

Act/Code Revision Proposals - **DRAFT**

State Universities Civil Service Act:

§36h, Appointments, (70/36h. Appointments)

(1) Whenever an employer covered by the University System has a position which needs to be filled, this employer shall inform the Executive Director of the Merit Board. The Executive Director shall then certify to the employer the names and addresses of the persons with the 3 highest scores on the register for the classification to which the position is assigned. The employer shall select one of these persons certified for the position and shall notify the Executive Director of the Merit Board of the selection. If less than 3 scores appear on the appropriate register, the Executive Director shall certify the names and addresses of all persons on the register.

(2) All appointments shall be for a probationary period of no less than 6 months and no longer than 12 months for each class of positions in the classification plan, the length of the probationary period for each class having been determined by the Executive Director, except that persons first appointed to any police department of any university or college covered by the University System after the effective date of this amendatory Act of 1979 shall be on probation for one year, except for those positions subject to the following paragraph. The service during the probationary period shall be deemed to be a part of the examination. During the probationary period, the employee may be dismissed if the employer determines that the employee has failed to demonstrate the ability and the qualifications necessary to furnish satisfactory service. The employer shall notify the Executive Director in writing of such dismissal. If an employee is not so dismissed during his or her probationary period, his or her appointment shall be deemed complete at the end of the period.

(3) No person shall be appointed to any police department of any university or college covered by the University System unless he or she possesses a high school diploma or an equivalent high school education, and unless he or she is a person of good character and is not a person who has been convicted of a felony or a crime involving moral turpitude.

(4) Grant-funded appointments are defined as positions being supported by any non-state appropriated funding source. Non-state appropriated funds may include, but are not limited to, federal grants, trust, foundation, corporate, institutional cost recovery funds or state grants. Employees accepting these positions shall be subject to a probationary period of no more than 24 months. Employees in these positions shall not accumulate seniority or be subjected to bumping rights, or -or- be allowed discharge rights -or- be subject to bumping.

August 2019 DRAFT

Administrative Code: - Nonstatus Employees/Temporary Employee (250.70.)

g) Grant-Funded Appointments (Previously -Temporary Appointments)

- 1) A grant-funded appointment may be made by an employer to any position which the employer certifies to be funded by qualified grant funds, defined as federal and state grants, trust, foundation or, corporate, ~~sources of state of funds, for at least grants, for at least~~ fifty-one (51%) percent of the source of funds total value of the employee's wages, ~~pension costs (if any), insurance, paid time off and other benefits~~. The certification shall identify the grant or grants supporting the position and the total value of the employee's wages ~~and benefits previously set forth in this part~~.
- 2) A grant-funded appointment shall not continue for more than 24 months. During this time, the employee shall be in a probationary status, serving their probationary period, unless the employer chooses to end the probationary period sooner. At the end of the 24-month period, the grant-funded position must be discontinued. Another grant-funded position using funds from the same or similar grant or grants or source of funds, performing the same or substantially the same duties, may not be created.
- 3) The grant-funded position may be converted to a status civil service position at the end of the 24-month probationary period, or at any time during that period. If the position is converted to a traditional status civil service position, the employee shall be granted seniority from the date of hire. If the position is converted prior to the completion of the otherwise determined probationary period, as defined by the classification specification, the employee must complete the remaining probationary period time.
 - a. A grant funded position may only be converted to a traditional status appointment if there is no available employee on the Reemployment register and the position does not have a designated Specialty Factor. If there are employee(s) listed on the reemployment register, and he/she has chosen not to accept an offered position, a signed statement must be provided to the Employer indicating so.
- 3)4) An employer shall fill a grant-funded position by calling candidates in the same manner as for status appointments, and in accordance with Section 250.60(d). Refusal to accept, or acceptance of, a grant funded appointment by a candidate shall in no way affect the candidate's position on the register, regardless of number of refusals or acceptances.¹

¹ From 250.70(a)(2).

~~4)5)~~ On a form provided by the Executive Director, a An employee in a grant-funded position shall be provided, in writing, a summary of the civil service rights he or she will waive by accepting the grant-funded position, ~~on a form provided by the Executive Director.~~

~~5)6)~~ An employee in a grant-funded position during the probationary period does not possess seniority rights and may not bump another employee, or be bumped by another employee from outside of the funding source. ~~may not be bumped by another employee with greater seniority in the same classification.~~

Section 250.110 Separations and Demotions

Layoff

1. The Executive Director shall be notified promptly of all employees on layoff status, together with the dates of the beginning of layoff and of return to employment from layoff status, when the layoff exceeds 30 consecutive work days. A status employee shall receive a written notice, at least 30 calendar days in advance of the effective date of layoff, when the layoff exceeds 30 consecutive work days; however, the effective date of layoff may be extended up to 15 days without the requirement of further notice.

2. Whenever it becomes necessary to lay off one or more employees, except as provided in subsection (d)(3), the employee who has the least amount of service in the class shall be laid off first, and additional layoffs shall be made in the ascending order of the place of the employee on the service and seniority lists for that class.

- ~~3.~~ An employee in a grant-funded position may not be bumped by another employee with greater seniority in the same classification during the probationary period. (Paragraph 6 may not be allowed.)

- ~~3.4.~~ An employee who is the incumbent of a position for which the Executive Director has authorized specialized certification under Section 250.60(d)(9), or who is the incumbent of a position that has previously been identified as requiring specialized training or experience as required by the position in accordance with minimum

acceptable qualifications for the class, may not be bumped by another employee with greater seniority unless the employee with greater seniority possesses the special and identified qualifications authorized for the incumbent's position.

~~4.~~5. Whenever it becomes necessary to reemploy one or more employees in a class, the employee last laid off by seniority shall be reemployed first, and further reemployment shall be made in the order of seniority until the reemployment register for that class is exhausted. Work of short duration requiring reemployment of one or more employees will not require a new written 15 day advance notice of layoff if the work period is to be 5 consecutive working days or less and the work is emergent in nature.

~~5.~~6. A status employee who is subject to layoff from a part-time position may bump an employee in a full-time status position, providing the part-time employee's equivalent full-time accrued seniority based on hours in pay status is greater than that of the least senior employee in a full-time position. A full-time status employee who is subject to layoff may bump the least senior full-time employee, who then may bump the part-time employee having the highest percent-time appointment, providing the full-time employee has more accrued seniority.

