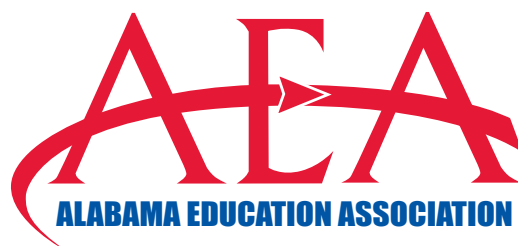
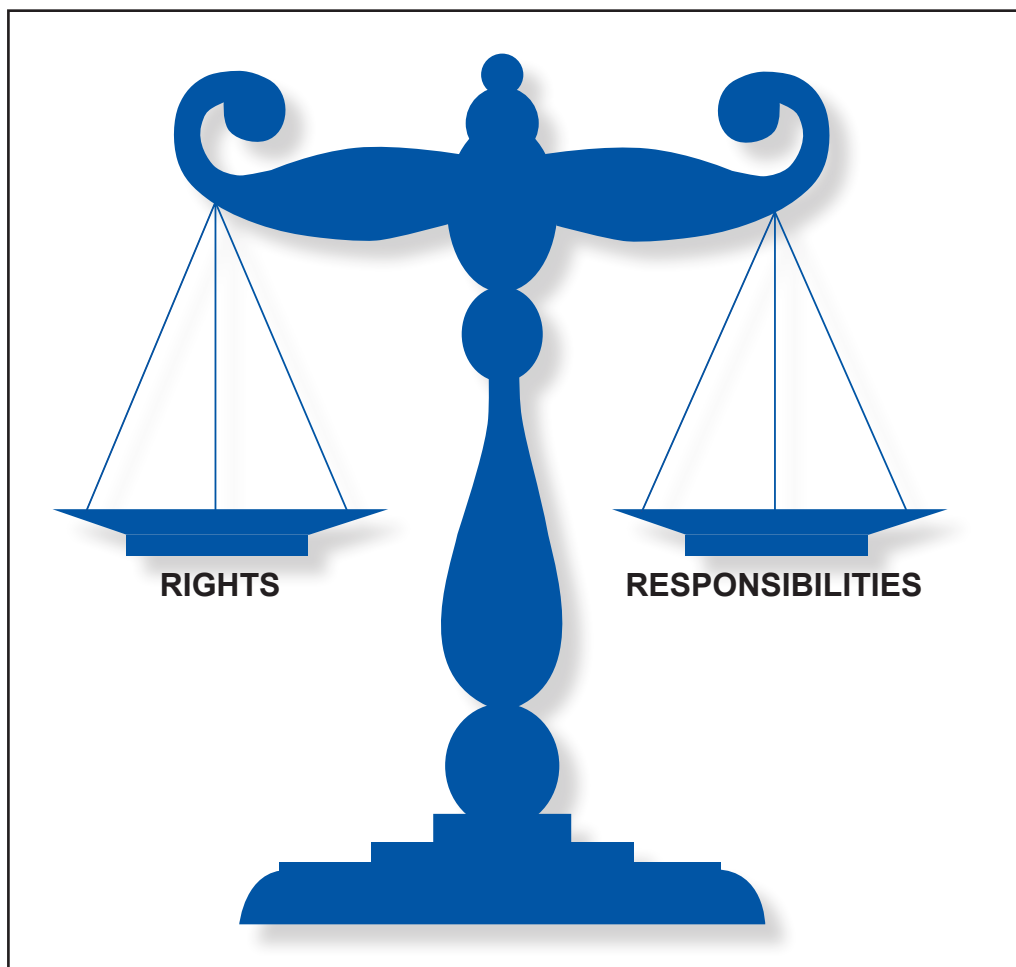


PR & R

PROFESSIONAL RIGHTS & RESPONSIBILITIES

A Handbook for AEA Members



Every Child. Every Opportunity.

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(effective: 8-18-2009)

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AEA Headquarters Management & Professional Staff

Dr. Paul R. Hubbert, *Executive Secretary and Treasurer*
Dr. Joe L. Reed, *Associate Executive Secretary and Staff Consultant to the PR&R Commission*
Mary Bruce Ogles, *Assistant Executive Secretary*
Michael Todd, *Regional Field Services Manager*
Darryl Sinkfield, *Regional Field Services Manager*
Sandra Jackson, *AEA Student Programs Director*
Steve Perrigin, *Business Manager*
Stephen Martin, *Governmental Relations Manager*
Joe Cottle, *Governmental Relations Director*
David Stout, *Public Relations Manager*
Suzie Smith, *Public Relations Director*
Jim Wrye, *Public Relations Director*
Ashley McLain, *Public Relations Director*
Amy Marlowe, *Research & Technology Manager*
Dr. Tyna Davis, *Education Policy & Professional Practice Manager*
Dr. Pam Fossett, *Education Policy & Professional Practice Director*
Glenn Parker, *Member Benefits & Programs Director*
Dr. Gerald W. Johnson, *Director of Capital Survey Research Center*

