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**A Look at Recent Teacher Dismissals Since SB 7
& How the Rauner Administration May
Influence Education Reform**

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Introduction: Senate Bill 7 Changes

- Goal of SB 7: streamline dismissal process
 - Pre-SB 7: H.O. decision typically issued 7-16 months after date of dismissal by board
- Under SB 7:
 - H.O. issues recommendation (not finding) on conduct-based dismissal to local school boards
 - Hearing officer may be mutually selected or board-selected

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Evaluating Trends Since SB7

- 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 boards
- 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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**Impact of Mental Health
Confidentiality Act**

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Goral v. New Trier HSD 203

▪ **Facts:**

- Tenured teacher with no prior discipline has highly disproportionate response to benign parent complaint.
- Refuses to meet with Superintendent and threatens that "[Administration] obeying her commands to commit suicide."

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Goral v. New Trier HSD 203

- 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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Goral v. New Trier HSD 203

- NTR directed to attend psychiatric 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."
- 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

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

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

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School Code Authority: 105 ILCS 5/24-5

- 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."

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Mental Health Confidentiality Act: 740 ILCS 110/1

- "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.
- *McCrutchen 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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- *Mikva (Goral Appeal)*
 - 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

- For mental health FFD, review doctor release for compliance with Act
- Assess if FFD is preliminary to administrative proceeding
- Due process +
- Strategic patience (beyond legal requirements)
- 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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Felonies are Not Remediable

Even when committed under mitigating circumstances

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Dismissal of Paul Carlino by THSD 214

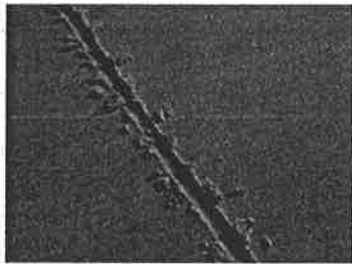
- **Facts:**
 - Special education teacher with caseload that included many BD students.
 - Teacher's son was sexually abused by a high school teacher at another district.
 - While the abuser was awaiting trial, teacher went to the abuser's house with a gun, hit him with the gun or his fists and stuck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

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Dismissal of Paul Carlino by THSD 214

- **Rulings:** H.O. - normally such misconduct would be irremediable, but here it was caused by teacher's psychological condition which had been remediated by his visits to a psychologist. H.O. 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

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Drawing the Line on Irremediable Behavior

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Irremediable v. Remediable

- *Lollino v. Board of Ed. of City of Chicago*
 - Teacher dismissed for inappropriate, sexual and profane language toward students
 - "Conduct may have bordered on negligence" and "possibly caused psychological harm" but not irremediable per se
 - H.O. upheld dismissal; cited teacher's inability and unwillingness to change

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Impact of Previous Evaluation Ratings

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Effect of Teacher Evaluation Ratings

- Performance-based dismissal hearings – H.O. must consider and give weight to all of the teacher's written evaluations relevant to the issues in the hearing
- Conduct-based dismissal hearings – Statute is silent regarding use of prior evaluations

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Effect of Positive Evaluations on Conduct-Based Dismissal Hearings

- *Lollino v. Bd. of Ed. Of City of Chicago*
 - Prior superior ratings did not outweigh teacher misconduct
- *Beggs v. Murphysboro Community Unit Sch. Dist. No. 186*
 - Teacher dismissed for excessive tardies and absences
 - Teacher caring for ailing parents
 - H.O. found behavior was remediable; recommended reinstatement
 - Excellent ratings "showed what the teacher was capable of"
 - "Perhaps performance issues were an anomaly"

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Using Student Witnesses/Documentation

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Dismissal of Rodriguez by Maine SD 207

- **Facts:** Freshman soccer players tackled to the ground by varsity players and anally penetrated through clothes. 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.

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Dismissal of Rodriguez by Maine SD 207

- **Ruling:** H.O. 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.
- Case under administrative review

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Rodriguez Case: Lessons Learned

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

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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.
- Court reversed 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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Rauner on Merit Pay Systems

- Illinois should incentivize school districts to move away from step-and-lane pay schedules
- Endorses merit pay proposals tied to student growth and achievement

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Examples of How to Approach Merit Pay Systems

- Bonuses based on excellent ratings
- Movement on salary schedule based on student performance
- Bonuses based on student achievement
- Separate salary schedules for highest performing teachers
- State merit pay systems Rauner points to:
 - Florida
 - Louisiana
 - Indiana

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Florida's Merit Pay System

- Effective 2014
- Districts must have two salary schedules:
 - 1) a "grandfathered" salary schedule
 - 2) a "performance based" salary schedule
- Teachers hired before July 1, 2014 paid based on "grandfathered" traditional schedule
- Both schedules provide for annual salary adjustment, the annual adjustment for teachers on the "performance based" schedule is higher
- Teachers can opt for the "performance based" schedule, but can't switch back
- Must receive minimum "effective" rating for increase
- 50% of evaluation based on student growth

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Louisiana's Merit Pay System

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- Effective 2012
- Eliminated traditional salary schedule
- Salary schedules based on the following criteria, with no one criterion counting for more than 50% of the formula:
 - Effectiveness (includes student growth);
 - Demand; and
 - Experience
- Individual districts may determine whether to reward teachers with permanent increases to base or a one-time stipend
- Must receive minimum "effective" rating for increase
- Bonuses paid by local school systems

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Indiana's Merit Pay System

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- Effective 2011
- Eliminated traditional salary schedule
- Increases in salary must be based on the following:
 1. 1/3 for seniority and academic degrees;
 2. evaluation results (including student growth);
 3. assignment of instructional leadership roles; and
 4. academic needs of students in schools
- Individual districts can opt to pay some of the raise as a stipend rather than have an increase to a teacher's base pay
- Must receive minimum "effective" rating for increase

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Rauner on Tenure

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- Rauner's position: Illinois should reform teacher tenure to ensure the state rewards the best teachers and replaces the worst teachers
- Illinois: SB7/PERA
 - Tenure:
 - 4 years with minimum proficient ratings on last evaluation and either second or third year evaluation
 - 3 years with all excellent ratings
 - 2 years for tenured teachers changing districts provided rating requirements are met
 - RIF/Recall: No longer based strictly on seniority
 - Student Growth: 25-30% of rating
- Rauner points to Florida
 - Each newly hired Florida teacher is awarded a probationary contract (7/11)
 - Upon successful completion of probationary contract, district may award an annual contract
 - Teachers hired before 7/11 moved to annual contract for poor ratings

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