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IN THE SUPREME COURT OF IOWA

NO. 25-0516

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

vs.

URBANDALE COMMUNITY SCHOOL DISTRICT,
Defendant-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY
HON. SAMANTHA GRONEWALD, PRESIDING
CASE NO. LACL153362

APPELLEE'S BRIEF

Respectfully submitted,

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STATEMENT OF THE ISSUES

I. THE JURY'S VERDICT IS INTERNALLY CONSISTENT AND MUST BE UPHELD.

II. THE DISTRICT COURT PROPERLY INSTRUCTED THE JURY THROUGH INSTRUCTION NUMBER 17.

III. THE DISTRICT COURT PROPERLY EXCLUDED EVIDENCE OF A BOEE PROBABLE CAUSE FINDING IN AN UNRELATED MATTER BECAUSE IT WAS IRRELEVANT AND UNDULY PREJUDICIAL.

IV. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN ALLOWING DR. DROBAC TO TESTIFY.

V. THE DISTRICT COURT PROPERLY EXCLUDED GRACIE MARKS', BRYCE GETTER'S, AND AIDEN DORIA'S TESTIMONY.

ROUTING STATEMENT

Because this case involves the application of existing legal principles, it should be transferred to the Iowa Court of Appeals. Iowa R. App. P. 6.1101(3)(a).

NATURE OF THE CASE

Defendant generally accepts Plaintiff's articulation of the nature of this case. Specific points of disagreement will be addressed below.

STATEMENT OF FACTS

Plaintiffs' statement of facts applies the incorrect standard for this Court's review. Rather than reviewing evidence in the manner Plaintiff wishes the jury had agreed with, this Court must view the evidence "in the light most favorable to the verdict . . . which requires deference to the jury's resolution of disputed factual issues." *State v. Mathis*, 971 N.W.2d 514, 518 (Iowa 2022). When viewed properly, the evidence tells a very different story than the one Plaintiff presents on appeal.

In the Fall of 2018, Plaintiff R.S. was an eighth-grade student at Urbandale Middle School, part of Urbandale Community School District (hereinafter, "Urbandale"). *See* D0014, Urbandale's Answer, ¶ 13 (9/12/2022). Another student, K.O., was also in her grade. D0569, Trial Tr. Vol IV, 99:12-18 (6/10/2025). Early that school year, R.S. claims to have sent K.O. nude photographs, which she took while at home. *See* D0569, 100:6-19; 139:1-4. R.S. claims that after she refused K.O.'s request to be his girlfriend, he distributed the photographs to his friends, who further distributed them amongst her peers. *See* D0569, 99:19-25, 101:16-25, 103:23-104:11.

That said, only two witnesses testified to having seen those photos while at school. The first, Breckin Geiser, was not sure the photograph even depicted R.S. *See* D0581, Trial Tr. Vol. I, 97:19-100:10 (6/10/2025). She also never informed any staff about the photos. *Id.* 101:20-22. The second, Molly Hartzell, could not have

seen the photograph until the Spring of 2019, after the events at issue in this case. *See* D0579, Trial Tr. Vol. III, 201:8-11 (6/10/2025); D0540, Def. Ex. SS, Hartzell Class Schedule (11/12/2024). And both Breckin and Hartzell conceded they changed their testimony based on information fed to them by Plaintiff's counsel. D0581, 100:17-101:16; D0579, 208:1-14.

In any event, R.S. claims that after apologizing to K.O., the bullying stopped. D0569, 105:13-21, 106:3-7. It is uncontested that R.S. did not inform any staff about the photographs or bullying. D0569, 141:23-142:7. 142:17-19. Mr. DeKruyf, the school principal, testified that he was never informed of the photographs. D00576, Trial Tr. Vol. VI, 145:7-19 (6/10/2025). Even if one accepts the Safris' testimony as true—which the jury did not need to do—Defendant did not know about the distribution of nude photographs until December 2018, when Jodi Safris claims to have informed DeKruyf. *See* D0579, 162:21-24. Notably, however, at that point R.S. had already been suspended for possessing marijuana on a school bus and was set to transfer to a new school district that month. *See* D0569, 114:7-115:1, 115:19-22, 117:2-7.

Following her apology, R.S. claims K.O. digitally penetrated her while in her language arts class. *See* D0569, 107:19-24, 109:20-110:18. The language arts classroom combined two separate classes, totaling nearly sixty students. D0581, at 130:2-20. It was taught by two teachers—Ms. Brittain and Mr. Lighter. *Id.* At times,

Ms. Mueller, a special education teacher, also was present in the classroom. *Id*. at 131:10-17. Mueller generally supervised students who had been assigned an Independent Education Program (IEP), which included K.O. *Id.*; D0580, Trial Tr. Vol. II, 23:4-6 (6/10/2024); D0492, Pl. Ex. 1.2, K.O.'s IEP (11/12/2024).

R.S. claims the assaults occurred on a near daily basis and lasted about a month. *See* D0569, 109:20-110:18; 163:15-17. The language arts classroom had desks arranged into pods of four triangular desks. D0494, Pl. Ex. 4, Photos of Classroom (11/12/2024). According to Brittain, Lighter, and Mueller, R.S. and K.O. did not sit together at any point. D0580, 14:8-15; 55:5-18; D0575, Trial Tr. Vol. VIII, 20:3-6 (6/10/2025). Even if they had, K.O. was a large student who did not fit easily under the desk, requiring him to sit far enough back from the desk as to make it impossible to reach a peer next to him. D00576, 66:16-67:5; 101:4-11. Despite having nearly sixty pairs of eyes in the classroom, Plaintiff could find only a single student who claimed to have seen K.O. reach into R.S.' pants on a single occasion, and even she did not describe K.O. digitally penetrating R.S. in the manner R.S. alleges. D0581, 130:2-20; D0579, 82:14-18. That student also never told any staff about K.O.'s conduct. D0579, at 83:2-3. And R.S. testified that K.O. would stop when teachers were nearby. *See* D0569, 111:11-19.

Plaintiff never told a teacher or any other staff member about the alleged assaults while attending Urbandale. *See* D0569, 141:16-22. Instead, she only told

her mother in September 2019—nearly a year after the fact—after she had gotten in trouble for going to a party. *See* D0569, 117:17-25, 119:4-120:7. Even then, Plaintiff did not report the assault. Instead, the assault went unreported until April 2021, when Plaintiff reported the incident to law enforcement. *See* D0084, Def. MSJ, Att. 1, at 88 (1/8/2024).

Plaintiff's mental health began declining in the fall of 2019, about a year after the alleged assaults. *See* D0579, 22:4-17. She was diagnosed with bipolar disorder. D0569, 133:8-11. Testimony at trial unequivocally demonstrated that her bipolar disorder diagnoses could not causally be related to an assault within any degree of medical certainty. D0578, Trial Tr. Vol. V 103:3-15 (6/10/2025). Instead, the diagnoses was a product of genetics. D0575, at 66:7-15. Further, while some of R.S.'s medical providers diagnosed her with posttraumatic stress disorder (PTSD), Urbandale's expert, Dr. Jaffe, performed a battery of testing and concluded R.S.'s responses failed to support the diagnosis. D0575, 44:12-15, 62:2-65:15. Dr. Jaffe also diagnosed R.S. with borderline personality disorder, which is characterized by "pathological narcissism," impulsivity, and manipulative behavior. D0575, 44:18-45:4 66:7-15.

Plaintiff filed suit in July 2022. *See* D0001, Petition (7/1/2022). By the time the case got to trial, the only remaining claim was against Urbandale, in which Plaintiff alleged Urbandale was negligent in (1) failing to prevent the distribution of

R.S.'s nude photographs, or (2) failing to prevent R.S. from being sexually assaulted. *See* D0544, Jury Instructions, p. 17 (11/8/2024). Following a nine-day trial, the jury determined Urbandale was at fault, but Urbandale's conduct was not causally related to Plaintiff's injuries, if any. *See* D0545, Verdict (11/8/2024).

ARGUMENT

I. THE JURY'S VERDICT IS INTERNALLY CONSISTENT AND MUST BE UPHELD.

a. Error Preservation

Defendant agrees Plaintiff preserved error on this issue. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

b. Standard of Review

A challenge to the consistency of a jury verdict is reviewed for the correction of errors at law. *Crow v. Simpson*, 871 N.W.2d 98, 105 (Iowa 2015).

c. The Jury's Finding of Fault But Not Causation Is Internally Consistent and Fits the Facts and Law of the Case.

The jury finding Urbandale at fault but the lack of any causal relationship between that fault and an injury is amply supported by Iowa law and the facts of this case.[1] Notably, Plaintiff's Brief entirely omits the legal standard for reversing a jury based on an inconsistent verdict. The reason for that omission is clear—Plaintiff's position is legally and factually untenable.

"When deciding if a verdict is inconsistent, we liberally construe the jury's verdict to give effect to the jury's intention and harmonize the jury's answers if possible." *Pavone v. Kirke*, 801 N.W.2d 477, 498 (Iowa 2011) (quoting *Hoffman v.*

[1] Urbandale maintains it was not at fault in any capacity. However, given the standard of review for this issue, the Court need only determine the jury's finding of fault can be harmonized with a finding of a lack of causation.

