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# LOUISIANA ASSOCIATION OF SCHOOL EXECUTIVES

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Lee Faucette, Editor

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## *Governor Bobby Jindal Bats a Thousand*

Achieving almost unprecedented legislative success, Governor Bobby Jindal got just about every item on his political agenda passed in his first two special sessions of the Louisiana Legislature. The first session changed the ethics laws dramatically and improved Louisiana’s standing in this area of law.

The second session passed 12 laws in six days, allowing the Governor to spend \$1.1 billion of the state’s surplus while granting tax breaks of \$1 billion over five years and redirecting some sales taxes and fees into a permanent fund for road construction.

The session could have lasted until March 29; however, an overwhelming majority of legislators got on board the Jindal train early and passed 12 bills in six days.

Though opposed by the Louisiana Association of School Executives, Louisiana Association of School Superintendents, Louisiana School Boards Association, and two teachers unions, SB 5, the tuition tax break for parents of private, public, and home school students, passed with wide margins. Tuition was defined as including costs of uniforms, school supplies, and textbooks to give tax relief to private and public school parents.

Once signed by the Governor, this new law that grants modest tax relief (\$26 Million) will mark a huge policy change by further opening the door to school vouchers, long opposed by advocates of public education. Indeed, a variety of voucher bills are expected to be introduced in the Regular Session of 2008, which begins March 31 and may run until June 23.

### **Achieved were the following in the Second Special Session:**

- HB 1 - A 1 cent decrease in sales taxes businesses pay for electricity & gas;
- HB 5 - Allows state to bid at auction for bonds to repair the Superdome;
- HB 6 - Deposits \$300 Million in Coastal Restoration & Protection Fund;
- HB 9 - Provides \$50 Million for development in low income areas;
- HB 18 - Exempts Federal rebate checks from taxes;
- HB 45 - Changes Board of Algiers Development District;
- HB 46 - Spending Plan for \$1.1 Billion (Breaks the Cap)
- SB 5 - Grants individual tax deductions for tuition and expenses;
- SB 7 - Broadens definition of *manufacturer* for sales tax relief;
- SB 10 - Accelerates the phase-out of taxes on corporate debt;
- SB 11 - Shifts tax receipts on vehicles to fund work on roads and highways;
- SB 12 - Accelerates tax phase-out on manufacturing equipment purchases.

### *What’s Inside*

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# Congratulations New LASE Members

