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Court of Appeals  
Division I  
State of Washington

No. 73825-9-I

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IN THE COURT OF APPEALS FOR  
THE STATE OF WASHINGTON  
DIVISION I

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A.Q. and J.Q., individually and as parents and guardians on behalf  
of L.Q., a minor,

Appellants,

v.

BELLEVUE SCHOOL DISTRICT,

Respondent.

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BRIEF OF RESPONDENT

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## TABLE OF CONTENTS

INTRODUCTION.....	1
RESTATEMENT OF ISSUES.....	2
STATEMENT OF THE CASE.....	3
A.    No one reported any HIB of L.Q. during her 8 <sup>th</sup> Grade year, either to the school or to the school district, or even to L.Q.'s own family. ....	3
B.    Plaintiffs instead relied on alleged HIB of a different student to argue that the school should have known what allegedly happened to L.Q. ....	4
C.    Plaintiffs argued their theory of the case to the jury. ....	6
D.    The jury found that the school district was not negligent. ....	7
ARGUMENT.....	8
A.    Standards of review. ....	8
B.    The plaintiffs' vague assignment of error to no particular jury instruction is inadequate, improper, and prejudicial. ....	9
C.    Taken as a whole – as required – the court's instructions properly stated the applicable law. ....	11
D.    The trial court correctly ruled that the school district did not have a heightened duty of a common carrier with regard to HIB. ....	16
E.    Plaintiffs' other objections are unavailing. ....	20
1.    The court instructed the jury on negligence. ....	20
2.    Plaintiffs could and did argue their negligence theory. ....	21
3.    Court's Instruction 15 correctly states the law. .....	23
CONCLUSION .....	28

## TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<b><i>Anfinson v. FedEx Ground Package Sys. Inc.</i></b> , 174 Wn.2d 851, 281 P.3d 289 (2012) .....	25
<b><i>Burlingham-Meeker Co. v. Thomas</i></b> , 58 Wn.2d 79, 360 P.2d 1033 (1961) .....	27
<b><i>Caruso v. Local Union No. 690 of Int'l Bhd. of Teamsters</i></b> , 107 Wn.2d 524, 730 P.2d 1299 (1987) .....	8
<b><i>City of Bellevue v. Raum</i></b> , 171 Wn. App. 124, 286 P.3d 695 (2012) .....	8
<b><i>Cowiche Canyon Conserv. v. Bosely</i></b> , 118 Wn.2d 801, 828 P.2d 549 (1992) .....	10
<b><i>Cox v. Spangler</i></b> , 141 Wn.2d 431, 5 P.3d 1265, 22 P.3d 791 (2000) .....	9
<b><i>Crittenden v. Fibreboard Corp.</i></b> , 58 Wn. App. 649, 794 P.2d 554 (1990) .....	26
<b><i>Crossen v. Skagit County</i></b> , 100 Wn.2d 355, 669 P.2d 1244 (1983) .....	9
<b><i>Gammon v. Clark Equip. Co.</i></b> , 104 Wn.2d 613, 707 P.2d 685 (1985) .....	8
<b><i>Griffin v. W. RS, Inc.</i></b> , 143 Wn.2d 81, 18 P.3d 558 (2001) .....	9
<b><i>Guijosa v. Wal-Mart Stores, Inc.</i></b> , 144 Wn.2d 907, 32 P.3d 250 (2001) .....	11
<b><i>Hall v. Sacred Heart Med. Ctr.</i></b> , 100 Wn. App. 53, 995 P.2d 621 (2000) .....	9

<b><i>Haslund v. City of Seattle,</i></b> 86 Wn.2d 607, 547 P.2d 1221 (1976) .....	27
<b><i>Hinzman v. Palmanteer,</i></b> 81 Wn.2d 327, 501 P.2d 1228 (1972) .....	27
<b><i>Hoglund v. Raymark Indus., Inc.,</i></b> 50 Wn. App. 360, 749 P.2d 164 (1987), <i>rev. denied</i> , 110 Wn.2d 1008 (1988) .....	26
<b><i>J.N. v. Bellingham Sch. Dist.,</i></b> 74 Wn. App. 49, 871 P.2d 1106 (1994) .....	12, 14, 15, 26
<b><i>Keller v. City of Spokane,</i></b> 146 Wn.2d 237, 44 P.3d 845 (2002) .....	25
<b><i>Leach v. School Dist. No. 322 of Thurston Co.,</i></b> 197 Wash. 384, 85 P.2d 666 (1938) .....	17, 18
<b><i>McLeod v. Grant County Sch. Dist. No. 128,</i></b> 42 Wn.2d 316, 255 P.2d 360 (1953) .....	12, 13, 14, 15
<b><i>N.K. v. Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints,</i></b> 175 Wn. App. 517, 307 P.3d 730 (2013) .....	24, 26
<b><i>Niece v. Elmview Group Home,</i></b> 131 Wn.2d 39, 929 P.2d 340 (1997) .....	26
<b><i>Parrilla v. King County,</i></b> 138 Wn. App. 427, 157 P.3d 879 (2007) .....	19, 20
<b><i>Payne v. Paugh,</i></b> 190 Wn. App. 383, 360 P.3d 39 (2015) .....	8, 9, 15, 16
<b><i>Peck v. Siau,</i></b> 65 Wn. App. 285, 827 P.2d 1108, <i>rev. denied</i> , 120 Wn.2d 1005 (1992) .....	13, 14, 15
<b><i>Peterson v. Littlejohn,</i></b> 56 Wn. App. 1, 781 P.2d 1329 (1989) (failure to make specific objection violates CR 51(f)) .....	25

<b><i>Phillips v. Hargrove,</i></b> 161 Wash. 121, 296 P. 559 (1931) .....	17, 18, 20
<b><i>Reed v. Pennwalt Corp.,</i></b> 93 Wn.2d 5, 604 P.2d 164 (1979) (failure to properly object under CR 51(f) generally precludes appellate review of an instruction).....	11
<b><i>Rekhter v. Dep't of Soc. &amp; Health Servs.,</i></b> 180 Wn.2d 102, 323 P.3d 1036 (2014) .....	9
<b><i>Roberts v. Goerig,</i></b> 68 Wn.2d 442, 413 P.2d 626 (1966) .....	22
<b><i>Roumel v. Fude,</i></b> 62 Wn.2d 397, 383 P.2d 283 (1963) .....	11
<b><i>Estate of Ryder v. Kelly-Springfield Tire Co.,</i></b> 91 Wn.2d 111, 587 P.2d 160 (1978) (purpose of CR 51(f) is to allow trial court to correct any mistakes in the instructions in time to prevent the unnecessary expense of a second trial).....	11
<b><i>State v. Etheridge,</i></b> 74 Wn.2d 102, 443 P.2d 536 (1968) .....	23
<b><i>State v. Ng,</i></b> 110 Wn.2d 32, 750 P.2d 632 (1988) .....	22
<b><i>State v. Warwick,</i></b> 16 Wn. App. 205, 555 P.2d 1386 (1976).....	27
<b><i>Stiley v. Block,</i></b> 130 Wn.2d 486, 925 P.2d 194 (1996) .....	9
<b><i>Stuart v. Consol. Foods Corp.,</i></b> 6 Wn. App. 841, 496 P.2d 527 (1972).....	27
<b><i>System Tank Lines v. Dixon,</i></b> 47 Wn.2d 147, 286 P.2d 704 (1955) .....	12
<b><i>Trueax v. Ernst Home Center, Inc.,</i></b> 124 Wn.2d 334, 878 P.2d 1208 (1994) .....	11, 26, 27

<b><i>Vogel v. Alaska S.S. Co.,</i></b> 69 Wn.2d 497, 419 P.2d 141 (1966) .....	9
<b><i>Webb v. Seattle,</i></b> 22 Wn.2d 596, 157 P.2d 312, 158 A.L.R. 810 (1945).....	16, 17, 18
<b><i>Young v. Key Pharm., Inc.,</i></b> 130 Wn.2d 160, 922 P.2d 59 (1996) (plurality opinion) .....	8
<b><i>Yurkovich v. Rose,</i></b> 68 Wn. App. 643, 847 P.2d 925 (1993).....	16, 17, 18
<b>Statutes</b>	
RCW 28A.300.285 .....	15
<b>Other Authorities</b>	
RAP 10.4(g).....	2, 9

## INTRODUCTION

Under the Court's Instructions to the Jury,<sup>1</sup> including the only one that plaintiffs challenged in the trial court (Court's Instruction 15) they argued that the school district had a duty to protect L.Q. from harassment, intimidation, and bullying ("HIB") and that it breached that duty, causing their damages. The court's instructions correctly stated the law. Plaintiffs could and did argue their theory of the case.

