

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

NO. 311783

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ALLEN MARTIN

Appellant

v.

RIVERSIDE SCHOOL DISTRICT NO. 416 and COWLES  
PUBLISHING COMPANY

Respondents

---

BRIEF OF RESPONDENT COWLES PUBLISHING COMPANY

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COMES NOW Respondent, Cowles Publishing Company, publisher of *The Spokesman-Review* newspaper (hereinafter "Spokesman-Review"), acting by and through its attorneys, Witherspoon Kelley, and respectfully submits the following response to Appellant's brief.

### I. RESTATEMENT OF THE ISSUES

This case is an appeal from an Order of the Superior Court requiring disclosure of certain public records pertaining to the discharge of Appellant from his position as a teacher and coach at the Riverside School District ("District"). Subsequent to the time Appellant was placed on administrative leave and the District issued to Appellant a notice of probable cause for discharge, reporter Jody Lawrence-Turner of the Spokesman-Review sought records pertaining to Appellant having been placed on administrative leave and terminated. (CP 50). At the time of the public records request and at the time the court ordered disclosure of the records, Appellant had filed for binding arbitration, challenging the District's decision to discharge and non-renew Appellant.<sup>1</sup> The District apparently terminated Appellant because of admitted sexual activity that occurred in Appellant's classroom over the Labor Day weekend between Appellant and a 25-year old ex-student aide of Appellant. (CP 57).

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<sup>1</sup> The arbitrator subsequently upheld the District's decision to terminate and non-renew Appellant. (App. Br. 9).

Appellant sought injunctive relief before the trial court pursuant to RCW 46.56.540 (CP 6), which requires a showing that release of a public record would cause substantial and irreparable damage to a vital governmental function or is clearly not in the public interest and will substantially and irreparably damage a person. Appellant asserts that public disclosure of the records would violate his right to privacy and the records are, therefore, exempt from disclosure pursuant to the personnel records exemption under RCW 42.56.230(3) and the investigative record exemption under RCW 42.56.240(1).

The Spokesman-Review hereby restates the issues on appeal as follows:

1. Where the District has made the decision to terminate Appellant, are public records of the District relating to the termination of legitimate concern to the public?

(a) Does legitimate public concern exist where the alleged misconduct occurred on school premises on a holiday weekend with a consenting adult and former student where the District determined the conduct was cause for termination of the teacher Appellant?

(b) Does legitimate public concern exist as to the basis for the District's decision to terminate where Appellant

teacher has filed for binding arbitration concerning the District's decision?

2. Where the conduct of Appellant does not constitute either illegal conduct or malfeasance, and the District does not assert that it does, does the specific investigative record exemption under RCW 42.56.240(1) apply to the records at issue?

3. Where there is no evidence that disclosure of the records would damage a vital governmental function or would clearly not be in the public interest and will substantially and irreparably damage a person, has Appellant satisfied his burden for injunctive relief under RCW 42.56.540?

## II. STATEMENT OF THE CASE

The Spokesman-Review accepts the statement of the case set out in Appellant's brief.

## III. ARGUMENT

### A. The Washington Public Records Act Provides for Broad Access to Public Records.

There is no dispute that the records at issue are public records, subject to the provisions of Washington's Public Records Act -- RCW Chapter 42.56 (hereinafter "PRA").

The PRA "is a strongly worded mandate for broad disclosure of public records." *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 127, 580 P.2d 246

(1978). The purpose of the PRA is to provide full access to non-exempt public records. *American Civil Liberties Union of Washington v. Blaine School Dist. No. 503*, 86 Wn.App. 688, 695, 937 P.2d 1176 (1997). The Act is to be liberally construed to promote full disclosure of government activity so that "the people might know how their representatives have executed the public trust placed in them and so hold them accountable." *Spokane Research and Defense Fund v. City of Spokane*, 155 Wn.2d 89, 100, 117 P.3d 1117 (2005). The purpose of the PRA "is to keep public officials and institutions accountable to the public." *Daines v. Spokane County*, 111 Wn. App. 342, 347, 44 P.3d 909 (2002). The exemptions under the statute are to be narrowly construed to promote the public policy of providing full access to public records. RCW 42.56.030.

