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IEERB Teacher CBA Compliance Rubric[1]

Introduction

IEERB is responsible for conducting compliance reviews of teacher collective bargaining agreements (CBA) and determining the penalty for any non-compliance. Pursuant to 560 IAC 2-8-1, the Board is required to develop and publish the rubric it uses to determine the CBA's compliance. The rubric must be reviewed and updated annually as needed and must be published on the Board's website by July 1 each year.

The Board is providing a single, annotated rubric for the 2016 bargaining season. The updated rubric includes the same sections as last year: (1) Required Provisions; (2) Permissible Provisions; (3) Required Subjects; and (4) Impermissible Items. However, the annotations have been revised and updated to include additional explanations, examples, and tips for practitioners based on the review of 2015-2016 CBAs. Note that the term "item" is used to refer to any piece of a CBA. "Subject" refers to a substantive area of bargaining (e.g., salary, wages, and related fringe benefits (mandatory); days (impermissible)). Provisions are other parts of a CBA (e.g., contract term (required), grievance procedure (permissible), bargaining unit includes supervisor (impermissible)).

The Board strongly recommends that the parties use the rubric (as well as the findings and comments in the compliance report on the prior CBA) to ensure CBA compliance prior to settling or ratifying the agreement. Time and staffing constraints prevent IEERB staff from being able to provide an informal review of a tentative agreement or proposed CBA, so the best way to ensure compliance is to consult the rubric, especially the information in the annotations. Additional resources to assist the parties in ensuring a compliant CBA may be found at www.in.gov/ieerb, including all applicable statutes and rules, as well as the IEERB Handbook on CBA Compliance. The Board also recommends that the parties have someone who did not participate in bargaining (e.g., teacher, administrator, board member, or parent) read/review the tentative agreement – especially the compensation plan – to ensure that it the terms are easily understood.

The Board and IEERB staff appreciate the parties' patience and understanding as this process is implemented and refined.

[1] This Rubric was initially published in June 2016. Updates were made August 19, 2016, and are highlighted in yellow. The only changes made are on pages ii and 5.

Scope of Review

The compliance review is based on the CBA and any MOU(s) the parties submitted to IEERB. The review does not include: (1) an evaluation of deficit financing; (2) an evaluation of whether the health insurance plan is compliant with Indiana Code Chapter 20-26-17; (3) an evaluation of compliance with Indiana Code Section 20-28-9-11; or (4) an exhaustive review of whether any provision of the CBA conflicts with any state or federal right, benefit, or law.

Legal Update

The Indiana Supreme Court recently handed down its decision in *Jay Classroom Teachers Association v. Jay School Corporation, Indiana Education Employment Relations [Board]*, Case No. 49S05-1603-PL-00113, accessible at: http://publicaccess.courts.in.gov/Appellate/Document?id=8b4e97ce-9c16-403c-99ba-bbaa53b5de99. The Court found:

- CBAs providing flexibility for the superintendent to set new hire salaries within a bargained salary range or scale are permissible.
- Ancillary duties may take place during the school day.[2]

[2] Parties may only bargain the compensation for ancillary duties – assignments are not bargainable. These payments must be clearly marked as for ancillary duties.

I. REQUIRED PROVISIONS

The failure of the parties to include the below provisions is an automatic finding of non-compliance unless an exception applies. Moreover, all included provisions must be compliant.

