

WYOMING SCHOOL BOARDS ASSOCIATION 2020 Convention

LEGAL UPDATE

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- Sexual Orientation and Transgender Discrimination in Employment
- Title IX Policies
- Changes to Wyoming Procurement Laws – Again
- CoVid 19 Issues for Wyoming Schools
- Reduction in Force Policies
- FERPA Issues Related to Virtual/Remote Education
- Conflicts of Interest for Wyoming School Trustees.
- Changes to Kindergarten Admission Age

DISCRIMINATION BASED ON SEXUAL ORIENTATION AND TRANSGENDERED STATUS



Bostock v. Clayton Cty.

U.S. Supreme Court case decided June 15, 2020.

The decision combined three different employment cases.

Each case involved a long-time employee who was terminated after the employee revealed that he or she was gay or transgendered.

Bostock worked as a child welfare advocate for Clayton County, GA. The county won national awards for its work under his leadership. After a decade with the county, Bostock began participating in a gay recreational softball league. He was fired for conduct “unbecoming” a county employee.

Aimee Stephens worked at a Funeral Home in Michigan. Aimee originally presented as a male. After treatment for depression, she was diagnosed with gender dysphoria, and doctors recommended that she begin living as a woman. After she wrote a letter to her employer explaining that she planned to live and work as a woman, the funeral home fired her.

The issue before the Court:

“Today we must decide whether an employer can fire someone simply for being homosexual or transgender.”

The legal question involves how to interpret Title VII of the Civil Rights Act of 1964.

Title VII makes it “unlawful...for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual ... because of such individual’s race, color, religion, sex, or national origin.”

“From the ordinary public meaning of the statute’s language at the time of the law’s adoption, a straightforward rule emerges: An employer violates Title VII when it intentionally fires an individual employee based in part on sex. It doesn’t matter whether other factors besides the plaintiff’s sex contributed to the decision. ”

“Title VII’s message is simple but momentous: an individual employee’s sex is not relevant to the selection evaluation, or compensation of employees.”

“The statute’s message for our cases is equally simple and momentous: An individual’s homosexuality or transgender status is not relevant to employment decisions. That’s because it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual on the basis of sex.”

“When an employer fires an employee for being homosexual or transgender, it necessarily and intentionally discriminates against that individual in part because of sex. And that is all Title VII has ever demanded to establish liability.”

“Under Title VII, we do not purport to address bathrooms, locker rooms, or anything else of the kind. The only question before us is whether an employer who fires someone simply for being homosexual or transgender has ..discriminated against that individual ‘because of such individual’s sex.’”

This decision does NOT address questions about transgendered students with respect to locker rooms, bathrooms, and participation in athletics. Those questions arise under Title IX (of the Education Amendments of 1972). Those questions may be addressed in future decisions.

BUT... will this case influence court decisions about Title IX? Stay tuned.

TITLE IX



New Regulations

New Title IX rules and regulations were rapidly adopted with requirements for accelerated implementation. A new grievance process was to be in place and staff trained by August 2020.

Speculation that a Democrat president would repeal or scale back the regulations ? Unknown.

The new regulations seem to be a reaction to a concern that mostly colleges when dealing with an accusation of sexual harassment, were providing minimal information to the accused and moving forward to discipline and/or expulsion without adequate due process.

- New regulations require a significant and detailed grievance process inclusive of a requirement to inform all parties that the accused is presumed not to have sexually harassed the accuser until after a full investigation is completed.
- The new regulations require increased access to all information by both the complainant and the respondent.
- An ability to ask questions of the other party.
- A right to have an advisor present during the process.
- Prompt timelines for completing the grievance process.

- Assurance that the Title IX coordinator, the investigator, the decision-maker, anyone responsible for mediating an informal resolution process, and an appeal decision-maker all be unbiased and have no conflict.
- There are specific training requirements for all of those individuals, including the Title IX coordinator, investigator, decision-maker, informal resolution mediator, and appeal decision-maker.
- This has caused a burden upon the districts to provide the training, pay for the training, and even find the personnel to handle the grievance process.

- Consider working with other districts to share personnel ?

