

ACT No. 2004-566

1 HB42
2 61982-5
3 By Representatives Spicer, Guin, Martin, Thigpen, Venable,
4 Robinson (O), Fite and McLaughlin
5 RFD: Education Finance and Appropriations
6 First Read: 03-FEB-04
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1
2 ENROLLED, An Act,

3 Relating to the Teacher Tenure Act; to streamline
4 the contest and appeal processes for teachers; to clarify the
5 procedures to be followed when a teacher is suspended; to
6 provide that teachers would have contract cancellation,
7 transfer, and suspension contests heard by a hearing officer
8 from the United States Federal Mediation and Conciliation
9 Service; and to provide that the hearing officer's decision in
10 cancellations and suspensions for greater than seven days
11 without pay could be appealed by either party to the Court of
12 Civil Appeals.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Sections 16-24-5, 16-24-6, 16-24-7,
15 16-24-9, and 16-24-10 are amended to read as follows:

16 "§16-24-5.

17 ~~"Any teacher on continuing service status, upon the~~
18 ~~recommendation of the superintendent and the approval of the~~
19 ~~employing board of education, may be transferred for any~~
20 ~~succeeding year from one position, school or grade to another~~
21 ~~by being given written notice of such intention to transfer by~~
22 ~~the employing board; except, that such transfer shall be~~
23 ~~without loss of status or violation of contract, and such~~
24 ~~transfer may not be for political or personal reasons. Any~~
25 teacher on continuing service status may be transferred for

1 any succeeding year from one position, school, or grade to
2 another by being given written notice of such intention to
3 transfer by the employing board. Such transfer shall be
4 without loss of status or violation of contract, and such
5 transfer may not be for political or personal reasons. Upon
6 recommendation of the superintendent, the employing board
7 shall determine if it intends to make such transfer. The
8 superintendent shall give written notice of the employing
9 board's intention to effectuate such transfer. Such notice
10 shall state the reasons for the proposed transfer, shall state
11 the time and place for the board's hearing on the proposed
12 transfer, and shall state the teacher's right to demand a
13 hearing before the board by filing with the superintendent a
14 written demand for a hearing within 15 days after the receipt
15 of such notice.

16 "§16-24-6.

17 ~~"After receiving notice of the employing board's~~
18 ~~intention to effect a transfer, the teacher receiving such~~
19 ~~notice may obtain a hearing before the employing board by~~
20 ~~filing a written demand for such hearing within 15 days after~~
21 ~~the receipt of such notice. If the teacher does not file such~~
22 ~~demand within 15 days after receipt of the notice to transfer,~~
23 ~~then the transfer shall be final. If the teacher does file a~~
24 ~~demand for a hearing before the board, the board shall hold~~
25 ~~such hearing within 15 days after receipt of the teacher's~~

1 ~~demand for such hearing. At least five days prior to the~~
2 ~~hearing the board shall furnish to the teacher by mailing by~~
3 ~~United States registered or certified mail with postage~~
4 ~~prepaid thereon to said teacher's last known address the time~~
5 ~~and place of said hearing and the reasons for the proposed~~
6 ~~transfer. The procedure at such hearing and the responsibility~~
7 ~~of the board subsequent to such hearing and the rights of the~~
8 ~~teacher and the board at such hearing shall be the same as are~~
9 ~~provided for a contested hearing for cancellation of the~~
10 ~~teacher's contract as hereinafter set out in Section 16-24-9.~~
11 After receiving the notice required in Section 16-24-5, the
12 teacher may obtain a hearing before the employing board by
13 filing with the superintendent a written demand for such
14 hearing within 15 days after the receipt of such notice. If
15 the teacher does not file with the superintendent such demand
16 within 15 days after receipt of the notice to transfer, the
17 transfer shall be final. If the teacher does file a demand for
18 a hearing before the board, the board shall hold such hearing
19 within 30 days after receipt of the notice to transfer. At the
20 hearing, which shall be public or private at the discretion of
21 the teacher, each party may appear with or without counsel and
22 may be heard and present the testimony of witnesses and other
23 evidence and/or information bearing upon the reasons for the
24 proposed transfer and may cross examine the adverse witnesses.
25 The board, or its authorized representative, may administer

