASIVENESS OF STUDENT KNOWLEDGE.**

ARGUMENT

I. THE JURY'S VERDICT FINDING NEGLIGENCE BUT NO CAUSATION IS INCONSISTENT, GIVEN THE FACTS OF THIS CASE AND *JOHNSON V. KNOXVILLE*

The split verdict cannot be sustained under Iowa's judgment-notwithstanding-the-verdict standard. Even when the evidence is viewed in the light most favorable to Urbandale, JNOV is required where the proof is so one-sided that reasonable minds cannot differ. *See Clinton Physical Therapy Servs., P.C. v. John Deere Health Care, Inc.,* 714 N.W.2d 603, 613 (Iowa 2006).

The jury returned a general verdict finding negligence but no causation. Because the only negligence theories tried and supported by the instructions were the seven marshalling specifications, any reasonable negligence finding must have rested on one or more of them. D0487, Verdict Form (11/5/2024). On this record, however, each specification that could rationally support a negligence finding also compels causation.

A. Urbandale's "Injury-Independent" Theory Cannot Harmonize This Verdict

Urbandale argues that the verdict can be harmonized because three specifications—E, F, and G—concern duties that exist "irrespective of Plaintiff's existence, let alone a particular harm to her." Appellee's Br. at 18-20. According to Urbandale, Specification E (IEP awareness) could be violated simply by teachers not knowing K.O.'s IEP, Specification F (IEP compliance) could be violated by not

performing seven-minute checks regardless of whether any assault occurred, and Specification G (policy enforcement) could be violated by failures that occurred entirely after K.O.'s assaults ended. *Id.*

The trial record establishes that Specifications E, F, and G are inextricably linked to causation. These specifications concerned K.O.'s IEP requirements and Urbandale's anti-bullying and sexual assault policies. D0544, Jury Instructions, at 17 (11/08/2024).

K.O.'s IEP documented his propensity for inappropriate conduct and required concrete interventions calibrated to that risk, including checks every seven minutes during independent work, social-skills instruction, and self-regulation training. D0492, Pl. Ex. 1.2, K.O.'s IEP, at 14 (11/12/2024); D0576, Trial Transcript Vol. VI, at 60:11–14 (6/10/2025). Urbandale also implemented preferential seating near teachers to maintain proximity and line-of-sight supervision given K.O.'s documented behavioral issues. D0576 at 90:1-18. These measures existed to ensure trained adults could monitor K.O. during the specific times and activities when he was known to act out inappropriately. D0580 at 45:12—48:7.

However, only Eileen Mueller, the special education teacher, knew the IEP's requirements. *Id.* at 38:25—39:16. The general education teachers in the room—Brittain and Lighter—did not. D0581, Trial Transcript Vol. I, at 141:13-19 (6/10/2025); D0575, Trial Transcript Vol. VIII, at 13:19-24 (6/10/2025). Teachers

who did not know K.O. required heightened monitoring and behavioral interventions could not provide them; teachers who did not know K.O. needed checks during independent work could not perform them; and teachers who did not understand K.O.'s documented propensity for inappropriate conduct could not watch for warning signs or position themselves to prevent foreseeable problems. *See Doe v. Cedar Rapids Cmty. Sch. Dist.*, 652 N.W.2d 439, 446 (Iowa 2002).

Even when Mueller was present, the supervision failed. Mueller was frequently out of the room attending to other students, and when present, she positioned herself in a chair at the front of the classroom without a line of sight to K.O. D0576 at 113:18–25. The classroom layout—with approximately sixty students and teachers who rarely crossed between the two sides of the room—created supervision gaps throughout the class period. D0581 at 130:7-17; D0569, Trial Transcript Vol. IV, at 109:12-19 (6/10/2025). K.O. assaulted R.R.S. daily over a one-month period during language arts class. D0569 at 110:1-18.

Most critically, R.R.S. testified that K.O. stopped touching her when a teacher approached and resumed when the teacher left. D0569 at 111:11–25. This testimony establishes direct causation: adult presence halted the misconduct; absence of adult presence enabled it. Urbandale also believed where he sat mattered so much that its internal policy dictated that K.O. was to be seated near teachers. D0576 at 90:1-18. The IEP is a federal and state mandate designed specifically to ensure that vulnerable

students like K.O. receive the supervision and structure needed to prevent foreseeable harm to themselves and others. D0580 at 33:1-7; 35:25—36:10. When teachers were unaware of K.O.'s needs and the plan designed to address them (Specification E), and when the supervision and monitoring that plan required did not occur (Specification F), the assaults continued. When a teacher approached, the assaults stopped. No reasonable jury could find negligence under Specifications E or F and then conclude those failures did not cause R.R.S.'s injuries.

Urbandale's attempt to divorce specification G from its protective context likewise fails. Urbandale argues the jury could have found a violation of anti-bullying and sexual assault policies based solely on paperwork failures that occurred months or years after the assaults ended—such as inadequate documentation in December 2018 or failures to investigate properly in April 2021. Appellee's Br. at 20. But that is not how Specification G was tried, and it is not what the evidence showed.