- There are significant pitfalls and procedural requirements that must be followed and training is required.

CHANGES TO PROCUREMENT LAWS - AGAIN?

Last year we discussed changes that the Wyoming legislature and federal government adopted to the procurement laws.

In 2020, the Wyoming legislature again changed the procurement laws.

H.B. 51 (Procurement of Professional Services)

This act amended W.S. 21-3-110 to specifically require school board to comply with the laws adopted in 2019 for procurement professional services (architects, engineers and surveyors).

Districts must advertise once a week for two consecutive weeks for any project where the professional services fees are estimated to exceed \$50,000. The advertisement must appear in a newspaper of general circulation, AND on the state procurement website prior to initiating the selection procedures.

HB 51

For any project where the estimated professional fees exceed \$50,000, the district shall request proposals from three firms, who shall submit unpriced proposals.

The District must interview not less than three firms from those that submitted proposals.

Nothing in this section prohibits an agency from determining that fewer than three firms with current statements of qualifications, or which have submitted applications are qualified to perform the services.

The district may request a fee estimate during the interview. The district must keep a record of the interviews.

HB 51

School districts must consider several factors in determining which firm to select:

- The ability of the professional personnel;
- Past performance;
- Ability to meet time requirements;
- Location;
- Current and projected work loads;
- Volume of work previously awarded to the firm;
- The equitable distribution of contracts among the firms.

HB 51

The district may consider the estimated fee (if requested), along with other factors above in deciding which firm to select.

Once a firm is selected, the district shall negotiate a written contract with the selected firm.

Nonresident firms may be selected if:

- no resident firms have submitted statements of qualifications or applications; or

- if the resident firms are determined not qualified.

Senate File 16 / Enrolled Act 6

SF 16 changed the statutory thresholds for bids for the purchase of insurance, supplies, or materials.

Old law: Districts had to obtain competitive bids for any purchase of insurance, supplies or materials costing more than \$10,000 and less than \$25,000. If purchases exceeded \$25,000, the district had to advertise in a newspaper at least once.

Senate File 16 / Enrolled Act 6

New threshold (effective October 1, 2020):
Districts must obtain competitive bids for any purchase of insurance, supplies or materials costing more than \$25,000 and less than \$50,000. For purchases that meet or exceed \$50,000, the district must advertise in the newspaper at least once, AND ON THE STATE PROCUREMENT WEBSITE (NEW).

Senate File 16 / Enrolled Act 6

For capital construction projects with an estimated value of at least \$50,000, the board shall publish a call for bids at least once a week for two consecutive weeks. (No change in the threshold amount).

CoVid and Staff Concerns

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CoVid 19 Issues for Wyoming Schools



Wyoming Department of Health Guidance for Educational Institutions:

- Constantly changing
- K-12 schools may provide in-person instruction for all students and groups of up to 50 persons with spacing guidelines. All plans for reopening should follow all applicable requirements and policies set forth by WDE.

Public Health Order September 29, 2020

- March 13, 2020 Governor Gordon declared a state of emergency and public health emergency in the State of Wyoming
- Governor directs the Wyoming Department of Health to take all appropriate and necessary actions, and that in the judgment of the Director of the Wyoming Department of Health, any actions necessary should be taken to provide aid to those locations where there is a threat or danger to public health, safety and welfare.

ORDER

1. “Face covering” means a covering made of cloth, fabric or other soft or permeable material, without holes, that covers the nose and mouth and surrounding areas of the lower face.
9. K-12 schools may provide onsite instruction to students under the following conditions:

- a) Groups of students and teachers **shall be limited to 50** in each separate room, however, 6 feet of separation between individuals should be maintained as much as possible;
- b) Up to 250 people may be allowed in rooms where 6 feet of separation between the individuals can be maintained (cafeterias, auditoriums, large classrooms);
- c) Students, teachers and school staff shall wear face coverings both indoors and outdoors where 6 feet of separation between individuals cannot be maintained;

- (d)(2) Individuals with a medical condition, mental health condition, or disability that prevents wearing a face covering: k-12 schools shall require documentation from the student's parent/guardian or the student's medical provider that the student meets this exception;
- (d)(5) Students with an IEP or 504 may be exempted if their disability necessitates exempting them from wearing a face covering;
- (d)(6) Children for whom a face covering may interfere with the ability to effectively participate in educational activities or may increase the risk of disease transmission because of increased hand-to-face contact;
- d(7) Individuals engaged in athletic activities.

