

AASB BOARDMANSHIP SERIES

DEVELOPING EXCELLENT SCHOOL BOARD LEADERS THROUGH
QUALITY TRAINING, ADVOCACY AND SERVICES



PROBATIONARY & CONTRACT PRINCIPALS

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Acknowledgments:

**Written by Jayne Harrell Williams,
Esquire**

AASB General Counsel & Director of
Legal Advocacy

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Foreword

This edition of the AASB Boardmanship Series booklet, *Probationary & Contract Principals* addresses the *Teacher Accountability Act*, which governs probationary and contract principals in the State of Alabama. This booklet will assist boards and superintendents in fulfilling their obligations under the law and also provide some practical tips to consider when dealing with principal employment issues.

Since the last edition of this booklet, several court cases have been decided which provide fresh guidance to the treatment in principals in Alabama. This booklet will attempt to provide the most recent information as has been decided by the courts and practical guidance which has been developed over the past several years.

Nevertheless, it is important to remember that this publication should be used as a tool and is not intended to be a substitute for the local board attorney's advice.

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INTRODUCTION

Despite its title, the *Teacher Accountability Act* has nothing to do with teachers or accountability.¹ In fact, the term “teacher” is only used one time in the entire Act.² The *Teacher Accountability Act* is the law which dictates the procedure for the hiring, evaluation, nonrenewal and termination of most principals in Alabama. As is common, the legislative drafting and negotiation process resulted in some areas which are less than clear. Nevertheless, we hope this guidance is helpful in addressing most of the procedural and practical questions which may arise.

IMPORTANT TERMS TO KNOW

When using the *Teacher Accountability Act*, a few definitions are important to know:

- **Probationary Principal** – a principal hired for the first time in the employing school system after July 1, 2000;
- **Contract Principal** – a principal hired by the employing school system after July 1, 2000, who has previously served as a principal for the same school system;
- **Principal** – a principal hired before July 1, 2000, who declined to enter a principal contract with the employing board;
- **Day** – a calendar day (more information can be found in the Practice Pointers);
- **Contract Year** – a period up to 12 months;
- **Nonrenewal** – the process to end the contract at the completion of the designated contract term; and
- **Termination** – the process to end the contract before the completion of the designated contract term.

You will note that these definitions do not use the precise wording of the Act, but are crafted to increase readability and understanding.³

TYPES OF PRINCIPALS

Proper use of the *Teacher Accountability Act* requires an understanding of the type of principal being addressed.

TENURED PRINCIPALS

Before addressing the principals covered by the *Teacher Accountability Act*, it may be helpful to address the principals not covered by the Act. Principals employed at the time the Act was passed in 2000 were given the option of giving up their “tenured principal” status under the then-*Teacher Tenure Act* or entering into employment contracts controlled by the *Teacher Accountability Act*. Nearly two decades later, most principals working in

Alabama’s public schools serve under the *Teacher Accountability Act*. Presumably, only a small number of “tenured principals” remain active, if any.

It should also be noted that “tenured principals” are now considered “tenured teachers” under the *Students First Act* passed in 2011.⁴ See the Guidelines for Implementing the Students First Act for additional information.

With the exception of the dwindling number of “tenured principals” described here, principals do not earn tenure under the *Teacher Accountability Act*.⁵ Any principal that still has tenure has the option to relinquish it and become a contract principal. Any such election must be done in writing to the superintendent at least 30 days before the start of the scholastic year, which begins each July 1.⁶

PROBATIONARY PRINCIPALS

A probationary principal is a principal hired on or after July 1, 2000, who has not previously served as a principal in the employing system.⁷ These principals work under contract and cannot gain tenure as principals.⁸

CONTRACT PRINCIPALS

A contract principal is a principal hired on or after July 1, 2000, who has previously served as a principal for the employing system.⁹ These principals also work under contract and cannot gain tenure as principals.¹⁰

The remainder of this booklet addresses probationary and contract principals.

PROBATIONARY PRINCIPALS

As noted, a probationary principal is a principal hired on or after July 1, 2000, who has not previously served as a principal in the employing system.¹¹

For example, Mr. Smith has worked for the Purple County School System for 8 years where he began his career as a teacher. In 2016, he applies for the principal position at the Purple County Elementary School and is selected. Mr. Smith would be a probationary principal because he has never been a principal for the Purple County School System.

LENGTH OF THE CONTRACT

Boards employing probationary principals have limited options when determining the length of the principal's contract. Depending on whether the person previously has been a principal in another Alabama school system before his appointment, the contract can be up to one year or up to two years.¹² A sample contract can be found in the Appendix.

IF THE PERSON HAS NEVER BEEN A PRINCIPAL IN ANOTHER SYSTEM

If the person has never been a principal in any Alabama public school system, the board has the option to offer the probationary principal up to a one or two-year contract.¹³

For example, Mr. Smith has worked for the Purple County School System for 8 years where he began his career as a teacher. In 2016, he applies for the principal position at the Purple County Elementary School and is selected. Mr. Smith would be a probationary principal because he has never been a principal for the Purple County School System. Because he has never been a principal for any other Alabama public school system, the board has the option of offering him a one or two-year contract.

The one- or two-year term must be decided and agreed upon at the beginning of the contract. The board cannot offer the principal a one-year contract, then reach the end of the first year and extend the contract to a second year.

IF THE PERSON HAS BEEN A PRINCIPAL IN ANOTHER SYSTEM

As noted, a probationary principal is defined as a person who has not previously been a principal in the employing system. However, if the person has been a principal in another Alabama public school system, the board is limited to offering the principal up to a one-year probationary contract. A two-year probationary contract is not an option if the person has been a principal in another system.¹⁴

For example, Mr. Smith was hired as a principal for the Blue County School System in 2005. In 2016, he applies for the principal position with the Purple County School System and is selected. Mr. Smith would be a probationary principal because he has never been a principal for the Purple County School System. However, because he has previously

served as a principal in an Alabama public school system, he cannot receive a two-year contract. He is only entitled to a one-year contract.

See the discussion in “Practice Pointers” regarding the impact of giving a probationary principal a contract that is the incorrect length.

A NOTE ABOUT MID-YEAR START DATES

It is best for contracts to coincide with the scholastic year--July 1 to June 30. However, while most contracts run from July 1 to June 30, occasionally principals are hired during the school term. Be mindful of those contracts that start at a different time during the school year. It may be advisable to adjust the length of the contract so that it ends at the traditional time of June 30. This will make it easier to track expiring contracts each year.

For example, Mr. Smith is hired as a probationary principal in October 2017. Rather than offering him a one-year contract that would end October 2018, it may be better to offer him a slightly shorter contract that would run from October 2017 to June 30, 2018.

SKIPPING THE PROBATIONARY PERIOD

There may be an occasion when a superintendent and board wish to recruit a particularly highly qualified candidate for a principal position. Under certain circumstances, the board would have the option to skip the probationary period and make the candidate a contract principal, which would allow the candidate more stability than he would otherwise receive as a probationary principal. If this occurs, the principal would receive all the rights and benefits of a contract principal, including the longer term, the longer notice and evaluation requirements.

STATUS AT END OF CONTRACT AND SUBSEQUENT CONTRACTS

If a probationary principal completes the initial contract and continues in his position (there is no nonrenewal), the principal would automatically become a contract principal and would be entitled to at least a three-year contract.¹⁵ In the event he is not formally offered a new contract, the terms of the expiring contract, including salary, would continue by operation of law with the exception of the date and evaluation and nonrenewal requirements for contract principals which are controlled by law.

EVALUATION REQUIREMENTS

While all principals should be regularly evaluated, there is no requirement to evaluate probationary principals under the Act. There is also no consequence for failing to annually evaluate probationary principals as there is for contract principals.¹⁶

NONRENEWING THE CONTRACT

Probationary principals can be nonrenewed at the end of the contract. If a nonrenewal is anticipated, the superintendent must recommend and the board must approve the nonrenewal no later than the last day of the contract term, which is typically June 30.¹⁷

1. The nonrenewal process for probationary principals begins with a written recommendation from the superintendent to the board. That recommendation can contain any reason, or no stated reason, as long as the recommendation is not based on personal, political or an otherwise illegal reason, such as discrimination.¹⁸

Sample Recommendation

I recommend that the contract for John Smith, Principal of Purple County Elementary School, be nonrenewed effective June 30, 2016.

