

FAIR DISMISSAL ACT

State Board of Education Policy

1. Definitions

1.1. Institution. An institution under the control of the State Board of Education.

1.2. Employees. All persons employed on a full-time basis by the President of an institution. The term “employees” also includes persons employed by the President of an institution on a fulltime basis who are adult bus drivers, and further includes other full-time employees whose duties require twenty (20) or more hours in each normal working week of the school term, institution holidays excepted. Substitute teachers and substitute workers are excluded from the term “employees.”

1.3. President. President shall mean the administrative head of an institution, regardless of the title actually held.

1.4. Service. Service of any notice required hereunder shall be deemed completed on the date of receipt.

1.5. Time. In computing any period of time prescribed under these regulations, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period computed shall be included unless it is a Saturday, Sunday, legal holiday (recognized by the institution), or institutional holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, legal holiday, or institutional holiday.

2. Probationary Period

2.1. All employees as defined in subsection 1.2 of these regulations shall be deemed employed on a probationary status for a period of three (3) years from the date of his or her initial employment.

2.2. During said probationary period, the employing authority shall cause the employee's performance to be evaluated.

2.3. At any time during such employee's probationary period, the employing authority may remove an employee by furnishing said employee written notification at least fifteen (15) calendar days prior to the effective date of termination.

2.4. If a probationary employee under contract is terminated within the period of a contract, the employee is entitled to be given cause and the opportunity for a hearing under these procedures adopted by the State Board of Education. Employment agreements shall be offered for either three (3), nine (9), or twelve (12) months. If fifteen (15) calendar days prior to the end of the contract period, the person is not notified in writing that his or her services will no

longer be required, he/she shall be offered another employment agreement for the same length as the prior contract unless otherwise agreed to by the President and the employee.

3. Non-probationary Status

Upon the completion by the employee of said probationary period, said employee shall be deemed employed on a non-probationary status, and said employee's employment shall thereafter not be terminated except for failure to perform his or her duties in a satisfactory manner, incompetency, neglect of duty, insubordination, immorality, justifiable decrease in jobs in the institution, or other good and just causes; provided, however, such termination of employment shall not be made for political or personal reasons on the part of the President of the institution.

4. Termination of Employment

An employee on nonprobationary status may be terminated only in the following manner:

4.1. The President shall give written notice of the intent to terminate which must include:

4.1.1. A statement indicating the reasons for the proposed termination.

4.1.2. A short and plain statement of the facts showing that the termination is based on one or more of the reasons listed in 3. above.

4.1.3. The time and place for the pre-termination conference which must be conducted no less than twenty (20) days and no more than thirty (30) days after receipt of notice by the employee.

4.1.4. Statement that, if the pre-termination conference is desired, the employee must file a written request within fifteen (15) days of receipt of notice.

4.2. Notice to the employee may be served by personal service, United States Postal Service Registered or Certified mail to the employee's last known address, or by private mail carrier for overnight delivery with signature required to the employee's last known address.

4.3. During the pre-termination conference, which shall be public or private at the discretion of the employee, the employee, or the employee's representative, shall be afforded the opportunity to speak to the President on matters relevant to the termination. The employee has the right to counsel and to have a court reporter record his or her statement, both at the expense of the employee.

5. Notice of Termination: Right to Hearing

Regardless of whether the employee elects to have a conference, within ten (10) days of the President's decision, the employee must be given written notice of the action and the right to appeal the action by filing a written notice of contest with the President within fifteen (15) days of receipt of the notice. Said notice shall be served by personal service, United States Postal Service Registered or Certified mail, or by private mail carrier for overnight delivery, signature required. If the employee does not timely file a notice of contest, the President's decision shall be final. The President may suspend an employee with pay if the action is taken. This section, however, does not mandate pay in cases involving moral turpitude. If such charges are found to be unfounded, pay would be reinstated. Termination may not be effected until the time for filing notice of

contest has expired and, if notice of contest is filed, not until the hearing officer has issued an opinion.

6. Process to Contest Termination

6.1. Hearing Officer Selection. Within seven (7) days of a timely filed notice of contest, the parties may either mutually agree upon a person to hear the employee's contest or submit a joint request for a panel of arbitrators to the Federal Mediation and Conciliation Services' Office of Arbitration Services (FMCS). The joint request must specify that the "parties prefer a hearing officer who is experienced in employment law." FMCS will submit to each party an identical list of names of persons chosen to serve as a hearing officer in such matters. Each party shall have ten (10) days from the date of receipt of the list to strike any name to which it objects, number the remaining names in the order of preference, and return the list to FMCS. If a party does not return the list on a timely basis, all persons on the list are deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, FMCS will select a hearing officer. If the parties fail to agree upon any of the persons named, if those named decline, or if for any reason the appointment cannot be made from the submitted lists, FMCS will make the appointment from among other members of the panel. Within seven (7) days of receipt of the notice of contest, the institution must forward the notice of contest information form to the State Department of Education.

