District Court, Alamosa County, State of Colorado Court Address: 702 Fourth St., Alamosa, CO 81101 Phone Number: (719) 589-4996	Filed in the Combined Court Alamosa County, Colorado
Plaintiff: RICHARD A. WUESTE **vs.** **Defendant: BOARD OF TRUSTEES, ADAMS STATE COLLEGE**	SEP 30 2005 Shirley Skinner Clerk of the Combined Court
	▲ COURT USE ONLY ▲ Case Number: 2005CV97
	Div.: 1 Ctrm:

ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION

THIS MATTER came before the court on September 28, 2005, for a hearing on plaintiff's request for a preliminary injunction. Plaintiff is asking the court to enjoin defendant from placing plaintiff on administrative leave and to enjoin defendant from continuing with the termination proceedings currently pending against plaintiff. Plaintiff was present at the hearing and was represented by counsel, Todd J. McNamara, Esq., and Kristina James, Esq., of McNamara & Martinez LLP. Defendant was present by and through counsel, Fred C. Kuhlwilm, Esq., and Nancy J. Wahl, Esq., of the Colorado Attorney General's Office

I. PROCEDURAL HISTORY

On September 15, 2005, plaintiff filed a complaint containing four claims for relief. Each claim alleges that the defendant violated the Open Meetings Law, C.R.S. § 24-6-401 *et seq.* As a remedy for these violations, the complaint seeks a court order enjoining the defendant from placing plaintiff on administrative leave and restoring him as president of Adams State College with all of his duties intact.

On September 15, 2005, plaintiff also filed a *Motion for Temporary Restraining Order and Request for Immediate Hearing* pursuant to C.R.C.P. 65. On September 15, plaintiff's and defendant's counsel appeared by telephone for a brief hearing on the motion. I denied the motion for a temporary restraining order but decided I would consider the motion as a request for a preliminary injunction and set the matter for hearing on September 28, 2005.

On September 26, 2005, defendant filed its *Answer.* Defendant admitted some of the claimed violations of the Open Meetings Law. On September 26, defendant also filed *Defendant's Response to Motion for TRO.* On September 27, plaintiff filed a *Supplemental Memorandum of Law in Support of Request for Preliminary Injunction.*

II. FINDINGS OF FACT

The Board of Trustees, Adams State College (*hereinafter* "board") hired Dr. Richard Wueste as president of the college commencing April 1, 2004. The board and Dr. Wueste signed a contract that provides the board can terminate his employment only for "just cause." Dr. Wueste worked in his capacity as president until the summer of 2005 when the board placed him on paid administrative leave. Dr. Wueste claims the board violated the Open Meetings Law (*hereinafter* "OML") in various meetings it held during the spring and summer of 2005 which led to his being placed on administrative leave.

The first of these meetings occurred on May 6, 2005, when the board held a regularly scheduled meeting. Dr. Wueste was present at the meeting, as were most of the trustees and other members of the Adams State College community. At the conclusion of the regular meeting, the board went into executive session to discuss Dr. Wueste's performance review. Although the board gave public notice of its regularly scheduled meeting it did not give public notice of the executive session. Dr. Wueste was not present during the executive session. Although the open part of the meeting was recorded electronically, the executive session was not recorded. According to the minutes of the executive session (which the board adopted after review and revision on August 3, 2005), the board had some concerns about Dr. Wueste's performance and decided to discuss those concerns with him. However, the board also decided to give Dr. Wueste a raise.

The next meeting of concern took place on June 13, 2005, when Dr. Wueste attended a special meeting of the board. The majority of the meeting took place in executive session. The executive session discussion was not recorded electronically. According to the minutes of the executive session (which the board adopted after review and revision on August 3, 2005), the board expressed serious concern with fiscal management of the college. In particular, the board expressed concerns about financial commitments Dr. Wueste had made that were not in the budget and that the board anticipated a budget shortfall in 2005-2006. According to the minutes:

> In closing, the Board reemphasized its serious concern with the continuing expenditures of unapproved items. Following the discussion, President Wueste stated that he understood the concern of the Board.

