

## **The Students First Act of 2011: What Hearing Officers Need to Know**

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### **Overview**

The Students First Act<sup>1</sup> (“the SFA” or “the Act”), which became effective July 1, 2011, generally governs terminations and certain other personnel actions involving tenured teachers and nonprobationary classified employees as defined by the Act. Employers subject to the SFA include all city and county boards of education, educational and correctional institutions under the control of the Department of Youth Services, the Alabama Institute for the Deaf and Blind, and all two-year educational institutions operated by the Department of Postsecondary Education. The SFA repealed and replaced former tenure and fair dismissal laws, and restored primary authority for conducting personnel proceedings to covered employers. Under the SFA, the employer’s decision is entitled to “deference” and is reviewed on an evidentiary record that is made available to the reviewing hearing officer if the employee appeals an adverse decision.<sup>2</sup>

### **Frequently Asked Questions**

#### **1. Who administers the hearing officer selection process?**

Administrative responsibilities under the SFA are shared by the State’s education agencies and the Alabama State Bar. The State Department of Education and the Department of Postsecondary Education are responsible for providing notices of appeal to Marcia Daniel of the Bar. In turn, Marcia furnishes a randomly selected five-member “panel of neutrals” from a roster of retired Alabama judges (excluding judges of probate) that is maintained by the Bar.

#### **2. How is the hearing officer selected?**

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<sup>1</sup> Ala. Code §16-24C-1, et seq.

<sup>2</sup> Under former Alabama law, personnel decisions involving teachers and other certified personnel were subject to *de novo* review by independent hearing officers (arbitrators) who were selected under a process that was overseen by the Federal Mediation and Conciliation Service. Only limited evidentiary proceedings were conducted by the employer. By contrast, the SFA returns primary authority for conducting personnel hearings and rendering personnel decisions to the employer.

The hearing officer is selected by agreement of the parties or, failing an agreement, by a process of alternating strikes by the parties from the five-member panel of retired Alabama judges provided by the Bar.

### **3. How is the hearing officer informed of his or her selection?**

Under procedures currently in place, the hearing officer is generally notified of his or her selection by email correspondence from the Alabama State Bar. The Act disqualifies a hearing officer from serving in the event of “a personal or professional interest that would conflict with his or her ability to render an objective decision.” The selected hearing officer is asked to respond to the Bar within five days to acknowledge acceptance of the assignment or to advise if a conflict or other impediment will prevent him from serving.

### **4. What timelines must be observed by the hearing officer?**

Hearing officers must agree to abide by timelines prescribed by the SFA. The SFA directs the employer to submit the administrative record within twenty days of the date the employer receives the notice of appeal; however, the deadline for filing the record may be extended by the hearing officer for good cause shown. For example, there are sometimes unavoidable delays in the hearing officer selection process which would support the need to extend the deadline for submitting the administrative record. Although no timeline is established by the statute for conducting the hearing on appeal, the hearing officer's ruling, either affirming or reversing the employer's decision, must be rendered within five days after the hearing.

### **5. What kinds of personnel actions are subject to review by a hearing officer?**

Under the SFA, tenured and nonprobationary classified employees, as defined by the Act, may appeal and obtain review of terminations from employment, unpaid suspensions in excess of twenty work days, and involuntary transfers to positions with a lower rate of pay or shorter term of employment.<sup>3</sup>

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<sup>3</sup> The employee must first request a hearing before the governing board or institution president and comply with other prerequisites to appeal.

Reductions in compensation, benefits, or length of work that are prospectively applied, formally approved, and uniformly applied to similarly situated employees are not subject to review. Likewise, layoffs and other personnel actions properly implemented under a Reduction-in-Force policy as specified by § 16-1-33 of the Code of Alabama are not subject to challenge or review under the Act.<sup>4</sup>

## **6. What kind of hearing is required on appeal?**

The SFA does not specifically describe the nature of the hearing to be held on appeal. In contrast to former law, the hearing officer's review under the SFA is not a "de novo" process, and the SFA makes no provision for any evidentiary record on review. Rather, the employer makes an evidentiary record of its hearing, which record is submitted to the hearing officer following the notice of appeal. The notice must specify the grounds on which the appeal is based. These provisions suggest that the hearing on appeal is in the nature of oral argument rather than a second evidentiary proceeding. However, nothing in the SFA precludes the submission of legal briefs or written arguments, bearing in mind the requirement that the decision must be rendered within five days after the hearing is concluded.

## **7. Where is the hearing conducted?**

The SFA does not speak to this point, but any suitable public venue (e.g. a courtroom) would be acceptable. Employers have traditionally made their meeting rooms available for such purposes.

## **8. How much decision-making discretion does the hearing officer have on review?**

Under former law, reviewing arbitrators had broad discretion to modify the employer's decision and were effectively allowed to substitute their judgment for that of the employer. However, the SFA requires the hearing officer to issue a "final ruling, either affirming or reversing the decision of the employer," giving "deference" to the employer's decision.<sup>5</sup> The hearing officer's review is

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<sup>4</sup> Ala. Code § 16-24C-6(h)(2), (3).

<sup>5</sup> Ala. Code § 16-24C-6(e). *See also* Lambert v. Escambia County Bd. of Educ., 2013 WL 5583739 (Ala. Civ. App. 2013), *cert granted*, Ala. Sup. Ct. Case No. 1130071 (July 30, 2014); Chilton County Bd. of Educ. v. Cahalane, 117 So.3d 363 (Ala. Civ. App. 2012).

presumably guided by, if not limited to, the grounds of appeal cited by the employee. If the employer's decision is reversed, the statute requires the employee to be "reinstated and credited with any benefits due under applicable statutes, salary schedules, or employment policies."<sup>6</sup>

### **9. Must the final decision be rendered in any particular format?**

The SFA does not specify or require that any particular format be followed in rendering a decision. Hearing officers should be guided by their experience and sound judicial practice, bearing in mind that their decisions can be appealed.

### **10. How much is a hearing officer paid?**

Effective January 1, 2015, hearing officers are paid \$150 dollars per hour.

### **11. How is the hearing officer paid for his or her services?**

The hearing officer should bill the *employer* after services have been rendered. An itemized invoice showing hours worked and a brief description of the work performed for each block of hours is required. The hearing officer may also bill at the hourly rate for time spent in travel status. This is considered sufficient to cover travel costs, which will not be reimbursed.

The employer is responsible for paying the hearing officer. The employer will then submit to the ALSDE for reimbursement a signed Hearing Costs Claim Form,<sup>7</sup> together with a copy of the itemized invoice from the hearing officer, a copy of the decision, and any other documentation of expenses. ALSDE will review the claim for reasonableness and accuracy and will pay funds to the employer as soon as possible.

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<sup>6</sup> Ala. Code § 16-24C-6(f).

<sup>7</sup> Hearing Officer Claim Forms and other SFA documents can be found at the Alabama State Department of Education website. Go to <http://www.alsde.edu>. Then select Department Offices/Office of Financial Management/SDE Accounting/Documents.