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MONTANA EIGHTH JUDICIAL DISTRICT COURT, COUNTY OF CASCADE

SHAUNA YELLOW KIDNEY, as next friend of C.Y.K. and S.Y.K.; CAMMIE DUPUIS-PABLO and ROGER PABLO, as next friends of K.W.1, K.W.2, K.D., K.P.1, and K.P.2; HALEIGH THRALL and DURAN CAFERRO, as next friends of A.E., D.C., and C.C.; AMBER LAMB, as next friend of K.L.; RACHEL KANTOR, as next friend of M.K.1, and M.K.2; CRYSTAL AMUNDSON and TYLER AMUNDSON, as next friends of C.A. and Q.A.; JESSICA PETERSON, as next friend of A.C.; and DAWN SKERRITT, as next friend of S.S. and M.S; on behalf of themselves and all others similarly situated, et al.	Cause No. DDV-21-0398 Hon. Amy Eddy **AMICUS BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR JOINDER**

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Plaintiffs, vs. MONTANA OFFICE OF PUBLIC INSTRUCTION; ELSIE ARNTZEN, in her official capacity as the Superintendent of Public Instruction; MONTANA BOARD OF PUBLIC EDUCATION; and DARLENE SCHOTTLE, in her official capacity as Chairperson of the Montana Board of Public Education, Defendants.	)

INTRODUCTION

Plaintiffs brought this action against the Montana Office of Public Instruction, the Superintendent of Public Education, the Montana Board of Public Education, and the Chairperson of the Montana Board of Public Education ("State Defendants") alleging that they failed in their responsibilities to implement, monitor and enforce Indian Education in Montana. These State Defendants are now asking this Court to join seven--and possibly 300--individual Montana school districts as defendants--a move that is not supported by the joinder rules in the Montana Rules of Civil Procedure or Montana law.

Plaintiffs argue they have sued the correct parties and oppose the joinder of the School Districts because they can obtain complete relief from the State Defendants without adding the School Districts. The School Districts agree, especially since this Court earlier in this litigation rejected the State Defendants' attempts to shift their responsibility to the individual districts. The State Defendants' Motion for Joinder risks conflating the issues before the Court and would, in essence, require mini-trials of the actions and policies of potentially more than 300 individual school districts. The attempt

to join unnecessary and disinterested additional defendants, against Plaintiffs' wishes, should be denied by the Court.

BACKGROUND

Plaintiffs' Complaint seeks declaratory and injunctive relief from the Court on the grounds that the State Defendants are "responsible for implementing, monitoring, and enforcing the Indian Education Provisions, and they have not fulfilled their responsibilities."[1] On June 12, 2023, the State Defendants moved the Court for an Order joining School Districts as Defendants.[2] The school districts filing this Brief were named in State Defendants' Motion as those "expressly referenced in the First Amended Complaint."[3] However, the State Defendants' Motion For Joinder also seeks to join "all school districts where other unnamed individual Plaintiffs attend school and are similarly situated as named Plaintiffs who attend schools that fail to implement the Indian Education Provisions cited in the First Amended Complaint ..."[4] Apparently the State Defendants seek to join an unspecified number of Montana school districts - a move that could add more than three hundred individual additional defendants to this case. Whether the State Defendants seek to join seven or three hundred individual school districts, the joinder is unnecessary, contrary to Montana authority and relevant case law, would unnecessarily conflate and confuse the issues before the Court, and unjustly prejudice the Plaintiffs and school districts.

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[1] First Amended Class Action Complaint for Declaratory and Injunctive Relief, 12/02/2021, Dkt. 29, ¶6.
[2] Defendants' Brief in Support of Motion for Joinder of School Districts, 06/12/2023, Dkt. 89.
[3] Defendant's Motion for Joinder of Schools District, Dkt. 88 at pg. 2.
[4] Dkt. 88 at pg. 2.

ARGUMENT

The School Districts are not required parties under Mont. R. Civ. P. 19. Complete relief for the Plaintiffs' claims can be found absent the School Districts' involvement as additional defendants. Moreover, the State Defendants cannot meet the requisite showing for this Court to find that the joinder of the School Districts is permissive under Mont. R. Civ. P. 20.