Diane Atkins  
Director of Attendance  
Caddo Parish

Ronald Bateman  
Assistant Principal  
Plaquemines Parish

Jemi Carlone  
Assistant Principal  
Plaquemines Parish

Nelson Carter  
Assistant Principal  
Assumption Parish

John Cashio  
Principal  
Central Community School Sys

Ginger Champagne  
Principal  
Washington Parish

James Champagne  
Principal  
Terrebonne Parish

Kayla Clark  
Assistant Principal  
Plaquemines Parish

Janice Comeaux  
Principal  
Ouachita Parish

Aylene Crain  
Principal  
Washington Parish

Lisa Dial  
Principal  
St. Tammany Parish  
April 2008

Theresa Duet  
Junior Counselor  
Lafourche Parish

Patricia Favaloro  
Principal  
Jefferson Parish

Maryann Fontenot  
Supervisor, Title I  
Evangeline Parish

Gwile Freeman, Ph.D.  
Assistant Superintendent  
Catahoula Parish

Pat Friedrich  
Director, Safe Schools  
East Baton Rouge Parish

James Fulton  
Business Manager  
New Orleans, LA

Paulette Gaspard  
Assistant Principal  
Vermilion Parish

Sheila Goins, Ph.D.  
Assistant Principal  
West Baton Rouge Parish

Bobby Green  
Assistant Principal  
Lafayette Parish

Angela Gullatt  
Assistant Principal  
Caldwell Parish

Patricia Haydell  
Principal  
Plaquemines Parish

Schanette Hebert  
Principal  
St. Tammany Parish

Jerome Henson  
Principal  
Vernon Parish

Rebecca Hochhalter  
Assistant Principal  
Plaquemines Parish

Kari Hooper  
School Psychologist  
Webster Parish

Sandra Jacobs  
Assistant Principal  
Evangeline Parish

Cliff Kendall  
Assistant Principal  
St. Tammany Parish

Wendy Lafleur  
Supervisor, Child Welfare  
Evangeline Parish

Darwan Lazard  
Supervisor  
Evangeline Parish

Sheryl LeJeune  
Assistant Principal  
Lafayette Parish

Mia Lemaire  
Assistant Principal  
Lafayette Parish

Michael Lombas  
Personnel Supervisor  
Evangeline Parish

# Congratulations New LASE Members

Lonnie Luce, Ph.D.  
Superintendent  
St. James Parish

Patricia Messer  
Elementary Supervisor  
Rapides Parish

Keith Morgan  
Assistant Principal  
Evangeline Parish

Elizabeth Moses  
School Psychologist  
Beauregard Parish

Tonika Peavy  
Assistant Principal  
Plaquemines Parish

Barry Quirk  
Assistant Principal  
Plaquemines Parish

Harlie Reynolds  
Principal  
Cameron Parish

Jackie Rice  
Payroll Manager  
Webster Parish

Arline Richard  
Supervisor, Spec. Educ.  
Evangeline Parish

Cindy Rushing  
Coordinator, Title I  
Rapides Parish

Geralyn Russo  
Assistant Principal  
St. Bernard Parish

Ann Sandidge  
Personnel Coordinator  
Concordia Parish

Grace Sibley  
Supervisor, Title I  
Evangeline Parish

Cole Sisung  
Director of Facilities  
Plaquemines Parish

MaryJane Smith  
Principal  
St. Tammany Parish

Sherry Smith  
School Counselor  
Beauregard Parish

Grady Smith  
Assistant Principal  
Webster Parish

Scott St. Pierre  
Assistant Principal  
St. Tammany Parish

Michael Stant  
Principal  
Tangipahoa Parish

Casey Weeks  
Principal  
Catahoula Parish

Candace Wikman  
Assistant Principal  
Ascension Parish

Yvonne Zeno  
Assistant Principal  
Lafayette Parish

# A REVIEW OF LSA-R.S. 17:442

## ***NECESSARY PROCEDURES FOR DISCHARGE OF PROBATIONARY TEACHERS***

### **I. HISTORY**

LSA-R.S. 17:442, entitled “Probation and Tenure of Parish or City School Teachers”, has been the subject of much litigation over the years. No other provision of this statute has been more contested than the procedures by which a school board discharges a probationary teacher. Although the statute seemingly provides a clear recipe for accomplishing the dismissal; interpretation of the language of the statute, along with the practical application and legislative intent behind the statute, has led to numerous law suits and appellate decisions.

However, a review of the more recent cases (and the history of this law) reveals a well settled set of parameters and rules for completing the discharge of a probationary teacher. Following the statute and judicial reasoning outlined below should allow for a clean and worry free process.

### **II. LAW AND JURISPRUDENCE**

The statute reads as follows:

*“Each teacher shall serve a probationary term of three years to be reckoned from the date of his first appointment in the parish or city in which the teacher is serving his probation. During the probationary term the parish or city school board, as the case may be, **may dismiss or discharge any probationary teacher upon the written recommendation of the parish or city superintendent of schools, as the case may be, accompanied by valid reasons therefor.***

*Any teacher found unsatisfactory by the parish or city school board, as the case may be, at the expiration of the said probationary term, shall be notified in writing by the board that he has been discharged or dismissed; in the absence of such notification, such probationary teacher shall automatically become a regular and permanent teacher in the employ of the school board of the parish or city, as the case may be, in which he has successfully served his three year probationary term; all teachers in the employ of any parish or city school board as of July 31, 1946 who hold proper certificates and who have served satisfactorily as teachers in that parish or city for more than three consecutive years, are declared to be regular and permanent teachers in the employ of the school board of that parish or city.”*

The bolded section above provides two (2) requirements for the discharge of a probationary teacher during the probationary term.<sup>1</sup> The first requirement is that the superintendent provides a written recommendation for discharge. Secondly, the written recommendation for discharge must be accompanied by valid reasons for the discharge. It is these two (2) specific requirements that have been the subject of a great deal of jurisprudence. As you might suspect, parties on both sides of this statute have argued for years as to what constitutes “valid reasons” and for whose benefit are these requirements written. Arguments have been made that the “valid reasons” are for the benefit of the employee to be discharged. It will allow the employee an opportunity to review the reasons for the discharge, allow for a defense of the allegations made by the superintendent, and allow for a formal response/appeal to the school board prior to its acting on the recommended discharge.