2. The board must vote to approve the superintendent's recommendation no later than the last day of the contract term.¹⁹

Sample Board Motion

I move that the board accept the superintendent's recommendation to nonrenew John Smith's principal contract effective June 30, 2016.

3. The superintendent must then provide written notice to the principal that his contract has been nonrenewed.²⁰ Notice must be provided in a way that can be verified, such as hand delivery or certified mail, return receipt requested.

Sample Notice

Dear Mr. Smith:

Please accept this notice that the board nonrenewed your probationary principal contract on June 19, 2016, to be effective June 30, 2016.

[IF THE EMPLOYEE HAS TENURE: Pursuant to the Teacher Accountability Act, you will be notified of your new assignment, effective July 1, 2016. Your salary will be based on the appropriate salary schedule for your assigned position for the 2016/2017 school year.]

*Sincerely,
Grace Green, Superintendent*

RIGHT TO CHALLENGE NONRENEWAL

There is no statutory right to challenge a board's decision to nonrenew a probationary principal. Nevertheless, it is important to remember that any board decision can be challenged by filing an action in the local circuit court. For example, if a probationary principal is nonrenewed, but the board does not vote by the last day of the contract term, the principal could file a lawsuit in circuit court and the board's decision can easily be overturned for failure to comply with the Act. While the wisdom of the decision cannot be challenged, compliance with the Act can be.

WHAT HAPPENS AFTER THE EMPLOYEE IS NONRENEWED?

Once the employee is nonrenewed as principal, his status depends upon his history with the system.

If the employee did not earn tenure in the system before becoming principal, he is not entitled to a position in the system after his nonrenewal.

If the employee was tenured by the employing system before he became principal, the employee has the right to return to at least a classroom instructor position in the system at the salary he would receive for that position on the salary schedule. The employee's principal salary has no bearing on the salary he must receive in any subsequent position.

The *Teacher Accountability Act* provides that principals who had previously earned "continuing service status" in a position with the employing board "shall retain that previously earned status and be returned to a similar status position" following nonrenewal.²¹ Some still believe that a nonrenewed principal has the right to return to an

administrative position if he was a “tenured supervisor” before becoming principal. That belief is based on two misperceptions. First, some believe that the “previously earned status” refers to prestige of the previous position. It does not. It refers to “continuing service status” otherwise known as “tenure”. Also, while the *Teacher Tenure Act* did provide tenure for supervisory positions in addition to classroom instructor tenure, the *Students First Act* passed in 2011 does not. The *Students First Act* repealed the *Teacher Tenure Act*, and specifically converted all employees with tenure in any certificated position to “tenured teachers”. This includes formerly tenured supervisors and tenured principals.²²

Therefore, while the nonrenewed principal can be placed in any certificated position from teacher to a high-ranking administrator, that decision belongs exclusively to the superintendent and board.

TERMINATING THE PROBATIONARY CONTRACT

A probationary principal may be terminated at any point before the end of his contract term.

GROUNDINGS FOR TERMINATING THE PROBATIONARY CONTRACT

A probationary principal can only be terminated for the following statutory reasons:²³

- Immorality;
- Insubordination;
- Neglect of duty;
- Conviction of a felony or a crime involving moral turpitude;
- Failure to fulfill the duties and responsibilities imposed upon principals by law;
- Willful failure to comply with board policy;
- A justifiable decrease in the number of positions due to decreased enrollment or decreased funding;
- Failure to maintain his or her certificate in a current status;
- Incompetency;
- Failure to perform duties in a satisfactory manner; and
- Other good and just cause.

In addition to the statutory grounds which must be provided in the notice and recommendation, the superintendent must also provide the factual grounds for terminating the probationary principal.

PROCEDURE FOR TERMINATING THE PROBATIONARY CONTRACT

The statutory procedure for terminating a probationary principal is less than clear and potentially legally insufficient as it may fail to provide sufficient due process under the U.S. Constitution. For that reason, many school board attorneys have added steps to the process which are not found in the Act. The process should begin with providing at least minimum due process to the principal, steps that are not included in the Act. That is (1) notice of the allegations against him; and (2) an opportunity to be heard before the board votes. Should you need to terminate a principal, make sure to consult with your local board attorney.

1. The superintendent provides written notice to the probationary principal that she intends to recommend his termination to the board.

Sample Letter

Mr. John Smith

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

1. *During your time as principal, employee morale has decreased significantly.*
2. *For the past two school years, standardized test scores have fallen consistently among all grades at the school.*

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

*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.

*Sincerely,
Grace Green, Superintendent*

2. NO HEARING REQUESTED: If the principal does not request a hearing before the board, skip to step 4.
3. HEARING REQUESTED: If the principal requests a hearing before the board, the board must hold a hearing at the scheduled meeting. A Loudermill (minimum due process) hearing is suggested.²⁴ A sample script is provided in the Appendix.

4. The superintendent provides a written recommendation to the board to cancel the principal's contract. That written notice must contain both statutory grounds and factual reasons for the recommendation.

Sample Recommendation

I recommend that the contract of John Smith, Principal of Purple County Elementary School, be cancelled for failure to perform duties in a satisfactory manner and other good and just cause based on the factual reasons listed in the superintendent's notice to the principal.

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

Sample Motion

I move that the board approve the superintendent's recommendation to cancel the contract of John Smith, Principal of Purple County Elementary School.

6. Within five days, the superintendent issues written notice of the board's action to the principal.

Sample Letter

Mr. John Smith

This letter is to notify you that the board voted to cancel your contract as Principal of Purple County Elementary School at its meeting on _____, 20__.

If you wish to contest this action, you must submit written notice to my office of your request for a non-jury, expedited evidentiary hearing before the local circuit court. Your request must be received in my office within 10 days of the date you receive this letter. If your request is timely received, the board will promptly file the expedited action in the local circuit court.

If you do not wish to contest this action, you will be notified of your new assignment if you are tenured in the system.

Sincerely,

Grace Green, Superintendent

7. IF A CONTEST IS NOT SUBMITTED: If the principal does not request a hearing before the circuit court, assign him to a position if he has tenure in the system.²⁵ No further action is needed.
8. IF A CONTEST IS SUBMITTED: If the principal requests a hearing, the superintendent must immediately file the action in the local circuit court. A sample action can be found in the Appendix.
9. The board bears the burden of proving by a preponderance of the evidence that the cancellation is solely for the reasons stated in the notice. The hearing must be held within 45 days of the date the request is filed in circuit court. If the court cannot hold the hearing within 45 days, it must appoint a mediator to hold the hearing within the allotted time period. The mediator's decision is binding.²⁶
10. If the court/mediator upholds the board's decision, pay and benefits are stopped.²⁷
11. Either party may appeal on the record to the Alabama Court of Civil Appeals.²⁸ Appeals must be filed with the Clerk of the Court of Civil Appeals within 14 days of receipt of the court or mediator's decision.²⁹
12. If an appeal is filed, the superintendent must send the record to the Clerk within 28 days of the appeal being filed. If the superintendent fails to file the record, the Court will enter a decision in favor of the principal.³⁰
13. Under the ore tenus standard of review, the appellate court will uphold the trial court's factual findings unless they are clearly erroneous and against the great weight of evidence.³¹ As long as the trial court's decision is supported by some credible evidence, the appellate court will affirm.³²

AN EXCEPTION FOR CRIMINAL CONDUCT

There is one exception to the procedure required to terminate a principal. The State Superintendent can immediately revoke the certificate of any person convicted of a Class A felony, such as murder, rape or kidnapping, and/or certain sex crimes.³³ If this occurs, the principal's contract must be immediately cancelled, presumably without the need to comply with the above-stated procedure.³⁴ If the conviction is eventually overturned, the State Superintendent must reinstate the principal's certificate and the local board has the option to either 1) reinstate the employee to a position commensurate with that certificate, or 2) place the employee on paid administrative leave. The local board also must pay the employee back pay and benefits which run from the date of his termination to the date his conviction was overturned.³⁵ Following reinstatement, the local board has the option to take any disciplinary action it see fit by following the procedures set out by either the *Teacher Accountability Act* or the *Students First Act*.³⁶

WHAT HAPPENS AFTER THE PRINCIPAL IS TERMINATED?