Plaintiff's Exhibit 6: Approved Minutes, Executive Session, Special Meeting, June 13, 2005.

The board held another special meeting on June 26, 2005, in Denver. This meeting was electronically recorded. Most of this meeting took place in executive session. Dr. Wueste was not present at this meeting but Vice President for Finance, Mr. Mansheim, and Provost, Dr. Svaldi, were present during parts of the meeting. During the executive session, the board adopted the following motion:

> Subject to the review of the Attorney General's office, the Board of Trustees has carefully reviewed financial data and information from the vice president of finance, and found that the President is in, or may be in, deliberate violation of his contract. To insure continuity of management of the college, the Provost and the

> Vice President for Finance will report from this point forward to the Board of Trustees and the President will be presented with the option of relinquishing signature authority and ability to bind the College. In the event that the President declines to relinquish signature authority and control, then he is immediately put on leave of absence with pay until the Board completes its investigation of his employment.

Transcript of June 26, 2005, Board Meeting, at 107.

On June 27, 2005, Chair Eck telephoned Dr. Wueste to tell him about the board's actions. Dr. Wueste understood he was not to sign any new contracts for the college such as the memorandum of understanding that he would be discussing in the next day or two in Louisiana with the U.S. Department of Agriculture. He did, however, sign two contracts before he left for Louisiana. On June 29, 2005, while in Louisiana, Dr. Wueste received a letter dated June 28, 2005, from Chair Eck informing him that he was "being placed on paid administrative leave, effective immediately, pending investigation of [his] management of the Adams State College budget, finances and contracting." Dr. Wueste called Chair Eck to discuss this letter with her; among other things, he asked her to ask the board to reconsider its decision.

On June 30, 2005, the board held another special meeting. This meeting was electronically recorded. The board immediately went into executive session. During the executive session, the board considered Dr. Wueste's telephone request to Chair Eck that the board reconsider the action of placing him on administrative leave. According to the minutes of the executive session "[i]t became apparent that there was consensus among the board that President Wueste should be kept on paid administrative leave." *Plaintiff's Exhibit 9*, Approved Minutes Executive Session, Special Emergency Meeting, 6/30/05. The minutes also reflect that "consensus became apparent that a notice of grounds for termination should be issued as soon as practicable." *Id.* The board decided to have their counsel, the attorney general's office, prepare the notice of grounds of termination and to circulate it for review and comment. The board understood it needed to convene an "Open Session" to take action on issuing the notice and decided that the time to do this was at the already scheduled board meeting of July 14th and 15th. Chair Eck also told the board that during her June 29 telephone conversation with Dr. Wueste she had informed him that the board desired to keep their action confidential and Dr. Wueste agreed. *Id.* The board then reconvened in open session and adjourned the meeting.

On June 30, Trustee Charles Scoggin telephoned Dr. Wueste and told him the board had denied his request to reconsider placing him on administrative leave. On July 1, 2005, Dr. Wueste received a letter, via e-mail, from Trustee Scoggin confirming in writing that the board had "declined [his] request to be taken off administrative leave. . ."

On July 5, 2005, Chair Eck issued a college-wide e-mail announcing that the board had placed Dr. Wueste on administrative leave. Dr. Wueste learned of this communication when a reporter called him for his comments and a college employee forwarded the e-mail to his home.

