

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

SUBPART A: GENERAL PROVISIONS

Section

51.10 Definitions

SUBPART B: STANDARD DISMISSAL PROCEDURES
UNDER ARTICLES 24 AND 34 OF THE SCHOOL CODE

- 51.20 Applicability of this Subpart B
51.30 Notice of Charges to Tenured Teachers
51.35 Suspension without Pay
51.40 Qualifications and Selection of Hearing Officers; Conditions of Service
51.50 Suspension Pending the Hearing (Repealed)
51.55 Pre-Hearing Procedures
51.60 The Hearing
51.70 The Decision: School Districts Not Organized under Article 34 of the School Code
51.75 The Decision: School Districts Organized under Article 34 of the School Code
51.80 Waiver, Interpretation and Application of this Part (Repealed)

SUBPART C: OPTIONAL ALTERNATIVE EVALUATIVE DISMISSAL
UNDER SECTION 24-16.5 OF THE SCHOOL CODE

Section

- 51.200 Purpose and Applicability of this Subpart C
51.210 Establishment of the List of Second Evaluators; Qualifications
51.220 Selection of Second Evaluators
51.230 Use of a Second Evaluator in Specific Remediations
51.235 Approval of Providers of PERA Training
51.240 Hearing Procedures

- 51.250 Notice of Dismissal to the Affected Tenured Teacher
- 51.260 Qualifications and Selection of Hearing Officers
- 51.270 Scope of the Hearing
- 51.280 Findings of Fact and Recommendation of the Hearing Officer
- 51.290 Decision of Board

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; amended at 36 Ill. Reg. 12829, effective July 25, 2012; amended at 38 Ill. Reg. 21906, effective November 3, 2014; amended at 44 Ill. Reg. 14763, effective September 11, 2020.

SUBPART A: GENERAL PROVISIONS

Section 51.10 Definitions

As used in this Part:

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

"Day" means calendar day unless otherwise specified in this Part, and the time within which any action required under this Part must occur shall be determined in accordance with the provisions of Section 1.11 of the Statute on Statutes [5 ILCS 70/1.11].

"General Superintendent" means the chief executive officer of City of Chicago School District 299. (See 105 ILCS 5/34-6.)

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

"PERA" means the Performance Evaluation Reform Act of 2010 (P.A. 96-861, effective January 15, 2010).

"School Code" or "Code" means 105 ILCS 5.

"State Board" means the Illinois State Board of Education.

"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 organized under Article 34 of the School Code [105 ILCS 5/Art. 34], 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 44 Ill. Reg. 14763, effective September 11, 2020)

SUBPART B: STANDARD DISMISSAL PROCEDURES UNDER ARTICLES 24 AND 34 OF
THE SCHOOL CODE

Section 51.20 Applicability of this Subpart B

This Subpart B applies to the dismissal for reason or cause of a tenured teacher (see Section 51.10 of this Part) under Section 24-12(d) or Section 34-85 of the School Code, other than a tenured 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]. That is, this Subpart B applies to dismissals of tenured teachers other than honorable dismissals (i.e., those set forth in Section 24-12(a) or (b) of the School Code), as follows:

- a) For any tenured teacher who fails to complete a remediation plan with a performance evaluation rating of “satisfactory” or “proficient” or better or who, in accordance with Section 24A-5(n) of the School Code, successfully completes a remediation plan but receives a subsequent performance evaluation rating of “unsatisfactory” anytime during the 36 months following the completion of the remediation plan (see Section 24A-5(m) and (n) of the School Code);
- b) For any tenured teacher who is being dismissed due to conduct that the Board does not consider remediable. (See Sections 24-12(d) and 34-85(a) of the School Code.)

(Source: Amended at 36 Ill. Reg. 12829, effective July 25, 2012)

Section 51.30 Notice of Charges to Tenured Teachers

The provision of notice of charges to the affected tenured teacher shall be as set forth in Section 24-12(d)(1) or 34-85 of the School Code, as applicable, and this Section.

- a) Notice of Charges for School Districts Not Organized under Article 34 of the School Code
 - 1) The notice shall be mailed by first-class U.S. mail to the tenured teacher and provided either by certified mail, return receipt requested, or personal delivery with receipt, within five days after the Board's adoption of a motion for the dismissal (see Section 24-12(d) of the School Code). If the teacher cannot be found by diligent inquiry, then the charges may be sent by certified mail, return receipt requested, at his or her last known address. A return receipt showing delivery to the teacher's last known address within 20 calendar days after the date of approval of the charges shall constitute proof of service.
 - 2) The notice shall include a bill of particulars and inform the tenured teacher of his or her right to request, in writing to the school district, a hearing within 17 days after receiving the notice (see Section 24-12(d) of the School Code).
 - A) The notice shall inform the tenured teacher of the requirement to copy the State Board on a request for a hearing submitted pursuant to subsection (a)(3) of this Section addressed to the General Counsel, Illinois State Board of Education, 100 W. Randolph Street, Chicago, Illinois 60601.
 - B) *In addition, 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).*
 - 3) 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 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 51.40(a)(3) of this Part.
- b) Notice of Charges for School Districts Organized under Article 34 of the School Code
- 1) The written notice shall be served upon the tenured teacher within 10 business days after approval of the charges (see Section 34-85(a) of the School Code). For purposes of this subsection (b)(1), “service” shall be by first-class U.S. mail, and also either by certified mail, return receipt requested, or personal delivery. If the tenured teacher cannot be found upon diligent inquiry, then the charges may be served by certified mail, return receipt requested, sent to the tenured teacher’s last known address. A return receipt showing delivery to the teacher’s last known address within 20 calendar days after the date of approval of the charges shall constitute proof of service. (See Section 34-85(a)(1) of the School Code.)
 - 2) The notice shall include the specifications of the dismissal and inform the tenured teacher of his or her right to request, in writing to the general superintendent, a hearing within 17 days after receiving the notice (see Section 34-85(a) of the School Code).
 - A) The notice shall inform the tenured teacher or principal of the requirement to copy the State Board of Education on a request for a hearing submitted pursuant to subsection (b)(3) of this Section addressed to the General Counsel, Illinois State Board of Education, 100 W. Randolph Street, Chicago, Illinois 60601, if the teacher elects not to participate in the process to select a hearing officer.
 - B) In addition, *any notice sent on or after July 1, 2012 shall inform the teacher or principal 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 or principal and the Board, or a hearing before a qualified hearing officer chosen by the general superintendent, with the cost of the hearing officer paid by the Board (Section 34-85(a)(1) of the School Code).

