

WYOMING SCHOOL BOARDS ASSOCIATION

2019 Convention

LEGAL UPDATE

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1. Concerns with new WDE mandatory data collection regarding teacher effectiveness
2. Misuse of public property and services
3. Follow-up to 45-day rule – proposed legislation
4. Administration of medication – has anything changed?
5. Public records law
6. Access to records concerning reports and investigations of child abuse and neglect
7. Use of personal electronic device for school business
8. Suspension – expulsion: new legislation
9. Teacher work day: what is it (policy and contract)
10. New requirements for procurement of professional services
11. Who has access to executive session minutes?

Concerns You Should Be Aware of With NEW WDE Mandatory Data Collection Regarding Teacher Effectiveness

WDE Memorandum No. 2018-063, May 21, 2018 to Superintendents/Personnel Directors.

To satisfy requirements in the Every Student Succeeds Act (ESSA), the Wyoming Department of Education will collect data on educator effectiveness to ensure that minority and low income students are not disproportionately served by ineffective teachers.

Memorandum No. 2018-063

WY 2014 Standard

Learner & Learning

Content Knowledge

Teaching Practices

- Plan and prepare to meet the needs of all students
 - Establish an environment most conducive for learning.
 - Apply a depth and breadth of current content knowledge.
-

Memorandum No. 2018-063

WY 2014 Standard

Instructional Practice

Professional Responsibilities

Teaching Practices

- Use highly effective instructional practices.
 - Use student data and/or formative assessment to individualize instruction.
 - Seek continual professional growth and engage in ethical professional practice.
 - Communicate and collaborate effectively with all stakeholders.
-

WDE was to deploy the WDE 752 (form), Educator Equity Data Collection on May 21, 2018 and WDE uses the WDE 652 data to ensure teachers are evaluated and reported.

WDE form 652 requires each school to designate the evaluation outcome as:

- E Effective
- F Individual did not teach
- L Individual has less than three (3) years
- N Not effective
- P Individual has three (3) years teaching but has not been teaching at the district long enough to meet the definition of a pattern
- X Not evaluated, which requires the narrative as to why not.

Concerns to be aware of:

- Your evaluation instrument needs to evaluate your staff on the standards required to be reported to WDE.
- You are required to advise WDE when a staff member is not effective (i.e., shows a pattern of ineffective practices reflecting an unsatisfactory evaluation in at least two (2) of the standard areas in a 3-year period or in three (3) areas over a career. What evaluation rating used by your district translates into a determination of ineffectiveness? Unsatisfactory? Basic? Other?

- If a teacher is determined to be not effective, should that require a recommendation for termination?
- What if an administrator wants to recommend a teacher for termination but the teacher has not been evaluated as “not effective” as reported to WDE? Inconsistency? Impact on hearing?
- Can you use the State’s definition of “not effective” and equate that to W.S. 21-7-110(a)(vi) “failure to perform duties in a satisfactory manner” which is a statutory basis for termination?

MISUSE OF PUBLIC PROPERTY

Wyoming law prohibits public employees from using public equipment, property and materials for private use.

MISUSE OF PUBLIC PROPERTY

W.S. 9-13-105(a): “A public official, public member or public employee shall not use public funds, time, personnel, facilities or equipment for his private benefit...”

W.S. 6-5-110(a): “A public servant who lawfully or unlawfully comes into possession of any property of any government and who, with intent to temporarily deprive the owner of its use and benefit, converts any of the public property to his own use or any use other than public use...is guilty of wrongful appropriation.”

EXAMPLES:

-A public employee brings his personal vehicle into the district's maintenance shop where public employees work on the vehicle.

-A supervisor directs employees, during business hours, to report to his house to stack his firewood on his deck.

Follow Up to 45-Day Rule – Proposed Legislation

- Last year we discussed with you the inconsistency between the statutory definition of suspension which requires the removal of a teacher to be with pay pending the outcome of the hearing and the right of the school board to order that a termination recommendation, if upheld, be effective at the end of the school year in which notice of termination is given.

As complicated by the fact that OAH has not been mandating hearings be commenced and thereafter completed on a date not later than 45 days after notice of recommendation of termination or dismissal is given.

Attorneys for teachers raise allegations of inability to complete discovery and prepare.

