



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
HB2438

Introduced 02/17/05, by Rep. Calvin L. Giles

SYNOPSIS AS INTRODUCED:

105 ILCS 5/34-85

from Ch. 122, par. 34-85

Amends the Chicago School District Article of the School Code. In a Section concerning the removal of teachers and principals, provides that each person on the State Board of Education's list of prospective hearing officers must have had a minimum of 5 years of experience as an arbitrator or attorney (instead of requiring that he or she be accredited by a national arbitration organization and have had a minimum of 5 years of experience as an arbitrator in cases involving labor and employment relations matters between educational employers and educational employees or their exclusive bargaining representatives). Makes a technical change having a revisory function.

LRB094 09284 NHT 39522 b

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. No teacher employed by the board of education shall
9 (after serving the probationary period specified in Section
10 34-84) be removed except for cause. No principal employed by
11 the board of education shall be removed during the term of his
12 or her performance contract except for cause, which may include
13 but is not limited to the principal's repeated failure to
14 implement the school improvement plan or to comply with the
15 provisions of the Uniform Performance Contract, including
16 additional criteria established by the Council for inclusion in
17 the performance contract pursuant to Section 34-2.3.

18 The general superintendent must first approve written
19 charges and specifications against the teacher or principal. A
20 local school council may direct the general superintendent to
21 approve written charges against its principal on behalf of the
22 Council upon the vote of 7 members of the Council. The general
23 superintendent must approve those charges within 45 days or
24 provide a written reason for not approving those charges. A
25 written notice of those charges shall be served upon the
26 teacher or principal within 10 days of the approval of the
27 charges. If the teacher or principal cannot be found upon
28 diligent inquiry, such charges may be served upon him by
29 mailing a copy thereof in a sealed envelope by prepaid
30 certified mail, return receipt requested, to the teacher's or
31 principal's last known address. A return receipt showing
32 delivery to such address within 20 days after the date of the

1 approval of the charges shall constitute proof of service.

2 No hearing upon the charges is required unless the teacher
3 or principal within 10 days after receiving notice requests in
4 writing of the general superintendent that a hearing be
5 scheduled, in which case the general superintendent shall
6 schedule a hearing on those charges before a disinterested
7 hearing officer on a date no less than 15 nor more than 30 days
8 after the approval of the charges. The general superintendent
9 shall forward a copy of the notice to the State Board of
10 Education within 5 days from the date of the approval of the
11 charges. Within 10 days after receiving the notice of hearing,
12 the State Board of Education shall provide the teacher or
13 principal and the general superintendent with a list of 5
14 prospective, impartial hearing officers. Each person on the
15 list must ~~be accredited by a national arbitration organization~~
16 ~~and~~ have had a minimum of 5 years of experience as an
17 arbitrator or attorney ~~in cases involving labor and employment~~
18 ~~relations matters between educational employers and~~
19 ~~educational employees or their exclusive bargaining~~
20 ~~representatives.~~

21 The general superintendent and the teacher or principal or
22 their legal representatives within 3 days from receipt of the
23 list shall alternately strike one name from the list until only
24 one name remains. Unless waived by the teacher, the teacher or
25 principal shall have the right to proceed first with the
26 striking. Within 3 days of receipt of the first list provided
27 by the State Board of Education, the general superintendent and
28 the teacher or principal or their legal representatives shall
29 each have the right to reject all prospective hearing officers
30 named on the first list and to require the State Board of
31 Education to provide a second list of 5 prospective, impartial
32 hearing officers, none of whom were named on the first list.
33 Within 5 days after receiving this request for a second list,
34 the State Board of Education shall provide the second list of 5
35 prospective, impartial hearing officers. The procedure for
36 selecting a hearing officer from the second list shall be the

1 same as the procedure for the first list. Each party shall
2 promptly serve written notice on the other of any name stricken
3 from the list. If the teacher or principal fails to do so, the
4 general superintendent may select the hearing officer from any
5 name remaining on the list. The teacher or principal may waive
6 the hearing at any time prior to the appointment of the hearing
7 officer. Notice of the selection of the hearing officer shall
8 be given to the State Board of Education. The hearing officer
9 shall be notified of his selection by the State Board of
10 Education. A signed acceptance shall be filed with the State
11 Board of Education within 5 days of receipt of notice of the
12 selection. The State Board of Education shall notify the
13 teacher or principal and the board of its appointment of the
14 hearing officer. In the alternative to selecting a hearing
15 officer from the first or second list received from the State
16 Board of Education, the general superintendent and the teacher
17 or principal or their legal representatives may mutually agree
18 to select an impartial hearing officer who is not on a list
19 received from the State Board of Education, either by direct
20 appointment by the parties or by using procedures for the
21 appointment of an arbitrator established by the Federal
22 Mediation and Conciliation Service or the American Arbitration
23 Association. The parties shall notify the State Board of
24 Education of their intent to select a hearing officer using an
25 alternative procedure within 3 days of receipt of a list of
26 prospective hearing officers provided by the State Board of
27 Education. Any person selected by the parties under this
28 alternative procedure for the selection of a hearing officer
29 shall have the same qualifications and authority as a hearing
30 officer selected from a list provided by the State Board of
31 Education. The teacher or principal may waive the hearing at
32 any time prior to the appointment of the hearing officer. The
33 State Board of Education shall promulgate uniform standards and
34 rules of procedure for such hearings, including reasonable
35 rules of discovery.