- 3) 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 the tenured teacher elects not to participate in the process to select a hearing officer, then he or she 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 51.40(b)(3) of this Part.

(Source: Amended at 36 Ill. Reg. 12829, effective July 25, 2012)

Section 51.35 Suspension without Pay

- a) For school districts not organized under Article 34 of the School Code, *if, in the opinion of the Board, the interests of the school require it, the Board may suspend the teacher without pay, pending the hearing, but if the Board's dismissal or removal is not sustained, the teacher shall not suffer the loss of any salary or benefits, less setoffs for mitigation, by reason of the suspension* (Section 24-12(d)(1) and (d)(8) of the School Code).
- b) For a school district organized under Article 34 of the School Code, the general superintendent or his or her designee may make the determination to suspend the tenured teacher *without pay in accordance with rules prescribed by the Board, provided that, if the teacher or principal charged is not dismissed based on the charges, he or she must be made whole for lost earnings, less setoffs for mitigation* (Section 34-85(a)(2) of the School Code).

(Source: Added at 36 Ill. Reg. 12829, effective July 25, 2012)

Section 51.40 Qualifications and Selection of Hearing Officers; Conditions of Service

- a) Master List of Hearing Officers and Selection of Hearing Officers – School Districts Not Organized under Article 34 of the School Code
 - 1) The State Board shall maintain a master list of qualified impartial hearing officers in accordance with Section 24-12(d)(3) of the School Code. Each hearing officer on the master list maintained by the State Board shall possess the following qualifications:
 - A) He or she *must be accredited by a national arbitration organization and have had a minimum of 5 years of experience directly related to labor and employment relations matters between employers and employees or their exclusive bargaining representatives* (Section 24-12(d)(3) of the School Code).
 - B) He or she must not be a resident of the school district involved in the hearing (see Section 24-12(d)(3) of the School Code).
 - C) He or she must be disinterested and impartial.
 - D) He or she must have no financial or personal interest in the result of the hearing.
 - E) Beginning on September 1, 2012, he or she must have successfully completed the training provided or approved by the State Board *specific to issues generally involved in evaluative and non-evaluative dismissals* (Section 24-12(d)(3) of the School Code).
 - F) He or she *must be available to commence the hearing within 75 days and conclude the hearing within 120 days after being selected as hearing officer* (Section 24-12(d) of the School Code).
 - 2) A hearing officer shall be selected as set forth in Section 24-12(d)(3) of the School Code and this subsection (a)(2) if the tenured teacher has requested a hearing before a mutually selected hearing officer.
 - A) The State Board shall, from the master list, provide, on a rotating basis, a list of five prospective hearing officers within five business days after receiving a copy of the tenured teacher's request for a hearing.

- B) *Within three business days after receiving the list of prospective hearing officers, the Board and the teacher, or their legal representatives, shall either:*
- i) *alternately strike one name from the list until one name remains (unless waived by the teacher, the teacher shall have the right to strike first); or*
 - ii) *reject all prospective hearing officers on the list, in which case, the party rejecting the entire list shall notify the State Board and the other party. (See Section 24-12(d)(3) of the School Code.)*
- C) If the parties reject the entire list, the notification sent to the State Board shall include whether the parties prefer that the State Board appoint, on a rotating basis, a hearing officer from the master list who was not on the parties' rejected list, or whether the parties intend to select a hearing officer through an alternative method in accordance with Section 24-12(d)(4) of the School Code.
- 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, 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 its selection. Notification to the State Board shall be addressed to the General Counsel, Illinois State Board of Education, 100 W. Randolph Street, Chicago, Illinois 60601.
- 4) In lieu of selecting a hearing officer pursuant to subsection (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 *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 their intent to select a hearing officer using an alternative process within 3 business days after 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 that it cannot provide a list of qualified, impartial hearing officers, whichever occurs later (Section 24-12(d)(4) of the School Code).

- b) List of Hearing Officers and Selection of Hearing Officers – School Districts Organized under Article 34 of the School Code
- 1) A school district organized under Article 34 of the School Code shall maintain a separate list of nine hearing officers to conduct hearings on charges and specifications. The school district shall develop the list *in good faith consultation with the exclusive representative of the Board's teachers and professional associations that represent the Board's principals* (Section 34-85(a)(3) of the School Code). Each hearing officer shall maintain the following qualifications:
 - A) He or she *must 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 employers and employees or their exclusive bargaining representatives* (Section 34-85(a)(3) of the School Code).
 - B) He or she must be disinterested and impartial.
 - C) He or she must have no financial or personal interest in the result of the hearing.
 - D) Beginning on September 1, 2012, he or she must have successfully completed the training provided or approved by the State Board *specific to issues generally involved in evaluative and non-evaluative dismissals* (Section 34-85(a)(3) of the School Code).
 - E) He or she must be available *to commence the hearing within 75 calendar days and conclude the hearing within 120 calendar days after being selected as hearing officer* (Section 34-85(a)(5) of the School Code).
 - 2) A hearing officer shall be selected as set forth in Section 34-85(a)(3) of the School Code and this subsection (b)(2) if the tenured teacher has chosen to use a mutually selected hearing officer. *The general superintendent and*

the teacher or principal or their legal representatives, within 5 business days after receiving the notice of request for a hearing, shall alternately strike one name from the list of nine qualified hearing officers until only one name remains. Unless waived by the teacher, the teacher or principal shall have the right to proceed first with the striking. (Section 34-85(a)(3) of the School Code)