I. Joinder is Not Required Under Mont. R. Civ. P. 19.

Mont. R. Civ. P. 19(a)(1)(A) states, in part, that a party must be joined if, "in that person's absence, the court cannot accord complete relief among existing parties." As the Montana Supreme Court has held, the requirement of the Rule is related to "holdings that the inability to fashion an effective decree in the person's absence may render him indispensable." *Mohl v. Johnson*, 275 Mont. 167, 171, 911 P.2d 217 (1996) (citation omitted). "While a party should be joined if his presence is deemed necessary for the according of complete relief, it must be noted that complete relief refers to *relief as between persons already parties, and not as between a party and the absent person whose joinder is sought.*" *Id.* (emphasis added). Importantly, joinder is not necessary "where, although certain forms of relief are unavailable due to a party's absence, meaningful relief can still be provided." *Id* (citation omitted).

Here, the State Defendants argue that joinder of the School Districts is necessary as school districts "are solely responsible for the various harms alleged in the First Amended Complaint..."[5] This notion comes from the State Defendants' faulty position that,

[5] Dkt. 89 at pg. 5.

> Complete relief cannot be accorded without the participation of the school districts because the Plaintiffs are seeking relief that only the school districts can provide; namely, developing and providing educational instruction that complies with the Indian Education provisions, and cooperating with the Tribes in close proximity to the school districts in providing educational instruction, implementing educational goals and following *relevant Indian educational content standards and accreditation requirements.*"[6]

Their argument is without merit. Plaintiffs brought claims against the State Defendants because they, not the School Districts, are responsible for "implementing, monitoring, and enforcing the Indian Education Provisions" and considering that "[d]eclaratory and injunctive relief from this Court are needed to ensure that Defendants will fulfill *their* responsibilities in the future."[7] As in *Mohl*, it does not matter that Plaintiffs could potentially have viable claims against the School Districts. The relief sought from the State Defendants, -- declaratory and injunctive relief to ensure that the Sate Defendants meet *their* obligations -- can be granted without the Joinder of the School Districts. Simply put, the School Districts are not necessary for complete relief because "meaningful relief" can be fully effectuated from the State Defendants alone.

The State Defendants are attempting to widen the playing field to include relief that Plaintiffs are not seeking and relief that is not necessary to the outcome of this litigation. Assuming *arguendo* that Plaintiffs are somehow seeking relief from the School Districts, which they are not, the relief sought would still first be dependent on the State Defendants fulfilling their own statutory obligations under Montana law. Specifically, the Plaintiffs claim that the State Defendants failed to meet their obligations by not implementing standards, monitoring those standards, and enforcing them.[8]

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[6] *Id. (emphasis added)*
[7] Dkt. 29, ¶¶6-7. *(emphasis added).*
[8] Dkt. 29, ¶6.

Importantly, under Montana law, the Board of Public Education "shall define and specify the basic instructional program for pupils in public schools, and this program must be set forth in the standards of accreditation." Mont. Code Ann. § 20-7-111; *see also* Mont. Code Ann. § 20-2-121(6). Similarly, it is the State Defendants' duty to adopt accreditation standards for public schools, including those related to academic requirements. Mont. Code Ann. § 20-7-101, 102. Meanwhile, the Superintendent of Public Instruction "shall collect and maintain a file of curriculum guides to be made available to districts for use of schools in planning courses of instruction." Mont. Code Ann. § 20-7-113. These statutes, in conjunctions with Mont. Const. Art. X, §1(2) and Mont. Code Ann. § 20-1-501, demonstrate that the State Defendants are placing the proverbial cart before the horse in arguing that the School Districts themselves must somehow provide the sought-after relief even before the State Defendants satisfy their own duties related to promulgating the necessary standards and procedures related to Indian Education. Unless the State Defendants first meet their own obligations, there are no standards to uniformly assess the performance of individual school districts.