Nat'l Med. Enters., Inc., 442 N.W.2d 123, 126 (Iowa 1989)). If the court "can harmonize the jury verdict in a reasonable manner consistent with the jury instructions, the evidence, and inferences the jury could have drawn from that evidence, the verdict is not inconsistent." *Westco Agronomy Co. v. Wollesen*, 909 N.W.2d 212, 224 (Iowa 2017) (quoting *Crow*, 871 N.W.2d at 107). "The determination of whether two answers are inconsistent requires the court to consider how the jury could have viewed the evidence and how that view of the evidence fits into the requirements of the instructions or the law applicable to the case." *Id.* at 224-25 (quoting *Clinton Physical Therapy Servs., P.C. v. John Deere Health Care, Inc.,* 714 N.W.2d 603, 613 (Iowa 2006)). "When, under this analysis two answers or findings by the jury would *compel* the rendition of different judgments, the answers are inconsistent." *Clinton*, 714 N.W.2d at 613 (emphasis added).

When viewing the issues and evidence before the jury, it is evident the jury's findings on fault and causation do not compel the conclusion that the answers were inconsistent. According to the marshalling instructions, the jury was tasked with determining the application of seven potential grounds for fault:

> (a) In failing to exercise reasonable care to prevent students from exhibiting and/or distributing nude photographs of [R.S.] during school;
>
> (b) In failing to exercise reasonable care to protect [R.S.] from bullying and harassment from her peers, during school, after the exhibition and/or distribution of her nude photographs;

(c) In failing to exercise reasonable care to adequately supervise and monitor [R.S.] and/or [K.O.] during their shared extended learning arts class such that [R.S.] was sexually assaulted by [K.O.] during class;

(d) In failing to exercise reasonable care to protect [R.S.] from being sexually assaulted by [K.O.] during their shared extended learning class;

(e) In failing to exercise reasonable care to ensure teachers were aware of the contents of the IEP of [K.O.];

(f) In failing to exercise reasonable care to ensure teachers complied with the requirements of the IEP of [K.O.]; and/or

(g) In failing to exercise reasonable care to follow and enforce its anti-bullying and anti-sexual assault policies.

D0544, Jury Instructions, at p. 17 (11/08/2024).[2] As written, Plaintiff only needed to prove one of the grounds for fault in order for the jury to answer Question 1 of the Verdict Form with a "yes." *Id.;* D0545, p. 1. Plaintiff failed to establish causation under any theory.

What is immediately striking about the specifications of the fault is that three grounds—E, F, and G—did not require an injury to Plaintiff *at all*. Instead, Specification E simply required a showing that K.O. had an IEP, or portions thereof, that a teacher was unaware of. That's it. The ground for fault could be met whether or not Plaintiff even went to the school, much less whether she suffered a sexual

[2] Plaintiff does not challenge those jury instructions on appeal, and as such they are the law of the case. *See* Iowa R. App. P. 6.903(2)(a)(8)(3); *State v. Canal*, 773 N.W.2d 528, 530 (Iowa 2009) (explaining marshalling instructions are the law of the case when a party fails to challenge them).

assault. And the evidence presented at trial could support such a conclusion. For instance, Brittain testified that general teachers would not have access to some portions of K.O.'s IEP. *See* D0581 141:13-19. Similarly, Lighter had not reviewed K.O.'s IEP. D0575, 13:19-24. The jury was instructed that the content of IEP's must be accessible to teachers. *See* D0544, at p. 30. Thus, a jury could reasonably conclude that Urbandale failed to make the contents of K.O.'s IEP known to his teachers without any underlying injury to Plaintiff at all, easily harmonizing the verdict.

Similarly, Specification F only required evidence that the IEP put some requirement in place that teachers needed to follow, but they failed to do so. Again, the specification could easily be met irrespective of Plaintiff's existence, let alone a particular harm to her. For instance, Lighter testified that he would check in on K.O. frequently, but did not commit to the notion that such checks occurred every seven minutes. D0575, 26:6-14.[3] Lighter's compliance with the IEP exists irrespective of K.O.'s alleged conduct. Because the specification could be established without an underlying injury to Plaintiff—meaning there would be no causal connection between Urbandale's fault and a non-existent injury—those specifications on their

[3] As Urbandale repeatedly argued at trial, the IEP did not require seven-minute checks for the whole day. Instead, the checks only needed to be done during independent-work periods. D0580, 40:5-10. That said, the jury could still find fault under Specification F in the event they disagreed with Urbandale's view of the scope of K.O.'s IEP.

own provide ample means to reconcile the jury's verdict.

Similarly, Specification G could easily have been met by showing a failure to follow policies that occurred *after* the tortious conduct by K.O. had ceased. For example, any failure to enforce the Urbandale's anti-bullying policies in response to students distributing Plaintiff's nude photographs necessarily occurred, at the earliest, in December 2018 when the Mrs. Safris claims to have discussed the issue with DeKruyf. *See* D0579, 117:12-18:7; *see generally*, D0533, Ex. J-1, Emails Between Defendant and Plaintiffs (11/12/2024). Similarly, any failure to investigate the alleged assaults occurred, at the earliest, around April 2021, when the assault was reported to law enforcement. *See* D0084, Def. MSJ, Att. 1, at 88. The fact that such a specification could be established in a manner that is entirely divorced from any causal nexus to the injury provides yet another means to reconcile the jury's verdict.

Notably, the jury could easily conclude any of the above policy violations occurred while concluding K.O. *never* sexually assaulted Plaintiff. All three teachers testified that K.O. and R.S. did not even sit together, making any assault impossible. D0580, at 14:8-15; 55:5-18; D0575, 20:3-6. Even if they had sat together, the format of the desks would have made it physically impossible for K.O. to reach R.S. in the fashion R.S. asserts. D00576, 66:16-67:5; 101:4-11. Further, despite having nearly sixty individuals in the classroom, not a single individual ever actually witnessed K.O. sexually abusing Plaintiff in the manner Plaintiff alleges, in which K.O.

digitally penetrated her on a near daily basis. D0581, 130:2-20; D0579, 82:14-18. And Dr. Jaffe opined that it was his belief, based on psychiatric testing he performed on R.S., that she had not suffered any trauma that would support a PTSD diagnosis. D0575, 62:2-65:15. Indeed, Dr. Jaffe expressly testified that the mental illnesses the evidence actually supported—borderline personality disorder and bipolar disorder II—were not caused by any underlying trauma. D0575, at 66:7-15. Of course, any finding of fault would be logically consistent with a lack of causation when there is no underlying injury in the first place.

Additionally, the jury could reasonably conclude Defendants were at fault under Specifications A and B—both of which dealt with the failure to prevent the distribution of Plaintiff's nude photographs by her peers while at school—without finding such fault a cause of any compensable damage. Plaintiff's medical providers were unequivocal: the *only* possible source of her trauma was the sexual abuse alleged perpetrated by K.O. *See, e.g.*, D0569; 27:14-17; *see also*, *Faber v. Herman*, 731 N.W.2d 1, 7 (Iowa 2007) (explaining causation requires analyzing "the relationship between those theories of negligence supported by the evidence and the theory of damages sought by the plaintiff"). As such, Plaintiff's injuries would not be causally related to any theory of fault under Specification A or B. In short, when Plaintiff's own medical providers opined that Plaintiff's injuries were not caused by the distribution of nude photographs, the jury could certainly conclude the same.

Finally, even if the jury concluded R.S. was sexually assaulted—as was required to find fault under Specifications C and D—the jury could still find Urbandale did not cause that injury. As instructed, the jury could conclude a party was a cause of Plaintiff's injury "when the damage would not have happened except for the conduct." D0544, at p. 19. The instruction properly instructed the jury to determine whether Defendant's conduct was a cause in fact of their injury, which requires the injury would not have occurred "but for" the defendant's conduct. *Garr v. City of Ottumwa*, 846 N.W.2d 865, 869 (Iowa 2014).

Here, the jury could reasonably have concluded R.S. would have been injured regardless of Urbandale's conduct. For instance, the jury was instructed that they could use their own common sense, along with evidence at trial, when deciding the case. *See* D0544, at p. 2. And the jury was further instructed that the distribution of nude photographs could only be a source of fault if it occurred "during school." D0544, at p. 17. It is certainly common sensical for the jury to believe that Urbandale preventing students from distributing Plaintiff's nude photographs during school would not have prevented Plaintiff's distress because students would just as easily distribute them elsewhere. Indeed, R.S. distributed the photos from her own home. *See* D0569, 139:1-4. Urbandale's conduct was not a "but-for" cause because the injury would occur regardless of Urbandale's efforts to curb the students' conduct.

Similarly, Plaintiff herself testified that K.O. would stop touching her when teachers came by their desks. *See* D0569, 111:11-19. As such, the jury could reasonably conclude that greater vigilance would not have stopped the assaults. *Faber*, 731 N.W.2d at 10 (negligence is not a cause of injury when the employee "suffered the same harm he would have suffered had [the defendant] not been negligent").

Plaintiff's belated attempt to challenge the jury verdict is also contrary to their conduct throughout trial. Plaintiff never moved for a directed verdict, either at the close of their case-in-chief or the close of evidence. *See* Iowa R. Civ. P. 1.1003(2). Had Plaintiffs truly thought the jury could never reach the question of causation, they could have moved for a directed verdict on that issue. *See Ludman v. Davenport Assumption High School*, 895 N.W.2d 902, 909 (Iowa 2017). Similarly, Plaintiff never objected to the inclusion of instructions concerning causation, nor did Plaintiff's object to the verdict form separating fault from causation. *See* Iowa R. Civ. P. 1.924 (requiring timely objection to improper jury instructions); *Bride v. Heckart*, 556 N.W.2d 449, 452 (Iowa 1996) (quoting *Vachon v. Broadlawns Med. Found.*, 490 N.W.2d 820, 822 (Iowa 1992)) ("Requested instructions that are not related to the factual issues to be decided by the jury should not be submitted even though they may set out a correct statement of the law.").

