THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHALND COUNTY
Richland County Circuit Court
Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2019-000951

K.S., a minor, by and through his Guardian ad Litem, James Seeger……..……Appellants

v.

Richland School District Two……..…….…….Respondent

APPELLANT'S FINAL BRIEF

THE LAW OFFICES OF JASON E. TAYLOR, P.C.

Brian C. Gambrell (SC Bar # 68253):
810 Dutch Square Blvd, Suite 112
Columbia, SC 29210
Telephone: (800) 351-3008
Facsimile: (803) 610-1931
bgambrell@jasonetaylor.com
Attorney for Appellants

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

CASES

STATUTES

RULES OF EVIDENCE

OTHER SOURCES

STATEMENT OF THE ISSUES ON APPEAL

I. Did the trial court err in granting a directed verdict to the Respondent?

II. Does South Carolina require a plaintiff in a negligence action to prove a significant physical injury in conjunction with mental health injuries?

III. Did the trial court err in excluding the testimony of Appellant's expert witness?

IV. Does the Safe School Climate Act waive the South Carolina Tort Claims Act under the facts of the instant action?

STATEMENT OF THE CASE

Appellant filed the initial complaint on January 18, 2017. (R. p. 18-31) Respondent filed an answer on February 21, 2017. (R. p. 32-39) Appellant filed an amended complaint on March 16, 2017, and the Respondent filed an amended answer on April 3, 2017. (R. p. 40-59.) Respondent filed a motion in limine to exclude Appellant's expert from testifying on February 7, 2019. (R. p. 64-70.) Respondent also filed a motion for summary judgment on February 28, 2019. (R. p. 87-88.)) The parties submitted memoranda of law which briefed the subjects for trial. (R. p. 71-86, R. p. 89-131.) The instant action was called for trial on May 28, 2019. The trial judge heard and denied Respondent's motions at the beginning of trial. The trial judge also heard and rejected arguments raised in Appellant's pre-trial brief that the South Carolina Tort Claims Act had been repealed by the later adoption of the Safe Schools Climate Act.

After three days of trial, the trial judge directed a verdict on May 30, 2019 finding:

> THE COURT: Moreover, **I don't even know that the touching on October 20th satisfies physical injury. Black's Law Dictionary defines physical injury as physical damage to a person's body. There has been no testimony of any damage to Kian's person. In fact, I believe there was testimony that -- that there were no physical scars, or no one saw anything, or at least there's no affirmative testimony that there was any damage to his body.** I could touch the hood of your car. That might be an unwanted touching. Maybe a car is a bad thing, because it's not so closely to the person that it'd be an assault. But I'll use it as an example. I can touch it, or I can scratch it with my key. One is damage, and the other is not. An unwanted touching would be an assault for which Ms. Moody would be liable. And when we talk about damages in -- in these kinds of cases -- let's see. Ralph King Anderson's charge -- and he cites some cases. But (As read): **"An injured party may recover for mental anguish brought about by bodily injury and suffering."**
>
> (R. p. 453-454)(Emphasis added.)

The trial issued a Form 4 on June 7, 2019. (R. p. 1-3.) The instant appeal was filed on June 11, 2019. (R. p. 132-133.)

STANDARD OF REVIEW

When reviewing the circuit court's ruling on a directed verdict motion, this court must apply the same standard as the circuit court "by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party." Elam v. S.C. Dep't of Transp., 361 S.C. 9, 27-28, 602 S.E.2d 772, 782 (2004). An appellate court will reverse the circuit court's ruling on a directed verdict motion only when there is no evidence to support the ruling or when the ruling is controlled by an error of law. Law v. S.C. Dep't of Corr., 368 S.C. 424, 434-35, 629 S.E.2d 642, 648 (2006). "When the evidence yields only one inference, a directed verdict in favor of the moving party is proper." Wright v. Craft, 372 S.C. 1, 22, 640 S.E.2d 486, 498 (Ct. App. 2006). "On the other hand, the [circuit] court must deny a motion for a directed verdict when the evidence yields more than one inference or its inference is in doubt." Id. "When considering a directed verdict motion, neither the [circuit] court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence." Burnett v. Family Kingdom, Inc., 387 S.C. 183, 188-89, 691 S.E.2d 170, 173 (Ct. App. 2010).

When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. Hopper v. Terry Hunt Constr., 373 S.C. 475, 479–80, 646 S.E.2d 162, 165 (Ct. App. 2007) "Certain situations involve mixed question of law and fact. Statutory interpretation is a question of law. But whether the facts of a case were correctly applied to a statute is a question of fact. Bursey v. S.C. Dep't of Health & Envtl. Control, 369 S.C. 176, 185, 631 S.E.2d 899, 904 (2006), overruled on other grounds by Allison v. W.L. Gore & Assocs., 394 S.C. 185, 714 S.E.2d 547 (2011).

STATEMENT OF THE FACTS

K.S. was a first grader at Respondent's North Springs Elementary ("North Springs") in the fall of 2011. K.S. attended kindergarten at North Springs, and he had no disciplinary or behavioral issues that year. (R. p. 435, lines 3-7.) K.S. loved kindergarten and had no issues going to school. (R. p. 152, line 21-p. 153, line 10; p. 179, line 19-p. 180, line 9.) Prior to first grade, K.S. was a normal five year old boy without anxiety issues. (R. p. 435, line 14-22) K.S.'s mother, Gina, is employed by Respondent as the attendance secretary at North Springs at the beginning K.S.'s first grade year. (R. p. 434, lines 13-21.) K.S.'s father, James, is a retired U.S. Army Master Sergeant. (R. p. 173, lines 17-20.)

K.S. was assigned to Jan Moody's (hereinafter "Moody") first grade class[1]. (R. p. 163, lines 14-15.) Mr. & Mrs. Seeger testified that K.S. began to cry before going to school just a few weeks into his first grade school year. (R. p. 181, line 23-p. 181, line 12; p. 437, lines 13-22.) K.S.'s crying was described by his mother as "shaking upset." (R. p. 439, lines 15-24.) K.S. also complained of stomach aches as an excuse not to go to school. (R. p. 437, line 23-p. 419, line 5.) K.S.'s crying was described by his father as "deep breathing and sobbing. The look in his eye was of fear." (R. p. 182, line 25-p. 183, line 8.)

The Seegers then reached out to Moody and the school administration to find out what was causing K.S.'s crying, apprehension, and terror regarding school. Ms. Germann, an assistant principal and the grade level administrator, told Mrs. Seeger that K.S. was a "mama's boy and he misses his mom, and he wants an excuse to come see you." (R. p. 118, lines 9-15) The Seegers set up a parent teacher conference with Moody. Mr. Seeger also sent K.S. little notes of encouragement, and ate lunch with K.S. in the cafeteria. (R. p. 616-617; R. p. 184, lines 5-24; p.

[1] K.S. is now in the 9th grade.

214, lines 20-24.) Moody gave the appearance of wanting to help. (R. p. 443, lines 6-8.) Mr. Seeger thought Moody was a nice person and had no idea that she was the problem until later. (R. p. 214, lines 7-17.)

Mr. & Mrs. Seeger finally learned of Moody's inappropriate conduct towards K.S. because of an incident that occurred in the school cafeteria on October 20, 2011 (hereinafter 'the cafeteria incident.") K.S. accidentally dropped his tray of food in the cafeteria as he was leaving the line. Cafeteria worker Belinda Fenwick later gave the following written statement to North Spring's principal Dr. David Holzendorf:

> "I then told him [K.S.] to go and get another lunch tray, and he went back through the serving line and come out with a corn dog. His teacher Ms. Moody approached him very harshly to go and get another tray. […] I observed his teacher (Ms. Moody) **grab him very forcefully by his arm** and tell him as she was walking him with him back to the table **'I will give you something to cry for.'** I feel that no student should ever be treated the way he was treated.
>
> (R. p. 587-588)(Emphasis added)

At trial, K.S. testified as follows:

> Q Okay. Now, I mentioned the cafeteria. Tell the --tell the jury what happened in the cafeteria.
>
> A I was going through the lunch line with my corn dog and a drink. And once I walked out, I handed the lunch lady my ticket to buy the lunch. And when I saw Ms. Moody, I dropped my tray. And then when the lunch ladies came over and helped me clean it up and Ms. Moody started walking over, and then **she grabbed my arm** and told me to go get another corn dog. So I went through and just grabbed a corn dog. And then she yelled at me to go get a tray. So I went and got a tray. And then the lady, like, took the other meal off and put that meal on. So then she grabbed my arm took me to another table, where I sat alone.
>
> Q Okay. When -- when you're talking about her grabbing your arm, what -- can you tell the jury exactly how it happened?
>
> **A She would claw my arm with her nails.**
>
> **Q Did it hurt?**
>
> **A Yes.**
>
> **Q Did it make you feel good that she was doing that, or did it make you more scared?**
>
> **A Made me more scared.**
>
> Q Do you remember her saying anything to you in the --in -- in the

cafeteria?

A Yes.

Q Okay. What do you remember her saying?

A She said, "Stop crying or I'll make you something to cry about."

(R. p. 158, line 13-p. 159, line 17.)(Emphasis added.)