36 The per diem allowance for the hearing officer shall be

1 paid by the State Board of Education. The hearing officer shall
2 hold a hearing and render findings of fact and a recommendation
3 to the general superintendent. The teacher or principal has the
4 privilege of being present at the hearing with counsel and of
5 cross-examining witnesses and may offer evidence and witnesses
6 and present defenses to the charges. The hearing officer may
7 issue subpoenas requiring the attendance of witnesses and, at
8 the request of the teacher or principal against whom a charge
9 is made or the general superintendent, shall issue such
10 subpoenas, but the hearing officer may limit the number of
11 witnesses to be subpoenaed in behalf of the teacher or
12 principal or the general superintendent to not more than 10
13 each. All testimony at the hearing shall be taken under oath
14 administered by the hearing officer. The hearing officer shall
15 cause a record of the proceedings to be kept and shall employ a
16 competent reporter to take stenographic or stenotype notes of
17 all the testimony. The costs of the reporter's attendance and
18 services at the hearing shall be paid by the State Board of
19 Education. Either party desiring a transcript of the hearing
20 shall pay for the cost thereof.

21 Pending the hearing of the charges, the person charged may
22 be suspended in accordance with rules prescribed by the board
23 but such person, if acquitted, shall not suffer any loss of
24 salary by reason of the suspension.

25 Before service of notice of charges on account of causes
26 that may be deemed to be remediable, the teacher or principal
27 shall be given reasonable warning in writing, stating
28 specifically the causes which, if not removed, may result in
29 charges; however, no such written warning shall be required if
30 the causes have been the subject of a remediation plan pursuant
31 to Article 24A. No written warning shall be required for
32 conduct on the part of a teacher or principal which is cruel,
33 immoral, negligent, or criminal or which in any way causes
34 psychological or physical harm or injury to a student as that
35 conduct is deemed to be irreparable. No written warning shall
36 be required for a material breach of the uniform principal

1 performance contract as that conduct is deemed to be
2 irremediable; provided however, that not less than 30 days
3 before the vote of the local school council to seek the
4 dismissal of a principal for a material breach of a uniform
5 principal performance contract, the local school council shall
6 specify the nature of the alleged breach in writing and provide
7 a copy of it to the principal.

8 The hearing officer shall consider and give weight to all
9 of the teacher's evaluations written pursuant to Article 24A.

10 The hearing officer shall within 45 days from the
11 conclusion of the hearing report to the general superintendent
12 findings of fact and a recommendation as to whether or not the
13 teacher or principal shall be dismissed and shall give a copy
14 of the report to both the teacher or principal and the general
15 superintendent. The board, within 45 days of receipt of the
16 hearing officer's findings of fact and recommendation, shall
17 make a decision as to whether the teacher or principal shall be
18 dismissed from its employ. The failure of the board to strictly
19 adhere to the timeliness contained herein shall not render it
20 without jurisdiction to dismiss the teacher or principal. If
21 the hearing officer fails to render a decision within 45 days,
22 the State Board of Education shall communicate with the hearing
23 officer to determine the date that the parties can reasonably
24 expect to receive the decision. The State Board of Education
25 shall provide copies of all such communications to the parties.
26 In the event the hearing officer fails without good cause to
27 make a decision within the 45 day period, the name of such
28 hearing officer shall be struck for a period not less than 24
29 months from the master list of hearing officers maintained by
30 the State Board of Education. The board shall not lose
31 jurisdiction to discharge the teacher or principal if the
32 hearing officer fails to render a decision within the time
33 specified in this Section. If a hearing officer fails to render
34 a decision within 3 months after the hearing is declared
35 closed, the State Board of Education shall provide the parties
36 with a new list of prospective, impartial hearing officers,

1 with the same qualifications provided herein, one of whom shall
2 be selected, as provided in this Section, to rehear the charges
3 heard by the hearing officer who failed to render a decision.
4 The parties may also select a hearing officer pursuant to the
5 alternative procedure, as provided in this Section, to rehear
6 the charges heard by the hearing officer who failed to render a
7 decision. A violation of the professional standards set forth
8 in "The Code of Professional Responsibility for Arbitrators of
9 Labor-Management Disputes", of the National Academy of
10 Arbitrators, the American Arbitration Association, and the
11 Federal Mediation and Conciliation Service, or the failure of a
12 hearing officer to render a decision within 3 months after the
13 hearing is declared closed shall be grounds for removal of the
14 hearing officer from the master list of hearing officers
15 maintained by the State Board of Education. The decision of the
16 board is final unless reviewed as provided in Section 34-85b of
17 this Act.

18 In the event judicial review is instituted, any costs of
19 preparing and filing the record of proceedings shall be paid by
20 the party instituting the review. If a decision of the board
21 ~~hearing officer~~ is adjudicated upon review or appeal in favor
22 of the teacher or principal, then the trial court shall order
23 reinstatement and shall determine the amount for which the
24 board is liable including but not limited to loss of income and
25 costs incurred therein. Nothing in this Section affects the
26 validity of removal for cause hearings commenced prior to the
27 effective date of this amendatory Act of 1978.

28 (Source: P.A. 89-15, eff. 5-30-95; revised 1-20-03.)