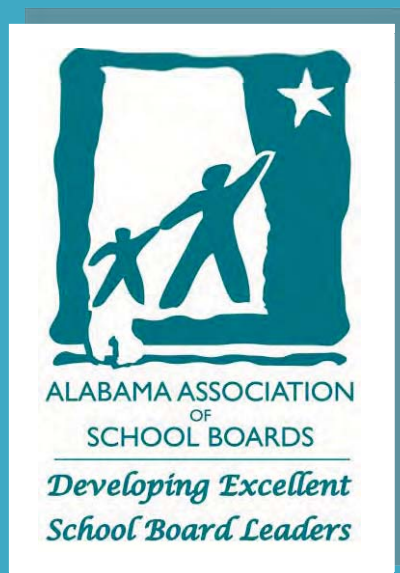


# AASB BOARDMANSHIP SERIES

*Developing excellent school board leaders through quality training, advocacy and services.*

## GUIDELINES FOR IMPLEMENTING THE STUDENTS FIRST ACT

*FIRST EDITION  
2012*



## Published by:

**Alabama Association of School Boards**  
P.O. Drawer 230488  
Montgomery, AL 36123-0488

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### Acknowledgments:

**Written by Jayne Harrell Williams**, a  
shareholder with Hill, Hill, Carter, Franco, Cole  
& Black P.C. of Montgomery and counsel for  
AASB.

Special appreciation goes to **Carl E. Johnson  
Jr.** and **Melissa Burkett McKie** of Bishop,  
Colvin, Johnson & Kent for their diligent work  
on the Students First Act.

## Foreword

The primary goals of the Students First Act are to improve the ability of boards to remove employees who are ineffective or act inappropriately and to more effectively manage their limited resources. This law represents a major shift toward a fair and reasonable system that balances the rights of employees with the ability of boards to properly govern the system and promote student learning.

This edition of the AASB Boardmanship Series, *Guidelines for Implementing the Students First Act*, should assist boards in this goal. It discusses the procedures superintendents and boards must use to take various employment actions.

While significant challenges to certain provisions are expected, the Alabama Association of School Boards is confident that this law can withstand the scrutiny of the courts as long as the law is fairly and consistently implemented. As legal challenges are filed and court decisions are rendered, certain provisions of the law will be clarified. Therefore, it's important to know this publication should be used as a tool and is not intended to be a substitute for the local board attorney's advice.

## Introduction

Alabama's Teacher Tenure and Fair Dismissal acts that had controlled the personnel actions of public school employees for decades were replaced by the Students First Act of 2011. The drafters of this important legislation made every effort to keep what worked about the old laws but fix what was wrong. As a result of the negotiating process, many changes were made from the initially introduced bill that resulted in a few inconsistencies and unintended consequences in the law. As challenges are filed, these points should be clarified by court decisions.

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## NONRENEWALS, TERMINATIONS, LAYOFFS & SUSPENSIONS

Action	Employee	Reason	Timing	Advance Notice to Employee	Rights Before Board	Review/ Appeal	Ala. Code §16-24C-	Notes
<b>Nonrenewal</b>	Probationary Teacher	Any or none <sup>†</sup>	End of year	No	None	No	5(c)	Notice by June 15 (or 30) in year 1 or 2; Notice by last day of school for teachers in year 3
<b>Nonrenewal</b>	Probationary Classified	Any or none <sup>†</sup>	End of year	No	None	No	5(a)	Notice by June 15 (or 30); Pay continues for 15 days
<b>Termination</b>	Probationary Teacher	Any or none <sup>†</sup>	Midyear	Yes	Written statement	No	5(c)	30 days' notice before board vote
<b>Termination</b>	Probationary Classified	Any or none <sup>†</sup>	Midyear	No	None	No	5(a)	Pay continues for 15 days
<b>Termination</b>	Tenured Teacher	Statutory grounds <sup>††</sup>	Anytime	Yes	Full hearing	Yes	6	Pay cut off 75 days after board vote or upon hearing officer decision, whichever first <sup>†††</sup>
<b>Termination</b>	Nonprobationary Classified	Statutory grounds <sup>††</sup>	Anytime	Yes	Full hearing	Yes	6	Pay cut off 75 days after board vote or upon hearing officer decision, whichever first <sup>†††</sup>
<b>Termination</b>	Tenured Teacher	Criminal conviction	Anytime	No	None	No	10(a)	If conviction overturned, teacher must be reinstated or placed on leave with back pay
<b>Termination</b>	Tenured Teacher	Loss of certificate	Anytime	No	None	No	10(d)	
<b>Pay/term reduction</b>	All Employees	Any	Prospective	No	None	No	6(h)(2)	Must apply to category, class, division, etc. of employees
<b>Layoff (RIF)</b>	Tenured Teacher/ Nonprobationary Classified	Statutory grounds <sup>††††</sup>	Anytime	No	None	No	6(h)(3)	Be sure to comply with local RIF policy
<b>Suspension 20 days or less</b>	All Employees	Any	Anytime	Yes	Written statement or conference	No	6(i)	
<b>Suspension more than 20 days</b>	All Employees	Any	Anytime	Yes	Full hearing	Yes	6(i)	

<sup>†</sup> Boards are not required to disclose a reason to the employee, but if the employee alleges that the termination/nonrenewal is illegal, the board should have a reason. For instance, if the employee files an EEOC charge claiming he was nonrenewed because of his race or sex, the board must be prepared to provide a reason to the EEOC.

<sup>††</sup> Grounds for termination are justifiable decrease in the number of positions, incompetency, insubordination, neglect of duty, immorality, failure to perform duties in a satisfactory manner, or other good and just cause.

<sup>†††</sup> If the termination is based on moral turpitude, immorality, incarceration, neglect of duty or loss of certificate, pay is cut off immediately upon board approval.

<sup>††††</sup> Grounds for declaring a reduction in force are a shortage of revenues or decreased student enrollment.

## REASSIGNMENTS & TRANSFERS<sup>†</sup>

Action	Employee	Pay	Location	Advance Notice to Employee	Rights Before Board	Review/ Appeal	Ala. Code §16-24C-	Notes
<b>Reassignment</b>	Probationary Teacher	Same	Within location	No	None	No	7(b)	Board approval not required; any grade, position or work location within school, campus or facility; must be certificated; no loss of pay
<b>Reassignment</b>	Probationary Classified <sup>†</sup>	Same	Within location	No	None	No	7(a)	Must be qualified
<b>Reassignment</b>	Tenured Teacher	Same	Within location	No	None	No	7(b)	Board approval not required; any grade, position or work location within school, campus or facility; no later than 20 <sup>th</sup> day of class; once a year; must be certificated; no loss of pay
<b>Reassignment</b>	Nonprobationary Classified <sup>†</sup>	Same	Within location	No	None	No	7(a)	Must be qualified
<b>Transfer</b>	Probationary Teacher/ Probationary Classified <sup>†</sup>	Same	Different location	No	None	No	7(a)	Must be qualified
<b>Transfer</b>	Tenured Teacher	Same	Different location	Yes	Conference	No	7(c)	Any grade, position or work location outside school, campus or facility; no later than 20 <sup>th</sup> day of class; once a year; must be certificated; no loss of pay
<b>Transfer</b>	Tenured Teacher	Same	Outside feeder pattern	Yes	Conference	No	7(c)	Any grade, position or work location outside school, campus or facility and outside feeder pattern; no later than 20 <sup>th</sup> day of class; once a year; must be certificated; no loss of pay
<b>Transfer</b>	Nonprobationary Classified	Same	Different location	Yes	None	No	7(d)	Effective 15 days after board decision
<b>Transfer</b>	Nonprobationary Classified	Same	Outside feeder pattern	Yes	Full hearing	Yes	7(d)	
<b>Transfer</b>	Probationary Teachers	Reduced	Any position	Yes	Written statement	No	7(e)	Initial notice must state impact on pay; effective 15 days after board decision
<b>Transfer</b>	Probationary Classified	Reduced	Any position	Yes	Written statement	No	7(e)	Initial notice must state impact on pay; effective 15 days after board decision
<b>Transfer</b>	Tenured Teacher/ Nonprobationary Classified	Reduced	Any position	Yes	Full hearing	Yes	7(f)	
<b>Transfer (RIF)</b>	Tenured Teacher/ Nonprobationary Classified	Reduced	Any position	No	None	No	6(h)(3)	Be sure to comply with local RIF policy

<sup>†</sup> Any reassignment or transfer not specified in Section 7 of the *Students First Act* can be accomplished by superintendent's recommendation and board approval.

# ***STUDENTS FIRST ACT: THE BASICS***

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## **WHO IS COVERED BY THE STUDENTS FIRST ACT?**

### **TEACHERS**

When the term “teacher” is used in the *Students First Act*, it refers to any employee who is required by law or board policy to maintain a professional educator’s certificate issued by the state Department of Education. This includes instructors, employees who were previously tenured as “supervisors” under the *Teacher Tenure Act* and tenured principals who did not become contract principals under the *Teacher Accountability Act*. *Ala. Code* §16-24C-3(8).

A “professional educator’s certificate” includes regularly issued certificates, provisional certificates and alternative certificates, but it does not include emergency certificates. The *Students First Act* suggests that teachers employed under provisional and alternative certificates do not earn credit toward tenure; however, this provision must be read in conjunction with *Ala. Code* §16-23-3, which specifically permits tenure to be earned under provisional and alternative certificates. Therefore, any time in service spent under these types of certificates counts toward the attainment of tenure. *Ala. Code* §16-24C-3(6).

Only emergency certificates are ineligible for tenure credit. Therefore, any time in service spent under an emergency certificate does not count toward the attainment of tenure.

### **CLASSIFIED EMPLOYEES**

When the term “classified employee” is used in the *Students First Act*, it refers to the following employees:

- All bus drivers
- Full-time cafeteria workers
- Full-time janitors and custodians
- Full-time maintenance personnel
- Full-time secretaries and clerical assistants
- Full-time instructional aides or assistants (whether or not they hold a certificate)
- Non-certificated supervisors
- Any other employee who is not a teacher but is employed full time by a board of education.

An employee is “full time” if he works 20 or more hours in a normal work week. *Ala. Code* §16-24C-3(2).

## **WHO’S NOT COVERED?**

Superintendents, contract principals and chief school financial officers are not protected by the *Students First Act*. They are considered neither a “teacher” nor a “classified employee” for purposes of the act and are covered by other statutes. However, if the chief school financial officer has duties not covered by the *School Fiscal Accountability Act*, that position may be subject to the *Students First Act*. Atty. Gen. Op. 2012-005.

Also, persons employed as temporary, part-time, substitute, summer school, occasional, seasonal, supplemental, irregular, etc., or in positions that are experimental, pilot, temporary, or like special programs, projects or purposes, the funding and duration of which are finite, are not covered by the *Students First Act*. *Ala. Code* §16-24C-4(3)(b).

## HOW IS PROTECTED STATUS EARNED?

A teacher gains tenure after completing three complete, consecutive school years of full-time employment as a teacher with the same employer. A probationary teacher does not gain tenure if he is given notice of termination before the last day of his third complete, consecutive school year of employment. *Ala. Code §16-24C-4(1)*.

A classified employee gains nonprobationary status after completing three complete, consecutive school years of full-time employment with the same employer. A probationary classified employee does not gain nonprobationary status if he is given notice of termination before June 15 of his third year of employment (or June 30 during the first year of the legislative quadrennium (2015, 2019, etc.)). *Ala. Code §16-24C-4(2)*.

The term “school year” is defined as the period beginning with the first day of the school term and ending with the last day of that term on which teachers are required to report for duty as dictated by the local board. *Ala. Code §16-24C-3(7)*.

A school year is deemed “complete” if the employee is hired or rehired before Oct. 1 of that school year. *Ala. Code §16-24C-4(3)(a)*.

### TIME IN SERVICE BEFORE THE *STUDENTS FIRST ACT*

Any teacher, supervisor or tenured principal who earned tenure prior to and was employed on July 1, 2011, is a tenured teacher under the *Students First Act*. *Ala. Code §16-24C-16(b)(1)*. Any classified employee who earned nonprobationary status prior to and was employed on July 1, 2011, continues to be a nonprobationary employee under the *Students First Act*. *Ala. Code §16-24C-14(a)(1)*.

Any employee who was employed before July 1, 2011, but had not earned tenure or nonprobationary status will be credited for the time employed, and unless nonrenewed, terminated, resigned or retired shall earn tenure or nonprobationary status according to the provisions of the *Students First Act*. *Ala. Code §16-24C-14(a)(2)*.

### LEAVES OF ABSENCE

Boards may grant employees leave of absence for one year without losing their tenured or nonprobationary status or credit for time in service. The board may extend the employee’s leave for one additional year. *Ala. Code §16-24C-13(a)*.

Military leaves of absence are controlled by *Ala. Code §31-2-13*.

## WHAT IS PROTECTED?

An employee gains protection in his status as a tenured teacher or nonprobationary classified employee. This provides for certain due process rights in the event transfer, suspension, termination or other actions are proposed. However, he does not gain protection in a specific position, rank, work site or location, assignment, title or rate of compensation. *Ala. Code §16-24C-4(3)(c)*.

# ***PRACTICE POINTERS***

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## **USE OF CONTRACTS**

The *Students First Act* provides employees with certain rights. If you use contracts, that may provide the employee with additional due process rights separate and apart from those provided by the act. Therefore, AASB recommends the use of letters of appointment with the following language included: “This letter of appointment does not constitute a contract of employment. The employment relationship is governed by the provisions of the *Students First Act*.” A sample letter is provided in the Appendix.

## **EMPLOYEE NOTICE**

Any time the superintendent must issue written notice under the *Students First Act*, it must be done as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee’s last known address. *Ala. Code* §16-24C-6(k).

If the employer issues notice by certified mail or private mail carrier, the notice is deemed received and complete after two business days. The employer has the burden to show that it properly issued notice (e.g., certified mail receipt to employee’s proper address). The employee has the burden to prove that the service was improper.

## **COURT REPORTERS**

Any time an employee can appeal the board’s decision to a hearing officer, the employer is required to hire a court reporter to record the board hearing. The board will be reimbursed for the court reporter’s fees by the state Department of Education. The board will have to file a Notice of Contest Form and Hearing Costs Claim Form with the Department. The forms are provided in the Appendix. *Ala. Code* §16-24C-6(l).

## **PERSONAL OR POLITICALLY MOTIVATED ACTIONS**

The statute specifies that no recommendation or decision by a superintendent or board can be based on personal or political reasons. *Ala. Code* §16-24C-4.

## **COMMUNICATIONS PRIOR TO BOARD ACTION**

The board sits as a quasi-judicial body when considering employee matters under the *Students First Act*. Therefore, board members do not need to come to any conclusions nor engage in extensive discussions with either party, including the superintendent, prior to considering the matter during the board hearing or conference. *Ala. Code* §16-24C-8. That said, it is appropriate for the superintendent to keep board members informed about matters involving employees. However, if the superintendent or board anticipates the board will have to sit in judgment of the employee at some point, those discussions should be limited in nature to prevent bias or claims of bias.



## **CRIMINAL STAYS**

Employees are no longer permitted to delay disciplinary proceedings based on threatened or pending criminal charges arising out of the same facts. Rather, the fact that an employee testifies on his own behalf during a disciplinary proceeding does not waive his right against self-incrimination and any testimony given during the disciplinary proceeding cannot be used against him in criminal court. *Ala. Code §16-24C-6(j)*.

## **STOPPING PAY**

An employee's pay can be cut off immediately upon the board's approval of the superintendent's recommendation to terminate if the termination is for:

- Moral turpitude
- Immorality
- Abandonment of job
- Neglect of duty
- Incarceration

*Ala. Code §16-24C-6(m)*.

The Alabama Legislature has never defined the term "moral turpitude," but the courts have provided some guidance. The Alabama Supreme Court has defined moral turpitude as "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen or to society in general." The following crimes have been held to constitute moral turpitude:

- Murder
- Various sex crimes
- Robbery
- Manslaughter
- Aggravated assault
- Bigamy

The employee need only be accused of an act involving moral turpitude; no criminal charges are required. This list should provide some guidance as to the type of acts covered, but it is not exhaustive. Consult with your local attorney regarding whether the underlying act may constitute moral turpitude.

## **RESIGNATIONS**

No tenured teacher can resign his employment during the 30-day window before the first day of classes without the board's consent. Thereafter, the teacher may resign with five days' notice. Any teacher violating this provision may be subject to certificate suspension or revocation for unprofessional conduct. *Ala. Code §16-24C-11*.

## **EMPLOYEES DENIED A HEARING**

Any tenured teacher or nonprobationary classified employee who is denied a hearing by the board can file a direct appeal to the chief administrative law judge. The board must file an answer in writing. The administrative law judge will then review the written filings and determine whether the board wrongfully denied the employee a hearing. *Ala. Code §16-24C-12*.

# ***NONRENEWALS & TERMINATIONS***

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## **PROCEDURE FOR MIDYEAR TERMINATION OF A PROBATIONARY TEACHER**

*ALA. CODE §16-24C-5(C)*

This section applies to probationary teachers being terminated during the school year. They must receive notice of the superintendent's recommendation at least 30 calendar days before the board is scheduled to vote.

1. The superintendent issues written notice to the teacher that she will recommend his termination to the board. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the teacher, or (d) hand delivery to the teacher's last known address.

*The sample letter asks the teacher to submit any written statement on a certain date prior to the board meeting. Such a practice would allow written responses to be timely placed in board packets and prevent questions of whether written submissions are in the mail or otherwise in transit.*

### *Sample Letter*

*Mr. John Doe*

*This letter is to notify you that I will recommend your termination to the board at its meeting on \_\_\_\_\_, 20\_\_ at \_\_\_ am/pm at \_\_\_\_\_ in \_\_\_\_\_, Alabama. **[NOTE: This date must be at least 30 days from the date of this notice.]***

*You have the right to submit a written statement to the superintendent and the board explaining why you should not be terminated. If you choose to submit that statement, it must be received in my office no later than 4:00 PM on \_\_\_\_\_, 20\_\_. **[NOTE: 1-2 days before the scheduled board meeting is suggested.]** Whether or not you choose to submit a statement, you will receive written notification of the board's decision after the meeting.*

*Dr. Jane Smith  
Superintendent  
City School System*

2. The teacher may submit a written statement to the superintendent and board explaining why he should not be terminated. If the teacher submits a written statement, it should be given to the board prior to the vote.
3. Whether or not the teacher submits a written statement, the board votes on the superintendent's recommendation. A majority of the whole board must approve the superintendent's recommendation.

*Sample Recommendation*

*I hereby recommend that the employment of Mr. John Doe, teacher at ABC Elementary School, be terminated effective immediately.*

*Sample Board Motion*

*I move that the board approve the superintendent's recommendation to terminate the employment of Mr. John Doe effective immediately.*

4. The superintendent issues written notice of the board's decision to the teacher. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the teacher, or (d) hand delivery to the teacher's last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board accepted my recommendation to terminate your employment effective immediately.*

*Dr. Jane Smith  
Superintendent  
City School System*

5. The decision is final and effective immediately. The teacher has no further right to challenge, review or appeal.

# PROCEDURE FOR NONRENEWAL OF A PROBATIONARY TEACHER

## *ALA. CODE §16-24C-5(C)*

This section applies to the nonrenewal of probationary teachers. The *Students First Act* does not use the term “nonrenew.” It only refers to termination. Within these guidelines, the terms are used interchangeably depending on the action.

If the teacher is in his first or second year of employment, he must be issued notice of the board’s decision on or before June 15 (or June 30 during the first year of the legislative quadrennium (2015, 2019, etc.)). If the teacher is in his third year of employment, he must be issued notice of the board’s decision by the last working day of the school year for teachers. Therefore, this procedure should begin in enough time for the board to hold a meeting and vote and the superintendent to have the letters prepared and issued.

1. The superintendent recommends in writing that the board nonrenew the teacher.

### *Sample Recommendation*

*I hereby recommend that the employment of Mr. John Doe, teacher at ABC Elementary School, be nonrenewed effective at the end of the current school year.*

*The board need not and should not provide a reason to the teacher for his nonrenewal, but the board or supervisor should have one. While the teacher has no right to job protection under state law, he may claim that his nonrenewal was discriminatory and file a claim with the U.S. Equal Employment Opportunity Commission. If he does so, the EEOC will demand a nondiscriminatory reason for the nonrenewal, and the board will need to produce one.*

2. The board votes on the superintendent’s recommendation. A majority of the whole board must approve the superintendent’s recommendation.

### *Sample Board Motion*

*I move that the board approve the superintendent’s recommendation to nonrenew the employment of Mr. John Doe, teacher at ABC Elementary School, effective at the end of the current school year.*

3. The superintendent issues written notice of the board’s decision to the teacher. If the teacher is in his first or second year of employment, the notice must be issued to him before June 15 (or June 30 during the first year of the legislative quadrennium (2015, 2019, etc.)). If the teacher is in his third year of employment, the notice must be issued to him before the last working day of the school year for teachers. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the teacher, or (d) hand delivery to the teacher’s last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board accepted my recommendation to nonrenew your employment effective at the end of the current school year.*

*Dr. Jane Smith  
Superintendent  
City School System*

4. The decision is final and effective immediately. The teacher has no further right to challenge, review or appeal.

<p><i>If a teacher is not nonrenewed as provided, he is deemed reemployed for the next school year.</i></p>
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## **PROCEDURE FOR MIDYEAR TERMINATION OF A PROBATIONARY CLASSIFIED EMPLOYEE**

### *ALA. CODE §16-24C-5(A)*

This section applies to the termination of probationary classified employees at any time during the three-year probationary period. The statute does not require a reason be given, but your board may wish to do so. However, remember that even though a reason is not required, the board should still have a legitimate, nondiscriminatory reason in case the employee files an EEOC charge.

1. The superintendent recommends in writing that the board terminate the employee.

#### *Sample Recommendation*

*I hereby recommend that the employment of Mr. John Doe, custodian at ABC Elementary School, be terminated effective 15 days from the date notice of termination is issued.*

2. The board votes on the superintendent's recommendation. A majority of the whole board must approve the superintendent's recommendation.

#### *Sample Board Motion*

*I move that the board approve the superintendent's recommendation to terminate the employment of Mr. John Doe, custodian at ABC Elementary School, effective 15 days from the date notice of termination is issued.*

3. The superintendent issues written notice of the board's decision to the employee. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

#### *Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board accepted my recommendation to terminate your employment effective 15 days from the date of this letter.*

*Dr. Jane Smith  
Superintendent  
City School System*

4. The decision is final and effective immediately. However, pay and benefits must continue for 15 days from the date notice of the board's decision is issued. The employee has no further right to challenge, review or appeal.

## **PROCEDURE FOR NONRENEWAL OF A PROBATIONARY CLASSIFIED EMPLOYEE IN THIRD YEAR**

### *ALA. CODE §16-24C-5(A)*

The *Students First Act* does not use the term “nonrenew.” It only refers to termination. Within these guidelines, the terms are used interchangeably for ease of reference, but the sample letters use only the term “termination.”

