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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

10 RENEE GRIFFITH,	Case No.: DV 09-0539
11 Plaintiff,	Judge Gregory R. Todd
12 vs.	ORDER GRANTING DEFENDANT'S
13 BUTTE SCHOOL DISTRICT NO. 1, CHARLES UGGETTI AND JOHN METZ,	MOTION FOR SUMMARY JUDGMENT
14 Defendants.	
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17 **INTRODUCTION**

18 This matter comes before the Court on Plaintiff Renee Griffith's Motion for
19 Summary Judgment. The Plaintiff filed a Brief in Support of Plaintiff's Motion for
20 Summary Judgment on October 9, 2009. The Defendants, Butte School District No. 1,
21 Charles Uggetti and John Metz, filed a Response Brief in Opposition to Plaintiff's Motion
22 for Summary Judgment and a Cross-Motion for Summary Judgment on November 6,
23 2009. The Plaintiff filed a Reply Brief in Support of her Motion for Summary Judgment
24 on December 8, 2009. A hearing was held on December 14, 2009, in Courtroom 515 of
25 the Yellowstone County Court House. William J. O'Connor II represented the Plaintiff

1 as well as being the participating attorney for the Rutherford Institute. Tony C. Koenig
2 was present for the Defendants.

3 **STATEMENT OF FACTS**

4 Renee Griffith (hereinafter 'Griffith') was a senior at Butte High School, a school
5 within Butte School District No. 1, during the 2007-08 school year. Defendant John Metz
6 (hereinafter 'Metz') was the principal of Butte High School, and Defendant Charles
7 Uggetti (hereinafter 'Uggetti') was the superintendent for Butte School District No. 1.
8 Griffith was scheduled to graduate in May of 2008, and by that time she, along with
9 several other classmates, had achieved the distinction of valedictorian of her class.
10 Metz informed the valedictorians of this achievement in the spring of 2008, and told
11 them that by virtue of their accomplishments, they would be allowed the opportunity to
12 speak at their graduation ceremony should they so choose. Griffith expressed such a
13 desire and prepared a speech to deliver at the graduation ceremony. Uggetti and Metz
14 did not allow her to deliver the speech as written because of two phrases referencing
15 God and Christ. The portion in controversy states:

17 I learned to persevere these last four years, even through failure or
18 discouragement, when I had to stand for my convictions. I can say that my
19 regrets are few and far between. I didn't let fear keep me from sharing Christ
20 and His joy with those around me. I learned to impart hope, to encourage people
21 to treat each day as a gift. I learned not to be known for my grades or for what I
22 did during school, but for being committed to my faith and morals and being
23 someone who lived with a purpose from God with a passionate love for him.

24 Because Griffith refused to change her speech as required by Uggetti and Metz
25 pursuant to school policy, she was not permitted to deliver her valedictory address at
graduation.

Griffith filed a Complaint of Discrimination against the Defendants on July 23,
2008 with the State of Montana Human Rights Bureau (hereinafter 'the Bureau'). The

1 Complaint alleged discrimination in the area of training or education because of Griffith's
2 creed or religion in violation of the Montana Human Rights Act, Title 49, Chapter 2,
3 Mont. Code Ann. The reasons given for her claim included that on or about May 29,
4 2008, she was prevented from delivering her valedictory address by officials of Butte
5 School District No. 1 because she would not omit the reference to 'God' or 'Christ' from
6 her address, in violation of M.C.A. § 49-2-307(1).

