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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, )

Cause No. DDV-21-0398

Hon. John W. Parker

FORT BELKNAP INDIAN COMMUNITY )  
OF THE FORT BELKNAP RESERVATION )  
OF MONTANA; CONFEDERATED )  
SALISH AND KOOTENAI TRIBES OF )  
THE FLATHEAD RESERVATION; )  
ASSINIBOINE AND SIOUX TRIBE OF )  
THE FORT PECK INDIAN RESERVA- )  
TION, MONTANA; NORTHERN )  
CHEYENNE TRIBE OF THE NORTHERN )  
CHEYENNE INDIAN RESERVATION, )  
MONTANA; LITTLE SHELL TRIBE OF )  
CHIPPEWA INDIANS OF MONTANA; and )  
CROW TRIBE OF MONTANA )

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

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 AND NATURE OF ACTION

1. This is an action against Defendant State agencies and officials in their official capacities (“Defendants”) seeking declaratory and injunctive relief for their failure to implement, monitor, and enforce the guarantees of Montana’s Constitution and statutes that provide that every Montana public school student, whether Indian or non-Indian, will learn about the distinct and unique cultural heritage of American Indians in a culturally responsive manner.<sup>1</sup>

2. Montana stands alone among states in its commitment to Indian education. While a few states support Indian education through statutes, only Montana embeds guarantees for Indian education within its Constitution. Article X, section 1(2), also known as the “Indian Education Clause,” provides: “The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.” Mont. Const. art. X, § 1(2); *see Columbia Falls Elementary Sch. Dist. No. 6 v. State*, 2005 MT 69, ¶¶ 34-35, 326 Mont. 304, 109 P.3d 257.

3. Montana’s extraordinary Indian Education Clause is augmented by statute. The Montana Indian Education for All (“IEFA”) Act states: “It is the constitutionally declared policy of this state to recognize the distinct and unique cultural heritage of American Indians and to be committed in its educational goals to the preservation of their cultural heritage.” § 20-1-501, MCA.

The IEFA further mandates,

(2) It is the intent of the legislature that in accordance with Article X, section 1(2), of the Montana constitution:

(a) every Montanan, whether Indian or non-Indian, be encouraged to learn about the *distinct and unique heritage of American Indians in a culturally responsive manner*; and

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<sup>1</sup> In keeping with the language of Montana’s Constitution and statutes, the terms “American Indian” and “Indian” are used throughout this Complaint to refer generally to the Indigenous Peoples of the United States.

(b) *every educational agency and all educational personnel will work cooperatively with Montana tribes or those tribes that are in close proximity*, when providing instruction or when implementing an educational goal or adopting a rule related to the education of each Montana citizen, to include information specific to the cultural heritage and contemporary contributions of American Indians, with particular emphasis on Montana Indian tribal groups and governments.

(3) It is also the intent of this part, predicated on the belief that all school personnel should have an understanding and awareness of Indian tribes to help them relate effectively with Indian students and parents, that educational personnel provide means by which school personnel will gain an understanding of and appreciation for the American Indian people.

§ 20-1-501, MCA (emphasis added).

4. In *Helena Elementary Sch. Dist. No. 1 v. State*, 236 Mont. 44, 58, 769 P.2d 684, 693 (1989), *amended*, 236 Mont. 44, 784 P.2d 412 (1990) and *Columbia Falls*, ¶ 35, the Montana Supreme Court held that the Indian Education Clause and the IEFA (hereinafter referred to collectively as the “Indian Education Provisions” or “Provisions”) impose mandatory obligations on the State. Those cases resulted in the Montana legislature making annual appropriations according to a legislatively-calculated formula to fund the State’s implementation of the Indian Education Provisions. Those cases, however, did not specifically address *how* the State must implement the Provisions.

5. Despite over a decade of dedicated annual state appropriations, the Indian Education Provisions’ goals and requirements remain largely unmet in many Montana public schools. In those schools, the cultural heritage and integrity of American Indians is not being preserved, and Indian and non-Indian Montanans are not learning about American Indian heritage in a culturally responsive manner.

6. Defendants—the Montana Office of Public Instruction; the Montana Board of Public Education; Elsie Arntzen, Montana Superintendent of Public Instruction (SPI); and Darlene Schottle, Chairperson of the Montana Board of Public Education—are responsible for

implementing, monitoring, and enforcing the Indian Education Provisions, and they have not fulfilled their responsibilities.

7. Declaratory and injunctive relief from this Court are needed to ensure that Defendants will fulfill their responsibilities in the future.

## **PARTIES**

### **A. Individual Plaintiffs**

8. Plaintiff Shauna Yellow Kidney is the parent of Plaintiffs C.Y.K. and S.Y.K. These Plaintiffs are citizens of the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana.

9. Plaintiffs C.Y.K. and S.Y.K. attend Paxson Elementary School, <https://www.mcpsmt.org/paxson> (last visited December 3, 2021), and are in kindergarten and 1st grade, respectively. This school is part of the Missoula Elementary District, *Directory of Montana Schools*, Mont. Off. Of Pub. Instruction (December 3, 2021), <http://apps.opi.mt.gov/SchoolDirectory/frmdirectorydistrictpdf.aspx>.

10. Plaintiffs C.Y.K. and S.Y.K. have received very little specific instruction about American Indian tribes in Montana. Without this instruction, Plaintiffs C.Y.K. and S.Y.K. will be subject to stereotyping and racism. Without proper implementation of Indian education, Plaintiffs feel ostracized and unwelcome. Unless Indian education is fully integrated into Plaintiffs' schools, they will see and feel that they are being excluded.

11. Defendants' failure to set forth measurable standards related to Indian education, and then implement, monitor and enforce those standards at the schools that Plaintiffs C.Y.K. and S.Y.K. attend has caused harm to these plaintiffs in the past and will cause them harm in the future. That harm manifests itself in the form of lack of culturally relevant instruction and resulting stereotyping and racism directed towards Plaintiffs.

12. Plaintiffs Cammie L. DuPuis-Pablo and Roger A. Pablo Jr. are the parents of Plaintiffs K.W.1, K.W.2, K.D., K.P.1, and K.P.2. These Plaintiffs are affiliated with the Confederated Salish and Kootenai Tribes of the Flathead Reservation.

13. Plaintiffs K.W.1, K.W.2, K.D., K.P.1, and K.P.2 attend Lewis and Clark Elementary School, <https://www.mcpsmt.org/lewisclark> (last visited December 3, 2021), Washington Middle School, <https://www.mcpsmt.org/washington> (last visited December 3, 2021), Hellgate High School, <https://www.mcpsmt.org/hellgate> (last visited December 3, 2021), and Willard Alternative High School, <https://www.mcpsmt.org/willard> (last visited December 3, 2021), and are in 1st, 4th, 6th, 9th and 11th grades, respectively. These schools are part of the Missoula Elementary and High School Districts, *Directory of Montana Schools*, Mont. Off. Of Pub. Instruction (December 3, 2021), <http://apps.opi.mt.gov/SchoolDirectory/frmdirectorydistrictpdf.aspx>.

14. Plaintiffs K.W.1, K.W.2, K.D., K.P.1, and K.P.2 report that the Indian education curriculum in their respective schools is lacking. These curricula fail to acknowledge American Indian contributions, American Indian history, and American Indian culture. As a result, Plaintiffs K.W.1, K.W.2, K.D., K.P.1 and K.P.2 are not understood by other students, and are subjected to bullying and racism. As an additional result, Plaintiffs have not developed the feeling of pride in their heritage and culture that the Indian Education Clause was intended to distill.

15. Defendants' failure to set forth measurable standards related to Indian education, and then implement, monitor and enforce those standards at the schools that Plaintiffs K.W.1, K.W.2, K.D., K.P.1 and K.P.2 attend has caused harm to these plaintiffs in the past and will continue to cause them harm in the future. That harm manifests itself in the form of lack of culturally relevant instruction and resulting stereotyping and racism directed towards Plaintiffs.

16. Plaintiffs Haleigh Thrall and Duran Caferro are the parents of Plaintiffs C.C., D.C., and A.E. Plaintiffs Duran Caferro, C.C., D.C., and A.E. are citizens of the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.

17. Plaintiffs C.C., D.C, and A.E. attend Chief Charlo Elementary School, <https://www.mcpsmt.org/chiefcharlo> (last visited December 3, 2021), Meadow Hill Middle School, <https://www.mcpsmt.org/meadowhill> (last visited December 3, 2021), and Sentinel High School, <https://www.mcpsmt.org/sentinel> (last visited December 3, 2021). Beginning in August 2021, they will be in kindergarten, 8th, and 12th grades, respectively. These schools are part of the Missoula Elementary and High School Districts, *Directory of Montana Schools*, Mont. Off. Of Pub. Instruction (December 3, 2021), <http://apps.opi.mt.gov/SchoolDirectory/frmdirectorydistrictpdf.aspx>.

18. Plaintiffs C.C., D.C, and A.E. report that teachers are asked, but not required, to implement IEFA. As a result, the education these Plaintiffs are receiving is not in alignment with the letter or intent of IEFA. Without full implementation of IEFA, Plaintiffs' culture and traditions are not being preserved and instructors continue to spread misinformation by using tools and materials not consistent with IEFA. Further, with full implementation of IEFA, Plaintiffs would experience a safer educational environment at their respective schools.

19. Defendants' failure to set forth measurable standards related to Indian education, and then implement, monitor and enforce those standards at the schools that Plaintiffs C.C., D.C. and A.E. attend has caused these plaintiffs to suffer harm in the past and will continue to cause them harm in the future. That actual harm manifests itself in the form of lack of culturally relevant instruction for Plaintiffs and their classmates, resulting in racial and cultural discrimination and a dangerous school environment for Plaintiffs.

20. Plaintiff Amber Cruz Lamb is the parent of Plaintiff K.L. These Plaintiffs are citizens of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana.

21. Plaintiff K.L. attends Big Sky High School, [www.mcpsmt.org/bigsky](http://www.mcpsmt.org/bigsky) (last visited December 3, 2021), and is in the 11th grade. Big Sky High School is part of the Missoula High School District, *Directory of Montana Schools*, Mont. Off. Of Pub. Instruction (December 3, 2021), <http://apps.opi.mt.gov/SchoolDirectory/frmdirectorydistrictpdf.aspx>.