Once the principal's contract is terminated, his status depends upon his history with the system.

If the employee did not earn tenure in the system before becoming a principal, he is not entitled to a position in the system after his termination.

If the employee was tenured by the employing system before he became principal, the employee has the right to return to at least a classroom instructor position in the system at the salary he would receive for that position on the salary schedule. The employee's principal salary has no bearing on the salary he must receive in any subsequent position.

The *Teacher Accountability Act* provides that principals who had previously earned "continuing service status" in a position with the employing board "shall retain that previously earned status and be returned to a similar status position" following nonrenewal.³⁷ Some still believe that a terminated principal has the right to return to an administrative position if he was a "tenured supervisor" before becoming principal. That mistaken belief is based on two misperceptions. First, some believe that the "previously earned status" refers to prestige of the previous position. It does not. It refers to "continuing service status" otherwise known as "tenure". Also, while the *Teacher Tenure Act* did provide tenure for supervisory positions in addition to classroom instructor tenure, the *Students First Act* passed in 2011 does not. The *Students First Act* repealed the *Teacher Tenure Act*, and specifically converted all employees with tenure in any certificated position to "tenured teachers". This includes formerly tenured supervisors and tenured principals.³⁸

Therefore, while the terminated principal can be placed in any certificated position from teacher to a high-ranking administrator, that decision belongs exclusively to the superintendent and board.

If the employee previously earned tenure in the system and the superintendent wishes to terminate the employee from the system completely, the superintendent will be required to initiate a separate termination proceeding pursuant to the *Students First Act*. With proper planning, the two proceedings can be handled concurrently so that only one hearing is required. Work closely with your local counsel before attempting to do so.

CONTRACT PRINCIPALS

A contract principal is a principal hired on or after July 1, 2000, who has previously served as a principal for the employing system.³⁹

For example, if Mr. Smith was hired by the Purple County School System as a principal in 2001, was nonrenewed in 2002 and was later rehired by Purple County as a principal in 2017, he would not be a probationary principal because this would be his second principalship by the employing system. He would be a contract principal.

LENGTH OF THE CONTRACT

Boards employing contract principals must offer at least a three-year contract.⁴⁰ While most contracts run from July 1 to June 30, be mindful of those contracts that start at a different time. It may be advisable to adjust the length of the contract so that it ends at the traditional time of June 30. This will make it easier to track expiring contracts each year.

For example, Mr. Smith is hired as a contract principal in January 2017. Rather than offering him a three-year contract that would end December 31, 2019, it may be better to offer him a slightly longer contract that would run from January 2017 to June 30, 2020. A sample contract can be found in the Appendix.

STATUS AT THE END OF CONTRACT AND SUBSEQUENT CONTRACTS

If a contract principal completes his initial contract and continues in his position (there is no nonrenewal), he would continue as a contract principal and would be entitled to at least a three-year contract.⁴¹ In the event he is not formally offered a new contract, the terms of the expiring contract, including salary, would continue by operation of law with the exception of the date.

EVALUATION REQUIREMENTS

Unlike probationary principals, contract principals must be evaluated annually using the evaluation instrument approved by the State Department of Education.⁴² If the contract principal is not properly evaluated at any point, his contract shall be extended one year for every year the evaluation is not completed, up to a maximum of three years.

For example, Mr. Smith is hired as a contract principal at Purple County Elementary School in July 2016. His contract is set to expire June 30, 2019. He is properly evaluated for the 2016/2017 and 2017/2018 school years, but in 2018/2019, the superintendent retires and the interim superintendent neglects to evaluate Mr. Smith. As a result, Mr. Smith cannot be nonrenewed in 2019. His contract automatically extends to June 30, 2020.

The consequences of missing an evaluation cycle can be dire to a school with an underperforming principal. For this reason, it is vital that the evaluation schedule be

followed to fidelity. In the event the principal is uncooperative with some portion of the evaluation, the evaluating authority to should thoroughly document all attempts to complete the evaluation and any difficulty caused by the principal.

NONRENEWING THE CONTRACT

A Note About Stigmatizing Reasons

If the contract principal is being nonrenewed for a reason that would be stigmatizing in nature, it would be advisable to provide a name-clearing hearing before the board votes. An allegation is stigmatizing if it would likely hurt the principal's chance to get another job. Falling test scores and low morale are likely not stigmatizing reasons. An allegation of theft likely is. If the publicized reasons for the nonrenewal are stigmatizing, we suggest adding in the procedures found in the Termination section, specifically steps 1-3 which should suffice as a name-clearing hearing. Work closely with your local board attorney to follow the correct procedure.

1. The nonrenewal process for contract principals begins with a written recommendation from the superintendent to the board. That recommendation must contain a reason or reasons for the recommendation, but there are no statutory limitations on what the reasons must be. However, the recommendation cannot be based on personal, political or an otherwise illegal reason, such as discrimination.⁴³

Sample Recommendation

I recommend that the contract for John Smith, Principal of Purple County Elementary School, be nonrenewed effective June 30, 2016. The reasons for this recommendation are decreased morale and falling test scores at the school for the past three years.

2. The board must vote to approve the superintendent's recommendation at least 90 days before the end of the contract term, which is typically March 30 for a contract ending June 30.⁴⁴

Sample Board Motion

I move that the board accept the superintendent's recommendation to nonrenew John Smith's principal contract effective June 30, 2016.

3. The superintendent must provide written notice to the principal that his position has been nonrenewed within five days of the board's vote.⁴⁵ Notice must be provided in a way that delivery can be verified, such as hand delivery or certified mail, return receipt requested.⁴⁶

Sample Notice

March 20, 2016

Dear Mr. Smith

Please accept this notice that the board nonrenewed your contract principal contract on June 19, 2016, to be effective June 30, 2016. This action was taken as a result of decreased moral and falling test scores at Purple County Elementary School.

[IF THE EMPLOYEE HAS TENURE: Pursuant to the Teacher Accountability Act, you will be assigned to 4th grade at Purple County Elementary School, effective July 1, 2016. Your salary will be calculated based on the Teacher Salary Matrix in effective for the 2016/2017 school year.]

*Sincerely,
Grace Green, Superintendent*

4. If the contract principal wishes to contest the decision, he must submit written notice to the superintendent within 10 days of receiving the notice of the board's vote. That notice must request a non-jury, expedited evidentiary hearing to show that the superintendent's recommendation or board's vote was based on a personal or political reason.⁴⁷
5. The contract principal must then file a request for expedited hearing with the local circuit court and provide a copy of same to the superintendent.
6. The court shall hold an expedited, non-jury hearing within 45 days of the request being filed. The only issue the court may consider is whether the recommendation or decision was based on personal or political reasons. Board attorneys should strenuously object to any attempts to expand the scope of the hearing to matters beyond the decision being personal or political.⁴⁸ The contract principal bears the burden of proof during the hearing.
7. The court's decision is binding on all parties.

WHAT HAPPENS AFTER THE EMPLOYEE IS NONRENEWED?

Once the principal is nonrenewed, his status depends upon his history with the system. If the employee did not earn tenure in the system before becoming principal, he is not entitled to a position in the system after his nonrenewal.

If the employee was tenured by the employing system before he became principal, the employee has the right to return to at least a classroom instructor position in the system at the salary he would receive for that position on the salary schedule. The employee's principal salary has no bearing on the salary he must receive in any subsequent position.

The *Teacher Accountability Act* provides that principals who had previously earned "continuing service status" in a position with the employing board "shall retain that previously earned status and be returned to a similar status position" following nonrenewal.⁴⁹ Some still believe that a nonrenewed principal has the right to return to an administrative position if he was a "tenured supervisor" before becoming principal. That mistaken belief is based on two misperceptions. First, some believe that the "previously earned status" refers to prestige of the previous position. It does not. It refers to "continuing service status" otherwise known as "tenure". Also, while the *Teacher Tenure Act* did provide tenure for supervisory positions in addition to classroom instructor tenure, the *Students First Act* passed in 2011 does not. The *Students First Act* repealed the *Teacher Tenure Act*, and specifically converted all employees with tenure in any certificated position to "tenured teachers". This includes formerly tenured supervisors and tenured principals.⁵⁰ Therefore, while the nonrenewed principal can be placed in any certificated position from teacher to a high-ranking administrator, that option belongs exclusively to the superintendent and board.

