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SERIES

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

**GUIDELINES FOR IMPLEMENTING
THE STUDENTS FIRST ACT**

THIRD EDITION
2020



ALABAMA
ASSOCIATION OF
SCHOOL BOARDS

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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†**Sample script included.**

QUICK REFERENCE CHART FOR NONRENEWALS, TERMINATIONS, LAYOFFS & SUSPENSIONS

Action	Employee	Reason to Employee	Timing	Advance Notice	Rights Before Board	Review/ Appeal	Ala. Code §16-24C-	Notes
Nonrenewal	Probationary Teacher	None [†]	End of year	No	None	No	5(c)	Notice by June 15 (or 30 in quadrennium year) in year 1 or 2; Notice by last day of school for teachers in year 3
Nonrenewal	Probationary Classified	None [†]	End of year ^{††}	No	None	No	5(a)	Notice by June 15 (or 30 in quadrennium year) of year 3; Pay continues for 15 days; Not required each school year
Termination	Probationary Teacher	None [†]	Anytime	Yes	Written statement	No	5(c)	30 days' notice before board vote
Termination	Probationary Classified	None [†]	Anytime	No	None	No	5(a)	Pay continues for 15 days after board vote
Termination	Tenured Teacher	Statutory grounds ^{†††}	Anytime	Yes	Full hearing	Yes	6	Pay cut off 75 calendar days after board vote or upon hearing officer decision, whichever first ^{††††}
Termination	Nonprobationary Classified	Statutory grounds ^{†††}	Anytime	Yes	Full hearing	Yes	6	Pay cut off 75 calendar days after board vote or upon hearing officer decision, whichever first ^{††††}
Termination	Tenured Teacher	Criminal conviction	Anytime	No	None	No	10(a)	If conviction overturned, teacher must be reinstated or placed on leave with back pay
Termination	Tenured Teacher	Loss of certificate	Anytime	No	None	No	10(d)	
Pay/term reduction	All Employees	Any	Prospective	No	None	No	6(h)(2)	Must apply to category, class, division, etc. of employees
Layoff (RIF)	Tenured Teacher/ Nonprobationary Classified	Statutory grounds ^{†††††}	Anytime	No	None	No	6(h)(3)	Be sure to comply with local RIF policy
Suspension 20 days or less	All Employees	Any	Anytime	Yes	Written statement or conference	No	6(i)	Suspension days refers to work days
Suspension more than 20 days	All Employees	Statutory grounds	Anytime	Yes	Full hearing	Yes	6(i)	Suspension days refers to work days

[†] 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.

^{††} There is no requirement to annually nonrenew probationary classified employees. They can be terminated at any point prior to the end of their third year of employment.

^{†††} 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.

^{††††} 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.

^{†††††} Grounds for declaring a reduction in force are a shortage of revenues or decreased student enrollment.

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.

STUDENTS FIRST ACT: THE BASICS

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 classroom 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). This also includes other certificated employees, such as librarians, counselors, reading coaches and central office supervisors, such as assistant superintendents and department heads that are required to hold a professional educator’s certificate for their position.

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

“Classified employee” refers to any employee who is not required by law or board policy to hold a professional educator’s certificate, including:

- 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; and
- Any other employee who is not a “teacher” but is employed full time by a board of education.

These employees are considered classified employees even if they hold a professional educator’s certificate. An employee is “full time” if he works 20 or more hours in a normal work week. Ala. Code §16-24C-3(2).

WHO IS NOT COVERED BY THE STUDENTS FIRST ACT?

Superintendents, contract/probationary 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 contracts or 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 (less than 20 hours per week), 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 school for teachers 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).

LOSS OF TENURE STATUS

If an employee earns tenure or nonprobationary status and subsequently leaves the district for any reason, including resignation or termination, that status is lost. If the employee is subsequently rehired by the same district, the employee will return as a probationary employee and be employed for three complete, consecutive school years to regain protected status.

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). Such leave is granted pursuant to the local board’s policies and discretion.

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 or termination 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).

WHAT IS THE HIGH SCHOOL FEEDER PATTERN?

Some transfer provisions of the Act rely upon the high school feeder pattern. Transfers made outside the high school feeder pattern require more due process depending on the type of employee. For districts with more than one high school, any elementary, junior or middle school that feeds into a particular high school are within the same feeder pattern. A transfer that will move the employee outside of that group of schools will be outside the feeder pattern. For districts with only one high school, there is only one feeder pattern.