But plaintiffs' proposed instructions misstated the law, particularly where the school district's duty to supervise students on the bus arose out of its student-supervision duties, not out of its employment as a common carrier. The duty to supervise students requires only ordinary care under controlling Washington law.

In any event, many of the plaintiffs' arguments and objections were not preserved in the trial court, or are not properly argued on appeal. For instance, jury instructions – even if misleading – cannot support a reversal unless the appellant establishes prejudice. The plaintiffs have failed to even argue prejudice here.

This Court should affirm.

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<sup>1</sup> The Court's Instructions to the Jury are Appendix A to this brief.

## **RESTATEMENT OF ISSUES**

1. Have appellants failed to comply with this Court's necessary and important requirements under RAP 10.4(g) for challenging jury instructions on appeal?
2. Was Court's Instruction 15 a correct statement of the law that permitted plaintiffs to argue their theory of the case to the jury, particularly where they did in fact argue their theory to the jury?
3. A school district owes a duty to use ordinary care to protect students from HIB on school grounds. Should it owe the same duty to protect students from HIB on a school bus, rather than the heightened duty of a common carrier, particularly where the school bus driver should and must be primarily focused on safe driving?
4. Did the trial court abuse its discretion by refusing to instruct the jury regarding the test for determining whether a duty exists, where the trial court had already determined that the above duty existed as a matter of law?
5. Did the trial court abuse its discretion by refusing to give plaintiffs' defective proposed jury instructions, where the correct portions were already in the trial court's existing instructions?
6. Should this Court refuse to consider new instructional challenges raised for the first time on appeal?

## STATEMENT OF THE CASE

Plaintiffs' Statement of the Case is highly argumentative and one-sided. It improperly slants the evidence in a light most favorable to them, ignoring the evidence supporting the jury's verdict, which is ample. That evidence is set forth here.

**A. No one reported any HIB of L.Q. during her 8<sup>th</sup> Grade year, either to the school or to the school district, or even to L.Q.'s own family.**

The school district moved to dismiss this case under CR 12(b)(6), and on summary judgment. CP 27-49; 103-24. Each of these motions was granted in part. CP 99-101; 834-25 (granting partial summary judgment on reconsideration). The claims that went to the jury concerned alleged HIB on a school bus when L.Q. was in 8<sup>th</sup> Grade. BA 16 (citing CP 837).<sup>2</sup>

It is undisputed that L.Q. never reported to anyone about her alleged HIB on a school bus (or anywhere else) during the 8<sup>th</sup> Grade. RP 335-38 (plaintiffs' expert acknowledges that L.Q. did not report HIB against her during the 8<sup>th</sup> Grade); RP 562 (no one reported to the school principal any alleged HIB of L.Q. during her 8<sup>th</sup> Grade year); RP 660 (no one reported to the assistant principal any alleged

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<sup>2</sup> Plaintiffs do not challenge the trial court's ruling *in limine* restricting the evidence at trial to alleged school-bus incidents. BA 3-4.

HIB of L.Q. during her 8<sup>th</sup> Grade year); RP 834 (L.Q. did not tell her younger sister (F.Q.) about alleged HIB during her 8<sup>th</sup> Grade year, and F.Q. witnessed only one incident in which L.Q. was called “ugly”); RP 929-30, 997 (L.Q. did not tell her mother about alleged HIB during her 8<sup>th</sup> Grade year); RP 1081, 1083-84, 1089 (L.Q. did not tell her father about alleged HIB during her 8<sup>th</sup> Grade year); RP 1195, 1197-98, 1201 (L.Q. did not tell her parents, teachers, or administrators about alleged HIB during the 8<sup>th</sup> Grade; she did not show alleged “welts” from “stingers” or “hornets” to her parents, to the bus driver, or to any teacher or school administrator).<sup>3</sup>

In sum, no one testified that anyone reported any alleged HIB of L.Q. during her 8<sup>th</sup> Grade year to anyone at the school or school district, or even to her family.

**B. Plaintiffs instead relied on alleged HIB of a different student to argue that the school should have known what allegedly happened to L.Q.**

Lacking evidence that the school district knew anything about alleged 8<sup>th</sup> Grade HIB of L.Q., plaintiffs instead argued that because L.Q. reported one school bus HIB incident regarding her friend, the

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<sup>3</sup> Exhibit 5 is L.Q.’s grade reports, which show no indication that any alleged HIB had an adverse impact on her education, in 8<sup>th</sup> Grade, or all the way through high school.

school should have known about the HIB L.Q. allegedly suffered on the bus. See, e.g., RP 331-33. The trial court instructed the jury – in an unchallenged instruction – that it could not award plaintiffs any damages as a result of L.Q. allegedly witnessing HIB of another student. CP 1032. The school carefully investigated this incident, which allegedly occurred on December 15, 2010. See, e.g., RP 559-61 (principal discusses seriousness of HIB from school’s perspective; see also, Ex 40, p. 14 (student handbook re HIB); RP 709 (assistant principal estimates that he interviewed roughly 200 students while investigating this incident); RP 1293-1311 (executive director of schools explains HIB policies in place at school).

The assistant principal – who was directly in charge of the investigation – found L.Q.’s version of the alleged HIB of another student to be an “outlier”: substantial inconsistencies existed between her version and those of every other witness – including the alleged victim – and L.Q. was not in a position to directly witness the incident. RP 592-96, 657, 711-15. Since L.Q.’s version matched no one else’s, the school did not follow up with her. *Id.* And indeed, L.Q. herself admitted under oath that her claims that she saw a student grab another student’s breasts and butt were false because she

could not see it if it had happened. RP 1212-13; see Ex 1 (report to school that “it was really sick to watch”).<sup>4</sup>

**C. Plaintiffs argued their theory of the case to the jury.**

During closing arguments, plaintiffs claimed to the jury that after L.Q. reported the December 15 incident of alleged HIB against another student, the school did nothing (*e.g.*, “put its head in the sand”) and L.Q. therefore suffered retaliatory harassment. *See, e.g.*, RP 1386-87. They argued that the school district breached its duty to prevent HIB, even while admitting to the jury that the school “spent a ton of time” on the December 15 incident. RP 1387-88. That effort, plaintiffs argued, proves that the school district should have known L.Q. was suffering alleged HIB that *no one* ever reported. RP 1388.