22. Plaintiff K.L. reports that there are currently no classes available to her that incorporate or teach Indian education. As a result, Plaintiff's peers have very little understanding of American Indian culture and contributions. Plaintiff has no role models as intended by IEFA. Plaintiff has experienced numerous incidents wherein her non-Indian classmates have engaged in discriminatory or racist behavior.

23. Defendants' failure to set forth measurable standards related to Indian education, and then implement, monitor and enforce those standards at the schools that Plaintiff K.L. attends has caused Plaintiff to suffer harm in the past and will continue to cause K.L. harm in the future. That harm manifests itself in the form of lack of culturally relevant instruction and resulting stereotyping and racism directed towards Plaintiff.

24. Plaintiff Rachel Kantor is the parent of Plaintiffs M.K. 1 and M.K. 2. These Plaintiffs are non-Indian.

25. Plaintiffs M.K.1 and M.K.2 attend Washington Middle School, <https://www.mcpsmt.org/washington> (last visited December 3, 2021), and are in the 6th and 8th grades, respectively. This school is part of the Missoula Elementary District, *Directory of Montana Schools*, Mont. Off. Of Pub. Instruction (December 3, 2021), <http://apps.opi.mt.gov/SchoolDirectory/frmdirectorydistrictpdf.aspx>.



26. Plaintiffs M.K. 1 and M.K. 2 report that Indian education instruction is highly variable across classes and grades and depending on the teacher. As a result, there is no uniformity in Indian education instruction being offered, and it is impossible to predict when and where Indian education will be incorporated into public school curricula.

27. Defendants' failure to set forth measurable standards related to Indian education, and then implement, monitor and enforce those standards at the schools that Plaintiffs M.K.1 and M.K.2 attend has caused these plaintiffs to suffer harm in the past and will continue to cause them harm in the future. That harm manifests itself in the form of lack of uniformity in Indian education instruction, and an impossibility to predict when and where Indian education will be offered. Plaintiffs are not being provided the required opportunities to learn about the culture and traditions of American Indians, resulting in a lack of cultural awareness and sensitivity. And Plaintiffs have no way of knowing what Indian education curriculum is being taught in the schools. Without adequate Indian education in public schools, Plaintiffs are unaware of how to connect and form relationships with American Indian students, or adequately appreciate the wide variety of American Indian traditions and cultural practices present today.

28. Plaintiffs Tyler and Crystal Amundson are the parents of C.A. and Q.A. These Plaintiffs are non-Indian.

29. Plaintiffs C.A. and Q.A. attend Meadowlark Elementary School, <https://www.billingsschools.org/our-schools/elementary-schools/meadowlark> (last visited December 3, 2021), and are in the 2nd and 5th grades, respectively. This school is part of the Billings Elementary District, *Directory of Montana Schools*, Mont. Off. Of Pub. Instruction (December 3, 2021), <http://apps.opi.mt.gov/SchoolDirectory/frmdirectorydistrictpdf.aspx>.

30. Plaintiffs C.A. and Q.A. report that there have been entire academic years when Indian education was not taught at all. In other years, they have sporadically learned about American Indian tribes as part of a Montana history course. Otherwise, Indian education is largely absent from their public school curricula. Unless they are able to learn about American Indian culture and heritage, Plaintiffs are concerned that they will fall prey to prejudices and stereotypes.

31. Plaintiffs have a constitutional right to learn about the unique contributions of American Indians to Montana's historical and contemporary landscape. Defendants' failure to set forth measurable standards related to Indian education, and then implement, monitor and enforce those standards at the schools that Plaintiffs C.A. and Q.A. attend has caused these plaintiffs to suffer harm in the past and will continue to cause them harm in the future. That harm manifests itself in the form of lack of Indian education instruction, and a resulting reinforcement of harmful prejudices and stereotypes.

32. Plaintiff Jessica Peterson is the parent of A.C. These plaintiffs are non-Indian.

33. Plaintiff A.C. attends the Montessori Classroom at Central Elementary School, <https://central.helenaschools.org> (last visited December 3, 2021), and is in the 2nd grade. This school is part of the Helena Elementary District, *Directory of Montana Schools*, Mont. Off. Of Pub. Instruction (December 3, 2021), <http://apps.opi.mt.gov/SchoolDirectory/frmdirectorydistrictpdf.aspx>.

34. Plaintiff A.C. reports that Indian education is largely absent from her public school curriculum. Without Indian education, Plaintiff A.C. will be unable to develop an understanding of the history of American Indians in Montana, their contributions and their culture.

35. Defendants' failure to set forth measurable standards related to Indian education, and then implement, monitor and enforce those standards at the school that Plaintiff A.C. attends

has caused A.C. to suffer harm in the past and will continue to cause A.C. to suffer harm in the future. That harm manifests itself in the form of lack of Indian education instruction, and a resulting reinforcement of harmful prejudices and stereotypes.

36. Plaintiff Dawn Skerritt is the parent of M.S. and S.S. These plaintiffs are non-Indian.

37. Plaintiffs M.S. and S.S. attend Lewis & Clark Elementary School, <https://www.gfps.k12.mt.us/LC> (last visited December 3, 2021), and Great Falls High School, <https://www.gfps.k12.mt.us/GFHS> (last visited December 3, 2021), and are in the 5th and 10th grades, respectively. These schools are part of the Great Falls Elementary and High School Districts, *Directory of Montana Schools*, Mont. Off. Of Pub. Instruction (December 3, 2021), <http://apps.opi.mt.gov/SchoolDirectory/frmdirectorydistrictpdf.aspx>.

38. Plaintiffs M.S. and S.S. report that they are receiving very little Indian education in their respective classrooms. That means that they are only learning about American Indian culture outside of school. Plaintiffs believe that it is extremely important to learn about the true history of American Indians in North America and Montana in school, and not receive a “white-washed” education that is not historically accurate.

39. Defendants’ failure to set forth measurable standards related to Indian education, and then implement, monitor and enforce those standards at the school that Plaintiffs M.S. and S.S. attend has caused M.S. to suffer harm in the past and will continue to cause A.C. to suffer harm in the future. That harm manifests itself in the form of lack of accurate Indian education instruction, and a resulting misunderstanding of the true history of American Indians and the State of Montana.

40. Although each Plaintiff is impacted somewhat differently, as noted above, all Plaintiffs have suffered, and will continue to suffer, cultural, mental, and emotional harm and educational deficiency and deficits as a result of Defendants' failures set forth herein.

## **B. Tribal Plaintiffs**

41. Plaintiff Fort Belknap Indian Community of the Fort Belknap Reservation of Montana ("FBIC") is a sovereign, federally-recognized Indian tribe comprised of the Gros Ventre and Assiniboine tribes located on the Fort Belknap Reservation in Montana. Fort Belknap Indian Community Homepage, <https://ftbelknap.org/> (last visited December 3, 2021). FBIC has over 8,400 citizens. The FBIC Reservation is served primarily by one Montana public school district and is in close proximity to another nineteen Montana public school districts.<sup>2</sup>

42. Defendants and every public school district that serves or is in close proximity to FBIC's Reservation, and all of Defendants' and the school districts' personnel, do not work cooperatively with FBIC when providing instruction, implementing the educational goals of the Indian Education Provisions or adopting rules related to the education of Montana citizens to include information specific to the cultural heritage and contemporary conditions of American Indians, with particular emphasis on Montana Indian tribal groups and governments.

43. Defendants' failure to work cooperatively with FBIC when providing instruction, implementing the educational goals of the Indian Education Provisions, or adopting rules related

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<sup>2</sup> The IEFA requires every educational agency and all educational personnel to work cooperatively with Montana tribes or those tribes that are in "close proximity." § 20-1-501(2)(b), MCA. Plaintiffs are unaware of whether and how Montana law defines "close proximity" for IEFA purposes. However, for purposes of the Formula Grants Program, the Indian Education Act of 1972, Pub. L. No. 89-10, currently codified at 20 U.S.C. § 7424(c), uses a measure of 50 miles for determining the distance of tribes from a local educational agency with which the local educational agency must consult. Accordingly, for purposes of this case, Plaintiffs use 50 miles as the measure of "close proximity" in the IEFA.

to the education of Montana citizens to include information specific to the cultural heritage and contemporary conditions of American Indians, with particular emphasis on Montana Indian tribal groups and governments, has resulted in past harm and continues to cause harm to FBIC. That harm manifests itself in the form of FBIC's expertise, views, and input not being included in education generally and in Indian education specifically in Montana public schools. It also manifests itself in a loss or threat of loss to FBIC's cultural heritage.

44. Defendants' failure to implement and monitor compliance by all of their personnel, by every school district that serves or is in close proximity to FBIC's Reservation, and by all of the school districts' personnel, with the requirement to work cooperatively with FBIC when providing instruction, implementing the educational goals of the Indian Education Provisions or adopting rules related to the education of Montana citizens to include information specific to the cultural heritage and contemporary conditions of American Indians, with particular emphasis on Montana Indian tribal groups and governments, has resulted in past harm and continues to cause harm to FBIC. That harm manifests itself in the form of FBIC's expertise, views, and input not being included in education generally and in Indian education specifically in Montana public schools. It also manifests itself in a loss or threat of loss to FBIC's cultural heritage.

45. Plaintiff Confederated Salish and Kootenai Tribes of the Flathead Reservation ("CSKT") is a sovereign, federally-recognized Indian tribe with a reservation located within Montana. Confederated Salish & Kootenai Tribes of the Flathead Reservations Homepage, <https://csktribes.org/> (last visited December 3, 2021). CSKT has 8,020 citizens, approximately 5,500 of whom live on the Flathead Reservation. CSKT's Reservation is served primarily by eight Montana public school districts and is in close proximity to another fifty-five Montana public school districts.

46. Defendants and every public school district that serves or is in close proximity to CSKT's Reservation, and all of Defendants' and the school districts' personnel, do not work cooperatively with CSKT when providing instruction, implementing the educational goals of the Indian Education Provisions or adopting rules related to the education of Montana citizens to include information specific to the cultural heritage and contemporary conditions of American Indians, with particular emphasis on Montana Indian tribal groups and governments.