The encounter was also captured on the school's video surveillance system. Both Mr. Seeger and Dr. Holzendorf testified as to their recollection of what the video showed[2]. Mr. Seeger testified that the grab was "forceful grab and pull." (R. p. 189, lines 10-16.) Dr. Holzendorf testified that he could not determine Moody's forcefulness but that the video confirmed Ms. Fenwick's observation of physical contact. (R. p. 379, lines 11-21.) Mrs. Seeger learned from the school nurse that something involving K.S. and Moody had happened in the cafeteria. (R. p. 441, 16-22.) Mrs. Seeger then informed her husband. (R. p. 441, line 25-p. 423, line 4.) Mr. Seeger testified that K.S. began "bawling" when he saw him after the cafeteria incident. (R. p. 187, lines 21-23[3]) The Seegers then brought this incident to the attention of Dr. Holzendorf and demanded a response. (R. p. 189, line 20-pg. 190, line 7.) When he was being lead to his new classroom, K.S. began to cry because he said "Moody's in the hallway." (R. p. 190, lines 16-25.)

Unknown to K.S.'s parents but known to Respondent, Moody was in a downward spiral of unprofessional conduct in the fall of 2011. On September 29, 2011, two members of the school staff, Media Specialist Tabitha Glover and her assistant, Susan Garris, witnessed Moody act inappropriately towards a different, unidentified student ("Student A.") Both Ms. Glover and Ms. Garris considered Moody's interaction with Student A to be a violation of the Respondent's anti-bullying policy, Policy JICFAA and JICFAA-R (hereinafter "JICFAA." (R. p. 551-556, 581-582, 585-587.)

[2] The video was not entered into evidence or shown to the jury.

[3] The trial transcript contains a scrivener's error. Mr. Seeger testified "immediately" not "immunity."

JICFAA prohibits "acts of harassment, intimidation or bullying of a student by students, staff and third parties" that "interfere with or disrupt a student's ability to learn and the school's responsibility to educate its students in a safe and orderly environment." (R. p. 551-556.) Harassment, intimidation and bullying are defined by JICFAA and the South Carolina Safe School Climate Act[4] as

> a gesture, an electronic communication, or a written, **verbal, physical**, or sexual act that **is reasonably perceived to have the effect of**:
>
> (a) **harming a student** physically **or emotionally** or damaging a student's property, **or placing a student in reasonable fear of personal harm** or property damage; **or**
>
> (b) **insulting or demeaning a student** or group of students **causing substantial disruption in, or substantial interference** with, the orderly operation of the school.

(R. p. 552)(Emphasis added.)

Both Glover and Garris observed Moody humiliating Student A in front of Moody's entire class by saying "Oh my gosh, there is no way you can read that book,[sic] you will not be able to read word one in that book, so [sic] so put it back and pick out another one." (R. p. 581-582, 585-586) Ms. Glover testified that Moody **yelled** that comment loud enough that the entire class heard her contact. (R. p. 237, lines 14-25.)(Emphasis added.) Ms. Garris testified that Moody's statement was so loud that she (Garris) and Moody's entire class heard it in the large media center. (R. p. 252, lines 8-25.) Ms. Glover and Ms. Garris thought the comment was very embarrassing to Student A, inappropriate, and intimidating. (R. p. 180, lines 1-9; pg. 182, lines 22-24; pg. 204, line 8-pg. 205, line 5.) Ms. Glover testified that she felt "distraught" even thinking about how Moody spoke to Student A. (R. p. 238, lines 17-25.) Ms. Glover reported Student A responded to Moody's outburst by crying when Moody embarrassed him in front of his entire class. (R. p. 239, lines 12-22; p. 249, lines 4-7.) JICFAA requires all employees of Respondent to report violations to the

[4] S.C. Code § 59-63-120(1)

school's principal. (R. p. 551-556.) Both testified that they immediately reported the September 29th incident to Dr. Holzendorf. (R. p. 241, lines 11-19; p. 252, line 16-p. 253, line 3.)

Dr. Holzendorf recalled that he had spoken to both Ms. Garris and Ms. Glover regarding the September 29th incident involving Student A. (R. p. 354, lines 7-20) Dr. Holzendorf testified that he thought Moody's comments to Student A did not serve a legitimate education purpose and were "demeaning." (R. p. 354, lines 6-16.) Dr. Holzendorf acknowledged that Moody's comments emotionally harmed Student A and fit one of the definitions of bullying under the district's policy. (R. p. 551-556; R. p. 356, line 19-pg. 357, line 3.) Dr. Holzendorf testified that he could not recall whether he had spoken with Moody, the grade level administrator, Student A, Student A's parents, or any of the other students in Moody's class which would have included K.S. (R. p. 350, lines 8-15; p. 366, line 24-p. 367, line 10) Dr. Holzendorf could not recall any of the actions that he had taken that would be consistent with the "prompt and thorough investigation" of the incident involving Student A as required by JICFAA. (R. p. 532-537; R. p. 357, lines 4-12.) Dr. Holzendorf's contemporaneously made notes did not reflect any sort of interactions with Moody regarding the September 29th incident. (R. p. 635-654; R. p. 349, line 22-p. 350, line 6.) Dr. Holzendorf conceded that the lack of documentation meant it was "likely" he did not even speak to Moody about the September 29th incident. (R. p. 635-654; R. p. 343, line 22-p. 344, line 6.) Dr. Holzendorf testified that at the time in his judgment he did not feel the September 29th incident warranted action. (R. p. 393, lines 16-21.) Holzendorf admitted he began an investigation of Moody on October 20th, and not September 29th. (R. p. 380, lines 8-11.) Dr. Holzendorf also admitted that he did not impose any of the required sanctions on Moody for violating JICFAA on September 29, 2011. (R. p. 551-556; p. 393, line 4-21.)

Dr. Karen Lovett, Respondent's Executive director for human resources, testified she did

not know about the September 29th incident involving Student A until much later. (R. p. 396, line 19-p. 397, line 3; p. 398, lines 19-22.) Dr. Lovett was of the opinion—after much prodding—that the September 29th incident violated JICFAA. (R. p. 398, line 19-p. 401, line 18.) Dr. Lovett also testified that the statement on September 29th was embarrassing to Student A. (R. p. 402, lines 10-14.) Dr. Lovett testified—again after much prodding—that Dr. Holzendorf should have initiated an investigation of Moody and contacted the district after receiving the September 29th incident report. (R. p.655-661; R. p. 404, line 22-p. 405, line 13.) Dr. Lovett also acknowledged that waiting 21 days to investigate the allegations of Moody's misconduct did not fit the definition of "promptly" and was not reasonable. (R. p. 406, lines 3-14.) Dr. Lovett also testified that she did not see any evidence of a "thorough" investigation of the September 29th incident as required by JICFAA. (R. p. 406, line 15-p. 408, line 8.) Moody stated to Dr. Holzendorf and Dr. Lovett when Respondent finally started its investigation that the September 29th incident occurred on a "very dark, ugly day" in her life. (R. p. 416, lines 1-14; R. p. 609-613). This "very dark, ugly day" was part of the personal issues which Dr. Lovett testified was one of the reasons Respondent took action against Moody. (R. p. 412, line 21-pg. 414, line 6.)

The second incident involving Moody—and the first incident documented by Respondent between Moody and K.S.—occurred on October 10, 2011 ("the October 10th incident.") Ms. Glover and Ms. Garris again witnessed Moody act inappropriately towards K.S. regarding his crying. Ms. Glover wrote that Moody stated when her class arrived "in a loud tone 'Don't give K.S. any special treatment or praise. He has been crying non-stop in the classroom all day, and he does not deserve anything.'" (R. p. 585-586.) Ms. Garris wrote that Moody loudly proclaimed when she came back to the media center after hearing that K.S. had behaved normally "Of course he's good for you, he has cried all day in my class." (R. p. 583-584.) Ms. Glover testified the

incident involving K.S. occurred either the next time or the second time Moody's class came to the media center after the September 29th incident. (R. p. 244 line 15-pg. 245, line 6.) Ms. Glover elaborated on the incident in her trial testimony that Moody's statement was said loudly in front of the whole class. (R. p. 244, line 17-p. 245, line 9.) Ms. Glover observed K.S. immediately put his head down and begin to sob. (R. p. 245, lines 10-16.)

Ms. Glover testified unequivocally that she informed Dr. Holzendorf of the October 10th incident within 24 hours after observing Moody's treatment of K.S. (R. p. 246, line 10-p. 247, line 15.) Ms. Garris testified that she hand delivered her written report regarding the October 10th incident directly to Dr. Holzendorf on or about October 10th or 11th. (R. p. 255, line 18-p. 256, line 12.) Dr. Holzendorf's recollection was the meeting with Ms. Glover occurred sometime after the cafeteria incident. (R. p. 358, line 19-p. 359, line 20.) Mr. Seeger had no idea the October 10th incident had even occurred until much later. (R. p. 196, lines 4-10.) Moody did not deny the incident on October 10th or her statement in the media center regarding K.S. when questioned about it by Dr. Lovett on November 3, 2011. (R. p. 489, lines 14-17; R. p. 601-604.) Dr. Lovett also testified that Dr. Holzendorf should have started an investigation on October 10th if he had received the complaints from Ms. Glover and Ms. Garris. (R. p. 411, lines 14-21.)