Plaintiffs thus argued that the school district knew or should have known that the alleged HIB went beyond the particular students involved in the December 15 incident. RP 1390-91. They argued that the school should have done much more in response to that incident. RP 1392-94. They argued that the school should have followed up with L.Q. and – despite receiving no reports that she was suffering alleged HIB or retaliation – should have created a “safety plan” for

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<sup>4</sup> Ex 1 is attached as Appendix B.

her because they knew retaliation could take place. RP 1394-96. They argued that these failures to act caused L.Q.'s eating disorder and other problems. RP 1396-97.

In short, plaintiffs argued their negligence theory – duty, breach, causation, and damages – to the jury.

**D. The jury found that the school district was not negligent.**

The Court instructed the jury on the plaintiffs' negligence claims. CP 1012-36 (App. A). The instructions are discussed *infra*.

The jury voted – 11 to one – that the school district was not negligent. CP 1037; RP 1440-42.

## ARGUMENT

### A. Standards of review.

Plaintiffs assign two errors: (1) a vague assignment to “incomplete and incorrect” instructions – with no specific assignment to any particular instruction; and (2) a broad assignment to entry of the judgment – with no argument as to why that was error. BA 3.

The language of jury instructions is left to the trial court's discretion. *Payne v. Paugh*, 190 Wn. App. 383, 402-03, 360 P.3d 39 (2015) (citing *Young v. Key Pharm., Inc.*, 130 Wn.2d 160, 176, 922 P.2d 59 (1996) (plurality opinion)). “Jury instructions are sufficient if they (1) allow each party to argue its theory of the case, (2) are not misleading, and (3) when read as a whole, properly inform the trier of fact of the applicable law.” *City of Bellevue v. Raum*, 171 Wn. App. 124, 142, 286 P.3d 695 (2012) (citing *Caruso v. Local Union No. 690 of Int’l Bhd. of Teamsters*, 107 Wn.2d 524, 529, 730 P.2d 1299 (1987)). Taking the jury instructions as a whole, their primary purpose is to allow both parties to fairly state their cases. See, e.g., *Gammon v. Clark Equip. Co.*, 104 Wn.2d 613, 616-18, 707 P.2d 685 (1985) (evaluating instructions as a whole rather than solely examining the missing jury instruction).

The legal adequacy of jury instructions is reviewed *de novo*. **Hall v. Sacred Heart Med. Ctr.**, 100 Wn. App. 53, 61, 995 P.2d 621 (2000). “[A]n instruction that contains an erroneous statement of the applicable law is reversible error where it prejudices a party.” **Cox v. Spangler**, 141 Wn.2d 431, 442, 5 P.3d 1265, 22 P.3d 791 (2000). “The party challenging an instruction bears the burden of establishing prejudice.” **Payne**, 190 Wn. App. at 403 (citing **Griffin v. W. RS, Inc.**, 143 Wn.2d 81, 91, 18 P.3d 558 (2001)).

The Court reviews a trial judge’s decision not to give a jury instruction for an abuse of discretion. **Rekhter v. Dep’t of Soc. & Health Servs.**, 180 Wn.2d 102, 120, 323 P.3d 1036 (2014) (citing **Stiley v. Block**, 130 Wn.2d 486, 498, 925 P.2d 194 (1996)). “[A] ‘trial court need never give a requested instruction that is erroneous in any respect.’” **Payne**, 190 Wn. App. at 403 (citing **Crossen v. Skagit County**, 100 Wn.2d 355, 360-61, 669 P.2d 1244 (1983) (quoting **Vogel v. Alaska S.S. Co.**, 69 Wn.2d 497, 503, 419 P.2d 141 (1966))).

**B. The plaintiffs’ vague assignment of error to no particular jury instruction is inadequate, improper, and prejudicial.**

The plaintiffs’ vague assignment of error to no particular jury instruction violates RAP 10.4(g), which requires the following:

A separate assignment of error for each instruction which a party contends was improperly given or refused must be

included with reference to each instruction or proposed instruction by number.

This rule is important, as it prevents sandbagging.

It is virtually impossible to tell from plaintiffs' vague assignment of error, or their vague arguments at BA 20-29, what specific instructions were supposedly in error. At a minimum, plaintiffs should not be permitted to argue in their reply about court's instructions never mentioned in their argument. **Cowiche Canyon Conserv. v. Bosely**, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (appellant may not raise new argument for first time in reply).

The only court instruction mentioned by number in plaintiffs' entire argument section is Court's Instruction 15. BA 27. This is likely because *that was the only court instruction regarding liability to which the plaintiffs substantively objected at trial*. See RP 1359-61.<sup>5</sup> The Court should not address any objections to the court's other instructions, which are the law of the case. See, e.g., CR 51(f) (one challenging an instruction in the trial court must "state distinctly the matter to which he objects and the grounds of his objection, specifying the number, paragraph or particular part of the instruction

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<sup>5</sup> Plaintiffs made typographical suggestions on instructions 8 and 9 (RP 1358-59) and also objected to some damages instructions that the jury never reached, so they are irrelevant here.

to be given or refused and to which objection is made”); ***Estate of Ryder v. Kelly-Springfield Tire Co.***, 91 Wn.2d 111, 114, 587 P.2d 160 (1978) (purpose of CR 51(f) is to allow trial court to correct any mistakes in the instructions in time to prevent the unnecessary expense of a second trial); ***Roumel v. Fude***, 62 Wn.2d 397, 399-400, 383 P.2d 283 (1963) (same); ***Reed v. Pennwalt Corp.***, 93 Wn.2d 5, 6-7, 604 P.2d 164 (1979) (failure to properly object under CR 51(f) generally precludes appellate review of an instruction); ***Guijosa v. Wal-Mart Stores, Inc.***, 144 Wn.2d 907, 917, 32 P.3d 250 (2001) (when no party objects to an instruction, it becomes the law of the case); ***Trueax v. Ernst Home Center, Inc.***, 124 Wn.2d 334, 339, 878 P.2d 1208 (1994) (unchallenged instructions may not serve as a basis for new trial).

**C. Taken as a whole – as required – the court’s instructions properly stated the applicable law.**

Taken as a whole – as required – the court’s instructions to the jury properly stated the applicable law on plaintiffs’ HIB negligence claim. Court’s Instruction 10 explained negligence:

Negligence is the failure to exercise ordinary care. It is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do some act that a reasonably careful person would have done under the same or similar circumstances.

CP 1024. This is the standard negligence instruction, WPI 10.01. It is based on ***System Tank Lines v. Dixon***, 47 Wn.2d 147, 286 P.2d 704 (1955), and cases cited therein.<sup>6</sup>

Court's Instruction 15 stated the school district's duty regarding student-on-student HIB, and defined relevant terms:

A school district has a duty to take ordinary care to prevent harassment, intimidation and bullying of one student by another if it knows or has reason to know that a student is the subject of harassment, intimidation or bullying by another student.

Harassment, intimidation and bullying means any intentionally written or verbal or physical act when the intentional electronic, written, verbal, or physical act:

- a) Physically harms a student or damages a student's property; or
- b) Has the effect of substantially interfering with a student's education; or
- c) Is so severe, persistent or pervasive that it creates an intimidating or threatening educational environment; or
- d) Has the effect of substantially disrupting the orderly operation of the school.

CP 1029. The first paragraph of this instruction is based on ***McLeod v. Grant County Sch. Dist. No. 128***, 42 Wn.2d 316, 318-22, 255 P.2d 360 (1953); ***J.N. v. Bellingham Sch. Dist.***, 74 Wn. App. 49,

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<sup>6</sup> Plaintiffs also proposed this instruction. CP 751.

56-60, 871 P.2d 1106 (1994); **Peck v. Siau**, 65 Wn. App. 285, 292, 827 P.2d 1108, *rev. denied*, 120 Wn.2d 1005 (1992).

