

# WYOMING SCHOOL BOARDS ASSOCIATION

2014 Convention

## **LEGAL UPDATE**

*TRACY COPENHAVER &  
SCOTT KOLPITCKE  
COPENHAVER, KATH, KITCHEN &  
KOLPITCKE, LLC  
P.O. BOX 839  
224 NORTH CLARK STREET  
POWELL, WY 82435  
(307) 754-2276  
(307) 754-4744 FAX  
[LAWFIRM@CKATTORNEYS.NET](mailto:LAWFIRM@CKATTORNEYS.NET)*





# SAME SEX MARRIAGE IN WYOMING



POLICY IMPLICATIONS FOR SCHOOL DISTRICTS

# SAME SEX MARRIAGE: POLICY ISSUES



Wyoming statute (W.S.) 20-1-101 defines marriage as “a civil contract between a male and a female person....”

On October 17, 2014, the U.S. District Court for the District of Wyoming held that this statute violates the Due Process and Equal Protection clauses of the U.S. Constitution. (*Guzzo and Robinson v. Mead*)

# SAME SEX MARRIAGE: POLICY ISSUES



The Wyoming District Court followed the 10<sup>th</sup> Circuit Court of Appeals, which previously ruled that similar state laws in Utah and Oklahoma were unconstitutional.

The Wyoming District Court recognized that the 10<sup>th</sup> Circuit's decisions are binding upon the Wyoming court. Governor Mead's office decided it would not appeal the District Court's decision.

# SAME SEX MARRIAGE: POLICY ISSUES



At this point, W.S. 20-1-101 is NOT enforceable, and Wyoming must recognize same-sex marriages.

What does this mean for Wyoming school districts?

# SAME SEX MARRIAGE: POLICY ISSUES



## **Questions:**

**Question 1:** Do any school district policies need to be amended?

*Probably not. You should review your benefits policies, and terms and conditions of benefits. Review the definitions of a “spouse”. If the policies or contracts define a spouse as between a man and a woman, those policies need to be amended.*

# SAME SEX MARRIAGE: POLICY ISSUES



- For example, all districts have (or should have) a Family and Medical Leave Act (FMLA) policy.
- FMLA requires employers to give employees up to 12 weeks of unpaid leave to care for a family member, including a spouse, with a serious health condition.
- Most FMLA policies do not define a “spouse.” Therefore, you probably do not have to amend your FMLA policies.



# SAME SEX MARRIAGE: POLICY ISSUES



- **BUT:** Your school district must allow an employee with a same sex spouse to use FMLA to care for his or her same sex spouse. In other words, employees with same sex spouses are entitled to the same benefits (health insurance, FMLA, etc) as employees with opposite sex spouses.

# SAME SEX MARRIAGE: POLICY ISSUES



“State of Celebration”: Proposed U.S. Department of Labor rule would allow all legally married couples to be treated consistently under the FMLA, regardless of where they live.

The proposed definition of “spouse” would include same-sex spouses and common-law marriages.

This rule was proposed prior to the District Court’s decision in *Guzzo*.

# SAME SEX MARRIAGE: POLICY ISSUES



**Question 2:** What if we want to deny benefits to an employee with a same sex spouse and challenge the Court's decision?

- *For the time being the District Court and 10<sup>th</sup> Circuit Court's decisions are the law in Wyoming. Denying benefits could subject the School District to liability.*

**LGBT**

# SAME SEX MARRIAGE: POLICY ISSUES



**Question 3:** How does this affect employment of gays, lesbians and transgendered employees?

- Sexual orientation is not a protected status under state or federal law.
- It is not illegal in Wyoming to fire an employee, or refuse to hire a prospective employee, on the basis of their sexual orientation.

# SAME SEX MARRIAGE: POLICY ISSUES



- BUT – it is probably a bad idea to terminate someone or refuse to hire someone solely on the basis of their sexual orientation.
- Even though sexual orientation is not a protected status, the 10<sup>th</sup> Circuit and Wyoming court decisions open the door to potential discrimination claims based on sexual orientation.
- As always, it is better to document performance issues, and to make employment decisions based on those performance issues, even with at-will employees.

# SAME SEX MARRIAGE: POLICY ISSUES



## **Question 4:** Could the decision change?

In October, the U.S. Supreme Court rejected a request to review decisions by three circuits (4<sup>th</sup>, 7<sup>th</sup> and 10<sup>th</sup>), which had struck down state laws banning gay marriage. On November 6, the 6<sup>th</sup> Circuit upheld a ban on same sex marriage in Kentucky, Michigan, Ohio and Tennessee.