- 3) A hearing officer shall be selected as set forth in Section 34-85(a)(4) of the School Code and this subsection (b)(3) if the tenured teacher does not participate in the selection process. The general superintendent either shall select the hearing officer from the list of nine qualified hearing officers or *select another qualified hearing officer from the master list maintained by the State Board.* (Section 34-85(a)(3) of the School Code) (See subsection (a)(1) of this Section.)
- c) For purposes of the master list maintained by the State Board pursuant to subsection (a)(1) of this Section, the names of the four hearing officers not selected from among the five provided to a school district under subsection (a)(2) of this Section shall be placed at the bottom of the master list and the State Board shall rotate the names on the list accordingly.
- d) As soon as possible, the prospective hearing officer shall disclose to the parties in writing any circumstances he or she believes might disqualify him or her as an impartial hearing officer.
 - 1) The parties may waive the presumptive disqualification.
 - 2) If either party declines to waive the presumptive disqualification, the party shall notify the State Board of this fact, and the State Board, within five days after receiving this disclosure, shall declare a vacancy.
- e) 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 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; that is:
 - A) For school districts not organized under Article 34 of the School Code, either by mutual selection by the tenured teacher and the Board, or by the Board; and

- B) For a school district organized under Article 34 of the School Code, either by mutual selection by the tenured teacher and the general superintendent, or by the general superintendent.
 - 2) If a vacancy occurs at any point prior to the opening of the hearing, a new hearing officer shall be appointed and shall adopt all pre-hearing orders entered by the previous hearing officer.
 - 3) If a vacancy occurs after the opening of a hearing, the entire matter shall be reheard by a new hearing officer unless, after considering arguments presented by each party, the hearing officer adopts the previous hearing officer's findings and agrees to move forward.
- f) Fees and Costs
- 1) If the notice of dismissal is sent to the tenured teacher before July 1, 2012, the State Board shall pay the hearing officer a per diem of \$300 for the days on which the hearing is held and \$37.50 per hour for any other services, or greater amounts as the State Board may determine based on available resources. Billing procedures shall be arranged on an individual basis between the State Board and the hearing officer.
 - 2) If the notice of dismissal is sent to the tenured teacher on or after July 1, 2012, payment shall be made in accordance with Section 24-12(d)(5) or 34-85(a)(4) of the School Code.
- g) 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. However, when 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.
- h) All hearing officers shall abide by the professional standards set forth in "The Code of Professional Responsibility for Arbitrators of Labor Management Disputes" (2007), published by the National Academy of Arbitrators, 1 North Main Street, Suite 412, Cortland, New York 13045; no later amendments to or editions of these standards are incorporated. A violation of the professional standards identified in this subsection (h) shall be grounds for removal of the hearing officer from the master list maintained by the State Board.

- i) 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.

(Source: Amended at 36 Ill. Reg. 12829, effective July 25, 2012)

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) The tenured teacher shall answer the bill of particulars or charges and specifications, aver any affirmative defenses, and update the answer and defenses, in accordance with the schedule set forth by the hearing officer pursuant to subsection (c) of this Section. (See Sections 24-12(d)(6) and 34-85(a)(5) of the School Code.)
- c) Pre-Hearing Conference

No later than 10 days after being selected as the hearing officer, the hearing officer shall convene a pre-hearing conference with the parties for the purpose of, among other things, setting a schedule. The schedule shall be contained in the hearing officer's order that reflects the action taken at the conference and include:

- 1) The deadline for the tenured teacher's answer and any affirmative defenses to the bill of particulars or charges and specifications submitted pursuant to subsection (b) of this Section and for the updating of that information after pre-hearing discovery;
 - 2) A schedule for discovery, including any written interrogatories and requests for production of documents;
 - 3) The deadline for initial disclosures and updated disclosures to be sent to the other party, which deadline may be no later than 10 days prior to the commencement of the hearing (see Sections 24-12(d)(6) and 34-85(a)(5)); and
 - 4) The dates, times and locations of any subsequent pre-hearing conferences, as needed.
- d) Initial Disclosures and Updated Disclosures

Subject to the deadline established by the hearing officer in his or her order issued pursuant to subsection (c) of this Section, and in accordance with Sections 24-12(d)(6) and 34-85(a)(5) of the School Code, each party shall disclose in writing to the other, with copies to the hearing officer, the following information:

- 1) *The names and addresses of persons who may be called as witnesses at the hearing;*
 - 2) *A summary of the facts or opinions each witness will testify to; and*
 - 3) *All other documents and materials, including information maintained electronically, relevant to its own as well as the other party's case (the hearing officer may exclude witnesses and exhibits not identified and shared, except those offered in rebuttal for which the party could not reasonably have anticipated prior to the hearing). (Sections 24-12(d)(6) and 34-85(a)(5) of the School Code)*
- e) Discovery

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 (see Sections 24-12(d)(6) and 34-85(a)(5) of the School Code).

- 1) Application for discovery shall be made by written motion to the hearing officer, with copies to the other party.
- 2) The motion shall state the specific nature of the discovery and the circumstances necessitating the discovery. If interrogatories are sought, a copy of the interrogatories shall be attached to the motion.
- 3) The hearing officer shall rule on the motion within five days after receipt of the motion, sending copies of the decision to both parties. 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 when the provisions of subsection (e)(2) of this Section have been complied with.
- 4) In ruling on the motion, the hearing officer shall not permit discovery that will unnecessarily delay the proceedings or harass a party, and shall allow only that discovery that will further the resolution of the dispute, avoid surprise to a party, or aid in doing substantial justice.

- 5) 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.
- f) Other pretrial motions may be filed and 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.
- g) Any party who proceeds with the hearing after knowledge that any provision of this Subpart B has not been complied with prior to the hearing and who fails to state his or her objection to the noncompliance in writing to the hearing officer shall be deemed to have waived his or her right to object.

(Source: Amended at 36 Ill. Reg. 12829, effective July 25, 2012)

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. When a witness is a minor, the hearing officer shall allow the parent or representative of the minor to be present when the minor is testifying. 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, 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, provided that the parties agree to take witnesses out of order, but in any event shall afford full and equal opportunity to all parties for presentation of relevant proof.
 - 4) Either party may offer evidence and witnesses, cross-examine the witnesses, 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 the requested subpoenas but may limit the number of witnesses to be subpoenaed on behalf of either party to not more than seven.

