

SETTLEMENT AGREEMENT

The following settlement agreement (“Agreement”) is entered into by and among all Plaintiffs and Defendant the Montana Board of Public Education (“BPE”), collectively “the Parties,” in *Yellow Kidney, et al v. Montana Office of Public Instruction, et al*, DDV-21-0398 (the “Lawsuit”). The Parties have mutually resolved the issues raised in the Lawsuit. Therefore, it is hereby:

AGREED by and between the Parties as follows:

1. This Agreement is effective as of the date of execution. It may be executed in multiple counterparts, each of which shall be deemed an original, and all counterparts so executed shall constitute one agreement binding on the Parties hereto, notwithstanding that all of the Parties are not signatory to the same counterpart.
2. The Agreement is binding on the parties to it, their heirs, personal representatives, successors, assigns, agents, partners, employees, and attorneys. In exchange for the actions set forth in this agreement, Plaintiffs agree to release BPE from any and all claims—monetary, injunctive, or otherwise—related to the subject-matter of this lawsuit, so long as BPE complies with its requirements under this agreement. Plaintiffs agree that this settlement agreement is not considered an admission of liability.
3. The Parties will submit to the trial court within ten days of full execution of the Agreement a joint motion to dismiss BPE with prejudice from the Lawsuit, while requesting that the Montana Eighth District Court, County of Cascade, retain jurisdiction over BPE to enforce the terms of this Agreement. Each party to this agreement will pay their own costs and fees.
4. The Parties enter into this Agreement, respectively, as a free and voluntary act with full knowledge of its legal consequences.
5. This Agreement shall be construed, interpreted and enforced under the laws of the State of Montana. Any action or proceeding relating to this Agreement shall be filed and proceed in the Montana Eighth District Court, County of Cascade.
6. This Agreement may not be changed, modified or assigned except by written agreement of the Parties, through their chosen counsel.

I. Assessment & Accountability Measures:

- A. BPE agrees to include meaningful measures of Indian Education for All (“IEFA”) implementation in accreditation determinations.
- B. BPE agrees to request that OPI submit an annual report: (1) identifying whether each school district has an IEFA plan in place, and (2) setting forth the extent to which each such plan is being implemented according to evidence submitted by the schools to OPI. BPE agrees to encourage OPI to ensure an IEFA plan is

- implemented in each school district.
- C. BPE agrees that proper monitoring of IEFA implementation requires gathering and reviewing supporting evidence pertaining to (1) districts' proper expenditure of IEFA funds and (2) cooperation with Tribes, and will request the same from OPI.
- D. BPE will request that OPI annually report at a BPE meeting on schools/districts that have received a 1 or 2 on any TEACH MT IEFA-specific prompts along with the steps OPI is taking to address these deficiencies.
- E. To the extent of its legal authority, BPE agrees to ensure IEFA obligations will be properly monitored before approving any accreditation standards.

II. Creation of content standards, in conjunction with the requirements of the Montana Constitution, Montana Code Annotated, Administrative Rules of Montana and HB 338:

- A. IEFA-Specific Content Standard Update:
 - i. To the extent of its legal authority, BPE shall provide for a uniform and integrated creation and revision of Content Standards as set forth in ARM 10.53 and as provided in Article X, section 1(2) of the Constitution of the state of Montana, 20-1-501 and 20-9-309(2)(c) MCA, and HB 338, which collectively mandate curriculum and instruction of the content standards incorporating the cultural heritage and contemporary contributions of American Indians, with particular emphasis on Montana Indian tribal groups and governments.
 - ii. BPE agrees to ensure that IEFA is incorporated across all content standards to the extent it has authority to do so.
 - iii. BPE agrees that IEFA content standards must include American Indian studies as defined in Mont. Code Ann. § 20-1-502, and agrees to encourage school districts to incorporate these concepts into their curriculum using the Essential Understandings Regarding Montana Indians.
- B. Incorporating IEFA Review into the Content Standard Review Process:
 - i. BPE agrees to review and consider all comments and recommendations by MACIE and Montana tribes before approving a Notice of Proposed Rulemaking.

III. Tribal Cooperation and Parent Committees:

- A. BPE will encourage all schools/districts to reach out to and cooperate with tribes in Montana as required by the IEFA statutory provisions.
- B. BPE will encourage school districts to meaningfully consult with local tribes in developing their IEFA plans.
- C. BPE will provide all board members and staff with a 3-hour tribal consultation and cooperation training every 3 years and/or upon appointment/hiring.
- D. BPE will meet jointly with MACIE annually to discuss IEFA monitoring, professional development, resources and, if available, survey and complaint responses collected by OPI. BPE will extend a written invitation to each tribe in Montana to encourage community and family engagement in the process.

