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2022 GUIDE TO CBA COMPLIANCE

The Indiana Education Employment Relations Board (IEERB) is a neutral agency that oversees the labor relations between public school teachers and the schools they serve. In 2015, the Indiana General Assembly passed legislation requiring IEERB to review all collective bargaining agreements (CBA) between school corporations and their exclusive representatives for compliance with Indiana Code Chapter 20-29-6 and Indiana Code § 20-28-9-1.5.

This Guide is designed to assist school employers and exclusive representatives in developing and ratifying a compliant CBA. It is intended solely as guidance and does not constitute legal advice and may not reflect subsequent agency or court decisions. The August 2022 Guide supersedes prior IEERB guidance on CBA compliance. IEERB may, from time to time, issue updates to this guidance. Please check IEERB's website (<https://www.in.gov/ieerb/>) for applicable laws, rules, current bargaining timelines, and additional guidance. You may also register for free IEERB updates through the *IEERB Bulletin* (<https://public.govdelivery.com/accounts/INEERB/subscriber/new>).

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Overview of the Guide

The purpose of this Guide is to assist parties in negotiating and ratifying a compliant CBA. This Guide supersedes prior IEERB guidance on CBA compliance and may be updated from time to time.¹

The Guide covers the items/terms that must be included in a CBA, as well as the mandatory subjects of bargaining, permissible items/terms that may be included, and Memorandums of Understanding (MOUs). Because IEERB is unable to review or offer legal advice on compliance of any tentative or proposed CBAs (except those subject to prior approval or compliance assessment conference), parties are encouraged to use this Guide, the 2022 IEERB Compliance Rubric, the Compliance Checklist, and their most recent *Compliance Report* (and any *Addendum* thereto) to ensure that their CBA is compliant.

CBA Submission

Once ratified, the school employer must upload the CBA to Gateway (<https://gateway.ifionline.org/>). The uploaded CBA must include the compensation plan, as well as all attachments, exhibits, and appendices referenced in the CBA. Any MOUs to the CBA should be uploaded separately within **10 business days** of ratification by the school employer. As an added measure, the exclusive representative may email the ratified CBA to IEERB (ratifiedcontracts@ieerb.in.gov). The CBA must also be posted on the school's website within **14 business days** of ratification and must be identical to the CBA uploaded to Gateway. MOUs must also be posted on the school's website within 14 business days of ratification.

Compliance Review Process

IEERB's Executive Director will appoint a compliance officer to review each ratified CBA and MOU. The compliance officer will review the CBA or MOU for compliance with the requirements outlined in the 2022 Compliance Rubric and may contact the school employer, the exclusive representative, or both, if necessary, to clarify contract language or request additional information.

The compliance review **does not** include an evaluation of deficit financing or whether the health insurance plan complies with Indiana Code Chapter 20-29-17. Nor does it include an exhaustive review of all rights and benefits established under state and federal law to determine compliance with Indiana Code § 20-29-6-2(1).

When the review of a CBA is completed, the compliance officer will issue a *Compliance Report and Recommendation*. The *Report* will be emailed to the superintendent and the exclusive representative president no later than May 30 of the year in which the CBA expires. The results of MOU compliance reviews are included in the corresponding *Report* for that contract period, or in an *Addendum* to the *Report*. The *Report*, or *Addendum* where applicable, will identify any findings of noncompliance, may include general comments, and will include a recommended penalty if there are any findings of noncompliance. The school employer and the exclusive

¹ Please check IEERB's website at www.in.gov/ieerb for applicable laws, rules, current bargaining timelines and reminders, and additional guidance.

representative may appeal the compliance officer's recommended findings and/or penalty to the Board.

All correspondence for CBA (and MOU) compliance reviews, including approval or denial of approval to ratify as described in the *Procedures for Prior Approval* section on page 14 shall be via email. **As a result, it is very important that school employers and exclusive representatives ensure that IEERB has the correct emails for the superintendent and exclusive representative president.** If the contact information for the individual serving as the superintendent or exclusive representative president has recently changed, parties should use the online form at www.in.gov/ieerb/2447.htm to report the change to IEERB right away. The parties are responsible for updating this information and are not entitled to extensions of deadlines resulting from their failure to provide an update to IEERB.