- 7) The hearing officer shall cause a record of the proceedings to be kept and shall employ a competent reporter to take stenographic or steno-type notes of all the testimony. *The party or parties who are responsible for paying the fees and costs of the hearing officer* (Sections 24-12(d)(6) and 34-85(a)(5) of the School Code) shall pay for the attendance and services of the court reporter or other competent reporter who can provide a verbatim transcript of the proceeding. (See Section 51.40(f) of this Part.)
 - A) The cost of any transcript ordered by the hearing officer shall be paid by the party or parties responsible for paying the fees and cost of the hearing officer.
 - B) Either party desiring a transcript of the hearing shall pay for the cost of the transcript (see Sections 24-12(d)(6) and 34-85(a)(5) of the School Code).
- 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 shall commence within 75 days and conclude within 120 days after the appointment of the hearing officer, barring modification of these timelines by the hearing officer upon a showing of good cause or mutual agreement of the parties. "Good cause" for the purpose of this subsection (c)(9) shall mean *the illness or otherwise unavoidable emergency of the teacher, district representative, their legal representatives, the hearing officer, or an essential witness as indicated in each party's pre-hearing submission* (Sections 24-12(d)(6) and 34-85(a)(5) of the School Code).
- 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) 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 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.

- 12) At the conclusion of the hearing, each party may make an oral closing statement incorporating arguments of fact and law.
 - 13) 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 so note in the record.
 - 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 50 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. Either party may waive submission of a brief. If written briefs are to be submitted subsequently, the hearing officer shall so note in the record.
 - 15) The record of the proceedings shall not be considered closed until all evidence has been submitted and any briefs have been timely received by the hearing officer. The hearing officer shall notify the parties, in writing, of the closing date of the record.
- d) Evidentiary rules to be followed during the hearing shall be as follows:
- 1) The parties may offer any evidence as they desire, and each party shall produce any additional evidence as the hearing officer may deem necessary to an understanding and determination of the dispute.
 - 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 and with the other party within the time designated by the hearing officer.

(Source: Amended at 36 Ill. Reg. 12829, effective July 25, 2012)

Section 51.70 The Decision: School Districts Not Organized under Article 34 of the School Code

When a hearing is held under Section 24-12(d) of the School Code, the hearing officer must, *within 30 days after the hearing is concluded or the record is closed, whichever is later*, render a *final decision* as to whether the tenured teacher shall be dismissed pursuant to Article 24A of the School Code (unless the school district pursues the dismissal under Subpart C of this Part) *or findings of fact and recommendation as to whether the teacher must be dismissed for conduct* (Sections 24-12(d)(7) of the School Code). The hearing officer shall provide a copy of the decision or findings of fact and recommendation issued pursuant to this Section to the State Board of Education by certified mail addressed to the General Counsel, Illinois State Board of Education, 100 W. Randolph Street, Chicago, Illinois 60601.

- a) Dismissal Due to Performance Pursuant to Article 24A of the School Code
 - 1) In a dismissal hearing regarding performance pursuant to Article 24A of the School Code, the hearing officer shall render a decision in writing as to whether the tenured teacher shall be dismissed. *The hearing officer shall consider and give weight to all of the teacher's evaluations*, subject to their introduction at the hearing, *that are relevant to the issues in the hearing* (Section 24-12(d)(6) of the School Code).
 - 2) A copy of the hearing officer's decision shall be given by certified mail to both the tenured teacher and the Board or their legal representatives of record.
 - 3) The decision of the hearing officer 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].
 - A) In the case of an administrative review, the Board shall prepare and file the record of proceedings and the parties shall share the cost equally of preparing and filing the record (see Section 24-12(d)(9) of the School Code).
 - B) The record of the proceedings shall contain each of the items listed in this subsection (a)(2)(B).
 - i) All pleadings and exhibits (including all notices and responses), motions and rulings.

- ii) All evidence received.
- iii) A statement of matters officially noticed.
- iv) Any offers of proof, objections, and rulings on the proof and objections.
- v) Any proposed findings and exceptions.
- vi) A transcript of the hearing.
- vii) The decision of the hearing officer.
- viii) Any other material required under Section 10-35 of the Illinois Administrative Procedure Act [5 ILCS 100/10-35].

b) Dismissal Due to Conduct Pursuant to Section 24-12(d) of the School Code

In a dismissal hearing regarding conduct pursuant to Section 24-12(d) of the School Code, the hearing officer shall issue *findings of fact and recommendation as to whether the conduct occurred, the conduct was remediable, and the proposed dismissal should be sustained* (Section 24-12(d)(8) of the School Code).

- 1) A copy of the hearing officer's findings of fact and recommendation shall be given by certified mail to both the tenured teacher and the Board, or their legal representatives of record.
- 2) The Board, *within 45 days after receipt of the hearing officer's findings of fact and recommendation* rendered pursuant to Section 24-12(d) of the School Code, *shall issue a written order as to whether the teacher must be retained or dismissed for cause.* (Section 24-12(d)(8) of the School Code) A copy of the Board's written order shall be given by certified mail to the tenured teacher and his or her legal representatives of record and to the State Board at the address set forth in this Section.
 - A) The order shall incorporate the findings of fact, except that the school board may modify or supplement the findings of fact if, in its opinion, the findings of fact are against the manifest weight of the evidence. (Section 24-12(d)(8) of the School Code)

- B) *If the school board dismisses the teacher notwithstanding the hearing officer's findings of fact and recommendation, the school board shall make a conclusion in its written order, giving its reasons therefor, and such conclusion and reasons must be included in its written order.* (Section 24-12(d)(8) of the School Code)
- 3) The decision of the Board, as set forth in its written order, is final unless reviewed under the Administrative Review Law, as provided in Section 24-16 of the School Code [105 ILCS 5/24-16].
- A) In the case of an administrative review, the Board shall prepare and file the record of proceedings and the parties shall share the cost equally of preparing and filing the record (see Section 24-12(d)(10) of the School Code).
- B) The record of the proceedings shall contain each of the items listed in this subsection (b)(3)(B).
- i) All pleadings and exhibits (including all notices and responses), motions and rulings.
- ii) All evidence received.
- iii) A statement of matters officially noticed.
- iv) Any offers of proof, objections, and rulings on the proof and objections.
- v) Any proposed findings and exceptions.
- vi) A transcript of the hearing.
- vii) The findings of fact and recommendation of the hearing officer.
- viii) The decision of the Board, as set forth in its written order.
- ix) Any other material required under Section 10-35 of the Illinois Administrative Procedure Act.