Of course, there was no basis to object—it is axiomatic that causation is

ordinarily left to the jury. *See, e.g.*, *Thompson v. Kaczinski*, 774 N.W.2d 829, 836 (Iowa 2009) (quoting *Lindquist v. Des Moines Union Ry.*, 30 N.W.2d 120, 123 (1947)) ("Causation is a question for the jury, '*save in very exceptional cases* where the facts are so clear and undisputed, and the relation of cause and effect so apparent to every candid mind, that but one conclusion may be fairly drawn therefrom.'") (emphasis added). Still, had Plaintiff truly believed the jury necessarily had to conclude that Plaintiff established causation, they had several procedural options available to present that argument.

Rather than grappling with any of the above facts or law, which arguably amounts to waiver under Iowa Rule of Appellate Procedure 6.903(2)(a)(8)(3), Plaintiff relies entirely on a single case in which the Iowa Supreme Court determined a jury verdict finding fault but not causation was internally inconsistent. *See Johnson v. Knoxville Cmty. Sch. Dist.*, 570 N.W.2d 633 (Iowa 1997). In doing so, Plaintiff overstates the holding and factual similarity of *Johnson* and ignore an overabundance of precedent that is contrary to their argument.

As an initial matter, the case is easily distinguished on its facts. In *Johnson*, a student fell while playing on a school playground and hit his head. 570 N.W.2d at 634. He was immediately taken inside and diagnosed with a closed head injury by the school nurse. *Id.* From there, he was flown to an area hospital, where he was treated. *Id.* Following his discharge from the hospital, the child began experiencing

behavioral and cognitive decline. *Id.* at 634-35. At trial, the defendant school district stipulated to negligence but disputed causation and damages. *Id.* at 635. Except, as the decision makes clear, the defendant actually stipulated to some of plaintiff's damages as well. *Id.* at 642 ("Defendant also stipulated that the medical costs incurred by Brian for visits to his doctors since the injury and for the original hospitalization at Iowa Methodist Medical Center amounted to $10,171.33, and agreed that the amount was 'fair, reasonable and necessary.'").

The Court concluded the jury's "*total* denial of any damages" was contrary to the evidence. *Id.* (emphasis added). And of course it did—the defendant had (1) admitted it was negligent in letting plaintiff injure his head and (2) stipulated that at least some of plaintiff's damages were causally connected to his head injury. While the defendant could reasonably contest the scope of other damages, there was simply no basis for a zero verdict when the defendant had conceded all four elements of negligence in some capacity.

In contrast, Urbandale disputed whether it breached a duty, whether Plaintiff suffered an injury, and the nature and scope of such injuries. *See Brown v. Greater Cmty. Hosp.*, No. 01-1882, 2003 WL 21229090, at *4 (Iowa Ct. App. May 29, 2003) (finding verdict was consistent when jury found fault but not causation when there was "conflicting evidence on almost every point concerning how and when any injury . . . occurred, and the nature and extent of any injury and damage."). At no

point did Urbandale concede that Plaintiff suffered any cognizable injury in the first place, nor did Urbandale concede the nature or scope of Plaintiff's injury. Indeed, Urbandale's psychiatric expert, Dr. Jaffe, expressly testified that his testing did not support Plaintiff's claims that she suffered trauma and further opined that any mental illness Plaintiff suffered from was not causally related to Defendant's conduct. D0569, at 62:2-65:15. That testimony, on its own, distinguishes *Johnson* and supports the jury's verdict.

Plaintiff claims, without any legal authority, that the distinction between stipulating to every element and presenting the issue to the jury is immaterial. That, of course, is absurd, and its contrary to the cases that have interpreted *Johnson*. *See, e.g.*, *Foss v. Allstate Ins. Co.*, No. 08-1642, 2010 WL 446992, at *3 n. 1 (Iowa Ct. App. Feb. 10, 2010) (finding *Johnson*'s holding was based the defendant's admission of negligence and "the record made that some damages were proximately caused by the negligence," and further finding the case inapplicable because the defendants had made no concessions as to negligence); *Greenwood v. Mitchell*, No. 99-644, 2000 WL 1157839, at *3 (Iowa Ct. App. Aug. 16, 2000) (*overruled on other grounds*, *Greenwood v. Mitchell,* 621 N.W.2d 2000 (Iowa 2001)) (concluding *Johnson*'s holding was premised the fact that the jury "failed to award uncontested damages"); *Keosoff v. Dick*, No. 98-0990, 1999 WL 668721, at *1 (Iowa Ct. App. Aug. 27, 1999) (finding *Johnson* relied on the "defendants stipulation of damages" to order a new

trial). *Johnson*'s holding unequivocally takes issue with the "total denial" of damages in the face of the defendant conceding at least a portion of those damages were compensable. 570 N.W.2d at 642. Short of that concession, the Court did not identify any basis upon which the verdict was inconsistent. *Id.* In contrast, having contested every element of the case—which, by way of conscious repetition, Plaintiff's tacitly admitted was supported by substantial evidence through submitting the case to a jury—the jury was free to evaluate each element of Plaintiff's claim.

Further, Plaintiff's argument ignores myriad cases in which Iowa courts have determined a finding of negligence did not require the jury to find in plaintiffs' favor on the issue of causation. Indeed, *Johnson* itself recognizes that "even though negligence has been established, proximate cause must be determined separately." 570 N.W.2d at 641. Iowa precedent is replete with examples of a plaintiff establishing fault but failing to establish causation. *See, e.g.*, *Crow*, 871 N.W.2d at 106 (concluding verdict finding negligence but not causation was internally consistent); *Scoggins v. Wal-Mart Stores, Inc.*, 560 N.W.2d 564, 567-68 (Iowa 1997) ("Although Wal–Mart was clearly negligent in selling the ammunition to a minor, there is insufficient evidence to prove that this negligence was the proximate cause of Chad's death."); *McCaull v. Universal Mfg. Co.*, 218 N.W.2d 592, 594 (Iowa 1974) (explaining, "as we have pointed out several times, a finding that one is guilty of negligence as a matter of law does not dictate that such negligence was the proximate

cause of the events which followed" and concluding that while "there was ample evidence to permit [a finding of causation] . . . there was not enough to compel it."); *Millis v. Hute*, 587 N.W.2d 625, 629 (Iowa Ct. App. 1998) (upholding defense verdict despite stipulation as to negligence when plaintiff failed to establish causation and damages); *Weber v. Ross*, No. 03-0933, 2004 WL 1161594, at *2 (Iowa Ct. App. May 26, 2004) (finding verdict was supported by substantial evidence when "causation of [plaintiff's] injuries was also in dispute").[4]

In sum, Plaintiff's arguments ignore the applicable legal standard for inconsistent verdicts. And in doing so, Plaintiff does not make any attempt to grapple with the evidence presented at trial—evidence that the jury could reasonably find supported a finding of fault under the specifications provided to the jury but not causation. Instead, Plaintiff rests their entire argument on a single, factually distinguishable, case rather than addressing the significant body of case law that is directly contrary to their position. Plaintiff's argument subverts the jury's role in evaluating questions of negligence and causation, including determining which portions of evidence to give weight. *See Crow*, 871 N.W.2d at 105 ("[T]he jury is free to accept or reject any testimony, including uncontroverted expert testimony."); Iowa R. App. P. 6.904(3)(j) ("Generally questions of negligence and contributory

[4] Plaintiff, oddly, argues *every* such case can be distinguished on its facts. *See* Appellant's Brief, at p. 19. It is unclear how Plaintiff anticipated such factual distinctions in advance of Urbandale's briefing.

negligence are for the jury; it is only in exceptional cases that they may be decided as matters of law."). For all the foregoing reasons, the jury's verdict was internally consistent and there is no basis for a new trial.

II. THE DISTRICT COURT PROPERLY INSTRUCTED THE JURY THROUGH INSTRUCTION NUMBER 17.

a. Error Preservation

Defendants agree Plaintiff preserved error on the arguments contained in this section. *Meier*, 641 N.W.2d at 537.

b. Standard of Review

Courts "review challenges to jury instructions for correction of errors at law." *State v. Coleman*, 907 N.W.2d 124, 134 (Iowa 2018). "Jury instructions 'must convey the applicable law in such a way that the jury has a clear understanding of the issues it must decide.'" *Rivera v. Woodward Resources Ctr.*, 865 N.W.2d 887, 892 (Iowa 2014) (quoting *Thompson v. City of Des Moines*, 564 N.W.2d 839, 846 (Iowa 1997)). "We do not consider an erroneous jury instruction in isolation, but look at the jury instructions as a whole." *Coleman*, 907 N.W.2d at 134. Courts "do not require perfection" when considering jury instructions. *Rivera*, 865 N.W.2d at 902.

"Instructional errors do not merit reversal unless prejudice results. Prejudice occurs and reversal is required if jury instructions have misled the jury, or if the district court materially misstates the law." *Rivera*, 865 N.W.2d at 892 (internal

citations omitted). Error that is harmless to the complaining party does not warrant reversal. *Id.* at 903.

c. Jury Instruction Number 17 is an Accurate Statement of the Law, and the Court Properly Instructed the Jury.