The School Districts recognize their obligations under Montana's Indian Education for All Act, codified as Mont. Code Ann. § 20-1-501. However, Plaintiffs' claims specifically do not target the School Districts, but assert that the State Defendants are the entities and individuals responsible for the statewide implementing, monitoring, and enforcing of Indian Education Provisions. As such, the State Defendants' citations to both *Vill. Bank v. Cloutier* and Mont. Code. Ann. § 27-8-301 are unavailing. *Vill. Bank v. Cloutier* is irrelevant because it addresses parties who were going to be brought into the action by a third-party complaint. 249 Mont. 25, 29, 813

P.2d 971 (1991). Here, neither the State Defendants nor the Plaintiffs are making affirmative claims against the School Districts.

The State Defendants' reliance on Mont. Code Ann. § 27-8-301 for their joinder argument also fails because the statute requires persons to be made parties "who have or claim any interest which would be affected by the declaration." Here, the School Districts neither have nor claim any interest in the Court's determination of a declaratory judgment as such judgment would affect the duties of the State Defendants, not the School Districts directly.

In short, meaningful and complete relief can be obtained from the State Defendants without the participation of Montana School Districts. Indeed, the actions of school districts cannot be considered or adjudicated given the alleged lack of action and fulfillment of the State Defendants' own responsibilities, which in turn are necessary to determine whether a school district's actions were adequate. Ultimately, the School Districts, and those unnamed school districts, are not necessary parties under Montana law, have no interest in the declaratory relief sought and should not be forced to join this matter.

II. Permissive Joinder under Mont. R. Civ. P. 20 is Not Appropriate.

> An entity may be joined as a defendant to any action if,
>
> (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; *and* (B) any question of law or fact common to all defendants will arise in the action.

Mont. R. Civ. P. 20(a)(2)(A), (B) Further, Mont. R. Civ. P. 20(b) states that a "court may issue orders...to protect a party against embarrassment, delay, expense, or other prejudice that arises from including a person against whom the party asserts no

claim and who asserts no claim against the party." Given that Rule 20 of the Montana Rules of Civil Procedure is modeled after the Federal Rules, this Court may look to interpretations of the Federal Rules for guidance. *See Mohl*, 275 Mont. at 171.

As asserted by Plaintiffs, the State Defendants' arguments that permissive joinder is allowed under the present facts misses the mark because neither the Plaintiffs nor the State Defendants are asserting claims for relief against the School Districts.[9] For the sake of brevity, the School Districts incorporate the Plaintiffs' argument as to why permissive joinder is not allowable under Mont. R. Civ. P. 20(a)(2). Additionally, the Court should deny joinder under M. R. Civ. P. 20(b).

Importantly, "[s]ince joinder is permissive in character, there is 'no requirement that the parties must be joined,' particularly where joinder would 'confuse and complicate the issues for all parties involved' rather than make the resolution of the case more efficient." *On The Cheap, LLC v. Does 1-5011*, 280 F.R.D. 500, 503 (N.D. Cal. Sep. 6, 2021) (citing *Wynn v. National Broadcasting Co., Inc.*, 234 F.Supp.2d 1067, 1078-88 (C.D. Cal Jan. 24, 2022). Indeed, even if the requirements of permissive joinder are met, "a district court must examine whether permissive joinder would 'comport with the principles of fundamental fairness' or would result in prejudice to either side." *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1296 (9th Cir. 2000) (citing *Desert Empire Bank v. Insurance Co. of N. Am.*, 623 F.2d 1371, 1375 (9th Cir. 1980). "Courts may also consider factors such as the motives of the party seeking joinder and whether joinder would confuse and complicate the issues for the parties involved."

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[9] Plaintiffs' Brief in Opposition to Defendants' Motion for Joinder of School Districts, 07/10/2023, Dkt. 93, pg. 7.

Patrick Collins, Inc. v. Does 1-38, 941 F.Supp.2d 153, 164 (D. Mass. 2013) (citation omitted).