Specification G charged Urbandale with failing "to exercise reasonable care to follow and enforce its anti-bullying and anti-sexual assault policies." D0544 at 17. These policies impose ongoing duties to receive complaints, investigate, and intervene to stop harassment and assault *while they are occurring*. *See generally* D0498, Ex. 8 (11/12/2024). The evidence showed Urbandale had notice of problematic conduct, including nude photo distribution and peer harassment,

without adequate investigation or remedial action during the period when R.R.S. was being harmed. *See generally* D0493, Ex. 2.2 (11/12/2024); *see also* D0580, Trial Transcript Vol. II, at 99:2–100:22 (6/10/2025).

B. A Finding of Negligence Under Specifications A-D Compels Finding Causation

Specifications A and B charged Urbandale with failing to exercise reasonable care to prevent the exhibition or distribution of nude photographs of R.R.S. and failing to protect R.R.S. from the bullying and harassment that followed. D0544 at 17.

Urbandale argues the jury could find negligence under Specifications A and B without causation because Plaintiff's medical providers testified that the only source of her trauma was the sexual assault by K.O., not the nude photo distribution. Appellee's Br. at 21. This argument fundamentally misunderstands the causal relationship between the nude photos and the assaults. The nude photos and the assaults were not independent harms; they were interconnected components of K.O.'s pattern of sexual exploitation.

K.O. distributed R.R.S.'s nude photographs to other students after she rejected his romantic advances. D0569 at 100:6–101:12. Once those photographs were circulating, K.O. possessed powerful leverage to keep R.R.S. silent about the classroom assaults. The widespread knowledge among students that R.R.S.'s nude

photographs existed—knowledge that Urbandale's failures allowed to proliferate unchecked—created an environment of humiliation and shame that enabled further abuse. *See, e.g.,* D0569 at 104:7-15. Students were already calling her a "slut," and telling her they had seen her nudes. D0569 at 104:25–105:7.

Urbandale's failure to investigate the nude photo distribution when it had notice—including Principal DeKruyf's active discouragement of investigation (D0579 at 197:12–199:11)—allowed the photographs to spread throughout the student body and allowed K.O.'s exploitative behavior to continue on multiple fronts simultaneously. Specifications A and B cannot be divorced from the harm of the assaults when the nude photo proliferation directly enabled those assaults to continue.

Specifications C and D explicitly charge failure to supervise "such that [R.R.S.] was sexually assaulted by [K.O.] during class" and failure to protect R.R.S. "from being sexually assaulted by [K.O.]" during class. D0544 at 17. A finding of negligence under either specification necessarily requires the jury to conclude the assault occurred. The specifications were written with the assault as an essential element—failure to supervise *such that* assault occurred, failure to protect *from*

assault. *Id.* If the jury concluded no assault occurred, they could not have found negligence under C or D as instructed.

The second argument inverts the causal proof. R.R.S. testified that K.O. stopped touching her when a teacher approached and resumed when the teacher left. D0569 at 111:11–25. This is direct proof of but-for causation: adult presence halted the misconduct; absence of adult presence enabled it. The evidence showed K.O. assaulted R.R.S. daily over two months, with multiple student witnesses observing the assaults. D0569 at 89:1-10, 110:1-18; D0579 at 82:11-20. The evidence also showed systematic supervision failures—teachers unaware of K.O.'s IEP requirements, Mueller frequently absent or positioned without line of sight, and teachers who rarely crossed the room. D0581 at 141:13-19; D0576 at 113:18–25; D0569 at 109:12-19.

When supervision existed, the harm ceased; when supervision failed throughout a month-long period, the harm occurred and recurred. No reasonable jury could simultaneously find that the District failed to provide adequate supervision *to prevent this assault* and that adequate supervision would not have prevented it.

C. Iowa Caselaw and Public Policy Compel a Finding of Causation

Urbandale argues, that Iowa courts will harmonize a negligence/no-causation split where the record supports a reasonable alternative causal narrative or where the negligent act is too indeterminate or *de minimis* to link to injury. *See, e.g., Crow v.*

Simpson, 871 N.W.2d 98 (Iowa 2015) (alternative seizure theory independent of defendant's negligence); *Clinton Physical Therapy Servs.,* 714 N.W.2d at 603 (Iowa 2006) (harmonization where answers can reasonably be reconciled with instructions and evidence); *Westco Agronomy Co. v. Wollesen,* 909 N.W.2d 212 (Iowa 2017) (same in commercial context); *Brown v. Greater Cmty. Hosp.,* No. 01-1882, 2003 WL 21229090 (Iowa Ct. App. May 29, 2003) (indeterminate negligent act and nominal injury); *Millis v. Hute,* 587 N.W.2d 625 (Iowa Ct. App. Oct. 29, 1998) (competing medical causation narratives); *Foss v. Allstate Ins. Co.*, No. 08-1642, 2010 WL 446992 (Iowa Ct. App. Feb. 10, 2010) (same). True, but none of the settings in the cited cases resemble this one. The causal mechanism here is simple and undisputed: adult presence at defined intervals prevents in-class sexual touching; absence enables it. There is no independent causal pathway comparable to the seizure in *Crow* or the medical disputes in *Millis* and *Foss*, and there is nothing indeterminate about the negligent conduct as in *Brown*. The harmonization rule does not authorize courts to accept a verdict that contradicts the only reasonable view of the record.