On October 18, 2011, Dr. Holzendorf documented a meeting that occurred between Moody and himself. (R. p. 596-597.) In that meeting, Moody informed Dr. Holzendorf that K.S. had been crying in her classroom "for the last three weeks." (R. p. 596-597.) Dr. Holzendorf testified at trial that "for the last three weeks" would have put the beginning of the crying episodes into sometime in September. (R. p. 370, lines 10-15.) The "for the last three weeks" would have placed the beginning of K.S.'s crying before the first incident involving Student A. And yet, Dr. Holzendorf still did nothing. Dr. Holzendorf elaborated that he thought the "missing his dad" statement was in

relation to a deployment by Mr. Seeger. (R. p. 368, lines 1-24; p. 394, lines 3-17.) Dr. Holzendorf was unaware of Mr. Seeger's deployment status and took no steps to find out. (R. p. 375, lines 3-17.) The only time Mr. Seeger was ever deployed overseas occurred during Operation Desert Storm long before K.S. was born. (R. p. 175, lines 14-15.) Mr. Seeger did travel within the United States for work, but K.S. had never experienced any episodes of crying while Mr. Seeger was traveling. (R. p. 177, line 15-p. 177, line 23.) Dr. Holzendorf admitted that he did not consult with the school counselor, Ms. Williams, regarding K.S.'s crying. (R. p. 369, lines 7-9; p. 371, lines 10-21.)

Dr. Holzendorf finally initiated an investigation into Moody's conduct after the October 20th cafeteria incident. (R. p. 601-627.) A recorded recollection prepared by Dr. Lovett contains the following statement from Dr. Holzendorf:

> DH: Through different incidents, those statements came out as we were expanding our investigation. The media specialist came to me that day, concerned about the tone Ms. Moody used. I didn't put the two situations together until later.

(R. p. 612.)

Dr. Lovett testified that Moody should no longer be in a classroom. (R. p. 412, lines 18-25.) Dr. Lovett also testified she did not think Moody could return and be effective in the classroom "in her present state of mind." (R. p. 420, lines 2-5.) Dr. Lovett testified that the three incidents meant that Moody was far beyond corrective action and that "She was just not in a –a mental state of mind to be with children at that point in time." (R. p. 420, lines 21-25.) Dr. Lovett testified that Moody was capable of being a teacher as September 29 but lost that ability sometime by October 20. (R. p. 427, line 23–p. 428, line 5.) Moody was allowed to resign in lieu of termination by the district. (R. p. 416, line 15-p. 417, line 2.)

It was only after the October 20th cafeteria incident that K.S. finally opened up to Mr. &

Mrs. Seeger regarding Moody's treatment of him in class. K.S. related specific past incidents. K.S. testified that Moody would get in his face and loudly yell "Stop being such a crybaby." (R. p. 153, line 18-p. 154, line 12.) K.S. also testified that Moody would isolate him grabbing him by the arm, putting him in the hall, and would not let him participate in class activities. (R. p. 154, lines 13-19.) K.S. testified that Moody's conduct also included unwanted physical touching and grabbing. (R. p. 155, lines 12-19) K.S. testified that Moody encouraged other class members to make critical comments about K.S. in his presence, and allowed the students to form a "No Crying Club" to exclude K.S. from class activities. (R. p. 154, line 20-p. 156, line 3.) Moody confiscated the encouraging notes Mr. Seeger had included in K.S.'s lunch. (R. p. 616-617, 625-627.) Moody did not deny taking the notes but added she wanted K.S. to write notes to her. (R. p. 601-604.) K.S. also testified that Moody would grab him "forcefully" and put him the hall. (R. p. 155 lines 12-19.) K.S. testified that the grabbing and yelling started about a week after school started. (R. p. 157, lines 22-23) Moody's explanation as to why she isolated K.S. was because other students were "fussing" about K.S.'s crying. (R. p. 601-604.)

K.S. testified that he was afraid—and still is afraid—of Moody. (R. p. 157, lines 5-8.) K.S. testified that he takes medication to help him feel better. (R. p. 164, line 2-p. 165, line 1.) K.S. also testified that often feels anxious, hopeless, and trouble sleeping. (R. p. 165, line 5-p. 167, line 17.) Mr. Seeger testified that K.S. still has issues of anxiety, angry outbursts in the months and years since the incident. (R. p. 192, line 2-p. 193, line 16.) Mr. Seeger also testified while the "sadness and darkness of his eyes wasn't as pronounced" that K.S. was not the same. (R. p. 195, lines 11-20.) Mr. Seeger testified that over time he and his wife began to find out "how profoundly affected he [K.S.] was." (R. p. 198, lines 3-9.) Mr. Seeger also described K.S. as being "fidgety," his "anxiety level was through the roof," and that he (K.S.) chewed all of his nails off continually."

(R. p. 203, lines 14-20.) Mr. Seeger also testified that there are some period of time where K.S. is depressed, easily angered, and will not come out of his room. (R. p. 209, lines 10-13.) K.S. also has trouble sleeping. (R. p. 210, lines 5-15.)

K.S. received in-office therapy from a series of psychologists after being removed from Moody's class. (R. p. 193, line 19-p. 194, line 20; pg. 126, lines 3-9; p. 200, line 9-p. 203, line 3; p. 205, line 5-p. 208, line 3.) K.S. also received assistance of a school counselor during the rest of his elementary school time. (R. p. 204, line 17-p. 204, line 4.) K.S. also sees a psychiatrist who prescribes K.S. medication including Zoloft. (R. p. 208, lines 4-19.) K.S. has improved with medication, but K.S. struggles even with medication. (R. p. 209, line 21-p. 210, line 4.) The days K.S. does not take his medication are "rough." (R. p. 209, lines 7-9.)

Appellant also presented expert testimony from a forensic psychologist, Dr. David Englert. Dr. Englert testified that K.S. has persistent depressive disorder with anxious mood. (R. p. 287, lines 11-17; p. 294, lines 13-17.) Dr. Englert testified that K.S. started suffering mental health issues—specifically persistent depressive disorder—as a direct response to the events in 2011 involving Moody. (R. p. 296, line 25-p. 297, line 4; p. 302, line 21-p. 303, line 3.) Dr. Englert also opined K.S.'s mental health issues were not related to either his mother or the litigation. (R. p. 304, line 9-p. 305, line 15.) Dr. Englert opined that K.S.'s struggles began well before he was a teenager. (R. p. 315, line 24-p. 316, line 112.) Dr. Englert interviewed K.S. and observed K.S. "crying and shaking" at the mere mention of Moody's name. (R. p. 297, lines 8-23.) Dr. Englert opined that K.S.'s reaction was an authentic psychological reaction to the mere mention of Moody's name. (R. p. 298, lines 3-10.)

Appellant also proffered Dr. Alan McEvoy as an expert via a video recorded deposition on the subject of teacher-versus-student bullying and school district responses to teacher-versus-

student bullying. (R. p. 469, lines 17-21.) Respondent opposed Dr. McEvoy's acceptance as an expert by filing a motion in limine. The trial court did not permit Dr. McEvoy's deposition to be presented to the jury on the grounds that Dr. McEvoy's testimony was cumulative with other evidence. (R. p. 432, line 18-p. 433, line 20.)

LEGAL ARGUMENT

I. The trial court incorrectly directed a verdict on the issue of mental health damages.

The trial court erred in directed a verdict in favor of Respondent by finding the Appellant had not proved he had suffered an injury in Appellant's negligence action. The Supreme Court has held whether a plaintiff that sustained physical or bodily injury as a consequence of the shock, fright and emotional upset was a jury question. Padgett v. Colonial Wholesale Distrib. Co., 232 S.C. 593, 606–08, 103 S.E.2d 265, 271–72 (1958). Emotional distress is properly recoverable under a negligence theory if there is a physical manifestation of those injuries. Babb v. Lee Cty. Landfill SC, LLC, 405 S.C. 129, 153, 747 S.E.2d 468, 481 (2013). A "physical manifestation" of emotional injuries means whether a plaintiff can show "medical treatment or other objective evidence of physical injury." Dooley v. Richland Mem'l Hosp.,[5] 283 S.C. 372, 375, 322 S.E.2d 669, 671 (1984).

The trial court clearly misapprehended the definition of "bodily injury" for the purposes of whether to submit the instant action to the jury. The Supreme Court answered this question many years ago when it held:

> "In order to receive bodily injury, **it was not necessary that the plaintiff should lose a limb or receive a broken limb, or to have wounds inflicted on her body.**

[5] Dooley was a case involving negligent infliction of mental distress when the hospital mistakenly told the Plaintiff Parents that their child was dead. The South Carolina Supreme Court has only allowed negligent infliction of mental distress for bystander liability. Kinard v. Augusta Sash & Door Co., 286 S.C. 579, 581, 336 S.E.2d 465, 466 (1985). The Appellant's parents have not asserted any claim in the instant action. Appellant instead alleged a first party negligence claim. Dooley and Kinard are cited herein to demonstrate the types of evidence used to prove a mental health injury.

> **Having her nervous system injured and being made sick, in the manner she testified, constitutes bodily injury**, and for which she should be entitled to recover damages in proportion to such injury, provided the proof establishes negligence on the part of defendant…."