- c) Pursuant to Section 24-12(d)(7) of the School Code, if the hearing officer fails, without good cause specifically provided in writing to the parties and the State Board, to render a decision issued pursuant to subsection (a) of this Section or findings of fact and recommendation issued pursuant to subsection (b) of this Section within 30 days after the later of the close of the hearing or the record, the parties may mutually agree to select a hearing officer pursuant to the alternative selection procedures provided under Section 24-12(d)(4) of the School Code to rehear the charges or review the record and render a decision.
- 1) The hearing officer who failed to timely render a decision or findings of fact and recommendation without good cause shall have his or her name struck from the master list of hearing officers maintained by the State Board of Education for a period of not more than 24 months.
 - 2) The parties and the State Board may take other actions as they deem appropriate regarding reducing fees paid to the hearing officer.
 - 3) If any hearing officer again fails to provide in a timely manner a decision or findings of fact and recommendation without good cause, the State Board shall remove him or her permanently from the master list and prohibit any party from selecting this hearing officer through the alternative selection process in Section 24-12(d)(4) of the School Code.
- d) Pursuant to Section 24-12(d)(7) 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 36 Ill. Reg. 12829, effective July 25, 2012)

Section 51.75 The Decision: School Districts Organized under Article 34 of the School Code

When a hearing is held under Section 34-85 of the School Code regarding performance pursuant to Article 24A of the School Code or conduct, *the hearing officer shall, within 30 calendar days after the conclusion of the hearing, report to the general superintendent findings of fact and a recommendation as to whether the teacher or principal shall be dismissed* (Section 34-85(a)(6) of the School Code). The hearing officer shall provide a copy of the findings of fact and recommendation issued pursuant to this Section to the State Board of Education by certified mail addressed to the General Counsel, Illinois State Board of Education, 100 W. Randolph Street, Chicago, Illinois 60601.

- a) In a dismissal hearing regarding performance pursuant to Article 24A of the School Code, *the hearing officer shall consider and give weight to all of the teacher's evaluations*, subject to their introduction at the hearing, *that are relevant to the issues in the hearing*. (Section 34-85(a)(5) of the School Code)
- b) *The hearing officer shall report to the general superintendent findings of fact and a recommendation as to whether the teacher or principal shall be dismissed and shall give a copy of the report to both the teacher or principal and the general superintendent* (Section 34-85(a)(6) of the School Code). A copy of the hearing officer's findings of fact and recommendation shall be given by certified mail to the tenured teacher or his or her legal representatives of record.
- c) If the hearing officer is appointed from the master list developed by the State Board and he or she fails, without good cause, to render a findings of fact and recommendation within the required timeframe, then his or her name shall be struck from the master list of hearing officers for a period of at least 24 months. Other action may be taken as provided in Section 51.70(c) of this Part.
- d) The decision of the hearing officer regarding dismissal due to either performance or conduct rendered pursuant to Section 34-85 of the School Code is the findings of fact and recommendation to the Board.
 - 1) The Board shall make a decision as to whether the tenured teacher shall be dismissed within 45 days after receiving the hearing officer's report of findings and recommendation.
 - 2) A copy of the Board's decision shall be given by certified mail to the tenured teacher and his or her legal representatives of record, and to the State Board at the address set forth in this Section.

- 3) 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], with the review required to be initiated in the Illinois Appellate Court for the First District (see Section 34-85(a)(8) of the School Code).
 - A) In the case of an administrative review, the Board shall prepare and file the record of proceedings and the parties shall share the costs of preparing and filing the record equally.
 - B) The record of the hearing shall contain each of the items enumerated in Section 51.70(b)(3)(B) of this Part.
- 4) Pursuant to Section 34-85(a)(7) of the School Code, *the failure of the Board to strictly adhere to the timeline set forth in subsection (d)(1) of this Section does not render it without jurisdiction to dismiss the tenured teacher.*

(Source: Added at 36 Ill. Reg. 12829, effective July 25, 2012)

Section 51.80 Waiver, Interpretation and Application of this Part (Repealed)

(Source: Repealed at 36 Ill. Reg. 12829, effective July 25, 2012)

SUBPART C: OPTIONAL ALTERNATIVE EVALUATIVE DISMISSAL UNDER SECTION 24-16.5 OF THE SCHOOL CODE

Section 51.200 Purpose and Applicability of this Subpart C

- a) This Subpart C sets forth the requirements for a school district, including a school district organized under Article 34 of the School Code, to implement an optional alternative evaluative dismissal process authorized under Section 24-16.5 of the School Code [105 ILCS 5/24-16.5].
- b) A school board may dismiss a tenured teacher using an optional alternative evaluative process if each of the conditions set forth in this subsection (b) are met. (See Section 24-16.5(b) of the School Code.)
 - 1) The tenured teacher is being dismissed due to his or her failure to complete a remediation plan, developed pursuant to Section 24A-5 of the School Code [105 ILCS 5/24A-5], with a rating of “proficient” or better.
 - 2) The “unsatisfactory” rating that precipitated the remediation plan resulted from a performance evaluation process that:
 - A) addressed teacher practice components and included data and indicators of student growth; and
 - B) was conducted on or after the date on which the school district was required to implement a performance evaluation plan incorporating data and indicators of student growth or an earlier date, as authorized under Section 24A-2.5 of the School Code [105 ILCS 5/24A-2.5].
 - 3) The school district has complied with the requirements of Section 24-16.5(c) of the School Code and this Subpart C regarding the selection and use of a second evaluator during the pre-remediation and remediation processes.
- c) *Nothing in this Subpart C is intended to change the existing practices or precedents under Section 24-12 or 34-85 of the School Code, nor shall this Subpart C be interpreted as implying standards and procedures that should or must be used as part of a remediation that precedes a dismissal sought under Section 24-12 or 34-85 of the School Code (Section 24-16.5(b) of the School Code).*

