

HB3307



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB3307

by Rep. Justin Slaughter

SYNOPSIS AS INTRODUCED:

105 ILCS 5/34-85

from Ch. 122, par. 34-85

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

LRB101 11137 AXK 56366 b

A BILL FOR

1 AN ACT concerning education.

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

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

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

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

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

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

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

1 a copy of it to the principal.

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

1 within 20 calendar days after the date of the approval of
2 the charges shall constitute proof of service.

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

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

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

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

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

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

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

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

22 The hearing officer shall commence the hearing within
23 75 calendar days and conclude the hearing within 120
24 calendar days after being selected by the parties as the
25 hearing officer, provided that these timelines may be
26 modified upon the showing of good cause or mutual agreement

1 of the parties. Good cause for the purposes of this
2 paragraph (5) shall mean the illness or otherwise
3 unavoidable emergency of the teacher, district
4 representative, their legal representatives, the hearing
5 officer, or an essential witness as indicated in each
6 party's pre-hearing submission. In a dismissal hearing,
7 the hearing officer shall consider and give weight to all
8 of the teacher's evaluations written pursuant to Article
9 24A that are relevant to the issues in the hearing. The
10 teacher or principal has the privilege of being present at
11 the hearing with counsel and of cross-examining witnesses
12 and may offer evidence and witnesses and present defenses
13 to the charges. Each party shall have no more than 3 days
14 to present its case, unless extended by the hearing officer
15 to enable a party to present adequate evidence and
16 testimony, including due to the other party's
17 cross-examination of the party's witnesses, for good cause
18 or by mutual agreement of the parties. The State Board of
19 Education shall define in rules the meaning of "day" for
20 such purposes. All testimony at the hearing shall be taken
21 under oath administered by the hearing officer. The hearing
22 officer shall cause a record of the proceedings to be kept
23 and shall employ a competent reporter to take stenographic
24 or stenotype notes of all the testimony. The costs of the
25 reporter's attendance and services at the hearing shall be
26 paid by the party or parties who are paying the fees and

1 costs of the hearing officer. Either party desiring a
2 transcript of the hearing shall pay for the cost thereof.
3 At the close of the hearing, the hearing officer shall
4 direct the parties to submit post-hearing briefs no later
5 than 21 calendar days after receipt of the transcript.
6 Either or both parties may waive submission of briefs.

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

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

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

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

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

26 The changes made by Public Act 97-8 shall apply to

1 dismissals instituted on or after September 1, 2011 or the
2 effective date of Public Act 97-8, whichever is later. Any
3 dismissal instituted prior to the effective date of these
4 changes must be carried out in accordance with the requirements
5 of this Section prior to amendment by Public Act 97-8.

6 (Source: P.A. 99-78, eff. 7-20-15.)