In **McLeod**, a student was raped in a dark room beneath a grandstand in a school gymnasium when the students were left alone in the gym by the teacher assigned to supervise them. 42 Wn.2d at 317-18. The Court held that because the school voluntarily undertook custody of the students, it had a duty to control them to prevent them from intentionally harming the victim, if the school knew or had reason to know that it had the ability to control the students, and knew or had reason to know of the necessity and opportunity for exercising such control. *Id.* at 363. The specific harm (the rape) did not have to be foreseeable, but it had to fall within the general field of danger “that the darkened room under the bleachers might be utilized during periods of unsupervised play for acts of indecency between school boys and girls.” *Id.* at 322.

In **Peck**, a school librarian engaged in sexual conduct with a minor student on school grounds. 65 Wn. App. at 287. Addressing **McLeod** and similar cases, the Court held that “the district will be liable only if the wrongful activities are foreseeable, **McLeod**, at 320-21 . . . and the activities will be foreseeable only if the district knew or in the exercise of reasonable care should have known of the risk

that resulted in their occurrence.” 65 Wn. App. at 293. The specific question thus became, “Did the District know, or in the exercise of reasonable care should it have known, that [the librarian] was a risk to its students?” *Id.* The answer was no, as a matter of law. *Id.*

In **J.N.**, a fourth grader repeatedly sexually assaulted a first grader after forcing him at knife-point into the boys’ restroom in the school cafeteria during recesses. 74 Wn. App. at 51 & nn. 1 & 2. The trial court granted summary judgment on the victim’s negligent supervision claim because he failed to show any evidence that the school knew or should have known about the perpetrator’s dangerous propensity to commit “this type of violent of act.” *Id.* at 56. This Court reversed, holding that the question was not whether the school district knew or reasonably should have known that the perpetrator would commit this particular wrong, but rather (as in **McLeod** and **Peck**) whether this sort of wrong was within the general ambit of the risk created by “arguably inadequate recess supervision, and the presence of nearby, accessible, and generally unsupervised rest rooms.” *Id.* at 59-60. The Court also stated that in any event, the plaintiff had presented “overwhelming evidence of notice to the District of A.B.’s prior actions demonstrating a propensity to assault other students.” *Id.* at 60. The Court remanded for trial. *Id.* at 50.

*McLeod, Peck*, and *J.N.* amply support the first paragraph of Courts' Instruction 15. As in those cases, this instruction told the jury that the school district had a duty to take ordinary care to prevent HIB of one student by another if it knew or had reason to know that a student was the subject of HIB by another student. CP 1029. Arguably, under *McLeod* and *Peck*, the trial court could have narrowed the instruction further, specifying that the risk was of student-on-student HIB on a school bus with an adult present. But this broad instruction certainly permitted the plaintiffs to argue – and they *did* argue – that because the school district was plainly aware of the general risk of student-on-student HIB, and it knew or in the exercise of reasonable care should have known that at least one student was the subject of HIB on the bus (*i.e.*, the December 15, 2010 incident), then it had a duty to protect L.Q. See, *e.g.*, RP 1387-96. Plaintiffs could and did argue their theory of the case.

As for the second part of Court's Instruction 15, under RCW 28A.300.285, school districts are required to adopt or amend policies and procedures prohibiting HIB of any student. Paragraph (2) of the statute defines HIB. See Appendix. The trial court incorporated that definition into its Instruction 15. CP 1029. The wording of a particular instruction is left to the trial court's discretion. *Payne*, 190 Wn. App.

at 403. The plaintiffs have shown no abuse of discretion by incorporating the relevant statutory definition. The Judge simply believed that the jury would benefit from knowing the legal definition of HIB. And the plaintiffs did not establish below, and have not established here, any prejudice from giving this instruction.

In sum, Court's Instruction 15 accurately stated the law for the jury. Taken together with the other negligence instruction, it allowed the plaintiffs to argue their theory of the case. No abuse of discretion occurred, nor any legal error.

**D. The trial court correctly ruled that the school district did not have a heightened duty of a common carrier with regard to HIB.**

The trial court correctly rejected plaintiffs' argument that the school district had a heightened duty of a common carrier with regard to their HIB claims. BA 18, 21-23 (citing RP 1368-69). The court specifically ruled that (a) the plaintiffs failed to cite any on-point authority for it, and (b) "I am troubled by the notion that if the same exact things happened in the lunchroom, the school district would have a different standard of care." *Id.* The court did not abuse its discretion in rejecting plaintiffs' proposed instruction.

Plaintiffs put substantial reliance on *Yurkovich v. Rose*, 68 Wn. App. 643, 847 P.2d 925 (1993) and *Webb v. Seattle*, 22 Wn.2d

596, 602, 157 P.2d 312, 158 A.L.R. 810 (1945). In those cases, the bus drivers violated regulations on them as *bus drivers*. **Yurkovich**, 68 Wn. App. at 646 (trial court found negligence as a matter of law, where driver dropped a student on side of highway without activating any safety lights or devices, did not keep her in sight, and drove off while she was crossing); **Webb**, 22 Wn.2d at 600-61 (driver made a habit of stopping in the middle of the road to pick up school children, encouraging them to run along-side the bus, and child fell under the bus; “those who convey children to and from school must exercise toward them the highest degree of care consistent with the practical operation of the conveyance”). These circumstances are quite distinct from the question of whether the driver – who obviously has a heightened duty to focus on safe driving, traffic, signals, etc. – should also have a heightened duty to supervise middle-school students’ behavior while the bus is in motion. The trial court correctly ruled that the plaintiffs failed to provide authority for their instruction.

On appeal, plaintiffs also cite **Leach v. School Dist. No. 322 of Thurston Co.**, 197 Wash. 384, 85 P.2d 666 (1938); and **Phillips v. Hargrove**, 161 Wash. 121, 296 P. 559 (1931). BA 23. In **Leach**, a student waiting in line to board a school bus was shoved into the door of the bus, which shattered, injuring him. 197 Wash. at 385. The

Court held that the school district did not breach its heightened duty as a common carrier by not using safety glass. *Id.* at 390. As in **Yurkovich** and **Webb**, the heightened duty applied to the school district *as a common carrier*, not as a supervisor of students.

This distinction is explained in **Phillips**. There, a school bus driver pulled to the side of a highway and suddenly, without warning, opened the rear door, allowing a six-year-old child to debark and walk in front of an oncoming car. 161 Wash. at 127. A jury instructed on an ordinary duty of care rendered a defense verdict, but the trial court granted a new trial. *Id.* The Supreme Court held that the school district had a heightened duty of care *when acting as a common carrier* (*id.* at 126, emphases added):

If a school district is liable for the failure to exercise ordinary care with reference to the school buildings, school grounds, and manual training equipment, there would appear to be no reason why it should not, *when it engages in the carrying of passengers by a school bus*, be required to exercise the same degree of care that is exercised by passenger carriers generally. If the rule of the highest degree of care arises, as all the authorities say, *from the nature of the employment*, and on the grounds of public policy, there is no reason why it should not be applied to a school district, *the same as any other passenger carrier*. Certainly, school children are entitled to the same degree of care as are adults.

**Phillips** thus supports the trial court's ruling. Plaintiffs offered no evidence that the school district failed to act appropriately as a

*common carrier*. Rather, their claim was that the bus driver failed to properly supervise the students. The same duty of care should apply to the school district arising out of its employment as a supervisor of students, regardless of where that supervision happens to occur. Indeed, if a school teacher takes students on a field trip, riding along on the school bus, his or her duty to supervise the students should not be increased to the highest standard of care.