~~6.~~7. Names of employees laid off during their probationary periods shall be returned to the register from which they were certified to their position in accordance with service in a status appointment earned as of the date of layoff.

f) Discharge Proceedings and Effective Date of Discharge

- 1) Reason for Discharge. Causes justifying discharge and any suspension during the discharge proceedings shall include, but are not limited to: all those listed as cause for suspension if they become recurring offenses; and, in addition, theft; ~~drinking~~ consuming intoxicating liquors or other illicit drugs on institutional time or property; inability or failure to perform satisfactorily assigned duties as a result of drinking alcoholic beverages assigned duties in a competent and satisfactory manner; malicious damage to property, tools or equipment; immoral or indecent conduct that violates common decency or morality; conviction of an offense involving moral turpitude; ~~illegal or excessive use of drugs, narcotics and/or intoxicants.~~

Commented [JB1]: Is this an appropriate way to express this.

± 2) Pre-discharge Proceedings

- A) ~~Notification of Employee Procedures.~~ Prior to initiating any proceedings before the Merit Board for the discharge of an employee, the employer shall notify the employee in writing, served upon the employee in person if the employee is present on the job or, otherwise, by an overnight delivery service that requires signature upon receipt to the most recent address of the employee as shown on the employer's records, of the employer's intention to initiate the proceedings. The notification shall advise the employee of the substance of the charges proposed to be filed in sufficient detail to inform the employee of the nature of the conduct on which the proposed charges are based. The notification shall also advise the employee that either or both of the following options are available to the employee:
 - i) within 3 work days after service of the employer's notification, the employee may notify the employer of his/her decision to require the employer to hold a conference with the employee or his/her representative for the purposes of responding to the matters contained in the notification and of attempting to achieve a reconciliation or understanding; and
 - ii) within 3 work days after service of notification, the employee may deliver to the employer a written response to the matters contained in the employer's notification; provided that, if the employee elects to require the conference identified in subsection (f)(2)(A)(i), at that conference the employee may request and receive an opportunity to respond further in writing within 3 work days after the conclusion of the conference.

- B) **Employer's Decision.**
- i) Within 7 work days after compliance with the provisions of subsection (f)(~~4~~2)(A), the employer shall either:
- notify the employee that no further action will be taken to initiate discharge proceedings with the Merit Board against the employee based solely on the matters contained in the employer's notification; or
 - initiate proceedings before the Merit Board under this subsection (f) seeking discharge of the employee based solely on the matters contained in the employer's notification.
- ii) The employer's election not to initiate discharge proceedings with the Merit Board shall not preclude the employer from imposing a suspension in accordance with subsection (e) or some lesser penalty.
- C) **Excused Absence with Pay.** An employee who has been served with an employer's notification as provided in subsection (f)(~~2~~4)(A) may be placed on excused absence with pay during all or any part of the period covered by this subsection (f)(~~2~~4) to provide the employer an opportunity to investigate serious charges.

~~2~~ 3) Actual Discharge Proceedings

- A) **Initiating Discharge Proceedings.** Proceedings before the Merit Board seeking the discharge of an employee shall be initiated by the employer by completing and filing a Written Charges for Discharge form with the Merit Board/University System, employee, legal counsel for employer, and employer, setting forth the causes for discharge in sufficient detail to inform the employee of the nature of the conduct on which the charges are based. The Written Charges for Discharge form shall be set forth in separately numbered charges. Also, the employer shall develop and attach a document that contains the dates, names of persons, places and facts necessary to properly allege the cause for discharge. If a breach of duty, statute or rule of the employer is alleged, the statute, law or rule shall be cited in connection with the charge. Any and all exhibits that the employer plans to present at the time of the hearing shall be submitted in accordance with subsection

- ~~(f)(1)(B)~~ (f)(4)(E) or as appropriate to the circumstances. The exhibits shall not be attached to the Written Charges for Discharge form.
- B) **Written Charges for Discharge.** The Written Charges for Discharge form shall be accompanied by a certification by the employer that all procedures set forth in subsection ~~(f)(2+)~~ have been followed and that there has been full compliance with any options elected by the employee. At the time the Written Charges for Discharge form and the certification are filed with the Merit Board/University System office, the employer shall serve copies upon the employee in person if the employee is present on the job; otherwise, service shall be by an overnight delivery service that requires signature upon receipt to the most recent address of the employee as shown on the employer's records, and the employer shall file proof of service with the Merit Board/University System office.
- C) **Amended Written Charges for Discharge.** At any time prior to commencement of the hearing, the Executive Director may direct or authorize the Written Charges for Discharge to be amended to correct technical defects or to set forth additional facts or allegations ~~related to that clarify~~ the subject matter of the original charges. ~~The Such technical~~ amendments shall relate back to the original proof of service date of the Written Charges for Discharge form. The employer shall serve copies of the Amended Written Charges for Discharge form upon the employee in person if the employee is present on the job; otherwise, service shall be by an overnight delivery service that requires signature upon receipt to the most recent address of the employee as shown on the employer's records, and the employer shall file ~~proof of service the~~ **Proof of Service on Employee for Amended Charges, on the form provided by the System Office, with the Merit Board/University System office. Nothing in this paragraph shall change the timing requirements in paragraph 250.110(f)(2)(C), above(4).**
- D) **Suspension Without Pay.** An employee who has been served with Written Charges for Discharge in accordance with subsections ~~(f)(32)~~(A) and (B) may be suspended without pay by the employer during all or any part of the period that the discharge proceeding is pending, and until final disposition, if the employer is of the opinion that the employee's presence on the job might constitute a substantial risk of injury to life or property, or might cause a disruptive effect on employer's operations. Any suspension without pay shall become effective on the date the employer serves the Suspension Notice Pending Discharge upon the employee,

which may be served with the Written Charges for Discharge or on any date thereafter. Service shall be upon the employee in person if the employee is present on the job; otherwise, service shall be by an overnight delivery service that requires signature upon receipt to the most recent address of the employee as shown on the employer's records, and the employer shall file with the Merit Board/University System office a copy of the Suspension Notice Pending Discharge and proof of service.

3 4) ~~Hearing Request~~ Timing of Parties' Actions

- A) **Written Request for Hearing.** An employee who has been served with Written Charges for Discharge may request a hearing by filing a written request for hearing with the Secretary for the Merit Board within 15 calendar days from the "Proof of Service on Employee" section on the Written Charges for Discharge form that is the date of either personal delivery or mailing of the Written Charges for Discharge form to the employee. **Any request for a hearing ~~should~~ must include a postal address, an e-mail address, and a telephone number where the employee can be reached and where Notices to the employee under these Rules shall be sent. The employee shall notify the Secretary of the Merit Board and the employer of any change to this notice information.** The Secretary for the Merit Board shall immediately acknowledge receipt of the request for a hearing and notify the employer that the employee has filed for a hearing. Thereafter, further proceedings shall be as provided in this subsection (f) and any discharge shall be effective on the date of the discharge order of the Merit Board, unless otherwise expressly stated in the order.
- B) **Requests for Documents and Other Tangible Items.** Any party may by written request ~~to the other party~~ direct any other party to produce for inspection, copying, reproduction photographing, testing or sampling specified documents, including electronically stored information, objects, or tangible things, relevant to the Written Charges for Discharge or the employee's defense to the Charges.
- i) The request shall specify a reasonable time and place for production or review of the requested items, ~~no fewer than 7 or more business days prior to the earliest Hearing Date scheduled hearing, as identified~~ **in the Written Charges for Discharge form provided by the System Office.**