7 On January 20, 2009, the Bureau issued a Notice of Dismissal and Notice of
8 Right to File Civil Action in District Court. The Bureau conducted an investigation and
9 found that Griffith's allegations were not supported by a preponderance of the evidence.
10 After determining there was no reasonable cause as required by § 49-2-504(7)(b), the
11 Bureau issued the Notice of Dismissal. The Notice indicated that the decision was final
12 and completed the administrative process unless the charging party (Griffith) sought
13 Human Rights Commission review by objecting to the decision within 14 days of the
14 Notice of Dismissal, or unless Griffith filed a complaint in district court in the district in
15 which the alleged violation occurred within 90 days of the Notice of Dismissal.
16

17 Griffith filed her Complaint in Montana Thirteenth Judicial District Court,
18 Yellowstone County, on April 16, 2009. (See this Court's Order of July 14, 2009
19 denying Defendant's Motion to Dismiss). The Complaint alleged generally the same
20 facts as her Complaint to the Bureau, and formed the basis of the six counts: violations
21 of Montana Human Rights Act , § 49-2-101 MCA *et seq.*; Governmental Code of Fair
22 Practices, § 49-3-101 MCA *et seq.*; Article II Section 5 of the Montana Constitution;
23 Article II Section 7 of the Montana Constitution; the First Amendment to the United
24 States Constitution; and the Fourteenth Amendment to the United States Constitution.
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1 SUMMARY JUDGMENT STANDARD IN MONTANA

2 Summary judgment should be granted when, based on the pleadings, discovery,
3 and affidavits, if any, there is no genuine issue of material fact and the moving party is
4 entitled to a judgment as a matter of law. Mont. R. Civ. P. 56(c). "The moving party
5 bears the burden of establishing that no genuine issue of material fact exists." *Fisher v.*
6 *Swift Transportation Co.*, 2008 MT 105, ¶ 12, 342 Mont. 335, ¶ 12, 181 P.3d 601, ¶ 12.
7 Once that burden has been met, the burden shifts to the non-moving party to provide
8 substantial evidence of a genuine issue of material fact. *Fisher*, ¶ 12. "All reasonable
9 inferences will be drawn in favor of the non-moving party." *Fisher*, ¶ 12.

10 ANALYSIS

11 I. Summary Judgment is appropriate because no genuine issues of material fact exist.

12 A. The Montana Human Rights Act is the exclusive remedy for
discrimination claims brought under the Act, therefore barring Counts III through
13 VI of the Complaint.

14 i. The MHRA is the exclusive remedy for Counts III and IV.

15 Griffith filed her discrimination complaint with the State of Montana Human Rights
Bureau alleging unlawful discrimination in the area of education based on religion in
16 violation of the Montana Human Rights Act (hereinafter 'MHRA'). In the case at hand,
17 the relevant portion of the Montana Human Rights Act states,

18 "The provisions of this chapter establish the **exclusive remedy** for acts
constituting an alleged violation of chapter 3 or this chapter, including acts that
may otherwise also constitute a violation of the discrimination provisions of
20 Article II, section 4, of the Montana constitution or 49-1-102. A claim or request
21 for relief based upon the acts may not be entertained by a district court other
than by the procedures specified in this chapter."

22 Mont. Code Ann. § 49-2-512(1) (2009). (Emphasis supplied)

23 In *Saucier v. McDonald's Restaurants of Montana, Inc.*, 2008 MT 63, 342 Mont.
24 29, 179 P.3d 481 (2008), a mentally disabled woman alleged that she was the victim of
25 workplace discrimination. On the basis of her gender and on the basis of her disability

1 she alleged she was subjected to a sexually hostile and offensive work environment,
2 and filed a complaint with the State of Montana Human Rights Bureau. After conducting
3 its investigation, the Human Rights Bureau issued a report that concluded that the
4 allegations of discrimination were not supported by a preponderance of the evidence.
5 Shortly thereafter, an action was filed in district court on behalf of Saucier. Saucier's
6 district court action alleged workplace discrimination based on the same set of facts set
7 forth in her Human Rights Complaint as well as various tort claims arising from the
8 same conduct. Agreeing with McDonald's analysis, the District Court concluded that
9 Saucier's discrimination based tort claims were barred by the exclusivity provision of the
10 MHRA and granted summary judgment in favor of the Defendants.