Classified employees can be terminated at any time during their probationary period with 15 days’ notice. Therefore, there’s no requirement that classified employees be nonrenewed at the same time as teachers unless they are in their third year of employment. The employee must be issued notice of the board’s vote on or before June 15 (or June 30 during the first year of the legislative quadrennium (2015, 2019, etc.)). Therefore, this procedure should begin in enough time for the board to hold a meeting and vote and the superintendent to have the letters prepared and issued.

Unlike the provision for probationary teachers, there is no distinction between the procedures for midyear terminations and nonrenewals for probationary classified employees. Therefore, it appears that the employee must continue to be paid for 15 days after receiving notice of nonrenewal.

There is no distinction in the treatment of nine-month employees and classified employees who work over the summer. Therefore, boards should be mindful that employees who work over the summer may still need to be notified of their nonrenewal/termination by June 15 (or June 30) or risk them earning nonprobationary status.

The board need not and should not provide a reason to the employee for his nonrenewal, but the board or supervisor should have one. While the employee has no right to job protection under state law, he may claim that his nonrenewal was discriminatory and file a claim with the EEOC. If he does so, the EEOC will demand a nondiscriminatory reason for the nonrenewal, and the board will need to produce one.

1. The superintendent recommends in writing that the board terminate the employee.

#### *Sample Recommendation*

*I hereby recommend that the employment of Mr. John Doe, custodian at ABC Elementary School, be terminated effective at the end of the current school year.*

2. The board votes on the superintendent’s recommendation. A majority of the whole board must approve the superintendent’s recommendation.

#### *Sample Board Motion*

*I move that the board approve the superintendent’s recommendation to terminate the employment of Mr. John Doe, custodian at ABC Elementary School, effective at the end of the current school year.*

3. The superintendent issues written notice of the board’s decision to the employee. The notice must be issued to the employee before June 15 (or June 30 during the first year of the legislative quadrennium (2015, 2019, etc.)). The methods for issuing written notice are as

follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board accepted my recommendation to terminate your employment effective at the end of the current school year.*

*Dr. Jane Smith  
Superintendent  
City School System*

4. The decision is final and effective immediately. However, pay and benefits must continue for 15 days from the date notice of the board's decision is issued. The employee has no further right to challenge, review or appeal.



# PROCEDURE FOR TERMINATION OF TENURED TEACHER AND NONPROBATIONARY CLASSIFIED EMPLOYEE

## *ALA. CODE §16-24C-6*

This section controls the termination of tenured teachers and nonprobationary classified employees. The grounds for which the recommendation can be made are as follows:

- Justifiable decrease in the number of positions,
  - Incompetency,
  - Insubordination,
  - Neglect of duty,
  - Immorality,
  - Failure to perform duties in a satisfactory manner, or
  - Other good and just cause. *Ala. Code §16-24C-6(a).*
1. The superintendent issues written notice to the employee that she will recommend his termination to the board. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

The notice must provide the following information:

- The ground(s) for the termination;
- A short and plain statement of the facts underlying those grounds; and
- A statement that the employee has the right to request a hearing with the board by filing a written request with the superintendent within 15 days after issuance of the notice. *Ala. Code §16-24C-6(b).*

### *Sample Letter*

*Mr. John Doe*

*This letter is to notify you that I am recommending your termination as a tenured teacher at ABC Elementary School on the grounds of failure to perform duties in a satisfactory manner, insubordination and/or other good and just cause. The facts supporting the proposed termination are as follows:*

1. *Mr. Doe failed to submit timely lesson plans as required from August 2011 to February 2012.*
2. *On February 5, 2012, when confronted about his repeated failure to submit timely lesson plans, Mr. Doe yelled at his principal, "You're not the boss of me! I hate you!"*
3. *After yelling at his boss, Mr. Doe ran from the principal's office and drove away from school at a high rate of speed.*
4. *After leaving the school without permission, Mr. Doe failed to teach his remaining classes on February 5, 2012.*

*You have the right to request a hearing before the board acts on my recommendation. In order to do so, you must submit a written request to me within 15 calendar days of the date of this notice.*

*If you do not timely request a hearing, the board will vote on my recommendation, and you will receive written notification of its decision.*

*If you timely request a hearing, you will receive written notification of the date of that hearing from my office.*

*Whether or not you request a hearing, should the board ultimately accept my recommendation, you will receive full pay and benefits for 75 days from the date of the board's vote or issuance of a hearing officer's decision upholding the termination, whichever comes first.*

*Dr. Jane Smith  
Superintendent  
City School System*

*If no hearing is requested, continue to step 2. If a hearing is requested, skip to step 4.*

2. **NO HEARING REQUESTED:** If the employee does not request a hearing in the time allowed, the board may vote on the superintendent's recommendation any time after the 15-day time period has expired. *Ala. Code §16-24C-6(b).*

*Sample Recommendation*

*I hereby recommend that the employment of Mr. John Doe, tenured teacher at ABC Elementary School, be terminated on the grounds of failure to perform duties in a satisfactory manner, insubordination and/or other good and just cause. The facts supporting the proposed termination are as follows:*

1. *Mr. Doe failed to submit timely lesson plans as required from August 2011 to February 2012.*
2. *On February 5, 2012, when confronted about his repeated failure to submit timely lesson plans, Mr. Doe yelled at his principal, "You're not the boss of me! I hate you!"*
3. *After yelling at his boss, Mr. Doe ran from the principal's office and drove away from school at a high rate of speed.*
4. *After leaving the school without permission, Mr. Doe failed to teach his remaining classes on February 5, 2012.*

*Sample Board Motion*

*I move that the board approve the superintendent's recommendation to terminate the employment of Mr. John Doe, tenured teacher at ABC Elementary School, effective immediately for the grounds and reasons stated in the recommendation, and pay to continue for 75 days.*

3. **NO HEARING REQUESTED:** The superintendent should then issue the employee written notice of the board's decision within 10 days. *Ala. Code §16-24C-6(d).* The decision is final and pay is cut off 75 days after the board votes. *Ala. Code §16-24C-6(m).* The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next

business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board voted to approve my recommendation to terminate you at its meeting on \_\_\_\_\_, 20\_\_\_. This decision is effective immediately. You will continue to receive full pay and benefits for 75 calendar days from the date of the board's vote.*

*Dr. Jane Smith  
Superintendent  
City School System*

4. **HEARING REQUESTED:** If the employee timely requests a hearing, the superintendent must set a time, date and place for a board hearing and issue written notice to the employee. The hearing date must be scheduled between 30 and 60 days from the date of the hearing notice. That date may be extended by agreement or for good cause. *Ala. Code §16-24C-6(b)*. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

*Sample Letter*

*Mr. John Doe*

*You have timely requested a hearing on my recommendation to terminate your employment.*

*The board has set a hearing to consider my recommendation for \_\_\_\_\_, 20\_\_, at \_\_\_ am/pm in the \_\_\_\_\_ in \_\_\_\_\_, Alabama. **[NOTE: The hearing date should be 30 to 60 days from the date of this notice.]***

*The hearing shall be public or private at your discretion and shall be conducted in accordance with Ala. Code §16-24C-6(c) of the Students First Act. You have the right to have an attorney represent you at your expense. You also have the right to be heard, to examine and cross-examine witnesses and present other evidence and argument on your behalf. You also have the right to request that the superintendent subpoena witnesses to testify on your behalf. Any such request should be provided in writing to the superintendent at least two weeks before the hearing date. A court reporter will be provided.*

*Dr. Jane Smith  
Superintendent  
City School System*

5. Ensure that a court reporter is hired for the hearing. Also, submit a Notice of Contest Form to the state Department of Education. The form is provided in the Appendix.

6. The board holds a full hearing. A sample script is provided at the end of this section. The board may then deliberate in executive session.

*The board has the right to impose a lesser punishment than termination. Ala. Code §16-24C-6(h)(1).*

*Neither the superintendent nor attorney(s) should be present during deliberation.*

7. The board should return to open session to vote on the superintendent's recommendation.

*The Open Meetings Act does not require the board to return to open session to vote on the recommendation as long as the board "issues a written decision which may be appealed to a hearing officer...which has the authority to conduct a public hearing or appeal." Ala. Code §36-25A-7(a)(9). Nevertheless, AASB believes voting in public is the best practice.*

#### *Sample Board Motion*

*I move that the board approve the superintendent's recommendation to terminate the employment of Mr. John Doe.*

8. While not required, the board should consider issuing written findings of fact to assist the hearing officer if the board's decision is appealed. A sample is below:

*The board could also direct the prevailing attorney to prepare the findings of fact to be signed by the board president. The findings would need to be completed in time for written notice to be issued to the employee (10 days from the date of the vote).*

#### *Sample Findings of Fact*

*The superintendent recommended that the board terminate John Doe, tenured teacher at ABC Elementary School, for the following reasons:*

- 1. Mr. Doe failed to submit timely lesson plans as required from August 2011 to February 2012.*
- 2. On February 5, 2012, when confronted about his repeated failure to submit timely lesson plans, Mr. Doe yelled at his principal, "You're not the boss of me! I hate you!"*
- 3. After yelling at his boss, Mr. Doe ran from the principal's office and drove away from school at a high rate of speed.*
- 4. After leaving the school without permission, Mr. Doe failed to teach his remaining classes on February 5, 2012.*

*Mr. Doe timely requested a hearing before this board and a hearing was held on \_\_\_\_\_, 20\_\_\_. Mr. Doe appeared at the hearing with his attorney \_\_\_\_\_. The superintendent was present and was represented by her attorney \_\_\_\_\_. The board has considered*

*the evidence presented to it and finds that the superintendent presented sufficient evidence of allegations 1, 3 and 4. Those allegations establish the grounds of failure to perform duties in a satisfactory manner, insubordination and other good and just cause. For this reason, the board finds that the superintendent's recommendation should be APPROVED by a vote of 4 to 1.*

*Done this \_\_\_ day of \_\_\_\_\_, 20\_\_.*

\_\_\_\_\_  
*Board President*

9. The superintendent issues written notice of the board's decision to the employee within 10 days. That notice can also contain the board's findings of fact. *Ala. Code §16-24C-6(d)*. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

*If the allegations leading to the termination are based on an act of moral turpitude, immorality, abandonment of job, incarceration or neglect of duty, pay may be cut off immediately upon the board's vote. Ala. Code §16-24C-6(m). That procedure is addressed in the next section.*

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board voted to approve my recommendation to terminate you at its meeting on \_\_\_\_\_, 20\_\_. The board's findings of fact are enclosed.*

*You have the right to contest this decision by filing an appeal pursuant to Ala. Code §16-24C-6(e) of the Students First Act.*

*If you wish to do so, you must file a written "Notice of Appeal" addressed to:*

*State Superintendent of Education  
Alabama Department of Education  
501 North Ripley Street  
P.O. Box 302101  
Montgomery, AL 36104*

*That notice of appeal must be filed within 15 days of your receipt of this letter and must state the grounds upon which your appeal is based. A copy of that notice must be simultaneously provided to my office as well.*

*If you do not wish to appeal, you will receive severance pay for 75 days from the date of the board's decision to terminate you. If you do wish to appeal, you will receive severance pay for 75 days from the date of the*

*board's decision or until the hearing officer renders a decision, whichever comes first.*

*Dr. Jane Smith  
Superintendent  
City School System*

10. If the employee does not file Notice of Appeal with the state superintendent, the employee's pay and benefits must continue for 75 days from the date the board voted to terminate. Submit the Hearing Costs Claim Form to the state Department of Education for reimbursement of the court reporter fees. (See Appendix).
11. If the employee does file Notice of Appeal with the state superintendent, the state superintendent will contact the executive director of the Alabama State Bar and obtain a panel of retired Alabama judges from which the parties can select a hearing officer. *Ala. Code §16-24C-6(e)*.
12. The panel of five potential hearing officers will be provided to the parties. The parties may agree on a hearing officer from the panel or any other source.
13. If the parties cannot agree on a hearing officer, the parties must use alternating strikes to select the hearing officer. The employee gets the first strike. The process must be completed within 10 days of the parties receiving the panel.
14. After receiving the Notice of Appeal, the superintendent must compile the hearing record, including the court reporter's transcript, documentary evidence and any notices. The record must be provided to the hearing officer within 20 days of receiving the Notice of Appeal.

*It is possible that the process of selecting the hearing officer may not be complete within 20 days through no fault of the board. If this occurs, once the superintendent receives the Notice of Appeal, the board attorney should go ahead and compile the record and be prepared to immediately provide the record to the hearing officer once he is appointed. The hearing officer can extend the time for providing the record for good cause shown.*

*Sample Letter*

*The Honorable Judge Jim Law  
123 Main Street  
City, Alabama*

*RE: The Termination of John Doe  
from the City Board of Education*

*Dear Judge Law:*

*I represent the City Board of Education in the above-referenced matter. The Notice of Appeal in this matter was received on October 1, 2011. Pursuant to Ala. Code §16-24C-6(e), I am obligated to provide a record of the*

*proceedings before the board to you within 20 days of the Notice of Appeal. I received notification of your appointment as hearing officer yesterday on October 31, 2011. Because more than 20 days have elapsed between the Notice of Appeal and your appointment, I was unable to comply with that provision. For that reason, I request an additional 5 days from today's date in which to provide the record to you. If this is acceptable, please contact me at (334) 555-1212 or joe.jones@citylawfirm.com.*

*Joe Jones, Esquire  
Counsel for City Board of Education*

*Sample Notice*

*In re the Termination of  
John Doe, Tenured Teacher,  
from the City School System*

*Notice of Record*

*The City Board of Education hereby provides a record of the termination proceedings involving Mr. John Doe. The record contains the following documents:*

- 1. Required Notices*
- 2. Transcript of Termination Hearing*
- 3. Exhibits Introduced During Termination Hearing*

*Done this \_\_ day of \_\_\_\_\_, 20\_\_.*

\_\_\_\_\_  
*Counsel for City Board of Education*

15. The hearing officer holds a hearing. There is no provision for when this hearing must be set.

*AASB's position is that the statute does not contemplate a full hearing but rather arguments of counsel based on the record before the board. This is evidenced by the facts that the statute refers to the action as a "review," the hearing officer is provided a transcript of the testimony taken by the board, the hearing officer is required to give the board's decision deference and the hearing officer is only permitted to affirm or reverse the board's decision. Ala. Code §16-24C-6(e).*

16. Remember that the employee must continue to receive pay and benefits for 75 days after the board votes to terminate or when the hearing officer upholds the termination, whichever is first.
17. The hearing officer issues a written decision either affirming or reversing the board's decision within five days of the hearing.
18. Report the hearing officer's decision and reimbursable costs to the state Department of Education by submitting the Hearing Costs Claim Form provided in the Appendix.

19. If the hearing officer reverses the board's decision, the board has the right to appeal that decision to the Alabama Court of Civil Appeals by filing a "Notice of Appeal" with that court. Otherwise, the employee must be reinstated and provided back pay and benefits, if the pay was cut off after 75 days.
20. If the hearing officer upholds the board's decision, the employee has the right to appeal the decision to the Alabama Court of Civil Appeals.



# Sample Hearing Script for Termination of Tenured Teachers/Nonprobationary Classified Employees

## 1. INTRODUCTION

Let us come to order. I am (INSERT PRESIDENT'S NAME), president of the (INSERT BOARD'S NAME) Board of Education.

This board meeting is convened on (INSERT DATE) in the (INSERT HEARING LOCATION). The following board members are present: (INSERT BOARD MEMBERS' NAMES). For the record, a quorum is present.

The board set this meeting to consider the proposed termination of (INSERT EMPLOYEE'S NAME). He/she may elect to have a public or private hearing. Does the employee wish this hearing to be public or private?

*If the employee wants a public hearing, skip to paragraph 2.*

*If the employee requests a private session, all members of the public, except those who may speak, must leave the room. Continue immediately below.*

At this time, I'll ask anyone who is not a party or witness to this proceeding to leave the room.

*The board is not required to follow the procedure for entering executive session when it sits in a quasi-judicial capacity.*

## 2. STATEMENT OF PRIOR PROCEEDINGS

The superintendent issued written notice of his/her recommendation to terminate (INSERT EMPLOYEE'S NAME) and he/she requested a hearing before this board. This hearing was scheduled and the board is prepared to proceed.

## 3. IDENTIFICATION OF ATTORNEYS

The superintendent is present and is represented by (INSERT NAME OF SUPERINTENDENT'S ATTORNEY).

(INSERT EMPLOYEE'S NAME) is present and is represented by (INSERT NAME OF EMPLOYEE'S ATTORNEY OR REPRESENTATIVE, IF APPLICABLE).

## 4. IMPARTIALITY OF BOARD

I will now ask each member of the board whether he or she is able to serve as an impartial member of this administrative tribunal and to arrive at a decision based solely upon the evidence presented at this hearing. Any member unable to act in such a manner may say so and ask to be excused.

*The president should call each board member by name and ask if he/she can be impartial in the hearing. If he/she cannot, excuse that member. No reason has to be given.*

**5. HEARING PROCEDURE**

The board will listen to all the testimony and evidence and make its decision based solely on the evidence presented to us at this hearing.

First, the superintendent’s attorney will present evidence establishing the reasons for the proposed termination. The employee’s representative may then present whatever evidence he/she desires. Both sides may present witnesses and documentary evidence and may cross-examine witnesses offered by the other side. Board members sit as a panel of judges and are to remain impartial. Board members will not be questioned by the attorneys or witnesses. As president, I will use my discretion to limit or disallow certain testimony or evidence if I deem it inappropriate.

I appoint (INSERT COURT REPORTER’S NAME), who is a notary public, to serve as court reporter and clerk, swear all witnesses and receive and label all exhibits and documentary evidence.

Do the parties understand and agree to be bound by the rules and procedures I have described?

Let the record show that both parties understand the rules and procedures that will govern this hearing and agree to proceed in compliance with those procedures.

Are there any preliminary matters which should be addressed at this time?

**6. SWEARING ALL WITNESSES**

Will all witnesses please stand? I will ask the clerk to administer the oath.

**Court Reporter**

Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

**7. INVOKING THE RULE**

The parties have the option to invoke the rule, which means that no witnesses expected to testify can listen to the testimony of another witness. Would the attorneys like to invoke the rule?

*If yes, continue below. If no, skip to paragraph 8.*

The attorneys have asked to invoke the rule. All witnesses must leave the hearing room until it is time for their testimony. No witness may discuss his or her testimony with any other witness until this hearing is over. Thank you.

**8. ATTORNEYS’ OPENING STATEMENTS (OPTIONAL)**

Does the attorney for the superintendent wish to make an opening statement?

*The superintendent’s attorney stands and makes his opening statement.*

Thank you.

Does the employee's attorney wish to make an opening statement?

*The employee's attorney stands and makes his opening statement.*

Thank you.

## 9. PRESENTATION OF EVIDENCE BY SUPERINTENDENT

We will now proceed with the presentation of evidence. (INSERT NAME OF SUPERINTENDENT'S ATTORNEY), you may call your first witness.

*Superintendent's attorney presents first witness and asks all of his questions. When he says he has no further questions, the employee's attorney may ask his questions. Continue below.*

(INSERT NAME OF EMPLOYEE'S ATTORNEY), do you have any questions for this witness?

*After cross-examination, the superintendent's attorney may ask additional questions of each witness (called redirect), and the employee's attorney may conduct additional cross-examination (called recross). These questions should be limited to questions the witness just answered. The superintendent's attorney can only redirect on issues raised during cross-examination. The employee's attorney can only recross on issues raised during redirect, etc. Attorneys may request permission to redirect or recross multiple times with a witness.*

*For example, the superintendent's attorney asks questions about the incident and the employee's history. During cross-examination, the employee's attorney asks questions about the incident, the employee's history and personal bias. On redirect, the superintendent's attorney may only ask questions about the incident, the employee's history and personal bias. He cannot ask questions about a second incident or any other subject unless the witness testified to it during cross-examination. This cycle has the potential to continue repeatedly, but because the subject matter is limited with each round, it should not continue indefinitely. Also, remember that the board president can determine if a line of questioning has gone too far. Once the attorneys indicate they have finished with a witness, continue below.*

Are there any further questions of this witness? May the witness be excused? Call the next witness.

*Repeat this procedure until the superintendent's attorney has called all witnesses. Once he has called all of his witnesses, he will rest his case.*

That concludes the presentation by the administration.

**10. PRESENTATION OF EVIDENCE BY EMPLOYEE**

(INSERT NAME OF EMPLOYEE’S ATTORNEY), you may call your first witness.

*Employee’s attorney presents case.*

(INSERT NAME OF SUPERINTENDENT’S ATTORNEY), do you have any questions for this witness?

*After cross-examination, the employee’s attorney may ask additional questions of each witness (called redirect), and the superintendent’s attorney may conduct additional cross-examination (called recross). These questions should be limited to questions the witness just answered. The employee’s attorney can only redirect on issues raised during cross-examination. The superintendent’s attorney can only recross on issues raised during redirect, etc. Attorneys may request permission to redirect or recross multiple times with a witness.*

*For example, the employee’s attorney asks questions about the incident, the employee’s history and personal bias. During cross-examination, the superintendent’s attorney asks questions about the incident and personal bias. On redirect, the employee’s attorney may only ask questions about the incident and personal bias. He cannot ask questions about a second incident or any other subject unless the witness testified to it during cross-examination. This cycle has the potential to continue repeatedly, but because the subject matter is limited with each round, it should not continue indefinitely. Also, remember that the board president can determine if a line of questioning has gone too far. Once the attorneys indicate they have finished with a witness, continue below.*

That concludes the presentation by the employee. Does the administration have any rebuttal evidence?

*The superintendent’s attorney can only offer rebuttal evidence of testimony given during the presentation of evidence by employee.*

If that concludes the evidence, does either side have anything further to present?

**11. CLOSING ARGUMENTS (OPTIONAL)**

*Attorneys use closing arguments to summarize the evidence and explain why an action should or should not be taken. However, depending on the type of case, some attorneys do not want to make closing statements and some boards do not want to hear them. If the board does not want to allow closing arguments, feel free to tell the attorneys that you do not believe they are necessary. Otherwise, give the attorneys the option as below.*

Does the attorney for the superintendent wish to make a brief closing statement?

*The superintendent's attorney stands and makes his closing statement.*

Thank you.

Does the employee's attorney wish to make a brief closing statement?

*The employee's attorney stands and makes his closing statement.*

Thank you.

## **12. CONCLUDING REMARKS**

This board will now convene in executive session to consider what action, if any, should be taken, and enter such order as it deems lawful and appropriate. If the board feels that any or all of the reasons given by the superintendent for the proposed termination are supported by the evidence presented and that these reasons are sufficient, it may act accordingly. If the board feels that termination is not appropriate under the facts presented, it may order a lesser punishment or no punishment at all.

At this time, do I hear a motion that the board should convene in executive session to deliberate this matter? Do I hear a second? All in favor of convening in executive session, say aye.