TERMINATING THE CONTRACT

A contract principal may be terminated at any point before the end of his contract term.

GROUND FORS FOR TERMINATING THE CONTRACT

A contract principal can only be terminated for the following statutory reasons:⁵¹

- Immorality;
- Insubordination;
- Neglect of duty;
- Conviction of a felony or a crime involving moral turpitude;
- Failure to fulfill the duties and responsibilities imposed upon principals by law;
- Willful failure to comply with board policy;
- A justifiable decrease in the number of positions due to decreased enrollment or decreased funding;
- Failure to maintain his or her certificate in a current status;
- Incompetency;
- Failure to perform duties in a satisfactory manner; and
- Other good and just cause.

In addition to the statutory grounds which must be provided in the notice and recommendation, the superintendent must also provide the factual grounds for terminating the contract principal.

PROCEDURE FOR TERMINATING THE CONTRACT

The statutory procedure for terminating a contract principal is less than clear and potentially legally insufficient as it may fail to provide sufficient due process under the U.S. Constitution. For that reason, many school board attorneys have added steps to the process which are not found in the Act. The process should begin with providing at least minimum due process to the contract principal, steps that are not included in the Act. That is (1) notice of the allegations against him; and (2) an opportunity to be heard before the board votes. Should you need to terminate a contract principal, make sure to consult with your local board attorney.

1. The superintendent provides written notice to the contract principal that she intends to recommend his termination to the board.

Sample Letter

Mr. John Smith

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

- 1. During your time as principal, employee morale has decreased significantly.*
- 2. For the past two school years, standardized test scores have fallen consistently among all grades at the school.*

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

*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.

*Sincerely,
Grace Green, Superintendent*

2. NO HEARING REQUESTED: If the principal does not request a hearing before the board, skip to step 4.
3. HEARING REQUESTED: If the principal requests a hearing before the board, the board must hold a hearing at the scheduled meeting. A *Loudermill* (minimum due process) hearing is suggested.⁵² A sample script is provided in the Appendix.

4. The superintendent provides a written recommendation to the board to cancel the contract principal's contract. That written notice must contain both statutory grounds and factual reasons for the recommendation.

Sample Recommendation

I recommend that the contract of John Smith, Principal of Purple County Elementary School, be cancelled for failure to perform duties in a satisfactory manner and other good and just cause based on the factual reasons listed in the superintendent's notice to the principal.

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

Sample Motion

I move that the board approve the superintendent's recommendation to cancel the contract of John Smith, Principal of Purple County Elementary School.

6. Within five days, the superintendent issues written notice of the board's action to the contract principal.

Sample Letter

Mr. John Smith

This letter is to notify you that the board voted to cancel your contract as Principal of Purple County Elementary School at its meeting on _____, 20__.

If you wish to contest this action, you must submit written notice to my office of your request for a non-jury, expedited evidentiary hearing before the local circuit court. Your request must be received in my office within 10 days of the date you receive this letter. If your request is timely received, the board will promptly file the expedited action in the local circuit court.

If you do not wish to contest this action, you will be notified of your new assignment if you are tenured in the system.

*Sincerely,
Grace Green, Superintendent*

7. IF A CONTEST IS NOT SUBMITTED: If the principal does not request a hearing before the circuit court, assign him to a position if he has tenure in the system.⁵³ No further action is needed.
8. IF A CONTEST IS SUBMITTED: If the principal requests a hearing, the superintendent must immediately file the action in the local circuit court. A sample action can be found in the Appendix.
9. The board bears the burden of proving by a preponderance of the evidence that the cancellation is solely for the reasons stated in the notice. The hearing must be held within 45 days of the date the request is filed in circuit court. If the court cannot hold the hearing within 45 days, it must appoint a mediator to hold the hearing within the allotted time period. The mediator's decision is binding.⁵⁴
10. If the court/mediator upholds the board's decision, pay and benefits are stopped.⁵⁵
11. Either party may appeal on the record to the Alabama Court of Civil Appeals.⁵⁶ Appeals must be filed with the Clerk of the Court of Civil Appeals within 14 days of receipt of the court or mediator's decision.⁵⁷
12. If an appeal is filed, the superintendent must send the record to the Clerk within 28 days of the appeal being filed. If the superintendent fails to file the record, the Court will enter a decision in favor of the principal.⁵⁸
13. Under the ore tenus standard of review, the appellate court will uphold the trial court's factual findings unless they are clearly erroneous and against the great weight of evidence.⁵⁹ As long as the trial court's decision is supported by some credible evidence, the appellate court will affirm.⁶⁰

AN EXCEPTION FOR CRIMINAL CONDUCT

There is one exception to the procedure required to terminate a principal. The State Superintendent can immediately revoke the certificate of any person convicted of a Class A felony, such as murder, rape or kidnapping, and/or certain sex crimes.⁶¹ If this occurs, the principal's contract must be immediately cancelled, presumably without the need to comply with the above-stated procedure.⁶² If the conviction is eventually overturned, the State Superintendent must reinstate the principal's certificate and the local board has the option to either 1) reinstate the employee to a position commensurate with that certificate, or 2) place the employee on paid administrative leave. The local board also must pay the employee back pay and benefits which run from the date of his termination to the date his conviction was overturned.⁶³ Following reinstatement, the local board has the option to take any disciplinary action it see fit by following the procedures set out by either the *Teacher Accountability Act* or the *Students First Act*.⁶⁴

WHAT HAPPENS AFTER THE PRINCIPAL IS TERMINATED?

Once the principal's contract is terminated, his status depends upon his history with the system.

If the employee did not earn tenure in the system before becoming principal, he is not entitled to a position in the system after his termination.

If the employee was tenured by the employing system before he became principal, the employee has the right to return to at least a classroom instructor position in the system at the salary he would receive for that position on the salary schedule. The employee's principal salary has no bearing on the salary he must receive in any subsequent position.

The *Teacher Accountability Act* provides that principals who had previously earned "continuing service status" in a position with the employing board "shall retain that previously earned status and be returned to a similar status position" following nonrenewal.⁶⁵ Some still believe that a terminated principal has the right to return to an administrative position if he was a "tenured supervisor" before becoming principal. That mistaken belief is based on two misperceptions. First, some mistakenly believe that the "previously earned status" refers to prestige of the previous position. It does not. It refers to "continuing service status" otherwise known as "tenure". Also, while the *Teacher Tenure Act* did provide tenure for supervisory positions in addition to classroom instructor tenure, the *Students First Act* passed in 2011 does not. The *Students First Act* repealed the *Teacher Tenure Act*, and specifically converted all employees with tenure in any certificated position to "tenured teachers". This includes formerly tenured supervisors and tenured principals.⁶⁶

Therefore, while the terminated principal can be placed in any certificated position from teacher to a high-ranking administrator, that option belongs exclusively to the superintendent and board.

If the superintendent wishes to terminate the employee from the system completely, the superintendent will be required to separately initiate a termination proceeding pursuant to the *Students First Act*. With proper planning, the two proceedings can conceivably be handled concurrently so that only one hearing is required. Work closely with your local counsel before attempting to do so.

PRACTICE POINTERS

MID-YEAR START DATES

Boards must offer up to a one or two-year contract to probationary principals and at least a three-year contract to contract principals.⁶⁷ While most contracts run from July 1 to June 30, be mindful of those contracts that start at a different time. It may be advisable to adjust the length of the contract so that it ends at the traditional time of June 30. This will make it easier to track expiring contracts each year.

For example, Mr. Smith is hired as a probationary principal in October 2016. Rather than offering him a one year contract which would expire in September 2017, it may be advisable to offer him a slightly shorter contract that would expire June 30, 2017. This way, his contract would be on a more typical expiration cycle and would be less likely to fall through the cracks.

The same can be done for contract principals which require at least a three-year contract, but it would require a slight upward adjustment of the contract rather than a downward adjustment. For example, Mr. Smith is hired as a contract principal in January 2017. Rather than offering him a three-year contract that would end December 31, 2019, it may be better to offer him a slightly longer contract that would run from January 2017 to June 30, 2020 so he can be on a regular expiration cycle.

