

Ex. Amdt.

ACT No. 2004-567

1 HB43
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3 By Representatives Salaam, Guin, Buskey, Lindsey, Thigpen,
4 Melton, Coleman (L), Martin, McLaughlin, Venable, Dunn and
5 Fite
6 RFD: Education Finance and Appropriations
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ENROLLED, An Act,

Relating to the Fair Dismissal Act; to streamline the contest and appeal processes for employees; to provide that employees would have contests of terminations, transfers, and suspensions heard by a hearing officer from the United States Federal Mediation and Conciliation Service; and to provide that the hearing officer's decision in terminations and suspensions for greater than seven days without pay could be appealed by either party to the Court of Civil Appeals.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 36-26-103, 36-26-104, 36-26-105, 36-26-106, 36-26-107, and 36-26-108 are amended to read as follows:

"§36-26-103.

~~"Employment of an employee on permanent status must be terminated only in the following manner:~~

~~"The employing board of education shall give notice in writing to the employee, stating in detail the reasons for the proposed termination, the facts upon which such reasons are based, and giving notice of the employee's rights to a hearing as set out herein. Said action of giving notice of termination shall be made only upon recommendation of the superintendent and upon approval of a majority of the members~~

1 ~~of the employing board which action shall be reflected in the~~
2 ~~board minutes.~~

3 "(a) An employee on nonprobationary status may be
4 terminated only in the following manner: The superintendent
5 shall give written notice to the employing board and the
6 employee of the superintendent's intention to recommend a
7 termination as provided in Section 36-26-102. Such notice
8 shall state the reasons for the proposed termination, shall
9 contain a short and plain statement of the facts showing that
10 the termination is taken for one or more of the reasons listed
11 in Section 36-26-102, and shall state the time and place for
12 the board's meeting on the proposed termination, which meeting
13 shall be held no less than 20 days and no more than 30 days
14 after the receipt of such notice by the employee. The notice
15 shall inform the employee that in order to request a
16 conference with the board, the employee must file a written
17 request with the superintendent within 15 days after the
18 receipt of such notice. At such conference, which shall be
19 public or private at the discretion of the employee, the
20 employee, or his or her representative, shall be afforded the
21 opportunity to speak to the board on matters relevant to such
22 termination. The employee shall have the right to counsel and
23 to have a court reporter record his or her statement, both at
24 the expense of the employee. Thereafter, the board shall
25 determine whether such termination shall be effectuated.

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

25 "§36-26-104.

1 ~~"Notice to the employee shall be served either by~~
2 ~~personal service or by United States registered or certified~~
3 ~~mail with postage prepaid thereon, to said employee's last~~
4 ~~known address. The employing board may suspend said employee~~
5 ~~with pay until the charges are heard and determined. This~~
6 ~~section, however, does not mandate pay in cases involving~~
7 ~~moral turpitude. If such charges are found to be unfounded,~~
8 ~~pay would be reinstated. Such notice shall also inform the~~
9 ~~employee that in order to contest said termination, the~~
10 ~~employee must file with the employing board, within 15 days~~
11 ~~after receipt of such notice, notice of an intention to~~
12 ~~contest the termination of said contract. If the employee does~~
13 ~~not file an intention to contest with the employing board~~
14 ~~within 15 days after receipt of such notice of intention to~~
15 ~~terminate said contract, then the employing board may dismiss~~
16 ~~the employee by a majority vote and such dismissal shall be~~
17 ~~final.~~

18 "(a) If notice of contest is filed pursuant to
19 Section 36-26-103, the hearing officer shall be selected as
20 provided in subsection (b) of Section 36-26-114. Upon
21 selection, the hearing officer shall immediately cause notice
22 to be given to the parties of the date and time for a hearing,
23 which date shall be no less than 30 days and no more than 60
24 days following the appointment of the hearing officer. The
25 parties shall agree as to the location of the hearing and, if