On behalf of all members of the board, I want to thank everyone involved for their cooperation during this proceeding. This concludes the hearing. The board will convene in executive session to consider the matter and discuss the recommendation. The board will reconvene in open session to vote on the recommendation. Also, a written decision will be issued to (INSERT EMPLOYEE'S NAME) following our decision.

Thank you.

**PROCEDURE FOR TERMINATION OF TENURED TEACHERS AND  
NONPROBATIONARY CLASSIFIED EMPLOYEES  
IMMEDIATE CUT OFF OF PAY**

*ALA. CODE §16-24C-6(M)*

If the allegations leading to the termination are based on an act of moral turpitude, immorality, abandonment of job, incarceration or neglect of duty, pay may be cut off immediately upon the board's vote by using this section. *Ala. Code §16-24C-6(m)*.

The superintendent must still also allege the grounds for which the recommendation can be made, as follows:

- Justifiable decrease in the number of positions,
- Incompetency,
- Insubordination,
- Neglect of duty,
- Immorality,
- Failure to perform duties in a satisfactory manner, or
- Other good and just cause. *Ala. Code §16-24C-6(a)*.

1. The superintendent issues written notice to the employee that she will recommend his termination to the board. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

The notice must provide the following information:

- The ground(s) for the termination;
- A short and plain statement of the facts underlying those grounds; and
- A statement that the employee has the right to request a hearing with the board by filing a written request with the superintendent within 15 days after issuance of the notice. *Ala. Code §16-24C-6(b)*.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that I am recommending your termination as a tenured teacher at ABC Elementary School on the grounds of failure to perform duties in a satisfactory manner, insubordination and/or other good and just cause. The facts supporting the proposed termination are as follows:*

1. *Mr. Doe failed to submit timely lesson plans as required from August 2011 to February 2012.*
2. *On February 5, 2012, when confronted about his repeated failure to submit timely lesson plans, Mr. Doe yelled at his principal, "You're not the boss of me! I hate you!"*
3. *After yelling at his boss, Mr. Doe ran from the principal's office and drove away from school at a high rate of speed.*

4. *After leaving the school without permission, Mr. Doe failed to teach his remaining classes on February 5, 2012.*
5. *Despite repeated attempts to reach him by phone, Mr. Doe has not reported to work for the past 17 days.*

*You have the right to request a hearing before the board acts on my recommendation. In order to do so, you must submit a written request to me within 15 calendar days of the date of this notice.*

*If you do not timely request a hearing, the board will vote on my recommendation, and you will receive written notification of its decision.*

*If you timely request a hearing, you will receive written notification of the date of that hearing from my office.*

*Should the board approve my recommendation to terminate you, you are not entitled to 75 days' severance pay because the allegations involve abandonment of your job. Your pay will be stopped immediately upon board approval; however, you will retain the right to appeal the board's decision.*

*Dr. Jane Smith  
Superintendent  
City School System*

*If no hearing is requested, continue to step 2. If a hearing is requested, skip to step 4.*

2. **NO HEARING REQUESTED:** If the employee does not request a hearing in the time allowed, the board may vote on the superintendent's recommendation any time after the 15-day time period has expired. *Ala. Code §16-24C-6(b).*

*Sample Recommendation*

*I hereby recommend that the employment of Mr. John Doe, tenured teacher at ABC Elementary School, be terminated on the grounds of failure to perform duties in a satisfactory manner, insubordination and/or other good and just cause. The facts supporting the proposed termination are as follows:*

1. *Mr. Doe failed to submit timely lesson plans as required from August 2011 to February 2012.*
2. *On February 5, 2012, when confronted about his repeated failure to submit timely lesson plans, Mr. Doe yelled at his principal, "You're not the boss of me! I hate you!"*
3. *After yelling at his boss, Mr. Doe ran from the principal's office and drove away from school at a high rate of speed.*
4. *After leaving the school without permission, Mr. Doe failed to teach his remaining classes on February 5, 2012.*
5. *Despite repeated attempts to reach him by phone, Mr. Doe has not reported to work for the past 17 days.*

*Further, because the allegations involve abandonment of job, Mr. Doe's pay will be stopped immediately.*

*Sample Board Motion*

*I move that the board approve the superintendent's recommendation to terminate the employment of Mr. John Doe, tenured teacher at ABC Elementary School, effective immediately for the grounds and reasons stated in the recommendation. Further, because the allegations involve abandonment of job, Mr. Doe's pay will be stopped immediately.*

3. **NO HEARING REQUESTED:** The superintendent should then issue the employee written notice of the board's decision within 10 days. *Ala. Code* §16-24C-6(d). The decision is final and pay is cut off immediately after the board votes. *Ala. Code* §16-24C-6(m). The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board voted to approve my recommendation to terminate you at its meeting on \_\_\_\_\_, 20\_\_.*  
*Further, because the allegations involve abandonment of your job, your pay shall be stopped immediately.*

*Dr. Jane Smith*  
*Superintendent*  
*City School System*

4. **HEARING REQUESTED:** If the employee timely requests a hearing, the superintendent must set a time, date and place for a board hearing and issue written notice to the employee. The hearing date must be scheduled between 30 and 60 days from the date of the hearing notice. That date may be extended by agreement or for good cause. *Ala. Code* §16-24C-6(b). The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

*Sample Letter*

*Mr. John Doe*

*You have timely requested a hearing on my recommendation to terminate your employment.*

*The board has set a hearing to consider my recommendation for \_\_\_\_\_, 20\_\_, at \_\_\_ am/pm in the \_\_\_\_\_ in \_\_\_\_\_, Alabama. **[NOTE: The hearing date should be 30 to 60 days from the date of this notice.]***

*The hearing shall be public or private at your discretion and shall be conducted in accordance with Ala. Code §16-24C-6(c) of the Students First Act. You have the right to have an attorney represent you at your expense. You also have the right to be heard, to examine and cross-examine witnesses and present other evidence and argument on your behalf. You also have the right to request that the superintendent subpoena witnesses to*



*testify on your behalf. Any such request should be provided in writing to the superintendent at least two weeks before the hearing date. A court reporter will be provided.*

*Dr. Jane Smith  
Superintendent  
City School System*

5. Ensure that a court reporter is hired for the hearing. Also, submit a Notice of Contest Form to the state Department of Education. The form is provided in the Appendix.
6. The board holds a full hearing. A sample script is provided at the end of this section. The board may then deliberate in executive session.

*The board has the right to impose a lesser punishment than termination. Ala. Code §16-24C-6(h)(1).*

*The board members should be the only ones present during deliberation. The superintendent, employee and their attorneys should not be present.*

7. The board should return to open session to vote on the superintendent's recommendation.

*The Open Meetings Act does not require the board to return to open session to vote on the recommendation as long as the board "issues a written decision which may be appealed to a hearing officer...which has the authority to conduct a public hearing or appeal." Ala. Code §36-25A-7(a)(9). Nevertheless, AASB believes voting in public is the best practice.*

#### *Sample Board Motion*

*I move that the board approve the superintendent's recommendation to terminate the employment of Mr. John Doe.*

8. While not required, the board should consider issuing written findings of fact to assist the hearing officer if the board's decision is appealed. A sample is below:

*The board could also direct the prevailing attorney to prepare the findings of fact to be signed by the board president. The findings would need to be completed in time for written notice to be issued to the employee (10 days from the date of the vote).*

#### *Sample Findings of Fact*

*The superintendent recommended that the board terminate John Doe, tenured teacher at ABC Elementary School, for the following reasons:*

1. *Mr. Doe failed to submit timely lesson plans as required from August 2011 to February 2012.*
2. *On February 5, 2012, when confronted about his repeated failure to submit timely lesson plans, Mr. Doe yelled at his principal, "You're not the boss of me! I hate you!"*
3. *After yelling at his boss, Mr. Doe ran from the principal's office and drove away from school at a high rate of speed.*
4. *After leaving the school without permission, Mr. Doe failed to teach his remaining classes on February 5, 2012.*
5. *Despite repeated attempts to reach him by phone, Mr. Doe has not reported to work for the past 17 days.*

*Mr. Doe timely requested a hearing before this board and a hearing was held on \_\_\_\_\_, 20\_\_\_. Mr. Doe appeared at the hearing with his attorney \_\_\_\_\_. The superintendent was present and represented by her attorney \_\_\_\_\_. The board has considered the evidence presented to it and finds that the superintendent presented sufficient evidence of allegations 1, 3, 4 and 5. Those allegations establish the grounds of failure to perform duties in a satisfactory manner, insubordination and other good and just cause. For this reason, the board finds that the superintendent's recommendation should be APPROVED by a vote of 4 to 1. Additionally, because the allegations involve abandonment of his job, Mr. Doe's pay shall be cut off immediately.*

*Done this \_\_\_ day of \_\_\_\_\_, 20\_\_.*

\_\_\_\_\_  
*Board President*

9. The superintendent issues written notice of the board's decision to the employee within 10 days. That notice can also contain the board's findings of fact. *Ala. Code §16-24C-6(d)*. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board voted to approve my recommendation to terminate you at its meeting on \_\_\_\_\_, 20\_\_\_. The board's findings of fact are enclosed. Additionally, because the allegations involve abandonment of job, your pay shall be cut off immediately.*

*You have the right to contest this decision by filing an appeal pursuant to Ala. Code §16-24C-6(e) of the Students First Act.*

*If you wish to do so, you must file a written "Notice of Appeal" addressed to:*

*State Superintendent of Education  
Alabama Department of Education  
501 North Ripley Street*

*P.O. Box 302101  
Montgomery, AL 36104*

*That notice of appeal must be filed within 15 days of your receipt of this letter and must state the grounds upon which your appeal is based. A copy of that notice must be simultaneously provided to my office as well.*

*Dr. Jane Smith  
Superintendent  
City School System*

10. If the employee does not file Notice of Appeal with the state superintendent, the decision is final after the expiration of 15 days. Submit a Hearing Costs Claim Form to the state Department of Education for reimbursement of the court reporter fees. The form is provided in the Appendix.
11. If the employee does file Notice of Appeal with the state superintendent, the state superintendent will contact the executive director of the Alabama State Bar and obtain a panel of retired Alabama judges from which the parties can select a hearing officer. *Ala. Code §16-24C-6(e)*.
12. The panel of five potential hearing officers will be provided to the parties. The parties may agree on a hearing officer from the panel or any other source.
13. If the parties cannot agree on a hearing officer, the parties must use alternating strikes to select the hearing officer. The employee gets the first strike. The process must be completed within 10 days of the parties receiving the panel.
14. After receiving the Notice of Appeal, the superintendent must compile the hearing record, including the court reporter's transcript, documentary evidence and any notices. The record must be provided to the hearing officer within 20 days of receiving the Notice of Appeal.

*It is possible that the process of selecting the hearing officer may not be complete within 20 days through no fault of the board. If this occurs, once the superintendent receives the Notice of Appeal, the board attorney should go ahead and compile the record and be prepared to immediately provide the record to the hearing officer once he is appointed. The hearing officer can extend the time for providing the record for good cause shown.*

*Sample Letter*

*The Honorable Judge Jim Law  
123 Main Street  
City, Alabama*

*RE: The Termination of John Doe  
from the City Board of Education*

*Dear Judge Law:*

*I represent the City Board of Education in the above-referenced matter. The Notice of Appeal in this matter was received on October 1, 2011. Pursuant to Ala. Code §16-24C-6(e), I am obligated to provide a record of the proceedings before the board to you within 20 days of the Notice of Appeal. I received notification of your appointment as hearing officer yesterday on October 31, 2011. Because more than 20 days have elapsed between the Notice of Appeal and your appointment, I was unable to comply with that provision. For that reason, I request an additional 5 days from today's date in which to provide the record to you. If this is acceptable, please contact me at (334) 555-1212 or joe.jones@citylawfirm.com.*

*Joe Jones, Esquire  
Counsel for City Board of Education*

*Sample Notice*

*In re the Termination of  
John Doe, Tenured Teacher,  
from the City School System*

*Notice of Record*

*The City Board of Education hereby provides a record of the termination proceedings involving Mr. John Doe. The record contains the following documents:*

- 1. Required Notices*
- 2. Transcript of Termination Hearing*
- 3. Exhibits Introduced During Termination Hearing*

*Done this \_\_ day of \_\_\_\_\_, 20\_\_.*

\_\_\_\_\_  
*Counsel for City Board of Education*

15. The hearing officer holds a hearing. There is no provision for when this hearing must be set.

*The type of hearing is at the discretion of the hearing officer, but AASB's position is that the statute does not contemplate a full hearing but rather arguments of counsel based on the record before the board. This is evidenced by the facts that the statute refers to the action as a "review," the hearing officer is provided a transcript of the testimony taken by the board, the hearing officer is required to give the board's decision deference and the hearing officer is only permitted to affirm or reverse the board's decision. Ala. Code §16-24C-6(e).*

16. The hearing officer issues a written decision either affirming or reversing the board's decision within five days of the hearing.

17. Report the hearing officer's decision and reimbursable costs to the state Department of Education by submitting the Hearing Costs Claim Form provided in the Appendix.
18. If the hearing officer reverses the board's decision, the board has the right to appeal that decision to the Alabama Court of Civil Appeals by filing a "Notice of Appeal" with that court. Otherwise, the employee must be reinstated and provided back pay and benefits.
19. If the hearing officer upholds the board's decision, the employee has the right to appeal the decision to the Alabama Court of Civil Appeals.

# Sample Hearing Script for Termination of Tenured Teachers/Nonprobationary Classified Employees

## 1. INTRODUCTION

Let us come to order. I am (INSERT PRESIDENT'S NAME), president of the (INSERT BOARD'S NAME) Board of Education.

This board meeting is convened on (INSERT DATE) in the (INSERT HEARING LOCATION). The following board members are present: (INSERT BOARD MEMBERS' NAMES). For the record, a quorum is present.

The board set this meeting to consider the proposed termination of (INSERT EMPLOYEE'S NAME). He/she may elect to have a public or private hearing. Does the employee wish this hearing to be public or private?

*If the employee wants a public hearing, skip to paragraph 2.*

*If the employee requests a private session, all members of the public, except those who may speak, must leave the room. Continue immediately below.*

At this time, I'll ask anyone who is not a party or witness to this proceeding to leave the room.

*The board is not required to follow the procedure for entering executive session when it sits in a quasi-judicial capacity.*

## 2. STATEMENT OF PRIOR PROCEEDINGS

The superintendent issued written notice of his/her recommendation to terminate (INSERT EMPLOYEE'S NAME) and he/she requested a hearing before this board. This hearing was scheduled and the board is prepared to proceed.

## 3. IDENTIFICATION OF ATTORNEYS

The superintendent is present and is represented by (INSERT NAME OF SUPERINTENDENT'S ATTORNEY).

(INSERT EMPLOYEE'S NAME) is present and is represented by (INSERT NAME OF EMPLOYEE'S ATTORNEY OR REPRESENTATIVE, IF APPLICABLE).

## 4. IMPARTIALITY OF BOARD

I will now ask each member of the board whether he or she is able to serve as an impartial member of this administrative tribunal and to arrive at a decision based solely upon the evidence presented at this hearing. Any member unable to act in such a manner may say so and ask to be excused.

*The president should call each board member by name and ask if he/she can be impartial in the hearing. If he/she cannot, excuse that member. No reason has to be given.*

**5. HEARING PROCEDURE**

The board will listen to all the testimony and evidence and make its decision based solely on the evidence presented to us at this hearing.

First, the superintendent’s attorney will present evidence establishing the reasons for the proposed termination. The employee’s representative may then present whatever evidence he/she desires. Both sides may present witnesses and documentary evidence and may cross-examine witnesses offered by the other side. Board members sit as a panel of judges and are to remain impartial. Board members will not be questioned by the attorneys or witnesses. As president, I will use my discretion to limit or disallow certain testimony or evidence if I deem it inappropriate.

I appoint (INSERT COURT REPORTER’S NAME), who is a notary public, to serve as court reporter and clerk, swear all witnesses and receive and label all exhibits and documentary evidence.

Do the parties understand and agree to be bound by the rules and procedures I have described?

Let the record show that both parties understand the rules and procedures that will govern this hearing and agree to proceed in compliance with those procedures.

Are there any preliminary matters which should be addressed at this time?

**6. SWEARING ALL WITNESSES**

Will all witnesses please stand? I will ask the clerk to administer the oath.

**Court Reporter**

Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

**7. INVOKING THE RULE**

The parties have the option to invoke the rule, which means that no witnesses expected to testify can listen to the testimony of another witness. Would the attorneys like to invoke the rule?

*If yes, continue below. If no, skip to paragraph 8.*

The attorneys have asked to invoke the rule. All witnesses must leave the hearing room until it is time for their testimony. No witness may discuss his or her testimony with any other witness until this hearing is over. Thank you.

**8. ATTORNEYS’ OPENING STATEMENTS (OPTIONAL)**

Does the attorney for the superintendent wish to make an opening statement?

*The superintendent's attorney stands and makes his opening statement.*

Thank you.

Does the employee's attorney wish to make an opening statement?

*The employee's attorney stands and makes his opening statement.*

Thank you.

## **9. PRESENTATION OF EVIDENCE BY SUPERINTENDENT**

We will now proceed with the presentation of evidence. (INSERT NAME OF SUPERINTENDENT'S ATTORNEY), you may call your first witness.

*Superintendent's attorney presents first witness and asks all of his questions. When he says he has no further questions, the employee's attorney may ask his questions. Continue below.*

(INSERT NAME OF EMPLOYEE'S ATTORNEY), do you have any questions for this witness?

*After cross-examination, the superintendent's attorney may ask additional questions of each witness (called redirect), and the employee's attorney may conduct additional cross-examination (called recross). These questions should be limited to questions the witness just answered. The superintendent's attorney can only redirect on issues raised during cross-examination. The employee's attorney can only recross on issues raised during redirect, etc. Attorneys may request permission to redirect or recross multiple times with a witness.*

*For example, the superintendent's attorney asks questions about the incident and the employee's history. During cross-examination, the employee's attorney asks questions about the incident, the employee's history and personal bias. On redirect, the superintendent's attorney may only ask questions about the incident, the employee's history and personal bias. He cannot ask questions about a second incident or any other subject unless the witness testified to it during cross-examination. This cycle has the potential to continue repeatedly, but because the subject matter is limited with each round, it should not continue indefinitely. Also, remember that the board president can determine if a line of questioning has gone too far. Once the attorneys indicate they have finished with a witness, continue below.*

Are there any further questions of this witness? May the witness be excused? Call the next witness.



*Repeat this procedure until the superintendent's attorney has called all witnesses. Once he has called all of his witnesses, he will rest his case.*

That concludes the presentation by the administration.

#### 10. PRESENTATION OF EVIDENCE BY EMPLOYEE

(INSERT NAME OF EMPLOYEE'S ATTORNEY), you may call your first witness.

*Employee's attorney presents case.*

(INSERT NAME OF SUPERINTENDENT'S ATTORNEY), do you have any questions for this witness?

*After cross-examination, the employee's attorney may ask additional questions of each witness (called redirect), and the superintendent's attorney may conduct additional cross-examination (called recross). These questions should be limited to questions the witness just answered. The employee's attorney can only redirect on issues raised during cross-examination. The superintendent's attorney can only recross on issues raised during redirect, etc. Attorneys may request permission to redirect or recross multiple times with a witness.*

*For example, the employee's attorney asks questions about the incident, the employee's history and personal bias. During cross-examination, the superintendent's attorney asks questions about the incident and personal bias. On redirect, the employee's attorney may only ask questions about the incident and personal bias. He cannot ask questions about a second incident or any other subject unless the witness testified to it during cross-examination. This cycle has the potential to continue repeatedly, but because the subject matter is limited with each round, it should not continue indefinitely. Also, remember that the board president can determine if a line of questioning has gone too far. Once the attorneys indicate they have finished with a witness, continue below.*

That concludes the presentation by the employee. Does the administration have any rebuttal evidence?

*The superintendent's attorney can only offer rebuttal evidence of testimony given during the presentation of evidence by employee.*

If that concludes the evidence, does either side have anything further to present?

## 11. CLOSING ARGUMENTS (OPTIONAL)

*Attorneys use closing arguments to summarize the evidence and explain why an action should or should not be taken. However, depending on the type of case, some attorneys do not want to make closing statements and some boards do not want to hear them. If the board does not want to allow closing arguments, feel free to tell the attorneys that you do not believe they are necessary. Otherwise, give the attorneys the option as below.*

Does the attorney for the superintendent wish to make a brief closing statement?

*The superintendent's attorney stands and makes his closing statement.*

Thank you.

Does the employee's attorney wish to make a brief closing statement?

*The employee's attorney stands and makes his closing statement.*

Thank you.

## 12. CONCLUDING REMARKS

This board will now convene in executive session to consider what action, if any, should be taken, and enter such order as it deems lawful and appropriate. If the board feels that any or all of the reasons given by the superintendent for the proposed termination are supported by the evidence presented and that these reasons are sufficient, it may act accordingly. If the board feels that termination is not appropriate under the facts presented, it may order a lesser punishment or no punishment at all.

At this time, do I hear a motion that the board should convene in executive session to deliberate this matter? Do I hear a second? All in favor of convening in executive session, say aye.

On behalf of all members of the board, I want to thank everyone involved for their cooperation during this proceeding. This concludes the hearing. The board will convene in executive session to consider the matter and discuss the recommendation. The board will reconvene in open session to vote on the recommendation. Also, a written decision will be issued to (INSERT EMPLOYEE'S NAME) following our decision.

Thank you.

# ***REASSIGNMENTS & TRANSFERS***

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## **ALA. CODE §16-24C-7**

One of the goals of the *Students First Act* was to give superintendents and boards greater flexibility to manage resources and eliminate extensive and often unnecessary challenges to routine personnel changes like transfers. The act also provides protection to employees from being needlessly shifted around repeatedly throughout the school year. To accomplish this goal, the *Students First Act* provides specified procedures to allow superintendents and/or boards to reassign or transfer employees based on the needs of the system. The procedure used depends upon the type of employee and type of action.

For teachers, a reassignment is generally considered a change in grade, position or work location within the same school, campus or facility. A transfer is a change in a teacher's position or work location outside the currently assigned location.

For classified employees, a reassignment would be a change in position within the same school, campus or facility, while a transfer would be a change outside the employee's current work location.

Any reassignment or transfer action not specifically described by the act can be pursued at any time based on the superintendent's recommendation and the board's approval as long as the employee is qualified for the position.

Under the *Students First Act*, some transfer decisions must be made early in the school year. However, there is no limitation on when an employee can voluntarily transfer or be reassigned.

## PROCEDURE FOR REASSIGNMENT OF PROBATIONARY TEACHER WITHIN SAME LOCATION

### *ALA. CODE §16-24C-7(B)*

1. The superintendent issues written notice of her decision to reassign the teacher. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the teacher, or (d) hand delivery to the teacher's last known address.

