

1 A BILL FOR

2 AN ACT concerning education.

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

5 **Section 1. Short title.** This Act may be cited as the  
6 Performance Counts Act of 2010.

7 **Section 5.** The School Code is amended by adding Section 2-  
8 3.153 as follows:

9 (105 ILCS 5/2-3.153) (New)

10 Sec. 2-3.153. Survey of Learning Conditions. The State  
11 Board of Education shall select for statewide administration an  
12 instrument to provide feedback on the instructional environment  
13 within a school after giving consideration to the  
14 recommendations of the Performance Evaluation Advisory Council  
15 made pursuant to subsection (a)(6) of Section 24A-20 of this  
16 Code. Subject to appropriation to the State Board of Education  
17 for the State's cost of development and administration,  
18 commencing with the 2012-2013 school year, each school district  
19 shall administer the instrument in every public school  
20 attendance center by a date specified by the State  
21 Superintendent, and data resulting from the instrument's  
22 administration shall be provided to the State Board of  
23 Education. The State Superintendent, following consultation  
24 with teachers, principals and other appropriate stakeholders,  
25 will publicly report on selected indicators of learning  
26 conditions resulting from administration of the instrument. If  
27 in any year the appropriation to the State Board of Education is  
28 insufficient for the State's costs associated with statewide  
29 administration of the instrument, the State Board of Education  
30 shall give priority to districts with low-performing schools.  
31 The requirement of a school district to administer this  
32 instrument is not subject to discontinuance or modification  
33 under Public Act 96-1441.

1           **Section 10.** The School Code is amended by adding Section  
2 10-17a-5 as follows:

3           (105 ILCS 5/10-17a-5) (New)

4           Sec. 10-17a-5. Reporting Educational Performance Task  
5 Force. The Reporting Educational Performance Task Force is  
6 hereby created. The goal of the task force is to recommend  
7 content, delivery methods, and features of a new school district  
8 and school report card that clearly and effectively informs the  
9 public of key indicators of district and school performance.  
10 The task force shall consist of members appointed by the State  
11 Superintendent of Education, and shall be staffed by the State  
12 Board of Education. The task force shall include, without  
13 limitation, one or more representatives from the P-20 Council,  
14 the Early Learning Council, the Illinois State Library, a  
15 statewide organization representing parents, a statewide  
16 organization representing school administrators, Chicago Public  
17 Schools, a statewide organization representing principals, the  
18 Illinois Education Association, the Illinois Federation of  
19 Teachers, Chicago Teachers Union, community-based organizations,  
20 regional offices of education, a statewide education reform  
21 organization, a business organization, an organization  
22 representing students with disabilities, a public university  
23 maintaining a website with report card information, and other  
24 appropriate stakeholders. The State Superintendent or a  
25 designee of the State Superintendent will chair the task force.  
26 When developing its recommendations, the task force will  
27 consider, among other things, the inclusion of:

28           (a) indicators of student growth based on a growth model  
29 developed by the State Board of Education;

30           (b) indicators of learning conditions based upon an  
31 instrument administered pursuant to Section 2-3.153 of this  
32 Code;

33           (c) operating expenditures per pupil at the school level  
34 calculated using actual teacher salaries;

35           (d) indicators relating to early learning and kindergarten  
36 readiness;

37           (e) indicators and data required to be reported by federal  
38 law, including indicators and data required to be reported as a  
39 condition of the receipt of State Fiscal Stabilization Fund  
40 funding;

1 (f) a manner to compare the performance of a district or  
2 school with districts and schools with similar demographics;

3 (g) a manner to aggregate report card data on a publicly  
4 accessible website that permits users of the website to export  
5 non-confidential data via a file format useful for analytical  
6 purposes; and

7 (h) methods to improve accessibility to report card  
8 information by low-income communities, populations without home  
9 internet access, and non-English speaking populations.

10 The task force shall submit a report on its recommendations to  
11 the General Assembly, Governor, and State Superintendent on or  
12 before April 15, 2011. This Section is repealed on April 16,  
13 2011.

14 **Section 15.** The School Code is amended by changing Section  
15 10-22.4 as follows:

16 (105 ILCS 5/10-22.4) (from Ch. 122, par. 10-22.4)

17 Sec. 10-22.4. Dismissal of teachers. To dismiss a teacher  
18 for incompetency, cruelty, negligence, immorality or other  
19 sufficient cause, to dismiss any teacher ~~who fails to complete a~~  
20 ~~1-year remediation plan with a "satisfactory" or better rating~~  
21 on the basis of performance evaluation results pursuant to  
22 Sections 24A-5(m) or 24A-5(n) of this Code and to dismiss any  
23 teacher whenever, in its opinion, he is not qualified to teach,  
24 or whenever, in its opinion, the interests of the schools  
25 require it, subject, however, to the provisions of Sections 24-  
26 10 to 24-15, inclusive. Temporary mental or physical incapacity  
27 to perform teaching duties, as found by a medical examination,  
28 is not a cause for dismissal. Marriage is not a cause of  
29 removal.

30 (Source: P.A. 85-248.)

31 **Section 20.** The School Code is amended by changing Section  
32 21-23 as follows:

33 (105 ILCS 5/21-23) (from Ch. 122, par. 21-23)

34 Sec. 21-23. Suspension or revocation of certificate.

35 (a) The State Superintendent of Education has the exclusive  
36 authority, in accordance with this Section and any rules adopted  
37 by the State Board of Education, to initiate the suspension of

1 up to 5 calendar years or revocation of any certificate issued  
2 pursuant to this Article, including but not limited to any  
3 administrative certificate or endorsement, for abuse or neglect  
4 of a child, immorality, a condition of health detrimental to the  
5 welfare of pupils, incompetency, unprofessional conduct (which  
6 includes the failure to disclose on an employment application  
7 any previous conviction for a sex offense, as defined in Section  
8 21-23a of this Code, or any other offense committed in any other  
9 state or against the laws of the United States that, if  
10 committed in this State, would be punishable as a sex offense,  
11 as defined in Section 21-23a of this Code), the neglect of any  
12 professional duty, willful failure to report an instance of  
13 suspected child abuse or neglect as required by the Abused and  
14 Neglected Child Reporting Act, failure to establish satisfactory  
15 repayment on an educational loan guaranteed by the Illinois  
16 Student Assistance Commission, or other just cause.  
17 Unprofessional conduct shall include refusal to attend or  
18 participate in, institutes, teachers' meetings, professional  
19 readings, or to meet other reasonable requirements of the  
20 regional superintendent or State Superintendent of Education.  
21 Unprofessional conduct also includes conduct that violates the  
22 standards, ethics, or rules applicable to the security,  
23 administration, monitoring, or scoring of, or the reporting of  
24 scores from, any assessment test or the Prairie State  
25 Achievement Examination administered under Section 2-3.64 or  
26 that is known or intended to produce or report manipulated or  
27 artificial, rather than actual, assessment or achievement  
28 results or gains from the administration of those tests or  
29 examinations. It shall also include neglect or unnecessary delay  
30 in making of statistical and other reports required by school  
31 officers. The State Board of Education shall define, by  
32 administrative rule and following consultation by the State  
33 Superintendent with the State Teacher Certification Board and  
34 the Performance Evaluation Advisory Council established pursuant  
35 to Section 24A-7 of this Code, a basis for two or more  
36 unsatisfactory performance evaluation ratings to constitute  
37 evidence of incompetency. Evidence of incompetency may be  
38 considered by the State Board of Education in determining an  
39 individual's qualifications in any decision to issue or renew a  
40 certificate for that individual. For incompetency, the State  
41 Superintendent may, in addition to other authority provided in  
42 this Section, initiate restrictions on any certificate issued  
43 pursuant to this Article in accordance with rules adopted by the  
44 State Board of Education. Such restrictions shall be for a  
45 defined period of time not to exceed five years, and may  
46 include, without limitation, a prohibition on classroom

1 teaching, requirements for professional development or  
2 coursework, or a prohibition on assignment to a low-performing  
3 school. If the conditions of a restricted certificate are not  
4 fulfilled by the teacher or principal, the State Superintendent  
5 may initiate suspension or revocation pursuant to this Section.

6 (a-5) The State Superintendent of Education shall, upon  
7 receipt of evidence of abuse or neglect of a child, immorality,  
8 a condition of health detrimental to the welfare of pupils,  
9 incompetency, unprofessional conduct, the neglect of any  
10 professional duty or other just cause, further investigate and,  
11 if and as appropriate, serve written notice to the individual  
12 and afford the individual opportunity for a hearing prior to  
13 suspension, ~~or~~ revocation, or the restriction of a certificate;  
14 provided that the State Superintendent is under no obligation to  
15 initiate such an investigation if the Department of Children and  
16 Family Services is investigating the same or substantially  
17 similar allegations and its child protective service unit has  
18 not made its determination as required under Section 7.12 of the  
19 Abused and Neglected Child Reporting Act. If the State  
20 Superintendent of Education does not receive from an individual  
21 a request for a hearing within 10 days after the individual  
22 receives notice, the suspension, ~~or~~ revocation, or restriction  
23 shall immediately take effect in accordance with the notice. If  
24 a hearing is requested within 10 days of notice of opportunity  
25 for hearing, it shall act as a stay of proceedings until the  
26 State Teacher Certification Board issues a decision. Any hearing  
27 shall take place in the educational service region wherein the  
28 educator is or was last employed and in accordance with rules  
29 adopted by the State Board of Education, in consultation with  
30 the State Teacher Certification Board, which rules shall include  
31 without limitation provisions for discovery and the sharing of  
32 information between parties prior to the hearing. The standard  
33 of proof for any administrative hearing held pursuant to this  
34 Section shall be by the preponderance of the evidence. The  
35 decision of the State Teacher Certification Board is a final  
36 administrative decision and is subject to judicial review by  
37 appeal of either party.

38 The State Board may refuse to issue or may suspend the  
39 certificate of any person who fails to file a return, or to pay  
40 the tax, penalty or interest shown in a filed return, or to pay  
41 any final assessment of tax, penalty or interest, as required by  
42 any tax Act administered by the Illinois Department of Revenue,  
43 until such time as the requirements of any such tax Act are  
44 satisfied.

45 The exclusive authority of the State Superintendent of  
46 Education to initiate suspension, ~~or~~ revocation, or restriction

1 of a certificate pursuant to this Section does not preclude a  
2 regional superintendent of schools from cooperating with the  
3 State Superintendent or a State's Attorney with respect to an  
4 investigation of alleged misconduct.

5 (b) (Blank).