INCORRECT CONTRACT/INCORRECT LENGTH

It is vitally important that the principal is given a contract of the proper length. If a probationary principal is improperly given a two-year contract, but was only entitled to a one year contract under the law, it is likely that a court would find that the contract is limited to one year by operation of law. Depending on when the error is discovered, it could be a benefit or a burden to the board.

For example, Mr. Smith was hired as a principal for the Blue County School System in 2005. In 2016, he applies for the principal position with the Purple County School System and is selected. Mr. Smith is accidentally given a two-year probationary principal contract, which is improper because he previously served as a principal in another Alabama public school system. During his first year as principal, Mr. Smith performs poorly. It is possible that the board could properly nonrenew Mr. Smith at the end of that first year, even though he was given a two-year contract. The board could argue that the contract could only be for one year by operation of law.

On the other hand, under the same scenario, if Mr. Smith completed the full two years and the board attempted to nonrenew him at the end of his contract, he could argue that he could not be nonrenewed at that time. Because his contract could only be one year, by operation of law, his probationary principal contract was over after his first year. Because he was not nonrenewed at the end of that first year, he could argue he automatically became a contract principal with a three-year contract.

TRANSFERS

It is common for principal contracts to provide that principals can be transferred at any time to another principal position at the same salary. All that is required is the superintendent's recommendation and board approval. There is typically no limitation on when such an action can be taken and no due process is required.

There is no authority to transfer a probationary or contract principal to a non-principal position. The only exception to this rule is if the principal voluntarily agrees to accept the non-principal position. If this occurs, it is important that the principal resign his contract. Otherwise, the principal may be able to claim later that the principal contract continued even though he accepted the new position.

For example, Mr. Smith is new to the system. He is hired as a probationary principal with a two-year contract. Following his first year, he voluntarily agrees to accept an administrative position in Central Office. Two years later, the superintendent is unhappy with his performance and Mr. Smith is nonrenewed from his Central Office position. At that point, Mr. Smith could claim that he is entitled to return to his principal position because he never formally resigned that contract and the board did not follow the procedure to nonrenew or terminate the contract. In an effort to address this issue, the sample contracts provided in the Appendix contain an "Implied Resignation" provision at Section 12.

DISCIPLINE

Questions often arise regarding whether principals can be disciplined because neither the *Teacher Accountability Act*, nor the typical contract, provide a procedure. All employees are subject to appropriate discipline, even if there is no state law which controls. In the event a superintendent wishes to suspend a principal, he would have to provide the principal due process pursuant to the U.S. Constitution. Due process is notice and an opportunity to be heard. Similar to the process used for employees under the *Students First Act*, the superintendent would notify the principal in writing of the allegations against him and give him an opportunity for a conference or hearing before the board. Reasonable time limits should be provided. Work with your local board attorney to ensure appropriate procedures are used.

UNSATISFACTORY EVALUATIONS

When the *Teacher Accountability Act* was passed in 2000, systems used PEPE, a summative evaluation instrument, to evaluate principals. Using PEPE, the Act required certain actions to be taken in the event a contract principal received an unsatisfactory evaluation. In 2011 or 2012, the evaluation system for principals was changed to LEADAlabama, a formative instrument. Because formative evaluations cannot be used to make employment decisions, the portion of the *Teacher Accountability Act* which requires certain actions based on a defunct evaluation instrument are presumably invalid. Consult your local board attorney with questions regarding this change.

BOARD/SUPERINTENDENT AT ODDS

On occasion, there is a dispute between the board and superintendent regarding the employment of a principal. Because the *Teacher Accountability Act* relies upon both the board and superintendent to change a principal's status, it is important to understand that such occasions always result in the principal retaining his position and receiving an extended contract.

For example, Mr. Smith is nearing the end of his probationary principal contract. The board has long been displeased with his performance at the elementary school and is looking forward to the opportunity to nonrenew him. The superintendent, however, thinks Mr. Smith is being unfairly blamed for the problems and wants him to remain principal. If the superintendent refuses to make a recommendation to nonrenew Mr. Smith, the board will have no opportunity to nonrenew him and he will automatically become a contract principal with a three-year contract by operation of law. This is true even if the board never approves a new three-year contract. His salary will remain the same as it was under the probationary contract.

The converse example could result in the superintendent's wishes being thwarted. The superintendent is unhappy with Mr. Smith's performance at the elementary school and wishes to nonrenew him. He timely makes the nonrenewal recommendation, but the board votes it down. Again, Mr. Smith would automatically become a contract principal with a three-year contract by operation of law. Again, this is true even if the superintendent never provides and the board never approves a new three-year contract. Likewise, his salary would remain the same.

PROPERLY COUNTING DAYS

The *Teacher Accountability 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.

The Act states that a "day" refers to a calendar day; not a business day.⁶⁸ When calculating 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.

For example, the Act requires notice of nonrenewal be provided within five days of the board's vote. If the board voted to nonrenew a probationary principal on Thursday, May 25, 2017, the notice would have to be sent to the principal by Friday, June 2, 2017, eight days later. The proper count would be as follows:

Thursday, May 25	Day of act not counted
Friday, May 26	Day 1
Saturday, May 27	Weekends are not counted when period is less than 11 days
Sunday, May 28	Weekends are not counted when period is less than 11 days

Monday, May 29	Holidays are not counted when period is less than 11 days
Tuesday, May 30	Day 2
Wednesday, May 31	Day 3
Thursday, June 1	Day 4
Friday, June 2	Day 5 when notice must be received

Because of these sometimes confusing rules, it is important to work closely with your legal counsel when calculating the days prescribed under this law.

BREACH OF CONTRACT CLAIMS

One little used part of the *Teacher Accountability Act* should be noted. In addition to controlling how principal contracts are entered and ended, the Act also prohibits contract principals from bringing lawsuits against the board or superintendent for breach of their employment contracts.⁶⁹

FILING IN CIRCUIT COURT

Principals are entitled to hearings before the local circuit court for certain actions. The party responsible for filing depends on the nature of the action.

If a contract principal's contract is nonrenewed, the contract principal files the action in circuit court and notifies the superintendent. If a contract or probationary principal's contract is terminated, the principal notifies the superintendent of his request and the superintendent files the action in circuit court. A sample filing can be found in the Appendix.

While these are the only statutory contests provided for under the Act, it is important to remember that any board decision can be challenged in the local circuit court, or under certain circumstances such as a claim of discrimination, the EEOC and/or federal court. Any such challenge taken outside the Act must be initiated by the principal.

ENDNOTES

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- ¹ *Ala. Code* §16-24B-1, *et seq.*
- ² *Ala. Code* §16-24B-8 (boards cannot retaliate against employees for opposing employment actions).
- ³ *Ala. Code* §16-24B-2.
- ⁴ *Ala. Code* §16-24C-3(8).
- ⁵ *Ala. Code* §16-24C-3(d).
- ⁶ *Ala. Code* §16-1-1; *Ala. Code* §16-24C-3(h).
- ⁷ *Ala. Code* §16-24B-2(8).
- ⁸ *Ala. Code* §16-24B-3(e)(1).
- ⁹ *Ala. Code* §16-24B-2(2).
- ¹⁰ *Ala. Code* §16-24B-3(e)(1).
- ¹¹ *Ala. Code* §16-24B-2(8).
- ¹² *Ala. Code* §16-24B-3(a).
- ¹³ *Ala. Code* §16-24B-3(a).
- ¹⁴ *Ala. Code* §16-24B-3(a).
- ¹⁵ *Ala. Code* §16-24B-3(a).
- ¹⁶ *Holmes v. Macon County Board of Education*, 11 So.3d 205 (2006).
- ¹⁷ *Ala. Code* §16-24B-3(a).
- ¹⁸ *Ala. Code* §16-24B-3(a).
- ¹⁹ *Ala. Code* §16-24B-3(a).
- ²⁰ *Ala. Code* §16-24B-3(a).
- ²¹ *Ala. Code* §16-24B-3(l)(3).
- ²² *Ala. Code* §16-24C-3(8).
- ²³ *Ala. Code* §16-24B-3(e)(1).
- ²⁴ *Loudermill v. Cleveland Board of Education*, 470 U.S. 532 (1985).
- ²⁵ *Ala. Code* §16-24B-3(f)(1).
- ²⁶ *Ala. Code* §16-24B-3(e)(2)(b).
- ²⁷ *Ala. Code* §16-24B-3(e)(4).
- ²⁸ *Ala. Code* §16-24B-3(g).
- ²⁹ *Ala. Code* §16-24B-5(a).
- ³⁰ *Ala. Code* §16-24B-5(a).
- ³¹ *Ala. Code* §16-24B-5(b).
- ³² *Curry v. Russell County Board of Education*, 125 So.3d 711 (2013).
- ³³ *Ala. Code* §16-23-5(b).
- ³⁴ *Ala. Code* §16-24B-3.1(a).
- ³⁵ *Ala. Code* §16-24B-3.1(b).
- ³⁶ *Ala. Code* §16-24B-3.1(c).
- ³⁷ *Ala. Code* §16-24B-3(l)(3).
- ³⁸ *Ala. Code* §16-24C-3(8).
- ³⁹ *Ala. Code* §16-24B-2(2).
- ⁴⁰ *Ala. Code* §16-24B-3(a).
- ⁴¹ *Ala. Code* §16-24B-3(a), 3(f)(2).
- ⁴² *Ala. Code* §16-24B-3(i)(1)
- ⁴³ *Ala. Code* §16-24B-3(a).