Commented [JB2]: This section and concept needs to be reviewed

- ii) A party directed to produce documents or other tangible items that is unable to produce the requested items by the date requested party may file an objection or request an extension of time to produce the requested items. Such objection or request for an extension of time shall be sent to the Executive Director and shall state the cause of the anticipated delay.
 - iii) All such written requests or objections under this section served on the Secretary of the Merit Board at the same time it is served on the other party.
 - iv) All actions taken under this paragraph shall be taken as early practicable and shall be taken in good faith.
- C) Evidence Depositions. Upon request to the Executive Director and upon good cause shown (which shall include, but is not restricted to, potential unavailability of a witness at the time the hearing is scheduled, scheduling or travel arrangement considerations, or agreement of the parties) any party may request a deposition of any witness to be taken for evidence in a hearing. The use of this provision will be severely restricted, and designated as a “last resort” option. If desired, subpoenas may be requested upon application to the Executive Director in a manner consistent with this Part. The deposition shall proceed in the manner provided by law for depositions in civil actions in the circuit courts of the State of Illinois.
- D) Subpoenas. Requests for subpoenas shall be directed to the Executive Director at least 5 work days before the scheduled hearing, unless an exception is granted by the Executive Director. Subpoena requests may be granted if reasonably designed to produce or lead to the production of evidence related to the alleged charges and the terms of compliance are reasonable given the time frames and other circumstances. The party requesting the subpoenas shall be responsible for service and costs related to the subpoena of a witness. A subpoena may be served by personal delivery of an executed original to the individual, or by leaving an executed original at the individual's usual place of abode, with some person of the family who is age 13 years or older, provided the server also sends a copy of the subpoena, postage prepaid, addressed to the individual at the individual's usual place of abode. The fees of the witnesses for attendance and travel shall be the

same as the fees of witnesses before the circuit courts of the State of Illinois. Subpoenas are effective throughout the course of the proceedings. Requests for subpoenas must be submitted in writing and include the following:

- i. The name and address of the witnesses sought;
- ii. Any specific documents the witnesses will be required to bring; and
- iii. A brief statement of the relevant facts or testimony that the witnesses will be providing.

E) Witness and Document Lists and Documents for Hearing.

- i. At least 3 working days prior to the hearing, each party shall serve upon the other party and file a copy with the Secretary for the Merit Board, to be submitted to the Hearing Board or Hearing Officer, the following information, to the extent available at that time:
 - A list of the names and addresses of the witnesses the party proposes to call in its case-in-chief; and
 - All documents the party proposes to offer in its case-in-chief.
- ii. Each party shall bring to the hearing ~~the original plus three~~ **four** identical copies of each document the party proposes to use at the hearing.

F) Commencement of Discharge Hearing. The Executive Director, the Hearing Board or Hearing Officer, the employee and the employer shall all make good faith efforts to commence the hearing within 10 calendar days after receipt of the employee's written request for hearing, but in no event shall the hearing commence later than 45 days after service of the Written Charges for Discharge, unless a continuance is granted pursuant to subsection (f)(2015)(B). Dilatory tactics or actions will not be permitted and the Executive Director, the Hearing Board or Hearing Officer, the employee and the employer shall all make good faith efforts to conduct the hearings in no more than ~~3-1~~ **3-1** hearing days, unless justice, due process, and fundamental fairness require otherwise.

G) Written Closing Arguments. In addition, each party may submit written arguments, summary statements, and/or briefs within 10 calendar days after conclusion of the hearing. A copy of the written closing arguments must be provided to all parties of record and filed with the Executive Director, with proof of service included. Only written materials submitted within the 10 calendar day timeframe will be forwarded with the transcript of evidence and exhibits and considered by the Hearing Board or Hearing Officer, unless otherwise extended by the Executive Director.

Commented [GS3]: These two paragraphs have been moved to logically fit

G H) Request for Oral Argument. A party ~~requesting~~ desiring to present oral argument before the Merit Board in cases of discharge must file ~~an appropriate motion~~ a Notice of Intent to Present Oral Argument with the Secretary for the Merit Board ~~with notice to all parties~~ within 14 calendar days after the date of the overnight delivery service of the certified Hearing Record, with proof of service on all parties. The ~~motion~~ Notice must specifically state the issues and any relevant law that will be the subject of argument. Oral Argument is reserved to discussion of extraordinary matters of the Discharge case and is not intended to be a recitation of the either party's case in chief as presented at the Discharge Hearing. The Merit Board chair has the authority to halt or redirect the testimony argument as circumstances warrant.

~~B~~ 5) **Effective Date of Discharge When No request for Hearing.** If the employee does not file a written request for hearing with the Secretary for the Merit Board within 15 calendar days from the date specified in the "Proof of Service on Employee" section on the Written Charges for Discharge form, the employee's discharge shall become effective at the end of the 15-day period without further action by the Merit Board. The Secretary for the Merit Board shall promptly notify the employer of the employee's failure to file a timely written request for hearing.

4 6) Hearing Proceedings

A) **Appointment of Hearing Officer.** Upon receipt of the employee's written request for hearing on the Written Charges for Discharge, the Merit Board/University System office shall promptly appoint a Hearing Board or Hearing Officer to hear the charges and the employee's response. ~~All hearings relating to discharge proceedings shall be convened by and conducted under the control of the Executive Director or his/her authorized representative.~~

B) **Disqualification of Assigned Hearing Board or Hearing Officer.** A

Hearing Board or Hearing Officer may be disqualified on grounds of bias or conflict of interest. An adverse ruling, or the fact that a Hearing Board or Hearing Officer has had contact with the University System, by itself, shall not constitute bias or conflict of interest.

