

TITLE 23: EDUCATION AND CULTURAL RESOURCES
SUBTITLE A: EDUCATION
CHAPTER I: STATE BOARD OF EDUCATION
SUBCHAPTER b: PERSONNEL

PART 51

DISMISSAL OF TENURED TEACHERS UNDER ARTICLE 24 AND DISMISSAL OF
TENURED TEACHERS AND PRINCIPALS UNDER ARTICLE 34 OF THE SCHOOL CODE

Section

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AUTHORITY: Implementing and authorized by Sections 24-12 and 34-85 of the School Code [105 ILCS 5/24-12 and 34-85].

SOURCE: Rules Prescribed by the State Board of Education Governing the Procedure for the Dismissal of Tenured Teachers in Illinois, adopted February 19, 1976; codified at 8 Ill. Reg. 13739; emergency amendment at 9 Ill. Reg. 13116, effective August 9, 1985, for a maximum of 150 days; amended at 10 Ill. Reg. 5807, effective April 2, 1986; emergency amendment at 10 Ill. Reg. 19572, effective October 30, 1986, for a maximum of 150 days; amended at 11 Ill. Reg. 5950, effective March 23, 1987; amended at 29 Ill. Reg. 10108, effective June 30, 2005; amended at 32 Ill. Reg. 4824, effective March 21, 2008.

Section 51.10 Definitions

"Board" means the local school board and not the State Board of Education.

"Parties" means the tenured teacher against whom charges are brought and the school board bringing the charges.

"Tenured Teacher" means any teacher who has entered upon contractual continued service pursuant to Section 24-11 of the School Code [105 ILCS 5/24-11] and, in school districts having a population of 500,000 or more, a teacher or principal (see Sections 34-84 and 34-85 of the School Code [105 ILCS 5/34-84 and 34-85]).

(Source: Amended at 29 Ill. Reg. 10108, effective June 30, 2005)

Section 51.20 Applicability of this Part

This Part applies to the dismissal for reason or cause of a tenured teacher (see Section 51.10 of this Part) under Section 24-12 or Section 34-85 of the School Code, other than a teacher for whom alternative procedures are established in an agreement entered into pursuant to Section 34-85c of the School Code [105 ILCS 5/34-85c].

(Source: Amended at 32 Ill. Reg. 4824, effective March 21, 2008)

Section 51.30 Dismissal Proceedings, Notice to Tenured Teachers, and Compliance with Other Applicable Provisions of the School Code

The approval of charges or a motion for dismissal, provision of notice to the affected tenured teacher, selection of the hearing officer, scheduling of the hearing, and suspension of the teacher pending the hearing shall be as set forth in Section 24-12 or Section 34-85 of the School Code, as applicable. To comply with Section 24-12 or Section 34-85 of the School Code, as applicable, the notice to the tenured teacher of the charges or motion for dismissal must inform the teacher that he or she has ten days after receiving notice to request in writing that a hearing be scheduled. A motion approved by a board pursuant to Section 24-12 of the School Code or charges approved by the general superintendent pursuant to Section 34-85 of the School Code may include a scheduled date for a hearing, provided that the hearing is scheduled no fewer than 15 nor more than 30 days after the approval of the motion or charges.

(Source: Amended at 29 Ill. Reg. 10108, effective June 30, 2005)