Jury Instruction Number 17 accurately stated the law and the issues the jury was required to decide. As a result, the Court was required to provide that instruction. And even if the instruction was not perfect, Plaintiff was not harmed because other instructions clarified the issues before the jury. Before turning to that issue, however, Plaintiff's argument on this issue is barred by the doctrine of invited error. "Under the Doctrine of Invited Error, it is elementary a litigant cannot complain of error which he has invited or to which he has assented." *Matter of Est. of Peterson*, No. 21-0218, 2022 WL 1487126, at *3 (Iowa Ct. App. May 11, 2022) (quoting *McCracken v. Edward D. Jones & Co.*, 445 N.W.2d 375, 378-79 (Iowa Ct. App. 1989)); *see also Horak v. Argosy Gaming Co.*, 648 N.W.2d 137, 150 (Iowa 2002). Plaintiff requested the very instruction they now object to through their Proposed Jury Instructions. *See* D0397, Plts. Proposed Jury Inst., at p. 25 (10/14/2024). Faulting the district court for providing an instruction Plaintiff themselves thought was warranted is the definition of invited error.

Even if the Court determines Plaintiff did not invite the very error they now complain of, the jury instructions in this case do not warrant reversal. When comparing Plaintiff's Proposed Instruction 23 and Jury Instruction 17, the primary

difference is that Plaintiff's utilizes the standard of a "prudent parent" rather than a "reasonable person," which imposes an "affirmative duty to take all reasonable steps to protect its students from risks that arise within the scope of the school-student relationship." *Compare* D0544, at p. 19, *with* D0397 at p. 26. Instruction 17, when read in context of the entire set of jury instructions and facts of the case, is a more accurate statement of the law that would avoid confusing the jury on the issues it needed to decide.

First, to the extent it was ever truly a different standard than that of a reasonable person, Iowa law has abandoned the "prudent parent" standard for school districts. The "prudent parent" standard was justified as an articulation of the doctrine of *in loco parentis*, where the school district stands in the parent's place to provide care to the student during school. *See, e.g.*, *City of Cedar Falls v. Cedar Falls Cmty. Sch. Dist.*, 617 N.W.2d 11, 18 (Iowa 2000). However, this past term, the Iowa Supreme Court clarified that "the *in loco parentis* relationship" only "imposes a duty of *ordinary care* for the purposes of negligence." *Doe v. Western Dubuque Cmty. Sch. Dist.*, 20 N.W.3d 798, 811, 812 (Iowa 2025) (emphasis added). Under the clear holding of *Western Dubuque*, there is simply no basis to compare a school district to a parent and Instruction 17 accurately described the duty owed by Urbandale.

Second, the "prudent parent" standard does not impose any materially

different standard on Defendant than that of a reasonable person under the Restatement (Third) of Torts: Liability for Physical and Emotional Harm (hereinafter, "Restatement Third"). Cases discussing the "prudent parent" standard opine that school districts owed a duty to protect students from the foreseeable danger posed by their peers or other dangerous persons. *See, e.g.*, *Godar v. Edwards*, 588 N.W.2d 701, 708 (Iowa 1999). As such, the standard simply speaks to the fact that schools may be liable for harm caused by third parties. *Compare* Restatement Third § 37 (explaining actors generally have no duty to prevent harm from risk not created by that actor).

Notably, the Restatement (Second), which was in effect at the time of *Godar v. Edwards* and *Doe v. Cedar Rapids Community School District*, did not include the school-student relationship as a special relationship. *See* Restatement (Second) of Torts § 314A. In contrast, under the Restatement Third § 40(a)(5), schools owe a duty to use reasonable care with regard to risks that arose within school-student relationship, even if the school is not the actor causing the harm. *See* Restatement (Third) § 40, cmt. G (explaining duty under Section 40 applies even when defendant's conduct did not create the risk of harm). But as the Restatement Third makes clear, the duty owed by a school in light of its relationship with a student remains the same as the duty for any other actor for their own risks—reasonable care. *See* Restatement (Third) § 40(a), cmt. D ("The duty imposed requires only

reasonable care under the circumstances."). Thus, describing the standard as one of reasonable care is an accurate statement of the law.[5]

The jury never heard any evidence suggesting there was a dispute over whether Urbandale owed a duty to prevent Plaintiff's peers from harming her. Indeed, the whole case was about harm caused by third parties. And Instruction 17 can be read in harmony with the duty to prevent harm from third parties. Instruction 17 informed the jury that ordinary care "is the care which a reasonably careful person would use under the circumstances." D0544, at p. 19. There is no indication in that instruction or any others that Defendant could only be liable for harm its own conduct caused. And both parties' experts agreed that schools, given the circumstances applicable to them, owe a duty to protect students from their peers. *See* D0579, 216:21-17:15; D0571, Trial Tr. Vol. VII, 61:10-18 (6/10/2025). The instruction would not confuse or mislead the jury on the scope of Urbandale's duty.

Plaintiff largely relies on vague assertions that the jury instruction lacked context about the duties expected of a school. But even accepting that the Court could have instructed under the "prudent parent" standard, Plaintiff's argument ignores the remainder of the jury instructions. *See Coleman*, 907 N.W.2d at 134 ("We

[5] Iowa Courts routinely have utilized the Restatement Third, including Section 40. *See, e.g., Hoyt v. Gutterz Bowl & Lounge LLC*, 829 N.W.2d 772, 777 (Iowa 2013); *Morris v. Legends Fieldhouse Bar & Grill, LLC*, 958 N.W.2d 817, 825 (Iowa 2021); *Mitchell v. Cedar Rapids Cmty. Sch. Dist.*, 832 N.W.2d 689, 700 (Iowa 2013).

do not consider an erroneous jury instruction in isolation."). Indeed, Instruction Number 16 includes four specifications of fault (A through D) that expressly instructed the jury that Defendant would be at fault if they failed to use reasonable care in preventing K.O. or Plaintiff's peers from harming her. D0544, at p. 17. Further, Specification F and Instruction 27 explains the duties schools have regarding implementation and enforcement of IEPs. D0544, at p. 30. Thus, to the extent one can quibble over whether Instruction 17 itself could have included more detail, any error was harmless because the jury was already instructed on the issues Plaintiff complains of. *See Rivera*, 865 N.W.2d at 902-903 (explaining error is harmless when specifications of fault in other instructions adequately present the issues to the jury).

Instruction 17 accurately articulated the law under *Doe v. Western Dubuque* and the Restatement Third. Moreover, when considering the issues before the jury and read in context with the other jury instructions—particularly Instructions 16 and 23—the jury would not be confused or mislead on the nature and scope of the duty owed by Urbandale. The Court must affirm the district court's jury instructions on this issue.

III. THE DISTRICT COURT PROPERLY EXCLUDED EVIDENCE OF A BOEE PROBABLE CAUSE FINDING IN AN UNRELATED MATTER BECAUSE IT WAS IRRELEVANT AND UNDULY PREJUDICIAL.

a. Error Preservation

Urbandale agrees Plaintiff preserved error on the arguments that the testimony was admissible under Iowa Rule of Evidence 5.405(b)(1) and Rule 5.406. *See Meier*, 641 N.W.2d at 537.

Plaintiff did not preserve error regarding the application of Rule 5.608(b)(1). In their Resistance to Urbandale's Third Motion in Limine, Plaintiff did argue, in the hypothetical, that the evidence would be admissible under 5.608(b)(1) in the event Urbandale discussed DeKruyf's character. *See* D0431, Plts. Rest. to Def. Third MIL, at p. 21 (10/17/2024). The district court's ruling granting Urbandale's motion in limine to exclude this evidence, however, could not have relied upon such a hypothetical, which the court would necessarily have reserved ruling on to determine how evidence entered the case. As a result, Plaintiff did not preserve error through that motion practice. *See Meier*, 641 N.W.2d at 537.

Further, Plaintiff's offer of proof, D0580 at 115:17-121:20, occurred a full week prior to Drobac's testimony, which according to Plaintiff was the triggering event to the admissibility of their evidence. *See* D0571, at 8; *See* Appellant's Brief p. 30 (identifying portions of Drobac testimony they contend opened the door to evidence at issue). If Plaintiff believed—as they assert on appeal—that Drobac's testimony altered the analysis under Rule 5.608(b)(1), they needed to either make an objection identifying the error or make another offer of proof. *See* Iowa R. Evid. 5.103(a) (providing means to secure error on evidentiary objections). They did

neither.

Plaintiff's failure to secure a ruling on this issue produces the very outcomes error preservation is intended to prevent.

> It is fundamentally unfair to fault the trial court for failing to rule correctly on an issue it was never given the opportunity to consider. Furthermore, it is unfair to allow a party to choose to remain silent in the trial court in the face of error, taking a chance on a favorable outcome, and subsequently assert error on appeal if the outcome in the trial court is unfavorable.

DeVoss v. State, 648 N.W.2d 56, 60 (Iowa 2002). Rather than letting the district court review the state of trial following Drobac's testimony to determine whether circumstances had changed enough to warrant admission of Plaintiff's proposed evidence, Plaintiff waited until an adverse verdict and appeal to fault the court for an issue they never raised. This Court should not entertain Plaintiff's untimely assertions on appeal.

b. Standard of Review

Orders regarding the admission of evidence are reviewed for an abuse of discretion. *Scott v. Dutton-Lainson Co.*, 774 N.W.2d 501, 503 (Iowa 2009). "Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected. Therefore, reversal is warranted only if exclusion of the evidence affected a party's substantial rights." *Id.* (internal citation omitted).

c. The Probable Cause Finding Is Irrelevant, Unduly Prejudicial, and No

Rule of Evidence Permits its Admission at Trial.

