



**The Teacher  
Tenure Act & The  
Teacher  
Accountability Act**

**2002 AEA PR&R  
Conference  
April 12-13, 2002**

**Clint Daughtrey  
Legal Assistant to the  
Associate Executive  
Secretary**

# TABLE OF CONTENTS

<b>Section 1 – General Questions About Tenure</b> .....	<b>1 - 2</b>
What is the Teacher Tenure Act? .....	1
Where is the Teacher Tenure Act in the law? .....	1
What is teacher tenure? .....	1
What is “continuing service status”? .....	1
Who is covered by the Teacher Tenure Act? .....	1
Are teacher’s aides and other paraprofessionals covered by the Teacher Tenure Act? .....	2
Is a position as a coach, band director, or other supplemental position outside of teaching covered by the Teacher Tenure Act? .....	2
Do non-tenured teachers have any rights under the Teacher Tenure Act? .....	2
Can a principal obtain tenure? .....	2
Can an assistant principal obtain tenure? .....	2
<b>Section 2 – Obtaining Tenure</b> .....	<b>3 - 4</b>
How does a teacher obtain tenure? .....	3
Can a teacher have a break in service during the four-year period? .....	3
When exactly does a teacher obtain tenure? .....	3
Does employment for less than a full year count toward tenure? .....	3
Does time spent teaching under an emergency or provisional certificate prior to obtaining a full certificate count toward tenure? .....	3
Can a board extend the probationary period beyond three years? .....	3
Does a tenured teacher lose her tenure as a teacher if she accepts a promotion to principal or supervisor? .....	4
How does a supervisor obtain tenure? .....	4
Must the board take any action to confer tenure on a teacher? .....	4

If I am a non-probationary teacher's aide and am hired as a teacher, do I keep my "tenure" as an aide? ..... 4

**Section 3 – Changes in Employment After Obtaining Tenure ..... 5 - 8**

Does the board have to take any action to reemploy a tenured teacher for the next year? ..... 5

When can the board change a tenured teacher's salary? ..... 5

What protections does a tenured teacher have against transfers? ..... 5

What is a change of "position"? ..... 5

What is a change of "grade"? ..... 5

What if a teacher teaches several grades? ..... 5

What is a change of "school"? ..... 6

What if a tenured teacher is reassigned from teaching reading to teaching math; is that a transfer? ..... 6

Can a tenured teacher be transferred during the school year? ..... 6

When must a tenured teacher receive notice of a proposed transfer? ..... 6

Can a tenured teacher be found to be insubordinate if she refuses to accept a transfer on the orders of a supervisor? ..... 6

Can a principal or superintendent transfer a teacher without board action? ..... 6

Can a tenured teacher demand a transfer? ..... 7

How does a tenured teacher contest a proposed transfer? ..... 7

What should a tenured teacher do if she receives a notice of transfer? ..... 7

What must a tenured teacher show to defeat a proposed transfer? ..... 7

What happens at the hearing? ..... 7

Can a tenured teacher appeal the decision of the Board on a transfer? ..... 7

If a tenured teacher appeals a board's decision, when does the transfer do into effect? ..... 8

Is there any appeal available after the Tenure Commission? ..... 8

<b>Section 4 – Termination of Employment</b> .....	<b>9 - 12</b>
On what grounds can a tenured teacher be terminated? .....	9
What is the procedure for a board to terminate a teacher? .....	9
What should a tenured teacher do if she receives a notice of proposed termination? .....	9
Is a termination hearing in front of the board a public or private meeting? .....	9
Can a tenured teacher compel the attendance of witnesses at a termination hearing? .....	9
Can a tenured teacher have an attorney at the hearing and cross-examine the board's witnesses? .....	10
Is a record kept at such a hearing? .....	10
When does the board make its decision? .....	10
Can a tenured teacher appeal the decision of the board to terminate her contract? .....	10
What happens when a tenured teacher files a notice of appeal to the Tenure Commission? .....	10
What happens after the hearing? .....	10
Can a tenured teacher resign from her position as a teacher? .....	11
Can the superintendent accept a tenured teacher's resignation during the year? .....	11
Can a teacher withdraw a letter of resignation? .....	11
If a tenured teacher resigns her position and is later rehired by the board, is she hired as a tenured teacher? .....	11
If a tenured teacher is given an ultimatum to resign or face termination, what should she do? .....	11
May a teacher take a leave of absence without forfeiting tenure? .....	12
If a teacher is tenured in one school system and is accepts a position in another school system, do her tenure rights go with her? .....	12