6.2. Hearing Process. Upon selection, the hearing officer shall immediately give notice of the date and time of the hearing, not less than thirty (30) nor more than sixty (60) days following the hearing officer's appointment. The parties may agree to the location of the hearing or, if they cannot agree, the hearing officer will determine a place within the jurisdiction of the institution. No less than thirty (30) days before the hearing, the parties shall submit to the hearing officer, with a copy to the opposing party, documents supportive of the action (or in the case of the employee, in contravention to), as well as a list of witnesses to be called at the hearing. The documentary submissions and witness list may be amended at any time prior to five (5) days before the hearing.

6.3. Hearing Officer Authority.

6.3.1 The hearing officer shall have the power to administer oaths and compel the attendance of witnesses and production of relevant documents or information. If requested, the hearing officer shall issue subpoenas for witnesses to testify at the hearing, under oath. The hearing officer will conduct a de novo hearing and render a decision based on the evidence and/or information submitted to the hearing officer.

The hearing officer shall determine which of the following actions should be taken:

6.3.1.1 Termination of the employee.

6.3.1.2 Suspension of the employee with or without pay.

6.3.1.3 Reprimand.

6.3.1.4 Other disciplinary action.

6.3.1.5 No action against the employee.

6.3.2. The hearing officer shall render a written decision with findings of fact and conclusions of law within thirty (30) days after the hearing. Expenses of the hearing officer shall be borne by the State Department of Education.

6.4. Appeal of Hearing Officer's Decision. All appeals of a final decision of the hearing officer will rest with the Alabama Court of Civil Appeals. An appeal by either party shall be perfected by filing a written notice of appeal with the Clerk of the Court of Civil Appeals within twenty-one (21) days after the receipt of the hearing officer's final written decision. Failure to file a timely notice of appeal shall render the decision of the hearing officer final, in which case the institution shall take possession of the record of the hearing and shall maintain the record for three (3) years. The Court of Civil Appeals shall have the discretion to refuse to hear appeals of the hearing officer's final decision. Review is not a matter of right but is rather a matter of judicial discretion, and an appeal may only be granted when the Court determines there are special and important reasons for granting the appeal. Within thirty (30) days after an appeal is granted, the hearing officer will transmit the record to the Clerk with the appealing party bearing the costs associated with the preparation and transmission of the record and transcript of the hearing. The decision of the hearing officer shall be affirmed on appeal unless the Court of Civil Appeals finds the decision arbitrary and capricious, in which case the court may order another hearing.

7. Transfer

7.1. The employing President shall have the authority to transfer employees from one position at the institution to another; however, such transfer shall be based upon the good and just cause needs of the institution, and shall not be for political or personal reasons on the part of the President and shall be without loss of status of the employee.

7.2. Notice of Transfer: Right to Hearing. If the employing President determines that a probationary or nonprobationary employee is to be transferred, the employee shall be served notice of the action within ten (10) days of the decision by personal service, United States Postal Service Registered or Certified mail to the employee's last known address, or by private mail carrier for overnight delivery, signature required, to the employee's last known address. Notice shall be in writing and will inform the employee of the right to contest the action by filing a written notice of contest with the President within fifteen (15) days of receipt of the President's notice. The transfer will not be effected until the time for filing notice of contest has expired and, if notice of contest is filed, not until the hearing officer has approved the transfer. If the contest is not timely filed, the President's decision will be final.

7.3 Process to Contest Transfer. If notice of contest is timely filed, the hearing officer shall be selected as indicated in 6.1. above. Upon selection, the hearing officer will give notice of the date and time for hearing, no less than thirty (30) days and no more than sixty (60) days following the appointment of the hearing officer. The parties may agree to the location of the hearing or, if they cannot agree, the hearing officer will determine a location within the jurisdiction of the institution. No less than thirty (30) days before the hearing, the parties must submit to the hearing officer, with a copy to the opposing party, documents supportive of (or in the employee's case, in contravention to) the transfer, as well as a list of witnesses to be called

at the hearing. The documentary submissions and witness list may be amended at any time prior to five (5) days before the hearing. The hearing officer shall have the power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence or information. If requested, the hearing officer shall issue subpoenas for witnesses to testify at the hearing under oath. The hearing officer shall conduct a *de novo* hearing and render a decision based upon the evidence and/or information submitted to the hearing officer. The hearing officer shall determine whether the evidence was insufficient for the President to take action, whether the action was taken for political or personal reasons, or whether such action was arbitrarily unjust. The hearing officer shall render a written decision, with findings of fact and conclusions of law, within thirty (30) days after the hearing. The decision of the hearing officer shall be final. Expenses of the hearing officer are to be borne by the State Department of Education.

