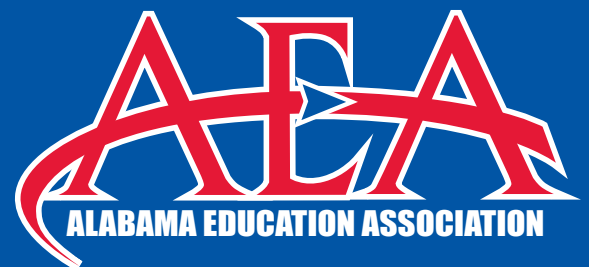
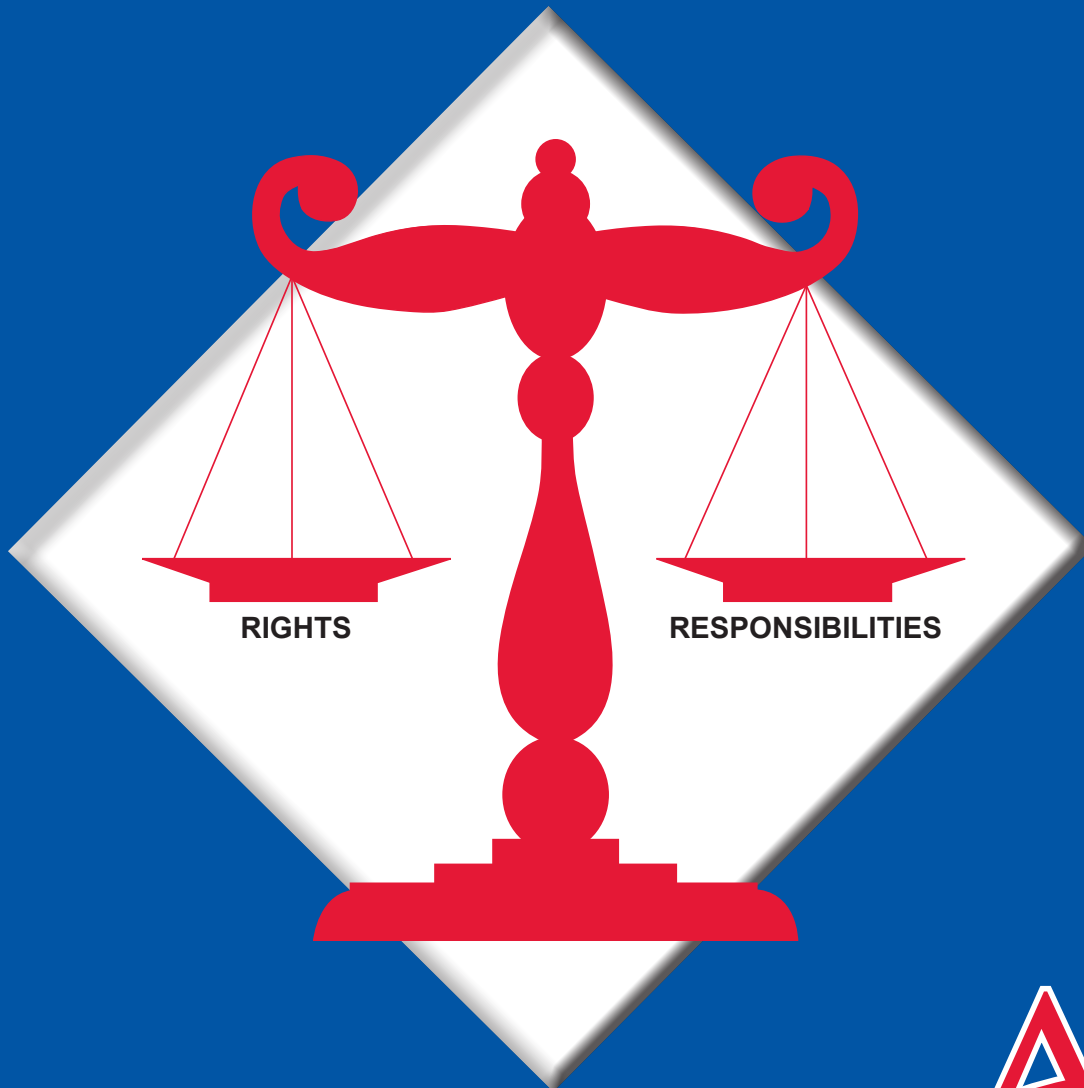


PR & R

PROFESSIONAL RIGHTS & RESPONSIBILITIES

The Handbook for the AEA Members Reflecting
Up-to-Date Changes in the Law
and Other Current Information Effective 2019.



Answers to Questions on Pertinent Laws and Information on Requesting Legal Help from the AEA on Employment Related Matters:

IMPORTANT: These guidelines are designed to provide members with a basic understanding of the AEA Legal Services Program. However, they should not be construed as contractual in nature. The AEA reserves the right to alter, amend, change or modify these guidelines at any time without notice. These guidelines are applied on a case-by-case basis and are dependent upon an individual evaluation of each case by the Associate Executive Director. The contract for legal services between the AEA and a member is part of the Application for Assistance and Support (PR&R Form).

Faxed applications for assistance will be processed, but assistance will not be granted until the original application is received, except in the case of an emergency.

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Legal Services Program:

Purpose:

The purpose of the Alabama Education Association (AEA) Legal Services Program (Professional Rights and Responsibilities) is to provide legal assistance and support to AEA members and local affiliates in connection with certain job-related disputes, as set forth in this handbook and its provisions. The program is established cooperatively and is jointly funded by the AEA and the National Education Association (NEA). It should be obvious that the association cannot right every wrong that an employee may experience with his or her employer as there is not a legal remedy for each and every wrong experienced by members. This publication sets forth the guidelines for members to follow as they seek legal assistance from the AEA Legal Services Program.

In protecting the legal rights of its members, the association strives to protect all members' rights. Under the Constitution of the United States, all persons enjoy essentially the same basic rights. Alabama's Constitution also guarantees all persons certain basic rights. The AEA/NEA members' rights are also governed by laws enacted by the Congress of the United States as well as the Legislature of Alabama.

Just as the Alabama Legislature enacted laws to give employees certain rights, the United States Congress also enacted laws to give certain classes of persons special consideration and protection. For example, the Civil Rights Act of 1964, as amended, prohibits discrimination in employment based on race, sex, religion, national origin, age, or disability. That law established the Equal Employment Opportunity Commission (EEOC) to investigate complaints and make recommendations regarding violations of the Civil Rights Act of 1964, as amended.

In addition to laws passed by the Legislature and Congress, rulings by state and federal agencies, decisions of state and federal courts, opinions of the attorney general of Alabama, and rules and regulations of the State Board of Education all impact on members' rights and govern the interpretation of state and federal statutes. Other legislation can also have an effect on the rights of persons employed in the public schools.

Professional Rights and Responsibilities Commission Platform:

The basic purpose of the Professional Rights and Responsibilities Commission of AEA is to protect the professional welfare of all members. In order for any profession to grow, the importance and dignity of each individual must be primary in its purpose. To this end, the objectives of the PR&R Commission are as follows:

- To defend the AEA members and the cause of education against unjust attacks.
- To investigate controversies involving members that are in the public interest.
- To encourage and further the development and use of personnel policies that attract and hold competent professional personnel and prevent unnecessary employment difficulties.
- To cooperate with the (AEA) Legislative Commission in drafting, improving, and extending legislation to ensure job security.
- To promote and protect the constitutional and human rights of members in the education profession.
- To promote conditions of freedom under which members may safely work and live without fear or favor.

Composition:

The PR&R Commission is composed of 12 members appointed by the AEA president and confirmed by the AEA Board of Directors for three year terms staggered so that one-third of the members are appointed annually.

The PR&R Commission elects, from its membership, one white member and one black member to serve as co-chairpersons and to alternately preside at commission meetings. On special occasions, when continuing cases are involved, the commission may, upon a majority vote, approve the continuation of either co-chairperson to serve as presiding officer. The commission will reorganize itself each year and elect its presiding officers. The co-chairpersons, in addition to presiding at commission meetings, will have all rights and privileges such as voting and participating in affairs of the commission.

Meetings:

The PR&R Commission shall be called into session by the chairperson at the request of the Associate Executive Director, Executive Director, President, on a petition of one-third of its members, or upon direction of the AEA Board of Directors.

Staff:

The Associate Executive Director is charged with the responsibility of administering the Professional Rights and Responsibilities program for the association and serving as staff consultant and director to the PR&R Commission.

In all meetings of the PR&R Commission, the Associate Executive Director shall be responsible for preparing the agenda, providing each member of the commission with information relative to each case, including setting forth the complainant's charges, the results of any preliminary inquiry, the question of law presented, and the outcome of each case.

The Associate Executive Director shall be responsible for recording the minutes of all meetings, writing reports, and notifying all parties of interest of the decisions of the commission.

The Associate Executive Director will regularly inform the Executive Director of requests for investigations and other commission activities. Reports of commission activities will be made periodically to the (AEA) Board of Directors.

Eligibility:

Active and educational support members and local affiliates of the AEA are eligible for services under the AEA Legal Services Program.

In cases involving legal, tenure and/or constitutional rights of members, the state association shall have primary jurisdiction. Members who feel their tenure or constitutional rights have been violated may apply directly to the AEA for assistance and support.

