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MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

SHAUN YELLOW KIDNEY, ET AL., PLAINTIFFS, VS. MONTANA OFFICE OF PUBLIC INSTRUCTION, ET AL., DEFENDANTS.	CASE NO. DDV-7-2021-0000398-OC HON. AMY EDDY **DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION FOR JOINDER OF SCHOOL DISTRICTS**

INTRODUCTION

Defendants, Montana Office of Public Instruction (OPI), Elsie Arntzen in her official capacity as Superintendent of Public Instruction and the Montana Board of Public Education

(BPE) and Madalyn Quinlan, in her official capacity as chair of the Board of Public Education (collectively "Defendants") move this Court for joinder of school districts because the relief Plaintiffs have been seeking, although articulated in their response as just against the Defendants, cannot be accomplished unless school districts are joined. Plaintiffs' response brief does not alter Defendants' position.

ARGUMENT

School districts have an interest in the underlying case because the Amended Complaint addresses harms that Defendants cannot correct. Moreover, the supervisory and regulatory authority that Plaintiffs seek to have the Court order all directly apply to school districts. Namely, the distribution of BASE aid, accreditation, and creation of content standards as it is carried out by school districts cannot be guaranteed to be effective in meeting the constitutional and statutory goals of the Plaintiffs without the joinder of school districts.

I. Plaintiffs' arguments fail to defeat the need for joinder of the school districts.

As referenced in Defendants' opening brief Plaintiffs allege harms that are within the exclusive control of school districts at the classroom level. (*See* Doc. 29, ¶¶ 10, 11, 15, 18, 19, 22, 23, 26.) These alleged harms refer to safer environments for students, racism, bullying, and the spread of misinformation, none of which Defendants have any control. Plaintiffs' arguments that school districts have no "legal interests" in the obligations and duties of the State Defendants are unavailing because Plaintiffs overlook the fact that school districts have legal interests in the outcome of whatever the Court may order Defendants to do to fulfill their alleged statutory and constitutional obligations. Any mandated acts as applied to the Defendants, if not properly carried out by school districts at the instruction and classroom level, can and likely will result in the withdrawal of funding for school districts. It behooves this Court to bring in school districts, and at least the responding school districts, at this juncture. Joining the school districts will

ensure that whatever may be ordered can actually be accomplished and that they carry out any mandates at the classroom level.

Plaintiffs do, however, aid the parties and the Court in clarifying their contentions against Defendants, which do not match those of the Amended Complaint herein. They now state that Defendants' supervisory authority can provide complete relief in this action and that they are seeking complete relief from Defendants in their supervisory role. (*See* Doc. 93 at 3.) They also go on to specify the relevant supervisory duties—as they point out the Court has already noted—to distribute and withhold public school funding known as BASE aid, to accredit Montana public schools, and to create curriculum and content standards, including incorporation the distinct and unique cultural heritage of American Indians pursuant to article X, section 1(2) of the Montana Constitution and Mont. Code Ann. §§ 20-1-501, 20-9-309(2)(c) and Admin. R. Mont. 10.53.102. If Plaintiffs were to concede the relief they are seeking is limited to these actions of Defendants and if they were to amend the Amended Complaint to withdraw the allegations concerning what school districts have purportedly done or failed to do, then joinder may not be necessary. However, as the Amended Complaint is actually written—as opposed to how Plaintiffs characterize it in their response—joinder of the school districts is absolutely necessary to accomplish the relief sought.

Plaintiffs state correctly in their response that Defendants view their authority as involving the power to develop standards and monitor compliance with those standards. Plaintiffs clarify that this is "precisely the relief Plaintiffs are seeking." Notwithstanding the mootness created by House Bill (HB) 338, the various issues with positive injunctions, BPE's constitutional nature, and the fact that the separation of powers dictates this Court cannot order rulemaking and therefore cannot order creation of content standards, were the claimed relief to

stop at the foregoing description, Defendants would not be pursuing their Motion for Joinder. However, Plaintiffs go on to state that, in their brief, school districts may share the blame for failing to fulfill IEC and IEFA requirements, but that "Defendant's supervisory authority can provide complete relief in this action." (Doc. 93 at 3.) The Court will no doubt agree that although some relief as *actually alleged* in the Amended Complaint can be afforded through Defendants' supervisory authority, that does not nearly apply to all the relief sought. Defendants are not obligated nor do they have the supervisory or regulatory authority to design curricula, to stop the spread of misinformation or to make the classroom environment, or protective against bullying. The responsibilities of the school districts must be resolved to ensure that at the classroom level compliant instruction is provided.