Section 51.40 Qualifications of Hearing Officers; Conditions of Service

- a) Each hearing officer proposed by the State Board of Education shall possess the following qualifications:
 - 1) He or she must be accredited by a national arbitration association.
 - 2) He or she must be a non-resident of the school district involved in the hearing at the time of the hearing, unless the hearing involves a school district organized pursuant to Article 34 of the School Code.
 - 3) He or she must be disinterested and impartial.
 - 4) He or she must have no financial or personal interest in the result of the hearing.
- b) The State Board of Education shall provide the local board of education and the teacher with a list of five prospective impartial hearing officers. The State Board of Education shall select the first five hearing officers from the master list who do not reside in the school district, if required by Section 24-12 of the School Code. The State Board of Education shall place the names of the four hearing officers not selected at the bottom of the master list and shall rotate the names on the list accordingly.
- c) Upon notice of his or her appointment as a hearing officer, the prospective hearing officer shall disclose any circumstances he or she believes might disqualify him or her as an impartial hearing officer.
 - 1) Upon receipt of such information the State Board of Education shall immediately disclose it to the parties.
 - 2) The parties may waive the presumptive disqualification.
 - 3) If either party declines to waive the presumptive disqualification, the State Board of Education shall declare a vacancy.
- d) If any hearing officer shall resign, die, withdraw, refuse or be unable or disqualified to perform the duties of his or her position, the State Board of Education shall, on proof satisfactory to it, declare the position vacant.
 - 1) Vacancies shall be filled in the same manner as that governing the making of the original appointment.

- 2) Should a vacancy occur during the course of a hearing, the entire matter shall be reheard by a new hearing officer.
- e) The State Board of Education shall pay the Hearing Officer a per diem of \$300 or such greater amount as the State Board of Education may determine based on available resources. Billing procedures shall be arranged on an individual basis between the State Board and the Hearing Officer.
- f) All communication from the parties to the hearing officer other than at oral hearing shall be in writing and copies shall be sent at the same time to the opposing party and the State Board of Education. However, where circumstances necessitate, the hearing officer may make other appropriate arrangements, including but not limited to conference telephone calls. The hearing officer shall promptly report to the other party the complete substance of any unilateral communications.
- g) All hearing officers shall abide by the professional standards set forth in "The Code of Professional Responsibility for Arbitrators of Labor Management Disputes" (2003), published by the National Academy of Arbitrators, 1 No. Main Street, Suite 412, Cortland, New York 13045; no later amendments to or editions of these standards are incorporated.

(Source: Amended at 29 Ill. Reg. 10108, effective June 30, 2005)

Section 51.50 Suspension Pending the Hearing (Repealed)

(Source: Repealed at 29 Ill. Reg. 10108, effective June 30, 2005)

Section 51.55 Pre-Hearing Procedures

- a) The parties and the hearing officer may agree to a location for the hearing. If there is a dispute as to the location of the hearing, the hearing officer shall fix the place of the hearing at a location within the district's boundaries.
- b) Discovery
 - 1) Either party may request in writing from the other, with copies to the State Board of Education and the hearing officer, *a list of persons (and their addresses) who may be called as expert witnesses at the hearing, the omission of any such name to result in a preclusion of the testimony of such witness in the absence of a showing of good cause and the express permission of the hearing officer.*
 - 2) Either party may request in writing from the other, with copies to the State Board of Education and the hearing officer, a list of persons (and their addresses) who may have knowledge of facts related to the charges and/or the defenses thereto. This is not to be construed as a list of witnesses to be used at the hearing, but no person whose name is not so disclosed may testify except upon good cause shown and by the express permission of the hearing officer.
 - 3) Further discovery, limited to written interrogatories, bills of particulars, requests to produce, and lists of witnesses, may be allowed.
 - A) Application for such discovery shall be made by written motion to the hearing officer, with copies to the State Board of Education and the other party.
 - B) The motion shall state the specific nature of the discovery and the circumstances necessitating the discovery. If interrogatories are sought, a copy of these shall be attached to the motion.
 - C) The hearing officer shall rule on the motion within five days after receipt of the motion, sending copies of the decision to both parties and to the State Board of Education. The ruling shall set a date by which discovery shall be completed. In the case of interrogatories, receipt of the hearing officer's ruling shall be deemed service of the interrogatories where the provisions of subsection (b)(3)(B) of this Section have been complied with.