1 oaths and issue subpoenas to compel the attendance of
2 witnesses and production of papers necessary as evidence
3 and/or information in connection with the dispute or claim. If
4 requested, the board shall issue subpoenas for witnesses to
5 testify at the hearing, under oath, either in support of the
6 charges or on behalf of the teacher. In case a person refuses
7 to obey such subpoena, the board, or its authorized
8 representative, may invoke the aid of the circuit court in
9 order that the testimony, evidence, or information be
10 produced. Upon proper showing, the court shall issue a
11 subpoena or order requiring the person to appear before the
12 board or its representative and produce evidence and/or
13 information and give testimony relating to the matter at
14 issue. A person failing to obey the court's subpoena or order
15 shall be punishable by the court as for contempt. It shall be
16 the duty of the board to employ a competent court reporter to
17 keep and transcribe a record of the proceedings at such
18 hearing, the costs of which shall be paid by the State
19 Department of Education. After each party has presented its
20 case at the hearing, the employing board of education may
21 determine the question of the transfer by a majority vote, or
22 it may defer action regarding the decision for a period not to
23 exceed five days. Its action and vote, whether taken
24 immediately following the hearing or within five days
25 thereafter, shall be evidenced by the minute proceedings of

1 the board and shall be only after full compliance with this
2 section. If the employing board determines that the transfer
3 shall be effectuated, the superintendent shall give notice to
4 the teacher of the board's action by providing notice by
5 personal service, by United States Postal Service registered
6 or certified mail with postage paid thereon to the teacher's
7 last known address, or by private mail carrier for overnight
8 delivery, signature required, with postage paid thereon to the
9 teacher's last known address within ten days of the board's
10 action. Such notice shall be in writing and shall inform the
11 teacher of the right to contest the transfer by filing with
12 the superintendent a written notice of contest of the action
13 within 15 days of the receipt of the notice.

14 "§16-24-7.

15 ~~"A teacher on continuing service status shall have~~
16 ~~the right to appeal within 15 days after the decision of the~~
17 ~~employing board to the State Tenure Commission, as hereinafter~~
18 ~~established, to obtain a decision by the commission as to~~
19 ~~whether such action was in compliance with this chapter and~~
20 ~~whether such action was taken for political or personal~~
21 ~~reasons and that such action was not arbitrarily unjust. If~~
22 ~~said appeal is not taken within 15 days after the decision of~~
23 ~~the board, the board's decision shall be final. Such appeal~~
24 ~~shall be taken by filing a notice of appeal with the~~
25 ~~commission and a copy with the employing board. Such appeal~~

1 ~~shall be heard not less than 30 days nor more than 60 days~~
2 ~~after such notice of appeal is filed with the commission, and~~
3 ~~the commission shall give such teacher not less than five~~
4 ~~days' notice of the time and place of such hearing. Such~~
5 ~~teacher shall have a right to appear with or without counsel~~
6 ~~and shall have a right to present argument to the commission~~
7 ~~based on the record of the proceedings before the employing~~
8 ~~board. No transfer shall be effected until the time for filing~~
9 ~~notice of appeal has expired and if notice of appeal is filed~~
10 ~~by said teacher not until after a hearing is held and the~~
11 ~~State Tenure Commission has evidenced its approval of the~~
12 ~~transfer of said teacher. The action of the State Tenure~~
13 ~~Commission shall be final and conclusive in determining all~~
14 ~~questions relative to said transfer and shall be based on the~~
15 ~~record of the proceedings before the said board and the~~
16 ~~evidence as recorded at such hearing. The employing board and~~
17 ~~the State Tenure Commission shall be required to complete the~~
18 ~~record in accordance with Section 16-24-10. No transfer shall~~
19 ~~be effected until the time for filing notice of contest has~~
20 ~~expired and, if notice of contest is filed, not until the~~
21 ~~hearing officer has approved the transfer. The teacher may~~
22 ~~obtain a review by a hearing officer of the board's decision.~~
23 ~~Such contest shall be taken by filing a written notice of~~
24 ~~contest with the superintendent within 15 days after the~~
25 ~~receipt of the notice of the decision of the employing board.~~

1 If the contest is not timely filed, the board's decision shall
2 be final. If notice of contest is filed, the hearing officer
3 shall be selected as provided in subsection (b) of Section
4 16-24-20. Upon selection, the hearing officer shall
5 immediately cause notice to be given to the parties of the
6 date and time for a hearing, which hearing shall be held no
7 less than 30 days and no more than 60 days following the
8 appointment of the hearing officer. The parties shall agree as
9 to the location of the hearing, and, if the parties are unable
10 to agree, the hearing officer shall determine the location
11 within the jurisdiction of the employing board. Within 10 days
12 of the appointment of a hearing officer, the board shall cause
13 to be made a copy of the record of proceedings for the hearing
14 officer and the teacher. The record shall consist of all
15 notices given to the teacher, all papers filed with the board
16 by the teacher in compliance with this chapter, a transcript
17 of testimony before the employing board, other evidence and/or
18 information, and the findings and decisions of the board. At
19 such hearing, the teacher and employing board shall make
20 presentations on the facts and the law, but no witnesses shall
21 be called. The hearing officer shall consider the case on the
22 record of the proceedings before the board and the arguments
23 at such hearing. The hearing officer shall determine whether
24 the evidence was insufficient for the board to take the
25 action, whether such action was taken for political or

1 personal reasons, or whether such action was arbitrarily
2 unjust. The hearing officer shall render a written decision,
3 with findings of fact and conclusions of law, within 30 days
4 after its hearing. The decision of the hearing officer shall
5 be final. Expenses of the hearing officer shall be paid by the
6 State Department of Education.

