

Rel: August 21, 2026

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0650), of any typographical or other errors, in order that corrections may be made before the opinion is published in Southern Reporter.

ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2026

CL-2026-0260

James David McGee

v.

Lauderdale County Board of Education

**Appeal from Order of Hearing Officer
(2025-106)**

MOORE, Presiding Judge.

James David McGee worked as a bus driver for the Lauderdale County Board of Education ("the Board"). As a bus driver, McGee was a classified employee under Ala. Code 1975, § 16-24C-3(2), a part of the Students First Act ("the SFA"), Ala. Code 1975, § 16-24C-1 et seq.

Because he worked full time for more than three years, McGee was considered a nonprobationary classified employee. See Ala. Code 1975, § 16-24C-4(2).

On July 2, 2025, Jerry Hill, the superintendent of the Board, notified McGee by letter that he was recommending to the Board that McGee's employment be terminated. McGee timely requested an evidentiary hearing before the Board pursuant to Ala. Code 1975, § 16-24C-6(b), a part of the SFA. Following a hearing on September 12, 2025, the Board voted to adopt Hill's recommendation and to terminate McGee's employment. McGee appealed the termination decision and requested review by an administrative hearing officer. See § 16-24C-6(f). The administrative hearing officer affirmed the Board's decision by an order rendered on February 23, 2026. McGee now appeals to this court. See id.

The record shows that, in 2024, McGee hired K.M., a female high-school student who rode on the bus that McGee operated, to assist with housekeeping at his home. On November 14, 2024, K.M. reported to the Lauderdale County Department of Human Resources ("DHR") that, on one occasion when McGee was transporting K.M. in his personal vehicle

to take her home after work, McGee had inappropriately touched her. DHR opened a child-abuse-and-neglect investigation, and the matter was referred to the local district attorney. The criminal investigation was concluded in January 2025 when a grand jury, before which McGee had testified, refused to indict McGee for any offense. However, in May 2025, DHR concluded that McGee was "indicated" for abusing K.M.¹ McGee initially elected to contest the indicated finding through an administrative hearing, see Ala. Code 1975, § 26-14-7.1, but, after considering the costs of the process, McGee withdrew his contest.

On May 9, 2025, DHR sent a letter to the Board notifying the Board of the final disposition of its investigation. In the letter, DHR stated that "our findings note that abuse or neglect [of K.M.] occurred" and labeled McGee as the person allegedly responsible for that abuse or neglect. Whitney Coates, the director of human relations for the Board, testified that, after receiving the letter from DHR regarding the results of its investigation and after reviewing McGee's personnel file, which showed that, in 2019, McGee had been reprimanded for improper comments he

¹"Indicated" means "[w]hen credible evidence and professional judgment substantiates that an alleged perpetrator is responsible for child abuse or neglect." Ala. Code 1975, § 26-14-8(a)(1).

had allegedly made to female students riding on his bus, she had recommended to Hill that McGee's employment be terminated. By law, DHR was required to file its "indicated" report in the statewide child-abuse-and-neglect registry. See Ala. Code 1975, § 26-14-8. Coates essentially testified that the Board could not employ any person who had an indicated child-abuse finding listed on the registry.

Hill testified that, after conferring with Coates, he decided to recommend to the Board that McGee's employment be terminated. On July 2, 2025, Hill drafted a letter to McGee that stated, in pertinent part:

"This letter is to inform you that I am recommending your termination as a tenured transportation driver with the [Board] on the grounds of immorality and other good and just cause.^[2] (See attachment). The facts supporting the proposed termination are follows:

"1. See attachment."

Hill did not testify regarding how the letter was delivered to McGee, but Coates testified that the Board customarily used certified mail for delivery of personnel letters. Hill testified that the notice itself did not contain the factual bases underlying the reason for the termination of

²"[I]mmorality" and "other good and just cause" are valid reasons to terminate a nonprobationary classified employee under the SFA. See Ala. Code 1975, § 16-24C-6(a).

McGee's employment but that the required information was in the "attachment." Hill testified that the "attachment" referred to in the notice was the May 9, 2025, "DHR report" notifying the Board that DHR had found that McGee had perpetrated abuse or neglect against K.M. Hill could not recall if he had attached the DHR report to the notice. Hill said that his secretary was responsible for making sure that the intended attachment was appended to the notice and delivered to McGee. The Board did not call Hill's secretary as a witness.

After the Board voted to terminate his employment, McGee appealed for review before a hearing officer, arguing, among other things, that the Board had not complied with § 16-24C-6(b), which provides, in pertinent part:

"The termination of a ... nonprobationary classified employee ... shall be initiated by the recommendation of the chief executive officer in the form of a written notice of proposed termination to the employee. ... [T]he notice shall state the reasons for the proposed termination, shall contain a short and plain statement of the facts showing that the termination is taken for one or more of the reasons listed in subsection (a), and shall be issued in conformity with subsection (k)."

McGee argued that, in its written notice of proposed termination, the Board did not provide McGee with any statement of the factual allegations upon which it had based its decision to terminate his

employment for immorality and other good and just cause. McGee pointed out that, according to Hill, the factual allegations were supposed to be in the DHR report attached to the notice, but, he maintained, the Board had failed to prove that the DHR report was attached and was delivered to McGee along with the notice. The Board countered that the DHR report contained the necessary factual basis for its termination decision and that the evidence did not show that McGee had failed to receive the DHR report.