PRACTICE POINTERS

USE OF ADMINISTRATIVE LEAVE

The *Students First Act* codifies the superintendent's authority to place an employee on paid administrative leave. *Ala. Code* §16-24C-9. This action is taken solely at the superintendent's discretion. It does not require board approval and there is no maximum or minimum duration of the leave. A sample letter is provided in the Appendix.

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 under the Constitution 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.

PUBLICATION OF REASONS

When employees are disciplined, the board must be careful about disclosing the reasons for that discipline. While employee discipline is considered public information, this information does not become public until the employee has had an opportunity to have a name-clearing hearing, such as a termination hearing, and/or the board has voted on the superintendent's discipline recommendation. This prohibition covers all methods of publication including verbal comments, placing letters in an employee's personnel file or responding to public records requests. Consult your local counsel before publicizing the reason for any employee discipline.

COUNTING DAYS UNDER THE ACT

The *Students First Act* specifies certain actions which must be taken within a specified number of days. It is important to realize that counting days is not as simple as it may first appear. Days are counted pursuant to the *Alabama Rules of Civil Procedure*. ARCP 6(a) states that when counting a date, the day of the action is not counted, but the last day of the period is counted unless it falls on a weekend or legal holiday. Also, weekends and holidays are not counted when the period is less than 11 days. Because of these sometimes confusing rules, it is important to work closely with your local counsel when calculating the days prescribed under this law.

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.

HEARING OFFICERS AND 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 and pay the hearing officer for his time. The board will be reimbursed for both the court reporter's fees and the cost of the hearing officer by the State Department of Education. (Attorneys' fees are not reimbursable.) The board will have to file a Report of Contested Personnel Action and Hearing Costs Claim Form with the Department. The forms are provided in the Appendix. *Ala. Code* §16-24C-6(l). They can also be found by visiting www.alsde.edu, and clicking Department Offices/Office of Financial Management/SDE Accounting/SFA Forms.

RIGHT TO REVIEW

Several sections of this booklet state that there is no employee right to review certain decisions, including nonrenewals, some terminations and some transfers. This means that there is no right to further review under the *Students First Act*, but any employee can challenge a board decision by filing an EEOC charge or a petition for review in the local circuit court.

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 perceived or actual 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 that may lead to their termination. 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; or
- 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." As examples, 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 counsel regarding whether the underlying act may constitute moral turpitude.

RESIGNATIONS

No teacher (including all positions under the "teacher" umbrella) 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 30 days' notice. Any teacher violating this provision may be subject to certificate suspension or revocation for unprofessional conduct. *Ala. Code §16-24C-11*, as amended by Act 2018-83.

Also, remember that resignations are not effective until accepted by the board. This can be done with one hour's notice under the Open Meetings Act. *Ala. Code §36-25A-3(b)*. Until the board has acted on an employee's written notice of resignation, the employee can rescind the notice.

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 may decide to hold a hearing before determining whether the board wrongfully denied the employee a hearing. *Ala. Code §16-24C-12*.

NONRENEWALS & TERMINATIONS

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*

The board need not and should not provide a reason to the teacher for his termination, 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 termination 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 termination, and the board will need to produce one.

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. This can be an individual recommendation or can be part of the Personnel Action Report.

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.

If a teacher is not nonrenewed as provided, he is deemed reemployed for the next school year.

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. 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 is no requirement that classified employees be nonrenewed at the same time as teachers unless they are in their third year of employment. For third year employees, 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 also 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 [the last day the employee will actually work].

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 [the last day the employee will actually work].

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 [the last day the employee will actually work].

*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 addresses the termination of tenured teachers and nonprobationary classified employees. The statutory 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).

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.

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 2016 to February 2017.*
2. *On February 5, 2017, 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!" or words to that effect.*
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, 2017.*

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 calendar 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 for the reasons provided in the notice letter.

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 reasons provided in the notice letter.

3. **NO HEARING REQUESTED:** The superintendent should then issue the employee written notice of the board's decision within 10 calendar days of the board's vote. *Ala. Code §16-24C-6(d).* The decision is final and pay is cut off 75 calendar 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**. [Therefore, if the superintendent is not prepared to immediately move forward with the termination hearing, this letter should be held so that it is sent within the 30-60 day window.] 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. A court reporter will be provided.