**B. The Two Exemptions Cited by Appellant Do Not Exempt Disclosure of the Records at Issue.**

**1. Washington Courts Have Held that the Public Has a Legitimate Concern in Substantiated Allegations of Teacher Misconduct.**

As indicated previously, there is no dispute that the records at issue are public records or that they relate to the District's decision to terminate Appellant and not renew his contract with the District. The records include notes of the District's interviews with Appellant and other persons with knowledge of the misconduct; a background check of the person with

whom the alleged misconduct occurred; notes of the District superintendent; interviews with community members and District staff concerning the alleged misconduct; correspondence between the District and Appellant as to the conduct and the District's review thereof; correspondence between the Riverside Education Association and the District concerning the misconduct; grievance and arbitration demands under the Riverside Education Association's collective bargaining agreement with the District and correspondence related to the grievance and arbitration process; notes from a Level III grievance meeting; a letter placing Appellant on administrative leave; a notice of probable cause for discharge and non-renewal; correspondence related to the termination of Appellant's paycheck and benefits; correspondence between the District and the Office of Superintendent of Public Instruction; notes and a file of an individual hired by the District to review allegations concerning Appellant; correspondence between the District and the Educational Service District; cellphone text message records of Appellant; a flyer containing comments about Appellant; and decisions from the Office of Superintendent of Public Instruction in cases unrelated to Appellant. (CP, Exhibit 1).

Clearly, these records, as a group, were assembled by the District as part of its review of Appellant's conduct and its ultimate decision to terminate and non-renew.

Appellant asserts his privacy rights would be violated by release of these records and, therefore, they should be exempt from public disclosure under RCW 42.56.230(3) and RCW 42.56.240(1). Although the Spokesman-Review will demonstrate later in this brief that the investigative record exemption under RCW 42.56.240(1) is not applicable because the records are not specific investigative records, the test for invasion of privacy is the same under both RCW 42.56.230(3) and 42.56.240(1) and, therefore, regardless of whether the records at issue are specific investigative records, the records are not exempt from public disclosure because the two-pronged test for demonstrating an invasion of privacy is not satisfied under the facts of this case and applicable Washington law.

The burden of proving these exemptions is on Appellant. RCW 42.56.550(1); *Brouillet v. Cowles Publishing Co.*, 114 Wn.2d 788, 794, 791 P.2d 426 (1990). In order to satisfy the test for invasion of privacy under RCW 42.56.050, Appellant must demonstrate that disclosure of information about him (1) would be highly offensive to a reasonable person and (2) is not of legitimate concern to the public. This is a

conjunctive test. That is, Appellant must prove both prongs of the test. For instance, even if Appellant were to demonstrate that release of the records would be highly offensive to a reasonable person, the records would still be subject to public disclosure unless Appellant can also prove that the records are not of legitimate concern to the public.

It is not enough that disclosure of personal information "may cause inconvenience or embarrassment to public officials or others." RCW 42.56.550(3). Nor does use of the privacy test permit balancing "the individual's privacy interest against the interests of the public in disclosure." *Dawson v. Daly*, 120 Wn.2d 782, 795, 845 P.2d 995 (1993). Rather, Appellant must prove both prongs of the privacy test.

**a. Release of the Records is Not Highly Offensive Under the Objective "Reasonable Person" Test.**

The first prong for determining invasion of privacy is an objective test. That is, the issue is whether disclosure of the records would be highly offensive "to a reasonable person," and not merely to Appellant. RCW 42.56.050. It is difficult to comprehend how release of the specific records at issue would be highly offensive where Appellant has publicly admitted that the conduct involved his encounter with a consenting adult on school property during the time when the school was closed for a school holiday. *Appellant's Brief* at 5. In addition, counsel for the District

and Appellant asserted in oral argument before the trial court in an open courtroom that Appellant's conduct involved a sexual encounter with a consenting adult, his former teacher's aide, in Appellant's classroom on Labor Day. (RP 15, 16, 23, 33.)

As a result of these public revelations in court pleadings and during oral argument, it is hard to envision how the conduct, to which Appellant has admitted, that forms the basis for his termination would be highly offensive if it has been discussed in such a public fashion. Events that are alleged to be "private" must occur in private, and privacy may be "either lost or diminished by being made public." *Spokane Public Guild v. State Liquor Control Board*, 112 Wn.2d 30, 38, 769 P.2d 283 (1989). Appellant has waived any privacy interest because of prior public disclosure of his conduct.

**b. Public Records Concerning District's Decision to Terminate are of Legitimate Concern to the Public.**

Even assuming, for the sake of argument, that, despite the very public discussion of the contents of the records, further public disclosure of already disclosed details would nevertheless be highly offensive to a reasonable person, Appellant cannot satisfy the second prong of the test for invasion of privacy that public disclosure of the records are not of legitimate public concern.