8. Suspension for More Than Seven Days Without Pay (Long-Term Suspension)

8.1 A nonprobationary employee may be suspended for more than seven (7) days without pay for just cause and the decision must not be made for political or personal reasons. The President must give written notice of the intent to impose a long-term suspension to the employee which must include:

8.1.1 The reasons for the proposed suspension;

8.1.2 A short and plain statement of the facts showing that the suspension is for just cause;

8.1.3 The time and place for the pre-suspension conference which must be conducted no less than twenty (20) days and no more than thirty (30) days after receipt of notice by the employee.

8.1.4 Statement that, if the pre-suspension conference is desired, the employee must file a written request within fifteen (15) days of receipt of notice.

8.1.5 During the pre-suspension conference, which shall be public or private at the employee's discretion, the employee, or the employee's representative, shall be afforded the opportunity to speak to the President on matters relevant to the suspension. The employee has the right to counsel and to have a court reporter record his or her statement, both at the expense of the employee.

8.2. Notice of Long-Term Suspension: Right to Hearing. Regardless of whether the employee elects to have a conference, within ten (10) days of the President's decision, the employee must be given written notice of the action and the right to appeal as provided in 5. above.

8.3. Process to Contest a Long-Term Suspension

8.3.1. Hearing Officer Selection. If notice of contest is timely filed (as provided in 5. above), the hearing officer shall be selected as provided in 6.1. above.

8.3.2. Hearing Process. Upon selection, the hearing officer shall immediately give notice of the date of the hearing as provided in 6.2. above.

8.3.3. Hearing Officer Authority. The hearing officer shall have authority and powers indicated in 6.3. above and shall determine which of the following actions should be taken:

8.3.3.1. Suspension of the employee, with or without pay.

8.3.3.2. Reprimand.

8.3.3.3. Other disciplinary action.

8.3.3.4. No action.

8.3.4. The hearing officer shall render a written decision with findings of fact and conclusions of law within thirty (30) days after the hearing. Expenses of the hearing officer shall be borne by the State Department of Education.

8.4. Appeal of Hearing Officer's Decision

All appeals of a final decision of the hearing officer will be conducted as provided in 6.4. above.

9. Other Disciplinary Action

9.1. A nonprobationary employee may be suspended for seven (7) days or less without pay, or suspended for any period of time with pay, or reprimanded or censured for just cause, but shall not be made for political or personal reasons. The President must give written notice of intent to impose disciplinary action to the employee which must include:

9.1.1. The reasons for the proposed disciplinary action.

9.1.2. A short and plain statement of the facts showing that the disciplinary action is taken for just cause.

9.1.3. The time and place for the President's conference on the proposed disciplinary action which shall be held no less than twenty (20) days and no more than thirty (30) days after receipt of notice by the employee.

9.1.4. Statement that, if the pre-disciplinary conference is desired, the employee must file a written request with the President within fifteen (15) days after receipt of the notice.

9.1.5. The pre-disciplinary conference shall be conducted as provided in 8.1.5. above.

9.2. Notice of Disciplinary Action Right to Hearing. Regardless of whether or not the employee elects to have a conference, within ten (10) days of the President's decision, the employee must be given notice of the action and the right to appeal as indicated in 5. above.

9.3. Process to Contest Disciplinary Action

9.3.1 Hearing Officer Selection

If notice is timely filed (as provided in 5. above), the hearing officer shall be selected as provided in 6.1. above.

9.3.2 Hearing Officer Authority

Upon selection, the hearing officer will set the date for submission of written materials relevant to the action which is not less than thirty (30) nor more than sixty (60) days following the appointment of the hearing officer. Not less than thirty (30) days before the date of submission of written materials, the parties must submit information and/or other documents supportive of or in contravention to the action to the hearing officer with a copy to the opposing party. No later than the date of submission of written materials, the parties must submit written briefs on the factual and legal issues relevant to the action. The hearing officer will consider the case on the written submissions and render a written decision with findings of fact and conclusions of law within thirty (30) days after the deadline for submission of materials. The decision of the hearing officer is final. The expenses of the hearing officer are to be borne by the State Department of Education.

10. Direct Appeal by Employee Denied a Hearing

10.1. A nonprobationary employee who has been denied a hearing before the President and has been transferred, terminated, or suspended has the right to appeal directly to the Chief Administrative Law Judge of the Office of Administrative Hearings, Office of the Attorney General, for relief. The Administrative Law Judge will be appointed by the Chief Administrative Law Judge to address the issue raised in the appeal. The appeal must state facts sufficient to allow the judge to determine tentatively whether or not the President has complied with the *Fair Dismissal Act* statutes. The President may answer or deny in writing the facts set out in the appeal. If no denial is filed, the facts set out in the appeal will be taken as true. The judge shall review the employee's request and the President's answer or denial and determine, with or without a hearing, whether the President has complied with the statutes.

Based upon the findings, the Administrative Law Judge may:

10.11 Order a hearing before the President.

10.12 Determine that the employee has been transferred, suspended, or dismissed in violation of the law and rescind the action taken by the President.

10.13 Sustain the action taken by the President.

10.2. The action of the Administrative Law Judge is final.