7 "§16-24-9.

8 ~~"An employment contract with a teacher on continuing~~
9 ~~service status may be cancelled only in the following manner:~~

10 ~~"The employing board of education shall give notice~~
11 ~~in writing to the teacher stating in detail the reasons for~~
12 ~~the proposed cancellation and naming the exact time and place~~
13 ~~at which the teacher may appear before the board to answer~~
14 ~~said notice, which date shall not be less than 20 nor more~~
15 ~~than 30 days after the service of such notice to the teacher~~
16 ~~by United States registered or certified mail with postage~~
17 ~~prepaid thereon to said teacher's last known address. Such~~
18 ~~notice shall also inform the teacher that in order to contest~~
19 ~~said cancellation the teacher must file with the board, at~~
20 ~~least five days prior to the date the matter is set for~~
21 ~~hearing, notice of an intention to contest. Nothing herein~~
22 ~~provided is intended to prevent the suspension of a teacher~~
23 ~~pending a hearing on such proposed cancellation and the final~~
24 ~~determination thereof. No teacher dismissed as the result of~~
25 ~~such hearing shall receive compensation for the period of such~~

1 ~~suspension. If the teacher does not file an intention to~~
2 ~~contest with the board at least five days prior to the date~~
3 ~~the matter is set for hearing, then the employing board may~~
4 ~~dismiss the teacher by a majority vote and such dismissal~~
5 ~~shall be final. At a contested hearing, which shall be public~~
6 ~~or private at the discretion of the teacher, each party shall~~
7 ~~have a right to appear with or without counsel and shall have~~
8 ~~a right to be heard and to present the testimony of witnesses~~
9 ~~and other evidence bearing upon the reasons for the proposed~~
10 ~~cancellation of such contract and shall have a right to~~
11 ~~cross-examine the adverse witnesses. The board, or its~~
12 ~~authorized representative, shall have power to administer~~
13 ~~oaths, take depositions and issue subpoenas to compel the~~
14 ~~attendance of witnesses and production of papers necessary as~~
15 ~~evidence in connection with the dispute or claim. If~~
16 ~~requested, the board shall issue subpoenas for witnesses to~~
17 ~~testify either in support of the charges or on behalf of the~~
18 ~~teacher, and such witnesses shall be entitled to receive the~~
19 ~~same mileage and per diem as witnesses called in civil cases~~
20 ~~in the circuit court of the county where the hearing is held,~~
21 ~~the same to be paid out of school funds; provided, that the~~
22 ~~board shall not be accountable for the witness fees of more~~
23 ~~than 10 of the witnesses subpoenaed by the teacher. In case a~~
24 ~~person refuses to obey such subpoena the board, or its~~
25 ~~authorized representative, may invoke the aid of the circuit~~

1 ~~court in order that the testimony or evidence be produced;~~
2 ~~and, upon proper showing, such court shall issue a subpoena or~~
3 ~~order requiring such person to appear before the board or its~~
4 ~~representative and produce evidence and give testimony~~
5 ~~relating to the matter at issue; a person failing to obey the~~
6 ~~court's subpoena or order shall be punishable by the court as~~
7 ~~for contempt. It shall be the duty of said board to employ a~~
8 ~~competent stenographer to keep and transcribe a record of the~~
9 ~~proceedings at such hearing. After each party has presented~~
10 ~~its case at said hearing, the employing board of education may~~
11 ~~determine the question of the cancellation of the contract by~~
12 ~~a majority vote, or it may defer action regarding the decision~~
13 ~~for a period not to exceed five days. Its action and vote,~~
14 ~~whether taken immediately following the hearing or within five~~
15 ~~days thereafter, shall be evidenced by the minute proceedings~~
16 ~~of the board and shall be only after full compliance with this~~
17 ~~section.~~

18 "(a) An employment contract with a teacher on
19 continuing service status may be cancelled only in the
20 following manner: The superintendent shall give written notice
21 to the employing board and the teacher of the superintendent's
22 intention to recommend a cancellation as provided in Section
23 16-24-8. Such notice shall state the reasons for the proposed
24 cancellation, shall contain a short and plain statement of the
25 facts showing that the cancellation is taken for one or more