AEA Legal Staff Consultants

Tamika Reed, Esq., *Administrative Assistant to the Associate Executive Secretary*
Theron Stokes, Esq., *AEA General Counselor*
Nancy E. Perry, Esq., *AEA General Counselor*
Charles Norton, Esq., *AEA General Counselor*
Gregory Graves, Esq., *Assistant to the Associate Executive Secretary for Legal Services*
Clint Daughtery, Esq., *Assistant to the Associate Executive Secretary for Legal Services*
LaFaye Jackson, *Confidential Secretary*
Luticia Johnson, *PR&R Records Secretary*
Rebecca Hooker, *Legal Affairs Secretary*
Linda Matthews, *Legal Affairs Secretary*

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Answers to Questions on Pertinent Laws and Information on Requesting Legal Help from 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. 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 Secretary. The contract for legal services between 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 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. AEA/NEA members' rights are also governed by laws enacted by the Congress of the United States as well as the Legislature of Alabama. For example, the Alabama Legislature enacted the Teacher Tenure Act which granted tenure to certified teachers after three (3) years of consecutive employment in the same system once they were rehired for the fourth year. The Fair Dismissal Act was enacted by the Alabama Legislature to give full-time educational support professionals (ESP), including community and technical college employees and adult bus drivers, non-probationary status after three (3) years of employment. Although both laws were passed by the Alabama Legislature, these laws do not operate in the same manner nor do they provide all educational employees the same rights or procedures.

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.

Platform

The basic purpose of the Professional Rights and Responsibilities Commission of the Alabama Education Association 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 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 fourteen (14) members appointed by the (AEA) president and confirmed by the (AEA) Board of Directors for three (3) 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 secretary, executive secretary, president, on a petition of one-third of its members, or upon direction of the AEA Board of Directors.

Staff

The associate executive secretary is charged with the responsibility of administering the Professional Rights and Responsibilities program for the association and serving as staff consultant and secretary to the PR&R Commission.

In each investigation, legal, special or otherwise, the staff consultant for the commission will assist the Investigating Committee in its work and will be responsible for the various procedural details necessary for the committee to conduct its investigation effectively and efficiently.

In all meetings of the PR&R Commission, the associate executive secretary 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 secretary 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 secretary to the PR&R Commission will regularly inform the executive secretary 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 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 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. 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 or 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 AEA may waive state and local dues, the state association may NOT waive 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 an ULSP-funded legal action 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. 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 or her, then he or 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

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 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 AEA shall be submitted in writing to the associate executive secretary 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 Secretary. **Prior to AEA's acceptance of an application for assistance, the PR&R Form must be signed. The PR&R Form constitutes a legal contract with AEA. The member's signature confirms his or 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 secretary 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 under the Teacher Tenure Act, considered to be non-probationary under the Fair Dismissal Act, or is otherwise entitled to a due process hearing before a hearing officer or arbitrator as a matter of law, the assignment of counsel is automatic for such a hearing. Whether legal counsel will be provided to appeal the decision of a hearing officer or arbitrator is at the discretion of the associate executive secretary. The assignment of counsel is at the discretion of the associate executive secretary in all other cases.**
3. A case referred to an attorney for review shall authorize the designated attorney to investigate the case. Within six (6) weeks of receipt of a Referral for Review, the designated attorney shall report to the associate executive secretary the results of his or 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 secretary shall make a determination as to 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 AEA policies. (See Appeals to PR&R Commission and AEA Board.)
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 secretary will assign, within fifteen (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 or 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 Secretary within twenty-four (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 to 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 Secretary in a timely manner so as to give the associate executive secretary 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 (5) days before a notice from the employee demanding a hearing before a hearing officer is due. If the request for assistance is filed less than five (5) 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 secretary.

The Teacher Tenure Law & The Fair Dismissal Act

The Teacher Tenure Act and the Fair Dismissal Act were amended in 2004. Those amendments substantially improved the process for taking disciplinary action against a tenured teacher. It made the process fairer to the teacher, faster for both parties, and thus, less expensive. In addition, the new law provided a new element in disciplining employees for misconduct, that of progressive discipline. For the first time, school boards were not required to either “fire or forgive” in the wake of misconduct. The law now prescribes procedures to be used in conjunction with suspensions, be they long-term or short-term.

Cancellation or Long-Term Suspension of a Tenured Teacher's or Non-Probationary Support Professional's Contract

From the date of the receipt of the PR&R Form to the completion of an appeal before a hearing officer, the timeline can stretch up to approximately one hundred eighty (180) days. This excludes any court appeals.

- Once written notice of a proposed contract cancellation or long-term suspension (Eight (8) days or more) from the superintendent is received by the teacher or ESP, the teacher/ESP has fifteen (15) days to request an informal conference with the board prior to its consideration of the charges against the teacher/ESP.

The notice from the superintendent must set a date for the board to hear the charges which is not less than twenty (20) or more than thirty (30) days after the teacher's receipt of the notice.

The written notice must inform the member of the reason(s) for the proposed contract cancellation/suspension.

The written notice must inform the member of his or her rights to contest the proposed cancellation/suspension.

It is the member's responsibility to timely file a notice of intent to contest and demand for an informal conference within the time allowed by law which is fifteen (15) days from his or her receipt of the notice.

- Once a written notice of intent to contest the proposed cancellation/suspension and demand for a conference is made by the member, the following action is required by the board.

The board must grant the member an informal conference.

The conference may be open to the public or closed at the discretion of the member.

The member or his/her representative may speak to the board regarding the proposed contract cancellation/suspension.

The member may be represented at the hearing. A member will be represented at the conference by his/her UniServ Director unless there are special extenuating circumstances and the associate executive secretary appoints legal counsel to represent the member at the conference. The member may also elect to have his or her minister or other individual speak on their behalf.