On July 14, 2005, the board held its regularly scheduled meeting at the college. All of the board members were present. A large number of Adams State College faculty, staff and

students were present as well as numerous members of the public. The board called the meeting to order at 10:50 am. The meeting was not adjourned until 7:38 pm. At the beginning of the meeting, the board went into executive session to discuss specific legal questions with its attorneys, John Sleeman, Esq., and Nancy Wahl, Esq. The board also discussed personnel matters particular to one employee, presumably Dr. Wueste. The board then reconvened in the regular session. The board dealt with various items of business and then heard public comment from twenty-four members of the community concerning the issue of Dr. Wueste being placed on leave. The comments were favorable to Dr. Wueste. The board then decided to return to executive session; but before it did so it amended the agenda "for possible employment action" once it returned from executive session. The board again went into executive session to discuss legal questions and personnel matters particular to one employee. When the board returned from executive session it unanimously adopted a resolution:

> to ratify the decision to place President Wueste on paid administrative leave until such time that the Board acts to change this status. Further, the Board resolved to issue to President Wueste a notice of hearing setting forth proposed grounds for termination in the form of a letter, reviewed and approved by the Board.

Exhibit 12 to plaintiff's *Supplemental Memorandum of Law in Support of Request for Preliminary Injunction*, DRAFT Minutes of July 14, 2005, Board meeting at ¶ X.A. According to the minutes, the board noted that it had taken the public's comments into consideration. *Id.*

Prior to the July 14 meeting, the attorney general's office had drafted a letter from the board to Dr. Wueste setting forth proposed grounds for termination. This was the letter the board reviewed and approved on July 14. On July 15, 2005, the board made that letter available to the public.

There has been a great deal of media coverage of these events and particularly of Dr. Wueste's being placed on administrative leave. The reporting has been local, state-wide and even national within the press devoted to higher education. Dr. Wueste's reputation has been harmed by the publicity about his being placed on administrative leave. Those who hire executive-level staff for institutions of higher education assume that an employee who has been placed on administrative leave has committed a crime or has committed serious financial improprieties. Such an employee will have difficulty finding another job. Dr. Wueste believes that the only way he can restore his reputation is to be allowed to return as President of Adams State College.

III. CONCLUSIONS OF LAW

Dr. Wueste is seeking a preliminary injunction to require the board to reinstate him as President of Adams State College with all of his duties and responsibilities intact and to require the board to cease the termination proceedings now scheduled for board hearing on October 7 and 8, 2005. Dr. Wueste argues, and the board admits[1], that the board violated the OML when it took some of the actions that resulted in Dr. Wueste's being placed on administrative leave. Dr.

[1] The Board does not admit all of the violations Dr. Wueste claims, but it does admit some of them. *See* footnotes 1-7 of *Defendant's Response to Motion for TRO.*

Wueste argues that the only meaningful way to stop the board from violating the OML in the future is to grant him the relief he requests.

The board makes three arguments why the court should not grant a preliminary injunction: 1. the court lacks subject matter jurisdiction to interfere with the board's administrative process in terminating Dr. Wueste because the board has not yet issued a final administrative order; 2. the relief Dr. Wueste is seeking is not available under the OML; and 3. even if he is otherwise entitled to relief, Dr. Wueste has failed to establish that he is entitled to a preliminary injunction.

A. OPEN MEETINGS LAW

The OML was enacted in 1972 by initiative of the Colorado electorate. *Benson v. McCormick,* 195 Colo. 381, 578 P.2d 651 (1978). The policy embodied in the OML is that "the formation of public policy is public business and may not be conducted in secret." C.R.S. § 24-6-401. To ensure that public business is conducted publicly, the OML contains specific requirements for meetings of public bodies. C.R.S. § 24-6-402. Meetings where two or more members of a state public body, such as the board, are present "at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times." C.R.S. § 24-6-402(2)(a). Furthermore, any meeting where a resolution is adopted or other formal action occurs or even where a quorum of the state public body is in attendance, or is expected to be in attendance, "shall be held only after full and timely notice to the public." C.R.S. § 24-6-402(2)(c). A state public body must take minutes of any meeting, the minutes must be promptly recorded and such records "shall be open to public inspection." C.R.S. § 24-6-402(2)(d)(I).

