



ALABAMA

ASSOCIATION OF

SCHOOL BOARDS

Personnel & Other Legal Issues

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What we'll talk about today

- Students First Act
- Teacher Accountability Act
- Discrimination
- Nepotism
- Grievances
- Immunity

Students First Act

AASB BOARDMANSHIP SERIES

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

GUIDELINES FOR IMPLEMENTING THE STUDENTS FIRST ACT

SECOND EDITION
2016



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Services :: Publications

A benefit of AASB membership, free electronic and print publications provide pertinent information to school boards.

These include the association's quarterly flagship periodical, *Alabama School Boards Magazine*, as well as these other informative publications.

- Advocate for Schools
- For Your Information
- Court Report
- AASB Network Newsletter
- Boardmanship Basics Booklets
- Alabama School Board News Blog (on al.com)
- AASB Library
- School System Snapshots
- NEW! In Case You Missed It: Archived e-Blasts
- NEW! Campaign FAQs



Training :: Boardmanship Basics

Media Download

- [Guidelines for Implementing Students First Act 2nd Edition \(2016\)](#) (3012 KB)
- [Legal Requirements for Raising and Renewing Property Taxes 4th Edition \(2017\)](#) (642 KB)
- [Probationary and Contract Principals 3rd Edition \(2017\)](#) (590 KB)
- [Public Meetings and Public Records 5th Edition \(2017\)](#) (551 KB)
- [School Boards and Superintendents - Roles & Responsibilities \(2017\)](#) (785 KB)
- [Securing Financial Support for Local Schools \(2007\)](#) (654 KB)
- [Selecting a Superintendent 3rd Edition \(2007\)](#) (405 KB)
- [The School Board President's Handbook 3rd Edition \(2007\)](#) (809 KB)

Who's Covered?

- Teachers
- Classified employees

Who's considered a teacher?

- Any employee required to have certificate for job
- Classroom instructors
- Librarians & counselors
- Assistant Principals
- School-based and Central Office Administrators
- Tenured principals

NOTE: Tenured supervisors are now “tenured teachers”

Who's considered a classified employee?

- Bus Drivers
- Bookkeepers
- Admin. Assistants
- School Secretaries
- Mechanics
- IT Professionals
- Payroll staff
- Nurses
- Paraprofessionals
- Cafeteria Workers
- Custodians
- Adjunct Instructors
- Supervisors
(non-certificated)

Who's Not Covered?

- Superintendents
 - Either elected or covered by contract
- CSFOs
 - School Fiscal Accountability Act
- Probationary & Contract Principals
 - Teacher Accountability Act

Who's Not Covered?

- Coaches & other supplemental positions
- Any employee working less than 20 hours per week
- Substitute employees
- Contract employees or temporary employees
- Employees funded by grant or other finite funding
 - Watch out for Pre-K! Not a local grant so likely tenurable!

How do you gain protection?

Teachers earn
Tenure

Classified employees earn
Nonprobationary status

- 3 complete, consecutive years
- Complete year
 - Hired effective October 1



Practice Pointer

- **Avoid contracts!**
 - Creates a due process right beyond SFA
 - Due process = Notice & Opportunity to be heard beyond Students First Act

❖ **Use letters of appointment**

Sample Letter of Appointment

Dear Mr. Doe:

Please accept this letter of appointment for the following position:

Position: 6th Grade Teacher
Location: DEF Middle School
Years of Exp.: 2
Pay: \$35,000.00/year
Term of Appointment: 9 months
Status: Probationary Teacher

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.

