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KTHE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable William P. Keesley, Circuit Court Judge

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Trial Court Case No. 2022-CP-32-02339
Appellate Case No. 2025-000647

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Nancy Arellano, individually
and as parent and natural guardian
of Minor Z.A., Respondent,

v.

School District No. Two of Lexington
County, State of South Carolina, Appellant.

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# APPELLANT'S INITIAL BRIEF

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II. DID THE TRIAL COURT ERR IN REFUSING TO CHARGE THE JURY REGARDING S.C. CODE ANN. § 15-78-60(20), WHICH IMMUNIZES GOVERNMENTAL ENTITIES FROM LIABILITY FOR ACTS OR OMISSIONS OF NON-EMPLOYEES, INCLUDING BUT NOT LIMITED TO CRIMINAL ACTIONS OF THIRD PARTIES?

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## STATEMENT OF THE CASE

This appeal arises out of a negligence action brought by Nancy Arellano, as parent[1] and natural guardian of her minor daughter, Z.A("Respondent" or "Z.A.")., against Lexington County School District Two ("the District" or "Appellant"). Respondent's claims resulted from a May 2022 classroom incident in which another kindergarten student, identified herein as "Student K," inappropriately touched Z.A.

Respondent's Complaint sets forth several theories of liability. The Complaint alleges as follows: (1) the District was negligent and grossly negligent in protecting Z.A. from the incident involving Student K; (2) the District was negligent and grossly negligent in responding to the incident after it was reported; and (3) the District was negligent and grossly negligent in referring the matter to the South Carolina Department of Social Services ("DSS"). The District denied liability and asserted defenses under the South Carolina Tort Claims Act ("SCTCA"), S.C. Code Ann. §§ 15-78-10 e*t seq*., including the statutory exemption for losses caused by the acts of non-employees under § 15-78-60(20).

A three-day jury trial was held in the Court of Common Pleas for Lexington County before the Honorable William P. Keesley from October 7 through October 10, 2024. At the close of Respondent's case, the District moved for a directed verdict, arguing Respondent had failed to present evidence from which a reasonable jury could conclude: (1) that the District was grossly negligent in supervising or protecting students; (2) that Nancy Arellano personally suffered damages; and (3) that the District acted with gross negligence in referring the matter to DSS.

[1] Nancy Arellano's individual claim was dismissed at the directed verdict stage and not appealed. *TT* 429:20-430:7.

The trial court granted the motion in part, dismissing Nancy Arellano's individual claim and her claim related to the District's referral of the matter to DSS. The court denied the remainder of the District's motion and the District subsequently presented its case to the jury.

Prior to closing arguments, the District specifically requested that the court instruct the jury on S.C. Code Ann. § 15-78-60(20), which provides that a governmental entity is not liable for a loss resulting from the acts of non-employees, "including but not limited to the criminal actions of third persons." The District asserted that the statutory provision directly applied because the incident leading to the claims against it resulted from the act of another student (Student K) and did not involve an act by any District employee. The court refused the instruction, with the trial judge reasoning that a six-year-old child could not legally commit a crime. The District renewed its request after the court delivered the charge to the jury.

On October 10, 2024, the jury returned a verdict awarding two hundred and forty-five thousand dollars ($245,000.00) to Respondent on behalf of Z.A. The District timely filed post-trial motions for judgment notwithstanding the verdict, or in the alternative, for a new trial absolute or a new trial nisi remittitur, pursuant to Rules 50 and 59, SCRCP. In those motions, the District argued that the uncontroverted evidence demonstrated it exercised at least slight care, that the refusal to charge § 15-78-60(20) deprived the jury of a correct statement of law, and that the verdict was grossly excessive and unsupported by the evidence. By Order dated March 5, 2025, the circuit court denied all post-trial relief.

The District now appeals, seeking reversal of the circuit court's order, entry of judgment in its favor, or, alternatively, a new trial or remittitur.