An individual applicant for legal assistance must be a member of the AEA at the time of the occurrence that gives rise to the need for legal assistance or at the time the member becomes aware of the problem at issue, whichever occurs first.

1. Continuous Membership Requirement:

A recipient of legal services must maintain membership in the Alabama Education Association while association-supported legal action is pending. The AEA may waive the state membership requirement for any member whose employment is interrupted while legal action is pending. **However, in the event the member obtains employment in a new position, whether in education or not, if his or her earnings are equal to the average Alabama support professional's salary, he/she must continue AEA active membership.** Any member whose request for legal assistance is denied, but who thereafter terminates his/her AEA membership, also waives all rights to appeal the denial of non-support.

2. Dues Requirement: While the AEA may waive state and local dues, the state association may NOT waive the NEA's portion of membership dues. Therefore, any member who receives legal assistance must remain an NEA Active member and is responsible for NEA Active dues as long as a legal action funded by the United Legal Service Program (ULSP) is pending. The sole exception to this requirement is where the member is receiving representation to contest the cancellation of his or her tenured employment contract.

3. Members Assisted Only in their Capacities as Employees: The AEA will assist members in their capacities as employees. No member who is acting as an agent or representative of the employing board or in his or her capacity as an employer will be assisted under this program. Example: An administrator or supervisor who is filing charges against a subordinate will not be assisted. However, if an administrator's supervisor is filing charges against him/her, then he/she is eligible for support.

4. Discrimination Prohibited: The state affiliate shall not discriminate against applicants on the basis of race, color, national origin, creed, age, disability, marital status, gender, sexual orientation or economic status.

Coverage:

The AEA's Legal Services Program is intended primarily to protect employment rights and privileges of members in instances involving adverse employment action. Legal assistance under this program will be provided in individual cases that arise out of the member's employment in a school system, college or university, or other educational employment institution. Assistance to local affiliates will be provided to protect the local affiliate's rights and privileges as representative of its collective membership.

The AEA will provide legal assistance to its members and affiliates when it is determined by the AEA that:

- ◆ Laws or policies establish an automatic right to a due process type hearing.

- ◆ The action at issue resulted or will result in actual prejudice or injury to a member's employment rights and privileges, or to an affiliate's rights and privileges as a representative of its collective membership.
- ◆ There is a substantial likelihood that a member or affiliate will be granted relief under current policies, regulations, or laws.
- ◆ The procedures and standards described in these guidelines have been followed and met.

Procedures for Obtaining Legal Assistance and Representation:

1. All applications for legal assistance and support from the AEA shall be submitted in writing to the Associate Executive Director setting forth the information requested on the Application for Assistance and Support Form (PR&R Form), supplemented with any other relevant information (i.e., copies of all written letters, documents, etc.). The applicant should set forth all charges in a clear and concise statement of the facts, including the names of each involved party. If a request for assistance is made in person, by telephone, or by facsimile, an original PR&R Form must be received before the association will accept the case for official action. PR&R Forms may be obtained by contacting the UniServ director for each district or by contacting the Office of the Associate Executive Director. **Prior to the AEA's acceptance of an application for assistance, the PR&R Form must be signed. The PR&R Form constitutes a legal contract with the AEA. The member's signature confirms his/her understanding of the terms and conditions of receiving legal assistance under this plan and binds the applicant to the contract terms as stated in the PR&R form.**

2. Upon receipt of a signed PR&R Form, the Associate Executive Director will review the application and may initiate further investigation personally, through staff, or other source; refer the case to an attorney for review; refer the case to an attorney for representation; or deny the request for assistance. **If a member is tenured or non-probationary under the Students First Act and entitled to a due process hearing before a school board or college president, the assignment of legal counsel is automatic for such a hearing, except where the basis of the termination is a criminal conviction. Proposed terminations resulting from criminal convictions will be reviewed on a case-by-case basis by the Associate Executive Director. Whether counsel will be provided to appeal the decision of the board or president to a hearing officer or beyond is at the discretion of the Associate Executive Director. The assignment of counsel is at the discretion of the Associate Executive Director in all other cases.**
3. A case referred to an attorney for review shall authorize the designated attorney to investigate the case. Within six weeks of receipt of a referral for review, the designated attorney shall report to the Associate Executive Director the results of his/her findings; make recommendations of appropriate legal remedies to be employed, if any; and provide an estimated cost of the proceedings, if requested.
4. In cases reviewed by counsel, following the report of the designated attorney, the Associate Executive Director shall make a determination as to the AEA/NEA's participation and will advise the applicant and designated attorney of the authorization to proceed or to discontinue any further action. The notification of denial of assistance shall be in writing and shall notify the member (or local affiliate) of the right to appeal the denial in accordance with the AEA policies. (See Appeals to PR&R Commission and the AEA Board on pages 24-27.)
5. In connection with tenured employees, if the applicant's contract of employment is being canceled or if action by the board will result in a change of current status, the Associate Executive Director will assign, within 15 days of the receipt of the PR&R Form, the applicant an appropriate representative to contest the change in status or cancellation of said contract. Such representative may be an attorney or UniServ director.
6. It will be the responsibility and burden of the member to ensure that all steps essential to the protection of his/her rights are taken in a timely manner including filing a notice of contest and request for a hearing with the employer. In most cases involving a hearing or where charges have been made, the applicant should notify the UniServ director or the Office of the Associate Executive Director within 24 hours of their receipt of notice of a hearing or charges. When requesting legal assistance, the applicant should attach a copy of their notice of contest, if applicable, with the completed PR&R Form.
7. It is also the responsibility and burden of the member to ensure that the request for legal assistance arrives in the Office of the Associate Executive Director in a timely manner so as to give the Associate Executive Director sufficient time to assign an attorney to prepare the case. **When a member has been notified of a proposed transfer or termination, he/she must file a request for legal assistance no later than five days before a notice from the employee demanding a hearing is due. If the request for assistance is filed less than five days prior to such a deadline, all reasonable efforts will be made to secure an attorney to represent said member, but representation is not guaranteed. If an application is received less than five days prior to a legal deadline, all reasonable efforts will be made to timely assign legal counsel, but representation is not guaranteed.**
8. Nothing set forth herein shall require the appointment of counsel at a grievance hearing unless or until such time as there is clear likelihood of actual prejudice and irreparable harm to the member's employment as determined by the Associate Executive Director.

The Students First Act (SFA): Act 2011-270: SB 310

The Students First Act of 2011, Act 2011-270, was adopted by the Legislature during the 2011 Regular Session. This law repealed the Teacher Tenure Act, the Fair Dismissal Act, and portions of the Teacher Accountability Act. It imposed a new tenure system for teachers and education support professionals (ESPs) in Alabama, including those who work in the postsecondary institutions. While this information covers the law as written, the AEA reserves the right to challenge the constitutionality of certain provisions, based on the facts and legal merit of specific cases.

Grandfather Clause:

A teacher who was tenured, or ESP who was non-probationary, on July 1, 2011, has the same status under the new law. All time accrued toward tenure under the prior law counts toward tenure under the new law.

Obtaining Tenure:

A teacher in K-12 obtains tenure after being employed in the same school system for three complete, consecutive years and being reemployed for a fourth consecutive year. A “complete year” means that the teacher is hired before October 1 of the school year. A non-tenured teacher must receive notice of non-renewal on or before the last working day of the school year during his/her third year, otherwise notice must be received by June 15 (or June 30 during the first year of a legislative term). Time during which a teacher has an emergency or alternative certificate does not count toward tenure.

An ESP in K-12 obtains non-probationary status after being employed in the same school system for three complete, consecutive years and being reemployed for a fourth consecutive year. A “complete year” means that the ESP is hired before October 1 of the school year. A probationary ESP must receive notice of non-renewal on or before June 15 of each year (or June 30 during the first year of a legislative term).

Under the SFA, instructors at postsecondary institutions

are referred to as “teachers.” A teacher at a postsecondary institution obtains tenure after being employed for six consecutive fall and spring academic semesters and being reemployed for a seventh semester. Summer semesters do not count toward tenure. A postsecondary teacher must receive notice of non-renewal on or before 15 days prior to the end of their sixth semester. Presidents and vice-presidents hired after the effective date of this law cannot earn tenure in those positions.

An ESP at a postsecondary institution obtains non-probationary status after being employed for 36 consecutive months at the same institution. An ESP must receive notice of non-renewal prior to fifteen days before the end of their 36th month of employment.

Termination proceedings for Tenured Teachers and Non-Probationary ESPs:

Tenured teachers and non-probationary ESPs can be terminated for the same causes as were found in prior law, “justifiable decrease in the number of positions, ... incompetency, insubordination, neglect of duty, immorality, failure to perform in a satisfactory manner, or other good and just cause.” No job action, including termination, transfer, demotion, suspension, or reassignment, can be taken based upon personal or political reasons of the superintendent, president, or school board members.

The termination process begins with either the superintendent in K-12, or the “senior personnel officer” at a postsecondary institution, notifying an employee that he or she is recommending the employee’s termination, the reasons for the action, a “short and plain statement of the facts,” and that the employee has a right to a hearing.

An employee must notify the superintendent or college president that he or she wants a hearing within 15 calendar days of the issuance of the notice. Failure to timely contest a termination makes it final and irreversible.