John Doe, Employee

***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.)***

*This letter does not constitute an employment contract.
The position offered is subject to the provisions of the Students First Act of 2011.*

Termination of Probationary Teachers

- During the year
 - Supt. gives 30 days' notice of recommendation
 - **Do not give reasons!**
 - Teacher can give written statement to board
 - Teacher cannot otherwise address the board
 - Board votes during open meeting
 - Pay ends

Termination of Probationary Teachers

- End of the year (Nonrenewal)
 - Recommendation and vote
 - **Do not give reasons!**
 - In years 1 & 2
 - Notice by June 15
 - June 30 in quadrennium (2015, 2019, 2023, etc.)
- In year 3
 - Notice by last day of school for teachers

Termination of Probationary Classified Employees

- Single process for termination/nonrenewal
 - Recommendation & vote
 - **Do not give reasons!**
 - Annual nonrenewal not required
 - Can be done anytime
 - Prior to June 15 of 3rd consecutive year
 - June 30 in quadrennium (2015, 2019, 2023, etc.)
- 15 days' notice (pay)

Practice Pointer



- Why shouldn't we give reasons?
 - U.S. Constitution – Right to good name (liberty)
 - Govt. can't take away your good name without providing **name clearing hearing**
 - Publicizing stigmatizing reasons at separation triggers right to name clearing hearing
 - placing letter in personnel file with reasons
 - telling media
 - discussing during open board meeting

Practice Pointer

- What's a stigmatizing reason?
 - something that could hurt chance to get another job
 - Being let go for stealing or lying is stigmatizing
 - Being let go for budget reasons or attendance issues is not
- Don't want principals and superintendents trying to figure out the difference

Practice Pointer

- Should we have a reason?
 - Generally, yes
 - Required to have a reason if EEOC charge is filed
 - **Keep record of wrongdoing in confidential file**
 - Reprimands
 - Investigative documents
 - Report to state superintendent

Practice Pointer

- What if the employee wants to know the reason?
 - No. Do not disclose the reason to an employee.
 - Script for principals, supervisors and superintendent
 - “I’m sorry. We have a longstanding **practice** to not disclose reasons unless the law requires it. We wish you the best.”

Termination of Tenured/ Nonprobationary Employees

- Written letter from supt. to employee
 - **Statutory Grounds**
 - Incompetency, Insubordination, Neglect of duty, other good and just cause, etc.
 - **Factual reasons**
 - “On October 15, 2019, you yelled at your principal.”
 - **Procedure to challenge**

Termination of Tenured/ Nonprobationary Employees

- Employee requests hearing
- Full Board hearing
- Board vote
- Right to contest to retired Alabama judge
 - Hearing
 - **Not a full hearing**
 - Written Decision
- Right to appeal to Court of Civil Appeals by either side

Termination of Tenured/ Nonprobationary Employees

- Deference
 - Hearing officer must give deference to board's decision
 - CCA and Supreme Court: "extreme deference"
- Severance
 - Pay continues
 - 75 days from board's vote OR
 - Hearing officer decision, whichever is first
 - ❖ No severance if reasons involve immorality, abandonment, neglect of duty, or incarceration

Reassignments & Transfers

QUICK REFERENCE CHART FOR REASSIGNMENTS & TRANSFERS†

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

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

Most Important Points

- Generally sufficient to move based on district needs
- Reassignments do not require board approval; transfers do
- Teachers can only be reassigned or transferred once a year up to 20th day for students unless Act of God
- Teachers transferred with same pay: board conference
- Classified employees outside feeder pattern: full hearing
- Any employee transferred with less pay: full hearing

Suspension of Employees

- Covers ALL employees
 - Probationary & nonprobationary
 - Teachers & classified employees
- Suspensions
 - Board approval required

Suspension of Employees

- 20 days or less
 - Notice
 - Conference with board
 - Recommendation & vote
 - Effective immediately
 - No right to contest
- More than 20 days
 - Same as termination

Practice Pointer

- Superintendent/supervisor decides when and how suspension is served
 - Immediately and all at once
 - 1 day a week or month until satisfied
 - Delay until best for district

Practice Pointer

- Don't confuse with suspension with paid administrative leave
 - No reasons required
 - No board approval required
 - Full pay and benefits continues
 - No minimum or maximum duration
- Elements of the letter
 - No entry onto board property without express permission
 - Remain available during regular working hours if needed

Practice Pointer

- Always attempt voluntary agreement
- For terminations
 - “If you resign today, I will make it effective in 3 months”
 - Board must accept it right away or can be rescinded
 - 1 hour’s notice for resignations
- For suspensions
 - “If you don’t agree to 5 days, I’ll ask the board for 10.”
- Saves prep time, attorneys fees, board hearing time, witnesses and provides finality