1 the parties are unable to agree, the hearing officer shall
2 determine the location within the jurisdiction of the
3 employing board. No less than 30 days before such date, the
4 parties shall submit to the hearing officer, with a copy to
5 the opposing party, documents supportive of, or in
6 contravention to, the action, as well as a list of witnesses
7 to be called at such hearing; provided, however, that such
8 witness list or documentary submissions may be amended at any
9 time prior to five days before such hearing. The State
10 Department of Education shall bear the expense of having a
11 court reporter present at such hearing. The hearing officer
12 shall have power to administer oaths and issue subpoenas to
13 compel the attendance of witnesses and production of papers
14 necessary as evidence and/or information in connection with
15 the dispute or claim. If requested, the hearing officer shall
16 issue subpoenas for witnesses to testify at the hearing, under
17 oath, either in support of the charges or on behalf of the
18 employee. The hearing officer shall conduct a de novo hearing
19 and shall render a decision based on the evidence and/or
20 information submitted to the hearing officer. The hearing
21 officer shall determine which of the following actions should
22 be taken relative to the employee: Termination of the
23 employee, a suspension of the employee, with or without pay, a
24 reprimand, other disciplinary action, or no action against the
25 employee. The hearing officer shall render a written decision,

1 with findings of fact and conclusions of law, within 30 days
2 after its hearing. Expenses of the hearing officer shall be
3 borne by the State Department of Education.

4 "(b) All appeals of a final decision of the hearing
5 officer shall lie with the Alabama Court of Civil Appeals. An
6 appeal by either party shall be perfected by filing a written
7 notice of appeal with the Clerk of the Court of Civil Appeals
8 within 21 days after the receipt of the final written decision
9 of the hearing officer. Failure to file a timely notice of
10 appeal shall render the decision of the hearing officer final,
11 in which case the employing board shall take possession of the
12 record of the hearing and shall maintain such record for a
13 period of three years. The Court of Civil Appeals shall have
14 no discretion to refuse to hear appeals of final decisions of
15 a hearing officer under this article. Within 30 days after a
16 notice of appeal is filed, the hearing officer shall transmit
17 a hearing officer pursuant to this article. Review by the
18 Court of Civil Appeals pursuant to this article is not a
19 matter of right, but of judicial discretion, and an appeal may
20 be granted only when the court determines there are special
21 and important reasons for granting the appeal. Within 30 days
22 after an appeal is granted, the hearing officer shall transmit
23 the record to the clerk, with the appealing party bearing the
24 costs associated with the preparation and transmission of the
25 record and transcript of the hearing. The decision of the

1 hearing officer shall be affirmed on appeal unless the Court
2 of Civil Appeals finds the decision arbitrary and capricious,
3 in which case the court may order that the parties conduct
4 another hearing consistent with the procedures of this
5 article.

6 "§36-26-105.

7 ~~"An appeal of the decision of the employing board~~
8 ~~may be filed by the employee within 15 days of receipt of the~~
9 ~~board's decision by mailing a notice to the superintendent of~~
10 ~~education and/or president of the junior/technical or~~
11 ~~community college or institution. Upon receipt of the request,~~
12 ~~the employing board and the employee may (1) mutually agree~~
13 ~~upon a person to hear the employee's appeal or (2) select a~~
14 ~~panel of three persons, one selected by the employing board,~~
15 ~~and another selected by the employee and a third agreed upon~~
16 ~~by the two parties listed hereinabove which shall constitute~~
17 ~~an employee review panel to hear the employee's appeal. If~~
18 ~~there is no agreement on the selection of a third member~~
19 ~~within 10 days following the selection of the second member,~~
20 ~~the probate judge of the county in which the dispute~~
21 ~~originated shall submit the names of three individuals who are~~
22 ~~qualified electors of that same county who, in the probate~~
23 ~~judge's opinion, would be qualified through their experience~~
24 ~~and training to render a fair and impartial decision as the~~
25 ~~third member of the employee review panel and said persons~~

1 ~~selected for membership on the employee review panel shall not~~
2 ~~be currently employed in the field of education. From these~~
3 ~~three names, the employing board shall then strike the first~~
4 ~~name and the employee shall strike the second name with the~~
5 ~~person whose name remains becoming the third member of the~~
6 ~~employee review panel.~~

7 "The employing board shall have authority to
8 transfer employees, however, such transfer shall be based upon
9 good and just cause needs of the school or institution, shall
10 not be for political or personal reasons on the part of the
11 recommending authority or any member of the employing board,
12 and shall be without loss of status for the employee.