Appellant's assertion as to invasion of his right to privacy is answered directly by the Supreme Court's decision in *John Does v. Bellevue School Dist.*, 164 Wn.2d 199, 189 P.3d 139 (2008). In that case, the court stated that "we previously determined that when a complaint regarding misconduct during the course of public employment is substantiated or results in some sort of discipline, an employee does not have a right of privacy in the complaint." 164 Wn.2d at 215.

The *John Does* case involved the issue of access to identities of teachers in records involving unsubstantiated allegations of sexual misconduct. What the court said in the *John Does* case is that the public does not have a legitimate concern in the identities of teachers who are the subjects of "unsubstantiated" allegations of sexual misconduct. However, the court made clear that it was the intent of the PDA "and our determination that the identities of teachers accused of sexual misconduct should be released only if a school district has found the allegations to be substantiated." 164 Wn.2d at 222.

There is no dispute in the case at bar that the District found the allegation concerning Appellant to be substantiated. First, Appellant voluntarily admitted to the conduct during an interview with District representatives. (CP 57). Secondly, Appellant acknowledges in the Complaint he filed in this matter that he filed a grievance "regarding the

district's decision to discharge and non-renew him." (CP 5.) In other words, the instant case fits neatly within the directive of the Supreme Court in the *John Does* case, "that when a complaint regarding misconduct during the course of public employment is substantiated or results in some sort of discipline, an employee does not have a right to privacy in the complaint." 164 Wn.2d at 215. In the instant case, not only was the conduct substantiated but also discipline by the District was undertaken.

Here, Appellant engaged in conduct that the District determined would affect his public employment; his conduct was substantiated and resulted in discipline against Appellant by the District -- i.e., termination and non-renewal of his teaching contract. This is not a case involving an unsubstantiated allegation of misconduct. The *John Does* case follows a lengthy line of Supreme Court precedent, in which the Court has held that a right of privacy does not exist when a public employee has been accused of misconduct, and the misconduct has been substantiated. *See, e.g., Cowles Publishing v. State Patrol*, 101 Wn.2d 712, 727; 748 P.2d 597 (1988) (right of privacy does not apply to law enforcement officer's actions while performing his public duties or improper off-duty actions which bear upon his ability to perform his public office). *Brouillet v. Cowles Publishing Co.*, 114 Wn.2d 788, 798, 791 P.2d 526 (1990)(revocation of teacher certificates for sexual misconduct with

students is a matter of legitimate public concern, and public records relating to the same are not exempt from disclosure).

Appellant asserts that the public has no interest in the allegations against Appellant because the conduct occurred during a holiday weekend with a consenting adult, albeit in Appellant's classroom. The public interest is limited (Appellant argues), only to Appellant's performance of his public duties. However, District policy, controlling Washington case law and a practical application of the public's right under the PRA to oversee the qualification for continued employment of public employees, including teachers such as Appellant, reject Appellant's narrow approach as to public oversight and legitimate concern. District policy, pursuant to which Appellant was discharged, relates not only to job performance by District employees but also conduct "off the job in ways that significantly affect their effectiveness on the job." (CP Ex. 1). Thus "off-the-job" conduct, by District policy, can result in discipline if it significantly affects effectiveness on the job.

Moreover, in *Cowles Publishing v. State Patrol*, 109 Wn.2d 712, 727, 784 P.2d 597 (1988), the Supreme Court stated that "improper off duty actions" of a law enforcement officer which bear upon his ability to perform his public office are not protected under the privacy test in the PRA.

Finally, common sense dictates, as the District has pointed out, that the conduct of Appellant was public behavior and the ability of Appellant to be effective as a teacher was directly impacted (sufficiently for his discharge to be upheld by an arbitrator) because of the conduct.

Counsel for the District asserted to the trial court:

No, it's public behavior. It wasn't in a bedroom, it was a public classroom on public property in a public high school on a desk owned by the public. The only way he had access to that classroom is because he was a public school teacher with a key issued by a public school district and the only way he had access to that 25-year-old former student consenting adult is because she was a student of his, a public high school student of his in his public high school classroom. (RP 24-25).

The District provided to the trial court three Orders issued by the Superintendent of Public Instruction (hereinafter "SPI") (CP, Exhibit 1, Tabs 61, 62 and 63) where the SPI had suspended teachers' certificates for conduct identical to that of Appellant -- a teacher having a sexual encounter with a consenting adult in a classroom. As counsel for the District noted, "In each and every one of these cases the teacher's misconduct in his classroom was deemed [by the SPI] related to his ability as a teacher." (RP 22).