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- ⁴⁴ *Ala. Code* §16-24B-3(c).
- ⁴⁵ *Ala. Code* §16-24B-3(e)(2).
- ⁴⁶ *Ala. Code* §16-24B-3(c).
- ⁴⁷ *Ala. Code* §16-24B-3(e)(2)(a).
- ⁴⁸ *See Curry v. Russell County Board of Education*, 125 So.3d 711 (2013).
- ⁴⁹ *Ala. Code* §16-24B-3(l)(3).
- ⁵⁰ *Ala. Code* §16-24C-3(8).
- ⁵¹ *Ala. Code* §16-24B-3(e)(1).
- ⁵² *Loudermill v. Cleveland Board of Education*, 470 U.S. 532 (1985).
- ⁵³ *Ala. Code* §16-24B-3(f)(1).
- ⁵⁴ *Ala. Code* §16-24B-3(e)(2)(b).
- ⁵⁵ *Ala. Code* §16-24B-3(e)(4).
- ⁵⁶ *Ala. Code* §16-24B-3(g).
- ⁵⁷ *Ala. Code* §16-24B-5(a).
- ⁵⁸ *Ala. Code* §16-24B-5(a).
- ⁵⁹ *Ala. Code* §16-24B-5(b).
- ⁶⁰ *See Curry v. Russell County Board of Education*, 125 So.3d 711 (2013).
- ⁶¹ *Ala. Code* §16-23-5(b).
- ⁶² *Ala. Code* §16-24B-3.1(a).
- ⁶³ *Ala. Code* §16-24B-3.1(b).
- ⁶⁴ *Ala. Code* §16-24B-3.1(c).
- ⁶⁵ *Ala. Code* §16-24B-3(l)(3).
- ⁶⁶ *Ala. Code* §16-24C-3(8).
- ⁶⁷ *Ala. Code* §16-24B-3(a).
- ⁶⁸ *Ala. Code* §16-24B-2(4); *see also Alabama Rule of Civil Procedure* 6(a).
- ⁶⁹ *Ala. Code* §16-24B-6(b); *see also Yance v. Dothan City Board of Education*, 163 So.3d 1070 (2014).

APPENDIX

QUICK REFERENCE CHART FOR CONTRACTS

	Probationary Principals	Contract Principals	Notes
Who?	First time principal in your system	Any person who has previously been a principal in your system	
Length of Contract	up to 1 year maximum – if person has previously been a principal in another Alabama public school	At least 3 years	Be mindful of non-standard start dates because it makes it difficult to keep up with principals whose contracts don't end in June. Act permits contracts to be "up to" one or two years or at least 3 years. Use this to keep principals on a regular cycle.
	up to 2 years – if person has never been a principal anywhere		1 year contracts cannot be extended at end of the year; length must be established at the beginning of the contract
Evaluation Requirement	Permitted, but not required	Must be evaluated every year of the contract	Contract extended one year for every year not evaluated, up to 3 years
If not nonrenewed	Becomes contract principal with at least a 3 year contract	Receives new contract of at least 3 years	

QUICK REFERENCE CHART FOR NONRENEWALS

	Probationary Principals	Contract Principals	Notes
Initiation of Nonrenewal	Written recommendation from supt. to board		
	No pre- or simultaneous notice to principal		
Timing of Nonrenewal	Notice of nonrenewal by end of contract (usually June 30)	Notice of nonrenewal 90 days before end of contract (usually March 30)	Be mindful of contracts that have non-standard start and end dates
Reasons for Nonrenewal	Any reason	Must have a reason	
	Without a stated reason	No limit on what the reason must be	
	Cannot be personal, political or otherwise discriminatory	Cannot be personal, political or otherwise discriminatory	
Nonrenewal hearing before the Board?	No	No, unless reason given is stigmatizing in nature	Stigmatizing means that it could harm their chances to get another job
Right to Challenge Nonrenewal?	No	Yes	For probationary principals, challenge could still be filed if process is not followed
Process to Challenge Nonrenewal	n/a	10 days to notify superintendent of request for hearing; judge must schedule within 45 days	
Issue to be decided by the court	n/a	Sole issue to be considered is whether nonrenewal is personal or political	
Pay Ends	At end of contract	Not until court issues decision upholding board's decision	

SAMPLE PROBATIONARY PRINCIPAL CONTRACT

This Probationary Principal's Contract is made by and between the _____ Board of Education located in the State of Alabama (hereinafter referred to as "the Board"), and _____ (hereinafter referred to as the "Probationary Principal").

Witnesseth: That in accordance with action taken by the Board as recorded in the minutes of the Board meeting held on the ____ day of _____, 20__, the Board hereby agrees to employ the Probationary Principal, and the Probationary Principal hereby agrees to accept such employment, subject to the following terms and conditions:

Section 1: Term of Contract. The Probationary Principal shall be employed for a period of _____ months, beginning on July 1, 20__ (or other date as appropriate) and ending on June 30, 20__. (or other date as appropriate. *Individuals who are being employed for the first time as a principal in any Alabama public school system may be employed for a probationary period of up to two (2) full contract years. Individuals who have been previously employed as a principal in another Alabama public school system may be employed for a probationary period of up to one (1) full contract year. Make every effort to end the contract on June 30 so that the principal is on the same cycle as other principals, even if that means shortening the contract term so that it ends on June 30. At the end of the probationary period they must be nonrenewed or given a minimum of a three-year contract.*)

Section 2. Salary. (a) In consideration of an annual salary of \$ _____, for _____ months/____ days per year and of further agreements and consideration hereinafter stated, the Probationary Principal agrees to use her or his best efforts to perform faithfully the duties of a Probationary Principal for the Board and to abide by the rules, regulations and policies promulgated by the Board before or during the term of this Contract. The annual salary shall be paid in twelve equal monthly installments.

(b) In any year in which the Alabama Legislature enacts a pay raise for all public school teachers, the Probationary Principal's salary will increase in accordance with the terms of the legislation and any subsequent action taken by the Board in response to that legislation.

(c) Any upward adjustment in salary during the term of this Contract shall not constitute a new contract or an amendment, modification, extension, waiver or cancellation of this Contract.

Section 3. Professional Status. The Probationary Principal affirms that throughout the term of this Contract he or she will hold a valid and appropriate certificate to act as a Principal of Schools in the State of Alabama.

Section 4. Probationary Principal's Duties. The Probationary Principal shall perform in a timely manner all duties delegated or assigned to the Probationary Principal by federal, state, and local laws, policies, and regulations, by the Board, or by its Superintendent of Education (hereinafter referred to as "the Superintendent"). These duties may be changed during the term of this Contract at the discretion of the Board and Superintendent. Such changes in duties do not constitute a new contract, or an amendment, modification, extension, waiver or cancellation of this Contract.

Section 5. Transfer. The Board, upon the written recommendation of the Superintendent, is authorized to transfer the Probationary Principal without loss of salary to other Principal openings in the school system without a hearing at any time.