The member may have a court reporter present at the conference, at his/her own expense. AEA generally will not supply a court reporter at the conference absent special extenuating circumstances.

- After a conference, the board must render its decision in the following manner.

The board will vote on the superintendent's recommendation following the conference.

The vote to cancel or terminate the member's contract must be by majority vote of the whole board.

A quorum of the board members must be present and participate in the vote.

The member must be informed in writing of the board's decision, which must be mailed within 10 days of the board's action.

- Once the board renders a decision, the member may appeal an adverse action to a hearing officer from the Federal Mediation and Conciliation Service (FMCS) by filing a notice of appeal.

The notice of appeal must be in writing and filed within 15 days of the member's receipt of the notice of the adverse action by the local board of education.

The notice of appeal may be hand delivered, or mailed to the board of education. Certified mail, return receipt requested, is advised.

- Upon receipt of the notice of appeal, the parties must either agree on a person to hear the case or submit a request to FMCS for a list of potential hearing officers.

FMCS will send back a list of potential hearing officers, usually seven, from its roster.

Each party will have 10 days to strike unacceptable names from the list, list the names not stricken in order of preference, and return the list to FMCS.

FMCS will then appoint the hearing officer from the names not stricken, in order of mutual preference.

If one party does not return the list within the 10 days, all names on the list are deemed equally acceptable to that party.

If both the board and the member strike every name from the list sent by FMCS, then FMCS will select a hearing officer from its roster whose name was not on the original list.

- After the hearing officer is named, he or she will set the date, time, and place for the hearing. Prior to the hearing:

The parties are required to exchange witness lists and documents to be used in the case 30 days prior to the hearing. These disclosures can be supplemented up to 5 days before the hearing.

Either party can ask the hearing officer to issue a subpoena to compel the attendance of witnesses or the production of documents.

- The hearing officer will then conduct a full “de novo” hearing, meaning he or she will give no weight to the board’s decision.

The hearing officer can uphold the board's decision, order that no action be taken against the member, or order some intermediate punishment, such as suspension or a reprimand.

After the hearing, the hearing officer has 30 days to issue written findings of fact and conclusions of law.

Either party may appeal the hearing officer's decision to the Court of Civil Appeals within 21 days of receipt of the hearing officer's decision.

The Court of Civil Appeals can only reverse the hearing officer's decision if it finds the decision to be “arbitrary and capricious.”

If the court reverses the hearing officer, it is to remand the case back to be heard by a new hearing officer.

Short-Term Suspension of a Tenured Teacher or Non-Probationary Support Professional

- Short-term suspensions (those that are for seven calendar days or less) are handled the same as terminations and long-term suspensions through the informal conference level.

The member's UniServ Director will represent him or her at the informal conference.

- Where the board votes to impose a short-term suspension, there is a very limited appeals process available.

The member can petition for a review by a hearing officer. However, the hearing officer will only review written submission of the parties on the matter. He or she will not hear witnesses or take testimony. The hearing officer's decision is final and not subject to appeal.

It is the member's responsibility to timely file a notice of intent to contest and demand for an informal conference within the time allowed by law which is fifteen (15) days from his or her receipt of the notice.

Transfer of a Tenured Teacher

- When a tenured teacher is noticed for a proposed transfer, the following board action is required.

The notice must state the intention to transfer from one position, grade or school to a specified different position, grade, or school; must provide a short and plain statement of the reasons for the proposed transfer; and must notify the teacher of the teacher's right to demand a hearing before the board and the time and place at which such hearing would be held.

The notice of intent to transfer must be in writing and approved by the board.

- Once a teacher is notified for a proposed transfer, the following action by the teacher is required.

The notice of intent to contest the transfer and demand for a hearing must be filed within fifteen (15) days of the teacher's receipt of the transfer notice. It must be in writing, hand delivered, or mailed to the local superintendent of education. Certified mail, return receipt requested, is advised. It is the teacher's responsibility to ensure that a notice of intent to contest the transfer and demand for a hearing is received by the board in a timely manner.

- When a hearing is scheduled before the local board of education, the teacher is entitled to representation by counsel at the hearing.

- After a hearing, the board of education must render a decision subject to the following conditions.

A quorum of the board must participate in the decision.

The board members must vote within five (5) days of the conclusion of the hearing.

The vote to transfer the teacher must be by a majority vote of the board.

The teacher must be informed of the board's decision in writing and the teacher's attorney should be provided a copy of such decision.

- When a teacher appeals the decision of transfer to a hearing officer, the teacher must meet the following requirements.

The teacher must file a notice of appeal with the superintendent within 15 days of the teacher's receipt of the written notice of the decision of the local school board.

The notice of appeal must be in writing.

- Once a notice of appeal is filed, a hearing must be held before a hearing officer.

The hearing must be set no less than 30 and no more than 60 days of the filing of the notice of appeal.

No transfer will be effective until the hearing officer renders its decision.

→ The hearing before a hearing officer will be based on the record established at the board hearing.

The hearing officer will not take any testimony, but will hear oral arguments from the attorneys for the school board and the teacher.

The transfer will be upheld unless the hearing officer determines that the evidence was insufficient for the board to take action, the action was taken for personal or political reasons, or was arbitrarily unjust.