*Additionally, the following information should be received in my office no later than Friday, _____, 20__ at 4:00 PM **[NOTE: 14 days before scheduled hearing suggested]**:*

- *Any request for subpoenas*
- *A list of the witnesses you plan to call*
- *A copy of the exhibits you plan to use*

A list of the superintendent's anticipated witnesses and a copy of anticipated exhibits will be sent to you on or before the same date. The goal of these deadlines is to promote fairness and efficiency. The Board may prohibit the testimony of witnesses or introduction of evidence if you fail to comply with these deadlines.

*Dr. Jane Smith
Superintendent
City School System*

5. Ensure that a court reporter is hired for the hearing. Also, submit a Report of Contested Personnel Action 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.

Sample Board Motion

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

8. The superintendent issues written notice of the board's decision to the employee within 10 days of the board's vote. *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__.

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
50 North Ripley Street*

P.O. Box 302101 (36130-2101)
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 calendar 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 calendar 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*

9. If the employee does not file Notice of Appeal with the state superintendent, the employee's pay and benefits must continue for 75 calendar 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).
10. 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)*.
11. If Notice of Appeal is filed, submit the Report of Contested Personnel Action to the State Department of Education. (See Appendix).
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, 2016. 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, 2016. 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 hearing before the hearing officer should not involve new witnesses or evidence. Rather, the hearing should rely on the 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 calendar 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 within 42 days from the hearing officer’s decision. Otherwise, the employee must be reinstated and provided back pay and benefits, if the pay was cut off after 75 calendar 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 within 42 days from the hearing officer’s decision.

SAMPLE HEARING SCRIPT FOR TERMINATION OF TENURED TEACHERS/NONPROBATIONARY CLASSIFIED EMPLOYEES

When it holds a termination hearing, the board has the option to (1) convene in open meeting noticed pursuant to the Open Meetings Act and then (a) hold the hearing in public if the employee wants the hearing open or (b) enter executive session for the hearing if the employee wants the hearing closed; or (2) simply convene for the hearing without providing public notice. The hearing can still be open or closed at the employee's option.

1. INTRODUCTION

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

This hearing 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 hearing 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 testify, 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.

2. STATEMENT OF 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, but Board members have the right to ask questions of any party or witness. As an administrative body, we are not subject to the rules of evidence. We will hear the evidence which will assist us in making a fair decision. 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. DELIBERATION

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.

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.

Board enters executive session to deliberate its decision, then returns to open session to vote in public (or in presence of parties if no meeting called).

13. DECISION

We have completed our deliberation and are now prepared to vote. Will the superintendent make his/her recommendation? Can I have a motion? Do I have a second? All in favor of upholding the superintendent's recommendation, please say aye. All opposed?

On behalf of all members of the board, I want to thank everyone involved for their cooperation during this proceeding. This concludes the hearing.

**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 2016 to February 2017.*

2. *On February 5, 2017, 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, 2017.*
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 calendar 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 for the reasons provided in the notice letter.

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 reasons provided in the notice letter.

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*

21. **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**. [Therefore, if the superintendent is not prepared to immediately move forward with the termination hearing, this letter should be held so that it is sent within the 30-60 day window.] 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. A court reporter will be provided.

*Additionally, the following information should be received in my office no later than Friday, _____, 20__ at 4:00 PM **[NOTE: 14 days before scheduled hearing suggested]**:*

- *Any request for subpoenas*
- *A list of the witnesses you plan to call*
- *A copy of the exhibits you plan to use*

A list of the superintendent's anticipated witnesses and a copy of anticipated exhibits will be sent to you on or before the same date. The goal of these deadlines is to promote fairness and efficiency. The Board may prohibit the testimony of witnesses or introduction of evidence if you fail to comply with these deadlines.

*Dr. Jane Smith
Superintendent
City School System*

4. Ensure that a court reporter is hired for the hearing. Also, submit a Report of Contested Personnel Action to the State Department of Education. The form is provided in the Appendix.
5. 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.

6. The board should return to open session to vote on 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.

7. The superintendent issues written notice of the board's decision to the employee within 10 days. 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__.
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
50 North Ripley Street
P.O. Box 302101 (36130-2101)
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*

8. 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.
9. 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)*.
10. 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.
11. 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.
12. 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, 2016. 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, 2016. 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

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

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).