IV. Teacher Training:

- A. BPE will make the following changes to educator licensure:
 - i. BPE will require completion of an Introduction to IEFA course that includes training on tribal cooperation.

- ii. Within the next two years, BPE will work with MACIE and OPI and will invite involvement of representatives from every Montana Tribe to determine if the Introduction to IEFA class requires updating, and if so, to complete that update. Beginning in 2029, BPE will work with MACIE and OPI every 5 years to identify and make any necessary updates to the Introduction to IEFA class. Plaintiffs and BPE recognize that OPI is the entity that completes the updates, and therefore this subsection is limited to BPE's ability to participate in the revision process.
 - iii. BPE will encourage OPI to create a second IEFA course, IEFA 2.0. Upon receiving notification from OPI that the development of IEFA 2.0 is complete in the Teacher Learning HUB, BPE will initiate rulemaking to propose IEFA 2.0 as a requirement for educator licensure.
 - iv. BPE agrees to encourage IEFA coordinators and other relevant school personnel to participate in additional IEFA trainings throughout the year.
 - v. In the event that micro-credentials are introduced into Montana's teacher licensing system, BPE will recommend to the appropriate entity the creation of an IEFA micro-credential.
- B. BPE will make the following changes to ongoing professional development requirements:
- i. BPE will convene stakeholders to determine the feasibility of requiring 4 professional development units relevant to IEFA, of which 2 professional development units every 5 years must be relevant to tribal consultation. Should adequate trainings be available to meet these requirements, BPE will work with the Superintendent to amend the relevant administrative rules accordingly. If adequate trainings do not exist, BPE will encourage OPI to work with MACIE to create the same.
 - ii. BPE will work with MACIE and OPI and invite the involvement of representatives from every Montana Tribe to determine whether new IEFA professional development materials/courses are needed and to encourage MACIE and OPI to create the same.

V. Document Production and Monitoring:

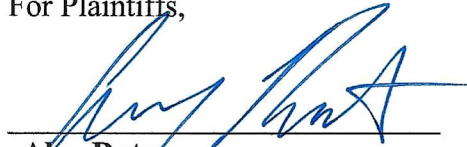
- A. The parties will engage in three fiscal years of monitoring, ending on June 30, 2028. The parties also agree that any disputes not resolved between the parties regarding this agreement will be brought to the court in the same forum as this action by June 30, 2028.
- B. Biannual Document Productions:
 - i. By October 15 of each monitoring year, BPE will produce to Plaintiffs and file with the Court a report summarizing its progress on each of the provisions set forth above.
 - ii. By October 15 of each monitoring year, BPE will produce to Plaintiffs any and all underlying documentation demonstrating or relating to implementation of the above provisions, including but not limited to documentation of all BPE / MACIE tribal cooperation efforts.
 - iii. Plaintiffs may request information in BPE's possession, no more than twice a year, if Plaintiffs believe such information is relevant to monitoring the settlement. This request must be in good faith and not unduly burdensome. BPE will produce documents responsive to such requests within 30 days.
- C. Enforcement:

- i. Plaintiffs must alert BPE in writing as to any suspected deficiencies in BPE compliance with the above provisions, and the parties must meet and confer in good faith to address the issue.
 - ii. Plaintiffs and BPE may seek enforcement in Court if the meet & confer process fails.
- D. Annual Review: In December of each monitoring year, counsel and the parties will convene to discuss the progress of this settlement.

VI. Timing: unless otherwise stated, all requirements of this agreement are to be put in place no later than the 2025-2026 school year. BPE will begin implementation of feasible reforms during the 2024-2025 school year.

The undersigned representatives of the parties certify that they are fully authorized by the party or parties whom they represent to enter into the terms and conditions of this Settlement Agreement and to legally bind the parties to it.

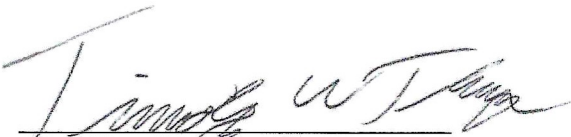
For Plaintiffs,



Alex Rate
Legal Director
ACLU of Montana

Dated: 4/10/2025

For Defendant Board of Public Education,



Dr. Tim Tharp
Board Chair
Montana Board of Public Education

Dated: 3/11/2025