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Personnel Trends and Recent Decisions

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Evaluating Trends Since SB7

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- Effective 9/1/11 – H.O. issues recommendation (not finding) on conduct based dismissal to local school board.
- 13 non-CPS conduct based dismissal cases decided by H.O. under new law.
 - 9 cases H.O. recommended dismissal of tenured teacher
 - 4 cases H.O. recommended reinstatement of tenured teacher
 - 3 of 4 local boards disagreed with H.O. recommendation and dismissed
- On average – H.O. decision 12 months from date of dismissal by local board.
- Approximately 5 non-CPS cases per year in last 25 years – no significant increase since change in law.

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Recent Decisions

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- Employed since 1983 – no discipline in file
- 2011: Benign parent complaint re: student treatment
- Teacher response:
 - “Gibberish and nonsense”
 - Demanded that district press criminal charges against the parent

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- Teacher scheduled for observation in response to complaint
- Teacher response:
 - “Think about your allegiance to your own family.”
 - “You should put on the brakes now before it is too late.”
 - “You see the consequences of where you put your feet these days”
- Directed to meet with Superintendent
- Teacher response:
 - “Only obligation is to rebuke Superintendent”
 - “[Administration] obeying her commands to commit suicide”

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- Suspension and NTR for repeated insubordinate and unprofessional conduct
- Teacher response:
 - “I rebuke the Superintendent to her face”
 - “She has conducted herself like some kind of mob boss—ordering goons to do her dirty work and then sitting in the luxurious surrounding, while the blood runs like water in the streets.”
 - “If you think I am weeping inside...you are mistaken....grossly underestimate how angry I am.”

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- NTR directed for FFD and to sign any releases to permit doctor to fully evaluate and report on his FFD
- Teacher response :
 - “Warning”
 - “Potential for prison term is staggering.”
 - “Quit sending me your harassing notes and NTR...I don't like reading gibberish.”

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- Directive to attend psychiatric exam
- Teacher refuses to attend:
 - “Board is losing precious time...Board President should be careful.”
- Notice of dismissal charges adopted by board
 - Refused to attend exam because no legitimate basis for directing him for FFD and rebukes never crossed line of being abusive or inappropriate.

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Goral: Appeals

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Appeal to ISBE

- Two days of testimony
- 107 exhibits
- Dismissal upheld

Appeal to Circuit Court

- Judge Mary Mikva – Affirmed Dismissal
- Raised Mental Health Act for first time

Appeal to Appellate Court

- Affirmed Dismissal
- 2013 IL App (1st Dist.) 130752

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Relevant Laws

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- Illinois School Code
- Mental Health Confidentiality Act
- Americans with Disabilities Act

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School Code Authority: 105 ILCS 5/24-5

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- Board may require examination of any employee by a physician...
- Authority to require examination of school employee extends to mental health exams.
- *Tetmeir v. Board of Ed. of School District 149*, 284 N.E.2d 380 (1st Dist. 1972)
 - “In the school setting the mental well-being of a teacher can be even more important than physical good health.”
- *Sweeney v. Board of Educ. of Mundelein Consolidated High Sch. Dist. 120*, 746 F.Supp. 758 (N.D. Ill. 1990).
 - Requiring a teacher to submit to three psychiatric exams to assess his ability to return to work did not state a cause of action.

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Mental Health Confidentiality Act 740 ILCS 110/1

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- “Recipient” - a person receiving mental health services.
- “Record” - any record kept by therapist in the course of providing mental health services.
- “Therapist” - individual providing mental health services.
- “Mental health services” - includes examination, diagnosis, evaluation, treatment.

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Mental Health Confidentiality Act

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- “All records and communications shall be confidential and shall not be disclosed except as provided in this Act.” 740 ILCS 110/3.
- Designated individuals permitted access
- Exceptions where access is permitted
- Otherwise consent is required

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Mental Health Confidentiality Act

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- The Confidentiality Act requires consent:
 - Written
 - Specify person to whom disclosure is to be made
 - Purpose of disclosure
 - Nature of information to be disclosed
 - Right to inspect and copy
 - Consequences of a refusal to consent
 - Expiration date
 - Right to revoke

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Mental Health Confidentiality Act

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- Recipient of mental health services has the privilege to refuse to disclose records in an administrative proceeding or any proceeding preliminary thereto.
- *McCrudden v. Board of Ed. of Chicago*, 419 N.E. 2nd 451 (1st Dist. 1981) .
 - Decision of the Board whether to issue a NTR is preliminary to an administrative proceeding.