14. The hearing officer issues a written decision either affirming or reversing the board’s decision within five days of the hearing.
15. 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.
16. 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 within 42 days from the hearing officer’s decision. Otherwise, the employee must be reinstated and provided back pay and benefits.
17. 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 within 42 days from the hearing officer’s decision.

SAMPLE HEARING SCRIPT FOR TERMINATION OF TENURED TEACHERS/NONPROBATIONARY CLASSIFIED EMPLOYEES IMMEDIATE CUT OFF OF PAY

When it holds a termination hearing, the board has the option to (1) convene in open meeting noticed pursuant to the Open Meetings Act and then (a) hold the hearing in public if the employee wants the hearing open or (b) enter executive session for the hearing if the employee wants the hearing closed; or (2) simply convene for the hearing without providing public notice. The hearing can still be open or closed at the employee's option.

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 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 an administrative body, we are not subject to the rules of evidence. We will hear the evidence which will assist us in making a fair decision. 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. DELIBERATION

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.

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.

Board enters executive session to deliberate its decision, then returns to open session to vote in public (or in presence of parties if no meeting called).

13. DECISION

We have completed our deliberation and are now prepared to vote. Will the superintendent make his/her recommendation? Can I have a motion? Do I have a second? All in favor of upholding the superintendent's recommendation, please say aye. All opposed?

On behalf of all members of the board, I want to thank everyone involved for their cooperation during this proceeding. This concludes the hearing.

REASSIGNMENTS & TRANSFERS

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. There is no limitation on when the reassignment can take place during the school year. 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 10th grade teacher at GHI High School to a 12th 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 20th 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 10th grade teacher at GHI High School to a 12th 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. There is no limitation on when the reassignment can take place during the school year.

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. There is no limitation on when the reassignment can happen during the school year.

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. There is no limitation on when the reassignment can happen during the school year.

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, the procedure applicable to teacher transfers either inside or outside the feeder pattern requires the same procedure. This view has been upheld by circuit courts and the Chief Administrative Law Judge on multiple occasions. Additionally, 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 20th 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 Act 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 local counsel.

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 10th grade teacher at GHI High School to an 8th 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. [NOTE: Provide sufficient notice here. 7-10 days should be a minimum.] 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 10th grade teacher at GHI High School be transferred to an 8th 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 10th grade teacher at GHI High School to an 8th grade teacher at DEF Middle School 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 10th grade teacher at GHI High

School to an 8th 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 requests 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 10th grade teacher at GHI High School, be transferred to an 8th 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 10th grade teacher at GHI High School to an 8th grade teacher at DEF Middle School 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 10th grade teacher at GHI High School to an 8th 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

1. INTRODUCTION

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.

2. STATEMENT OF PROCEEDINGS

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.

3. 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 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.

4. HEARING PROCEDURE

The matter before us is a serious and important matter. However, it is not a full adversarial hearing involving cross-examination of witnesses.

IF THE SUPERINTENDENT PROVIDED REASONS: Under the procedure to be followed, the superintendent or his/her designee will explain the reasons for his/her proposal to transfer (INSERT EMPLOYEE'S NAME) and may submit any information he/she wishes. 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.

IF THE SUPERINTENDENT DID NOT PROVIDE REASONS: Under the procedure to be followed, the employee 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. There will be no cross-examination of the superintendent or his/her designee, although the members of the board may choose to ask questions of either party.

5. PRESENTATION OF REASONS

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

IF THE SUPERINTENDENT PROVIDED REASONS: I will now ask the superintendent or his/her designee to provide any evidence or information 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.

IF THE SUPERINTENDENT DID NOT PROVIDE REASONS: (INSERT EMPLOYEE'S NAME), 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)?

6. DELIBERATION

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 the proposed transfer is appropriate, 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.

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.

Board enters executive session to deliberate its decision, then returns to open session to vote in public (or in presence of parties if no meeting called).

7. DECISION

We have completed our deliberation and are now prepared to vote. Will the superintendent make his/her recommendation? Can I have a motion? Do I have a second? All in favor of upholding the superintendent's recommendation, please say aye. All opposed?

On behalf of all members of the board, I want to thank everyone involved for their cooperation during this proceeding. This concludes the hearing.

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. 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.

Under AASB's interpretation, the procedure applicable to teacher transfers either inside or outside the feeder pattern requires the same procedure. This view has been upheld by circuit courts and the Chief Administrative Law Judge on multiple occasions. Additionally, 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 20th 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 local counsel.