Although the general rule is that all discussions of a state public body are to be conducted in public, state public bodies are authorized to meet in executive session in certain circumstances. These circumstances include: conferences with an attorney "concerning specific claims or grievances or for purposes of receiving legal advice on specific legal questions," and meetings to consider "the dismissal, discipline, promotion, demotion, or compensation of, or the investigation of charges or complaints against . . .[an] employee."[2] C.R.S. §24-6-402(3)(a)(II) and (3)(b)(I). Such an executive session may only be held at a regular or special meeting of the state public body. C.R.S. §24-6-402(3)(b)(I). Before going into executive session, the state public body must announce to the public the topic for discussion at the executive session "in as much detail as possible without compromising the purpose for which the executive session is authorized." C.R.S. § 24-6-402(3)(a). During the executive session the state public body may not adopt "any proposed policy, position, resolution, rule, regulation, or formal action. . ." *Id.* If a state public body holds an executive session, the minutes of the meeting must reflect the topic of discussion during that session. C.R.S. § 24-6-402(1)(d)(I). Discussions that occur during

[2] This provision concerning discussion of personnel matters only applies to governing boards of institutions of higher education and does not apply to any other state public bodies; other state public bodies are required to conduct such meetings in public unless the employee requests an executive session. C.R.S. § 24-6-402(3)(b)(I). In contrast, employees of *local* public bodies have the right to receive proper notice that the employee will be the subject of an executive session so the employee may call an open meeting. *Gumina v. City of Sterling,* 2004 WL 3015806 at 5 (Colo. App. 2004); *see* § 24-6-402(4)(f)(I).

executive sessions "must be recorded in the same manner and media that the state public body uses to record the minutes of open meetings." C.R.S. § 24-6-402(2)(d.5)(I)(A).

If a state public body violates these requirements, the statue provides for various remedies. If a state public body discusses matters in an executive session that do not fall within the exceptions to the general rule, or if the state public body "adopt[s] a proposed policy, position, resolution, rule, regulation, or formal action" during the executive session, then the portion of the record of the executive session where these prohibited activities takes place shall be made open to public inspection. C.R.S. §24-6-402(2)(d.5)(I)(c). If a state public body adopts a "resolution, rule, regulation, ordinance, or formal action" at a meeting held in violation of the OML, the resolution or formal action is invalid. C.R.S. §24-6-402(8). If a state public body commits any violations of the OML, the statute grants a court of record (such as this court) "jurisdiction to issue injunctions to enforce the purposes of [the OML]" upon the request of any citizen of the state. C.R.S. § 24-6-402(9). Finally, if the court finds a violation of the OML, "the court shall award the citizen prevailing in such action costs and reasonable attorney fees." *Id.*

B. SUBJECT MATTER JURISDICTION OF THE COURT

The board argues that this court does not have subject matter jurisdiction to hear Dr. Wueste's claim because the board has not yet taken a final administrative action. Generally, this is true and the appellate courts have regularly held that "the judiciary should not interfere with an administrative hearing until the administrative agency has reached a final conclusion." *Colorado State Bd. of Medical Examiners v. District Court,* 191 Colo. 158, 551 P.2d 194 (Colo. 1976). In the current case, however, the OML grants the court subject matter jurisdiction to issue injunctions to enforce the purposes of the act, regardless of whether the agency has taken a final administrative action. *See* C.R.S. § 24-6-402(9). Therefore, the court has subject matter jurisdiction to consider Dr. Wueste's claim.

C. ENTITLEMENT TO A PRELIMINARY INJUNCTION

Preliminary injunctive relief is an extraordinary remedy. Its purpose is to protect a plaintiff from sustaining irreparable injury and to preserve the power of the court to render a meaningful decision following a trial on the merits. *Rathke v. MacFarlane*, 648 P.2d 648, 651 (Colo. 1982). Courts are reluctant to grant such injunctions, particularly in cases such as the current one, where the injunction will interfere with the activities of another branch of government. *See id.* Such relief should be granted sparingly and "with full conviction on the part of the trial court of its urgent necessity." *Board of County Commissioners, Eagle County, v. Fixed Base Operators, Inc.*, 939 P.2d 464, 467 (Colo. App. 1997). The reason for such judicial deference is "the doctrine of separation of powers, which serves to restrain one governmental branch from usurping or restraining the proper exercise of the powers of another branch." *Id.* at 466-67 (*citing Rathke,* 648 P.2d 648).