<b>Section 5 – The Tenure Commission</b> .....	<b>13 - 14</b>
What is the Tenure Commission? .....	13
What is the composition of the Commission? .....	13
What rules are there regarding when and how the Commission meets? .....	13
Who presides over the Tenure Commission? .....	13
How much are Tenure Commission members paid? .....	13
What is the jurisdiction of the Tenure Commission? .....	14
Is a ruling by the Tenure Commission final? .....	14
<b>Section 6 – The Teacher Accountability Act and “Contract Principals”</b> .....	<b>15 - 19</b>
What is the Teacher Accountability Act? .....	15
How did the Teacher Accountability Act speed up appeals for tenured teachers? .....	15
Did the Teacher Accountability Act eliminate tenure for all principals? .....	15
What is a “contract principal?” .....	15
Does the Teacher Accountability Act apply to assistant principals or vice-principals? .....	15
Does the Teacher Accountability Act apply to administrators of vocational schools? .....	16
What is the major difference between the Teacher Tenure Act and the Teacher Accountability Act with regard to principals? .....	16
What is the timeline for a contract principal with regards to her contract? .....	16
On what grounds can a contract principal be terminated during the contract? .....	16
What is the procedure for terminating a contract principal during the contract? .....	16
How long before the end of a contract must a board move to non-renew the contract? .....	17
What if the board takes no action to non-renew the principal’s contract? .....	17

Does the board have to wait until the end of a contract to renew a principal? .....	17
Are there any provisions regarding the evaluation of contract principals? .....	17
What types of grades can a contract principal receive on her evaluation? .....	17
What happens if a contract principal receives an “unsatisfactory but remediable” evaluation? .....	17
What happens if a contract principal receives an “unsatisfactory” evaluation? .....	17
Can a principal contest an “unsatisfactory” evaluation? .....	18
How is the independent third-party evaluator selected? .....	18
How long does the evaluator have to review the principal’s evaluation? .....	18
What happens if the evaluator overturns the evaluation? .....	18
What happens if the evaluator upholds the evaluation? .....	18
Can the superintendent or the board unilaterally move to discontinue a contract principal’s employment? .....	18
What if a tenured teacher becomes a contract principal and is non-renewed or terminated for cause? .....	18
What happens if a contract principal is not evaluated? .....	19
<b>Section 7 – The Teacher Accountability Act and “Emergency Transfers” .....</b>	<b>20 - 21</b>
What does the Teacher Accountability Act say about transfers? .....	20
What is an emergency? .....	20
When can the board make emergency transfers? .....	20
What is the mechanism for affecting an emergency transfer? .....	20
Can a teacher contest an emergency transfer? .....	20
Who has the burden of proof in an emergency transfer? .....	21
Can a teacher appeal the decision of the board? .....	21
Can the board retaliate against me for contesting an emergency transfer? .....	21
What rights does a teacher have after she accepts an emergency transfer or after an appeal is denied? .....	21

## **Section 1 – General Questions About Tenure**

### **What is the Teacher Tenure Act?**

The Teacher Tenure Act operates to protect good teachers from unfair dismissal and provide a fair method to terminate teachers when necessary. This places the employment and dismissal of teachers on a professional and legal level, instead of a personal or political level.

### **Where is the Teacher Tenure Act in the law?**

The Teacher Tenure Act is codified as Title 16, Chapter 24 of the Code of Alabama 1975. It runs from §16-24-1 to §16-24-38.

### **What is teacher tenure?**

Tenure is a property right granted by the 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 your house. The board cannot take it away from you without due process of law, i.e. 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.

### **What is “continuing service status?”**

“Continuing service status” is the technical term the Legislature uses to mean “tenure.” “Continuing service status” and “tenure” mean the same thing and are interchangeable.

### **Who is covered by the Teacher Tenure Act?**

The Teacher Tenure Act covers “teachers” in the public school systems of Alabama. This includes all county and city boards of education, the Alabama Institute for the Deaf and Blind, and employees of the Alabama Industrial Schools. The Legislature has defined the term “teacher” to mean all certificated employees, including instructors, counselors, librarians, and supervisors. The Teacher Tenure Act also covers principals who were employed as principals prior to July 1, 2000, and who have elected to remain covered by the Tenure Act.

### **Are teacher's aides and other paraprofessionals covered by the Teacher Tenure Act?**

Generally, the Teacher Tenure Act does not cover teacher's aides and paraprofessionals. They are granted similar, but not identical, rights under the Fair Dismissal Act. In rare instances, the courts have included time spent as an aide to the time necessary to obtain tenure as a teacher. In those cases, an individual who was state certified as a teacher was classified and paid as an aide, but who performed the same duties and activities as teachers, had teaching responsibility in the classroom, and exercised a great deal of discretion in her teaching methods. However, those cases are exceedingly rare and are the exception, not the rule.