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 10th grade teacher at GHI High School to a 10th 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 on _____, 20__, at _____ am/pm at _____ in _____, Alabama. **[NOTE: Provide sufficient notice here. 7-10 days should be a minimum.]** You have the right to meet with the board and 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 10th grade teacher at GHI High School, be transferred to a 10th grade teacher 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 10th grade teacher at GHI High School to a 10th grade teacher at JKL High School 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 10th grade teacher at GHI High School to a 10th grade teacher at JKL High School. This transfer is effective _____, 20__.

Dr. Jane Smith
Superintendent

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 10th grade teacher at GHI High School, be transferred to a 10th 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 10th grade teacher at GHI High School to 10th 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 10th grade teacher at GHI High School to 10th 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

1. INTRODUCTION

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.

2. STATEMENT OF PROCEEDINGS

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.

3. 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 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.

4. HEARING PROCEDURE

IF THE SUPERINTENDENT PROVIDED REASONS: Under the procedure to be followed, the superintendent or his/her designee will explain the reasons for his/her proposal to transfer (INSERT EMPLOYEE'S NAME) and may submit any information he/she wishes. 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.

IF THE SUPERINTENDENT DID NOT PROVIDE REASONS: Under the procedure to be followed, the employee 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. There will be no cross-examination of the superintendent or his/her designee, although the members of the board may choose to ask questions of either party.

5. PRESENTATION OF REASONS

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

IF THE SUPERINTENDENT PROVIDED REASONS: I will now ask the superintendent or his/her designee to provide any evidence or information 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.

IF THE SUPERINTENDENT DID NOT PROVIDE REASONS: (INSERT EMPLOYEE'S NAME), 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.

6. CONSIDERATION BY THE BOARD

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.

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.

Board enters executive session to deliberate its decision, then returns to open session to vote in public (or in presence of parties if no meeting called).

7. DECISION

We have completed our deliberation and are now prepared to vote. Will the superintendent make his/her recommendation? Can I have a motion? Do I have a second? All in favor of upholding the superintendent's recommendation, please say aye. All opposed?

On behalf of all members of the board, I want to thank everyone involved for their cooperation during this proceeding. This concludes the hearing.

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. 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 this section.

There is no limitation on when the transfer can happen during the school year. However, 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.

There is no limitation on when the transfer can happen during the school year. However, 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 local counsel.

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*

22. **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**. [Therefore, if the superintendent is not prepared to immediately move forward with the termination hearing, this letter should be held so that it is sent within the 30-60 day window.] 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 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 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. A court reporter will be provided.

*Additionally, the following information should be received in my office no later than Friday, _____, 20____ at 4:00 PM **[NOTE: 14 days before scheduled hearing suggested]:***

- *Any request for subpoenas*
- *A list of the witnesses you plan to call*
- *A copy of the exhibits you plan to use*

A list of the superintendent's anticipated witnesses and a copy of anticipated exhibits will be sent to you on or before the same date. The goal of these deadlines is to promote fairness and efficiency. The Board may prohibit the testimony of witnesses or introduction of evidence if you fail to comply with these deadlines.

*Dr. Jane Smith
Superintendent
City School System*

5. Ensure that a court reporter is hired for the hearing. Also, submit a Report of Contested Personnel Action 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.

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. The superintendent issues written notice of the board's decision to the employee within 10 days. 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.

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
50 North Ripley Street
P.O. Box 302101 (36130-2101)
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*

9. If the employee does not file Notice of Appeal with the state superintendent, the employee can be transferred immediately. Submit the Report of Contested Personnel Action and Hearing Costs Claim Form to the State Department of Education for reimbursement of the court reporter fees. (See Appendix).
10. 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.
11. Submit the Report of Contested Personnel Action to the State Department of Education. (See Appendix).
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, 2016. 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, 2016. 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__.

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 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 within 42 days from the hearing officer's decision.

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 within 42 days from the hearing officer’s decision. 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 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 an administrative body, we are not subject to the rules of evidence. We will hear the evidence which will assist us in making a fair decision. 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. DELIBERATION

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 the proposed transfer is appropriate, it may act accordingly. If it determines that the proposed 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.

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.

Board enters executive session to deliberate its decision, then returns to open session to vote in public (or in presence of parties if no meeting called).

13. DECISION

We have completed our deliberation and are now prepared to vote. Will the superintendent make his/her recommendation? Can I have a motion? Do I have a second? All in favor of upholding the superintendent's recommendation, please say aye. All opposed?