Spaugh v. A. C. L. Railroad Co., 158 S.C. 25, 155 S.E. 145, 147 (1930)(Emphasis added)

The Supreme Court in Spaugh also held "suffering from a nervous breakdown, as a result of defendant's negligence, would support a verdict for the plaintiff, independent of any other injury she sustained." Spaugh, supra. In Doe by Doe v. Greenville Hosp. Sys., 323 S.C. 33, 38–39, 448 S.E.2d 564, 567 (Ct. App. 1994), this Court—citing Spaugh—held the fact that the victim of a sexual molestation suffered no physical wounds was "not determinative" as to whether the victim had suffered an injury. This Court held in Doe by Doe held the record "replete with evidence" that Doe had suffered "a severe mental injury." Id. Citing Doe by Doe, the United States District Court of South Carolina found that suffering from severe emotional trauma including major depressive episodes was a sufficient mental injury upon which to base damages even in the absence of physical wounds. Zimbelman v. Savage, 745 F. Supp. 2d 664, 681 (D.S.C. 2010) Also citing Spaugh, this Court has held that emotional trauma can be a bodily injury for the purposes of insurance. State Farm Mut. Auto. Ins. Co. v. Ramsey, 295 S.C. 349, 350, 368 S.E.2d 477, 478 (Ct. App.), aff'd, 297 S.C. 71, 374 S.E.2d 896 (1988). The amount of damages suffered in a personal injury action is also a question for the fact-finder. Wilder v. Blue Ribbon Taxicab Corp., 396 S.C. 139, 148, 719 S.E.2d 703, 708 (Ct. App. 2011); Hicks v. Herring, 246 S.C. 429, 436, 144 S.E.2d 151, 154 (1965).

The Supreme Court in Dooley held the evidence that the Dooleys received no medical treatment for being "upset and nervous" and taking medication that had previously proscribed was insufficient as "objective evidence" of a mental health injury. Instead, a plaintiff alleging mental health injury must demonstrate a "physical manifestation" of the mental health injury. Dooley,

supra. A "physical manifestation" has been held to include crying, weight loss, sleep disturbances, inability to do housework, difficulty in socializing, and the inability to tolerate stress. Kinard v. Augusta Sash & Door Co., 286 S.C. 579, 581, 336 S.E.2d 465, 466 (1985); Landreth v. Reed, 570 S.W.2d 486, 488 (Tex. Civ. App. 1978). A physical manifestation of mental injury has also been held to include shaking, nausea, cramps, hysteria, depression, headaches, spastic colon, knotting of the intestinal tract, stiffness and numbness. Ford v. Hutson, 276 S.C. 157, 165, 276 S.E.2d 776, 780 (1981)

In the light most favorable to the Appellant, the Appellant proved a sufficient injury beyond "mere emotional discomfort." Appellant and Appellant's witnesses testified as to Appellant's bodily injuries. Appellant himself testified he was grabbed and clawed by Moody. (R. p. 156, line 13-p. 157, line 17.) Respondent has not seriously contested that Moody grabbed K.S.'s arm in the cafeteria only the amount of force used. (R. p. 374, lines 11-21.) The actions of Moody putting her hands on K.S. "concerned" Dr. Holzendorf. (R. p. 588-593.) Mr. Seeger testified as to K.S.'s profound changes in emotions and demeanor. Mr. Seeger testified that K.S. still has issues of anxiety, angry outbursts in the months and years since the incident. (R. p. 192, line 2-p. 193, line 16.) Mr. Seeger also testified while the "sadness and darkness of his eyes wasn't as pronounced" that K.S. was not the same. (R. p. 195, lines 11-20.) Mr. Seeger also testified that there are some periods of time where K.S. is depressed, easily angered, and will not come out of his room. (R. p. 209, lines 10-13.) K.S. also has trouble sleeping. (R. p. 210, lines 5-15.) Mr. Seeger also testified that Appellant has significantly changed in his response to discipline. (R. p. 231, line 23-p. 234, line 5) Appellant still suffers from a significant meltdown anytime Moody is mentioned. (R. p. 231, line 23-p. 234, line 5) Appellant and other witnesses testified to K.S.'s physical manifestations of psychological injury. Appellant's expert opined that K.S. has a mental health diagnosis—his

nervous system has become sick—as result of his experiences. K.S. now takes medication—Zoloft—for depression.

Thus, whether the injuries inflicted on him where sufficient to cause damages is a question of fact that should have been left to the jury.

II. Appellant has proved the failure to exercise slight care by the Respondent.

The Appellant proved gross negligence by Respondent sufficient to submit to a jury to in the instant action. The Tort Claims Act exception regarding the failure to follow the law or policies is also subject to the gross negligence standard pursuant to the South Carolina Supreme Court precedent. Policies JIFAA and GCQF constitute a self-adopted standard of care, and the failure to follow its policies is relevant if even if the Tort Claims Act still applies.

To establish a cause of action in negligence, a plaintiff must prove the following three elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty. Bloom v. Ravoira, 339 S.C. 417, 529 S.E.2d 710 (2000). A duty of care unquestionably exists between Appellant and Respondent. The Tort Claims Act provides that a governmental entity will not be liable for a loss resulting from any "responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student,… except where the responsibility or duty is exercised in a grossly negligent manner." S.C. Code Ann. § 15–78–60(25); Doe v. Greenville Cty. Sch. Dist., 375 S.C. 63, 71, 651 S.E.2d 305, 309 (2007). A court will read into the Tort Claims Act language a gross negligence standard where cases in which at least one of the asserted exceptions contains the gross negligence standard while other asserted exceptions do not. Steinke v. S.C. Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 398, 520 S.E.2d 142, 155 (1999).When an

exception containing the gross negligence standard applies, that same standard will be read into any other applicable exception. Id.

The Tort Claims Act also provides:

> (f) "Loss" means bodily injury, disease, death, **or damage** to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, **or** death, pain and suffering, **mental anguish**, and any other element of actual damages recoverable in actions for negligence, **but does not include the intentional infliction of emotional harm**.
>
> S.C. Code Ann. § 15-78-30(f)(Emphasis added.)

Gross negligence is defined as "the failure to exercise slight care." Solanki v. Wal-Mart Store No. 2806, 410 S.C. 229, 237, 763 S.E.2d 615, 619 (Ct. App. 2014). It has also been defined as "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." Doe v. Greenville Cty. Sch. Dist., supra. Gross negligence "is a relative term, and means the absence of care that is necessary under the circumstances." Id. Gross negligence is ordinarily a mixed question of law and fact. Faile v. S.C. Dep't of Juvenile Justice, 350 S.C. 315, 332, 566 S.E.2d 536, 545 (2002) In the context of bad conduct by an employee, the liability of the governmental agency starts when it becomes aware of allegations of inappropriate conduct. Doe v. Greenville Cty. Sch. Dist., supra.

When the evidence supports but one reasonable inference, it is solely a question of law for the court, otherwise it is an issue best resolved by the jury. Clyburn v. Sumter County School District # 17, 317 S.C. 50, 451 S.E.2d 885 (1994). In most cases, gross negligence is a factually controlled concept whose determination best rests with the jury. Faile, supra. Moreover, the performance of discretionary duties does not give rise to immunity if the public official acted in a grossly negligent manner. Id; Jackson v. South Carolina Dep't of Corr., 301 S.C. 125, 390 S.E.2d 467 (Ct.App.1989); aff'd, 302 S.C. 519, 397 S.E.2d 377 (1990).

The general rule is that evidence of industry safety standards is relevant to establishing the standard of care in a negligence case. Elledge v. Richland/Lexington Sch. Dist. Five, 352 S.C. 179, 186, 573 S.E.2d 789, 793 (2002). In a given case, a court may establish and define the standard of care by looking to the common law, statutes, administrative regulations, industry standards, or a Respondent's own policies and guidelines. Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 140, 638 S.E.2d 650, 659 (2006); Hurd v. Williamsburg Cty., 363 S.C. 421, 426–27, 611 S.E.2d 488, 491 (2005). Evidence of a deviation from its own internal policies is relevant to show that Respondent deviated from the standard of care, and is properly admitted to show the element of breach. Peterson v. Nat'l R.R. Passenger Corp., 365 S.C. 391, 397, 618 S.E.2d 903, 906 (2005); Caldwell v. K–Mart Corp., 306 S.C. 27, 31, 410 S.E.2d 21, 24 (Ct.App.1991).

The evidence in this case shows there is a question of fact whether Respondent failed to exercise slight care by failing to follow its own procedures and properly investigate the actions of Moody and remove Appellant from her classroom as soon as possible. It is also a question of fact of what did the Respondent know and when did it—particularly Dr. Holzendorf—know it.

Respondent employees Susan Garris and Tabitha Glover submitted oral and written reports to Principal Dr. Holzendorf documenting what they had heard Ms. Moody say to her students including K.S. (R. p. 581-586.) Even though K.S. was not the target, K.S. was in the media center during the first incident. (R. p. 249, lines 1-3.) K.S.'s crying in class began about this same time according to Moody's own report to Holzendorf. (R. p. 596-600.) Both Ms. Garris and Ms. Glover testified that they immediately reported the incident to Dr. Holzendorf. (R. p. 241, lines 11-19; p. 252, line 16-p. 253, line 3.) Dr. Holzendorf recalled that he had spoken to both Ms. Garris and Ms. Glover regarding the September 29th incident. (R. p. 354, lines 7-20.) Ms. Glover testified she informed Dr. Holzendorf of the October 10th incident involving Moody and K.S. within 24 hours.

(R. p. 246, line 110-p. 247, line 15.) Ms. Garris testified that she hand delivered her written report of what she observed directly to Dr. Holzendorf on or about October 10th or 11th. (R. p. 255, line 18-p. 256, line 12.) Dr. Holzendorf admitted he started his investigation of Moody on October 20, 2011. (R. p. 430, lines 8-12.)