Appealing Findings of Noncompliance or a Recommended Penalty

The school employer and/or the exclusive representative may appeal the compliance officer's findings of noncompliance² and/or the recommended penalty within 15 days of the date the *Report* or *Addendum* was emailed to the parties. The appeal must be in writing, state the specific reasons for the appeal, and be submitted to IEERB via email at efile@ieerb.in.gov. If no appeal is received by IEERB within 15 days, the *Report* or *Addendum* shall become the report of the Board. For more information, see 560 IAC 2-6-8.

² The IEERB Board has determined that parties who wish to appeal a General Comment may request that the General Comment be converted to a Finding of Noncompliance in order to allow an appeal. More information about this process will be included in the Compliance Report and on IEERB's website.

CBA Contents

There are certain provisions that **must** be included in a CBA, as well as provisions that are not bargainable and **cannot** be included in a CBA. There are also optional provisions that the parties may choose whether to include in the CBA.

The Board has approved a CBA Compliance Rubric for use in determining compliance. IEERB has also developed a Compliance Checklist for the parties to use and include when uploading their ratified CBA. Both are extremely useful tools to ensure that a CBA is compliant and are available at <https://www.in.gov/ieerb/2411.htm>.

I. Required Items or Terms

There are five items or terms that are basic to the agreement that **must** be included in a CBA:

- The names of the school employer and the exclusive representative;
- A description of the bargaining unit that matches the IEERB order in effect at the time the CBA is ratified;
- The beginning and ending dates of the CBA – the ending date can be no later than June 30, 2023; and
- The date the CBA was ratified – cannot be prior to September 15.³
- An attestation as to the dates on which the public hearing required by Indiana Code § 20-29-6-1 and the public meeting required by Indiana Code §20-29-6-19 took place, and **whether or not electronic participation by the governing body and the public was allowed.**

II. Mandatory Subjects of Bargaining

The parties are required to bargain salary, wages, and salary and wage related fringe benefits. Ind. Code § 20-29-6-4. All agreements on these subjects must be included in the CBA.

A. Salaries and Salary Increases (Compensation Plan)

If the parties bargain a salary increase, the increase must be included in the compensation plan. Base salary increases described in other sections of the CBA, but not in the compensation plan are noncompliant.

If the parties bargain that there will be no salary increases for the current contract period, they do not need to include a compensation plan in their CBA.⁴ However, they must include in their CBA: (1) a clear statement that there are no increases or increments for the current contract; (2) a statement of the salary range (see below) **and** (3) information demonstrating a minimum full-time classroom teacher salary of at least \$40,000.

³ The beginning (effective) date of a CBA may be prior to September 15, but the CBA may not be **ratified** until on or after September 15.

⁴ If parties bargain no increases, but include a compensation plan, the compliance officer may review the plan, but will make no findings of noncompliance regarding the plan.

The requirements of a compliant compensation plan⁵ are as follows:

1. Salary range

The compensation plan must include a clear statement of the salary range of the current lowest and highest **annual** salaries of all returning,⁶ full-time bargaining unit members. This salary range cannot include any increases or ISTRF contributions for the current contract period. The parties may include additional salary ranges (e.g., salary range including ISTRF contribution or current year increases), but at a minimum **must** include the **required** salary range without any increases or ISTRF contributions.

2. Minimum Salary Requirement

The compensation plan for each school year beginning after June 30, 2022, must demonstrate that each full-time classroom teacher (instructs students at least 50% of the workday) will earn no less than the statutory minimum salary of forty thousand dollars (\$40,000) or the CBA must include a copy of the report submitted to the IDOE in compliance with IC 20-28-9-26.