On behalf of all members of the board, I want to thank everyone involved for their cooperation during this proceeding. This concludes the hearing.

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. There is no limitation on when the transfer can happen during the school year, but 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 both the statutory ground and factual reasons for the superintendent’s recommendation. The Act states that these transfers “shall conform and be subject to the substantive and procedural standards and requirements that apply to termination of” tenured and nonprobationary employees. *Ala. Code §16-24C-7(f)*. For this reason, it is potentially required that the notice requirements for these transfers are consistent with those for terminations. Consult your local counsel.

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 for other good and just cause. The facts supporting the proposed transfer are as follows:

1. *On July 23, 2016, 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__ for the reasons provided in the notice letter.

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 provided in the notice letter.

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 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*

23. **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**. [Therefore, if the superintendent is not prepared to immediately move forward with the termination hearing, this letter should be held so that it is sent within the 30-60 day window.] 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 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 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. A court reporter will be provided.

*Additionally, the following information should be received in my office no later than Friday, _____, 20____ at 4:00 PM **[NOTE: 14 days before scheduled hearing suggested]**:*

- *Any request for subpoenas*
- *A list of the witnesses you plan to call*
- *A copy of the exhibits you plan to use*

A list of the superintendent's anticipated witnesses and a copy of anticipated exhibits will be sent to you on or before the same date. The goal of these deadlines is to promote fairness and efficiency. The Board may prohibit the testimony of witnesses or introduction of evidence if you fail to comply with these deadlines.

*Dr. Jane Smith
Superintendent
City School System*

5. Ensure that a court reporter is hired for the hearing. Also, submit a Report of Contested Personnel Action 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.

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. The superintendent issues written notice of the board’s decision to the employee within 10 days. 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__.

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
50 North Ripley Street
P.O. Box 302101 (36130-2101)
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*

9. 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.

10. 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.
11. 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.
12. 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.
13. 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, 2016. 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, 2016. 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*

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

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).

15. The hearing officer issues a written decision either affirming or reversing the board’s decision within five days of the hearing.
16. 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 within 42 days from the hearing officer’s decision.
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 upholds the board’s decision, the employee has the right to appeal the decision to the Alabama Court of Civil Appeals within 42 days from the hearing officer’s decision. 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).

The Open Meetings Act specifically permits boards to hold hearings in private if expressly allowed by law. Private transfer hearings 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 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 an administrative body, we are not subject to the rules of evidence. We will hear the evidence which will assist us in making a fair decision. 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. DELIBERATION

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 the proposed transfer is appropriate, it may act accordingly. If it determines that the proposed 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.

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.

Board enters executive session to deliberate its decision, then returns to open session to vote in public (or in presence of parties if no meeting called).

13. DECISION

We have completed our deliberation and are now prepared to vote. Will the superintendent make his/her recommendation? Can I have a motion? Do I have a second? All in favor of upholding the superintendent's recommendation, please say aye. All opposed?

On behalf of all members of the board, I want to thank everyone involved for their cooperation during this proceeding. This concludes the hearing.

TERMINATIONS: CERTIFICATE ACTIONS

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

Pursuant to Ala. Code §16-24C-10, 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.
7. Any discipline, including termination, which may be issued subsequent to reinstatement would follow the regular termination provisions in *Ala. Code* §16-24C-6.

PROCEDURE FOR TERMINATION OF EMPLOYEE WHOSE CERTIFICATE IS REVOKED, DENIED, SUSPENDED, FORFEITED OR EMPLOYEE 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 employee.

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 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 teacher, or (d) hand delivery to the teacher's last known address.

Sample Letter

Mr. John Doe

Pursuant to Ala. Code §16-24C-10(d), 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 employee has no further right to challenge, review or appeal.

SUSPENSIONS

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 work days or less.

The sample letter asks the employee 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 2016 to February 2017.*
2. *On February 5, 2017, 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, 2017.*

*The board will consider my recommendation at its meeting on _____, 20__ at ___ am/pm at _____ in _____, Alabama. **[NOTE: Provide sufficient notice here. 7-10 days should be a minimum.]** 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 reasons stated in the notice letter.

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 stated in the notice letter.

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 reasons stated in the notice letter.

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 stated in the notice letter.