Other Important Notes

- No decision based on personal, political or other discriminatory reason
- No bias, investigation or deliberation outside of hearing
- Individual board members have responsibility to protect process and/or recuse
- Board has option to approve, reject or reduce punishment
 - Board cannot increase punishment



Teacher Accountability Act

Types of Principals

- Students First Act
 - Tenured principals
 - Principals hired before July 1, 2000 who chose to keep their tenure as principals
 - Now considered “tenured teachers”
- Teacher Accountability Act
 - Principals hired after July 1, 2000
 - Probationary principals
 - Contract principals

Quick Reference Chart for Contracts

	Probationary Principals	Contract Principals	Notes
Who?	First time principal in your district	Any person who has previously been a principal in your district	
Length of Contract	up to 1 year maximum – if person has previously been a principal in another Alabama public school system	At least 3 years	-Be mindful of non-standard start dates -Take advantage of “up to” and “at least” terms to make contracts standard
	up to 2 years – if person has never been a principal anywhere		1 year contracts cannot be extended at end of the year

Quick Reference Chart for Nonrenewals

	Probationary Principals	Contract Principals	Notes
Initiation of Nonrenewal	Written recommendation from supt. to board		*Consider name-clearing hearing for contract principals if reason is stigmatizing
	No pre or simultaneous notice to principal*		
Timing of Nonrenewal	Notice of nonrenewal by end of contract (usually June 30)	Notice of nonrenewal 90 days before end of contract (usually March 30)	Be mindful of contracts that have non-standard start and end dates
Reasons for Nonrenewal	Any reason	Must have a reason	
	Without a stated reason	No limit on what the reason must be	
	Cannot be personal, political or otherwise discriminatory		

What if there is no nonrenewal?

- For probationary principals
 - They automatically become contract principals
 - Minimum 3 year contract
- For contract principals
 - They remain contract principals
 - Minimum 3 year contract

Practice Pointer

- **If prior tenure, right to return to “similar status”**
 - Applies to nonrenewals and terminations
 - “Similar status” refers to tenure status; not prestige
 - Pay is wherever employee falls on the salary schedule
 - previous pay/contract pay are irrelevant



Discrimination Issues



Discrimination

- Title VII of the Civil Rights Act of 1964
- Equal Employment Opportunity Commission
- Race
- Color
- Religion
- Sex
- National origin
- Age
- Disability
- Genetic information

Discrimination

- Applies to
 - Job applicants
 - Employees
- Hiring
- Firing
- Discipline
- Promotions
- Training
- Wages & benefits

Discrimination

- Types of prohibited conduct
 - Discrimination
 - Unlawful to refuse to hire, fire or treat differently in compensation or work conditions based on protected classification
 - Harassment
 - Retaliation
 - Unlawful to take an adverse employment action because a person engaged in protected activity

