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

MONTANA QUALITY EDUCATION
COALITION; DISABILITY RIGHTS
MONTANA,

Plaintiffs,

v.

STATE OF MONTANA; GREG
GIANFORTE, in his official capacity as
GOVERNOR OF THE STATE OF
MONTANA; and ELSIE ARNTZEN, in
her official capacity as
SUPERINTENDENT OF PUBLIC
INSTRUCTION,

Defendants,

SUE VINTON, in her official capacity
as a member of the House of
Representatives and Sponsor of HB 393,

Intervenor-Defendant.

Cause No. ADV-2024-44

**ORDER ON
PRELIMINARY INJUNCTION**

1 Before the Court is Plaintiffs’ Montana Quality Education
2 Coalition (MQEC) and Disability Rights Montana (DRM) motion for a
3 preliminary injunction. Riley Sommers-Flanagan, Constance Van Kley, and
4 Mikaela Koski represent MQEC. Tal M. Goldin and Michelle L. Weltman also
5 represent DRM. Austin M. Knudsen, Alwyn Lansing, Emily Jones, Michael
6 Russell, and Thane P. Johnson represent Defendants State of Montana (State),
7 Greg Gianforte, in his official capacity as Governor of the State of Montana
8 (Gianforte), and Elsie Arntzen, in her official capacity as Superintendent of
9 Public Instruction (Arntzen). Thomas M. Fisher, Dale Schowengerdt, and
10 Timothy Longfield represent Intervenor-Defendant Sue Vinton, in her official
11 capacity as the sponsor of House Bill 393 (HB 393) and member of the Montana
12 House of Representatives (Vinton).

13 STATEMENT OF FACTS

14 In 2023, the Montana Legislature passed HB 393, which creates
15 Education Savings Accounts (ESAs) for parents of students with disabilities
16 (qualified students). To qualify for an ESA, a student must be a “child with a
17 disability” under the federal Individuals with Disabilities Education Act (IDEA),
18 20 U.S.C. §§ 1400, *et seq.* Qualifying students must be between ages five and
19 nineteen, counted in the prior year’s school funding formula, eligible for public
20 school enrollment, and not enrolled in another state education institution.
21 Kindergarten eligible students and new arrivals to Montana qualify for an ESA
22 regardless of whether they have ever enrolled in public school. To access funds,
23 a guardian must “release the resident school district from all obligations to
24 educate the qualified student, including any requirements that the district provide

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1 a free and appropriate education to the qualified student or develop an
2 individualized education program for the qualified student.” HB 393,
3 Section 5(1)(b).

4 The ESA program receives funding “from the [resident] district’s
5 general fund.” HB 393, Section 9(3)(a). HB 393 requires the Office of Public
6 Instruction (OPI) to reimburse guardians for certain expenses including entrance
7 exams, private school tuition and transportation, and tuition at eligible
8 postsecondary institutions. *Id.* Section 4(1)(a)–(k). The Superintendent also has
9 discretion to approve “any other educational expense.” *Id.* Section (4)(1)(l).
10 HB 393 allocates five percent of ESA funding to OPI for administrative costs,
11 and then requires deposits from the district’s general fund into individual
12 students’ ESAs. HB 393 offers guardians of qualified students between
13 \$5,390.32 and \$8,419.72 annually. OPI has already taken steps to begin
14 administering HB 393. Guardians may access ESA funds in the 2024–25
15 school year.

16 MQEC and DRM are nonprofit organizations headquartered in
17 Helena, Montana. MQEC’s mission is to serve as a guardian of Article X’s
18 guarantees and to advocate for adequate and equitable public school funding to
19 provide quality education for each of Montana’s public school students.
20 MQEC’s members include more than 100 diverse school districts, six statewide
21 public education advocacy organizations, and innumerable teachers, trustees,
22 administrators, and other public school employees. DRM is the federally
23 mandated civil rights protection and advocacy (“P&A”) system for Montana.
24 Plaintiffs allege HB 393 harms both students with disabilities who leave the
25 public school system to access an ESA and those who remain.