6 (b-5) The State Superintendent of Education or his or her  
7 designee may initiate and conduct such investigations as may be  
8 reasonably necessary to establish the existence of any alleged  
9 misconduct. At any stage of the investigation, the State  
10 Superintendent may issue a subpoena requiring the attendance and  
11 testimony of a witness, including the certificate holder, and  
12 the production of any evidence, including files, records,  
13 correspondence, or documents, relating to any matter in question  
14 in the investigation. The subpoena shall require a witness to  
15 appear at the State Board of Education at a specified date and  
16 time and shall specify any evidence to be produced. The  
17 certificate holder is not entitled to be present, but the State  
18 Superintendent shall provide the certificate holder with a copy  
19 of any recorded testimony prior to a hearing under this Section.  
20 Such recorded testimony must not be used as evidence at a  
21 hearing, unless the certificate holder has adequate notice of  
22 the testimony and the opportunity to cross-examine the witness.  
23 Failure of a certificate holder to comply with a duly-issued,  
24 investigatory subpoena may be grounds for revocation,  
25 suspension, or denial of a certificate.

26 (b-10) All correspondence, documentation, and other  
27 information so received by the regional superintendent of  
28 schools, the State Superintendent of Education, the State Board  
29 of Education, or the State Teacher Certification Board under  
30 this Section is confidential and must not be disclosed to third  
31 parties, except (i) as necessary for the State Superintendent of  
32 Education or his or her designee to investigate and prosecute  
33 pursuant to this Article, (ii) pursuant to a court order, (iii)  
34 for disclosure to the certificate holder or his or her  
35 representative, or (iv) as otherwise required in this Article  
36 and provided that any such information admitted into evidence in  
37 a hearing shall be exempt from this confidentiality and  
38 non-disclosure requirement.

39 (c) The State Superintendent of Education or a person  
40 designated by him shall have the power to administer oaths to  
41 witnesses at any hearing conducted before the State Teacher  
42 Certification Board pursuant to this Section. The State  
43 Superintendent of Education or a person designated by him is  
44 authorized to subpoena and bring before the State Teacher  
45 Certification Board any person in this State and to take  
46 testimony either orally or by deposition or by exhibit, with the

1 same fees and mileage and in the same manner as prescribed by  
2 law in judicial proceedings in the civil cases in circuit courts  
3 of this State.

4 (c-5) Any circuit court, upon the application of the State  
5 Superintendent of Education or the certificate holder, may, by  
6 order duly entered, require the attendance of witnesses and the  
7 production of relevant books and papers as part of any  
8 investigation or at any hearing the State Teacher Certification  
9 Board is authorized to conduct pursuant to this Section, and the  
10 court may compel obedience to its orders by proceedings for  
11 contempt.

12 (c-10) The State Board of Education shall receive an annual  
13 line item appropriation to cover fees associated with the  
14 investigation and prosecution of alleged educator misconduct and  
15 hearings related thereto.

16 (d) As used in this Section, "teacher" means any school  
17 district employee regularly required to be certified, as  
18 provided in this Article, in order to teach or supervise in the  
19 public schools.

20 (Source: P.A. 96-431, eff. 8-13-09.)

21 **Section 25.** The School Code is amended by changing Section  
22 24-1 as follows:

23 (105 ILCS 5/24-1) (from Ch. 122, par. 24-1)

24 ~~Sec. 24-1. Appointment-Salaries-Payment-School month-School~~  
25 ~~term. School boards shall appoint all teachers, determine~~  
26 ~~qualifications of employment and fix the amount of their~~  
27 ~~salaries subject to limitation set forth in this Act. They shall~~  
28 ~~pay the wages of teachers monthly, subject, however, to the~~  
29 ~~provisions of Section 24-21. The school month shall be the same~~  
30 ~~as the calendar month but by resolution the school board may~~  
31 ~~adopt for its use a month of 20 days, including holidays. The~~  
32 ~~school term shall consist of at least the minimum number of~~  
33 ~~pupil attendance days required by Section 10-19, any additional~~  
34 ~~legal school holidays, days of teachers' institutes, or~~  
35 ~~equivalent professional educational experiences, and one or two~~  
36 ~~days at the beginning of the school term when used as a~~  
37 ~~teachers' workshop.~~

38 Procedures and criteria for the selection of candidates for  
39 new and vacant teaching positions:

40 (a) shall be based upon merit, using performance evaluation  
41 ratings as the predominant factor in determining merit for  
42 teachers currently employed by the district;

1           (b) may consider qualifications for the position; and

2           (c) may only consider years of service among teaching  
3 candidates determined by the school district to have equivalent  
4 merit and qualifications.

5 Such procedures and criteria shall be developed by the board in  
6 consultation with its teachers and may be included in a  
7 collective bargaining agreement between the board and the  
8 exclusive bargaining representative of its teachers. Any  
9 provisions in a collective bargaining agreement that are  
10 contrary to this Section of this amendatory Act of the 96th  
11 General Assembly shall be null, void and considered contrary to  
12 law and public policy upon the effective date of this amendatory  
13 Act or upon the expiration of any collective bargaining  
14 agreement in effect on such date.

15 (Source: P.A. 80-249.)

16           **Section 30.** The School Code is amended by changing Section  
17 24-11 as follows:

18           (105 ILCS 5/24-11) (from Ch. 122, par. 24-11)

19           Sec. 24-11. Boards of Education—Boards of School Inspectors  
20 —Contractual continued service. As used in this and the  
21 succeeding Sections of this Article:

22           "Teacher" means any or all school district employees  
23 regularly required to be certified under laws relating to the  
24 certification of teachers.

25           "Board" means board of directors, board of education, or  
26 board of school inspectors, as the case may be.

27           "School term" means that portion of the school year, July 1  
28 to the following June 30, when school is in actual session.

29           This Section and Sections 24-12 through 24-16 of this  
30 Article apply only to school districts having less than 500,000  
31 inhabitants.

32           Prior to the implementation date of an evaluation system  
33 for teachers in a district as specified by Section 24A-2.5 of  
34 this Code; any ~~Any~~ teacher who has been employed in that ~~any~~  
35 district as a full-time teacher for a probationary period of ~~2~~ 4

1 consecutive school terms shall enter upon contractual continued  
2 service unless given written notice of dismissal stating the  
3 specific reason therefor, by certified mail, return receipt  
4 requested by the employing board at least 45 days before the end  
5 of such period; ~~except that for a teacher who is first employed~~  
6 ~~as a full time teacher by a school district on or after January~~  
7 ~~1, 1998 and who has not before that date already entered upon~~  
8 ~~contractual continued service in that district, the probationary~~  
9 ~~period shall be 4 consecutive school terms before the teacher~~  
10 ~~shall enter upon contractual continued service. After the~~  
11 implementation date of an evaluation system for teachers in a  
12 district as specified by Section 24A-2.5 of this Code, any  
13 teacher who has been continuously employed in that district as a  
14 full-time teacher for a period of time that includes 4 school  
15 terms of service rated as "satisfactory", "proficient" or  
16 "excellent" shall enter upon contractual continued service  
17 unless given written notice of dismissal stating the specific  
18 reason therefor, by certified mail, return receipt requested by  
19 the employing board at least 45 days before the end of the  
20 fourth school term of service rated as "satisfactory",  
21 "proficient" or "excellent". For the purpose of determining  
22 contractual continued service, the first probationary year shall  
23 be any full-time employment from a date before November 1  
24 through the end of the school year. If, however, a teacher who  
25 was first employed prior to January 1, 1998 has not had one  
26 school term of full time teaching experience before the  
27 beginning of a probationary period of 2 consecutive school  
28 terms, the employing board may at its option extend the  
29 probationary period for one additional school term by giving the  
30 teacher written notice by certified mail, return receipt  
31 requested, at least 45 days before the end of the second school  
32 term of the period of 2 consecutive school terms referred to  
33 above. This notice must state the reasons for the one year  
34 extension and must outline the corrective actions that the  
35 teacher must take to satisfactorily complete probation. The  
36 changes made by this amendatory Act of 1998 are declaratory of  
37 existing law.

38 ~~Any full time teacher who is not completing the last year~~  
39 ~~of the probationary period described in the preceding paragraph,~~  
40 ~~or any teacher employed on a full-time basis not later than~~  
41 ~~January 1 of the school term, shall receive written notice from~~  
42 ~~the employing board at least 45 days before the end of any~~  
43 ~~school term whether or not he will be re employed for the~~  
44 ~~following school term. If the board fails to give such notice,~~  
45 ~~the employee shall be deemed reemployed, and not later than the~~

1 ~~close of the then current school term the board shall issue a~~  
2 ~~regular contract to the employee as though the board had~~  
3 ~~reemployed him in the usual manner.~~

4 Contractual continued service shall continue in effect the  
5 terms and provisions of the contract with the teacher during the  
6 last school term of the probationary period, subject to this  
7 Act, the right of the school board to return the teacher to  
8 probationary status and terminate contractual continued service  
9 pursuant to Section 24-12(b), and the lawful regulations of the  
10 employing board. This Section and succeeding Sections do not  
11 modify any existing power of the board except with respect to  
12 the procedure of the discharge of a teacher and reductions in  
13 salary as hereinafter provided. Contractual continued service  
14 status shall not restrict the power of the board to transfer a  
15 teacher to a position which the teacher is qualified to fill or  
16 to make such salary adjustments as it deems desirable, but  
17 unless reductions in salary are uniform or based upon some  
18 reasonable classification, any teacher whose salary is reduced  
19 shall be entitled to a notice and a hearing as hereinafter  
20 provided in the case of certain dismissals or removals.

21 The employment of any teacher in a program of a special  
22 education joint agreement established under Section 3-15.14, 10-  
23 22.31 or 10-22.31a shall be under this and succeeding Sections  
24 of this Article. For purposes of attaining and maintaining  
25 contractual continued service and computing length of continuing  
26 service as referred to in this Section and Section 24-12,  
27 employment in a special educational joint program shall be  
28 deemed a continuation of all previous certificated employment of  
29 such teacher for such joint agreement whether the employer of  
30 the teacher was the joint agreement, the regional  
31 superintendent, or one of the participating districts in the  
32 joint agreement.