3. Eligibility Criteria

The compensation plan must include a clear statement -- a description -- of the criteria for salary increase eligibility. Failing to include an eligibility statement will result in a finding of noncompliance. The compliance officer will not infer eligibility criteria from the factors used as the bases for the salary increase.

At a minimum, the eligibility statement must provide that teachers rated ineffective or improvement necessary in the prior year are not eligible for a salary increase. This eligibility criterion is expressly required by statute, with one notable exception. Parties may bargain that teachers in their first two full school years of instructing students who received an evaluation rating of ineffective or improvement necessary are nonetheless eligible for a salary increase. If parties bargain this exemption for new teachers, they should ensure that the compensation plan language correctly reflects the relevant statutory language regarding the exemption (e.g., use “teachers in their first two full school years of instructing students” **not** “new teachers” or “teachers who have taught at the school for less than two years.”). Please note, the statutory citation for this exception to the evaluation rating eligibility requirement was changed in 2018 to Indiana Code § 20-28-9-1.5(f). Any references to this statute should be appropriately updated.

In addition to the statutory evaluation rating eligibility criterion, the eligibility statement may include additional eligibility criteria as bargained by the parties (e.g., “To be eligible for a salary increase, a teacher must not have been rated ineffective or improvement necessary in the prior year and must have been employed by the corporation for at least 120 days in the prior year.”).

⁵ Model Compensation Plans are available at <https://www.in.gov/ieerb/files/2022-Model-Compensation-Plans.pdf>.

⁶ A returning teacher is a teacher not newly hired for the current school year, a teacher who was employed by the corporation in the prior school year who has returned as a full-time teacher for the current school year.

4. *Salary Increases*

- a. **All** bargainable salary increases to be awarded in the current contract period must be included in the compensation plan.
- b. The compensation plan must describe either the amount of the salary increase (e.g., “A teacher will receive \$1000 each for satisfying the evaluation rating and experience factors;” “A teacher will receive a 2% increase for satisfying each of the factors,” etc.) **or** the method by which the amount of increase will be determined (e.g., “Teachers earn a certain number of points for each factor, and the \$200,000 available for increases will be divided by the total number of points. The resulting dollar value per point will be multiplied by the number of points the teacher earned.”)
- c. In awarding salary increases, the compensation plan must use at least two of the five statutory factors:
 - i. Number of years of experience (“experience”)
 - ii. Possession of an additional content area degree or credit hours beyond the requirements for employment (“education”)
 - iii. Results of an evaluation rating (“evaluation”)
 - iv. Assignment of instructional leadership roles (“instructional leadership”)
 - v. Academic needs of students in the corporation (“academic needs”)
- d. Factors must be clearly defined so that teachers know what is required to satisfy the factor, and the distribution of factor increases must be consistent with that definition.
- e. “Evaluation,” if used as a factor, must be defined as an annual rating of “Highly effective” or “Effective” (or as not “Ineffective” or “Needs Improvement”) in an evaluation conducted pursuant to IC 20-28-11.5 unless the parties have bargained the eligibility exception and are defining the factor accordingly.
- f. If the parties use “experience” as a factor for a salary increase, they must define the factor with some measurable specificity (e.g., “Experience” means being employed by the school corporation at least 120 days in the prior school year.)⁷
- g. “Instructional leadership,” if used as a factor, is defined by the parties. The parties have some flexibility in defining the factor, but it must be defined with some measurable specificity (e.g., “Instructional leadership” means that a teacher completed one of the following activities in the prior school year: (1) conducted a professional development session at the building level, (2) volunteered ten hours per semester to tutor students after school, or (3) participated on a school improvement or curriculum development committee).
NOTE: If the instructional leadership factor is defined or its increases distributed using education or experience, then the entire salary increase associated with the factor will be counted toward the 50% cap on such increases.

⁷ See subsection “j” below.