Nowhere in their response brief do Plaintiffs address the funding consequences to school districts if they do not provide compliant instruction or allocate IEFA funding appropriately. As objects of Defendants' regulatory and supervisory mandates, school districts are materially interested in what the Court orders of the Defendants. Plaintiffs do not dispute that Mont. R. Civ. P. 19(a)(1)(A) applies to a mandatory joinder or that the holding in *Vill. Bank v. Cloutier*, 249 Mont. 25, 29, 813 P.2d 971, 974 (1991) does not apply. That case holds that, whenever feasible, persons materially interested in the subject of the action be joined so that they may be heard and a complete disposition of the case can be made. As shown by the Defendants the school districts are materially interested in the issues of how to comply so their funding is continued. Without a determination and order mandating that school districts comply with goals and rules governing curricula development and the proper application of funding allocated to implement IEFA, the Court will be unable to award complete relief. Moreover, article X, section 1(2) of the Constitution dictates that *the State* recognize "the distinct and unique cultural heritage

of the American Indians and [that it] is committed in its educational goals to the preservation of their cultural integrity." Certainly, school districts are included in the concept of the "State." Although the Plaintiffs argue the school districts hold no legal interest and the case can be resolved without their joinder, the claims in the Amended Complaint addressing harms caused at the school district level and the requested relief together make the Defendants' actions and responsibilities intertwined with those of the school districts. As opposed to the case Plaintiff cites, *John Alexander Ethen Tr. Agreement v. River Res. Outfitters, LLC*, 2011 MT 143, ¶ 49, 361 Mont. 57, 256 P.3d 913, joinder pursuant to Mont. Code Ann. § 27-8-301 is required because a decision against the Defendants would determine the rights of the local school districts to receive funding and the obligations to comply. *See also Adams & Gregoire, Inc. v. Nat'l Indem. Co*., 141 Mont. 103, 375 P.2d 112 (1962). In this case involving joinder of parties with separate interests under two separate actions for tort and contract but in which the presence or absence of an amendment was a central issue, the Montana Supreme Court stated it is clear that the rights of all parties are so intimately connected by the one transaction that in order to determine the rights of the parties it was necessary to have the parties to the transaction as parties to the action. Here, liability for the harms and the consequence of failing to instruct properly are common to the Defendants and the school districts.

II. The issue of whether the defendants have supervisory authority over school districts in their obligation to work cooperatively with Montana Tribes in close proximity when providing instruction under Mont. Code Ann. §§ 20-1-501(2)(b) and 20-9-329 ((4)(b)(i) makes joinder necessary.

HB 338, which contains amendments to the Indian Education For All Act (IEFA), has been enacted into law (Doc 93 at 5 n.1.) the administering, tracking, instructing, coordinating and reporting obligations of public school districts, as well as the exercise of administrative and regulatory responsibility of the OPI and BPE, are specifically prescribed in more detail than at

the inception of the underlying case. These amendments contain the mandatory obligations which school districts, OPI and BPE must follow, and moot the claims and requested relief as to both Defendants and school districts.

It goes without saying that, regarding the issue of compliance of Defendants and school districts, that HB 338 makes tribal cooperation (to include information specific to the cultural heritage and contemporary contributions of American Indians in the development of content standards for school accreditation and on the school districts to engage in tribal cooperation when providing instruction) mandatory on school districts. Defendants do not provide instruction. Although Defendants and Plaintiffs differ on this point, in order to resolve the degree of responsibility and scope of authority of Defendants and to ensure school districts' compliance and cooperation with any relief awarded herein, the school districts are interested parties and it is necessary to join them.

Defendants do not address the permissive joinder arguments because mandatory joinder best supports the Defendants' arguments. In any case, the Court has the discretion to add a party pursuant to Mont. R. Civ. P. 21 and should do so in this case.

CONCLUSION

As this Court has already held, "while local control of school districts is well-established, that control [of school districts] must be exercised within the constitutional and statutory mandate[s]. Order Re: Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint, pages 19 and 20, the question here is whether the constitutional and statutory mandates should be accomplished in one lawsuit or many. Defendants urge the Court to conclude one lawsuit as to all parties should occur (assuming a class action can be brought) because the actions, legal interests, liabilities and remedies this Court will apply to Defendants directly affects the legal interests (funding availability), liabilities (providing compliant instruction) and remedies

(compliance with HB 338) of school districts. Plaintiffs intermittently invoke "the State" as the entity against whom the relief in this case should be directed in their response brief. School districts constitute part of "the State" in the context of this case.

DATED this 10th day of August, 2023.

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CERTIFICATE OF SERVICE

I, Katherine Orr, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Reply Brief to the following on 08-10-2023:

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