33 Prior to the implementation date of an evaluation system  
34 for teachers in a program of a special education joint agreement  
35 as specified by Section 24A-2.5 of this Code, any ~~Any~~ teacher  
36 employed after July 1, 1987 as a full-time teacher in that a  
37 program of a special education joint agreement, whether the  
38 program is operated by the joint agreement or a member district  
39 on behalf of the joint agreement, for a probationary period of  
40 ~~two~~ 4 consecutive years shall enter upon contractual continued  
41 service in all of the programs conducted by such joint agreement  
42 which the teacher is legally qualified to hold; ~~except that for~~  
43 ~~a teacher who is first employed on or after January 1, 1998 in a~~

1 ~~program of a special education joint agreement and who has not~~  
2 ~~before that date already entered upon contractual continued~~  
3 ~~service in all of the programs conducted by the joint agreement~~  
4 ~~that the teacher is legally qualified to hold, the probationary~~  
5 ~~period shall be 4 consecutive years before the teacher enters~~  
6 ~~upon contractual continued service in all of those programs. In~~  
7 ~~the event of a reduction in the number of programs or positions~~  
8 ~~in the joint agreement, the teacher on contractual continued~~  
9 ~~service shall be eligible for employment in the joint agreement~~  
10 ~~programs for which the teacher is legally qualified in order of~~  
11 ~~greater length of continuing service in the joint agreement~~  
12 ~~unless an alternative method of determining the sequence of~~  
13 ~~dismissal is established in a collective bargaining agreement.~~  
14 ~~In the event of the dissolution of a joint agreement, the~~  
15 ~~teacher on contractual continued service who is legally~~  
16 ~~qualified shall be assigned to any comparable position in a~~  
17 ~~member district currently held by a teacher who has not entered~~  
18 ~~upon contractual continued service or held by a teacher who has~~  
19 ~~entered upon contractual continued service with shorter length~~  
20 ~~of contractual continued service. After the implementation date~~  
21 ~~of an evaluation system for teachers in a joint program as~~  
22 specified by Section 24A-2.5 of this Code, any teacher who has  
23 been continuously employed in that joint program as a full-time  
24 teacher for a period of time that includes 4 school terms of  
25 service rated as "satisfactory", "proficient" or "excellent"  
26 shall enter upon contractual continued service unless given  
27 written notice of dismissal stating the specific reason  
28 therefor, by certified mail, return receipt requested by the  
29 governing board of the joint agreement at least 45 days before  
30 the end of the fourth school term of service rated as  
31 "satisfactory", "proficient" or "excellent".

32 The governing board of the joint agreement, or the  
33 administrative district, if so authorized by the articles of  
34 agreement of the joint agreement, rather than the board of  
35 education of a school district, may carry out employment and  
36 termination actions including dismissals under this Section and  
37 Section 24-12.

38 For purposes of this and succeeding Sections of this  
39 Article, a program of a special educational joint agreement  
40 shall be defined as instructional, consultative, supervisory,  
41 administrative, diagnostic, and related services which are  
42 managed by the special educational joint agreement designed to  
43 service two or more districts which are members of the joint  
44 agreement.

1 Each joint agreement shall be required to post by February  
2 1, a list of all its employees in order of length of continuing  
3 service in the joint agreement, unless an alternative method of  
4 determining a sequence of dismissal is established in an  
5 applicable collective bargaining agreement.

6 The employment of any teacher in a special education  
7 program authorized by Section 14-1.01 through 14-14.01, or a  
8 joint educational program established under Section 10-22.31a,  
9 shall be under this and the succeeding Sections of this Article,  
10 and such employment shall be deemed a continuation of the  
11 previous employment of such teacher in any of the participating  
12 districts, regardless of the participation of other districts in  
13 the program. Any teacher employed as a full-time teacher in a  
14 special education program prior to September 23, 1987 in which 2  
15 or more school districts participate for a probationary period  
16 of 2 consecutive years shall enter upon contractual continued  
17 service in each of the participating districts, subject to this  
18 and the succeeding Sections of this Article, and in the event of  
19 the termination of the program shall be eligible for any vacant  
20 position in any of such districts for which such teacher is  
21 qualified.

22 (Source: P.A. 90-548, eff. 1-1-98; 90-653, eff. 7-29-98.)

23 **Section 35.** The School Code is amended by changing Section  
24 24-12 as follows:

25 (105 ILCS 5/24-12) (from Ch. 122, par. 24-12)

26 Sec. 24-12. Honorable dismissals; removal ~~Removal~~ or  
27 dismissal of teachers in contractual continued service.

28 (a) Honorable dismissals. If any teacher, whether  
29 probationary or a teacher in contractual continued service, is  
30 removed or dismissed as a result of a decision of ~~the a school~~  
31 board to decrease the number of teachers employed by the board  
32 or, a decision of a school board to discontinue some particular  
33 type of teaching service, or a reduction in the number of  
34 programs or positions in a special education joint agreement,  
35 written notice shall be mailed to the teacher and also given the  
36 teacher either by certified mail, return receipt requested or  
37 personal delivery with receipt at least 45 ~~60~~ days before the  
38 end of the school term, together with a statement of honorable  
39 dismissal and the reason therefor, ~~and in all such cases the~~  
40 ~~board shall first remove or dismiss all teachers who have not~~

1 ~~entered upon contractual continued service before removing or~~  
2 ~~dismissing any teacher who has entered upon contractual~~  
3 ~~continued service and who is legally qualified to hold a~~  
4 ~~position currently held by a teacher who has not entered upon~~  
5 ~~contractual continued service. As between teachers who have~~  
6 ~~entered upon contractual continued service, the teacher or~~  
7 ~~teachers with the shorter length of continuing service with the~~  
8 ~~district shall be dismissed first unless an alternative method~~  
9 ~~of determining the sequence of dismissal is established in a~~  
10 ~~collective bargaining agreement or contract between the board~~  
11 ~~and a professional faculty members' organization and except that~~  
12 ~~this provision shall not impair the operation of any affirmative~~  
13 ~~action program in the district, regardless of whether it exists~~  
14 ~~by operation of law or is conducted on a voluntary basis by the~~  
15 ~~board.~~

16 Procedures and criteria used for the layoff or reduction in  
17 force of teachers:

18 (a) shall be based upon prior performance, using  
19 performance evaluation ratings as the predominant factor in  
20 determining prior performance;

21 (b) may consider qualifications for positions within the  
22 district; and

23 (c) may only consider years of service among teachers  
24 determined by the school district to have equivalent prior  
25 performance and qualifications.

26 Such procedures and criteria shall be developed by the board in  
27 consultation with its teachers and may be included in a  
28 collective bargaining agreement between the board and the  
29 exclusive bargaining representative of its teachers.

30 Any teacher dismissed as a result of such decrease or  
31 discontinuance shall be paid all earned compensation on or  
32 before the third business day following the last day of pupil  
33 attendance in the regular school term. If the board or joint  
34 agreement has any vacancies for the following school term or  
35 within one calendar year from the beginning of the following  
36 school term, ~~the positions thereby becoming available shall be~~  
37 ~~tendered to the teachers so removed or dismissed who submit~~  
38 ~~applications for such positions shall be first considered for~~  
39 ~~such positions so far as they are legally qualified to hold such~~  
40 ~~positions; provided, however, that if the number of honorable~~  
41 ~~dismissal notices based on economic necessity exceeds 15% of the~~

1 ~~number of full time equivalent positions filled by certified~~  
2 ~~employees (excluding principals and administrative personnel)~~  
3 ~~during the preceding school year, then if the board has any~~  
4 ~~vacancies for the following school term or within 2 calendar~~  
5 ~~years from the beginning of the following school term, the~~  
6 ~~positions so becoming available shall be tendered to the~~  
7 ~~teachers who were so notified and removed or dismissed whenever~~  
8 ~~they are legally qualified to hold such positions. Each board~~  
9 ~~shall, in consultation with any exclusive employee~~  
10 ~~representatives, each year establish a list, categorized by~~  
11 ~~positions, showing the length of continuing service of each~~  
12 ~~teacher who is qualified to hold any such positions, unless an~~  
13 ~~alternative method of determining a sequence of dismissal is~~  
14 ~~established as provided for in this Section, in which case a~~  
15 ~~list shall be made in accordance with the alternative method.~~  
16 ~~Copies of the list shall be distributed to the exclusive~~  
17 ~~employee representative on or before February 1 of each year.~~  
18 ~~Whenever the number of honorable dismissal notices based upon~~  
19 ~~economic necessity exceeds 5, or 150% of the average number of~~  
20 ~~teachers honorably dismissed in the preceding 3 years, whichever~~  
21 ~~is more, then the school board or governing board of a joint~~  
22 ~~agreement, as applicable, also shall hold a public hearing on~~  
23 ~~the question of the dismissals. Following the hearing and board~~  
24 ~~review the action to approve any such reduction shall require a~~  
25 ~~majority vote of the board members.~~

26 Any provisions in a collective bargaining agreement that are  
27 contrary to this subsection of this amendatory Act of the 96th  
28 General Assembly shall be null, void and considered contrary to  
29 law and public policy upon the effective date of this amendatory  
30 Act or upon the expiration of any collective bargaining  
31 agreement in effect on such date.

32 (b) Dismissals on the basis of performance evaluation  
33 results. If, after the implementation date of an evaluation  
34 system for teachers in a district as specified by Section 24A-  
35 2.5 of this Code, dismissal of a teacher in contractual  
36 continued service is sought on the basis of performance  
37 evaluation results pursuant to Sections 24A-5(m) or 24A-5(n) of  
38 this Code, the hearing, school board action, and any appeal  
39 relating thereto shall be carried out in accordance with this  
40 subsection (b). The school board must first provide written  
41 notice to the teacher within 90 days after the completion of the  
42 last performance evaluation used as a basis for such  
43 termination. The notice shall describe the basis for the  
44 termination and include a copy of each performance evaluation

1 result used as a basis for the termination. Within 10 days of  
2 notice the teacher has an opportunity to appeal the dismissal to  
3 the superintendent or his or her designee, with the burden upon  
4 the teacher to demonstrate that (a) the performance evaluation  
5 result or results used as a basis for the termination are not  
6 valid or appropriate, or (b) the teacher was not provided with  
7 an opportunity to remediate the teacher's cited deficiencies as  
8 part of a remediation plan meeting the requirements of Section  
9 24A-5 of this Code. The superintendent will convene a hearing  
10 in front of a panel that includes a designee from the  
11 superintendent, a designee appointed by its teachers or, where  
12 applicable, the exclusive bargaining representative of its  
13 teachers, and a designee appointed by the school board. The  
14 State Board of Education shall promulgate uniform standards and  
15 rules of procedures for such hearings. The teacher and a  
16 representative of the school district will each have one day to  
17 provide evidence and testimony confined to the validity and  
18 appropriateness of the performance evaluation result or results  
19 used as a basis for the termination and the adequacy of  
20 remediation, provided the panel, in its discretion, may provide  
21 an extension of time for the presentation of further evidence  
22 and testimony. The superintendent shall, within 30 days from  
23 the conclusion of the hearing, render to the school board the  
24 panel's findings and conclusions and, based on a majority vote  
25 of the panel, recommend to the school board one of the three  
26 following actions: the teacher be dismissed; the teacher be  
27 retained; or the teacher be returned to probationary status and  
28 contractual continued service status for that teacher be  
29 terminated. The school board shall review the panel's findings  
30 and conclusions and the recommendation of the superintendent and  
31 adopt, through written order, one of the three following  
32 actions: the teacher be dismissed; the teacher be retained; or  
33 the teacher be returned to probationary status and contractual  
34 continued service status for that teacher be terminated. If the  
35 school board dismisses the teacher over the superintendent's  
36 recommendation of retention, the school board shall make a  
37 conclusion, giving its reasons therefor, which must be supported  
38 by the panel's findings and conclusions, and such conclusion and  
39 reasons shall be included in its written order. The written  
40 order of a school board to retain a teacher or return the  
41 teacher to probationary status may be conditioned upon a  
42 settlement agreement between the teacher and the board. A  
43 teacher returned to probationary status shall be provided full-  
44 time employment for at least one school term following the final  
45 decision of the school board, and the first school term  
46 following the teacher's return to probationary status shall be

1 deemed the teacher's first probationary year. The provisions of  
2 the Administrative Review Law, and all amendments and  
3 modifications thereof and the rules adopted thereto, shall apply  
4 to and govern all proceedings instituted for the judicial review  
5 of a final decision by a school board pursuant to this  
6 subsection (b), except that the circuit court may only reverse  
7 the decision of the school board if it finds the decision to be  
8 arbitrary, capricious, an abuse of discretion, or otherwise not  
9 in accordance with law. All final decisions of a school board  
10 pursuant to this subsection (b) shall be reported to the State  
11 Board of Education, together with such additional information as  
12 the State Superintendent may require, to enable the State Board  
13 of Education to monitor the frequency of each type of school  
14 board decision.

