WYOMING SCHOOL BOARDS ASSOCIATION

2015 Convention

LEGAL UPDATE

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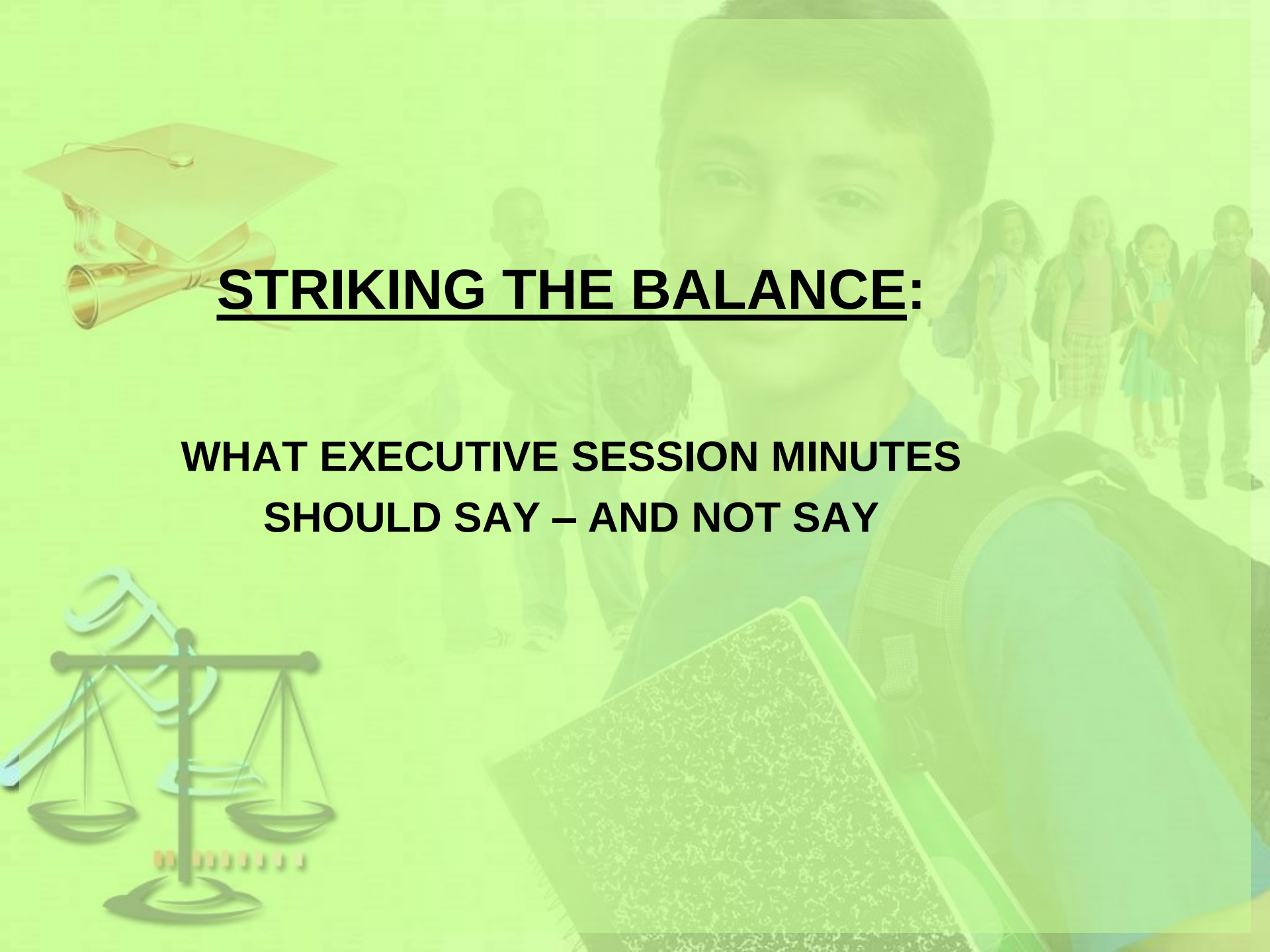


STRIKING THE BALANCE:

WHAT EXECUTIVE SESSION MINUTES SHOULD SAY – AND NOT SAY

Executive Session Minutes

- *Sheridan Newspapers, Inc. v. Board of Trustees of Sheridan County School District #2, State of Wyoming, 2015 WY 70 (May 14, 2015).*

- Sheridan Newspaper filed a petition seeking release of minutes from executive sessions where School Board discussed a proposed multi-purpose recreational facility.