That leaves *Johnson*, which Urbandale seeks to minimize. *Johnson* is not a damages-itemization outlier; it is the controlling expression of the substantial-justice principle when negligence and injury cannot, on the record, be decoupled. 570 N.W.2d at 641–42 (Iowa 1997). Under *Thompson*'s risk framework, R.R.S.'s

injuries are the precise realization of the risks that made the conduct negligent. *Thompson v. Kaczinski,* 774 N.W.2d 829, 834–35 (Iowa 2009). Under *Johnson*, allowing a general negligence/no-causation split to stand in the face of that proof would fail to effectuate substantial justice. 570 N.W.2d at 641–42 (Iowa 1997).

Because the evidence on causation is so one-sided that reasonable minds cannot differ, the Court should grant judgment notwithstanding the verdict on proximate cause. At a minimum, as in *Johnson*, the general negligence/no-causation split fails to effectuate substantial justice and warrants a new trial limited to causation and damages.

II. PLAINTIFF'S PROPOSED INSTRUCTION NUMBER 23 WAS AN ACCURATE STATEMENT OF LAW, AND THEREFORE SHOULD HAVE BEEN INCLUDED IN THE JURY INSTRUCTIONS.

A. The Doctrine of Invited Error Does Not Bar Review

Urbandale's reliance on the doctrine of invited error misstates both the record and the applicable law. The alleged error arises from the court's *refusal* to include Plaintiff's proposed Instruction 23—which correctly stated the law and complemented the "reasonable care" instruction that was given. *See* D0397, Pl. Amended Proposed Jury Instructions, at 25, 26 (10/14/2024); D0575, 117:25–120:14.

The Safrises' proposed *both* Instructions 17 and 23. D0397 at 25, 26. Requesting Instruction 17 (the generic negligence instruction) does not constitute

affirmative consent to the *omission* of Instruction 23 (the contextual school duty instruction). Invited error applies only where a party induced or affirmatively consented to the challenged instruction itself. *Odegard v. Gregerson*, 12 N.W.2d 559, 562 (Iowa 1944) (". . . a litigant cannot invite error by asking the court to give a requested instruction and thereafter claim error if the court gives such an instruction"); *Horak v. Argosy Gaming Co.*, 648 N.W.2d 137, 150 (Iowa 2002).

The Safrises' position at trial was clear and is preserved in the record: Instruction 17's generic "reasonable care" language, while not legally incorrect in the abstract, was fatally incomplete without Instruction 23's explanation of the specific duties arising from the school-student relationship. *See, e.g.,* D0575, 117:25–120:14.

Accordingly, the doctrine of invited error does not bar review of the district court's refusal to give Proposed Instruction 23.

B. Plaintiff's Proposed Instruction 23 Accurately Stated the Law Governing a School's Duty of Care

Urbandale argues *Western Dubuque* "abandoned" the prudent parent standard by holding that "the in loco parentis relationship" only "imposes a duty of ordinary care for the purposes of negligence." Urbandale's Brief at 31 (citing *Doe v. W. Dubuque Cmty. Sch. Dist.*, 20 N.W.3d 798, 811 (Iowa 2025)). This argument misapprehends both *Western Dubuque* and decades of Iowa school duty precedent.

First, *Western Dubuque* addressed whether schools owe a *fiduciary duty* to students. The Court held they do not—schools owe a *negligence* duty of ordinary care. *Id.* at 811-12. The case says nothing about how juries should be instructed on what "ordinary care" means in the school-student context. It does not address jury instructions at all.

Second, Iowa precedent consistently recognizes that schools' "ordinary care" duties are defined by the school-student relationship. In *Godar v. Edwards*, the Supreme Court held that schools must exercise reasonable care in supervising students and protecting them from reasonably foreseeable harm, including harm from third parties. 588 N.W.2d 701, 708 (Iowa 1999) ("The law charges school districts with the care and control of children and requires the school district to exercise the same standard of care toward the children that a parent of ordinary prudence would observe in comparable circumstances"). *Doe v. Cedar Rapids Community School District* reaffirmed this framework, emphasizing that schools have "an affirmative duty to take all reasonable steps to protect its students" and must "exercise the same care toward them as a parent of ordinary prudence would observe in comparable circumstances." 652 N.W.2d at 446. In 2010, *Brokaw v. Winfield-Mt. Union Community School District* confirmed that this duty remains good law even after Iowa adopted the Restatement Third principles one year earlier in 2009. 788 N.W.2d 386, 391 (Iowa 2010); *see also Thompson,* 774 N.W.2d 829.