47. Defendants' failure to work cooperatively with CSKT when providing instruction, implementing the educational goals of the Indian Education Provisions, or adopting rules related to the education of Montana citizens to include information specific to the cultural heritage and contemporary conditions of American Indians, with particular emphasis on Montana Indian tribal groups and governments, has resulted in past harm and continues to cause harm to CSKT. That harm manifests itself in the form of CSKT's expertise, views, and input not being included in education generally and in Indian education specifically in Montana public schools. It also manifests itself in a loss or threat of loss to CSKT's cultural heritage.

48. Defendants' failure to implement and monitor compliance by all of their personnel, by every school district that serves or is in close proximity to CSKT's Reservation, and by all of the school districts' personnel, with the requirement to work cooperatively with CSKT when providing instruction, implementing the educational goals of the Indian Education Provisions or adopting rules related to the education of Montana citizens to include information specific to the cultural heritage and contemporary conditions of American Indians, with particular emphasis on Montana Indian tribal groups and governments, has resulted in past harm and continues to cause harm to CSKT. That harm manifests itself in the form of CSKT's expertise, views, and input not

being included in education generally and in Indian education specifically in Montana public schools. It also manifests itself in a loss or threat of loss to CSKT's cultural heritage.

49. Plaintiff Assiniboine and Sioux Tribe of the Fort Peck Indian Reservation, Montana, ("Fort Peck Tribes") is a sovereign, federally-recognized Indian tribe with a reservation located in Montana. Fort Peck Tribes Homepage, <http://www.fortpecktribes.org/> (last visited December 3, 2021). The Fort Peck Tribes have over 13,000 citizens, approximately 7,000 of whom live on the Fort Peck Indian Reservation. The Fort Peck Indian Reservation is served primarily by nine Montana public school districts, and is in close proximity to another twenty-five Montana public school districts.

50. Defendants and every public school district that serves or is in close proximity to the Fort Peck Tribes' Reservation, and all of Defendants' and the school districts' personnel, do not work cooperatively with the Fort Peck Tribes when providing instruction, implementing the educational goals of the Indian Education Provisions or adopting rules related to the education of Montana citizens to include information specific to the cultural heritage and contemporary conditions of American Indians, with particular emphasis on Montana Indian tribal groups and governments.

51. Defendants' failure to work cooperatively with the Fort Peck Tribes when providing instruction, implementing the educational goals of the Indian Education Provisions, or adopting rules related to the education of Montana citizens to include information specific to the cultural heritage and contemporary conditions of American Indians, with particular emphasis on Montana Indian tribal groups and governments, has resulted in past harm and continues to cause harm to the Fort Peck Tribes. That harm manifests itself in the form of the Fort Peck Tribes' expertise, views, and input not being included in education generally and in Indian education

specifically in Montana public schools. It also manifests itself in a loss or threat of loss to the Fort Peck Tribes' cultural heritage.

52. Defendants' failure to implement and monitor compliance by all of their personnel, by every school district that serves or is in close proximity to the Fort Peck Tribes' Reservation, and by all of the school districts' personnel, with the requirement to work cooperatively with the Fort Peck Tribes' when providing instruction, implementing the educational goals of the Indian Education Provisions or adopting rules related to the education of Montana citizens to include information specific to the cultural heritage and contemporary conditions of American Indians, with particular emphasis on Montana Indian tribal groups and governments, has resulted in past harm and continues to cause harm to the Fort Peck Tribes. That harm manifests itself in the form of the Fort Peck Tribes' expertise, views, and input not being included in education generally and in Indian education specifically in Montana public schools. It also manifests itself in a loss or threat of loss to the Fort Peck Tribes' cultural heritage.

53. Plaintiff Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana, is a sovereign, federally-recognized Indian tribe with a reservation located in Montana. Northern Cheyenne Tribe Homepage, <https://www.cheyennation.com/> (last visited December 3, 2021). The Northern Cheyenne Tribe has approximately 11,275 citizens. The Northern Cheyenne Indian Reservation is served primarily by three Montana public school districts and is in close proximity to another twelve Montana public school districts.

54. Defendants and every public school district that serves or is in close proximity to the Northern Cheyenne Tribe's Reservation, and all of Defendants' and the school districts' personnel, do not work cooperatively with the Northern Cheyenne Tribe when providing instruction, implementing the educational goals of the Indian Education Provisions or adopting



rules related to the education of Montana citizens to include information specific to the cultural heritage and contemporary conditions of American Indians, with particular emphasis on Montana Indian tribal groups and governments.

55. Defendants' failure to work cooperatively with the Northern Cheyenne Tribe when providing instruction, implementing the educational goals of the Indian Education Provisions, or adopting rules related to the education of Montana citizens to include information specific to the cultural heritage and contemporary conditions of American Indians, with particular emphasis on Montana Indian tribal groups and governments, has resulted in past harm and continues to cause harm to the Northern Cheyenne Tribe. That harm manifests itself in the form of the Northern Cheyenne Tribe's expertise, views, and input not being included in education generally and in Indian education specifically in Montana public schools. It also manifests itself in a loss or threat of loss to the Northern Cheyenne Tribe's cultural heritage.

56. Defendants' failure to implement and monitor compliance by all of their personnel, by every school district that serves or is in close proximity to the Northern Cheyenne Tribe's Reservation, and by all of the school districts' personnel, with the requirement to work cooperatively with the Northern Cheyenne Tribe when providing instruction, implementing the educational goals of the Indian Education Provisions or adopting rules related to the education of Montana citizens to include information specific to the cultural heritage and contemporary conditions of American Indians, with particular emphasis on Montana Indian tribal groups and governments, has resulted in past harm and continues to cause harm to the Northern Cheyenne Tribe. That harm manifests itself in the form of the Northern Cheyenne Tribe's expertise, views, and input not being included in education generally and in Indian education specifically in

Montana public schools. It also manifests itself in a loss or threat of loss to the Northern Cheyenne Tribe's cultural heritage.

57. Plaintiff Little Shell Tribe of Chippewa Indians of Montana (Little Shell Tribe) is a sovereign, federally-recognized Indian tribe headquartered in Great Falls, Montana. Little Shell Chippewa Tribe Homepage, <https://www.montanalittleshelltribe.org/> (last visited December 3, 2021). The Little Shell Tribe does not have a reservation. The Little Shell Tribe has approximately 5,400 citizens, and is in close proximity to thirty-three Montana public school districts.

58. Defendants and every public school district that serves or is in close proximity to the Little Shell Tribe, and all of Defendants' and the school districts' personnel, do not work cooperatively with the Little Shell Tribe when providing instruction, implementing the educational goals of the Indian Education Provisions or adopting rules related to the education of Montana citizens to include information specific to the cultural heritage and contemporary conditions of American Indians, with particular emphasis on Montana Indian tribal groups and governments.

59. Defendants' failure to work cooperatively with the Little Shell Tribe when providing instruction, implementing the educational goals of the Indian Education Provisions, or adopting rules related to the education of Montana citizens to include information specific to the cultural heritage and contemporary conditions of American Indians, with particular emphasis on Montana Indian tribal groups and governments, has resulted in past harm and continues to cause harm to the Little Shell Tribe. That harm manifests itself in the form of the Little Shell Tribe's expertise, views, and input not being included in education generally and in Indian education specifically in Montana public schools. It also manifests itself in a loss or threat of loss to the Little Shell Tribe's cultural heritage.

60. Defendants' failure to implement and monitor compliance by all of their personnel, by every school district that serves or is in close proximity to the Little Shell Tribe, and by all of the school districts' personnel, with the requirement to work cooperatively with the Little Shell Tribe when providing instruction, implementing the educational goals of the Indian Education Provisions or adopting rules related to the education of Montana citizens to include information specific to the cultural heritage and contemporary conditions of American Indians, with particular emphasis on Montana Indian tribal groups and governments, has resulted in past harm and continues to cause harm to the Little Shell Tribe. That harm manifests itself in the form of the Little Shell Tribe's expertise, views, and input not being included in education generally and in Indian education specifically in Montana public schools. It also manifests itself in a loss or threat of loss to the Little Shell Tribe's cultural heritage.

61. Plaintiff Crow Tribe of Montana (Crow) is a sovereign, federally-recognized Indian tribe with a reservation located within Montana. Crow Tribe of Montana Homepage, <http://www.crow-nsn.gov/> (last visited December 3, 2021). Crow has about 11,000 citizens. Crow's Reservation is served primarily by ten Montana public school districts and is in close proximity to another twenty-one Montana public school districts.

62. Defendants and every public school district that serves or is in close proximity to Crow's Reservation, and all of Defendants' and the school districts' personnel, do not work cooperatively with Crow when providing instruction, implementing the educational goals of the Indian Education Provisions or adopting rules related to the education of Montana citizens to include information specific to the cultural heritage and contemporary conditions of American Indians, with particular emphasis on Montana Indian tribal groups and governments.

63. Defendants' failure to work cooperatively with Crow when providing instruction, implementing the educational goals of the Indian Education Provisions, or adopting rules related to the education of Montana citizens to include information specific to the cultural heritage and contemporary conditions of American Indians, with particular emphasis on Montana Indian tribal groups and governments, has resulted in past harm and continues to cause harm to Crow. That harm manifests itself in the form of Crow's expertise, views, and input not being included in education generally and in Indian education specifically in Montana public schools. It also manifests itself in a loss or threat of loss to Crow's cultural heritage.

64. Defendants' failure to implement and monitor compliance by all of their personnel, by every school district that serves or is in close proximity to Crow's Reservation, and by all of the school districts' personnel, with the requirement to work cooperatively with Crow when providing instruction, implementing the educational goals of the Indian Education Provisions or adopting rules related to the education of Montana citizens to include information specific to the cultural heritage and contemporary conditions of American Indians, with particular emphasis on Montana Indian tribal groups and governments, has resulted in past harm and continues to cause harm to Crow. That harm manifests itself in the form of Crow's expertise, views, and input not being included in education generally and in Indian education specifically in Montana public schools. It also manifests itself in a loss or threat of loss to Crow's cultural heritage.