REQUIRED PROVISION	DECRIPTION	EXPLANATIONS, EXAMPLES, & PRACTITIONER'S TIPS
School employer	Name	• Example: Oz School Corporation
Exclusive representative	Name	• Example: Oz Teachers' Organization
Bargaining unit description	Positions included in and excluded from the bargaining unit	• The provision must be the same as the prior year unless a change has been approved by IEERB. • Changes to the bargaining unit, such as unit amendment or clarification, must go through the notice process and be sent to IEERB. For more information, see I.C. Ch. 20-29-5 and 560 I.A.C. 2-2. • Important Note: Given the confusion and lack of enforcement for changing the bargaining unit, the Board will adopt the bargaining unit description in the current CBA as the parties' current bargaining unit. To the extent that that unit description is not correct, or if any changes in the future need to be met, the parties MUST comply with the correct process. • Practitioner's Tip: many parties have bargaining unit descriptions that need to be updated.
CBA term	Dates contract effective	• Contract term may not extend past state budget biennium. • Contract dates should be included: o Example: July 1, 2016 – June 30, 2017 o Not: 2016-2017 school year • Practitioner's Tip: state budget biennium falls on June 30 of odd-numbered years.
Ratification	Date of ratification	• Parties may not ratify CBA until August 1. The date of ratification must be included to ensure statutory compliance.

		• Signatures are proof of ratification and must be included. Only one agent of each party must sign. Unsigned CBAs will be returned and/or found to be non-compliant. • Practitioner's Tip: have CBA signed and dated at the time of ratification.

II. PERMISSIBLE PROVISIONS

The parties may include the following provisions in their CBA. However, if included the provisions must be compliant.

PERMISSIBLE PROVISION	DECRIPTION	EXPLANATIONS, EXAMPLES, & PRACTITIONER'S TIPS
Grievance procedure	Description of the procedure for grievances	• The grievance procedure may contain binding arbitration only within scope of bargaining. • Practitioner's Tip: binding arbitration involves a decision made by a third party that is binding on both parties.
Definitions	Definitions of CBA terms.	• Example: "Days" as used in this contract shall mean calendar days unless otherwise specified. • Other commonly defined terms include board, school corporation, superintendent, agreement, school year, and association/federation.
Contract interpretation provisions	Provisions to allow a third-party to interpret CBA	• Examples: supremacy, savings, and severability clauses.
Other	Permissible non-subject provisions	• The parties cannot create a non-bargainable right (e.g., union gets a bulletin board in the teachers lounge; superintendent unilaterally sets all teacher pay, and may decrease salary below July 1, 2015, solely to conform to compensation plan). • Practitioner's Tip: Teacher rights provisions should not be confused with union rights and cannot conflict with school employer rights, such as rights set forth in I.C. § 20-29-4-2. Teacher rights' provisions limited to the text of I.C. § 20-29-4-1 are compliant.

III. REQUIRED SUBJECTS

The parties are required to bargain salary, wages, and salary and wage related fringe benefits. Any agreements on these subjects must be included in the CBA. That includes an agreement that one or more of the subjects will not be provided to teachers. For example, if the parties have agreed to no increases for the CBA term, the compensation plan must include a statement such as: "No method for increases is included in this CBA as the parties have agreed to no increases for the CBA term."

REQUIRED SUBJECT	DECRIPTION	EXPLANATIONS, EXAMPLES, & PRACTITIONER'S TIPS
SALARY	All direct compensation for teachers for all regular teaching duties.	

Salary range	Lowest and highest base salaries of all full-time bargaining unit members prior to any CBA term base increases	• All CBAs must include a salary range.
		• Salary ranges must be included for all teachers (as opposed to just new teachers).
		• The salary range should be clearly marked and included in the compensation plan section.
		• The salary range does not include:
		  o Increases for the contract period
		  o Payments for ancillary, co-curricular, or extra-curricular duties or activities.
		  o Indiana Teachers' Retirement Fund (TRF) payments
		• Example: **Salary Range**: $35,000 - $80,000
		• Practitioner's Tip: Parties may provide more information than requested above, but must provide a simple stand-alone salary range as provided in the example above.

Starting salaries	Salaries **for all** teachers prior to any CBA term base increases (may be separate from salary range)	• Starting salaries do not have to be numbers, but can include a range or method of calculating the salaries. • Practitioner's Tip: Many parties include a salary schedule to show the starting salaries for returning teachers. Any such salary schedule should include any increases provided to teachers from the prior year.