9(h) Individuals with symptoms of CoVid 19, or exposure to an individual with CoVid 19 within the last 14 days, may not attend the institution unless otherwise directed by public health officials.

13. This order supersedes all individual county health orders currently in effect, except to the extent any county order is more restrictive.

WDE Memorandum No. 2020-115

Anything in SmartStart Guidance related to health practices that is inconsistent with a current or future local or state health order is to be **disregarded in favor of the prevailing health order.**

16th Continuation, and Modification of Statewide Public Health Order dated November 13, 2020.

Gatherings of more than fifty (50) people are prohibited in order to help stop the spread of CoVid 19 and protect the health of the public.

Gatherings at the following are exempted from this Order:

4(e) federal, state and local government facilities, including government service centers

A school district is a local governmental entity.

Events not specifically identified by name within the Order may allow indoor gatherings of more than fifty (50) people but not more than two hundred fifty (250) people. Events not specifically identified by name may allow outdoor gatherings of more than fifty (50) people but not more than fifty percent (50%) of venue capacity (or 250, whichever is greater), with a maximum of 1,000 people.

This would include sporting events.

These events are subject to multiple limitations, including:

- Groups of attendees seated or standing must be limited to eight (8).
- A 6-foot distance must be maintained between individual groups at all times.
- Prior to the event staff, hosts, organizers and participants must be screened for symptoms of CoVid or exposure to a person with CoVid 19 during the previous 14 days.
- Staff who come within 6' must wear a face covering.

- In the event the required 6' of distance between individual groups cannot be maintained, face coverings must be worn during the event to the greatest extent possible.
- The event shall not take place without appropriate protective equipment for staff.
- Event shall encourage contactless and non-signature payment as applicable. If not, card and payment stations must be sanitized after each use and staff must sanitize between handling payment options.

- Signage must remind attendees not to enter if they have symptoms of CoVid. Signage must also be posted on event premises reminding parties to stand at least 6' apart.
- Food and beverage service shall follow provisions for restaurants.
- Participants in sporting events shall not congregate in groups larger than fifty (50).

For clarification, the person limit 50-250 is not calculated by adding participants and spectators/attendees together.

ENFORCEMENT.

W.S. §35-1-105. No person, corporation, or other organization shall:

- 1) Willfully violate, disobey or disregard the provisions of the public health laws of Wyoming or the terms of any lawful notice, order, rule or regulation issued pursuant thereto.

Upon conviction of any of the offenses prohibited by this statute, the violator shall be fined not to exceed \$100 or imprisonment not to exceed 6 months, or both, and shall be liable for all expenses incurred by health authorities in removing the nuisance or cause of sickness.

ENFORCEMENT.

W.S. §35-4-101. The State Department of Health shall have the power to prescribe rules and regulations for the management and control of communicable diseases. Any person violating or refusing to obey such rules and regulations or resisting or interfering with any officer or agent of the State Department of Health while in the performance of his duties shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by the imposition of such penalty as may be provided by law or, in the discretion of the court, said person may be punished by a fine of not more than \$100 or imprisonment not exceeding 30 days, or both.

ENFORCEMENT.

- WDE is not the department/agency authorized to enforce state health orders.
- WDE has not adopted rules or regulations mandating specific actions or conduct required to instruct students relating to CoVid.
- Risk of liability ?
- Risk of loss of insurance coverage ?

COVID 19 RELATED PERSONNEL ISSUES

What happens if personnel refuse to work?
Or if they refuse to comply with health orders?

Applicable laws:

- Families First Coronavirus Response Act /
Emergency Paid Sick Leave (available through
December 31)
- Family Medical Leave Act (FMLA)
- Americans with Disabilities Act (ADA)

Families First Coronavirus Response Act (FFCRA):

- Expanded FMLA coverage
- Coverage expanded to provide 12 weeks of job-protected leave to care for an employee's child if the child's school or place of care is closed or the child care provider is unable due to the CoVid 19 public health emergency.
- When passed, it was to remain in effect until December 31, 2020 (extension ?)
- After the initial 10-day period, employer must pay 2/3 of the employee's regular rate limited to a maximum of \$200 per day.