In the light most favorable to the Appellant, Ms. Glover and Ms. Garris followed Respondent's JIFAA policy after witnessing two incidents of "bullying, intimation and harassment." In the light most favorable, both Ms. Glover and Ms. Garris spoke to Dr. Holzendorf and submitted written reports regarding Moody's conduct on the days the incidents took place. Dr. Holzendorf took no corrective action towards Ms. Moody before October 20, 2011 despite two prior reports given to him regarding Moody's bullying conduct towards Student A and K.S. Dr. Holzendorf was required to take action by two separate policies, JIFAA and GCQF, to "promptly and thoroughly" investigate a report of "bullying, harassment and intimidation" and report receipt of the allegation to the Respondent. Resolving the factual disputes in Appellant's favor, Dr. Holzendorf did nothing despite receiving two reports of misconduct.

"Slight care" in this context means the failure to act despite receiving a complaint. Smart by Clark v. Hampton Cty. Sch. Dist. No. 2, 315 S.C. 192, 195, 432 S.E.2d 487, 489 (Ct. App. 1993). Polices JIFAA and GCQF do not contain discretionary language. They both contain mandatory language requiring action, and no action occurred until after the damage had been done.

For these reasons, the instant action should be remanded for trial.

III. The trial court erred in excluding the testimony of Appellant's expert witness on school bullying.

The trial court erred when it ruled that the testimony of Appellant's expert, Dr. Alan McEvoy, should be excluded. The trial court made the following comment:

> THE COURT: Well, and one of the reasons that motions in limine need to be renewed is, you know, because they're not final decisions, or those objections need to be renewed. And they're always very difficult for the Court to make a decision, not having heard the testimony of the witnesses and not knowing the case the way, of course, the parties and counsel know the case.
>
> Having heard all of the witnesses testify, I'm actually going to grant the motion and exclude the witness. **His testimony would be cumulative at best. I-- I mean, my initial impression was that his commentary regarding teacher-on-student bullying may be instructive in some way.** But now having a full grasp of the scope of the interactions alleged between K.S. and Ms. Moody, I don't think that there's anything particularly unique about the situation.
>
> There's been testimony as to the actual damages sustained by K.S.. And so testimony regarding theoretical, speculative -- **I mean, and frankly, I think we've beaten the policy to death through witness after witness. And so yet another person trying to tell these jurors the definition of bullying or -- or whatever it is, is simply unnecessary, cumulative, would have the potential to confuse the jury as to the ultimate issue they are to decide in this case.** And therefore, the motion to exclude the testimony of Dr. Alan McAvoy is granted.
>
> (R. p. 432, line 18-p. 433, line 20.)(Emphasis added.)

A. The trial court did not properly apply Rule 403, SCRE to Dr. McEvoy's testimony.

The trial court relied upon Rule 403, SCRE to exclude Dr. McEvoy's testimony. Judge Richard Posner offered the following definition of "cumulative" evidence:

> Evidence is "cumulative" when it adds very little to the probative force of the other evidence in the case, so that if it were admitted its contribution to the determination of truth would be outweighed by its contribution to the length of trial, with all the potential for confusion, as well as prejudice to other litigants, who must wait longer for their trial, that a long trial creates.
>
> United States v. Williams, 81 F.3d 1434, 1443 (7th Cir.1996).

Cumulative evidence has also been "tersely defined as additional evidence of the same kind to the same point." Johnston v. Belk-McKnight Co. of Newberry, 188 S.C. 149, 198 S.E. 395, 398–99 (1938). Evidence is not cumulative in the legal sense if it tends to establish the same general result but does so by proof of a new and distinct fact. Id. Black's Law Dictionary defines

"cumulative evidence" as "[a]dditional evidence of the same character as existing evidence and that supports a fact established by the existing evidence (esp. that which does not need further support)." Black's Law Dictionary 577 (7th ed.1999). For instance, a party was not allowed, pursuant to Rule 403, FRE[6], to enter evidence of uncharged statute that forbade driving a boat while intoxicated when the record contained evidence of intoxication. Littleton v. McNeely, 562 F.3d 880, 891 (8th Cir. 2009).

In contrast, the admission of five 9-1-1 recordings from various witness was not cumulative when the recordings were used as evidence to show that the accused had not slept through a shootout. United States v. Edwards, 540 F.3d 1156, 1162–63 (10th Cir. 2008). The admission of testimony of three different witnesses who testified as to the defendant's flight from prosecution was not cumulative because each witness testified to different portions of the flight. United States v. Urbina, 431 F.3d 305, 312 (8th Cir. 2005). The Arizona Court of Appeals held that two experts regarding the same issue but offering meaningfully differing opinions was not cumulative. Felipe v. Theme Tech Corp., 334 P.3d 210, 216–17 (Ariz. Ct. App. 2014). The North Carolina Court of Appeals held that the testimony of an expert was not cumulative when the expert offered an opinion of a character trait that was stridently opposed by the prosecution. State v. Tatum-Wade, 747 S.E.2d 382, 387 (N.C. Ct. App. 2013). The Texas Court of Appeals held the admission of photos of a victim's injuries was not cumulative with the testimony of an officer describing those injuries. Hill v. State, 392 S.W.3d 850, 856 (Tex. App. 2013). This Court ruled that the admission of a mug shot photo was not cumulative because the defendant's challenge of the accuracy of the lineup was a central issue in the trial. State v. Stephens, 398 S.C. 314, 322, 728 S.E.2d 68, 72 (Ct. App. 2012).

[6] Rule 403, FRE, is no longer identical to Rule 403, SCRE after December 1, 2011. However, this Court has already ruled the difference between the federal and South Carolina rule is "stylistic only." State v. Gray, 408 S.C. 601, 617, 759 S.E.2d 160, 169 fn. 5 (Ct. App. 2014)

The issue of whether K.S. was the victim of bullying was the paramount issue during trial. It was not and had not been conceded by Respondent. Respondent also consistently challenged during the course of the trial whether Moody's actions had damaged K.S. Respondent's defense theory sought to minimize both the nature and duration of K.S.'s treatment by Moody. Said differently, Respondent said that Moody's treatment of K.S. was not that bad and did not go on that long. The following exchanges are indicative of this theory:

> Q And then, the cafeteria incident happened. And later that day, you were switched to a new class, correct?
> A Yes.
> Q To Ms. Shipman's class?
> A Yes, ma'am.
> Q And you never saw Ms. Moody again, right?
> A Yes, ma'am.
> Q Okay. And you were happy when you moved to the new class, correct?
> A Yes, ma'am.
> Q And your mood got better?
> A Yes, ma'am.
> Q You didn't cry in school anymore?
> A Yes.
> Q And things went back to normal for you?
> A Yes, ma'am.
>
> (R. p. 171, lines 5-21)

> Q All right. You would agree that there other stressors and other things that make K.S. anxious and upset as a teenager, other than just thinking about Ms. Moody in first grade?
> A That's why we didn't pursue any medical -- prescription medicine or seeing if there was a – a diagnosis.
> Q Yeah. He gets upset, for example, if you ground him?
> A Yeah.
> Q Take his electronic away?
> A Yes.
> Q All right. Not getting to hang out with friends?
> A Yes.
>
> (R. p. 230, lines 9-22)

> Q Yeah. All right. And it's not unusual for a 6-year-old not getting his way to cry?

A Yes. That's true.

(R. p. 310, lines 23-25)

Q Any one thing that happened here that's serious enough to be bullying to you?
A The October 20th incident led to a -- to a -- for us to believe -- and I really believe that the October 20th incident -- incident, based on my experience, the seven years that I was principal, would alone triggered the same reaction that I had, whether the October 10th or ---
Q Sure.
A --- or the October -- or the September 29th incident took place. You know, I've had situations where we've --we've done the same thing, so ---
Q All right.
A Yeah.
Q So that took care of the problem?
A As far as I know.

(R. p. 389, line 22-p. 391, line 11.)

To rebut this theory, Dr. McEvoy testified that Moody's conduct was that bad and it went on far too long. (R. p. 500, line 19-p. 502, line 22; p. 505, line 6-p. 506, line 3.)

Dr. McEvoy's testimony also went far beyond just "repeating the definition of bullying." Dr. McEvoy offered testimony and opinions on: the standard of care (R. p. 466, lines 20-25; p. 468, line 10-p. 469, line 21);the impact of teacher on student bullying on student (R. p. 475 line 25-p. 478, line 1; p. 478, line 15-p. 479, line 19; p. 480, line 20-p. 481, line 12); the impact of a teacher yelling at a child: (R. p. 480, line 13-p. 482, line 7); Respondent's responsibility: (R. p. 482, line 18-p. 483, line 18); why do principals make bad investigators (R. p. 483, line 19-p. 485, line 6); what Respondent should have done (R. p. 487, line 3-p. 488, line 13); the warning signs of bullying (R. p. 488, line 23-p. 491, line 3; p. 518, line 7-p. 520, line 25); why parents do not figure it out (R. p. 488, lines 14-22; p. 491, lines 5-24; (R. p. 520, line 2-p. 521, line 14); the lack of effective training (R. p. 496, line 15-p. 498, line 18; p. 522, line 15-p. 523, line 11); opinions regarding the effectiveness of Respondent's policy (R. p. 498, line 13-p. 499, line 10; p. 504, line

9-p. 507, line 9); relationship between the failure to comply with policy and impact on K.S (R. p. 500, line 16-p. 501, line 6; p. 502, lines 14-22; p. 515, line 19-p. 516, line 23; p. 523, line 6-p. 525, line 20); the effectiveness of Holzendorf as an investigator (R. p. 510, line 2-p. 511, line 12); the Respondent's ineffectiveness of training of students (R. p. 514, line 10-p. 515, line 3); opinions as to the corruption of the role of the teacher (R. p. 532, line 15-p. 533, line 12); and that bullying does not require a pattern (R. p. 535, line 23-p. 537, line 3.)