Executive Session Minutes

The School Board argued that the executive sessions were proper, and the minutes were confidential, because they discussed 1) matters involving employees; 2) pending litigation; 3) consideration of a site or purchase of real estate; 4) information classified as confidential by law; and 5) student expulsions.

Executive Session Minutes

The Court found generally that the minutes lacked sufficient detail to be considered confidential. The Court focused primarily on two of the reasons the Board cited for protecting the minutes: attorney-client privilege, and consideration of the purchase of real estate.

Executive Session Minutes

- “Under the circumstances... we conclude the minutes of those sessions are not confidential because they reveal nothing substantive about the content of the legal advice the district attorney gave to the Board, and their disclosure would not, therefore, invade the attorney-client privilege.”

Executive Session Minutes

- With respect to the consideration of real estate, the Court held that the “minutes do not identify any of the actual information the Board considered or received concerning real estate or potential sites. The minutes are simply insufficiently descriptive to allow this Court to conclude that they were properly withheld from disclosure…”

Executive Session Minutes

"Bare-boned minutes such as those provided by the Board in this matter that do nothing but mention 'potential sites' and recite the statutory grounds for the executive session are not entitled to confidential treatment."

Executive Session Minutes

So what information do you include?

-If you keep “bare-boned” minutes, that do not sufficiently describe the substance of the meeting, a court may order the District to disclose the minutes if the press requests them.

Executive Session Minutes

If the District wants to protect the minutes, the person drafting the minutes should include more details – but not a transcript of the discussion.

Executive Session Minutes

-The minutes for that executive session mention the names of two employees who were the subject of the complaints, and the nature of the complaints.

-The minutes also identify the name of the potential plaintiff and his attorney, and the nature of the proposed litigation.

Executive Session Minutes

- EXAMPLE:

A town council conducts an executive session to:

• discuss litigation to which the town may be a party;

• “hear complaints or charges brought against an employee…”; and

• “receive information classified as confidential by law.”

Executive Session Minutes

- The minutes identify that the attorney advised the Town Counsel about the possible options for both the personnel issue, and the threatened litigation.
- The minutes do not record the comments of each elected official.

Executive Session Minutes

The person taking the minutes MUST:

1. Understand what is, and is not, an appropriate executive session topic.
2. Take minutes which include enough substance and detail to show what was actually discussed.
3. If the board is unsure what to say, consult your attorney, and have them review your minutes.

Executive Session Minutes

If a local newspaper asks for copies of the board's executive session minutes, consult your attorney. The response must identify "the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege."

Local Preferences in Bidding:

The Court Giveth; the Court Taketh Away

Western Wyo. Construction Co. v. Bd. of County Commissioners, 301 P.3d 512 (Wyo. 2013)

The Sublette County Board of Commissioners received a bid from Western Wyoming Construction Company for a highway project and was the low bidder. The County Commissioners, however, awarded the contract to R.S. Bennett Construction Company, Inc., whose bid was slightly higher. The County Commissioners argued that W.S. 16-6-102(a), did not mandate the award of the contract to the lowest responsible bidder and allowed the County to provide a local preference to a bidder from the same county.

The Wyoming Supreme Court reversed the decision of the District Court, which had held that the County had to award the bid to the lowest responsible bidder and concluded that the County could, under certain circumstances, apply a local preference, and remanded the case for further factual determinations.

The District Court, on remand, concluded that the County could apply a local preference within its discretion and found in favor of the Commissioners awarding the bid to the second low bidder. Western Wyo. Construction appealed for a second time.

The low bidder was the contractor out of Lander: $4,232,854.00. The second low bidder, R.S. Bennett, is based out of Sublette County, and submitted a bid of $4,241,074.00.

The Supreme Court in the first case concluded that the requirement to award a bid to the responsible certified resident contractor making the lowest bid if the resident's bid is not more than 5% higher than the lowest responsible non-resident bidder, was not applicable to competing bids from two resident contractors. It was only a requirement if determining whether to award a bid to a resident or a non-resident contractor.

The contractor argued that the use of a known but unannounced criteria of residency to decide to whom to award a public contract constitutes an abuse of discretion. The Court agreed, and decided that the County could not utilize an undisclosed preference for Sublette County contractors to award the bid. Because the County did not in any way indicate that county of residence would play a role in awarding the contract, it granted a hidden advantage to local contractors, unleveling the bidder playing field.

Allowing an agency to make a decision based upon a preference absent any standards or guidelines, constitutes arbitrary action.

The Court concluded the Commissioners **could** use a local preference in deciding to whom the contract should be awarded, but must disclose the nature of the preference to the bidders.

