

1 SB429
2 116564-2
3 By Senator Sanders
4 RFD: Finance and Taxation Education
5 First Read: 16-FEB-10

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8 SYNOPSIS: This bill would authorize the immediate
9 termination of the employment of any employee on
10 nonprobationary status convicted of a felony or of
11 a sex offense involving a child, would provide for
12 a pretermination hearing before the local board of
13 education, and would restrict the use of testimony
14 offered in employment termination hearings in
15 related criminal proceedings.
16

17 A BILL
18 TO BE ENTITLED
19 AN ACT
20

21 Relating to public K-12 education; to amend Sections
22 36-26-102, 36-26-103, 36-26-104, and 36-26-114, Code of
23 Alabama 1975, relating to the fair dismissal law; to authorize
24 the immediate termination of the employment of any
25 nonprobationary employee convicted of a felony or of a sex
26 offense involving a child; to provide for a pretermination
27 hearing before the local board of education; and to restrict

1 the use of testimony offered in employment termination
2 hearings in related criminal proceedings.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 36-26-102, 36-26-103, 36-26-104,
5 and 36-26-114 of the Code of Alabama 1975, are amended to read
6 as follows:

7 "§36-26-102.

8 "(a) Upon the completing by the employee of ~~said the~~
9 probationary period, ~~said the~~ employee shall be deemed
10 employed on a nonprobationary status and ~~said the~~ employee's
11 employment shall thereafter not be terminated except for
12 failure to perform his or her duties in a satisfactory manner,
13 incompetency, neglect of duty, insubordination, immorality,
14 justifiable decrease in jobs in the system, or other good and
15 just ~~causes; provided, however, such termination cause.~~
16 Termination of employment ~~shall~~ may not be made for political
17 or personal reasons on the part of any party recommending or
18 voting to approve ~~said~~ termination.

19 "(b) The employment of an employee, whether or not
20 the employee is on nonprobationary status, may be terminated
21 by majority vote of the local board of education upon
22 conviction of the employee of a felony or upon entry of a plea
23 of guilty or nolo contendere by the employee in any court to a
24 felony charge under federal or state law if the felony
25 constitutes a crime of moral turpitude, or upon conviction of
26 the employee or upon entry of a plea of guilty of the employee
27 to any of the following charges:

1 "(1) Rape in the first or second degree, pursuant to
2 Section 13A-6-61 or 13A-6-62.

3 "(2) Sodomy in the first or second degree, pursuant
4 to Section 13A-6-63 or 13A-6-64.

5 "(3) Sexual torture, pursuant to Section 13A-6-65.1.

6 "(4) Sexual abuse in the first or second degree,
7 pursuant to Section 13A-6-66 or 13A-6-67.

8 "(5) Enticing a child to enter a vehicle, room,
9 house, office, or other place for immoral purposes, pursuant
10 to Section 13A-6-69.

11 "(6) Promoting prostitution in the first or second
12 degree, pursuant to Section 13A-12-111 or 13A-12-112.

13 "(7) Violation of the Alabama Child Pornography Act
14 pursuant to Section 13A-12-191, 13A-12-192, 13A-12-196, or
15 13A-12-197.

16 "(8) Kidnapping a minor, except by a parent, in the
17 first or second degree, pursuant to Section 13A-6-43 or
18 13A-6-44.

19 "(9) Incest, pursuant to Section 13A-13-3, when the
20 offender is an adult and the victim is a minor.

21 "(10) Transmitting obscene material to a child by
22 computer, pursuant to Section 13A-6-111.

23 "(11) Facilitating solicitation of unlawful sexual
24 conduct with a child, pursuant to Section 13A-6-121.

25 "(12) Electronic solicitation of a child or
26 facilitating the online solicitation of a child, pursuant to
27 Section 13A-6-122 or 13A-6-123.

1 "(13) Traveling to meet a child for an unlawful sex
2 act or facilitating the travel of a child for an unlawful sex
3 act, pursuant to Section 13A-6-124 or 13A-6-125.

4 "(14) Any solicitation, attempt, or conspiracy to
5 commit any of the offenses listed in subdivisions (1) to (13),
6 inclusive.

7 "(15) Any crime committed in any state or a federal,
8 military, or foreign jurisdiction which, if committed in this
9 state under the law existing at the time of the offense, would
10 constitute an offense listed in subdivisions (1) to (13),
11 inclusive.

12 "(16) Any criminal sex offense in which the victim
13 is a child under the age of 12 or any offense involving child
14 pornography.

15 "(17) Any crime committed in any jurisdiction which,
16 regardless of the specific description or statutory elements,
17 may be characterized or known as rape, sodomy, sexual assault,
18 sexual battery, sexual abuse, sexual torture, solicitation of
19 a child, enticing or luring a child, child pornography, lewd
20 and lascivious conduct, taking indecent liberties with a
21 child, or molestation of a child.