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Policy Behind Act

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- To preserve the confidentiality of the records and communications of persons who are receiving or who have received mental-health services.
- To protect statements made to a therapist in the course of a professional consultation.
- Therapist-patient privilege is grounded in the crucial role of confidentiality in a therapeutic relationship.

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Does Act Apply to FFD Exams?

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- *Sangirardi v. Village of Stickney*, 793 N.E.2d 787 (1st Dist. 2003)
 - Holding that the **results** of an employee fitness for duty exam *are not* covered by the Act.
- *Johnson v. Weil*, 946 N.E.2d 329 (2011)
 - Holding that the Confidentiality Act does not apply to independent professionals whose sole function is to “make an evaluation” rather than to “treat” a patient.
- *J. Mikva*
 - Holding that “a fitness-for-duty examination . . . is not a mental health record under the Confidentiality Act” because it is “a record created for the employer not by the therapist in the course of providing even the examination, it’s specifically for the employer.”

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ADA

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- Medical examination or inquiry must be job—related and consistent with business necessity.
- Information about an employee’s disability or requests for reasonable accommodation or FMLA related documents must be kept confidential and separate from personnel file.
- Employer may share **limited** information about the disability with supervisors who need to know about work restrictions or necessary accommodations.

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Goral Case: Lessons Learned

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- For mental health FFD, review doctor release for compliance with Act or prepare for district.
- Assess if FFD is preliminary to administrative proceeding.
- Treating doctor communication with IME doctor shouldn't be included in FFD report.
- FFD report should only include information relevant to FFD.
- When in doubt, use NTR to direct to attend FFD exam.
- Act does not prohibit requiring teacher to submit to FFD exam or consent to release results of FFD exam.

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Dismissal of Paul Carlino by THSD 214

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- **Facts:** Carlino was a special education teacher with a caseload that included many BD students. Carlino's son was sexually abused by a high school teacher at another district. While the abuser was awaiting trial, Carlino took his gun, went to the abuser's house, hit him with the gun or his fists and stuck the gun down his throat to warn him not to abuse any more kids. Carlino was dismissed by the district as unfit to serve as a role model to any students but particularly to the BD students he taught. He subsequently pled guilty to a felony assault on the abuser. The felony was not one which resulted in automatic loss of his license.

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Dismissal of Paul Carlino by THSD 214

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- **Rulings:** HO Steven Bierig--normally Carlino's misconduct would be irremediable, but here it was caused by Carlino's psychological condition which had been remediated by his visits to a psychologist. Bierig ordered him reinstated with no back pay which would have amounted to an unpaid two year suspension.
- **Circuit Court and Appellate Court:** Affirm right of school district to fire a teacher who commits a felony. 2014 IL App (1st) 133808-U
- **Lessons:** Felonies, even when committed under mitigating circumstances, are not remediable.

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Kimble v. Board of Ed. of City of Chicago 16 N.E. 3d 169 (1st Dist. 2014)

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- Teacher dismissed for pushing and choking 10 year old student.
- Reversing dismissal of tenured teacher where evidence against her was based on hearsay statements of one student, not present at the hearing.

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Dismissal of Rodriguez by Maine SD 207

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- **Facts:** Freshman soccer players tackled to the ground by varsity players and anally penetrated. Following the attack, the freshman team reported the details of the “initiation” to head freshman coach Rodriguez. In response, Rodriguez did nothing other than text varsity coach to have the varsity team “lay off his guys.” Rodriguez denied being told details of the attack. District terminated Rodriguez because he failed to prevent, report, or otherwise adequately respond to an incident of repugnant and dangerous hazing.
- **Ruling:** H.O. Jules Crystal upheld Rodriguez’s discharge.
 - Credited the testimony of the student witnesses that they informed Rodriguez of the assault shortly after the campus run.
 - Did not find that Rodriguez affirmatively lied about what he was or was not told that day, but rather that under the circumstances Rodriguez may not have “fully processed the import of what he was being told.”
 - Found that Rodriguez failed to prevent, report, or otherwise adequately respond to hazing incident and his conduct irreparably damaged his fitness to serve as an effective teacher, damaged his reputation as a teacher and a member of the school community, damaged the reputation of the District and caused harm to the staff and students of the District.

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Rodriguez Case: Lessons Learned

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- Administrators need to be trained on investigation techniques and documentation practices.
- Identify student records early and seek consent for use at hearing.
- Centralize coordination with all agencies involved.

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