

TITLE 560 INDIANA EDUCATION EMPLOYMENT RELATIONS BOARD

Final Rule

LSA Document #12-112(F)

DIGEST

Amends [560 IAC 2-1-2](#) concerning definitions. Amends [560 IAC 2-2-9](#) to establish mail ballot election procedures. Amends [560 IAC 2-4-1](#) and [560 IAC 2-4-3](#) through [560 IAC 2-4-6](#) and adds [560 IAC 2-4-3.1](#) concerning impasse procedures. Repeals [560 IAC 2-4-2](#). Effective 30 days after filing with the Publisher.

[560 IAC 2-1-2](#); [560 IAC 2-2-9](#); [560 IAC 2-4-1](#); [560 IAC 2-4-2](#); [560 IAC 2-4-3](#); [560 IAC 2-4-3.1](#); [560 IAC 2-4-4](#); [560 IAC 2-4-5](#); [560 IAC 2-4-6](#)

SECTION 1. [560 IAC 2-1-2](#) IS AMENDED TO READ AS FOLLOWS:

[560 IAC 2-1-2](#) Definitions

Authority: [IC 20-29-2](#); [IC 20-29-3-11](#)

Affected: [IC 4-21.5](#); [IC 20-29](#)

Sec. 2. "Act" means [IC 20-7.5-1](#).

"Administrative Orders and Procedures Act (AOP)" means [IC 4-21.5](#).

The definitions in [IC 20-29-2](#) and the following apply throughout this article:

- (1) "Board" has the meaning set forth in [IC 20-7.5-1-2\(m\)](#) and [IC 20-7.5-1-9](#). [IC 20-29-2-3](#).
- (2) "Certificated employee" has the meaning set forth in [IC 20-29-2-4](#).
- (3) "Chairman" or "chairperson" means the full-time member of the board as defined in [IC 20-7.5-1-9](#) [IC 20-29-3-3](#) or such other board member who may perform such duties pro tempore.
- (4) "Contract" means a written agreement reached through collective bargaining that is ratified by the governing body of the school corporation and the exclusive representative.
- (5) "Days" means calendar days in accordance with the Trial Rules of the Indiana Rules of Procedure.
- (6) "Deficit financing" has the meaning set forth in [IC 20-29-2-6](#).
- (7) "Exclusive representative" has the meaning set forth in [IC 20-29-2-9](#).
- (8) "Hearing examiner" means the person conducting a hearing pursuant to [IC 20-7.5-1-11\(b\)](#) under [IC 20-29-7-4\(e\)](#) and includes any agent of the board, who may be a member of the board, when such agent conducts an unfair practice hearing.
- (9) "Hearing officer" means any agent of the board conducting the hearing in a proceeding under [IC 20-7.5-1-10](#). [IC 20-29-5-1\(c\)](#).
- (10) "IEERB" refers to the Indiana education employment relations board as established by [IC 20-29-3-1](#).
- (11) "Party" means any school employer, school employee, or school employee organization with standing in a proceeding.
- (12) "School corporation" ~~"governing body," "school employer," "superintendent," "school employee," "supervisor," "confidential employee," "certificated employee," "non-certificated employee," "employees performing security work," "school employee organization," "exclusive representative," "bargain collectively," "discuss," "strike," and "deficit financing"~~ have the meanings set forth in [IC 20-7.5-1-2](#). has the meaning set forth in [IC 20-29-2-12](#).
- (13) "School employee" has the meaning set forth in [IC 20-29-2-13](#).
- (14) "School employee organization" has the meaning set forth in [IC 20-29-2-14](#).
- (15) "School employer" has the meaning set forth in [IC 20-29-2-15](#).
- (16) "Strike" has the meaning set forth in [IC 20-29-2-16](#).
- (17) "Superintendent" has the meaning set forth in [IC 20-29-2-18](#).

(Indiana Education Employment Relations Board; [560 IAC 2-1-2](#); filed Oct 6, 1988, 11:15 a.m.: 12 IR 301; readopted filed Sep 12, 2001, 10:55 a.m.: 25 IR 529; readopted filed Nov 30, 2007, 11:19 a.m.: [20071226-IR-560070368RFA](#); filed Aug 28, 2012, 2:06 p.m.: [20120926-IR-560120112FRA](#))

SECTION 2. [560 IAC 2-2-9](#) IS AMENDED TO READ AS FOLLOWS:

[560 IAC 2-2-9](#) Election procedures

Sec. 9. (a) ~~Secret and absentee ballots.~~ All elections shall be conducted and supervised by one (1) or more board agents. All elections shall be by secret ballot. Absentee ballots may be permitted under terms agreed to by the school employer and school employee organizations on the ballot and accepted by the board's agent or under such terms as the board or its agent may direct.