15 (c) Other dismissals. If a dismissal or removal is sought  
16 for any ~~other~~ reason or cause other than for the reasons and  
17 causes described in subsections (a) and (b) of this Section  
18 ~~including those under Section 10-22.4,~~ the board must first  
19 approve a motion containing specific charges by a majority vote  
20 of all its members. Written notice of such charges shall be  
21 served upon the teacher within 5 days of the adoption of the  
22 motion. Such notice shall contain a bill of particulars. No  
23 hearing upon the charges is required unless the teacher within  
24 10 days after receiving notice requests in writing of the board  
25 that a hearing be scheduled, in which case the board shall  
26 schedule a hearing on those charges before a disinterested  
27 hearing officer on a date no less than 15 nor more than 30 days  
28 after the enactment of the motion. The secretary of the school  
29 board shall forward a copy of the notice to the State Board of  
30 Education. Within 5 days after receiving this notice of hearing,  
31 the State Board of Education shall provide a list of 5  
32 prospective, impartial hearing officers. Each person on the list  
33 must be accredited by a national arbitration organization and  
34 have had a minimum of 5 years of experience directly related to  
35 labor and employment relations matters between educational  
36 employers and educational employees or their exclusive  
37 bargaining representatives. No one on the list may be a resident  
38 of the school district. The Board and the teacher or their legal  
39 representatives within 3 days shall alternately strike one name  
40 from the list until only one name remains. Unless waived by the  
41 teacher, the teacher shall have the right to proceed first with  
42 the striking. Within 3 days of receipt of the first list  
43 provided by the State Board of Education, the board and the  
44 teacher or their legal representatives shall each have the right  
45 to reject all prospective hearing officers named on the first

1 list and to require the State Board of Education to provide a  
2 second list of 5 prospective, impartial hearing officers, none  
3 of whom were named on the first list. Within 5 days after  
4 receiving this request for a second list, the State Board of  
5 Education shall provide the second list of 5 prospective,  
6 impartial hearing officers. The procedure for selecting a  
7 hearing officer from the second list shall be the same as the  
8 procedure for the first list. In the alternative to selecting a  
9 hearing officer from the first or second list received from the  
10 State Board of Education, the board and the teacher or their  
11 legal representatives may mutually agree to select an impartial  
12 hearing officer who is not on a list received from the State  
13 Board of Education either by direct appointment by the parties  
14 or by using procedures for the appointment of an arbitrator  
15 established by the Federal Mediation and Conciliation Service or  
16 the American Arbitration Association. The parties shall notify  
17 the State Board of Education of their intent to select a hearing  
18 officer using an alternative procedure within 3 days of receipt  
19 of a list of prospective hearing officers provided by the State  
20 Board of Education. Any person selected by the parties under  
21 this alternative procedure for the selection of a hearing  
22 officer shall not be a resident of the school district and shall  
23 have the same qualifications and authority as a hearing officer  
24 selected from a list provided by the State Board of Education.  
25 The State Board of Education shall promulgate uniform standards  
26 and rules of procedure for such hearings. As to prehearing  
27 discovery, such rules and regulations shall, at a minimum, allow  
28 for: (1) discovery of names and addresses of persons who may be  
29 called as expert witnesses at the hearing, the omission of any  
30 such name to result in a preclusion of the testimony of such  
31 witness in the absence of a showing of good cause and the  
32 express permission of the hearing officer; (2) bills of  
33 particulars; (3) written interrogatories; and (4) production of  
34 relevant documents. The per diem allowance for the hearing  
35 officer shall be determined and paid by the State Board of  
36 Education. The hearing officer shall hold a hearing and render a  
37 final decision. The teacher has the privilege of being present  
38 at the hearing with counsel and of cross-examining witnesses and  
39 may offer evidence and witnesses and present defenses to the  
40 charges. The hearing officer may issue subpoenas and subpoenas  
41 duces tecum requiring the attendance of witnesses and, at the  
42 request of the teacher against whom a charge is made or the  
43 board, shall issue such subpoenas, but the hearing officer may  
44 limit the number of witnesses to be subpoenaed in behalf of the  
45 teacher or the board to not more than 10. All testimony at the  
46 hearing shall be taken under oath administered by the hearing

1 officer. The hearing officer shall cause a record of the  
2 proceedings to be kept and shall employ a competent reporter to  
3 take stenographic or steno-type notes of all the testimony. The  
4 costs of the reporter's attendance and services at the hearing  
5 shall be paid by the State Board of Education. Either party  
6 desiring a transcript of the hearing shall pay for the cost  
7 thereof. If in the opinion of the board the interests of the  
8 school require it, the board may suspend the teacher pending the  
9 hearing, but if acquitted the teacher shall not suffer the loss  
10 of any salary by reason of the suspension.

11 Before setting a hearing on charges stemming from causes  
12 that are considered remediable, a board must give the teacher  
13 reasonable warning in writing, stating specifically the causes  
14 which, if not removed, may result in charges; however, no such  
15 written warning shall be required if the causes have been the  
16 subject of a remediation plan pursuant to Article 24A. The  
17 hearing officer shall consider and give weight to all of the  
18 teacher's evaluations written pursuant to Article 24A. The  
19 hearing officer shall, within 30 days from the conclusion of the  
20 hearing or closure of the record, whichever is later, make a  
21 decision as to whether or not the teacher shall be dismissed and  
22 shall give a copy of the decision to both the teacher and the  
23 school board. If the hearing officer fails to render a decision  
24 within 30 days, the State Board of Education shall communicate  
25 with the hearing officer to determine the date that the parties  
26 can reasonably expect to receive the decision. The State Board  
27 of Education shall provide copies of all such communications to  
28 the parties. In the event the hearing officer fails without good  
29 cause to make a decision within the 30 day period, the name of  
30 such hearing officer shall be struck for a period of not more  
31 than 24 months from the master list of hearing officers  
32 maintained by the State Board of Education. If a hearing officer  
33 fails without good cause to render a decision within 3 months  
34 after the hearing is concluded or the record is closed,  
35 whichever is later, the State Board of Education shall provide  
36 the parties with a new list of prospective, impartial hearing  
37 officers, with the same qualifications provided herein, one of  
38 whom shall be selected, as provided in this Section, to review  
39 the record and render a decision. The parties may mutually agree  
40 to select a hearing officer pursuant to the alternative  
41 procedure, as provided in this Section, to rehear the charges  
42 heard by the hearing officer who failed to render a decision. If  
43 the hearing officer fails without good cause to render a  
44 decision within 3 months after the hearing is concluded or the  
45 record is closed, whichever is later, the hearing officer shall

1 be removed from the master list of hearing officers maintained  
2 by the State Board of Education. The board shall not lose  
3 jurisdiction to discharge a teacher if the hearing officer fails  
4 to render a decision within the time specified in this Section.  
5 The decision of the hearing officer is final unless reviewed as  
6 provided in Section 24-16 of this Act. In the event such review  
7 is instituted, any costs of preparing and filing the record of  
8 proceedings shall be paid by the board.

9 If a decision of the hearing officer is adjudicated upon  
10 review or appeal in favor of the teacher, then the trial court  
11 shall order reinstatement and shall determine the amount for  
12 which the board is liable including but not limited to loss of  
13 income and costs incurred therein.

14 Any teacher who is reinstated by any hearing or  
15 adjudication brought under this Section shall be assigned by the  
16 board to a position substantially similar to the one which that  
17 teacher held prior to that teacher's suspension or dismissal.

18 If, by reason of any change in the boundaries of school  
19 districts, or by reason of the creation of a new school  
20 district, the position held by any teacher having a contractual  
21 continued service status is transferred from one board to the  
22 control of a new or different board, the contractual continued  
23 service status of such teacher is not thereby lost, and such new  
24 or different board is subject to this Act with respect to such  
25 teacher in the same manner as if such teacher were its employee  
26 and had been its employee during the time such teacher was  
27 actually employed by the board from whose control the position  
28 was transferred.

29 (Source: P.A. 89-618, eff. 8-9-96; 90-224, eff. 7-25-97.)

30 **Section 40.** The School Code is amended by changing Section  
31 24-12.1 as follows:

32 (105 ILCS 5/24-12.1) (from Ch. 122, par. 24-12.1)

33 Sec. 24-12.1. Rights of recalled teachers. Any teacher on  
34 contractual continued service who is removed or dismissed as a  
35 result of a decision of the board to decrease the number of  
36 teachers employed by the board or to discontinue some particular  
37 type of teaching service and who ~~accepts the tender of a vacancy~~  
38 is rehired within one calendar year from the beginning of the

1 following school term pursuant to Section 24-12 shall lose no  
2 rights which accrued while in contractual continued service.

3 (Source: P.A. 82-997.)

4 **Section 45.** The School Code is amended by changing Section  
5 24A-2.5 as follows:

6 (105 ILCS 5/24A-2.5)

7 Sec. 24A-2.5. Definitions. In this Article:

8 "Evaluator" means:

9 (1) an administrator qualified under Section 24A-3; or

10 (2) other individuals qualified under Section 24A-3,  
11 provided that, if such other individuals are in the bargaining  
12 unit of a district's teachers, the district and the exclusive  
13 bargaining representative of that unit must agree to those  
14 individuals evaluating other bargaining unit members.

15 Notwithstanding anything to the contrary in item (2) of  
16 this definition, a school district operating under Article 34 of  
17 this Code may require department chairs qualified under Section  
18 24A-3 to evaluate teachers in their department or departments,  
19 provided that the school district shall bargain with the  
20 bargaining representative of its teachers over the impact and  
21 effects on department chairs of such a requirement.

22 "Implementation date" means, unless otherwise specified and  
23 provided that the requirements set forth in subsection (d) of  
24 Section 24A-20 have been met:

25 (1) For school districts having 500,000 or more  
26 inhabitants, in at least 300 schools by September 1, 2012 and in  
27 the remaining schools by September 1, 2013.