12 The Montana Supreme Court, confirming the rationale of the District Court in
13 *Saucier*, stated that the "procedures and remedies [of the MHRA] constitute the
14 exclusive means of redress for conduct which falls within the MHRA's definition of
15 unlawful discrimination." *Saucier v. McDonald's Restaurants of Montana, Inc.*, 2008 MT
16 63, ¶ 42, 342 Mont. 29, 42, 179 P.3d 481, 490 & 491 (2008). The Court elaborated on
17 the subject by stating,

18 "In conjunction with its anti-discrimination provisions, the MHRA establishes
19 procedures and remedies, **separate from tort law**, for legal redress of conduct
20 which falls within the definition of unlawful discrimination. The Legislature has
21 mandated that **this remedial scheme is the exclusive means** of legal redress
22 for unlawful discrimination . . . **may not maintain a traditional tort action**
23 based on that conduct; rather, the plaintiff is limited to the specific procedures
24 and remedies established by in the MHRA."

25 *Id.*, at ¶ 39; 342 Mont. at 40, 179 P.3d at 490. (Emphasis supplied)

26 At issue in *Saucier* was whether the conduct complained of fell within the
27 MHRA's definition of unlawful discrimination. In deciding cases such as *Saucier*, the

1 Montana Supreme Court looks at the nature of the acts alleged by the plaintiff, as
2 opposed to the manner in which the complaint is framed, to determine the 'gravamen' of
3 the complaint. *Id.* at ¶ 56. The Court goes on to state that their "gravamen"
4 determination is made irrespective of the manner in which the complaint is framed
5 because [they] realize that litigants can frequently employ tort terminology to improperly
6 re-characterize 'what is at heart a . . . discrimination claim.' *Id.* (citing *Harrison v.*
7 *Chance*, 244 Mont. 215, 223, 797 P.2d 200, 205 (1990)). Clarifying this statement, the
8 Court goes on to state that "the bottom line is that the gravamen depends on the nature
9 of the alleged conduct, and not upon the technical format of the complaint or procedural
10 aspects of the case." *Id.* at ¶ 57.

12 Although the Montana Supreme Court ultimately found that Saucier's tort claims
13 were not barred by the MHRA, determining that the alleged acts went beyond unlawful
14 discrimination, the rationale employed in *Saucier* is still controlling in the case at hand.
15 This Court is tasked with determining whether the facts alleged by Griffith constitute
16 discrimination in education or if they are grounded in something different. The
17 gravamen of Griffith's complaint with the State of Montana Human Rights Bureau, her
18 Complaint in this Court, and her Motion for Summary Judgment all argue that the
19 conduct of the Defendants constituted "discrimination in education in violation of Mont.
20 Code Ann. § 49-2-307(1)." The relevant portion of Mont. Code Ann. § 49-2-307(1)
21 (2009) states,
22

23 It is an unlawful discriminatory practice for an educational institution . . . to
24 exclude, expel, limit, or otherwise discriminate against an individual seeking
25 admission as a student or an individual enrolled as a student in the terms,
conditions, or privileges of the institution because of race, creed, religion, sex,
marital status, color, age, physical disability, or national origin or because of
mental disability, unless based on reasonable grounds.

1 In her Complaint, Griffith claims that she was prevented from giving her high school
2 valedictory address on the basis of her refusal to remove religious references from her
3 proposed speech. Consequently, she asserts that these allegations constitute
4 discrimination in education and are a violation of the Governmental Code of Fair
5 Practices. Griffith then goes on to assert that the same alleged acts of the Defendants
6 also violate various provisions of the United States and the Montana Constitutions. The
7 same set of facts form the basis for each separate cause of action. This Court
8 concludes that counts III and IV of Griffith's Complaint, which are framed as state
9 Constitution freedom of religion and freedom of speech actions, are more properly
10 characterized as discrimination of religion and speech claims.