13 "§36-26-106.

14 ~~"Upon the employee review panel's selection to hear~~
15 ~~a case, the panel shall within 10 days establish a date,~~
16 ~~place, and time for the hearing to be conducted. The date of~~
17 ~~such hearing shall in no case be later than 60 days following~~
18 ~~the decision of the employing board. Upon the completion of a~~
19 ~~de novo hearing, the panel's decision must be rendered within~~
20 ~~45 days. The parties shall have the right of counsel or~~
21 ~~representation of their choosing. In making its decision, the~~
22 ~~panel shall consider whether the action of the board or its~~
23 ~~administrative staff was arbitrary or unjust or for political~~
24 ~~or personal reasons on the part of any member of the board or~~
25 ~~its staff and whether the board's action was warranted based~~

1 ~~upon the facts of the case and the employment record of the~~
2 ~~employee. The decision of the panel shall be final and binding~~
3 ~~upon the parties. Expenses and fees of the employee review~~
4 ~~panel shall be shared equally by the board and employee.~~

5 "The employing board of education may determine the
6 question of the transfer by a majority vote. Its action and
7 vote shall be evidenced by the minute proceedings of the board
8 and shall be only after full compliance with this section. If
9 the employing board determines that such action shall be taken
10 against the employee, the superintendent shall give notice to
11 the employee of the board's action by providing notice by
12 personal service, by the United States Postal Service
13 registered or certified mail with postage paid thereon to the
14 employee's last known address, or by private mail carrier for
15 overnight delivery, signature required, with postage paid
16 thereon to the employee's last known address within 10 days of
17 the board's action. The notice shall be in writing and shall
18 inform the employee of the right to contest the action by
19 filing a written notice of contest of the action within 15
20 days of the receipt of the notice.

21 "§36-26-107.

22 ~~"The employing board shall have authority to~~
23 ~~transfer employees, however, such transfer shall be based upon~~
24 ~~good and just cause needs of the school or institution and~~
25 ~~shall not be for political or personal reasons on the part of~~

1 ~~the recommending authority or any member of the employing~~
2 ~~board and shall be without loss of status for the employee.~~
3 ~~Appeals of a decision to transfer shall be handled in the same~~
4 ~~manner as for termination and the decision of the employee~~
5 ~~review panel shall be final and binding on the parties.~~

6 "No transfer shall be effected until the time for
7 filing notice of contest has expired and, if notice of contest
8 is filed, not until the hearing officer has approved the
9 transfer. The employee shall have the right to obtain a review
10 by a hearing officer of the board's decision. Such contest
11 shall be taken by filing a written notice of contest with the
12 superintendent within 15 days after the receipt of the notice
13 of the decision of the employing board. If the contest is not
14 timely filed, the board's decision shall be final. If notice
15 of contest is filed, the hearing officer shall be selected as
16 provided in subsection (b) of Section 36-26-114. Upon
17 selection, the hearing officer shall immediately cause notice
18 to be given to the parties of the date and time for a hearing,
19 which date shall be no less than 30 days and no more than 60
20 days following the appointment of the hearing officer. The
21 parties shall agree as to the location of the hearing and, if
22 the parties are unable to agree, the hearing officer shall
23 determine the location within the jurisdiction of the
24 employing board. No less than 30 days before such date, the
25 parties shall submit to the hearing officer, with a copy to

