

No. OP _____

IN THE SUPREME COURT OF THE STATE OF MONTANA

MONTANA QUALITY EDUCATION COALITION AND DISABILITY RIGHTS
MONTANA,

Plaintiff-Petitioners,

v.

THE STATE OF MONTANA, GREG GIANFORTE, IN HIS OFFICIAL CAPACITY AS
THE GOVERNOR OF THE STATE OF MONTANA, AND SUSAN HEDALEN, IN HER
OFFICIAL CAPACITY AS THE SUPERINTENDENT OF PUBLIC INSTRUCTION,

Defendant-Respondents,

and

SUE VINTON, IN HER OFFICIAL CAPACITY AS A MEMBER OF THE MONTANA
HOUSE OF REPRESENTATIVES AND SPONSOR OF HB 393,

Intervenor-Defendant-Respondent.

Petition for Writ of Supervisory Control to the First Judicial District
Lewis and Clark County, Cause No. ADV 2024-44
The Honorable Mike Menahan Presiding

**PETITION FOR WRIT OF SUPERVISORY CONTROL
AND MOTION FOR RELIEF FROM RULE 22 STAY**

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INTRODUCTION

Plaintiffs respectfully petition this Court for relief from the District Court's entry of a stay pending appeal under Montana Rule of Appellate Procedure 22. The District Court's stay order is procedurally and substantively defective and should be vacated.

BACKGROUND

House Bill 393 ("HB 393") allows the Office of Public Instruction ("OPI") to contract with parents to create Education Savings Accounts ("ESAs") for students with disabilities. Dkt. 86, Ord. – Mots. for Summ. J., 3–5 ("Summ. J. Ord."). HB 393 authorizes OPI to take tax dollars from local public schools to fund these ESAs. *Id.* The District Court correctly determined that HB 393 violates Article VIII, Section 14 of the Montana Constitution. *Id.* at 15.

After losing below and before noticing any appeal to this Court, Defendant-Respondents the State of Montana, Governor Gianforte, and Superintendent Hedalen ("the State") moved for a stay pending appeal to force schools to continue paying for ESAs. Dkt. 91, Mot. for Stay of J. Pending Attys' Fees Determination & Appeal & Br. in Supp. ("State's Stay Mot.").

The District Court granted the State’s motion over Plaintiffs’ opposition, without waiting for a response, and without considering the stay factors established by this Court. Dkt. 92, Order Granting Stay of J. Pending Attys’ Fees Determination & Appeal (“Stay Ord.”). This was an abuse of discretion. Plaintiffs sought relief below, *see* Dkt. 93, Pls.’ Mot. to Vacate Opposed Stay, but the District Court did not rule prior to the deadline to seek relief from this Court, Mont. R. App. P. 22(2)(a) (setting eleven-day deadline).

LEGAL STANDARD

Under Montana Rule of Appellate Procedure 22(2)(a), a party may seek relief in this Court from an order granting a Rule 22(1)(a) stay. Mont. R. App. P. 22. The motion must “demonstrate good cause for the relief requested, supported by affidavit.” Mont. R. App. P. 22(2)(a)(i). This Court reviews stay orders for abuse of discretion. *Ternes v. State Farm Fire & Cas. Co.*, 2011 MT 156, ¶ 17, 361 Mont. 129, 257 P.3d 352.

ARGUMENT

Good cause exists here because the District Court’s stay order was an abuse of discretion. Both the State’s motion and the Court’s order are procedurally defective. Nor do the equities support a stay pending appeal.

I. The stay motion and order are procedurally improper.

The District Court abused its discretion in granting the opposed stay motion without waiting for Plaintiffs’ response.¹ *See Fennessy v. Dorrington*, 2001 MT 204, ¶ 11, 306 Mont. 307, 309, 32 P.3d 1250, 1252 (district court abused its discretion by granting motion before time for response expired under Rule 2). The District Court’s haste was particularly inappropriate given that Plaintiffs were working in good faith to address time-sensitive, individualized, and actual needs in the wake of the judgment. *See* Dkt. 89, Joint Mot. for Partial Stay (“Joint Stay Mot.”); Dkt. 94, Exs. A & B to Pls’ Br. in Supp. of Mot. to Vacate Stay (“Pls.’ BIS Vacatur”).

