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NANCY SWINNEY
CLERK OF DISTRICT COURT
FILED BY LISA KALLIO
2003 MAY -5 A 9:52

**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

Cause No. BDV-2002-528

ORDER

COLUMBIA FALLS ELEMENTARY SCHOOL DISTRICT NO. 6 AND H.S. DISTRICT NO. 6; EAST HELENA ELEMENTARY DISTRICT NO. 9; HELENA ELEMENTARY DISTRICT NO. 1 AND HS DISTRICT NO. 1; BILLINGS ELEMENTARY DISTRICT NO. 2 AND H.S. DISTRICT NO. 2; WHITE SULPHUR SPRINGS ELEMENTARY DISTRICT NO. 8 AND H.S. DISTRICT NO. 8; TROY ELEMENTARY DISTRICT NO. 1 AND H.S. DISTRICT NO. 1; MEA-MFT; MONTANA SCHOOL BOARDS ASSOCIATION; MONTANA RURAL EDUCATION ASSOCIATION; SCHOOL ADMINISTRATORS OF MONTANA; ALAN & NANCY NICHOLSON; GENE JARUSSI; PETER & CHERYL MARCHI; and MICHAEL & SUSAN NICOSIA, for themselves and as parents of their minor children,

Plaintiffs,

v.

THE STATE OF MONTANA,

Defendant.

1 This matter is before the Court on Defendant's motion to dismiss and
2 Plaintiffs' motion for supplemental relief and order to show cause. A hearing was held
3 before the Court on April 4, 2008.

4 On April 4, 2004, this Court issued its Findings of Fact, Conclusions of
5 Law and Order. At page 51, Conclusion of Law No. 9, this Court held that "the
6 current Montana school funding system violates Article X, Section 1 of the Montana
7 Constitution in that it fails to provide adequate funding for Montana's public schools."
8 In Finding of Fact No. 198, this Court also found that it would be appropriate for it to
9 exercise continuing jurisdiction so as to avoid unnecessary costly delays and
10 complications which would result absent continuing jurisdiction. The matter was
11 appealed to the Montana Supreme Court, which affirmed this Court's decision on
12 March 22, 2005. Columbia Falls Elem. Sch. Dist. No. 6 v. State, 2005 MT 69, 326
13 Mont. 304, 109 P.3d 257.

14 In its decision, the supreme court noted that the primary problem with the
15 existing funding system is that it was not correlated with what constitutes a quality
16 education. The legislature had not defined "quality," and since that term had not been
17 defined, it could not be found that the current funding system was designed to secure a
18 quality education. Further, the funding formula was not linked to any factors that
19 might constitute a quality education. Columbia Falls, ¶ 25.

20 During the appeal, neither the Montana Supreme Court nor Defendant
21 addressed Finding of Fact No. 198 granting this Court continuing jurisdiction.

22 In August 2006, this Court denied a motion of the Plaintiffs to set a show
23 cause hearing to be set after the 2007 legislature met. This Court held that such a
24 motion was premature. The current motion for supplemental relief was filed by
25 Plaintiffs on February 5, 2008. The State suggests that since significant revisions to

1 the school funding laws have occurred since this Court's earlier decision, this matter is
2 different than the one decided earlier by this Court and the matter is moot.

3 As noted by the State, it is true that the legislature has adopted new
4 components to the school funding formula since 2005. These include the quality
5 educator provisions, at-risk funding provisions, Indian Education for All funding, and
6 Indian achievement gap funding. However, the Court has to agree with Plaintiffs that
7 these changes are not really "substantial" since, according to the affidavit of Tom
8 Bilodeau, they account for only 5.4 percent of statewide general fund budgets in the
9 current fiscal year. Thus, some 95 percent of school funding is still provided through
10 the same formula that existed at the time of the trial of this case.

11 The legislature has noted its obligation and enacted Section 20-9-309,
12 MCA. That statute defined a basic system of free quality public education. Further,
13 the legislature required itself to determine the costs of providing the basic system of
14 free quality public education, to establish a funding formula based on that system, and
15 to reflect the costs associated therewith. Section 20-9-309(4), MCA. However, the
16 question remains whether the legislature has followed up on its obligations imposed by
17 the Montana Supreme Court and the legislature's own enactment of Section 20-9-
18 309(4), MCA. The Court notes that although the State has contributed more money to
19 the system, it is not clear whether it has addressed the structural deficiencies in the
20 funding formula.