- OAH appears to be short-handed.
- OAH has threatened to “commence” a hearing so as to meet the statutory requirement but then immediately recess the hearing until additional discovery can be completed, sometimes many months later.
- Recent incidents of hearings taking place well into the next school year.
- A choice not to pay the salary of a teacher on suspension for the next school year likely to result in additional litigation.

Legislation Solution needed

- Recommended additional language to be added to W.S. 21-7-110(d):
- “The hearing officer and the parties shall agree to **abbreviated** discovery procedures in order that the hearing can be commenced within the forty-five (45) day period and **completed without further delay**; provided, however, that if both parties consent, the time for the hearing may be continued. If for any reason the decision of the board on the recommendation for dismissal or termination is delayed beyond the start of the following school year, any contractual payments owed to the teacher shall be **held in escrow** by the school district and if the recommendation for dismissal or termination is upheld, retained by the district, and if the recommendation for termination or dismissal is not upheld, the payments shall be promptly released to the teacher.”

This also requires a change to the definition of “suspension” as follows:

W.S. 21-7-102(a)(vi)(A)(II): Insert the following language:

“Subject to the provisions for escrowing salary payments in the event of the continuance of a hearing into the next school year as set forth in W.S. 21-7-110(d).”

**Please contact your legislators
for support.**

Administration of Medication: Has Anything Changed?

- Last year we reported on the Wyoming State Board of Nursing Advisory Opinions prohibiting nurses from administering medication, including over-the-counter medication without provider orders. We revised and circulated administration of medication policies to comply therewith.
- The Board in January of 2019, after discussion with the School Nurses Association, retracted the Medication Guidance Advisory Opinion.

At the same time they revised their Advisory Opinion relating to “assuring safe healthcare in schools and alternate settings”. They reiterate in that Advisory Opinion that “A licensed, registered professional nurse is the ideal health care professional to provide comprehensive assessment and initiate individualized plans of care and provide feedback for a safe system.”

“A licensed, registered nurse administering all routine and emergency medications in . . . schools is the best situation”.

Message:

If the Advisory Opinion was retracted, school nurses may go back to being responsible for administration of over-the-counter meds, correct?

HOLD ON!

When the State Board of Nursing was contacted to confirm the interpretation of many school nurses as to the intent and impact of the decision to retract the Advisory Opinion, a very different message was delivered.

The State Board of Nursing Practice and Education Consultant stated that despite the retraction of the Advisory Opinion, it was her belief that if the State Board of Nursing were to receive a complaint pertaining to a nurse administering medication, even over-the-counter medication, without provider orders, the State Board of Nursing would likely determine the nurse was practicing outside his/her standard of care.

What has changed?

Is the school nurse's license at risk?

Recommendation: no change.

New Public Records Laws

In 2019, the Wyoming legislature approved S.F. 57, which substantially amended the Wyoming Public Records Act.

The new law adds new procedures, deadlines and people for handling public records requests.

New Public Records Law

“Designated public records person” means the person designated as required by W.S. 16-4-202(e) or that person’s designee”.

The “designated public records person” (PRP) is not necessarily (but can be) the same as the “official custodian”.

The superintendent often serves as the official custodian of records for a school district. The district may name someone else in the administration office as the PRP.

School districts must provide the name, email address and mailing address of the PRP to the department of administration and information (A&I) for publication on the A&I official website:

<https://ai.wyo.gov/> (Link for A&I)

https://docs.google.com/forms/d/e/1FAIpQLSeSnWbGW6NU_EvRW5a-z0X9wNIqL4nVDA7QwUJDKd-dUMvWbw/viewform
(Link for form).

The primary job of the designated public records person is to receive all applications for public records, and to serve as a point of contact between the governmental entity and applicants seeking records. (W.S. 16-4-202(e))

If the requested records are either:

1) not in the custody or control of the school district; or

2) the records are unavailable because they are in storage, then

the PRP must notify the applicant within 7 business days of the receipt of the application.

If the public record is readily available, it must be released immediately to the applicant as long as the release does not impair or impede the school district's ability to discharge its other duties.

All public records **shall** be released not later than **thirty (30) calendar days** from the date of acknowledged receipt of the request unless good cause exists preventing release as authorized by paragraph (iv) of this subsection.

If good cause exists which prevents release within 30 days, the parties must try to agree to a date for the release of the records.

An applicant for public records may, at any time, either file a complaint with the ombudsman, or file a petition in district court for a determination as to whether the custodian has demonstrated good cause.