The Court stated plainly: "Godar [] makes it clear that school districts have a duty of reasonable care in providing for the safety of students from the harmful actions of fellow students, a teacher, or other third persons." *Brokaw,* 788 N.W. 2d at 390-91. Although *Brokaw* relocated foreseeability analysis from the duty element to the breach element, it expressly reaffirmed the school's heightened duty announced in Godar: to protect students and exercise the care of a parent, not merely that of an ordinary person. *Brokaw*, 788 N.W.2d at 391 n.1.

These cases establish that schools' duty of "ordinary care" is not generic—it is shaped by the custodial school-student relationship and includes affirmative protective obligations. Plaintiff's Proposed Instruction 23 accurately captured this body of law. Its omission left the jury with only the abstract "reasonably careful person" standard from Instruction 17—the same standard applicable to motorists, landowners, and any other defendant.

C. The Other Jury Instructions Did Not Cure This Deficiency

Urbandale argues that Instructions 16 and 27 cured any deficiency by identifying specific duties. Appellee's Br. at 34. This confuses what duties Urbandale owed with how carefully it must perform those duties.

Instruction 16 enumerated seven specifications of fault, each requiring proof that Urbandale failed to exercise "reasonable care." D0544 at 17 (discussed above). Every specification uses the term "reasonable care," but the instructions never

explain what that phrase means for a school. The jury knew they must determine whether Urbandale failed to exercise "reasonable care" in seven specific ways, but they had only Instruction 17's generic "reasonably careful person" standard to guide that analysis.

This matters because "reasonable care" has radically different content depending on the relationship. Consider Specification (c)'s requirement to "adequately supervise and monitor" students. Under Instruction 17's generic standard, a jury might reasonably conclude that with nearly sixty students and three teachers circulating in the classroom, and no specific reason to anticipate assault at that moment, a "reasonably careful person" exercised adequate supervision. Under the school-specific standard that Instruction 23 would have provided—requiring schools to exercise the care "that a parent of ordinary prudence would observe" and to "take all reasonable steps to protect" students from foreseeable peer harm (*Godar,* 588 N.W.2d at 708; *Doe v. Cedar Rapids*, 652 N.W.2d at 446)—the analysis changes fundamentally. A prudent parent aware that K.O. posed risks would monitor him accordingly. Where a reasonable person, without a greater duty under the law, might merely refrain from creating danger, a school standing *in loco parentis* is required to take affirmative steps to mitigate known harms and risks. *See Godar,* 588 N.W.2d at 708–10.

Instruction 27 compounds rather than solves the problem. That instruction explained Iowa law's IEP requirements—that IEPs must be accessible to teachers, that each person must be informed of their responsibilities, and that accommodations must be provided. D0544, at 30. But this instruction does not tell the jury *what standard applies when determining whether failures to meet these requirements constitute actionable negligence*. The jury still needed to know whether failing to comply with IEP requirements breaches the generic "reasonable person" standard or the heightened school-specific standard.

The jury's verdict—finding negligence but no causation—confirms this gap. D0545, Civil Verdict (11/8/2024). The jury understood the District failed somehow, but without understanding that schools have affirmative duties to protect students from foreseeable peer harm, they could not connect those failures to R.R.S.'s injuries.

III. THE DISTRICT COURT ERRED IN EXCLUDING THE BOEE PROBABLE CAUSE FINDING.

A. Error Preservation as to Iowa R. Evid. 5.608(b)(1)

Urbandale claims Appellant failed to preserve error under Rule 5.608(b)(1) on evidence of the BOEE's probable cause finding because the Safris's offer of proof occurred before Dr. Drobac testified. Appellee's Br. at 35-36.

Urbandale's argument fails for several reasons. First, Appellant preserved error through the Resistance to Defendant's Motion in Limine, which explicitly

argued the evidence was admissible under Rule 5.608. D0431, Plts.' Rest. to Def. Third MIL, at 21 (10/17/2024). Second, the trial court's ruling was made *in limine* and applied throughout trial. When Appellant attempted to revisit the issue after DeKruyf testified about the importance of following BOEE standards, and made an offer of proof on the evidence, the court refused to reconsider. D0580 at 82:21-24, 113:3-11 (off-the-record discussion). Appellant was not required to make repetitive offers of proof once the court's position was clear. Iowa R. Evid. 5.103(b) ("Once the court rules definitively on the record—either before or at trial—a party need not renew an objection or offer of proof to preserve a claim of error for appeal"); *Meier v. Senecaut*, 641 N.W.2d 532, 537-38 (Iowa 2002).