Transfer of a Non-probationary Support Professional

→ When a non-probationary ESP is noticed for a proposed transfer, the following board action is required.

The notice of intent to transfer must be in writing and supported and approved by the board.

The notice must state the intention to transfer from one position, grade or school to a specified different position, grade, or school; must provide a short and plain statement of the reasons for the proposed transfer; and must notify the member of the ESP's right to demand a hearing before a hearing officer.

→ Once an ESP is notified for a proposed transfer, the following action by the ESP is required.

The notice of intent to contest the transfer and demand for a hearing must be filed within fifteen (15) days of the ESP's receipt of the transfer notice. It must be in writing, hand delivered, or mailed to the local superintendent of education. Certified mail, return receipt requested, is advised. It is the ESP's responsibility to ensure that a notice of intent to contest the transfer and demand for a hearing is received by the board in a timely manner.

→ Once a notice of appeal is filed, a hearing must

be held before a hearing officer.

The hearing must be set no less than 30 and no more than 60 days of the filing of the notice of appeal.

No transfer will be effective until the hearing officer renders its decision.

→ The hearing before a hearing officer will conduct a de novo hearing on the transfer.

The hearing officer will take any testimony and hear oral arguments from the attorneys for the school board and the ESP.

The transfer will be upheld unless the hearing officer determines that the evidence was insufficient for the board to take action, the action was taken for personal or political reasons, or was arbitrarily unjust.

→ The hearing officer's decision on the transfer is final and not subject to appeal.

Questions and Answers

The Teacher Tenure Act

What is the purpose of the Teacher Tenure Act?

The purpose of the Teacher Tenure Act is to serve children by providing them with teachers who, because they have security in their positions, may devote themselves whole-heartedly to their profession. Children need to be assured of the continued service of good teachers and protected from the presence of inefficient, incompetent teachers in the classroom. The Tenure Law operates to protect good teachers from unfair dismissal and provides a fair method to eliminate unfit teachers from the profession. The law places the employment and dismissal of teachers on a professional and legal level, instead of a political or personal basis.

The Tenure Law also protects school boards in the discharge of their responsibilities in selecting and retaining teachers. Without limiting the board's authority to end the employment of an inefficient or incompetent teacher, the law eliminates unnecessary teacher turnover and increases the stability of the teaching profession. The law strengthens the board in resisting political, partisan, or commercial pressures from within the community, which may seek to interfere with the operation and administration of the schools.

What is teacher tenure?

Tenure or continuing service status is a property right granted by the Alabama Legislature to guarantee that a teacher 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 car or house. The board cannot take it away from you without proper notice and an opportunity for a hearing. The failure of a school board to issue a written contract to a tenured teacher in no way affects the continuing service status of the teacher.

How long have Alabama teachers had tenure?

The Alabama Legislature established the Teacher Tenure Law in 1939.

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

Yes.

Where can a copy of the Tenure Law be found?

It can be found in the Code of Alabama, Section 16-24-1 et. seq. (1975).

What legal documents other than the law itself must be considered in connection with the operation of tenure?

In addition to the act that created tenure, there are federal laws and decisions of state and federal courts and opinions of the attorney general that govern the dismissal and transfer of teachers who have achieved continuing service status.

How does a teacher gain tenure?

A regularly certified teacher who has been employed for three consecutive years by the same board of education, and who has been re-employed for the fourth year achieves "continuing service status" or tenure.

Must the fourth contract school year immediately follow the three probationary contract years?

Yes. The teacher's fourth contract year must be consecutive. It must immediately follow the three probationary contract years.

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

It may. According to decisions of Alabama courts, time actually served as a teacher may be counted toward the three-year probationary period, even if it is less than a full year. Such determination is made on a case-by-case basis.

Does employment prior to receiving regular certification from the State Department of Education count toward tenure?

It may. If the teacher is employed under at least a provisional or emergency certificate and employment is continuous, that time may count toward tenure.

How is the local board notified that a teacher will attain tenure or continuing service status?

At the end of each contract year, the superintendent must submit to the board a list of teachers recommended for continuing service status. If the superintendent does not submit this list, however, the continuing service status of the teacher is not jeopardized and tenure attaches without formal board action.

May a board keep a teacher on “probationary status” 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 nor the teacher may extend the time for gaining tenure. The board 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?

Yes. “Teacher” is defined in the law as “persons regularly certified and employed as instructors, principals or supervisors.”

May a coach gain tenure in a coaching position?

No. The Tenure Law does not apply to coaching positions.

Are other employment positions protected by the Tenure Law?

Depending on the circumstances, employees who are regularly certified by the state may attain

continuing service status 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.

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 forty-five (45) days before the beginning of the school term of his/her resignation.

If a teacher resigns less than forty-five (45) days before the school term begins, what action may be taken against the teacher?

The teacher may be guilty of unprofessional conduct. The state superintendent is authorized to suspend or permanently revoke a teacher’s certificate after a due process hearing.

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

Only by mutual consent of the employing board of education and the employee. Such consent should be in writing and approved by the board.

May a superintendent accept a teacher’s resignation?

No. The teacher’s contract exists with the employing board of education. The superintendent has no authority to accept a resignation. Until the board accepts the resignation, however, a teacher may rescind a letter of resignation.

May a teacher “resign” his or her tenure?