Discrimination

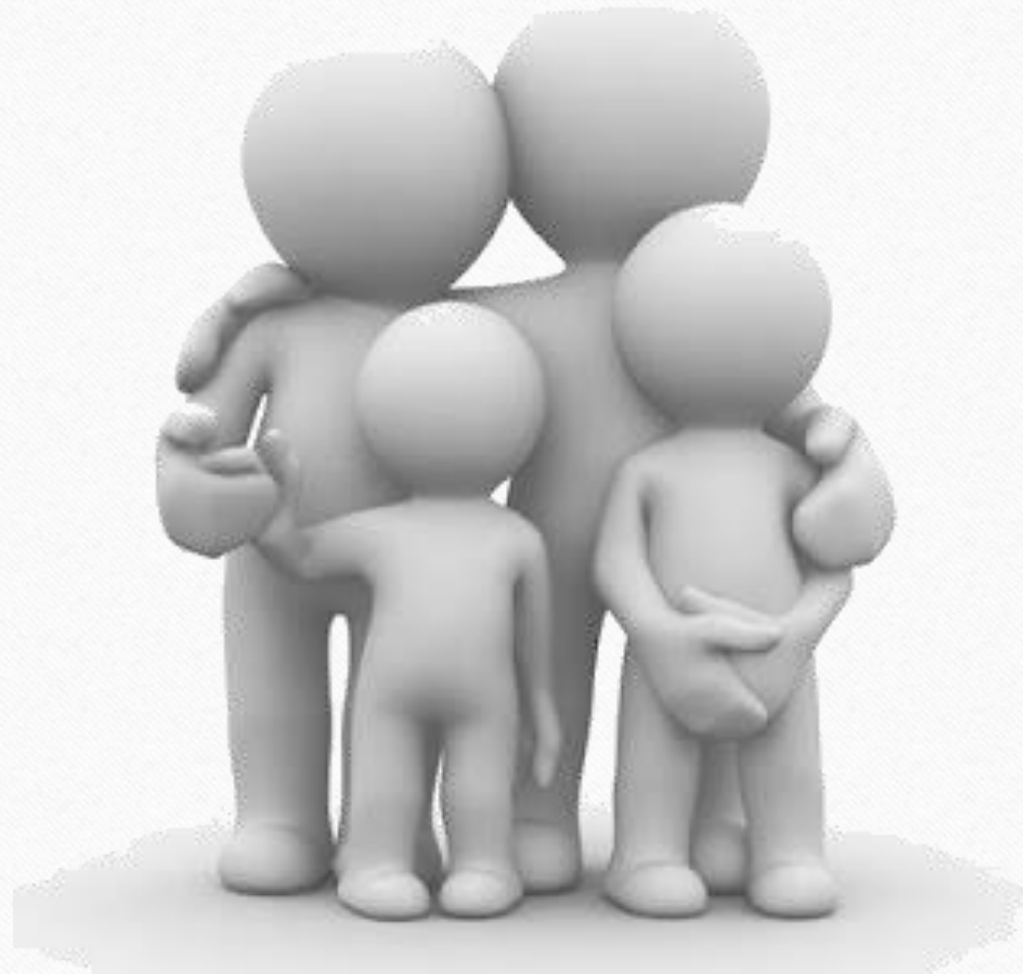
- Defense
 - Legitimate, nondiscriminatory reason for decision
 - Can be objective or subjective reason
 - Examples
 - Objective: He had a *Master's* degree and she didn't.
 - Subjective: She had a better interview than he did.

Discrimination

- How does discrimination look?
 - “This community is not ready for a black or a female superintendent.”
 - “The high school already has a white principal. We really need a black AP.”
 - “The elementary school has a large Hispanic population. We really need to hire more Hispanic teachers.”
 - “We need someone who plans to stay several years.”
 - “We need someone who can fit in at the local church.”



Nepotism Law



Nepotism

- Governs employment of relatives by school board
- Board member/superintendent/supervisor cannot have any involvement in hiring or supervision of relative
- Special rules for local boards of education

Who's Covered?

- Spouse
- Dependent
 - provide 51% of support no matter age or residence
- Adult child and his spouse
- Parent
- Spouse's parent
- Sibling and spouse

What's Prohibited?

- No person can apply or be hired into position where his relative would be his immediate supervisor
 - Examples
 - Applicant seeks to be hired as Special Ed Director where sister is superintendent
 - Teacher seeks to be hired at school where brother is principal

What's Permitted?

- Person can apply and be hired into a position in the relative's chain of command
 - Examples
 - Superintendent's sister is math teacher at middle school
 - Applicant seeks to be hired as Special Ed Coordinator where sister is superintendent, but she reports to Director of Special Ed
 - Librarian seeks to be hired at school where brother is principal, but all librarians report to Central Office Supervisor

Hiring Process for Superintendent's Relative

- Relative applies for advertised vacancy
- Superintendent submits application to board president and takes no further action
- Board president selects **impartial person** to conduct interviews and make recommendation
- Impartial person issues written report to board
- Board considers written recommendation and makes decision without input from superintendent

Who is an Impartial Person?