Recommendation: If a governmental entity intends to try to enforce a local preference, it must clearly be stated in the bid documents not only that there is a local preference, but what that preference is (i.e., 5%, etc). The preference should define the boundary within which preference will be given, as well as the amount of the preference. The decision should not be left to discretion after bids are opened. It should be defined in advance.

TRANSGENDER STUDENTS

RECENT CASES, RULINGS, AND POLICY RECOMMENDATIONS

TRANSGENDERED STUDENTS (CONTINUED)

What we will discuss:

A. Office for Civil Rights (OCR) rulings.
B. Court rulings.
C. Policy Issues.

TRANSGENDERED STUDENTS (CONTINUED)

- OCR and U.S. Department of Justice (DOJ) have concluded that discrimination against students based on transgender status violates Title IX.
- Title IX prohibits recipients of federal financial assistance from discriminating on the basis of sex.

TRANSGENDERED STUDENTS (CONTINUED)

- According to a January 2015 letter from OCR:

"When a school elects to separate or treat students differently on the basis of sex…a school generally must treat transgender students consistent with their gender identity."

TRANSGENDERED STUDENTS (CONTINUED)

- The April 2015 Title IX Resource Guide published by OCR states, in part:

"Title IX protects students…from all forms of sex discrimination, including discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity."

TRANSGENDERED STUDENTS (CONTINUED)

- OCR has ruled in at least two investigations that school districts violated Title IX because they prohibited a transgendered student from using restrooms and locker rooms consistent with their preferred gender identities. (Arcadia, California, July 2013; and Palatine, Illinois, November 2015).

TRANSGENDERED STUDENTS (CONTINUED)

- November 2015 case: Student A is a high school student in Illinois.
- Student A was born male, and from a young age identified as a female, including a female appearance, a legal name change, a passport reflecting a gender change, a diagnosis of gender dysphoria, and hormone therapy.

TRANSGENDERED STUDENTS (CONTINUED)

- The District identified Student A by her female name; gave her unlimited access to all girls' restrooms; and allowed her to participate in girls' athletics.

TRANSGENDERED STUDENTS (CONTINUED)

- Student A requested that she be allowed to change privately in the girls' locker rooms, in an area such as a bathroom stall.
- The school district denied Student A's request.
- The School District offered Student A the choice of using a restroom down the hall from the girls' (PE) locker room, or using a restroom adjacent to the girls' (PE) locker room.

TRANSGENDERED STUDENTS (CONTINUED)

- OCR said the school discriminated against the student, and violated Title IX.
- According to OCR, the Title IX regulations require that "facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex. All students, including transgender students, are protected from sex-based discrimination under Title IX."

TRANSGENDERED STUDENTS (CONTINUED)

- OCR found that the alternatives the School offered to Student A were not comparable to the girls' locker room (i.e. no showers, hair dryers, she had to walk to a different facility than the rest of the girls, etc).
- The School offered to install, and did install privacy curtains in the locker room, but said it would deny Student A's request to use the locker room unless she was required to change behind the privacy curtains.

TRANSGENDERED STUDENTS (CONTINUED)

- OCR found that although the privacy curtains "go a long distance toward achieving … a nondiscriminatory alternative…", it found the current alternative inadequate because the school denied Student A's access unless she was **required to use** the privacy curtains. OCR found that Student A should be **allowed** to use the privacy curtains on the same basis as other students.

TRANSGENDERED STUDENTS (CONTINUED)

- "…the District could afford equal access to its locker rooms for all its students if it installed and maintained privacy curtains in its locker rooms in sufficient number to be reasonably available for any student who wants privacy. Here, the totality of the circumstances weighs in favor of the District granting Student A equal access to the girls' locker rooms, while protecting the privacy of its students."

TRANSGENDERED STUDENTS (CONTINUED)

- OCR recognized the District's two constitutional privacy concerns:

1) Exposing female students to being observed in a state of undress by a biologically male individual; and
2) It would be inappropriate for young female students to view a naked male.

TRANSGENDERED STUDENTS (CONTINUED)

OCR response:

"OCR finds the concerns unavailing in this case."

TRANSGENDERED STUDENTS (CONTINUED)

- Bottom Line: If a school denies a student equal access to a facility (restroom or locker room) which is consistent with that student's preferred gender identity, OCR will view that denial as gender discrimination in violation of Title IX.

TRANSGENDERED STUDENTS (CONTINUED)

- **BUT:**

- At lease one court disagrees with OCR:

- ***G.G. ex rel Grimm v. Gloucester County School Board, ____ F. Supp. 3d ____, (September 17, 2015).***

TRANSGENDERED STUDENTS (CONTINUED)

In *Gloucester,* the student, GG was born as a female.