(b) ~~Choices on ballot.~~ A school employee organization shall not be entitled to a place on the ballot unless it submits written evidence satisfactory to the board or its agent of at least twenty percent (20%) representation of the school employees in the unit. In addition to the school employee organizations included as choices on the ballot in the election, the ballot shall contain a choice of "no representation by a school employee organization", except where the board or its agent orders a runoff ballot in an election pursuant to [IC 20-7.5-1-10](#) under [IC 20-29-5-3](#) or a rerun ballot in an election pursuant to [IC 20-7.5-1-11](#) under [IC 20-29-7-4](#).

(c) ~~Removal of name from ballot.~~ Whenever two (2) or more school employee organizations are included as choices on a ballot, any such organization may, upon prompt request to and approval thereof by the board or its agent, have its name removed from the ballot; provided, however, that in a proceeding involving a petition filed by a school employer or a petition for decertification, neither the school employee organization certified and currently recognized nor a school employee organization found to be seeking recognition may have its name removed from the ballot without giving notice in writing to all parties and the board or its agent that it disclaims any representation interest among the school employees in the unit.

(d) ~~Observers.~~ Any party may be represented at the polling place(s) by observers of its own choosing, subject to such limitations as the board or its agent may prescribe.

(e) ~~Challenges.~~ (d) Voting shall be by secret ballot. The board or its agent shall give each eligible voter a ballot which shall be marked in secrecy. The board or its **agent** or agents or authorized observers may challenge the eligibility of any person to participate in the election.

(f) ~~Voter eligibility.~~ (e) Eligible voters shall be those school employees included within the unit described in the collective bargaining agreement for consent election or as determined by the board or its agent those who were employed during the payroll period immediately prior to the election, including employees who did not work during that period because they were ill, on vacation, or on other legitimate leave, as determined by the board or its agent. Ineligible to vote are those school employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. In all representation elections conducted pursuant to **under** this section, the school employer is required to file with the board and with the school employee **organization or** organizations an election eligibility list, unless otherwise directed differently by the board or its agent. The list shall consist of an alphabetical listing of the names of all eligible voters, together with their last known mailing address, and building in which the voter is primarily assigned, unless otherwise directed by the board or its agent. The eligibility list must be received by the board or its agent ~~no~~ **not** later than ten (10) days prior to the date of the election. A school employee whose name does not appear on the eligibility list shall not be precluded from voting but should be challenged on the day of election.

(f) Mail ballot elections procedures are as follows:

(1) The voter eligibility list must be provided by the school employer as a set of preprinted mailing labels containing the names and addresses of each eligible voter. In the event that the school employer is unable to provide preprinted mailing labels due to extraordinary circumstances, the IEERB staff will prepare labels from an eligibility list provided by the employer.

(2) The voter eligibility list will be provided by the school employer to the IEERB and all employee organizations listed on the ballot ten (10) days prior to the first day of the polling period. All employee organizations listed on the ballot or potential voters who wish to challenge the voter eligibility list must do so by notifying the IEERB not later than five (5) days prior to the first day of the polling period. The voter eligibility list will be deemed final if no challenges are received.

(3) IEERB entrusts ballots to the U.S. mail for transmittal to eligible voters and pays the postage for eligible voters to transmit their ballots back to IEERB. In addition to any sanctions imposed by IEERB, allegations of tampering with the transmittal of mail ballots will be turned over to federal authorities for

prosecution as mail fraud.

(4) IEERB staff will send ballot materials to eligible voters at least three (3) calendar days (excluding Sundays or legal holidays) prior to the beginning of the polling period.

(5) An eligible voter may return the ballot by mail or may hand-deliver his or her ballot to the IEERB office.

(6) The polling period will consist of at least fourteen (14) calendar days, but not more than thirty (30) calendar days, and will be determined by the IEERB hearing officer in consultation with the interested parties. In order to be counted, a ballot must be received by IEERB by the last date of the polling period.

(7) All returned ballots are handled exclusively by IEERB staff. Ballots shall remain unopened in return envelopes until the time and date of the tabulation of ballots.

(8) Where IEERB staff has sent an eligible voter a duplicate ballot, the original ballot will no longer be deemed countable and will be discarded if received by IEERB.

(9) Where more than one (1) employee organization is a party in the election, the incumbent will have first choice as to the position of the employee organization's name on the ballot. For nonincumbent employee organizations, choices as to ballot position shall be made in the order in which the employee organizations filed a showing of interest.