- h. If “education” is a factor for a salary increase, it must clearly be limited to additional **content area**⁸ degrees or credit hours beyond those required for employment.
- i. “Academic needs,” if used as a factor, must be defined with some descriptor – it can’t just be defined as “academic needs.” The parties define the factor and may, but are not required to, use one or more of the definitions provided in IC § 20-28-9-1.5(c).
 - i. Defining the term academic needs as “the importance of retaining particular teachers *agreed upon during bargaining*” is insufficient because it does not provide the level of clarity needed for teachers to know what is required to earn the increase. Furthermore, such a definition implies that the parties have reached agreement on, and intend to be bound by, salary terms “identified by the parties during bargaining” but not memorialized in the CBA.
 - ii. If the academic needs factor is defined, or its increases distributed, using education or experience, then the entire salary increase associated with the factor will be counted toward the 50% cap on such increases.
- j. The amount of increase based on “experience” and “education” (including increases for other factors that use experience or education) cannot be more than **50%** of the total available increase. However, if the compensation plan clearly states that the factor is to reduce the gap between the minimum and average teacher salary or to implement a teacher retention catch-up increase pursuant to IC 20-28-9-1.5(d)(2), then the corresponding salary increase is considered only as part of the total available increase and not in the portion subject to the 50% limitation.⁹ The 50% is calculated as a proportion of the maximum available salary increase; it is not calculated on an individual teacher’s increase.
- k. If a compensation plan provides for both salary increases and stipends, it must use at least two factors in awarding the salary increases. A compensation plan that uses two factors, but bases salary increases on one factor and stipends on the other factor is not compliant.

5. *Salary Increase Differentials*

Findings of noncompliance will be issued where differentiated increases: 1) are not attributed to a factor or subfactor, or 2) cause the parties to exceed the 50% cap on salary increases for education and experience.

⁸ “Content area” means the subject matter an applicant is licensed to teach; or administrative or service function an applicant is licensed to provide. 511 IAC 10.1-1-1(9)

⁹ See section 5 below.

A salary increase differential occurs when teachers receive different salary increases for satisfying the same factor¹⁰ or sub-factor.¹¹ In other words, the dollar amount and percentage amount that one teacher receives is different than another teacher who satisfies the same factor or sub-factor.

To determine whether there is a salary increase differential, IEERB looks at the amount of increase for a factor. If teachers receive the same dollar amount of increase for the factor, there is no salary increase differential. If teachers receive different dollar amounts for the factor, IEERB looks to whether the dollar amounts represent equivalent percentage increases. If teachers receive the same percentage increase for the factor, there is no salary increase differential.

A salary increase differential may be based on reasons the school corporation determines are appropriate.¹² Such reasons may include:

- a. the subject or subjects taught by a given teacher, including but not limited to special education, science, technology, engineering, mathematics, elementary math, elementary reading, and elementary literacy;
- b. the importance of retaining a given teacher in the corporation; and
- c. the need to attract an individual with specific qualifications to fill a teaching vacancy.

6. 50% Cap on Increases Based on Education and/or Experience

Education (“possession of an additional content area degree or credit hours”) and experience cannot account for more than 50% of the total salary increase, except where intended to “reduce the gap” or implement a “teacher retention catchup” increase.

- a. Salary increase to “reduce the gap”¹³
 1. Parties may bargain a salary increase differential to **“reduce the gap” between the minimum teacher salary and the average of the minimum and maximum teacher salary.**
 - A. The **gap** is the difference between the minimum salary of a full-time returning teacher¹⁴ and the average salary of a full-time returning teacher.
 - B. The **average salary** is determined by adding the minimum and maximum salary from the salary range and dividing the sum by two.

¹⁰ Evaluation rating, years of experience, possession of an additional content area degree or credit hours, assignment of instructional leadership roles, and academic needs of students in the corporation. Indiana Code § 20-28-9-1.5(b).

¹¹ A sub-factor is a component of the factor – for example: highly effective and effective evaluation ratings are both sub-factors of the evaluation rating factor. The sub-factor must be logically connected to the factor.