		Examples: New teachers: $40,000; Returning teachers: Attached salary schedule (showing all increases from 2015-2016).
Compensation Plan (note: IEERB will not find non-compliant any compensation plans compliant with current DOE guidance/model)	Method for determining base salary increases	• All bargainable salary increases must go through the compensation plan. If the parties have agreed to no salary increases, a statement indicating such must be included in the CBA. • Transition year contracts are the first year of a contract under the 2011 changes to collective bargaining. Parties to a transition year contract must include the method for determining any increases. However, these methods are not subject to the increase restrictions of I.C. § 20-28-9-1.5 (unless the parties used an evaluation plan compliant with I.C. Ch. 20-28-11.5, in which case they may not provide increases for teacher rated ineffective or needs improvement on the most recent evaluation (unless new teacher)). A statement explaining that the parties are in a transition year must be included to take advantage of this flexibility. • Note: If the parties include a compensation plan, even though it is not being used during the contract term due to a lack of increases or it being a transition year, the compensation plan will be reviewed for compliance.
	Increases provided for contract term	• The compensation plan should govern increases for the contract term. Increases effective at a date later than the contract term should be included in a future contract. • Example: 2015-2016 contract includes method for determining 2016-2017 increases. Those increases should be included in the 2016-2017 CBA.
	Eligibility clearly defined	• The compensation plan should clearly state that teachers who received ineffective or needs improvement ratings on the most recent evaluation will not receive an increase. Note: there is a new "new teacher exception" for teachers in the first two full school years that the teacher provides instruction to students in elementary school or high school. • All other eligibility criteria should be listed. • Compensation plans may not provide teachers extra or "catch up" compensation for years in which a teacher received ineffective/needs improvement ratings. • Practitioner's Tip: If a salary schedule includes increases for the same row and column, the compensation plan should make it clear that teachers rated ineffective of needs improvement shall not move on to the new salary schedule, but are paid based on prior CBA. • Example: Teachers rated ineffective or needs improvement for the prior year are not eligible for any increases, and will remain at the prior year's salary.

	Clear method of determining teacher increases	• Compensation plans will be found non-compliant unless the compliance officer can determine that increases are compliant. • Additionally, it is in the public interest for compensation plans to clearly lay out the method of determining teacher increases. • Practitioner's Tip: Have someone who was not at the bargaining table (e.g., teacher, school board member, parent) read the compensation plan prior to ratification (and ideally before a tentative agreement) to identify areas of confusion.
	2-4 statutory factors	• The statutory factors are: o Evaluation results o Education (as defined in more detail below) and experience o Assignment of instructional leadership roles o Meeting academic needs • Parties may not create factors (e.g., attendance). • Education and experience together comprise one factor. • NOTE: The following issue will be noted in compliance reports but will not be a compliance finding for the 2016-2017 contract period. IEERB will issue further guidance prior to the next bargaining season. The amounts of raises must be based on factors. That means that a % or number or points must be issued based on the factors, and must be consistent within those factors. For example, if one factor is experience, the experience factor must either be the same increase for everyone (e.g., 2 points, $2,000, or 2%), or the differentiation must be factored into the 33% (e.g., 20% for prior year, 10% for any additional years of service, 70% evaluation rating).
	Factors defined	• Parties have flexibility in definitions; however, o education or experience in any factor will be counted in 33% cap (e.g., leadership or academic needs cannot be defined as experience or education if the two factors together would exceed 33%); o factors must include a definition (e.g., experience is defined as having worked at least 120 days in the school corporation, NOT experience) • Practitioner's Tip: Failure to define factors results in the inability of the compliance officer to determine that the 33% cap has not been exceeded.

		• Example of non-compliance: Factor I: Years of experience; Factor II: Academic needs, defined as years of experience.

