Part 51 (Dismissal of Tenured Teachers under Article 24 and Dismissal of Tenured Teachers and Principals under Article 34 of the School Code)

External Review: Proposed Changes

Listed below by Section number are changes proposed during an external review of the rulemaking conducted prior to the proposed amendments being presented to the State Board of Education for its initial review. For ease of reference, a note is provided of the page number of the Board packet on which the proposed rule appears.

Legal staff have reviewed the suggestions made and the State Superintendent is recommending that the Board authorize solicitation of public comment on Part 51 to include the changes in the proposed amendments, as indicated below.

**Section 51.30(a)(3)** [page 23 of the Board packet]

3) Any written notice sent on or after July 1, 2012 shall inform the teacher of the right to request a hearing before a mutually selected hearing officer, with the cost of the hearing officer split equally between the teacher and the Board, or a hearing before a Board-selected hearing officer, with the cost of the hearing paid by the Board (Section 24-12(d)(1) of the School Code). The notice shall inform the tenured teacher of the requirement to copy the State Board of Education on a request for a hearing submitted pursuant to subsection (a)(4) of this Section addressed to the General Counsel, Illinois State Board of Education, 100 W. Randolph Street, Chicago, Illinois 60601.

**Section 51.30(a)(4)** [page 23 of the Board packet]

4) If the tenured teacher chooses to have a hearing, then the tenured teacher shall submit a request for a hearing in writing to the school district within the timeline set forth in subsection (a)(2) of this Section that specifies his or her desire to have the hearing either before a mutually selected hearing officer or a Board-selected hearing officer. The tenured teacher shall send a copy of his or her request for a hearing to the General Counsel, Illinois State Board of Education, 100 W. Randolph Street, Chicago, Illinois 60601.

A) Failure of the tenured teacher to notify the State Board of Education on his or her request for a hearing is not jurisdictional.

B) If a tenured teacher fails to specify the method by which a hearing officer is to be selected, then the hearing officer shall be selected as set forth in Section 50.40(a)(3) of this Part.

**Section 51.30(b)(4)** [page 24 of the Board packet]
4) If the tenured teacher chooses to have a hearing, then the tenured teacher shall submit a request for a hearing in writing to the general superintendent within the timeline set forth in subsection (b)(2) of this Section that specifies his or her desire to have the hearing either before a mutually selected hearing officer or a hearing officer selected by the general superintendent. If a tenured teacher fails to specify the method by which a hearing officer is to be selected, then the hearing officer shall be selected as set forth in Section 50.40(b)(3) of this Part.

Section 51.40(a)(3) [page 26 of the Board packet]

3) A hearing officer shall be selected in accordance with Section 24-12(d)(3) of the School Code and this subsection (a)(3) if the tenured teacher has requested a hearing before a Board-selected hearing officer. Within three business days after receipt of the master list from the State Board of Education, the Board shall select one name from the master list established pursuant to subsection (a)(1) of this Section and, in writing, notify the tenured teacher and the State Board of Education of its selection. Notification to the State Board of Education shall be addressed to the General Counsel, Illinois State Board of Education, 100 W. Randolph Street, Chicago, Illinois 60601.

Section 51.40(a)(4) [page 27 of the Board packet]

4) In lieu of selecting a hearing officer pursuant to subsections (a)(2) or (a)(3) of this Section, the parties may mutually select either an impartial hearing officer who is on the State Board’s master list but was not on the list provided to the parties under subsection (a)(2) of this Section or may mutually select an impartial hearing officer who is not on the State Board’s master list either directly or by using procedures for the appointment of an arbitrator established by the Federal Mediation and Conciliation Service or the American Arbitration Association. The parties shall notify the State Board of Education of their intent to select a hearing officer using an alternative process within 3 business days of the receipt of the list of prospective hearing officers provided by the State Board, or the notice of appointment of hearing officer by the State Board, or receipt of notice from the State Board of Education that it cannot provide a list of qualified, impartial hearing officers, whichever occurs later. (See Section 24-12(d)(4) of the School Code.)

Section 51.40(b)(1)(D) [page 27 of the Board packet]

D) Beginning on September 1, 2012, he or she must have successfully completed the training provided or approved by the State Board of Education specific to issues generally involved in evaluative and non-evaluative dismissals (Section 34-85(a)(3) of the School Code).

Section 51.55(e) [page 32 of the Board packet]
The hearing officer shall allow for interrogatories and requests for production of documents, and may allow for other discovery, subject to reasonable limitations set forth by the hearing officer, in the order reflecting the pre-hearing conference or any future order. The hearing officer shall not allow for discovery depositions (Sections 24-12(d)(6) and 34-85(a)(5) of the School Code).