## STATEMENT OF FACTS

In May 2022, Z.A., a kindergarten student at Saluda River Academy for the Arts, was involved in an incident in which another kindergarten student, "Student K", briefly and inappropriately touched Z.A. in her groin area during classroom instruction. The classroom, comprised of approximately twenty-four (24) students, was staffed with a certified kindergarten teacher, Sadie Ray ("Ray"), and a full-time teaching assistant, Kimberly Long ("Long"). *TT (Ray)* 139:3-17, 12-13; 185:1; (*Drozdak)* 470:17-19; *(Long)* 450:6-7, 22-23. The presence of both teachers exceeded state staffing requirements for kindergarten classrooms. *TT* (*Drozdak)* 470:20-25. Long had significant experience working with young children, including multiple years as a teaching assistant in the District and prior employment in daycare settings. *TT (Ray)* 185:7-11; *(Long)* 449:16-24. Neither Ray nor Long had any history of unsatisfactory performance and neither had been the subject of complaints regarding their supervision. *TT (Ray)* 183:7-9; 185:17-25; 186:1-4, 9-13; (*Ariail)* 350:10-25; 351:1-8; (*Drozdak)* 464:6-19; *(Long)* 450:12-21.

On the day of the incident, both staff members were actively supervising students. *TT (Ray)* 185:1; 211:6-20. Ray testified she was circulating through the classroom monitoring students immediately before the touching occurred and had just returned to her desk when a student reported the incident to her. *TT (Ray)* 145:18-24; *(Long)* 455:8-17. Long confirmed she was in the classroom engaging with students and monitoring activities. *TT (Ray)* 146:6-10; *(Long)* 454:21-25; 455:2-7.

The classroom was designed to provide maximum visibility and supervision. *TT (Ray)* 194:3-17. Both Ray and Long testified there were no blind spots in the room. *TT (Ray)* 194:12-17; *(Long)* 455:18-25-456:1-2. Ray arranged students' desks so she could view the entire classroom from her desk at the front, while Long's desk at the back provided a full line of sight in the opposite direction. *TT (Ray)* 194:14-17; 200:1-2; *(Long)* 455:18-25-456:1-2. At the time of the incident, the

classroom overhead lights and lamps were all on and the blinds were open, ensuring clear visibility throughout the space. *TT (Ray)* 147:16-19; 199:13-23; 210:1-3.

Prior to the incident, the District had adopted and enforced policies addressing student supervision, prevention of harassment, and procedures for investigating student misconduct. *TT* (*Ariail)* 330:17-18; (*Drozdak)* 458:4-9; 459:9-13; 460:17-22; 462:3-12; 463:21-25; 464:1-5. Just weeks before the incident, the school counselor, Catherine Prizer ("Prizer"), presented a "Safe Touch" lesson to the kindergarten class. *(Prizer)* 252:25-253:1. This age-appropriate instructional program educated students on distinguishing between appropriate and inappropriate touching, both by adults and by peers. *TT (Ray)* 184:9-13; *(Prizer)* 253:12-22; 284:15-285:1-2; 285:6-10.

No evidence suggested that Student K had engaged in any similar conduct before this event. *TT (Ray)* 188:16-18; *(Prizer)* 285:14-17; *(Snyder)* 319:8-9. Teachers and administrators testified that Student K and Z.A. were friends, and neither had any history of disciplinary problems. *TT (Ray)* 188:16-18*.;* 189:8-16; *(Long)* 451:7-23; 452:2-4; 453:13-15. No reports of prior inappropriate conduct, harassment, or safety concerns had ever been raised involving Student K. *TT (Ray)* 188:11-15; *(Prizer)* 285:14-17; *(Long)* 451:24-25-452:1.