¹ The District Court also appears to have erred in granting a Rule 22(1) motion absent any pending appeal. *See Matter of Emergency Stay Sought by Mont. Dep’t of Justice*, 2025 WL 1013579 (Mont. Apr. 3, 2025) (Rule 22(1) applies only when appeal is pending). The State failed to notice an appeal before moving under Rule 22(1)—and sought relief in the form of a Rule 22 stay before final judgment on fees and costs was entered. Dkt. 91. Since Rule 22(1) orders issued prior to final judgment do not appear to be independently appealable under Montana Rule of Appellate Procedure 6(3), Plaintiffs bring their timely motion for relief in an original action under Montana Rule of Appellate Procedure 14(3). *See* Mont. R. App. P. 22(2) (setting 11-day deadline to seek Rule 22(1) relief).

The District Court's error likely stemmed from the State's failure to comply with Uniform District Court Rule 2(b), which requires filing a separate brief in support of contested motions. Uniform Dist. Ct. R. (2)(b) (summary dismissal of unaccompanied motions appropriate because the lack of a brief constitutes admission that the motion lacks merit); *In re Marriage of Grounds*, 256 Mont. 397, 403, 846 P.2d 1034, 1038 (1993) (same). The State attached an affidavit, but no supporting brief, and its motion was devoid of substantive legal arguments. Since unaccompanied motions are typically procedural or agreed-to, failing to file a separate brief can lead to confusion by failing to signal a response is required. *See, e.g., Moody v. Northland Royalty*, 286 Mont. 89, 96, 951 P.2d 18, 23 (1997). Rule 2(b) exists to prevent this sort of confusion.

This Court should vacate the stay and remand for further proceedings, including full briefing on any renewed stay request.

II. The stay motion and order lack factual and legal support, and the public interest does not favor a stay.

Before granting a stay, courts must consider “(1) whether the stay applicant has made a strong showing that it is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other

parties interested in the proceeding; and (4) where the public interest lies.” *Torgison v. Lincoln Cnty. Port Auth.*, No. DA 25-0550, 2025 WL 2949135, at *2 (Mont. Sept. 9, 2025) (citing *Hilton v. Braunskill*, 48 U.S. 770 (1987)); *see Held v. State*, DA 23-0575, Order, at *2 (Mont. Jan. 16, 2024) (same). Neither the District Court’s order, nor the State’s naked motion for a stay, address the standard stay factors.

The District Court’s failure to address these factors in its order is an abuse of discretion. A district court must “include in findings of fact and conclusions of law, or in a supporting rationale, the relevant facts and legal authority on which the district court’s order is based.” Mont. R. App. P. 22(1)(d). The District Court’s order includes neither. Stay Ord.

Again, the District Court’s error is likely the result of the State’s defective motion and lack of supporting brief. The State’s motion failed to cite—much less establish—the relevant stay factors. *Compare* State’s Stay Mot. (citing no law), *with* State’s Opposed Emergency Mot. to Stay, *Saslav v. Howe*, DA 25-0054 (Mont. Jan. 22, 2025) (citing stay standard); *see also, e.g.,* Order, *Mont. Env’t Info. Ctr. v. Westmoreland Rosebud Mining, LLC*, DA 22-0064 (Mont. Aug. 9, 2022); *Nken v. Holder*, 556 U.S. 418, 433–34 (2009) (“The party requesting a stay bears the burden of

showing that the circumstances justify an exercise of that discretion.”). Even had the State addressed the standard, a blanket stay is unjustified.

The State made no attempt to show it is likely to succeed. Nor could it—HB 393 undeniably lacks a valid appropriation for ESA funds. Summ. J. Ord., 15. Moreover, the State did not attempt to establish any irreparable harm to itself or Intervenor-Defendant, nor could it. *Cf. Nken*, 556 U.S. at 433 (“[A] stay is not a matter of right even if irreparable injury might otherwise result.”). Instead, the State asserts only an injury to purported third-party reliance interests. State’s Stay Mot., 2. But the public interest does not favor forcing local public schools to continue funding ESAs absent a showing of actual and individualized need.

First, forcing local school districts to assume financial liability to third parties for the State’s unconstitutional promises is inequitable. The State knew HB 393 was likely unconstitutional but still offered ESA contracts. *See, e.g.*, T. Everts & J. Johnson, *Legal Review Note* (HB 393), at 3 (Jan. 20, 2023) (“[P]laying tax dollars from the trust to reimburse parents without an appropriation may potentially implicate Article VIII, section 14.”); Dkt. 1, Ex. B to Compl., Gov.’s Off. of Budget & Progr. Planning, Fiscal Note 2025 Biennium: HB0393, 5–6 (Feb. 16, 2023)

(noting constitutionality concerns); Compl. (Jan. 22, 2024); Summ. J. Ord., 4 (OPI opened applications on May 1, 2024). Notably, though, the state expressly denied any financial liability to families if ESA funding terminated. *See* Dkt. 91, Ex. A to State’s Stay Mot., Decl. of Christy Mock-Stutz ¶ 10 (ESA contracts end upon the elimination of ESA funding, regardless of any reliance interest). Having induced parents to accept unconstitutional funds, the State cannot now assert that equity demands that local school districts shoulder a financial burden the State had the foresight to contractually disclaim.