21 In arguing that this matter is moot, the State suggests that the funding
22 formula is different from the one faced by this Court in 2005. However, this Court has
23 reference to the affidavit of John Myers, vice-president of Augenblick, Palaich and
24 Associates, Inc. (APA). Myers was one of the primary expert witnesses who testified
25 before this Court in 2004. In his affidavit, Myers opined as follows:

1 4. It remains my opinion that the State of Montana has not yet
2 determined the costs of providing the system of public schools as defined
3 by the Legislature. The current funding formula does not reflect the
4 costs associated with providing that system of public schools.

5 5. The 2007 legislative enactments continued to provide
6 additional state funds while not recognizing the need [to] determine the
7 costs of providing the educational programs and services identified in the
8 legislative definition of a quality system of public schools. To establish
9 a funding system that is based on the definition of quality, and which
10 reflects the costs of meeting the definition, would require structural
11 changes to the existing funding formula. APA could not find evidence
12 that the legislature has implemented the types of structural changes that
13 would be necessary to establish such a funding system. The revenues
14 available to school districts continue to flow through a funding system
15 that is fundamentally unchanged.

16 (Myers Supp. Aff. ¶¶ 4-5.)

17 In a case with a similar issue of mootness in an educational funding
18 dispute, the Idaho Supreme Court noted:

19 Actions which challenge the validity or the manner of implementation of
20 a statute or regulation are often mooted because the provision has been
21 repealed, amended or revised. . . . However, such actions are not mooted
22 by an amendment or replacement if the controversy is not removed or the
23 amendment or replacement does not otherwise resolve the parties'
24 claims. . . .

25 We do not agree that the actions of the 1994 legislature render this
 action moot, and hold that a justiciable issue does indeed exist. Although
 the legislature made the changes noted above, at the time that the
 summary judgment motion was heard, there still remained in place the
 Idaho constitutional requirement of a thorough education. . . .

 The increases in the legislature's appropriations, the revising of the
 funding formulas, the adopting of the statutory definition of
 "thoroughness," and the sunseting of the Board of Education's
 regulations do not answer the question whether a constitutionally
 "thorough" education is provided. . . . Thus, we hold that all of the
 legislature's enactments and changes in 1994 did not render this action moot.

Idaho Sch. for Quality Educ. Opportunity v. Idaho State Bd. of Educ., 912 P.2d 644,
650-51 (Idaho 1996) (citations omitted).

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1 Thus, although the legislature has made numerous changes to the funding
2 of Montana's schools, Plaintiffs have provided evidence that the same defective
3 funding formula that was before this Court and the Montana Supreme Court in 2004
4 and 2005 may not have been changed as required by this Court and the Montana
5 Supreme Court. Therefore, the Court does not conclude that the matter is moot or the
6 statutes that have been enacted have so substantially changed the funding formula that
7 a new case should begin. Therefore, the State's opposition to Plaintiffs' motion for
8 supplemental relief will be denied.

9 The Court must be mindful to use its judicial resources wisely. At this
10 stage of the proceedings, it does not appear to the Court to be a wise use of its
11 resources to have the parties begin a new lawsuit that would take months, if not years,
12 to prepare and weeks to try. Plaintiffs are suggesting that the State of Montana has not
13 complied with this Court's Order or the order of the Montana Supreme Court. The
14 task of ensuring compliance with its orders is not a task that is foreign to this Court.
15 Although this case is more complicated than the vast majority of cases before this
16 Court, Plaintiffs' request for an examination of whether the State's actions have met
17 the standards required by this Court and the supreme court does not seem to be
18 unreasonable and out of the ambit of what courts frequently do in other civil cases.

19 The Court, however, needs to address a couple of matters. It is assumed
20 that the parties will now arrange a scheduling conference with the Court's clerk to have
21 a hearing on these matters. However, the Court does not feel it appropriate that the
22 burden of proof be on the State of Montana. It is Plaintiffs' contention that the funding
23 formula has not changed in order to meet the mandates of the supreme court. The
24 Plaintiffs will be required to prove that to this Court.

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Further, this Court, as it writes these words, is unsure of the precise nature of any supplemental relief that might be awarded after the hearing if the Court agrees with the Plaintiffs. The Court makes this statement for the reason that it does not want the parties to assume that, even if the Court should agree with the Plaintiffs that the system has not been changed as required by the Montana Supreme Court, the remedies sought by Plaintiffs in their motion for order to show cause will be granted.

Based on the above, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's motion to dismiss this matter as being moot is DENIED, and a hearing on Plaintiffs' motion for supplemental relief will be held as scheduled by the Clerk of this Court.

DATED this 5 day of May 2008.


JEFFREY M. SHERLOCK
District Court Judge

pcs: James P. Molloy
Brian K. Gallik
Mike McGrath, Ali Bovingdon, Anthony Johnstone
Rich Batterman

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