Plaintiffs' own argument makes this obvious: "The court's instructions failed to account for the increased vulnerability that children face when *the only supervision available is from a bus driver distracted by traffic . . .*" BA 2. A bus driver obviously has a heightened duty *to focus on the traffic*. Placing a heightened duty on him or her to focus primarily on the students would be as unwise as it is unsupported by any legal authority. The trial court did not err.

Finally on this point, this Court refused to impose a heightened duty of care on a common carrier based on its failure to control the actions of a third party in ***Parrilla v. King County***, 138 Wn. App. 427, 430, 157 P.3d 879 (2007). There, a passenger on a city bus was acting in an erratic and threatening fashion. The driver got off the bus, leaving the erratic passenger aboard with the bus running. The passenger commandeered the bus and ran it into a car, whose

owners and passengers sued the city. While this Court determined that the city owed a duty of ordinary care to the injured third parties because the driver knew or should have known the passenger was dangerous, it rejected the imposition of a heightened duty simply due to the driver's status as a common carrier. 138 Wn. App. at 442-43.

In sum, the duty of care arises from the nature of the employment. *Phillips*, 161 Wash. at 126. School bus drivers owe a heightened duty in their employment as common carriers. But to the extent that they are employed to supervise students, their duty is ordinary care. The trial court did not err in rejecting the heightened duty instruction and imposing a duty of ordinary care.

**E. Plaintiffs' other objections are unavailing.**

Plaintiffs raise three additional jury instruction arguments. BA 23-29. None of them establishes an abuse of discretion, nor that plaintiffs suffered any prejudice. The Court should affirm.

**1. The court instructed the jury on negligence.**

First, plaintiffs argue that sufficient evidence existed to instruct the jury on the school district's alleged negligence. BA 24-25. But as fully explained above, the jury was instructed on negligence.

**2. Plaintiffs could and did argue their negligence theory.**

Second, plaintiffs claim that they could not argue their negligence theory because the trial court (a) declined to give an instruction about how the duty arises (*i.e.*, a “special relationship”); and (b) included the statutory definition of HIB. BA 25-26. Neither argument has merit.

Plaintiffs sought to insert the first paragraph of their proposed instruction 13 (CP 754) into Court’s Instruction 15. RP 1360:

[MR. WRENN for plaintiffs]: We believe the standard that should be at the top [of Court’s Instruction 15] is what we submitted in foreseeability in Plaintiffs’ jury Instruction No. 13. I have a copy here that I can hand up.

THE COURT: Okay.

MR. WRENN: Okay. And that is “Defendant, as a school district, owes to its students a duty to anticipate reasonably foreseeable dangers and take precautions to protect its students from such dangers, including the harmful actions of other students.[”]

The trial court responded that it had already determined the duty exists as a matter of law, so there was no need to use language from cases about how a duty may arise (*id.*, emphases added):

THE COURT: . . . Well, the problem that I have with this – I think it is probably correct insofar as it links duty and foreseeability. The problem is that it then has the jury determining what – if they have a duty. **And I think that the question of duty is a question of law for the Court.**

MR WRENN: But it’s –

THE COURT: And if I thought there weren't a duty . . . then I **would have granted Defendant's motion** [to dismiss] . . . .

The plaintiffs then argued in the alternative for a “foreseeability” instruction, relying on an instruction that the school district had earlier proposed: “Even if the Court does not give that, what we would still like is an instruction on foreseeability . . . . It’s their proposed 27.” RP 1361.<sup>7</sup> But the trial court explained that the “knew or should have known” concept was already incorporated into the Court’s Instruction 15 (RP 1361):

THE COURT: But it [defendant’s proposed 27] talks about new [*sic*] or – and exercise of reasonable care should have known, which is . . . contained in Instruction 15.

The court stated that it understood the objection, but would leave its Instruction 15 as is. *Id.*

The trial court did not abuse its discretion by rejecting duplicative language already covered in its proposed instructions. See, e.g., **State v. Ng**, 110 Wn.2d 32, 41, 750 P.2d 632 (1988) (“trial court has discretion to decide how instructions are worded” (citing **Roberts v. Goerig**, 68 Wn.2d 442, 455, 413 P.2d 626 (1966))); “requested instruction need not be given if the subject matter is

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<sup>7</sup> Defendant’s proposed 27 reads: “A school district will be liable only if the wrongful activities were foreseeable and the activities will be foreseeable only if the school district knew or in the exercise of reasonable care should have known of the risk that resulted in the occurrence.” CP 717.

adequately covered elsewhere in the instructions” (citing ***State v. Etheridge***, 74 Wn.2d 102, 110, 443 P.2d 536 (1968)). Court’s Instruction 15 expressly covered both the duty (“school district has a duty to take ordinary care to prevent harassment, intimidation and bullying of one student by another”) and foreseeability (“if it knows or has reason to know that a student is the subject of harassment, intimidation or bullying by another student”). This, Court’s Instruction 10 (defining negligence), and Court’s Instruction 8,<sup>8</sup> refute the plaintiffs’ claim that the “court’s instructions completely prevented L.Q. from presenting a negligence case to the jury.” BA 25.

Plaintiffs also complain about what the school district allegedly argued regarding “school harassment law.” BA 26. Plaintiffs cannot challenge a jury instruction by misconstruing what counsel may have argued to the Judge. Rather, they must explain why *the instruction* misstated the law or prevented them from arguing their theory of the case. Plaintiffs’ second argument lacks merit.

### **3. Court’s Instruction 15 correctly states the law.**

Plaintiffs’ final argument is (again) that Court’s Instruction 15 misstates the law. BA 26-29. The thrust of this argument is that the

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<sup>8</sup> Court’s Instruction 8 includes, “Plaintiff . . . claims that defendant [school district] was negligent in failing to prevent” HIB. CP 1022.

instruction “required proof of a known specific threat in order to trigger a protective duty.” BA 26. Plaintiffs misread the instruction.

Court’s Instruction 15 says that the “school district has a duty to take ordinary care to prevent harassment, intimidation and bullying of one student by another if it knows or has reason to know that a student is the subject of harassment, intimidation or bullying by another student.” CP 1029. This instruction did not require that the school district be aware of any specific threat to any specific student, but rather that the school district know *or have reason to know* that “a student” was subjected to HIB by “another student.” *Id.* This was wholly consistent with plaintiffs’ last surviving theory of liability: that the school district’s duty to protect arose because L.Q. witnessed and reported the December 15 HIB of “a student” by “another student.” *See supra*, Statement of the Case § C. Plaintiffs could and did argue their theory of the case. *Id.*

Since Court’s Instruction 15 did not require plaintiffs to prove that “**a specific student** was targeted by another student’s **specific conduct** meeting the statutory definition of” HIB, the case plaintiffs cite is inapposite. BA 26-28 (emphasis theirs) (citing *N.K. v. Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints*, 175 Wn. App. 517, 522, 307 P.3d 730 (2013)). Since the

instruction does not literally say what plaintiffs assert, perhaps they are suggesting that the instruction *could* be read that way, so it is potentially misleading. While plaintiffs' reading is not really plausible, even if it were, when an instruction is merely misleading, prejudice must be shown. ***Anfinson v. FedEx Ground Package Sys. Inc.***, 174 Wn.2d 851, 860, 281 P.3d 289 (2012) (citing ***Keller v. City of Spokane***, 146 Wn.2d 237, 249-50, 44 P.3d 845 (2002)).

To establish prejudice, the appellant must show that an incorrect interpretation was urged upon the jury in closing arguments. *Id.* at 876-77. Plaintiffs have not even attempted to make this showing, cannot raise it for the first time in their reply, and could not make the showing if they tried. See RP 1411-12 (school district discusses Court's Instruction 15 with jury):

And so we had the duty to exercise ordinary care to prevent harassment that was so severe, persistent, and pervasive that it creates an intimidating or threatening educational environment.