The District placed Dr. Holzendorf in charge of interpreting and enforcing policy JICFAA. (R. p. 551-556.) Dr. Holzendorf testified he had not been specifically trained on JICFAA beyond watching some slides. (R. p. 317, lines 10-15.) Dr. Holzendorf did not know the warning signs of bullying. (R. p. 317, lines 10-15.) Dr. Holzendorf testified that he did not think Moody's behavior on September 29th was bullying or warranted an investigation. (R. p. 393, lines 16-21.) Respondent's counsel also elicited the following testimony from Dr. Holzendorf:

> Q All right. Is -- is crying an unusual response for a 6-year-old who gets fussed at by an adult?
> A No.
> Q All right. Any report of this student crying, other than that particular day?
> A Not that I'm aware of.
> Q All right. Would you expect a first-grader to be able to get over getting fussed at by a teacher?
> A I would imagine, eventually. Yeah.
> Q Sure.
> A More than likely, they would -- the next day it would probably be over.
>
> (R. p. 381, lines 8-19)

The trial court's comment that the policy "had been beaten to death" also belies a level of second guessing Appellant's trial strategy and not an assessment of the merits of Dr. McEvoy's testimony. Trial courts must resist the temptation to "second-guess a lawyer's trial strategy; the lawyer makes choices based on the law as it appears at the time, the facts as disclosed ... and his

best judgment as to the attitudes and sympathies of judge and jury." Blackmon v. White, 825 F.2d 1263, 1265 (8th Cir.1987).

B. Dr. McEvoy should have been admitted as an expert.

"The qualification of an expert witness and the admissibility of the expert's testimony are matters largely within the trial court's discretion." Watson v. Ford Motor Co., 389 S.C. 434, 447, 699 S.E.2d 169, 176 (2010); State v. Harris, 318 S.C. 178, 181, 456 S.E.2d 433, 435 (Ct. App. 1995). A circuit court's ruling on the admissibility of expert testimony constitutes an abuse of discretion where the ruling is unsupported by the evidence or controlled by an error of law. State v. Jones, 423 S.C. 631, 638, 817 S.E.2d 268, 271 (2018). A trial court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion where the ruling is manifestly arbitrary, unreasonable, or unfair. State v. Grubbs, 353 S.C. 374, 379, 577 S.E.2d 493, 496 (Ct. App. 2003).

Rule 702, SCRE, provides: "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education[ ] may testify thereto in the form of an opinion or otherwise." A witness is allowed to testify as an expert as long as the witness has "acquired by study or practical experience such knowledge of the subject matter of [their] testimony as would enable [them] to give guidance and assistance to the jury in resolving a factual issue [that] is beyond the scope of the jury's good judgment and common knowledge." State v. Anderson, 407 S.C. 278, 285, 754 S.E.2d 905, 908 (Ct. App. 2014). "Th[e] language [in Rule 702] makes no relevant distinction between 'scientific' knowledge and 'technical' or 'other specialized' knowledge. It makes clear that any such knowledge might become the subject of expert testimony." Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999). Reliability is a central feature of Rule 702 admissibility. Id.

Thus, the trial court was required to make three inquiries: whether "the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury." Watson, 389 S.C. at 446, 699 S.E.2d at 175. Second, the expert must have "acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter," although he "need not be a specialist in the particular branch of the field." Id. Finally, the substance of the testimony must be reliable. Id. It is this final requirement of reliability which is the central feature of the inquiry. State v. White, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009).

However, "the reliability of a witness's testimony is not a pre[ ]requisite to determining whether or not the witness is an expert." State v. Tapp, 398 S.C. 376, 388, 728 S.E.2d 468, 474 (2012). "The expertise, [the] reliability, and the ability of the testimony to assist the trier of fact are all threshold determinations to be made prior to the admission of expert testimony, and generally, a witness's expert status will be determined prior to determining the reliability of the testimony." Id. at 388, 728 S.E.2d at 474-75. "[A]ll expert testimony, not just scientific expert testimony, must be vetted for its reliability prior to its admission at trial." Id. at 388, 728 S.E.2d at 474. The admissibility of *scientific* evidence depends upon "the degree to which the trier of fact must accept, on faith, scientific hypotheses not capable of proof or disproof in court and not even generally accepted outside the courtroom." State v. Whaley, 305 S.C. 138, 142, 406 S.E.2d 369, 371 (1991)(Emphasis in original.) However, the Supreme Court requires a review on an *ad hoc* basis for nonscientific testimony because it has declined to set a general test due to the multitude of challenges which may arise. Graves v. CAS Med. Sys., Inc., 401 S.C. 63, 75, 735 S.E.2d 650, 656 (2012). Thus, there is no formulaic approach for determining the foundational requirements of qualifications and reliability in non-scientific evidence. State v. Chavis, 412 S.C. 101, 108, 771 S.E.2d 336, 339 (2015). Reliability is established by a nonscientific expert by when he or she

applies his knowledge gained from his or her training and experience to a set of facts. Whaley, supra.

1. Beyond ordinary knowledge of juror

Does the proffered witness possess more knowledge that the jury would have common knowledge? If that answer is "yes" then that is all Rule 702 requires. State v. Mealor, 425 S.C. 625, 652, 825 S.E.2d 53, 68 (Ct. App. 2019). Stated differently, is the subject matter beyond the ordinary knowledge of the jury? If so, an expert may be allowed to explain the matter to the jury. Watson, 389 S.C. at 446, 699 S.E.2d at 175. Respondent did not make any argument to point that prevention of teacher-versus-student bullying and school district responses to teacher-versus-student bullying are topics within the common knowledge of the jury.

Dr. McEvoy testified he has a doctorate degree in sociology. (R. p. 462, lines 3-8). Dr. McEvoy testified that he studies the topic of school bullying with a particular emphasis on teacher vs. student bullying. (R. p. 462, lines 18-22.) Dr. McEvoy has taught classes on the sociology of education, deviant behavior, and patterns of violence. (R. p. 462, line 22-p. 463, line 10.) Dr. McEvoy has conducted "dozens" of in-service training sessions for schools and reviewed their policies on teacher vs. student bullying. (R. p. 463, lines 11-15.) Dr. McEvoy published numerous papers and what he believes to be the first study on teacher vs. student bullying in 2005, and published the largest study in the country on teachers who bully students in 2018. (R. p. 463, line 16- p. 464, line 5.) Dr. McEvoy started studying teacher vs. student bullying in the 1990s. (R. p. 464, line 6-p. 446, line 7.) McEvoy testified that he was familiar with the national standard of care as well as the standard of care adopted by Respondent. (R. p. 467, lines 3-20; p. 468, line 10-p. 464, line 16.) Dr. McEvoy also testified he had written several books on the impacts on trauma victims. (R. p. 525, lines 2-20.)

There was no evidence before the trial court that the typical juror has an understanding of any of these issues. Dr. McEvoy testified that he has conducted what he believes to be the first major study of the teacher-on-student bullying issue in 2005. (R. p. 463, line 16-p. 464, line 5.) Dr. McEvoy also testified that is very little research on teacher-on-student bullying while in contrast there is a lot of research on the subject of student-on-student bullying. (R. p. 473, line 17-p. 474, line 11.)

Clearly, Dr. McEvoy had more knowledge than the jury on the topic of teacher-on-student bullying and related topics.

2. Requisite Knowledge

Second, the expert must have "acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter," although he "need not be a specialist in the particular branch of the field." Watson, supra. Dr. McEvoy testified he has "acquired by study or practical experience such knowledge of the subject matter" on the topics of teacher-versus-student bullying and school district responses to teacher-versus-student bullying. Dr. McEvoy testified he has a doctorate degree in sociology. (R. p. 462, lines 3-8). He has been continuously employed as a university professor since 1975. (R. p. 462, 9-13.) Dr. McEvoy testified that he studies the topic of school bullying with a particular emphasis on teacher vs. student bullying. (R. p. 462, lines 18-22.) Dr. McEvoy has taught classes on the sociology of education, deviant behavior, and patterns of violence. (R. p. 462, line 22-p. 463, line 10.) Dr. McEvoy has conducted "dozens" of in-service training sessions for schools and reviewed their policies on teacher vs. student bullying. (R. p. 463, lines 11-15.) Dr. McEvoy published numerous papers and what he believes to be the first study on teacher vs. student bullying in 2005, and the largest in 2018. (R. p. 463, line 16-p. 464, line 5.) Dr. McEvoy started studying teacher vs. student bullying in the 1990s. (R. p. 464, line 6-p. 465, line

7.) Dr. McEvoy has testified six or seven times on behalf of both students and districts. (R. p. 466, lines 15-20.). Dr. McEvoy testified that he reviewed Respondent's anti-bullying policy, all of the depositions, as well as his own research to prepare for his testimony. (R. p. 466, line 21-pg. 9, 2.) Dr. McEvoy testified that he was familiar with the national standard of care as well as the standard of care adopted by Respondent. (R. p. 467, lines 3-20; p. 468, line 10-p. 469, line 16.) Dr. McEvoy also testified he had written several books on the impacts on trauma victims. (R. p. 525, lines 2-20.)