-Before 6, she refused to wear girls' clothes.

-At 12, GG started to acknowledge his male identity to himself.

-During his freshman year of high school, most of GG's friends were aware that he identified as a male.

TRANSGENDERED STUDENTS (CONTINUED)

- A psychologist diagnosed GG with gender dysphoria, and recommended that GG “should be treated as a boy in all respects, including with respect to his use of the restroom.”
- GG obtained a legal name change.
- GG received hormone treatment, which deepened his voice, and increased his facial hair.

TRANSGENDERED STUDENTS (CONTINUED)

- GG requested to use the male restroom at school (not the locker room).
- The school initially allowed GG to use the male restroom for seven weeks.
- After members of the community objected, the school board adopted a resolution.

TRANSGENDERED STUDENTS (CONTINUED)

- The resolution stated that use of the restrooms and locker rooms “shall be limited to the corresponding biological genders, and students with gender identity issues shall be provided an alternative appropriate private facility.”

TRANSGENDERED STUDENTS (CONTINUED)

The principal told GG that he could no longer use the male restroom, and if he did he would be disciplined.

The school then installed three unisex, single-stall restrooms.

TRANSGENDERED STUDENTS (CONTINUED)

GG filed a lawsuit against the school district, claiming that its policy violated Title IX and the Equal Protection clause.

DOJ filed a statement of interest, arguing that the School Board’s policy violated Title IX.

TRANSGENDERED STUDENTS (CONTINUED)

The Court ruled that the Title IX claim is precluded by OCR's regulations:

"A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex."

TRANSGENDERED STUDENTS (CONTINUED)

- This is the same regulation cited by OCR to support its argument in the Illinois case that the school failed to provide comparable facilities for the student.
- The Court ruled that the school board “did not run afoul of Title IX by limiting GG to the bathrooms assigned to his birth sex.”

TRANSGENDERED STUDENTS (CONTINUED)

The US Government argued that the court should defer to OCR's interpretation of Title IX.

The Court held that the OCR's "interpretation does not stand up to scrutiny."

TRANSGENDERED STUDENTS (CONTINUED)

- The Court found that GG failed to present sufficient evidence of a hardship, compared to the hardship the school would suffer:
- “The Court gives great weight to the concerns of the School Board – which represents the students and parents in the community – on the question of the privacy concerns of students…”

TRANSGENDERED STUDENTS (CONTINUED)

- The ACLU filed an appeal of the Court's decision on October 21.

TRANSGENDERED STUDENTS (CONTINUED)

- **UNANSWERED QUESTIONS:**

How do you define a transgendered student?

-does there have to be a diagnosis?

-does the student have to take hormones?

- how long does the student have to demonstrate their gender identity?

-can the school adopt criteria to determine the sincerity of the gender preference?

TRANSGENDERED STUDENTS (CONTINUED)

- How do you balance the rights of the transgender student with the privacy rights of the other students? What evidence do you consider? What evidence will the courts consider?
- How do you protect students in athletics?
- Should you adopt a policy? If you do, what should the policy say?

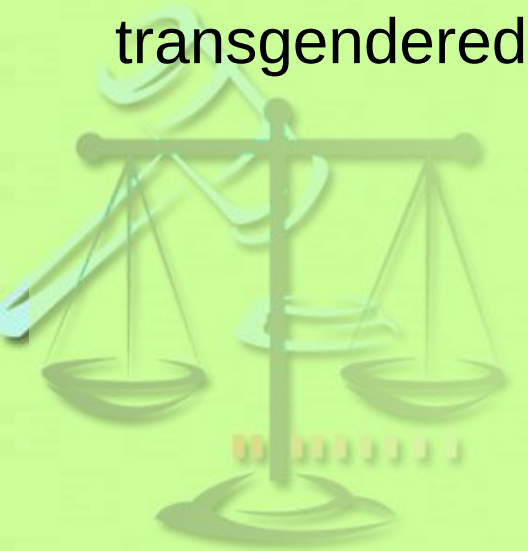
TRANSGENDERED STUDENTS (CONTINUED)

- Benefits of a Policy:

Having a policy that is consistent with OCR's position will:

1) Serve as a guideline for the School to deal with transgender issues when they arise, rather than addressing it on a case-by-case basis;

2) Protect the school from potential legal action by a transgendered student and OCR.



TRANSGENDERED STUDENTS (CONTINUED)

Drawbacks to a Policy:

-The law on this area is not settled. We are likely to see more court cases, with different facts and different conclusions.