(Source: Added at 36 Ill. Reg. 12829, effective July 25, 2012)

Section 51.210 Establishment of the List of Second Evaluators; Qualifications

- a) Before a school district's first remediation relating to a dismissal under Section 24-16.5 of the School Code and this Part, the school district shall establish a list of at least two evaluators who meet the qualifications set forth in subsection (b) of this Section to serve as second evaluators.
 - 1) The school district shall provide written notification to the teacher representatives identified pursuant to subsection (e) of this Section of the names and qualifications of the individuals it has chosen to include as second evaluators.
 - 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:
 - A) holds certification from the *National Board of Professional Teaching Standards*, with no "unsatisfactory" or "needs improvement" performance evaluation ratings in his or her two most recent performance evaluations; or
 - B) has obtained a performance evaluation rating of "excellent" in two of the three most recent performance evaluations, with no "needs improvement" or "unsatisfactory" performance evaluation ratings in his or her last three ratings.
 - 3) If the teacher representatives fail to submit in writing any names of additional second evaluators within 21 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.
- b) Each second evaluator shall be qualified to serve as an evaluator under Section 24A-3 of the School Code [105 ILCS 5/24A-3].

- c) The list of second evaluators may be revised either by the school district or teacher representatives at any time, with the party initiating the revision providing at least three days notice to the other party of its intent to revise the list. The process to revise the list shall be made in accordance with this Section and Section 24-16.5(c)(2) of the School Code.

- d) Establishment of the Process for Selecting a Second Evaluator
 - 1) Before a school district's first remediation relating to a dismissal under Section 24-16.5 of the School Code and this Subpart, the school district also shall, in good faith cooperation with its teacher representatives, develop a process to be used to select a second evaluator from the list established pursuant to subsection (a) (see Section 24-16.5(c)(2) of the School Code).
 - 2) The process may be amended at any time in good faith cooperation with the teacher representatives.
 - 3) If the teacher representatives are given an opportunity to cooperate with the school district with respect to the establishment or amendment of the process and elect not to do so, then the school district may, at its discretion, establish or amend the process for selection.
 - 4) Before the hearing officer and as part of any judicial review of a dismissal under Section 24-16.5 of the School Code, a tenured teacher may not challenge a remediation or dismissal on the grounds that the process used by the school district to select a second evaluator was not established in good faith cooperation with its teacher representatives.

- e) For the purposes of this Section, "teacher representatives" shall mean:
 - 1) the exclusive collective bargaining agent, or its designees, if the teachers are represented by a collective bargaining unit; or
 - 2) a group of teachers, whose number shall not exceed the number of school district representatives participating in the selection process, who have been chosen by their peers to serve in this capacity.

(Source: Added at 36 Ill. Reg. 12829, effective July 25, 2012)

Section 51.220 Selection of Second Evaluators

- a) When a school district determines that it will use the optional alternative evaluative dismissal process for a particular tenured teacher, it shall choose a second evaluator using the process outlined in Section 51.210(d) of this Part from the list established pursuant to Section 51.210(a) of this Part, provided that:
 - 1) the evaluator selected shall not be the same individual who made the determination to assign the affected tenured teacher a performance evaluation rating of “unsatisfactory” (see Section 24-16.5(c)(3) of the School Code); and
 - 2) if the evaluator selected is an administrator, then the evaluator does not directly report to the individual who assigned the “unsatisfactory” rating to the affected tenured teacher (see Section 24-16.5(c)(3) of the School Code).
- b) *The school district's authority to select a second evaluator from the list of second evaluators must not be delegated or limited through any agreement with the teacher representatives (Section 24-16.5(c)(3) of the School Code).*
- c) Nothing in this Subpart C shall prohibit a school district and its teacher representatives from agreeing to use an individual as a second evaluator who is a member of the exclusive bargaining unit, provided that the individual otherwise qualifies under this Section and Section 24A-3 of the School Code.

(Source: Added at 36 Ill. Reg. 12829, effective July 25, 2012)

Section 51.230 Use of a Second Evaluator in Specific Remediations

In accordance with the requirements of Section 24-16.5(c)(4) of the School Code, the second evaluator chosen to participate in an optional alternative evaluative dismissal process of a particular tenured teacher shall conduct an evaluation of that tenured teacher's performance by one of the methods specified in this Section.

- a) The second evaluator may conduct a mid-point and final evaluation of the tenured teacher subject to dismissal during the period of the tenured teacher's remediation and award a performance evaluation rating of "excellent", "proficient", "needs improvement" or "unsatisfactory".
 - 1) The mid-point evaluation shall assess the tenured teacher's performance during the time period since the completion of the evaluation that resulted in the "unsatisfactory" rating, and the final evaluation shall assess the tenured teacher's performance during the time period since the completion of the mid-point evaluation. (See Section 24A-5(k) of the School Code.)
 - 2) The final evaluation shall include an overall evaluation of the tenured teacher's performance during the remediation period.
- b) The second evaluator may conduct an independent assessment of whether the tenured teacher completed the remediation plan with a rating of "proficient" or "excellent". *The independent assessment may include, but is not limited to, personal or video-recorded observations of the teacher practice components of the remediation plan developed pursuant to Section 24A-5 of the School Code (Section 24-16.5(c)(4) of the School Code).*

(Source: Added at 36 Ill. Reg. 12829, effective July 25, 2012)

Section 51.235 Approval of Providers of PERA Training

In accordance with Section 24-16.5(f) of the Code, only members of the Board who have successfully completed a training program regarding performance evaluations administered or approved by the State Board shall consider the findings of fact and recommendation and make a determination as to whether the affected tenured teacher should be retained or dismissed using procedures set forth in this Subpart C.