1 of the reasons listed in Section 16-24-8, and shall state the
2 time and place for the board's meeting on the proposed
3 cancellation, which meeting shall be held no less than 20 days
4 and no more than 30 days after the receipt of such notice by
5 the teacher. The notice shall inform the teacher that in order
6 to request a conference with the board, the teacher shall file
7 a written request with the superintendent within 15 days after
8 the receipt of such notice. At such conference, which shall be
9 public or private at the discretion of the teacher, the
10 teacher, or his or her representative, shall be afforded the
11 opportunity to speak to the board on matters relevant to such
12 cancellation. The teacher shall have the right to counsel and
13 to have a court reporter record his or her statement, both at
14 the expense of the teacher. Thereafter, the board shall
15 determine whether such cancellation shall be effectuated.

16 "(b) Regardless of whether or not the employee
17 elects to have a conference with the employing board, if the
18 board votes to cancel the teacher's contract, the
19 superintendent shall give notice to the teacher of the board's
20 action by providing notice by personal service, by United
21 States Postal Service registered or certified mail with
22 postage paid thereon to the teacher's last known address, or
23 by private mail carrier for overnight delivery, signature
24 required, with postage paid thereon to the teacher's last
25 known address within 10 days of the board's action. Such

1 notice shall be in writing and shall inform the teacher of the
2 right to contest the board's decision by filing with the
3 superintendent a written notice of contest of the action
4 within 15 days of the receipt of the notice. Such contest
5 shall be taken by filing a written notice of contest with the
6 superintendent within 15 days after receipt of the notice of
7 the decision of the employing board. If the contest is not
8 timely taken, the board's decision shall be final. No
9 cancellation shall be effected until the time for filing
10 notice of contest has expired and, if notice of contest is
11 filed, not until the hearing officer has issued an opinion.

12 "§16-24-10.

13 ~~"(a) The action of the employing board shall be~~
14 ~~final in its action on cancellation of a teacher's contract;~~
15 ~~provided, that such action was in compliance with the~~
16 ~~provisions of this chapter and was not arbitrarily unjust.~~

17 ~~"(b) The teacher shall have the right to appeal to~~
18 ~~the State Tenure Commission, as hereinafter established, to~~
19 ~~obtain a review by the commission as to whether such action~~
20 ~~was in compliance with this chapter and whether such action~~
21 ~~was arbitrarily unjust. Such appeal shall be taken by filing~~
22 ~~within 15 days after the decision of the employing board a~~
23 ~~written notice of appeal with the superintendent or chairman~~
24 ~~of said board. If said appeal is not taken within 15 days~~
25 ~~after decision of the board, the board's decision shall be~~

1 ~~final. Upon notice of appeal, the board shall cause to be made~~
2 ~~sufficient copies of the record of proceedings to provide a~~
3 ~~copy for each of the members of the commission and one for the~~
4 ~~teacher. The record shall consist of all notices given to the~~
5 ~~teacher, all paper filed with the board by the teacher in~~
6 ~~compliance with the provisions of this chapter, transcript of~~
7 ~~testimony and other evidence and the findings and decisions of~~
8 ~~the board. The requisite number of copies of the record shall~~
9 ~~be delivered to the commission and to the teacher within 10~~
10 ~~days from the day of the filing of the notice of appeal. The~~
11 ~~commission shall set a date for the hearing at which the board~~
12 ~~and the teacher, or a representative of each, shall have an~~
13 ~~opportunity to be heard. The date of such hearing shall be not~~
14 ~~less than 30 days nor more than 60 days after such notice of~~
15 ~~appeal is filed, and the teacher and the board shall be given~~
16 ~~at least five days' notice of the time and place where the~~
17 ~~appeal will be considered. On said appeal the commission will~~
18 ~~consider the case on the record of the proceedings before the~~
19 ~~said board and the evidence as recorded at such hearing. The~~
20 ~~commission shall by a majority vote determine the validity of~~
21 ~~the action by the board and shall render its decision within~~
22 ~~five days after its hearing.~~

23 ~~"(c) No action shall lie for the recovery of damages~~
24 ~~for the breach of any employment contract of a teacher in the~~
25 ~~public schools.~~