-This is a challenging issue to debate. Boards will find it difficult to reconcile OCR's position with community concerns.

TRANSGENDERED STUDENTS (CONTINUED)

State Boards of Education and local school districts that have adopted policies for transgender and gender-nonconforming students have generally followed OCR's lead.

Those policies generally require the school to defer to the student's gender identity.

TRANSGENDERED STUDENTS (CONTINUED)

If your school district adopts a policy, it should address the following issues:

-Definitions – what is “gender identity”, “transgender”, “gender expression”?

-Prohibition on discrimination and harassment.

-Privacy / Confidentiality (including FERPA).

-Official records.

-Names / pronouns.

TRANSGENDERED STUDENTS (CONTINUED)

- Policy issues:

-Sports and Physical Education

-Restroom and Locker Room Accessibility

-Gender Segregation in other Areas (overnight trips).

-Dress Codes

-Resources for Transgender Students

HIPAA

DOES HIPAA APPLY TO SCHOOLS?

HIPAA
Health Insurance Portability and Accountability Act

Is it necessary to have a separate HIPAA policy?

Answer: Most likely, no.

Employers are not generally covered by HIPAA unless an employer self-administers claims under the health plan.

STUDENT HEALTH INFORMATION:

Generally, student health records kept by an elementary or secondary school are considered education records and are protected by FERPA. They are not protected by the HIPAA privacy rule, even if the school employs nurses.

Exception: if a school employs a provider that bills Medicaid electronically for services provided to a student.

Joint Guidance on the Application of FERPA and HIPAA to Student Health Records (November 2008).

There is confusion on the part of school staff, as well as health care professionals and others, as to how FERPA and HIPAA apply to records maintained on students.

At the elementary or secondary level, a student's health records, including immunization records maintained by an educational agency, as well as records maintained by a school nurse, are "educational records" subject to FERPA. In addition, records that the school maintains on special education students are "education records" under FERPA.

HIPAA was enacted in 1996 to improve efficiency and effectiveness of health care systems through the establishment of national standards and requirements for electronic health care transactions and to protect the privacy and security of individually identifiable health information.

Entities subject to HIPAA, known as “covered entities”, are: health plans, health care clearing houses, and health care providers that transmit health information in electronic form in connection with covered transactions.

“Health care providers” include institutional providers of health or medical services such as hospitals, as well as non-institutional providers, such as physicians, dentists, and other practitioners, along with any other organization that furnishes, bills, or is paid for health care in the normal course of business.

The HIPAA privacy rule requires “covered entities” to protect individual’s health records and other identifiable health information by requiring appropriate safeguards and appropriately limiting disclosure of information.

A school could be a covered entity because it may be a health care provider (an institution that provides health or medical services).

However, even if a school were deemed to be a HIPAA-covered entity, it is **not required** to comply with the HIPAA privacy rule because the only health records maintained by the school are “educational records” or “treatment records” of eligible students under FERPA, both of which are excluded from coverage under the HIPAA privacy rule and HIPAA security rule.

Most likely, a school is not a HIPAA-covered entity. Even though a school employs a school nurse or other health care provider, the school is not generally a HIPAA-covered entity because the providers do not engage in any of the covered transactions such as billing a health plan electronically for their services.

The school most likely is also not subject to HIPAA because even if it were a covered entity, it does not have “protected health information”. The maintenance of student health information in student health records constitutes “educational records” under FERPA and thus are is not “protected health information” under HIPAA. The HIPAA privacy rule excludes educational records from its coverage.

It doesn’t matter if the nurse is an employee or contractor, nor whether the services are provided on or off site. Records maintained by a school nurse who is contracted to provide services to students on behalf of the school constitute educational records under FERPA. Even if the services are provided off school grounds, it does not change the status of the records.

Can a covered health care provider disclose protected health information about a student to a school nurse or physician without violating HIPAA?

Yes. The HIPAA privacy rule allows covered health care providers to disclose PHI about students to school nurses or other health care providers for treatment purposes without the authorization of the student or student's parent. For example, a student's primary care physician may discuss the student's medication and other health care needs with a school nurse who will administer the student's medication and provide care to the student while the student is at school.

FERPA EXCEPTIONS:

An eligible student's treatment records may be shared with health care professionals who are providing treatment to the student as long as the information is being disclosed only for the purpose of providing treatment to the student.

To Insure or Not to Insure:

Immunity Issues

W.S. 1-39-104. A school district and its public employees, while acting within the scope of duties, are granted immunity from liability for any tort except as provided by W.S. 1-39-105 – 112.