28 (2) For school districts voluntarily receiving funding from  
29 the State for the specific purpose of adopting a teacher  
30 evaluation system that meets the requirements of Public Act 96-  
31 861 (the Performance Evaluation Reform Act), September 1, 2013  
32 if the district receives funding in State Fiscal Year 2012. The  
33 State Superintendent shall determine the amount of funding to be  
34 received by each district in consultation with the Performance  
35 Evaluation Advisory Council.

1           (23) For school districts having less than 500,000  
2 inhabitants and receiving a Race to the Top Grant or School  
3 Improvement Grant after the effective date of this amendatory  
4 Act of the 96th General Assembly, the date specified in those  
5 grants for implementing an evaluation system for teachers and  
6 principals incorporating student growth as a significant factor.

7           (34) For the lowest performing 20% percent of remaining  
8 school districts having less than 500,000 inhabitants (with the  
9 measure of and school year or years used for school district  
10 performance to be determined by the State Superintendent of  
11 Education at a time determined by the State Superintendent),  
12 September 1, 2015.

13           (45) For all other school districts having less than  
14 500,000 inhabitants, September 1, 2016.

15           (6) For school districts voluntarily electing to adopt an  
16 earlier implementation date than the date otherwise set forth in  
17 items (4) and (5) above, the implementation date adopted by  
18 resolution of the board of the school district. The resolution  
19 shall be transmitted to the State Board of Education.

20

21           "Race to the Top Grant" means a grant made by the Secretary  
22 of the U.S. Department of Education for the program first funded  
23 pursuant to paragraph (2) of Section 14006(a) of the American  
24 Recovery and Reinvestment Act of 2009.

25           "School Improvement Grant" means a grant made by the  
26 Secretary of the U.S. Department of Education pursuant to  
27 Section 1003(g) of the Elementary and Secondary Education Act.

28 (Source: P.A. 96-861, eff. 1-15-10.)

29           **Section 50.** The School Code is amended by changing Section  
30 24A-5 as follows:

31           (105 ILCS 5/24A-5) (from Ch. 122, par. 24A-5)

32           Sec. 24A-5. Content of evaluation plans. This Section does  
33 not apply to teachers assigned to schools identified in an  
34 agreement entered into between the board of a school district  
35 operating under Article 34 of this Code and the exclusive  
36 representative of the district's teachers in accordance with

1 Section 34-85c of this Code. Each school district to which this  
2 Article applies shall establish a teacher evaluation plan which  
3 ensures that each teacher in contractual continued service is  
4 evaluated at least once in the course of every 2 school years.

5 By no later than September 1, 2012, each school district  
6 shall establish a teacher evaluation plan that ensures that:

7 (1) each teacher not in contractual continued service  
8 is evaluated at least once every school year; and

9 (2) each teacher in contractual continued service is  
10 evaluated at least once in the course of every 2 school  
11 years. However, any teacher in contractual continued  
12 service whose performance is rated as either "needs  
13 improvement" or "unsatisfactory" must be evaluated at least  
14 once in the school year following the receipt of such  
15 rating.

16 Notwithstanding anything to the contrary in this Section or  
17 any other Section of the School Code, a principal shall not be  
18 prohibited from evaluating any teachers within a school during  
19 his or her first year as principal of such school.

20 The evaluation plan shall comply with the requirements of  
21 this Section and of any rules adopted by the State Board of  
22 Education pursuant to this Section.

23 The plan shall include a description of each teacher's  
24 duties and responsibilities and of the standards to which that  
25 teacher is expected to conform, and shall include at least the  
26 following components:

27 (a) personal observation of the teacher in the  
28 classroom by the evaluator, unless the teacher has no  
29 classroom duties.

30 (b) consideration of the teacher's attendance,  
31 planning, instructional methods, classroom management,  
32 where relevant, and competency in the subject matter  
33 taught.

34 (c) by no later than the applicable implementation  
35 date, consideration of student growth as a significant  
36 factor in the rating of the teacher's performance.

1 (d) prior to September 1, 2012, rating of the  
2 performance of teachers in contractual continued service as  
3 either:

4 (i) "excellent", "satisfactory" or "unsatisfactory";  
5 or

6 (ii) "excellent", "proficient", "needs improvement" or  
7 "unsatisfactory".

8 (e) on and after September 1, 2012, rating of the  
9 performance of teachers in contractual continued service as  
10 "excellent", "proficient", "needs improvement" or  
11 "unsatisfactory".

12 (f) specification as to the teacher's strengths and  
13 weaknesses, with supporting reasons for the comments made.

14 (g) inclusion of a copy of the evaluation in the  
15 teacher's personnel file and provision of a copy to the  
16 teacher.

17 (h) within 30 school days after the completion of an  
18 evaluation rating a teacher in contractual continued  
19 service as "needs improvement", development by the  
20 evaluator, in consultation with the teacher, and taking  
21 into account the teacher's on-going professional  
22 responsibilities including his or her regular teaching  
23 assignments, of a professional development plan directed to  
24 the areas that need improvement and any supports that the  
25 district will provide to address the areas identified as  
26 needing improvement.

27 (i) within 30 school days after completion of an  
28 evaluation rating a teacher in contractual continued  
29 service as "unsatisfactory", development and commencement  
30 by the district of a remediation plan designed to correct  
31 deficiencies cited, provided the deficiencies are deemed  
32 remediable. In all school districts the remediation plan  
33 for unsatisfactory, tenured teachers shall provide for 90  
34 school days of remediation within the classroom, unless an  
35 applicable collective bargaining agreement provides for a  
36 shorter duration. In all school districts evaluations  
37 issued pursuant to this Section shall be issued within 10  
38 days after the conclusion of the respective remediation  
39 plan. However, the school board or other governing  
40 authority of the district shall not lose jurisdiction to

1 discharge a teacher in the event the evaluation is not  
2 issued within 10 days after the conclusion of the  
3 respective remediation plan.

4 (j) participation in the remediation plan by the  
5 teacher in contractual continued service rated  
6 "unsatisfactory", an evaluator and a consulting teacher  
7 selected by the evaluator of the teacher who was rated  
8 "unsatisfactory", which consulting teacher is an  
9 educational employee as defined in the Educational Labor  
10 Relations Act, has at least 5 years' teaching experience,  
11 and a reasonable familiarity with the assignment of the  
12 teacher being evaluated, and who received an "excellent"  
13 rating on his or her most recent evaluation. Where no  
14 teachers who meet these criteria are available within the  
15 district, the district shall request and the applicable  
16 regional office of education shall supply, to participate  
17 in the remediation process, an individual who meets these  
18 criteria.

19 In a district having a population of less than 500,000  
20 with an exclusive bargaining agent, the bargaining agent  
21 may, if it so chooses, supply a roster of qualified  
22 teachers from whom the consulting teacher is to be  
23 selected. That roster shall, however, contain the names of  
24 at least 5 teachers, each of whom meets the criteria for  
25 consulting teacher with regard to the teacher being  
26 evaluated, or the names of all teachers so qualified if  
27 that number is less than 5. In the event of a dispute as to  
28 qualification, the State Board shall determine  
29 qualification.

30 (k) a mid-point and final evaluation by an evaluator  
31 during and at the end of the remediation period,  
32 immediately following receipt of a remediation plan  
33 provided for under subsections (i) and (j) of this Section.  
34 Each evaluation shall assess the teacher's performance  
35 during the time period since the prior evaluation; provided  
36 that the last evaluation shall also include an overall  
37 evaluation of the teacher's performance during the  
38 remediation period. A written copy of the evaluations and  
39 ratings, in which any deficiencies in performance and  
40 recommendations for correction are identified, shall be  
41 provided to and discussed with the teacher within 10 school  
42 days after the date of the evaluation, unless an applicable  
43 collective bargaining agreement provides to the contrary.

1 These subsequent evaluations shall be conducted by an  
2 evaluator. The consulting teacher shall provide advice to  
3 the teacher rated "unsatisfactory" on how to improve  
4 teaching skills and to successfully complete the  
5 remediation plan. The consulting teacher shall participate  
6 in developing the remediation plan, but the final decision  
7 as to the evaluation shall be done solely by the evaluator,  
8 unless an applicable collective bargaining agreement  
9 provides to the contrary. Evaluations at the conclusion of  
10 the remediation process shall be separate and distinct from  
11 the required annual evaluations of teachers and shall not  
12 be subject to the guidelines and procedures relating to  
13 those annual evaluations. The evaluator may but is not  
14 required to use the forms provided for the annual  
15 evaluation of teachers in the district's evaluation plan.

16 (l) reinstatement to the evaluation schedule set forth  
17 in the district's evaluation plan for any teacher in  
18 contractual continued service who achieves a rating equal  
19 to or better than "satisfactory" or "proficient" in the  
20 school year following a rating of "needs improvement" or  
21 "unsatisfactory".

22 (m) dismissal in accordance with Section 24-12(b) or  
23 34-85(a) of the School Code of any teacher who fails to  
24 complete any applicable remediation plan with a rating  
25 equal to or better than a "satisfactory" or "proficient"  
26 rating. Districts and teachers subject to dismissal  
27 hearings are precluded from compelling the testimony of  
28 consulting teachers at such hearings under Section 24-12(b)  
29 or 34-85(a), either as to the rating process or for  
30 opinions of performances by teachers under remediation.

31 (n) After the implementation date of an evaluation  
32 system for teachers in a district as specified by Section  
33 24A-2.5, if a teacher in contractual continued service  
34 successfully completes a remediation plan following a  
35 rating of "unsatisfactory" and receives a subsequent rating  
36 of "unsatisfactory" during the 5-year period following the  
37 initial rating of "unsatisfactory" in any district, the  
38 school district may forego remediation and seek dismissal  
39 in accordance with Section 24-12(b) or 34-85(a) of the  
40 Code.

41 Nothing in this Section or Section 24A-4 shall be construed  
42 as preventing immediate dismissal of a teacher for deficiencies  
43 which are deemed irremediable or for actions which are injurious

1 to or endanger the health or person of students in the classroom  
2 or school, or preventing the dismissal or non-renewal of  
3 teachers not in contractual continued service for any reason not  
4 prohibited by applicable employment, labor, and civil rights  
5 laws. Failure to strictly comply with the time requirements  
6 contained in Section 24A-5 shall not invalidate the results of  
7 the remediation plan.

8 (Source: P.A. 95-510, eff. 8-28-07; 96-861, eff. 1-15-10; 96-  
9 1423, eff. 8-3-10.)