- i) Disclosing a Potential Conflict of Interest. The Hearing Officer shall communicate with the Secretary of the Merit Board and all parties immediately upon suspecting that the Hearing Officer may have a conflict of interest.
 - ii) Whenever any party believes a Hearing Board or Hearing Officer should be disqualified from conducting an assigned proceeding, that party may file a request with the Executive Director to disqualify the Hearing Board or Hearing Officer, setting forth by affidavit the alleged grounds for disqualification, with proof of service on all parties. The Executive Director shall rule and make the final determination on all requests for disqualification.
- C) Role and Responsibilities of the Hearing Board or Hearing Officer. The Hearing Board or Hearing Officer shall be responsible for the following activities:
 - i) Conduct the pre-hearing conference;
 - ii) Facilitate the timely completion of the hearing process, taking necessary steps to avoid delay;
 - iii) Establish reasonable limits on the duration of witness testimony;
 - iv) Limit repetitive or cumulative testimony;
 - v) Rule on motions, objections or evidentiary questions;
 - vi) Hear evidence as presented at the hearing by the employer and the employee on behalf of their respective positions (the evidence may include matters in aggravation, mitigation and justification, which may pertain to the question of "just cause" for discharge);
 - vii) Direct questions to witnesses at any time, but restrict questioning to the clarification of the testimony already

presented;

viii) Prepare and transmit to the Merit Board a signed findings of fact within 15 calendar days after receipt of the transcript and exhibits of the hearing proceedings. The findings of fact shall set forth each of the written charges alleged in the Written Charges for Discharge, including an evaluation of the facts presented by the employer and employee with respect to each charge, and based on this evaluation, a determination as to whether the charges are sufficiently supported by the evidence presented. The findings of fact shall be based exclusively on the evidence and on matters officially noticed. The findings of fact presented by the Hearing Board or Hearing Officer are advisory only to the Merit Board. It is not the role of the Hearing Board or Hearing Officer to determine whether just cause for discharge exists. The determination of just cause is the sole province of the Merit Board; and

ix) Enter any order that further carries out the purpose of this Section.

D) Ex Parte Communications

- i) Except in the disposition of matters ~~they are~~ authorized by law to entertain or dispose of on an ex parte basis, the Merit Board, the Executive Director, employees of the University System Office, and the assigned Hearing Board or Hearing Officer shall not, after the Notice of Convening of Hearing has been issued to the parties of record, communicate, directly or indirectly, with any party or the party's representative regarding any issue of fact or with any person or party in connection with any other issue regarding the case, except upon notice and opportunity for all parties to participate. However, the Merit Board, the Executive Director, employees of the University System, and the Hearing Board or Hearing Officer may communicate with each other. Also, members of the Merit Board and the Hearing Board or Hearing Officer may have the aid and advice of one or more personal assistants.
- ii) Communications regarding procedure, including interpretation and application of Section 36o of the Act, subsection (f), and related procedures, are not considered ex parte communications.

~~E)~~ Commencement of Discharge Hearing. The Executive Director, the Hearing Board or Hearing Officer, the employee and the employer shall all make good faith efforts to commence the hearing within 10 calendar days after receipt of the employee's written request for hearing, but in no event shall the hearing commence later than 45 days after service of the Written Charges for Discharge, unless a continuance is granted pursuant to subsection (f)(2015)(B). Dilatory tactics or actions will not be permitted and the Executive Director, the Hearing Board or Hearing Officer, the employee and the employer shall all make good faith efforts to conduct the hearings in no more than 3 hearing days, unless justice, due process, and fundamental fairness require otherwise.

~~FE)~~ **Open Hearings.** All hearings shall be open to the public unless, upon motion of either party, the Hearing Board or Hearing Officer finds it necessary to close the hearing or parts of the hearing in instances where personal safety is of concern or when confidential testimony/exhibits are to be referenced or revealed. There shall be a presumption that hearings will be closed only under extraordinary circumstances. ~~The employer shall, as a course of common action, provide for appropriate security during the hearing. This may include, but is not limited to assigning a member of the Department of Public Safety (or a similar department) to attend the hearing.~~

~~GF)~~ **Transcript of Hearing.** A transcript of the hearing, including exhibits, shall be made and shall be filed with the Secretary for the Merit Board as soon as possible following the conclusion of the hearing. ~~Transcripts will be provided by the University System to all parties simultaneously. No party may request or obtain a copy of the transcript of the hearing from the court reporter or any other source. If a party or their representative receives a transcript of the hearing from any source other than the Secretary of the Merit Board the party shall immediately send, without first having read the transcript and without retaining any copy, to the the Secretary of the Merit Board.~~

~~B H G)~~ **Findings of Fact by Hearing Officer.** Within 15 calendar days after receipt of the transcript from the Secretary for the Merit Board, the Hearing Board or Hearing Officer shall file its findings of fact and any other recommendations with the Secretary for the Merit Board, unless that time is extended by the Executive Director for good cause shown. For the purpose of this Section, good cause shall include, but not be limited to: sickness, attendance at court

Commented [GS4]: ISU's objection, is about primarily about liability. If there is violent incident of some kind, is the university now more liable for violence, after all.

Also, it would appear that if we were to require a police presence at the sort of police presence at the MB hearing where the question of D

Another objection is what to do about police personnel. Can we require a police worker is participating in a discharge hearing?

While the folks at ISU have an objection to the presence of a uniformed police officer of the situation – and I don't know whether it does or not – they are concerned about PD.

They could live with a requirement that a police officer be present if a discharge is heard. They are concerned that the phrase "course of disciplinary meetings."

proceedings, death, weather conditions that prevent the members from meeting.

- ~~I~~ H) **Failure of Hearing Officer to Submit Findings of Fact.** If by ~~that~~ **time** 15 calendar days after receipt of the transcript from the **Secretary for the Merit Board** the findings of fact have not been received by the Secretary for the Merit Board, the Executive Director will either appoint another approved Hearing Board or Hearing Officer that will then review the record and submit findings of fact within 10 calendar days after the appointment, or the Executive Director will give written notice to all Hearing Board members or the Hearing Officer and to all parties to the proceeding that he or she will, within 10 calendar days, discontinue the hearing and commence a new hearing and the present Hearing Board or Hearing Officer will be dismissed without pay. Within this 10-day period following the Executive Director's notice, the Hearing Board or Hearing Officer can appeal to the Executive Director by showing cause why time should be extended.
- ~~G~~ ~~I~~ I) **Certification of Hearing Record.** The Executive Director shall certify as the Hearing Record the Written Charges for Discharge, the Suspension Notice Pending Discharge, the employee's request for hearing, the transcript and exhibits, the Hearing Board's or Hearing Officer's findings of fact and other recommendations, and other documents that have been filed. Upon certification by the Executive Director, the Secretary for the Merit Board shall, by an overnight delivery service that requires signature upon receipt, immediately forward a copy of the Hearing Record, along with notice that the Hearing Record has been certified, to all parties of record.
- ~~K~~ J) **Objections to Hearing Record.** Any objections to the form or contents of the Hearing Record, or briefs, abstracts, or excerpts from the Hearing Record, or arguments, motions, or recommendations, relating to the hearing proceedings or the Hearing Record, or requests for further hearing or for permission to supplement further the Hearing Record by other evidence, must be filed with the Secretary for the Merit Board within 14 calendar days after the date of the overnight delivery service that the Hearing Record has been certified, with proof of service on all parties. No answer or reply briefs and arguments in response to these filings will be permitted unless expressly authorized by the Executive Director or the Merit Board or its Chair.
- E) ~~A party requesting oral argument before the Merit Board in cases of discharge must file an appropriate motion with the Secretary for~~