22 "(18) Any crime not listed in this subsection
23 involving endangerment to the health, safety, or welfare of a
24 child that may be created on or after the effective date of
25 the act adding this subdivision.

26 "§36-26-103.

1 "(a) ~~An~~ Except as provided in subsection (b) of
2 Section 36-26-102, the employment of an employee on
3 nonprobationary status may be terminated only in the following
4 manner: The superintendent shall give written notice to the
5 employing board and the employee of the superintendent's
6 intention to recommend a termination as provided in subsection
7 (a) of Section 36-26-102. Such notice shall state the reasons
8 for the proposed termination, ~~and~~ and shall contain a short and
9 plain statement of the facts showing that the termination is
10 taken for one or more of the reasons listed in subsection (a)
11 of Section 36-26-102, and. The notice shall state the time and
12 place ~~for~~ of the board's ~~meeting~~ hearing on the proposed
13 termination, which ~~meeting~~ hearing shall be held no less than
14 20 days and no more than 30 days after the receipt of such
15 notice by the employee. The notice shall also inform the
16 employee that in order to ~~request a conference with the board~~
17 preserve the right to a board hearing on the proposed
18 termination, the employee ~~must~~ shall file a written request
19 with the superintendent ~~within 15~~ no later than five days
20 ~~after the receipt of such notice~~ before the date of the
21 hearing. Failure of the employee to timely request a hearing
22 or other waiver of the right to a hearing before the board
23 does not prejudice the right of the employee to appeal the
24 decision of the board pursuant to Section 36-26-104. At ~~such~~
25 ~~conference~~ the board hearing, which ~~shall~~ may be public or
26 private at the discretion of the employee, the employee, or
27 his or her representative, shall be afforded the opportunity

1 ~~to speak to the board on matters relevant to such termination~~
2 respond orally or in writing to the charges on which the
3 proposed termination is based and to offer evidence and
4 reasons as to why the proposed action should not be taken. The
5 employee shall have the right to counsel, at the expense of
6 the employee, and either party may ~~and to have a court~~
7 ~~reporter record his or her statement, both at the expense of~~
8 ~~the employee. Thereafter~~ and transcribe the proceedings before
9 the board, at the expense of the State Department of
10 Education. Unless the employee chooses a public hearing,
11 expressly waives his or her right to testify, or offers the
12 hearing transcript or record, or any part thereof, into
13 evidence in a criminal proceeding, no testimony or statement
14 offered by the employee during or in connection with the board
15 hearing shall constitute a waiver of the right of the employee
16 not to testify in a criminal proceeding and no part of the
17 transcript or record of the termination hearing that
18 memorializes or evidences any statement or testimony by the
19 employee before the board shall be admissible in any criminal
20 proceeding in which the employee is a defendant and which
21 arises out of or relates to the facts and circumstances on
22 which the proposed termination is based. Nothing in this
23 subsection shall preclude the proffer or consideration of the
24 transcript or record of the termination hearing, or the
25 decision of the board, in any appeal brought pursuant to
26 Section 16-24-10. Following the hearing, the board shall
27 determine, by majority vote, whether ~~such termination shall be~~

1 ~~effectuated to terminate the employment contract of the~~
2 ~~employee. The decision of the board shall be accorded a~~
3 ~~presumption of correctness in the event the employee appeals~~
4 ~~the decision of the board pursuant to Section 36-26-114.~~

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

1 ~~expired and, if notice of contest is filed, not until the~~
2 ~~hearing officer has issued an opinion.~~

3 "§36-26-104.

4 "(a) If notice of contest is filed pursuant to
5 Section 36-26-103, the hearing officer shall be selected as
6 provided in subsection (b) of Section 36-26-114. Upon
7 selection, the hearing officer shall immediately cause notice
8 to be given to the parties of the date and time for a hearing,
9 which date shall be no less than 30 days and no more than 60
10 days following the appointment of the hearing officer. The
11 parties shall agree as to the location of the hearing and, if
12 the parties are unable to agree, the hearing officer shall
13 determine the location within the jurisdiction of the
14 employing board. No less than 30 days before such date, the
15 parties shall submit to the hearing officer, with a copy to
16 the opposing party, documents supportive of, or in
17 contravention to, the action, as well as a list of witnesses
18 to be called at such hearing; ~~provided, however, that such.~~
19 The witness list or documentary submissions may be amended at
20 any time prior to five days before such hearing. The hearing
21 may be public or private at the discretion of the employee.
22 The State Department of Education shall bear the expense of
23 having a court reporter present at such hearing. The hearing
24 officer shall have power to administer oaths and issue
25 subpoenas to compel the attendance of witnesses and production
26 of papers necessary as evidence ~~and/or~~ or information, or
27 both, in connection with the dispute or claim. If requested,