The school district thus argued that Court's Instruction 15 was *not* limited to a specific student subjected to specific conduct.

In any event, plaintiffs did not raise this objection to Court's Instruction 15 during objections to the court's instructions, so it is waived. See, e.g., ***Peterson v. Littlejohn***, 56 Wn. App. 1, 11, 781

P.2d 1329 (1989) (failure to make specific objection violates CR 51(f)); **Trueax**, 124 Wn.2d at 340-41 (lack of specific objection precludes consideration on appeal).

And plaintiffs cite no case holding that instructing the jury on the statutory definition of HIB is legally incorrect, much less an abuse of discretion. They instead rely on cases regarding *whether a duty exists at all*. BA 27-29 (citing, *inter alia*, **Niece v. Elmview Group Home**, 131 Wn.2d 39, 929 P.2d 340 (1997); **N.K.**, *supra*; **McCleod**, *supra*; **J.N.**, *supra*). As the trial court stated, if there was no duty, it would have dismissed the case. Instructing the jury under cases asking whether a duty exists would have been error.

Indeed, *plaintiffs'* proposed instructions misstated the law. For example, their negligence instructions discussed the common-carrier standard, which was incorrect for the reasons above (*i.e.*, the duty arose out of employment as supervisor of children, not as a common carrier). CP 996, 998. Failure to propose a *correct* instruction waives the issue on appeal. **Crittenden v. Fibreboard Corp.**, 58 Wn. App. 649, 655, 794 P.2d 554 (1990) ("If a party is not satisfied with an instruction, it must propose a correct instruction. If a party fails to propose a correct instruction, it cannot complain about the court's failure to give it"; citing **Hoglund v. Raymark Indus., Inc.**, 50 Wn.

App. 360, 368, 749 P.2d 164 (1987), *rev. denied*, 110 Wn.2d 1008 (1988); see also **Hinzman v. Palmanteer**, 81 Wn.2d 327, 334, 501 P.2d 1228 (1972) (“court is under no obligation to give an instruction which is erroneous in any respect”). The issue was not preserved.

And even if a party proposes correct alternate instructions, appellate courts refuse to review alleged instructional errors not raised below. **Haslund v. City of Seattle**, 86 Wn.2d 607, 615-16, 547 P.2d 1221 (1976); **State v. Warwick**, 16 Wn. App. 205, 212, 555 P.2d 1386 (1976). An implied objection based on proposed instructions is “useless” because it fails to apprise the trial court of the particular part of the court's instruction to which objection is made. CR 51; **Trueax**, 124 Wn.2d at 339; **Burlingham-Meeker Co. v. Thomas**, 58 Wn.2d 79, 82, 360 P.2d 1033 (1961); **Stuart v. Consol. Foods Corp.**, 6 Wn. App. 841, 846, 496 P.2d 527 (1972). This Court need not consider such groundless objections on appeal. **Trueax**, 124 Wn.2d at 342.

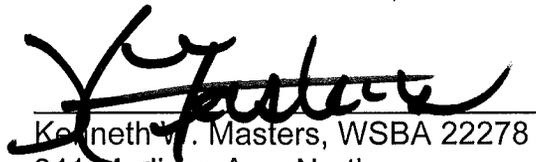
In sum, plaintiffs’ last argument misreads Court’s Instruction 15, is unsupported by relevant legal authority, was not properly raised in the trial court, is not properly preserved on appeal, caused no prejudice, and lacks merit in any event. The Court should affirm.

## CONCLUSION

The court's instructions to the jury correctly stated the law, were not misleading, and permitted the plaintiffs to argue their theory of the case. Even if they had suffered from some defect, however, plaintiffs failed to argue – much less prove – any prejudice. And most of the arguments they raise here were not properly preserved in any event. The Court should affirm the jury's verdict.

RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of April, 2016.

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**CERTIFICATE OF SERVICE BY MAIL AND/OR EMAIL**

I certify that I caused to be mailed, a copy of the foregoing **BRIEF OF RESPONDENT** postage prepaid, via U.S. mail on the 4<sup>th</sup> day of April, 2016, to the following counsel of record at the following addresses:

James E. Baker  
JERRY MOGERG & ASSOCIATES, P.S.  U.S. Mail  
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Seattle, WA 98121  Facsimile

  
\_\_\_\_\_  
Kenneth W. Masters, WSBA 22278  
Attorney for Respondent

# APPENDIX A

**FILED**  
KING COUNTY WASHINGTON

JUL 01 2015

SUPERIOR COURT CLERK  
BY Melissa Ehlers  
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR  
KING COUNTY

<p>ALLEN G. QUYNN, and JENNIFER A. QUYNN, husband and wife, individually, and as parents and guardians on behalf of LILLIAN J. QUYNN, their minor child,</p> <p>Plaintiffs,</p> <p>V.</p> <p>BELLEVUE SCHOOL DISTRICT,</p> <p>Defendants.</p>	<p>NO. 14-2-04360-1SEA</p>
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**COURT'S INSTRUCTIONS TO THE JURY**

DATE: July 2, 2015

  
HONORABLE PALMER ROBINSON  
SUPERIOR COURT JUDGE

**JURY INSTRUCTION NO. 1**

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law as I explain it to you, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses and the exhibits that I have admitted during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

In order to decide whether any party's claim has been proved, you must consider all of the evidence that I have admitted that relates to that claim. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of the witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things they testify about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the

issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict.

The law does not permit me to comment on *the evidence in any way*. I would be commenting on the evidence if I indicated my personal opinion about the value of testimony or other evidence. Although I have not intentionally done so, if it appears to you that I have indicated my personal opinion, either during trial or in giving these instructions, you must disregard it entirely.

As to the comments of the lawyers during this trial, they are intended to help you understand the evidence and apply the law. However, it is important for you to remember that the lawyers' remarks, statements, and arguments are not evidence. You should disregard any remark, statement, or argument that is not supported by the evidence or the law as I have explained it to you.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

As jurors, you have a duty to consult with one another and to deliberate with the intention of reaching a verdict. Each of you must decide the case for yourself, but only after an impartial consideration of all of the evidence with your fellow jurors. Listen to one another carefully. In the course of your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon the evidence. You should not surrender your honest convictions about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of obtaining enough votes for a verdict.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, bias, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

Finally, the order of these instructions has no significance as to their relative importance. They are all equally important. In closing arguments, the lawyers may properly discuss specific instructions, but you must not attach any special significance to a particular instruction that they may discuss. During your deliberations, you must consider the instructions as a whole.

JURY INSTRUCTION NO. 2

The evidence that has been presented to you may be either direct or circumstantial. The term "direct evidence" refers to evidence that is given by a witness who has directly perceived something at issue in this case. The term "circumstantial evidence" refers to evidence from which, based on your common sense and experience, you may reasonably infer something that is at issue in this case.

The law does not distinguish between direct and circumstantial evidence in terms of their weight or value in finding the facts in this case. One is not necessarily more or less valuable than the other.

**JURY INSTRUCTION NO. 3**

The law treats all parties equally whether they are organizations or individuals. This means that organizations and individuals are to be treated in the same fair and unprejudiced manner.

**JURY INSTRUCTION NO. 4**

Any act or omission of a school district employee is the act or omission of the school district.

**JURY INSTRUCTION NO. 5**

A witness who has special training, education, or experience may be allowed to express an opinion in addition to giving testimony as to facts.