Disclosure of the records at issue allows the purpose of the PRA -- to ensure release of public records so that public employees and institutions shall be accountable to the public -- to be fulfilled. The

records will provide information not only as to Appellant's alleged misconduct but also as to how the District investigated the conduct and took action it felt appropriate and necessary.

c. **Records are Subject to Disclosure Regardless of Pendency of Binding Arbitration Proceeding Concerning Discharge.**

Appellant argues that the records relating to his discharge by the District are exempt from disclosure because at the time the summary judgment order was entered, a binding arbitration proceeding was pending concerning his discharge.<sup>2</sup> However, Appellant cites no authority that release of public records pertaining to discipline of a public employee must await further arbitration or court proceedings before the records are made public. In fact, the law, as set out in numerous appellate decisions, is to the contrary.

In the *John Does* case, the court noted that the right of privacy concerning a complaint alleging misconduct is subject to public disclosure if the complaint "results in some sort of discipline by the school district." (Emphasis supplied). 164 Wn.2d at 215.

Administrative action by an agency in disciplining an employee has been held sufficient to give rise to legitimate concern of the public and to override any privacy concerns of the affected employee. In the *Brouillet* case, *supra*, the records at issue were releasable and did not constitute an invasion of privacy

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<sup>2</sup> As indicated previously, a month after the summary judgment motion was granted, the arbitrator presiding over Appellant's arbitration hearing "ruled that the district had sufficient cause to discharge and non-renew Mr. Martin." *Appellant's Brief* at 9.

once the superintendent of public instruction had revoked a teacher's license. 114 Wn.2d at 796. In the *Cowles Publishing v. State Patrol* case, the records that were deemed not to constitute an invasion of privacy involved substantiated complaints of misconduct following an internal review by a police department. *Cowles Publishing, supra*, at 726-727.

In *Morgan v. City of Federal Way*, 166 Wn.2d 747, 756, 213 P.3d 596 (2009), the court determined that, even if an employee disputes findings of an investigation, such dispute does make the findings unsubstantiated. Here, Appellant does not dispute the District's determination as to what conduct occurred because he voluntarily admitted to the conduct; therefore, the prerequisite set out in the *John Does* case (in order to protect privacy) that an agency not have substantiated an allegation is not even at issue. Rather, substantiation by the District is admitted.

The rationale that disclosure of records of discipline by an agency do not violate an employee's right to privacy is set out in the PRA. RCW 42.56.030 states that "the people insist on remaining informed so that they may maintain control over the instruments that they have created." The instrument at issue in this case is the school district. In the *Brouillet* case the instrument was the office of the Superintendent of Public Instruction and in the *State Patrol* case, the instruments were the Spokane Police Department, Spokane County Sheriff's Department, and the State Patrol. At issue in this case is not only the underlying conduct of Appellant, a public employee, that resulted in his termination, but also how the District undertook review of that conduct. Public disclosure of the

records will show how the District went about reviewing Appellant's conduct, whom the District interviewed, what the interviews indicated, how extensive was the review, and how was the determination to discharge and non-renew reached.

Release of these records will allow the realization of the interest set out in the PRA concerning legitimate public concern as to issues so that the people generally, and those specifically served by the District, can remain informed in order to maintain control over and evaluate the performance of the District and its employees concerning Appellant's situation. Did the District act reasonably, did it act expeditiously, did it act thoroughly, and was its decision, under the circumstances, appropriate? All of these questions will be implicated and answered by public disclosure of the records at issue.

Moreover, as indicated by the provisions of the PRA, that Act is not intended as a legislative enactment that would give only a historical perspective to the conduct of agencies. In other words, the purpose of the PRA is to give the public timely access to agency action in order to be able to effectively monitor the activity and conduct of government entities. Waiting on courts or binding arbitration actions to be completed before allowing access to records of agencies that may have precipitated the binding arbitration or court actions does not fulfill the mandate of the PRA that public disclosure of records is intended to allow the public to "maintain control over the instruments that they have created." Control can be effective only if access to public records is timely provided.

The District, in reviewing the conduct of Appellant, is not an investigative agency, nor are the records "specific investigative records." Thus, in *John Does v. Bellevue School Dist.*, *supra*, the exemption at issue was not the investigative record exception of RCW 42.56.240(1) but rather only the "personnel records" exemption under RCW 42.56.230(2), formerly RCW 42.17.310(1)(b).

