

HB2801



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB2801

Introduced 2/19/2021, by Rep. Sonya M. Harper

SYNOPSIS AS INTRODUCED:

105 ILCS 5/34-85

from Ch. 122, par. 34-85

Amends the Chicago School District Article of the School Code. Makes a technical change in a provision concerning the removal of a teacher or a principal.

LRB102 14523 CMG 19876 b

A BILL FOR

1 AN ACT concerning education.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The School Code is amended by changing Section
5 34-85 as follows:

6 (105 ILCS 5/34-85) (from Ch. 122, par. 34-85)

7 Sec. 34-85. Removal for cause; notice and hearing;
8 suspension.

9 (a) No teacher employed by the ~~the~~ board of education
10 shall (after serving the probationary period specified in
11 Section 34-84) be removed except for cause. Teachers (who have
12 completed the probationary period specified in Section 34-84
13 of this Code) shall be removed for cause in accordance with the
14 procedures set forth in this Section or, at the board's
15 option, the procedures set forth in Section 24-16.5 of this
16 Code or such other procedures established in an agreement
17 entered into between the board and the exclusive
18 representative of the district's teachers under Section 34-85c
19 of this Code for teachers (who have completed the probationary
20 period specified in Section 34-84 of this Code) assigned to
21 schools identified in that agreement. No principal employed by
22 the board of education shall be removed during the term of his
23 or her performance contract except for cause, which may

1 include but is not limited to the principal's repeated failure
2 to implement the school improvement plan or to comply with the
3 provisions of the Uniform Performance Contract, including
4 additional criteria established by the Council for inclusion
5 in the performance contract pursuant to Section 34-2.3.

6 Before service of notice of charges on account of causes
7 that may be deemed to be remediable, the teacher or principal
8 must be given reasonable warning in writing, stating
9 specifically the causes that, if not removed, may result in
10 charges; however, no such written warning is required if the
11 causes have been the subject of a remediation plan pursuant to
12 Article 24A of this Code or if the board and the exclusive
13 representative of the district's teachers have entered into an
14 agreement pursuant to Section 34-85c of this Code, pursuant to
15 an alternative system of remediation. No written warning shall
16 be required for conduct on the part of a teacher or principal
17 that is cruel, immoral, negligent, or criminal or that in any
18 way causes psychological or physical harm or injury to a
19 student, as that conduct is deemed to be irreparable. No
20 written warning shall be required for a material breach of the
21 uniform principal performance contract, as that conduct is
22 deemed to be irreparable; provided that not less than 30 days
23 before the vote of the local school council to seek the
24 dismissal of a principal for a material breach of a uniform
25 principal performance contract, the local school council shall
26 specify the nature of the alleged breach in writing and

1 provide a copy of it to the principal.

2 (1) To initiate dismissal proceedings against a
3 teacher or principal, the general superintendent must
4 first approve written charges and specifications against
5 the teacher or principal. A local school council may
6 direct the general superintendent to approve written
7 charges against its principal on behalf of the Council
8 upon the vote of 7 members of the Council. The general
9 superintendent must approve those charges within 45
10 calendar days or provide a written reason for not
11 approving those charges. A written notice of those
12 charges, including specifications, shall be served upon
13 the teacher or principal within 10 business days of the
14 approval of the charges. Any written notice sent on or
15 after July 1, 2012 shall also inform the teacher or
16 principal of the right to request a hearing before a
17 mutually selected hearing officer, with the cost of the
18 hearing officer split equally between the teacher or
19 principal and the board, or a hearing before a qualified
20 hearing officer chosen by the general superintendent, with
21 the cost of the hearing officer paid by the board. If the
22 teacher or principal cannot be found upon diligent
23 inquiry, such charges may be served upon him by mailing a
24 copy thereof in a sealed envelope by prepaid certified
25 mail, return receipt requested, to the teacher's or
26 principal's last known address. A return receipt showing

1 delivery to such address within 20 calendar days after the
2 date of the approval of the charges shall constitute proof
3 of service.

4 (2) No hearing upon the charges is required unless the
5 teacher or principal within 17 calendar days after
6 receiving notice requests in writing of the general
7 superintendent that a hearing be scheduled. Pending the
8 hearing of the charges, the general superintendent or his
9 or her designee may suspend the teacher or principal
10 charged without pay in accordance with rules prescribed by
11 the board, provided that if the teacher or principal
12 charged is not dismissed based on the charges, he or she
13 must be made whole for lost earnings, less setoffs for
14 mitigation.

15 (3) The board shall maintain a list of at least 9
16 qualified hearing officers who will conduct hearings on
17 charges and specifications. The list must be developed in
18 good faith consultation with the exclusive representative
19 of the board's teachers and professional associations that
20 represent the board's principals. The list may be revised
21 on July 1st of each year or earlier as needed. To be a
22 qualified hearing officer, the person must (i) be
23 accredited by a national arbitration organization and have
24 had a minimum of 5 years of experience as an arbitrator in
25 cases involving labor and employment relations matters
26 between employers and employees or their exclusive

1 bargaining representatives and (ii) beginning September 1,
2 2012, have participated in training provided or approved
3 by the State Board of Education for teacher dismissal
4 hearing officers so that he or she is familiar with issues
5 generally involved in evaluative and non-evaluative
6 dismissals.