Respondent also raised Dr. McEvoy's unfamiliarity with an alleged South Carolina standard of care for teacher vs. student bullying. Dr. Lovett testified in her deposition, one of the depositions relied upon by Dr. McEvoy, as follows:

> Q: Are there any national or state standards regarding the investigation of teacher/staff abuse of students?
>
> A: Not that I'm aware of. We abide by our district board policy.
>
> (R. p. 129, lines 16-20)
>
> Q: But you're in -- at least, this is the policy that you go by when you're investigating allegations of teacher bullying or harassment towards students?
>
> A. Yes.
>
> Q: So this is -- this policy is what guides --should guide you, but should also guide the certified staff and classified staff?
>
> A: This is one of several, yes.
>
> Q: Are there any other policies that govern the certified or classified staff concerning teacher or certified staff conduct toward children regarding harassment or bullying?
>
> A: This is the bullying policy. There is a staff conduct policy, but this is the bullying policy.
>
> Q: Is the staff policy inconsistent or consistent with the bullying policy?

A. It's consistent.

(R. p. 130, line 15-p. 131, line 7[7].)

A court may establish and define the standard of care by looking to the common law, statutes, administrative regulations, industry standards, or a defendant's own policies and guidelines. Roddey v. Wal-Mart Stores E., LP, 415 S.C. 580, 589, 784 S.E.2d 670, 675 (2016); Madison ex rel. Bryant, supra. Evidence of a party's deviation from its own internal policies is relevant to show the party deviated from the standard of care, and is properly admitted to show the element of breach. Peterson, supra; Caldwell, supra. The breach of a national standard of care is applicable to a breach of duty by a school district. Elledge, supra.

Respondent has not proffered an alternative standard of care apart from the two cited by Dr. McEvoy. Dr. Lovett—the witness that conducts investigations for Respondent—testified she was "unaware" of either a "national" or a "South Carolina" standard of care for investigating abuse of a student by a teacher or staff member. Instead, Dr. Lovett testified that the standard of care that Respondent by is the standard contained within their policy[8]. This is the same policy that Dr. McEvoy testified he reviewed in preparing for his testimony, and that this standard was consistent with the national standard known to Dr. McEvoy. Thus, Respondent's policy is the only standard of care relevant in the instant action. Roddy, supra; Elledge, supra.

The Supreme Court abandoned the "locality" rule in actions in medical negligence actions in 1981; accountants in 1990, and legal malpractice actions in 1996. Smith v. Haynsworth, Marion, McKay & Geurard, 322 S.C. 433, 437–38, 472 S.E.2d 612, 614 (1996); King v. Williams, 276

[7] R. p.471, lines 18-23.

[8] Respondent's policy was adopted pursuant to passed the Safe School Climate Act, S.C. Code § 59-63-110, *et. seq*. which required all South Carolina school districts before January 1, 2007 adopt anti-bullying policies. There has been no argument that Respondent's policy is inconsistent or contrary to the Safe School Climate Act. Thus, Dr. McEvoy is familiar with the state standard of care such as it exists by and through Respondent's policy.

S.C. 478, 279 S.E.2d 618 (1981); Folkens v. Hunt, 300 S.C. 251, 387 S.E.2d 265 (1990). Thus, Respondent's assertion that Dr. McEvoy's testimony should be excluded for his alleged lack of knowledge regarding a "South Carolina" standard is specious.

Respondent has also raised that Dr. McEvoy has never been employed as a teacher within South Carolina. The Supreme Court has previously ruled that an expert "need not be a specialist in the particular branch of the field" to provide testimony. Watson, supra. The Supreme Court has also held that an expert need not be licensed in the State of South Carolina to provide expert testimony. J.T. Baggerly v. CSX Transp., Inc., 370 S.C. 362, 374–75, 635 S.E.2d 97, 103–04 (2006).

3. Reliability.

Dr. McEvoy testified that he applied his reviewed JICFAA, all of the depositions, as well as his own research to prepare for his testimony. (R. p. 466, line 21-p. 467, 2.) An expert is given wide latitude in determining the basis of his testimony." Bass v. S.C. Dep't of Soc. Servs., 414 S.C. 558, 572, 780 S.E.2d 252, 259 (2015). Respondent made no showing that Dr. McEvoy failed to apply his education and experience to the facts of this case.

Dr. McEvoy's testimony is also consistent with experts that provide testimony as to causation. A negligence claim may be established by circumstantial evidence showing that, through the exercise of reasonable diligence, Respondent should have known of Moody's abusive classroom conduct. Such testimony can be rendered by an expert witness testifying within the scope of their expertise. 5 Star, Inc. v. Ford Motor Co., 408 S.C. 362, 370–71, 759 S.E.2d 139, 143–44 (2014). Even testifying using the words "negligent" is permissible in the instance where gross negligence is involved. Bass, supra. This is the only instance in his trial testimony in which Dr. McEvoy uses the word "negligence" or variations thereof:

> Q. What is it about in particular Dr. Holzendorf that – and his relationship to the policy that created a problem in this case?
>
> A. My sense of Dr. Holzendorf is that he's probably a decent man. He was new to the job. And he was never given -- He was supposed to read the policy, but he was never given any guidelines on how to implement the policy particularly involving teacher conduct, how to investigate. He had no clue. The analogy I would use is, I remember teaching my two children how to drive when they were teenagers. And it would have been negligent of me to give them the keys to the car and say go off and drive without doing any training. And I think that's exactly what happened. The policy, that was the keys to the car. That was --And he was never trained on how to drive it. He was never trained on how to use it. So he made mistakes. He was negligent in some ways. He didn't follow the policy, according to all the testimony from Lovett and others, that he was confronted with some pretty egregious behavior, and he didn't follow policy. But he was also not trained to follow policy. So there was fault or negligence on his part up to a point, but also on the system itself that didn't train him.
>
> (R. p. 494, pg. 36, line 15-p. 495, line 14.)

Dr. McEvoy's testimony is entirely consistent with the testimony that was allowed by the Supreme Court in Bass. Therefore, this testimony should be deemed reliable enough to be presented to the jury.

C. Importance of Dr. McEvoy's testimony

The importance of Dr. McEvoy's testimony—and the prejudice from its exclusion—can be demonstrated in the following exchange between Dr. McEvoy and Respondent's counsel:

This exchange is important in light of Respondent's repeated assertion that K.S. **was not** bullied. For instance:

> Q: All right. As far as K.S. goes, the removal of him from Jan Moody's class and the removal of Jan Moody from the school solved the Seeger problem didn't it, as related to Jan Moody?
> A: I would have to say it solved the problem of him having to have contact with her. It did not solve all the problems she created. And clearly, the testimony based upon the parents and even K.S.'s own testimony and the testimony of the therapist, he is still suffering from problems years later. He is now 12 years old, and it is six years later, and he is still suffering from what looks like something that parallels with PTSD.

> Q: You don't question that at all, Dr. McEvoy, that a seventh or eighth grade boy is claiming to be suffering from getting yelled at or having to deal with a mean teacher for a couple months of first grade?
> A: This child was subject to systematic trauma and what I would call emotional terrorism for a period of time and it has done damage, it has done emotional damage. The parents testified to this and the professional therapist has testified to this, so I rely on that judgment.
>
> (R. p. 502, line 10-p. 503, line 9)

For the reasons set forth herein, it was an abuse of discretion to exclude Dr. McEvoy's testimony.

IV. The General Assembly repealed the South Carolina Tort Claims Act when it passed the Safe School Climate Act.

Respondent is not/was not entitled to a directed verdict under gross negligence because the General Assembly has repealed the South Carolina Tort Claims Act as it relates to the failure to follow the Safe Schools Climate Act. As a result, Appellant must prove Respondent's negligence by a preponderance of the evidence instead of a higher gross negligence standard. Additionally, the burden of establishing an exception to the waiver of immunity is on the governmental entity asserting the defense. Niver v. South Carolina Dept. of Hwy. & Pub. Transp., 302 S.C. 461, 395 S.E.2d 728 (Ct.App.1990).

The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible. I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 412–13, 526 S.E.2d 716, 719 (2000); Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. State v. Baker, 310 S.C. 510, 427 S.E.2d 670 (1993). Generally, specific laws prevail over general laws, and later legislation takes precedence over earlier legislation. Lloyd v. Lloyd, 295 S.C. 55, 367 S.E.2d 153 (1988). In construing a statute, a court must assume the General Assembly was aware of past statutes, and a court is to give effect

to all the words in a statute. Whitner v. State, 328 S.C. 1, 6, 492 S.E.2d 777, 779 (1997); Matter of Decker, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995). Courts also must follow the rule of construction which states "*expressio unius est exclusio alterius*" or "*inclusio unius est exclusio alterius*" which means that "to express or include one thing implies the exclusion of another, or of the alternative." Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000).