### **Is a position as a coach or other supplemental position outside of teaching covered by the Teacher Tenure Act?**

No. The courts have expressly ruled that coaching and other supplemental positions are not covered by the Teacher Tenure Act. Thus, an employing board can fire a coach at any time. However, under contract law, if a coach is fired in the middle of a school year, she is entitled to receive her coaching supplement until the end of the contract.

### **Do non-tenured teachers have any rights under the Teacher Tenure Act?**

Yes. Non-tenured teachers have the right to notice of non-renewal. Such notice must be in writing and must be delivered before the last day of school. If such notice is not provided, then the non-tenured teacher is deemed rehired for the next school year. Non-tenured teachers also cannot be terminated during their contracts without cause.

### **Can a principal obtain tenure?**

Yes and No. All principals hired after July 1, 2000 are covered by the Teacher Accountability Act, which will be discussed at length below. The Accountability Act gives the employing school boards the option of whether or not new principals are hired under the Tenure Act or under contract through the Accountability Act. If a principal is a "contract principal" under the Accountability Act, she cannot obtain tenure. If not, she remains under the Tenure Act and can obtain tenure.

### **Can an assistant principal obtain tenure?**

Yes. An assistant principal can obtain tenure as a "supervisor," so long as she has supervisory responsibilities.



## **Section 2 – Obtaining Tenure**

### **How does a teacher obtain tenure?**

To obtain tenure, a teacher must be: 1) certified as a teacher; 2) employed by a school board as a teacher for three consecutive years; and 3) be re-employed by the board for a fourth consecutive year.

### **Can a teacher have a break in service during the three-year period?**

No. The three years of employment and renewal for a fourth must be continuous and uninterrupted.

### **When exactly does a teacher obtain tenure?**

A teacher obtains tenure by operation of law upon either 1) the board voting to renew her employment for a fourth consecutive year; or 2) the day after the last day of the school year if a teacher who just completed her third consecutive year does not receive a notice of non-renewal. The last day of the school year is the last day teachers have duties.

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

Usually. According to opinions of the Alabama Supreme Court, time actually served as a teacher may be counted toward the three-year probationary period, even if it is less than a full year; provided, the employee acted in the capacity of a teacher without a break in service. However, there are cases that refer to an anniversary date, so each case will be different.

### **Does time spent teaching under an emergency or provisional certificate prior to obtaining a full certificate count toward tenure?**

It might, depending on the specific circumstances of the case.

### **Can a board extend the probationary period beyond three years?**

No. Neither the board of education nor the teacher may extend the time for gaining tenure. The time period to achieve tenure is governed by law.

**Does a tenured teacher lose her tenure as a teacher if she accepts a promotion to principal or supervisor?**

No. Once you have obtained tenure as a teacher, it is a property right that you possess so long as you are employed by that school system. If you accept a promotion, you retain your tenure as a teacher. Therefore, if you are non-renewed as a supervisor, you have a right to return to the classroom as a tenured teacher.

**How does a supervisor obtain tenure?**

If the supervisor was promoted from a position as a tenured teacher, then once the supervisor is employed for three years, she obtains tenure as a supervisor. It is not necessary that the supervisor be renewed for a fourth year first.

**Must the board take any action to confer tenure on a teacher?**

No. The law requires the superintendent to provide the board with a list of the names of individuals he recommends for tenure. This is a list of teachers who have served for three years that the superintendent is recommending for reemployment for a fourth year. However, the superintendent's failure to do so or the board's failure to act on that list does not affect the teachers who will obtain tenure by operation of law.

**If I am a non-probationary teacher's aide and am hired as a teacher, do I keep my "tenure" as an aide?**

No. The Fair Dismissal Act, not the Teacher Tenure Act, covers teacher's aides. Thus, if someone is hired as a teacher after being employed as a teacher's aide, she starts down the tenure track as if she had never worked for the board. Also, if the teacher in this case is non-renewed, the board is not required to rehire her as a teacher's aide. However, if she is rehired as an aide, she is rehired with non-probationary status.

## **Section 3 – Changes in Employment After Obtaining Tenure**

### **Does the board have to take any action to reemploy a tenured teacher for the next year?**

No. Once a teacher is tenured, she shall remain under contract as a teacher until proper action is taken by the board or the teacher to change that.