12 **ii. MHRA neutrality bars § 1983 and First and Fourteenth
13 Amendment claims.**

14 Griffith argues that Counts V and VI, which allege violations of the First and
15 Fourteenth Amendments to the U.S. Constitution and invoke 42 USC § 1983, do not fall
16 within the confines of the MHRA. Such an argument, however, is inapposite here. In
17 regards to unlawful discrimination claims, Mont. Code Ann. § 49-2-512(1) (2009) plainly
18 states that a claim or request for relief, other than as provided for in the MHRA, "may
19 not be entertained by a district court other than by the procedures specified." Griffith
20 notes the presumption that, through the Supremacy Clause of the U.S. Constitution,
21 federal law is "the supreme law of the land." However her contention that § 1983
22 actions must always be heard by a district court is not accurate.
23

24 In *Haywood v. Drown*, 129 S.Ct. 2108 (2009), the U.S. Supreme Court
25 recognized two exceptions to the supremacy presumption. The first exception occurs

1 "when Congress expressly ousts state courts of jurisdiction," and the second when "a
2 state court refuses jurisdiction because of a neutral state rule regarding the
3 administration of the courts." *Id.* at 2114. The Supreme Court goes on to state that
4 "only a neutral jurisdictional rule will be deemed a 'valid excuse' for departing from the
5 default assumption that 'state courts have inherent authority, and are thus
6 presumptively competent, to adjudicate claims arising under the laws of the United
7 States.'" *Id.* The Supreme Court has further held that "the States . . . have great latitude
8 to establish the structure and jurisdiction of their own courts. In addition, States may
9 apply their own neutral procedural rules to federal claims, unless those rules are pre-
10 empted by federal law." *Howlett v. Rose*, 496 U.S. 356, 372 (1990).

11

12 In determining whether a state law qualifies as a neutral rule of judicial
13 administration, the U.S. Supreme Court points out that "a State cannot employ a
14 jurisdictional rule "to dissociate [itself] from federal law because of disagreement with its
15 content or a refusal to recognize the superior authority of its source." *Haywood* at 2114
16 (Citing *Howlett* at 371). In *Haywood*, the Supreme Court ultimately determined that the
17 New York statute at issue was not a neutral jurisdictional rule because the underlying
18 basis for the statute was a conclusion by the state that suits brought by prisoners
19 against corrections officers were "too numerous or too frivolous." *Id.* at 2115. The Court
20 went on to conclude that the New York statute was not a neutral state rule because the
21 state courts of general jurisdiction could still "entertain analogous suits" brought against
22 other officials, and that "It is only a particular species of suits - those seeking damages
23 relief against correction officers - that the State deems inappropriate for its trial courts."
24 *Id.* at 2116-17.

1 Applying the rationale employed in *Haywood* to this case renders a different
2 result. Here, the Montana Legislature has not precluded the District Court from hearing
3 'only a particular species of suits' brought by a specifically identified class of plaintiffs
4 against a specifically identified class of officials. Rather, the exclusivity provisions of the
5 MHRA apply to **all** types of claims where the underlying allegations would constitute
6 unlawful discrimination. The provisions of the MHRA apply equally and neutrally to **all**
7 claims or requests for relief brought by **any** plaintiff against **any** defendant in state court.
8

9 Because the gravamen of Griffith's claims against the School District is
10 discrimination, and because the exclusive remedy for discrimination claims is
11 established in the MHRA, Mont. Code Ann. §49-2-512(1), counts V and VI of Griffith's
12 complaint are also barred, along with Counts III and IV. Counts III through VI all claim
13 Montana or U.S. Constitutional violations.

14 **B. The unlawful conduct alleged by Griffith is not violative of the**
15 **Governmental Code of Fair Practices.**

16 In Count II of her Complaint, Griffith alleges that "the actions of the defendants
17 were violative of the Governmental Code of Fair Practices 49-3-101 MCA et seq." A
18 review of the Governmental Code of Fair Practices (GCFP), however, reveals that none
19 of the provisions apply to the alleged facts before the Court in this case. Even if the
20 factual allegations stated in the Complaint are taken as true, no violation of the GCFP
21 has occurred, and, as such, the Defendant is entitled to summary judgment on Count II.
22

23 **C. The Defendants' refusal to permit Griffith to state to the attendees at the**
24 **2008 graduation ceremony her own personal religious views during her**

1 valedictory speech was not in violation of the First Amendment Establishment
2 Clause to the U.S. Constitution or Mont. Code Ann. § 49-2-307(1).