Yes. The courts have held that a teacher loses all tenure rights when a teacher resigns his or her position, even if the teacher is rehired without any break in service.

When asked to resign or threatened with non-renewal or dismissal, should a teacher resign?

No. A teacher should not resign until he or 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 board, virtually all rights are waived.

May a teacher obtain a leave of absence without losing tenure?

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

If a teacher on continuing service status moves to another system, does their continuous service status transfer to the new system?

No. Continuous service status does not transfer between school systems. The teacher must complete three probationary years and be rehired for the fourth year in the second system to attain tenure again.

How does a teacher lose tenure or continuing service status?

A teacher may lose tenure through: (a) retirement, (b) termination, or (c) resignation.

When must a board notify a non-tenured 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 of the school term. The last day of the

school term is the last day the teacher is required to work.

On what grounds or for what reasons may a tenured teacher's contract be canceled?

A tenured teacher's contract may be canceled for seven (7) specific reasons: (1) incompetency, (2) insubordination, (3) neglect of duty, (4) immorality, (5) justifiable decrease in the number of teaching positions, (6) failure to perform duties in a satisfactory manner, or (7) any other good and just cause.

May a tenured teacher contest the cancellation of his or her contract?

Yes. To contest the cancellation of his or her contract, the teacher may either demand a conference with the school board before it votes on the superintendent's recommendation to cancel the contract and/or the teacher may demand a hearing before a hearing officer to contest the cancellation.

What happens if a tenured teacher does not file a notice of intent to contest a contract cancellation in a timely fashion (within fifteen (15) days of receipt of the board decision to approve the superintendent's recommendation)?

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

What happens if a tenured teacher fails to file a notice of intent to contest a transfer and demand for a hearing in a timely fashion (within fifteen (15) days from receiving a notice of the intended transfer)?

If the teacher fails to contest the proposed transfer in a timely manner, the teacher waives the right to challenge the transfer and the board may transfer the teacher upon a majority vote. Such a transfer is final.

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

Yes. A teacher is entitled to have an attorney or other representative present at a board conference, board hearing, or hearing before an arbitrator on a cancellation or transfer.

What other rights do tenured teachers have at an arbitration hearing?

At a contested hearing on a cancellation of a contract, which may be public or private at the teacher'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 hearing officer may require the attendance of witnesses through subpoenas, either in support of the charges or on behalf of the teacher. Prior to the hearing, the parties will exchange the names of board witnesses, summaries of their testimony and copies of any documents either party intends to use as evidence at the hearing. After the hearing, the hearing officer has thirty (30) days to render its written decision on the cancellation of the teacher's contract.

If the tenured teacher loses before the hearing officer, is there an appellate procedure to contest the decision?

The law specifies that the teacher has the right to ask the Alabama Court of Civil Appeals to hear his or her appeal of a hearing officer's decision. If the court agrees to hear the case, it will review it solely to determine if the hearing officer's decision was "arbitrary and capricious." If it so finds, it can order the matter be heard by a new hearing officer.

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

If a request for a hearing is refused, the teacher

may file a direct appeal to an administrative law judge in the Office of the Attorney General.

If a tenured teacher is wrongfully terminated, finds other employment, and subsequently wins his or her case, may the teacher's earnings during the pendency of the case be deducted from the monetary award?

No. A tenured teacher whose contract is improperly interrupted is not required to mitigate damages and the teacher may recover all monies lost while the case was pending.

May a board that lost a court decision because it did not follow the termination procedure then follow the proper legal procedure to effect a termination?

Yes. However, the board must follow the law and meet all timelines for taking such action.

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. 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 Department of Education.

If the local board fails to give a tenured teacher a written contract after school begins, is the teacher's continuing service status jeopardized?

No. A written contract is not necessary for a tenured teacher to maintain continuing service status.

What constitutes a transfer?

The law defines a transfer as any change in school, grade, or position. The courts have held that a mere change in working hours or subject matter does not constitute a transfer.

When may the board affect a transfer?

A teacher must receive notice of the board's intent to transfer him or her before the beginning of the next scholastic year. A teacher may not be noticed for transfer after July 1 unless the teacher agrees to the transfer, or the transfer is an "emergency transfer."

May a teacher demand a transfer?

No. A teacher may request a voluntary transfer pursuant to local board policy. However, the board is not obligated to transfer the teacher upon request.

Is a teacher insubordinate if he or she refuses to accept a transfer on the orders of the principal, superintendent, or employing board prior to a ruling by the hearing officer?

No. The teacher contesting the proposed transfer has a right to remain in his or her position until the hearing officer has approved the transfer.

May a principal transfer a teacher without board action?

No. Only the employing board has a right to transfer a teacher.

What other protection does a teacher have against a transfer?

The board may not transfer a teacher for personal or political reasons, nor may the transfer action be arbitrarily unjust.

May the board issue a blanket order for the transfer of numerous teachers?

No. The board must consider each individual teacher's situation before authorizing a transfer.

What is an "emergency transfer?"

Emergency transfers were created by the Legislature as part of the Teacher Accountability Act of 2000. They allow a school board to transfer a tenured teacher during a period starting fifteen (15) days before the first day of school to (15) fifteen days after the first day of school in the case of an emergency.

What is an emergency?

The Legislature did not define what an emergency is for purposes of this statute. It did, however, say that an emergency must be something that "could not have been reasonably anticipated, foreseen, or utilized to meet the needs of the board."