Records qualify as "specific investigative records" only if they were "compiled as a result of a specific investigation focusing with special intensity upon a particular party." *Laborers Intl. Union, Local 374 v. Aberdeen*, 31 Wn. App. 445, 448, 642 P.2d 418, rev. den., 97 Wn.2d 1024 (1982). The investigation involved must be "one designed to ferret out criminal activity or to shed light on some other allegation of malfeasance." (Emphasis supplied). *Columbian Publishing Co. v. Vancouver*, 36 Wn. App. 25, 31, 671 P.2d 280 (1983).

While the review by the District of Appellant's conduct may have focused with special intensity upon Appellant, the review clearly did not involve ferreting out criminal activity. Appellant does not assert that the review of Appellant's conduct involved a review of "criminal activity." In fact, Appellant forcefully asserts that Appellant's "conduct was not criminal, and the District did not consider Mr. Martin's conduct criminal." *Appellant's Brief 5* (CR 57). Nor was the purpose of the review to shed light on some other allegation of "malfeasance," as that term is narrowly defined under Washington law.

"Malfeasance" is a term of art, and has been construed in numerous Washington court decisions. "Malfeasance" is not the same as "misconduct." Article V, Section 3 of the Washington Constitution makes this distinction when it states that "all officers not liable to impeachment shall be subject to removal for misconduct or malfeasance in office." (Emphasis supplied).

"Malfeasance" is also distinguished from "misfeasance." "Malfeasance" means the commission of an "unlawful" act, or "the doing of an act which the person ought not to do at all." *State v. Miller*, 37 Wn.2d 149, 152, 201 P.2d 136 (1948). On the other hand, "misfeasance" means "the improper doing of an act an officer might lawfully do, or, in other words, it is the performance of a duty in an improper manner." *State v. Miller, supra*, at 152.

Appellant takes great pains to assert that the conduct of Appellant was not illegal, nor did it involve abuse of a student or of a minor. Rather, the conduct apparently involved Appellant's sexual encounter with a consenting 25-year old former teacher's aide of Appellant in Appellant's classroom on a public holiday -- Labor Day. Clearly, this conduct was not malfeasance in that it was not unlawful nor was it an act which a person should never do, but rather it was misfeasance in that it was an act which was lawful but improper.

This distinction is underscored in the District policy under which Appellant was disciplined and terminated. (CP, Exhibit 1). The "Disciplinary Action and Discharge" Policy No. 5281 states that an employee may be subject to discipline concerning conduct off the job in a way that significantly affects the employee's effectiveness on the job. Examples in the Policy of behavior, conduct

or action which may lead to disciplinary action or discharge include "insubordination, gross incompetence, immorality, sexual misconduct, conviction of a felony, non-professional conduct, mental or physical inability to perform the duties for which employee, intemperance, intentional discrimination, vulgar speech or actions, use of habit-forming drugs, etc." While it is has not been disclosed which of these specific examples of improper behavior were the basis for Appellant's discipline and termination, it is likely the asserted sexual contact in the classroom with a former teacher's aide would fit at least under "non-professional conduct" or "vulgar action." Certainly, non-professional or vulgar conduct is not illegal or malfeasance but rather falls into the category of "misfeasance," which is an improper act that a teacher might lawfully do but should not have done. It was not "malfeasance," because it was not illegal or conduct that should not be engaged in at all.

Since the Washington courts have limited the terms "investigation" and "specific investigative records" under the PRA to investigation and records relating to ferreting out criminal activity or shedding light on an allegation of malfeasance, RCW 42.56.240(1) is not applicable to the personnel records at issue.

This is underscored by the fact that the courts have held that a city manager "who is investigating the job performance of a person under his supervision, is not functioning as an 'investigative, law enforcement [or] penology agenc[y]' as the exemption requires." *Columbian Publishing v. Vancouver*, 36 Wn. App. 25, 30, 671 P.2d 280 (1983). The investigation in the

*Columbian Publishing* case involved a review by the city manager of a "no confidence" vote rendered by the Vancouver Police Association concerning its chief of police and allegations that he was aloof, lacked motivation and communication skills, and showed no respect for his employees, and, as a result, "morale in the department was asserted to be at an all-time low." 36 Wn. App. at 27. In other words, while the investigation certainly focused on the police chief and complaints registered against him, the court nevertheless held that the investigation of his conduct was "purely a personnel matter, not an investigation in the intended sense, i.e., one designed to ferret out criminal activity or to shed light on some other allegation of malfeasance." 36 Wn. App. at 31.