Dr. Wueste bears the burden of proving that he is entitled to a preliminary injunction in this case. To do so, he must show all of the following by a preponderance of the evidence: 1. that he has a reasonable probability of success on the merits; 2. that there is a danger he will

suffer real, immediate and irreparable injury which may be prevented by injunctive relief; 3. that he has no plain, speedy and adequate remedy at law; 4. that granting an injunction will not disserve the public interest; 5. that the balance of equities favors an injunction; and 6. that granting the injunction will preserve the status quo. *Rathke v. MacFarlane*, 648 P.2d 648, 653-654 (Colo. 1982); *Bloom v. National Collegiate Athletic Ass'n*, 93 P.3d 621, 628 (Colo.App. 2004).

1. Probability of Success on the Merits

It is certain that Dr. Wueste will have some success on the merits of his case because the board has admitted it violated the OML. Nevertheless, these violations do not entitle Dr. Wueste to the remedy he is seeking.

To be entitled to the relief he is seeking, Dr. Wueste must prevail on his argument that the board's formal actions to place him on administrative leave and to issue him a notice of grounds for termination are invalid. At both the June 26 and June 30 meetings, the board took formal action in executive session. At the June 26 meeting, the board adopted a resolution concerning Dr. Wueste's employment. At the June 30 meeting, the board reached a "consensus" to deny Dr. Wueste's request for reconsideration and to ask the attorney general's office to draft a notice of grounds for termination. Dr. Wueste argues that these actions are invalid because they are formal actions the board took during an executive session in violation of the OML. See C.R.S. §24-6-402(8). As a result, he claims he is entitled to an order enjoining the board from enforcing its void resolutions, i.e. an order enjoining the board from keeping him on administrative leave and from pursuing its plan to hold a hearing on the notice of termination.

At its regularly scheduled meeting on July 14, 2005, however, the board properly adopted a resolution to ratify placing Dr. Wueste on administrative leave and to issue the notice of termination. The July 14 meeting was well-publicized and well-attended. This meeting did not violate the requirements of the OML and the court cannot declare formal actions taken at this meeting invalid.

Nevertheless, Dr. Wueste contends that the board's action at the July 14, 2005, meeting was merely a "rubber-stamp" of actions it took at earlier meetings that violated the OML. It is true that a public meeting held only to formally adopt a resolution on an issue that a public body previously decided in a meeting that did not comply with the OML also violates the OML. *Van Alstyne v. Housing Auth. of Pueblo,* 985 P.2d 97, 101 (Colo. App. 1997). Actions taken at such a public meeting are just as void as the actions taken at the original, non-complying meeting. *Id.* The holding in *Van Alstyne,* however, does not support Dr. Wueste's argument for two reasons: first, the OML violation in *Van Alstyne* went to the heart of the purpose of the OML while the OML violations in this case do not; and, second, unlike the public body in *Van Alstyne,* the board in this case did more at the July 14 meeting than simply adopt a formal action it had already decided upon.