(10) All employee organizations listed on the ballot will have equal access to mailboxes, bulletin boards, and lounges for certificated employees during the period between the ordering of an election and the final date of balloting. Campaigning will be limited to certificated employee areas. All employee organizations will be required to follow school employer policies and procedures in all campaign activities.

(g) ~~The tabulation of ballots immediately after the closing of the polls,~~ **shall be scheduled on the IEERB business day following the deadline for return of the ballots, or at such date and time deemed appropriate by the IEERB hearing officer.** The board or its **agent or** agents in the presence of the authorized observers shall count and tabulate the ballots. Upon request, a complete tally of the ballots will be furnished to the parties at the conclusion of the count. **Each interested party will be allowed one (1) official observer to be present at the tabulation of ballots. Each party must notify IEERB in writing as to the person who is the official observer representing that party. If a party fails to notify IEERB of its official observer, or if the official observer fails, without reasonable cause as determined by the IEERB hearing officer, to appear at the ballot tabulation, that party shall forfeit its right to observe the tabulation of ballots.** Challenges may be waived before the count, and the challenged ballots should be removed from the envelopes and counted with other ballots. If there is no waiver, challenged ballots shall not be opened or counted at this time but shall remain sealed.

(h) ~~Ruling on challenges.~~ If challenged ballots are sufficient in number to affect the results of the election, the board or its **agent or** agents shall conduct an investigation, which may include a hearing, and make a ruling upon the challenges. All documents, evidence, and briefs of the parties in support of or in opposition to the challenge shall be filed within five (5) days of the initial tally of the votes. After a ruling is made on the challenges, those ballots in which the challenge was not upheld shall be counted and added to the tally, and a new tally will be furnished to the parties upon request.

(i) ~~Objections to conduct of elections.~~ If objections to the conduct of the election are filed, they shall be filed within five (5) days of the initial tally of the ballots. Documents, evidence, and briefs in support of the objections shall be filed with the board and served on all other parties within the ~~5-day~~ **five (5) day** time limit. All other parties shall have an additional five (5) days from receipt of the objections to file answering briefs. The board or its agent shall conduct an investigation, which may include hearing the objections and ruling upon them, except where the board agent's conduct is the subject of an objection to an election. If the agent's conduct is the subject of an objection, the agent shall not conduct the investigation of or hearing on the objection. Prior to the next board meeting, the board or its appropriate designee will appoint another agent who will investigate and hear the objections.

(j) After the investigation has been completed or, where appropriate, the hearing process has been completed, the board will render a determination with regard to the objections either setting aside the election and directing a new election or dismissing the objections and issuing the appropriate certification.

(Indiana Education Employment Relations Board; [560 IAC 2-2-9](#); filed Oct 6, 1988, 11:15 a.m.: 12 IR 305; readopted filed Sep 12, 2001, 10:55 a.m.: 25 IR 529; readopted filed Nov 30, 2007, 11:19 a.m.: [20071226-IR-560070368RFA](#); filed Aug 28, 2012, 2:06 p.m.: [20120926-IR-560120112FRA](#))

SECTION 3. [560 IAC 2-4-1](#) IS AMENDED TO READ AS FOLLOWS:

[560 IAC 2-4-1](#) Resolution of an impasse; petition for assistance

Authority: [IC 20-29-3-11](#); [IC 20-29-6-13](#)

Affected: [IC 20-29-6](#)

Sec. 1. ~~A school employer or exclusive representative may request assistance in the resolution of an impasse. The oral or written request shall be made to the board or its agent. The party requesting assistance shall~~ **(a) The IEERB shall declare impasse after September 30 if either:**

(1) the parties notify the board of impasse; or

(2) the parties are, or are supposed to be under the terms of their contract, in collective bargaining for all or part of a contract and have not submitted a contract to the IEERB.

(b) Upon the declaration of impasse, each party is required to provide the IEERB with the name, position, address, e-mail address, and phone number of each party's chief spokesperson, and of the individual to whom billing invoices should be submitted. Each party is required to immediately submit a change in contact information occurring during a mediation or fact-finding process.

(c) Unless otherwise indicated in these rules, all correspondence for impasse procedures shall be via e-mail. Parties or the IEERB may, in addition to e-mail, correspond via mail, facsimile, or hand delivery. Receipt of an e-mail will be presumed upon dispatch.