#### *Sample Letter*

*Mr. John Doe*

*This letter is to notify you that you will be reassigned from a 10<sup>th</sup> grade teacher at GHI High School to a 12<sup>th</sup> grade teacher at GHI High School effective \_\_\_\_\_, 20\_\_\_. You shall not suffer any loss of pay as a result of this reassignment.*

*Dr. Jane Smith  
Superintendent  
City School System*

2. Board approval is not required, and there is no further right to review, challenge or appeal.

## PROCEDURE FOR REASSIGNMENT OF TENURED TEACHER WITHIN SAME LOCATION

### *ALA. CODE §16-24C-7(B)*

1. The superintendent issues written notice of her decision to reassign the teacher. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the teacher, or (d) hand delivery to the teacher's last known address.

The reassignment must meet the following criteria:

- It can be to any grade, position or work location within the school, campus or facility;
- The teacher must be properly certificated for the position;
- There can be no loss of pay;
- The teacher must receive notice no later than the 20<sup>th</sup> calendar day after classes start (unless caused by an act of God or disaster and a hearing is provided); and
- Only one involuntary reassignment per year.

#### *Sample Letter*

*Mr. John Doe*

*This letter is to notify you that you will be reassigned from a 10<sup>th</sup> grade teacher at GHI High School to a 12<sup>th</sup> grade teacher at GHI High School effective \_\_\_\_\_, 20\_\_\_. You shall not suffer any loss of pay as a result of this reassignment.*

*Dr. Jane Smith  
Superintendent  
City School System*

2. Board approval is not required, and there is no further right to review, challenge or appeal.

**PROCEDURE FOR REASSIGNMENT  
OF PROBATIONARY CLASSIFIED EMPLOYEE  
WITHIN SAME LOCATION**

*ALA. CODE §16-24C-7(A)*

*The act does not specifically address reassignment of probationary classified employees. Any reassignment or transfer action not specifically described by the act can be pursued based on the superintendent's recommendation and the board's approval as long as the employee is qualified for the position.*

1. The superintendent recommends in writing that the board reassign the employee.

*Sample Recommendation*

*I hereby recommend the reassignment of Mr. John Doe, Aide at GHI High School to CNP worker at GHI High School, effective \_\_\_\_\_, 20\_\_.*

2. The board votes on the superintendent's recommendation. A majority of the whole board must approve the superintendent's recommendation.

*Sample Board Motion*

*I move that the board approve the superintendent's recommendation to reassign Mr. John Doe, Aide at GHI High School to CNP worker at GHI High School, effective \_\_\_\_\_, 20\_\_.*

3. The superintendent issues written notice of the board's decision to the employee. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board approved my recommendation to reassign you from an Aide at GHI High School to a CNP worker at GHI High School effective \_\_\_\_\_, 20\_\_. You shall not suffer any loss of pay as a result of this reassignment.*

*Dr. Jane Smith  
Superintendent  
City School System*

4. The decision is final and effective immediately. The employee has no further right to challenge, review or appeal.

**PROCEDURE FOR REASSIGNMENT  
OF NONPROBATIONARY CLASSIFIED EMPLOYEE  
WITHIN SAME LOCATION**

*ALA. CODE §16-24C-7(A)*

*The act does not specifically address reassignment of nonprobationary classified employees. Any reassignment or transfer action not specifically described by the act can be pursued based on the superintendent's recommendation and the board's approval as long as the employee is qualified for the position.*

1. The superintendent recommends in writing that the board reassign the employee.

*Sample Recommendation*

*I hereby recommend the reassignment of Mr. John Doe, Aide at GHI High School to CNP Worker at GHI High School, effective \_\_\_\_\_, 20\_\_.*

2. The board votes on the superintendent's recommendation. A majority of the whole board must approve the superintendent's recommendation.

*Sample Board Motion*

*I move that the board approve the superintendent's recommendation to reassign Mr. John Doe, Aide at GHI High School to CNP Worker at GHI High School, effective \_\_\_\_\_, 20\_\_.*

3. The superintendent issues written notice of the board's decision to the employee. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board approved my recommendation to reassign you from an Aide at GHI High School to a CNP Worker at GHI High School effective \_\_\_\_\_, 20\_\_. You shall not suffer any loss of pay as a result of this reassignment.*

*Dr. Jane Smith  
Superintendent  
City School System*

4. The decision is final and effective immediately. The employee has no further right to challenge, review or appeal.

**PROCEDURE FOR TRANSFER  
OF PROBATIONARY TEACHER  
OR PROBATIONARY CLASSIFIED EMPLOYEE**

*ALA. CODE §16-24C-7(A)*

*The act does not specifically address the transfer of probationary teachers and classified employees. Any reassignment or transfer action not specifically described by the act can be pursued based on the superintendent's recommendation and the board's approval as long as the employee is qualified for the position.*

1. The superintendent recommends in writing that the board transfer the employee.

*Sample Recommendation*

*I hereby recommend the transfer of Mr. John Doe, Teacher at GHI High School to Teacher at DEF Middle School, effective \_\_\_\_\_, 20\_\_.*

2. The board votes on the superintendent's recommendation. A majority of the whole board must approve the superintendent's recommendation.

*Sample Board Motion*

*I move that the board approve the superintendent's recommendation to transfer Mr. John Doe, Teacher at GHI High School, to Teacher at DEF Middle School, effective \_\_\_\_\_, 20\_\_.*

3. The superintendent issues written notice of the board's decision to the employee. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board approved my recommendation to transfer you from a Teacher at GHI High School to a Teacher at DEF Middle School effective \_\_\_\_\_, 20\_\_. You shall not suffer any loss of pay as a result of this transfer.*

*Dr. Jane Smith  
Superintendent  
City School System*

4. The decision is final and effective immediately. The employee has no further right to challenge, review or appeal.



**PROCEDURE FOR  
TRANSFER OF TENURED TEACHER  
DIFFERENT SCHOOL/NOT OUTSIDE FEEDER PATTERN**

*ALA. CODE §16-24C-7(C)*

This section addresses transfers of tenured teachers to any grade or position outside the school, campus or facility but not outside the high school feeder pattern. Under AASB's interpretation, any transfer that does not implicate a feeder pattern, e.g., central office to the elementary school, is not "outside the feeder pattern" since central office has no feeder pattern. Rather, it is merely a transfer to a different facility and is controlled by this section.

The transfer must meet the following criteria:

- It can be to any grade or position outside the school, campus or facility;
- The teacher must be properly certificated for the position;
- There can be no loss of pay;
- The teacher must receive notice no later than the 20<sup>th</sup> calendar day after classes start (unless caused by an act of God or disaster); and
- The teacher can only be involuntarily transferred once a year.

The sample letter includes reasons for the superintendent's recommendation. The statute does not require the superintendent to give reasons for the transfer, but it may be advisable to do so. This way the teacher can make a determination as to whether he wishes to challenge the transfer and gives the board a basis upon which to make its decision. Consult with your board attorney.

The sample also asks the teacher to submit a written request to meet with the board on a certain date prior to the board meeting. Such a practice would allow the board to better plan its meeting. While there is no specific authority in the statute to require a written request, the statute only requires that the board afford the teacher the opportunity to meet with the board. Requiring a written request does not frustrate the teacher's opportunity to do so.

1. The superintendent issues written notice of her recommendation to transfer the teacher to any grade or position outside of his current school, campus or facility. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the teacher, or (d) hand delivery to the teacher's last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that I am recommending you be transferred from a 10<sup>th</sup> grade teacher at GHI High School to an 8<sup>th</sup> grade teacher at DEF Middle School effective \_\_\_\_\_, 20\_\_\_. You shall not suffer any loss of pay as a result of this transfer. The reason for this recommendation is that the number of students at GHI High School has decreased while the number of students at DEF Middle School has increased.*

The board will consider my recommendation on \_\_\_\_\_, 20\_\_, at \_\_\_\_\_ am/pm at \_\_\_\_\_ in \_\_\_\_\_, Alabama. You have the right to meet with the board and explain the reasons you should not be transferred.

If you wish to meet with the board, you must submit a written request to me which must be received in my office no later than 4:00 PM on \_\_\_\_\_, 20\_\_. **[NOTE: 1-2 days before the scheduled board meeting is suggested.]**

If you do not submit a request to meet with the board by \_\_\_\_\_, 20\_\_, the board will vote on my recommendation, and you will receive written notification of its decision.

Dr. Jane Smith  
Superintendent  
City School System

If no meeting is requested, continue to step 2. If a meeting is requested, skip to step 4.

2. **NO MEETING REQUESTED:** If the teacher does not request a meeting with the board, the superintendent should recommend the transfer and the board should vote on the recommendation.

*Sample Recommendation*

*I recommend that Mr. John Doe, a 10<sup>th</sup> grade teacher at GHI High School be transferred to an 8<sup>th</sup> grade teacher at DEF Middle School effective \_\_\_\_\_, 20\_\_. The reason for this recommendation is that the number of students at GHI High School has declined while the number of students at DEF Middle School has increased.*

*Sample Board Motion*

*I move that the board approve the superintendent's recommendation to transfer Mr. John Doe from a 10<sup>th</sup> grade teacher at GHI High School to an 8<sup>th</sup> grade teacher at DEF Middle School for the reason(s) provided in the superintendent's recommendation effective \_\_\_\_\_, 20\_\_.*

3. **NO MEETING REQUESTED:** The superintendent issues written notice of the board's decision to the teacher. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the teacher, or (d) hand delivery to the teacher's last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board voted to approve my recommendation to transfer you from a 10<sup>th</sup> grade teacher at GHI High School to an 8<sup>th</sup> grade teacher at DEF Middle School at its meeting on \_\_\_\_\_, 20\_\_. This transfer is effective \_\_\_\_\_, 20\_\_.*

*Dr. Jane Smith  
Superintendent  
City School System*

4. **MEETING REQUESTED:** If the teacher does request a meeting, the board must give the teacher the opportunity to address the board at the scheduled meeting. A sample script is provided at the end of this section.
5. The board votes on the superintendent's recommendation. A majority of the whole board must approve the superintendent's recommendation.

*Sample Recommendation*

*I recommend that Mr. John Doe, a 10<sup>th</sup> grade teacher at GHI High School, be transferred to an 8<sup>th</sup> grade teacher at DEF Middle School, effective \_\_\_\_\_, 20\_\_\_. The reason for this recommendation is that the number of students at GHI High School has declined while the number of students at DEF Middle School has increased.*

*Sample Board Motion*

*I move that the board approve the superintendent's recommendation to transfer Mr. John Doe from a 10<sup>th</sup> grade teacher at GHI High School to an 8<sup>th</sup> grade teacher at DEF Middle School for the reason(s) provided in the superintendent's recommendation, effective \_\_\_\_\_, 20\_\_.*

6. The superintendent issues written notice of the board's decision to the teacher. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the teacher, or (d) hand delivery to the teacher's last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board voted to approve my recommendation to transfer you from a 10<sup>th</sup> grade teacher at GHI High School to an 8<sup>th</sup> grade teacher at DEF Middle School. This transfer is effective \_\_\_\_\_, 20\_\_.*

*Dr. Jane Smith  
Superintendent  
City School System*

7. The teacher has no further right to challenge, review or appeal.

## Sample Conference Script for Transfer of Tenured Teachers Different Location/Not Outside Feeder Pattern

The board must now consider the proposed transfer of (INSERT EMPLOYEE'S NAME).

*The Open Meetings Act specifically permits boards to hold hearings in private if expressly allowed by law. Private transfer hearings for teachers are not specifically allowed by law, and therefore, a board cannot close this type of hearing on this basis.*

*However, there are other grounds upon which a board can enter executive session, including to discuss good name and character, physical or mental health or, for some employees, job performance. Consult with your local attorney to determine if your board may enter executive session to hear this type of action.*

The superintendent recommended to this board that (INSERT EMPLOYEE'S NAME) be transferred from (INSERT CURRENT POSITION) in/at (INSERT CURRENT LOCATION) to (INSERT PROPOSED POSITION) in/at (INSERT PROPOSED LOCATION) effective (INSERT EFFECTIVE DATE). He/she will work the same term and will suffer no loss in pay. The superintendent gave him/her written notice of this recommendation and notice of this conference and (INSERT EMPLOYEE'S NAME) has requested the opportunity to address the board on this recommendation.

I will now ask each member of the board whether he or she is able to serve as an impartial member of this administrative tribunal and to arrive at a decision based solely upon the information presented at this conference. Any member not able to act in such a manner may say so and ask to be excused. When your name is called, please either respond affirmatively or state your request to be excused from these proceedings.

*The president should call each board member by name and ask if he/she can be impartial in the hearing. If he/she cannot, excuse that member. No reason has to be given.*

The matter before us is a serious and important matter. However, it is not a full adversarial hearing involving cross-examination of witnesses. Under the procedure to be followed, the superintendent or his/her designee will present the evidence establishing the reasons for his/her proposal to transfer (INSERT EMPLOYEE'S NAME). There will be no cross-examination of the superintendent or his/her designee, although the members of the board may choose to ask questions. After (INSERT EMPLOYEE'S NAME) has heard the superintendent's evidence, he/she will have an opportunity to present in full all the reasons why he/she believes he/she should not be transferred and to provide whatever documentary evidence he/she may have to support his/her position. No witnesses will be sworn.

Are there any preliminary matters which should be addressed at this time? Are there any questions or problems regarding the hearing procedure?

I will now ask the superintendent or his/her designee to provide the evidence in support of his/her recommendation.

*Here, the superintendent (or his/her designee) stands up and gives the reasons the transfer should be approved.*

(INSERT EMPLOYEE'S NAME), you have received an explanation of the evidence which the superintendent says supports his/her recommendation to transfer you. I will now give you an opportunity to tell us all the reasons why you believe you should not be transferred. You may also provide us any documents you wish.

*Here, the employee or his/her representative stands up and states why the superintendent's evidence against him/her is not correct or why he/she should not be transferred.*

Do any members of the board have questions for the superintendent or (INSERT EMPLOYEE'S NAME)?

Having received the evidence, the board will now consider what action should be taken on the superintendent's recommendation. If the board feels that any or all of the reasons given by the superintendent for the proposed transfer are sufficient to merit such action, it may act accordingly. If the board feels that transfer is not appropriate, it may so order. At this time, do I hear a motion that the board should convene in executive session to deliberate this matter? Do I hear a second? All in favor of convening in executive session, say aye.

On behalf of all members of the board, I want to thank everyone involved for their cooperation during this proceeding. This concludes the conference. The board will convene in executive session to consider the matter and discuss the recommendation. The board will reconvene in open session to vote on the recommendation. Also, a written decision will be issued to (INSERT EMPLOYEE'S NAME) following our decision.

Thank you.

## PROCEDURE FOR TRANSFER OF TENURED TEACHER DIFFERENT SCHOOL/OUTSIDE FEEDER PATTERN

### *ALA. CODE §16-24C-7(C)*

This section addresses transfers outside the school, campus or facility that are also outside the high school feeder pattern. Under AASB's interpretation, any transfer that does not implicate a feeder pattern, e.g., central office to the elementary school, is not "outside the feeder pattern" since central office has no feeder pattern. Rather, it is merely a transfer to a different facility and is controlled by the preceding section.

The transfer must meet the following criteria:

- It can be to any grade or position outside the school, campus or facility;
- The teacher must be properly certificated for the position;
- There can be no loss of pay;
- The teacher must receive notice no later than the 20<sup>th</sup> calendar day after classes start (unless caused by an act of God or disaster); and
- The transfer can only occur once a year.

The sample letter includes reasons for the superintendent's recommendation. The statute does not require the superintendent to give reasons for the transfer, but it may be advisable to do so. This way the teacher can make a determination as to whether he wishes to challenge the transfer and gives the board a basis upon which to make its decision. Consult with your board attorney.

The *Students First Act* refers to the teacher's right to a "hearing" before the board. *Ala. Code §16-24C-7(c)* does not specify the type of hearing required as it does for termination actions. AASB's position is that the type of hearing conducted is at the board's discretion. However, because no court reporter is required and there is no right to further review or appeal, AASB believes that a full hearing is not required.

1. The superintendent issues a written notice of her recommendation to transfer the teacher to another school, campus or facility. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the teacher, or (d) hand delivery to the teacher's last known address.

#### *Sample Letter*

*Mr. John Doe*

*This letter is to notify you that I am recommending you be transferred from a 10<sup>th</sup> grade teacher at GHI High School to a 10<sup>th</sup> grade teacher at JKL High School effective \_\_\_\_\_, 20\_\_\_. The reason for this recommendation is that the number of students at GHI High School has decreased while the number of students at JKL High School has increased. You shall not suffer any loss of pay as a result of this transfer.*

*The board will consider my recommendation at its meeting on \_\_\_\_\_, 20\_\_ at \_\_\_ am/pm at \_\_\_\_\_ in \_\_\_\_\_, Alabama. You have the right to a hearing with the board to explain the reasons you should not be transferred.*

*If you wish to have a hearing with the board, you must submit a written request to me which must be received in my office no later than 4:00 PM on \_\_\_\_\_, 20\_\_.* **[NOTE: 1-2 days before the scheduled board meeting is suggested.]**

*If you do not timely request a hearing before the board, the board will vote on my recommendation, and you will receive written notification of its decision.*

*Dr. Jane Smith  
Superintendent  
City School System*

*If no hearing is requested, continue to step 2. If a conference is requested, skip to step 4.*

2. **NO HEARING REQUESTED:** If the teacher does not request a hearing before the board, the superintendent should recommend the transfer and the board should vote on the recommendation.

*Sample Recommendation*

*I recommend that Mr. John Doe, a 10<sup>th</sup> grade teacher at GHI High School, be transferred to a 10<sup>th</sup> grade teacher at JKL High School effective \_\_\_\_\_, 20\_\_. The reason for this recommendation is that the number of students at GHI High School has decreased while the number of students at JKL High School has increased.*

*Sample Board Motion*

*I move that the board approve the superintendent's recommendation to transfer Mr. John Doe from a 10<sup>th</sup> grade teacher at GHI High School to a 10<sup>th</sup> grade teacher at JKL High School for the reason(s) provided in the superintendent's recommendation effective \_\_\_\_\_, 20\_\_.*

3. **NO HEARING REQUESTED:** The superintendent issues written notice of the board's decision to the teacher. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the teacher, or (d) hand delivery to the teacher's last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board voted to approve my recommendation to transfer you from a 10<sup>th</sup> grade teacher at GHI High School to a 10<sup>th</sup> grade teacher at JKL High School. This transfer is effective \_\_\_\_\_, 20\_\_.*

*Dr. Jane Smith  
Superintendent  
City School System*

4. **HEARING REQUESTED:** If the teacher does request a hearing, the board must give the teacher the opportunity for a hearing before the board at the scheduled meeting. A sample script is provided at the end of this section.
5. The board votes on the superintendent's recommendation. A majority of the whole board must approve the superintendent's recommendation.

*Sample Recommendation*

*I recommend that Mr. John Doe, a 10<sup>th</sup> grade teacher at GHI High School, be transferred to a 10<sup>th</sup> grade teacher at JKL High School effective \_\_\_\_\_, 20\_\_\_. The reason for this recommendation is that the number of students at GHI High School has decreased while the number of students at JKL High School has increased.*

*Sample Board Motion*

*I move that the board approve the superintendent's recommendation to transfer Mr. John Doe from a 10<sup>th</sup> grade teacher at GHI High School to 10<sup>th</sup> grade teacher at JKL High School for the reason(s) provided in the superintendent's recommendation effective \_\_\_\_\_, 20\_\_.*

6. The superintendent issues written notice of the board's decision to the teacher. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the teacher, or (d) hand delivery to the teacher's last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board voted to approve my recommendation to transfer you from a 10<sup>th</sup> grade teacher at GHI High School to 10<sup>th</sup> grade teacher at JKL High School. This transfer is effective \_\_\_\_\_, 20\_\_.*

*Dr. Jane Smith  
Superintendent  
City School System*

7. The decision is final, and the teacher has no further right to challenge, review or appeal.



## Sample Conference Script for Transfer of Tenured Teachers Different Location/Outside Feeder Pattern

The board must now consider the proposed transfer of (INSERT EMPLOYEE'S NAME).

*The Open Meetings Act specifically permits boards to hold hearings in private if expressly allowed by law. Private transfer hearings for teachers are not specifically allowed by law, and therefore, a board cannot close this type of hearing on this basis.*

*However, there are other grounds upon which a board can enter executive session, including to discuss good name and character, physical or mental health or, for some employees, job performance. Consult with your local attorney to determine if your board may enter executive session to hear this type of action.*

The superintendent recommended to this board that (INSERT EMPLOYEE'S NAME) be transferred from (INSERT CURRENT POSITION) in/at (INSERT CURRENT LOCATION) to (INSERT PROPOSED POSITION) in/at (INSERT PROPOSED LOCATION) effective (INSERT EFFECTIVE DATE). He/she will work the same term and will suffer no loss in pay. The superintendent gave him/her written notice of this recommendation and notice of this conference and (INSERT EMPLOYEE'S NAME) has requested the opportunity to address the board on this recommendation.

I will now ask each member of the board whether he or she is able to serve as an impartial member of this administrative tribunal and to arrive at a decision based solely upon the information presented at this conference. Any member not able to act in such a manner may say so and ask to be excused. When your name is called, please either respond affirmatively or state your request to be excused from these proceedings.

*The president should call each board member by name and ask if he/she can be impartial in the hearing. If he/she cannot, excuse that member. No reason has to be given.*

The matter before us is a serious and important matter. However, it is not a full adversarial hearing involving cross-examination of witnesses. Under the procedure to be followed, the superintendent or his/her designee will present the evidence establishing the reasons for his/her proposal to transfer (INSERT EMPLOYEE'S NAME). There will be no cross-examination of the superintendent or his/her designee, although the members of the board may choose to ask questions. After (INSERT EMPLOYEE'S NAME) has heard the superintendent's evidence, he/she will have an opportunity to present in full all the reasons why he/she believes he/she should not be transferred and to provide whatever documentary evidence he/she may have to support his/her position. No witnesses will be sworn.

Are there any preliminary matters which should be addressed at this time? Are there any questions or problems regarding the hearing procedure?

I will now ask the superintendent or his/her designee to provide the evidence in support of his/her recommendation.

*Here, the superintendent (or his/her designee) stands up and gives the reasons the transfer should be approved.*

(INSERT EMPLOYEE'S NAME), you have received an explanation of the evidence which the superintendent says supports his/her recommendation to transfer you. I will now give you an opportunity to

tell us all the reasons why you believe you should not be transferred. You may also provide us any documents you wish.

*Here, the employee or his/her representative stands up and states why the superintendent's evidence against him/her is not correct or why he/she should not be transferred.*

Do any members of the board have questions for the superintendent or (INSERT EMPLOYEE'S NAME)?

Having received the evidence, the board will now consider what action should be taken on the superintendent's recommendation. If the board feels that any or all of the reasons given by the superintendent for the proposed transfer are sufficient to merit such action, it may act accordingly. If the board feels that transfer is not appropriate, it may so order. At this time, do I hear a motion that the board should convene in executive session to deliberate this matter? Do I hear a second? All in favor of convening in executive session, say aye.

On behalf of all members of the board, I want to thank everyone involved for their cooperation during this proceeding. This concludes the conference. The board will convene in executive session to consider the matter and discuss the recommendation. The board will reconvene in open session to vote on the recommendation. Also, a written decision will be issued to (INSERT EMPLOYEE'S NAME) following our decision.