After Ray learned of the touching, she immediately notified Assistant Principal Annette Ariail ("Ariail"), who began an investigation. *TT (Ray)* 151:17-24; 215: 1-4, 10-12; (*Ariail)* 326:1-2. Ariail interviewed Z.A. and Student K in a manner tailored to their age and understanding and also interviewed the student who reported the incident to Ray. *TT (Ray)* 152:1-3; 216:9-12 (*Ariail)* 327:1-2; 329:2-6, 12-14; (*Drozdak)* 465:5-13 *(Snyder)* 302:12-18. At the conclusion of Ariail's investigation, the school determined that an inappropriate touching had occurred and took immediate action. *TT* (*Ariail)* 338:14-16; 343:9-11; 345:14-19. They notified law enforcement and referred Student K for possible discipline consistent with District policy. *TT* (*Ariail)* 341:10-14; 362:2-4; *(Snyder)* 321:17-19. Ray and Prizer also made a referral to DSS because, during her

interview with Prizer, Z.A. had displayed inappropriate knowledge of specific sexual acts, indicating potential neglect or abuse. *TT (Ray)* 165:14-24; 227:18-22; *(Prizer)* 256:16-20; 257:8-13; 263:14-18; 269:4-11; 271:4-6; 288:15-22; 289:15-25.

At trial, Respondent presented no evidence to contradict the District witnesses' testimony about the layout of the classroom or the supervision that was provided on the date of the incident. Instead, Respondent's counsel argued to the jury that the occurrence of the incident standing alone was sufficient to establish that the District was grossly negligent in its supervision of the classroom and its protection of Z.A.

After the incident, Z.A. was treated by counselor Narumi Amador ("Amador"), who saw Z.A. approximately twelve (12) times without presenting any evidence on the total amount of counseling bills. *TT (Amador)* 400:18-24; and 405:14-17. Amador last saw Z.A. in November 2023 and testified that, as of October 2024, she had received no requests to release Z.A.'s records to another counselor. *TT (Amador)* 400:2-17; and 398:9-20.

Amador testified she could not definitively answer the question whether Z.A. would need medical treatment or counseling in the future as a result of the classroom incident. *TT (Amador)* 416:10-25. Amador agreed that additional current stressors in Z.A.'s life, including changing schools, moving to a new city, and anticipating receiving visits from her biological father, could cause anxiety for Z.A. *TT (Amador)* 408:13-411:18.

Respondent presented no additional medical or expert testimony regarding the damages she asserts were sustained by Z.A. as a result of the classroom incident. Significantly, Respondent testified that Z.A. was currently making good grades, did not have any discipline or academic issues, and was not currently seeing a counselor. *TT* (*Nancy Arellano*) 49:10-24.

Despite the speculative nature of Respondent's damages, the jury ultimately returned a verdict of two hundred and forty-five thousand dollars ($245,000.00) in favor of Z.A.

## APPLICABLE STANDARDS OF REVIEW

### I. Judgment Notwithstanding the Verdict.

In reviewing the denial of a motion for judgment notwithstanding the verdict, the appellate court applies the same standard as the trial court. The evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. *Strange v. S.C. Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 445 S.E.2d 439 (1994). A motion for judgment notwithstanding the verdict should be granted if the evidence yields only one reasonable inference or if no evidence exists from which a jury could properly find for the non-moving party. *Gastineau v. Murphy*, 331 S.C. 565, 503 S.E.2d 712 (1998). While conflicts in the evidence must be resolved in favor of the non-movant, "speculative, theoretical, and hypothetical" inferences cannot sustain a verdict. *Hanahan v. Simpson*, 326 S.C. 140, 485 S.E.2d 903 (1997).

### II. Jury Instructions.

The appellate court reviews the trial court's refusal to give a requested jury instruction for errors of law. *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019). Whether a jury instruction is a correct statement of law is a question of law reviewed de novo. *State v. Adkins*, 353 S.C. 253, 578 S.E.2d 16 (2003). A party is entitled to a requested instruction if: (1) the request is a correct statement of law, (2) it is supported by the evidence, and (3) the substance of the request is not otherwise included in the court's charge. *Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000). The trial court has discretion in the wording and form of jury instructions, but it commits reversible error if the refusal leaves the jury inadequately instructed on the applicable law. *State v. Aleksey*, 343 S.C. 20, 538 S.E.2d 248 (2000).