10 **Section 55.** The School Code is amended by changing Section  
11 34-84 as follows:

12 (105 ILCS 5/34-84) (from Ch. 122, par. 34-84)

13 Sec. 34-84. Appointments and promotions of teachers.  
14 Appointments and promotions of teachers shall be made for merit  
15 only, and after ~~satisfactory~~ a probationary period of continuous  
16 employment that includes 4 school terms of service rated as  
17 "superior", "proficient" or "excellent" ~~a probationary period of~~  
18 ~~3 years with respect to probationary employees employed as full-~~  
19 ~~time teachers in the public school system of the district before~~  
20 ~~January 1, 1998 and 4 years with respect to probationary~~  
21 ~~employees who are first employed as full-time teachers in the~~  
22 ~~public school system of the district on or after January 1, 1998~~  
23 ~~(, during which period the board may dismiss or discharge any~~  
24 ~~such probationary employee upon the recommendation, accompanied~~  
25 ~~by the written reasons therefor, of the general superintendent~~  
26 ~~of schools)~~ , and after which period appointments of teachers  
27 shall become permanent, subject to the right of the board to  
28 return the teacher to probationary status and terminate  
29 contractual continued service pursuant to Section 34-85(a) and  
30 removal for cause in the manner provided by Section 34-85.

31 As used in this Article, "teachers" means and includes all  
32 members of the teaching force excluding the general  
33 superintendent and principals.

34 There shall be no reduction in teachers because of a  
35 decrease in student membership or a change in subject  
36 requirements within the attendance center organization after the  
37 20th day following the first day of the school year, except  
38 that: (1) this provision shall not apply to desegregation  
39 positions, special education positions, or any other positions  
40 funded by State or federal categorical funds, and (2) at

1 attendance centers maintaining any of grades 9 through 12, there  
2 may be a second reduction in teachers on the first day of the  
3 second semester of the regular school term because of a decrease  
4 in student membership or a change in subject requirements within  
5 the attendance center organization.

6 The school principal shall make the decision in selecting  
7 teachers to fill new and vacant positions consistent with  
8 Section 34-8.1.

9 (Source: P.A. 89-15, eff. 5-30-95; 90-548, eff. 1-1-98.)

10 **Section 60.** The School Code is amended by changing Section  
11 34-85 as follows:

12 (105 ILCS 5/34-85) (from Ch. 122, par. 34-85)

13 Sec. 34-85. Removal for cause; Notice and hearing;  
14 Suspension.

15 (a) Dismissals on the basis of performance evaluation  
16 results. If, after the implementation date of an evaluation  
17 system for teachers in a school within the district as specified  
18 by Section 24A-2.5 of this Code, dismissal of a teacher in  
19 contractual continued service is sought on the basis of  
20 performance evaluation results pursuant to Sections 24A-5(m) or  
21 24A-5(n) of this Code, the hearing, board action, and any appeal  
22 relating thereto shall be carried out in accordance with this  
23 subsection (a). The board must first provide written notice to  
24 the teacher within 90 days after the completion of the last  
25 performance evaluation used as a basis for such termination. The  
26 notice shall describe the basis for the termination and include  
27 a copy of each performance evaluation result used as a basis for  
28 the termination. Within 10 days of notice the teacher has an  
29 opportunity to appeal the dismissal to the general  
30 superintendent or his or her designee, with the burden upon the  
31 teacher to demonstrate that (a) the performance evaluation  
32 result or results used as a basis for the termination are not  
33 valid or appropriate, or (b) the teacher was not provided with  
34 an opportunity to remediate the teacher's cited deficiencies as  
35 part of a remediation plan meeting the requirements of Section  
36 24A-5 of this Code. The general superintendent will convene a  
37 hearing in front of a panel that includes a designee from the  
38 general superintendent, a designee appointed by the exclusive  
39 bargaining representative of its teachers, and a designee  
40 appointed by the board. The State Board of Education shall

1 promulgate uniform standards and rules of procedures for such  
2 hearings. The teacher and a representative of the district will  
3 each have one day to provide evidence and testimony confined to  
4 the validity and appropriateness of the performance evaluation  
5 result or results used as a basis for the termination and the  
6 adequacy of remediation, provided the panel, in its discretion,  
7 may provide an extension of time for the presentation of further  
8 evidence and testimony. The general superintendent shall,  
9 within 30 days from the conclusion of the hearing, render to the  
10 board the panel's findings and conclusions and, based on a  
11 majority vote of the panel, recommend to the board one of the  
12 three following actions: the teacher be dismissed; the teacher  
13 be retained; or the teacher be returned to probationary status  
14 and contractual continued service status for that teacher be  
15 terminated. The board shall review the panel's findings and  
16 conclusions and the recommendation of the general superintendent  
17 and adopt, through written order, one of the three following  
18 actions: the teacher be dismissed; the teacher be retained; or  
19 the teacher be returned to probationary status and contractual  
20 continued service status for that teacher be terminated. If the  
21 board dismisses the teacher over the superintendent's  
22 recommendation of retention, the board shall make a conclusion,  
23 giving its reasons therefor, which must be supported by the  
24 panel's findings and conclusions, and such conclusion and  
25 reasons shall be included in its written order. A teacher  
26 returned to probationary status shall be provided full-time  
27 employment for at least one school term following the final  
28 decision of the board, and the first school term following the  
29 teacher's return to probationary status shall be deemed the  
30 teacher's first probationary year. The provisions of the  
31 Administrative Review Law, and all amendments and modifications  
32 thereof and the rules adopted thereto, shall apply to and govern  
33 all proceedings instituted for the judicial review of a final  
34 decision by the board pursuant to this subsection (a), except  
35 that the circuit court may only reverse the decision of the  
36 board if it finds the decision to be arbitrary, capricious, an  
37 abuse of discretion, or otherwise not in accordance with law.  
38 All final decisions of the board pursuant to this subsection (a)  
39 shall be reported to the State Board of Education, together with  
40 such additional information as the State Superintendent may  
41 require, to enable the State Board of Education to monitor the  
42 frequency of each type of board decision.

43 (b) Other dismissals and removals. This subsection (b)  
44 applies to dismissals and removals for cause, other than  
45 dismissals pursuant to subsection (a) of this Section. No

1 teacher employed by the board of education shall (after serving  
2 the probationary period specified in Section 34-84) be removed  
3 except for cause. Teachers (who have completed the probationary  
4 period specified in Section 34-84 of this Code) shall be removed  
5 for cause in accordance with the procedures set forth in this  
6 Section subsection or such other procedures established in an  
7 agreement entered into between the board and the exclusive  
8 representative of the district's teachers under Section 34-85c  
9 of this Code for teachers (who have completed the probationary  
10 period specified in Section 34-84 of this Code) assigned to  
11 schools identified in that agreement. No principal employed by  
12 the board of education shall be removed during the term of his  
13 or her performance contract except for cause, which may include  
14 but is not limited to the principal's repeated failure to  
15 implement the school improvement plan or to comply with the  
16 provisions of the Uniform Performance Contract, including  
17 additional criteria established by the Council for inclusion in  
18 the performance contract pursuant to Section 34-2.3.

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

35 No hearing upon the charges is required unless the teacher  
36 or principal within 10 days after receiving notice requests in  
37 writing of the general superintendent that a hearing be  
38 scheduled, in which case the general superintendent shall  
39 schedule a hearing on those charges before a disinterested  
40 hearing officer on a date no less than 15 nor more than 30 days  
41 after the approval of the charges. The general superintendent  
42 shall forward a copy of the notice to the State Board of  
43 Education within 5 days from the date of the approval of the  
44 charges. Within 10 days after receiving the notice of hearing,

1 the State Board of Education shall provide the teacher or  
2 principal and the general superintendent with a list of 5  
3 prospective, impartial hearing officers. Each person on the list  
4 must be accredited by a national arbitration organization and  
5 have had a minimum of 5 years of experience as an arbitrator in  
6 cases involving labor and employment relations matters between  
7 educational employers and educational employees or their  
8 exclusive bargaining representatives.

9 The general superintendent and the teacher or principal or  
10 their legal representatives within 3 days from receipt of the  
11 list shall alternately strike one name from the list until only  
12 one name remains. Unless waived by the teacher, the teacher or  
13 principal shall have the right to proceed first with the  
14 striking. Within 3 days of receipt of the first list provided by  
15 the State Board of Education, the general superintendent and the  
16 teacher or principal or their legal representatives shall each  
17 have the right to reject all prospective hearing officers named  
18 on the first list and to require the State Board of Education to  
19 provide a second list of 5 prospective, impartial hearing  
20 officers, none of whom were named on the first list. Within 5  
21 days after receiving this request for a second list, the State  
22 Board of Education shall provide the second list of 5  
23 prospective, impartial hearing officers. The procedure for  
24 selecting a hearing officer from the second list shall be the  
25 same as the procedure for the first list. Each party shall  
26 promptly serve written notice on the other of any name stricken  
27 from the list. If the teacher or principal fails to do so, the  
28 general superintendent may select the hearing officer from any  
29 name remaining on the list. The teacher or principal may waive  
30 the hearing at any time prior to the appointment of the hearing  
31 officer. Notice of the selection of the hearing officer shall be  
32 given to the State Board of Education. The hearing officer shall  
33 be notified of his selection by the State Board of Education. A  
34 signed acceptance shall be filed with the State Board of  
35 Education within 5 days of receipt of notice of the selection.  
36 The State Board of Education shall notify the teacher or  
37 principal and the board of its appointment of the hearing  
38 officer. In the alternative to selecting a hearing officer from  
39 the first or second list received from the State Board of  
40 Education, the general superintendent and the teacher or  
41 principal or their legal representatives may mutually agree to  
42 select an impartial hearing officer who is not on a list  
43 received from the State Board of Education, either by direct  
44 appointment by the parties or by using procedures for the  
45 appointment of an arbitrator established by the Federal

1 Mediation and Conciliation Service or the American Arbitration  
2 Association. The parties shall notify the State Board of  
3 Education of their intent to select a hearing officer using an  
4 alternative procedure within 3 days of receipt of a list of  
5 prospective hearing officers provided by the State Board of  
6 Education. Any person selected by the parties under this  
7 alternative procedure for the selection of a hearing officer  
8 shall have the same qualifications and authority as a hearing  
9 officer selected from a list provided by the State Board of  
10 Education. The teacher or principal may waive the hearing at any  
11 time prior to the appointment of the hearing officer. The State  
12 Board of Education shall promulgate uniform standards and rules  
13 of procedure for such hearings, including reasonable rules of  
14 discovery.

15 The per diem allowance for the hearing officer shall be  
16 paid by the State Board of Education. The hearing officer shall  
17 hold a hearing and render findings of fact and a recommendation  
18 to the general superintendent. The teacher or principal has the  
19 privilege of being present at the hearing with counsel and of  
20 cross-examining witnesses and may offer evidence and witnesses  
21 and present defenses to the charges. The hearing officer may  
22 issue subpoenas requiring the attendance of witnesses and, at  
23 the request of the teacher or principal against whom a charge is  
24 made or the general superintendent, shall issue such subpoenas,  
25 but the hearing officer may limit the number of witnesses to be  
26 subpoenaed in behalf of the teacher or principal or the general  
27 superintendent to not more than 10 each. All testimony at the  
28 hearing shall be taken under oath administered by the hearing  
29 officer. The hearing officer shall cause a record of the  
30 proceedings to be kept and shall employ a competent reporter to  
31 take stenographic or steno-type notes of all the testimony. The  
32 costs of the reporter's attendance and services at the hearing  
33 shall be paid by the State Board of Education. Either party  
34 desiring a transcript of the hearing shall pay for the cost  
35 thereof.