### **When can the board change a tenured teacher's salary?**

The board may change a tenured teacher's salary for the next school year by providing notice prior to the end of the preceding school year. However, the board cannot reduce the salary of a teacher below the state minimum salary schedule. Furthermore, a reduction in salary for a tenured teacher is a partial termination of her contract, and due process must be afforded.

### **What protections does a tenured teacher have against transfers?**

The Teacher Tenure Act provides that a tenured teacher cannot be transferred from "one position, school, or grade to another" without proper notice and the opportunity to contest such transfer.

### **What is a change of "position"?**

A change of position would be a change from one job type to another. For example, a change from teacher to librarian or counselor would be a change of position.

### **What is a change of "grade"?**

A change of grade is just that, a change of assignment from one student grade level to another. For example, a change from 3<sup>rd</sup> grade teacher to 2<sup>nd</sup> grade teacher is a change of grade.

### **What if a teacher teaches several grades?**

If a teacher teaches multiple grades, then whether or not a change in grades is a transfer depends on what type of change it is. If another grade or grades is added, that is a transfer. If one or more grades are taken away, that is not a transfer. If the number of grades taught stays the same, but the grades taught are different, that is a transfer.

*(Example. A physical education teacher at a K-12 school teaches 8<sup>th</sup> grade – 12<sup>th</sup> grade this year. If the board adds 7<sup>th</sup> grade to his responsibilities next year, that would be a transfer. If the board takes away 8<sup>th</sup> grade, and he now only teaches 9<sup>th</sup> – 12<sup>th</sup> grade, that is not a transfer. If the board assigns him to teach 5<sup>th</sup> – 9<sup>th</sup> grade only, that would be a transfer.)*

### **What is a change of “school”?**

A change of school is a change from one administrative unit of the board to another. The Tenure Commission has held that where two small schools were consolidated into one administratively, they were one school for purposes of the transfer protections of the Teacher Tenure Act, even though they were five miles apart. Conversely, if a middle school and a high school are on the same physical plot, but have different administrations, a change of assignment from one to the other is a transfer.

### **What if a tenured teacher is reassigned from teaching history to teaching math; is that a transfer?**

No. The courts have held that a reassignment of subject matter taught, without any change in the other three factors, is not a transfer under the Tenure Act. Thus, an 11<sup>th</sup> grade history teacher can be reassigned to teach 11<sup>th</sup> grade math at the same school.

### **Can a tenured teacher be transferred during the school year?**

Generally no. Prior to 2000, all transfers had to be for the succeeding school year. However, the Teacher Accountability Act provided a mechanism for “emergency transfers.” That allows a board to conduct an emergency transfer within the first 15 days of school. Emergency transfers will be discussed in more detail below. After the first 15 days of school, all transfers must be for the next school year, unless the teacher consents.

### **When must a tenured teacher receive notice of a proposed transfer?**

Unlike a notice of non-renewal, which must be received on or before the last day of school, a board can provide notice of transfer for the next school year before July 1<sup>st</sup> of that year. A notice received on or after July 1<sup>st</sup> is deficient.

### **Can a tenured teacher be found to be insubordinate if she refuses to accept a transfer on the orders of a supervisor?**

No. A tenured teacher who properly contests a transfer has an absolute right to stay in her position until the Tenure Commission has ruled on the transfer. As always, when in doubt, contact your UniServ Director.

### **Can a principal or superintendent transfer a teacher without board action?**

No. Only a teacher’s employing board may give notice of a transfer and then only with the recommendation of the superintendent and in compliance with the Tenure Act.

### **Can a tenured teacher demand a transfer?**

No. A teacher may request a voluntary transfer under the procedures spelled out in board policy. However, the board is not required to grant that request.

### **How does a tenured teacher contest a proposed transfer?**

After receiving proper notice of a proposed transfer, the teacher must file a notice of contest within 15 days of her receipt of that notice. If she does not timely contest the transfer, then the transfer is final. Once the board receives a notice of contest, it must schedule a hearing on the transfer within 15 days and notify the teacher within 5 days of that hearing.

### **What should a tenured teacher do if she receives a notice of transfer?**

A tenured teacher who is an AEA member should notify her UniServ Director immediately. The UniServ Director can then assist the member in completing an application for legal assistance. Unless instructed otherwise, a member should not immediately respond to a transfer notice. If the notice does not meet legal requirements, it is considered a defective notice and may be invalid. Issues regarding defective notice can be directly appealed to the Tenure Commission. However, if a teacher responds to a defective notice, she has waived any claim of defect.

### **What must a tenured teacher show to defeat a proposed transfer?**

The burden is on the teacher to show that the transfer is being done for a personal or political reason on the part of the board, that the transfer will result in a loss of status, that the transfer is in violation of the teacher's contract, or that the transfer is arbitrarily unjust.