The rule: you can't sue the king.

Complete immunity vs. the current law: immunity with limited exceptions.

State, not Federal, claims.

W.S. 1-39-104.

When liability is alleged against any public employee determined to be acting within the scope of his duty, whether or not alleged to have been committed maliciously or fraudulently, the governmental entity shall provide a defense and if the act is determined by a court to be within the public employee's scope of duties, to pay any judgment. A governmental entity shall also assume and pay settlements of claims against any public employee.

Exceptions:

Liability for operation of a motor vehicle.

Does not include training, supervision, planning (i.e., bus stops).

W.S. 1-39-110

Liability for the negligence of health care providers who are employees of the school district, including physicians, PA's, nurses, optometrists, and dentists. ??? CNA ???

https://m.youtube.com/watch?v=j9RDfv5OAZQ

W.S. 1-39-106.

A governmental entity is liable for damages resulting from the negligence of public employees in the operation or maintenance of any building, recreation area or public park.

Fugle v. Sublette Co. School Dist. No. 9

W.S. 1-39-120.

The exceptions to liability generally applicable to maintenance or operation of a building, recreation area or park do not include, and immunity is retained, for claims arising out of a defect in the plan or design, or the failure to properly construct or reconstruct, any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area, as well as improper maintenance, including maintenance to compensate for weather conditions, of any bridge, culvert, highway, roadway, street, alley, sidewalk or parking area.

Claims procedure:

Notice must be filed within two (2) years.

Litigation must be filed within one (1) year of the notice.

Minors likely have until they reach of the age of majority to file the notice of claim.

Jurisdiction: W.S. 1-39-117. Original and **exclusive** jurisdiction for any claim filed in State court under this Act shall be in the District Courts of Wyoming. Venue for claims against the school district shall be in the county in which the defendant resides or in which the principal office of the entity is located.

Maximum liability insurance:

1. $250,000 to any claimant for any number of claims arising out of a single transaction or occurrence; or

2. $500,000 for all claims of all claimants arising out of a single transaction.

3. $1,000,000 for claims against a physician, physician assistant, nurse.

To insure, or not insure?

W.S. 1-39-118. If a governmental entity has insurance coverage either exceeding the limits of liability as stated in this section or covering liability which is not authorized by this Act, the governmental entity's liability is extended to the coverage.

If a school district acquires coverage in an amount greater than the limits specified for the purpose of protecting itself against potential losses under federal law, and if the purpose of the coverage is stated to be for that purpose, the limits shall be applicable only to claims brought under federal law.

A governmental entity may join with other governmental entities by joint powers agreement to pool funds and establish a self-insurance fund or jointly purchase insurance coverage.

Separation Agreements: Confidential, or Not?

If you will agree to resign, we will agree to pay the balance of your contract. The terms of this separation agreement will be deemed confidential.

Are they? Can the Board accept the resignation, or do they have to accept the resignation and authorize payment of the balance of the contract?

Payment of the contract sum was approved when the Board took action to approve the contract.

However, the contract contemplated payment spread out over the period of the contract as services were provided. The press may argue that payment at a different time was not expressly authorized. Does that require additional Board action?

While there is no definitive answer, the safest course of action is for the Board to approve the early payout and deal with the inquiries from the press.

W.S. 16-4-203 requires that a school district deny the right of inspection for personnel files, except that **employment contracts, working agreements or other documents setting forth the terms and conditions of employment of public officials and employees are not considered part of a personnel file and shall be available for public inspection**.

Question:
Does a separation/resignation agreement set forth the terms and conditions of employment?

Does it set forth the terms and conditions of unemployment/ termination?

Does it matter?

Albany County Hospital Dist. v. Laramie Newspaper, Dist. Ct. decision Dec. 28, 2004. The employment of the hospital CEO ended with his resignation on June 18, 2004 and the newspaper requested copies of any termination or severance agreement entered into between the hospital and the CEO.

The CEO objected to disclosure of any such documents based upon the documents being part of his personnel file, the documents being inadmissible evidence of settlement negotiations, and on the basis that their release would invade his privacy.

The District Court analyzed the Wyoming Public Records Act, generally concluding that the purpose of the Act was to require all public records be open for inspection by any person at reasonable times and the purpose was disclosure, not secrecy, and that the Act is to be interpreted liberally in favor of disclosure, construing all exceptions narrowly.

The District Court decision is not a published decision and is not well known except has recently been utilized by various newspapers to demand access to information pertaining to separation agreements.