You are not, however, required to accept his or her opinion. To determine the credibility and weight to be given to this type of evidence, you may consider, among other things, the education, training, experience, knowledge, and ability of the witness. You may also consider the reasons given for the opinion and the sources of his or her information, as well as considering the factors already given to you for evaluating the testimony of any other witness.

**JURY INSTRUCTION NO. 6**

You should decide the case of each plaintiff separately as if it were a separate lawsuit. The instructions apply to each plaintiff unless a specific instruction states that it applies only to a specific plaintiff.

**JURY INSTRUCTION NO. 7**

When it is said that a party has the burden of proof on any proposition, or that any proposition must be proved by a preponderance of the evidence, or the expression “if you find” is used, it means that you must be persuaded, considering all the evidence in the case bearing on that question, that the proposition on which that party has the burden of proof is more probably true than not true.

**JURY INSTRUCTION NO. 8**

The following is merely a summary of the claims of the parties. You are not to consider the summary as proof of the matters claimed, and you are to consider only those matters that are established by the evidence. These claims have been outlined solely to aid you in understanding the issues.

Plaintiff Lillian Quynn claims that defendant Bellevue School District was negligent in failing to prevent bullying, harassment, and intimidation she alleges to have experienced both on her school bus and in school.

Plaintiff claims that such negligence was a proximate cause of injury and damage to her.

Plaintiffs Allen Quynn and Jenny Quynn also claim the defendant's negligence was a proximate cause of damages they sustained; specifically loss of love and companionship of Lillian and injury to or destruction of the parent-child relationship.

The defendant claims that Lillian Quynn was contributorily negligent. The plaintiffs deny that claim.

The defendant denies it was negligent. It also denies the nature and extent of the damages claim by plaintiffs.

INSTRUCTION NO. 9

The plaintiffs have the burden of proving each of the following propositions:

First, that the defendant acted, or failed to act, in one of the ways claimed by the plaintiffs and that in so acting or failing to act, the defendant was negligent;

Second, that the plaintiffs were injured;

Third, that the negligence of the defendant was a proximate cause of the injury to the plaintiffs.

The defendant has the burden of proving each of the following propositions:

First, that plaintiff Lillian J. Quynn acted, or failed to act, in one of the ways claimed by the defendant, and that in so acting or failing to act, plaintiff Lillian J. Quynn was negligent;

Second, that the negligence of plaintiff Lillian J. Quynn was a proximate cause of plaintiff Lillian J. Quynn's own injuries and was therefore contributory negligence.

**JURY INSTRUCTION NO. 10**

Negligence is the failure to exercise ordinary care. It is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do some act that a reasonably careful person would have done under the same or similar circumstances.

INSTRUCTION NO. 11

Ordinary care means the care a reasonably careful person would exercise under the same or similar circumstances.

When referring to a child, ordinary care means the same care that a reasonably careful child of the same age, intelligence, maturity, learning, and experience would exercise under the same or similar circumstances.

INSTRUCTION NO. 12

Contributory negligence is negligence on the part of a person claiming injury or damage that is a proximate cause of the injury or damage claimed.

**INSTRUCTION NO. 13**

If you find contributory negligence, you must determine the degree of negligence, expressed as a percentage, attributable to the person claiming injury or damage. The court will furnish you a special verdict form for this purpose. Your answers to the questions in the special verdict form will furnish the basis by which the court will apportion damages, if any.

**JURY INSTRUCTION NO. 14**

The term "proximate cause" means a cause which in a direct sequence produces the injury complained of and without which such the injury would not have happened.

There may be more than one proximate cause of an injury.

INSTRUCTION NO. 15

A school district has a duty to take ordinary care to prevent harassment, intimidation and bullying of one student by another if it knows or has reason to know that a student is the subject of harassment, intimidation or bullying by another student.

Harassment, intimidation and bullying means any intentionally written or verbal or physical act when the intentional electronic, written, verbal, or physical act:

- a) Physically harms a student or damages the student's property; or
- b) Has the effect of substantially interfering with a student's education; or
- c) Is so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment; or
- d) Has the effect of substantially disrupting the orderly operation of the school.

INSTRUCTION NO. 16

If your verdict is in favor of the plaintiffs and if you find that:

(1) before this occurrence the plaintiff had a mental condition that was not causing pain or disability; and

(2) the condition made the plaintiff more susceptible to injury than a person in normal health,

then you should consider all the injuries and damages that were proximately caused by the occurrence, even though those injuries, due to the pre-existing condition, may have been greater than those that would have been incurred under the same circumstances by a person without that condition.

There may be no recovery, however, for any injuries or disabilities that would have resulted from natural progression of a pre-existing condition even without this occurrence.

INSTRUCTION NO. 17

If your verdict is in favor of the plaintiffs and if you find that:

(1) before this occurrence the plaintiff had a mental condition that was not causing pain or disability; and

(2) because of this occurrence the pre-existing condition was lighted up or made active,

then you should consider the lighting up and any other injuries that were proximately caused by the occurrence, even though those injuries, due to the pre-existing condition, may have been greater than those that would have been incurred under the same circumstances by a person without that condition.

There may be no recovery, however, for any injuries or disabilities that would have resulted from natural progression of a pre-existing condition even without this occurrence.

INSTRUCTION NO. 18

You are instructed that that you may not award any damages to plaintiffs which they suffered as a result of Lilly seeing any assault of her friend on the school bus on December 15, 2010.

INSTRUCTION NO. 19

It is the duty of the court to instruct you as to the measure of damages on the plaintiffs' claims. By instructing you on damages the court does not mean to suggest for which party your verdict should be rendered.

If you find for more than one plaintiff, you should determine the damages of each plaintiff separately.

If you find for plaintiff Lillian Quynn, then you must determine the amount of money that will reasonably and fairly compensate plaintiff Lillian Quynn for such damages as you find were proximately caused by the negligence of the defendant.

*You should consider the following future economic damages elements:*

- The reasonable value of necessary medical care, treatment and services with reasonable probability to be required in the future.

*You should also consider the following non-economic damages elements:*

- The nature and extent of the injuries.
- The disability and loss of enjoyment of life experienced and with reasonable probability to be experienced in the future.
- The pain and suffering, both mental and physical, and inconvenience experienced and with reasonable probability to be experienced in the future.

If you find for Allen and Jenny Quynn, then you must determine the amount of money that will reasonably and fairly compensate them for such damages to them as you find were proximately caused by the injury to their child.

You should consider the following past economic damage elements:

- The reasonable value of earnings lost to the present time.

You should also consider the following non-economic damages elements:

- Such amount as is just under all the circumstances for loss of love and companionship of the child and injury to or the destruction of the parent-child relationship.

The burden of proving damages rests upon the plaintiffs. It is for you to determine, based upon the evidence, whether any particular element has been proved by a preponderance of the evidence.

Your award must be based upon evidence and not upon speculation, guess, or conjecture.

The law has not furnished us with any fixed standards by which to measure noneconomic damages. With reference to these matters you must be governed by your own judgment, by the evidence in the case, and by these instructions.

**JURY INSTRUCTION NO. 20**

When you begin to deliberate, your first duty is to select a presiding juror. The presiding juror's responsibility is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

You will be given the exhibits admitted in evidence and these instructions. You will also be given a special verdict form.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. In your question, do not state how the jury has voted, or in any other way indicate how your deliberations are proceeding. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

In order to answer any question on the special verdict form, ten jurors must agree upon the answer. It is not necessary that the jurors who agree on the answer be the same

jurors who agreed on the answer to any other question, so long as ten jurors agree to each answer.