1 "(a) If notice of contest is filed pursuant to
2 Section 16-24-9, the hearing officer shall be selected as
3 provided in subsection (b) of Section 16-24-20. Upon
4 selection, the hearing officer shall immediately cause notice
5 to be given to the parties of the date and time for a hearing,
6 which date shall be no less than 30 days and no more than 60
7 days following the appointment of the hearing officer. The
8 parties shall agree as to the location of the hearing and, if
9 the parties are unable to agree, the hearing officer shall
10 determine the location within the jurisdiction of the
11 employing board. No less than 30 days before such date, the
12 parties shall submit to the hearing officer, with a copy to
13 the opposing party, documents supportive of, or in
14 contravention to, the action, as well as a list of witnesses
15 to be called at such hearing. The witness list and documentary
16 submissions may be amended at any time prior to five days
17 before such hearing. The State Department of Education shall
18 bear the expense of having a court reporter present at such
19 hearing. The hearing officer shall have power to administer
20 oaths, and issue subpoenas to compel the attendance of
21 witnesses and production of papers necessary as evidence
22 and/or information in connection with the dispute or claim. If
23 requested, the hearing officer shall issue subpoenas for
24 witnesses to testify at the hearing, under oath, either in
25 support of the charges or on behalf of the teacher. In case a

1 person refuses to obey such subpoena, the board, or its
2 authorized representative, may invoke the aid of the circuit
3 court in order that the testimony, evidence, or information be
4 produced. Upon proper showing, such court shall issue a
5 subpoena or order requiring such person to appear before the
6 board or its representative and produce evidence and/or
7 information and give testimony relating to the matter at
8 issue. The hearing officer shall conduct a de novo hearing and
9 shall render a decision based on the evidence and/or
10 information submitted to the hearing officer. The hearing
11 officer shall determine which of the following actions should
12 be taken relative to the employee: Cancellation of the
13 employment contract, a suspension of the employee, with or
14 without pay, a reprimand, other disciplinary action, or no
15 action against the employee. The hearing officer shall render
16 a written decision, with findings of fact and conclusions of
17 law, within 30 days after its hearing. Expenses of the hearing
18 officer shall be paid by the State Department of Education.

19 "(b) All appeals of a final decision of the hearing
20 officer shall lie with the Alabama Court of Civil Appeals. An
21 appeal by either party shall be perfected by filing a written
22 notice of appeal with the clerk of the Court of Civil Appeals
23 within 21 days after the receipt of the final written decision
24 of the hearing officer. Failure to file a timely notice of
25 appeal shall render the decision of the hearing officer final,

1 in which case the employing board shall take possession of the
2 record of the hearing and shall maintain such record for a
3 period of three years. The Court of Civil Appeals shall have
4 no discretion to refuse to hear appeals of final decisions of
5 a hearing officer under this article. Within 30 days after a
6 notice of appeal is filed, the hearing officer shall transmit
7 a hearing officer pursuant to this article. Review by the
8 Court of Civil Appeals pursuant to this article is not a
9 matter of right, but of judicial discretion, and an appeal may
10 be granted only when the court determines there are special
11 and important reasons for granting the appeal. Within 30 days
12 after an appeal is granted, the hearing officer shall transmit
13 the record to the clerk, with the appealing party bearing the
14 costs associated with the preparation and transmission of the
15 record and transcript of the hearing. The decision of the
16 hearing officer shall be affirmed on appeal unless the Court
17 of Civil Appeals finds the decision arbitrary and capricious,
18 in which case the court may order that the parties conduct
19 another hearing consistent with the procedures of this
20 article."

21 Section 2. New Sections 16-24-14, 16-24-15,
22 16-24-16, 16-24-17, 16-24-18, 16-24-19, 16-24-20, and 16-24-21
23 are added to Chapter 24 of Title 16 to provide as follows:

24 §16-24-14. Major suspensions of teachers -
25 Authorized; notice; conditions.

1 A teacher on continuing service status may be
2 suspended for more than seven days without pay for just cause.
3 Such suspension shall not be made for political or personal
4 reasons. The superintendent shall give written notice to the
5 employing board and the teacher of the superintendent's
6 intention to recommend a long-term suspension. Such notice
7 shall state the reasons for the proposed suspension, shall
8 contain a short and plain statement of the facts showing that
9 the suspension is for just cause, and shall state the time and
10 place for the board's meeting on the proposed suspension,
11 which meeting shall be held no less than 20 days and no more
12 than 30 days after the receipt of such notice by the teacher.
13 The notice shall inform the teacher that in order to request a
14 conference with the board, the teacher shall file a written
15 request with the superintendent within 15 days after the
16 receipt of such notice.

17 §16-24-15. Major suspensions of teachers --
18 Procedure; hearings.