In a final decision and order, the hearing officer determined that McGee had received adequate notice on the following theory:

"McGee argues that because the DHR report was not attached to or enclosed with Hill's letter proposing termination, he was not given a short and plain statement of the facts that informed him of the charge that would allow him to prepare a defense. The Board argues that inadequate notice is an affirmative defense and McGee failed to prove that [the] DHR report was not included in Hill's letter.

"The hearing officer agrees that the case authorities cited by Hill absolutely require that the termination letter contain a short and plain statement of the facts that underpin a proposed termination, and that a failure to do so cannot be cured by discovery that occurs before a hearing.

"Just as there is a rebuttable presumption of service, the hearing officer concludes there is a rebuttable presumption that the DHR report was attached or enclosed in Hill's letter. Based on the record, McGee did not rebut the presumption."

In other words, the hearing officer presumed that McGee had received the attachment along with the notice and placed the burden on McGee to prove otherwise.

By its plain language, § 16-24C-6(b) provides that the termination of the employment of a nonprobationary classified employee may be initiated only by a written notice containing a short and plain statement of the facts supporting the grounds for termination. Nothing in the law precludes an employer from providing the necessary factual statement as an attachment to a letter notifying the employee of a proposed termination. However, as § 16-24C-6(b) also plainly provides, the notice and the attachment must be delivered together because the notice must contain both the statutory grounds for termination and the factual basis for those grounds. Consequently, if the notice the Board provided to McGee did not contain the DHR report setting forth the required factual allegations supporting the termination decision, the notice was not adequate to initiate the termination process. See generally Ex parte Soleyn, 33 So. 3d 584 (Ala. 2009) (holding that, in the absence of a short and plain statement of the facts supporting the grounds for termination in notice of proposed termination, employees could not be properly

terminated under the Fair Dismissal Act, Ala. Code 1975, former § 36-26-100 et seq.).

In this case, the hearing officer, analogizing the delivery of a written notice of a proposed termination under the SFA to service of process under the Alabama Rules of Civil Procedure, applied a presumption that the Board had delivered the DHR report along with the notice that it provided to McGee. However, the SFA contains specific rules governing the presumption of delivery of a written notice of a proposed termination.

Section 16-24C-6(k) provides that, when notice of a proposed termination is delivered by certified mail or private mail carrier, the notice

"shall be deemed received by the employee and complete for purposes of [the SFA] two business days after the notice is deposited for certified delivery in the United States mail or placed with a private mail carrier for next business day delivery. The employer has the burden of producing evidence that service was affected in the manner permitted by [the SFA], but the employee has the burden of proving that such service was not properly made."

In Taylor v. Huntsville City Board of Education, 143 So. 3d 219 (Ala. Civ. App. 2013), this court held that § 16-24C-6(k) establishes a rebuttable

presumption that an employee received the notice of a proposed termination within two business days when it was delivered by certified mail. Once the employer proves that it deposited the notice for certified delivery in the United States mail, properly addressed and postage prepaid, the burden shifts to the employee to prove that the notice was not properly delivered, and, if the employee presents evidence disputing proper delivery, the issue becomes one of fact to be resolved by the fact-finder.

In Taylor, this court explained that the rebuttable presumption codified in § 16-24C-6(k) is like the common-law mailbox rule. Under the common-law mailbox rule, the presumption of delivery of a letter arises only when the evidence shows that the letter was deposited in the mail, properly addressed and postage prepaid. See Taylor, 143 So. 3d at 229 n.3. Under the common-law mailbox rule, to create a presumption of the delivery of a written communication through the mail, a party must, at a minimum, show the content of the communication that was placed in the mail. See Reserve Ins. Co. v. Johnson, 260 Iowa 740, 150 N.W.2d 632 (1967). In this case, the mailbox rule established in § 16-24C-6(k) could not be applied. Assuming that the Board followed its policy by delivering

the notice of proposed termination by certified mail, no witness testified that the DHR report was attached to the written notice of the proposed termination or enclosed in the same envelope. Hill testified that he did not recall attaching the DHR report, and his secretary, who Hill testified was responsible for securing the attachment, was not called to testify.

In the absence of such a presumption, the question whether the DHR report was attached to the notice remained in dispute. Section 16-24C-6(c) provides that "the chief executive officer ... shall bear the burden of proof with regard to disputed issues of material fact." Accordingly, the burden rested on Hill to establish that he had delivered both the notice and the DHR report containing the factual basis for the proposed termination. Hill did not discharge that burden. Thus, the hearing officer erred in determining that the Board had complied with the notice provisions of § 16-24C-6(b).

Without the required factual statement, the Board failed to properly initiate the termination process under the SFA. We, therefore, reverse the order of the hearing officer, and we render a judgment for McGee, concluding that his employment was not effectively terminated due to a lack of proper notice of the factual underpinning for the proposed

termination of his employment.³ See generally Bishop State Cmty. Coll. v. Archible, 33 So. 3d 588, 591 (Ala. Civ. App. 2009) (holding that hearing officer did not err in dismissing appeal of termination decision because the evidence showed that the employer had not provided a short and plain statement of the facts supporting the decision, thus rendering the termination ineffective). However, nothing in our opinion should be construed as foreclosing the Board from properly commencing the termination process by providing proper notice to McGee of the reasons for the termination of his employment and the facts underlying those reasons, as contemplated by § 16-24C-6(b).

REVERSED AND JUDGMENT RENDERED.

Edwards, Hanson, Fridy, and Bowden, JJ., concur.

³Based on our disposition, we pretermitt discussion of McGee's other arguments on appeal.