- Does not answer to superintendent
- Beware
 - supervisory work relationships with any interested person
 - family relationships or personal or financial connections
 - appropriate training and experience
- Examples
 - Superintendent/administrator in neighboring district
 - Local college president

Hiring Process for Board Member's Relative

- Relative applies for advertised vacancy
- Board member recuses herself/himself from discussion, debate, consideration, or vote
- Satisfies both nepotism law and ethics law

Other Employment Decisions

- A person may not evaluate, decide compensation, or set employment terms for a subordinate relative
- Recommendations to superintendent affecting superintendent's relative (e.g. promotion, discipline, compensation) must be either
 - ❖ Delegated to 3rd party, e.g. HR Director, CSFO, Principal, etc.; or
 - ❖ Referred to board president for appointment of impartial person

Hiring Process for Supervisor's Relative

- Relative applies for advertised vacancy
- Principal/supervisor cannot participate in hiring process
- Superintendent assigns another administrator who does not report to disqualified administrator

What about current employees?

- Is there a grandfather clause that covers current family member employees?
 - No.
 - Board has options
 - Employee can agree to transfer or resign/retire
 - Board can terminate based on violation of nepotism law

Civil Penalties

- If a relative of superintendent, board member, or principal/supervisor is hired in violation of the law's hiring process provisions:
 - any other applicant may bring action in circuit court within 21 days
 - court shall nullify the relative's hire and order new hiring process if violation is found
 - initially hired relative will be ineligible

Criminal & Other Penalties

- Violation of the nepotism law is a misdemeanor
 - Fine up to \$500
 - Imprisonment up to one year
- Willful violations can lead to termination



Grievance Policies



Grievance Policies

- Complaint Procedures
 - ❖ Employees
 - ❖ Students
 - ❖ Parents
 - ❖ Community stakeholders
- Types of complaints
- Lowest level of responsibility
 - ❖ e.g. principal to superintendent to board

Grievance Policies

Policy Pitfalls

- Set out things that are NOT proper grievances
 - Items covered by law or other policy
 - Students First Act/Teacher Accountability Act
 - Student discipline matters
- Don't guarantee hearings before the board
- ❖ Be mindful of limits to board authority
 - Grievance policy & procedure does not negate state law





Immunity

Immunity

- Absolute immunity (sovereign immunity/constitutional immunity)
 - State entities
 - Includes local boards of education
 - State officers (Official capacity claims only)
 - Includes members of local boards of education and superintendents

Immunity

- Exceptions to Absolute Immunity
 - Compel officials to perform their legal duties
 - Enjoin officials from enforcing an unconstitutional law
 - Compel officials to perform ministerial acts
 - Actions brought under the Declaratory Judgments Act seeking construction of a statute and its application in a given situation

Immunity

- State-agent immunity (discretionary function immunity)
- Applies to individual capacity claims
- Now codified at Ala. Code §36-1-12 (Act 2014-124)

Immunity

Duties which trigger immunity for individuals

- Formulating plans, policies or design
- Exercising his judgment
 - Making administrative adjudications
 - Allocating resources and negotiating contracts
 - Hiring, firing, transferring, assigning or supervising personnel

Immunity

Duties which trigger immunity for individuals (cont'd.)

- Discharging duties imposed by law
- Exercising judgment in the discharge of duties imposed by statute, rule or regulation in ... educating students

Immunity

- No immunity if agent or employee has acted
 - fraudulently
 - in bad faith
 - beyond their authority
 - in a mistaken interpretation of law
- ❖ No immunity if agent had no discretion
 - Be careful of overly detailed policies, checklists, etc.

Alabama Trust for Boards of Education

- Not insurer or insurance company
- Self-insured risk management trust
- Member owned, member governed, tax exempt, not for profit trust
- Provides coverage to boards, board members and superintendents (in official capacity only)
 - General Liability/Errors & Omissions Liability Fund (GL/EO)
 - Automobile Fund

Alabama Trust for Boards of Education

- Names to know
 - Dr. Dwight Hester, PhD, JD
 - Lucy Hester Sellers, JD



Thank you for listening!



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