**Section 51.55(g) [page 33 of the Board packet]**

g) Any party who proceeds with the hearing after knowledge that any provision of this Subpart B 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.

**Section 51.60(c)(3) [page 34 of the Board packet]**

3) The Board shall proceed first to present its evidence, and it shall have the burden of proof. Parties may agree to take witnesses out of order. 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.

**Section 51.60(c)(11) [page 35 of the Board packet]**

11) Each party shall be provided no more than three business days to present its case, unless the hearing officer determines, in accordance with the provisions of Section 24-12(d)(6) or Section 34-85(a)(5) of the School Code, that more time is needed for either the tenured teacher or the Board to present adequate evidence and testimony, including due to the other party’s cross-examination of the party’s witnesses. For the purposes of this subsection (c)(11), a “business day” shall consist of 7.5 hours, such that three business days equates to 22.5 hours, exclusive of time taken for lunch and other breaks.

**Section 51.60(c)(12) [page 36 of the Board packet]**

12) At the conclusion of the hearing, each party may make an oral closing statement (orally and/or written at the discretion of the hearing officer) incorporating arguments of fact and law.

**Section 51.60(c)(14) [page 36 of the Board packet]**

14) At the close of the hearing, the hearing officer shall direct the parties to submit post-hearing briefs no later than 21 days after receipt of the transcript, unless extended by the hearing officer for good cause or by mutual agreement of the parties (Sections 24-12(d)(6) and 34-85(a)(5) of the School Code). Post-hearing briefs may not exceed 20 pages in length, unless the hearing officer determines
in a written order that the circumstances of a particular matter (e.g., length of the hearing) warrant a limitation shorter or longer than 50 pages as an exception. Either or both parties may waive submission of briefs. If written briefs are to be submitted subsequently, the hearing officer shall so note in the record.

Section 51.70(a)(2)(B)(viii) and (ix) [pages 38 and 39 of the Board packet]

viii) All staff memoranda or data submitted to the hearing officer or staff of the State Board of Education in connection with their consideration of the case that are inconsistent with Section 10-60 of the Illinois Administrative Procedure Act (“Ex parte communications”).

ix) Any ex parte communication prohibited by Section 10-60 of the Illinois Administrative Procedure Act; this communication shall not form the basis for any findings of fact.

viii) Any other material required under Section 10-35 of the Illinois Administrative Procedure Act [5 ILCS 100/10-35].

Section 51.70(b)(2)(B)(viii) and (ix) [pages 40 and 41 of the Board packet]

viii) All staff memoranda or data submitted to the hearing officer or staff of the State Board of Education in connection with their consideration of the case that are inconsistent with Section 10-60 of the Illinois Administrative Procedure Act (“Ex parte communications”).

ix) Any ex parte communication prohibited by Section 10-60 of the Illinois Administrative Procedure Act; this communication shall not form the basis for any findings of fact.

viii) The decision of the Board.

ix) Any other material required under Section 10-35 of the Illinois Administrative Procedure Act [5 ILCS 100/10-35].

Section 51.210(a)(2) [page 46 of the Board packet]

2) The teacher representatives may submit in writing to the school district the names and qualifications of additional individuals to be included on the list of second evaluators, provided that they shall not submit more teacher evaluators for inclusion on the list than the number of evaluators submitted by the school district (Section 24-16.5(c)(1) of the School Code). Each individual whose name is submitted by the teacher representatives to serve as a second evaluator shall meet one of the qualifications specified in Section 24-16.5(c) of the School Code; that is, either:
Section 51.210(a)(3) [page 46 of the Board packet]

3) If the teacher representatives fail to submit in writing any names of additional second evaluators within 21 calendar days after receiving the written notification specified in subsection (a)(1) of this Section, then the school district may proceed with a remediation using a list of second evaluators that includes only those names identified by the school district.

Various Sections

Further, modifications will be made in several sections of the rules to ensure consistency among the provisions regarding requirements for the hearing officer to provide his or her findings of fact and recommendation or decision to both the tenured teacher and local school board of education by certified mail and to provide a copy to the State Board of Education, attention General Counsel at the Chicago office address. The sections of the rules affected are:

- Section 51.70 introduction (page 37)
- Section 51.70(a)(1) (page 38)
- Section 51.70(b)(1) (page 39)
- Section 51.75 introduction (page 43)
- Section 51.75(b) (page 43)
- Section 51.280(b) (page 53)
- Section 51.290(a)(1) (page 54)