If an employee timely files a notice of contest, a hearing is held on the termination in front of the board in K-12 or the president in postsecondary between 30 and 60 days from the date of the written notice of termination. The hearing is transcribed by a court reporter at the expense of the State Department of Education or the Alabama Community College System. The employee has the right to the following: legal counsel, to present witnesses and evidence, to subpoena witnesses and evidence, to cross-examine the employer's witnesses, and to have the hearing in public or in private.

The superintendent or senior personnel officer has the burden of proof at the hearing. The board or president can act solely on the testimony and evidence presented at the hearing. The board or president serves in "an independent and quasi-judicial capacity." They cannot have deliberated or determined the outcome of the matter before the hearing. They also have the independent authority to impose a lesser sanction, such as a suspension, than the one recommended by the superintendent or the senior personnel officer. The board or president also has independent authority to reach a "negotiated settlement" with the employee.

A notice to the employee of the action of the board or president must be provided within 10 days of the hearing. If the employee is terminated, the notice must also advise the employee of the right to appeal to a neutral hearing officer. An employee has 15 days to demand such a hearing by providing notice to the state superintendent of education or the chancellor of postsecondary education. An employee who is terminated will remain on payroll after notice of the board's or president's action for 75 calendar days or until the hearing officer issues a decision, **whichever comes first**. This severance pay is not provided in cases of "moral turpitude, immorality, abandonment of job, incarceration, or neglect of duty."

The hearing officers under the act can be selected by mutual agreement of the parties. If the parties cannot agree on a hearing officer, the act created a roster of retired Alabama judges, except probate judges, maintained by the executive director of the

Alabama State Bar to serve as hearing officers. After an employee appeals a termination, the state superintendent or chancellor is to request a panel of five judges from the roster. The employee strikes one name, then the employer, then that process is repeated until the last name left on the panel is selected as the hearing officer. That process is to be completed within 10 days of receipt of the panel.

The hearing officer is to receive the record of the board or president hearing below within 20 calendar days. He/she is to hold a hearing. He/she must give "deference" to the board or president's action, but is not required to follow it. He/she can only reverse or uphold the board or president's action, but cannot modify it. He/she must agree to abide by all timelines in the law. The hearing officer is paid by the state superintendent or postsecondary chancellor. The hearing officer must issue a decision within five days of a hearing. Either side can appeal that decision to the Court of Civil Appeals. All appeals of AEA cases are at the discretion of the Associate Executive Director.

Suspensions:

A proposed suspension of 21 or more working days is treated the same as a termination.

A proposed suspension of 20 working days or less means that the employee must be provided "adequate notice of the reason or reasons for the proposed suspension and an opportunity to present evidence and argument, either in person or in writing," to the president or the board prior to a decision being made.

Transfers:

A tenured teacher in K-12 or postsecondary can be transferred once per school year to "any grade or position outside of the school, campus, or instructional facility to which the teacher is assigned" within the first 20 days after students report for class only if the position is one for which the teacher is certified, there is no loss of compensation, and the

teacher is “afforded an opportunity to meet with the president [or] board to demonstrate why the proposed transfer should not be approved.”

If a tenured teacher in K-12 is to be transferred to a school outside his/her “feeder pattern,” then the teacher has the right to a full “hearing” before the board.

If a teacher is to be transferred after 20 days from the first day of school due to an “act of God,” then the teacher has the right to a full “hearing” before the board.

A non-probationary ESP in K-12 or postsecondary can be transferred once per school year to “any position for which they are qualified within the agency or system,” so long as there is no loss of compensation, there is 15 days’ notice before a final decision is made by the board or the president, and the transfer will not be effective until 15 days after such decision.

If a K-12 ESP is to be transferred outside the feeder pattern of his/her current school, he/she receives the same due process as if he/she were being terminated.

Demotions:

A non-tenured teacher or probationary ESP can be demoted to a lower-paying job for which they hold certification or qualifications with 15 calendar days’ notice.

A tenured teacher or non-probationary ESP who is being demoted to a lower-paying job receives the same due process as if he/she were being terminated.

Actions For Which a Hearing is Not Provided¹:

If an employee who is required to hold a state-issued certificate or license has that certificate or license revoked, his/her employment is terminated without a hearing.

If the board or president implements a reduction in force, as provided in §16-1-33 Ala. Code 1975, then the employee is not entitled to a hearing. However, the board’s or president’s failure to comply with the law or its own RIF policy can be challenged in court.

A hearing is not provided for any demotion or transfer that is “(a.) prospective in effect, (b.) based on the recommendation of the president of a two-year college alone or the chief executive officer and formal approval of the governing board, and (c.) applied to similarly-situated employees within the two-year college, agency, or system, or within designated operating divisions, departments, or employment classifications therein.”

A teacher being reassigned within the first 20 days after students start school to another position in his/her same school at the same salary for which he/she is certified is not an action that gives rise to a hearing.

An ESP being reassigned to another position in his/her same school at the same salary for which he/she is qualified is not an action that gives rise to a hearing.

¹ AEA reserves the right to challenge the constitutionality of any or all of these provisions.

Questions & Answers: The Students First Act (SFA)

General Questions:

What is the purpose of the Act?

The Act's stated purpose is to improve the quality of public education in the state of Alabama by doing all of the following:

- (1) Providing for fundamental fairness and due process to employees covered by this act.
- (2) Restoring primary authority and responsibility for maintaining a competent educational workforce to employers covered by this act.
- (3) Enhancing the ability of public educational agencies to increase student academic achievement and student performance through effective allocation of personnel resources.
- (4) Investing employers covered by this act with the discretion and flexibility necessary to make the most effective use of limited educational resources.
- (5) Eliminating costly, cumbersome, and counterproductive legal challenges to routine personnel decisions by simplifying administrative adjudication and review of contested personnel decisions.

What is teacher tenure or education support professional (ESP) non-probationary status?

Tenure and non-probationary status are property rights granted by the Alabama Legislature to guarantee that a teacher or ESP cannot be arbitrarily or capriciously dismissed. It is the "right" to be under a permanent contract of employment. This "right" is property, just like your house or your car. The failure of a school board to issue a written contract to a tenured teacher or non-probationary ESP in no way affects the tenure of the teacher or non-probationary status or the ESP.

Are teachers and ESPs in all public school systems, including the Alabama Institute for Deaf and Blind (AIDB) and the Department of Youth Services (DYS), equally protected?

Yes.

Where can a copy of the SFA be found?

It is Act 2011-270, and the law is available on line at: www.legislature.state.al.us. Under *Resources* click on *Code of Alabama*, then click view *Code of Alabama*. Scroll down to "Title 16 Education" and click on it. Choose "Chapter 24C" and select the desired topic from the listings.

What legal documents, other than the law itself, must be considered in connection with the operation of tenure and non-probationary status?

In addition to the act that created tenure, there are federal and state laws and decisions of state and federal courts and opinions of the attorney general that govern the dismissal and transfer of tenured teachers and non-probationary ESPs.

How does an employee lose tenure or non-probationary status?

An employee may lose tenure or non-probationary status through: (a) retirement, (b) termination, or (c) resignation.

Does the SFA cover employees of four-year colleges and universities?

No. Procedures for gaining tenure or permanent status, contesting cancellations, non-renewals of contract, or any other personnel action will be found in the respective institution's policy handbook. It is the responsibility of each member to familiarize himself or herself with his or her institution's personnel policy handbook.

Does the SFA cover instructors at the two-year colleges?

Yes. However, the SFA refers to postsecondary instructors as “teachers.” Unless otherwise indicated, any time a question or answer refers to “teachers,” the question or answer applies to teachers in K-12 and postsecondary alike.

Are local boards and colleges required to follow their own policies and procedures?

Yes. If a local board or college adopts a policy, that employer has entered into a contract with the employee and cannot violate its own policy without breaching the contract.

Can a board or president act for personal or political reasons?

No. At the AEA’s insistence, the SFA contains multiple prohibitions on superintendents, presidents, or school boards acting for personal or political reasons.

Questions for Teachers:

How long have Alabama teachers had tenure?

The Alabama Legislature established the Teacher Tenure Law in 1939. While the SFA repealed the Teacher Tenure Law, it still provides the mechanism for teachers to obtain tenure.

How does a teacher gain tenure?

A teacher in K-12 obtains tenure after being employed in the same school system for three complete, consecutive years and being reemployed for a fourth consecutive year. A “complete year” means that the teacher is hired before October 1 of the school year. A non-tenured teacher must receive notice of non-renewal on or before the last working day of the school year during his/her third year, otherwise

notice must be received by June 15 (or June 30 during the first year of a legislative term). Time during which a teacher has an emergency or alternative certificate does not count toward tenure.

A teacher at a postsecondary school obtains tenure after being employed for six consecutive fall and spring academic semesters and being reemployed for a seventh semester. Summer semesters do not count toward tenure. A postsecondary teacher must receive notice of non-renewal on or before 15 days prior to the end of their sixth semester. Presidents and vice-presidents hired after the effective date of this law cannot earn tenure in those positions.

Must the fourth contract school year or seventh semester immediately follow the three probationary contract years (six semesters)?

Yes. The teacher’s fourth contract year, or seventh semester, must be consecutive. It must immediately follow the three probationary contract years or six semesters.

Does employment for less than a full school year count toward tenure?