1 the opposing party, documents supportive of, or in
2 contravention to, the action, as well as a list of witnesses
3 to be called at such hearing; provided, however, that such
4 witness list or documentary submissions may be amended at any
5 time prior to five days before such hearing. The hearing
6 officer shall have power to administer oaths and issue
7 subpoenas to compel the attendance of witnesses and production
8 of papers necessary as evidence and/or information in
9 connection with the dispute or claim. If requested, the
10 hearing officer shall issue subpoenas for witnesses to testify
11 at the hearing, under oath, either in support of the charges
12 or on behalf of the employee. The hearing officer shall
13 conduct a de novo hearing and shall render a decision based on
14 the evidence and/or information submitted to the hearing
15 officer. The hearing officer shall determine whether the
16 evidence was insufficient for the board to take the action,
17 whether such action was taken for political or personal
18 reasons, or whether such action was arbitrarily unjust. The
19 hearing officer shall render a written decision, with findings
20 of fact and conclusions of law, within 30 days after its
21 hearing. The decision of the hearing officer shall be final.
22 Expenses of the hearing officer shall be borne by the State
23 Department of Education.

24 "§36-26-108.

1 ~~"The employing board of education shall have~~
2 ~~authority to reprimand, censure, or suspend with or without~~
3 ~~pay, an employee for just cause. Such action on the part of~~
4 ~~the employing board or its management shall not be for~~
5 ~~political or personal reasons on the part of the recommending~~
6 ~~authority or any member of the employing board. The employee~~
7 ~~shall have the right to contest the board's action by~~
8 ~~appealing through the same manner as for termination and the~~
9 ~~decision of the employee review panel shall be final and~~
10 ~~binding on the parties.~~

11 "An employee on nonprobationary status may be
12 suspended for more than seven days without pay for just cause.
13 Such suspension shall not be made for political or personal
14 reasons. The superintendent shall give written notice to the
15 employing board and the employee of the superintendent's
16 intention to recommend a long-term suspension. Such notice
17 shall state the reasons for the proposed suspension, shall
18 contain a short and plain statement of the facts showing that
19 the suspension is for just cause, and shall state the time and
20 place for the board's meeting on the proposed suspension,
21 which meeting shall be held no less than 20 days and no more
22 than 30 days after the receipt of such notice by the employee.
23 The notice shall inform the employee that in order to request
24 a conference with the board, the employee must file a written

1 request with the superintendent within 15 days after the
2 receipt of such notice."

3 Section 2. Sections 36-26-109, 36-26-110, 36-26-111,
4 36-26-112, 36-26-113, 36-26-114, and 36-26-115 are added to
5 Article 4 of Chapter 26 of Title 36 of the Code of Alabama
6 1975, as follows:

7 §36-26-109. Major suspensions of employees --
8 Procedure; hearings.

9 (a) At the conference provided in Section 36-26-108,
10 which shall be public or private at the discretion of the
11 employee, the employee, or his or her representative, shall be
12 afforded the opportunity to speak to the board on matters
13 relevant to such suspension. The employee shall have the right
14 to counsel and to have a court reporter record his or her
15 statement, both at the expense of the employee.

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

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

13 §36-26-110. Major suspensions of employees --

14 Contests.

15 (a) If notice of contest is filed pursuant to
16 Section 36-26-109, the hearing officer shall be selected as
17 provided in subsection (b) of Section 36-26-114. Upon
18 selection, the hearing officer shall immediately cause notice
19 to be given to the parties of the date and time for a hearing,
20 which date shall be no less than 30 days and no more than 60
21 days following the appointment of the hearing officer. The
22 parties shall agree as to the location of the hearing and, if
23 the parties are unable to agree, the hearing officer shall
24 determine the location within the jurisdiction of the
25 employing board. No less than 30 days before such date, the

