John Smith has been the activities director for a Wyoming school district for 10 years. As activities director, Mr. Smith supervises athletics and activities for the school district, especially the middle school and high school, and is generally responsible for scheduling, arranging, and traveling to various schools to assure that venues are prepared for athletic and activity events. He is also involved with investigation and enforcement of the school district’s code of conduct policy, including drug and alcohol violations, for students involved in athletics and activities.

The purpose of the code of conduct is to communicate to students who have the privilege of participating in sports and activities about what conduct is expected of them. Athletes and participants in extracurricular activities are considered to be the public face of the school district, and consequently the school district expects them to act as role models for younger students, and as upstanding representatives of the school district in their interactions with their own and other communities. The code of conduct prohibits students who are on an athletic team or in extracurricular activities sanctioned by the Wyoming High School Association from using, possessing, or delivering tobacco, alcohol, or illegal drugs, or engaging in any other criminal conduct, except minor traffic violations.

The code of conduct specifies some mandatory punishments; the penalty for a first offense is suspension for 30% of a season; for a second offense, suspension for 60% of a season; for a third offense, suspension from all activities for one year; and, two violations in a single sport season will result in dismissal from the team or organization. The code of conduct gives Mr. Smith discretion to punish other misconduct; in addition to criminal conduct, “any other behavior that would diminish the integrity of the community, school, team or individual as determined in the sole discretion of the Activities Director” is a violation of the code of conduct. Also, because extracurricular activities do not necessarily have a “season” the same way as sports, and may “vary significantly in the nature of the activity and/or contest, the consequences for violation of the Code of Conduct will also vary from activity to activity.” The code of conduct gives the activities director discretion over punishment for students in activities other than sports; “…the consequences/penalties for violation of this Code of Conduct for those students shall be determined by the sponsor for that activity and approved by the Activities Director.”

The code of conduct authorizes Mr. Smith to punish violations of the code of conduct by imposing suspensions and other penalties. But in reality, as a matter of custom and practice,
Mr. Smith would not punish students by himself. If a student is accused of violating the code of conduct, Mr. Smith would investigate, and Mr. Smith, the student’s principal, and the student’s assistant principal (assistant principals are primarily responsible for discipline) would discuss Mr. Smith’s investigation and agree on a punishment. When a student is punished under the code of conduct, it is Mr. Smith’s job to meet with and inform the student and parents.

In the early morning hours of February 19, 2015, while driving home after drinking for several hours with a friend from college, after stopping at an intersection Mr. Smith rapidly accelerated his Ram truck, producing black smoke (sometimes known as “rollin’ coal”) and failed to maintain his lane of travel. Seeing this, Officer Williams activated his lights and sirens and put his spotlight on Mr. Smith’s vehicle. Mr. Smith failed to pull over and continued to drive until he reached his home. Mr. Smith refused an alcohol test of his breath and a warrant was obtained for a blood test. The result of the test was a BAC of .26. Mr. Smith’s arrest and a description of events were in the newspaper the next day.

Officer Kenneth Williams arrested Mr. Smith, who was charged with DUI in circuit court. After he was released on bail, Mr. Smith told the superintendent of the school district what happened, including the result of the BAC test. Mr. Smith admitted that he had too much to drink and should not have been driving. Mr. Smith also told the Superintendent that he was going to seek counseling and treatment for alcoholism.

The superintendent of the school district concluded that “good cause” existed to fire Mr. Smith, reported to the school board that he had lost confidence in Mr. Smith, and recommended firing Mr. Smith. Per his contract with the school district and the school district’s official policies, when Mr. Smith was given notice of the superintendent’s recommendation, Mr. Smith requested a “contested case hearing” – a trial-like hearing held in front of the school board. The board hired an attorney to act as the hearing officer, conduct the hearing, and submit proposed findings of fact, conclusions of law, and a recommended decision.

At the hearing, Mr. Smith was honest and candid about what happened. However, the parties disagreed whether Mr. Smith’s conduct on February 19, 2015 bears a reasonable relationship to Mr. Smith’s fitness or capacity to discharge the duties of his job.

At the hearing Mr. Smith testified that even though the code of conduct does not apply to administrators, coaches, or teachers, an administrator should conduct himself in a manner consistent with the policies he enforces. The superintendent testified that he would not

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1 Mr. Smith was not convicted. The prosecutor voluntarily dismissed the charge after the circuit court ruled that the officer lacked probable cause to stop Mr. Smith and suppressed the evidence of his intoxication.
recommend firing a teacher over a similar offense. Instead, he would recommend discipline in the form of suspension without pay and a letter to the teacher’s personnel file warning that any future violation of the law again will result in further discipline, up to and including termination of employment. The superintendent also admitted that the school district does not have a policy about how to treat employees who drive under the influence of alcohol, or commit other misdemeanors, or commit other crimes.

At the hearing, the lawyer for the superintendent argued that given the nature of his job responsibilities, driving under the influence of alcohol was “good cause” to fire Mr. Smith. The superintendent’s lawyer argued that being cited for DUI adversely affected his ability to be a good role model for the students of the District. The superintendent’s lawyer also argued that Mr. Smith’s ability to serve as the administrator of the code of conduct for student athletes, administering consequences for drug and alcohol violations, had been irreparably compromised.

Mr. Smith’s lawyer argued that there was not “good cause” to fire him as activities director because there was not enough of a connection between his arrest and his job duties, because he was not on school property, not in a school district vehicle, and not on duty at the time of his arrest. Mr. Smith’s lawyer argued that although Mr. Smith’s conduct was offensive and wrong, he shouldn’t be fired because he could still do his job. He also argued dismissal from employment was an unreasonably severe sanction, requesting a lesser sanction of suspension without pay along with a requirement that Mr. Smith get a substance abuse assessment and get any recommended treatment or counseling, as well as attend Alcoholics Anonymous and be alcohol free.

Mr. Smith’s lawyer also argued that the school board could not fire Mr. Smith because the school district did not inform Mr. Smith in advance of a definitive acceptable standard of professional conduct that applied to his conduct, a clear standard that, if violated, could result in termination of employment. Specifically, he argued that under Wyoming law a school district is obligated to furnish its employees a clear standard of conduct, clear enough to enable an employee to conform his conduct to that standard.

The school board decided to fire Mr. Smith because his supervisor, the superintendent, had lost confidence in him and because he violated the school district’s “Staff Responsibilities” policy. Mr. Smith filed a petition for judicial review of administrative action—an administrative

2 The policy provides:

“In their association with students, all school employees will set examples that are an important part of the educational process. Their manner, dress, courteousness, industry,
appeal—in the district court. He argued that the school board’s decision was not supported by substantial evidence. You, the district court judge, are about to hear oral arguments from Mr. Smith’s lawyer and the school board’s lawyer.

and attitudes establish models that affect the development of young people. The school board expects its staff members to set exemplary models, as well as provide exemplary instruction.”