- D) In ruling on the motion, the hearing officer shall not permit discovery which will unnecessarily delay the proceedings or harass a party, but shall allow only that discovery which will further the resolution of the dispute, avoid surprise to a party, or aid in doing substantial justice.
- 4) Each party providing answers to discovery requests shall sign his or her responses under oath, and each attorney making objections shall sign his or her objections under oath.
- c) Other pretrial motions may be resolved prior to the hearing at the discretion of the hearing officer, provided that no motion shall be resolved prior to the hearing that would result in a default judgment against the tenured teacher.

(Source: Amended at 29 Ill. Reg. 10108, effective June 30, 2005)

Section 51.60 The Hearing

- a) The hearing shall be closed to the public unless one of the parties requests that it be open and the hearing officer so orders. The hearing officer shall exclude witnesses during the testimony of other witnesses upon the motion of either party, except that, at any time, one representative of each party in addition to counsel (or other authorized representative) shall be allowed to be present, even if that representative is also a witness. In open hearings, individuals who are not witnesses are not affected by exclusion under this subsection (a).
- b) The parties may be present and represented by counsel and by other authorized representatives.
- c) The order of proceeding shall be as follows:
 - 1) The hearing shall be opened by the recording of the place, time, and date of the hearing, the presence of the hearing officer and the parties and counsel, if any, and any stipulations as to facts. Pre-hearing motions submitted in accordance with Section 51.55 of this Part and not previously disposed of shall be heard at this time.
 - 2) Upon the opening of the hearing, the hearing officer shall allow the parties to make opening statements.
 - 3) The board shall proceed first to present its evidence.
 - 4) Either party may cross-examine the witnesses, offer evidence, and present a defense or rebuttal.
 - 5) All testimony shall be taken under oath or affirmation administered by the hearing officer.
 - 6) The hearing officer may issue subpoenas requiring the attendance of witnesses and subpoenas duces tecum, and, at the request of either of the parties, shall issue such subpoenas but may limit the number of witnesses to be subpoenaed on behalf of either party to not more than ten.
 - 7) The hearing officer shall cause a record of the proceedings to be kept and shall employ a competent reporter to take stenotype notes of all the testimony. The State Board of Education shall pay for the attendance and services of the court reporter as well as for the transcript, if any, ordered by the hearing officer for the purpose of making his or her decision.

- 8) Exhibits, when offered by either party, may be received in evidence by the hearing officer. The names and addresses of all witnesses and exhibits, in order received, shall be made a part of the record. The hearing officer shall make rulings on the admissibility of exhibits.
 - 9) The hearing officer for good cause shown may continue the hearing upon the request of the teacher or the board or upon his or her own initiative.
 - 10) The hearing may proceed in the absence of either party, who, after due notice, fails to be present or fails to obtain a continuance.
 - 11) *The hearing officer shall consider and give weight to all of the teacher's evaluations written pursuant to Article 24A of the School Code.*
 - 12) The hearing officer may, at his or her discretion, vary the normal procedure under which the board presents its case first, but in any event shall afford full and equal opportunity to all parties for presentation of relevant proof.
 - 13) At the conclusion of the hearing, each party may make a closing statement (orally and/or written at the discretion of the hearing officer) incorporating arguments of fact and law.
 - 14) The hearing shall not be considered closed until all evidence has been submitted and briefs, if allowed by the hearing officer, have been received by the hearing officer. The hearing officer shall notify the parties, in writing, of the closing date of the hearing. A copy of the notice shall be forwarded to the State Board of Education.
- d) Evidentiary rules to be followed during the hearing shall be as follows:
- 1) The parties may offer such evidence as they desire, and each party shall produce such additional evidence as the hearing officer may deem necessary to an understanding and determination of the dispute. *The hearing officer may limit the number of witnesses on behalf of either party to no more than ten.* (Sections 24-12 and 34-85 of the School Code)
 - 2) The hearing officer shall be the judge of the relevancy and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary.