~~the Merit Board with notice to all parties within 14 calendar days after the date of the overnight delivery service of the certified Hearing Record, with proof of service on all parties. The motion must specifically state the issues and any relevant law that will be the subject of argument. The Merit Board will grant or deny the motion at the Merit Board meeting at which oral argument is requested. Oral argument in cases of discharge will generally not be allowed unless novel or precedent setting questions of law or policy are at issue.~~

5 7) Conduct of Hearing

A) Pre-hearing Conference. In all hearings, it is recommended that the Hearing Board or Hearing Officer hold a pre-hearing conference immediately preceding the hearing on the first day of the hearing. The Hearing Board or Hearing Officer will give the parties an opportunity to discuss issues and share information at the pre-hearing conference that will allow them to present their cases in a fair, efficient, and timely manner. Generally, the Hearing Board or Hearing Officer will conduct the pre-hearing conference for the purpose of achieving one or more of the following points, as determined by the Hearing Board or Hearing Officer on a case by case basis:

- i) defining and simplification of the issues;
- ii) negotiating admissions or stipulations of fact to avoid unnecessary proof;
- iii) reviewing each party's witness and exhibit list;
- iv) limiting redundant witness testimony or duplication of evidentiary material, if necessary;
- v) determining the length of time each party will need to present its case;
- vi) exchanging exhibits;
- vii) discussing any matter that may aid in the efficient and timely disposition of the case

viii) work with each party to determine if a settlement can be achieved. Note: if a settlement is reached during the pre-

conference hearing, the Discharge Hearing will be formally convened and the parameters of the settlement will be entered into the record in written form or by testimony/statement and agreement by each party.

- B) **Length of Pre-hearing Conference.** The length and scope of the pre-hearing conference is at the discretion of the Hearing Board or Hearing Officer, but should generally be concluded within a one hour timeframe.

8) **Evidence and Motions**

A) **Admissibility of Evidence.**

- i) As a general matter, the rules of evidence and privilege as applied in civil cases in the circuit courts of the State of Illinois shall be followed. However, evidence not admissible under those rules may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent persons in the investigation and conduct of serious matters of this nature. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.
- ii) Consistent with these requirements and in order to expedite the hearing, any part of the evidence may be received in written form, provided the interests of the parties are not jeopardized.
- iii) Performance records of the employee or past disciplinary records are admissible and relevant for the purpose of mitigation or aggravation, except if otherwise excluded by a local employer policy or collective bargaining agreement.

- B) **Oath or Affirmation.** All testimony shall be presented under oath or affirmation.
- C) **Objections.** Objections to testimony or evidentiary offers shall be noted in the record.
- D) **Standard of Proof.** The standard of proof applied by the Hearing Board or Hearing Officer when evaluating the charges will be the preponderance of the evidence.
- E) **Notice Taken by Hearing Officer.** The Hearing Board or Hearing Officer may, on its own motion or upon motion of one of the

parties, take notice of matters of which the circuit courts of the State of Illinois take judicial notice.

- F) **Non-Dispositive Motions.** The Hearing Board or Hearing Officer has the authority to rule on all motions that do not dispose of the proceedings. Examples of motions that can be ruled on by the Hearing Board or Hearing Officer are motions in limine or motions to suppress evidence. Motions directed at the Hearing Board or Hearing Officer shall be presented at the pre-hearing conference, if possible, and actions taken by the Hearing Board or Hearing Officer shall be entered into the record.
- G) **Dispositive Motions.** Motions that dispose of the proceedings must be directed to the Merit Board. Examples of motions that are to be directed to the Merit Board are motions to dismiss, motions to decide a proceeding on the merits, or motions claiming lack of jurisdiction. Motions must be filed with the Secretary for the Merit Board within 14 calendar days after the date of the overnight delivery service of the certified Hearing Record. Motions will be ruled on by the Merit Board at the Merit Board meeting in which the case is being considered. The filing of a motion of this nature shall not be allowed to cause any delay in the proceedings.

6 9) Order of Hearing

- A) **Convening the Hearing.** All hearings relating to discharge proceedings shall be convened by and conducted under the control of the Executive Director or his/her authorized representative.
- B) **Recording of Pre-Hearing Conference Information.** The Hearing Board or Hearing Officer shall enter into the record any action taken and any agreements made by the parties as to the matters considered.
- B C) Excluding Witnesses from Hearing Room.** The Executive Director, or authorized representative, shall request all persons who have been asked to serve as witnesses, other than a party or employer representative, to be excluded from the hearing room while the hearing is in process, except during their own testimony and cross-examination. Except as he/she might intervene, or be requested to intervene, the Executive Director, or authorized representative, shall empower the Hearing Board or Hearing Officer to proceed with the hearing in such a manner as to provide the employer and the employee a full opportunity to present their positions to the Hearing Board or Hearing Officer.

- D)** Stipulations. Parties may agree by stipulation upon any facts involved in the hearing. The facts stipulated shall be considered as evidence in the hearing. It is the policy of the Merit Board to encourage stipulation of facts whenever practicable.
- E)** **Opening Statements.** The parties may make a brief opening statement at the beginning of the hearing. The employer will proceed first, followed by the employee. Opening statements may be waived or may be reserved and presented at the commencement of the party's case-in-chief.
- F)** **Employer's Case.** The employer shall first present its case-in-chief, with an opportunity for the employee to cross-examine the employer's witnesses. The employee may be called as an adverse witness during the course of the hearing.
- G)** **Employee's Case.** The employee shall then present his/her case-in-chief, with an opportunity for the employer to cross-examine the employee's witnesses.
- H)** **Rebuttal.** Each party may call rebuttal witnesses if found to be necessary by the Hearing Board or Hearing Officer.
- I)** **Closing Arguments.** At the conclusion of the hearing, each party may make an oral closing argument. The employer may be permitted a brief rebuttal at the end of the employee's closing argument. **The parties may also file a written closing argument pursuant to Section 250.11(f)(4)(G)**
- J)** **Closing the Hearing.** The hearing shall be closed when the employer and the employee have had a fair and reasonable opportunity to present their positions to the Hearing Board or Hearing Officer.
- K)** **Written Closing Arguments.** In addition, each party may submit written arguments, summary statements, and/or briefs within 10 calendar days after conclusion of the hearing. A copy of the written closing arguments must be provided to all parties of record and filed with the Executive Director, with proof of service included. Only written materials submitted within the 10 calendar day timeframe will be forwarded with the transcript of evidence and exhibits and considered by the Hearing Board or Hearing Officer, unless otherwise extended by the Executive Director.
- L)** **Request for Oral Argument.** A party requesting desiring to present oral argument before the Merit Board in cases of discharge must

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file ~~an appropriate motion~~ a Notice of Intent to Present Oral Argument with the Secretary for the Merit Board ~~with notice to all parties~~ within 14 calendar days after the date of the overnight delivery service of the certified Hearing Record, with proof of service on all parties. The ~~motion~~ Notice must specifically state the issues and any relevant law that will be the subject of argument. Oral Argument is reserved to discussion of extraordinary matters of the Discharge case and is not intended to be a recitation of the either party's case in chief as presented at the Discharge Hearing. The Merit Board chair has the authority to halt or redirect the testimony argument as circumstances warrant.