	Education factor limited to attainment of additional content area degree or credit hours beyond the requirement for employment	• Common mistakes:
		  ○ Compensation for mere possession of a degree (as opposed to attainment)
		  ○ No content area limitations
		  ○ Compensation for PGPs or CRUs
		• Example: Eligible teachers may receive a $1,500 base increase for the attainment of an eligible content area graduate degree beyond the requirements of employment. Eligible content areas are any content area (as defined by IDOE) in which the teacher currently teaches or any other content area approved by the superintendent.

	Education and experience does not exceed more than 33% of increase calculation	• The calculation is not based on what individual teachers actually get, but what they could get. For example, a compensation plan that provides for 25% for education and experience, 50% for leadership, and 25% for evaluation is permissible even though a teacher does not get the leadership money (thereby making 50% of individual increase based on education and experience and 50% on evaluation). However, a compensation plan that provides that all eligible teachers get a 2% raise based on education and experience and evaluation is not permissible. • Failure of the parties to weigh the factors will result in the compliance officer assuming equal weight of the factors. • No rounding. The following are impermissible: 1/3 of the increase; 33 1/3%; 33.33333%. • Practitioner's Tip: Failure to define factors or impermissibly putting increases outside the compensation plan generally results in the inability of the compliance officer to determine that this cap has not been exceeded.
	Redistribution provision	• The statute requires that compensation plans redistribute money for increases that otherwise would have been given to teachers rated ineffective or needs improvement based on the statutory factors. • Who needs a redistribution provision? ○ Plans that provide for set amounts per teacher, factor, or point (e.g., each effective evaluation gets $100 or $100 per point). Generally, compensation plans based on a salary schedule will need a redistribution provision.

		○ Plans that do not use all of a pot of money • Who does not need a redistribution provision? Compensation plans that include a pot of money that will be entirely distributed under the plan. The pot can either be defined (e.g., $300,000) or a calculation (e.g., 80% of new money into the general fund). • Example: Any money that would have been given to teachers who were rated ineffective or needs improvement for prior year will be equally distributed amongst all teachers receiving an effective or highly effective evaluation rating for prior year in the form of a stipend within 30 days after evaluations are final.
Stipends (optional)	Non-repeating increases.	• Practitioner's Tip: The Board recommends that any stipends be part of the compensation plan, but they are not required to be. Any stipends, however, should be clearly labelled as such. • Example: Teachers will be paid a $100 stipend for meeting academic needs for holding monthly office hours after school. The stipend shall be paid on the last day of the school year.
WAGES	Payment for ancillary, co-curricular, and extra-curricular duties/ activities.	• Examples: (a) Head swimming coach receives $5,000 stipend. (b) Teacher paid hourly rate for homebound instruction. • Wage payments may be in the form of an hourly wage or a set amount per activity or duty. • Practitioner's Tip: Only the compensation, not number of positions, may be bargained. If the parties want to keep the number of positions in the contract, there must be an accompanying statement that the number of positions were not bargained but included for informational purposes only. • Practitioner's Tip: Ancillary duties must be clearly marked as such.
Other permissible wage/salary items	Parties must include all bargained and agreed to items relating to salary and wages. This category is for mandatory wage/salary items (to the extent applicable).	• Examples: wage payment agreements, dues deductions, payment for extended contracts, general payroll deductions. • Wage payment agreements are agreements pursuant to I.C. § 20-26-5-32.2 between the parties regarding the frequency of salary payments where the frequency will be different than that required under the Indiana wage payment laws. • Extended contracts are often for the non-teaching employees in the bargaining unit to work days in excess of the teaching work days. Practitioner's Tip: remember that only the compensation, not the number of days, may be bargained. If the parties want to keep the number of days in the CBA, there must be an accompanying statement that the days were not bargained but included for informational purposes only.