What is the mechanism for affecting an emergency transfer?

The superintendent must first seek volunteers for transfer by posting a notice in all school system sites for five (5) days. If there are no volunteers, a non-tenured teacher must be transferred if there is one qualified. If there are no non-tenured teachers who are qualified, then a tenured teacher can be transferred. All qualified tenured teachers are to then be ranked and transferred in order of least seniority. If two tenured teachers have equal seniority, the employing board must consider qualifications, certifications, experience in position, experience in grade level, and experience in subject matter in making the decision on whom to transfer.

Can a teacher contest an emergency transfer?

Yes. However, unlike regular transfers, which are not effective until the hearing officer has ruled on them, emergency transfers are effective immediately. Upon receipt of a notice of contest by the teacher, a hearing must be held by the board within fifteen (15) days.

Who has the burden of proof in an emergency transfer?

Unlike a regular transfer, where the burden of proof is on the teacher, in an emergency transfer the burden is on the superintendent to prove that an emergency existed and that he followed the law in filling the vacancy.

Can a teacher appeal the decision of the board?

Yes. That decision can be appealed.

Can the board retaliate against a teacher for contesting an emergency transfer?

No. The law specifically forbids retaliation by the board against a teacher for contesting an emergency transfer.

What rights does a teacher have after he/she accepts an emergency transfer or after an appeal is denied?

That teacher has a one-time right of first refusal to go back to the former school, if a vacancy for which he or she is qualified opens up at the end of the school year. The right of first refusal is good for two years following the emergency transfer.

Where there is a justifiable decrease in the number of teaching positions, may a board of education cancel the contract of a teacher on continuing service status and retain a non-tenured teacher in the same field?

The courts have ruled that the contract of a tenured teacher may not be canceled based upon a justifiable decrease in the number of teaching positions, where the board of education retains a probationary (non-tenured) teacher in the same field.

How does maternity leave affect a teacher's tenure status?

No duly authorized leave impairs a teacher's tenure rights, so long as it is for one year or less.

Is a teacher entitled to return to her same position and school when she returns from maternity leave?

Yes. According to the courts and the attorney general, a teacher is entitled to return to her same position and school when her maternity or any other medical leave is completed.

When a teacher takes extended leave, what benefits is he or she entitled to maintain?

Under the Family and Medical Leave Act of 1993, a teacher is entitled to the same benefits while on medical leave as she or he would be entitled to as a working teacher. For example, the teacher would be permitted to retain his or her insurance benefits while on the Family and Medical Leave under the same conditions as if he or she was teaching. The employee, however, is required to pay his or her share of the premium to maintain the coverage. The board will continue to pay the employer's share.

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

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

Questions and Answers

Fair Dismissal Act

Who constitutes an “employee” covered by the Fair Dismissal Act, Code of Alabama, Section 36-26-100 et. seq. (1975)?

An employee is defined under the act to “include all persons employed by county and city boards of education, two-year educational institutions under the control and auspices of the State Board of Education, the Alabama Institute for the Deaf and Blind (AIDB), educational and correctional institutions under the control and auspices of the Alabama Department of Youth Services (DYS), who are employed as bus drivers, lunchroom or cafeteria workers, maids and janitors, custodians, maintenance personnel, secretaries and clerical assistants, supervisors and all other persons not otherwise certified by the state board of education.”

Does the Fair Dismissal Act apply to part-time or substitute employees?

No. The Fair Dismissal Act 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 twenty (20) or more hours a week during a normal work week.

Who are “non-probationary employees” under the Act?

A non-probationary employee is one who (a) meets the criteria defining employee in the Code of Alabama, Section 36-26-100 (1975), and (b) has been employed “for a period not to exceed three (3) years from the date of his or her initial employment, or a lesser period which may be fixed by the employing authority.”

Can the employing board shorten the probationary period?

Yes.

Can the employing board extend the probationary period beyond three years?

No.

How long must an employee work to gain non-probationary status?

An employee must work a total of 36 months to attain non-probationary status. It is not required that the service be consecutive.

What protections do probationary employees have under the Act?

The Fair Dismissal Act only requires that the employee be given “at least” fifteen (15) days notice of termination.

Does the Act require the employing board to evaluate employees during the probationary period?

Yes. The Code of Alabama, Section 36-26-101 (1975) requires the employing board to evaluate a probationary employee’s performance during the probationary term.

Would failure to evaluate the employee be grounds for reinstatement?

The courts have held that failure to evaluate or improperly evaluating an employee does not give the employee a right to reinstatement as a result of failing to follow the evaluation requirement.

Is it possible for an employee to waive his or her rights under the Fair Dismissal Act?

Yes. Any employee who “knowingly, intentionally and voluntarily” resigns his or her employment and does not act to withdraw the resignation before it is accepted by the board has waived the right to claim the protection of the Fair Dismissal Act.

Is the employing board required to notify the employee of his or her rights before he or she resigns?

No. The board is under no obligation to inform the employee of any rights he or she may have before the employee submits a resignation.

On what grounds may a non-probationary employee be terminated under the Act?

An employee may be terminated for (a) a failure to perform his or her duties in a satisfactory manner; (b) incompetency; (c) neglect of duty; (d) insubordination; (e) immorality; (f) justifiable decrease in jobs in the system; or (g) other good and just cause.

On what grounds is termination impermissible?