7 Within 5 business days after receiving the notice of
8 request for a hearing, the general superintendent and the
9 teacher or principal or their legal representatives shall
10 alternately strike one name from the list until only one
11 name remains. Unless waived by the teacher, the teacher or
12 principal shall have the right to proceed first with the
13 striking. If the teacher or principal fails to participate
14 in the striking process, the general superintendent shall
15 either select the hearing officer from the list developed
16 pursuant to this paragraph (3) or select another qualified
17 hearing officer from the master list maintained by the
18 State Board of Education pursuant to subsection (c) of
19 Section 24-12 of this Code.

20 (4) If the notice of dismissal was sent to the teacher
21 or principal before July 1, 2012, the fees and costs for
22 the hearing officer shall be paid by the State Board of
23 Education. If the notice of dismissal was sent to the
24 teacher or principal on or after July 1, 2012, the hearing
25 officer's fees and costs must be paid as follows in this
26 paragraph (4). The fees and permissible costs for the

1 hearing officer shall be determined by the State Board of
2 Education. If the hearing officer is mutually selected by
3 the parties through alternate striking in accordance with
4 paragraph (3) of this subsection (a), then the board and
5 the teacher or their legal representative shall each pay
6 50% of the fees and costs and any supplemental allowance
7 to which they agree. If the hearing officer is selected by
8 the general superintendent without the participation of
9 the teacher or principal, then the board shall pay 100% of
10 the hearing officer fees and costs. The hearing officer
11 shall submit for payment a billing statement to the
12 parties that itemizes the charges and expenses and divides
13 them in accordance with this Section.

14 (5) The teacher or the principal charged is required
15 to answer the charges and specifications and aver
16 affirmative matters in his or her defense, and the time
17 for doing so must be set by the hearing officer. The State
18 Board of Education shall adopt rules so that each party
19 has a fair opportunity to present its case and to ensure
20 that the dismissal proceeding is concluded in an
21 expeditious manner. The rules shall address, without
22 limitation, the teacher or principal's answer and
23 affirmative defenses to the charges and specifications; a
24 requirement that each party make mandatory disclosures
25 without request to the other party and then update the
26 disclosure no later than 10 calendar days prior to the

1 commencement of the hearing, including a list of the names
2 and addresses of persons who may be called as witnesses at
3 the hearing, a summary of the facts or opinions each
4 witness will testify to, and all other documents and
5 materials, including information maintained
6 electronically, relevant to its own as well as the other
7 party's case (the hearing officer may exclude witnesses
8 and exhibits not identified and shared, except those
9 offered in rebuttal for which the party could not
10 reasonably have anticipated prior to the hearing);
11 pre-hearing discovery and preparation, including provision
12 for written interrogatories and requests for production of
13 documents, provided that discovery depositions are
14 prohibited; the conduct of the hearing; the right of each
15 party to be represented by counsel, the offer of evidence
16 and witnesses and the cross-examination of witnesses; the
17 authority of the hearing officer to issue subpoenas and
18 subpoenas duces tecum, provided that the hearing officer
19 may limit the number of witnesses to be subpoenaed in
20 behalf of each party to no more than 7; the length of
21 post-hearing briefs; and the form, length, and content of
22 hearing officers' reports and recommendations to the
23 general superintendent.

24 The hearing officer shall commence the hearing within
25 75 calendar days and conclude the hearing within 120
26 calendar days after being selected by the parties as the

1 hearing officer, provided that these timelines may be
2 modified upon the showing of good cause or mutual
3 agreement of the parties. Good cause for the purposes of
4 this paragraph (5) shall mean the illness or otherwise
5 unavoidable emergency of the teacher, district
6 representative, their legal representatives, the hearing
7 officer, or an essential witness as indicated in each
8 party's pre-hearing submission. In a dismissal hearing in
9 which a witness is a student or is under the age of 18, the
10 hearing officer must make accommodations for the witness,
11 as provided under paragraph (5.5) of this subsection. The
12 hearing officer shall consider and give weight to all of
13 the teacher's evaluations written pursuant to Article 24A
14 that are relevant to the issues in the hearing. Except as
15 otherwise provided under paragraph (5.5) of this
16 subsection, the teacher or principal has the privilege of
17 being present at the hearing with counsel and of
18 cross-examining witnesses and may offer evidence and
19 witnesses and present defenses to the charges. Each party
20 shall have no more than 3 days to present its case, unless
21 extended by the hearing officer to enable a party to
22 present adequate evidence and testimony, including due to
23 the other party's cross-examination of the party's
24 witnesses, for good cause or by mutual agreement of the
25 parties. The State Board of Education shall define in
26 rules the meaning of "day" for such purposes. All

1 testimony at the hearing shall be taken under oath
2 administered by the hearing officer. The hearing officer
3 shall cause a record of the proceedings to be kept and
4 shall employ a competent reporter to take stenographic or
5 stenotype notes of all the testimony. The costs of the
6 reporter's attendance and services at the hearing shall be
7 paid by the party or parties who are paying the fees and
8 costs of the hearing officer. Either party desiring a
9 transcript of the hearing shall pay for the cost thereof.
10 At the close of the hearing, the hearing officer shall
11 direct the parties to submit post-hearing briefs no later
12 than 21 calendar days after receipt of the transcript.
13 Either or both parties may waive submission of briefs.