# SAME SEX MARRIAGE: POLICY ISSUES



- There is now a split among the Circuit Courts, which could lead the U.S. Supreme Court to hear an appeal from a future case.
- For now, the law in Wyoming recognizes same-sex marriages, and Wyoming school districts must provide employees with same-sex spouses the same benefits as employees with spouses of the opposite sex.



ASOK, YOUR WORK  
HAS BEEN EXCELLENT  
ALL YEAR.



www.dilbert.com scottadams@aol.com

I'M RATING YOU  
"POOR" SO I'LL HAVE  
A PAPER TRAIL IN  
CASE I EVER NEED  
TO FIRE YOU.



4/16/03 © 2003 United Feature Syndicate, Inc.

YOU'LL PROBABLY  
FEEL A LITTLE  
SURGE OF MOTI-  
VATION BECAUSE  
YOU GOT FEEDBACK.



**TERMINATION LETTER:** to provide reasons, or not.

An at-will employee in the State of Wyoming can be discharged without a reason.

Termination options:

- a) Inform the person they are being terminated and the supervisor is not going to discuss with the employee the reasoning behind the decision.
- b) Inform the employee of reasons for the decision.

## Concerns about giving reasons:

1. Supervisor does not want to invest the time to prepare a letter that sets forth the reasons.
2. There is a concern that by telling the employee the reasons for the termination, it will only result in an argument or efforts by the employee to dispute the reasons.
3. There may be a belief that by giving an employee reasons for their termination, it compromises the at-will relationship. That belief is false.
4. There really are no good reasons for the termination and the real reason is not one that a supervisor wants to discuss. If this is the case, there is a problem with the supervisor.



**YOU  
ARE  
FIRED**

## Benefits of giving reasons in the termination letter:

1. It helps protect the employer against discrimination claims, retaliation claims, violation of public policy, breach of implied covenant of good faith and fair dealing and/or defamation.
2. Reasons inform the employee of performance issues they most likely are already aware of, even if they won't admit.
3. Employees are less likely to mount a legal challenge to a termination when they know that they were terminated for legitimate performance reasons than when they are simply told you can't or won't give them any reasons.

4. Requiring supervisors to tell employees their reasons leads to more objective and better investigated reasons.
5. It will require the supervisor to approach the process with far less emotion and much more evidence.
6. Requiring a supervisor to review the reasons in a termination letter with their supervisor prepares the supervisor to explain or, if necessary, testify about the reasons and how they were legitimately arrived at.

7. Expressing reasons to an employee requires and conveys confidence and conviction in the reasons and the decision to terminate.
8. Giving reasons helps you should you have to go to trial. Jurors are much more receptive of a legitimate reason provided by an employer versus a statement that “we don’t have to give reasons” and then coming up with reasons for the jury, leaving the employee to speculate as to why they weren’t given in the first place. It eliminates speculation that the reasons were made up after the fact.

9. An employee will have a harder time pulling the wool over the eyes of his/her spouse or other community members if he/she is faced with a choice of pretending the letter doesn't exist. Lawsuits sometimes are initiated by spouses who are angry over an unwarranted termination, mostly because the terminated employee informed his/her spouse there were no reasons.
10. If the employee would not qualify for unemployment, the letter can be a valuable document in determining eligibility.
11. A termination letter with reasons mandates the supervisor give careful thought and preparation for the decision.



# DIFFICULT PERSONNEL DECISIONS:

“Doing What is Right the Right Way”

Dismissal, suspension, termination,  
expulsion

*“DO UNTO OTHERS AS YOU WOULD  
HAVE THEM DO UNTO YOU”*

## TORTIOUS INTERFERENCE WITH CONTRACT

In order to establish the claim of tortious interference with a contract, a plaintiff must prove the following elements:

- 1) The existence of the contract;
- 2) The defendant's knowledge of the contract;
- 3) Intentional interference with the plaintiff's contract without justification; and
- 4) Resulting damages.



# OMG! R U 4 REAL?

## SEARCHES OF STUDENT CELL PHONES

- When is it o.k. to search the content of a student's cell phone (i.e. text messages, call history, etc)?
- If it is o.k. to search a student's
- cell phone, how much can you
- search?



# SEARCHES OF STUDENT CELL PHONES



## RECENT CASES ON CELL PHONE SEARCHES:

- *Riley v. California*, United States Supreme Court, decided June 25, 2014.