- FFCRA requires employers to provide emergency paid sick leave.
- Up to 80 hours of paid emergency sick leave for certain qualifying Coronavirus-related reasons (expires December 31. (Extension ?)
- Employees qualify if they are unable to work or telework because of 1) subject to quarantine; 2) advised by health care provider to self-quarantine; 3) experiencing symptoms of CoVid and seeking a medical diagnosis; 4) the employee is caring for an individual who is subject to an order to quarantine; 5) the employee is caring for a son or daughter if the school or place of care is closed or the provider is unavailable due to CoVid precautions.

- Emergency paid sick leave is capped at \$511 per day or, for an employee taking leave to care for someone else, compensation is at 2/3 their regular rate capped at \$200 per day.
- Employee must be allowed to use the paid sick time under the Act before being required to use any other accrued paid time off. Benefit is in addition to any other existing benefits.

School Board Policy GBGA, Staff Health.

The district may require an employee to have a physical examination which would include CoVid testing whenever a staff member's medical condition is such that it interferes with his/her ability to perform his/her duties or there is a risk to the health and safety of others. The district has a responsibility to take necessary steps to evaluate the employee's condition and make appropriate employment decisions.

If you have credible information that an employee has CoVid virus or has had immediate close contact and refuses to quarantine, you can mandate testing, and if they refuse to comply with a directive that is in the interests of the safety and health of the employee and/or others, you could suspend them for 30 days pending an investigation if it is a certified teaching employee, or otherwise suspend them pending the outcome of testing.

Be careful of acting on rumors. Just as WDE does not have authority to enforce state health orders, neither does the district. Work with your county health officials.

If you have credible evidence that a student is a risk to the health or safety of others, if need be and the student and/or parents won't comply with quarantine directives, you could suspend or expel for conduct harmful to the health, education and welfare of other students.

An employer can require an employee to quarantine only if there is a reasonable belief that the employee poses a direct threat to the health or safety of the employee or others. If the employee poses a direct threat to the health or safety of others, you can exclude them from the workplace.

- An employer can test all employees for CoVid, for example, taking temperature, asking about symptoms, ask if they have been exposed to anyone who tested positive for CoVid, and administer testing, however, you cannot test for antibodies and cannot ask about family members' health conditions, etc.
- An employer can exclude an employee from the work place if they have symptoms of CoVid, report that they have been exposed to someone who has tested positive for CoVid, or refuse to screen, however, if they refuse to screen the employer should inquire as to why and see if there is any way to address the concerns about testing, such as confidentiality.
- An employer is not required to do screening.

Questions to ask regarding employees who refuse to work due to COVID 19:

-Do they have documentation from a health care provider or public health official?

-Does the provider require the employee to stay home? Does the script say the employee cannot wear a face covering?

-What are the employee's job duties? (is he or she a teacher, bus driver, custodian, para, counselor?)

-Does the employee's job description specifically require them to be in the school building? Do they have to interact with others while at work?

-Is there a reasonable way for the employee to do their job remotely, or without a face covering?

-If students attend school in person, is remote work a reasonable accommodation for a teacher? A counselor?

- An employer cannot exclude a pregnant employee from the work place due to a concern of risks related to CoVid. An employee must offer any accommodations that are provided to other employees to a pregnant woman for health and safety reasons.

- Medical information concerning an employee is confidential. If an employee tests positive for CoVid, you cannot disclose the name or identity of the person who tested positive but you can confirm there has been a positive test result and give the location, such as the school.
- Information such as the temperatures from a screening or disclosure of symptoms is confidential and should be maintained in a confidential log with very limited access only to persons who have a need to know.

Employer has a duty to accommodate an employee only if the employee requests the accommodation and has a disability. An employee is not entitled to an accommodation merely because they live with someone who has a disability. In other words, a fear by an employee that if they get CoVid it will adversely impact another family member or someone with whom they live does not legally require the employer to provide an accommodation.