A teacher in K-12 must be hired before October 1 of the school year for that school year to count toward tenure.

May a board or president keep a teacher non-tenured beyond the three-year period by contracting with the teacher or otherwise prohibit tenure from attaching at the end of the probationary period?

No. Neither the board of education, president nor the teacher may extend the time for gaining tenure. The board or president may not contract to prevent the teacher from obtaining tenure. The time period to achieve tenure is governed by law.

May an assistant principal or supervisor gain tenure in those positions?

The new SFA defines teacher to include all certified employees, except for superintendents and contract principals. It provides that a teacher does not gain tenure in a specific position. Thus, a teacher can only be tenured or non-tenured, and tenure status remains with a teacher throughout his/her career after he/she has earned it.

May a coach gain tenure in a coaching position?

No. The law does not apply to coaching or other “supplemental” positions.

Are other employment positions protected by the SFA?

Depending on the circumstances, employees who are regularly certified by the state may attain tenure regardless of their job title. The general rule is that the job responsibilities of a certified employee and years of service determine his or her tenure status. However, principals who are under contract are not covered by this law, and superintendents, custodians of school funds, college presidents, and college vice-presidents are specifically exempt.

How long before the school term begins may a teacher cancel his or her contract?

A teacher must notify his or her school system at least 30 days before the first day of classes for students of his/her resignation.

If a teacher resigns less than 30 days before the school term begins, what action may be taken against the teacher?

The teacher is guilty of unprofessional conduct. The State Superintendent may suspend or permanently revoke a teacher’s certificate after a due process hearing.

Under what circumstances may a teacher resign during a school year?

Pursuant to Act 2018-83, K-12 teachers must notify his or her employing board in writing of that teachers’s intent to resign at least 30 days in advance of the effective date of the resignation. Otherwise, the teacher is guilty of unprofessional conduct.

When must a board notify a non-tenured K-12 teacher that he or she will not be re-employed?

The non-tenured teacher must receive actual written notice of non-renewal no later than the last day the teacher is required to work in her third year of employment. During the first two years, the deadline is June 15, except for the first year of a legislative term or “quadrennium.” During the first year of a quadrennium, the deadline to notify a non-tenured teacher of non-renewal after his/her first or second year is June 30.

When must a college notify a non-tenured postsecondary teacher (instructor) that he or she will not be re-employed?

The non-tenured teacher must receive actual written notice of non-renewal no later than 15 calendar days prior to the end of their sixth consecutive semester.

Can a non-tenured teacher be terminated in the middle of a school year?

Yes. However, the teacher is entitled to submit a written statement to the school board or president before the final decision is made on the recommendation to terminate his/her contract.

Questions for ESPs:

How long have ESPs had non-probationary status?

The Alabama Legislature established the Fair Dismissal Act in 1983. While the SFA repealed the Fair Dismissal Act, it still provides the mechanism for ESPs to obtain non-probationary status.

Does the SFA apply to part-time or substitute employees?

No. The SFA provides protection for full-time employees only.

What is considered full-time employment for the purpose of the Act?

Full-time employees include all adult bus drivers and all other employees who work 20 or more hours a week during a normal work week.

How does an ESP gain “non-probationary status?”

An ESP in K-12 obtains non-probationary status by being employed in the same school system for three complete, consecutive years and being reemployed for a fourth consecutive year. A “complete year” means that the ESP is hired before October 1 of the school year. A probationary ESP must receive notice of non-renewal on or before June 15 of each year (or June 30 during the first year of a legislative term).

An ESP at a postsecondary school obtains non-probationary status after being employed for 36 consecutive months at the same school. An ESP must receive notice of non-renewal prior to 15 days before the end of their 36th month of employment.

What protections do probationary ESPs have under the Act?

The SFA only requires that the ESP be given “at least” 15 days’ notice, with pay, of termination.

Termination and Transfer Proceedings for Tenured Teachers and Non-Probationary ESPs in K-12 and postsecondary:

On what grounds or for what reasons may a tenured teacher’s or non-probationary ESP’s contract be canceled?

Tenured teachers and non-probationary classified employees may be terminated at any time because of a justifiable decrease in the number of positions or for incompetency, insubordination, neglect of duty, immorality, failure to perform duties in a satisfactory manner, or other good and just cause.

May a tenured teacher or non-probationary ESP contest the cancellation of his/her contract?

Yes. To contest the cancellation of his/her contract, the employee must notify the superintendent or college president in writing within 15 calendar days of the issuance of the notice.

What happens if a tenured teacher or non-probationary ESP does not file a notice of intent to contest a contract cancellation in a timely fashion?

If an employee fails to file a notice of intent to contest, the employee waives the right to challenge and the termination is final.

May an employee have an attorney at a cancellation or transfer hearing?

Yes.

What other rights do tenured teachers and non-probationary ESPs have at a cancellation hearing?

At a contested hearing on a cancellation of a contract, which may be public or private at the employee's election, each party is entitled to appear with or without counsel; may be heard; may present witnesses; and may cross-examine the opposing party's witnesses. The board or president may require the attendance of witnesses through subpoenas.

What is the role of the board or college president at the hearing?

The board or president is to act in an "independent and quasi-judicial capacity." Neither can act for personal or political reasons. Neither is to "deliberate or determine" the outcome of the case prior to the hearing. Either has the right to order a lesser punishment than that recommended by the superintendent or senior personnel officer. Either can also negotiate a settlement with the employee independent of the superintendent or the senior personnel officer.

Is there any due process beyond the board or president?

Yes. An employee may appeal that decision to a hearing officer within 15 days of receipt of notice of the board or president's action.

When is an employee's salary cut off after a board or president acts to terminate?

A tenured employee who is terminated can stay on payroll for up to 75 calendar days after a board or president acts to terminate their employment. If a hearing officer issues a decision upholding the termination before 75 days is up, pay is cut off at that point. However, the severance pay is not provided, and pay is cut off immediately after the board or president makes a decision, in cases of "*moral turpitude, immorality, abandonment of job, incarceration, or neglect of duty.*"

Who is a "hearing officer?"

Hearing officers can be selected by mutual agreement of the parties. If that does not happen, the hearing officers come from a panel of retired judges maintained by the executive director of the Alabama State Bar.

Who can serve on the hearing officer panel?

Any retired Alabama judge, except for probate judges, who express an interest in serving.

How is a retired judge selected?

The state superintendent of education or the chancellor of postsecondary education will send notice to the executive director that the parties need a panel of potential hearing officers. The executive director will send the employer and the employee a list of five retired judges. After alternating strikes, with the employee striking first, the last name on the list is appointed as the hearing officer.

What is the role of the hearing officer?

The hearing officer is to hold a hearing. He/she must give deference to the employer's decision, but is not bound by it. He/she can reverse or uphold, but cannot modify, the employer's action.

How long after the hearing does the hearing officer have to render a decision?

Five days.

What if the hearing officer rules in favor of the employee?

The employee is to be reinstated and, where required, provided with back pay.

Can a hearing officer's decision be appealed?

Yes. Either party may appeal a hearing officer's decision to the Alabama Court of Civil Appeals within 42 days of the hearing officer's decision.

When the board of education refuses or fails to grant a tenured teacher or non-probationary ESP a hearing on a transfer or contract cancellation, what recourse does the employee have?

If a request for a hearing is refused, the employee may file a direct appeal to an administrative law judge in the Attorney General's office.

If a teacher's contract is properly terminated, will the teacher's teaching certificate be affected?

This would depend on the facts of the case. All proposed terminations are reported to the State Department of Education. If the teacher is found "guilty of immoral conduct or unbecoming or indecent behavior," the state superintendent of education has the authority to revoke the teacher's certificate under Code of Alabama, Section 16-23-5 (1975). Such revocation action would require notice and a due process hearing by the state superintendent of education.

If the local board or college fails to give a tenured teacher or non-probationary ESP a written contract after school begins, is the teacher's tenure or ESP's non-probationary status jeopardized?

No. A written contract is not necessary for a teacher to remain tenured or an ESP to remain non-probationary.

What is a “reassignment” of a tenured teacher?

If a tenured teacher is being reassigned within his/her current school to another position for which he/she is certified, without a loss of compensation, this is a “reassignment.” Such actions cannot be challenged under the SFA so long as they occur during the first 20 calendar days after students report for the school year. At the postsecondary level, all campuses of a college are considered the same “school.”

What if a tenured K-12 teacher is assigned to another school within the same “feeder pattern” as his/her current school?

A tenured teacher can be transferred to a different school without loss of compensation, if the target school is within the same “feeder pattern” as his/her existing school. However, he/she is entitled to “an opportunity to meet” with the board before a final decision is made on such a transfer.

What if a tenured K-12 teacher is being transferred outside his/her feeder pattern?

A teacher being transferred outside the feeder pattern of his/her current school is entitled to a full hearing before the board prior to the board voting on the transfer.

What is a reassignment of an ESP?

When a non-probationary ESP is being reassigned within his/her current school to another position for which he/she is qualified without a loss of compensation this is a “reassignment.” Such actions cannot be challenged under the SFA so long as they occur during the first 20 calendar days after students report for the school year. At the postsecondary level, all campuses of a college are considered the same “school.”

What if a non-probationary K-12 ESP is assigned to another school, but one within the same “feeder pattern” as his/her current school?

