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MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

SHAUN YELLOW KIDNEY, ET AL.,

PLAINTIFFS,

VS.

MONTANA OFFICE OF PUBLIC
INSTRUCTION, ET AL.,

DEFENDANTS.

CASE No. DDV-7-2021-0000398-OC
HON. AMY EDDY

**DEFENDANTS' RESPONSE TO AMICUS BRIEF
IN OPPOSITION TO DEFENDANTS'
MOTION FOR JOINDER**

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

(collectively, “Defendants”) hereby give notice of the incorporation by reference of Defendants’ Reply to Plaintiffs’ Brief in Opposition to Defendants’ Motion for Joinder of School Districts as their response to the Amicus Brief filed by Counsel for the named school districts in the Amended Complaint. Defendant’s response addresses most if not all the arguments of Amici school districts.

The Defendants and school districts share distinct but intertwined responsibilities as components of the State as referenced in article X, section 1(2) of the Montana Constitution and as educational agencies under House Bill (HB) 338, which amends Mont. Code Ann. §§ 20-1-501, 20-1-503, and 20-9-329. The Amended Complaint (Doc. 29) references harms that occur at the school district level over which the Defendants have no control. For example, it is alleged Plaintiffs feel ostracized and unwelcome (Doc. 29, ¶10), stereotyping and racism (*id.*, ¶¶ 11, 15), students who are not understood by other students (*id.* ¶ 14), the spread of misinformation through the use of tools and materials not consistent with IEFA (*id.*, ¶ 18), learning in a safe environment (*id.*), learning in a dangerous school environment (*id.*, ¶ 19), no uniformity in Indian education instruction being offered (*id.*, ¶ 26). Plaintiffs’ intent to correct these harms through the granting of declaratory and injunctive relief necessarily involves the interests of the school districts against whom the harm has been blamed. Plaintiffs have not alleged the compliance of Defendants with the Indian Education For All Act (IEFA), Mont. Code Ann. §§ 20-1-501 through 20-1-503, and the Constitution by Defendants removes these harms. The harms cannot be remedied without joinder of the school districts because of their required compliance at the classroom level and cooperation with local tribes independent of the Defendant’s responsibilities but which Plaintiffs are now intermixing.

The arguments of Amici as to shifting of blame and ordering of relief where Defendants must first fulfill their own statutory obligations before school districts' interests are implicated are misplaced because the relative responsibilities are related but distinct. School districts develop and provide compliant instruction, Defendants do not. In short school districts and Defendants' rights and responsibilities must be brought before the Court in this action.

DATED this 11th day of August, 2023.

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