1 parties shall submit to the hearing officer, with a copy to
2 the opposing party, documents supportive of, or in
3 contravention to, the action, as well as a list of witnesses
4 to be called at such hearing; provided, however, that such
5 witness list and documentary submissions may be amended at any
6 time prior to five days before such hearing. The State
7 Department of Education shall bear the expense of having a
8 court reporter present at such hearing. The hearing officer
9 shall have power to administer oaths and issue subpoenas to
10 compel the attendance of witnesses and production of papers
11 necessary as evidence and/or information in connection with
12 the dispute or claim. If requested, the hearing officer shall
13 issue subpoenas for witnesses to testify at the hearing, under
14 oath, either in support of the charges or on behalf of the
15 employee. In case a person refuses to obey such subpoena the
16 board, or its authorized representative, may invoke the aid of
17 the circuit court in order that the testimony, evidence, or
18 information be produced; and, upon proper showing, such court
19 shall issue a subpoena or order requiring such person to
20 appear before the board or its representative and produce
21 evidence and/or information and give testimony relating to the
22 matter at issue. The hearing officer shall conduct a de novo
23 hearing and shall render a decision based on the evidence
24 and/or information submitted to the hearing officer. The
25 hearing officer shall determine which of the following actions

1 should be taken relative to the employee: A suspension of the
2 employee, with or without pay, a reprimand, other disciplinary
3 action, or no action. The hearing officer shall render a
4 written decision, with findings of fact and conclusions of
5 law, within 30 days after its hearing. Expenses of the hearing
6 officer shall be borne by the State Department of Education.

7 (b) All appeals of a final decision of the hearing
8 officer shall lie with the Alabama Court of Civil Appeals. An
9 appeal by either party shall be perfected by filing a written
10 notice of appeal with the clerk of the Court of Civil Appeals
11 within 21 days after the receipt of the final written decision
12 of the hearing officer. Failure to file a timely notice of
13 appeal shall render the decision of the hearing officer final,
14 in which case the employing board shall take possession of the
15 record of the hearing and shall maintain such record for a
16 period of three years. The Court of Civil Appeals shall have
17 ~~no~~ discretion to refuse to hear appeals of final decisions of
18 ~~a hearing officer under this article. Within 30 days after a~~
19 ~~notice of appeal is filed, the hearing officer shall transmit~~
20 a hearing officer pursuant to this article. Review by the
21 Court of Civil Appeals pursuant to this article is not a
22 matter of right, but of judicial discretion, and an appeal may
23 be granted only when the court determines there are special
24 and important reasons for granting the appeal. Within 30 days
25 after an appeal is granted, the hearing officer shall transmit

1 the record to the clerk, with the appealing party bearing the
2 costs associated with the preparation and transmission of the
3 record and transcript of the hearing. The decision of the
4 hearing officer shall be affirmed on appeal unless the Court
5 of Civil Appeals finds the decision arbitrary and capricious,
6 in which case the court may order that the parties conduct
7 another hearing consistent with the procedures of this
8 article.

9 §36-26-111. Other disciplinary action - Authorized;
10 notice; conditions.

11 An employee on nonprobationary status may be
12 suspended for seven days or less without pay, or suspended for
13 any period of time with pay, or reprimanded or censured for
14 just cause. Such other disciplinary action shall not be made
15 for political or personal reasons. The superintendent shall
16 give written notice to the employing board and the employee of
17 the superintendent's intention to recommend such a
18 disciplinary action. Such notice shall state the reasons for
19 the proposed disciplinary action, shall contain a short and
20 plain statement of the facts showing that the disciplinary
21 action is taken for just cause, and shall state the time and
22 place for the board's meeting on the proposed disciplinary
23 action, which meeting shall be held no less than 20 days and
24 no more than 30 days after the receipt of such notice by the
25 employee. The notice shall inform the employee that in order

1 to request a conference with the board, the employee must file
 2 a written request with the superintendent within 15 days after
 3 the receipt of such notice.

4 §36-26-112. Other disciplinary action to employees
 5 -- Procedure; hearings.