In *Riley*, the U.S. Supreme Court reviewed two cases involving law enforcement officers searching the data on cell phones.

# SEARCHES OF STUDENT CELL PHONES



## *Riley v. California:*

In one case, an officer performed a traffic stop, and arrested the driver. The officer seized the driver's smart phone, searched the data on that smart phone. The police used the data from the phone to connect the driver to a shooting, and charged him with crimes related to the shooting.

# SEARCHES OF STUDENT CELL PHONES



## *Riley v. California:*

In the second case, officers seized a flip phone from a suspect involved in a drug sale. They used the call history to identify the suspect's home. The police obtained a warrant to search the suspect's house. During the search of his house, they found drugs, drug paraphernalia, firearms, ammunition and cash.

# SEARCHES OF STUDENT CELL PHONES



The U.S. Supreme Court held that the searches in both cases violated the Fourth Amendment to the U.S. Constitution. The Court held that a warrant is generally required before searching the data on a cell phone seized incident to arrest.



# SEARCHES OF STUDENT CELL PHONES



In explaining its rationale, the U.S. Supreme Court focused on the ability of cell phones to store large quantities of personal information.

“The term ‘cell phone’ is itself misleading shorthand; many of these devices are in fact minicomputers that also happen to have the capacity to be used a telephone.”

# SEARCHES OF STUDENT CELL PHONES



The Court noted that smart phones can reconstruct someone's movements down to the minute, and may contain information about a person's familial, political, religious and sexual associations.

# SEARCHES OF STUDENT CELL PHONES



“Today...it is no exaggeration to say that many of the more than 90% of American adults who own a cell phone keep on their person a digital record of nearly every aspect of their lives – from the mundane to the intimate.”

# SEARCHES OF STUDENT CELL PHONES



At least two courts have examined cell phone searches by school officials:

-*G.C. v. Owensboro Public Schools*, 711 F.3d 623 (6<sup>th</sup> Cir. 2013).

-*Gallimore v. Henrico County School Bd.*, \_\_\_\_ F.3d \_\_\_\_, (E.D. VA., August 5, 2014).

# SEARCHES OF STUDENT CELL PHONES



In *Owensboro*, there were two searches at issue:

- A sophomore with a history of drug use and mental health issues left school without permission. The assistant principal found the student in his car in the parking lot talking on his phone. The student told the AP he was thinking about suicide. The AP confiscated the cell phone and searched it. The AP saw a text message that said: “I need to smoke.”

# SEARCHES OF STUDENT CELL PHONES



*Owensboro, cont.:*

In the second search, the same student (six months later) was caught texting in class. When the teacher confiscated the phone, the student threw a fit. The AP came and retrieved the student and the phone. She searched the phone for text messages from that day.



# SEARCHES OF STUDENT CELL PHONES



The AP testified that she searched the cell phone messages because she believed his phone could reveal evidence of suicide, drug use at school, or both.

The text messages revealed evidence of drug use.

# SEARCHES OF STUDENT CELL PHONES



The 6<sup>th</sup> Circuit Court of Appeals held:

-The first search (the AP's search of the phone after the student left the school) did NOT violate the Constitution.

-The second search (the AP's search of the phone after the student threw a fit in class) DID violate the Constitution.



# SEARCHES OF STUDENT CELL PHONES



The first search was justified because the student left school without permission, and made a statement that he was thinking of suicide.

The second search was not justified because there was no recent statement or evidence that the cell phone would contain evidence of criminal activity, violation of school rules, or imminent harm to anyone in the school.

# SEARCHES OF STUDENT CELL PHONES



The 6<sup>th</sup> Circuit relied on the U.S. Supreme Court case of *New Jersey v. T.L.O.*, which upheld a search of a student's purse after the student was caught smoking in the bathroom. The Court held in *T.L.O.* that students have a reduced expectation of privacy in the school setting, so administrators have more latitude to search student belongings.

# SEARCHES OF STUDENT CELL PHONES



A search of a student's belongings is reasonable if:

- It was justified at its inception; and
- The search was reasonably related in scope to the reason the search was initiated.

# SEARCHES OF STUDENT CELL PHONES



A search is justified at its inception if there is **reasonable suspicion** that the search will turn up evidence that the student violated the law or school rules.

In *Owensboro*, the 6<sup>th</sup> Circuit held that there was not enough evidence that a search of the phone would yield evidence that he violated the law or rules.