Thank you.

## PROCEDURE FOR TRANSFER OF NONPROBATIONARY CLASSIFIED EMPLOYEE NOT OUTSIDE FEEDER PATTERN

### *ALA. CODE §16-24C-7(D)*

This section addresses transfers of nonprobationary classified employees outside the school, campus or facility but not outside the high school feeder pattern. Under AASB's interpretation, any transfer that does not implicate a feeder pattern, e.g., central office to the elementary school, is not "outside the feeder pattern" since central office has no feeder pattern. Rather, it is merely a transfer to a different facility and is controlled by this section.

The transfer must meet the following criteria:

- The employee must be qualified for the position;
- There can be no loss of pay;
- If the board approves the transfer, the transfer can become effective 15 days later.

Be aware that these transfers will not be effective for at least 30 days. The board must wait 15 days from the date notice is issued to vote, and the transfer is effective no less than 15 days after the vote.

1. The superintendent issues written notice of her recommendation to transfer the employee to any position within the system. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

#### *Sample Letter*

*Mr. John Doe*

*This letter is to notify you that I intend to recommend you be transferred from a 9-month custodian at GHI High School to a 9-month custodian at DEF Middle School.*

*The board will consider my recommendation at its meeting on \_\_\_\_\_, 20\_\_.* **[NOTE: This date must be at least 15 days from the date this notice is issued.]** *Should the board approve my recommendation, the transfer will become effective no less than 15 days thereafter, and you will suffer no loss in pay. You will be notified of the board's decision.*

*Dr. Jane Smith  
Superintendent  
City School System*

2. The board votes on the superintendent's recommendation. A majority of the whole board must approve the superintendent's recommendation.

*Sample Recommendation*

*I recommend that Mr. John Doe, a 9-month custodian at GHI High School, be transferred to a 9-month custodian at DEF Middle School, effective no less than 15 days after the board's approval.*

*Sample Board Motion*

*I move that the board approve the superintendent's recommendation to transfer Mr. John Doe from a 9-month custodian at GHI High School to a 9-month custodian at DEF Middle School, such transfer to become effective no fewer than 15 days from our approval.*

3. The superintendent issues written notice of the board's decision to the employee. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board voted to approve my recommendation to transfer you from a 9-month custodian at GHI High School to a 9-month custodian at DEF Middle School. The transfer shall be effective \_\_\_\_\_, 20\_\_ . **[NOTE: The effective date must be at least 15 days from the date the board approves the transfer.]***

*Dr. Jane Smith  
Superintendent  
City School System*

4. The decision is final and effective 15 days after the board's approval. The employee has no further right to challenge, review or appeal.

## PROCEDURE FOR TRANSFER OF NONPROBATIONARY CLASSIFIED EMPLOYEE OUTSIDE FEEDER PATTERN

### *ALA. CODE §16-24C-7(D)*

This section addresses transfers outside the school, campus or facility that are also outside the high school feeder pattern. The procedure is the same as for termination of tenured teachers and nonprobationary classified employees. This section does not apply to employees whose regular duties require regular or periodic travel throughout the system or between work sites.

Under AASB's interpretation, any transfer that does not implicate a feeder pattern, e.g., central office to the elementary school, is not "outside the feeder pattern" since central office has no feeder pattern. Rather, it is merely a transfer to a different facility and is controlled by the preceding section.

The transfer must meet the following criteria:

- The employee must be qualified for the position;
- There can be no loss of pay; and
- The transfer can only occur one time a year (unless caused by an act of God or disaster).

The sample letter includes reasons for the superintendent's recommendation. The statute does not require the superintendent to give reasons for the transfer, but it may be advisable to do so. This way the employee can make a determination as to whether he wishes to challenge the transfer and gives the board a basis upon which to make its decision. Consult with your board attorney.

1. The superintendent issues written notice of her recommendation to transfer the employee to any position within the system that is outside the feeder pattern of his current work site. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

#### *Sample Letter*

*Mr. John Doe*

*This letter is to notify you that I am recommending you be transferred from a 9-month custodian position at GHI High School to a 9-month custodian position at JKL High School effective \_\_\_\_\_, 20\_\_\_. The facts supporting the proposed transfer are as follows:*

1. *The student enrollment at GHI High School has decreased significantly.*
2. *There is no longer a need for 8 custodians at GHI High School.*
3. *The student enrollment at JKL High School has increased significantly.*
4. *JKL High School is in need of additional custodial staff.*

*You have the right to request a hearing before the board votes on my recommendation. In order to do so, you must submit a written request to me within 15 calendar days of the date of this notice. If you do not request a hearing by \_\_\_\_\_, 20\_\_\_, the board will vote on my recommendation, and you will receive written notification of its decision. If you request a hearing,*

*you will receive written notification of the date of that hearing from my office.*

*Dr. Jane Smith  
Superintendent  
City School System*

*If no hearing is requested, continue to step 2. If a hearing is requested, skip to step 4.*

2. **NO HEARING REQUESTED:** If the employee does not request a hearing in the time allowed, the board may vote on the superintendent's recommendation after the 15-day time period has expired.

*Sample Recommendation*

*I recommend that Mr. John Doe, a 9-month custodian at GHI High School, be transferred to a 9-month custodian at JKL High School, effective \_\_\_\_\_, 20\_\_.*

*Sample Board Motion*

*I move that the board approve the superintendent's recommendation to transfer Mr. John Doe from a 9-month custodian at GHI High School to a 9-month custodian at JKL High School, effective \_\_\_\_\_, 20\_\_.*

3. **NO HEARING REQUESTED:** The superintendent issues written notice of the board's decision to the employee. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board voted to approve my recommendation to transfer you from a 9-month custodian at GHI High School to a 9-month custodian at JKL High School. The transfer shall be effective \_\_\_\_\_, 20\_\_.*

*Dr. Jane Smith  
Superintendent  
City School System*

4. **HEARING REQUESTED:** If the employee timely requests a hearing, the superintendent must set a time, date and place for a board hearing and issue written notice to the employee. The hearing date must be scheduled between 30 and 60 days from the date of the hearing notice. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

*Sample Letter*

*Mr. John Doe*

*You have timely requested a hearing on my recommendation to transfer you from a 9-month custodian at GHI High School to a 9-month custodian at JKL High School.*

*The board has set a hearing for \_\_\_\_\_, 20\_\_, at \_\_\_ am/pm in the \_\_\_\_\_ in \_\_\_\_\_, Alabama. **[NOTE: The hearing date should be 30 to 60 days from the date of this notice.]***

*The hearing shall be conducted in accordance with Ala. Code §16-24C-6(c) of the Students First Act. You have the right to have an attorney represent you at your expense. You also have the right to be heard, to examine and cross-examine witnesses and present other evidence and argument on your behalf. You also have the right to request that the superintendent subpoena witnesses to testify on your behalf. Any such request should be provided in writing to the superintendent at least two weeks before the hearing date. A court reporter will be provided.*

*Dr. Jane Smith  
Superintendent  
City School System*

5. Ensure that a court reporter is hired for the hearing. Also, submit a Notice of Contest Form to the state Department of Education. The form is provided in the Appendix.
6. The board holds a full hearing. A sample script is provided at the end of this section.

*The board members should be the only ones present during deliberation. The superintendent, employee and their attorneys should not be present.*

7. The board should return to open session to vote on the superintendent's recommendation.

*The Open Meetings Act does not require the board to return to open session to vote on the recommendation as long as the board "issues a written decision which may be appealed to a hearing officer...which has the authority to conduct a public hearing or appeal." Ala. Code §36-25A-7(a)(9). Nevertheless, AASB believes voting in public is the best practice.*

*Sample Board Motion*

*I move that the board approve the superintendent's recommendation to transfer you from a 9-month custodian at GHI High School to a 9-month custodian at JKL High School effective \_\_\_\_\_, 20\_\_.*

8. While not required, the board should consider issuing written findings of fact to assist the hearing officer if the board's decision is appealed. A sample is below:

*The board could also direct the prevailing attorney to prepare the findings of fact to be signed by the board president. The findings would need to be completed in time for written notice to be issued to the employee (10 days from the date of the vote).*

#### *Sample Findings of Fact*

*The superintendent recommended that the board transfer Mr. John Doe from a 9-month custodian at GHI High School to a 9-month custodian at JKL High School for the following reasons:*

- 1. The student enrollment at GHI High School has decreased significantly.*
- 2. There is no longer a need for 8 custodians at GHI High School.*
- 3. The student enrollment at JKL High School has increased significantly.*
- 4. JKL High School is in need of additional custodial staff.*

*Mr. Doe timely requested a hearing before this board and a hearing was held on \_\_\_\_\_, 20\_\_\_. Mr. Doe appeared at the hearing with his attorney \_\_\_\_\_. The superintendent was present and represented by her attorney \_\_\_\_\_. The board has considered the evidence presented to it and finds that the superintendent presented sufficient evidence of the reasons asserted for her recommendation. For this reason, the board finds that the superintendent's recommendation should be APPROVED by a vote of 5 to 0.*

*Done this \_\_ day of \_\_\_\_\_, 20\_\_.*

\_\_\_\_\_  
*Board President*

9. The superintendent issues written notice of the board's decision to the employee within 10 days. That notice can also contain the board's findings of fact. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

#### *Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board voted to approve my recommendation to transfer you from a 9-month custodian at GHI High School to a 9-month custodian at JKL High School. The board's findings of fact are enclosed.*

*You have the right to contest this decision by filing an appeal.*

*If you wish to do so, you must file a written "Notice of Appeal" addressed to:*



*State Superintendent of Education  
Alabama Department of Education  
501 North Ripley Street  
P.O. Box 302101  
Montgomery, AL 36104*

*That notice of appeal must be filed within 15 days of your receipt of this letter and must state the grounds upon which your appeal is based. A copy of that notice must be simultaneously provided to my office as well.*

*If you do not wish to appeal, your transfer will be effective on \_\_\_\_\_, 20\_\_.* **[NOTE: Set the start date at least 17 days out to allow for notice to be received and the appeal time to expire.]** *If you do wish to appeal, your transfer will not be effective unless and until the hearing officer upholds the board's decision.*

*Dr. Jane Smith  
Superintendent  
City School System*

10. If the employee does not file Notice of Appeal with the state superintendent, the employee can be transferred immediately. Submit the Notice of Contest Form and Hearing Costs Claim Form to the state Department of Education for reimbursement of the court reporter fees. (See Appendix).
11. If the employee does file Notice of Appeal with the state superintendent, the state superintendent will contact the executive director of the Alabama State Bar and obtain a panel of retired Alabama judges from which the parties can select a hearing officer.
12. The panel of five potential hearing officers will be provided to the parties. The parties may agree on a hearing officer from the panel or any other source.
13. If the parties cannot agree on a hearing officer, the parties must use alternating strikes to select the hearing officer. The employee gets the first strike. The process must be completed within 10 days of the parties receiving the panel.
14. After receiving the Notice of Appeal, the superintendent must compile the hearing record, including the court reporter's transcript, documentary evidence and any notices. The record must be provided to the hearing officer within 20 days of receiving the Notice of Appeal.

*It is possible that the process of selecting the hearing officer may not be complete within 20 days through no fault of the board. If this occurs, once the superintendent receives the Notice of Appeal, the board attorney should go ahead and compile the record and be prepared to immediately provide the record to the hearing officer once he is appointed. The hearing officer can extend the time for providing the record for good cause shown.*

*Sample Letter*

*The Honorable Judge Jim Law  
123 Main Street  
City, Alabama*

*RE: The Transfer of John Doe  
by the City Board of Education*

*Dear Judge Law:*

*I represent the City Board of Education in the above-referenced matter. The Notice of Appeal in this matter was received on October 1, 2011. Pursuant to Ala. Code §16-24C-6(e), I am obligated to provide a record of the proceedings before the board to you within 20 days of the Notice of Appeal. I received notification of your appointment as hearing officer yesterday on October 31, 2011. Because more than 20 days have elapsed between the Notice of Appeal and your appointment, I was unable to comply with that provision. For that reason, I request an additional 5 days from today's date in which to provide the record to you. If this is acceptable, please contact me at (334) 555-1212 or joe.jones@citylawfirm.com.*

*Joe Jones, Esquire  
Counsel for City Board of Education*

*Sample Notice*

*In re the Transfer of  
John Doe, Nonprobationary Classified Employee,  
by the City School System*

*Notice of Record*

*The City Board of Education hereby provides a record of the transfer proceedings involving Mr. John Doe. The record contains the following documents:*

- 1. Required Notices*
- 2. Transcript of Transfer Hearing*
- 3. Exhibits Introduced During Transfer Hearing*

*Done this \_\_ day of \_\_\_\_\_, 20 \_\_.*

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*Counsel for City Board of Education*

15. The hearing officer holds a hearing. There is no provision for when this hearing must be set.

*The type of hearing is at the discretion of the hearing officer, but AASB's position is that the statute does not contemplate a full hearing but rather arguments of counsel based on the record before the board. This is evidenced by the facts that the statute refers to the*

*action as a “review,” the hearing officer is provided a transcript of the testimony taken by the board, the hearing officer is required to give the board’s decision deference and the hearing officer is only permitted to affirm or reverse the board’s decision. Ala. Code §16-24C-6(e).*

16. The hearing officer issues a written decision either affirming or reversing the board’s decision within five days of the hearing.
17. Report the hearing officer’s decision and reimbursable costs to the state Department of Education by submitting the Hearing Costs Claim Form provided in the Appendix.
18. If the hearing officer reverses the board’s decision, the board has the right to appeal that decision to the Alabama Court of Civil Appeals by filing a “Notice of Appeal” with that court.
19. If the hearing officer upholds the board’s decision, the employee has the right to appeal the decision to the Alabama Court of Civil Appeals. However, the superintendent should issue written notice to the employee that the transfer is effective immediately, irrespective of his decision to further appeal. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee’s last known address.

*Sample Letter*

*Mr. John Doe*

*The board has received the hearing officer’s order upholding its decision to transfer you from a 9-month custodian at GHI High School to a 9-month custodian at JKL High School. In light of this decision, you must report to JKL High School beginning \_\_\_\_\_, 20\_\_.*

*Dr. Jane Smith  
Superintendent  
City School System*

# Sample Hearing Script for Transfer of Nonprobationary Classified Employees Outside Feeder Pattern

## 1. INTRODUCTION

Let us come to order. I am (INSERT PRESIDENT'S NAME), president of the (INSERT BOARD'S NAME) Board of Education.

This board meeting is convened on (INSERT DATE) in the (INSERT HEARING LOCATION). The following board members are present: (INSERT BOARD MEMBERS' NAMES). For the record, a quorum is present.

The board set this meeting to consider the proposed transfer of (INSERT EMPLOYEE'S NAME).

*The Open Meetings Act specifically permits boards to hold hearings in private if expressly allowed by law. Private transfer hearings for nonprobationary classified employees are not specifically allowed by law, and therefore, a board cannot close this type of hearing on this basis.*

*However, there are other grounds upon which a board can enter executive session, including to discuss good name and character, physical or mental health or, for some employees, job performance. Consult with your local attorney to determine if your board may enter executive session to hear this type of action.*

## 2. STATEMENT OF PRIOR PROCEEDINGS

The superintendent issued written notice of his/her recommendation to transfer (INSERT EMPLOYEE'S NAME) and he/she requested a hearing before this board. This hearing was scheduled and the board is prepared to proceed.

## 3. IDENTIFICATION OF ATTORNEYS

The superintendent is present and is represented by (INSERT NAME OF SUPERINTENDENT'S ATTORNEY).

(INSERT EMPLOYEE'S NAME) is present and is represented by (INSERT NAME OF EMPLOYEE'S ATTORNEY OR REPRESENTATIVE, IF APPLICABLE).

## 4. IMPARTIALITY OF BOARD

I will now ask each member of the board whether he or she is able to serve as an impartial member of this administrative tribunal and to arrive at a decision based solely upon the evidence presented at this hearing. Any member unable to act in such a manner may say so and ask to be excused.

*The president should call each board member by name and ask if he/she can be impartial in the hearing. If he/she cannot, excuse that member. No reason has to be given.*

## 5. HEARING PROCEDURE

The board will listen to all the testimony and evidence and make its decision based solely on the evidence presented to us at this hearing.

First, the superintendent's attorney will present evidence establishing the reasons for the proposed transfer. The employee's representative may then present whatever evidence he/she desires. Both sides may present witnesses and documentary evidence and may cross-examine witnesses offered by the other side. Board members sit as a panel of judges and are to remain impartial. Board members will not be questioned by the attorneys or witnesses. As president, I will use my discretion to limit or disallow certain testimony or evidence if I deem it inappropriate.

I appoint (INSERT COURT REPORTER'S NAME), who is a notary public, to serve as court reporter and clerk, swear all witnesses and receive and label all exhibits and documentary evidence.

Do the parties understand and agree to be bound by the rules and procedures I have described?

Let the record show that both parties understand the rules and procedures that will govern this hearing and agree to proceed in compliance with those procedures.

Are there any preliminary matters which should be addressed at this time?

## 6. SWEARING ALL WITNESSES

Will all witnesses please stand? I will ask the clerk to administer the oath.

### Court Reporter

Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

## 7. INVOKING THE RULE

The parties have the option to invoke the rule, which means that no witness expected to testify can listen to the testimony of another witness. Would the attorneys like to invoke the rule?

*If yes, continue below. If no, skip to paragraph 8.*

The attorneys have asked to invoke the rule. All witnesses must leave the hearing room until it is time for their testimony. No witness may discuss his or her testimony with any other witness until this hearing is over. Thank you.

## 8. ATTORNEYS' OPENING STATEMENTS (OPTIONAL)

Does the attorney for the superintendent wish to make an opening statement?

*The superintendent's attorney stands and makes his opening statement.*

Thank you.

Does the employee's attorney wish to make an opening statement?

*The employee's attorney stands and makes his opening statement.*

Thank you.

## 9. PRESENTATION OF EVIDENCE BY SUPERINTENDENT

We will now proceed with the presentation of evidence. (INSERT NAME OF SUPERINTENDENT'S ATTORNEY), you may call your first witness.

*Superintendent's attorney presents first witness and asks all of his questions. When he says he has no further questions, the employee's attorney may ask his questions. Continue below.*

(INSERT NAME OF EMPLOYEE'S ATTORNEY), do you have any questions for this witness?

*After cross-examination, the superintendent's attorney may ask additional questions of each witness (called redirect), and the employee's attorney may conduct additional cross-examination (called recross). These questions should be limited to questions the witness just answered. The superintendent's attorney can only redirect on issues raised during cross-examination. The employee's attorney can only recross on issues raised during redirect, etc. Attorneys may request permission to redirect or recross multiple times with a witness.*

*For example, the superintendent's attorney asks questions about the incident and the employee's history. During cross-examination, the employee's attorney asks questions about the incident, the employee's history and personal bias. On redirect, the superintendent's attorney may only ask questions about the incident, the employee's history and personal bias. He cannot ask questions about a second incident or any other subject unless the witness testified to it during cross-examination. This cycle has the potential to continue repeatedly, but because the subject matter is limited with each round, it should not continue indefinitely. Also, remember that the board president can determine if a line of questioning has gone too far. Once the attorneys indicate they have finished with a witness, continue below.*

Are there any further questions of this witness? May the witness be excused? Call the next witness.

*Repeat this procedure until the superintendent's attorney has called all witnesses. Once he has called all of his witnesses, he will rest his case.*

That concludes the presentation by the administration.

**10. PRESENTATION OF EVIDENCE BY EMPLOYEE**

(INSERT NAME OF EMPLOYEE’S ATTORNEY), you may call your first witness.

*Employee’s attorney presents case.*

(INSERT NAME OF SUPERINTENDENT’S ATTORNEY), do you have any questions for this witness?

*After cross-examination, the employee’s attorney may ask additional questions of each witness (called redirect,) and the superintendent’s attorney may conduct additional cross-examination (called recross). These questions should be limited to questions the witness just answered. The employee’s attorney can only redirect on issues raised during cross-examination. The superintendent’s attorney can only recross on issues raised during redirect, etc. Attorneys may request permission to redirect or recross multiple times with a witness.*

*For example, the employee’s attorney asks questions about the incident, the employee’s history and personal bias. During cross-examination, the superintendent’s attorney asks questions about the incident and personal bias. On redirect, the employee’s attorney may only ask questions about the incident and personal bias. He cannot ask questions about a second incident or any other subject unless the witness testified to it during cross-examination. This cycle has the potential to continue repeatedly, but because the subject matter is limited with each round, it should not continue indefinitely. Also, remember that the board president can determine if a line of questioning has gone too far. Once the attorneys indicate they have finished with a witness, continue below.*

That concludes the presentation by the employee. Does the administration have any rebuttal evidence?

*The superintendent’s attorney can only offer rebuttal evidence of testimony given during the presentation of evidence by employee.*

If that concludes the evidence, does either side have anything further to present?

**11. CLOSING ARGUMENTS (OPTIONAL)**

*Attorneys use closing arguments to summarize the evidence and explain why an action should or should not be taken. However, depending on the type of case, some attorneys do not want to make closing statements and some boards do not want to hear them. If the board does not want to allow closing arguments, feel free to tell the attorneys that you do not believe they are necessary. Otherwise, give the attorneys the option as below.*

Does the superintendent's attorney wish to make a brief closing statement?

*The superintendent's attorney stands and makes his closing statement.*

Thank you.

Does the employee's attorney wish to make a brief closing statement?

*The employee's attorney stands and makes his closing statement.*

Thank you.

## **12. CONCLUDING REMARKS**

This board will now convene in executive session to consider what action, if any, should be taken, and enter such order as it deems lawful and appropriate. If the board feels that any or all of the reasons given by the superintendent for the proposed transfer are supported by the evidence presented and that these reasons are sufficient, it may act accordingly.

At this time, do I hear a motion that the board should convene in executive session to deliberate this matter? Do I hear a second? All in favor of convening in executive session, say aye.

On behalf of all members of the board, I want to thank everyone involved for their cooperation during this proceeding. This concludes the hearing. The board will convene in executive session to consider the matter and discuss the recommendation. The board will reconvene in open session to vote on the recommendation. Also, a written decision will be issued to (INSERT EMPLOYEE'S NAME) following our decision.

Thank you.



## PROCEDURE FOR TRANSFER OF PROBATIONARY TEACHERS AND PROBATIONARY CLASSIFIED EMPLOYEES REDUCED PAY

### *ALA. CODE §16-24C-7(E)*

This section addresses the transfer of probationary teachers and classified employees which results in a reduction in their pay. The transfer must meet the following criteria:

- The employee must be qualified for the position;
- The employee must be notified of the impact on his pay;
- If the board approves the recommendation, the transfer can be effective 15 days later.

The sample letter asks the employee to submit any written statement on a certain date prior to the board meeting. Such a practice would allow written responses to be timely placed in board packets and prevent questions of whether written submissions are in the mail or otherwise in transit.