B. The Defense Made DeKruyf's Handling of Nude Photo Incidents a Central Issue

Urbandale cannot invoke the trial court's evidentiary rulings as a shield after using those same topics as a sword. On direct examination, the defense elicited extensive testimony from their expert, Dr. Drobac, about a prior nude photo incident and DeKruyf's purportedly proper response:

> Q. [D]id you become aware of a prior incident involving nude photographs at Urbandale Middle School?
>
> A. Yes.
>
> Q. [C]an you [] tell the jury a little bit about what your knowledge was with respect to that?
>
> . . . .

> A. . . . the principal, Loren DeKruyf, became aware of this and reported it to the police. The police were involved, and then he complied with the police directives on what he should do about it, and they resolved the case.
>
> Q. And then did—did Mr. DeKruyf comply with the policies and procedures of Urbandale Middle School in responding to that incident?
>
> A. Yes.

D0571 at 40:3—41:1. The defense used this testimony to establish DeKruyf's good character for handling nude photo incidents—precisely the type of situation at issue in this case. Having introduced this evidence on direct examination, the defense opened the door to rebuttal evidence about DeKruyf's actual pattern of conduct in handling such matters.

C. Rule 5.608(b) Permits Cross-Examination on Specific Instances of Conduct

Urbandale argues that Iowa Rule of Evidence 5.608(b)(1) bars admission of the BOEE evidence. Rule 5.608(b)(1) provides:

> Except for a criminal conviction under rule 5.609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. *But the court may, on cross-examination, allow them to be inquired into* if they are probative of the character for truthfulness or untruthfulness of: (1) The witness.

Iowa R. Evid. 5.608(b)(1) (emphasis added). The rule expressly permits cross-examination about specific instances of conduct probative of truthfulness—which includes falsifying information in official investigations, as the BOEE findings alleged. D0548, BOEE Findings (11/13/2025).

The defense cannot introduce evidence that DeKruyf properly handled nude photo incidents and then claim immunity from cross-examination about whether he actually did so. Once Dr. Drobac testified that DeKruyf complied with policies, both she and DeKruyf should have been subject to cross-examination about:

- Whether the BOEE found probable cause that DeKruyf violated professional standards;
- Whether the BOEE found probable cause that he falsified or omitted material information in an official investigation; and
- Whether those findings undermined Dr. Drobac's opinion that DeKruyf consistently complied with policies.

Rule 5.608(b)(1)'s prohibition on extrinsic evidence does not prevent cross-examination—particularly where the opposing party opened the door by introducing the very subject matter on direct.

D. The Defense Made DeKruyf's Character an Essential Element Under Rule 5.405(b)

Urbandale argues character was not an essential element of their defense. Appellee's Br. at 42-43. But their entire defense strategy belies this claim. The defense presented evidence of DeKruyf's prior proper handling of nude photo incidents to establish he would not have mishandled this case. D0571 at 40:3—41:1 This made his character for compliance an operative fact in the case, with direct

bearing on the jury's understanding of the likelihood that DeKruyf was compliant during the period of R.S.S.'s abuse, just as Dr. Drobac claimed he was in 2017.

As this Court explained in *Klaes v. Scholl*, "when character or a trait of character is an operative fact determining the parties' rights and liabilities [] specific instances of conduct [are] a proper method of proving character." 375 N.W.2d 671, 676 (Iowa 1985). The defense argued, through Dr. Drobac's testimony, that DeKruyf's past compliance with policies made it unlikely he failed to act properly in this case. D0571 at 40:3—41:1. That is precisely the type of character evidence contemplated by Rule 5.405(b) and *Klaes*.

E. Urbandale's Temporal Argument Fails

Appellee contends the BOEE evidence is irrelevant because the findings post-date the events at issue. But this argument proves too much. The defense used a 2017 incident—also temporally distinct from the 2018-2019 events at issue—to establish DeKruyf's good character. If prior incidents are relevant to show a pattern of proper conduct, then subsequent incidents are equally relevant to show the absence of such a pattern.

The defense invited the jury to infer from the 2017 incident that DeKruyf consistently and properly handled nude photo matters. Evidence that he later violated professional standards in handling similar matters is directly probative of whether

that inference is warranted. The jury should not be permitted to hear only the defense's cherry-picked example while being insulated from contrary evidence.

This is particularly true where the BOEE findings included probable cause that DeKruyf falsified information in an official investigation (D0548)—conduct directly bearing on his credibility as a witness in this case, regardless of when it occurred. *See* Iowa R. Evid. 5.608(b)(1).

F. Any Prejudice Would Not Be Unfair

Evidence is not "unfairly prejudicial" simply because it damages a party's case. "Unfair prejudice" means causing a jury to decide on an improper basis. *State v. Rodriquez*, 636 N.W.2d 234, 239–40 (Iowa 2001). The BOEE finding was probative of DeKruyf's credibility and professional conduct—core issues in this case. Any prejudice was entirely fair and certainly did not outweigh the probative value of the evidence.