Who is the ombudsman? The Governor appointed the ombudsman on September 30, 2019:

Ruth Van Mark

ruth.vanmark@wyo.gov

The office of the state ombudsman gives public records applicants a person from whom they can ask for help when they have a question or concern about a public records issue, without having to resort to litigation.

If a governmental entity fails to release records by a mutually agreed date, or fails to comply with an order by the ombudsman, the applicant may apply to the district court to compel the production of the record, or may file a complaint with the ombudsman.

The ombudsman or district court may consider whether the records are privileged or confidential by law, or whether release of the records impairs or impedes the governmental entity's ability to discharge its other duties.

The ombudsman or the district court may mediate disputes between the governmental entity and the person seeking records; prescribe timelines for the release of the records; and waive any fees charged by the governmental entity.

Penalty: Any person who knowingly or intentionally violates the Public Records Act is liable for a penalty not to exceed \$750.00.

Reminders:

The Public Records Act allows government entities to charge fees for copies of records, but only if they have adopted a rule, resolution, ordinance or other like authority (i.e. a policy).

If you do not have a fee policy for records, you cannot charge for copies.

Government entities can charge a reasonable fee for copies, and for the reasonable costs of producing copies of records that exist primarily or solely in electronic format. The cost of producing electronic records may include the cost of programming and computer services.

A government entity cannot charge for mere inspection of records.

Government entities are not required to compile data, extract data or create a new document to comply with an electronic records request if doing so would impair the government entity's ability to discharge its duties.

Access to Records Concerning Reports and Investigations of Child Abuse and Neglect

- W.S. 14-3-214 requires that the Department of Family Services release to the school district a summary of an individual's records regarding complaints and charges of abuse and/or neglect.

The applicant for the information may only use the information for purposes of screening prospective employees and volunteers who may, through their employment or volunteer services, have unsupervised access to minors or disabled adults.

The authorization for release of information form to be signed by the applicant mandates that DFS, if they report that a prospective employee is under investigation, notify the employer of the final determination of that investigation.

- DFS records are not the same as DCI records.
- DFS records include reports where investigation has determined that credible evidence exists to support the abuse/neglect allegations. This means the available facts, when reviewed in consideration of surrounding circumstances, would cause a reasonable person to believe that a child or adult was abused or neglected.

- W.S. 14-3-214. All records concerning reports and investigations of child abuse or neglect are confidential, however, upon appropriate application the State agency will give access to (v) a person responsible for the welfare of the child.

APPLICATION FOR CHILD & ADULT ABUSE/NEGLECT CENTRAL REGISTRY SCREEN

Background checks on volunteers, prospective employees, or an employee who has or may have unsupervised access to minors or vulnerable adults may be screened. Note: According to W.S. 14-3-214, "the applicant shall use the information received only for screening prospective employees and volunteers."

Instructions:

- 1) The requesting organization should complete page one of this form **in ink**.
- 2) The person being screened will complete page two of this form **in ink**, ensuring the Authorization of Release of Information is signed and dated.
- 3) Verify SSN and DOB with a driver's license or other means of identification and obtain a copy **for your records**.
- 4) Authorization is only valid for sixty (60) days from the date signed.
- 5) **A ten dollar (\$10) fee is required for each individual screened. An invoice will be sent to you after screens for the current month are complete.**
- 6) **Submit an envelope addressed to the Organization requesting the check with the request.** Postage is not required but is appreciated.
- 7) For accuracy purposes, please attach a typed list of the names, dates of birth and social security numbers for all individuals being screened.
- 8) Incomplete forms and requests not accompanied by a check or money order will be returned unprocessed.
- 9) Only applications with original signatures will be accepted. Electronic signatures, scanned or faxed copies are not accepted.
- 10) The SS-26 Form will be returned to the agency requesting the screen when it is complete.
- 11) By including an email, you acknowledge The Department of Family Services may send you results electronically, and agree to abide by all confidentiality laws regarding Central Registry data. The original will follow by mail.
- 12) Areas marked by an asterisk (*) are required fields.

Mail application to:
Department of Family Services
Central Registry
2300 Capitol Ave. 3rd Floor
Cheyenne, WY 82002

Note: Central Registry screens are specific to the State of Wyoming.