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

1. INTRODUCTION

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 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 PROCEEDINGS

The superintendent recommended to this board that (INSERT EMPLOYEE'S NAME) be suspended for (INSERT NUMBER OF DAYS) work 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.

3. 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 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.

4. HEARING PROCEDURE

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?

5. PRESENTATION OF REASONS BY SUPERINTENDENT

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.

6. PRESENTATION OF REASONS BY EMPLOYEE

(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 either party?

7. DELIBERATION

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 the proposed suspension is appropriate, it may act accordingly. If it determines that the proposed suspension is not appropriate, it may reduce the suspension or order 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.

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.

Board enters executive session to deliberate its decision, then returns to open session to vote in public (or in presence of parties if no meeting called).

8. DECISION

We have completed our deliberation and are now prepared to vote. Will the superintendent make his/her recommendation? Can I have a motion? Do I have a second? All in favor of upholding the superintendent's recommendation, please say aye. All opposed?

On behalf of all members of the board, I want to thank everyone involved for their cooperation during this proceeding. This concludes the hearing.

PROCEDURE FOR SUSPENSION OF EMPLOYEES FOR MORE THAN 20 DAYS

ALA. CODE §16-24C-6(I)

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

The Act states that suspensions of more than 20 days “are subject to the notice, hearing, and review requirements and procedures that apply to” tenured and nonprobationary employees. *Ala. Code §16-24C-7(f)*. For this reason, it is important to remember that both the statutory grounds and the factual reasons must be provided in the notice.

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 statutory grounds and factual 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 for failure to perform duties in a satisfactory manner. The facts supporting the proposed suspension are as follows:

1. *Mr. Doe failed to submit timely lesson plans as required from August 2016 to February 2017.*
2. *On February 5, 2017, 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, 2017.*

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*

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 reasons provided in the notice letter.

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 notice letter.

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*

24. **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**. [Therefore, if the superintendent is not prepared to immediately move forward with the termination hearing, this letter should be held so that it is sent within the 30-60 day window.] 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 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. A court reporter will be provided.

*Additionally, the following information should be received in my office no later than Friday, _____, 20__ at 4:00 PM **[NOTE: 14 days before scheduled hearing suggested]**:*

- *Any request for subpoenas*
- *A list of the witnesses you plan to call*
- *A copy of the exhibits you plan to use*

A list of the superintendent's anticipated witnesses and a copy of anticipated exhibits will be sent to you on or before the same date. The goal of these deadlines is to promote fairness and efficiency. The Board may prohibit the testimony of witnesses or introduction of evidence if you fail to comply with these deadlines.

*Dr. Jane Smith
Superintendent
City School System*

5. Ensure a court reporter is hired and submit a Report of Contested Personnel Action 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.

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. The superintendent issues written notice of the board's decision to the employee within 10 days. 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__.

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
50 North Ripley Street
P.O. Box 302101 (36130-2101)
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*

9. 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.
10. 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.
11. 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.
12. 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.

13. 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, 2016. 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, 2016. 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__.

Counsel for the City Board of Education

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

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).

15. The hearing officer issues a written decision either affirming or reversing the board’s decision within five days of the hearing.
16. 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.
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 within 42 days from the hearing officer’s decision.
18. 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 within 42 days from the hearing officer’s decision. 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 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 an administrative body, we are not subject to the rules of evidence. We will hear the evidence which will assist us in making a fair decision. 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. DELIBERATION

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 suspension 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.

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.

Board enters executive session to deliberate its decision, then returns to open session to vote in public (or in presence of parties if no meeting called).

13. DECISION

We have completed our deliberation and are now prepared to vote. Will the superintendent make his/her recommendation? Can I have a motion? Do I have a second? All in favor of upholding the superintendent's recommendation, please say aye. All opposed?

On behalf of all members of the board, I want to thank everyone involved for their cooperation during this proceeding. This concludes the hearing.