### III. Motions for New Trial and Remittitur.

The trial court's denial of motions for a new trial absolute or new trial nisi remittitur is reviewed for abuse of discretion. *Sanders v. Prince*, 304 S.C. 236, 403 S.E.2d 640 (1991). An abuse occurs when the verdict is unsupported by the evidence or when the amount is so grossly excessive that it shocks the conscience and indicates it was the result of passion, prejudice, or other improper considerations. *Small v. Springs Indus.*, 292 S.C. 481, 357 S.E.2d 452 (1987).

Under the "thirteenth juror" doctrine, the trial judge may weigh the evidence and set aside a verdict that, in the judge's view, is not justified by the evidence. *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 567 S.E.2d 851 (2002). If the trial court denies to exercise its power to grant a new trial or a new trial nisi remittitur, the trial court's ruling is reviewed for abuse of discretion, but if the jury's award is grossly disproportionate to the evidence, a new trial or remittitur is warranted. *James v. Horace Mann Ins. Co.*, 371 S.C. 187, 638 S.E.2d 667 (2006).

## ARGUMENT

### I. THE CIRCUIT COURT ERRED IN DENYING THE DISTRICT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT.

The South Carolina Tort Claims Act ("SCTCA" or "the Act"), S.C. Code Ann. §§ 15-78-10 *et seq*., provides a limited waiver of sovereign immunity, establishing both the circumstances under which a governmental entity may be held liable and the losses for which it cannot. S.C. Code Ann. § 15-78-60. The General Assembly expressly directed that "the provisions of this chapter establishing limitations on and exemptions to the liability of the State … must be liberally construed in favor of limiting the liability of the State." § 15-78-20(f).

Among these statutory limitations, § 15-78-60(20) exempts school districts from liability for "a loss resulting from an act or omission of a person other than an employee including but not limited to the criminal actions of third persons." This broad language reflects legislative intent to

shield school districts from liability where damages result from unforeseeable misconduct by third parties, including students. South Carolina courts consistently reject liability in such cases where the school exercised some degree of supervision and causation remains speculative.

**A. Gross Negligence Requires Proof of a Conscious Failure to Act**

A school district may be liable for a student injury only if it failed to exercise **slight care** in its supervision and protection of the student.(Emphasis added) *Vinson v. Hartley*, 324 S.C. 389, 477 S.E.2d 715, 718 (Ct. App. 1996). Gross negligence — the standard required for liability — means "the intentional, conscious failure to do something which it is incumbent upon one to do" or "the doing of a thing intentionally that one ought not to do." *Etheredge v. Richland Sch. Dist. One*, 341 S.C. 307, 311, 534 S.E.2d 275, 277 (2000).

The record here contains uncontradicted evidence that the District exercised at least slight care in supervising the classroom where Student K inappropriately touched Z.A. The class was staffed with a certified teacher and an experienced teacher assistant — a ratio exceeding state requirements. *TT* (*Ray*) 139:3-17, 12-13; 185:1; (*Drozdak*) 470:17-25; (*Long*) 450:6-7, 22-23. Both actively monitored students when the incident occurred. *TT* (*Ray*) 145:18-24; (*Long*) 455:8-17; *TT* (*Ray*) 146:6-10; (*Long*) 454:21-25; 455:2-7. The classroom was free of blind spots, arranged for clear sight lines, and adequately lit. *TT* (*Ray*) 194:3-17; 194:12-17; (*Long*) 455:18-25-456:1-2; *TT* (*Ray*) 147:16-19; 199:13-23; 210:1-3. The school counselor had recently delivered a "Safe Touch" program. (*Prizer*) 252:25-253:1; *TT* (*Ray*) 184:9-13; (*Prizer*) 253:12-22; 284:15-285:1-2; 285:6-10.

There was no history of prior misconduct by Student K, and both children were described as friends with no behavioral issues. *TT* (*Ray*) 188:16-18; (*Prizer*) 285:14-17; (*Snyder*) 319:8-9; *TT* (*Ray*) 189:8-16; (*Long*) 451:7-23; 452:2-4; 453:13-15. When notified, school officials promptly investigated, interviewed students, contacted law enforcement, notified DSS, and referred Student

K for discipline. *TT* (*Ray*) 151:17-24; 215:1-4, 10-12; (*Ariail*) 326:1-2; *TT* (*Ariail*) 341:10-14; 362:2-4; (*Snyder*) 321:17-19.