For example, the court in *Coleman* found that the likelihood of prejudice and confusion outweighed the gains from judicial economy when the joinder would have resulted in a "parade of witnesses" and confusion of the issues. 232 F.3d at 1296. Similarly, the court in *Patrick Collins* concluded that "joinder would complicate the proceedings[,]" would cause prejudice and unfairness to the defendants, and "would not promote the interests of justice." 941 F. Supp.2d at 164. The court reasoned that "permitting joinder would force the Court to address the unique defenses that are likely to be advanced by each Defendant, creating scores of mini-trials involving different evidence and testimony." *Id.* at 165 (citation omitted). As such, considering that allowing joinder would "complicate rather than expedite the litigation, and would substantially prejudice the defendants[,]" the Court did not allow joinder. *Id.*

Similar issues are present here. Joinder of the School Districts, and those unnamed school districts, would not expedite this litigation but would complicate it by adding a variety of different legal theories and necessary fact-finding challenges related to each specific school district. If joinder is allowed, the Court would be faced with scores of mini-trials about the defenses, the facts, and the presented evidence of each individual school district. In turn, the Court would have to determine whether each school district violated Montana law related to Indian Education, such that injunctive and/or declaratory relief was appropriate, with no guideposts related to such a determination. The School Districts would somehow be assessed against standards or protocols that were never promulgated by the State Defendants, whose actual duties

are at issue in this litigation.

Moreover, the reasoning behind the State Defendants' tactic of attempting to join an unspecified number of school districts should be considered, as there is no legitimate basis for the joinder of these school districts given that the State Defendants are not bringing any legal claims against the School Districts and are incorrectly alleging that Plaintiffs are seeking such relief, even though Plaintiffs deny this. The State Defendants are attempting to unnecessarily complicate the issue before the Court and place unnecessary defendants into the litigation so blame can be cast to defendants from whom relief is not even being sought.

Additionally, if School Districts, and/or those unnamed school districts, were to be added, issues related to the appropriateness of Plaintiffs' class action and standing would be called into question. Mont. R. Civ. P. 23(a)(2) and (4) require that "there are questions of law or fact common to the class" and that "the representative parties will fairly and adequately protect the interests of the class." Meanwhile, Mont. R. Civ. P 23(b)(2) states a class action may be maintained if "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as whole." If the State Defendants' arguments were somehow accepted, major issues would arise as to the adequacy of Plaintiffs' class action considering that specific plaintiffs may have claims against individual school districts that are not common to the class and which the representatives of the class could not fairly and adequately protect. Nor could the final injunctive or declaratory relief be proper as to the class considering the potential multitude of individual issues, facts, findings, and relief as to specific

Plaintiffs and individual school districts. *See generally Mattson v. Montana Power Co.*, 2012 MT 318, ¶¶37-38, 368 Mont. 1, 291 P.3d 1209. Moreover, there would be no standing for claims against individual school districts where none of the Plaintiffs actually attended. *See generally Baxter Homeowners Ass'n, Inc. v. Angel*, 2013 MT 83, ¶15, 369 Mont. 398, 298 P.3d 1145.

Ultimately, the State Defendants' attempt to join the School Districts and an unspecified number of unnamed school districts should be denied. The proposed joinder would result in a drastic increase in the complexity and number of issues before the Court. It would not help to expedite litigation but would compound and confuse legal issues and create an untold number of mini-trials which would necessarily be adjudicated based on yet-to-be promulgated standards. The proposed joinder would complicate rather than expedite the litigation, force parties to defend or pursue claims they have no interest in, force school districts to expend scarce and limited resources, potentially affect Plaintiff's class action and prejudice any added school district. Therefore, the State Defendants' Motion for Joinder should be denied.

CONCLUSION

The State Defendants have failed to meet their burden of establishing that the School Districts or the unnamed school districts are necessary parties to this litigation such that joinder is necessary. Moreover, the State Defendants have failed to show that permissive joinder is appropriate under the circumstances presented. Lastly, the joinder of the School Districts would act to prolong, confuse, and complicate this litigation to the prejudice of the other parties. For these reasons and those specified above, the State Defendants' Motion for Joinder should be denied in its entirety.

DATED THIS 17th day of July 2023.

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CERTIFICATE OF SERVICE

It is hereby certified on this 17th day of July, 2023, a true and accurate copy of the foregoing document was served electronically on the following:

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