### **What happens at the hearing?**

At the hearing, both parties may present evidence regarding the transfer. Following the hearing, the board may vote to affirm or rescind the proposed transfer, or it may table the matter for a vote later.

### **Can a tenured teacher appeal the decision of the Board on a transfer?**

Yes. If the board votes to ratify a proposed transfer, a tenured teacher may appeal the decision to the State Tenure Commission. The teacher must file a notice of appeal with the Commission within 15 days of the Board's decision. If a timely appeal is not filed, the decision of the board is final. The Tenure Commission must hold a hearing on the appeal not less than 30 days and not more than 60 days after the appeal is filed. The teacher must get at least 5 days notice of the hearing.

**If a tenured teacher appeals a board's decision, when does the transfer go into effect?**

In the case of an appeal to the Tenure Commission, a transfer would not go into effect until the Tenure Commission issues a ruling, or until the time for filing an appeal to the Tenure Commission has passed, if the teacher does not appeal.

**Is there any appeal available after the Tenure Commission?**

If the Tenure Commission upholds the board's decision, a tenured teacher may appeal to the circuit court of the county where the school board is located. Once the case is in the court system, it can be appealed like any other lawsuit.

## **Section 4 – Termination of Employment**

### **On what grounds can a tenured teacher be terminated?**

Section 16-24-8 sets out the specific grounds for which a tenured teacher can be terminated. They are: incompetence, insubordination, neglect of duty, immorality, failure to perform duties in a satisfactory manner, justifiable decrease in the number of teaching positions, and other good and just cause. The Legislature added “failure to perform duties in a satisfactory manner” starting with the 2000-2001 school year. The statute also provides that a tenured teacher cannot be terminated for personal or political reasons.

### **What is the procedure for a board to terminate a teacher?**

If a board desires to terminate a teacher, it must provide him or her with notice in writing spelling out in detail the reasons for the proposed termination. The notice must provide the date and time for a hearing at which time the teacher can contest the proposed termination. The hearing must be set for a date between 20 and 30 days after the notice is mailed by certified mail. The notice must apprise the teacher of her right to contest the termination and her obligation to inform the board within 5 days of the scheduled hearing if she will exercise that right. If a teacher does not notify the board that she will contest the termination, the board’s action is final. Once the board receives the notice, it will convene the hearing as scheduled.

### **What should a tenured teacher do if she receives a notice of proposed termination?**

Just like with a notice of proposed transfer, the teacher should notify her UniServ Director immediately. A notice of proposed termination must meet certain legal requirements or it will be considered defective. A defective termination notice can be directly appealed to the Tenure Commission, just like a defective transfer notice.

### **Is a termination hearing in front of the board a public or private meeting?**

The teacher who has been noticed for termination has sole discretion to decide if the hearing will be a public meeting or a private meeting. If the teacher elects to have an open meeting, the board cannot restrict access to anyone, including the media. Conversely, if the teacher elects to have a private meeting, then the meeting is closed to the public, the media, and anyone not necessary to conduct the hearing.

### **Can a tenured teacher compel the attendance of witnesses at a termination hearing?**

Yes. Upon the teacher’s request, the board must subpoena any witness the teacher intends to call at the hearing. However, the board is only responsible for the witness fees for 10 witnesses. The costs associated with any witnesses beyond ten are the responsibility of the teacher.

**Can a tenured teacher have an attorney at the hearing and cross-examine the board's witnesses?**

Yes. The statute specifically authorizes a tenured teacher to have legal counsel represent her at a termination hearing. As a member, you may request legal counsel from AEA at such a hearing. That attorney, or a teacher without an attorney, may cross-examine the board's witnesses at the hearing.

**Is a record kept at such a hearing?**

Yes. The statute requires the board to provide a court reporter or other stenographer to transcribe the proceedings.

**When does the board make its decision?**

The board can vote on the termination at the conclusion of the hearing. It may also table the matter and vote at any time within 5 days after the hearing.

**Can a tenured teacher appeal the decision of the board to terminate her contract?**

Yes. The teacher can appeal to the Tenure Commission on the grounds that the termination violated the statute or was arbitrarily unjust. A tenured teacher must file such an appeal with the superintendent within 15 days of the board's vote to terminate her contract.

**What happens when a tenured teacher files a notice of appeal to the Tenure Commission?**

Once an appeal is filed, the board has 10 days to provide a copy of the record of the board hearing to the teacher and each member of the Tenure Commission. The Commission will then set a hearing date that is not less than 30 days, or more than 60 days, from the date of appeal. The Commission must give the teacher and the board at least five days' notice of the date set for the hearing. At the hearing, the Tenure Commission is to consider the record of the proceedings below.