1 the hearing officer shall issue subpoenas for witnesses to
2 testify at the hearing, under oath, either in support of the
3 charges or on behalf of the employee. Unless waived by the
4 employee, the terms, conditions, and prohibitions provided in
5 Section 36-26-103, pertaining to the use of the hearing
6 transcript in criminal proceedings, shall apply in the same
7 manner to hearings and related proceedings conducted by the
8 hearing officer pursuant to this section. The employee shall
9 have the burden of proving that the decision of the board
10 should be set aside. To determine whether the employee has met
11 his or her burden, the ~~The~~ hearing officer shall conduct a ~~de~~
12 ~~novo~~ review hearing and ~~shall render a decision,~~ based on the
13 record of proceedings before the board and the evidence ~~and/or~~
14 or information, or both, submitted to the hearing officer. ~~The~~
15 ~~hearing officer~~ shall determine which of the following actions
16 should be taken relative to the employee: Termination of the
17 employee, a suspension of the employee, with or without pay, a
18 reprimand, other disciplinary action, or no action against the
19 employee. The hearing officer shall render a written decision,
20 with findings of fact and conclusions of law, within 30 days
21 after its hearing. Expenses of the hearing officer shall be
22 borne by the State Department of Education. Should a hearing
23 officer set aside the termination of an employee's contract,
24 the employee shall be entitled to restitution of any unpaid
25 compensation.

26 "(b) All appeals of a final decision of the hearing
27 officer shall lie with the Alabama Court of Civil Appeals. An

1 appeal by either party shall be perfected by filing a written
2 notice of appeal with the Clerk of the Court of Civil Appeals
3 within 21 days after the receipt of the final written decision
4 of the hearing officer. Failure to file a timely notice of
5 appeal shall render the decision of the hearing officer final,
6 in which case the employing board shall take possession of the
7 record of the hearing and shall maintain such record for a
8 period of three years. The Court of Civil Appeals shall have
9 discretion to refuse to hear appeals of final decisions of a
10 hearing officer pursuant to this article. Review by the Court
11 of Civil Appeals pursuant to this article is not a matter of
12 right, but of judicial discretion, and an appeal may be
13 granted only when the court determines there are special and
14 important reasons for granting the appeal. Within 30 days
15 after an appeal is granted, the hearing officer shall transmit
16 the record to the clerk, with the appealing party bearing the
17 costs associated with the preparation and transmission of the
18 record and transcript of the hearing. The decision of the
19 hearing officer shall be affirmed on appeal unless the Court
20 of Civil Appeals finds the decision arbitrary and capricious,
21 in which case the court may order that the parties conduct
22 another hearing consistent with the procedures of this
23 article.

24 "§36-26-114.

25 "(a) Notices which are required to be given to the
26 employee shall be served by personal service, by United States
27 registered or certified mail with postage prepaid thereon to

1 the employee's last known address, or by private mail carrier
2 for overnight delivery, signature required, with postage
3 prepaid thereon to the employee's last known address.

4 "(b) If an employee should timely file a contest of
5 a decision as provided in this article, the employing board
6 and the employee shall, within seven days of such filing,
7 either mutually agree upon a person to hear the employee's
8 contest, or submit a joint request for a panel of arbitrators
9 to the Federal Mediation and Conciliation Services' Office of
10 Arbitration Services (FMCS). The joint request shall specify
11 that the parties prefer a hearing officer who is experienced
12 in employment law. Thereafter, FMCS shall submit to each
13 party an identical list of names of persons chosen to serve as
14 a hearing officer in such matter. Each party shall have 10
15 days from the date of receipt of the list to strike any name
16 to which it objects, number the remaining names in the order
17 of preference, and return the list to FMCS. If a party does
18 not return the list within the time specified, all persons
19 named therein shall be deemed acceptable. From among the
20 persons who have been approved on both lists, and in
21 accordance with the designated order of mutual preference, the
22 FMCS shall invite the acceptance of a hearing officer to
23 serve. If the parties fail to agree upon any of the persons
24 named, if those named decline, or if for any other reason the
25 appointment cannot be made from the submitted lists, FMCS
26 shall make the appointment from among other members of the
27 panel. FMCS will formally appoint the hearing officer, who

1 shall be known for purposes of this article as the "hearing
2 officer."

3 "(c) Unless the employee chooses a public hearing,
4 expressly waives his or her right to testify, or offers the
5 hearing transcript or record, or any part thereof, into
6 evidence in a criminal proceeding, no testimony or statement
7 offered by the employee during or in connection with the board
8 hearing or hearing before the hearing officer shall constitute
9 a waiver of the right of the employee not to testify in a
10 criminal proceeding and no part of the transcript or record of
11 the proceedings that memorializes or evidences any statement
12 or testimony by the employee before the board or the hearing
13 officer shall be admissible in any criminal proceeding in
14 which the employee is a defendant and which arises out of or
15 relates to the facts and circumstances on which the proposed
16 action is based. Nothing in this subsection shall preclude the
17 proffer or consideration of the transcript or the decision of
18 the board in any appeal brought pursuant to Section
19 36-26-104."

20 Section 2. This act shall become effective
21 immediately following its passage and approval by the
22 Governor, or its otherwise becoming law.