Ultimately, the Court's distinction between the two searches in this case suggests a search of a student's cell phone will be justified at its inception when school officials:

1. Have a credible, specific, and timely reason to believe that they will find evidence of wrongdoing or potential harm to self or others; and
2. Can reasonably and specifically articulate what that specific wrongdoing or potential harm is.

# SEARCHES OF STUDENT CELL PHONES



- In *Gallimore*, two adults reported that a student had smoked marijuana on a school bus.
- Two assistant principals patted down a student, and searched his backpack, shoes and pockets. They also searched a Vaseline jar, sandwich wrapper and his cell phone.
- They found no evidence of drugs.

# SEARCHES OF STUDENT CELL PHONES



The student and his family sued the assistant principals. The court dismissed the claims with respect to the pat down, and the searches of the backpack, shoes, pockets, Vaseline jar and sandwich wrapper.

The court did NOT dismiss the lawsuit with respect to the search of the cell phone.

# SEARCHES OF STUDENT CELL PHONES



“Unlike the sandwich wrapper or the Vaseline jar, the cell phone could not have contained drugs. The search of the cell phone was, therefore, not ‘reasonably related’ to the objective of the search--- finding evidence of drug use...”



# SEARCHES OF STUDENT CELL PHONES



“Common sense dictates that a school administrator cannot claim to look for marijuana and then look through a student’s cell phone. No reasonable school administrator could believe that searching a student’s cell phone would result in finding marijuana...”

# SEARCHES OF STUDENT CELL PHONES



- SO WHAT DO YOU DO?
- *T.L.O.* is still good law, but *Riley* **probably** limits searches of student cell phones.
- Officials need reasonable suspicion that the object to be searched (backpack, purse, pockets, cell phone) has evidence of a violation of law, school rules, or evidence of imminent harm to students.

## You Be The Judge: Valid Search, Or Not?



A student is stopped in the hallway for being out of class between periods without the hall pass required by the rules. The assistant principal searches the student and feels an object under the student's coat. The principal pull out a cell phone in a case. The principal felt something in the case in addition to the phone, and opened the case and found heroin. Is the search valid?

## You Be The Judge: Valid Search, Or Not?



A student was caught smoking in the bathroom. The student's purse was searched by the principal who suspected she had more cigarettes. The principal found cigarettes in her purse, and marijuana, a cell phone and a list of other students using marijuana. The principal read several text messages on the phone. The messages led to other students who used drugs.

Is the search valid?

# You Be The Judge: Valid Search, Or Not?



An SRO sees a student talking on a cell phone in the school parking lot. School policy prohibits possession and use of a cell phone during the school day. The principal examined the cell phone to see who called. The phone starts ringing and the principal opens the phone, and sees that another student is calling.

Is the search lawful?



## CANINE SEARCHES

Student searches versus property searches – a difference.

Both the 5<sup>th</sup> Circuit Court of Appeals and the 9<sup>th</sup> Circuit Court of Appeals have ruled that a school's use of trained police dogs to randomly sniff students constituted a search for purpose of the Fourth Amendment and if the search was unreasonable, would be stricken. The Fourth Amendment applies with its fullest vigor against any intrusion of the human body. The Court concluded that dogs sniffing of students constituted a search and that in the absence of individualized suspicion that students possessed illegal drugs, the search violated the Fourth Amendment.

The 9<sup>th</sup> Circuit similarly held that requiring students to leave their classroom and allowing a trained police dog to sniff the students as they exited the classroom when the school did not report that it had a drug problem and there was no individualized suspicion, violated the student's Fourth Amendment rights.



In *Sims v. Brakken County School District*, the Federal District Court upheld the search of a student for drugs after a drug dog alerted staff to the presence of drugs in the personal property of the student and concluded the search was reasonable based upon the dog alerting to the personal property of the student.

The 5<sup>th</sup> Circuit Court of Appeals has upheld the use of drug dogs to sniff automobiles in parking lots, concluding that was not a search within the meaning of the Fourth Amendment.

In *Burlson v. Springfield*, parents claimed that the canine search of their child's backpack constituted both an illegal search and because the child was required to leave the backpack behind, an illegal seizure. The Federal District Court said that for the plaintiff parents to prevail, they must prove that the search of the backpack was unreasonable and in order to do that, they would need to prove that something beyond the dog sniffing occurred. The Court also concluded that the requirement that students leave their backpacks behind did not constitute an unreasonable seizure. It was important that there was a known drug problem to justify the seizure.