**What happens after the hearing?**

The Tenure Commission is required to render its decision by majority vote within 5 days of the hearing.



### **Can a tenured teacher resign from her position as a teacher?**

You may resign at any time and for any reason by mutual agreement with the board. However, a tenured teacher who resigns during the school year or within 45 days of the start of the school year without the consent of the board is deemed to have committed unprofessional conduct. In that case, the board is authorized to ask the State Superintendent of Education to suspend or revoke the teacher's certificate. The board and the teacher may mutually agree to cancel the contract at any time and the board cannot then take action against the teacher's certificate. However, if a teacher is resigning during the period from the day after school is out to 45 days before the next year, she must only give 5 days notice of her resignation and need not have board approval. Again, when in doubt, contact your UniServ Director for assistance.

### **Can the superintendent accept a tenured teacher's resignation during the year?**

No. A teacher's contract is with the board of education. Thus, there must be board action to accept the resignation for the resignation to take effect.

### **Can a teacher withdraw a letter of resignation?**

Yes, unless the board has taken action to accept the resignation. If the board has voted to accept the resignation, it is irrevocable.

### **If a tenured teacher resigns her position and is later rehired by the board, is she hired as a tenured teacher?**

No. Once a resignation is accepted, all tenure rights the teacher had are forfeited. If she is later rehired as a teacher, even if there is no break in service, she is considered non-tenured. This is one difference between the Teacher Tenure Act and the Fair Dismissal Act. A teacher's aide in this situation would be hired back with non-probationary status, the equivalent of tenure.

### **If a tenured teacher is given an ultimatum to resign or face termination, what should she do?**

A teacher should never resign until she has had an opportunity to discuss the situation with someone who can give her competent professional assistance and who can then advise her on the best course of action. Once the board accepts a resignation, virtually all rights are waived.

**May a teacher take a leave of absence without forfeiting 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 a leave of absence for an additional year. The law does not permit a board to extend leave beyond two years. A request for a leave of absence must be in writing, then submitted to and approved by the employing board. Also, you do not have a right to return to your exact position upon your return to work.

**If a teacher is tenured in one school system and later accepts a position in another school system, do her tenure rights go with her?**

No. A teacher's tenure rights are specific to her employing board. If a tenured teacher takes a job with another school system, she must work for that system for three years and be reemployed for a fourth to earn tenure in that system.

## **Section 5 – The Tenure Commission**

### **What is the Tenure Commission?**

The State Tenure Commission is a body created by the Legislature to hear appeals by tenured teachers who have suffered adverse employment actions by their employing boards.

### **What is the composition of the Commission?**

The Commission is made up of 7 members. One member is a member of a city or county board of education who is appointed by the president of the Alabama Association of School Boards for a term of seven years. The State Superintendent of Education selects one of the superintendents of a city or county school board as a member for a six-year term. The president of the Alabama Congress of Parents and Teachers selects a non-educator member, who serves a five-year term. AEA selects two tenured teachers to serve on the Commission, one for a four-year term and the other for a three-year term. The Governor appoints a non-teacher for a term of two years. The final member of the Commission is a principal or supervisor who is selected by the State Superintendent of Education for a term of seven years. Only one resident of each congressional district can sit on the Commission. The Executive Secretary of the Alabama Education Association is the ex officio secretary of the Commission. The Attorney General is required to appoint a member of his staff to serve as legal advisor to the Commission.

### **What rules are there regarding when and how the Commission meets?**

To conduct business, a quorum of five members of the Commission must be present. The Commission may not meet more than 30 days within the year, or for more than five consecutive days at one time.

### **Who presides over the Tenure Commission?**

The Tenure Commission elects a chairman and a vice-chairman to serve one-year terms.

### **How much are Tenure Commission members paid?**

By statute, Commission members receive \$15 per day for every day the Commission is in session, plus they are reimbursed their travel expenses to and from Montgomery at the same rate as state employees.

## **What is the jurisdiction of the Tenure Commission?**

The Commission has jurisdiction over appeals by tenured teachers of a decision to terminate or transfer them. It has direct jurisdiction to hear cases where a local board has refused to grant a teacher a hearing on a job action the teacher believes is a transfer or termination or where the teacher alleges that the notice provided by the local board of such an action is defective.

## **Is a ruling by the Tenure Commission final?**

No. A tenured teacher can “appeal” an adverse action taken by the Commission by filing a petition for a writ of mandamus in the circuit court of the county where the school board is located. The burden is on the teacher to show that the Commission’s decision did not comply with the law or that it was arbitrarily unjust.