1. The superintendent issues written notice of her recommendation to transfer the employee to any position within the system that causes a lower rate of compensation or shorter term of employment. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

#### *Sample Letter*

*Mr. John Doe*

*This letter is to notify you that I intend to recommend you be transferred from a 10-month custodian at GHI High School to a 9-month custodian at DEF Middle School.*

*If approved, your pay would be impacted as follows:*

*Annual pay would be reduced from  
\$24,000 to \$20,000*

*You have the right to submit a written statement to the superintendent and the board explaining why you should not be transferred. If you choose to submit that statement, it must be received in my office no later than 4:00 PM on \_\_\_\_\_, 20\_\_ . **[NOTE: 1-2 days before the scheduled board meeting is suggested.]***

*The board will consider my recommendation at its meeting on \_\_\_\_\_, 20\_\_. Should the board approve my recommendation, the transfer will become effective no less than 15 days thereafter. Whether or not you choose to submit a statement, you will receive written notification of the board's decision after the meeting.*

*Dr. Jane Smith  
Superintendent  
City School System*

2. The employee may submit a written statement to the superintendent and board explaining why he should not be transferred. If the employee submits a written statement, the board must be provided that prior to the vote.
3. The board votes on the superintendent's recommendation. A majority of the whole board must approve the superintendent's recommendation.

*Sample Recommendation*

*I recommend that Mr. John Doe, a 10-month custodian at GHI High School, be transferred to a 9-month custodian at DEF Middle School, effective no less than 15 days from the board's approval.*

*Sample Board Motion*

*I move that the board approve the superintendent's recommendation to transfer Mr. John Doe from a 10-month custodian at GHI High School to a 9-month custodian at DEF Middle School, such transfer to become effective no fewer than 15 days from our approval.*

4. The superintendent issues written notice of the board's decision to the employee. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board voted to approve my recommendation to transfer you from a 10-month custodian at GHI High School to a 9-month custodian at DEF Middle School. The transfer shall be effective \_\_\_\_\_, 20\_\_.* **[NOTE: The effective date must be at least 15 days from the date the board approves the transfer.]**

*Dr. Jane Smith  
Superintendent  
City School System*

5. The decision is final, and the transfer becomes effective 15 days after the board's approval. The employee has no further right to challenge, review or appeal.

**PROCEDURE FOR TRANSFER OF TENURED TEACHER AND  
NONPROBATIONARY CLASSIFIED EMPLOYEE  
REDUCED PAY**

*ALA. CODE §16-24C-7(F)*

The procedure for transfers of tenured teachers/nonprobationary classified employees that cause a reduction in pay is the same as for termination of tenured teachers/nonprobationary employees. This section does not apply if this action is caused by a reduction in force.

The sample letter includes reasons for the superintendent's recommendation. The statute does not require the superintendent to give reasons for the transfer, but it may be advisable to do so. This way the employee can make a determination as to whether he wishes to challenge the transfer and gives the board a basis upon which to make its decision. Consult with your board attorney.

1. The superintendent issues written notice of her recommendation to transfer the employee to any position within the system for which he is qualified that causes a lower rate of compensation or shorter term of employment. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that I am recommending you be transferred from a 12-month curriculum specialist position at Central Office to a 9-month teacher position at JKL High School effective \_\_\_\_\_, 20\_\_ with a commensurate reduction in pay. The facts supporting the proposed transfer are as follows:*

1. *On July 23, 2011, the board approved the superintendent's recommendation to phase out all curriculum specialist positions effective \_\_\_\_\_, 20\_\_ due to budgetary considerations.*
2. *JKL High School is in need of additional teachers due to a higher than expected number of retirements at the end of the last school year.*

*You have the right to request a hearing before the board acts on my recommendation. In order to do so, you must submit a written request to me within 15 calendar days of the date of this notice. If you do not timely request a hearing, the board will vote on my recommendation, and you will receive written notification of its decision. If you timely request a hearing, you will receive written notification of the date of that hearing from my office.*

*Dr. Jane Smith  
Superintendent  
City School System*

*If no hearing is requested, continue to step 2. If a hearing is requested, skip to step 4.*

2. **NO HEARING REQUESTED:** If the employee does not request a hearing in the time allowed, the board may vote on the superintendent’s recommendation after the 15-day time period has expired.

*Sample Recommendation*

*I recommend that Mr. John Doe, a 12-month curriculum specialist at Central Office, be transferred to a 9-month teacher at JKL High School with a commensurate reduction in pay, effective \_\_\_\_\_, 20\_\_.*  
*The facts supporting the proposed transfer are as follows:*

1. *On July 23, 2011, the board approved the superintendent’s recommendation to phase out all curriculum specialist positions effective immediately due to budgetary considerations.*
2. *JKL High School is in need of additional teachers due to a higher than expected number of retirements at the end of the last school year.*

*Sample Board Motion*

*I move that the board approve the superintendent’s recommendation to transfer Mr. John Doe from a 12-month curriculum specialist at Central Office to a 9-month teacher at JKL High School with a commensurate reduction in pay for the reasons stated in the superintendent’s recommendation effective \_\_\_\_\_, 20\_\_.*

3. **NO HEARING REQUESTED:** The superintendent issues written notice of the board’s decision to the employee. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee’s last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board voted to approve my recommendation to transfer you from a 12-month curriculum specialist at Central Office be transferred to a 9-month teacher at JKL High School with a commensurate reduction in pay. The transfer shall be effective \_\_\_\_\_, 20\_\_. **[NOTE: Set the start date at least 17 days out to allow for notice to be received and the appeal time to expire.]***

*Dr. Jane Smith  
Superintendent  
City School System*

4. **HEARING REQUESTED:** If the employee timely requests a hearing, the superintendent must set a time, date and place for a board hearing and issue written notice to the employee. The hearing date must be scheduled between 30 and 60 days from the date of the hearing notice. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee’s last known address.

*Sample Letter*

*Mr. John Doe*

*You have timely requested a hearing on my recommendation to transfer you from a 12-month curriculum specialist at Central Office to a 9-month teacher at JKL High School.*

*The board has set a hearing for \_\_\_\_\_, 20\_\_, at \_\_\_ am/pm in the \_\_\_\_\_ in \_\_\_\_\_, Alabama. **[NOTE: The hearing date should be 30 to 60 days from the date of this notice.]***

*The hearing shall be conducted in accordance with Ala. Code §16-24C-6(c) of the Students First Act. You have the right to have an attorney represent you at your expense. You also have the right to be heard, to examine and cross-examine witnesses and present other evidence and argument on your behalf. You also have the right to request that the superintendent subpoena witnesses to testify on your behalf. Any such request should be provided in writing to the superintendent at least two weeks before the hearing date. A court reporter will be provided.*

*Dr. Jane Smith  
Superintendent  
City School System*

5. Ensure that a court reporter is hired for the hearing. Also, submit a Notice of Contest Form to the state Department of Education. The form is provided in the Appendix.
6. The board holds a full hearing. A sample script is provided at the end of this section. The board may then deliberate in executive session.

*The board members should be the only ones present during deliberation. The superintendent, employee and their attorneys should not be present.*

7. The board should return to open session to vote on the superintendent’s recommendation.

*The Open Meetings Act does not require the board to return to open session to vote on the recommendation as long as the board “issues a written decision which may be appealed to a hearing officer...which has the authority to conduct a public hearing or appeal.” Ala. Code §36-25A-7(a)(9). Nevertheless, AASB believes voting in public is the best practice.*

*Sample Board Motion*

*I move that the board approve the superintendent's recommendation to transfer you from a 12-month curriculum specialist at Central Office to a 9-month teacher at JKL High School with a commensurate reduction in pay effective \_\_\_\_\_, 20\_\_.*

8. While not required, the board should consider issuing written findings of fact to assist the hearing officer if the board's decision is appealed. A sample is below:

*The board could also direct the prevailing attorney to prepare the findings of fact to be signed by the board president. The findings would need to be completed in time for written notice to be issued to the employee (10 days from the date of the vote).*

*Sample Findings of Fact*

*The superintendent recommended that the board transfer Mr. John Doe from a 12-month curriculum specialist at Central Office to a 9-month teacher at JKL High School with a commensurate reduction in pay for the following reasons:*

- 1. On July 23, 2011, the board approved the superintendent's recommendation to phase out all curriculum specialist positions effective immediately due to budgetary considerations.*
- 2. JKL High School is in need of additional teachers due to a higher than expected number of retirements at the end of the last school year.*

*Mr. Doe timely requested a hearing before this board and a hearing was held on \_\_\_\_\_, 20\_\_. Mr. Doe appeared at the hearing with his attorney \_\_\_\_\_. The superintendent was present and represented by her attorney \_\_\_\_\_. The board has considered the evidence presented to it and finds that the superintendent presented sufficient evidence of the reasons asserted for her recommendation. For this reason, the board finds that the superintendent's recommendation should be APPROVED by a vote of 5 to 0.*

*Done this \_\_\_ day of \_\_\_\_\_, 20\_\_.*

\_\_\_\_\_  
*Board President*

9. The superintendent issues written notice of the board's decision to the employee within 10 days. That notice can also contain the board's findings of fact. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board voted to approve my recommendation to transfer you from a 12-month curriculum specialist at Central Office to a 9-month teacher at JKL High School with a commensurate reduction in pay effective \_\_\_\_\_, 20\_\_\_. The board's findings of fact are enclosed.*

*You have the right to contest this decision by filing an appeal.*

*If you wish to do so, you must file a written "Notice of Appeal" addressed to:*

*State Superintendent of Education  
Alabama Department of Education  
501 North Ripley Street  
P.O. Box 302101  
Montgomery, AL 36104*

*That notice of appeal must be filed within 15 days of your receipt of this letter and must state the grounds upon which your appeal is based. A copy of that notice must be simultaneously provided to my office as well.*

*If you do not wish to appeal, your transfer will be effective on \_\_\_\_\_, 20\_\_\_. **[NOTE: Set the start date at least 17 days out to allow for notice to be received and the appeal time to expire.]** If you do wish to appeal, your transfer will not be effective unless and until the hearing officer upholds the board's decision.*

*Dr. Jane Smith  
Superintendent  
City School System*

10. If the employee does not file Notice of Appeal with the state superintendent, the employee can be transferred as soon as the time to appeal has expired. Submit a Hearing Costs Claim Form to the state Department of Education for reimbursement of the court reporter fees. The form is provided in the Appendix.
11. If the employee does file Notice of Appeal with the state superintendent, the state superintendent will contact the executive director of the Alabama State Bar and obtain a panel of retired Alabama judges from which the parties can select a hearing officer.
12. The panel of five potential hearing officers will be provided to the parties. The parties may agree on a hearing officer from the panel or any other source.
13. If the parties cannot agree on a hearing officer, the parties must use alternating strikes to select the hearing officer. The employee gets the first strike. The process must be completed within 10 days of the parties receiving the panel.

14. After receiving the Notice of Appeal, the superintendent must compile the hearing record, including the court reporter's transcript, documentary evidence and any notices. The record must be provided to the hearing officer within 20 days of receiving the Notice of Appeal.

*It is possible that the process of selecting the hearing officer may not be complete within 20 days through no fault of the board. If this occurs, once the superintendent receives the Notice of Appeal, the board attorney should go ahead and compile the record and be prepared to immediately provide the record to the hearing officer once he is appointed. The hearing officer can extend the time for providing the record for good cause shown.*

*Sample Letter*

*The Honorable Judge Jim Law  
123 Main Street  
City, Alabama*

*RE: The Transfer of John Doe  
by the City Board of Education*

*Dear Judge Law:*

*I represent the City Board of Education in the above-referenced matter. The Notice of Appeal in this matter was received on October 1, 2011. Pursuant to Ala. Code §16-24C-6(e), I am obligated to provide a record of the proceedings before the board to you within 20 days of the Notice of Appeal. I received notification of your appointment as hearing officer yesterday on October 31, 2011. Because more than 20 days have elapsed between the Notice of Appeal and your appointment, I was unable to comply with that provision. For that reason, I request an additional 5 days from today's date in which to provide the record to you. If this is acceptable, please contact me at (334) 555-1212 or joe.jones@citylawfirm.com.*

*Joe Jones, Esquire  
Counsel for City Board of Education*

*Sample Notice*

*In re the Transfer of  
John Doe, Tenured Teacher,  
by the City School System*

*Notice of Record*

*The City Board of Education hereby provides a record of the transfer proceedings involving Mr. John Doe. The record contains the following documents:*

- 1. Required Notices*



2. *Transcript of Transfer Hearing*
3. *Exhibits Introduced During Transfer Hearing*

Done this \_\_\_ day of \_\_\_\_\_, 20\_\_.

---

*Counsel for the Board of Education*

15. The hearing officer holds a hearing. There is no provision for when this hearing must be set.

*The type of hearing is at the discretion of the hearing officer, but AASB's position is that the statute does not contemplate a full hearing but rather arguments of counsel based on the record before the board. This is evidenced by the facts that the statute refers to the action as a "review," the hearing officer is provided a transcript of the testimony taken by the board, the hearing officer is required to give the board's decision deference and the hearing officer is only permitted to affirm or reverse the board's decision. Ala. Code §16-24C-6(e).*

16. The hearing officer issues a written decision either affirming or reversing the board's decision within five days of the hearing.
17. If the hearing officer reverses the board's decision, the board has the right to appeal that decision to the Alabama Court of Civil Appeals by filing a "Notice of Appeal" with that court.
18. Report the hearing officer's decision and reimbursable costs to the state Department of Education by submitting the Hearing Costs Claim Form provided in the Appendix.
19. If the hearing officer upholds the board's decision, the employee has the right to appeal the decision to the Alabama Court of Civil Appeals. However, the superintendent should issue written notice to the employee that the transfer is effective immediately, irrespective of his decision to further appeal. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

*Sample Letter*

*Mr. John Doe*

*The board has received the hearing officer's order upholding its decision to transfer you from a 12-month curriculum specialist at Central Office to a 9-month teacher at JKL High School with a commensurate reduction in pay. In light of this decision, you must report to JKL High School beginning \_\_\_\_\_, 20\_\_.*

*Dr. Jane Smith  
Superintendent  
City School System*

# Sample Script for Transfer of Tenured Teacher / Nonprobationary Classified Employee (Reduced Pay)

## 1. INTRODUCTION

Let us come to order. I am (INSERT PRESIDENT'S NAME), president of the (INSERT BOARD'S NAME) Board of Education.

This board meeting is convened on (INSERT DATE) in the (INSERT HEARING LOCATION). The following board members are present: (INSERT BOARD MEMBERS' NAMES). For the record, a quorum is present.

The board set this meeting to consider the proposed transfer of (INSERT EMPLOYEE'S NAME). He/she may elect to have a public or private hearing. Does the employee wish this hearing to be public or private?

*If the employee wants a public hearing, skip the next paragraph.  
If the employee requests a private session, all members of the public, except those who may speak, must leave the room. Continue immediately below.*

At this time, I'll ask anyone who is not a party or witness to this proceeding to leave the room.

*The board is not required to follow the procedure for entering executive session when it sits in a quasi-judicial capacity.*

## 2. STATEMENT OF PRIOR PROCEEDINGS

The superintendent issued written notice of his/her recommendation to transfer (INSERT EMPLOYEE'S NAME) and he/she requested a hearing before this board. This hearing was scheduled, and the board is prepared to proceed.

## 3. IDENTIFICATION OF ATTORNEYS

The superintendent is present and is represented by (INSERT NAME OF SUPERINTENDENT'S ATTORNEY).

(INSERT EMPLOYEE'S NAME) is present and is represented by (INSERT NAME OF EMPLOYEE'S ATTORNEY OR REPRESENTATIVE, IF APPLICABLE).

## 4. IMPARTIALITY OF BOARD

I will now ask each member of the board whether he or she is able to serve as an impartial member of this administrative tribunal and to arrive at a decision based solely upon the evidence presented at this hearing. Any member unable to act in such a manner may say so and ask to be excused.

*The president should call each board member by name and ask if he/she can be impartial in the hearing. If he/she cannot, excuse that member. No reason has to be given.*

## 5. HEARING PROCEDURE

The board will listen to all the testimony and evidence and make its decision based solely on the evidence presented to us at this hearing.

First, the superintendent's attorney will present evidence establishing the reasons for the proposed transfer. The employee's representative may then present whatever evidence he/she desires. Both sides may present witnesses and documentary evidence and may cross-examine witnesses offered by the other side.

Board members sit as a panel of judges and are to remain impartial. Board members will not be questioned by the attorneys or witnesses. As president, I will use my discretion to limit or disallow certain testimony or evidence if I deem it inappropriate.

I appoint (INSERT COURT REPORTER'S NAME), who is a notary public, to serve as court reporter and clerk, swear all witnesses and receive and label all exhibits and documentary evidence.

Do the parties understand and agree to be bound by the rules and procedures I have described?

Let the record show that both parties understand the rules and procedures that will govern this hearing and agree to proceed in compliance with those procedures.

Are there any preliminary matters which should be addressed at this time?

## 6. SWEARING ALL WITNESSES

Will all witnesses please stand? I will ask the clerk to administer the oath.

### **Court Reporter**

Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

## 7. INVOKING THE RULE

The parties have the option to invoke the rule, which means that no witness expected to testify can listen to the testimony of another witness. Would the attorneys like to invoke the rule?

*If yes, continue below. If no, skip to paragraph 8.*

The attorneys have asked to invoke the rule. All witnesses must leave the hearing room until it is time for their testimony. No witness may discuss his or her testimony with any other witness until this hearing is over. Thank you.

## 8. ATTORNEYS' OPENING STATEMENTS (OPTIONAL)

Does the attorney for the superintendent wish to make an opening statement?

*The superintendent's attorney stands and makes his opening statement.*

Thank you.

Does the employee's attorney wish to make an opening statement?

*The employee's attorney stands and makes his opening statement.*

Thank you.

## 9. PRESENTATION OF EVIDENCE BY SUPERINTENDENT

We will now proceed with the presentation of evidence. (INSERT NAME OF SUPERINTENDENT'S ATTORNEY), you may call your first witness.

*Superintendent's attorney presents first witness and asks all of his questions. When he says he has no further questions, the employee's attorney may ask his questions. Continue below.*

*Superintendent's attorney presents first witness and asks all of his questions. When he says he has no further questions, the employee's attorney may ask his questions. Continue below.*

(INSERT NAME OF EMPLOYEE'S ATTORNEY), do you have any questions for this witness?

*After cross examination, the superintendent's attorney may ask additional questions of each witness (called redirect), and the employee's attorney may conduct additional cross-examination (called recross). These questions should be limited to questions the witness just answered. The superintendent's attorney can only redirect on issues raised during cross-examination. The employee's attorney can only recross on issues raised during redirect, etc. Attorneys may request permission to redirect or recross multiple times with a witness.*

*For example, the superintendent's attorney asks questions about the incident and the employee's history. During cross-examination, the employee's attorney asks questions about the incident, the employee's history and personal bias. On redirect, the superintendent's attorney may only ask questions about the incident, the employee's history and personal bias. He cannot ask questions about a second incident or any other subject unless the witness testified to it during cross-examination. This cycle has the potential to continue repeatedly, but because the subject matter is limited with each round, it should not continue indefinitely. Also, remember that the board president can determine if a line of questioning has gone too far. Once the attorneys indicate they have finished with a witness, continue below.*

Are there any further questions of this witness? May the witness be excused? Call the next witness.

*Repeat this procedure until superintendent's attorney has called all witnesses. Once he has called all of his witnesses, he will rest his case.*

That concludes the presentation by the administration.

## **10. PRESENTATION OF EVIDENCE BY EMPLOYEE**

(INSERT NAME OF EMPLOYEE'S ATTORNEY), you may call your first witness.

*Employee's attorney presents case.*

(INSERT NAME OF SUPERINTENDENT’S ATTORNEY), do you have any questions for this witness?

*After cross-examination, the employee’s attorney may ask additional questions of each witness (called redirect), and the superintendent’s attorney may conduct additional cross-examination (called recross). These questions should be limited to questions the witness just answered. The employee’s attorney can only redirect on issues raised during cross-examination. The superintendent’s attorney can only recross on issues raised during redirect, etc. Attorneys may request permission to redirect or recross multiple times with a witness.*

*For example, the employee’s attorney asks questions about the incident, the employee’s history and personal bias. During cross-examination, the superintendent’s attorney asks questions about the incident and personal bias. On redirect, the employee’s attorney may only ask questions about the incident and personal bias. He cannot ask questions about a second incident or any other subject unless the witness testified to it during cross-examination. This cycle has the potential to continue repeatedly, but because the subject matter is limited with each round, it should not continue indefinitely. Also, remember that the board president can determine if a line of questioning has gone too far. Once the attorneys indicate they have finished with a witness, continue below.*

That concludes the presentation by the employee. Does the administration have any rebuttal evidence?

*The superintendent’s attorney can only offer rebuttal evidence of testimony given during the presentation of evidence by employee.*

If that concludes the evidence, does either side have anything further to present?

## 11. CLOSING ARGUMENTS (OPTIONAL)

*Attorneys use closing arguments to summarize the evidence and explain why an action should or should not be taken. However, depending on the type of case, some attorneys do not want to make closing statements and some boards do not want to hear them. If the board does not want to allow closing arguments, feel free to tell the attorneys that you do not believe they are necessary. Otherwise, give the attorneys the option as below.*

Does the superintendent’s attorney wish to make a brief closing statement?

*The superintendent’s attorney stands and makes his closing statement.*

Thank you.

Does the employee's attorney wish to make a brief closing statement?

*The employee's attorney stands and makes his closing statement.*

Thank you.

## **12. CONCLUDING REMARKS**

This board will now convene in executive session to consider what action, if any, should be taken, and enter such order as it deems lawful and appropriate. If the board feels that any or all of the reasons given by the superintendent for the proposed transfer are supported by the evidence presented and that these reasons are sufficient, it may act accordingly.

At this time, do I hear a motion that the board should convene in executive session to deliberate this matter? Do I hear a second? All in favor of convening in executive session, say aye.

On behalf of all members of the board, I want to thank everyone involved for their cooperation during this proceeding. This concludes the hearing. The board will convene in executive session to consider the matter and discuss the recommendation. The board will reconvene in open session to vote on the recommendation. Also, a written decision will be issued to (INSERT EMPLOYEE'S NAME) following our decision.

Thank you.

# ***TERMINATIONS: CERTIFICATE ACTIONS***

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## **PROCEDURE FOR TERMINATION OF TEACHER WHOSE CERTIFICATE IS REVOKED BY CRIMINAL CONVICTION**

### ***ALA. CODE §16-24C-10(A)-(C)***

This section can be used to terminate a teacher who has lost his teaching certificate as the result of a covered criminal conviction. If the conviction is overturned on appeal, the state superintendent must reinstate the certificate and the board must reinstate the teacher's employment. The teacher would have to be placed in a comparable position or placed on administrative leave. Even if the conviction is eventually reversed, the state superintendent and board can still pursue disciplinary action against the teacher for the facts underlying the original conviction.