PARTIAL CANCELLATIONS & REDUCTIONS IN FORCE

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 2017-2018 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 2017-2018 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 2017-2018 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, 2017, Governor Robert Bentley declared 3% proration in the Education Trust Fund for FY 2017. 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)

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, 2017, Governor Robert Bentley declared 3% proration in the Education Trust Fund for FY 2017. 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, 2017. 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)

This section applies to employees who will be transferred due to a reduction in force. Actions taken as a result of a reduction in force are specifically excluded from the Act. 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, 2017, Governor Robert Bentley declared 3% proration in the Education Trust Fund for FY 2017. 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, 2017. 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

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: 6th 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

By my signature below, I accept the above-referenced appointment as described and agree to comply with all Board and/or applicable school/worksites 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.).*

**SAMPLE
ADMINISTRATIVE LEAVE LETTER**

Mr. John Doe
111 Main Street
City, Alabama 35555

Dear Mr. Doe:

You are hereby placed on administrative leave from your duties with the _____
_____ Board of Education, effective immediately. You will receive your normal salary and benefits
during your leave as required by Alabama law. Therefore, you must be available during normal working
hours in the event you are needed by my office.

For the duration of your administrative leave, you shall not enter any _____ _____ Board of
Education property without my express permission. In the event that you wish to communicate with me,
please do so in writing. When appropriate, I will respond accordingly.

Sincerely,

Dr. Jane Smith
Superintendent

FORM 1A

Alabama Department of Education
Administrative and Financial Services
SDE Accounting
(Form TFD 1A, Revised 1/15)

FOR SDE USE ONLY	
CASE/TRACKING #:	_____

**REPORT OF CONTESTED PERSONNEL ACTION
Alabama Students First Act - Ala. Act No. 2011-270**

CHECK ONE:

REPORT OF: HEARING REQUEST APPEAL TO STATE SUPT. RESOLUTION

LEA: _____

SUPERINTENDENT: _____

EMPLOYEE NAME: _____

POSITION: TEACHER CLASSIFIED

LEA ATTORNEY: _____

LEA ATTORNEY EMAIL: _____

PROPOSED PERSONNEL ACTION:

- Termination
- Transfer
- Suspension (in excess of 20 work days without pay)
- Other (describe): _____

BRIEF SUMMARY OF PROPOSED ACTION (Attach additional pages if necessary. For contested transfer, state circumstances that make transfer subject to challenge and review.)

REMINDERS / ADDITIONAL INFORMATION:

When a hearing is requested, a decision is appealed, or the matter is resolved, this form needs to be submitted to State Department of Education, SDE Accounting Section, immediately so that the case file may be opened or updated as appropriate.

_____/_____
Superintendent Date

FAX COMPLETED FORM TO:
Ms. Vera Guettler, Director of Financial Management
Office of Financial Management
SDE Accounting
(334) 353-7030

When reporting an Appeal to the State Superintendent, a copy should also be emailed to:
SFA@alsde.edu

Alabama Department of Education
Administrative and Financial Services
SDE Accounting
Form TFD 2A, Revised 1/15

REQUIRED
Partial Claim
Final Claim

HEARING COSTS CLAIM FORM Alabama Students First Act

*STUDENTS 1st ACT GUIDELINES ARE AVAILABLE AT:

<http://web.alsde.edu/Home/Sections/SectionDocuments.aspx?SectionID=64>

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 AT HEARING BEFORE THE BOARD (TOTAL FOR HEARING INCLUDING TRAVEL) \$ _____

OTHER LEA COSTS: \$ _____

HEARING OFFICER COSTS:
FEE @ \$150.00 PER HOUR FOR _____ HOURS \$ _____

TOTAL DUE LEA: \$ _____

I hereby certify that these costs are due, correct, and unpaid.

Superintendent

Date Signed

FAX FORM WITH RECEIPTS, INVOICES, DECISION, AND OTHER DOCUMENTATION TO:

**Ms. Vera Guettler, Director of Financial Management
Office of Financial Management
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). 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 topics related to improving board governance, evaluation and goal-setting, improving stakeholder relationships, understanding and using data effectively and understanding important legal topics

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
- Federal Relations Network (FRN)
- Legislative advocacy network

Services

- Alabama Trust for Boards of Education (ATBE)
- Policy Review & Analysis and *Policy Pipeline* updates
- Legal Information and Legal Assistance Fund
- SUPERINTENDENT|Finder and CSFO|Finder
- BOARD|Evaluation, SUPERINTENDENT|Evaluation and CSFO|Evaluation
- Medicaid Administrative Claiming (MAC) & Direct Bill
- Strategic Planning
- 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 or visit www.AlabamaSchoolBoards.org.

Follow us: *Facebook (@AlabamaSchoolBoards) and Twitter (@AlaSchoolBoards) or BoardCast app (free in the app store for iPhone/iPad).*

Alabama Association of School Boards
P.O. Drawer 4980
Montgomery, AL 36130-4980

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