- I) In addition, each party may submit written arguments, summary statements, and/or briefs within 10 calendar days after conclusion of the hearing. A copy of the written closing arguments must be provided to all parties of record and filed with the Executive Director, with proof of service included. Only written materials submitted within the 10 calendar day timeframe will be forwarded with the transcript of evidence and exhibits and considered by the Hearing Board or Hearing Officer, unless otherwise extended by the Executive Director.

7) — Evidence and Motions —

- A) — As a general matter, the rules of evidence and privilege as applied in civil cases in the circuit courts of the State of Illinois shall be followed. However, evidence not admissible under those rules may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent persons in the investigation and conduct of serious matters of this nature. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.
- B) All testimony shall be presented under oath or affirmation. Objections to testimony or evidentiary offers shall be noted in the record. Consistent with these requirements and in order to expedite the hearing, any part of the evidence may be received in written form, provided the interests of the parties are not jeopardized.
- C) — The standard of proof applied by the Hearing Board or Hearing Officer when evaluating the charges will be the preponderance of the evidence.

- D) ~~The Hearing Board or Hearing Officer may, on its own motion or upon motion of one of the parties, take notice of matters of which the circuit courts of the State of Illinois take judicial notice.~~
- E) ~~The Hearing Board or Hearing Officer has the authority to rule on all motions that do not dispose of the proceedings. Examples of motions that can be ruled on by the Hearing Board or Hearing Officer are motions in limine or motions to suppress evidence. Motions directed at the Hearing Board or Hearing Officer shall be presented at the pre-hearing conference, if possible, and actions taken by the Hearing Board or Hearing Officer shall be entered into the record.~~
- F) ~~Motions that dispose of the proceedings must be directed to the Merit Board. Examples of motions that are to be directed to the Merit Board are motions to dismiss, motions to decide a proceeding on the merits, or motions claiming lack of jurisdiction. Motions must be filed with the Secretary for the Merit Board within 14 calendar days after the date of the overnight delivery service of the certified Hearing Record. Motions will be ruled on by the Merit Board at the Merit Board meeting in which the case is being considered. The filing of a motion of this nature shall not be allowed to cause any delay in the proceedings.~~
- G) ~~Performance records of the employee or past disciplinary records are admissible and relevant for the purpose of mitigation or aggravation, except if otherwise excluded by a local employer policy or collective bargaining agreement.~~
- 8) ~~Stipulations. Parties may agree by stipulation upon any facts involved in the hearing. The facts stipulated shall be considered as evidence in the hearing. It is the policy of the Merit Board to encourage stipulation of facts whenever practicable.~~
- 9) ~~Evidence Depositions. Upon request to the Executive Director and upon good cause shown (which shall include, but is not restricted to, potential unavailability of a witness at the time the hearing is scheduled, scheduling or travel arrangement considerations, or agreement of the parties) any party may request a deposition of any witness to be taken for evidence in a hearing. If desired, subpoenas may be requested upon application to the Executive Director in a manner consistent with this Part. The deposition shall proceed in the manner provided by law for depositions in civil actions in the circuit courts of the State of Illinois.~~
- 10) ~~Subpoenas. Requests for subpoenas shall be directed to the Executive Director at least 5 work days before the scheduled hearing, unless an~~

exception is granted by the Executive Director. Subpoena requests may be granted if reasonably designed to produce or lead to the production of evidence related to the alleged charges and the terms of compliance are reasonable given the time frames and other circumstances. The party requesting the subpoenas shall be responsible for service and costs related to the subpoena of a witness. A subpoena may be served by personal delivery of an executed original to the individual, or by leaving an executed original at the individual's usual place of abode, with some person of the family who is age 13 years or older, provided the server also sends a copy of the subpoena, postage prepaid, addressed to the individual at the individual's usual place of abode. The fees of the witnesses for attendance and travel shall be the same as the fees of witnesses before the circuit courts of the State of Illinois. Subpoenas are effective throughout the course of the proceedings. Requests for subpoenas must be submitted in writing and include the following:

- A) ~~_____ The name and address of the witnesses sought;~~
 - B) ~~_____ Any specific documents the witnesses will be required to bring; and~~
 - C) ~~_____ A brief statement of the relevant facts or testimony that the witnesses will be providing.~~
- 11) ~~Request for Documents. At least 3 working days prior to the hearing, each party shall serve upon the other party and file a copy with the Secretary for the Merit Board, to be submitted to the Hearing Board or Hearing Officer, the following information, to the extent available at that time:~~
- A) ~~_____ A list of the names and addresses of the witnesses the party proposes to call; and~~
 - B) ~~_____ All documents the party proposes to offer in its case in chief.~~
- 12 10) Failure to Appear.** Failure of a party to appear on the date set for hearing may result ~~in findings of fact unfavorable to that party and may result~~ in a loss of rights by default.
- A) Failure to Appear by Employee
 - i) A Notice of Convening of Hearing will be sent to all parties of record confirming the date, time and place of the hearing. If an employee or his/her representative is not present on the designated hearing date, the ~~employer~~ Merit Board/University System office will try to make reasonable

contact with the employee or his/her representative immediately. If, within a reasonable time on the hearing date, the ~~employer~~ Merit Board/University System office is unable to contact the employee, the hearing will commence.