¹² See Indiana Code § 20-28-9-1.5(c).

¹³ See Indiana Code § 20-28-9-1.5(d)(1).

¹⁴ A returning teacher is a teacher not newly hired for the current school year; a teacher who was employed by the corporation in the prior school year who has returned as a full-time teacher for the current school year.

2. Parties must **clearly identify the specific salary increase factor they are using to reduce the gap** – e.g., “The salary increase for experience is to reduce the gap.”
3. The salary range on which the current gap is calculated must be clearly stated and accurately reflect the minimum and maximum salary of full-time returning teachers without any ISTRF contribution and before any increases are implemented for the current year.
4. The compensation plan must include sufficient information for the compliance officer to confirm that the gap has been reduced.
5. If the specific salary increase resulting from the identified factor causes the gap to be reduced, the salary increase attributed to that factor is exempt from the 50% limitation and counts only toward the total available increase. In other words, cap exempt increases still figure into the total amount against which the cap percentage is measured (the denominator), but not into the proportion attributable to education and experience (the numerator). However, if the compliance officer cannot determine that the gap is actually reduced by the salary increase, the exemption will not apply.
 - A. Exemption from the 50% limitation only applies to the specific salary increase designated to reduce the gap. A salary increase based on experience and/or education that is not identified to reduce the gap remains subject to the 50% limitation, unless another exemption applies. For example:

Increase amounts applied to base salary:

- Evaluation rating = \$1,000
- Experience - **The salary increase for Experience is to reduce the gap**
 - Teachers with 1 or 2 years’ experience with the corporation = \$2,000
 - Teachers with 3 or 4 years’ experience with the corporation = \$1,500
- Possession of content area Master’s degree = \$1,000

The 50% limitation applies only to the increase for possession of a content area Master’s degree because experience is identified as the specific salary increase to reduce the gap.

$$\$1,000 \text{ (education)} / \$4,000 \text{ (evaluation + experience + education)} = 25\%$$

- B. If the specific increase is not identified, the increase does not reduce the gap, or due to a lack of sufficient information the compliance officer cannot confirm that the gap has been reduced, the exemption will not apply.
- b. Teacher retention catch-up salary increases

1. Parties may bargain a “teacher retention catch-up” to **allow teachers currently employed by the school corporation to receive a salary adjusted in comparison to the starting base salaries of new teachers.**¹⁵
2. A specific “teacher retention catch-up” increase is exempt from the 50% limitation.
3. Teachers who receive the catch-up increase may be identified using education and/or experience without the increase counting against the 50% cap.
4. The teacher retention catch-up increase must be clearly identified as such – e.g., “The salary increase for Academic Needs is a teacher retention catch-up increase.”
5. Because teacher retention catch-up increases are salary adjustments made **in comparison to new teacher salaries**, they are necessarily limited by what the parties bargain for new teachers (e.g., if parties bargain that new teachers receive a salary commensurate with current teachers with similar education and experience, the parties may not be able to make the comparison necessary to use a teacher retention catch-up.)
6. How to use a teacher retention catch-up:
 - Use a factor.
 - Identify the increase as a teacher retention catch-up increase.
 - Describe the current teachers who will receive the increase.
 - May be a specific teacher or group of teachers, or subject to superintendent discretion.
 - Must be described using experience level, content area, educational attainment, current salary, or any other objective metric or combination of metrics that would allow a teacher to determine if the catch-up applies to them.
 - Identify the amount of the increase, or the method of calculating the increase.
 - May be a specified amount or differentiated amounts.
 - May include superintendent discretion within bargained parameters (limited by discretionary parameters bargained for new hires).
 - Describe how the increase amount represents a comparison to the starting salaries of new teachers.

See the 2022 Compliance Rubric and the 2022 Compensation Plan FAQs for additional information on exceptions to the 50% cap.

¹⁵ See Indiana Code § 20-28-9-1.5(d)(2)

7. *Redistribution Plan*

Compensation plans must provide for the redistribution of any money allocated for salary increases that would otherwise have gone to teachers rated ineffective or improvement necessary.