Urbandale relies on *State v. Huston*, 825 N.W.2d 531 (Iowa 2013), and *State v. Thoren*, 970 N.W.2d 611 (Iowa 2022). Appellee's Br. at 39. But both cases involved criminal prosecutions where licensing board findings against the defendant— whose licenses were revoked based on the same conduct for which they faced criminal charges, creating a risk the jury would treat the administrative finding as proof of guilt—risked undue weight. *See State v. Huston,* 825 N.W.2d 531, 538 (Iowa 2013); *State v. Thoren,* 970 N.W.2d 611, 622-23 (Iowa 2022). Here: DeKruyf

is a witness in a civil case; the BOEE finding goes to his credibility and character; there is no risk of a criminal conviction; and the BOEE findings concerned different conduct and would only have been used to impeach character evidence the *defense chose to introduce*. The prejudice concerns in *Huston* and *Thoren* do not apply with the same force to the impeachment of a witness in civil litigation, especially under these circumstances.

Finally, Urbandale's concern about a "confusing mini-trial" is overstated. Appellee's Br. at 40. A simple limiting instruction explaining that the finding represents a probable cause determination offered for credibility purposes would have sufficed. Iowa courts routinely manage such issues through limiting instructions. *See, e.g., State v. Richards*, 879 N.W.2d 140, 152-53 (2016) (finding a limiting instruction sufficient to overcome potential prejudice where prior bad acts evidence was admitted in a criminal case).

The probative value of evidence directly bearing on the credibility of a key witness on contested facts substantially outweighed any risk of confusion or unfair prejudice.

The defense made a strategic choice to introduce evidence that DeKruyf properly handled nude photo incidents. Having done so, they cannot invoke evidentiary rules to prevent rebuttal. At minimum, Rule 5.608(b)(1) entitled

Plaintiffs to cross-examine DeKruyf and Dr. Drobac about the BOEE findings. The trial court's blanket exclusion was an abuse of discretion requiring reversal.

IV. DR. DROBAC'S TESTIMONY WAS INADMISSIBLE

A. Urbandale Concedes the Core Problem

Urbandale does not dispute that Dr. Drobac testified "they [the District] did meet the standard of care" and that DeKruyf's responses to reports of nude photos proliferating were "appropriate." Appellee's Br. at 49; D0571 at 45:25-46:5, 41:9—43:20. Urbandale instead argues this was permissible under Rule 5.704, which allows opinions on "ultimate issues." Appellee's Br. at 49.

But Rule 5.704 does not permit experts to state legal conclusions. *Haskenhoff v. Homeland Energy Sols., LLC*, permits testimony on the standard of care—meaning what conduct is required—not testimony that a party met the standard. 897 N.W.2d 553, 600 (Iowa 2017) ("questions such as whether a defendant was negligent or not negligent are improper"). The former assists the jury; the latter usurps it. Dr. Drobac crossed that line repeatedly, telling the jury Defendant was not negligent rather than explaining what the standard required. *See, e.g.,* D0571 at 45:25-46:5, 41:9—43:20.

More problematic still, Dr. Drobac made impermissible credibility determinations that Urbandale dismisses without meaningful analysis. Dr. Drobac testified that she "looked at the students' depositions, including [R.R.S.'s], and they

all believed the [teachers] cared about them and *would have done something if they had known about a problem*." *Id.* at 45:10–24 (emphasis added). While Urbandale tries to focus this Court's attention on the first half of this remark, it is the second half that is disallowed. Appellee's Br. at 51. This statement creates an inference that the teachers could not have known anything, because they did not do anything. Whether the sentence is read as a manifestation of Dr. Drobac's own opinion on the teachers or speculation as to what the students thought is immaterial. It is credibility vouching regardless.

These were not opinions based on specialized knowledge—they were personal judgments about whom to believe. Evaluating witness credibility is the jury's exclusive function. *See, e.g., State v. Dudley*, 856 N.W.2d 668, 676-77 (Iowa 2014). By telling the jury which witnesses were credible, and which were not, Dr. Drobac improperly invaded the jury's role. This was particularly prejudicial because the entire case turned on the issue of whether Urbandale met the standard of care, which necessarily implicated the credibility of the witnesses. Dr. Drobac's testimony told the jury how to resolve these disputes rather than providing neutral expertise to assist them.

B. Dr. Drobac's Qualifications and Methodology Remain Problematic

Urbandale argues Dr. Drobac was qualified because "experience is sufficient" and Iowa doesn't follow *Daubert*. Appellee's Br. at 48-49. But Dr. Drobac, a lawyer,

admitted her Title IX expertise was not relevant to this case and that she had no K-12 experience or credentials. D0393, Attach. 2, at 56:24-57:25; D0571 at 49:15-57:20. Iowa's "liberal view" on expert testimony does not eliminate the threshold requirement that the witness possess relevant expertise. *See Leaf v. Goodyear Tire & Rubber Co.*, 590 N.W.2d 525, 533-36 (Iowa 1999); Iowa R. Evid. 702 (requiring that an expert provide "scientific, technical, or other specialized knowledge [that] will assist the trier of fact to understand the evidence or to determine a fact in issue," and that they be "qualified as an expert by knowledge, skill, experience, training, or education").