- a) Training organizations, institutions, regional offices of education, firms, professional associations, universities and colleges, or individuals may apply to the State Board of Education for approval to conduct PERA training.
- b) Each entity wishing to receive approval to offer PERA training shall submit an application on a form supplied by the State Board of Education. The application shall include, but is not limited to:
 - 1) evidence that the entity is knowledgeable about PERA and the optional alternative evaluation process;
 - 2) a description of the training to be provided, to address how the training activities will present participants with:
 - A) a basic foundation of PERA;
 - B) information specific to the components of a performance evaluation plan required under Article 24A of the Code; and
 - C) information about the processes and procedures (i.e., professional development plans, remediation plans, dismissal procedures) to take place in the event of a "needs improvement" or "unsatisfactory" performance evaluation rating, as defined in 23 Ill. Adm. Code 50.30 (Evaluation of Educator Licensed Employees under Articles 24A and 34 of the Code);
 - 3) the qualifications and experience of the entity and of each presenter to be assigned to provide the PERA training, which shall include evidence of a presenter's specific skills and knowledge in this area; and
 - 4) assurances that the requirements of subsection (c) will be met.
- c) Each entity approved to provide training under this Section shall:

- 1) verify attendance at its training activities, provide to participants a written confirmation of their completion of the training, and require participants to complete an evaluation of the training; and
 - 2) maintain attendance and evaluation records for a period of not less than five years for each event or activity it conducts or sponsors.
- d) Applicants may be asked to clarify particular aspects of their materials.
- e) The State Superintendent of Education shall respond to each application for approval no later than 30 days after receiving it.
- f) An entity shall be approved to offer PERA training if the entity's application presents evidence that the training that it conducts will be developed and presented by persons knowledgeable about PERA.
- g) The State Board of Education will post on its website at www.isbe.net the list of all approved providers.
- h) Approval as a provider shall be valid for two full fiscal years and expires on July 1 immediately following the second full fiscal year after the approval was issued. To request renewal of approval, a provider shall submit a renewal application on a form supplied by the State Board of Education containing:
- 1) a description of any significant changes in the material submitted as part of its approved application or a certification that no such changes have occurred; and
 - 2) assurances that the PERA trainings will be provided in a manner consistent with the content of the approved application and any changes proposed for the renewal period.
- i) A provider's approval shall be renewed if the application conforms to the requirements of subsection (h), provided that the State Superintendent has received no evidence of noncompliance with the requirements of this Section.
- j) The State Board of Education may evaluate an approved provider at any time to ensure compliance with the requirements of this Section. Upon request by the State Board, a provider shall supply information regarding its schedule of training, which the State Board may, at its discretion, monitor at any time. If an evaluation

indicates that the requirements have not been met, the State Board of Education may withdraw approval of the provider.

(Source: Amended at 44 Ill. Reg. 14763, effective September 11, 2020)

Section 51.240 Hearing Procedures

A school district electing to use an optional alternative evaluative dismissal process shall comply with the procedures and requirements for a tenured teacher's request for a hearing, the selection of a hearing officer, pre-hearing and hearing procedures, and post-hearing briefs set forth in this Subpart C, and in either Section 24-12(d) or 34-85(a) of the School Code, as applicable, and Subpart B of this Part. (See Section 24-16.5(a) of the School Code.)

(Source: Added at 36 Ill. Reg. 12829, effective July 25, 2012)

Section 51.250 Notice of Dismissal to the Affected Tenured Teacher

- a) A school district that meets the conditions set forth in Section 51.200(b) of this Part that elects to use an optional alternative evaluative dismissal proceeding shall provide a written notice to the affected tenured teacher of this fact within 30 days after completion of the final remediation evaluation. (See Section 24-16.5(d) of the School Code.) The notice shall:
 - 1) comply with the notice requirements set forth in Section 51.30(a) of this Part for a school district not organized under Article 34 of the School Code, including the right of the affected tenured teacher to request a hearing before a mutually selected hearing officer or a hearing officer selected by the Board; or
 - 2) comply with the notice requirements set forth in Section 51.30(b) of this Part for a school district organized under Article 34 of the School Code, including the right of the affected tenured teacher to request a hearing before a mutually selected hearing officer or to have a hearing officer selected by the general superintendent, should the tenured teacher not participate in the selection process.
- b) The notice shall indicate that the dismissal is sought under the optional alternative evaluative dismissal process authorized under Section 24-16.5 of the School Code and this Subpart C. (See Section 24-16.5(d) of the School Code.)
- c) The notice shall contain a copy of each performance evaluation that is the subject of the optional alternative evaluative dismissal process. (See Section 24-16.5(d) of the School Code.)

(Source: Added at 36 Ill. Reg. 12829, effective July 25, 2012)

Section 51.260 Qualifications and Selection of Hearing Officers

- a) School districts not organized under Article 34 of the School Code shall select a hearing officer in accordance with the requirements of Section 51.40(a) of this Part.
- b) School districts organized under Article 34 of the School Code shall select a hearing officer in accordance with the requirements of Section 51.40(b) of this Part.
- c) In addition to the applicable qualifications of Section 51.40 of this Part, each hearing officer shall have successfully completed the prequalification process required under Section 24A-3 of the School Code [105 ILCS 5/24A-3] before conducting a hearing under the optional alternative evaluative dismissal process.
- d) In accordance with Section 24-16.5(d)(1) of the School Code, the State Board may waive the prequalification process requirements in order to provide an adequate pool of hearing officers for consideration.

(Source: Added at 36 Ill. Reg. 12829, effective July 25, 2012)

Section 51.270 Scope of the Hearing

- a) In accordance with Section 24-16.5(d)(2)(A) of the School Code, the scope of the hearing held for an optional alternative evaluative dismissal process shall be limited to the school district's demonstration of each of the components listed in this subsection (a).
- 1) The performance evaluation rating of *"unsatisfactory" that preceded remediation applied the teacher practice components and student growth components and determined an overall evaluation rating of "unsatisfactory" in accordance with the standards and requirements of the school district's evaluation plan;*
 - 2) The remediation plan for the affected tenured teacher complied with the requirements of Section 24A-5 of the School Code;
 - 3) *The teacher failed to complete the remediation plan with a performance evaluation rating equal to or better than a "proficient" rating, based upon a final remediation evaluation that met the standards and requirements of the school district's evaluation plan, as applicable; and*
 - 4) If the second evaluator selected pursuant to Section 51.220 of this Part conducts an independent assessment that results in a performance evaluation rating for the affected tenured teacher of "proficient" or "excellent", then *the school district must demonstrate that the final remediation evaluation is a more valid assessment of the teacher's performance than the assessment made by the second evaluator.* (Section 24-16.5(d)(2)(A) of the School Code)

b) Limitations of Action by the Tenured Teacher Subject to Dismissal

A tenured teacher subject to dismissal under an optional alternative evaluative dismissal process shall challenge only the substantive and procedural aspects of the process as set forth in this subsection (b). (See Section 24-16.5(d)(2)(B) of the School Code.)