Section 6. Cancellation. (a) For the duration of this Contract, the Contract may be canceled for any of the reasons enumerated in state law and regulations: (1) immorality, (2) insubordination, (3) neglect of duty, (4) conviction of a felony or crime involving moral turpitude, (5) failure to fulfill the Principal's duties as defined by law, (6) willful failure to comply with Board policy, (7) justifiable decrease in the number of positions due to decreased enrollment or decrease in funding, (8) failure to maintain a current certificate, and (9) failure to perform duties in a satisfactory manner, (10) incompetency, or (11) other good and just cause.

(b) Cancellation of this Contract shall be in accordance with the Teacher Accountability Act, *Ala. Code* § 16-24B-1 *et seq.*

(c) The Probationary Principal shall give the Superintendent ___ days' (*length of notice to be negotiated*) written notice of her or his intent to cancel this Contract. Notice shall be served by certified mail, return receipt requested, or by personal service, and by no other means.

Section 7. Contract Nonrenewal. (a) Nonrenewal of this Contract shall be in accordance with the provisions of the Teacher Accountability Act. In the event of such nonrenewal, the Superintendent and Board shall approve same prior to the expiration of this Contract and provide the Probationary Principal written notice of same. Notice shall be served by certified mail, return receipt requested, or by personal service, and by no other means.

(b) The Probationary Principal shall give the Superintendent at least ___ days' (*length of notice to be negotiated*) written notice of her or his intent not to seek renewal of the Contract. Notice shall be served by certified mail, return receipt requested, or by personal service, and by no other means.

(c) Should the Board and Probationary Principal agree to renew the Contract but fail to execute a new Contract prior to the expiration of the current Contract, the terms and agreements herein shall continue to bind the parties in accordance with the provisions of the Teacher Accountability Act.

Section 8. Evaluation. The Probationary Principal should be evaluated annually according to the process defined by the State Board of Education. The Probationary Principal agrees to participate in the evaluation process and to complete any professional development plan resulting from the evaluation process. Failure to annually evaluate the Probationary Principal shall not be deemed a breach of this contract.

Section 9. Benefits. The Probationary Principal shall receive all benefits of employment that the state law or regulations or Board grants to all certificated employees. In addition, the Board shall provide the Probationary Principal with the following benefits: (*List others, if any, i.e., travel allowance, annual leave, vacation, professional activities, as agreed upon.*) Changes in these benefits during the term of this Contract shall not constitute a new contract, or an amendment, modification, extension, waiver or cancellation of this Contract.

Section 10. Background Check. Pursuant to state law and regulations, the Board is required to conduct a criminal background check on all employees with unsupervised access to children. Failure to disclose a criminal conviction shall be considered a material breach of this Contract and shall subject the Probationary Principal to cancellation proceeding under Section 6.

Section 11. Professional Liability. The Principal will be entitled to liability protection for acts and omissions within the line and scope of his position as provided by the Educators Liability Trust Fund, pursuant to *Ala. Code* §16-22-4.1 and subject to the terms, limitations and exclusions of said coverage.

Section 12. Implied Resignation. Should the Principal voluntarily accept an administrative or supervisory position not covered by the Teacher Accountability Act during the

term of this Contract or any subsequent or extended principal Contract, such acceptance shall act as implied resignation of this Contract as of the effective date of the Principal's new position.

Section 13. Amendment, Modification, Extension or Waiver. This Contract shall not be amended, modified, extended or waived except in writing authorized, agreed upon, and executed by the Probationary Principal and the Board, upon the written recommendation of the Superintendent.

Section 14. Severability. If during the term of this Contract it is found that part of the Contract is illegal and must be severed from the Contract, the remainder of the Contract shall remain in force, unless the severance causes the remainder of the Contract to fail in its essential purpose.

Section 15. Choice of Law. This contract shall be construed and enforced by the substantive laws of the State of Alabama.

Section 16. Interpretation of Agreement. No provision of this Contract shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of that party having, or being deemed to have, structured, dictated, or drafted that provision.

Section 17. Headings. The section headings in this Contract are entirely editorial, and in no way substantive. They do not create, enlarge, or diminish the rights and duties of the parties to this Contract.

Section 18. Other Agreements or Understandings. Provisions of this Contract, and any changes made pursuant to Sections 2, 4, 9, 12 and 13, above, supersede any previous agreements or understandings between the parties – whether oral or in writing – and will control in the event of a conflict with any other agreement or understanding that the parties may enter in to.

Section 19. Counterparts. This Contract may be executed in two counterparts, each of which shall be deemed an original but all of which will constitute one and the same Contract.

Section 20. The undersigned acknowledge that this Contract is void and a nullity unless (a) the Board approves said Contract as evidenced by action of a majority of the Board in an official board meeting and (b) a copy of the official minutes of the Board meeting in which the Contract was approved is kept on file in Central Office.

Section 21. To the extent any provision of this Contract conflicts with the Teacher Accountability Act codified at *Ala. Code* §16-24B-1, *et seq.*, that provision shall be deemed amended to be consistent with the Act.

Section 22. Advice of Counsel. THE PARTIES TO THIS CONTRACT REPRESENT THAT THEY HAVE SIGNED IT (1) AFTER AMPLE, FULL, AND MATURE DELIBERATION, (2) WITH FULL AUTHORITY TO DO SO, (3) AFTER HAVING READ THE CONTRACT AND HAD THE OPPORTUNITY TO FREELY DISCUSS IT WITH COUNSEL AND ANY OTHER ADVISOR OF EACH PARTY'S CHOICE, AND (4) THAT THEY ARE SIGNING IT VOLUNTARILY AND FULLY AWARE OF ITS CONTENTS AND MEANING.

SECTION 23. Effective Date. The effective date of this Contract is July 1, 20 __, (or other date as may be appropriate).

In Witness whereof, the parties have executed this Contract on the date indicated below.

Executed by the Board this ____ day of _____, 20__.

Superintendent of Education

Executed by the Probationary Principal this ____ day of _____, 20__.

Probationary Principal

SAMPLE CONTRACT PRINCIPAL CONTRACT

This contract is made by and between the _____ Board of Education located in the State of Alabama (hereinafter referred to as “the Board”), and _____ (hereinafter referred to as “the Contract Principal”).

Witnesseth: That in accordance with action taken by the Board as recorded in the minutes of the Board meeting held on the ____ day of _____, 20____, the Board hereby agrees to employ the Contract Principal, and the Contract Principal hereby agrees to accept such employment, subject to the following terms and conditions:

Section 1: Term of Contract. The Contract Principal shall be employed for a period beginning on July 1, 20____, (*or other date as appropriate*) and ending on June 30, 20____. (*or other date as appropriate. Make every effort to end the contract on June 30 so that the principal is on the same cycle as other principals, even if that means lengthening the contract term so that it ends on June 30. Under current Alabama law this Contract must be for a minimum of three years.*)

Section 2: Salary. (a) In consideration of an annual salary of \$_____, for _____ months/____ days per year and of further agreements and consideration hereinafter stated, the Contract Principal agrees to abide by the rules, regulations and policies promulgated by the Board before or during the term of this Contract. The annual salary shall be paid in twelve equal monthly installments.

(b) In any year in which the Alabama Legislature enacts a pay raise for all public school teachers, the Contract Principal’s salary will increase in accordance with the terms of the legislation and any subsequent action taken by the Board in response to that legislation.

(c) Any upward adjustment in salary during the term of this Contract shall not constitute a new contract or an amendment, modification, extension, waiver or cancellation of this Contract.

Section 3. Professional Status. The Contract Principal affirms that throughout the term of this Contract he or she will hold a valid and appropriate certificate to act as a Contract Principal of Schools in the State of Alabama.

Section 4. Contract Principal’s Duties. The Contract Principal shall perform in a timely manner all duties delegated or assigned to the Contract Principal by federal, state, and local laws, policies, and regulations, by the Board or by its Superintendent of Education (hereinafter referred to as “the Superintendent”). These duties may be changed during the term of this Contract at the discretion of the Board and Superintendent. Such changes in duties do not constitute a new contract, or an amendment, modification, extension, waiver or cancellation of this Contract.

Section 5. Transfer. The Board, upon the written recommendation of the Superintendent, is authorized to transfer the Contract Principal without loss of salary to other Contract Principal openings in the school system at any time, and such transfer can be effected without a hearing.