Respondent presented no contrary evidence. Their case relied solely on Plaintiff's counsel's speculation that Ray "might have been distracted" by paperwork — a claim Ray denied. *TT* (*Ray*) 174:21-23. Speculation cannot establish gross negligence. *Small v. Pioneer Mach., Inc.*, 329 S.C. 448, 461, 494 S.E.2d 835, 841 (Ct. App. 1997).

**B. Case Law Confirms That Liability Requires More Than the Occurrence of Injury**

The Supreme Court's decision in *Greenville Memorial Auditorium v. Martin*, 301 S.C. 242, 391 S.E.2d 546 (1990), illustrates when liability may be attached. There, substantial evidence of foreseeability — including inadequate security for 6,000 patrons, open floor access, alcohol and drug use, unruly behavior, and acknowledgment of heightened risk — supported liability when a bottle was thrown from a balcony. *Greenville Memorial Auditorium v. Martin*, 301 S.C. 242, 391 S.E.2d 546 (1990).

This case is starkly different. The District staffed the classroom with two professionals, maintained clear sight lines and lighting, provided a "Safe Touch" lesson, had no prior incidents, and immediately responded once notified. *TT* (*Ray*) 139:3-17, 12-13; 185:1; (*Drozdak*) 470:17-25; (*Long*) 450:6-7, 22-23; *TT* (*Ray*) 194:3-17; 194:12-17; (*Long*) 455:18-25-456:1-2; *TT* (*Ray*) 147:16-19; 199:13-23; 210:1-3; (*Prizer*) 252:25-253:1; *TT* (*Ray*) 184:9-13; (*Prizer*) 253:12-22; 284:15-285:1-2; 285:6-10. Unlike *Greenville Memorial*, there is no evidence that the District's conduct made the incident foreseeable. Plaintiff offered only conjecture — legally insufficient to establish gross negligence under South Carolina law.

In *Moore v. Berkeley Cnty. Sch. Dist.*, 326 S.C. 584, 486 S.E.2d 9 (Ct. App. 1997), the court affirmed summary judgment for the district where a teacher's misconduct occurred off-campus, holding that background checks and lack of prior knowledge defeated gross negligence claims.

Likewise, in *Etheredge*, despite the tragic shooting, the Supreme Court emphasized that gross negligence "cannot be assumed" merely because an injury occurred; it requires evidence of a conscious failure to act. *Etheredge v. Richland Sch. Dist. One*, 341 S.C. 307, 311, 534 S.E.2d 275, 277 (2000). Similarly, *Clyburn v. Sumter Cnty. Sch. Dist. 17*, 317 S.C. 50, 451 S.E.2d 885 (1994), upheld summary judgment where the district responded to prior threats before a bus assault, holding that those steps constituted slight care.

These authorities confirm that where a district exercises some degree of supervision and takes responsive action, liability cannot rest on speculation. The District here did more than provide supervision — it exceeded staffing standards, improved visibility, provided safety education, and responded immediately. *TT* (*Ray*) 139:3-17, 12-13; 185:1; (*Drozdak*) 470:17-25; (*Long*) 450:6-7, 22-23; *TT* (*Ray*) 194:3-17; 194:12-17; (*Long*) 455:18-25-456:1-2; *TT* (*Ray*) 147:16-19; 199:13-23; 210:1-3.

Without concrete evidence of gross negligence, no reasonable jury could find liability. Because Plaintiffs presented none, the only permissible outcome was judgment for the District. The trial court's refusal to grant JNOV was reversible error.