36 Pending the hearing of the charges, the person charged may  
37 be suspended in accordance with rules prescribed by the board  
38 but such person, if acquitted, shall not suffer any loss of  
39 salary by reason of the suspension.

40 Before service of notice of charges on account of causes  
41 that may be deemed to be remediable, the teacher or principal  
42 shall be given reasonable warning in writing, stating  
43 specifically the causes which, if not removed, may result in

1 charges; however, no such written warning shall be required if  
2 the causes have been the subject of a remediation plan pursuant  
3 to Article 24A or where the board of education and the exclusive  
4 representative of the district's teachers have entered into an  
5 agreement pursuant to Section 34-85c of this Code, pursuant to  
6 an alternative system of remediation. No written warning shall  
7 be required for conduct on the part of a teacher or principal  
8 which is cruel, immoral, negligent, or criminal or which in any  
9 way causes psychological or physical harm or injury to a student  
10 as that conduct is deemed to be irremediable. No written warning  
11 shall be required for a material breach of the uniform principal  
12 performance contract as that conduct is deemed to be  
13 irremediable; provided however, that not less than 30 days  
14 before the vote of the local school council to seek the  
15 dismissal of a principal for a material breach of a uniform  
16 principal performance contract, the local school council shall  
17 specify the nature of the alleged breach in writing and provide  
18 a copy of it to the principal.

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

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

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

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

31 (Source: P.A. 95-510, eff. 8-28-07.)

32 **Section 65.** The Educational Labor Relations Act is amended  
33 by changing Section 4.5 as follows:

34 (115 ILCS 5/4.5)

35 Sec. 4.5. Subjects of collective bargaining.

36 (a) Notwithstanding the existence of any other provision  
37 in this Act or other law, collective bargaining between an  
38 educational employer whose territorial boundaries are  
39 coterminous with those of a city having a population in excess

1 of 500,000 and an exclusive representative of its employees ~~may~~  
2 shall not include any of the following subjects:

3 (1) ~~(Blank)~~. Decisions to implement performance-  
4 based, assignment-based and other differentiated or  
5 alternative teacher compensation plans as a supplement to  
6 the base salaries provided by a collective bargaining  
7 agreement, and the impact of these decisions on individual  
8 employees or the bargaining unit.

9 (2) Decisions to contract with a third party for one  
10 or more services otherwise performed by employees in a  
11 bargaining unit, and the procedures for obtaining such  
12 contract or the identity of the third party, and the impact  
13 of these decisions on individual employees or the  
14 bargaining unit.

15 (3) Decisions to layoff or reduce in force employees,  
16 including, but not limited to, layoffs or reductions in  
17 force resulting from a lack of work or funds, the closing  
18 of an attendance center or program, a decline in student  
19 enrollment, a change in the subject requirements within an  
20 attendance center or program and a change in the  
21 educational focus of an attendance center, and the impact  
22 of these decisions on individual employees or the  
23 bargaining unit.

24 (4) Decisions to determine class size, class staffing  
25 and assignment, class schedules, academic calendar, length  
26 of the school day or work day, hours and places of  
27 instruction, or pupil assessment policies, and the impact  
28 of these decisions on individual employees or the  
29 bargaining unit.

30 (5) Decisions concerning use and staffing of  
31 experimental or pilot programs and decisions concerning use  
32 of technology to deliver educational programs and services  
33 and staffing to provide the technology, and the impact of  
34 these decisions on individual employees or the bargaining  
35 unit.

36 (b) The subject or matters described in subsection (a) are  
37 permissive prohibited subjects of bargaining between an  
38 educational employer and an exclusive representative of its  
39 employees and, for the purpose of this Act, are within the sole  
40 discretion authority of the educational employer to decide to  
41 bargain, provided that the educational employer is required to

1 ~~bargain over the impact of a decision concerning such subject or~~  
2 ~~matter on the bargaining unit upon request by the exclusive~~  
3 ~~representative. During this bargaining, the educational employer~~  
4 ~~shall not be precluded from implementing its decision. If, after~~  
5 ~~a reasonable period of bargaining, a dispute or impasse exists~~  
6 ~~between the educational employer and the exclusive~~  
7 ~~representative, the dispute or impasse shall be resolved~~  
8 ~~exclusively as set forth in subsection (b) of Section 12 of this~~  
9 ~~Act in lieu of a strike under Section 13 of this Act.~~

10 (c) ~~A provision in a collective bargaining agreement that~~  
11 ~~was rendered null and void because it involved a prohibited~~  
12 ~~subject of collective bargaining under this subsection (c) as~~  
13 ~~this subsection (c) existed before the effective date of this~~  
14 ~~amendatory Act of the 93rd General Assembly remains null and~~  
15 ~~void and shall not otherwise be reinstated in any successor~~  
16 ~~agreement unless the educational employer and exclusive~~  
17 ~~representative otherwise agree to include an agreement reached~~  
18 ~~on a subject or matter described in subsection (a) of this~~  
19 ~~Section as subsection (a) existed before this amendatory Act of~~  
20 ~~the 93rd General Assembly. Any provision in a policy or~~  
21 ~~collective bargaining agreement or any practice that is~~  
22 ~~inconsistent with this Section of this amendatory Act of the~~  
23 ~~96th General Assembly shall be considered null, void and~~  
24 ~~contrary to law and public policy upon the effective date of~~  
25 ~~this amendatory Act or upon the expiration of any collective~~  
26 ~~bargaining agreement in effect on such date.~~

27 (Source: P.A. 93-3, eff. 4-16-03.)

28 **Section 70.** The Educational Labor Relations Act is amended  
29 by changing Section 12 as follows:

30 (115 ILCS 5/12) (from Ch. 48, par. 1712)

31 Sec. 12. Impasse procedures.

32 (a) Negotiations period. If the parties engaged in  
33 collective bargaining have not reached an agreement by 90 days  
34 before the scheduled start of the forthcoming school year, the  
35 parties shall notify the Illinois Educational Labor Relations  
36 Board concerning the status of negotiations.

37 Upon demand of either party, collective bargaining between  
38 the employer and an exclusive bargaining representative must  
39 begin within 60 days of the date of certification of the

1 representative by the Board, or in the case of an existing  
2 exclusive bargaining representative, within 60 days of the  
3 receipt by a party of a demand to bargain issued by the other  
4 party. Once commenced, collective bargaining must continue for  
5 at least a 60 day period, unless a contract is entered into.

6 (b) Mediation. ~~Except as otherwise provided in subsection~~  
7 ~~(b) of this Section, if~~ If after a reasonable period of  
8 negotiation and within 45 days of the scheduled start of the  
9 forth-coming school year, the parties engaged in collective  
10 bargaining have reached an impasse, either party may petition  
11 the Board to initiate mediation. Alternatively, the Board on  
12 its own motion may initiate mediation during this period.  
13 However, mediation shall be initiated by the Board at any time  
14 when jointly requested by the parties and the services of the  
15 mediators shall continuously be made available to the employer  
16 and to the exclusive bargaining representative for purposes of  
17 arbitration of grievances and mediation or arbitration of  
18 contract disputes. ~~If requested by the parties, the mediator~~  
19 ~~may perform fact finding and in so doing conduct hearings and~~  
20 ~~make written findings and recommendations for resolution of the~~  
21 ~~dispute.~~ Such mediation shall be provided by the Board and  
22 shall be held before qualified impartial individuals. Nothing  
23 prohibits the use of other individuals or organizations such as  
24 the Federal Mediation and Conciliation Service or the American  
25 Arbitration Association selected by both the exclusive  
26 bargaining representative and the employer.

27 If the parties engaged in collective bargaining fail to  
28 reach an agreement within 15 days of the scheduled start of the  
29 forthcoming school year and have not requested mediation, the  
30 Illinois Educational Labor Relations Board shall invoke  
31 mediation.

32 Whenever mediation is initiated or invoked under this  
33 subsection (a), the parties may stipulate to defer selection of  
34 a mediator in accordance with rules adopted by the Board.

35 (c) Fact-finding.

36 (1) For collective bargaining agreements that expire or  
37 are terminated on or after the effective date of this  
38 amendatory Act of the 96th General Assembly, if the  
39 parties fail to reach an agreement after a reasonable  
40 period of mediation, the Board shall order that the  
41 dispute be submitted to a three-member fact-finding  
42 panel. Within three days following the Board's order,

1 each party shall appoint one member of the fact-  
2 finding panel. Within three days following these  
3 appointments, the parties shall select a qualified  
4 impartial member to serve as the chairperson of the  
5 fact-finding panel. If the parties are unable to  
6 agree upon a qualified impartial member, the parties  
7 shall request a panel of qualified impartial members  
8 from either the Federal Mediation and Conciliation  
9 Service or the American Arbitration Association and  
10 shall select the chairperson of the fact-finding panel  
11 from such panel in accordance with the procedures  
12 established by the organization providing the panel.  
13 The chairperson of the fact-finding panel shall not be  
14 the same individual who was appointed as a mediator.

15 (2) The fact-finding panel shall have the following duties  
16 and powers:

17 (A) To require the parties to submit a statement of  
18 disputed issues and their position regarding each  
19 issue either jointly or separately;

20 (B) To identify disputed issues that are economic in  
21 nature;

22 (C) To meet with the parties either separately or  
23 jointly;

24 (D) To conduct hearings and regulate the time, place,  
25 course and manner of such hearings;

26 (E) To request the Board to issue subpoenas requiring  
27 the attendance and testimony of witnesses or the  
28 production of evidence;

29 (F) To administer oaths and affirmations;

30 (G) To examine witnesses and documents;

31 (H) To create a full and complete written record of  
32 the hearings;

33 (I) To attempt mediation;

34 (J) To require the parties to submit final offers;  
35 and

- 1           (K) To employ any other measures deemed appropriate  
2           to resolve the impasse.
- 3       (3) If the dispute is not settled within 90 days of the  
4       appointment of the fact-finding panel, and after the  
5       fact-finding panel has conducted a hearing on the  
6       disputed issues, the fact-finding panel shall issue a  
7       private report to the parties that contains advisory  
8       findings of fact and recommended terms of settlement  
9       for all disputed issues and that sets forth a  
10       rationale for each recommendation. The fact-finding  
11       panel, acting by a majority of its members, shall base  
12       its findings and recommendations upon the following  
13       criteria as applicable:
- 14           (A) The lawful authority of the employer;
- 15           (B) The federal and state statutes or local  
16           ordinances applicable to the employer;
- 17           (C) Prior collective bargaining agreements and the  
18           bargaining history between the parties;
- 19           (D) Stipulations of the parties;
- 20           (E) The interests and welfare of the public and of  
21           the students and families served by the employer;
- 22           (F) The ability of the employer to finance and  
23           administer the proposals at issue, provided that  
24           such ability is not predicated on the premise  
25           that the employer will develop additional sources  
26           of revenue;
- 27           (G) The impact of any economic adjustments on the  
28           employer's ability to pursue its educational  
29           mission;
- 30           (H) The present and future general economic  
31           conditions in the locality and State;
- 32           (I) The average consumer prices for goods and  
33           services, which is commonly known as the cost of  
34           living;
- 35           (J) The overall compensation presently received by  
36           the employees involved in the dispute, including

1 direct wage compensation; vacations, holidays and  
2 other excused time; insurance and pensions;  
3 medical and hospitalization benefits; the  
4 continuity and stability of employment and all  
5 other benefits received;

6 (K) Changes in any of the above circumstances during  
7 the fact-finding procedures; and

8 (L) Such other factors, not confined to the  
9 foregoing, that are normally or traditionally  
10 considered in the determination of wages, hours  
11 and conditions of employment through collective  
12 bargaining, mediation, fact-finding, arbitration  
13 or other impasse resolution procedures in public  
14 employment.

