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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, 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 RESERVATION, MONTANA; NORTHERN CHEYENNE TRIBE OF THE NORTHERN CHEYENNE INDIAN RESERVATION, MONTANA; LITTLE SHELL TRIBE OF CHIPPEWA INDIANS OF MONTANA; and CROW TRIBE OF MONTANA 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.	Cause No. DDV-21-0398 Hon. Amy Eddy **PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR JOINDER OF SCHOOL DISTRICTS**

Introduction

Every plaintiff has a right to select the issues they want to litigate and to structure their lawsuit as they see fit. Here, Plaintiffs have elected to sue State Defendants for violating Plaintiffs' rights. No outside party is necessary to adjudicate those claims. Nevertheless, Defendants now seek to join school districts across the State pursuant to Mont. R. Civ. P. 19(a)(1)(A), Mont. R. Civ. P. 20(a)(2)(A) and (B), and § 27-8-301, MCA. None of these arguments have merit. Mandatory joinder is not appropriate because the school districts are not responsible for the harms alleged by Plaintiffs in the First Amended Complaint. Those harms, as already recognized by this Court, fall squarely at the feet of the State Defendants. § 27-8-301, MCA does not require joinder because the Plaintiffs are seeking a declaratory judgment specifically against the State Defendants, and the school districts do not have or claim any interest which would be affected by such a declaration. Finally, permissive joinder must be denied because neither Plaintiffs nor Defendants have asserted any right to relief against the school districts, rendering the provision inapplicable. Defendants' Motion to Join over 300 school districts across the State should be denied.

Factual Background

Plaintiffs brought this action to require the Defendants – State educational agencies and officials – to implement, monitor and enforce Indian Education in Montana. First Am. Class Action Compl. for Declaratory and Injunctive Relief ("FAC"), ¶ 1 Plaintiffs specifically allege that *these* Defendants are "responsible for implementing, monitoring, and enforcing the Indian Education Provisions, and they have not fulfilled their responsibilities." *Id.* at ¶ 6. Plaintiffs' FAC seeks no relief outside the named Defendants – rather, the injunctive and declaratory relief is all directed at State Agencies. *See* FAC Prayer for Relief. Plaintiffs' requested relief is logical.

After all, the Montana Constitution's Indian Education clause provides that "*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) (emphasis added).

At the outset of this case the Defendants moved to dismiss Plaintiffs' complaint, asserting, among other things, that the responsibility for implementing, monitoring, and enforcing Indian Education falls to the local school districts. This Court roundly rejected that argument, holding that "while the local control of school districts is well-established, that control must still be exercised within the parameters of constitutional and statutory mandated." (sic) Order Re: Defs.' Mot. to Dismiss Pls.' First Am. Comp., Apr. 19, 2023, ("Order") at 19-20. More specifically, this Court found that Plaintiffs adequately pled causal allegations against the State Defendants. *Id.* at 11. In fact, the State Defendants concede that they do have the power to "develop standards and monitor compliance with those standards," which is precisely the relief that the Plaintiffs are seeking. Defs.' Br. in Supp. of Mot. for Joinder of Sch. Dists. at 3-4. Joinder of school districts is not necessary to afford Plaintiffs complete relief in this case.

Argument

I. Local school districts are not required parties to this action because complete relief can be afforded among the existing parties.

Pursuant to the Montana Rules of Civil Procedure, "a person who is subject to service of process must be joined as a party if, in that person's absence, the court cannot accord complete relief among existing parties." Mont. R. Civ. P. 19(a)(1)(A). Complete relief refers to "relief as between the persons already parties, and not as between a party and the absent person whose joinder is sought." *Mt. W. Bank, N.A. v. Mine & Mill Hydraulics, Inc.*, 2003 MT 35, ¶ 34, 314 Mont. 248, 259, 64 P.3d 1048, 1055 (quoting *Mohl v. Johnson,* 275 Mont. 167, 171, 911 P.2d 217

(1996)). Defendants assert that the "[s]chool districts are solely responsible for various harms alleged in the First Amended Complaint," Defs.' Br. in Supp. of Mot. for Joinder at 5, but this ignores Plaintiffs' well-pled allegations of harms caused by "Defendants' failure to set forth measurable standards related to Indian education, and then implement, monitor and enforce those standards," FAC, 5-11, as well as Defendants' failure to ensure cooperation with Tribes under IEFA. *Id*. at 12-20. These are duties that are explicitly assigned to Defendants under the IEC and IEFA. *See,* Mont. Const. art. X, § 1(2); § 20-1-501, MCA; § 20-1-501(2)(b), MCA.