## II. THE CIRCUIT COURT ERRED IN REFUSING TO INSTRUCT THE JURY ON IMMUNITY UNDER S. C. CODE § 15-78-60(20).

The SCTCA represents a limited waiver of sovereign immunity. The Act sets out both the circumstances where a governmental entity may be sued and numerous exemptions that preserve immunity for the entity. The General Assembly expressly mandated that "the provisions of this chapter establishing limitations on and exemptions to the liability of the State … must be liberally construed in favor of limiting the liability of the State." S.C. Code Ann. § 15-78-20(f). Among these provisions, § 15-78-60(20) exempts governmental entities from liability for "a loss resulting from an act or omission of a person other than an employee including but not limited to the criminal

actions of third persons." This broad language reflects a legislative choice to shield schools and other public entities from liability for unforeseeable misconduct of third parties over whom they have no direct control.

The District's requested jury instruction[2] tracks the plain language of the Tort Claims Act, which exempts governmental entities from liability for losses caused by the acts of non-employees. South Carolina precedent confirms that failure to charge a correct, applicable statute is reversible error. In *Clark v. Cantrell*, this Court held that a party is entitled to a requested instruction if it correctly states the law, is supported by the evidence, and is not otherwise covered by the charge. *Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000).

The District satisfied these three requirements. First, the requested instruction was a correct statement of law. Next, the requested instruction was directly supported by the evidence presented at trial, particularly as Respondent failed to produce any testimony to contradict the District's witnesses testimony that they exercised at least slight care in providing supervision in the classroom at the time of the incident and in following up on the incident. Finally, the District's requested instruction was not otherwise covered in the jury charge. In denying the District's request, the trial judge reasoned that the statute applied only where a third party committed a crime. *TT* 485:2-24. This was error. The statute broadly covers the acts of third parties, to include students and is not limited to criminal conduct.

South Carolina courts have consistently applied the SCTCA to limit governmental liability where the complained-of injury was caused by a third party rather than the entity itself. In *Clyburn v. Sumter Cnty. Sch. Dist. 17*, 317 S.C. 50, 451 S.E.2d 885 (1994), where a student was injured by another student on the bus, the Supreme Court acknowledged that, before a school district may be

[2] S.C. Code Ann. § 15-78-60(20) was even cited as an affirmative defense in the District's answer.

held liable for the acts of students, there must be some evidence from which a reasonable jury could find that the District was grossly negligent in carrying out its duties of protection and supervision..

In *Etheredge v. Richland Sch. Dist. One*, 341 S.C. 307, 534 S.E.2d 275 (2000), the Supreme Court affirmed summary judgment for a district where a student was assaulted by another student, reiterating that liability attaches only if the district failed to exercise slight care. SCTCA reflects a careful legislative balance: permitting suits in limited circumstances while protecting public entities from open-ended liability. Requiring school districts to defend against claims for every act of misbehavior between students would transform them into absolute insurers of student conduct, a burden expressly rejected by the general assembly. As the Court noted in *Burns v. S.C. Comm'n for the Blind*, 323 S.C. 77, 80, 448 S.E.2d 589, 590 (Ct. App. 1994), "[a] governmental entity is not the insurer of all harms that may befall those it serves." Applying § 15-78-60(20) here ensures that liability remains tethered to the District's own conduct, not to unforeseeable acts of a six-year-old child.

The trial court's refusal to instruct on § 15-78-60(20) deprived the jury of the central legal principle governing this case: that the District cannot be held liable for the independent acts of a third party, including another student. Because the District requested the instruction (and renewed its objection post-charge) it was a correct statement of law, supported by the evidence, and not otherwise covered by the charge, the refusal was reversible error as a matter of law. *TT* 485-488. *Clark v. Cantrell*, 339 S.C. at 381. Without that instruction, the jury had no legal basis to distinguish the District's conduct from the independent act of a student.

## III. THE CIRCUIT COURT ERRED IN DENYING THE DISTRICT'S MOTION FOR A NEW TRIAL OR, ALTERNATIVELY, A NEW TRIAL NISI REMITTITUR.