65. Plaintiffs FBIC, CSKT, Fort Peck Tribes, Northern Cheyenne Tribe, Little Shell Tribe, and Crow (hereinafter referred to collectively as "Tribal Plaintiffs") assert claims on their own behalf and on behalf of their citizens as *parens patriae*.

## C. Defendants

### 1. Montana Office of Public Instruction

66. Defendant Montana Office of Public Instruction (“OPI”) is an agency within the executive branch of the Montana government and is located in Helena, Montana. State of Montana Directory, <https://directory.mt.gov/govt/state-dir/agency/opi> (last visited December 3, 2021); *see also* Mont. Const. art. VI, §1(1) (stating that executive branch officers include the superintendent of public instruction).

67. OPI maintains an IEFA webpage, which states that OPI “provide[s] schools and staff with knowledge, skills, and content to ensure Indian Education for All means cultural enrichment, academic engagement, and equitable pedagogy for students.” Montana Office of Public Instruction Homepage, <http://opi.mt.gov/Educators/Teaching-Learning/Indian-Education-for-All> (last visited December 3, 2021).

68. OPI also maintains an IEFA Team which consists of a Director, an Indian Education Specialist, and an Administrative Assistant. Montana Office of Public Instruction Homepage, <http://opi.mt.gov/Educators/Teaching-Learning/Indian-Education-for-All/Meet-the-Indian-Education-for-All-Team> (last visited December 3, 2021).

### 2. Montana Superintendent of Public Instruction

69. OPI is headed by a Superintendent of Public Instruction (SPI). Montana Office of Public Instruction – Office of the Superintendent, <https://opi.mt.gov/Leadership/Management-Operations/Office-of-the-Superintendent> (last visited December 3, 2021).

70. Elsie Arntzen is the current SPI. *Id.*

71. The SPI is responsible for the general supervision of the Montana public schools and school districts. Mont. Const. art. X, § 9(3)(b); § 20-3-106, MCA.

72. The SPI is responsible for accrediting Montana public schools. § 20-7-102(1), MCA. The SPI must review the operating conditions for each school district and school to determine compliance with accreditation standards. § 20-2-102(1), MCA.

73. Upon order of the Montana Board of Public Education, the SPI must distribute Montana public school equity funding known as “BASE aid.” § 20-9-344(1)(c), MCA. BASE aid includes IEFA funding. § 20-9-306(2)(e), MCA.

74. Upon order of the Montana Board of Public Education, the SPI may withhold distribution of BASE aid from a school district when the district fails to submit required reports or budgets or fails to maintain accredited status. § 20-9-344(2), MCA.

75. The SPI has the duty to “faithfully work in all practical and possible ways for the welfare of the public schools of the state.” § 20-3-105(10), MCA.

### **3. Montana Board of Public Education**

76. The Montana Board of Public Education (BPE) is a constitutionally-created entity that “exercise[s] general supervision over the public school system.” Mont. Const. art. X, § 9(3)(a). The BPE maintains an office in Helena, Montana, and an internet website, <https://bpe.mt.gov/Home/About-Us>. The BPE’s New Member Orientation Manual is available via the internet, <https://bpe.mt.gov/Home/Board-Members/2021-BPE-New-Member-Handbook.pdf>.

77. Along with the Montana Board of Regents, the BPE is responsible for “long range planning and for coordinating and evaluating policies and programs for the public educational systems of the state.” § 20-2-101(1), MCA.

78. The BPE must adopt accreditation standards and establish the accreditation status of every school. § 20-2-121(6), MCA; *accord* § 20-7-101(1), MCA (“Standards of accreditation for all schools must be adopted by the board of public education upon the recommendations of the

superintendent of public instruction”); § 20-7-102(1), MCA (The accreditation status of each school must ... be established by the board of public education upon the recommendation of the superintendent of public instruction.”); Admin. R. Mont 10.55.601.

79. The BPE must “define and specify the basic instructional program for pupils in public schools, and this program must be set forth in the standards of accreditation.” § 20-7-111(1), MCA.

80. The BPE must establish content standards for school districts to use in developing curriculum. Admin. R. Mont. 10.53.101. Curriculum and instruction of the content standards shall incorporate the distinct and unique cultural heritage of American Indians pursuant to Article X, section 1(2) of the Constitution of the state of Montana and § 20-1-501 and § 20-9-309(2)(c), MCA. Admin. R. Mont. 10.53.102.

81. The BPE administers and orders the distribution of, and subsequently distributes, Montana public school equity funding known as “BASE aid.” § 20-2-121(3), MCA; § 20-9-344(1), MCA; § 20-9-306(1), MCA, § 20-9-306(2), MCA. BASE aid includes IEFA funding. § 20-9-306(2)(e), MCA.

82. The BPE must adopt policies for regulating the distribution of BASE aid (§ 20-9-344(1)(a), MCA) and may require reports from county superintendents, county treasurers, and trustees that it considers necessary. § 20-9-344(1)(a) MCA.

83. The BPE may order the SPI to withhold distribution of BASE aid from a school district when the district fails to submit required reports or budgets or fails to maintain accredited status. § 20-9-344(2), MCA.

#### **4. Chairperson of the Montana Board of Public Education**

84. The Chairperson is one of “seven [Board] members appointed by the governor and confirmed by the senate.” Mont. Const. art. X, § 3(b).

85. The Chairperson is one of three members of the Board’s Executive Committee and is charged with presiding at Board meetings, participation in the construction of Board meeting agendas, and appointment of all Board committees. *See* Board Bylaws approved Sept. 11, 2014, Bd. Of Pub. Educ. (2014), <https://bpe.mt.gov/Home/Board-Members/BPE-By-Laws-July-2014.pdf>.

86. Darlene Schottle is the current Chairperson of the Board. Montana Board of Public Education, <http://bpe.mt.gov/Home/Board-Members> (last visited December 3, 2021).

#### **JURISDICTION AND VENUE**

87. Original jurisdiction is conferred on this Court through Mont. Const. art. VII, § 4 and § 3-5-302, MCA.

88. This Court has jurisdiction to grant declaratory relief under the Montana Uniform Declaratory Judgments Act. § 27-8-201, 202, MCA; M. R. Civ. P. 57. This Court also has jurisdiction to grant injunctive relief. § 27-19-101, MCA *et seq.* This Court has jurisdiction over Plaintiffs’ federal due process claim. *See Howlett By & Through Howlett v. Rose*, 496 U.S. 356, 358, 367 (1990); *Haywood v. Drown*, 556 U.S. 729, 735, 741-742 (2009); U.S. Const. art. VI.

89. Venue in this action is proper in Cascade County because one or more Plaintiffs reside in Cascade County. § 25-2-126, MCA, (“In an action brought by a resident of the state, the county of the plaintiff’s residence is also a proper place of trial.”).



90. The agencies and officials named as Defendants are being sued for “administrative actions undertaken in execution of a law or public policy,” § 2-9-111, MCA, and as such, sovereign immunity from suit does not bar the relief sought in this action.

## ALLEGATIONS

### A. History of Montana’s Indian Education Provisions

91. Montana is home to seven Indian reservations, eight federally recognized tribes, and some 78,000 American Indian people (6.3% of the State’s population and 10.8% of Montana’s public school student population). *See* U.S. Dept. of the Interior, Bureau of Indian Affairs, Indian Entities Eligible to Receive Services From the United States Bureau of Indian Affairs, 86 Fed. Reg. 7554 (Jan. 29, 2021); *Facts About Montana Education*, Mont. Off. Of Pub. Instruction (2021), <https://opi.mt.gov/Portals/182/Superintendent-Docs-Images/Facts%20About%20Montana%20Education.pdf?ver=2020-09-16-132427-883>.

92. State public school education of Indians has a long history of failure and criticism. *See* The Meriam Report: The Problem of Indian Administration, Public Schools and Indian Children, Part II, Chap. 9, at 415-18 (1928), [https://narf.org/nill/documents/merriam/n\\_meriam\\_chapter9\\_part1\\_education.pdf](https://narf.org/nill/documents/merriam/n_meriam_chapter9_part1_education.pdf); *see also* Indian Education: A National Tragedy - A National Challenge, Report Of The Committee On Labor And Public Welfare, United States Senate Made By Its Special Subcommittee On Indian Education Pursuant To S. Res. 80, Part I at 22-54 (1969) (Failure of Public Schools) (also known as “The Kennedy Report”) (1969), <https://narf.org/nill/resources/education/reports/kennedy/1-2.pdf>. (last visited, December 3, 2021).

93. These nationwide denunciations were applicable to Montana and inspired the remarkable Indian Education Provisions. Notably, the Provisions are directed at improving education for all Montanans, not just American Indians.

### **1. The Indian Education Clause**

94. When a new constitution for Montana was being debated in 1972, American Indian students, their families, and their tribes lobbied for a provision that would ensure the educational opportunity “to study their own culture, perhaps their own language, and to *develop a real feeling of pride* in themselves for their own heritage and culture.” Montana Constitutional Convention, Verbatim Transcript, Mar. 10, 1972, p. 1950 (emphasis added).

95. Delegate Eck at the 1972 Montana Constitutional Convention proposed the amendment that eventually passed, the current Indian Education Clause: “The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.” Mont. Const. art. X, § 1(2).

### **2. *Helena Elementary v. State***

96. Nearly two decades later, a group of school districts sued Montana, the BPE, and the SPI, challenging the State’s public school funding methods under the Montana Constitution. *See Helena Elementary*, 236 Mont. at 46, 769 P.2d at 685.

97. In *Helena Elementary*, the Montana Supreme Court affirmed the funding methods’ unconstitutionality. *Id.* In so holding, the Supreme Court expressly found that the Indian Education Clause “establishes a special burden in Montana . . . which must be addressed as a part of the school funding issues.” *Id.* at 58, 769 P.2d at 693.

### 3. The IEFA

98. In 1995, the Montana Senate passed Joint Resolution No. 11, which asked the Montana Committee on Indian Affairs to evaluate public schools' compliance with the Indian Education Clause and make recommendations. Pursuant to this Resolution, the Committee surveyed 153 school districts and held public hearings. *See* Comm. on Indian Affairs, *To Promote a Better Understanding: The 1995-96 Activities of the Committee on Indian Affairs*, S. Rep., 55th Leg., 13 (Mont. 1996).