An employer is not required to eliminate an essential function of the job nor grant an accommodation which would cause undue hardship to the school district.

Just because the school district was forced to work remotely and educate students remotely when the school was shut down does not mandate that you allow workers to work from home unless the ADA requirements are met: 1) the employee has a disability; 2) permitting the employee to work remotely allows the employee to fulfill all the essential functions of the job.

Is teaching in person an essential function of the job?

Whether teaching remotely when the school was closed was effective is a relevant consideration.

Was the essential function of quality teaching performed effectively in a remote manner?

Interactive Process.

If an employee claims to have a disability, the employer must engage in an interactive conversation and discussion with the employee. The employer may request medical documentation to determine the disability unless the disability is obvious. The employer gets to choose among various effective accommodations even if the employee prefers a different accommodation so long as it allows the employee to perform the essential functions of the job.

Just because students are allowed to learn remotely does not equate to being required to allow teachers to teach remotely.

If due to a disability an employee is entitled to accommodations which may be frustrating to the employer or other co-employees, care must be taken to avoid any appearance of harassment or hostility as “hostile work environment claims” are actionable under the ADA.

Similarly, discrimination/harassment claims can arise in any protected classification. Mocking older workers because they have a fear of catching CoVid would form a basis for an age discrimination/harassment claim.

- But I don't want to wear a mask.
- I have personal reasons for not being able to wear a mask.
- I have a note from my parent that says I should not have to wear a mask.
- I have a note from my provider that recommends I don't have to wear a mask.

- The district has the right to require medical documentation.
- Medical documentation should provide more than a recommendation but rather, identify a disability or medical reasons why the individual cannot wear a mask.

- There is no law to guide us. If the employee does not have a disability, you are not required to excuse them from wearing a mask without regard to what their doctor recommends.
- If the employee has a disability, does it prevent them from wearing a mask?
- If a staff member cannot wear a mask, are there other reasonable accommodations that would allow the staff member to perform the essential functions of their job?

- Is working from home and teaching virtually a reasonable accommodation mandated by the ADA ???
- Is being at school and teaching face-to-face an essential function of the job?
- Job descriptions ? Should attendance at school be an essential function of the job ?

- Be cautious about creating virtual jobs or allowing staff to decide whether to teach in person or virtually as you may be establishing that attendance at school is not an essential function of teaching.
- Should exceptions only be granted when students can't be present rather than when the employee can't be present ?
- Can you require students who want to learn in person to take courses virtually because the staff member wants to or needs to teach virtually ?
- Generally an accommodation that mandates you hire an extra person, for example, to monitor a class when the teacher is not present, is not a required reasonable accommodation.

Family Medical Leave Act:

Allows eligible employees to take up to 12 weeks of unpaid leave due to a serious medical condition, or to care for a family member with a serious medical condition.

If an employee runs out of other types of leave, and must stay home because of a COVID 19 related reason, they may qualify for FMLA leave.

REDUCTION IN FORCE



If you anticipate a possible reduction in force (RIF) because of budget cuts, this is a good time to review your RIF policy.

A RIF policy should give the board discretion to terminate the contract of a teacher at the end of a school year because of a decrease in the size of faculty due to decreased enrollment, financial need, change in programs, or other event beyond the control of the board.

Notice of the non-renewal (RIF) for continuing contract teachers must be given.

The District must give notice to the teacher prior to April 15, and the notice must state the reason for the termination.

W.S. 21-7-111 allows a school district to terminate a teacher due to a RIF without a hearing ...

BUT - due process may require a hearing anyway.

RIF policy should allow a hearing before the board unless the board elects to appoint a hearing officer.

The RIF policy should allow the school district to terminate teachers based on what the superintendent and board believe will result in the best educational program for the students, based on the criteria or factors the superintendent believes are appropriate.

It is generally not a good idea for RIF policy to give preference to seniority, experience, etc. There may be less experienced teachers who perform better than a more experienced teacher.

RIF policies should not apply to initial contract teachers or other non-teaching staff, who can be terminated for any reason or nonrenewed at the end of their annual contract.