When you have finished answering the questions according to the directions on the special verdict form, the presiding juror will sign the verdict form. The presiding juror must sign the verdict whether or not the presiding juror agrees with the verdict. The presiding juror will then tell the bailiff that you have reached a verdict. The bailiff will bring you back into court where your verdict will be announced.

# APPENDIX B

**Plaintiff's Exhibit No. 1**

### Chinook Incident Statement

Student Name: Willy DUNN Grade: 8 Date of Incident: 12/15/10

As clearly as possible, describe the situation you witnessed or in which you were involved. Please be honest and complete in your statement. Add details you actually saw, heard, or the words as spoken by another individual. Provide information about location, time of day, and the names of other people present or involved in the incident. If you believe you have an understanding of why a situation occurred, please include that in addition to the factual information you provide.

yesterday on the bus something terrible happened to my friend Becky Thomas. We were riding home on bus 30 in the afternoon and we didn't have our usual bus driver. My friend Becky has always been picked on by the boys on our bus - they take her backpack and her phone a lot and the bus driver never seems to care. She is kind of a shy person and doesn't do much about these things. Yesterday though the boys on the bus went a little too far. I was sitting next to Becky but I forget something and when I came back, Yofi Wyle and Isaac Engvik were sitting next to her when there was room so that they didn't need to sit 3 to a seat. I had to sit in the back of the bus. The boys ~~stole~~ <sup>stole</sup> by taking Becky's backpack and they took her tampons from her backpack and snook the around. Then somehow they got a hold of her foot and took her shoe. At one point, there were four

Signature: Willy Dunn

Date: 12/16/10

(Additional space on the back if needed.)

Willy - I saw screen grabbing  
Becky's chest & take her backpack  
and shoe.

(Becky didn't really  
know up to this point)

Boys on the seat next to her. They  
were one on top of her and screen  
trulson (the third boy) was grabbing  
her boobs. Yofi Wyle grabbed her  
butt. It was really sick to watch and  
I felt helpless b/c I couldn't get to  
her b/c I was in the back. I'm not  
completely sure if Haise didn't play  
that much of a role in this. But  
I know that he was on the seat  
at one time. What really bothered me  
though was that no one bothered to  
help her. There were people aren't  
around but no one tried to help. The  
bus driving didn't even notice anything.  
I really hope that you can do something  
about this. Thank you.

DANIEL MORA - SAID SHE  
SAW YOFI GRABBING  
BECKY'S BUTT.

Boys involved - screen trulson  
yofi wyle, & Haise Engvik.

Boys Justin Wako, Brendan Smith  
not involved Chase Jones

## RCW 28A.300.285

### **Harassment, intimidation, and bullying prevention policies and procedures—Model policy and procedure—Training materials—Posting on web site—Rules—Advisory committee.**

(1) By August 1, 2011, each school district shall adopt or amend if necessary a policy and procedure that at a minimum incorporates the revised model policy and procedure provided under subsection (4) of this section that prohibits the harassment, intimidation, or bullying of any student. It is the responsibility of each school district to share this policy with parents or guardians, students, volunteers, and school employees in accordance with rules adopted by the superintendent of public instruction. Each school district shall designate one person in the district as the primary contact regarding the antiharassment, intimidation, or bullying policy. The primary contact shall receive copies of all formal and informal complaints, have responsibility for assuring the implementation of the policy and procedure, and serve as the primary contact on the policy and procedures between the school district, the office of the education ombuds, and the office of the superintendent of public instruction.

(2) "Harassment, intimidation, or bullying" means any intentional electronic, written, verbal, or physical act, including but not limited to one shown to be motivated by any characteristic in RCW 9A.36.080(3), or other distinguishing characteristics, when the intentional electronic, written, verbal, or physical act:

- (a) Physically harms a student or damages the student's property; or
- (b) Has the effect of substantially interfering with a student's education; or
- (c) Is so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment; or
- (d) Has the effect of substantially disrupting the orderly operation of the school.

Nothing in this section requires the affected student to actually possess a characteristic that is a basis for the harassment, intimidation, or bullying.

(3) The policy and procedure should be adopted or amended through a process that includes representation of parents or guardians, school employees, volunteers, students, administrators, and community representatives. It is recommended that each such policy emphasize positive character traits and values, including the importance of civil and respectful speech and conduct, and the responsibility of students to comply with the district's policy prohibiting harassment, intimidation, or bullying.

(4)(a) By August 1, 2010, the superintendent of public instruction, in consultation with representatives of parents, school personnel, the office of the education ombuds, the Washington state school directors' association, and other interested parties, shall provide to the education committees of the legislature a revised and updated model harassment, intimidation, and bullying prevention policy and procedure. The superintendent of public instruction shall publish on its web site, with a link to the safety center web page, the revised and updated model harassment, intimidation, and bullying prevention policy and procedure, along with training and instructional materials on the components that shall be included in any district policy and procedure. The superintendent shall adopt rules regarding school districts' communication of the policy and procedure to parents, students, employees, and volunteers.

(b) The office of the superintendent of public instruction has the authority to update with new technologies access to this information in the safety center, to the extent resources are made available.

(c) Each school district shall by August 15, 2011, provide to the superintendent of public instruction a brief summary of its policies, procedures, programs, partnerships, vendors, and instructional and training materials to be posted on the school safety center web site, and shall also provide the superintendent with a link to the school district's web site for further information. The district's primary contact for bullying and harassment issues shall annually by August 15th verify posted information and links and notify the school safety center of any updates or changes.

(5) The Washington state school directors' association, with the assistance of the office of the superintendent of public instruction, shall convene an advisory committee to develop a model policy prohibiting acts of harassment, intimidation, or bullying that are conducted via electronic means by a student while on school grounds and during the school day. The policy shall include a requirement that materials meant to educate parents and students about the seriousness of cyberbullying be disseminated to parents or made available on the school district's web site. The school directors' association and the advisory committee shall develop sample materials for school districts to disseminate, which shall also include information on responsible and safe internet use as well as what options are available if a student is being bullied via electronic means including, but not limited to, reporting threats to local police and when to involve school officials, the internet service provider, or phone service provider. The school directors' association shall submit the model policy and sample materials, along with a recommendation for local adoption, to the governor and the legislature and shall post the model policy and sample materials on its web site by January 1, 2008. Each school district board of directors shall establish its own policy by August 1, 2008.

(6) As used in this section, "electronic" or "electronic means" means any communication where there is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means.

[2013 c 23 § 50; 2010 c 239 § 2; 2007 c 407 § 1; 2002 c 207 § 2.]

#### **NOTES:**

**Finding—Intent—2010 c 239:** "The legislature finds that despite a recognized law prohibiting harassment, intimidation, and bullying of students in public schools and despite widespread adoption of antiharassment policies by school districts, harassment of students continues and has not declined since the law was enacted. Furthermore, students and parents continue to seek assistance against harassment, and schools need to disseminate more widely their antiharassment policies and procedures. The legislature intends to expand the tools, information, and strategies that can be used to combat harassment, intimidation, and bullying of students, and increase awareness of the need for respectful learning communities in all public schools." [2010 c 239 § 1.]

**Findings—2002 c 207:** "The legislature declares that a safe and civil environment in school is necessary for students to learn and achieve high academic standards. The legislature finds that harassment, intimidation, or bullying, like other disruptive or violent behavior, is conduct that disrupts both a student's ability to learn and a school's ability to educate its students in a safe environment.

Furthermore, the legislature finds that students learn by example. The legislature commends school administrators, faculty, staff, and volunteers for demonstrating appropriate behavior, treating others with civility and respect, and refusing to tolerate harassment, intimidation, or bullying." [2002 c 207 § 1.]