A non-probationary ESP can be transferred to a different school without loss of compensation, if the target school is within the same “feeder pattern” as his/her existing school. However, the ESP must be given 15 days’ notice prior to the final decision being made by the board or president on the transfer, and the transfer cannot be effective for 15 days thereafter.

What if a non-probationary K-12 ESP is transferred to a school outside the feeder pattern of his/her current school?

That ESP would be entitled to the same due process as if he/she were being terminated.

May an employee demand a transfer?

No. An employee may request a voluntary transfer pursuant to local board or college policy. However, the board or president is not obligated to transfer the employee upon request.

May a principal transfer or reassign an employee?

No. A superintendent can reassign an employee within their same school, but a transfer to another school must be approved by the board on the superintendent’s recommendation.

Can a tenured teacher or non-probationary ESP be transferred into a lower-paying position (demoted)?

Yes, but he/she is entitled to the same due process as if the board or college were terminating his/her employment.

Actions for which a Hearing is Not Required²:

What is administrative leave?

Administrative leave is fully-paid leave given to an employee by an employer that does not count against the employee's sick leave, personal leave, or vacation balance. It is designed to allow employers to investigate allegations of impropriety. The law does not require a reason for placing an employee on paid administrative leave, nor does it limit its duration. Any employee notified that he/she is being placed on unpaid leave should notify the AEA immediately.

What is a "reduction in force" or "RIF?"

Section 16-1-33 defines a RIF as an "unavoidable reduction in the work force beyond normal attrition due to decreased student enrollment or shortage of revenues."

How are RIFs treated under the Students First Act (SFA)?

The Students First Act specifically exempts RIFs from the due process provisions for terminations, demotions, or transfers.

What rights do employees have in a RIF?

Employees have the right to be treated in accordance with the RIF law, which requires that RIFs be done on the basis of objective criteria. They have the right to insist that a RIF be done in accordance with their employers' RIF policies. The AEA will take action in court if an employer tries to invoke the RIF clause of the SFA and does not do so in compliance with the RIF law and the employer's RIF policy.

Is there any other way an employee's pay can be cut without a hearing?

Section 6 (h) (2) of the SFA provides that groups of employees can have their pay cut without a hearing if the change is prospective in effect, approved by the school board or college president, and "applied to similarly situated employees within the two-year college, agency, or system, or within designated operating divisions, departments, or employment classifications therein."

What if an employer tries to use this paragraph arbitrarily?

Like with a RIF, if an employer does not comply with this provision to the letter, the AEA is ready and willing to file legal action in court to prevent arbitrary cuts to employees' salaries².

² This is the law as written, but AEA reserves the right to challenge its constitutionality.

Leave of Absence and Resignations:

May an employee obtain a leave of absence without losing tenure or non-probationary status?

Yes. An employer may grant a leave of absence for one year for good cause without impairing the tenure or non-probationary status of an employee. However, the employer is not required to grant a leave of absence. For valid reasons, the employer may, but is not required to, extend the leave for an additional year. The law does not permit an employer to extend leave beyond two years. Such leave must be written and approved by the employer.

Does maternity leave affect tenure or non-probationary status?

No.

When an employee takes extended leave, what benefits is he/she entitled to maintain?

Under the Family and Medical Leave Act of 1993, an employee who has worked at least 1,250 clock hours in the past 12 months is entitled to the same benefits while on medical leave as he/she would be entitled to while working for up to twelve calendar weeks. For example, an employee would be permitted to retain his/her insurance benefits while on family and medical leave under the same conditions as if he/she was teaching. The employee, however, is required to pay his/her share of the premium to maintain the coverage. The employer will continue to pay the employer's share.

When asked to resign or threatened with non-renewal or dismissal, should an employee resign?

No. An employee should not resign until he/she has had an opportunity to discuss the entire case with someone who can give him or her competent professional assistance and who can advise them on the best course of action. When a resignation is accepted by the employer, almost all rights are waived or lost.

If a tenured teacher or non-probationary ESP moves to another system, does their tenure or non-probationary status transfer to the new system?

No. Tenure or non-probationary status does not transfer between school systems. The employee must gain tenure or non-probationary status in the new system the same as any other new hire. The only exception is when a city system is formed out of a county system, or consolidates back into the county system. In those situations, which are outside the control of the employee, tenure or non-probationary status would transfer.

School Principals: Teacher Accountability Act/Students First Act

On July 1, 2000, an amendment to the Teacher Tenure Act, known as the Teacher Accountability Act, went into effect. The Act made some technical changes to the Tenure Act and added “failure to perform duties in a satisfactory manner” to the list of causes for which a tenured teacher can be terminated. However, the main impact of this legislation was to give school boards the option to take all principals hired after July 1, 2000, out from under the Teacher Tenure Act, and place them on a contract system. Some portions of the Teacher Accountability Act were repealed by the SFA but not all.

Did the Teacher Accountability Act eliminate tenure for all principals?

No. The Teacher Accountability Act only applies to individuals who became principals for the first time on or after July 1, 2000. Anyone who was already a principal or who was hired as a principal on or before June 30, 2000, could elect to remain under the Teacher Tenure Act or to come under the Teacher Accountability Act. Also, local school boards have the option of employing their principals under the Students First Act if they wish.

What is a “contract principal?”

A “contract principal” is the term the Legislature coined to define individuals hired as principals after July 1, 2000 who are employed under term contracts.

Does the Teacher Accountability Act apply to assistant principals or vice principals?

No. The Teacher Accountability Act only applies to individuals who are “the chief administrator of a school.” Assistant principals and vice principals remain under the Students First Act.

Does the Teacher Accountability Act apply to administrators of vocational schools?

Yes. The Legislature specifically included vocational schools in the Act. However, only the chief administrator or principal is covered.

What is the timeline for contract principals with regards to their contract?

When a contract principal is hired, he or she will be hired under a one-year contract. If they are being hired as a principal for the first time, he or she may be given a two-year contract. At the end of the contract, the board can vote to renew the contract. If the principal is renewed, he/she must be given a renewal of at least three years. The contract renewal process then takes place at the end of each contract.

On what grounds can a contract principal be terminated during the contract?

A contract principal can be terminated during the contract for immorality, insubordination, neglect of duty, conviction of a felony or crime involving moral turpitude, failure to fulfill the duties and responsibilities of a principal, willful failure to comply with board policy, a justifiable decrease in positions, failure to maintain their certificate in a current status, incompetency, failure to perform duties in a satisfactory manner, and other good and just cause.

What is the procedure for terminating a contract principal during the contract?

If a local board votes to terminate the contract of a contract principal, it must provide written notice of such action, including the reasons behind it, within five days of the vote. The contract principal then has 10 days to file a request for a hearing. Such a hearing will be held before a circuit court judge and must be held within 45 days of the contract principal's request. If the court determines that it cannot conduct the hearing within 45 days, it must refer the matter to a mediator to conduct the hearing. If the contract principal receives an unfavorable ruling there, his/her only recourse is an appeal to the Alabama Court of Civil Appeals. Such an appeal must be filed within 14 days of receipt of the final ruling of the circuit court or mediator. The superintendent then has 28 days after the appeal is filed to transmit the record of the hearing to the clerk of the Court of Civil Appeals. If the superintendent does not submit a full and accurate record in a timely manner, the contract principal wins his/her appeal by law.

How long before the end of a contract must a board move to non-renew the contract?

The board must vote to non-renew a non-probationary contract principal's employment at least 90 days before the end of his/her contract, and it must notify the principal within five days of its decision. The process then is the same as if the board were acting to terminate for cause. A probationary principal can be non-renewed on or before the last day of his/her contract.

What if the board takes no action to non-renew the principal's contract?

If the board takes no action, then the principal is considered rehired for another contract term.

Does the board have to wait until the end of a contract to renew a principal?

No. The law provides that the board, upon the superintendent's recommendation, may enter into a new contract with a new principal at any time. Such contract must be for at least three years.

Are there any provisions regarding the evaluation of contract principals?

Yes. The act provides that all contract principals must be evaluated annually by the superintendent or his/her designee. If a contract principal is not evaluated during one year of the contract, his /her contract is extended by one year.

What types of grades can a contract principal receive on their evaluation?

A contract principal can be evaluated as satisfactory, unsatisfactory but remediable, or unsatisfactory.

What happens if a contract principal receives an “unsatisfactory but remediable” evaluation?

If a contract principal is evaluated as “unsatisfactory but remediable,” he or she must have a conference with the superintendent. The superintendent will present a professional development plan that addresses the areas of unsatisfactory performance. The contract principal must complete this plan prior to his/her next evaluation.

What happens if a contract principal receives an “unsatisfactory” evaluation?

If a contract principal is evaluated as “unsatisfactory,” the superintendent has two options. The principal may be recommended for termination for cause or the superintendent could have a conference with the principal and set out a professional development plan to address the deficiencies in the principal’s performance. Principals must then complete that plan prior to their next evaluation.

Can a principal contest an “unsatisfactory” evaluation?

Yes. If a contract principal is evaluated as “unsatisfactory” and noticed for termination, the principal can request a review of that evaluation. If such a request is made, the evaluation will be reviewed by an independent third-party evaluator.

How is the independent third-party evaluator selected?