The district court properly excluded evidence related to a probable cause finding by the Board of Educational Examiners (BOEE) regarding alleged misconduct by Loren DeKruyf in an unrelated matter that occurred after the events at issue in this case. The evidence is facially irrelevant and unduly prejudicial under Iowa Rule of Evidence 5.403. Further, contrary to Plaintiff's arguments, the evidence does not meet the standard for habit evidence under Rule 5.406, nor would the evidence go to an "essential element" of a claim or defense under Rule 5.405(b)(1). Finally, the evidence was not admissible under Rule 5.608 because the evidence (1) was not being offered to establish DeKruyf's truthfulness, (2) DeKruyf's truthfulness was not at issue, and (3) is not probative to any issue before the jury.

Before turning to that, however, the Court cannot reverse the district court because Plaintiff failed to introduce sufficient evidence to permit the Court to determine the admissibility of such testimony. Plaintiff's offer of proof did not elicit any testimony from DeKruyf regarding the circumstances underpinning the probable cause finding. *See* D0580, 115:17-121:20. And Plaintiff's Proposed Exhibit 75, a printout of the BOEE website, does not include any of the factual details underpinning its investigation. *See also* D0398, Plts. Proposed Ex. 75 (10/14/2024), admitted as Court Exhibit at D0548 (11/13/2024). As such, Plaintiff left the district court to speculate as to the circumstances surrounding the investigation and probable

cause finding. Without those details, Plaintiff, as the proponent of the evidence, did not meet their burden of establishing the conditional relevancy of the offered evidence, leaving this Court nothing to review. *See* Iowa R. Evid. 5.104(b) ("When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist."); *see also State v. Greene*, 592 N.W.2d 24, 28 (Iowa 1999) (overruled on other grounds) (finding error was not preserved on application of Rule 5.608(b)(1) when party did not make offer of proof eliciting testimony regarding alleged untruthful statements).

i. The Proposed Evidence is Irrelevant and Unduly Prejudicial Under Iowa Rule of Evidence 5.403.

Evidence of the BOEE finding probable cause for ethics rules violations by DeKruyf for unrelated conduct that occurred after the events at issue was properly excluded under Iowa Rule of Evidence 5.403. Pursuant to Rule 5.403, "relevant evidence can be inadmissible if the evidence's probative value is 'substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.'" *State v. Buelow*, 951 N.W.2d 879, 889 (Iowa 2020) (quoting Iowa R. Evid. 5.403). "We determine whether evidence should be excluded under Rule 5.403 through a two-part test. First, we consider the probative value of the evidence. Second, we balance the probative value against the danger of its prejudicial or wrongful effect upon the triers of fact." *Buelow*, 951 N.W.2d at 889.

The BOEE investigation and its findings are not relevant to the issues in this case. Plaintiff's counsel themselves admitted the probable cause finding was issued due to unrelated conduct that occurred after the events at issue in this case. *See* D0567, Pretrial Confer. Tr., 62:8-13; 63:17-23 (5/21/2025); D0580, at 120:12-21. Whether DeKruyf's conduct in an entirely unrelated case fell below the ethics standards imposed by a separate licensing body simply makes no fact of consequence any more or less probable. *See* Iowa R. Evid. 5.401. Indeed, in similar cases, the Iowa Supreme Court has concluded similar findings by governmental agencies were "irrelevant to any issue for the jury to decide." *State v. Huston*, 825 N.W.2d 531, 538 (Iowa 2013); *see also State v. Thoren*, 970 N.W.2d 611, 622-23 (Iowa 2022) (concluding evidence of a licensing board investigation and revocation of the defendant's license should have been excluded under Rule 5.403 due to it having "little, if any, probative value").

In contrast, introduction of evidence pertaining to the probable cause finding would be highly prejudicial. "Because administrative agencies are arms of the state, there is a risk that juries will treat agency findings as official, state-sanctioned results." *Thoren*, 970 N.W.2d at 623; *see also Huston*, 825 N.W.2d at 537-38 (warning that jury could be swayed by the "imprimatur of a purportedly unbiased state agency decision"). The only means to prevent the jury from making such an inference would force Urbandale to introduce significant evidence rebutting the

probable cause finding, which is problematic in two respects. First, it would result in a confusing mini-trial over whether the BOEE finding was supported by evidence, which is irrelevant to the issues in the case. *See* Iowa R. Evid. 5.403; *see also American Bank & Tr. Co., N.A. v. Leyden*, No. 21-1852, 2013 WL 6405161, at *6 (Iowa Ct. App. Dec. 5, 2013) ("The district court had broad discretion under Rule 5.403 to exclude [evidence] . . . if their admission would have required a 'trial within a trial' and posed the risk of unfair prejudice, trial delay, and jury confusion."). Second, such a mini-trial would force Urbandale to marshal and present evidence in advance of the hearing upon which DeKruyf could face professional discipline, providing the State with the gameplan for DeKruyf's defense.

Further, the BOEE finding was only for probable cause. As such, the offered evidence risks confusing the jury on the nature of the BOEE findings, giving undue weight to what was a low evidentiary burden to clear. *See Thoren*, 970 N.W.2d at 622 ("We have cautioned that introducing professional standards with lower burdens of proof in a criminal trial creates a significant risk of prejudice."). Further, the evidence would require explaining differing burdens of proof, confusing the jury on the burden in this case. *See Huston*, 539 N.W.2d at 539 (noting cautionary instruction as to the differing burden of proof would not cure prejudice).

While Plaintiff argued in their Resistance to Defendant's Third Motion in Limine that such prejudice was mitigated by the fact that the probable cause finding

was wholly unrelated to the issues of the case, that only exacerbates the Plaintiff's problems under Rule 5.403. *See* D0431, at p. 22. Indeed, Plaintiff's argument is tantamount to saying: "The finding is completely irrelevant, so the jury will not improperly consider it." At best for Plaintiff, that simply reduces the probative value of the evidence to zero. At worse, it demonstrates the misleading nature of the proposed testimony that could only serve to waste time and inflame the jury's passion. The Court properly excluded the evidence under Rule 5.403.

ii. Iowa Rules of Evidence 5.406 and 5.405 Do Not Permit Admission of This Evidence.

According to their plain text and binding precedent, neither Iowa Rule of Evidence 5.406 nor Rule 5.405 supports admission the BOEE investigation or its probable cause determination.

Rule 5.406 provides: "Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice." *Holmes v. Pomeroy*, 959 N.W.2d 384, 391 (Iowa 2021) ("A habit of doing a thing is naturally of probative value as indicating that on a particular occasion the thing was done as usual . . .."). "Habit may be evidenced by specific instances so long as they are 'numerous enough to base an inference of systematic conduct' and 'occurred under substantially similar circumstances, so as to be naturally accountable for by a system only, and not as casual recurrences.'" *Id.* (quoting *Barrick v. Smith*, 80 N.W.2d 326,

329 (Iowa 1957)).

Here, Plaintiff's suggestion that a single administrative finding demonstrates a habit by DeKruyf is facially deficient. For instance, in *Holmes*, the Iowa Supreme Court concluded that *twenty* examples of similar misconduct was insufficient to show a habit. *Id.* Similarly, the Iowa Court of Appeals found testimony from two former employees "did not show the frequency of specific actions necessary to prove systematic conduct admissible under the rule." *Leyden*, 2013 WL 6405161, at *6. Introduction of a single finding does nothing to establish conduct "numerous enough to base an inference of systematic conduct." *Holmes*, 959 N.W.2d at 391. And again, given the lack of factual development during their offer of proof, Plaintiff cannot establish the conduct was under "substantially similar circumstances." *Id.*

Plaintiff's assertion that such evidence was admissible under Rule 5.405(b)(1) similarly ignores clear precedent to the contrary. That rule provides: "When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct." Iowa R. Evid. 5.405(b)(1). But the cases interpreting that rule clearly explain its narrow scope: The proponent must establish the pertinent character trait is an actual element of either a claim or an affirmative defense. *See, e.g.*, *State v. Williams*, 929 N.W.2d 621, 635-36 (Iowa 2019). As has been consistently explained for nearly forty years:

> Only when character is in issue in the strictest sense, and is thus deserving of searching inquiry, is proof by specific acts allowed under rule 405(b). Fed.R.Evid. 405, Advisory Committee Note. Thus only when character or a trait of character is an operative fact determining the parties' rights and liabilities are specific instances of conduct a proper method of proving character.

Klaes v. Scholl, 375 N.W.2d 671, 676 (Iowa 1985). The *Klaes* court went on to explain when character is a necessary element, citing to cases including issues like slander. *Id.*

Thus, in *Williams*, the Court concluded that a person's character was irrelevant to a justification defense because the reasonableness of the defendant's belief that force was necessary existed regardless of a person's character. *Id.* Similarly, a person's character has no bearing on negligence—whether a particular act fell below the standard of care exists, or does not, regardless of their character. Therefore, Rule 5.405(1)(b) cannot be a basis for admissibility.

iii. Rule 5.608 Does Not Provide a Basis for Admission of Plaintiff's Proposed Evidence.