The examination of the difference between the terms "malfeasance" and "misfeasance" demonstrates why in the *Columbian Publishing* case the personnel issue relating to investigation of complaints against the police chief did not implicate the protections of the investigative record exception under RCW 42.56.240(1) and, similarly, why the review of the conduct of Appellant does not constitute an investigation and assembling of specific investigative records as set out under RCW 42.56.240(1).

Since the review that resulted in Appellant's discipline and termination was not conducted by an investigative agency and did not result in the assembling of "specific investigative records," the exemption under RCW 42.56.240(1) is inapplicable.

**3. Appellant Has Not Satisfied Requirements for Injunctive Relief Under RCW 42.56.540.**

This action was initiated by Appellant's filing of a Complaint seeking to enjoin release of the records at issue. (CP 5-9). Enjoining release of a public record is governed by RCW 42.56.540, which is a procedural statute only. The Washington Supreme Court has held that a party seeking injunctive relief must not only satisfy the requirements of RCW 42.56.540 but must also demonstrate the applicability of a specific exemption. *Progressive Animal Welfare Society v. University of Washington*, 125 Wn.2d 243, 257-58, 884 P.2d 592 (1994). As indicated previously in this brief, the two exemptions relied upon by Appellant -- the personnel records exemption and the investigative records exemption -- do not prohibit release of the records in question. Moreover, Appellant has not satisfied the additional criteria under RCW 42.56.540 for issuance of an injunction because Appellant has not demonstrated substantial and irreparable damage to a vital governmental function if the records were released or that an examination of the records is clearly not in the public's interest and would substantially or irreparably damage any person.

The record is devoid of any argument or evidence as to how a vital governmental function would be substantially and irreparably damaged by release of the records. Moreover, while Appellant has argued that his privacy interest would be affected if the records were publicly disclosed, he has not shown that he would suffer any substantial and irreparable damage from release of the records. More importantly, however, the record is absolutely devoid of

any evidence or showing of how examination of the records would clearly not be in the public interest. Such a showing that release would clearly not be in the public interest is required in addition to demonstrating why non-disclosure is mandated under a specific exemption:

If one of the PRA's exemptions applies, a court can enjoin release of a public record only if disclosure 'would clearly not be in the public interest and would substantially and irreparably damage any person or . . . vital governmental functions.'

*Morgan v. City of Federal Way*, 166 Wn.2d 747, 756-757, 213 P.3d 596 (2009);

*Soter v. Cowles Publishing Co.*, 162 Wn.2d 716, 757, 174 P.3d 60 (2007).

Not only is the record devoid of any evidence as to how public interest would be harmed by disclosure of the records, to the contrary, the record is replete with evidence as to why the interests of the public and the District are bolstered by release of the records in question. (*See, e.g., generally* CP, Exhibit 1). Disclosure of the records will enable the public to perform its oversight function by allowing the public to review not only the conduct of Appellant but also the conduct of the District in determining that Appellant should be terminated.

Because Appellant has not satisfied the requirements under RCW 42.56.540 for issuance of an injunction, the records at issue should be disclosed to the public.

#### IV. CONCLUSION

For the reasons set out above, the Spokesman-Review respectfully requests that the decision of the Superior Court be upheld and that the District be required to publicly disclose the public records at issue.

Respectfully submitted this 24<sup>th</sup> day of April, 2013.

WITHERSPOON KELLEY



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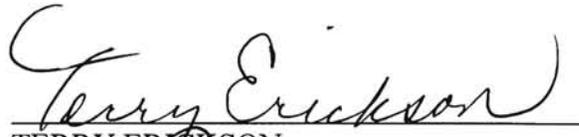
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CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the State of Washington that on the date stated below I caused to be served a copy of this document in the manner indicated.

Tyler M. Hinckley Montoya Hinckley PLLC 4702 A Tieton Dr, Yakima, WA 98908  <i>Attorneys for Appellant</i>	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Telecopy (Fax)
Paul E. Clay Stevens Clay & Manix PS 421 W. Riverside Avenue, Suite 1575 Spokane, WA 99201-0409  <i>Attorneys for Riverside School District No. 416</i>	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Telecopy (Fax)

DATED at Spokane, Washington, this 24<sup>th</sup> day of April, 2013.

  
\_\_\_\_\_  
TERRY ERICKSON  
Legal Assistant