Within five days of the contract principal’s request for a review, the superintendent must request from the State Department of Education a list of five individuals who are certified to review a contract principal’s evaluation. The superintendent and the contract principal may then each strike two names from the list. The remaining name is the evaluator.

How long does the evaluator have to review the principal’s evaluation?

Thirty days from the day the evaluator receives the evaluation from the superintendent.

What happens if the evaluator overturns the evaluation?

If that occurs, then the principal will continue to serve out his or her contract subject to termination for other future cause.

What happens if the evaluator upholds the evaluation?

The contract principal must be notified of the decision and the reasons supporting it. The principal’s contract will then be canceled.

Can the superintendent or the board unilaterally move to discontinue a contract principal’s employment?

No. Any action to discontinue a principal’s employment must be recommended in writing by the superintendent and ratified by the board.

What if a tenured teacher becomes a contract principal and is non-renewed or terminated for cause?

Like under the old law, tenured teachers retain their tenure rights when they assume the role of contract principal. If they are non-renewed or terminated as a principal for cause, they must be returned to a similar status position within a reasonable time after their termination or non-renewal. However, if the termination or non-renewal was based upon conviction of a felony or other crime involving moral turpitude, then the former contract principal loses tenure rights as a teacher as well.

What happens if a contract principal is not evaluated?

If a contract principal is not evaluated, his or her contract is extended by one year for each year they are not evaluated. Their contract can be extended in this manner up to three years.

Forums for Legal Actions:

Courts:

Courts are the final legal forum to protect certain rights of most employees. In cases arising under such laws as the Students First Act, and Title VII of the Civil Rights Act of 1964, most employment disputes will be initially adjudicated through administrative procedures established by those statutes. Federal and state courts are often the last resort for challenging employer actions. Once a case is filed in court, regardless of an employee's tenure status, the AEA has no jurisdiction or control over how soon the case is heard and cannot predict how long the case will proceed. Depending on the court, a case may be heard for the first time in three months or two years from the initial date of filing. If the case is appealed to a higher court, a general rule is one additional year should be expected for each level of appeal. All employees are bound by the timelines in the Students First Act when contesting the actions of an employing board. Failure to meet the time requirements will deprive the employee of any further appellate relief.

Equal Employment Opportunity Commission (EEOC):

For certain types of cases, the Congress of the United States has provided an administrative, intermediate step before suit can be filed in federal court. Complaints arising under Title VII of the Civil Rights Act of 1964 (age, race, gender, and religion) the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, Title IX of the Education Amendments of 1972, and the Americans with Disabilities Act of 1990 must be filed with the Equal Employment Opportunity Commission (EEOC) prior to filing federal litigation. While this process is time-consuming, it is often the only avenue available for certain types of cases.

Title VII of the Civil Rights Act of 1964, as amended, prohibits employment discrimination based on race, religion, gender, or national origin. The Equal Pay Act of 1963 prohibits discrimination on the basis of sex and requires employees to receive equal pay for equal work. The Age Discrimination in Employment Act of 1967, and Title IX of the Education Amendments of 1972 prohibit discrimination on the basis of age and sex, respectively. The Americans with Disabilities Act prohibits discrimination based on disability.

Timelines for filing discrimination charges with the EEOC:

- An employee has one-hundred eighty (180) days from the time the employee knew or should have known of the first allegedly discriminatory action to file a charge of discrimination with the EEOC.
- The EEOC has the right to retain the charge of discrimination for at least 180 days to:
 1. Settle the dispute.
 2. Issue a "right to sue" letter stating that there was reasonable cause to believe that discrimination had occurred.
 3. Issue a "no cause" determination that there was no reasonable cause to believe that discrimination had occurred and giving the complainant the right to file suit in federal court.
- If after 180 days the EEOC has not issued a finding, an employee can request a right-to-sue letter on his/her behalf.
- The employee has 90 days from receipt of the right-to-sue letter to file a complaint in federal district court. Once a right-to-sue letter has been issued by the EEOC and the evidence supports the complainant's charge of discrimination, the AEA may consider the member's petition for assistance upon a timely request.

Department of Human Resources – Charges of Child Abuse:

The Department of Human Resources has broad power to investigate, prosecute, and maintain a central registry of charges and findings. A determination of an indicated finding that abuse has occurred would have a dramatic impact on an educational employee's financial and professional future. As a result of a finding of abuse, educational employees may be suspended without pay, terminated,

charged criminally, sued civilly for damages, or may have their teaching certificate permanently revoked.

The AEA also may provide assistance in matters concerning the Department of Human Resources. If a member is accused of child abuse, sexual abuse, or sexual misconduct and that misconduct was alleged to have occurred at work or is otherwise related to their employment, the AEA provides counsel to defend the member against the charges, unless the member resigns or admits guilt.

Board of Adjustment (BOA):

The Board of Adjustment (BOA) is a state agency created to provide compensation to, among other persons, employees of boards of education who sustain injuries while on the job. Recovery of such job-related injuries is very limited and patterned after the Alabama Law for Workers' Compensation. Under the laws of Alabama, school boards are not required to provide Workers' Compensation insurance. Any successful recovery from the BOA is limited to reimbursement of any out-of-pocket expenses; that is, any expenses not covered by insurance. Any claim before the BOA is reduced by the amount of insurance coverage that the member may have from any source, whether from their own insurance and that of their spouse. Lost wages may be recovered from the BOA; claims are limited to those days where the employee was docked leave or pay. If the local board has reimbursed the employee for lost wages (up to 90 days), the BOA will not provide additional reimbursement for that time. The BOA also uses the Alabama Law for Workers' Compensation as a guide to calculate the amount of lost wages. The maximum amount of recovery under Alabama Law for Workers' Compensation is 66.6 percent of lost wages, up to the maximum amount at the time of injury.

ALL BOA CLAIMS MUST BE FILED WITHIN ONE (1) YEAR FROM THE DATE OF THE INITIAL INJURY. THE AEA MUST RECEIVE A COMPLETED AND SIGNED APPLICATION FOR ASSISTANCE NO LESS THAN THIRTY (30) DAYS PRIOR TO THE DEADLINE FOR FILING A BOA CLAIM.

The employee is responsible for payment of medical bills, before, during, or after recovery from the BOA.

Any legal assistance provided by the Alabama Education Association legal department is limited to employment-related matters. The AEA ordinarily does not provide counsel to pursue personal injury litigation arising out of job-related injuries.

The burden of proof rests on the employee. Documentation is necessary to substantiate a claim before the BOA. Some examples of the types of documentation needed include but are not limited to: an accident or injury report; itemized medical bills; insurance company summary sheets; letters from the employer to show lost wages and the daily rate of pay; a disability rating, if applicable; receipts or bills to substantiate damages; and a list of any other expenses, such as mileage, that the member incurred as a result of the injury.

Because the Board of Adjustment processes so many cases, once a claim is filed, often it takes several years before the matter is resolved unless an offer of administrative settlement is made and accepted. If the claim is contested, a hearing must be scheduled by the BOA. Neither the AEA nor its attorneys have any control over the scheduling of hearings before the BOA.

Liability Cases:

The explanation of the NEA Educators Employment Liability (EEL) Program contained herein is only general information. The actual coverage and terms thereof are outlined in the certificate of coverage that is furnished annually to each member. **Determination of coverage under the policy is vested solely within the discretion of the liability carrier.**

All AEA/NEA members are insured under the EEL Program. The program is a professional liability insurance program offered as a benefit to AEA/NEA members.

The EEL Program provides payment or reimbursement of legal costs for defending civil proceedings, civil rights violations, criminal proceedings, or posting of bail bonds. The program provides payment of legal costs for defending civil proceedings (other than civil rights violations)

brought against members in the course of their work as educators. The policy covers up to \$1,000,000 in damages assessed against a member as a result of such proceedings. The policy also provides up to \$300,000 worth of defense, settlements or judgments and other supplementary payments for proceedings involving civil rights violations. Coverage is subject to a \$3,000,000 per occurrence cap, regardless of the number of members involved in the occurrence.

A member may seek reimbursement of attorney's fees and other legal costs up to \$35,000 if the member is charged with violating a criminal statute in the course of his/her employment as an educator and the member is subsequently exonerated of the charges. If the AEA provides legal counsel for defense of a criminal charge, it may seek reimbursement under the policy. A member may also seek reimbursement of up to \$1,000 for a bail bond premium if he/she has to post a bond as a result of an occurrence arising out of his/her employment as an educator. The insurance company is not obligated to furnish the bond.

A member may also seek payment of up to \$500 for damages to personal property that resulted from an attack on the member in the course of his/her employment.

As educators, members are frequently exposed to situations that may give rise to legal actions and which can involve personal liability. If a student or a parent files a suit against a member, the EEL Program will provide the member with insurance protection in the majority of cases. The EEL policy covers claims arising out of the covered acts that occur during the contract period. However, certain activities are excluded and the policy explicitly states those exclusions. Some exclusions include, but are not limited to: teaching or supervising medical services; operating motor vehicles; selling or distributing products, including food and beverages; law enforcement activities; and using or supervising the use of firearms.

The EEL Program provides coverage for educational employment activities on and off school grounds, including school-sponsored athletic events, laboratory experiments, shop training, field trips, and after school clubs. Educational employment activities are those duties that an employee performs pursuant

to the expressed or implied terms of his/her employment with an educational unit.