A positive alert to a student's property can give grounds for a reasoned basis to a reasonable search. Most likely, strip searches should be avoided absent more information supporting a basis to conclude that there are narcotics somewhere on the student.





# PREGNANCY DISCRIMINATION ACT

The EEOC has released new enforcement guidelines on pregnancy discrimination for the first time in over 30 years. The PDA prevents employers from discriminating against employees on the basis of pregnancy, child birth, or related medical conditions. The Act holds that such discrimination is a form of sex discrimination prohibited by Title VII.

- Pregnant women who are able and willing to work must be permitted to do so on the same conditions as other employees.

- Exclusion of pregnant or fertile women from certain jobs will be valid only in EXTREMELY narrow exceptions that cannot be based on fears of danger to the employee or her fetus, fears of potential tort liability, or assumptions and stereotypes about employment characteristics of pregnant women.

- Lactation is a medical condition related to pregnancy. Therefore, an employer that discriminates against an employee based on her need to take reasonable lactation breaks may be in violation of the PDA.

In a somewhat controversial interpretation, the guidance document states that even in healthy pregnancies, employers must still provide accommodations equivalent to those provided to non-pregnant employees who are similarly unable to perform their jobs. This is the case even if such accommodations are provided only to non-pregnant employees in connection with an ADA-covered disability, a work-related injury, or a Workers Compensation claim (i.e., light duty or flexible scheduling). The interpretation effectively adds a reasonable accommodation requirement. This interpretation is up for review before the United States Supreme Court. The decision could go either way.

EEOC guidance documents are not the law. They do provide insight as to how the EEOC will treat various activities.

FMLA: Notice to Employee of FM Leave – the “Mailbox” Rule.

Employee sued employer, alleging that it interfered with her rights by not giving her notice that her leave was covered under the federal law and then firing her for not having returned to work at the expiration of the twelve (12) weeks leave. Employer claims it mailed the notice. The Court rejected the presumption that something that was put in the mail had been received.



Bottom line:

In this age of computerized communications, it is not expecting too much to require employers who wish to avoid a material dispute about the receipt of a letter to use some form of a mailing that includes receipt when mailing something as important as a legally-mandated notice.

The Court wrote: “The negligible cost and inconvenience of doing so is dwarfed by the practical consequences and potential unfairness of simply relying on business practices in the sender’s mailroom.”

1. Personally deliver
2. Send certified mail, return receipt
3. Attach to email with a request for electronic receipt
4. Retain proof of receipt.

*Lupyan v. Corinthian Colleges, Inc.*, 3d Circuit  
2014.

# SCHOOL RESOURCE OFFICERS: PROTECTING and SERVING WHO?

SRO'S are generally certified peace officers, employed by a local police department or sheriff's office.

SRO'S generally work in the schools pursuant to an agreement between the school district and the local law enforcement agency (LEA).

# SCHOOL RESOURCE OFFICERS: PROTECTING and SERVING WHO?

The primary purpose of the agreement is to define the role and expectations of the SRO, and define how the position is funded.

During the school year, the SRO is treated as an employee of the school district. This allows the SRO access to student records that are otherwise protected as confidential.

# SCHOOL RESOURCE OFFICERS: PROTECTING and SERVING WHO?

- As an employee of the school district, the SRO cannot use the confidential student records or documents (including videos) he or she receives from the school district to make an arrest or issue a citation.
- If school officials have a video or other record that is confidential, and which is evidence of a crime, they should contact the LEA, and

# SCHOOL RESOURCE OFFICERS: PROTECTING and SERVING WHO?

If school officials have a video or other record that is confidential, and which is evidence of a crime, they report the incident to the LEA, BUT DO NOT PROVIDE THE VIDEO OR DOCUMENTS UNTIL THE LEA GETS A WARRANT, SUBPOENA OR OTHER COURT ORDER.

# SCHOOL RESOURCE OFFICERS: PROTECTING and SERVING WHO?

School officials should meet with the police chief and SRO to discuss the School District's expectations in terms of the SRO's arrest authority.

-In what circumstances does the School District want the SRO to issue citations and make arrests? Fights / assaults? Drugs? Alcohol? Tobacco? Other disruptive behavior?

# SCHOOL RESOURCE OFFICERS: PROTECTING and SERVING WHO?

- Does the School District want the SRO to check with administration before issuing a citation or making an arrest?

If the investigation into the misconduct going to potentially lead to charges, the student should be *Mirandized*.