- a. A redistribution plan **is required** when a compensation plan:
 - i. does not provide for the distribution of all funds in an identified pool of money;
 - ii. provides for a set amount per teacher, factor, or point (e.g., \$1,000 if teacher satisfies all factors, \$500 for effective rating, \$100 per point, etc.); or
 - iii. provides for movement within a salary schedule.
- b. A redistribution plan **is not required** when the compensation plan utilizes a pool of money that is entirely distributed under the plan (e.g., “\$100,000 will be divided by the total number of teacher points. The resulting dollar value per point will be multiplied by the number of points the teacher earned, and the entire \$100,000 will be distributed to eligible teachers. Therefore, a redistribution plan is not required.”).
 - i. NOTE: if the compensation plan combines this method of allocating salary increases with another for which a redistribution plan is required (e.g., a teacher retention catch up increase using academic needs), then a redistribution plan must still be included.
- c. If the compensation plan does not clearly demonstrate that a redistribution plan is unnecessary, the parties must either include a redistribution plan or a statement explaining why a plan is not necessary.
 - i. Simply stating that all funds will be distributed, and that no redistribution plan is necessary, does not constitute an “explanation” and will not satisfy the requirement.
- d. When a redistribution plan is required:
 - i. It must be specific as to how and to whom the redistribution will be made. The redistribution plan **cannot** be a mere statement that the parties will redistribute any remaining funds in accordance with the statute. Nor can it be a statement that the parties will negotiate or agree on redistribution at a later date.
 - ii. It must include how the redistribution will be paid – either as a stipend or a base salary increase.
 - iii. It must state when the redistribution will occur (e.g., during the contract term).

B. Stipends

A stipend is not an increase to the base salary and is a non-recurring payment.¹⁶ It is not subject to any of the requirements listed above. However, stipends given to a majority of teachers should be listed in the compensation plan.

Stipends must be clearly labeled as stipends. If the compensation is not identified as a stipend, it may be assumed to be a salary increase and may be found to be noncompliant.

C. Starting Salaries for New Teachers

New teacher salaries **must** be bargained. The parties may bargain specific amounts for new teachers, a range of starting salaries, or a method by which starting salaries will be calculated. Failing to include a provision for determining starting salaries for newly hired teachers will result in a finding of noncompliance.

If the parties bargain that the Superintendent has the authority to determine the starting salary of a new teacher, they must also bargain the parameters or range for that authority (e.g., “The Superintendent has authority to increase the teacher’s starting salary by \$1,000 if the teacher is hired for a ‘hard-to-fill’ position” or “The Superintendent shall set the starting salary of a new teacher within the range of salaries for current teachers”).

For each school year beginning after June 30, 2022, annual salaries for new full-time classroom teachers (who instruct students at least 50% of the workday) must equal or exceed \$40,000 unless the school corporation has submitted a report to IDOE in compliance with IC 20-28-9-26 and attached the report to the CBA for that period.

D. Wages

Parties may bargain wages for duties outside of normal teaching duties that are performed during or outside of the regular teacher workday. Generally, these include ancillary duties and extracurricular or co-curricular duties. Wage payments may be in the form of an hourly wage or a set amount per activity or duty. Parties may also bargain additional release or compensatory time in lieu of financial compensation for these extra duties.

1. Ancillary Duties

Parties may bargain only the compensation (monetary or release time) for an ancillary duty. Parties should clearly identify the compensation, whether monetary or release time, as compensation for a particular ancillary duty or duties.

Parties cannot bargain which activities constitute ancillary duties or any conditions under which a teacher may be assigned an ancillary duty including hours or days to be worked and whether a given assignment will be voluntary. The school employer determines what constitutes an ancillary duty and how such duties will be assigned, subject to its statutory discussion obligation.

¹⁶ A recurring stipend will be evaluated as a base salary increase.