An employee cannot be terminated for personal or political reasons “on the part of any party recommending or voting to approve said termination.”

Would a reduction in hours constitute a partial termination for which notice and hearing provisions would apply?

A reduction in hours would constitute a partial termination for which notice and hearing provisions would apply.

Does a change in hours constitute a transfer or a partial reduction of a contract?

In general, a local board may change an employee’s schedule without affecting a transfer. A reduction or an increase in the number of hours worked by the employee may constitute a partial cancellation of his or her employment contract and the employee may be entitled to a due process hearing.

May a local board of education implement a salary schedule that “grandfathered” some employees, resulting in unequally paid employees?

Yes. The courts have held that boards have a “legitimate interest in protecting its current employees to ensure that they would not be unduly affected by the establishment of the pay schedule.”

Probationary Employees

- Probationary employees must be given at least 15 days notice of termination prior to the effective date of termination.
- The courts have held that employees achieve non-probationary status under the Fair Dismissal Act after three (3) calendar years of service. Therefore, regardless of whether one is a 9-, 10-, 11-, or 12-month employee, one receives non-probationary status on the third anniversary of his/her hire date.
- Unless otherwise provided, Alabama law allows probationary employees’ contracts to be non-renewed (canceled) without the employer giving the employee any reasons. Therefore, unless an employee can convince a court that his or her contract was non-renewed by the employer for legally impermissible reasons, (such as religion, race, sex, exercise of free speech, free association, or breach of contract), a probationary employee has little or no recourse against dismissal. Failure to evaluate or evaluate in accordance with local or state policy does not give probationary employees the right to reinstatement.

Postsecondary Institutions/ School Principals

Termination, Transfer or Disciplinary Action under the Fair Dismissal Act and the Revised Fair Dismissal Hearing Procedure for Junior Community Colleges and Technical Schools

- All employees at two-year institutions, including instructors and administrators, are covered under the Fair Dismissal Act.
- Employees at two-year institutions undergo the same due process as K-12 teachers and support professionals in instances of contract cancellation, short-term suspension, or long-term suspension. In the case of a transfer, the matter is handled in the same manner as that for K-12 support professionals.
- Any act that the board of education or superintendent would take at the K-12 level would be taken by the college president for two-year employees.

Employees at Four-Year Institutions

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.

School Principals – The Teacher Accountability Act

Only 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.

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 keeping their principals under the Tenure Act if they wish.

What is a "contract principal?"

A "contract principal" is the term the Legislature coined to define individuals who are or will be hired as principals after July 1, 2000. The term refers to the fact that these individuals are no longer covered by the Teacher Tenure Act, but will be on 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 Teacher Tenure 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 major difference between the Teacher Tenure Act and the Teacher Accountability Act with regard to principals?

Under the Teacher Tenure Act, once a principal gained tenure as a principal, he or she had an expectation of continuing employment that was not subject to renewal. Under the Teacher Accountability Act, a principal has a contract for a term, usually three years. At the end of that contract, the principal's contract can be non-renewed.

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 or 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 (5) days of the vote. The contract principal then has ten (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 forty-five (45) days of the contract principal's request. If the court determines that it cannot conduct the hearing within forty-five (45) days, it must refer the matter to a mediator to conduct the hearing. If the contract principal receives an unfavorable ruling there, his or her only recourse is an appeal to the Alabama Court of Civil Appeals. Such an appeal must be filed within fourteen (14) days of receipt of the final ruling of the circuit court or mediator. The superintendent then has twenty-eight (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 or 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 contract principal's employment at least 90 days before the end of his or her contract, and it must notify the principal within five (5) days of its decision. The process then is the same as if the board were acting to terminate for cause.

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 (3) 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 or her designee. If a contract principal is not evaluated during one year of the contract, his or 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 their 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 (5) days of the contract principal’s request for a review, the superintendent must request from the State Department of Education a list of five (5) individuals who are certified to review a contract principal’s evaluation. The superintendent and the contract principal may then each strike two (2) names from the list. The remaining name is the evaluator.

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

Thirty (30) 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 (1) year for each year they are not evaluated. Their contract can be extended in this manner up to three (3) 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 Teacher Tenure Law, the Fair Dismissal 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. Due to the specific language of the Teacher Tenure Act and the Fair Dismissal Act, only in very unusual cases will claims raised under those acts be appealed to state or federal courts following the decision of the hearing officer. Once a case is filed in court, regardless of an employee's tenure status, 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 Tenure or Fair Dismissal Laws 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 American 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 or her behalf.
- The employee has ninety (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 association also provides 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, 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 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 worker's 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 of Worker's Compensation as a guide to calculate the amount of lost wages. The maximum amount of recovery under worker's 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. 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 association

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 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 members involved in the occurrence.

A member may seek reimbursement of attorney fees and other legal costs up to \$35,000 if the member is charged with violating a criminal statute in the course of his or her employment as an educator and the member is subsequently exonerated of the charges. If 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 or she has to post a bond as a result of an occurrence arising out of his or her employment as an educator. The insurance company is not obligated to furnish the bond.

A member may also seek payment of up to \$250 for damages to personal property that resulted from an attack on the member in the course of his or 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. However, 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 or 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 or 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 or her educational employment, the member should immediately submit a PR&R Form and copies of all legal documents to Dr. Joe L. Reed 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 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, 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, 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, AEA/NEA reserves the right to partial or full payment of any costs for legal services rendered.