15 (4) The fact-finding panel's recommended terms of  
16 settlement shall be deemed agreed upon by the parties  
17 as the final resolution of the disputed issues and  
18 incorporated into the collective bargaining agreement  
19 executed by the parties, unless either party tenders  
20 to the other party and the chairperson of the fact-  
21 finding panel a notice of rejection of the recommended  
22 terms of settlement, with a rationale for the  
23 rejection, within ten days of the date of issuance of  
24 the fact-finding panel's report. If either party  
25 submits a notice of rejection, the chairperson of the  
26 fact-finding panel shall publish the fact-finding  
27 panel's report for public information by delivering a  
28 copy to all newspapers of general circulation in the  
29 community with simultaneous written notice to the  
30 parties.

31 (5) After the publication of the fact-finding panel's  
32 report, the fact-finding panel's recommended terms of  
33 settlement shall be deemed agreed upon by the parties  
34 as the final resolution of the disputed issues and  
35 incorporated into the collective bargaining agreement  
36 executed by the parties, unless either party tenders  
37 to the other party and the chairperson of the fact-  
38 finding panel a notice of rejection of the recommended  
39 terms of settlement, with a rationale for the  
40 rejection, within five days of the date on which the  
41 chairperson of the fact-finding panel delivers for  
42 publication the fact-finding panel's report. If  
43 either party submits a notice of rejection, the

1 chairperson of the fact-finding panel shall publish  
2 such party's notice of rejection and the rationale for  
3 each rejection for public information by delivering a  
4 copy to all newspapers of general circulation in the  
5 community.

6 (6) If the dispute is not settled through fact-finding,  
7 within ten days of the date on which the chairperson  
8 of the fact-finding panel delivers for publication the  
9 fact-finding panel's report, the parties shall  
10 exchange final offers on each disputed issue.

11 (7) After the expiration of the ten-day period defined in  
12 paragraph (6), and upon the affirmative vote of two-  
13 thirds of its members, the governing body of the  
14 employer shall resolve each disputed issue by adopting  
15 one of the final offers submitted pursuant to  
16 paragraph (6) or the fact-finding panel's recommended  
17 terms of settlement for such disputed issue. The  
18 terms of settlement adopted by the governing body of  
19 the employer shall be incorporated into the collective  
20 bargaining agreement executed by the parties.

21 (8) If the governing body of the employer fails to adopt a  
22 resolution for each disputed issue within forty days  
23 of the date on which the chairperson of the fact-  
24 finding panel delivers for publication the fact-  
25 finding panel's report, the exclusive bargaining  
26 representative shall have the right to engage in a  
27 strike in accordance with Section 13 of this Act.

28 (bd) Exception for Section 4.5 subjects of collective  
29 bargaining. If, after a period of bargaining of at least 60  
30 days, a dispute or impasse exists between an employer whose  
31 territorial boundaries are coterminous with those of a city  
32 having a population in excess of 500,000 and the exclusive  
33 bargaining representative over a subject or matter set forth in  
34 Section 4.5 of this Act, the parties shall submit the dispute or  
35 impasse to the dispute resolution procedure agreed to between  
36 the parties. The procedure shall provide for mediation of  
37 disputes by a rotating mediation panel and may, at the request  
38 of either party, include the issuance of advisory findings of  
39 fact and recommendations. A dispute or impasse over a Section  
40 4.5 subject shall not be resolved through the impasse resolution  
41 procedure set forth in this Act, and the mediator and fact-  
42 finding panel has no jurisdiction over any Section 4.5 subject.

1 The changes made to this Section by this amendatory Act of the  
2 96th General Assembly are declarative of existing law.

3 ~~(ee) Costs. The costs of fact finding and mediation shall~~  
4 ~~be shared equally between the employer and the exclusive~~  
5 ~~bargaining agent, provided that, for purposes of mediation under~~  
6 ~~this Act, if either party requests the use of mediation services~~  
7 ~~from the Federal Mediation and Conciliation Service, the other~~  
8 ~~party shall either join in such request or bear the additional~~  
9 ~~cost of mediation services from another source. The costs and~~  
10 expenses of the mediator and the chairperson of the fact-finding  
11 panel shall be shared equally between the parties. All other  
12 costs and expenses of complying with this Section shall be borne  
13 by the party incurring them.

14 (f) Refusal to participate in mediation or fact-finding  
15 when required. If the representatives of either the employer or  
16 exclusive bargaining representative refuse to participate in the  
17 mediation or fact-finding procedures when required by this  
18 Section, such refusal shall be deemed a refusal to bargain in  
19 good faith. In the absence of an unfair labor practice charge  
20 filed by an aggrieved party, the Board on its own motion may  
21 issue an unfair labor practice complaint based on such refusal  
22 and conduct hearings and issue orders as provided for in Section  
23 15 of this Act.

24 (dg) Alternate impasse procedures. Nothing in this Act  
25 prevents an employer and an exclusive bargaining representative  
26 from mutually submitting to final and binding impartial  
27 arbitration unresolved issues concerning the terms of a new  
28 collective bargaining agreement.

29 (Source: P.A. 93-3, eff. 4-16-03.)

30 **Section 75.** The Educational Labor Relations Act is amended  
31 by changing Section 13 as follows:

32 (115 ILCS 5/13) (from Ch. 48, par. 1713)

33 Sec. 13. Strikes.

34 (a) Notwithstanding the existence of any other provision  
35 in this Act or other law, educational employees ~~employed in~~  
36 ~~school districts organized under Article 34 of the School Code~~  
37 ~~shall not engage in a strike at any time during the 18 month~~  
38 ~~period that commences on the effective date of this amendatory~~

1 ~~Act of 1995~~ except as permitted under subsection (b). An  
2 educational employee employed in a school district organized  
3 under Article 34 of the School Code who participates in a strike  
4 in violation of this Section is subject to discipline by the  
5 employer. In addition, no educational employer organized under  
6 Article 34 of the School Code may pay or cause to be paid to an  
7 educational employee who participates in a strike in violation  
8 of this ~~subsection~~ Section any wages or other compensation for  
9 any period during which an educational employee participates in  
10 the strike, except for wages or compensation earned before  
11 participation in the strike. Notwithstanding the existence of  
12 any other provision in this Act or other law, ~~during the 18-~~  
13 ~~month period that strikes are prohibited under this subsection~~  
14 nothing in this ~~subsection~~ Section shall be construed to require  
15 an educational employer to submit to a binding dispute  
16 resolution process. If any strike occurs in violation of this  
17 Section, the employer may initiate in the circuit court of the  
18 county in which such strike occurs an action for an injunction  
19 and other relief, and the circuit court shall impose at least  
20 one or more of the following penalties on the exclusive  
21 bargaining representative in addition to ordering other  
22 appropriate relief:

23 (1) Revoke the designation of the exclusive bargaining  
24 representative as the exclusive bargaining  
25 representative of the employees involved in the  
26 dispute and declare the exclusive bargaining  
27 representative to be ineligible for such designation  
28 for a period of two years; or

29 (2) Prohibit the employer from deducting dues on behalf of  
30 the exclusive bargaining representative for a period  
31 of two years; or

32 (3) Void the collective bargaining agreement and permit  
33 the employer to set initial terms and conditions of  
34 employment for bargaining unit members; or

35 (4) Impose fines on the exclusive bargaining  
36 representative and/or its officers.

37 (b) Notwithstanding the existence of any other provision  
38 in this Act or any other law, educational employees ~~other than~~  
39 ~~those employed in a school district organized under Article 34~~  
40 ~~of the School Code and, after the expiration of the 18 month~~  
41 ~~period that commences on the effective date of this amendatory~~  
42 ~~Act of 1995, educational employees in a school district~~

1 ~~organized under Article 34 of the School Code~~ shall not engage  
2 in a strike except under the following conditions:

3 (1) they are represented by an exclusive bargaining  
4 representative;

5 (2) ~~mediation has been used without success~~ the parties  
6 have in good faith fully and completely engaged in  
7 mediation and fact-finding as required by Section  
8 12(b) and (c) of this Act;

9 (3) the governing body of the employer has failed to adopt  
10 a resolution for each disputed issue within forty days  
11 of the date on which the chairperson of the fact-  
12 finding panel delivers for publication the fact-  
13 finding panel's report as set forth in Section  
14 12(c)(8) of this Act;

15 (~~34~~) at least 10 days have elapsed after a notice of intent  
16 to strike has been given by the exclusive bargaining  
17 representative to the educational employer, the  
18 regional superintendent and the Illinois Educational  
19 Labor Relations Board;

20 (~~45~~) the collective bargaining agreement between the  
21 educational employer and educational employees, if  
22 any, has expired or has been terminated; and

23 (~~56~~) the employer and the exclusive bargaining  
24 representative have not mutually submitted the  
25 unresolved issues to arbitration.

26 If, however, in the opinion of an employer the strike is or  
27 has become a clear and present danger to the health, ~~or~~ safety  
28 or welfare of the public, the employer may initiate in the  
29 circuit court of the county in which such danger exists an  
30 action for relief which may include, but is not limited to,  
31 injunction. The court may grant appropriate relief upon the  
32 finding that such clear and present danger exists. An unfair  
33 practice or other evidence of lack of clean hands by the  
34 educational employer is a defense to such action. Except as  
35 provided for in this paragraph, the jurisdiction of the court  
36 under this Section is limited by the Labor Dispute Act.

37 (Source: P.A. 89-15, eff. 5-30-95; 90-548, eff. 1-1-98.)

1           **Section 99. Effective date.** This Act takes effect upon  
2 becoming law.

CONFIDENTIAL DRAFT