The Court concluded that members of the public have a legitimate interest in the operation of the county hospital and any amount the community is spending on health care providers. Balanced against this interest, the Court concluded that disclosure of financial agreements between the County and a physician was not an unwarranted invasion of privacy and that such financial agreements are not the type of record the Legislature sought to shield from inspection when it exempted hospital records from disclosure. The Court further concluded that one of the usual terms of a public employment document is the amount of public monies that will be paid by the public body to the public employee for services rendered.

The Court specifically, in looking at the personnel file exception, stated that while the CEO asserts that the agreement is not an “employment contract” because it deals with the end of an employment, the Court **disagrees**. The Court stated the agreement evidences a modification to the employee’s original employment contract which sets forth the terms of his employment, as well as the conclusion of that employment, the basis for any termination, and any monetary payment owed upon the termination of his employment. The agreement clearly is a contract dealing with the CEO’s employment, the modification of the terms thereof, and the end of the same. The Court concluded that nothing within the agreement arises to an exception pursuant to the personnel files exception.

The Court rejected the invasion of privacy argument, concluding that the agreement does not contain information or reveal personal facts about the employee that cast him in a negative light with respect to the public eye. The agreement really reveals nothing of substance; only the amounts paid pursuant to the severance agreement. The Court also considered factors such as whether or not if the matter were made public it would be offensive and objectionable to a reasonable person with ordinary sensibilities. The Court concluded there was no reason to refuse the disclosure of the agreement as an unwarranted invasion of privacy.

Conclusion:

While the decision of a District Court is not necessarily binding on any other District Court, there is a good degree of likelihood that other District Courts will make similar rulings and therefore separation agreements, when necessary, should be drafted with the understanding that they may become public.

FERPA: ARE SURVEILLANCE VIDEOS STUDENT RECORDS?

Bryner v. Canyons School District, 351 P.3d 852 (Ct. of Appeals, UT, May 2015).

In *Bryner*, parents sought video of altercation between their child and other students at middle school.

The school denied the request, citing FERPA.

FERPA: ARE SURVEILLANCE VIDEOS STUDENT RECORDS?

The Utah Court of Appeals agreed with the trial court that the surveillance video was a “student record” and not subject to disclosure.

FERPA: ARE SURVEILLANCE VIDEOS STUDENT RECORDS?

The Court agreed with the US Department of Education's Family Policy Compliance Office that:

"a parent my only inspect a school videotape showing his or her own child engaged in misbehavior if no other students are pictured."

FERPA: ARE SURVEILLANCE VIDEOS STUDENT RECORDS?

The Court found that the video in question contained “information directly related to the students involved in the altercation.”

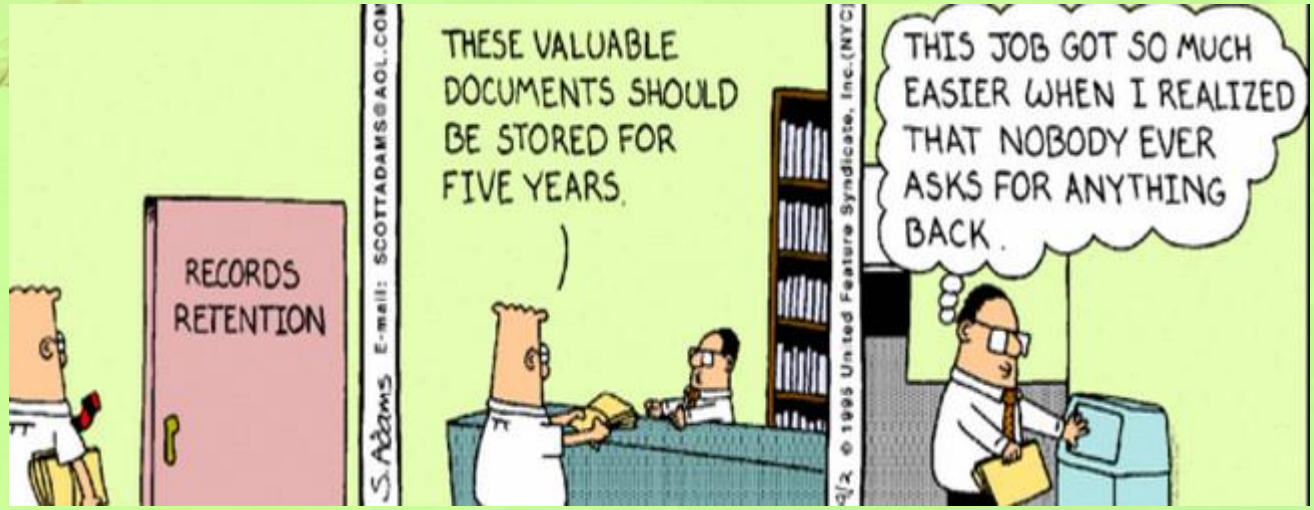
FERPA: ARE SURVEILLANCE VIDEOS STUDENT RECORDS?