1 As the governor of the state of Montana, Gianforte is responsible
2 for executing state law. Arntzen, as the Montana Superintendent of Public
3 Instruction, administers HB 393’s ESA program. Vinton is a member of the
4 Montana House of Representatives and sponsored HB 393. Vinton intervened in
5 this matter pursuant to Montana Code Annotated § 5-2-107.

6 Plaintiffs moved for a preliminary injunction of HB 393 on
7 April 22, 2024. Plaintiffs allege HB 393 is unconstitutional under Article VIII,
8 Section 14, Article V, Sections 1 and 11, and Article X, Sections 1 and 8 of the
9 Montana Constitution. The State Defendants (Gianforte and Arntzen) and
10 Intervenor-Defendant Vinton each filed responses in opposition on May 17,
11 2024. The parties appeared before this Court for a show cause hearing on
12 June 27, 2024.

13 PRINCIPLES OF LAW

14 A preliminary injunction order or temporary restraining order may
15 be granted when the applicant establishes that: (a) the applicant is
16 likely to succeed on the merits; (b) the applicant is likely to suffer
17 irreparable harm in the absence of preliminary relief; (c) the balance
18 of equities tips in the applicant’s favor; *and* (d) the order is in the
19 public interest.

20 Mont. Code Ann. § 27-19-201(1). The Montana Legislature intended for this
21 standard to “mirror the federal preliminary injunction standard” and “closely
22 follow United States supreme court case law.” Mont. Code Ann. § 27-19-201(4).
23 Pursuant to Montana Code Annotated § 27-19-201(3), the party moving for an
24 injunction “bears the burden of demonstrating the need for an injunction order.”

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1 ANALYSIS

2 As demonstrated by federal district court precedent from the
3 District of Montana, the preliminary injunction standard requires the moving
4 party to establish all four factors to obtain relief. *See, Friends of the Flathead*
5 *River v. U.S. Forest Serv.* (D. Mont. 2022), 614 F. Supp. 3d 747, 752-53 (“The
6 *Winter* test is conjunctive, which means all four parts of the test must be satisfied
7 for an injunction to issue.”). Thus, if Plaintiffs are unable to establish any factor,
8 the Court must deny the request for a preliminary injunction. Here, the Court
9 finds the Plaintiffs have not met their burden of demonstrating they will suffer
10 irreparable harm during the pendency of this litigation absent an injunction. For
11 this reason, the Court will confine its analysis to this dispositive factor.

12 Plaintiffs assert HB 393 will cause them imminent, irreparable
13 harm absent an injunction by preventing MQEC and DRM from ensuring
14 students with disabilities receive a quality education. MQEC alleges HB 393
15 harms the organization and its members by interfering with trustees’ ability to
16 perform their constitutionally mandated duties. Specifically, MQEC alleges HB
17 393 causes trustees to lose control over local school budgets. In turn, they allege
18 HB 393 will force trustees to seek additional revenue from local tax bases to
19 recover the funding lost to ESAs. DRM alleges when a student uses an ESA,
20 DRM loses tools essential to advocating on the student’s behalf to ensure the
21 student will receive a quality public education. Students with disabilities who
22 leave the public school system generally lose IDEA’s benefits and safeguards.
23 Additionally, DRM alleges HB 393 diverts public funds from public schools,
24 which prevents schools from being able to provide a free and appropriate public
25 education (FAPE) to the remaining students under IDEA.

1 The State Defendants, on the other hand, argue Plaintiffs’ alleged
2 harms are too vague and not specific to any particular Plaintiff. Intervenor-
3 Defendant argues an injunction will create irreparable harm to students
4 attempting to take advantage of the currently available ESA program.

5 In addressing the standard for demonstrating irreparable harm in
6 relation to a motion for a preliminary injunction, the United States Supreme
7 Court has stated:

8 Our frequently reiterated standard requires plaintiffs seeking
9 preliminary relief to demonstrate that irreparable injury is *likely* in
10 the absence of an injunction. Issuing a preliminary injunction based
11 only on a possibility of irreparable harm is inconsistent with our
12 characterization of injunctive relief as an extraordinary remedy that
entitled to such relief.