As for methodology, Urbandale's argument that "Plaintiff's own expert used the same methodology" (Appellee's Br. at 49) is a *non sequitur*. If both experts merely reviewed depositions and documents without applying specialized knowledge (which is not true given that Dr. Perondi does have relevant experience upon which to base his assertions (*see* D0503, Ex. 38 (11/12/2024)) both should have been excluded. *See* Iowa R. Evid. 702. Unlike Dr. Drobac, Dr. Perondi possessed the requisite K-12 expertise to opine on school supervision standards. Dr. Drobac's complete absence of K-12 experience rendered her opinions on middle school operations, special education programming, and student supervision unreliable and inadmissible.

C. The Error Was Not Harmless

Urbandale argues the error was harmless because "the jury already rejected" Dr. Drobac's testimony by finding negligence. Appellee's Br. at 53. But the jury found no causation—the very issue on which Dr. Drobac opined most extensively. Her testimony that teachers "cared about" students, that they "would have done something if they had known about a problem," and that "whatever Riley was seeing . . . means that the teacher wasn't in that chair" (D0571 at 45:10-24, 62:7-15) directly addressed whether Urbandale's failures caused R.R.S.'s injuries. This testimony directly addressed causation: it told the jury that any failure to supervise did not cause the assault because the assault occurred when R.R.S. was positioned where teachers could not see her—not because teachers failed in their duties.

The jury's verdict—negligence but no causation—suggests Dr. Drobac's testimony on causation and credibility had exactly the impact one would expect from an expert improperly instructing the jury on ultimate issues and witness credibility. The error was not harmless.

V. THE STUDENT TESTIMONY REGARDING WIDESPREAD RUMORS WAS ADMISSIBLE NON-HEARSAY EVIDENCE OF CONSTRUCTIVE NOTICE

Urbandale mischaracterizes both the purpose and legal significance of the excluded student testimony. The testimony was offered to prove that rumors about nude photographs were so pervasive throughout the student body that the school,

through reasonable supervision, should have discovered them—not to prove the photographs existed, which R.R.S. herself established. D0569 at 103:23—104:11; 118:12–16.

A. *Gacke and Timely Mission* Are Not Dispositive Because the Underlying Fact Was Already Proven and Schools Owe Affirmative Supervisory Duties to Students

Urbandale's reliance on *Gacke v. Pork Xtra, LLC*, 684 N.W.2d 168, 181-82 (Iowa 2004), rests on a fundamental factual distinction. In *Gacke*, the plaintiffs needed the questionnaires to prove the *underlying fact*—that noxious odors actually emanated from the defendant's hog facility. If the reported odors did not exist, the Defendant's failure to respond would not be unreasonable, so the questionnaires could not serve as evidence of notice. *Id.* Therefore, the statements were offered to prove the truth of the asserted matter—that odors actually existed—making them hearsay. *Id.*

Similarly, in *Timely Mission Nursing Homes v. Arends* whether abuse actually occurred was contested—the very issue the plaintiff sought to prove through the rumors. 2023 WL 4104021, at *4-6 (Iowa Ct. App. June 21, 2023). The Court of Appeals correctly held those rumors were hearsay because their relevance depended on their truth, and because "the evidence of alleged abuse came from unknown staff about nonspecific details against unnamed residents." *Id.* at *6.

The case at bar is distinguishable. First, schools operate under legal obligations fundamentally different from nursing homes. Iowa law imposes on schools an affirmative duty of reasonable care in supervising students, acting *in loco parentis*. *Godar v*588 N.W.2d at 708; *Brokaw*, 788 N.W.2d 386 at 391 (Iowa 2010). As discussed above, this duty arises from the school's custodial control over students during school hours—a relationship the law recognizes as sufficiently distinct to impose heightened obligations. *Doe v. Cedar Rapids Cmty. Sch. Dist.*, 652 N.W.2d 439, 446 (Iowa 2002) (schools "ha[ve] an affirmative duty to take all reasonable steps to protect [their] students"). This is not merely a duty to respond to known problems, but an obligation to maintain active awareness of the school environment. Schools are charged with knowledge they should discover through the exercise of reasonable supervision. *Brokaw*, 788 N.W.2d at 391 (duty "readily applied" when institution "has sufficient knowledge of the immediate circumstances or the general character of the third party to foresee that party's misconduct").

Hog facilities obviously do not owe such a heightened duty to those living around them. Unlike schools, nursing homes do not stand *in loco parentis* to adult residents or have affirmative duties to proactively supervise daily interactions among residents. *Compare* Iowa Code § 135C.3(1) *with Brokaw,* 788 N.W.2d at 391. *Timely Mission* involved no duty requiring proactive institutional awareness of

conditions among residents—only obligations to report suspected abuse once discovered. 2023 WL 4104021, at *6.