Denial of Assistance

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 AEA or NEA, 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 AEA or the attorney assigned by AEA, 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 AEA or the attorney assigned by AEA, AEA reserves the right to decline to provide legal assistance or representation or may discontinue financial support of a case.
- If 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, 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 AEA, 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, 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, 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, AEA determines that the case no longer has legal merit because of changes in the facts, law or precedent-setting court decisions, 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 secretary provides the member with substantial relief and should be accepted, and the member rejects the settlement offer, 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, 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 secretary may deny additional support to pursue appeals when the evidence shows that further pursuit of the case will be wasteful of AEA resources, frivolous, or contrary to the existing state of the law. Provided, however, that in any case where the associate executive secretary 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 secretary's decision to withhold support, it is the member's responsibility to provide his or her own representation as if 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 Secretary's Decision

Where an application for legal assistance is denied by the associate executive secretary or the associate executive secretary 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 twenty (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 secretary 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 Secretary, 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 (5) days after the hearing, and the member

will be notified within seven (7) days of the decision reached.

- The individual (or affiliate) making an appeal may be represented by a representative of his or her choosing at his or 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 fifteen (15) minutes.
 - Formal or informal statement.
 - Introduction of other evidence (if any).
- Response by associate executive secretary or his designee, limited to fifteen (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 secretary.
- Closing statement by applicant or representative.
- Closing statement by associate executive secretary.
- 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 secretary 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 twenty (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 AEA failed to process his or 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 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

AEA will not reimburse members for attorney's fees incurred after the member's case has been declined by the associate executive secretary or after the associate executive secretary 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 AEA if the case is to qualify for reimbursement under the ULSP. If the matter is referred to an attorney, AEA shall select the attorney. Only AEA-approved attorneys are assigned AEA cases. AEA will not reimburse members for attorney's fees of attorneys not selected by AEA. As outlined above, 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 AEA up to the amount of 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, AEA will be reimbursed with amounts recovered that have been specifically designated as attorney's fees or court costs. AEA will be responsible for the collection of such

monies and for forwarding NEA its fair share of the reimbursed or recovered legal costs of the case.

Participating Attorneys

The association 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 Unified Legal Services Program (ULSP) will only be assigned to attorneys who have been approved as 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 AEA will not be paid. No fees will be paid to AEA participating attorneys unless in conjunction with a legal matter that AEA and NEA agree should be pursued.

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

Expenditures

- The associate executive secretary is authorized to spend up to \$15,000 to ensure that all members receive legal representation at administrative hearings or when it is determined that a member's rights have been violated under state law and/or the constitution, such as denial of due process; equal protection of the law; a deprivation of liberty and property; or breach of contract.
- Any expenditure for PR&R action in a particular case of more than \$15,000 (exclusive of expenses for staff and commission members) shall require the approval of a majority vote of the members of the commission or a majority vote of the Board of Directors.
- Any such expenditure of more than \$30,000 shall require the approval of the AEA Board of Directors.

AEA As a Party

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

Amicus Curiae

On recommendation of the associate executive secretary with the concurrence of the co-chairperson of the PR&R Commission, the executive secretary, and the AEA president, an Amicus Curiae motion and brief may be filed in court in the name of the Alabama Education Association 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, 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, however, that in all cases, such statements will be cleared with one of the executive officers.

Administrative Procedures and Reimbursement by NEA

It is the responsibility of AEA to ensure that the association's Legal Services Program operates in accordance with the Unified Legal Services Program Guidelines in order to qualify for reimbursement under the ULSP of 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 AEA;
 3. Detailed expenditure records including copies of attorney's bills for all services rendered under this plan;
 4. Court orders or other official documents and decisions relating to closed cases including information on any and all awards, settlements, or recoveries; and
 5. 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 (Nonlegal)

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 Member Assault Protection Program (MAPP)

Our 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 in the school bus – our members deserve additional protection from assault from parents, guardians, and students.

How It Works

- Effective the 1998-99 membership year, 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 AEA.
- 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 AEA within 45 days of the assault. AEA membership must be in effect at the time of the assault.

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 Dr. Joe L Reed, Associate Executive Secretary, AEA Legal Division, P.O. Box 4177, Montgomery, Alabama 36103.
- Coverage does not apply when an assault occurs between AEA members.
 - AEA, at its sole discretion, reserves the right to expend funds under this program.
 - AEA will not provide funding to pursue litigation against an individual or individuals for malicious prosecution or other similar claims.

Conclusions

AEA's Legal Services Program to provide member protection has proven very effective over the years.

Hundreds of members who thought they would never need AEA's legal services have learned firsthand that had it not been for 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 and fair dismissal 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 AEA or an attorney assigned by 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. 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 association has been involved in thousands of cases at all levels, most cases can be evaluated against legal precedent established in prior cases.

AEA's goal is to provide every member competent legal counsel when legal representation is necessary. As stated earlier, however, every member's problem does not always have a legal solution. Many members' concerns involve local grievances that are handled by AEA's UniServ field 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 AEA has a respected Legal Services Program keeps many employers cautious about using their positions improperly.

Alabama Education Association
422 Dexter Avenue (36104) • P. O. Box 4177
Montgomery, AL 36103-4177
334-834-9790 • 800-392-5839
www.myaea.org