DO YOU “LIKE”?

Former employee posts negative remarks about your school on Facebook, including a personal attack against a principal. A current employee “likes” a post . The principal would like to fire the employee who liked the post. Can the employee be fired?

Response: Not if the subject of the post included terms and conditions of employment.

The NLRB ruled that Triple Play's Sports Bar & Grill violated the National Labor Relations Act when it fired an employee who liked a Facebook post by a former employee expressing ire over the restaurant's tax-withholding mistakes.

Several employees expressed anger that they had to pay unexpected tax bills because of the employer's accounting errors. The fired employee indicated he liked the post and stated "I owe too. Such an asshole." Employee was fired for disloyalty to the company.

Fired employee claims that under the NLRA, because they were communicating about the terms and conditions of their employment, a protected activity under federal law, they could not be fired. Triple Play argued that the comment was allegedly defamatory and disparaging and defamatory and disparaging speech is not protected under the NLRA.

What is the decision?

## Conclusion:

The comment was protected speech and was not sufficiently disloyal or defamatory to lose the protections contained in the NLRA. The NLRB has taken an aggressive approach to social media posts among both unionized and non-union work forces. As long as the employee is engaging in “protected concerted activity”, then their communications are immune from discipline under the Act, assuming they are not otherwise sufficiently defamatory, disloyal or profane to lose the protections of the Act.

Employers need to carefully determine whether or not the post is arguably related to the terms and conditions of employment.

Employers should also determine if the speech is protected First Amendment speech.

This does not mean that all social media posts are protected and will not result in discipline. Decisions should be made after a cooling off period and after consulting with legal counsel.

We have received calls from administrators complaining about staff members posting profanity, belligerent comments that are critical of supervisors on Facebook or other social media.

Before you react to such comments, you need to ask:

1. Are these comments related to “protected, concerted activity”?
2. Are these comments protected by the First Amendment?

Call your attorney if you are unsure.



# WYOMING PUBLIC RECORDS ACT: CASE LAW UPDATE



*Aland v. Mead*, 327 P.3d 751, 2014 WY 83 (Wyo. 2014):

The Wyoming Supreme Court held that the Wyoming Public Records Act includes an exemption for the “*deliberative process privilege*.”

# WYOMING PUBLIC RECORDS ACT: CASE LAW UPDATE



The “deliberative process privilege” is not explicitly mentioned in the Wyoming Public Records Act, although it is recognized in federal law under the Freedom of Information Act (FOIA).

# WYOMING PUBLIC RECORDS ACT: CASE LAW UPDATE



The intent of the deliberative process privilege is to protect the governmental decision-making process.

The privilege “rests on the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news...”

# WYOMING PUBLIC RECORDS ACT: CASE LAW UPDATE



The privilege serve to assure uninhibited opinions and recommendations, and to protect against premature disclosure of proposed policies, and to protect against confusing the issues and misleading the public.

# WYOMING PUBLIC RECORDS ACT: CASE LAW UPDATE



To qualify for the privilege, the record must meet three elements:

1. It is an interagency or intra-agency communication;
2. The communication is pre-decisional *and* deliberative; and
3. disclosure is not in the public interest.

# WYOMING PUBLIC RECORDS ACT: CASE LAW UPDATE



A document will only meet this privilege if “its disclosure would ‘lay bare’ the discussion and methods of reasoning of public officials’ and withholding it is necessary to ‘protect free discussion of prospective operations and policy.’”

# WYOMING PUBLIC RECORDS ACT: CASE LAW UPDATE



The Wyoming Supreme Court upheld the Governor's decision to withhold most of the documents at issue. Most of those documents were memos and notes between staff members offering their opinions and recommendations on policy issues, and on a draft letter from the Governor to the Secretary of the Interior.





## EVALUATIONS:

W.S. 21-3-110(XXX). Not later than school year 2015-16, and each school year thereafter, require the performance of each school district leader, including superintendents and principals, and other district or school leaders serving in a similar capacity, to be evaluated in accordance with the statewide Education Accountability System. Not later than August 15, 2016 in accordance with rules and regulations of the State Board, the district board shall also provide the State Board written reports verifying school district leader performance and providing performance scores necessary for continued employment.

The evaluation is required to be in accordance with the statewide Education Accountability System and in accordance with the rules and regulations of the State Board.

Problem: They don't yet have that system in place.

Another extension of time has been requested of the Legislature.