- 3) Objections to evidentiary offers may be made and shall be noted in the record. The hearing officer shall have the power to make rulings, including the power to exclude evidence. "Offers of Proof" shall be permitted.
 - 4) Any witness designated as hostile by the hearing officer may be examined as if under cross-examination.
 - 5) If the hearing officer grants a party's request to submit a document after the evidentiary portion of the hearing is closed, the party shall file that document with the hearing officer, with copies to the State Board of Education and the other party, within the time designated by the hearing officer.
- e) When the hearing officer determines that neither party has further proof to offer or witnesses to be heard, he or she shall declare the hearing concluded, and a minute thereof shall be so noted in the record. If written briefs are to be submitted subsequently, the hearing officer shall so note.

(Source: Amended at 29 Ill. Reg. 10108, effective June 30, 2005)

Section 51.70 The Decision

When a hearing is held under Section 24-12 of the School Code, *the decision must be rendered within 30 days after the conclusion of the hearing or closure of the record, whichever occurs later*. When a hearing is held under Section 34-85 of the School Code, *the hearing officer's findings of fact and recommendation must be rendered within 45 days after the conclusion of the hearing*. For purposes of the remainder of this Section, "decision" means either a decision under Section 24-12 of the School Code or the findings of fact and recommendation under Section 34-85 of the School Code.

- a) The hearing officer shall make a decision in writing as to whether or not the teacher shall be dismissed. The hearing officer's decision shall include findings of fact.
- b) If the hearing officer fails, without good cause, to render a decision within the required timeframe, his or her name shall be struck from the master list of hearing officers maintained by the State Board of Education for a period of at least six months.
- c) A copy of the hearing officer's decision shall be given to the State Board of Education to be forwarded by certified mail to both the teacher and the Board, or their legal representatives of record. If Section 34-85 of the School Code applies, the decision of the Board shall also be given to the State Board of Education to be forwarded by certified mail to the teacher.
- d) The decision of the hearing officer, if rendered pursuant to Section 24-12 of the School Code, is final unless reviewed under the Administrative Review Law [735 ILCS 5/Art. III], as provided in Section 24-16 of the School Code [105 ILCS 5/24-16]. The decision of the hearing officer, if rendered pursuant to Section 34-85 of the School Code, is only a finding of fact and recommendation to the Board. The Board's decision to dismiss a tenured teacher from its employ is final unless reviewed under the Administrative Review Law, as provided in Section 34-85b of the School Code [105 ILCS 5/34-85b].
 - 1) If neither party appeals, then either party desiring a transcript of the hearing shall pay for the cost thereof.
 - 2) The costs of preparing and filing the record of proceedings in the case of a review shall be paid by the Board.
 - 3) The record of the hearing shall include:

- A) all pleadings and exhibits,
 - B) a statement of matters officially noticed,
 - C) a transcript of the hearing, and
 - D) the decision of the hearing officer (and the decision of the Board, if Section 34-85 of the School Code applies).
- e) Pursuant to Sections 24-12 and 34-85 of the School Code, *the Board shall not lose jurisdiction to discharge a teacher if the hearing officer fails to render a decision within the applicable time specified in this Section.*

(Source: Amended at 29 Ill. Reg. 10108, effective June 30, 2005)

Section 51.80 Waiver, Interpretation and Application of this Part

- a) Any party who proceeds with the hearing after knowledge that any provision of this Part prior to hearing has not been complied with and who fails to state his or her objection thereto in writing either to the State Board of Education or to the hearing officer shall be deemed to have waived his or her right to object.
- b) The hearing officer shall interpret and apply the provisions of this Part insofar as they relate to his or her powers and duties and shall follow any court interpretation of this Part.
- c) A violation of the professional standards identified in Section 51.40(g) of this Part shall be grounds for removal of the hearing officer from the master list maintained by the State Board of Education.
- d) All other rules shall be interpreted and applied by the State Board of Education.

(Source: Amended at 29 Ill. Reg. 10108, effective June 30, 2005)