STUDENT PRIVACY ISSUES

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Family Educational Rights and Privacy Act (FERPA)

FERPA is a federal law that protects student education records.

An “education record” is any record that is “directly related” to a student and is “maintained by an educational agency or institution”.

Information such as grades, disciplinary records and services provided through IEP or 504 are clearly educational records.

FERPA also protects students' personally identifiable information (PII) which is any information that directly or indirectly identifies a student or would allow a reasonable person to identify the student with reasonable certainty (name, address, date of birth, or an identification number).

FERPA does allow "directory information" to be shared without parental consent, which may include student's name grade level, phone number, picture, and address.

This should be in the district's FERPA notice and parents have a right to opt out.

DISTANCE LEARNING:

A student's participation in virtual learning or sharing a student's name or image in a way that is visible on digital learning platforms generally does not implicate FERPA. Generally, information about a student that is shared among classmates and educators in a virtual learning setting is not personally identifiable information.

HIPAA is normally not a concern for an educational institution and typically does not apply in an educational context (there are a few exceptions not normally applicable).

Using digital platforms to have live virtual classes through video conferencing does not violate student privacy laws.

Best practices:

- Set meeting preferences so attendees do not automatically share their video when joining the call.
- Do not require students to have their video turned on during classes.
- Let parents know about live virtual classes ahead of time so they can decide whether they want their student to join by video.

- When recording a lesson that will include students' names or videos, take precautions when storing the video. Ensure it remains protected and accessible only to those who are allowed access to student records under FERPA.

- When recording a lesson that will include students' names or videos, take precautions when storing the video. Ensure it remains protected and accessible only to those who are allowed access to student records under FERPA.

Access or attendance by parents to virtual classes:

- FERPA does not prohibit parents from observing their student's classroom, including students with disabilities. If you have a policy on classroom visitors that you can adapt to online learning, that is an option.
- Student privacy is a priority but concerns about privacy should be carefully balanced with the need to provide education to all students in accessible and equitable ways. Requiring that a family member not be present during live virtual sessions raises equity issues for students who share space with other members of the household or may need a parent or caregiver present to help them access content.

Live virtual classes may be recorded for students to watch at a later time.

An image or video that is **directly related** to a student and kept by the educational agency is considered a part of the student's education record and is subject to FERPA. "Directly related" generally means that a student is or becomes the focus of a video or if content of the video includes personally identifiable information in the student's education record.

Recording virtual classes. Consider:

- What is the purpose of recording a live lesson?
- Is it solely for educational purposes?
- Can another option be used to achieve the same goal (e.g., teachers record themselves without students present) or the camera tracks the teacher and not a student so their images are not depicted?

- Who will the recording be shared with? If it is other parents, we need to take care to make sure it is not an educational record of another student. If it is for the teacher's or administration's use or other school employees who have a legitimate educational reason to access the video, it is not a FERPA violation even if it has PII.
- Where are the recordings be stored or how are they being stored? Is it secure enough to protect student data?

One-on-One Services (i.e., Speech Language, Physical Therapy, One-on-One Reading, Etc.):

- There is not a problem with providing services on behalf of schools for students with disabilities or even regular ed students on a one-to-one basis virtually. So long as the platform used is adopted by the school and the session is not recorded or shared with others, there is not a FERPA concern nor an IDEA concern. If recorded, it would be a student record and have to be maintained confidentially.
- Caution: data about health or disability status must never be used to track students in any way or to limit their educational access or the types of opportunities available to them.

CONFLICTS OF INTEREST FOR WYOMING SCHOOL BOARD TRUSTEES

Wyoming law governs when elected officials (including school board trustees) must abstain from a vote.

The law can be confusing, so it is important to pay attention to potential conflicts and ask legal counsel before voting on an issue if there is a question.

The Ethics and Disclosure Act - Wyoming

W.S. 9-13-102 (Definitions)

-“Family member” includes a spouse, parent, sibling, child, grandparent, grandchild, or a member of the individual’s household.

W.S. 9-13-106(a): “A public official ...shall not make an official decision or vote on an official decision if the public official has a personal or private interest in the matter.”