The Court ruled that the parent could only inspect the video if:

1) The parent obtained the consent of the parents of the other students involved in the altercation; or
2) The School District redacted or blurred the images of the other students - at the expense of the parent requesting the video.

Litigation Lessons:

The Importance of Records Retention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THIS JOB GOT SO MUCH EASIER WHEN I REALIZED THAT NOBODY EVER ASKS FOR ANYTHING BACK.

1. Emails are not confidential

2. Records retention requirements (litigation hold)

3. Spoilation of evidence instruction

One 3-year teacher; 8,000 emails; 29,000 pages.

Communications among administrators about employees.

State records retention requirements.

Notice of claim mandates records retention.

STUDENT DIGITAL PRIVACY: PROPOSED LEGISLATION

The Wyoming Legislature's Task Force on Digital Information Privacy has proposed a bill to protect student digital privacy.

The DRAFT bill would make it illegal for any school employee to ask or require a student to provide access to the student's "digital information account…"

STUDENT DIGITAL PRIVACY: PROPOSED LEGISLATION

The DRAFT bill prohibits school employees from asking for a student's username, password, or other means of authentication that provides access to a "digital information account."

STUDENT DIGITAL PRIVACY: PROPOSED LEGISLATION

The draft bill defines a “digital information account” as “an electronic service or account used to communicate or store digital assets.”

What does this mean?

STUDENT DIGITAL PRIVACY: PROPOSED LEGISLATION

According to Senator Chris Rothfuss, one of the bill's sponsors, the draft bill would prevent school employees from asking a student to access their Facebook, Twitter, Instagram, Snapchat and other social media sites.

It would also prevent school employees from searching a student's cell phone if the student has protected it with a passcode.

STUDENT DIGITAL PRIVACY: PROPOSED LEGISLATION

The draft bill makes it a misdemeanor for a school employee to violate the provisions of the bill. A violation is punishable by a fine of up to $1,000 for a first offense, and up to $2,500 for a subsequent offense.

When is a termination a termination?

Kinstler v. Laramie Co. School Dist. No. 1.

The school district gave notice to Mr. Kinstler of his termination on March 30, 2012 (prior to April 15). Mr. Kinstler requested a hearing.

W.S. 21-7-110(d) requires the hearing to be held within 45 days after the notice of termination. The independent hearing officer is then required to issue recommended findings of fact within 30 days. The board is required to enter a final order within 20 days after receipt of the proposed findings.

The definition of termination is the failure of the board of trustees of a school district in Wyoming to re-employ a teacher at the end of a school year in any given year. W.S. 21-7-102(a)(vii).

It seems clear the intent was that the termination be effective at the end of the employment contract.

Kinstler requested a continuance of the hearing, claiming that he could not properly be prepared within the 45-day time frame (that is not unusual).

Although this frequently happens, there is a question as to whether either party can actually waive the time frame mandated by statute. Nevertheless, the hearing was extended at the request of the employee, but even without the request the decision would likely have been after July 1.

A hearing was held on August 13, 2012. The hearing officer recommended the termination of Kinstler and the Board of Trustees on September 17, 2012 unanimously accepted the hearing officer's finding to terminate Mr. Kinstler. On September 18 the Assistant Superintendent sent Kinstler a letter notifying him that he was terminated and the termination was effective as of September 17, 2012. On October 9, 2012, the Board issued a written notice of termination.

Kinstler did not appeal the decision to terminate him but appealed the effective date of the termination, asserting that because he did not get actual notice of termination until the following school year, it was not effective until the end of the next school year (2012-13 school year).

The Court held that the language of W.S. 21-7-106(b) is clear and unambiguous. The termination of a continuing contract teacher is effective at the end of the contract year after receiving notice of **actual** termination. The Court held as a result, Mr. Kinstler's termination was not effective until the end of the 2012-13 school year.

Because the termination under any scenario was not effective until approved by the Board of Trustees, the School District had already contemplated paying Mr. Kinstler through the date of the Board action in September of the following school year.

The case is on appeal to the Wyoming Supreme Court.

Lesson:

Don’t drag out the termination hearing.

Never mind!

On November 12, 2015, the Wyoming Supreme Court reversed the District Court decision.

Questions?

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