2. *Extracurricular or Co-Curricular Duties*

Parties may bargain only the compensation for an extracurricular or co-curricular activity. They cannot bargain the number or type of ECA/CCA positions or any restrictions on how or who the school employer selects to fill a position.

If the parties do not bargain, but want to include, the number of staff for one or more ECA positions, they must include a statement in the CBA that the number of positions was not bargained but was included solely for informational purposes. If parties include the number of positions, but do not include the “information only” statement, the compliance officer will assume that the number of positions has impermissibly been bargained, and a finding of noncompliance may be issued.

E. Salary and Wage Related Fringe Benefits

A salary and wage related fringe benefit is defined as a benefit, other than direct salary or compensation, received by the school employee from the school employer. Such benefits include, but are not limited to:

- Accident
- Sickness
- Health
- Dental
- Vision
- Life
- Disability
- Retirement benefits
- Paid time off (as permitted to be bargained under Indiana Code § 20-28-9-11)
- Unpaid leave
- Wellness plans
- Section 125 plans
- Travel allowance
- Severance pay
- Expanded criminal history background checks

Any amounts paid directly to teachers as a result of a fringe benefit (e.g., sick leave buyback or severance pay) should be clearly noted in the contract as a stipend and not a base salary increase.

III. Other Permissible Items That May Be Included in the CBA

The parties may bargain and include the following items or provisions in their CBA:

A. Grievance procedure

1. If the parties include binding arbitration as a part of the grievance procedure, the grievance procedure must be limited to alleged violations within the scope of bargaining.

2. If the parties include advisory arbitration or no arbitration in the grievance procedure, the scope of the procedure may be beyond the scope of bargaining such as alleged violations of school board policy.
- B. General definitions applicable to the CBA (e.g., “day”, “Board”, etc.)
 - C. Contract interpretation provisions such as a savings clause, scope of agreement, supremacy clause, etc.

IV. Impermissible Subjects, Terms, and Provisions

The list of terms, provisions, and subjects that cannot be bargained is lengthy. Indeed, parties may not bargain ANY subjects other than salary, wages, and fringe benefits. Indiana Code §§ 20-29-6-4 and 20-29-6-4.5 specifically state that the following cannot be bargained:

- School calendar
- Teacher dismissal procedures and criteria
- Restructuring options
- The school’s ability to work with educational entities regarding postsecondary or dual credits
- Teacher evaluation procedures and criteria
- Any subject not required to be bargained
- Any matter that another statute specifies is not a subject of bargaining (e.g., supplemental payments pursuant to Indiana Code § 20-28-9-1.5(a); any performance stipend or base salary increase based on a performance stipend to an individual teacher under Indiana Code § 20-43-10-3.5, etc.)

In addition, parties may not bargain or include in a CBA any provisions that conflict with any right or benefit established by federal or state law or with school employee or school employer rights set forth in Indiana Code §§ 20-29-4-1 and 2 and Indiana Code § 20-29-4-3 respectively. They also may not bargain the source of funding for a given salary or wage, or how much a school must budget for a given salary or wage, unless it is a condition on the wage.

See the 2022 CBA Compliance Rubric for additional information and examples.

V. MOUs

A Memorandum of Understanding (MOU) may be used by the parties to change or supplement their CBA. The MOU is considered a part of the CBA and must be submitted to IEERB for compliance review.

Bargaining is generally not permitted outside of the formal bargaining timeframe (September 15 through November 15), and an MOU bargained outside of this timeframe is generally considered to be not compliant. However, there are two exceptions:

- A. If the MOU is necessary due to newly discovered information or an unanticipated event that was not known or available at the time the parties ratified the original CBA; or
- B. If, due to unanticipated circumstances impacting multiple school employers and exclusive representatives, IEERB issues a nonrule policy document that allows parties to

bargain and ratify a limited MOU outside of the bargaining time period. The nonrule policy document will provide guidance and parameters for the limited MOU. NOTE: At this time, only certain health insurance MOUs contemplated by NPD No. 2018-2 satisfy this exception. NPD No. 2018-2 is available at <https://www.in.gov/ieerb/files/NPD-2018-2.pdf>.