(Indiana Education Employment Relations Board; [560 IAC 2-4-1](#); filed Oct 6, 1988, 11:15 a.m.: 12 IR 315; readopted filed Sep 12, 2001, 10:55 a.m.: 25 IR 529; readopted filed Nov 30, 2007, 11:19 a.m.: [20071226-IR-560070368RFA](#); filed Aug 28, 2012, 2:06 p.m.: [20120926-IR-560120112FRA](#))

SECTION 4. [560 IAC 2-4-3](#) IS AMENDED TO READ AS FOLLOWS:

[560 IAC 2-4-3](#) Appointment of mediator

Authority: [IC 20-29-3-11](#); [IC 20-29-6-13](#)

Affected: [IC 20-29-6](#)

Sec. 3. Upon receiving a request for assistance, **declaration of impasse**, a mediator fact finder, or arbitrator from the board's staff of conciliators shall be appointed ~~if the request is for arbitration, the request shall be signed by representatives of both the exclusive representative and the school employer.~~ **by the board.**

(Indiana Education Employment Relations Board; [560 IAC 2-4-3](#); filed Oct 6, 1988, 11:15 a.m.: 12 IR 315; readopted filed Sep 12, 2001, 10:55 a.m.: 25 IR 529; readopted filed Nov 30, 2007, 11:19 a.m.: [20071226-IR-560070368RFA](#); filed Aug 28, 2012, 2:06 p.m.: [20120926-IR-560120112FRA](#))

SECTION 5. [560 IAC 2-4-3.1](#) IS ADDED TO READ AS FOLLOWS:

[560 IAC 2-4-3.1](#) Last best offer

Authority: [IC 20-29-3-11](#); [IC 20-29-6-15.1](#)

Affected: [IC 20-29-6](#)

Sec. 3.1. **(a) The last best offer (LBO) shall be presented to the opposing party at the end of mediation. The LBO must be submitted to the IEERB electronically within two (2) days after mediation has ended. The LBO submitted to IEERB must be identical to the LBO presented to the opposing party at the end of mediation.**

(b) Each party's LBO shall contain a signed verification stating that all information is correct and that the LBO does not place the employer in a position of deficit financing due to a reduction in the

employer's actual general fund revenue or an increase in the employer's expenditures when the expenditures exceed the employer's current year actual general fund revenue. The LBO shall:

- (1) be submitted in the format required by the IEERB; and
- (2) include all information and documents required by the IEERB.

Prior to October 1st of each year, IEERB will post on its website the required format, information, and documents for an LBO for that year's bargaining season. This information also will be sent to the parties upon declaration of impasse.

(c) The LBO shall be submitted to IEERB electronically. If the large size of any supporting documentation precludes electronic delivery, the supporting documentation may be submitted to IEERB in hard copy or an electronic format within twenty-four (24) hours of the submission of the LBO.

(d) IEERB shall review the LBOs to ensure that the LBO is in the required format and contains the required information and documents. Failure to substantially comply with the requirements of an LBO could result in rejection of the submitted LBO and acceptance of the opposing party's LBO.

(e) If a party has substantially complied with the LBO requirements, IEERB will notify the submitting party, who will have twenty-four (24) hours to provide the requested format, information, or documents. Failure to submit an LBO as requested by IEERB could result in rejection of the submitted LBO and acceptance of the opposing party's LBO.

(Indiana Education Employment Relations Board; [560 IAC 2-4-3.1](#); filed Aug 28, 2012, 2:06 p.m.: [20120926-IR-560120112FRA](#))

SECTION 6. [560 IAC 2-4-4](#) IS AMENDED TO READ AS FOLLOWS:

[560 IAC 2-4-4](#) Fact-finding

Authority: [IC 20-29-3-11](#); [IC 20-29-6-15.1](#); [IC 20-29-8-7](#)

Affected: [IC 20-29-6-4](#); [IC 20-29-8](#)

Sec. 4. (a) ~~Circumvention of mediation. If the Parties jointly request at impasse must engage in at least one~~ **(1) mediation session prior to the initiation of fact-finding.** ~~prior to mediation, a fact-finder will be appointed.~~

(b) ~~Mediation by a fact-finder. In all cases in which a fact-finder is appointed, the fact-finder, with the consent of the parties, shall be empowered to mediate with all of the powers of a mediator. If parties in the fact-finding process are able to reach a settlement, they shall submit identical LBOs to the fact-finder, and the fact-finder shall impose the terms of the joint LBO as the contract. Each party's LBO must contain a verification statement, as required by section 3.1 of this rule.~~

(c) **The school corporation is responsible for providing a room for the fact-finding hearing and equipment and necessary materials for recording of the proceedings. Each party has a maximum of two (2) hours to present in the fact-finding hearing and one (1) hour for rebuttal.**