Second, the public interest does not lie in a blanket stay pending appeal when more tailored relief is available. As evidenced by a joint motion to stay judgment as to 43 families with preapproved expenses through November 25, 2025, *see* Joint Stay Mot., Plaintiffs have endeavored in good faith to find an equitable solution that would not require a blanket stay, *see* Dkt. 94, Ex. A to Pls.’ BIS Vacatur, Email from R. Sommers-Flanagan to T. Johnson (Dec. 10, 2025); Dkt. 94, Ex. B to Pls.’ BIS Vacatur, Email from T. Johnson to M. Danahy (Dec. 16, 2025). Notably, Plaintiffs repeatedly expressed willingness to extend the joint stay request to families with approved expenses who have not yet

received reimbursement due to an insufficient ESA balance.² *Id.* Rather than accept Plaintiffs' offer, the State used these families to support their blanket stay request pending appeal after the joint stay was granted. *See* Mock-Stutz Decl. ¶ 10.

Even for expenses incurred after HB 393 was enjoined, Plaintiffs remain open to tailoring relief based on need. Indeed, existing ESA balances may be sufficient to cover most demonstrated needs. Mock-Stutz Decl. ¶ 5 (currently, \$192,444 is sitting in existing ESA accounts). But a stay that requires local schools to remit ESA payments indefinitely, including to ESAs with thousands of dollars in existing balances, regardless of need, is unjust. Worse still, the blanket stay does nothing to prevent OPI from contracting with new students during the pendency of an appeal. Continuing to allow ESAs to siphon thousands of public tax dollars out of public schools, for unspecified future spending, without any showing of actual, individualized need, does not serve the public interest.

² ESA payments are remitted to OPI on a monthly basis, rather than as a lump sum, such that ESAs are not fully funded until the end of the school year. *See* § 20-7-1709(2), MCA; § 20-9-344(5)(a), MCA. If approved expenses exceed the amount in an ESA at the time of the approval, the ESA account will reflect a negative balance. *See* Mock-Stutz Decl. ¶ 11.

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Finally, the blanket stay irreparably harms local school districts, including MQEC's members. *Infra*, Decl. of Dr. Douglas Reisig. MQEC's members have lost hundreds of thousands of dollars in appropriated public school funds. *Id.* ¶¶ 2–3. Being forced to continue to remit money from local public schools' general funds for unappropriated purposes during the pendency of an appeal will cause immense damage to local public schools. *See id.*

CONCLUSION

This Court should vacate the District Court's stay order and remand for further proceedings.

Respectfully submitted this 18th day of December, 2025.

/s/ Rylee Sommers-Flanagan

Rylee Sommers-Flanagan

Molly Danahy

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Attorney for Petitioner DRM

DECLARATION OF DR. DOUGLAS REISIG

I, Douglas Reisig, declare under penalty of perjury,

1. I am a resident of Missoula, Montana, am over the age of 18, and am the Executive Director of the Montana Quality Education Coalition (MQEC). MQEC is an education advocacy nonprofit, whose mission is to realize the Montana Constitution's education guarantees.

2. MQEC has over 100 member school districts. Over the past two weeks, 12 schools or districts provided MQEC with data on the impacts of HB 393. Just from these 12 members, HB 393 diverted \$134,246 in public funds intended to benefit all public school students, including the more than 20,000 students with disabilities who continue to rely on Montana public schools for services. This includes thousands of dollars diverted to five students who did not previously attend and thus did not generate funding for the school financing their ESA.

3. By taking tax dollars out of schools, HB 393 has harmed Montana public schools' ability to provide a quality education to Montana students. Continuing to divert thousands of public dollars to a handful of individuals during the pendency of this appeal will multiply these harms. I declare under penalty of perjury that the foregoing is true and correct.

December 29, 2025, in Missoula, Montana. By Douglas Reisig
Dr. Douglas Reisig

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this motion for relief is printed with a proportionately spaced Roman typeface in 14-point font, and is double spaced. Pursuant to Rule 22 of the Montana Rules of Appellate Procedure, I certify that this response does not exceed 10 pages of text, including the declaration.

/s/ Rylee Sommers-Flanagan

Rylee Sommers-Flanagan

CERTIFICATE OF SERVICE

I, Rylee Sommers-Flanagan, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 12-29-2025:

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