Except as provided in NPD No. 2018-2, an MOU should not be used to amend an expired CBA during the status quo period per I.C. 20-29-6-16(b) (“Upon the expiration of the current contract that is in effect, except for teacher appreciation grant stipends and additions to base salary provided under IC 20-43-10-3.5, the school employer shall continue under the terms of the current contract that is in effect, with no increase or increment in salary, wages, or benefits for any bargaining unit employee until a new contract is executed.”).

The terms of the MOU are subject to the same bargaining requirements and restrictions as the CBA described above. The parties must submit the MOU to IEERB within **ten business days of ratification** and must include a written explanation of why the MOU was necessary. As with the CBAs they modify, school employers submit MOUs by uploading them to Gateway (<https://gateway.ifionline.org/>) as a single standalone document using the new MOU upload portal. As an added measure, the exclusive representative may email the ratified CBA to IEERB (ratifiedcontracts@ieerb.in.gov). If neither party to an MOU submits it within ten business days of its ratification, a finding of noncompliance will be issued. The MOU must also be posted along with the CBA on the corporation’s website within **14 business days of ratification**.

At the parties’ request, IEERB will review a tentative/proposed MOU and advise the parties if the MOU satisfies either of the two exceptions and if it complies with all other bargaining requirements and restrictions. Parties seeking IEERB’s review of a proposed MOU should send a request to compliance@ieerb.in.gov. The request should include an unsigned draft of the proposed MOU as well as a written explanation of why the MOU is necessary. The party sending the request should include their bargaining counterpart on the email, so that both the school employer and exclusive representative are included. IEERB will acknowledge receipt of proposed MOU review requests and will provide additional information at that time.

Procedure for Compliance Assessment Conference

If the final order of the Board requires the parties to attend a compliance assessment conference, the Executive Director will appoint a compliance officer and notify the parties before the first day of formal bargaining.

The parties must schedule a time to meet jointly with the compliance officer. At the conference, the compliance officer will review with the parties the results of the most recent compliance report.

Procedure for Prior Approval to Ratify a CBA

If the final order of the Board requires the parties to obtain written prior approval from the compliance officer prior to ratifying any subsequent CBA, the Executive Director will appoint a compliance officer and notify the parties before the first day of formal bargaining.

Parties must submit their tentative agreement (TA) to the compliance officer for review and cannot ratify the CBA until they receive written approval. Parties are strongly encouraged to

use the most recent Compliance Report, the 2022 Compliance Rubric, and the 2022 Compliance Checklist to ensure their TA (proposed CBA) is compliant.

Because the review process and potential revisions may take some time, the parties should submit their TA to the compliance officer as soon as possible in the bargaining time period. If parties wait until early November to submit their TA for review, they risk not receiving timely approval and a potential declaration of impasse being issued.

The compliance officer will review the TA and notify the parties in writing whether it is compliant. If the TA is not compliant and prior approval is denied, the notice will identify the terms of the TA that are not compliant. The parties then have two options:

1. work with the compliance officer to resolve the noncompliance and submit a revised TA; or
2. appeal the denial to the Board (see 560 IAC 2-8-8 for additional information).

Once the parties receive written approval, they may ratify the CBA. The CBA must then be uploaded to Gateway as described on page 1.

Resources

There are a variety of resources available on IEERB's website:

Recent Announcements	http://www.in.gov/ieerb/2331.htm
Collective Bargaining	http://www.in.gov/ieerb/2402.htm
Collective Bargaining Compliance	http://www.in.gov/ieerb/2411.htm
Laws, Rules, and Documents	http://www.in.gov/ieerb/laws,-rules-and-documents/
IEERB Search	http://www.in.gov/ieerb/2406.htm

Parties may also email questions to IEERB via questions@ieerb.in.gov.