While school districts may also share blame for failing to voluntarily fulfill IEC and IEFA requirements, this does not negate Plaintiffs' choice to request relief from Defendants based on Plaintiffs' reasonable determination that Defendants' supervisory authority can provide complete relief in this action. *See Fair Fight Action, Inc. v. Raffensperger*, 413 F. Supp. 3d 1251 (N.D. Ga. 2019) (holding joinder not necessary when relief can be provided by a supervisory authority). The Plaintiffs in *Raffensperger* sought to permanently enjoin the Secretary of State and State Election Board to adequately oversee elections by enforcing uniform election standards and processes. *Id.* at 1262. The defendants argued that plaintiffs failed to join the local county election boards and officials as necessary parties. *Id*. at 1280, 1282. The court, however, ruled that because Georgia law granted defendants oversight authority, including setting uniform standards for county election boards, that complete relief could be afforded between the existing parties. *Id*. at 1283-84.

As in *Raffensperger*, Plaintiffs in this case are also seeking complete relief from Defendants in their supervisory role. This Court, in its order denying Defendants' motion to dismiss, determined that Defendants have constitutional and statutory supervisory authority over state public schools and districts. Order at 6-7. The relief sought is for Defendants to carry out their mandatory and specific constitutional and statutory obligations under Montana law. Pls.' Br.

in Opp'n to Defs.' Mot. to Dismiss at 27. Defendants argue that they "do not have responsibility for oversight, direction, or control of school districts" regarding "providing educational instruction, implementing educational goals, and adopting educational rules." Defs.' Br. in Supp. of Mot. for Joinder at 9. This is irrelevant, because, as this Court noted, Defendants' statutory obligations specifically include supervisory duties to distribute and withhold public school funding known as "BASE aid," which includes IEFA funding, accrediting Montana public schools, and creating curriculum and content standards, including incorporation of "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 Mont. Code Ann. §20-1-501, §20-9-309(2)(c). Admin. R. Mont. 10.53.102." Order at 6-7. These duties mandated by Montana law, in combination with Defendants' general supervisory authority, allow for Defendants to provide complete relief to Plaintiffs by ensuring that the school districts comply with the IEC and IEFA.

Defendants are also wrong in their assertion that they lack "oversight of school districts in their cooperation with adjacent Tribes" as well as "authority to ensure that schools and school districts in close proximity to Montana Tribes cooperate with those Tribes." Defs.' Br. in Supp. of Mot. for Joinder at 9. In addition to the aforementioned statutorily-mandated supervisory duties, Defendants also have a specific IEFA-mandated duty to work cooperatively with Tribes in Montana. IEFA reads in part:

> (2)(b) *every educational agency* [*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, MCA (emphasis added).

Read in tandem with Defendants' general supervisory authority, it has always been clear that "*every educational agency*" includes Defendants, who have a specific and concrete duty to ensure that school districts are cooperating with Tribes as a part of Defendants' obligations under IEFA. Recent amendments to IEFA make this understanding explicit by defining "educational agency" to include Defendants Office of Public Instruction and the Montana Board of Public Education. The amendments also insert mandatory obligations on the State in the form of requiring Indian Education, tribal cooperation and development of content standards for school accreditation. [1]

The Montana Supreme Court has held that joinder is not "necessary where, although certain forms of relief are unavailable due to a party's absence, meaningful relief can still be provided." *Mohl*, 275 Mont. at 171. *See also John Alexander Ethan Revocable Tr. Agreement dated Oct. 17, 1996 v. River Res. Outfitters, LLC*, 2011 MT 143, ¶ 52, 361 Mont. 57, 68, 256 P.3d 913, 922. The Ninth Circuit in *Disabled Rts. Action Comm. v. Las Vegas Events, Inc.*, clarified that meaningful relief is relief that would achieve the "objective" of the litigation. 375 F.3d 861, 880 (9th Cir. 2004). Plaintiffs' substantive prayers for relief seek declaratory and injunctive relief against Defendants so that they carry out their constitutionally and statutorily mandated duties – those are the objectives of Plaintiffs' litigation. FAC, 48-49. Complete relief between Plaintiffs and Defendants regarding Defendants' obligations under the IEC and IEFA is possible without addressing any obligations of the school districts.

Every plaintiff has the right to choose its litigation objectives. Absent circumstances not present here, a plaintiff cannot be compelled to add objectives that implicate the obligations of

[1] Revise laws related to Indian Education for All, HB 338, 68th Legislature (Mont. 2023), was passed by the Montana Legislature and went into effect on July 1, 2023. *See* Jt. Notice to Court, May 26, 2023.

additional parties. Plaintiffs have chosen to sue Defendants for violating Plaintiffs' rights; the school districts are not necessary parties to adjudicate those claims.

Moreover, Defendants' bare citation to § 27-8-301, MCA, without any interpreting caselaw, does not alter this conclusion. § 27-8-301does not require joinder of the school districts because the school districts do not "have or claim any interest which would be affected by the declaration." *River Res*. *Outfitters*, *LLC,* 2011 MT 143, ¶ 52 (absent landowners had notice, yet *elected* not to intervene). The school districts have thus far not claimed any interest in the subject of this action, let alone a material interest that is required for an absent party to join a suit. *Cf. Mohl*, 275 Mont. at 171 (quoting *Village Bank v. Cloutier*, 249 Mont. 25, 29, 813 P.2d 971 (1991)).