If a member is involved in any situation, including investigations by law enforcement officers, in which the member believes he/she may be covered by the EEL Program, the member should contact either the local UniServ director or the EEL Program coordinator at the AEA Headquarters.

In the event that a member is sued for activities arising out of his/her educational employment, the member should immediately submit a PR&R Form and copies of all legal documents to Theron Stokes at AEA, P.O. Box 4177, Montgomery, Alabama 36103-4177.

Other Cases:

- In criminal cases, the assignment of counsel is determined on a case-by-case basis after a review of the facts. Generally, in matters arising out of a member's educational employment activities (i.e., a member is charged with assault defending himself or herself against a parent), counsel will be assigned to defend the member. However, counsel generally is not assigned to defend the member in situations personal in nature (i.e., stabbing another employee on school property). In the event that the AEA does not assign counsel in a criminal case, if the charge is determined to be the result of an educational employment activity and the member is exonerated of the charges, the AEA will assist the member in seeking reimbursement of attorney fees from the insurance carrier.
- In those instances where a case appears to be precedent-setting, the AEA/NEA may accept it as a test case and assume all legal costs and related expenses. In the event that legal fees and/or court costs are awarded, the AEA/NEA reserves the right to partial or full payment of any costs for legal services rendered.

Denial of Assistance:

Appeals Procedure:

Decision to Decline or Discontinue Service: The AEA reserves the right to decline to provide legal assistance or representation or may discontinue financial support of a case in the following circumstances.

- If the case involves support of a position contrary to the policies of the AEA or NEA, the AEA reserves the right to decline to provide legal assistance or representation or may discontinue financial support of a case.
- If the member or affiliate does not fully cooperate with the AEA or the attorney assigned by the AEA, the AEA reserves the right to decline to provide legal assistance or representation or may discontinue financial support of a case.
- If the member or affiliate is less than truthful or forthcoming with the AEA or the attorney assigned by the AEA, the AEA reserves the right to decline to provide legal assistance or representation or may discontinue financial support of a case.
- If the AEA determines that the facts of the case as alleged by the member or affiliate are incorrect, untrue, or do not support a legal cause of action, the AEA reserves the right to decline to provide legal assistance or representation or may discontinue financial support of the case.
- If the member or affiliate retains a private attorney without the knowledge or consent of the AEA, the AEA reserves the right to decline to provide legal assistance or representation or may discontinue financial support of a case.
- If in a previously accepted case, the AEA determines from the evidence uncovered during the representation that there is little likelihood that the member or affiliate will be granted relief through further pursuit of the case, the AEA reserves the right to decline to provide legal assistance or representation or may discontinue financial support of a case.
- If in a previously accepted case, the AEA determines that the case no longer has legal merit because of changes in the facts, law, or precedent-setting court decisions, the AEA reserves the right to decline to

provide legal assistance or representation or may discontinue financial support of a case.

- If in a previously accepted case, a settlement offer is proposed which, in the opinion of the assigned legal counsel and the Associate Executive Director provides the member with substantial relief and should be accepted, and the member rejects the settlement offer, the AEA reserves the right to discontinue financial support of a case.
- If in a previously accepted case, the member agrees to accept a settlement offer then later decides not to execute a formal settlement agreement or refuses to abide by the terms of the settlement, the AEA reserves the right to discontinue financial support of the case.

Member's Responsibilities Pending Appeal:

At any stage in the Legal Services Program where the member's case ceases to have merit as determined by legal counsel, the Associate Executive Director may deny additional support to pursue appeals when the evidence shows that further pursuit of the case will be wasteful of the AEA resources, frivolous, or contrary to the existing state of the law. Provided, however, that in any case where the Associate Executive Director withholds financial support to a case, the member may appeal that decision to the PR&R Commission, and thereafter, to the AEA Board of Directors and to the NEA. While the member is appealing the Associate Executive Director's decision to withhold support, it is the member's responsibility to provide his or her own representation as if the AEA were never in the case. In any case where financial support is withheld or denied and support is subsequently restored after appeal, the AEA will reimburse the member reasonable attorney's fees and expenses incurred, if any, during the period of non-support, less any amount awarded by the courts.

Appeal of Associate Executive Director's Decision:

Where an application for legal assistance is denied by the Associate Executive Director or the Associate Executive Director discontinues financial support of a previously accepted case, the member may appeal to the AEA PR&R Commission for the reasons listed below, provided the applicant follows the procedure outlined herein and acts within the timelines established by such appeals.

- A procedural violation pertaining to the handling of a request for legal services.
- An unreasonable decision of non-support based upon faulty consideration of the merits of the case or the evidence.
- Decision of non-support was arbitrary, capricious or discriminatory and contrary to existing law.

Appeal Timelines and Procedure:

An appeal of a decision of non-support by an individual or affiliate shall be filed within 20 days of the member's receipt of the denial of support with the PR&R Commission chairperson. A copy of the appeal should be provided to the Associate Executive Director at the time the appeal is filed.

- The appeal shall be in writing and signed.
- The appeal shall contain the full name, address and telephone number of the person(s) or local affiliate(s) making the appeal.
- A concise statement of the facts shall be submitted.
- The appeal may be delivered personally or by mail to the Office of the Associate Executive Director, directed to the attention of the chairperson of the PR&R Commission.
- A complaint may be amended or withdrawn by the aggrieved party at any time prior to the convening of the hearing.
- The commission shall hear the non-support appeal at its next meeting following its receipt of the notice of appeal from the member. The PR&R Commission shall render a decision within five days after the hearing, and the member will be notified within seven days of the decision reached.
- The individual (or affiliate) making an appeal may be represented by a representative of his/her choosing at his/her own expense.
- All individuals (or local affiliates) shall be given the time and place of the hearing and shall be advised of the hearing procedures provided herein.

Appeal Hearing Before the PR&R Commission:

- Identification of all participants by the chairperson.
- Review of the hearing procedure by the chairperson.
- Presentation of appeal by member, limited to 15 minutes.
 - Formal or informal statement.
 - Introduction of other evidence (if any).
- Response by Associate Executive Director or his/her designee, limited to 15 minutes.
 - Formal or informal statement.
 - Presentation of evidence in support of decision of non-support.
- Questions by commission to appealing member and Associate Executive Director.
- Closing statement by applicant or representative.
- Closing statement by Associate Executive Director.
- Dismissal of member from the room.
- Deliberation by the PR&R Commission.

Appeal to the AEA Board of Directors:

The decision of the PR&R Commission may be appealed to the AEA Board of Directors by writing the AEA president or Executive Director to be placed on the Board agenda. An appeal to the Board shall be limited to the same reasons initially raised in the appeal to the PR&R Commission. An appeal to the Board of Directors must be filed within 20 days of the member's receipt of the PR&R Commission's decision. The appeal hearing before the Board of Directors shall be governed by the provisions relevant to the hearing before the PR&R Commission.

Appeal of AEA's Denial of Support to NEA:

Within 90 days of the completion of the internal appeal to the AEA PR&R Commission and the Board of Directors, a member who is denied legal assistance by the AEA is entitled to request legal assistance from the NEA. The member may appeal to NEA on the sole ground that the AEA failed to process his/her application or handle the matter in accordance with the provisions of the AEA's Legal Services Program guidelines. The member applicant may appeal to the NEA by writing to the National Education Association, Legal Services Program, 1201 16th Street, N.W., Washington, D.C. 20036.

Attorney's Fees in Cases Where Support is Denied:

The AEA will not reimburse members for attorney's fees incurred after the member's case has been declined by the Associate Executive Director or after the Associate Executive Director discontinues support for a case, unless and until that decision is reversed during the appeals process.

Provisions for Legal Representation:

The decision to pursue a case at each administrative or judicial level will be made by the AEA if the case is to qualify for reimbursement under the Unified Legal Services Program (ULSP). If the matter is referred to an attorney, the AEA shall select the attorney. Only AEA-approved attorneys are assigned the AEA cases. The AEA will not reimburse members for attorney's fees of attorneys not selected by the AEA. As outlined above, the AEA reserves the right to discontinue support of a case upon completion of each administrative or judicial level or otherwise.

Reimbursement of Court Costs and Legal Fees:

Prior to receiving legal assistance under this plan, as set forth on the PR&R Form, the member must agree in writing to repay the AEA up to the amount of the AEA's legal expenses on behalf of the applicant in the event of an award, settlement, or insurance payment in excess of the member's actual economic loss. The member must further agree that in any event, the AEA will be reimbursed with amounts recovered that have been specifically designated as attorney's fees or court costs. The AEA will be responsible for the collection of such monies and for forwarding the NEA its fair share of the reimbursed or recovered legal costs of the case.

Participating Attorneys:

The AEA employs staff attorneys and retains law firms statewide to advise members of their rights. Cases processed under this plan as reimbursable under the AEA/NEA ULSP will only be assigned to attorneys who have been approved as the AEA Legal Services Program attorneys. This program differs from the AEA Attorney Referral Program.

Attorney's fees in excess of the rate or rates agreed upon by the AEA will not be paid. No fees will be paid to the AEA participating attorneys unless in conjunction with a legal matter that the AEA and the NEA agree should be pursued.

Bills from all attorneys will be required to include itemized specific information in a manner to be established by the AEA.