99. The Committee found that the intent of the Indian Education Clause was “for all public schools to develop appropriate policies and programs to recognize and preserve the value of the American Indian culture and traditions.” The Committee noted that several public schools were doing a poor job of implementing the Clause, and some were not implementing the Clause at all. *To Promote a Better Understanding*, S. Rep., 55th Leg., *supra* ¶ 98, at 53.

100. The Committee's work led to the introduction in 1999 of House Bill (H.B.) 528 by Montana Representative Carol Juneau. H.B. 528 was specifically intended “to make the [Indian Education Clause's] application to the education system clear.” Carol Juneau & Denise Juneau, *Indian Education for All: Montana's Constitution at Work in Our Schools*, 72 Mont. L. Rev. 111, 116-117 (2011) (citing § 20-1-501, MCA, introduced in Mont. H.R. 528, 56th Leg. Sess. (Apr. 29, 1999)).

101. H.B. 528 was enacted as the IEFA and is codified in § 20-1-501, MCA *et seq.*

102. The IEFA was designed to provide the missing link between the Indian Education Clause's language and the actions needed to implement its promises. The preamble provides, in relevant part:

WHEREAS, as part of the state's educational guarantees, the people of Montana in 1972 included Article X, section 1(2), in the state constitution, recognizing the

distinct and unique cultural heritage of American Indians and expressing the state's commitment to preserve that cultural integrity through education; and

WHEREAS, the Legislature also recognizes that Article X, section 9(3), of the Montana Constitution provides the Board of Public Education with general supervision over the public school system and that Article X, section 8, of the Montana Constitution vests the supervision and control of the schools in each school district to the local board of trustees; and

WHEREAS, a 1995 study conducted by the Committee on Indian Affairs [now Law and Justice Interim Committee], pursuant to Senate Joint Resolution No. 11, revealed that despite the constitution's educational guarantees, many school districts and schools, including those adjacent to Montana's seven Indian reservations, had no policy or information in their school curricula recognizing the cultural heritage of American Indians and that the small number of Indian teachers and administrators in public schools resulted in Indian students with no role models and in a lack of cultural awareness and sensitivity among non-Indian students; and

WHEREAS, the Legislature recognizes that the history of Montana and the current problems of the state cannot be adequately understood and the problems cannot be addressed unless both Indians and non-Indians have an understanding of the history, culture, and contemporary contributions of Montana's Indian people.

Mont. H.R. 528, 56th Leg. Sess. (Apr. 29, 1999).

103. Representative Juneau stated that implementation of the IEFA "would help strengthen educational institutions and understandings between the Indian nations and other Montana people." Committee on Education and Cultural Resources, 2. "[A]ll that remained was to carry it out." Juneau & Juneau, *Indian Education for All*, *supra* ¶ 100, at 117.

#### **4. *Columbia Falls v. State***

104. In 2004, a group of schools and concerned parents again challenged Montana's school funding system on state constitutional grounds. *Columbia Falls*, ¶¶ 1-9. Violations of the Indian Education Clause were specifically alleged and reached in *Columbia Falls*, ¶¶ 6, 10, 34-35.

105. The Montana Indian Education Association, along with the federally and state-recognized tribes of Montana and numerous other organizations focused on American Indian education (hereinafter collectively referred to as "Tribal Amici"), filed an amicus curiae brief in

*Columbia Falls*. Tribal Amici argued that the State’s failure to implement the IEFA “has become institutional.” Montana Indian Education Association’s Amicus Curiae Brief 2, Jan. 15, 2004, No. BDV-2002-528. A committee report cited by the Tribal Amici noted that the “sad results” of lack of implementation of the IEFA were: “(1) lack of funding for the programs’ implementation; and (2) *absence of an adequate oversight mechanism.*” *Id.* at 11 (emphasis added).

106. In affirming the district court’s finding that Montana’s public school funding system was unconstitutional, the Montana Supreme Court held, *inter alia*, that “the District Court concluded that the State has failed to recognize the distinct and unique cultural heritage of American Indians and that it has shown no commitment in its educational goals to the preservation of Indian Cultural identity, as demanded by [the Indian Education Clause].” *Columbia Falls*, ¶ 35. The Supreme Court expressly noted that this assertion “stand[s] unchallenged” because the State did not contest the district court’s conclusion. *Id.*

##### **5. IEFA Appropriations 2007-present**

107. As a result of *Columbia Falls*, the Montana legislature appropriated approximately \$3.4 million for the 2007 biennium to provide funding for school districts to implement the Indian Education Provisions. Sp. Sess. Laws Dec. 2005 (2005 Mont. Laws 1st Sp. Sess.) Ch. 4, § 3 (S.B. 1), *as amended by* 2007 Mont. Laws 1st Sp. Sess. Ch. 1 § 17, (S.B. 2). The legislature also dedicated approximately \$3 million for future year Indian Education Provisions funding. *Id.*

108. The required funding for the Indian Education Provisions is codified at Title 20, Education, Chapter 9, Finance, Part 3, Funding of Basic System of Quality Public Schools, Indian Education for All payment. It provides, in relevant part:

- (4) A public school district that receives an Indian Education for All payment *may not divert the funds to any purpose other than curriculum development, providing curriculum and materials to students, and providing training to teachers about the curriculum and materials.* A public school district *shall file an annual report with*

*the Office of Public Instruction*, in a form prescribed by the superintendent of public instruction, that specifies how the Indian Education for All funds were expended.

§ 20-9-329, MCA (emphasis added). Thus, the statute requires that (a) school districts will spend IEFA money only for IEFA purposes, and (b) OPI will annually monitor those expenditures through a form OPI creates for this purpose.

109. The General Appropriations Act of 2007, An Act Appropriating Money to Various State Agencies for the Biennium Ending June 30, 2009, states that IEFA funding is appropriated to OPI, and that OPI must distribute the funding to school districts. Sp. Sess. Laws 2007 (2007 Mont. Laws 1st Sp. Sess.) Ch. 5, §§ 9, 28 (H.B. 2).

110. In the 2020-2021 school year, Montana had 402 public school districts and 825 public schools. *Facts About Montana Education*, Mont. Off. of Pub. Instruction (2021), <https://opi.mt.gov/Portals/182/Superintendent-Docs-Images/Facts%20About%20Montana%20Education.pdf?ver=2020-09-16-132427-883>. The statewide K-12 public school student enrollment total was 149,181. *Id.*

111. In 2015, OPI retained Dr. Shawn deAnne Bachtler to conduct an independent evaluation of how well IEFA was being implemented. *See* Shawn deAnne Bachtler, *Montana Indian Education For All Evaluation Prepared for the State of Montana Office of Public Instruction*, Mont. Off. of Pub. Instruction (2015) (“2015 Evaluation”), <https://opi.mt.gov/Portals/182/Page%20Files/Indian%20Education/Indian%20Education%20101/IEFA%20Evaluation.pdf?ver=2018-03-13-161917-910>. The 2015 Evaluation found that, while some school districts were properly implementing the IEFA, implementation in other districts was “very minimal.” *Id.* at 35. These variations in compliance, Dr. Bachtler concluded, “will very likely continue” due to “the absence of accountability.” *Id.* The 2015 Evaluation contains a series of recommendations. Notably, the three primary failings of the Defendants identified in this

lawsuit—insufficient standards, insufficient monitoring, and insufficient enforcement (accountability)—were subjects of the 2015 Evaluation recommendations. *See, e.g., id.* at 35 (“If accountability is introduced, it will be very important to clearly define the requirements, identify who is responsible for oversight of that accountability, and whether there are consequences for not meeting the requirement.”) The 2015 Evaluation highlighted the fact that school officials were unsure—some two decades after IEFA’s implementation—what IEFA required and what OPI expected of them. *See id.* at 16 (“Interviewees commonly noted that expectations for implementation of IEFA are not precisely defined by the law or by OPI.”) OPI has ignored the recommendations of the 2015 Evaluation and has failed to create sufficient standards, to monitor compliance with those standards, and to enforce those standards. Exactly as Dr. Bachtler predicted, due to OPI’s persistent shortcomings, variations in compliance remain and compliance with IEFA in many school districts is very minimal.

## **B. Defendants’ Failures to Implement, Monitor, and Enforce the Indian Education Provisions**

### **1. Defendants Have Failed to Establish Minimum Compliance Standards and Outcomes**

112. Defendants have failed to establish minimum standards and outcomes necessary to determine whether school districts and schools are complying with the Indian Education Provisions. Specifically, there are no compliance standards and outcomes to determine: (1) whether schools recognize and preserve American Indian cultural heritage and whether students are learning about American Indian cultural heritage in a culturally responsive manner, *see* §§ 20-1-501(1), 501(2)(a), MCA; (2) whether schools, including “every educational agency and all educational personnel,” are “work[ing] cooperatively with Montana tribes or those tribes that are in close proximity, when providing instruction or when implementing an educational goal or

adopting a rule related to the education of each Montana citizen,” *see* § 20-1-501(2)(b); and (3), MCA, whether “all school personnel . . . have an understanding and awareness of Indian tribes to help them relate effectively with Indian students and parents, . . . [and] gain an understanding of an appreciation for the American Indian people,” *see* § 20-1-501(3), MCA.

113. Over a decade ago, OPI published Tammy Elser, *The Framework: A Practical Guide for Montana Teachers and Administrators Implementing Indian Education for All*, Mont. Off. of Pub. Instruction (2010), <http://opi.mt.gov/Portals/182/Page%20Files/Indian%20Education/Indian%20Education%20101/Framework.pdf>. The Framework is a self-described “Practical Guide,” yet it does not contain standards or outcomes that school districts and schools must meet in order to lawfully comply with the Indian Education Provisions.

114. More recently, in 2018, OPI published an IEFA Funding Spectrum Guide, *Funding Spectrum Guide – Indian Education for All*, Mont. Off. of Pub. Instruction (2018), <https://opi.mt.gov/Portals/182/Page%20Files/Indian%20Education/Indian%20Education%20101/Funding%20Spectrum%20Guide%20-%20IEFA.pdf?ver=2018-01-22-090243-490>. The Funding Spectrum Guide, too, is a self-acknowledged “guide” that describes “suggested activities” for schools at four different IEFA funding levels to consider undertaking, from field trips to professional development. Like the Framework, the Funding Spectrum Guide does not contain standards or outcomes that school districts and schools must meet in order to comply with the Indian Education Provisions.