3 Both parties are in agreement that Griffith was a valedictorian in the Butte High
4 School graduating class of 2008, and that she and the other valedictorians were
5 informed that they would be given a chance to speak during the graduation ceremony.
6 It is also undisputed that Griffith was informed by Uggetti and Metz that the school
7 district had a policy to retain control over the content of graduation ceremonies.
8 Further, it is undisputed that Griffith was given the opportunity to make changes to her
9 speech that would bring it into compliance with the district's policy, that Griffith refused
10 to make any changes and that her refusal precluded her from giving her valedictory
11 speech. The only dispute between the parties is whether or not the Defendants' refusal
12 to permit Griffith to state her personal religious views to the 2008 graduation attendees
13 was a violation of the First Amendment and Mont. Code Ann. § 49-2-307(1).

14 The facts of this case are similar to those in *Cole v. Oroville Union High School*
15 *Dist.*, 228 F.3d 1092 (9th Cir. 2000). In *Cole*, a class valedictorian was selected to give
16 a speech during his graduation, and the District refused to permit the speech, as
17 submitted, to be delivered. The District justified its refusal on a District Policy that
18 required all student graduation speeches to be reviewed and approved by the principal.
19 *Id.* at 1096. The policy did not specifically enumerate the prohibited content, although
20 the valedictorian was repeatedly advised and told to modify his speech in order to make
21 it 'nondenominational' and inclusive of all beliefs. *Id.* The valedictorian filed suit
22 claiming the refusal violated his right to freedom of speech. Siding with the District, the
23 Court concluded that the District's refusal to allow the student to deliver his speech,
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1 which was admittedly sectarian, was necessary to avoid violating the Establishment
2 Clause. *Id.* at 1101.

3 The *Cole* Court further stated that, "the District's plenary control over the
4 graduation ceremony, especially student speech, makes it apparent [the student's]
5 speech would have borne the imprint of the District." *Id.* at 1103. The Court noted that
6 "the District authorizes the valedictory speech as part of the District-administered
7 graduation ceremony, which is held on District property and financed in part by District
8 funds and in which only selected students are allowed to speak," and that a policy was
9 in effect stating that "the principal retains supervisory control over all aspects of the
10 graduation, and has final authority to approve the content of student speeches." *Id.*
11 Ultimately, the Court determined that the actions of the District officials were reasonable
12 in order to avoid violating the Establishment Clause. *Id.* at 1105.

14 Central to Defendants' argument in the case at hand is School District Policy
15 2332, specifically the part pertaining to graduation ceremonies, which states, much like
16 the policy employed in *Cole*:

17 Graduation Ceremonies

18 Graduation is an important event for students and their families. In order to
19 assure the appropriateness and dignity of the occasion, the District sponsors and
20 pays for graduation ceremonies and retains ultimate control over their structure
and content.

21 District officials may not invite or permit members of the clergy to give prayers at
22 graduation. Furthermore, District officials may not organize or agree to requests
23 for prayer by other persons at graduation, including requests from students. The
District may not prefer the beliefs of some students over the beliefs of others,
coerce dissenters or nonbelievers, or communicate any endorsement of religion.

24 The District's actions in this case were neither taken in response to Griffith's personal
25 religious beliefs, as has been asserted by Griffith, nor were they unlawfully

1 discriminatory. Mont. Code Ann. § 49-2-307(1) prohibits discrimination against an
2 enrolled student because of religion, unless such discrimination is based upon
3 reasonable grounds.

4 As pointed out by the Defendants, it is the policy and practice of the District to not
5 permit religious references of any kind during graduation ceremonies. The Defendants
6 note that permitting one student to express her or his personal religious beliefs during a
7 graduation speech would then require the District to permit other students to express
8 their religious beliefs during their graduation speeches as well, as it would be obviously
9 discriminatory to deny other students the same opportunity. Here, as in *Cole*,
10 enforcement of the District's policy and practice of not permitting expression of personal
11 religious views in student speeches during the graduation ceremony provided a
12 reasonable basis for the Defendants to insist that Griffith and all speakers refrain from
13 expressing their personal religious beliefs during the graduation ceremony.