The Wyoming Advisory Committee to the Select Committee on Statewide Education Accountability has submitted a report dated February 21, 2014 entitled “The Wyoming Model Leader and Educator Support and Evaluation System”.

Both leader and teacher support evaluation systems were presented together in the same document because of their inter-connection.

The leader system is designed so that school leaders will be evaluated against seven standards of leadership. Leaders must be evaluated annually but don't have to be evaluated against all seven standards annually except for Standard 1, "unwavering focus on student achievement and growth".

The committee recommends using a decision panel to combine multiple indicators in the system and to weight Standard 1 at least one-third of the overall rating.

The proposed evaluation system for **educators** will be evaluated against ten standards grouped into four practice domains: 1) learner and learning; 2) content knowledge; 3) instructional practice; and 4) professional responsibilities. A fifth category requires that educators be evaluated for their contributions to student learning which essentially becomes a fifth domain, with a recommendation that the five domains each be weighted equally at approximately 20%. These requirements for teachers do not go into place until 2016-17.

The primary purpose of the systems is to maximize student learning and improvement in student learning.

The Wyoming **Leader** Support and Evaluation System mandates that all leader evaluation systems include the following seven standards of educational leadership practice:

Standard 1: unwavering focus on student achievement and growth

Standard 2: instructional and assessment leadership

Standard 3: developing and supporting a learning organization

Standard 4: vision, mission and culture

Standard 5: efficient and effective management

Standard 6: ethics and professionalism

Standard 7: communication and community engagement

The committee strongly recommended that the State develop an evaluation instrument designed specifically for evaluating Wyoming leadership standards. The committee anticipates collaborating with WDE during the 2014 interim. For now there is some local control in the development of the tools and approaches to measure the standards. District leaders are expected to be able to evaluate and document the degree to which their selected tool(s) appropriately reflect the content and intent of the standards.

**The report states: “Finally, this system will not lead to valid outcomes unless those conducting the evaluations – superintendents or their designees have the knowledge, skills and practice to do so. The advisory committee strongly recommends that supervisors participate in training to prepare them to do their work well.”**



What about board members? Is it reasonable to expect lay members of a board of trustees to be trained and knowledgeable in utilizing the complex evaluation system to evaluate the superintendent?

WDE and the Advisory Committee will outline specific measurement procedures that can be used to operationalize this notion of “actionable information” (clear and direct improvement actions).

Standard 1 is required to be in the evaluation system every year. Expected evidence of impact for Standard 1: “increases in student achievement over multiple years and student longitudinal growth, as well as improvement (or maintenance for high performance schools) of other important outcomes and processes such as equity, attendance and graduation rates.” The committee recommends that overall achievement and growth on State assessment comprise a major component of Standard 1 and recommends using the results of the School Accountability System as the bulk of Standard 1 score.

The Committee has recommended expected evidence of impact for all standards as well as sources of data for all standards.