A court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something. Denene, Inc. v. City of Charleston, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002). Courts are constrained to avoid a construction that would read a provision out of a statute, and must reconcile conflicts if possible. Ballard v. Ballard, 314 S.C. 40, 443 S.E.2d 802 (1994).Statutes in apparent conflict should, if reasonably possible, be construed so as to allow both to stand and to give effect to each. Chris J. Yahnis Coastal, Inc. v. Stroh Brewery Co., 295 S.C. 243, 247, 368 S.E.2d 64, 66 (1988); Powell v. Red Carpet Lounge, 280 S.C. 142, 311 S.E.2d 719 (1984); Stone & Clamp, General Contractors v. Holmes, 217 S.C. 203, 60 S.E.2d 231 (1950). If, however, the statutes are incapable of any reasonable reconcilement, the last statute passed will prevail, so as to impliedly repeal the earlier statute to the extent of the repugnancy. City of Newberry v. Public Serv. Comm'n, 287 S.C. 404, 339 S.E.2d 124 (1986); Ward v. Cobb, 204 S.C. 275, 28 S.E.2d 850 (1944); Pearson v. Mills Mfg. Co., 82 S.C. 506, 64 S.E. 407 (1909).

The South Carolina Tort Claims Act, like all other statutes, is subject to repeal by the General Assembly. The South Carolina Supreme Court has previously held that the damages caps in the South Carolina Tort Claims Act were repealed by the General Assembly's later adoption of the South Carolina Uniform Contribution Among Tortfeasors Act. Southeastern Freight Lines v. City of Hartsville, 313 S.C. 466, 469, 443 S.E.2d 395, 397 (1994). To avoid an implied repeal, the General Assembly since Southeastern Freight has included specific exclusionary or exemption

language in a later passed statute. For instance, the General Assembly specifically excluded the South Carolina Tort Claims Act from tort reform in S.C. Code Ann. § 15-32-240.The South Carolina General Assembly last modified the exemptions to the waiver of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-60 and S.C. Code Ann. § 15-78-70 on May 25, 2005. The General Assembly last modified the definitions under the Tort Claims Act, S.C. Code Ann. § 15-78-30, on April 16, 2008.

The Safe School Climate Act, S.C. Code § 59-63-110, *et. seq.* became effective on June 12, 2006. The purpose of the Safe School Climate Act was to require school districts to develop policies for the prevention of harassment, intimidation, or bullying. S.C. Code § 59-63-140(C) S.C. Code § 59-63-120 defines harassment, intimidation, or bullying as "gesture, an electronic communication, or a written, verbal, physical or sexual act" that is reasonably perceived to have the effect of "harming a student physically or emotionally, or placing a student in reasonable fear of personal harm." S.C. Code § 59-63-130 forbids "a person" from engaging in acts of harassment, intimidation or bullying" of a student. The General Assembly required the various school districts in South Carolina pursuant to S.C. Code Ann. § 59-63-140 to adopt policies designed to detect and deter intimidation, harassment and bullying. S.C. Code Ann. § 59-63-140(A) does not create or mention a specific consequence if a school district fails to adopt a policy.

Safe School Climate Act contains the following provision:

> (A) This article must not be interpreted to prevent a victim from seeking redress pursuant to another available civil or criminal law. This section does not create **or alter tort** liability.
>
> (B) **A school employee or volunteer who promptly reports** an incident of harassment, intimidation, or bullying to the appropriate school official designated by the local school district's policy, and who makes this report in compliance with the procedures in the district's policy, **is immune from a cause of action for damages arising from failure to remedy the reported incident.**

S.C. Code Ann. § 59-63-150(Emphasis added)

S.C. Code Ann. § 59-63-150 both complements and conflicts with various provisions of the Tort Claims Act. For instance, the Tort Claims Act abrogated South Carolina's sovereign immunity making this state's governmental entities liable for their torts "in the same manner and to the same extent as ... private individual[s] ..., subject to the limitations upon liability and damages, contained herein." S.C. Code Ann. § 15–78–40; Trousdell v. Cannon, 351 S.C. 636, 642, 572 S.E.2d 264, 267 (2002). S.C. Code Ann. § 59-63-150(A) and S.C. Code § 15-78-40 do not conflict. While the Safe School Act does not create a private right of action for a victim of bullying[9], it does not prevent a victim from suing under a negligence theory since the government is liable for torts like a private individual. S.C. Code Ann. § 15-78-40. The Safe School Act does not contain a provision which excludes the repeal of the Tort Claims Act. This the only logical way to read S.C. Code Ann. § 59-63-150(A) to give full effect to the "create or alter" language.

In contrast, the language within the Safe School Climate Act is irreconcilable with the Tort Claims Act. S.C. Code Ann. § 59-63-150(A) is irreconcilable with the language within S.C. Code Ann. § 15-78-120 which sets a damage cap and eliminates punitive damages. It is also irreconcilable with S.C. Code Ann. § 15-32-240[10]. S.C. Code Ann. § 59-63-150(A) plainly states that it "must not be interpreted to prevent a victim from seeking redress pursuant to another available civil or criminal law." The second part of S.C. Code Ann. § 59-63-150(A) states this provision does not "create **or alter tort** liability." Neither the Tort Claims Act nor the Noneconomic Damages Statutes are torts, but are instead are statutes. This, S.C. Code Ann. § 59-

[9] The Safe School Climate Act makes bullying, harassment and intimation synonymous. Undersigned counsel uses "bullying" for the sake of simplicity but means all three prohibited behavior.
[10] S.C. Code Ann. § 15-32-240 was made effective on July 1, 2005 which is before the effective date of the Safe School Climate Act.

63-150(A) provision should be rationally read to alter **statutory** provisions relating to caps and punitive damages.

S.C. Code Ann. § 59-63-150(B) is also irreconcilable with S.C. Code Ann. § 15-78-50(a), S.C. Code Ann. § 15-78-60(17), and S.C. Code Ann. § 15-78-70(a) which provide a governmental entity is only liable for "official duty" torts. Thus, the Safe School Climate Act's obvious enforcement mechanism is to remove immunity for school districts for the failure to adopt and comply with their policies. Under the doctrine of *respondeat superior*, an employer is vicariously liable for injuries to a third party resulting from torts its employee commits within the scope of employment. Froneburger v. Smith, 406 S.C. 37, 52, 748 S.E.2d 625, 633 (Ct. App. 2013). A Appellant seeking recovery from an employer under a theory of *respondeat superio*r must establish that the employment relationship existed at the time of the injuries and the employee was acting within the scope of employment. Armstrong v. Food Lion, 371 S.C. 271, 276, 639 S.E.2d 50, 52 (2006). An employer can be liable for negligent hiring and supervision when the "employer knew or should have known that employing a specific person created an undue risk of harm to the public." James v. Kelly Trucking Co., 377 S.C. 628, 632, 661 S.E.2d 329, 331 (2008). "Negligent hiring cases 'generally turn on two fundamental elements—knowledge of the employer and foreseeability of harm to third parties.' " Kase v. Ebert, 392 S.C. 57, 64, 707 S.E.2d, 456, 459 (Ct. App. 2011) (quoting Doe v. ATC, Inc., 367 S.C. 199, 206, 624 S.E.2d 447, 450 (Ct. App. 2005)).

S.C. Code Ann. § 59-63-150(B) would be superfluous since all government employees are immune in their individual capacities if they have acted within the scope of their employment under S.C. Code Ann. § 15-78-70. S.C. Code Ann. § 59-63-150(B) is only necessary if the General Assembly intended to remove immunity from the entities and individuals either engaging in bullying or who fails to remedy the bullying after a report. This is clearly what the General

Assembly intended in light of its explicit refusal to create a separate private right of action but authorize suit under other civil or criminal law.

The only other way to interpret S.C. Code Ann. § 59-63-150(B) would be that the Safe School Climate Act did not repeal the Tort Claims Act. However, this would lead to several absurd results. A school district could refuse to adopt the policy pursuant to S.C. Code Ann. § 59-63-140. A school district could adopt a policy but yet refuse to enforce it. In either instance, the school district would be allowed to rely on the exemptions in S.C. Code Ann. § 15-78-60(4) and (17) to avoid liability when a child was the victim of bullying. This is the very absurd result the Respondent certainly will advocate for in response.

For these reasons, this Court should find that the gross negligence standard does not apply and that Appellant has sufficiently proved the existence of a question of fact.

CONCLUSION

For these reasons, Appellant respectfully requests this Court REVERSE the decision of the trial court to exclude the testimony of his expert witness, direct a verdict, and to declare that the Safe School Climate Act has repealed the South Carolina Tort Claims Act. Appellant respectfully requests this Court remand the instant action for a new trial.

THE LAW OFFICES OF JASON E. TAYLOR, P.C.
/s Brian Gambrell
Brian C. Gambrell (SC Bar No. 68253)
Office Address:
810 Dutch Square Blvd
Suite 112
Columbia, SC 29210
Mailing Address:
P.O. Box 2688
Hickory, NC 28603
Telephone: (800) 351-3008
Facsimile: (803) 610-1931
bgambrell@jasonetaylor.com
Attorney for the Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHALND COUNTY
Richland County Circuit Court
Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2019-000951

K.S., a minor, by and through his Guardian ad Litem, James Seeger……..……Appellants

v.

Richland School District Two……..…….……Respondent

CERTIFICATE OF COUNSEL

Undersigned counsel hereby certifies Appellants' Final Brief and Final Reply Brief complies with Rule 211(b), South Carolina Appellate Court Rules.

THE LAW OFFICES OF JASON E. TAYLOR, P.C.
/s Brian C. Gambrell
Brian C. Gambrell (SC Bar # 68253):
810 Dutch Square Blvd, Suite 112
Columbia, SC 29210
Telephone: (800) 351-3008
Facsimile: (803) 610-1931
bgambrell@jasonetaylor.com
Attorney for Appellant