13 *Winter v. NRDC, Inc.* (2008), 555 U.S. 7, 22, 129 S. Ct. 365, 375 (emphasis in
14 original) (citations omitted). Importantly, at the preliminary injunction stage,
15 Plaintiffs must demonstrate they will suffer irreparable injury prior to final
16 resolution on the merits. *See Davis v. Westphal*, 2017 MT 276, ¶ 24, 389 Mont.
17 251, ¶ 24, 405 P.3d 73, ¶ 24.

18 While the Court acknowledges the seriousness of the potential
19 harms Plaintiffs identify, they are not the type of imminent harm a preliminary
20 injunction seeks to prevent. Although HB 393 will have an impact on school
21 budgets, the nature of that impact is too speculative to support an irreparable
22 harm finding at this stage. The HB 393 fiscal note provides insight into the
23 potential impact of the ESA program on school budgets statewide if every known
24 eligible student participated in the program. Similarly, Plaintiffs’ expert witness
25 presented testimony demonstrating potential harm to school funding based on a

1 hypothetical number of students participating in the ESA program in a particular
2 school district. However, Defendants have presented evidence the current
3 participation in the program statewide is very low. While the low participation
4 numbers are almost certainly in part attributable to the newness of the program,
5 the current numbers undercut the argument the program will cause irreparable
6 harm to school funding during the pendency of the litigation.

7 Regarding the harm to DRM’s ability to advocate for students
8 using ESAs, the Court again finds a preliminary injunction is not the appropriate
9 means to address this issue. The nature of the harm DRM raises is speculative.
10 The harm arises under a hypothetical situation in which a student uses an ESA,
11 encounters an issue which implicates the IDEA protections, and contacts DRM
12 for assistance with the issue. Because HB 393 requires guardians to contractually
13 relinquish their students’ rights and protections under the IDEA to participate in
14 the ESA program, DRM would not have the legal tools it would otherwise rely
15 on to assist the student. However, while the impact on the hypothetical student is
16 clear in this scenario, the harm to DRM is abstract. The potential long term
17 societal harm which may arise from reducing DRM’s advocacy power is not the
18 kind of imminent irreparable harm required to obtain a preliminary injunction.
19 Further, “[t]he purpose of a preliminary injunction is merely to preserve the
20 relative positions of the parties until a trial on the merits can be held.” *Univ. of*
21 *Tex. v. Camenisch* (1981), 451 U.S. 390, 395, 101 S. Ct. 1830, 1834; *see also,*
22 *Starbucks Corp. v. McKinney* (2024), 144 S. Ct. 1570. HB 393 went into effect
23 on July 1, 2023. During the June 27, 2024 hearing, Christy Mock-Stutz, assistant
24 superintendent of OPI, testified OPI has already begun implementing the ESA
25 program. Specifically, she testified OPI has created an ESA steering committee,

1 created an informational handbook for guardians, drafted contracts for the
2 program, and hired a program coordinator. Mock-Stutz testified OPI has already
3 approved twenty-three eligible students for the ESA program. Plaintiffs filed
4 their motion for a preliminary injunction on April 22, 2024, nearly ten months
5 after the law went into effect. Thus, denying the preliminary injunction preserves
6 the status quo.

7 **ORDER**

8 **IT IS HEREBY ORDERED** Plaintiffs' motion for a preliminary
9 injunction is **DENIED**.

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11
12 /s/ Mike Menahan
13 MIKE MENAHAN
14 District Court Judge

15 c: Riley Sommers-Flanagan, via email
16 Constance Van Kley, via email
17 Mikaela Koski, via email
18 Tal M. Goldin, via email
19 Michelle L. Weltman, via email
20 Austin M. Knudsen, via email
21 Alwyn Lansing, via email
22 Emily Jones, via email
23 Michael Russell, via email
24 Thane P. Johnson, via email
25 Thomas M. Fisher, via email
Dale Schowengerdt, via email
Timothy Longfield, via email

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Electronically Signed By:
Hon. Judge Mike Menahan
Wed, Jul 10 2024 03:19:52 PM