The only other ground asserted by Plaintiff to support the admissibility of the BOEE findings—Rule 5.608(b)(1)—similarly fails. As explained above, error is not preserved on this issue, but Plaintiff's claim also fails on its merits. That rule 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). As an initial matter, the rule forbids extrinsic evidence, only permitting oral examination on specific incidents of untruthfulness. As such, Plaintiff's Exhibit 75 would remain inadmissible under the rule. *See Greene*, 592 N.W.2d at 28 ("This part of rule 608 permits cross-examination of a witness concerning a specific instance of conduct by the witness; it does *not* permit such conduct to be proved by extrinsic evidence."). Further, the rule is limited to "character for truthfulness," so Plaintiff's attempt to introduce this evidence as proof that DeKruyf did not follow policies in 2017 necessarily fails as a matter of law.

In any event, Plaintiff's proffered proof is not probative for truthfulness. Instead, as explained above, the examination in Plaintiff's offer of proof did not include any admission of dishonesty. The testimony was simply DeKruyf stating his awareness that a probable cause finding had been made, not whether he engaged in any untruthful conduct. The Supreme Court has previously found similar issues demonstrated the district court did not abuse its discretion when refusing to admit evidence under Rule 5.608(b)(1). *See Greene*, 592 N.W.2d at 28. ("Without knowing what [the witness's] testimony would have been if he had been cross-examined within the bounds of rule 608(b), we have no way of determining whether any abuse in not permitting the cross-examination was prejudicial and, therefore, constituted reversible error.").

Further, Plaintiff's complained error was the failure to admit evidence of a single instance of alleged untruthfulness that occurred after the events at issue in order to establish DeKruyf, who's only alleged misconduct in this case necessarily occurred *after* Plaintiff was already injured, failed to act reasonably in responding to the distribution of unrelated nude photographs the year prior to the Plaintiff's alleged injuries. There is simply no relevance to such a convoluted series of inferences, particularly in light of the significant prejudice Defendants would suffer from admission of the BOEE investigation and probable cause findings. The district court did not abuse its discretion by excluding such evidence.

IV. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN ALLOWING DR. DROBAC TO TESTIFY.

a. Error Preservation

Defendants agree Plaintiff preserved error on the arguments contained in this section. *Meier*, 641 N.W.2d at 537.

b. Standard of Review

An appellate court "will reverse a decision by the district court concerning the admissibility of expert opinions only when the record shows 'the court exercised [its] discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable.'" *Ranes v. Adams Laboratories, Inc.*, 778 N.W.2d 677, 685 (Iowa 2010) (citation omitted). "[A] trial court is entitled to exercise a broad discretion in the admissibility of expert testimony." *United Cent. Bank of Des Moines, N.A. v.*

Kruse, 439 N.W.2d 849, 852 (Iowa 1989).

Iowa is "committed to a liberal view on the admissibility of expert testimony." *Ranes*, 778 N.W.2d at 685. Pursuant to Iowa's Rules of Evidence: "A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue." Iowa R. Evid. 5.702.

A court undertakes a two-step inquiry to determine whether to admit expert testimony. *Ranes*, 778 N.W.2d at 685. "The court must first determine if the testimony 'will assist the trier of fact' in understanding the evidence or to determine a fact in issue." *Id.* "Second, the court must determine if the witness is qualified to testify as an expert by knowledge, skill, experience, training, or education." *Id.* Iowa addresses the admissibility of expert testimony on an "ad hoc basis," where the "complexity of the subject matter will influence the foundational showing of reliability." *State v. Hall*, 297 N.W.2d 80, 85 (Iowa 1980).

c. Dr. Drobac Was Qualified to Testify to the Issues in this Case.

First, Dr. Drobac was amply qualified to testify. Since at least 1992, Dr. Drobac has worked in the field of sexual harassment, starting as an attorney specializing in sexual harassment law. *See* D0536, Deft. Ex. MM, Drobac's CV (11/12/2024). Then, starting in 1997, Dr. Drobac began teaching sexual harassment

law at multiple different universities. *Id.* She has continued to specialize in sexual harassment law through the present. *Id.*

Dr. Drobac's distinguished career in academia also translated into practical experience in establishing procedural frameworks for preventing, investigating, and responding to sexual harassment and sexual assault in educational settings. For instance, as a member of the American Law Institute (ALI), Dr. Drobac participated in the MCGs (Members Consultative Groups) for Sexual Assault and Related Offenses, Children and the Law, and Student Sexual Misconduct: Procedural Frameworks for Colleges and Universities. *Id.* at 2-3. Dr. Drobac served as an Indiana University Faculty Council Executive Committee Representative and worked on the Task Force on Sexual Assault, Prevention, Intervention, and Response. *Id.* at 3; D0393, Plt. M. to Strike, Att. 1, Drobac Report, p. 1 (10/14/2024). She worked on the Indiana University Sexual Misconduct Policy Committee. *Id.* These experiences provided practical knowledge on how educational facilities can and should prevent, investigate, and respond to sexual misconduct by students in educational settings. Dr. Drobac's knowledge and experiences readily qualifies her to opine on the issues present in this case.

Plaintiff argues that Dr. Drobac's experience in preventing and investigating sexual assaults in college campuses is distinguishable from the K12 setting. Fair enough. But that distinction does not render Dr. Drobac's testimony wholly

irrelevant. *See Mensink v. American Grain & Relate Indus.*, 564 N.W.2d 376, 380 (Iowa 1997) ("The witness need not be a specialist in the particular area of testimony so long as the testimony falls within the witness' general area of expertise."); *Leaf v. Goodyear Tire & Rubber Co*., 590 N.W.2d 525, 535 (Iowa 1999) ("[N]o particular education is required; experience is sufficient to qualify a witness as an expert."). Instead, Plaintiffs were free to address the differences between K12 and collegiate settings through cross examination—which they did. *See* D0571, 50:3-52:24; *Hutchinson v. Am. Fam. Mut. Ins. Co.*, 514 N.W.2d 882, 885 (Iowa 1994) ("If . . . the Court is satisfied that the threshold requirements have been met, the witness should be allowed to testify. All further inquiry regarding the extent of his qualifications goes to the weight that the fact finder can give such testimony.").

Second, Plaintiff's arguments regarding Dr. Drobac's methodologies misapplies Iowa law. Plaintiff's argument appears to rest on the mistaken assumption that *Daubert*[6] controls expert testimony, which Iowa courts have emphatically rejected. *Leaf*, 590 N.W.2d at 532. And even though *Daubert* may be relevant but not controlling in *some* cases, Iowa's Supreme Court has concluded the considerations the *Daubert* factors are "not appropriate in cases involving 'technical or specialized knowledge' because such nonscientific evidence is not as complex." *Ranes*, 778 N.W.2d at 687 (quoting *Johnson*, 570 N.W.2d at 639). Indeed, Plaintiff's

[6] *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993).

primary authority in Argument Section I—*Johnson v. Knoxville*—concluded the expert's testimony in that case did not need to meet the foundational showing for methodologies required under *Daubert* because the testimony was based on technical, non-scientific knowledge. *Johnson*, 570 N.W.2d at 639. Moreover, Plaintiff's own standard of care expert, Mr. Perondi, relied on the very same methodology Plaintiff now complains of. *Compare* D0580, 176:9-15 (where Mr. Perondi explains his opinions were based on deposition testimony) *with* D0571, 38:6-39:25 (explaining documents and depositions reviewed by Dr. Drobac).

Third, Plaintiff's qualms with Dr. Drobac's report including statements that they claim opine directly on legal conclusions is irrelevant. Iowa law has consistently held that "[e]xpert testimony on the standard of care or standard of practice is generally permitted in negligence actions." *Haskenhoff v. Homeland Energy Sols., LLC*, 897 N.W.2d 553, 600 (Iowa 2017); *see also* Iowa R. Evid. 5.704 (permitting opinions on the ultimate issue before the jury). As such, the complained of testimony was proper.

Even if it were not, expert reports are designed to provide the outer limits of the expert's testimony, not set forth the expert's testimony word-for-word before trial. *See, e.g.*, Iowa R. Civ. P. 1.508(4) ("The expert's direct testimony at trial may not be inconsistent with *or go beyond* the fair scope of the expert's disclosures, report, deposition testimony, or supplement thereto."); *Duitsman v. Afzal*, No. 19-

1942, 2021 WL 2453985, at *4 (Iowa Ct. App. June 16, 2021) ("[T]he purpose of the rule [is] to avoid surprise to litigants and to allow the parties to formulate their positions on such evidence as is available."). To the extent any portion of Dr. Drobac's report would have been improper testimony, the district court did not abuse its discretion by waiting for specific evidentiary objections rather than entirely excluding Dr. Drobac's testimony. And the district court *expressly* instructed the parties that Dr. Drobac was not to testify to improper legal conclusions, curing any of Plaintiff's concerns. D0571, 29:6-15. Further, Dr. Drobac's report was never shown to the jury, and as will be explained in the next section, none of Dr. Drobac's actual testimony before the jury was improper. As such, the jury did not hear any improper legal conclusions.

Finally, Dr. Drobac's testimony was relevant to the issues before the jury. Plaintiff's expert, Mr. Perondi, opined that Defendant failed to comply with their internal policies, which fell below the standard of care. D0580, at 213:13-19, 216:21-218:20. Dr. Drobac's testimony regarding the adequacy of Urbandale's policy and its compliance with those policies was directly relevant to rebutting that testimony. The district court did not abuse its discretion in permitting Drobac's testimony.

d. Dr. Drobac's Testimony Did Not Improperly Opine on Credibility or Legal Conclusions.

