**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 stenotype 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)