1. The superintendent recommends in writing that the board terminate the teacher.

#### *Sample Recommendation*

*I hereby recommend that the employment of Mr. John Doe, teacher at ABC Elementary School, be terminated effective immediately as a result of his certificate revocation.*

2. The board votes on the superintendent's recommendation. A majority of the whole board must approve the superintendent's recommendation.

#### *Sample Board Motion*

*I move that the board approve the superintendent's recommendation to terminate the employment of Mr. John Doe effective immediately as a result of his certificate revocation.*

3. The superintendent issues written notice of the board's decision to the teacher. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the teacher, or (d) hand delivery to the teacher's last known address.

#### *Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board accepted my recommendation to terminate your employment effective immediately as a result of your certificate being revoked by the State Superintendent of Education.*

*Dr. Jane Smith  
Superintendent  
City School System*

4. The decision is final and effective immediately, and the teacher has no further right to challenge, review or appeal.

5. If the conviction that precipitated the revocation is overturned on appeal, the state superintendent of education must immediately reinstate his certificate.
6. If the certificate is reinstated, the board must reinstate the teacher to a position for which he holds certification or place him on administrative leave. The teacher must also receive all back pay and benefits.



**PROCEDURE FOR TERMINATION OF TEACHER WHOSE  
CERTIFICATE IS REVOKED, DENIED, SUSPENDED, FORFEITED  
OR TEACHER IS DECLARED INELIGIBLE FOR CERTIFICATE**

*ALA. CODE §16-24C-10(D)*

This section can be used to terminate teachers who have significant action taken on their certificates. The same section and procedures can be used for a classified employee who has lost a required certificate, e.g. registered nurse, bus driver, etc. Even if an employee is terminated using this section, he retains his right to challenge the state superintendent's action separately, but that challenge would not impact the board, even if successful.

1. The superintendent recommends in writing that the board terminate the teacher.

*Sample Recommendation*

*I hereby recommend that the employment of Mr. John Doe, teacher at ABC Elementary School, be terminated effective immediately as a result of his certificate revocation.*

2. The board votes on the superintendent's recommendation. A majority of the whole board must accept the superintendent's recommendation.

*Sample Board Motion*

*I move that the board approve the superintendent's recommendation to terminate the employment of Mr. John Doe effective immediately as a result of his certificate revocation.*

3. The superintendent issues written notice of the board's decision to the teacher. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the teacher, or (d) hand delivery to the teacher's last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board accepted my recommendation to terminate your employment effective immediately as a result of your certificate being revoked by the State Superintendent of Education.*

*Dr. Jane Smith  
Superintendent  
City School System*

4. The decision is final and effective immediately, and the teacher has no further right to challenge, review or appeal.

# ***SUSPENSIONS***

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## **PROCEDURE FOR SUSPENSION OF EMPLOYEES 20 DAYS OR LESS**

### ***ALA. CODE §16-24C-6(I)***

This section applies to all employees, including probationary employees, recommended for suspension for 20 days or less.

The sample letter asks the teacher to submit any written statement or request to address the board on a certain date prior to the board meeting. Such a practice would allow written responses to be timely placed in board packets and/or better planning for the board meeting.

1. The superintendent issues a written notice to the employee of her recommendation to suspend him for 20 work days or less. The notice must contain the reasons for the suspension. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

#### *Sample Letter*

*Mr. John Doe*

*This letter is to notify you that I am recommending you be suspended for 10 work days without pay. The facts supporting the proposed suspension are as follows:*

1. *Mr. Doe failed to submit timely lesson plans as required from August 2011 to February 2012.*
2. *On February 5, 2012, when confronted about his repeated failure to submit timely lesson plans, Mr. Doe yelled at his principal, "You're not the boss of me! I hate you!"*
3. *After yelling at his boss, Mr. Doe ran from the principal's office and drove away from school at a high rate of speed.*
4. *After leaving the school without permission, Mr. Doe failed to teach his remaining classes on February 5, 2012.*

*The board will consider my recommendation at its meeting on \_\_\_\_\_, 20\_\_ at \_\_\_ am/pm at \_\_\_\_\_ in \_\_\_\_\_, Alabama. You have the right to present the board with the reasons you should not be suspended. You can present a statement, evidence or argument in writing or in person.*

*If you wish to submit something to the board in writing, it must be received in my office no later than 4:00 pm on \_\_\_\_\_, 20\_\_. **[NOTE: 1-2 days before the scheduled board meeting is suggested.]** If you wish to meet with the board in person, you must submit a written request to me which must be received in my office no later than 4:00 PM on \_\_\_\_\_, 20\_\_. **[NOTE: 1-2 days before the scheduled board meeting is suggested.]***

*If you do not submit any information or request a conference by \_\_\_\_\_, 20\_\_, the board will vote on my recommendation, and you will receive written notification of its decision.*

*Dr. Jane Smith  
Superintendent  
City School System*

*If no statement is submitted and no meeting is requested, continue to step 2. If a hearing is requested, skip to step 4.*

2. **NO STATEMENT SUBMITTED AND NO MEETING REQUESTED:** If the employee does not submit a statement or request a meeting with the board by the time provided, the superintendent should recommend the suspension and the board should vote on the recommendation.

*Sample Recommendation*

*I recommend that Mr. John Doe, teacher at ABC Elementary School, be suspended for 10 work days without pay for the following reasons:*

1. *Mr. Doe failed to submit timely lesson plans as required from August 2011 to February 2012.*
2. *On February 5, 2012, when confronted about his repeated failure to submit timely lesson plans, Mr. Doe yelled at his principal, "You're not the boss of me! I hate you!"*
3. *After yelling at his boss, Mr. Doe ran from the principal's office and drove away from school at a high rate of speed.*
4. *After leaving the school without permission, Mr. Doe failed to teach his remaining classes on February 5, 2012.*

*Sample Board Motion*

*I move that the board approve the superintendent's recommendation to suspend Mr. John Doe for 10 work days without pay for the reasons provided in the superintendent's recommendation.*

3. **NO STATEMENT SUBMITTED AND NO MEETING REQUESTED:** The superintendent issues written notice of the board's decision to the employee. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board voted to approve my recommendation to suspend you for 10 work days without pay at its meeting on \_\_\_\_\_, 20\_\_. Your suspension shall begin on \_\_\_\_\_, 20\_\_. You shall return to work on \_\_\_\_\_, 20\_\_.*

*Dr. Jane Smith*

*Superintendent  
City School System*

4. **STATEMENT SUBMITTED OR MEETING REQUESTED:** If the employee submits a statement, the board must review the written evidence at the scheduled meeting. If the employee requests a meeting, the board must give the employee the opportunity to address the board at the scheduled meeting. A sample script is provided at the end of this section.
5. The board votes on the superintendent's recommendation. A majority of the whole board must approve the superintendent's recommendation.

*Sample Recommendation*

*I recommend that Mr. John Doe, teacher at ABC Elementary School, be suspended for 10 work days without pay for the following reasons:*

1. *Mr. Doe failed to submit timely lesson plans as required from August 2011 to February 2012.*
2. *On February 5, 2012, when confronted about his repeated failure to submit timely lesson plans, Mr. Doe yelled at his principal, "You're not the boss of me! I hate you!"*
3. *After yelling at his boss, Mr. Doe ran from the principal's office and drove away from school at a high rate of speed.*
4. *After leaving the school without permission, Mr. Doe failed to teach his remaining classes on February 5, 2012.*

*Sample Board Motion*

*I move that the board approve the superintendent's recommendation to suspend Mr. John Doe for 10 work days without pay for the reasons provided in the superintendent's recommendation.*

6. The superintendent issues written notice of the board's decision to the employee. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board voted to approve my recommendation to suspend you for 10 work days without pay at its meeting on \_\_\_\_\_, 20\_\_. Your suspension shall begin on \_\_\_\_\_, 20\_\_. You shall return to work on \_\_\_\_\_, 20\_\_.*

*Dr. Jane Smith  
Superintendent  
City School System*

7. The decision is final and effective immediately. The employee has no further right to challenge, review or appeal.

## Sample Conference Script for Suspension of 20 Days or Less for All Employees

The board must now consider the proposed suspension of (INSERT EMPLOYEE'S NAME).

*The Open Meetings Act specifically permits boards to hold hearings in private if expressly allowed by law. Private suspension hearings for nonprobationary classified employees are not specifically allowed by law, and therefore, a board cannot close this type of hearing on this basis.*

*However, there are other grounds upon which a board can enter executive session, including to discuss good name and character, physical or mental health or, for some employees, job performance. Consult with your local attorney to determine if your board may enter executive session to hear this type of action.*

The superintendent recommended to this board that (INSERT EMPLOYEE'S NAME) be suspended for (INSERT NUMBER OF DAYS) without pay. The superintendent gave him/her written notice of this recommendation and notice of this conference and (INSERT EMPLOYEE'S NAME) has requested the opportunity to address the board on this recommendation.

I will now ask each member of the board whether he or she is able to serve as an impartial member of this administrative tribunal and to arrive at a decision based solely upon the information presented at this conference. Any member not able to act in such a manner may say so and ask to be excused. When your name is called, please either respond affirmatively or state your request to be excused from these proceedings.

*The president should call each board member by name and ask if he/she can be impartial in the hearing. If he/she cannot, excuse that member. No reason has to be given.*

The matter before us is a serious and important matter. However, it is not a full adversarial hearing involving cross-examination of witnesses. Under the procedure to be followed, the superintendent or his/her designee will present the evidence establishing the reasons for his/her proposal to suspend (INSERT EMPLOYEE'S NAME). There will be no cross-examination of the superintendent or his/her designee, although the members of the board may choose to ask questions. After (INSERT EMPLOYEE'S NAME) has heard the superintendent's evidence, he/she will have an opportunity to present in full all the reasons why he/she believes he/she should not be suspended and to provide whatever documentary evidence he/she may have to support his/her position. No witnesses will be sworn.

Are there any preliminary matters which should be addressed at this time? Are there any questions or problems regarding the hearing procedure?

I will now ask the superintendent or his/her designee to provide the evidence in support of his/her recommendation.

*Here, the superintendent (or his/her designee) stands up and gives the reasons the suspension should be approved.*

(INSERT EMPLOYEE'S NAME), you have received an explanation of the evidence which the superintendent says supports his/her recommendation to suspend you. I will now give you an opportunity to

tell us all the reasons why you believe you should not be suspended. You may also provide us any documents you wish.

*Here, the employee or his/her representative stands up and states why the superintendent's evidence against him/her is not correct or why he/she should not be suspended.*

Do any members of the board have questions for the superintendent or (INSERT EMPLOYEE'S NAME)?

Having received the evidence, the board will now consider what action should be taken on the superintendent's recommendation. If the board feels that any or all of the reasons given by the superintendent for the proposed suspension are sufficient to merit such action, it may act accordingly. If the board feels that suspension is not appropriate, it may so order. At this time, do I hear a motion that the board should convene in executive session to deliberate this matter? Do I hear a second? All in favor of convening in executive session, say aye.

On behalf of all members of the board, I want to thank everyone involved for their cooperation during this proceeding. This concludes the conference. The board will convene in executive session to consider the matter and discuss the recommendation. The board will reconvene in open session to vote on the recommendation. Also, a written decision will be issued to (INSERT EMPLOYEE'S NAME) following our decision.

Thank you.

## PROCEDURE FOR SUSPENSION OF EMPLOYEES FOR MORE THAN 20 DAYS

### ALA. CODE §16-24C-6(I)

*The procedure for suspensions of more than 20 days is the same as for termination of tenured teachers and nonprobationary employees.*

1. The superintendent issues written notice to the employee of her recommendation to suspend the employee for more than 20 work days. The notice must contain the reasons for the suspension. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

#### *Sample Letter*

*Mr. John Doe*

*This letter is to notify you that I am recommending you be suspended for 30 work days without pay. The facts supporting the proposed suspension are as follows:*

1. *Mr. Doe failed to submit timely lesson plans as required from August 2011 to February 2012.*
2. *On February 5, 2012, when confronted about his repeated failure to submit timely lesson plans, Mr. Doe yelled at his principal, "You're not the boss of me! I hate you!"*
3. *After yelling at his boss, Mr. Doe ran from the principal's office and drove away from school at a high rate of speed.*
4. *After leaving the school without permission, Mr. Doe failed to teach his remaining classes on February 5, 2012.*

*You have the right to request a hearing before the board acts on my recommendation. In order to do so, you must submit a written request to me within 15 calendar days of the date of this notice. If you do not timely request a hearing, the board will vote on my recommendation, and you will receive written notification of its decision. If you timely request a hearing, you will receive written notification of the date of that hearing from my office.*

*Dr. Jane Smith  
Superintendent  
City School System*

*If no hearing is requested, continue to step 2. If a hearing is requested, skip to step 4.*

2. **NO HEARING REQUESTED:** If the employee does not request a hearing in the time allowed, the board may vote on the superintendent's recommendation after the 15-day time period has expired.

*Sample Recommendation*

*I recommend that Mr. John Doe, teacher at ABC Elementary School, be suspended for 30 work days without pay for the following reasons:*

- 1. Mr. Doe failed to submit timely lesson plans as required from August 2011 to February 2012.*
- 2. On February 5, 2012, when confronted about his repeated failure to submit timely lesson plans, Mr. Doe yelled at his principal, "You're not the boss of me! I hate you!"*
- 3. After yelling at his boss, Mr. Doe ran from the principal's office and drove away from school at a high rate of speed.*
- 4. After leaving the school without permission, Mr. Doe failed to teach his remaining classes on February 5, 2012.*

*Sample Board Motion*

*I move that the board approve the superintendent's recommendation to suspend Mr. John Doe for 30 work days without pay for the reasons provided in the superintendent's recommendation.*

- 3. NO HEARING REQUESTED:** The superintendent issues written notice of the board's decision to the employee.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board voted to approve my recommendation to suspend you for 30 work days without pay at its meeting on \_\_\_\_\_, 20\_\_. Your suspension shall begin on \_\_\_\_\_, 20\_\_. You shall return to work on \_\_\_\_\_, 20\_\_.*

*Dr. Jane Smith  
Superintendent  
City Board of Education*

- 4. HEARING REQUESTED:** If the employee timely requests a hearing, the superintendent must set a time, date and place for a board hearing and issue written notice to the employee. The hearing date must be scheduled between 30 and 60 days from the date of the hearing notice. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

*Sample Letter*

*Mr. John Doe*

*You have timely requested a hearing on my recommendation to suspend you for 30 work days without pay.*



The board has set a hearing for \_\_\_\_\_, 20\_\_, at \_\_\_ am/pm in the \_\_\_\_\_ in \_\_\_\_\_, Alabama. **[NOTE: The hearing date should be 30 to 60 days from the date of this notice.]**

*The hearing shall be public or private at your discretion and shall be conducted in accordance with Ala. Code §16-24C-6(c) of the Students First Act. You have the right to have an attorney represent you at your expense. You also have the right to be heard, to examine and cross-examine witnesses and present other evidence and argument on your behalf. You also have the right to request that the superintendent subpoena witnesses to testify on your behalf. Any such request should be provided in writing to the superintendent at least two weeks before the hearing date. A court reporter will be provided.*

*Dr. Jane Smith  
Superintendent  
City School System*

5. Ensure a court reporter is hired and submit a Notice of Contest Form to the state Department of Education. The form is provided in the Appendix.
6. The board holds a full hearing. A sample script is provided at the end of this section. The board may then deliberate in executive session.

*The board members should be the only ones present during deliberation. The superintendent, employee and their attorneys should not be present.*

7. The board should return to open session to vote on the superintendent's recommendation.

*The Open Meetings Act does not require the board to return to open session to vote on the recommendation as long as the board "issues a written decision which may be appealed to a hearing officer...which has the authority to conduct a public hearing or appeal." Ala. Code §36-25A-7(a)(9). Nevertheless, AASB believes voting in public is the best practice.*

#### *Sample Board Motion*

*I move that the board approve the superintendent's recommendation to suspend Mr. John Doe for 30 work days without pay for the reasons set out in the superintendent's written notice.*

8. While not required, the board should consider issuing written findings of fact to assist the hearing officer if the board's decision is appealed. A sample is below:

*The board could also direct the prevailing attorney to prepare the findings of fact to be signed by the board president. The findings would need to be completed in time for written notice to be issued to the employee (10 days from the date of the vote).*

*Sample Findings of Fact*

*The superintendent recommended that the board suspend John Doe for 30 work days without pay for the following reasons:*

- 1. Mr. Doe failed to submit timely lesson plans as required from August 2011 to February 2012.*
- 2. On February 5, 2012, when confronted about his repeated failure to submit timely lesson plans, Mr. Doe yelled at his principal, "You're not the boss of me! I hate you!"*
- 3. After yelling at his boss, Mr. Doe ran from the principal's office and drove away from school at a high rate of speed.*
- 4. After leaving the school without permission, Mr. Doe failed to teach his remaining classes on February 5, 2012.*

*Mr. Doe timely requested a hearing before this board and a hearing was held on \_\_\_\_\_, 20\_\_\_. Mr. Doe appeared at the hearing with his attorney \_\_\_\_\_. The superintendent was present and represented by her attorney \_\_\_\_\_. The board has considered the evidence presented to it and finds that the superintendent presented sufficient evidence of allegations 1, 3 and 4. For this reason, the board finds that the superintendent's recommendation should be APPROVED by a vote of 4 to 1.*

\_\_\_\_\_  
*Board President*

9. The superintendent issues written notice of the board's decision to the employee within 10 days. That notice can also contain the board's findings of fact. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board voted to approve my recommendation to suspend you for 30 work days without pay at its meeting on \_\_\_\_\_, 20\_\_\_. The board's findings of fact are enclosed.*

*You have the right to contest this decision by filing an appeal.*

*If you wish to do so, you must file a written "Notice of Appeal" addressed to:*

*State Superintendent of Education  
Alabama Department of Education  
501 North Ripley Street  
P.O. Box 302101  
Montgomery, AL 36104*

*That notice of appeal must be filed within 15 days of your receipt of this letter and must state the grounds upon which your appeal is based. A copy of that notice must be simultaneously provided to my office as well.*

*If you do not wish to appeal, you will serve your suspension beginning \_\_\_\_\_, 20\_\_ and return to work \_\_\_\_\_, 20\_\_. **[NOTE: Set the start date at least 17 days out to allow for notice to be received and the appeal time to expire.]** If you do wish to appeal, you will not serve your suspension unless and until the hearing officer upholds the board's decision.*

*Dr. Jane Smith  
Superintendent  
City School System*

10. If the employee does not file Notice of Appeal with the state superintendent, the employee must begin serving his suspension immediately. Submit a Hearing Costs Claim Form to the state Department of Education for reimbursement of the court reporter fees. The form is provided in the Appendix.
11. If the employee does file Notice of Appeal with the state superintendent, the state superintendent will contact the executive director of the Alabama State Bar and obtain a panel of retired Alabama judges from which the parties can select a hearing officer.
12. The panel of five potential hearing officers will be provided to the parties. The parties may agree on a hearing officer from the panel or any other source.
13. If the parties cannot agree on a hearing officer, the parties must use alternating strikes to select the hearing officer. The employee gets the first strike. The process must be completed within 10 days of the parties receiving the panel.
14. After receiving the Notice of Appeal, the superintendent must compile the hearing record, including the court reporter's transcript, documentary evidence and any notices. The record must be provided to the hearing officer within 20 days of receiving the Notice of Appeal.

*It is possible that the process of selecting the hearing officer may not be complete within 20 days through no fault of the board. If this occurs, once the superintendent receives the Notice of Appeal, the board attorney should go ahead and compile the record and be prepared to immediately provide the record to the hearing officer once he is appointed. The hearing officer can extend the time for providing the record for good cause shown.*

*Sample Letter*

*The Honorable Judge Jim Law  
123 Main Street  
City, Alabama*

*RE: The Suspension of John Doe  
from the City Board of Education*

*Dear Judge Law:*

*I represent the City Board of Education in the above-referenced matter. The Notice of Appeal in this matter was received on October 1, 2011. Pursuant to Ala. Code §16-24C-6(e), I am obligated to provide a record of the proceedings before the board to you within 20 days of the Notice of Appeal. I received notification of your appointment as hearing officer yesterday on October 31, 2011. Because more than 20 days have elapsed between the Notice of Appeal and your appointment, I was unable to comply with that provision. For that reason, I request an additional 5 days from today's date in which to provide the record to you. If this is acceptable, please contact me at (334) 555-1212 or joe.jones@citylawfirm.com.*

*Joe Jones, Esquire  
Counsel for City Board of Education*

*Sample Notice*

*In re the Suspension of  
John Doe, Tenured Teacher,  
from the City School System*

*Notice of Record*

*The City Board of Education hereby provides a record of the suspension proceedings involving Mr. John Doe. The record contains the following documents:*

- 1. Required Notices*
- 2. Transcript of Suspension Hearing*
- 3. Exhibits Introduced During Suspension Hearing*

*Done this \_\_ day of \_\_\_\_\_, 20 \_\_.*

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*Counsel for the City Board of Education*

15. The hearing officer holds a hearing. There is no provision for when this hearing must be set.

*The type of hearing is at the discretion of the hearing officer, but AASB's position is that the statute does not contemplate a full hearing but rather arguments of counsel based on the record before the board. This is evidenced by the facts that the statute refers to the action as a "review," the hearing officer is provided a transcript of the testimony taken by the board, the hearing officer is required to give the board's decision deference and the hearing officer is only permitted to affirm or reverse the board's decision. Ala. Code §16-24C-6(e).*

- 16. The hearing officer issues a written decision either affirming or reversing the board's decision within five days of the hearing.
- 17. Report the hearing officer's decision and reimbursable costs to the state Department of Education by submitting the Hearing Costs Claim Form provided in the Appendix.
- 18. If the hearing officer reverses the board's decision, the board has the right to appeal that decision to the Alabama Court of Civil Appeals by filing a "Notice of Appeal" with that court.
- 19. If the hearing officer upholds the board's decision, the employee has the right to appeal the decision to the Alabama Court of Civil Appeals. However, the superintendent should issue written notice to the employee of the dates his suspension will be served, irrespective of his decision to further appeal. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

*Sample Letter*

*Mr. John Doe*

*The board has received the hearing officer's order upholding its decision to suspend you for 30 work days without pay. In light of this decision, you must begin serving your suspension on \_\_\_\_\_, 20\_\_. You may return to work on \_\_\_\_\_, 20\_\_.*

*Dr. Jane Smith  
Superintendent  
City School System*

# Sample Hearing Script for Suspension of More Than 20 Days

## 1. INTRODUCTION

Let us come to order. I am (INSERT PRESIDENT'S NAME), president of the (INSERT BOARD'S NAME) Board of Education.

This board meeting is convened on (INSERT DATE) in the (INSERT HEARING LOCATION). The following board members are present: (INSERT BOARD MEMBERS' NAMES). For the record, a quorum is present.

The board set this meeting to consider the proposed suspension of (INSERT EMPLOYEE'S NAME). He/she may elect to have a public or private hearing. Does the employee wish this hearing to be public or private?