Plaintiff erroneously argues Dr. Drobac improperly commented on credibility of witnesses and opined on legal conclusions. Plaintiff simply misstates the record—

Dr. Drobac never commented on any witnesses' credibility, nor did she improperly testify to legal conclusions.

First, while commenting on witness credibility is certainly improper, Plaintiff has failed to identify any testimony that even remotely comments on credibility of witnesses.[7] The only portion of the record that Plaintiff identifies as commenting on credibility is at D0571, 45:10-24, in which Dr. Drobac simply states that the uncontested deposition testimony shows the students believed their teachers cared about them. That's not commenting on credibility, its simply stating a source for Dr. Drobac's testimony came from deposition testimony. *Compare State v. Dudley*, 856 N.W.2d 668, 678 (Iowa 2014) (concluding testimony that child's symptoms were consistent with sexual abuse improperly vouched for that child's credibility). Moreover, the testimony, even if erroneous, is harmless—no one argued Urbandale's staff did not actually care about their students, and it would not be surprising to the jury that public school teachers care about their pupils. Similarly, Dr. Drobac was not opining on credibility when she discussed Riley Young's testimony, which was expressly limited to Dr. Drobac indicating, "I don't have any evidence that Riley Young . . . said that," and further testifying to the entirely unremarkable notion that

[7] Plaintiff's failure to provide a factual basis for their argument cannot be cured through their reply brief. *See* Iowa R. App. P. 6.903(2)(a)(8)(3), 6.903(4). And this Court should not waste its own resources conducting a review of the record Plaintiff should have undertaken in the first place. *Inghram v. Dairyland Mut. Ins. Co.*, 215 N.W.2d 239, 240 (Iowa 1974).

Riley Young, as a student, was not a teacher. D0571, 62:3-15. That testimony simply does not indicate a belief that Riley Young was or was not truthful.

Second, Plaintiff similarly fails to identify any improper testimony that crossed the line into opining on a legal conclusion. First, Plaintiff's citation to D0571 at 6:25-7:6, 19:17-19, and 21:12-16 are simply irrelevant because they occurred during the voir dire, outside the presence of the jury. As such, there can be no prejudice to Plaintiff from testimony the jury never heard. Further, Plaintiff's citations to D0571 43:11-45:15 are unavailing because the testimony was simply describing the standard of care and whether Defendant's conduct would meet that standard. As explained above, Iowa law has long held that expert testimony regarding the standard of care is permissible. *Haskenhoff*, 897 N.W.2d at 600. Indeed, such testimony is *required* to establish the plaintiff's case. *See Putnam v. Walther*, 973 N.W.2d 857, 864 (Iowa 2022) (recognizing expert testimony is necessary when facts lay outside laypersons ability to understand absent such expert). Even if it were not, Plaintiff opened the door to such testimony through Mr. Perondi's testimony, who repeatedly and unambiguously opined that Urbandale violating the standard of care. *See* D0580, 177:9-12, 191:25-92:2, 209:21-210:12; 212:1-13:1, 213:13-19, 216:21-218:20. The district court did not abuse its discretion in permitting appropriate testimony in response to Plaintiff's own expert.

Even assuming Dr. Drobac's testimony was improper—which it was not—

any error is harmless. *See State v. Slaughter*, 3 N.W.3d 540, 553 (Iowa 2024). First, Plaintiff only identifies a few instances of improper testimony within the context of a two-week trial, not to mention the fact that the testimony was in response to a topic Plaintiff's expert had already opined upon. As a result, this was not uncontested testimony—the jury was free to compare Perondi's and Dr. Drobac's testimony and give each the weight to each it believed such testimony deserved. Further, Dr. Drobac's testimony opined on the standard of care and its alleged breach—an issue Plaintiff's prevailed upon at trial. *See State v. Wilson*, 878 N.W.2d 203, 219 (Iowa 2016) (concluding error was harmless when excluding such evidence would not have changed outcome on retrial). As a result, Plaintiff is complaining of testimony the jury already rejected. As such, this Court should affirm the district court's determination permitting Dr. Drobac to testify.

V. THE DISTRICT COURT PROPERLY EXCLUDED GRACIE MARKS', BRYCE GETTER'S, AND AIDEN DORIA'S TESTIMONY.

a. Error Preservation

Defendants agree Plaintiff preserved error on the arguments contained in this section. *Meier*, 641 N.W.2d at 537.

b. Standard of Review

Defendant agrees the district court's ruling on evidentiary issues is generally reviewed for an abuse of discretion. *See Valdez v. West Des Moines Cmty. Schs.*, 992 N.W.2d 613, 634 (Iowa 2023). To the extent the district court found the proposed

evidence was hearsay, that determination is reviewed for the correction of errors at law. *State v. Dessinger*, 958 N.W.2d 590, 597 (Iowa 2021).

c. Marks' Testimony Was Irrelevant to the Issues Before the Jury.

Gracie Marks' testimony was properly excluded from trial because it was entirely irrelevant and unduly prejudicial to the defense. *See* Iowa R. Evid. 5.402, 5.403. Marks testified in her offer of proof that sometime during COVID-19, at the earliest in Spring of 2020, K.O. lifted Marks up by the throat. *See* D0569, Trial Tr. Vol. IV, 233:12-34:8 (6/10/2025). The district court did not abuse its discretion in determining that testimony was irrelevant to the issues, prejudicial to the defense, and amounted to improper propensity reasoning.

First, the allegations are simply irrelevant. *See* Iowa R. Evid. 5.402. Marks testified that the assault did not occur until about two years after the events underpinning this case. D0569, 233:12-34:8. That temporal disconnect renders the testimony entirely irrelevant—events that put a defendant on notice *after* the tortious conduct is complete does not put the defendant on notice in a manner that is causally connected to plaintiff's injuries. *See, e.g.*, *Godar*, 588 N.W.2d at 708-09 (to show negligent supervision, plaintiffs need to show knowledge by the supervisor of tortfeasor's unfitness at the time of the tortious conduct). Knowledge that can only be obtained after the plaintiff's injuries occur does not provide any basis for imposing liability—the defendant could not have been expected to change behavior

based on events one could only anticipate if they were clairvoyant.

Marks' testimony was also unduly prejudicial. *See* Iowa R. Evid. 5.403. Presenting testimony regarding an entirely unrelated assault that occurred years after the events at issue only serves to inflame the passion of the jury. *State v. Martin*, 704 N.W.2d 665, 672 (Iowa 2005) ("The evidence of Martin's violent nature could only serve to inflame the passions of the jury."). Even to the extent the jury was not angry with K.O. for perpetrating the assault, the jury would still be unduly prejudiced by alleged misconduct by Urbandale in an entirely unrelated incident. *See State v. Cromer*, 765 N.W.2d 1, 9 (Iowa 2009) (explaining unfair prejudice occurs when the jury is "lure[d] . . . into declaring guilt on a ground different from the proof specific to the offense charged").

Plaintiff argues Marks' testimony was relevant to the "school culture." Plts. Brief at p. 51.[8] But that argument faces a fundamental flaw: its propensity reasoning, plain and simply. And Iowa's Rules of Evidence have long prohibited propensity reasoning. *See* Iowa R. Evid. 5.404(a)(1) ("Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait."); *id.* 5.404(b)(1) ("Evidence of any

[8] Plaintiff also argues the evidence is relevant to Defendants' conduct "before, during, and after" Plaintiff's alleged assault. Of course, temporally, it cannot establish conduct before or during Plaintiff's alleged assault. And conduct after is irrelevant to Plaintiff's claims. *See* Iowa R. Evid. 5.401.

other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character."). Plaintiff's intended use of Marks' testimony—as they expressly state in their briefing—was to convince the jury that because Urbandale failed to respond properly in the 2020 incident, Urbandale must have failed to respond properly in 2018. Its an inference that is as illogical as it is expressly prohibited by Rule 5.404.

Courts utilize a three-step process to determine admissibility under Rule 5.404(b). *State v. Putnam*, 848 N.W.2d 1, 8 (Iowa 2014). "A court must first determine whether the evidence is relevant to a legitimate, disputed factual issue." *Id.* at 9. As explained above, Marks' testimony has no relevance to any issue in this case because it could not put Defendant on notice of K.O.'s allegedly dangerous behavior two years prior to Marks' assault. That, on its own, ends this analysis.

Even if minimally relevant, Plaintiff would still need to establish the evidence's "probative value is substantially outweighed by the danger of unfair prejudice to the defendant."[9] *Id.* "Weighing probative value against prejudicial effect 'is not an exact science,' so 'we give a great deal of leeway to the trial judge who must make this judgment call.'" *Id.* (quoting *State v. Newell*, 710 N.W.2d 6, 20-21 (Iowa 2006)). And here, as explained above, the district court did not abuse its

[9] Defendants concede that Marks' testimony could satisfy the second element, that there was "clear proof the individual against whom the evidence is offered committed the bad act." *Id.*

discretion when determining Marks' testimony's probative value did not substantially outweigh its prejudicial effect. As Plaintiff themselves concede, the evidence's primary purpose was to convince the jury to engage in propensity reasoning and invite the jury to punish Urbandale for conduct wholly unrelated to the case.