14 Because Griffith's proposed speech was not a sermon or a prayer or a
15 proselytization, Griffith argues that the District should have allowed her personal
16 religious views which were non-proselytizing. The question for the District becomes,
17 where should the line be drawn between such expression and speech that did violate
18 the Establishment Clause? Consequently, the District would have to confront the issue
19 of whether such a policy could be enforced.

20 The policies and practices of the District prohibiting religious speech during
21 graduation ceremonies are applied evenly to all student speakers. Clearly, the policy
22 was drafted with the specific intent of maintaining District neutrality towards religion, as
23 is required by the Establishment Clause. ("Congress shall make no law respecting an

1 establishment of religion, or prohibiting the free exercise thereof;"). Policy 2332 does
2 permit personal religious expression by students in all circumstances and situations
3 where it would not appear that the District was endorsing the personal religious
4 viewpoints of the students. For example, private religious expression, individual or
5 group prayer that is not disruptive or coercive, individual religious beliefs in reports,
6 tests and homework, religion in curriculum, distribution of religious literature and
7 teaching about religious holidays are allowed.

8 The graduation ceremony, however, is not one of those permitted situations. The
9 District's actions in this case were not undertaken with hostility towards Griffith's
10 religious beliefs, nor were they taken because of the substance of Griffith's religious
11 beliefs. If anything, contrary to Griffith's argument otherwise, the District did not prefer
12 the beliefs of any student over the beliefs of others. Such action is in no way
13 discriminatory, and cannot be found to be in violation of either the First Amendment or
14 Mont. Code Ann. § 42-9-307(1). The District's policy and practice gave a reasonable
15 basis for not allowing Griffith to give her personal religious beliefs in the graduation
16 ceremony.

17 A high school graduation ceremony is not intended to be a forum for expression
18 of individual student religious views. It is to recognize the achievement of meeting the
19 requirements for graduation and to honor graduates in a sectarian setting. Because of
20 the compulsory nature of graduation ceremonies, (see *Good News Club v. Milford Cent.*
21 *School*, 533 U.S. 98, 115, 121 S.Ct. 2093, 150 L.Ed.2d 151 (2001) and *Nurre v.*
22 *Whitehead*, 580 F.3d 1087 (9th Cir. 2009)), the risk of implied endorsement by the
23 District of each student speaker's expression of personal religious views and the virtual
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1 impossibility of drawing a line between permissible and non-permissible religious
2 expression, Griffith's interpretation of the requirements of Mont. Code Ann. § 49-2-
3 307(1) cannot stand.

4 In deciding the appropriateness as well as the legality of the District policies,
5 perhaps the most eloquent and profound instruction can be found in *Ecclesiastes* 3:1-8:

- 1 To every thing there is a season, and a time to every purpose under the
heaven:
- 2 A time to be born, and a time to die; a time to plant, and a time to pluck up
that which is planted;
- 3 A time to kill, and a time to heal; a time to break down, and a time to build
up;
- 4 A time to weep, and a time to laugh; a time to mourn, and a time to dance;
- 5 A time to cast away stones, and a time to gather stones together; a time to
embrace, and a time to refrain from embracing;
- 6 A time to get, and a time to lose; a time to keep, and a time to cast away;
- 7 A time to rend, and a time to sew; a time to keep silence, and a time to
speak;
- 8 A time to love, and a time to hate; a time of war, and a time of peace.

14 King James Bible. Philadelphia: The National Publishing Company, 1970.

15 ORDER

16 IT IS HEREBY ORDERED that Defendant's Motion for Summary Judgment is
17 GRANTED.

19 DATED AND ORDERED this 24th day of February 2010.

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22
23 HON. GREGORY R. TODD, District Court Judge
DV 09-0539

25 cc. William J. O'Connor II, Attorney for the Plaintiff
Tony C. Koenig, Attorney for the Defendants