19 (a) At the conference provided in Section 16-24-14,
20 which shall be public or private at the discretion of the
21 teacher, the teacher, or his or her representative, shall be
22 afforded the opportunity to speak to the board on matters
23 relevant to such suspension. The teacher shall have the right
24 to counsel and to have a court reporter record his or her
25 statement, both at the expense of the teacher.

1 (b) Regardless of whether the teacher elects to have
2 a conference with the board, if the employing board votes to
3 suspend the employee, the superintendent shall give notice to
4 the teacher of the board's action by providing notice by
5 personal service, by the United States registered or certified
6 mail with postage paid thereon to the teacher's last known
7 address, or by private mail carrier for overnight delivery,
8 signature required, with postage paid thereon to the teacher's
9 last known address within 10 days of the board's action. Such
10 notice shall be in writing and shall inform the teacher of the
11 right to contest the action by filing with the superintendent
12 a written notice of contest of the action within 15 days of
13 the receipt of the notice. The teacher may obtain a review by
14 a hearing officer of the board's decision. Such contest shall
15 be taken by filing a written notice of contest with the
16 superintendent within 15 days after receipt of the notice of
17 the decision of the employing board. If the contest is not
18 timely taken, the board's decision shall be final. No such
19 suspension shall be effected until the time for filing notice
20 of contest has expired and, if notice of contest is filed, not
21 until the hearing officer has issued an opinion.

22 §16-24-16. Major suspensions of teachers --
23 Contests.

24 (a) If notice of contest is filed pursuant to
25 Section 16-24-15, the hearing officer shall be selected as

1 provided in subsection (b) of Section 16-24-20. Upon
2 selection, the hearing officer shall immediately cause notice
3 to be given to the parties of the date and time for a hearing,
4 which date shall be no less than 30 days and no more than 60
5 days following the appointment of the hearing officer. The
6 parties shall agree as to the location of the hearing and, if
7 the parties are unable to agree, the hearing officer shall
8 determine the location within the jurisdiction of the
9 employing board. No less than 30 days before such date, the
10 parties shall submit to the hearing officer, with a copy to
11 the opposing party, documents supportive of, or in
12 contravention to, the action, as well as a list of witnesses
13 to be called at such hearing. Such witness list and
14 documentary submissions may be amended at any time prior to
15 five days before such hearing. The State Department of
16 Education shall bear the expense of having a court reporter
17 present at such hearing. The hearing officer shall have power
18 to administer oaths and issue subpoenas to compel the
19 attendance of witnesses and production of papers necessary as
20 evidence and/or information in connection with the dispute or
21 claim. If requested, the hearing officer shall issue subpoenas
22 for witnesses to testify at the hearing, under oath, either in
23 support of the charges or on behalf of the teacher. In case a
24 person refuses to obey such subpoena, the board, or its
25 authorized representative, may invoke the aid of the circuit

1 court in order that the testimony, evidence, or information be
2 produced. Upon proper showing, such court shall issue a
3 subpoena or order requiring such person to appear before the
4 board or its representative and produce evidence and/or
5 information and give testimony relating to the matter at
6 issue. The hearing officer shall conduct a de novo hearing and
7 shall render a decision based on the evidence and/or
8 information submitted to the hearing officer. The hearing
9 officer shall determine which of the following actions should
10 be taken relative to the employee: A suspension of the
11 employee, with or without pay, a reprimand, other disciplinary
12 action, or no action against the employee. The hearing officer
13 shall render a written decision, with findings of fact and
14 conclusions of law, within 30 days after its hearing. Expenses
15 of the hearing officer shall be borne by the State Department
16 of Education.

17 (b) All appeals of a final decision of the hearing
18 officer shall lie with the Alabama Court of Civil Appeals. An
19 appeal by either party shall be perfected by filing a written
20 notice of appeal with the clerk of the Court of Civil Appeals
21 within 21 days after the receipt of the final written decision
22 of the hearing officer. Failure to file a timely notice of
23 appeal shall render the decision of the hearing officer final,
24 in which case the employing board shall take possession of the
25 record of the hearing and shall maintain such record for a

1 period of three years. The Court of Civil Appeals shall have
2 ~~no~~ discretion to refuse to hear appeals of final decisions of
3 ~~a hearing officer under this article. Within 30 days after a~~
4 ~~notice of appeal is filed, the hearing officer shall transmit~~
5 a hearing officer pursuant to this article. Review by the
6 Court of Civil Appeals pursuant to this article is not a
7 matter of right, but of judicial discretion, and an appeal may
8 be granted only when the court determines there are special
9 and important reasons for granting the appeal. Within 30 days
10 after an appeal is granted, the hearing officer shall transmit
11 the record to the clerk, with the appealing party bearing the
12 costs associated with the preparation and transmission of the
13 record and transcript of the hearing. The decision of the
14 hearing officer shall be affirmed on appeal unless the Court
15 of Civil Appeals finds the decision arbitrary and capricious,
16 in which case the court may order that the parties conduct
17 another hearing consistent with the procedures of this
18 article.