## **Section 6 – The Teacher Accountability Act and “Contract Principals”**

### **What is the Teacher Accountability Act?**

The Teacher Accountability Act was passed by the Legislature in its 2000 regular session. The major elements of the act were 1) speeding up appeals for tenured teachers; 2) eliminating tenure for principals and placing them under term contracts; 3) allowing for emergency transfers within 15 days of the start of the school year; and 4) adding “failure to perform duties in a satisfactory manner” as a statutory ground for termination.

### **How did the Teacher Accountability Act speed up appeals for tenured teachers?**

The Act reduced from 30 to 10 the number of days a local board has to furnish a copy of the record of the board hearing on a termination or transfer. The board must still furnish a copy to the Tenure Commission members and to the teacher. It also reduced the time for filing an appeal to circuit court from an adverse ruling by the Tenure Commission from 90 days to 45 days.

### **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, 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 if a reason is given.

## **What is the timeline for a contract principal with regards to her contract?**

When a contract principal is hired, she will be hired under a one-year contract. If she is being hired as a principal for the first time, 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, 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 her 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 5 days of the vote. The contract principal then has 10 days to file a request for a hearing. Such a hearing will be held before a circuit court judge and must be held within 45 days of the contract principal's request. If the court determines that it cannot conduct the hearing within 45 days, it must refer the matter to a mediator to conduct the hearing. If the contract principal receives an unfavorable ruling there, her only recourse is an appeal to the Alabama Court of Civil Appeals. Such an appeal must be filed within 14 days of receipt of the final ruling of the circuit court or mediator. The superintendent then has 28 days after the appeal is filed to transmit the record of the hearing to the clerk of the Court of Civil Appeals. If the superintendent does not submit a full and accurate record in a timely manner, the contract principal wins 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 her contract. 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 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 designee. If a contract principal is not evaluated during one year of the contract, her contract is extended by one year.

### **What types of grades can a contract principal receive on her 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," 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 her next evaluation.

### **What happens if a contract principal receives an "unsatisfactory" evaluation?**

If a contract principal is evaluated as "unsatisfactory," the superintendent has two options. He may recommend that the principal be terminated for cause or he can have a conference with the principal and set out a professional development plan to address the deficiencies in the principal's performance. The principal must then complete that plan prior to her next evaluation.

### **Can a principal contest an “unsatisfactory” evaluation?**

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

### **How is the independent third-party evaluator selected?**

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

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

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

### **What happens if the evaluator overturns the evaluation?**

If that occurs, then the principal will continue to serve out 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 cancelled.

### **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, a tenured teacher retains her tenure rights when she assumes the role of contract principal. If she is non-renewed or terminated as a principal for cause, she must be returned to a similar status position within a reasonable time after her 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 her tenure rights as a teacher as well.



**What happens if a contract principal is not evaluated?**

If a contract principal is not evaluated, her contract is extended by one year for each year she is not evaluated. Her contract can be extended in this manner up to three years.

## **Section 7 – The Teacher Accountability Act and “Emergency Transfers”**

### **What does the Teacher Accountability Act say about transfers?**

The Act provides that in the event of an emergency, a teacher, whether tenured or not, may be transferred if she meets the qualifications and certifications of the vacancy that caused the 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.”

### **When can the board make emergency transfers?**

The statute provides a 31-day window for emergency transfers. The window goes from 15 days before the first day of school to 15 days after the first day of school.

### **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 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 Tenure Commission 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 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 to the Tenure Commission.