"The facts and circumstances of each case determine whether a court must join a particular non-party." *River Res. Outfitters, LLC,* 2011 MT 143, ¶ 49 (citing Mt. *West Bank v. Mine & Mill Hydraulics, Inc*., 2003 MT 35, ¶ 32, 314 Mont. 248, 64 P.3d 1048). In *River Res. Outfitters*, landowners sought declaratory relief in a boundary dispute with their neighbors. The Court refused to join additional landowners because a decision "does not determine the rights of any other landowners along Flint Creek" and they held "no legal interest in the disputed acreage at issue in this case." *Id.*, ¶ 52. The facts and circumstances of this case are no different – joinder pursuant to § 27-8-301, MCA is not required because a decision against the State Defendants would not "determine the rights" of local school districts. Moreover, the school districts have no "legal interests" in the obligations and duties of the State Defendants. Accordingly, § 27-8-301, MCA does not require joinder of the school districts.

In conclusion, the school districts are not necessary parties under Rule 19(a) and § 27-8-301, MCA because complete relief can be provided between the existing parties, the school

districts have not shown a material interest in the subject of this suit, and the school districts do not have a legal interest in the obligations and duties of the State Defendants.

II. The School Districts' Cannot be Joined as Parties to this Action by Permissive Joinder

Defendants' argument that the school districts should be joined as parties to this action by permissive joinder also misses the mark. Pursuant to Mont. R. Civ. P. 20, which is identical to the federal rule,[2] a person may be joined as a defendant if "any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences" *and* "any question of law and fact common to all defendants will arise in the action" Mont. R. Civ. P. 20(a)(2)(A) & (B) (emphasis added).

Rule 20 may only be used by a defendant when it "has asserted a counterclaim or crossclaim in the action . . . [a] defendant has no right to insist that the plaintiff join all persons who could be joined under the permissive party joinder rule." 4 James Wm. Moore et al., *Moore's Federal Practice,* § 20.02[1][b], [2][a][i] (3d ed. 2010). Rule 20(a)(2) "provides the framework for *plaintiffs* to join *defendants*; it does not provide a mechanism for a *defendant* to join parties, unless the defendant is asserting a crossclaim or counterclaim." *Nixon v. Guzzetta*, 272 F.R.D. 260, 262 (D.D.C. 2011) (emphasis added); *cf. Lincoln Property Co. v. Roche*, 546 U.S. 81, 94 (2005) (it is "not incumbent on [a defendant] to propose as additional defendants persons the [plaintiff], as masters of their complaint, permissively might have joined.")

Defendants provide several examples of what they claim to be common issues of law and fact, but they ignore completely Rule 20's second requirement that a "right to relief is asserted

[2] *Cf. Moore v. Frost*, 2021 MT 74, ¶ 7, 403 Mont. 483, 486, 483 P.3d 1090, 1092 ("Because M. R. Civ. P. 62.1(a)(2) and Fed. R. Civ. P. 62.1(a)(2) are identical, 'the interpretation of the federal rules [has] persuasive application to the interpretation of the state rules.'") (citations omitted).

against [the person who may be added as a defendant]." *See Jones v. All Star Painting, Inc.*, 2018 MT 70, ¶ 32, 391 Mont. 120, 130, 415 P.3d 986, 993 (denying permissive joinder because plaintiff failed to assert a right to relief against the would-be party); *Busby v. Capital One, N.A.*, 759 F. Supp. 2d 81, 88 (D.D.C. 2011) ("because no right to relief has been asserted against [the potential defendant] in the operative complaint, joinder would be improper at this time"). Here, neither Plaintiffs nor Defendants have asserted claims for relief against the school districts in this case, and thus Rule 20 is not satisfied.

At its core, Rule 20 is simply about who is a "proper party." "A proper party falls within the scope of Rule 20. Such a person is one who should be joined if litigation is to be kept to a minimum and the rights of all persons concerned can be determined in one action." *Preste v. Mt. View Ranches, Inc.*, 180 Mont. 369, 376, 590 P.2d 1132, 1136 (1979) (citation omitted). The State Defendants do not argue that they are not a proper party, nor can they dispute that complete relief as between the named Plaintiffs and Defendants is not possible based on the allegations contained in the Amended Complaint.

Conclusion

Defendants' Motion for Joinder of the School Districts must be denied. The school districts are not necessary parties because complete relief can be granted among existing parties, the school districts have not shown a material interest in the subject of this suit, and the school districts' absence does not subject the existing parties to multiple or inconsistent obligations. Finally, the school districts cannot be joined as parties to this action by permissive joinder because neither Plaintiffs nor Defendants have asserted a right to relief against the school districts.

DATED THIS 10th day of July, 2023.

Respectfully Submitted,

By: */s/ Alex Rate*
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Electronically signed by Krystel Pickens on behalf of Alex Rate.
Dated July 10, 2023

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I, Alexander H. Rate, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Brief in Opposition to the following on 07-10-2023:

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