19 §16-24-17. Minor suspensions of teachers -
20 Authorized; notice; conditions.

21 A teacher on continuing service status may be
22 suspended for seven days or less without pay for just cause.
23 Such suspension shall not be made for political or personal
24 reasons. The superintendent shall give written notice to the
25 employing board and the teacher of the superintendent's

1 intention to recommend a short-term suspension. Such notice
2 shall state the reasons for the proposed suspension, shall
3 contain a short and plain statement of the facts showing that
4 the suspension is for just cause, and shall state the time and
5 place for the board's meeting on the proposed suspension,
6 which meeting shall be held no less than 20 days and no more
7 than 30 days after the receipt of such notice by the teacher.
8 The notice shall inform the teacher that in order to request a
9 conference with the board, the teacher shall file a written
10 request with the superintendent within 15 days after the
11 receipt of such notice.

12 §16-24-18. Minor suspensions of teachers --
13 Procedure; hearings.

14 (a) At the conference provided in Section 16-24-17,
15 which shall be public or private at the discretion of the
16 teacher, the teacher, or his or her representative, shall be
17 afforded the opportunity to speak to the board on matters
18 relevant to such suspension. The teacher shall have the right
19 to counsel and to have a court reporter record his or her
20 statement, both at the expense of the teacher.

21 (b) Regardless of whether or not the employee elects
22 to have a conference with the employing board, if the board
23 votes to suspend the teacher, the superintendent shall give
24 notice to the teacher of the board's action by delivering the
25 notice within two days of the board's action. Such notice

1 shall be in writing and shall inform the teacher of the right
2 to contest the action by filing with the superintendent a
3 written notice of appeal of the action within 15 days of the
4 receipt of the notice. The teacher may obtain a review by a
5 hearing officer of the board's decision. Such contest shall be
6 taken by filing a written notice of contest with the
7 superintendent within 15 days after receipt of the notice of
8 the decision of the employing board. If the contest is not
9 timely taken, the board's decision shall be final. No such
10 suspension shall be effected until the time for filing notice
11 of contest has expired and, if notice of contest is filed, not
12 until the hearing officer has issued an opinion.

13 §16-24-19. Minor suspensions of teachers -- Contest.

14 If notice of contest is filed pursuant to Section
15 16-24-18, the hearing officer shall be selected as provided in
16 subsection (b) of Section 16-24-20. Upon selection, the
17 hearing officer shall immediately cause notice to be given to
18 the parties of the date for submission of written materials
19 relevant to such action, which date shall be no less than 30
20 days and no more than 60 days following the appointment of the
21 hearing officer. No less than 30 days before such date, the
22 parties shall submit to the hearing officer, with a copy to
23 the opposing party, evidence, information, and/or other
24 documents supportive of, or in contravention to, the action.
25 No later than such date, the parties shall submit written

1 briefs on the factual and legal issues relevant to the action.
2 The hearing officer shall consider the case on the written
3 submissions. The hearing officer shall determine whether the
4 evidence was sufficient for the board to take the action and
5 shall render a written decision, with findings of fact and
6 conclusions of law, within 30 days after the deadline for
7 submission of materials. The decision of the hearing officer
8 shall be final. Expenses of the hearing officer shall be paid
9 by the State Department of Education.

10 §16-24-20. Procedures applicable to tenure disputes
11 in general.

12 (a) Notices which are required to be given to the
13 teacher shall be served by personal service, by United States
14 registered or certified mail with postage prepaid thereon to
15 the teacher's last known address, or by private mail carrier
16 for overnight delivery, signature required, with postage
17 prepaid thereon to the teacher's last known address.

18 (b) If a teacher should timely file a contest from a
19 decision as provided in this article, the employing board and
20 the teacher shall, within seven days of such filing, either
21 (1) mutually agree upon a person to hear the teacher's
22 contest, or (2) submit a joint request for a panel of
23 arbitrators to the Federal Mediation and Conciliation
24 Services' Office of Arbitration Services ("FMCS"). The joint
25 request shall specify that the parties prefer a hearing

1 officer who is experienced in employment law. Thereafter, FMCS
2 shall submit to each party an identical list of names of
3 persons chosen to serve as a hearing officer in such matter.
4 Each party shall have 10 days from the date of receipt of the
5 list to strike any name to which it objects, number the
6 remaining names in the order of preference, and return the
7 list to FMCS. If a party does not return the list within the
8 time specified, all persons named therein shall be deemed
9 acceptable. From among the persons who have been approved on
10 both lists, and in accordance with the designated order of
11 mutual preference, FMCS shall invite the acceptance of a
12 hearing officer to serve. If the parties fail to agree upon
13 any of the persons named, if those named decline, or if for
14 any other reason the appointment cannot be made from the
15 submitted lists, FMCS shall make the appointment from among
16 other members of the panel. FMCS will formally appoint the
17 hearing officer, who shall be known for purposes of this
18 chapter as the "hearing officer."