The trial transcript is replete with witness testimony showing that the District exercised abundant care: it staffed the classroom adequately, monitored students, implemented safety-oriented classroom design, provided student education on inappropriate touching, and responded immediately to the incident. *TT (Ray)* 139:3-17, 12-13; 185:1; (*Drozdak)* 470:17-25; and *(Long)* 450:6-7, 22-23; and *TT (Ray)* 194:3-17; and *TT (Ray)* 194:12-17; *(Long)* 455:18-25-456:1-2; and *TT (Ray)* 147:16-19; 199:13-23; 210:1-3; and (*Prizer*) 252:25-253:1; and *TT (Ray)* 184:9-13; *(Prizer)* 253:12-22; 284:15-285:1-2; 285:6-10. As discussed above, Respondent presented no evidence to contradict that testimony or sufficient evidence of any damages to support the verdict.

Despite the lack of evidence supporting the amount, the jury returned a $245,000 verdict. The verdict disregarded the overwhelming evidence of due care and reflected a failure to apply the governing legal standard. Under the "thirteenth juror" doctrine, the trial court should have intervened to prevent this miscarriage of justice. Its failure to do so was an abuse of discretion.

Even if liability were assumed, the amount of damages awarded by the jury in this case is indefensible. Respondents presented no testimony regarding economic damages, no medical bills, and only speculative testimony about future counseling needs. The counselor admitted she had not treated Z.A. in nearly a year and could not say whether treatment would be required. *TT (Amador)* 400:2-17; 398:9-20; and 416:10-25. More specifically, Amador testified that she could not provide a definitive answer as to whether Z.A. would exercising continuous/ongoing problems stemming from the alleged incident. *TT (Amador)* 416:10-25. Additionally, Amador testified about additional stressors or potential instances (changing schools, moving to new city, and biological father seeking visit with Z.A.) that could cause Z.A. to experience anxiety and/or behavioral issues. Respondent presented no additional medical or expert testimony regarding the damages she asserts

were sustained by Z.A. as a result of the classroom incident. Significantly, Respondent testified that Z.A. was currently making good grades, did not have any discipline or academic issues, and was not currently seeing a counselor. *TT* (*Nancy Arellano*) 49:10-24.

Despite this evidentiary void, the jury awarded nearly a quarter million dollars. This award is "shockingly disproportionate" to the evidence, indicating it was motivated by passion, prejudice, or sympathy rather than reason. *Small v. Springs Indus.*, 292 S.C. 481, 487, 357 S.E.2d 452, 455 (1987). The record confirms this. The jury was repeatedly exposed to emotionally charged and prejudicial material: Z.A.'s extended emotional outbursts; shifting and graphic descriptions of the incident ("oral sex" and/or "white sticky stuff") that inflamed sentiment; and testimony regarding the impact of DSS investigations that was not relevant to the District's liability. *TT (Ray)* 226:4-19; *TT* (*Prizer*) 257:6-17; *TT* (*Snyder*) 318:19-25; and *TT* (*Ariail*) 355:4-12. Such evidence improperly magnified the emotional atmosphere, leading jurors away from their duty to decide based solely on facts.

Lastly, South Carolina law prohibits punitive damages against governmental entities. S.C. Code Ann. § 15-78-120(b). Yet the size of the award strongly suggests the jury intended to punish the District, not compensate the Plaintiff. The award is inconsistent with both statute and evidence.

Even if this Court does not order a new trial absolute, it should order a new trial nisi remittitur to reduce the verdict to an amount supported by the evidence. *James*, 371 S.C. at 192. Given the absence of proof of medical expenses or long-term treatment, any reasonable award would necessarily be far less than $245,000. The trial court's denial of both new trial absolute and remittitur left in place a verdict that was unsupported by the evidence, grossly excessive, and contrary to law. This constitutes reversible error requiring correction by this Court.

## CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the judgment below and enter judgment in favor of the District because Respondent failed to present evidence from which a reasonable jury could find gross negligence. In the alternative, Appellant requests that the Court reverse and remand for a new trial based on the trial court's refusal to properly instruct the jury under S.C. Code Ann. § 15-78-60(20). At a minimum, Appellant requests that this Court order a new trial nisi remittitur to reduce the verdict to an amount supported by the evidence. Such relief is necessary to vindicate the General Assembly's mandate that the South Carolina Tort Claims Act be liberally construed in favor of limiting governmental liability.

October 2, 2025
Columbia, South Carolina