In *Van Alstyne,* the Pueblo Housing Authority held several meetings to discuss the sale of real property. *Id.,* 985 P.2d at 98. The housing authority did not provide notice to the public of the date and time of the meetings. *Id.* As a result of the meetings, the housing authority adopted

a resolution to accept an offer on the property. *Id.* Several neighboring property owners filed suit alleging that the housing authority had violated the OML when it adopted the resolution to accept an offer for the real property without having conducted a meeting in compliance with the OML. *Id.* After the suit was filed, the housing authority properly noticed and convened a meeting to discuss the sale of the real property. *Id.* at 98-99. At the properly noticed meeting, the housing authority refused to consider a new offer on the property and only considered the three offers that had been before it at the previous meetings. *Id.* at 99. The housing authority adopted a resolution accepting the offer it had previously accepted. *Id.* It then sought summary judgment alleging that the neighboring property owners' claims were moot because the housing authority had now conducted a proper meeting in compliance with the OML. *Id.* The trial court granted summary judgment to the housing authority. *Id.* The neighboring property owners appealed claiming that the housing authority had not really reconsidered its earlier action because it refused to consider new offers. *Id.* The court of appeals reversed the trial court's grant of summary judgment finding that there remained a disputed question of fact whether or not the housing authority reconsidered its earlier action or merely rubber-stamped its earlier action. *Id.* at 101. If the housing authority had reconsidered its earlier action, its decision to accept the offer would be valid; if it had not reconsidered its earlier actions, its decision would be void.

In reaching this conclusion, the court of appeals cited an earlier supreme court case that had held that "the intent of the OML was not met in cases where the public witnessed only the final recorded vote." *Id.(citing Bagby v. School Dist. No. 1,* 186 Colo. 428, 528 P.2d 1299 (1974)). In *Bagby*, the Colorado Supreme Court held that a school board's practice of discussing the board's pending business at private conferences in advance of public school board meetings and then adopting, at the public meeting, the decisions it had made earlier, violated the OML. *Bagby*, 186 Colo. at 434, 528 P.2d at 1302. The court explained that when the majority of the public body's work is done outside the public's eye, the public is "deprived of the discussions, the motivations, the policy arguments, and other considerations which led to the discretion exercised by the Board." *Id.* The *Bagby* court upheld the trial court's entry of an injunction requiring all future meetings of the school board, whether termed conferences or not, to be public with proper notice given to the public. *Id.*,186 Colo. at 435, 528 P.2d at 1303.

The current factual situation is different from the factual situations in *Alstyne* and in *Bagby*. In *Alstyne* and *Bagby* the public bodies were considering matters that the OML requires to be discussed in a public meeting. In contrast, the OML allows the board to discuss the question of the employment, discipline or dismissal of an employee in an executive session, i.e. in a session that is closed to the public. C.R.S. § 24-6-402(3)(b)(I). Thus, the reasoning of *Alstyne* and *Bagby* that the public should not be deprived of the discussions, motivations, policy arguments, and other considerations that led to a public body's decision does not apply. *See Bagby,* 186 Colo. at 434, 528 P.2d at 1302. (The *Bagby* court stated that executive sessions related to matters not at issue in the case.) Even if the board in this case had strictly complied with the OML, the public could have lawfully been deprived of the discussions and policy considerations that motivated the board to adopt the resolution to place Dr. Wueste on administrative leave and to issue the notice of termination.

In addition, one of the main reasons the *Van Alstyne* court reversed the summary judgment was because the housing authority had failed, at the properly noticed meeting, to

consider any bids other than the three bids it had received at the improper meetings. *Van Alstyne,* 985 P.2d at 99. In contrast, at the July 14 public meeting the board heard public comment from twenty-four individuals before it adopted the resolution to ratify placing Dr. Wueste on administrative leave and to issue the notice of termination.

It is unlikely that Dr. Wueste will prevail on his claim that the board violated the OML at its July 14, 2005, meeting. If the July 14 meeting did not violate the OML, there is no basis for the court to declare void the resolution adopted at that meeting. If the resolution is not void, the court cannot grant Dr. Wueste the injunctive relief he is seeking.

2. Irreparable Injury

A plaintiff seeking a preliminary injunction must demonstrate that he will suffer "real, immediate, and irreparable injury which may be prevented by injunctive relief . . ." *Rathke,* 648 P.2d at 653. Dr. Wueste's uncontroverted testimony showed that he has suffered and will continue to suffer serious harm to his reputation as a result of the board's decision to place him on administrative leave. Since the harm has already occurred, however, I do not see how granting the requested injunction will prevent the harm.