115. The BPE’s accreditation standards define and include IEFA. Admin. R. Mont. 10.55.602(17).



116. The BPE and the SPI are not ensuring that all Montana school districts and schools comply with the IEFA accreditation standards. Their failure to do so results in actual harm to the named Individual and Tribal Plaintiffs.

117. The BPE's content standards include IEFA. Admin. R. Mont. 10.53.102.

118. The BPE is not ensuring that all Montana school districts and schools comply with the IEFA content standards. Its failure to do so results in actual harm to the named Individual and Tribal Plaintiffs.

## **2. Defendants Have Failed to Establish Meaningful and Objective Reporting Requirements**

119. Defendants have failed to establish a mandatory, uniform, and transparent reporting system or mechanism to determine whether the amount of IEFA funding that is distributed to school districts and schools is actually being used for IEFA purposes, and in what manner.

120. Montana public school districts may not use IEFA funding for any purpose other than curriculum development, providing curriculum and materials to students, and providing training to teachers about the curriculum and materials. § 20-9-329(4), MCA. Public schools must report annually to OPI, in a form prescribed by the SPI, the specifics of how *all* of their IEFA funds were expended. *Id.* (emphasis added).

121. The BPE, the SPI and OPI have failed to adopt and enforce specific policies and procedures for school district and school reporting and expenditure of all IEFA funding.

### **a. Annual Trustees Financial Summaries**

122. The SPI is required by law to create a form on which each school district will describe how it spent all of its IEFA funds, and each school district must complete and submit that form annually. § 20-9-329(4), MCA. According to its Funding Spectrum Guide, *Funding Spectrum Guide – Indian Education for All*, Mont. Off. of Pub. Instruction (2018),

<https://opi.mt.gov/Portals/182/Page%20Files/Indian%20Education/Indian%20Education%20101/Funding%20Spectrum%20Guide%20-%20IEFA.pdf?ver=2018-01-22-090243-490>, OPI will collect that information through the Annual Trustees Financial Summary (“ATFS”), which is a statutorily required general financial report of school districts that is not specific to IEFA funding or any particular funding that school districts receive. *See* § 20-3-209, MCA.

123. With respect to IEFA funding, in their ATFS for Fiscal Years 2019 and 2020, available on OPI’s website, Montana Office of Public Instruction – Accounting, [https://opi.mt.gov/School\\_Finance\\_Upload/Accounting?folderId=101148&view=gridview&pageSize=10](https://opi.mt.gov/School_Finance_Upload/Accounting?folderId=101148&view=gridview&pageSize=10) (last visited December 3, 2021), the majority of school districts listed only the annual total dollar amount of a district’s IEFA funding, an amount pre-determined by the legislatively set calculated formula, without an explanation of funding expenditures. *See* MT Leg. 470, 2021 Mont. Laws Ch. 470 (H.B. 46) (May 21, 2021), amending § 20-9-306(14). Moreover, only a small fraction of school districts – about 10% – reported IEFA expenditures that actually match their IEFA funding amounts. For example, Belgrade Elementary District received over \$55,000.00 in IEFA funding for both FY 2019 and FY 2020, yet it reported IEFA expenditures for only 71% of that funding. *Trustees’ Financial Summary FY 2019-2020 - 16 Gallatin County, 0368 Belgrade Elem, Mont. Off. of Pub. Instruction (2020)*, <https://opi.mt.gov/Portals/182/Page%20Files/School%20Finance/Accounting/TFS%20Reports/TFS%20FY%202020/BelgradeEl.pdf?ver=2020-12-14-152339-463&timestamp=1626712936224>. ATFS reports filed by the vast majority of school districts across the State contained the same deficiencies.

124. As a result of these unreported IEFA expenditures, of the \$6.7 million in statewide IEFA funding appropriated for Montana public school districts for the combined Fiscal Years 2019

and 2020, almost 50% (nearly \$3.5 million) was unaccounted for. *See* Montana Office of Public Instruction – Accounting, [http://opi.mt.gov/School\\_Finance\\_Upload/State-School-Payments?folderId=88852&view=gridview&pageSize=10](http://opi.mt.gov/School_Finance_Upload/State-School-Payments?folderId=88852&view=gridview&pageSize=10) (last visited December 3, 2021).

125. Even for those school districts that account for all or some dollar amount(s) of their IEFA funding, most nevertheless fail to provide information about *how* that funding was expended in manners that aligns with the IEFA statutory purposes. *See* § 20-9-329(4), MCA. The ATFS for Fiscal Years 2019 and 2020 show no IEFA expenditure breakdown for the majority -- about 70% -- of districts. Montana Office of Public Instruction – Accounting, [https://opi.mt.gov/School\\_Finance\\_Upload/Accounting?folderId=101148&view=gridview&pageSize=10](https://opi.mt.gov/School_Finance_Upload/Accounting?folderId=101148&view=gridview&pageSize=10) (last visited December 3, 2021). For example, the FY 2020 ATFS filed by Hellgate Elementary and Florence-Carlton K-12 Districts -- which include schools that receive the highest available level of IEFA funding -- did not include any detail of their IEFA expenditures. *See Trustees' Financial Summary FY 2019-2020 - 32 Missoula County, 0586 Hellgate Elem*, Mont. Off. of Pub. Instruction (2020), [https://opi.mt.gov/Portals/182/Page\\_Files/School\\_Finance/Accounting/TFS\\_Reports/TFS\\_FY\\_2020/HellgateEl.pdf?ver=2020-12-14-152514-983](https://opi.mt.gov/Portals/182/Page_Files/School_Finance/Accounting/TFS_Reports/TFS_FY_2020/HellgateEl.pdf?ver=2020-12-14-152514-983) (last visited December 3, 2021) and *Trustees' Financial Summary FY 2019-2020 - 41 Ravalli County, 0743 Florence-Carlton K-12 Schls*, Mont. Off. of Pub. Instruction (2020), <https://opi.mt.gov/Portals/182/Page%20Files/School%20Finance/Accounting/TFS%20Reports/TFS%20FY%202020/FlorenceCarltonK12.pdf?ver=2020-12-14-152448-200&timestamp=1624396158520> (last visited December 3, 2021).

126. OPI's FY 2018 ATFS Instructions to school districts do not state that a breakdown or detail of IEFA funding expenditures must be reported. *Trustees' Financial Summary Instructions*, Mont. Off. of Pub. Instruction (2019),

<https://opi.mt.gov/Portals/182/Page%20Files/School%20Finance/Accounting/Guidance%20and%20Manuals/Trustees%20Financial%20Summary/TFS%20Instructions%20FY%202019%20Year%20End.pdf?ver=2019-07-23-120450-550>.

127. School districts and schools have no incentive to fully and accurately report their IEFA expenditures because there is no penalty for failing to do so. Incomplete and inaccurate IEFA reporting does not jeopardize school districts' and schools' future IEFA funding. For example, despite submitting no information demonstrating that IEFA funds had been spent exclusively and properly for IEFA purposes during Fiscal Year 2020, the Florence Carlton K-12 Schools received IEFA funding for Fiscal Year 2021. *Preliminary Budget Data Sheet FY 2020-2021 (41 Ravalli, 0731 Corvallis K-12 Schools)*, Mont. Off. of Pub. Instruction (2020), <https://opi.mt.gov/Portals/182/Page%20Files/School%20Finance/Budget/Preliminary%20Budget%20Data%20Reports/FY%202021/Ravalli.pdf?ver=2020-02-20-094259-460&timestamp=1624395508684> (last visited December 3, 2021).

**b. Terms of Employment, Accreditation, and Master Schedules**

128. “To fulfill a number of new and anticipated reporting requirements in addition to replacing previous [reporting requirements],” OPI also administers annual Terms of Employment, Accreditation, and Master Schedule (“TEAMS”) data collection from Montana public school districts and schools. See Montana Office of Public Instruction – TEAMS, <https://opi.mt.gov/Leadership/Assessment-Accountability/School-Accreditation/TEAMS> (last visited December 3, 2021).

129. TEAMS data collection includes requests for IEFA data, but upon information and belief, TEAMS data submission by school districts regarding IEFA expenditures is voluntary, and district and school responses vary widely. For example, in the 2014-2015 school year data

collection, 46 schools failed to submit any TEAMS data to OPI at all.<sup>3</sup> In 2017-2018 school year data collection, 113 school districts provided such scant information about how they spent IEFA funds that it is impossible to determine if those funds were properly spent. Also in the 2017-2018 school year data collection, some schools that received IEFA funding explicitly stated that no expenditures were made, some responded “not applicable,” and some reported being unaware of or unable to locate any verifiable IEFA expenditures.

130. TEAMS data collection invites schools to self-report on nine areas of staff and administrator training, including one area denominated as “IEFA best practices.” In the 2017-2018 school year data collection, 47 schools reported no IEFA administrator or staff training, 207 schools reported no IEFA administrator training, and 62 schools reported no IEFA staff professional development.

131. TEAMS data collection also invites schools to self-rate their knowledge of six IEFA items: (1) contemporary issues, (2) history, (3) knowledge of sovereignty, (4) federal policies, (5) arts, and (6) literature. In the 2017-2018 school year data collection, 214 schools—over 25%—reported an overall “low” knowledge of the IEFA items. For example, Hardin Intermediate School, which is located adjacent to the Crow Indian Reservation and has a student population that is 78% American Indian, reported a low level of IEFA knowledge for four consecutive years in its TEAMS data, from 2015 to 2018.

132. Critically, neither the ATFS nor the TEAMS data collection require school districts or schools to report about their statutorily-required cooperation with Montana tribes in expending their IEFA funds or in creating an acceptable IEFA curriculum. *See* § 20-1-501(2)(b), MCA

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<sup>3</sup> Plaintiffs obtained TEAMS data via responses to public records requests made to OPI in December, 2018 and March, 2020.

("[E]very educational agency and all educational personnel will work cooperatively with Montana tribes or those tribes that are in close proximity, when providing instruction or when implementing an educational goal").