- ii) The Executive Director or his/her authorized representative will commence the hearing with an opening statement. At the conclusion of the opening statement, if the employee or his/her representative has still failed to appear, the hearing will be suspended for 3 work days. During this 3 work day period, the Executive Director or his/her authorized representative will attempt to ~~try to~~ make contact with the employee or his/her representative using the last known address, phone, email or any similar method as shown on the ~~Written Charges for Discharge form~~ employee's request for a hearing.
- iii) If the employee or his/her representative cannot be reached within 3 work days or if the employee is unable to produce a reasonable explanation for failure to attend the hearing, the hearing will be closed and the employee's discharge shall become effective at the end of the 15-day period of the date on the Proof of Service on Employee, as found on the Written Charges for Discharge form, without further action by the Merit Board. The Merit Board/University System office shall notify the parties of record immediately of the action.
- iv) If the employee or his/her representative has a reasonable explanation for not attending the hearing, the Executive Director or his/her authorized representative shall schedule a new hearing date. A new Notice of Convening of Hearing will be issued to the parties of record and the Executive Director or his/her authorized representative will appoint either the same Hearing Board or Hearing Officer or appoint a new Hearing Board or Hearing Officer to conduct the hearing.
- v) ~~Reasonable explanations can include, but are not limited to: injury on the day or preceding day of the scheduled hearing, traffic accident, death or significant injury of a family member, or other cause that is deemed reasonable by the Executive Director or his/her authorized representative. In any event, the employee is required to demonstrate that there was reasonable effort made to~~

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~~contact the employer or the Merit Board/University System office.~~

- B) Failure to Appear by Employer. ~~If the employer fails to appear without reasonable cause, as determined by the Executive Director or his/her authorized representative, If the employer's representative cannot be reached within 3 work days or if the employee employer is unable to produce a reasonable explanation for failure to attend the hearing, the hearing will be closed and the employee will be reinstated to his/her position without loss of compensation as of the Proof of Service on Employee date on the Written Charges for Discharge form.~~
- C) Reasonable explanations can include, but are not limited to: injury on the day or preceding day of the scheduled hearing, traffic accident, death or significant injury of a family member, or other cause that is deemed reasonable by the Executive Director or his/her authorized representative. In any event, the employee is required to demonstrate that there was reasonable effort made to contact the employer or the Merit Board/University System office.

~~13) Disqualification of Assigned Hearing Board or Hearing Officer. A Hearing Board or Hearing Officer may be disqualified on grounds of bias or conflict of interest. An adverse ruling, or the fact that a Hearing Board or Hearing Officer has had contact with the University System, by itself, shall not constitute bias or conflict of interest. Whenever any party believes a Hearing Board or Hearing Officer should be disqualified from conducting an assigned proceeding, that party may file a request with the Executive Director to disqualify the Hearing Board or Hearing Officer, setting forth by affidavit the alleged grounds for disqualification, with proof of service on all parties. The Executive Director shall rule and make the final determination on all requests for disqualification.~~

~~14) Ex Parte Communications~~

- ~~A) Except in the disposition of matters they are authorized by law to entertain or dispose of on an ex parte basis, the Merit Board, the Executive Director, employees of the University System Office, and the assigned Hearing Board or Hearing Officer shall not, after the Notice of Convening of Hearing has been issued to the parties of record, communicate, directly or indirectly, with any party or the party's representative regarding any issue of fact or with any person or party in connection with any other issue regarding the case, except upon notice and opportunity for all parties to participate. However, the Merit Board, the Executive Director,~~

~~employees of the University System, and the Hearing Board or Hearing Officer may communicate with each other. Also, members of the Merit Board and the Hearing Board or Hearing Officer may have the aid and advice of one or more personal assistants.~~

- ~~B) Communications regarding procedure, including interpretation and application of Section 360 of the Act, subsection (f), and related procedures, are not considered ex parte communications.~~

~~15) Role and Responsibilities of the Hearing Board or Hearing Officer. The Hearing Board or Hearing Officer shall be responsible for the following activities:~~

- ~~A) Conduct the pre-hearing conference;~~
- ~~B) Facilitate the timely completion of the hearing process, taking necessary steps to avoid delay;~~
- ~~C) Establish reasonable limits on the duration of witness testimony;~~
- ~~D) Limit repetitive or cumulative testimony;~~
- ~~E) Rule on motions, objections or evidentiary questions;~~
- ~~F) Hear evidence as presented at the hearing by the employer and the employee on behalf of their respective positions (the evidence may include matters in aggravation, mitigation and justification, which may pertain to the question of "just cause" for discharge);~~
- ~~G) Direct questions to witnesses at any time, but restrict questioning to the clarification of the testimony already presented;~~
- ~~H) Prepare and transmit to the Merit Board a signed findings of fact within 15 calendar days after receipt of the transcript and exhibits of the hearing proceedings. The findings of fact shall set forth each of the written charges alleged in the Written Charges for Discharge, including an evaluation of the facts presented by the employer and employee with respect to each charge, and based on this evaluation, a determination as to whether the charges are sufficiently supported by the evidence presented. The findings of fact shall be based exclusively on the evidence and on matters officially noticed. The findings of fact presented by the Hearing Board or Hearing Officer are advisory only to the Merit Board. It is not the role of the Hearing Board or Hearing Officer to determine whether just cause for discharge exists. The~~

determination of just cause is the sole province of the Merit Board;
and

1) ~~Enter any order that further carries out the purpose of this Section.~~

~~46~~ 11) Settlement Agreements. Following the request for a hearing by the employee set forth in subsection (f)(~~43~~)(A), the employer and the employee may enter into a Settlement Agreement that may include a suspension of no more than 120 days. Such a suspension is only permissible if the employer files with the Secretary for the Merit Board the terms of that suspension, which must include a signed waiver of the rights provided by Section 360 of the Act. The employer is otherwise limited to a suspension of no more than 30 calendar days as set forth in subsection (e).

~~47~~ 12) Final Decision of the Merit Board. In the course of reaching its decision, the Merit Board may request the Executive Director to make recommendations that he/she deems appropriate with respect to the discharge proceedings. Nothing in this subsection (f)(~~12~~~~47~~) is intended to eliminate or limit the Merit Board's discretion to determine the appropriate disposition on a case-by-case basis. The Merit Board shall enter findings of fact and shall order the following decision and order or any other decision and order it deems appropriate:

- A) **Discharge.** Discharge, if just cause is found to exist. No employee shall be discharged except for just cause. Just cause is defined as some substantial shortcoming that renders the employee's continuance in his/her position in some way detrimental to the discipline and efficiency of the service and that the law and sound public opinion recognize as good cause for the employee no longer holding the position; or
- B) **Reinstatement.** Reinstatement, if just cause for discharge is found not to exist. An employee shall be reinstated as follows:
- i) Reinstatement with no loss of compensation when none or few of the significant charges are proven.
 - ii) Reinstatement with an unpaid suspension of a minimum of 3 days to a maximum of 120 days when the proven charges do not rise to the level of just cause for discharge, but some disciplinary action is justified based on the severity of the proven charges. If the Merit Board orders reinstatement with a suspension, any time served while on suspension pending discharge will be applied towards the fulfillment of the suspension. The Merit Board shall not order a

reinstatement with a suspension past the day of the action taken by the Merit Board.