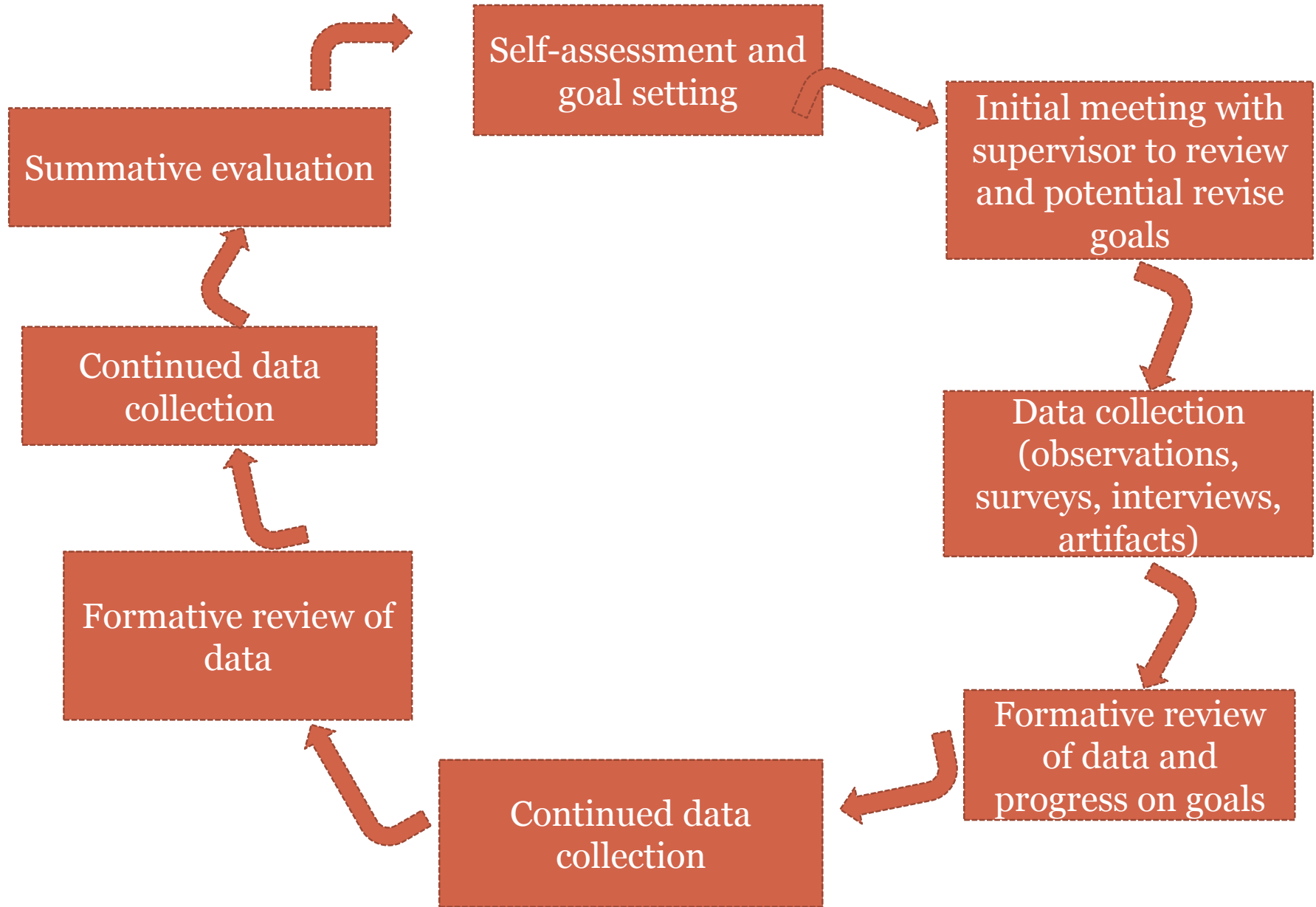
See

<http://legisweb.state.wy.us/InterimCommittee/2013/SEARptWY-EduAccountabilityReport-R3.pdf> to get a copy of the report which sets out the expected evidence of impact and sources of data for each standard.

## Performance Level Descriptors:

All Wyoming schools as determined by their districts are required to classify all school leaders as highly effective, effective, needs improvement, and ineffective, based on measures of the standards for professional practice and measures of student performance. The evaluation system will produce an overall rating for each leader.

The Committee recognizes that training and professional learning opportunities should be occurring as early as the spring and summer of 2014 with continued training and piloting during the 2014-15 school year. The State Board of Education will begin the rule-making process soon after the 2014 legislative session.



The Committee recommends using data sources summarized below as a part of each leader's annual evaluation:

- 1) School accountability system results, which includes a review of the school's performance (achievement), growth, readiness, and equity indicators as well as information as to how the school leader is using the results.
- 1) Observation by supervisor.

- 3) Survey or interview of teachers and classified staff. The perceptions of the educational staff in the building are critical for informing the leader evaluation. This may include staff, student and parent surveys.
- 4) Results of the teacher evaluations. For example, the supervisor should review the overall distribution of ratings to check for such things as score inflation (or depression) and to examine the type of feedback provided to teachers.
- 5) Analysis of evidence from key artifacts. This will vary depending upon the specific focus of the yearly evaluation. The Committee suggests that the evaluator gain additional insights for analyzing key data by reviewing:

- a) Analysis of common assessment results
- b) Survey of students
- c) Observations by peers
- d) Surveys of parents and community members.

The report has similar information and data for the teacher evaluation system to be implemented in 2016-17.



# Questions?



**COPENHAVER, KATH, KITCHEN &  
KOLPITCKE, LLC  
(307) 754-2276**

**[LAWFIRM@CKATTORNEYS.NET](mailto:LAWFIRM@CKATTORNEYS.NET)**

**[TRACY@CKATTORNEYS.NET](mailto:TRACY@CKATTORNEYS.NET)**

**[SCOTT@CKATTORNEYS.NET](mailto:SCOTT@CKATTORNEYS.NET)**

**WSBA – LEGAL SERVICES**