### **3. Defendants Lack Monitoring Procedures That Will Identify Unauthorized and Improper Expenditures**

133. The IEFA payment statute expressly states that "[a] public school district that receives an Indian Education for All payment may not divert the funds to any purpose other than curriculum development, providing curriculum and materials to students, and providing training to teachers about the curriculum and materials." § 20-9-329(4), MCA. The statute also provides that each "public school district shall file an annual report with the Office of Public Instruction, in a form prescribed by the superintendent of public instruction, that specifies how the Indian Education for All funds were expended." *Id.* The combination of these two clauses reflects a clear legislative intent that OPI must monitor *through written reports* the expenditure of IEFA funds to ensure that not one penny of those funds is spent for a non-IEFA purpose.

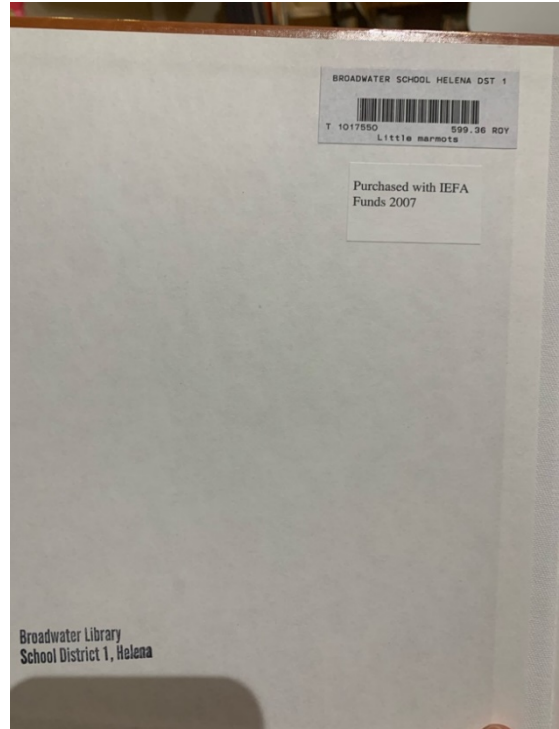
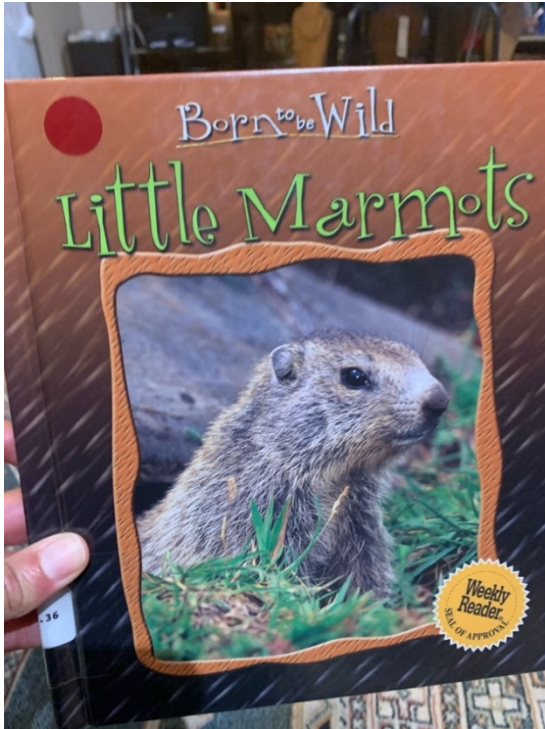
134. In the TEAMS 2017-2018 school year data collection, some school districts reported IEFA expenses that appear to have been outside the scope of the IEFA. Reported expenses were for activities that are more appropriate for other state or federal education programs, including counseling services, Indian Clubs, behavioral intervention training, and interventions focused on assisting struggling students.

135. According to the TEAMS 2017-2018 school year data, Bozeman Elementary and High School Districts, which received nearly \$150,000 in IEFA funds, reported using the funds to pay a portion of their school district's librarians' salaries and benefits without (a) stating the precise portion of the librarians' salaries and benefits that were funded by IEFA, or (b) explaining why IEFA funds should be spent in this manner.

136. In the TEAMS 2017-2018 school year data, some school districts reported purchases that may actually be inappropriate or harmful. For example, Deer Creek Elementary School, which is in Deer Creek Elementary District, <http://apps.opi.mt.gov/SchoolDirectory/frmdirectorydistrictpdf.aspx> (last visited December 3, 2021), purchased *Squanto and the Miracle of Thanksgiving*, which “approaches the holiday from an evangelical point of view” (Amazon, <https://www.amazon.com/Squanto-Miracle-Thanksgiving-Eric-Metaxas-ebook/dp/B005CA2KMO> (last visited December 3, 2021)). The book is described as follows:

This entertaining and historical story shows that the actual hero of the Thanksgiving was neither white nor Indian, but God. In 1608, English traders came to Massachusetts and captured a 12-year old Indian, Squanto, and sold him into slavery. He was raised by Christians and taught faith in God. Ten years later he was sent home to America. Upon arrival, he learned an epidemic had wiped out his entire village. But God had plans for Squanto. God delivered a Thanksgiving miracle: an English-speaking Indian living in the exact place where the Pilgrims land in a strange new world.

*Id.* The District expressly reported this book as an IEFA-related purchase. Similarly, while perhaps unreported to OPI or other Defendants, Helena School District 1’s Broadwater School Library contains a book entitled *Born to be Wild: Little Marmots*. Anne Royer, *Born to be Wild: Little Marmots* (2005). This book has a hand-placed sticker inside its cover that states that it was “Purchased with IEFA Funds 2007.” The book describes the physical characteristics and social habits of marmots, including how marmots greet each other and play. The book does not situate marmots within the context of cultural significance, relevance, or meaning to American Indians in Montana.



#### **4. Lack of Compliance with IEFA Content Standards for Purposes of Accreditation**

137. The BPE must adopt accreditation standards and establish the accreditation status of every school. § 20-2-121(6), MCA; § 20-7-101(1), MCA; § 20-7-102(1), MCA. The BPE also must “define and specify the basic instructional program for pupils in public schools, and this program must be set forth in the standards of accreditation.” § 20-7-111, MCA. The SPI must review the conditions under which each school operates “to determine compliance with the standards of accreditation,” and make recommendations for accreditation to the Board. § 20-7-102, MCA.

138. The BPE also must establish content standards for school districts to use in developing curriculum. Admin R. Mont 10.53.101. The Montana Secretary of State’s Rule on Education, Content Standards, Indian Education provides that “[c]urriculum and instruction of the content standards under this chapter shall incorporate the distinct and unique cultural heritage of Montana American Indians pursuant to Article X, section 1(2) of the Constitution of the state of



Montana and 20-1-501 and 20-9-309(2)(c), MCA.” A.R.M. Rule 10.53.102, *available at* Montana Secretary of State Homepage, <http://mtrules.org/gateway/RuleNo.asp?RN=10%2E53%2E102> (last visited December 3, 2021).

139. OPI’s website has a link to Indian Education Curriculum Development and Implementation. Montana Office of Public Instruction – Indian Education Curriculum Development & Implementation, <http://opi.mt.gov/Educators/Teaching-Learning/Indian-Education-for-All/Indian-Education-Curriculum-Development-Implementation> (last visited December 3, 2021). OPI’s website also has a link to Content Standards, and the Social Studies Standards expressly include Indian education. Montana Office of Public Instruction – Social Studies Standards, <http://opi.mt.gov/Educators/Teaching-Learning/K-12-Standards-Revision/Social-Studies-Standards> (last visited December 3, 2021).

140. Upon information and belief, however, the SPI does not include compliance with the Indian Education Provisions as among the conditions under which a school must operate for purposes of determining compliance with accreditation standards. *See* § 20-7-102, MCA. Nor does the BPE consider compliance with the IEFA a factor in establishing school accreditation status. *Id.*

141. According to the 2015 Evaluation, some schools interpreted compliance with IEFA mandates and obligations as conducting a single event during a school year. 2015 Evaluation, *supra* ¶ 111, at 16. Also, according to the 2015 Evaluation, IEFA is not integrated across grade levels or subject areas in all Montana public schools. *Id.* IEFA is most frequently included in language arts, art, music, or vocational classes, and less frequently integrated into science, math, and social studies. *Id.*, *supra* ¶ 111, at 21. TEAMS survey data from 2015 through 2018 demonstrates that the emphasis on single events and language arts, art, music, or vocational classes

rather than IEFA integration across curriculum areas like science, math, and social studies continues to be the norm in many Montana public schools.

##### **5. Lack of Cooperation with Montana Tribes**

142. As noted above, the IEFA expressly requires that,

*“every educational agency and all educational personnel will work cooperatively with Montana tribes or those tribes that are in close proximity, when providing instruction or when implementing an educational goal or adopting a rule related to the education of each Montana citizen, to include information specific to the cultural heritage and contemporary contributions of American Indians, with particular emphasis on Montana Indian tribal groups and governments.”*

§ 20-1-501(2)(b), MCA (emphasis added). This requirement is not being met, and Defendants have not been monitoring or enforcing compliance with the requirement.

143. The declaratory and injunctive relief that Plaintiffs seek will require Defendants and all of their personnel to work cooperatively with Montana tribes or those tribes that are in close proximity, when providing instruction, implementing the educational goals of the Indian Education Provisions or adopting rules related to the education of Montana citizens, so that the tribes’ expertise, views, and input in education generally and in Indian education specifically will be included in all Montana public schools, and the tribes’ cultural heritages will be preserved responsibly in education in Montana public schools.

144. The declaratory and injunctive relief that Plaintiffs seek will require Defendants to implement and monitor compliance by all of their personnel, by every school district that serves or is in close proximity to Montana tribes, and by all of the school districts’ personnel, the requirement to work cooperatively with Montana tribes or those tribes that are in close proximity when providing instruction, implementing the educational goals of the Indian Education Provisions or adopting rules related to the education of Montana citizens, so that tribes’ expertise, views, and input in education generally and in Indian education specifically will be included in all

Montana public schools, and the tribes' cultural heritages will be preserved responsibly in education in Montana public schools.