3. Inadequate Remedy at Law

A court may grant an injunction only when the complainant has no adequate remedy at law. To determine whether there is an adequate remedy at law, the court must consider "whether damages can be proven with reasonable certainty, whether the defendant is solvent and capable of responding to a money judgment, whether the harm alleged is continuing or will require plaintiff to resort to multiple litigation to effect the legal remedy, and the difficulty of obtaining, by the use of money, a suitable substitute for the promised performance." *Benson v. Nelson,* 725 P.2d 71, 72 (Colo. App. 1986).

There is no adequate remedy at law for the admitted violations of the OML and therefore it would be appropriate to enjoin the board from future failures to comply with the law. The harm that Dr. Wueste is claiming, however, is damage to his reputation because of the board's decision to place him on administrative leave. As he explained it, the harm comes about because persons who learn he was placed on administrative leave assume he has committed a bad act and this may affect his future ability to obtain employment. Courts routinely determine monetary damages for this type of harm. *E.g.* CJI-Civ 4th 22:13 (Actual damages for defamation include "any impairment of the plaintiff's reputation, personal humiliation, mental anguish and suffering, physical suffering, injury to the plaintiff's credit standing, loss of income. . ."). Furthermore, the college is solvent and capable of responding to a money judgment. Therefore, Dr. Wueste has failed to prove that he has no adequate remedy at law.

4. Will Granting the Injunction Serve the Public Interest?

Dr. Wueste argues that granting an injunction will serve the public's interest because the board took its action to place him on administrative leave in a secret meeting where the local, San Luis Valley public was unable to participate in the decision-making process. I will admit

that, as a member of the San Luis Valley public, I was as stunned as anyone when I read in the paper that Dr. Wueste had been placed on administrative leave. And, just as many other people did, I wondered why there was so much secrecy surrounding the action. But, granting Dr. Wueste's requested injunction will not change the fact that the board, under the OML, is allowed to discuss personnel matters, such as whether to place Dr. Wueste on administrative leave, in a closed, executive session. The injunction would not stop the board from starting again on the process to place Dr. Wueste on administrative leave and it would not stop the board from having its discussions concerning the matter in a closed, executive session.

On the other hand, the public interest in having information concerning the board's decision will be served if the board holds a public termination hearing on October 7 and 8, 2005. Although there is no guarantee that the board will make the hearing a public hearing, if I grant the requested injunction there will be no hearing at all, public or not. Dr. Wueste has not met his burden to demonstrate that the grant of the injunction he is requesting will serve the public interest.

5. Balance of the Equities and Preserve the Status Quo

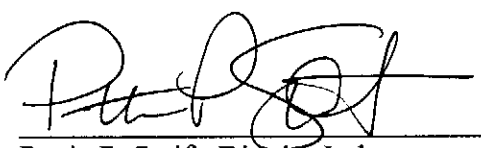
A plaintiff seeking a preliminary injunction must prove all of the six factors set forth in *Rathke* before the court can grant the relief requested. Since I have already decided that Dr. Wueste has failed to prove the first four factors, there is no need to consider the remaining two factors.

IV. CONCLUSION & ORDER

Dr. Wueste has failed to prove that he is entitled to the preliminary injunction he is seeking. It is therefore ordered that the motion for a preliminary injunction is hereby denied.

DONE this 30th day of September, 2005.

BY THE COURT:



Pattie P. Swift, District Judge

CERTIFICATE OF EFILING

I do hereby certify that on September 30, 2005, a true and correct copy of the above **Order** was efiled via Lexis-Nexis File & Serve [Courtlink] to the following:

Frederick Kuhlwilm, Esq.

Todd McNamara, Esq.

Allison Schaak

Allison Schaak, Division Clerk