Section 6. Cancellation. (a) For the duration of this Contract, the Contract may be canceled for : (1) immorality, (2) insubordination, (3) neglect of duty, (4) conviction of a felony or crime involving moral turpitude, (5) failure to fulfill the Contract Principal’s duties as defined by law, (6) willful failure to comply with Board policy, (7) justifiable decrease in the number of positions due to decreased enrollment or decrease in funding, (8) failure to maintain a current certificate, and (9) failure to perform duties in a satisfactory manner, (10) incompetency, or (11) other good and just cause.

(b) Cancellation of this Contract shall be in accordance with *Ala. Code* § 16-24B-1, *et seq.*

(c) The Contract Principal shall give the Superintendent ____ days' (*length of notice to be negotiated*) written notice of her or his intent to cancel this Contract. Notice shall be served by certified mail, return receipt requested, or by personal service, and by no other means.

Section 7. Contract Renewal and Nonrenewal. (a) Nonrenewal of this Contract shall be upon the recommendation of the Superintendent and a majority of the Board no less than 90 days before the end of this Contract and in accordance with the provisions of the *Ala. Code* § 16-24B-1 *et seq.* Said notice shall state the reasons for nonrenewal. Such action shall not be for political or personal reasons on the part of the Superintendent or the Board.

(b) The Contract Principal shall give the Superintendent at least ____ days' (*length of notice to be negotiated*) written notice of her or his intent not to seek renewal of the Contract. Notice shall be served by certified mail, return receipt requested, or by personal service, and by no other means.

(c) Should the Board and Contract Principal agree to renew the Contract but fail to execute a new Contract prior to the expiration of the current Contract, the terms and agreements herein shall continue to bind the parties in accordance with the provisions of the Teacher Accountability Act.

Section 8. Evaluation. The Contract Principal shall be evaluated annually according to the process defined by the State Board of Education. The Contract Principal agrees to participate in the evaluation process and to complete any professional development plan resulting from the evaluation process. The failure of the Superintendent to ensure the Contract Principal is evaluated shall result in a one-year extension of this Contract, for no more than a total of three years.

Section 9. Benefits. The Contract Principal shall receive all benefits of employment that state law or regulations or Board grants to all certified employees. In addition, the Board shall provide the Contract Principal with the following benefits: (*List others, if any, i.e., travel allowance, annual leave, vacation, professional activities, as agreed upon.*) Changes in these benefits during the term of this Contract shall not constitute a new Contract, or an amendment, modification, extension, waiver or cancellation of this Contract.

Section 10. Background Check. Pursuant to state law and regulations, the Board is required to conduct a criminal background check on all employees with unsupervised access to children. Failure to disclose a criminal conviction shall be considered a material breach of this Contract, and shall subject the Contract Principal to cancellation proceeding under Section 6.

Section 11. Professional Liability. The Contract Principal will be entitled to liability protection for acts and omissions within the line and scope of his position as provided by the Educators Liability Trust Fund, pursuant to *Ala. Code* §16-22-4.1 and subject to the terms, limitations and exclusions of said coverage.

Section 12. Implied Resignation. Should the Principal voluntarily accept an administrative or supervisory position not covered by the Teacher Accountability Act during the term of this Contract or any subsequent or extended principal Contract, such acceptance shall act as implied resignation of such Contract as of the effective date of the Principal's new position.

Section 13. Amendment, Modification, Extension or Waiver. This Contract shall not be amended, modified, extended or waived except in writing authorized, agreed upon, and executed by the Contract Principal and the Board, upon the written recommendation of the Superintendent.

Section 14. Severability. If during the term of this Contract it is found that part of the Contract is illegal and must be severed from the Contract, the remainder of the Contract shall remain in force, unless the severance causes the remainder of the Contract to fail in its essential purpose.

Section 15. Choice of Law. This contract shall be construed and enforced by the substantive laws of the State of Alabama.

Section 16. Interpretation of Agreement. No provision of this Contract shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of that party having, or being deemed to have, structured, dictated, or drafted that provision.

Section 17. Headings. The section headings in this Contract are entirely editorial, and in no way substantive. They do not create, enlarge, or diminish the rights and duties of the parties to this Contract.

Section 18. Other Agreements or Understandings. Provisions of this Contract, and any changes made pursuant to Sections 2, 4, 9, 12 and 13, above, supersede any previous agreements or understandings between the parties – whether oral or in writing – and will control in the event of a conflict with any other agreement or understanding that the parties may enter in to.

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Section 21. To the extent any provision of this Contract conflicts with the Teacher Accountability Act codified at *Ala. Code* §16-24B-1, *et seq.*, that provision shall be deemed amended to be consistent with the Act.

Section 22. Advice of Counsel. THE PARTIES TO THIS CONTRACT REPRESENT THAT THEY HAVE SIGNED IT (1) AFTER AMPLE, FULL, AND MATURE DELIBERATION, (2) WITH FULL AUTHORITY TO DO SO, (3) AFTER HAVING READ THE CONTRACT AND HAD THE OPPORTUNITY TO FREELY DISCUSS IT WITH COUNSEL AND ANY OTHER ADVISOR OF EACH PARTY'S CHOICE, AND (4) THAT THEY ARE SIGNING IT VOLUNTARILY AND FULLY AWARE OF ITS CONTENTS AND MEANING.

SECTION 23. Effective Date. The effective date of this Contract is July 1, 20___, (*or other date as may be appropriate*).

In Witness whereof, the parties have executed this Contract on the date indicated below.

Executed by the Board this ____ day of _____, 20__.

Superintendent of Education

Executed by the Contract Principal this ____ day of _____, 20__.

Contract Principal

**SAMPLE SCRIPT FOR TERMINATION
OF A CONTRACT OR PROBATIONARY PRINCIPAL**

1. INTRODUCTION

The board must now consider the proposed termination of (INSERT EMPLOYEE'S NAME)'s principal contract.

The Open Meetings Act specifically permits boards to hold hearings in private if expressly allowed by law. Private termination hearings for principals 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)'s principal contract be cancelled. 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 he 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/he can be impartial in the hearing. If he/he 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 cancel (INSERT EMPLOYEE'S NAME)'s contract. 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/he will have an opportunity to present in full all the reasons why he/he believes his/her contract should not be cancelled and to provide whatever documentary evidence he/he 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 contract should be cancelled.

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 cancel your contract. I will now give you an opportunity to tell us all the reasons why you believe your contract should not be cancelled. 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 his/her contract should not be cancelled.

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 recommendation is appropriate, it may act accordingly. If it determines that it is not appropriate, it may reject the recommendation.

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.

**SAMPLE REQUEST FOR NON-JURY EXPEDITED EVIDENTIARY HEARING
FOR CONTRACT CANCELLATIONS**

IN THE CIRCUIT COURT OF PURPLE COUNTY, ALABAMA

JOHN SMITH,)	
)	
Petitioner,)	
)	
vs.)	Case No. CV- _____
)	
PURPLE COUNTY)	
BOARD OF EDUCATION,)	
)	
Respondent.)	

**REQUEST FOR NON-JURY EXPEDITED EVIDENTIARY HEARING
PURSUANT TO THE ALABAMA TEACHER ACCOUNTABILITY ACT**

COMES NOW the Purple County Board of Education (“the Board”), pursuant to the Teacher Accountability Act (“the Act”) codified at *Ala. Code* §16-24B-3(e)(2)(b), and requests an expedited evidentiary hearing regarding the Board’s cancellation of John Smith’s (“Smith”) principal contract. The Board states as follows:

1. The Board entered into a contract with Smith on July 1, 20__ to expire June 30, 20__. (See Exhibit 1).
2. On _____, 20__, the Board voted to cancel said contract for cause.
3. The Board notified Smith of this decision by letter dated _____, 20__. (See Exhibit 2).
4. On _____, 20__, Smith notified Superintendent Grace Green that he wished to contest the Board’s decision. (See Exhibit 3).
5. Pursuant to the Act, the Superintendent must notify the local circuit court that the principal requests a non-jury, expedited evidentiary hearing, which must be set for hearing by the Court within 45 days of the Board’s request.

Respectfully Submitted this ___ day of _____, 20__.

JESSICA JONES (JON001)
Counsel for the Purple County
Board of Education

OF COUNSEL:
JONES & ASSOCIATES, P.C.
100 Jones Avenue
Purple City, Alabama
(334) 555-1212
jjones@joneslaw.com