However, this argument is contrary to the very nature and premise of tenure. A teacher who has achieved tenure (permanent status) is entitled to due process protections of the United States Constitution. Prior to achieving tenure (probationary status), there is no statutory or jurisprudential authority by which these probationary teachers would be entitled to due process protections. Accordingly, the “valid reasons” that must accompany the superintendent’s recommendation must be for the benefit of someone else. As you will see below, the courts have almost universally held that the “valid reasons” are for the benefit of the school board members—ensuring that they make an informed and educated decision.

In *McKenzie vs. Webster Parish School Board*, 609 So.2d. 1028 (La.App. 2<sup>nd</sup> Cir. 1992), the court held that a “teacher who does not enjoy tenure in his position may be discharged by a school board without notice or hearing”, so long as valid reasons for the discharge exist. *Id* at 1031. In determining “whether there were valid reasons for discharge of the teacher, the role of the reviewing court is to determine whether the great discretion of the school board was abused. Where there is a rational basis for the school board’s discretionary determination regarding discharge of a teacher, supported by substantial evidence, courts cannot and should not substitute their own judgment.” *Id*. The court added:

“This statute simply requires the board to notify the non-tenured teacher/employee in writing that he has been discharged or dismissed. There is no requirement in the statute for detailed notice to the probationary teacher of the superintendent’s reasons for recommending dismissal, nor is there a requirement that such a teacher be given a hearing or an opportunity to rebut charges. While valid reasons must accompany the written recommendation of the superintendent to the board and they must actually exist, there is no requirement that these reasons be in any particular form.” *Id* at 1032.

The key rationale in the McKenzie decision and other decisions before and after is that the school board be given sufficient information upon which to base its determination. There must be a sufficient recitation of facts upon which the board can base its decision. It should be noted that mere conclusions of “incompetence” or “willful neglect” may not be viewed as sufficient valid

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<sup>1</sup> There is also a requirement that the probationary teacher be provided notice. However, that particular portion of the statute is not at issue in this writing.

reasons. *Serignet v. Livingston Parish School Board*, 282 So.2d 761 (La.App. 1<sup>st</sup> Cir. 1973). The dismissal of a probationary teacher is entrusted to the “sound discretion of the school board, and unless a teacher can show that the board abused that discretion, the courts will not interfere.” *Drane vs. Richland Parish School Board*, 740 So.2d 248 (La.App. 2<sup>nd</sup> Cir. 1999). See also *Foreman vs. Vermillion Parish School Board*, 353 So.2d 471 (La.App. 3<sup>rd</sup> Cir. 1977), *Castille vs. Evangeline Parish School Board*, 304 So.2d 701 (La.App. 3<sup>rd</sup> Cir. 1975), and *Booker vs. Richland Parish School Board*, 393 So.2d 785 (La.App. 2<sup>nd</sup> Cir. 1981).

### **III. CONCLUSION**

As with many statutes, a seemingly clear and unambiguous law can lead to a multitude of legal issues and law suits. As is the case with LSA-R.S. 17:442, the courts have stepped in to provide guidance for the application and procedures to be implemented in carrying out the directions of this statute.

The *McKenzie* court and its brethren have established that the discharge of a probationary teacher must be preceded by: 1) A written recommendation for discharge; 2) Accompanied by valid reasons for the discharge; and 3) Delivered to the school board members for consideration. The valid reasons must not be a mere recitation of conclusions; but rather, it should be a recitation of facts sufficient in form and content to inform and educate the school board members voting for the discharge.

# LASE 31st ANNUAL CONFERENCE

November 16-18, 2008

## Registration Form

Name	
Address	
City, State, Zip	
School/District	
Position	
Work Telephone	(       )
Home Telephone	(       )
E-mail Address	
Spouse/Guest Name (optional)	

### Registration Fees

<b>LEGAL COUNSEL PRE-CONFERENCE SESSION</b>	\$ 50 _____
<b>LASE MEMBERS CONFERENCE REGISTRATION</b>	
Registration Fee (prior to 11/12/08)	\$150 _____
Onsite Registration Fee (after 11/12/08)	\$175 _____
One Day Conference Fee	\$ 85 _____
Onsite One Day Conference Fee	\$100 _____
Spouse/Guest (Sunday Evening Event)	\$ 25 _____
<b>NON-MEMBERS CONFERENCE REGISTRATION</b>	
Registration Fee (prior to 11/12/08)	\$175 _____
Onsite Non-members Registration Fee	\$185 _____
Onsite One Day Conference Fee	\$100 _____
<b>LASE MEMBERSHIP DUES</b>	\$150 _____
<b>TOTAL PAYMENT ENCLOSED</b>	\$ _____

**DEADLINE FOR REFUNDS: NOVEMBER 14, 2008**