The district court did not abuse its discretion in finding Marks' testimony was irrelevant, unduly prejudicial, and improper propensity reasoning. As such, this Court must affirm the district court's decision to bar such testimony.

d. Testimony Regarding Rumors of Plaintiff's Nude Photographs was Inadmissible Hearsay and Irrelevant.

The district court properly excluded evidence from Bryce Getter and Aiden Doria regarding rumors of Plaintiff's nude photographs because the testimony was improper hearsay and entirely irrelevant.[10]

Getter's and Doria's testimony were clearly hearsay. Hearsay is any out of court statement used to prove the truth of the matter asserted. *See* Iowa R. Evid. 5.801. Unless an exception applies, hearsay is inadmissible. *See* Iowa R. Evid. 5.802.

[10] Plaintiff's argument in this section lists Getter, Johnson, and Doria by name, while noting there could be other witnesses. *See* Plaintiff's Brief p. 51. To the extent Plaintiff claims error as to the exclusion of other testimony, that argument has been waived by their failure to cite to the record regarding such testimony. *See* Iowa R. App. P. 6.903(2)(a)(8)(3). Additionally, Plaintiff waived any argument as to Isabel Johnson's testimony by expressly informing the Court: "Plaintiffs are not calling Isabel Johnson as a witness, so this issue raised by Defendants is moot." *See* D0431, at 5.

The district court granted Urbandale's motion in limine seeking to exclude testimony regarding Plaintiff's nude photographs because all such testimony was based purely on information other students told the witnesses—neither Getter nor Doria ever personally observed the photographs themselves. *See* D0580, 109:21-10:2 (Getter's Offer of Proof); D0405, Def. Third MIL, Ex. B, Doria Deposition, 10:11-11:9 (10/14/2024). As such, Doria and Getter could only testify as to what other students told them—the definition of an out of court statement. Absent an exception, the court was required to exclude their testimony.

Plaintiff erroneously contends the rumors heard by Getter and Doria were not being offered for the truth of the matter asserted, but instead were simply to establish notice, state of mind, or responsive conduct. That argument has several flaws. First, the two students' state of mind, responsive conduct, or notice is irrelevant to this case and to the application of Rule 5.802. Notice to unrelated third parties is not a way around the hearsay rule because the third-party's knowledge or responsive conduct is not the purpose for which the statement is offered, which Plaintiff expressly argues was instead that Urbandale should have been on notice.

Even if it that were not true, that just means the statements are inadmissible on relevancy grounds. *See Scott*, 774 N.W.2d at 508 ("Non-hearsay may still be excluded based on other rules of evidence, including relevancy…"). Here, whether students were aware of the nude photographs has no bearing the issue in this case:

Urbandale's knowledge and conduct. *See* Iowa R. Evid. 5.402. And there is no basis to assume—without any record evidence supporting such an inference—that students being aware of the nude photographs necessarily put Urbandale on notice. *Timely Mission Nursing Homes v. Arends* No. 21-1852, 2023 WL 4104021, at *4-5 (Iowa Ct. App. June 21, 2023) (finding rumors circulating around residents of nursing home did not place nursing home on notice), *compare Meredith Outdoor Advertising Inc. v. Iowa Dept. of Trans*., 648 N.W.2d 109, 114 (Iowa 2002) (noting agency relationships allow notice to be imputed on another).

Second, Plaintiff's argument has already been conclusively rejected by Iowa courts. For instance, in *Timely Mission Nursing Homes v. Arends*, the plaintiff sought to introduce statements made by six witnesses regarding rumors they heard about abuse perpetrated against other residents by the Timely Mission's employees. 2023 WL 4104021, at *4-5. The plaintiff argued the statements were offered to show that Timely Mission did not conduct adequate investigations into reports of abuse. The Court of Appeals disagreed, finding the rumors would only be relevant to Timely Mission's conduct if that abuse actually occurred—without the rumors being true, there would be no failure to investigate. *Id.* at *6. As such, the statements were in fact offered for the truth of the matter asserted.

In doing so, the Court relied heavily on *Gacke v. Pok Xtra, LLC*, 684 N.W.2d 168 (Iowa 2004). That case involved a claimed nuisance from a hog confinement

facility and considered whether a questionnaire concerning orders from the facility and circulated to those near the plaintiff's property was hearsay. *Gacke*, 684 N.W.2d at 182. The plaintiff claimed the questionnaires put the defendant on notice of the noxious odor, demonstrating their failure to respond was unreasonable. *Id.* The Court concluded the questionnaires were not truly offered simply to demonstrate notice, explaining:

> One of the flaws in this argument is that the reasonableness of the defendant's inaction is dependent on whether an odor problem actually existed. In other words, if the statements made by the questionnaire respondents that there were severe odors coming from the defendant's facilities were untrue, the defendant's inaction would not be unreasonable. Thus, the probative value of the questionnaire statements depends on the truth of those statements. As such, the questionnaires are being offered for the truth of the matter asserted because only if the matter asserted is true do the statements establish the ultimate fact the plaintiffs seek to prove, namely, the unreasonableness of the defendant's conduct. Therefore, the questionnaires are hearsay.

Id.

The same is true here: The rumors of Plaintiff's nude photographs circulating are only relevant if one believes the nude photographs truly were circulating around the student body. If the photographs were not circulating, or were not circulated at school, Urbandale's alleged inaction would definitionally be reasonable. As such, the statements are being offered for the truth of the matter asserted and were properly excluded as hearsay under the reasoning of *Gacke*.

Plaintiff's only authority on this point—*U.S. v. Worman*—actually supports

Urbandale's arguments. That case involved the criminal prosecution of a man who allegedly sent a pipe bomb to his former boss. 622 F.3d 969, 973-74 (8th Cir. 2010). Prior to sending the pipe bomb, the victim allegedly terminated a contract the defendant's wife had with the victim's business. *Id.* Two of the victim's employees testified about rumors of the victim's involvement in canceling the contract. *Id.* at 974. The evidence was offered to establish (1) the defendant's wife knew of the reason behind the contract's termination, and (2) set up the inference that if the wife knew, so did the defendant, establishing his motive. *Id.* at 975.

Of course, the relationship between spouses supporting such an inference is a far cry from that of the relationship between schools and their students—Iowa law recognizes a spousal privilege, after all. *See* Iowa Code § 622.9; *State v. Anderson*, 636 N.W.2d 26, 31 n. 2 (Iowa 2001) (noting one purpose of the statute is that the "protected privacy, and the confidence between spouses which it encourages, are utterly essential to the complete fulfillment of marriage."). More to the point, however, the Eighth Circuit still found the hearsay statements ought to be excluded as irrelevant and unduly prejudicial. *Worman*, 622 F.3d at 975. The Court concluded that the wife's knowledge or subjective intent was irrelevant to what the defendant thought, invited unfair bias by confusing the jury as to whose mental state was at issue, and distracted the jury from evidence that would actually be probative of intent. *Id.*

The same is true here—as Urbandale argued in their motion in limine and at trial. *See* D0405, at p. 3, 8.[11] What Getter or Doria knew does not assist the jury in deciding the issues of the case, invites unfair prejudice by prompting the jury to impute knowledge from students to the school without any legal or factual basis to do so, and distracts the jury from evidence more probative of Urbandale's knowledge or lack thereof. Thus, on both hearsay and relevancy grounds, the Court properly excluded Doria and Getter's testimony regarding rumors of Plaintiff's nude photographs.

Finally, even if such testimony was admissible, any error by the district court was harmless. Defendants did not dispute the existence of the nude photographs or that such photos were distributed amongst R.S.'s peers. Instead, the dispute was over whether Urbandale knew or should have known about such photos. Doria and Getter confirming rumors that the photographs existed was merely cumulative of other testimony regarding the photo's existence. As such, any error is not the basis for reversal.

[11] Even if Urbandale did not expressly argue undue prejudice, this Court must affirm the exclusion of evidence it "could be held inadmissible on any theory, even though no urged in the objections." *DeVoss*, 648 N.W.2d at 62 (quoting *Aller v. Rodgers Mach. Mgf. Co.*, 268 N.W.2d 830, 840 (Iowa 1978)).

CONCLUSION

This Court must affirm the jury's verdict finding Urbandale was not negligent. First, the verdict is internally consistent well supported by the record evidence. Second, the jury was properly instructed on the standard of care owed by Urbandale. Third, the BOEE probable cause finding—dealing with an entirely different situation than Plaintiff's allegations—was properly excluded from trial. Fourth, the district court did not abuse its discretion when permitting Dr. Drobac to testify, and her testimony did not exceed the proper scope of expert testimony. Finally, the district court properly excluded Marks, Getter's, and Doria's testimony as irrelevant, unduly prejudicial, and based on hearsay. Because each of Plaintiff's arguments on appeal are wholly without merit, this Court must affirm.

REQUEST FOR ORAL ARGUMENT

Urbandale Community School District respectfully requests this matter be heard at oral argument.

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CERTIFICATE OF COMPLIANCE

This Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(i)(1) because this brief contains 12803 words, excluding the parts of the Brief exempted by Iowa R. App. P. 6.903(1)(i)(1). This Brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(g) and the type-style requirements of Iowa R. App. P. 6.903(1)(h) because this Brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point, Times New Roman.

/s/ Janice M. Thomas

CERTIFICATE OF SERVICE

The undersigned certifies a copy of Plaintiffs-Appellant's Brief was filed with the Clerk of the Iowa Supreme Court via EDMS and served upon the following persons by EDMS on the 26th day of September, 2025:

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