To be Completed by Organization/Facility (Print clearly)

Name of person being screened: _____
 *Organization requesting check: _____
 *Contact person for requesting organization: _____
 *Mailing Address: _____
 *City: _____ *State: _____ *Zip _____
 *Phone: (_____) _____
 Organization Email (optional): _____

For Central Registry Use Only

Date Completed _____ Reference Number _____
 Person being screened listed on the DFS Abuse/Neglect Central Registry? YES _____ NO _____
 Central Registry Specialist initials _____ DB _____

**AUTHORIZATION OF RELEASE
OF CHILD & ADULT ABUSE/NEGLECT CENTRAL REGISTRY INFORMATION**

To Be Completed by Person Being Screened (Please type or print legibly in ink).

I hereby authorize the Wyoming Department of Family Services to conduct a Wyoming Central Registry Record Search to check for abuse, neglect and exploitation of children or vulnerable adults. I agree to provide the following information and any other information needed to initiate the background check. I understand that any falsification of information or substantiated abuse or neglect activities may be the grounds for termination of employment.

*Legal Name (**First, Middle, Last**) _____

*Maiden Name _____

*Former Married Names _____

*Aliases or Nicknames _____

*Social Security Number _____

*Date of Birth _____

* Gender: Male Female

*Current Address _____

*City _____ *State _____ *Zip _____ *Phone _____

*List All Addresses for the past five (5) years

“Voluntarily” List Names of Your Children (This information assures accuracy of the screen)

If you do not agree to electronic submission of results to the email address listed on page 1 please opt out by initialing here. _____

I hereby authorize the results of this check to be provided to the Organization/Agency identified on Page 1 of this form. If this application is being made as a requirement of a child-placing agency, therapeutic foster care, and/or an adoption agency, I hereby authorize the requesting agency to provide the results of this check to the Department of Family Services.

***Signature of Person Being Screened**

***Date Valid for 60 Days**

*Pursuant to W.S. 14-3-314(f) and W.S. 35-20-116(a), any applicant receiving a report that a prospective employee/volunteer is “under investigation”, shall be notified of the final determination of that investigation. A second screen result will be sent to the Organization/Agency on Page 1 when a final determination is made in those cases.

Use of Personal Electronic Devices for School Business

Teachers, coaches & sponsors now often use personal cell phones to communicate with each other, parents, teams and student groups.

- use of apps for sports, activities (“Remind”).

- requests from parents who are also friends.

- communications with parents about students, especially special ed. students.

Coach Jacque (to basketball team and parents):

Here are the room assignments for the trip to Powder River Friday. Bobby does not have a roommate. Since we lost the last game because he missed his free throws, he will be in a room by himself so he can hopefully concentrate better.

Parent (to coach Jacque):

Your message is offensive and immature. You owe Bobby and the team an apology. You are a bully.

Coach Jacque (to team and parents):

I'm not surprised you're offended. No wonder your son is such a snowflake. If you don't like it, your son is welcome to play on the girls' team.

Coach Jacque (in P.E. class, observing students reading text to all teachers out loud):

OMG. Have U smelled Johnny today?
Have his parents ever heard of a bath?

Mr. Gossipy (replying to text to all teachers):
I don't know what stinks worse – him or his attitude. He's a little punk. Today he failed another math test. And he still calls me Mr. Butthead.

Coach Jacque (to all teachers):

That's funny. Do you think he knows that's what we call Principal Smith?