*If the employee wants a public hearing, skip the next paragraph.  
If the employee requests a private session, all members of the public, except those who may speak, must leave the room. Continue immediately below.*

At this time, I'll ask anyone who is not a party or witness to this proceeding to leave the room.

*The board is not required to follow the procedure for entering executive session when it sits in a quasi-judicial capacity.*

## 2. STATEMENT OF PRIOR PROCEEDINGS

The superintendent issued written notice of his/her recommendation to suspend (INSERT EMPLOYEE'S NAME) and he/she requested a hearing before this board. This hearing was scheduled and the board is prepared to proceed.

## 3. IDENTIFICATION OF ATTORNEYS

The superintendent is present and is represented by (INSERT NAME OF SUPERINTENDENT'S ATTORNEY).

(INSERT EMPLOYEE'S NAME) is present and is represented by (INSERT NAME OF EMPLOYEE'S ATTORNEY OR REPRESENTATIVE, IF APPLICABLE).

## 4. IMPARTIALITY OF BOARD

I will now ask each member of the board whether he or she is able to serve as an impartial member of this administrative tribunal and to arrive at a decision based solely upon the evidence presented at this hearing. Any member unable to act in such a manner may say so and ask to be excused.

*The president should call each board member by name and ask if he/she can be impartial in the hearing. If he/she cannot, excuse that member. No reason has to be given.*

## 5. HEARING PROCEDURE

The board will listen to all the testimony and evidence and make its decision based solely on the evidence presented to us at this hearing.

First, the superintendent's attorney will present evidence establishing the reasons for the proposed suspension. The employee's representative may then present whatever evidence he/she desires. Both sides may present witnesses and documentary evidence and may cross-examine witnesses offered by the other

side. Board members sit as a panel of judges and are to remain impartial. Board members will not be questioned by the attorneys or witnesses. As president, I will use my discretion to limit or disallow certain testimony or evidence if I deem it inappropriate.

I appoint (INSERT COURT REPORTER'S NAME), who is a notary public, to serve as court reporter and clerk, swear all witnesses and receive and label all exhibits and documentary evidence.

Do the parties understand and agree to be bound by the rules and procedures I have described?

Let the record show that both parties understand the rules and procedures that will govern this hearing and agree to proceed in compliance with those procedures.

Are there any preliminary matters which should be addressed at this time?

## 6. SWEARING ALL WITNESSES

Will all witnesses please stand? I will ask the clerk to administer the oath.

### Court Reporter

Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

## 7. INVOKING THE RULE

The parties have the option to invoke the rule, which means that no witness expected to testify can listen to the testimony of another witness. Would the attorneys like to invoke the rule?

*If yes, continue below. If no, skip to paragraph 8.*

The attorneys have asked to invoke the rule. All witnesses must leave the hearing room until it is time for their testimony. No witness may discuss his or her testimony with any other witness until this hearing is over. Thank you.

## 8. ATTORNEYS' OPENING STATEMENTS (OPTIONAL)

Does the attorney for the superintendent wish to make an opening statement?

*The superintendent's attorney stands and makes his opening statement.*

Thank you.

Does the employee's attorney wish to make an opening statement?

*The employee's attorney stands and makes his opening statement.*

Thank you.

## 9. PRESENTATION OF EVIDENCE BY SUPERINTENDENT

We will now proceed with the presentation of evidence. (INSERT NAME OF SUPERINTENDENT'S ATTORNEY), you may call your first witness.

*Superintendent's attorney presents first witness and asks all of his questions. When he says he has no further questions, the employee's attorney may ask his questions. Continue below.*

(INSERT NAME OF EMPLOYEE’S ATTORNEY), do you have any questions for this witness?

*After cross-examination, the superintendent’s attorney may redirect each witness and the employee’s attorney may recross. These questions should be limited to questions answered immediately before. Superintendent’s attorney can only redirect on issues raised during cross-examination. Employee’s attorney can only recross on issues raised during redirect, etc.*

*For example, superintendent’s attorney asks questions about the incident and the employee’s history. During cross-examination, the employee’s attorney asks questions about the incident, the employee’s history and personal bias. On redirect, the superintendent may only ask questions about the incident, the employee’s history and personal bias. He cannot ask questions about a second incident or any other subject unless the witness testified to it during cross-examination. This process has the potential to continue repeatedly, but because the subject matter is limited with each round, it should not continue indefinitely. Also, remember that you can determine if a line of questioning has gone too far. Once the attorneys indicate they have finished with a witness, continue below.*

Any further questions of this witness? May the witness be excused? Call the next witness?

*Repeat this procedure until superintendent’s attorney has called all witnesses.*

That concludes the presentation by the administration.

**10. PRESENTATION OF EVIDENCE BY EMPLOYEE**

(INSERT NAME OF EMPLOYEE’S ATTORNEY), you may call your first witness.

*Employee’s attorney presents case.*

(INSERT NAME OF SUPERINTENDENT’S ATTORNEY), do you have any questions for this witness?

*After cross-examination, the employee’s attorney may ask additional questions of each witness (called redirect), and the superintendent’s attorney may conduct additional cross-examination (called recross). These questions should be limited to questions the witness just answered. The employee’s attorney can only redirect on issues raised during cross-examination. The superintendent’s attorney can only recross on issues raised during redirect, etc. Attorneys may request permission to redirect or recross multiple times with a witness.*



*For example, the employee's attorney asks questions about the incident, the employee's history and personal bias. During cross-examination, the superintendent's attorney asks questions about the incident and personal bias. On redirect, the employee's attorney may only ask questions about the incident and personal bias. He cannot ask questions about a second incident or any other subject unless the witness testified to it during cross-examination. This cycle has the potential to continue repeatedly, but because the subject matter is limited with each round, it should not continue indefinitely. Also, remember that the board president can determine if a line of questioning has gone too far. Once the attorneys indicate they have finished with a witness, continue below.*

That concludes the presentation by the employee. Does the administration have any rebuttal evidence?

*The superintendent's attorney can only offer rebuttal evidence of testimony given during the presentation of evidence by the employee.*

If that concludes the evidence, does either side have anything further to present?

## **11. CLOSING ARGUMENTS (OPTIONAL)**

*Attorneys use closing arguments to summarize the evidence and explain why an action should or should not be taken. However, depending on the type of case, some attorneys do not want to make closing statements and some boards do not want to hear them. If the board does not want to allow closing arguments, feel free to tell the attorneys that you do not believe they are necessary. Otherwise, give the attorneys the option as below.*

Does the superintendent's attorney wish to make a brief closing statement?

*The superintendent's attorney stands and makes his closing statement.*

Thank you.

Does the employee's attorney wish to make a brief closing statement?

*The employee's attorney stands and makes his closing statement.*

Thank you.

## 12. CONCLUDING REMARKS

This board will now convene in executive session to consider what action, if any, should be taken, and enter such order as it deems lawful and appropriate. If the board feels that any or all of the reasons given by the superintendent for the proposed suspension are supported by the evidence presented and that these reasons are sufficient, it may act accordingly. If the board feels that the recommendation is not appropriate under the facts presented, it may order a lesser punishment or no punishment at all.

At this time, do I hear a motion that the board should convene in executive session to deliberate this matter? Do I hear a second? All in favor of convening in executive session, say aye.

On behalf of all members of the board, I want to thank everyone involved for their cooperation during this proceeding. This concludes the hearing. The board will convene in executive session to consider the matter and discuss the recommendation. The board will reconvene in open session to vote on the recommendation. Also, a written decision will be issued to (INSERT EMPLOYEE'S NAME) following our decision.

Thank you.

# ***PARTIAL CANCELLATIONS & REDUCTIONS IN FORCE***

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## **PROCEDURE FOR PARTIAL CANCELLATION FOR ALL EMPLOYEES**

### ***ALA. CODE §16-24C-6(H)(2)***

This section applies to partial cancellations for all employees. Reductions in pay based on the length of the work day or school year that affect a class or group of employees are not considered terminations, partial terminations or transfers under the *Students First Act* as long as:

- The action is prospective in effect (in the future);
- Is recommended by the superintendent and approved by the board; and
- Is applied to similarly situated employees within the system, departments, categories or divisions.

1. The superintendent recommends in writing that the work term or work hours of a class of employees be reduced.

#### *Sample Recommendation*

*I hereby recommend that the work term of all assistant principals be reduced systemwide from 10 months to nine months effective the 2012-2013 school year. This recommendation shall impact the following employees:*

1. *John Doe, Assistant Principal, ABC Elementary School*
2. *Joe Doe, Assistant Principal, DEF Middle School*
3. *Jim Doe, Assistant Principal, GHI High School*

2. The board moves to accept the superintendent's recommendation.

#### *Sample Board Motion*

*I move that the board approve the superintendent's recommendation to reduce the work term of all assistant principals systemwide from 10 months to nine months effective the 2012-2013 school year. This action shall apply to the employees listed in the superintendent's recommendation.*

3. The superintendent issues written notification of the board's decision to the employee. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

#### *Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board voted to approve my recommendation to reduce your work term from 10 months to nine months*

*effective the 2012-2013 school year. This action applies to all assistant principals systemwide.*

*Dr. Jane Smith  
Superintendent  
City School System*

4. The decision is final, and the employee has no further right to challenge, review or appeal.

## PROCEDURE FOR NOTIFYING EMPLOYEES OF LAYOFF CAUSED BY REDUCTION IN FORCE

### ALA. CODE §16-24C-6(H)(3)

Another of the important features of the *Students First Act* is that actions taken as a result of a reduction in force are specifically excluded from the act. This section applies to employees who will be laid off due to a reduction in force. Any such action must be taken in compliance with the board's reduction in force policy. If the board fails to properly implement its RIF policy, the employee could file an action in state court or file a charge with the EEOC.

1. The superintendent recommends in writing that the board declare a reduction in force pursuant to its local policy.

#### *Sample Recommendation*

*On February 28, 2012, Governor Robert Bentley declared 3% proration in the Education Trust Fund for FY 2012. As a result, the City School System will lose \$3.5 million in funding and our reserves will be totally depleted. Accordingly, I hereby advise that the City School System is in a state of financial emergency. For this reason, I recommend that the Board implement a reduction in force.*

2. The board declares a reduction in force.

#### *Sample Motion*

*I move that we accept the superintendent's recommendation that this board implement a reduction in force.*

3. In compliance with the board's local reduction in force policy, the superintendent then determines which classes of employees are impacted.
4. The superintendent recommends the required employee actions.

#### *Sample Recommendation*

*I hereby recommend that the board lay off three custodians. Pursuant to the board's reduction in force policy, this recommendation shall impact the following employees:*

1. *John Doe, custodian, ABC Elementary School*
2. *Joe Doe, custodian, DEF Middle School*
3. *Jim Doe, custodian, GHI High School*

5. The board moves to accept the superintendent's recommendation.

#### *Sample Board Motion*

*I move that the board approve the superintendent's recommendation to lay off 3 custodians. This action shall apply to the employees listed in the superintendent's recommendation.*

6. The superintendent issues written notification of the board's decision to the employee. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board voted to approve my recommendation to implement a reduction in force. Unfortunately, as a result of this reduction in force, you will be laid off effective \_\_\_\_\_, 20\_\_.*

*In the event the board is able to recall employees within one calendar year, you shall receive written notice of the recall pursuant to the reduction in force policy. Please make sure you update your address with the Personnel Department. Thank you for your service to the City School System.*

*Dr. Jane Smith  
Superintendent  
City School System*

7. The decision is final, and there is no further right to challenge, review or appeal.

**PROCEDURE FOR PARTIAL CANCELLATION OF TENURED  
TEACHER OR NONPROBATIONARY CLASSIFIED EMPLOYEE  
CAUSED BY REDUCTION IN FORCE**

*ALA. CODE §16-24C-6(H)(3)*

Another of the important features of the *Students First Act* is that actions taken as a result of a reduction in force are specifically excluded from the act. This section applies to employees whose hours or work term will be reduced due to a reduction in force. Any such action must be taken in compliance with the board's reduction in force policy. If the board fails to properly implement its RIF policy, the employee could file an action in state court or file a charge with the EEOC.

1. The superintendent recommends in writing that the board declare a reduction in force pursuant to its local policy.

*Sample Recommendation*

*On February 28, 2012, Governor Robert Bentley declared 3% proration in the Education Trust Fund for FY 2012. As a result, the City School System will lose \$3.5 million in funding and our reserves will be totally depleted. Accordingly, I hereby advise that the City School System is in a state of financial emergency. For this reason, I recommend that the Board implement a reduction in force.*

2. The board declares a reduction in force.

*Sample Motion*

*I move that we accept the superintendent's recommendation that this board implement a reduction in force.*

3. In compliance with the board's local reduction in force policy, the superintendent then determines which classes of employees are impacted.
4. The superintendent recommends the required employee actions.

*Sample Recommendation*

*I hereby recommend that the board reduce all 12-month curriculum specialists to 9-month curriculum specialists. Pursuant to the board's reduction in force policy, this recommendation shall impact the following employees:*

1. *John Doe, 12-month curriculum specialist, Central Office*
2. *Joe Doe, 12-month curriculum specialist, Central Office*
3. *Jim Doe, 12-month curriculum specialist, Alternative School*

5. The board moves to accept the superintendent's recommendation.

*Sample Board Motion*

*I move that the board approve the superintendent's recommendation to reduce all 12-month curriculum specialists to 9-month curriculum specialists. This action shall apply to the employees listed in the superintendent's recommendation.*

6. The superintendent issues written notification of the board's decision to the employee. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board voted to approve my recommendation to implement a reduction in force. As a result of this reduction in force, the board has further approved my recommendation to reduce all 12-month curriculum specialists to 9-month curriculum specialists, effective August 8, 2012. You are impacted by this decision and your work term and pay will be reduced accordingly.*

*In the event the board is able to increase the work term of its curriculum specialists within one calendar year, you shall receive written notice of the recall pursuant to the reduction in force policy.*

*Dr. Jane Smith  
Superintendent  
City School System*

7. The decision is final, and there is no further right to challenge, review or appeal.



**PROCEDURE FOR TRANSFER OF TENURED TEACHER OR  
NONPROBATIONARY CLASSIFIED EMPLOYEE  
CAUSED BY REDUCTION IN FORCE**

*ALA. CODE §16-24C-6(H)(3)*

Another of the important features of the *Students First Act* is that actions taken as a result of a reduction in force are specifically excluded from the act. This section applies to employees who will be transferred due to a reduction in force. Any such action must be taken in compliance with the board's reduction in force policy. If the board fails to properly implement its RIF policy, the employee could file an action in state court or file a charge with the EEOC.

1. The superintendent recommends in writing that the board declare a reduction in force pursuant to its local policy.

*Sample Recommendation*

*On February 28, 2012, Governor Robert Bentley declared 3% proration in the Education Trust Fund for FY 2012. As a result, the City School System will lose \$3.5 million in funding and our reserves will be totally depleted. Accordingly, I hereby advise that the City School System is in a state of financial emergency. For this reason, I recommend that the Board implement a reduction in force.*

2. The board declares a reduction in force.

*Sample Motion*

*I move that we accept the superintendent's recommendation that this board implement a reduction in force.*

3. In compliance with the board's local reduction in force policy, the superintendent then determines which classes of employees are impacted.
4. The superintendent recommends the required employee actions.

*Sample Recommendation*

*I hereby recommend that the board transfer all 12-month curriculum specialists at Central Office to 9-month teachers at locations to be determined. Pursuant to the board's reduction in force policy, this recommendation shall impact the following employees:*

1. *John Doe, 12-month curriculum specialist, Central Office*
2. *Joe Doe, 12-month curriculum specialist, Central Office*
3. *Jim Doe, 12-month curriculum specialist, Central Office*

5. The board moves to accept the superintendent's recommendation.

*Sample Board Motion*

*I move that the board approve the superintendent's recommendation to transfer all 12-month curriculum specialists at Central Office to 9-month teachers at locations to be determined. This action shall apply to the employees listed in the superintendent's recommendation.*

6. The superintendent issues written notification of the board's decision to the employee. The methods for issuing written notice are as follows: (a) certified mail, (b) private mail carrier for next business day delivery, (c) hand delivery to the employee, or (d) hand delivery to the employee's last known address.

*Sample Letter*

*Mr. John Doe*

*This letter is to notify you that the board voted to approve my recommendation to implement a reduction in force. As a result of this reduction in force, the board has further approved my recommendation to transfer all 12-month curriculum specialists in Central Office to 9-month teachers at a location to be determined, effective August 8, 2012. You are impacted by this decision and will be transferred accordingly.*

*In the event the board is able to recall its curriculum specialists within one calendar year, you shall receive written notice of the recall pursuant to the reduction in force policy.*

*Dr. Jane Smith  
Superintendent  
City School System*

7. The decision is final, and there is no further right to challenge, review or appeal.

# APPENDIX

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## SAMPLE Letter of Appointment

Mr. John Doe  
111 Main Street  
City, Alabama 35555

Dear Mr. Doe:

Please accept this letter of appointment as the following position:

Position: 6<sup>th</sup> Grade Teacher  
Location: DEF Middle School  
Yrs of Experience (if applicable): 2  
Pay: \$35,000.00/year  
Term of Appointment: 9 months  
Status: Probationary Teacher

Please indicate your acceptance of this appointment and the terms thereof by signing below and returning this letter to Central Office by close of business on \_\_\_\_\_, 20\_\_.

Sincerely,

Dr. Jane Smith  
Superintendent

---

By my signature below, I accept the above-referenced appointment and agree to comply with all Board and/or applicable school/worksite policies, regulations and rules.

\_\_\_\_\_  
Mr. John Doe

\_\_\_\_\_  
Date

\_\_\_\_\_  
***This letter does not constitute an employment contract.  
The position offered is subject to the provisions of the  
Students First Act of 2011  
(Ala. Code §16-24C-1 et seq.).***

**SAMPLE**  
Letter of Special Appointment

Mr. John Doe  
111 Main Street  
City, Alabama 35555

Dear Mr. Doe:

Please accept this letter of temporary appointment to the following position:

Position: Special Bus Driver  
Location: Transportation Department  
Pay: \$50.00 per day worked  
Term of Appointment: 180 work days  
Status: Not eligible for nonprobationary status

By signing this letter, you are indicating that you understand and agree to the following statements:

- This position is not considered a regular or full-time position.
- The position is temporary and you are not eligible to earn nonprobationary status.
- You cannot expect or anticipate that this route or position will be available or offered to you next school year or any school year thereafter.
- This position can be discontinued at any time.
- You will not be eligible to earn benefits or accrue leave and will only be paid for the time you actually work.
- Your specific assignment will be determined by the Director of Transportation or her designee and will be based on the needs of the district.
- You are not entitled to drive any particular route and any route assignment may be changed at any time.

Please indicate your acceptance of this appointment and the terms thereof by signing below and returning this letter to Central Office by close of business on \_\_\_\_\_, 20\_\_.

Sincerely,

Dr. Jane Smith  
Superintendent

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By my signature below, I accept the above-referenced appointment as described and agree to comply with all Board and/or applicable school/worksite policies, regulations and rules.

\_\_\_\_\_  
Mr. John Doe

\_\_\_\_\_  
Date

---

*This letter does not constitute an employment contract.  
The position is not subject to the provisions of the Students First Act of 2011 (Ala. Code §16-24C-1 et seq.).*



## HEARING COSTS CLAIM FORM

\*GUIDELINES ARE AVAILABLE AT:

[www.alsde.edu/html/sections/documents.asp?section=64&footer=sections](http://www.alsde.edu/html/sections/documents.asp?section=64&footer=sections)

SDE CASE TRACKING NUMBER \_\_\_\_\_ ( REQUIRED) (from Form TFD 1)

LEA \_\_\_\_\_

LEA ATTORNEY \_\_\_\_\_

SUPERINTENDENT \_\_\_\_\_

TEACHER/EMPLOYEE NAME \_\_\_\_\_

DATE OF HEARING BEFORE LEA BOARD \_\_\_\_\_

DATE EMPLOYEE NOTIFIED IN WRITING OF DECISION \_\_\_\_\_

DATE WRITTEN NOTICE OF APPEAL SUBMITTED TO SDE \_\_\_\_\_

DATE OF HEARING OFFICER'S REVIEW \_\_\_\_\_

DATE OF OUTCOME/RULING \_\_\_\_\_

PROVIDE A XEROX COPY OF HEARING OFFICER'S FINAL DECISION WITH FINAL CLAIM

### ITEMIZED COSTS:

COURT REPORTER (TOTAL FOR HEARING INCLUDING TRAVEL) \$ \_\_\_\_\_  
(COURT REPORTER AT HEARING BEFORE THE BOARD)

OTHER LEA COSTS: \$ \_\_\_\_\_

HEARING OFFICER COSTS:  
FEE @ \$125.00 PER HOUR FOR \_\_\_\_\_ HOURS \$ \_\_\_\_\_

TOTAL DUE LEA: \$ \_\_\_\_\_

I hereby certify that these costs are due, correct, and unpaid.

\_\_\_\_\_  
Superintendent

\_\_\_\_\_  
Date Signed

FAX FORM WITH DOCUMENTATION (including all receipts, invoices, and decision, etc.) TO:

Ms. Vera Guettler, Chief Fiscal Officer  
Administrative and Financial Services  
SDE Accounting (334) 353-7030

## ABOUT AASB

The Alabama Association of School Boards' mission is to develop excellent school board leaders through quality training, advocacy and services. Alabama's school board interests are represented nationally through AASB's participation in the National School Boards Association ([www.NSBA.org](http://www.NSBA.org)). Since 1949, AASB has served education leaders and promoted responsible local-level decision making in public education. By pooling resources, AASB members receive a wide range of valuable, cost-effective benefits, including:

### Training

#### School Board Member Academy

- Features eight core leadership courses: Roles & Responsibilities Orientation; Effective Boards & Relationships Orientation; Financial Accountability; Developing a Highly Effective Staff; Academic Achievement; Creating the Optimal Learning Environment; Policy & Planning; and Community Engagement
- Hours earned ultimately lead to the Master School Board Member designation
- Training for full boards, including: Data First for Governance, Persogenics for School Boards (communication styles), Conflict Resolution, Board Self-Evaluation and Strategic Planning

*AASB also offers customizable training for a fee and workshops that are free with membership.*

### Advocacy

- Governmental Relations
  - Lobbying & strategic relationships
  - *Advocate for Schools* newsletter
  - Action alerts, issue briefs & white papers
  - Monitor actions of the state Board of Education
  - Collaborate on key education issues
- Congressional Contacts
- Leader to Leader

### Services

- Alabama Risk Management for Schools (ARMS)
- *Policy Pipeline* updates & policy review
- Legal Assistance Fund (LAF)
- CSFO|Finder and SUPERINTENDENT|Finder
- Medicaid Administrative Claiming (MAC) & Direct Bill
- Research & data
- Print/electronic publications and news sources

For more information, call 334/277-9700 or 800/562-0601 (in-state), email us at [info@AlabamaSchoolBoards.org](mailto:info@AlabamaSchoolBoards.org) or visit [www.AlabamaSchoolBoards.org](http://www.AlabamaSchoolBoards.org).

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