- 1) The affected tenured teacher may challenge the performance evaluation rating of "unsatisfactory" that led to the remediation, the remediation plan developed pursuant to Section 24A-5 of the School Code, and the final evaluation conducted at the conclusion of the remediation period.

- 2) *To the extent the teacher challenges procedural aspects, including any in applicable collective bargaining agreement provisions, of a relevant performance evaluation rating or the remediation plan, the teacher must demonstrate how an alleged procedural defect materially affected the teacher's ability to demonstrate a level of performance necessary to avoid remediation or dismissal or successfully complete the remediation plan. Without any such material effect, a procedural defect shall not impact the assessment by the hearing officer, Board, or reviewing court of the validity of a performance evaluation or a remediation plan. (Section 24-16.5(d)(2)(B) of the School Code)*
- c) *The hearing officer shall only consider and give weight to performance evaluations relevant to the scope of the hearing as described in this Section (Section 24-16.5(d)(2)(C) of the School Code).*
- d) In accordance with Section 24-16.5(d)(3) of the School Code, each party shall have two business days, as defined in Section 51.60(c)(11) of this Part, to present evidence and testimony unless:
 - 1) a longer period is mutually agreed to by the parties; or
 - 2) the hearing officer deems the extension to be necessary to enable a party to present adequate evidence and testimony.

(Source: Added at 36 Ill. Reg. 12829, effective July 25, 2012)

Section 51.280 Findings of Fact and Recommendation of the Hearing Officer

- a) The hearing officer shall issue a report of findings of fact and recommendation to the Board, stating whether the affected tenured teacher shall be retained or dismissed and the reasons for the recommended action (see Section 24-16.5 of the School Code).
 - 1) The report of findings of fact and recommendation shall be issued within 30 days after the hearing is concluded or the record of the hearing is closed, whichever is later. The record of the proceedings shall not be considered closed until all evidence has been submitted. The hearing officer shall notify the parties, in writing, of the closing date of the record.
 - 2) The report of findings of fact and recommendation shall not exceed 30 pages.
 - 3) A copy of the hearing officer's findings of fact and recommendation shall be given by certified mail to the tenured teacher and his or her legal representatives of record and to the State Board of Education addressed to the General Counsel, 100 W. Randolph Street, Chicago, Illinois 60601.
- b) The hearing officer shall provide a copy of the report of findings of fact and recommendation to the affected tenured teacher and the superintendent of the school district at the same time as the report is provided to the Board. The hearing officer shall provide a copy of the report to the State Board.
- c) Pursuant to Section 24-16.5(e) of the School Code, if the hearing officer fails, without good cause specifically provided in writing to the parties and the State Board, to render findings of fact and recommendation within 30 days after the later of the close of the hearing or the record, the parties may mutually agree to select a hearing officer pursuant to the alternative selection procedures provided under Section 24-12(d)(4) of the School Code to rehear the charges or to review the record and render a recommendation.
 - 1) The hearing officer who failed to timely render findings of fact and recommendation shall have his or her name struck from the master list of hearing officers maintained by the State Board for a period of not more than 24 months.
 - 2) The parties and the State Board may take other actions as they deem appropriate regarding reducing fees paid to the hearing officer. If any

hearing officer again fails to provide in a timely manner a decision or findings of fact and recommendation, the State Board shall remove him or her permanently from the master list and prohibit any party from selecting this hearing officer through the alternative selection process in Section 24-12(d)(4) of the School Code.

(Source: Added at 36 Ill. Reg. 12829, effective July 25, 2012)

Section 51.290 Decision of Board

- a) Within 45 days after receiving the hearing officer's findings of fact and recommendation, the Board shall render a written order as to whether the affected tenured teacher be retained or dismissed.
 - 1) A copy of the Board's decision shall be provided to the tenured teacher either by certified mail, return receipt requested, or personal delivery with receipt within five days after the date on which the Board rendered a decision to retain or dismiss the affected tenured teacher. A copy of the Board's decision also shall be given by certified mail to the State Board of Education addressed to the General Counsel, 100 W. Randolph Street, Chicago, Illinois 60601.
 - 2) If the Board determines that the affected tenured teacher should be dismissed, contrary to the hearing officer's findings of fact and recommendation, then the Board shall provide in its written order its conclusion and the reasons for making that determination.
 - 3) *The failure of the Board to strictly adhere to the timeline set forth in this subsection (a) does not render it without jurisdiction to dismiss the teacher (Section 24-16.5(f) of the School Code).*
- b) The decision of the Board is final unless reviewed under the Administrative Review Law, as provided in Section 24-16.5(g) of the School Code.
 - 1) The affected tenured teacher shall file the appeal within 35 days from the date that he or she received the Board's decision pursuant to subsection (a)(1).
 - A) *For a teacher dismissed by a school district having fewer than 500,000 inhabitants, the judicial review must be taken directly to the appellate court of the judicial district in which the school district's Board maintains its primary administrative offices (Section 24-16.5(g)(2) of the School Code).*
 - B) *For a teacher dismissed by a school district organized under Article 34 of the School Code, the judicial review must be taken directly to the Illinois Appellate Court for the First District (Section 24-16.5(g)(1) of the School Code).*

- 2) *If the hearing officer recommended dismissal, the decision of the Board may be reversed only if it is found to be arbitrary, capricious, an abuse of discretion, or not in accordance with law (Section 24-16.5(g) of the School Code).*
 - 3) *In the event judicial review is instituted by a teacher, any costs of preparing and filing the record of proceedings must be paid by the teacher (Section 24-16.5(g) of the School Code).*
 - 4) The record of the proceedings shall contain each of the items enumerated in Section 51.70(a)(2)(B).
- c) Pursuant to Section 24-16.5(f) 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 38 Ill. Reg. 21906, effective November 3, 2014)