6 (a) At the conference provided in Section 36-26-111,
 7 which shall be public or private at the discretion of the
 8 employee, the employee, or his or her representative, shall be
 9 afforded the opportunity to speak to the board on matters
 10 relevant to such disciplinary action. The employee shall have
 11 the right to counsel and to have a court reporter record his
 12 or her statement, both at the expense of the employee.

13 (b) Thereafter, the board shall determine whether
 14 such disciplinary action shall be effectuated. Regardless of
 15 whether or not the employee elects to have a conference with
 16 the board, if the board votes to take disciplinary action
 17 against the employee, the superintendent shall give notice to
 18 the employee of the board's action by providing notice by
 19 personal service, by the United States registered or certified
 20 mail with postage paid thereon to the employee's last known
 21 address, or by private mail carrier for overnight delivery,
 22 signature required, with postage paid thereon to the
 23 employee's last known address within 10 days of the board's
 24 action. Such notice shall be in writing and shall inform the
 25 employee of the right to contest the action by filing with the

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

12 §36-26-113. Other disciplinary action against
13 employees - Contest.

14 If notice of contest is filed pursuant to Section
15 36-26-112, the hearing officer shall be selected as provided
16 in subsection (b) of Section 36-26-114. 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 will 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 borne
9 by the State Department of Education.

10 §36-26-114. Procedures applicable to nonprobationary
11 status disputes in general.

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

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

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

19 §36-26-115. Direct appeal by certain employees
20 denied hearing before local board of education.

21 An employee who has attained nonprobationary status
22 and has been denied a hearing before the local board of
23 education as required by Section 36-26-102, 36-26-105,
24 36-26-108, or 36-26-111 shall have the right to appeal
25 directly to the Chief Administrative Law Judge of the Office

1 of Administrative Hearings, Division of Administrative Law
2 Judges, Office of Attorney General for relief. The Chief
3 Administrative Law Judge shall appoint an administrative law
4 judge to address the issue raised in the appeal. The appeal
5 shall state facts sufficient to allow the judge to determine
6 tentatively whether or not the local board of education has
7 complied with Section 36-26-102, 36-26-105, 36-26-108, or
8 36-26-111. The local board may answer or deny in writing the
9 facts set out in the employee appeal and, if it fails to so
10 deny, the facts set out in the appeal must be taken as true.
11 The judge shall review the employee's request and the local
12 board's answer or denial and shall determine, with or without
13 a hearing, whether or not the local board of education has
14 complied with Section 36-26-102, 36-26-105, 36-26-108, or
15 36-26-111. Based upon its findings, the judge shall do one of
16 the following: (1) Order a hearing before the local board, (2)
17 determine that the employee has been transferred, suspended,
18 or dismissed in violation of the law and rescind the action
19 taken by the local board, or (3) sustain the action taken by
20 the local board. Action taken by the Administrative Law Judge
21 under this section shall be final.

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

1 Section 4. If a court of competent jurisdiction
2 adjudges invalid or unconstitutional any clause, sentence,
3 paragraph, section, or part of this act, such judgment or
4 decree shall not affect, impair, invalidate, or nullify the
5 remainder of this act, but the effect of the decision shall be
6 confined to the clause, sentence, paragraph, section, or part
7 of this act adjudged to be invalid or unconstitutional.

8 Section 5. All laws or parts of laws which conflict
9 with this act are repealed.

10 However, in those cases where the board of education
11 has voted to propose the cancellation of the contract of a
12 non-probationary employee, transfer of a non-probationary
13 employee, suspension of a non-probationary employee, or the
14 termination of the contract of a probationary employee, prior
15 to the effective date of this act, the process under which
16 those cases will be heard shall be that process in place prior
17 to the effective date of this act.

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

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Adm. / Smith

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 98, NAYS 0

Greg Pappas
Clerk

Senate	<u>06-MAY-04</u>	Passed
Senate	<u>17-MAY-04</u>	Passed, as amended by Exec. Amendment
		Yeas 31, Nays 3, Abstains 0

APPROVED 5-24-04

TIME 8:01 am

Bob Riley
Alabama Secretary of State
GOVERNOR