The AEA as a Party:

In all cases where the AEA becomes a party litigant through intervention or institution, prior approval of the AEA Board of Directors shall be required, regardless of the amount of expenses involved.

Amicus Curiae:

On recommendation of the Associate Executive Director with the concurrence of the co-chairperson of the PR&R Commission, the Executive Director, and the AEA president, an Amicus Curiae motion and brief may be filed in court in the name of AEA when it is deemed to be in the interest of the membership to have the association's position known on a legal question before a court.

Press Releases and Publicity:

While it may not be the practice of the commission to issue statements about legal matters, from time to time, in the interest of the association, it will be necessary to provide the public with information pertaining to the commission's activities. Therefore, the AEA's executive officers reserve the right to publicize cases for which support is received under this plan. In such instances, statements for public enlightenment will be drafted under the auspices of the staff consultant to the PR&R Commission with the assistance of the Department of Public Relations, provided, that in all cases, such statements will be cleared with one of the executive officers.

Member Assault Protection Program (MAPP):

Administrative Procedures and Reimbursement by the NEA:

It is the responsibility of the AEA to ensure that the AEA's Legal Services Program operates in accordance with the ULSP Guidelines in order to qualify for reimbursement under the ULSP of the NEA.

The AEA will provide non-confidential information on its legal services program including the procedures used in processing applications for legal assistance, to local affiliates and members.

The AEA will maintain the following records:

→ Case files on each application for assistance to include:

1. The initial application;
2. Acceptance or denial of assistance letters from the AEA;
3. Court orders or other official documents and decisions relating to closed cases including information on any and all awards, settlements, or recoveries; and
4. Briefs and official court decisions regarding matters funded under this plan that did not involve the services of an attorney.

→ The association's financial records relative to the ULSP.

Special Investigations (non-legal):

In special cases, the commission may appoint a special Ad Hoc Committee for additional investigation. The appointed Ad Hoc Committee will contact the individuals making the request, speak to all parties directly involved in the problem, and will, upon entering any school system, visit with the superintendent as a matter of courtesy. A chronology of events leading to the situation shall be prepared on the basis of statements of the involved parties.

The special committee shall make a written report of its findings to the full PR&R Commission and shall make appropriate recommendations for action or further investigation, if necessary.

AEA members know the rising tide of assaults that are occurring in the field of public education. Whether it is in the classroom, the gym, the cafeteria, or on the school bus, AEA members deserve additional protection from assault from parents, guardians, and students.

How It Works:

→ Effective in the 1998-99 membership year, the AEA instituted a new AEA member benefit program entitled the AEA Member Assault Protection Program (MAPP). This new benefit will be free to all AEA membership categories when the member is actively employed and paid by a board of education or public employer.

→ To qualify for this benefit, the member must file an official complaint with local law enforcement authorities, obtain a copy of the police report, complete a MAPP form, and forward all related documentation to the AEA.

→ The AEA will pay up to \$5,000 per occurrence for an attorney, if the local district attorney fails to bring appropriate legal charges, to prosecute any parent, guardian, student, or person who physically assaults a member while the member is performing an authorized school function or participating in assigned job-related activities. (Assault by another AEA member is not covered under this program).

→ All claims must be filed with the AEA within 45 days of the assault. AEA membership must be in effect at the time of the assault.

Conclusions:

If an assault occurs while you are on the job or performing a required school function, here's what you do:

1. File an official complaint against the perpetrator with local law enforcement officials;
 2. Obtain a copy of the police report or sheriff's report of the incident;
 3. Complete and file a MAPP form, with all documentation, within 45 days of the incident to Theron Stokes, Associate Executive Director, P.O. Box 4177, Montgomery, Alabama 36103-4177.
- Coverage does not apply when an assault occurs between AEA members.
 - The AEA, at its sole discretion, reserves the right to expend funds under this program.
 - The AEA will not provide funding to pursue litigation against an individual(s) for malicious prosecution or other similar claims.

The AEA's Legal Services Program provides member protection which has proven very effective over the years. Hundreds of members who thought they would never need the AEA's legal services have learned firsthand that, had it not been for the AEA, they would have been unemployed or worse, facing criminal charges.

Legal matters often proceed very slowly. Some cases have lasted as long as eight years and one case, which was resolved in the teacher's favor, lasted 15 years. While tenure hearings have definite timelines, once a lawsuit is filed, the judge may wait many months before setting a trial or hearing date and then may not rule for a long time thereafter. There is very little the AEA or an attorney assigned by the AEA can do under these circumstances to speed the process. While members may certainly contact the assigned attorney or the AEA Legal Department for a status report on their case, often there will be no movement on a case for a significant period of time. Whenever a decision has been reached by a court or other entity such as a hearing officer, the member will be promptly notified by the attorney assigned to the case. The Legal Department cannot and will not release information concerning any case to any person other than the member who is the party involved in the case.

Every case of every member cannot be carried to the Alabama or U.S. Supreme Courts. The AEA/NEA must always strike a balance between zealously representing the rights of our members and being good stewards of its members' money by not wasting it pursuing cases with no reasonable chance of success. In making this decision, the judgment of competent legal counsel must be given considerable weight. Since the AEA has been involved in thousands of cases at all levels, most cases can be evaluated against legal precedent established in prior cases.

The AEA's goal is to provide every member competent legal counsel when legal representation is necessary. As stated earlier, however, every members' problem does not always have a legal solution. Many members' concerns involve local grievances that are handled by the AEA's UniServ staff. In those cases where a request for legal assistance involves a grievance, such requests will usually be referred to the UniServ director for further action. Even though a member may never have a case, the fact that the AEA has a respected Legal Services Program keeps many employers cautious about using their positions improperly.

Frequently Used Numbers

Alabama Education Association

422 Dexter Avenue
Montgomery, AL 36104
P. O. Box 4177
Montgomery, AL 36103-4177
Toll free Number: 800.392.5839
Direct Number: 334.834.9790
Fax Numbers:
• 334.262.8377 (Executive Office)
• 334.265.8132 (Research)
• 334.263.5913 (Field Services)
• 334.834.7034 (Legal Dept.)
• 334.262.1226 (Business Office)
Website: myAEA.org

National Education Association

1201 16th Street, N.W.
Washington, D.C. 20036
Direct Number: 202.833.4000
Fax Number: 202.822.7767
Website: nea.org

NEA Member Benefits

900 Clopper Road, Suite 300
Gaithersburg, MD 20878-1356
Toll Free Number: 800.637.4636
(M-F, 8 a.m.-8 p.m. &
Sat., 9 a.m.-1 p.m. ET)
Website: neamb.com

Alabama State Department of Education (ALSDE)

Gordon Persons Building
50 North Ripley Street
P. O. Box 302101
Montgomery, AL 36130-2101
Direct Number: 334.242.9700
Fax Number: 334.242.9708
Website: alsde.edu

Public Education Employees' Health Insurance Plan (PEEHIP)

201 South Union Street
P. O. Box 3012510 (36130-2150)
Montgomery, AL 36104
Toll Free: 877.517.0020
Direct: 334.517.7000
Toll Free Fax: 877.517.0021
Fax: 877.517.0021
Email: peehipinfo@rsa-al.gov
Website: www.rsa-al.gov
My Active Health: myactive.com

Alabama Education Retirees Association (AERA)

828 Washington Avenue
Montgomery, AL 36104
Toll Free Number: 800.537.6867
Direct Number: 334.262.4177
Fax Number: 334.262.6002
Website: aerainc.org

Alabama Teachers' Retirement System (TRS)

201 South Union Street
Montgomery, AL 36104
Toll free Number: 877.517.0020
Direct Number: 334.517.7000
Fax Number: 334.517.7001
Website: rsa-al.gov

Governor of Alabama

Alabama State Capitol
600 Dexter Avenue, Room N-104
Montgomery, AL 36104
Direct Number: 334.242.7100
Fax Number: 334.353.0004
Website: governor.alabama.gov

Alabama Senate

State House/Senate Chamber
11 South Union Street
Montgomery, AL 36104
Direct Number: 334.261.0800
Fax Number: 334.242.8819
Website: legislature.state.al.us

Alabama House

State House/House Chamber
11 South Union Street
Montgomery, AL 36104
Direct Number: 334.261.0500
Website: legislature.state.al.us

OTHER IMPORTANT INFORMATION

MedImpact/PEEHIP

877.606.0727
800.788.2949
Fax: 877.606.0728

Southland/PEEHIP

800.476.3010
southlandbenefit.com

Medicare

800.633.4227
mymedicare.gov

Social Security

800.772.1213
ssa.gov

AARP

866.542.8167
aarp.org

Did you know your membership card is also your ACCESS discount card?



ACCESS is a group discount program created specially for AEA members.



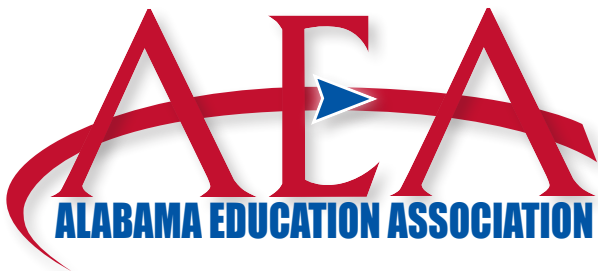
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Services	\$20.58
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Ski & Snowboard	\$13.45
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