W.S. 9-13-106(a): A personal or private interest is one which:

1. Is direct and immediate, as opposed to speculative and remote;
2. Is an interest that provides the public official a greater benefit or a lesser detriment than it does for a large or substantial group of persons who are similarly situated.

W.S. 9-13-106(b): “A public official described in subsection (a) ...shall abstain from voting on the decision and from making any official decision in the matter.”

Example: A board member is married to a school district teacher. The board is going to vote on whether to approve step and lane advancements for teachers for the next fiscal year.

-Is the trustee's interest direct and immediate?

-Will the action provide the board member with a greater benefit than a large or substantial group of similarly situated persons?

Does the answer change if the employee is the board member's adult step-son? Nephew?

What if the employee is not a "family member" as defined by statute? (i.e. a cousin, uncle / aunt, nephew / niece)?

W.S. 9-13-106(a): in determining whether he has a personal or private interest in a matter the public official shall recognize the importance of his right to represent his constituency and shall abstain from voting **only** in clear cases of a personal or private interest as defined in this subsection.

If you strictly follow the statute, a trustee is actually required to vote unless they have a clear personal or private interest in the matter.

However, there may be situations which do not squarely fit within the statutory definition of a personal or private interest where you should consult with legal counsel, and consider abstaining.

W.S. 9-13-104(a): No public official shall advocate or cause the employment, appointment, promotion, transfer or advancement of a family member to an office or position of ...a school district. A public official...shall not supervise or manage a family member..."

W.S. 9-13-104(b): A public official shall not participate in his official responsibility or capacity regarding a matter relating to the employment or discipline of a family member.

Trustees should not participate in any matter involving the hiring, firing, discipline or pay of a family member.

A trustee who has a family member employed by the school district should abstain from the approval of the vouchers / payroll if it includes a payment to the trustee's family member.

Example: A board of trustees will vote on whether to hire an outside contractor to provide food services for the school district. If the board approves the contract, the school district will likely terminate most or all of its food service staff. One of the trustee's spouses works for the district in the food service department. Should the trustee vote on the contract for the food service contractor?

W.S. 9-13-109: Any person who violates [the Ethics and Disclosure Act] is guilty of a misdemeanor punishable upon conviction by a fine of not more than \$1,000.00.

Violation of any provision of this act constitutes sufficient cause for ...removal of a public official ... from his office or position.

Conflicts of Interest in Contracts:

W.S. 16-6-118: Prohibits elected officials from having any interest, either directly or indirectly, in their own name or in the name of any other person or entity, in a contract with the board. Any contract approved in violation of this statute is void, and the official may be removed from office.

W.S. 16-6-118(b) - There is an exception to the general rule which prohibits elected officials from having an interest in a contract with the school district. The contract between the school district and a trustee can be lawful if the trustee:

- discloses the nature and extent of his interest to all the contracting parties;
- absents himself or herself during the considerations and vote;
- does not attempt to influence any of the contracting parties
- does not act directly or indirectly for the public entity in the inspection, operation administration or performance of the contract.

The requirement to “absent himself from the consideration and vote” means that the trustee must leave the room during the vote, and during any discussion of the matter. The trustee should not participate in any discussion of potential projects in which he or she may eventually participate as a subcontractor, contractor, or vendor.

CHANGE TO KINDERGARTEN ADMISSION DATES



The Wyoming Legislature recently amended the law related to admission age for kindergarten kids.

- ▶ A student may register in kindergarten in the year in which the student's fifth birthday falls on or before August 1. However, if the student's fifth birthday falls after August 1 but on or before September 15 and if based upon the kindergarten readiness assessment the district determines the student is mature enough (developmentally ready both academically and socially), the student may attend kindergarten.

- ▶ The district is required to develop and utilize a kindergarten readiness assessment which will be utilized to assess whether the students are sufficiently mature, which is defined to mean developmentally ready both academically and socially, to be admitted to the applicable grade.
- ▶ If a student whose fifth birthday falls after August 1 and prior to September 15 is admitted to kindergarten, then that student may also register in first grade the following year. Otherwise, a student may register in first grade in the year in which his sixth birthday falls on or before August 1.

Questions?

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