14 (5.5) In the case of charges involving sexual abuse or
15 severe physical abuse of a student or a person under the
16 age of 18, the hearing officer shall make alternative
17 hearing procedures to protect a witness who is a student
18 or who is under the age of 18 from being intimidated or
19 traumatized. Alternative hearing procedures may include,
20 but are not limited to: (i) testimony made via a
21 telecommunication device in a location other than the
22 hearing room and outside the physical presence of the
23 teacher or principal and other hearing participants, (ii)
24 testimony outside the physical presence of the teacher or
25 principal, or (iii) non-public testimony. During a
26 testimony described under this subsection, each party must

1 be permitted to ask a witness who is a student or who is
2 under 18 years of age all relevant questions and follow-up
3 questions. All questions must exclude evidence of the
4 witness' sexual behavior or predisposition, unless the
5 evidence is offered to prove that someone other than the
6 teacher subject to the dismissal hearing engaged in the
7 charge at issue.

8 (6) The hearing officer shall within 30 calendar days
9 from the conclusion of the hearing report to the general
10 superintendent findings of fact and a recommendation as to
11 whether or not the teacher or principal shall be dismissed
12 and shall give a copy of the report to both the teacher or
13 principal and the general superintendent. The State Board
14 of Education shall provide by rule the form of the hearing
15 officer's report and recommendation.

16 (7) The board, within 45 days of receipt of the
17 hearing officer's findings of fact and recommendation,
18 shall make a decision as to whether the teacher or
19 principal shall be dismissed from its employ. The failure
20 of the board to strictly adhere to the timeliness
21 contained herein shall not render it without jurisdiction
22 to dismiss the teacher or principal. In the event that the
23 board declines to dismiss the teacher or principal after
24 review of a hearing officer's recommendation, the board
25 shall set the amount of back pay and benefits to award the
26 teacher or principal, which shall include offsets for

1 interim earnings and failure to mitigate losses. The board
2 shall establish procedures for the teacher's or
3 principal's submission of evidence to it regarding lost
4 earnings, lost benefits, mitigation, and offsets. The
5 decision of the board is final unless reviewed in
6 accordance with paragraph (8) of this subsection (a).

7 (8) The teacher may seek judicial review of the
8 board's decision in accordance with the Administrative
9 Review Law, which is specifically incorporated in this
10 Section, except that the review must be initiated in the
11 Illinois Appellate Court for the First District. In the
12 event judicial review is instituted, any costs of
13 preparing and filing the record of proceedings shall be
14 paid by the party instituting the review. In the event the
15 appellate court reverses a board decision to dismiss a
16 teacher or principal and directs the board to pay the
17 teacher or the principal back pay and benefits, the
18 appellate court shall remand the matter to the board to
19 issue an administrative decision as to the amount of back
20 pay and benefits, which shall include a calculation of the
21 lost earnings, lost benefits, mitigation, and offsets
22 based on evidence submitted to the board in accordance
23 with procedures established by the board.

24 (9) If the Governor has declared a disaster due to a
25 public health emergency pursuant to Section 7 of the
26 Illinois Emergency Management Act, except if the parties

1 mutually agree otherwise and the agreement is in writing,
2 the requirements of this Section pertaining to prehearings
3 and hearings are paused and do not begin to toll until the
4 proclamation declaring the disaster is no longer in
5 effect. If mutually agreed to and reduced in writing, the
6 parties may proceed with the prehearing and hearing
7 requirements of this Section connected to the appointment
8 and selection of a hearing officer and those connected to
9 commencing and concluding a hearing. Any hearing convened
10 during a public health emergency pursuant to Section 7 of
11 the Illinois Emergency Management Agency Act may be
12 convened remotely. Any hearing officer for a hearing
13 convened during a public health emergency pursuant to
14 Section 7 of the Illinois Emergency Management Agency Act
15 may voluntarily withdraw from the hearing and another
16 hearing officer shall be selected or appointed pursuant to
17 this Section.

18 (b) Nothing in this Section affects the validity of
19 removal for cause hearings commenced prior to June 13, 2011
20 (the effective date of Public Act 97-8).

21 The changes made by Public Act 97-8 shall apply to
22 dismissals instituted on or after September 1, 2011 or the
23 effective date of Public Act 97-8, whichever is later. Any
24 dismissal instituted prior to the effective date of these
25 changes must be carried out in accordance with the
26 requirements of this Section prior to amendment by Public Act

1 97-8.

2 (Source: P.A. 101-531, eff. 8-23-19; 101-643, eff. 6-18-20.)