

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 17, 2004

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 04-2103-FT
STATE OF WISCONSIN**

Cir. Ct. No. 04CV001469

**IN COURT OF APPEALS
DISTRICT II**

LARRY R. ROBINSON,

PLAINTIFF-APPELLANT,

v.

**RACINE UNIFIED SCHOOL DISTRICT AND RACINE
JOURNAL TIMES,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Racine County:
FAYE M. FLANCHER, Judge. *Affirmed.*

Before Anderson, P.J., Brown and Snyder, JJ.

¶1 PER CURIAM. Larry R. Robinson appeals from the order of the circuit court that denied his request for injunctive relief under WIS. STAT. § 19.356(4), 2003 Wis. Act 47 (effective August 26, 2003), to prevent the Racine Unified School District (RUSD) from disclosing certain portions of his personnel

records. He argues on appeal that ten documents should not be released. We conclude that the court properly allowed the disclosure of these documents and we affirm.

¶2 Robinson is employed by RUSD as a special education teacher. In June 2004, the Racine Journal Times made a public records demand to RUSD for Robinson's entire personnel record. The Racine Journal Times was running a series of articles about sexual misconduct charges against Robinson. RUSD denied access to Robinson's grades and performance evaluations, but agreed to release the other portions of Robinson's record. Robinson then filed an action in the circuit court to enjoin the disclosure of certain documents in his record. The court denied the injunctive relief and ordered RUSD to disclose the documents. Robinson appealed and the documents have remained sealed pending this appeal.

¶3 The clearly stated, general presumption of the open records law is that all public records shall be open to the public. *Linzmeier v. Forcey*, 2002 WI 84, ¶15, 254 Wis. 2d 306, 646 N.W.2d 811. The open records law provides that access shall not be provided to employee personnel records that contain: "Information relating to the current investigation of a possible criminal offense or possible misconduct connected with employment by an employee prior to disposition of the investigation." WIS. STAT. § 19.36(10)(b), 2003 Wis. Act 47 (effective August 26, 2003).

¶4 The first document at issue appears at page 13 of record document 10. Robinson argues that this document is a document that relates to the current investigation of a possible criminal offense or misconduct charge within the meaning of the statute. The circuit court concluded that the document was nothing more than a notice of suspension and that this information was common

knowledge. Consequently, the court allowed the document to be released. We agree with the court's conclusion.

¶5 Robinson's next argument is that the remaining documents should not be released even though he admits that they were collected for reasons unrelated to the instant proceedings. Robinson asserts that the documents "undoubtedly" will be used by the prosecution at DPI and school board hearings. Robinson argues specifically that while they are unlikely to be admissible as other acts evidence, their publication will make it difficult for him to get a fair trial. When a record is not covered by a specific statutory exemption, the question for the court becomes whether the presumption of openness can be overcome by a public policy favoring non-disclosure. *Linzmeier*, 254 Wis. 2d 306, ¶24. We determine this by balancing whether permitting inspection of the record would result in harm to the public interest that would outweigh the public interest in opening the record to inspection. *Id.*, ¶25. The supreme court has acknowledged that public school teachers are employees in positions of "some visibility" who are "in the public eye." *Id.*, ¶¶28–29. This position "supports public scrutiny of potential misconduct, particularly if it occurs in the school and classroom settings," and the public should expect some increased accountability. *Id.*

¶6 We conclude that there is neither a specific statutory requirement nor a compelling public policy reason why these documents should not be disclosed. The applicable statute requires that the records relate to a current investigation. As Robinson admits, the nine documents do not relate to the current investigation. Further, we are not convinced that public policy requires that these documents be withheld. The supreme court has held that the public's interest in teacher misconduct is of heightened importance. We are not convinced that the disclosure of these documents, especially considering the information that has already been

disclosed to the public, will deprive Robinson of the right to a fair trial. Consequently, we affirm the order of the circuit court denying Robinson's request to enjoin disclosure of these documents.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2001-02).