## **6. Lack of Enforcement Generally**

145. The 2015 Evaluation is replete with statements by teachers and administrators that, with respect to IEFA, there are no clear standards, and oversight, monitoring, compliance, follow-up consequences, and accountability are lacking, rendering the IEFA mandate “toothless.” 2015 Evaluation, *supra* ¶ 111, at 1, 16, 17.

146. Upon information and belief, a school district's failure to submit an ATFS or school district's or school's TEAMS data to OPI does not impact subsequent IEFA funding to the school district or school, and does not result in other consequences to the school district or school meted out by Defendants. *See supra*, at ¶¶ 123-127; *see also* Montana Office of Public Instruction – Accounting, [http://opi.mt.gov/School\\_Finance\\_Upload/State-School-Payments?folderId=88852&view=gridview&pageSize=10](http://opi.mt.gov/School_Finance_Upload/State-School-Payments?folderId=88852&view=gridview&pageSize=10) (last visited December 3, 2021). .

147. Upon information and belief, for those school districts that do submit ATFS, or those school districts and schools that submit TEAMS data, the content of the response has no bearing on future IEFA funding to the school district or school. For example, as noted *supra*, at ¶ 123, Belgrade Elementary District did not account for the majority of its IEFA expenditures in Fiscal Years 2019 and 2020, yet it received IEFA funding for FY 2021. Montana Office of Public Instruction – Accounting, [http://opi.mt.gov/School\\_Finance\\_Upload/State-School-Payments?folderId=88852&view=gridview&pageSize=10](http://opi.mt.gov/School_Finance_Upload/State-School-Payments?folderId=88852&view=gridview&pageSize=10) (last visited December 3, 2021). Similarly, Browning Elementary School did not submit any IEFA funding expenditure reporting in Fiscal Years 2019 and 2020, yet it received IEFA funding for FY 2021. *Trustees' Financial Summary FY 2019-2020 - 18 Glacier County, 0400 Browning Elem*, Mont. Off. of Pub. Instruction

(2020),

<https://opi.mt.gov/Portals/182/Page%20Files/School%20Finance/Accounting/TFS%20Reports/TFS%20FY%202020/BrowningEl.pdf?ver=2020-12-14-152357-277&timestamp=1626715785099>

148. Upon information and belief, Defendants have undertaken no compliance, corrective, or enforcement actions against school districts or schools even when it is clear they are not in compliance with the Indian Education Provisions.

149. The Montana Legislature did not create a system under which millions of dollars in IEFA public funds are distributed by OPI each year without creating any duty and authority on the part of OPI to protect against misuse or misappropriation. § 20-9-329(4), MCA's requirement that the SPI create a form on which each school district will describe how it spent its IEFA funds carries with it an implied duty that the SPI will then examine the data on those forms under appropriate criteria. Similarly, the BPE has the clearly implied duty and authority, as part of its supervision of accreditation, to ensure that schools that misappropriate IEFA monies face the loss of accreditation, and to ensure that the SPI properly fulfills her responsibilities.

150. Each and every time that a school district fails to properly and fully demonstrate on its § 20-9-329 form that it spent its IEFA monies properly and said district then suffers no consequences from Defendants, the Plaintiffs herein suffer measurable injury fairly traceable to Defendants. Stated differently, the harms suffered by Plaintiffs are directly traceable to the fact that Defendants allow school districts to misspend and misappropriate IEFA monies.

151. It is true, of course, that each school district is obligated to spend its IEFA monies properly, but it is equally true that Defendants have *independent* statutory, supervisory, and administrative duties to ensure that those schools receiving IEFA funds from the State spend those

funds properly. Defendants' failure to exercise those duties are substantial factors in causing the harm the that Plaintiffs have suffered and continue to suffer.

### **Class Action Allegations**

152. Pursuant to M. R. Civ. P. 23, individual Plaintiffs bring this action on behalf of themselves and all others similarly situated.

153. The individual Plaintiffs seek to represent a class defined as: all current and future students in the Montana public school system. *See* Mont. Const. art X, § 1(3).

154. At present the Montana public school system has a statewide student enrollment of about 150,000 students. *See Facts About Montana Education*, Mont. Off. of Pub. Instruction (2021), <http://opi.mt.gov/Portals/182/Superintendent-Docs-Images/Facts%20About%20Montana%20Education.pdf?ver=2020-09-16-132427-883>.

155. The proposed class is so numerous and so fluid that joinder of all members is impracticable. M. R. Civ. P. 23(a)(1).

156. There are questions of law and fact common to the proposed class. M. R. Civ. P. 23(a)(2). These questions include, but are not limited to, whether Defendants are denying the class members of rights guaranteed under the Indian Education Provisions by failing to: (1) establish minimum standards by which Defendants can determine whether school districts and schools are complying with their responsibilities under the Provisions and then to adequately monitor, implement, and enforce those standards; (2) establish meaningful and objective reporting requirements to assess IEFA funding expenditures by school districts and schools; (3) ensure proper expenditures by school districts and schools of IEFA funds; (4) ensure compliance by school districts and schools with IEFA content standards for purposes of school accreditation; (5) ensure cooperation by school districts and schools with Montana tribes in educational instruction,

the implementation of educational goals, and the adoption of educational rules; and, (6) enforce generally the Provisions.

157. The claims of the representative parties, the named Individual Plaintiffs, are typical of the claims of the proposed class. M. R. Civ. P. 23(a)(3).

158. The representative parties will fairly and adequately protect the interests of the proposed class. M. R. Civ. P. 23(a)(4).

159. Defendants have acted or refused to act on grounds generally applicable to the proposed class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the proposed class as a whole. M. R. Civ. P. 23(b)(2).

## **CLAIMS FOR RELIEF**

### **COUNT I: VIOLATIONS OF THE INDIAN EDUCATION PROVISIONS**

160. Plaintiffs incorporate herein by reference the allegations made in all preceding paragraphs set forth above.

161. Defendants have constitutional and statutory duties to implement, monitor, and enforce the Indian Education Provisions.

162. Defendants are in violation of the Indian Education Provisions by failing to establish minimum compliance standards that ensure compliance by school districts and schools with the Provisions, and then failing to implement, monitor, and enforce those standards.

163. Defendants are in violation of the Indian Education Provisions by failing to require that educational agencies and educational personnel work cooperatively with Montana tribes to meet their statutory and constitutional obligations.

164. Plaintiffs are entitled to relief ordering that Defendants comply with the Indian Education Provisions now and in the future.

**COUNT II. VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH  
AMENDMENT TO THE UNITED STATES CONSTITUTION**

165. The Montana Supreme Court recognized in *Helena Elementary*, and repeated in *Columbia Falls*, that the Montana Constitution’s Indian Education Clause “establishes a special burden in Montana *for the education of American Indian children* which *must* be addressed as part of the school funding issues.” *Columbia Falls*, ¶ 35 (quoting *Helena Elementary*, 236 Mont. at 58, 769 P.2d at 693) (emphasis added).

166. Similarly, provisions of the IEFA impose mandatory obligations on state agencies and their officials to ensure that Montana school children and the tribes of Montana receive certain benefits and protections (*see, e.g.*, “every educational agency and all educational personnel *will* work cooperatively with Montana tribes or those tribes that are in close proximity,” and “It is also the intent of this part, . . . that educational personnel provide means by which school personnel *will* gain an understanding of and appreciation for the American Indian people.”) (Emphasis added.)

167. These state-created rights are protected against arbitrary loss by the Due Process Clause of the Fourteenth Amendment. *See Bd. of Pardons v. Allen*, 482 U.S. 369, 373-378 (1987); *Mishler v. Nevada State Bd. of Med. Exam’rs*, 896 F.2d 408, 410-11 (9th Cir. 1990). *See also Cedar Rapids Cmty. Sch. Dist. v. Garret F. ex rel. Charlene F.*, 526 U.S. 66 (1999); *Orr v. State*, 2004 MT 354, 324 Mont. 391, 106 P.3d 100 (2004) (discussing legislative intent to create mandatory obligations on state agencies).

168. Accordingly, Defendants’ failure to establish minimum standards which school districts and schools must meet to comply with the Indian Education Provisions, and failure to monitor and enforce compliance with those standards has resulted, and will continue to result, in the arbitrary loss of rights guaranteed under state law, thereby depriving Montana Indian and non-

Indian students, and the tribes of Montana, including the Plaintiffs herein, of their rights protected by the Due Process Clause of the Fourteenth Amendment without adequate notice and a hearing. Accordingly, relief is sought pursuant to 42 U.S.C. § 1983.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for an Order:

- (1) Certifying this action as a class action under M. R. Civ. P. 23(b)(2) with a class consisting of all Montana public school system enrolled students, now and in the future;
- (2) Certifying the named Individual Plaintiffs in this Complaint as representatives of the Class;
- (3) Certifying the American Civil Liberties Union-Montana, the American Civil Liberties Union Foundation, the Native American Rights Fund, and Robins Kaplan, LLP, as Class Counsel;
- (4) Entering a Declaratory Judgment that Defendants have constitutional and statutory duties to establish adequate minimum standards that ensure compliance with the Indian Education Provisions and then to implement, monitor, and enforce those standards;
- (5) Entering a Declaratory Judgment that Defendants are in violation of their constitutional and statutory duties by failing to require every Montana educational agencies and all educational personnel to work cooperatively with Montana tribes to implement the Indian Education Provisions;
- (6) Entering a Declaratory Judgment that Defendants' violations of the Indian Education Provisions also violate the right to due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution;



(7) Entering a Declaratory Judgment that Defendants must comply with the Indian Education Provisions now and in the future;

(8) Granting a Preliminary and Final Injunction enjoining Defendants from failing to establish adequate minimum standards that ensure compliance with the Indian Education provisions and failing to implement, monitor, and enforce those standards, and failing to ensure that schools and school districts in close proximity to Montana tribes cooperate with those tribes in providing educational instruction, implementing educational goals, and adopting educational rules;

(9) Retaining continuing jurisdiction over this matter until such time as the Court has determined that Defendants have, in fact, fully and properly fulfilled its Orders;

(10) Awarding Plaintiffs their costs and reasonable attorney's fees under state law and under 42 U.S.C. § 1988; and

(11) Awarding such other and further relief as the Court deems just and proper.

DATED this 3rd day of December, 2021.



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**CERTIFICATE OF SERVICE**

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