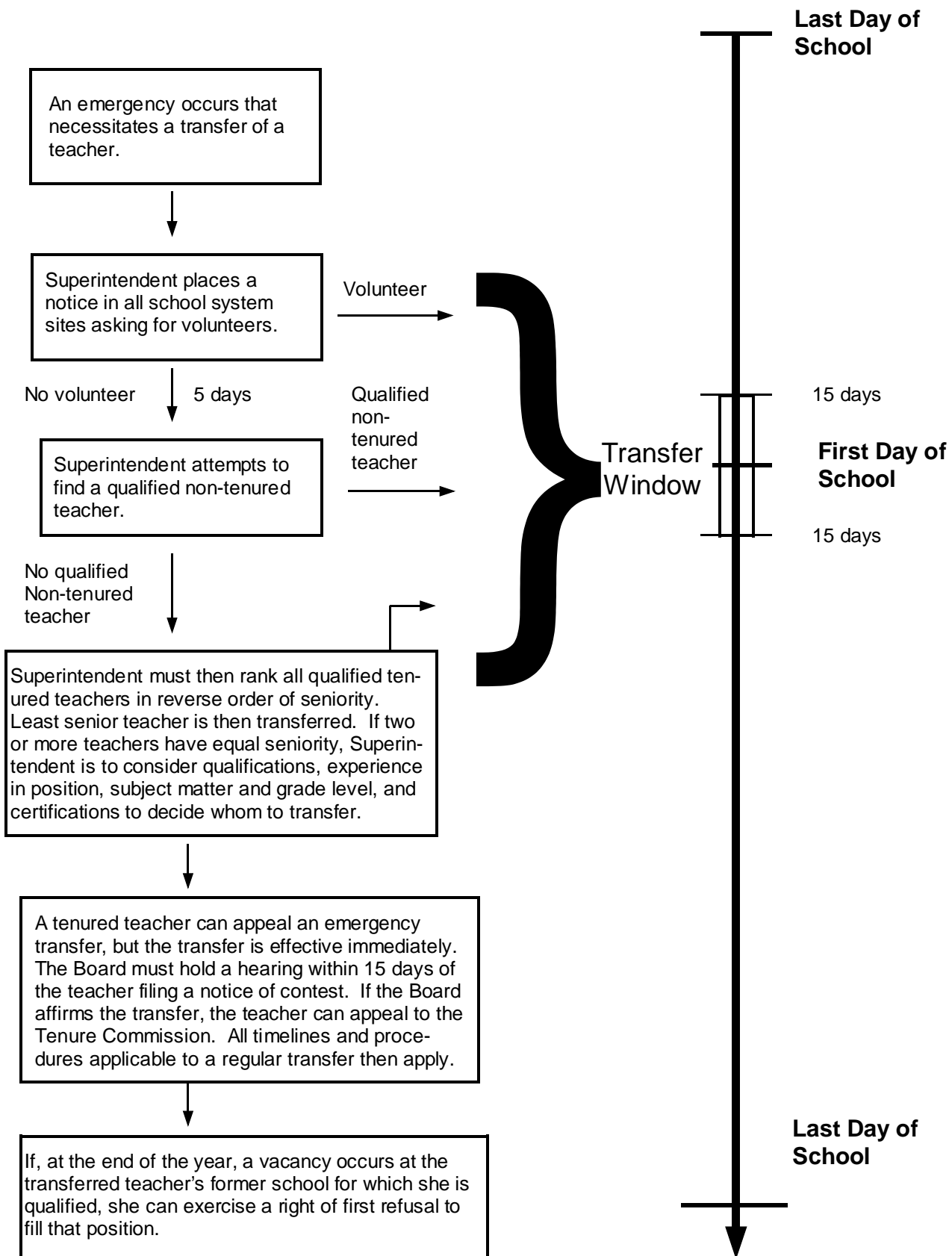
**Can the board retaliate against me for contesting an emergency transfer?**

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

**What rights does a teacher have after 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 her former school, if a vacancy for which 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.

# Emergency Transfer Process



# Comparison of Tenure Principals and Contract Principals

Tenure Principal Hired — principal is hired under the Teacher Tenure Act which means she is non-tenured until she serves three years.

Contract Principal Hired — if this is the first time she has been a principal, she may be hired on a two-year contract.

One Year

Under the Teacher Tenure Act, the principal can be non-renewed and returned to the classroom without cause or a hearing.

Under the Teacher Accountability Act, the principal has been evaluated, and can only be terminated for cause while under contract.

Two Years

Again, the principal can be non-renewed without cause.

If the Board intends to non-renew the principal, she must receive 90 days notice. The board may non-renew for any reason or no reason. The principal can then have an expedited appeal in circuit court within 45 days of the board's decision to show that the non-renewal was based upon personal or political reasons. If the board does not act, or renews the contract, such renewal must be for at least 3 years.

Three Years

If the principal is not terminated for cause by the end of the third year, she is tenured as a principal and can only be terminated for cause.

During the contract period, the principal can only be terminated for cause. The principal must also be evaluated annually. If she receives an "unsatisfactory" evaluation, the Teacher Accountability Act provides an appeals process to contest the evaluation.

Five Years

The tenured principal is still tenured, and can still only be removed for cause.

If the Board intends to non-renew the principal, she must receive 90 days notice. The board may non-renew for any reason but must give a reason in writing. The principal can then have an expedited appeal in circuit court within 45 days of the board's decision to show that the non-renewal was based upon personal or political reasons. If the board does not act, or renews the contract, such renewal must be for at least 3 years.

# Termination (or Transfer) of a Tenured Teacher