~~48~~ 13) Final Decision and Order of the Merit Board. The Secretary for the Merit Board shall immediately forward copies of all Merit Board orders to the employer and the employee by an overnight delivery service that requires signature upon receipt. The employer is required to enact the Decision and Order of the Merit Board in a timely manner, in most instances within 10 days of receipt of the order.

~~49~~ 14) Administrative Review. All final decisions of the Merit Board shall be subject to appeal by the parties to the proceedings under the Administrative Review Law [735 ILCS 5/Art. III]. A complaint for administrative review must be filed and summons issued within 35 days after the date that a copy of the final Merit Board decision has been served upon the party affected. A final decision of the Merit Board shall be deemed served either when personally delivered or when deposited in the United States mail in a sealed envelope or package, with postage paid, addressed to the party affected by the decision at his/her last known residence or place of business.

~~20~~ 15) Time Periods for Proceedings

- A) **Requests for Extensions.** On the motion of either party with notice to the other party, or by independent action of the Chair of the Merit Board or the Executive Director communicated to both parties, any time period set forth in this subsection (f) may be extended by the Chair of the Merit Board or by the Executive Director for good cause shown. The Executive Director, in his/her sound discretion, may grant an extension by written agreement of the parties.
- B) **Extensions to be Granted by Executive Director.** No extension may be beyond a period established by statute, except for cases in which a written motion for continuance of a scheduled hearing is filed with the Secretary for the Merit Board at least 48 hours prior to the time scheduled for hearing, unless an exception is granted by the Executive Director. The moving party must set forth emergency grounds for a continuance, which are limited to unforeseen, unavoidable or uncontrollable circumstances, such as an Act of God; the sudden illness or death of the movant, a member of his or her immediate family, or his/her legal counsel; or if the movant is able to demonstrate some other real and compelling need for additional time. If there is an arrest or criminal indictment of any employee that resulted from an employee's conduct in the course of employment duties, the

Executive Director, at the request of the employee, may grant a continuance of hearing pending some resolution of the criminal charges. Requests for continuances must be preceded by contacting the opposing party and asking for agreement to the continuance.

- C) **Deadlines that May be Extended.** The time periods set forth in this subsection (f), except for the 15-day period set forth in subsection (f)(3)(B) and except for any time period provided for seeking administrative review of a final decision of the Merit Board, shall be deemed directory and not mandatory; and no failure to comply with any of the time periods set forth in this subsection (f), except for the 15-day period set forth in subsection (f)(4)(B) of this Section and except for any time period provided for seeking administrative review of a final decision of the Merit Board, shall cause the Merit Board to lose jurisdiction of any matter.
- D) **Weekends and Holidays.** If the last date for filing falls on a weekend or legal holiday, the last date for filing is the first business day following that weekend or legal holiday.

21) ~~Reason for Discharge. Causes justifying discharge and any suspension during the discharge proceedings shall include, but are not limited to: all those listed as cause for suspension if they become recurring offenses; and, in addition, theft; drinking intoxicating liquors on institutional time or property; inability to perform satisfactorily assigned duties as a result of drinking alcoholic beverages; malicious damage to property, tools or equipment; immoral or indecent conduct that violates common decency or morality; conviction of an offense involving moral turpitude; illegal or excessive use of drugs, narcotics and/or intoxicants.~~

22 16) Hearing Expenses. All customary and reasonable court reporter and copying expenses incident to the preparation of the Hearing Record and providing copies to parties to the proceedings shall be paid by the employer. The Merit Board shall pay all expenses of the Hearing Board or Hearing Officer and any legal expenses incurred by a Hearing Board or Hearing Officer, to the extent that those expenses have been approved by the Merit Board or its Executive Director.

g) Demotion

- 1) Any of the actions described in this subsection (g)(1) is considered to be a demotion when that action has been initiated by the employer. A demotion may occur when a status employee:

- A) is subject to a reduction in salary in his/her current position, or in a position of the same class to which he/she has been reassigned, except when the reduction in pay results from an overall reduction in pay to persons employed in the same class and/or when the Merit Board, on the basis of supporting evidence, determines that the pay potential should be lowered for a class;
 - B) is subject to a reduction in percentage of time worked;
 - C) is appointed to a position in a lower class in a promotional line;
 - D) is appointed to a position in a class outside a promotional line with a lower pay potential;
 - E) is given a nonstatus appointment.
- 2) None of the actions described in subsection (g)(1) are considered to be a demotion when the action has been initiated, or willingly accepted, by the employee.
- A) Evidence of initiation by, or willing acceptance by, an employee, i.e., a "voluntary demotion" shall be: a statement signed by the employee (to be filed by the employer with the notice of employment) indicating that the new appointment is at his/her request and/or is acceptable to him/her, or the employee applied for, and took, the Civil Service examination, upon the results of which the new appointment is based, after the date of certification to his/her most recent position.
 - B) Without the evidence indicated in subsection (g)(2)(A), the action will be considered to have been initiated by the employer and, therefore, will be considered to be a demotion.
- 3) Any classification plan changes authorized and implemented by the University System and/or the Merit Board that may result in a lower pay potential will not be considered a demotion.
- 4) An employer may effectuate a demotion by filing a Notice of Demotion form with the Merit Board and serving a copy of the Notice of Demotion on the employee by an overnight delivery service that requires signature upon receipt, or by personally serving the employee. The Notice of Demotion form shall designate the position and class to which the employee has been demoted and shall factually state the causes justifying demotion. The effective date of the demotion shall be the "Proof of Service on Employee" date on the Notice of Demotion form. A demotion shall be subject to the same hearing and review procedures as are provided

an employee in the case of a discharge. (See subsection (f).) During any hearing and review proceedings, the employee shall be paid the approved rate for the class of the position to which he/she has been demoted, as set forth in the Notice of Demotion form.

- 5) A status employee who is demoted to a position in a position in a class classification in which he/she has never been employed on a status appointment ~~may qualify for the position to which he/she is demoted, if his/her name is not already on an eligible register for that class, by taking the examination given to all other applicants for this class as promptly as possible following demotion to the class. The employee must pass the examination as a condition to retaining his/her appointment.~~ will be designated based on Merit Board action to the classification and may qualify for the position to which he/she is demoted.

~~, if his/her name is not already on an eligible register for that class, by taking the examination given to all other applicants for this class as promptly as possible following demotion to the class. The employee must pass the examination as a condition to retaining his/her appointment.~~

h) Dismissal

- 1) An employer may dismiss an employee whose name has been certified and who has been subsequently employed in a status position at any time during the probationary period of employment in a class, if the employer determines, pursuant to Section 250.90(a), that the employee has failed to demonstrate the ability and the qualifications necessary to furnish satisfactory service.
- 2) The employer shall notify the Executive Director promptly of dismissals, setting forth the reasons for the dismissal.

(Source: Amended at 43 Ill. Reg. 6829, effective May 23, 2019)