This case presents a different theory of liability than *Gacke* or *Timely Mission*: institutional failure to discover widespread, publicly-known conditions within its supervised environment. The issue is not whether Urbandale should have investigated particular complaints, but whether reasonable supervision would have revealed pervasive student knowledge. Iowa law recognizes that schools cannot remain willfully blind to conditions discoverable through ordinary oversight of student interactions. *Brokaw*, 788 N.W.2d at 392-93 (liability exists when actor should have "sufficient knowledge of the immediate circumstances" to foresee harm).

When information is so widely known among students that it permeates the social environment, a school's failure to discover it through reasonable supervision is itself evidence of inadequate oversight—regardless of whether anyone formally reported it to administrators. The widespread rumors demonstrated what the school *should have known* through the exercise of its mandatory supervisory duties.

Second, R.R.S. proved that the nude photographs existed and were shared among students. D0569 at 103:23—104:11; 118:12–16. The underlying fact was not in dispute. The testimony about rumors was offered to prove a different proposition: that knowledge of the photographs was sufficiently widespread among the student

body that a school exercising reasonable supervisory care should have become aware of it. This goes to the school's constructive notice, not to proving the photos existed or even that they were circulated.

Gacke's reasoning—which *Timely Mission* applied—requires that the out-of-court statements be offered to prove the truth of the asserted matter. *Gacke*, 684 N.W.2d at 182; *Timely Mission*, 2023 WL 4104021 at *6. When the asserted matter (photographs exist and were circulated) has been independently proven, statements about rumors serve a different evidentiary purpose: showing that conditions existed which a properly supervised institution should have discovered.

B. *United States v. Worman* Supports Admissibility

In *United States v. Worman*, the Eighth Circuit affirmed that testimony concerning workplace rumors may be admissible—not to prove the truth of the rumors, but to show that certain individuals (*e.g.,* the defendant or related persons) knew or believed them. 622 F.3d 969, 975 (8th Cir. 2010). The court stressed that the testimony must be offered for a non-hearsay purpose (such as knowledge or motive), and that its probative value must outweigh any unfair prejudicial effect. *Id.*

The same principle applies here. What matters is not whether the photographs were circulating (which R.R.S. proved), but that the school either knew or should have known that rumors about the photographs were so pervasive that they created an environment requiring intervention. The testimony establishes the scope of

student awareness, which in turn demonstrates what the school should have discovered through reasonable supervision.

Urbandale's attempt to distinguish *Worman* based on the spousal relationship misses the point. Appellee's Br. at 60-61. The case stands for the broader proposition that out-of-court statements offered to show notice or knowledge—rather than to prove the truth of their contents—are not hearsay. *Worman*, 622 F.3d at 975.

C. Rule 5.403 Balancing Weighs in Favor of Admission

Because the district court excluded the rumor evidence on hearsay grounds, it did not perform a Rule 5.403 balancing test. *See* Iowa R. Evid. 5.403. If the court had done such a balancing test, it should have found that the high probative value of this evidence to establish the school's constructive notice and the scope of the problem far outweighed any minimal prejudicial effect. The testimony was crucial to showing:

- The pervasiveness of knowledge among students;
- What conditions existed that the school should have discovered;
- The social environment R.R.S. faced; and
- The foreseeability of continued harm.

Any concerns about improper use could have been addressed through limiting instructions. The court's categorical exclusion deprived the jury of critical evidence bearing directly on whether Urbandale breached its duty of reasonable supervision.

The excluded testimony was not offered to prove that photographs existed or were circulating—R.R.S. established those facts directly. It was offered to prove that rumors were so widespread that a school exercising reasonable supervisory care should have discovered them. This is precisely the type of non-hearsay evidence of institutional awareness that *Worman* held admissible. 622 F.3d at 975.

The trial court's exclusion of this evidence was an abuse of discretion that deprived the jury of proof central to establishing that Urbandale knew or should have known of the harm to R.R.S. Reversal is required.

CONCLUSION

For these reasons, Plaintiffs-Appellants respectfully request this Court:

1. Reverse the district court's denial of Plaintiffs' motion for new trial;
2. Remand for a new trial with instructions to:
    a. Properly instruct the jury on the applicable standard of care for school districts.
    b. Admit evidence of Principal DeKruyf's licensure proceedings;
    c. Exclude Dr. Drobac's unreliable expert testimony; and
    d. Admit the excluded witness testimony.

Respectfully submitted this 23rd of October, 2025.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because it contains 6,448 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Further, this brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because it has been prepared in proportionally spaced typeface using Word in 14-point Times New Roman font.

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I, Myles D. Young, hereby certify that I have filed the attached Appellants' Brief by e-filing using the CM/ECF system, on October 23, 2025.

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