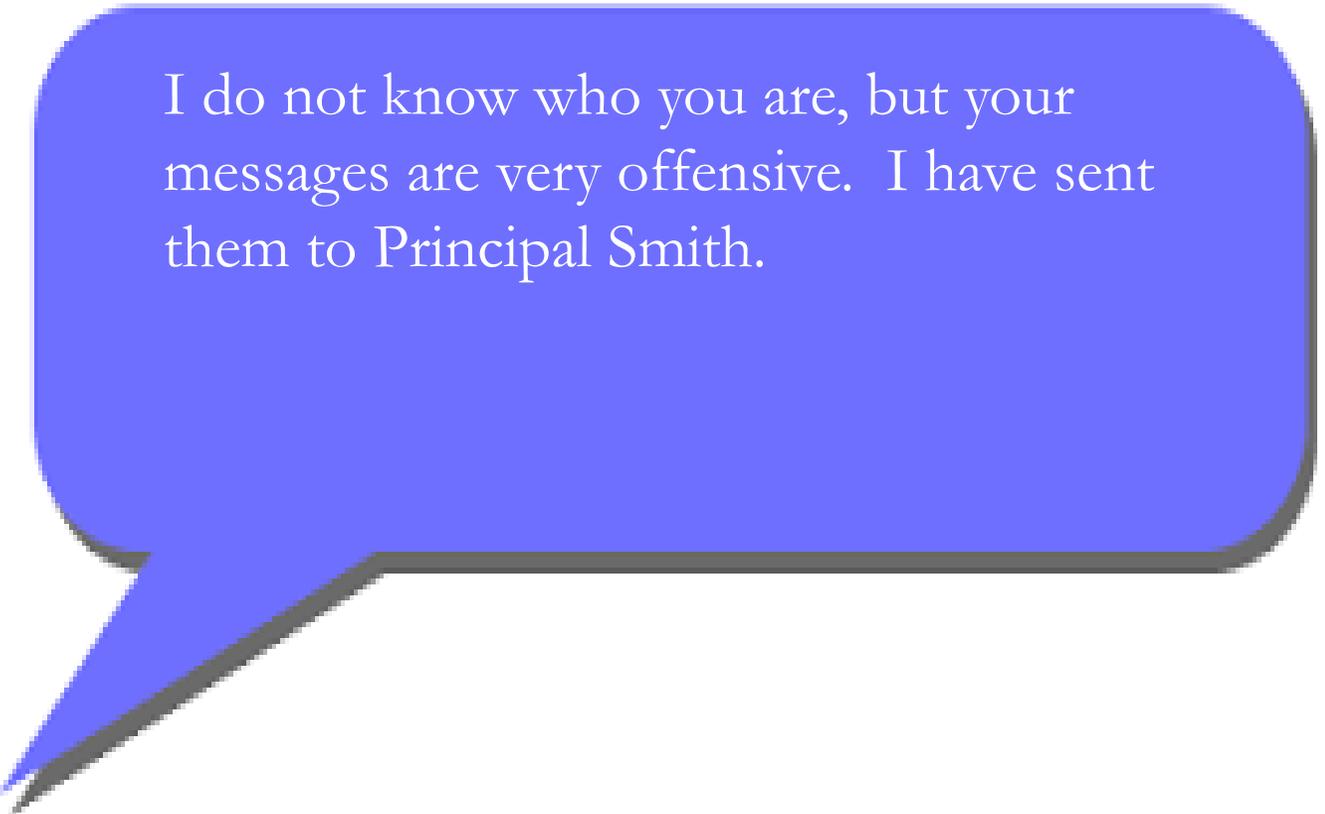
Mr. Gossipy (to all teachers):

I don't know. I think his attitude comes from his parents. You know how those newspaper people can be. They will probably blame us for his bad grades, and his bad smell.

Coach Jacque (to all teachers):

I am relieved every time he is suspended. I look for an excuse to get him and his stupid man-bun out of my class.

(text from unknown person):

A blue speech bubble with a white border and a drop shadow, containing the text: "I do not know who you are, but your messages are very offensive. I have sent them to Principal Smith." The bubble has a tail pointing towards the bottom left.

I do not know who you are, but your messages are very offensive. I have sent them to Principal Smith.

Questions, Issues and Problems for Absaroka High School:

Can Principal Smith demand to see
Coach Jacque's cell phone?

Did Coach Jacque or Mr. Gossipy violate any laws or rules?

-FERPA?

-Unprofessional conduct?

-Is their speech protected by the First Amendment?

Are the text messages public records?

-Are the messages school district records?

-Does it make a difference if the employee is an administrator instead of a teacher?

Solutions?

-Ban the use of employee cell phones
for school business?

(Yeah, right)

Policy ?

Develop a policy:

If you use your personal cell phone for school business, or to communicate with students or about students, you consent to a search of your phone for messages related to a particular incident.

- Employee may use school district phone?
- Employee may ask a supervisor or district staff to use their district phone?

SUSPENSION AND EXPULSION: NEW LEGISLATION

- The 2019 Wyoming Legislature amended suspension and expulsion proceedings set forth in W.S. 21-4-305 – 306.

- Prior statute mandated written notice of suspension to be sent to parents within 24 hours of the decision. Current statute requires that a good faith attempt to notify the student's parents, guardians or custodians within 24 hours of the student's suspension using contact information on record with the school is required. The disciplinarian is required to keep a record of the effort to provide the notice and whether the notice was provided successfully.
- The requirement to give a student notice as soon as practical and an opportunity to respond to the charges before the suspension, if the suspension is of ten (10) school days or less, goes into place remains similar.