(e) ~~Nature of~~ **(d) The purpose of fact-finding reports. A fact-finding report is a neutral advisory opinion issued to the parties in a specific dispute and is limited in its effect to that is to provide a final solution on the items permitted to be bargained under [IC 20-29-6-4](#) whenever the parties are unable by themselves, or through a mediator, to resolve a dispute.**

(d) ~~Public release of fact-finding report.~~ **(e) If no request for review has reached the board within five (5) days after the parties have received the fact-finding report pursuant to [560 IAC 2-4-6](#) under section 6 of this rule, the fact-finding report will be delivered to the board, and it will be released to the public within ten (10) days or less after delivery to the board.**

(Indiana Education Employment Relations Board; [560 IAC 2-4-4](#); filed Oct 6, 1988, 11:15 a.m.: 12 IR 315; readopted filed Sep 12, 2001, 10:55 a.m.: 25 IR 529; readopted filed Nov 30, 2007, 11:19 a.m.: [20071226-IR-560070368RFA](#); filed Aug 28, 2012, 2:06 p.m.: [20120926-IR-560120112FRA](#))

SECTION 7. [560 IAC 2-4-5](#) IS AMENDED TO READ AS FOLLOWS:

560 IAC 2-4-5 Initiation of mediation or fact-finding

Authority: [IC 20-29-3-11](#); [IC 20-29-6-13](#); [IC 20-29-6-15.1](#)

Affected: [IC 20-29-6](#)

Sec. 5. ~~At any time~~ The chairman or chairperson or his or her designee ~~may~~ shall initiate mediation and/or fact-finding without a request, pursuant to [560 IAC 2-4-1](#) and [560 IAC 2-4-3](#), regardless of whether the parties have requested it. The chairman or chairperson or his or her designee shall initiate the fact-finding process if mediation does not result in a contract.

(Indiana Education Employment Relations Board; [560 IAC 2-4-5](#); filed Oct 6, 1988, 11:15 a.m.: 12 IR 316; readopted filed Sep 12, 2001, 10:55 a.m.: 25 IR 529; readopted filed Nov 30, 2007, 11:19 a.m.: [20071226-IR-560070368RFA](#); filed Aug 28, 2012, 2:06 p.m.: [20120926-IR-560120112FRA](#))

SECTION 8. [560 IAC 2-4-6](#) IS AMENDED TO READ AS FOLLOWS:

560 IAC 2-4-6 Appeal of fact-finding reports

Authority: [IC 20-29-3-11](#); [IC 20-29-6-18](#)

Affected: [IC 20-29-6](#)

Sec. 6. To obtain board review of a fact-finding report, a request must be made by the school employer or the exclusive representative within ~~two (2)~~ **thirty (30)** days after receipt of the report. The oral or written request must state the nature of the objection to the report. If the request is oral, a written confirmation of the request must be received by the board within two (2) days. ~~Once the board receives a request, the board may refuse to review the fact-finding report or make additional findings and recommendations. The refusal to review the fact-finding report or the making of additional findings and recommendations must be made within ten (10) days of the receipt of the fact-finding report.~~ **The appeal of a fact-finding report must be in writing, stating the specific nature of each objection to the report. Any party in opposition to the appeal may file an answering brief. Any answering brief must be filed within ten (10) days of service of the appeal and within fifteen (15) days of the filing of the appeal with the IEERB. No additional briefs may be filed unless requested by the board. The board will decide the matter upon the record, with or without oral argument. The appealing party must bear the cost for preparation of a hearing transcript.**

(Indiana Education Employment Relations Board; [560 IAC 2-4-6](#); filed Oct 6, 1988, 11:15 a.m.: 12 IR 316; readopted filed Sep 12, 2001, 10:55 a.m.: 25 IR 529; readopted filed Nov 30, 2007, 11:19 a.m.: [20071226-IR-560070368RFA](#); filed Aug 28, 2012, 2:06 p.m.: [20120926-IR-560120112FRA](#))

SECTION 9. [560 IAC 2-4-2](#) IS REPEALED.

LSA Document #12-112(F)

Notice of Intent: [20120307-IR-560120112NIA](#)

Proposed Rule: [20120502-IR-560120112PRA](#)

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Small Business Regulatory Coordinator: Amy A. Matthews, General Counsel, Indiana Education Employment Relations Board, Indiana Government Center North, 100 North Senate Avenue, Room N1049, Indianapolis, IN 46204, (317) 233-6625, ammatthews@ieerb.in.gov

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