	Parties must include all bargained and agreed to items relating to salary and wages. This category is for permissible wage/salary items.	• Example: salary for supplemental contracts • A supplemental service teacher's contract shall be used when a teacher provides professional service in evening or summer school, except when a teacher or other individual is employed to supervise or conduct noncredit courses or activities. I.C. § 20-28-6-7.
SALARY AND WAGE RELATED FRINGE BENEFITS	Benefit, other than direct salary or compensation, received by the school employee from the school employer	• Statutory examples of salary and wage related fringe benefits are accident, sickness, health, dental, vision, life, disability, retirement benefits, and paid time off as permitted to be bargained under I.C. § 20-28-9-11. • Other examples include unpaid leave, wellness plans, Section 125 plans, travel allowance, and severance pay.

IV. IMPERMISSIBLE ITEMS (PROVISIONS & SUBJECTS)

The following items may not be included in a CBA. The inclusion of any listed item is an automatic finding of non-compliance unless an exception applies.

IMPERMISSIBLE ITEM	DECRIPTION	EXPLANATIONS, EXAMPLES, & PRACTITIONER'S TIPS
Non-unit member provisions	CBA covers only bargaining unit members.	• Only allowable provision including non-unit members is as an exclusion in the unit description. • Parties also may not bargain preference for unit members (e.g., right of first refusal).

Impermissible MOUs	MOUs not permitted outside timeline unless pursuant to a Board order or permitted by the Compliance Officer	• An MOU is any agreement ratified by the school employer and the exclusive representative, subsequent to a ratified collective bargaining agreement, that changes or modifies the collective bargaining agreement. • MOUs must be dated so the compliance officer can determine compliance. • Any MOU ratified by the parties outside the bargaining timelines is noncompliant unless one of the following exceptions applies: (1) Newly discovered information or an unanticipated event that was not known or available at the time the parties ratified the original CBA. This exception will be decided on a case-by-case basis by the compliance officer. a. Example of MOU found to be compliant: Unanticipated and extraordinary rises in health insurance premiums. b. Example of MOU found to be noncompliant: adding an extra pay day. (2) Non-rule policy guidance issued by the board addressing unanticipated circumstances impacting multiple bargaining parties and allowing parties to bargain and ratify a limited MOU outside of the bargaining timelines. • Practitioner's Tip: To avoid confusion, parties who incorporate old MOUs in their CBA should delete or otherwise explain that the MOU is no longer an MOU but part of the contract.
Impermissible subjects	Any subject other than salary, wages, or salary and wage related fringe benefits	• Statutory examples of impermissible subjects: o Non-compensation related: curriculum development and revisions; selection of curricular materials; teaching methods; hiring, evaluation, promotion, demotion, transfer, assignment, and retention of certificated employees; student discipline; expulsion or supervision of students; pupil/teacher ratio; class size or budget appropriations; safety issues for student and employees in the workplace; hours o Compensation related: supplemental payments pursuant to I.C. § 20-28-9-1.5(a); individual performance stipends, and any related base salary increases, to teachers pursuant to I.C. § 20-43-10-3 • Examples of commonly found impermissible subjects: o Days for regular or extended contracts o Number of positions (e.g., ECA positions)

		○ Practitioner's Tip: If the parties want to keep the number of days/positions in the CBA, there must be an accompanying statement that the days/positions were not bargained but included for informational purposes only. ○ Right of first refusal ○ Association/teacher rights not limited to I.C. § 20-29-4-1 (e.g., access to school property)
Impermissible provisions	Pursuant to I.C. § 20-29-6-2	Any provisions that conflict with: (1) any right or benefit established by federal or state law (2) school employee rights as set forth in I.C. §§ 20-29-4-1, 20-29-4-2 (3) school employer rights set forth in I.C. § 20-29-4-3 (4) restructuring options available as described in I.C. § 20-29-6-2(a)(4) (5) the school employer's ability to work with an education entity as provided in I.C. § 20-29-6-2(a)(5)
Other		