19 (c) During all hearings conducted before a hearing
20 officer pursuant to this article, the hearing officer may
21 consider the employment history of the teacher, including, but
22 not limited to, matters occurring in previous years. Testimony
23 and exhibits shall be admitted into evidence at the discretion
24 of the hearing officer. The hearing officer shall also have

1 the authority and discretion to exclude or limit unnecessary
2 or cumulative evidence.

3 ~~(c)~~ (d) No action shall lie for the recovery of
4 damages for the breach of any employment contract of a teacher
5 in the public schools.

6 §16-24-21. Direct appeal by certain teachers denied
7 hearing before local board of education.

8 (a) A teacher who has attained continuing service
9 status and has been denied a hearing before the local board of
10 education as required by Section 16-24-6, 16-24-9, 16-24-15,
11 or 16-24-18 shall have the right to appeal directly to the
12 Chief Administrative Law Judge of the Office of Administrative
13 Hearings, Division of Administrative Law Judges, Office of
14 Attorney General for relief. The Chief Administrative Law
15 Judge shall appoint an administrative law judge to address the
16 issue raised in the appeal. The appeal shall state facts
17 sufficient to allow the judge to determine tentatively whether
18 or not the local board of education has complied with Section
19 16-24-6, 16-24-9, 16-24-15, or 16-24-18. The local board may
20 answer or deny in writing the facts set out in the teacher
21 appeal and, if it fails to so deny, the facts set out in the
22 appeal must be taken as true. The judge shall review the
23 teacher's request and the local board's answer or denial and
24 shall determine, with or without a hearing, whether or not the
25 local board of education has complied with Section 16-24-6,

1 16-24-9, 16-24-15, or 16-24-18. Based upon its findings, the
2 judge shall do one of the following: (1) Order a hearing
3 before the local board, (2) determine that the teacher has
4 been transferred, suspended, or dismissed in violation of the
5 law and rescind the action taken by the local board, or (3)
6 sustain the action taken by the local board.

7 (b) Action taken by the administrative law judge
8 under this section shall be final.

9 Section 3. All laws or parts of laws which conflict
10 with this act are repealed, and specifically, Sections
11 16-24-30, 16-24-31, 16-24-32, 16-24-33, 16-24-34, 16-24-35,
12 16-24-36, 16-24-37, and 16-24-38 of the Code of Alabama 1975,
13 are repealed.

14 However, in those cases where the board of education
15 has voted to propose the cancellation of the contract of a
16 tenured teacher, transfer of a tenured teacher, suspension of
17 a tenured teacher, or the non-renewal of the contract of a
18 non-tenured teacher, prior to the effective date of this act,
19 the process under which those cases will be heard shall be
20 that process in place prior to the effective date of this act.

21 Section 4. If a court of competent jurisdiction
22 adjudges invalid or unconstitutional any clause, sentence,
23 paragraph, section, or part of this act, such judgment or
24 decree shall not affect, impair, invalidate, or nullify the
25 remainder of this act, but the effect of the decision shall be

1 confined to the clause, sentence, paragraph, section, or part
2 of this act adjudged to be invalid or unconstitutional.

3 Section 5. The Legislature shall annually
4 appropriate funds to carry out all components of this act
5 assigned to the State Department of Education.

6 Section 6. This act shall become effective
7 ~~immediately~~ July 1, 2004 following its passage and approval by
8 the Governor, or its otherwise becoming law.

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Scott J. Harris

Speaker of the House of Representatives

Lacy Baxley

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 12-FEB-04 and was passed again as
amended by Executive Amendment 17-MAY-04.

YEAS 96, NAYS 0

Greg Pappas
Clerk

Senate	<u>04-MAY-04</u>	Passed
Senate	<u>17-MAY-04</u>	Passed, as amended by Exec. Amendment
		Yeas 29, Nays 6, Abstains 0

APPROVED 5-24-04

TIME 8:00 am

Robert S. Riley
GOVERNOR
Act 04-566
Bill Num.: H-42
Rec'd 05/24/04 11:27am HMB