- Prior legislation only allowed for a suspension of up to ten (10) days, generally necessitating that the hearing be held within ten (10) school days or the suspension would expire.
- New legislation requires the hearing to be held within ten (10) business days or as soon thereafter as is reasonably practical after the supervisory staff disciplinarian recommends suspension or expulsion to the appropriate administrator. The suspension shall continue until the hearing is held. The new legislation would potentially extend the time for a hearing and when the student must be re-admitted for an additional ten (10) days (i.e., recommendation for expulsion is made on the 10th day of the suspension. An additional 10 days is granted for the hearing, during which the suspension continues.

- New legislation allows for the student (parents) to request an extension of the hearing date subject to approval by the board of trustees or the disciplinarian-designee of the board. If approved by the board, it could extend the extension beyond the 10-day provision. The new legislation allows the suspension to remain in place until the hearing is held.
- An extension requires parents' request (consent).

- The legislation provides that the hearing shall be held in accordance with the Wyoming Administrative Procedures Act. It is our opinion that this is a right the student has but can be waived if they prefer to have an informal hearing, which is almost always the case. The waiver should be knowingly made in writing and signed by the parents. The Wyoming Administrative Procedures Act expressly allows at W.S. 16-3-107(n): “Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default”.
- It is the student’s (parents’) choice.

- Opportunity to be heard means, at a minimum, a meeting in which the disciplinarian provides substantive information regarding the basis of the recommended suspension or expulsion to the student and the parents and the student has an opportunity to dispute the substantive information. This is not required to be a formal process.

Teacher Work Day: What is it?

- Contract language. “Teacher agrees to accept and fulfill the position of a teacher within (school district) and to competently and efficiently carry out the duties of teacher and such other duties, including extra-duty assignments as may be assigned, to the teacher by the Superintendent or Board”.

Policy. “Teachers will arrive at their posts sufficiently in advance of students and will remain after the school day to meet with individual students, parents and faculty committees **and** to carry out other professional responsibilities.”

Playground duty/bus duty/professional development/
curriculum work ??

CHANGES TO PROCUREMENT POLICY

The 2019 Wyoming legislature adopted changes to state laws governing the procedures school districts use for obtaining bids for various kinds of purchases and work. This resulted in changes to WSBA Policy EFAB.

Building construction: W.S. 21-3-110(a):

The threshold amount which requires bids and advertising for **constructing or repairing** buildings increased from \$25,000 to **\$50,000**. Bids must be published in a newspaper once a week for two consecutive weeks when any school building is to be built, or when any repairs, additions or improvements exceed \$50,000.

Engineers, architects and surveyors:

Old: School districts were not required to obtain bids or publish advertisements for professional services.

New: School districts **must obtain bids or publish** as follows:

Engineers, architects and surveyors:

For projects where professional services will exceed **\$25,000**, school districts must **notify all qualified architects, engineers and surveyors of record** who have submitted an annual statement of qualifications. If fees exceed **\$50,000**, the district must **publish notice in a newspaper** of general circulation at least one a week for two consecutive weeks.

Engineers, architects and surveyors:

If professional services fee will exceed **\$50,000**, the school district shall **interview at least 3 firms**. The interview must be recorded, and include discussion of each firm's cost projections, qualifications, approaches, abilities, alternative methods and estimated fees.

Engineers, architects and surveyors:

If fees are estimated to be less than \$50,000, the school district must select three firms from which a project specific submittal shall be requested.

In determining which professional to select, the district must consider several factors, including the professional's ability, past performance, ability to meet time requirements, location, current work load; volume of work load previously awarded by the district, and the equitable distribution of contracts among firms.

Districts do not need to award bids for professional services to the lowest bidder.

EXECUTIVE SESSION MINUTES

- **Who Should Have Access To Them?**

W.S. 16-4-405(b):

“Minutes shall be maintained of any executive session. Except for those parts of minutes of an executive session reflecting a member’s objection to the executive session as being in violation of this act, minutes and proceedings of executive sessions shall be confidential and produced only in response to a valid court order.”

Who should have access to the executive session minutes?

Board members, and those who they authorize to have access.

- Superintendent?

- Other school district staff? (Executive assistant).

Where should executive session minutes be maintained?

-A file in the administration office.

How are they secured?

-The Board chair should have a key to the file cabinet, and the board may give a key to the superintendent.

Digital or electronic copies?

Questions?

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