



2023 CBA Compliance

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Session Roadmap

- Compliance Review Process
- CBA Content
- Model Compensation Plans and Other Compliance Resources
- Avoiding Common Noncompliance Issues
- General Compliance Tips and Wrap-up



CBA Compliance Review

- IEERB's statutory authority to review CBA comes from I.C. § 20-29-6-6.1
- After CBA is ratified, the school employer must submit it to IEERB
 - Submission via Gateway for school employer
 - Exclusive Representative may also submit by emailing to ratifiedcontracts@ieerb.in.gov
 - The ratified CBA must also be posted on the school's website within 14 business days
- IEERB appoints a Compliance Officer to review each submitted CBA
- Compliance Officer makes a written Compliance Report & Recommendation (CRR)
 - Must be completed before May 31st of the year in which the CBA expires
- Parties have a 15-day window for appeal of the CRR



Compliance Review Process: CRR Penalties

Noncompliant CBAs result in one of the following penalties:

- cease & desist penalty
- compliance assessment conference (CAC) penalty
- prior approval (PA) penalty

What is the statutory basis for these penalties?

- Indiana Code § 20-29-6-6.1(f). Review of collective bargaining agreement:

“If, following the review of a collective bargaining agreement, the board finds the collective bargaining agreement does not comply with this chapter, the board shall issue an order that may include one (1) or more of the following items:

- (1) Ordering the parties to **cease and desist** from all identified areas of noncompliance.
- (2) Preventing the parties from ratifying any subsequent collective bargaining agreements until the parties receive **written approval** from the board or the board's agent.
- (3) Requiring **other action as deemed appropriate** by the board as authorized by state law” (emphasis added).



2023 Compliance Results

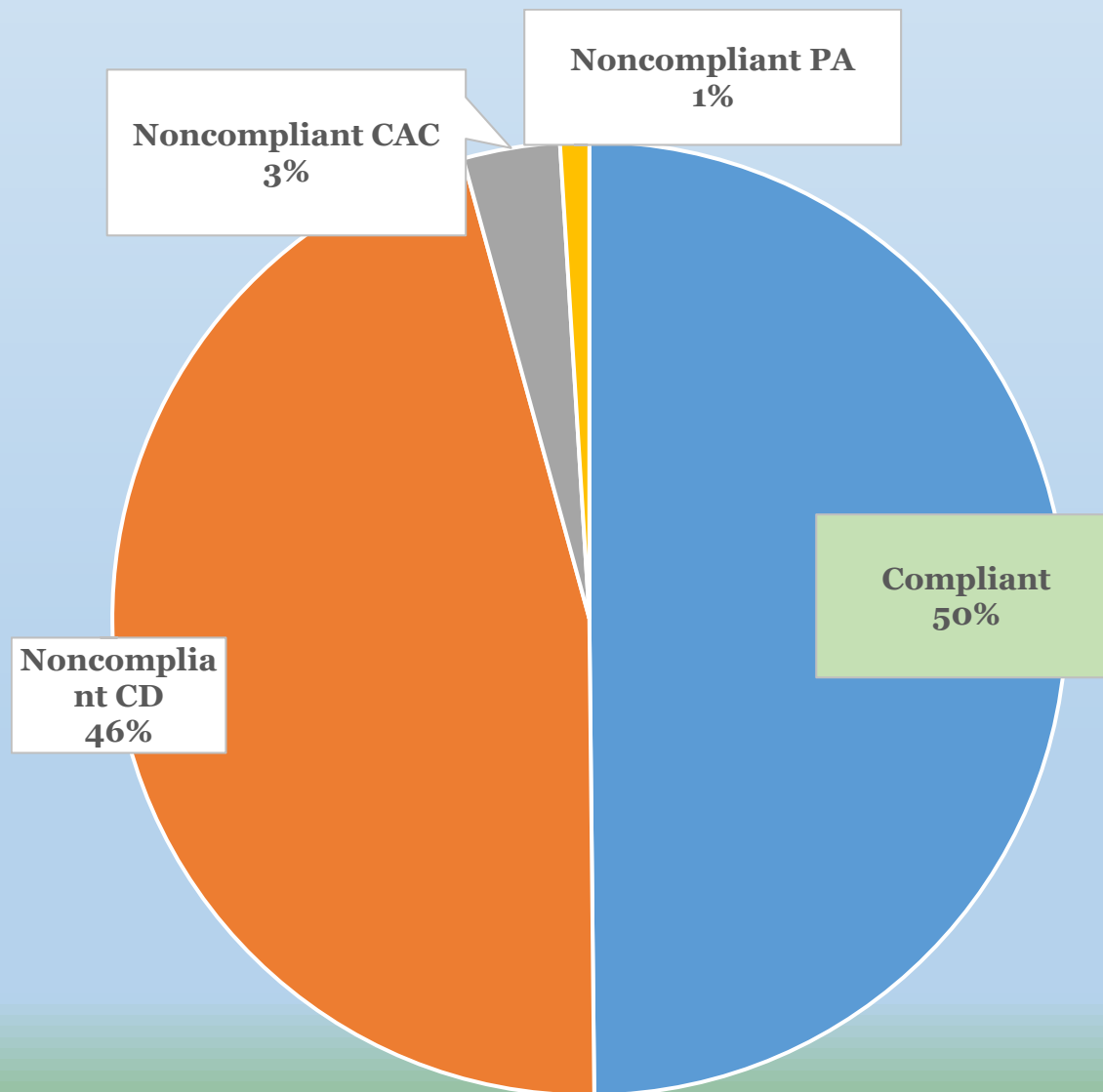
152 Compliant

140 Not Compliant – Cease and Desist

10 Not Compliant – Compliance
Assessment Conference

3 Not Compliant – Prior Approval

No Appeals



Based on 305 CRRs Issued May 26, 2023



Compliance Reports

Top Issues of Noncompliance:

- Public Hearing & Meeting Attestations/Gateway Reporting
- 50% Cap on Education and/or Experience
- Increase not in Compensation Plan
- Increases Not Attributed to a Factor
- Recognition Clause
- Redistribution Plan
- Non-Bargainable Subjects



CBA Content

Required
Basic Items
and Terms

Mandatory
Subjects of
Bargaining

Compensation
Plan

Optional
Provisions

Provisions
That Are
NOT
Bargainable
and **CANNOT**
Be Included



CBA Content: Required Terms and Provisions

- There are 5 basic items or terms that **must** be included in a CBA:
- The names of the school employer and the exclusive representative
- The recognition clause in the CBA matches the IEERB order in effect at the time of ratification
- The beginning and ending dates of the CBA
(end date no later than June 30, 2025)
- The date CBA was ratified (cannot be prior to September 15)
- Attestation* as to dates of public hearing and public meetings, and **whether or not electronic participation by the governing body and the public was allowed**

**Additional compliance information in later section*



CBA Content: Mandatory Subjects of Bargaining

The parties are required to bargain salary, wages, and salary-related fringe benefits.

Indiana Code § 20-29-6-4.

- Salary and salary increases, i.e., **the compensation plan**, is the heart of the CBA.
- Compensation plan components:
 - Salary Range (amount before any increase or ISTRF contributions)
 - Minimum Salary Requirement: Effective July 1, 2022, the CBA must demonstrate that the salary of all full-time teachers is no less than \$40,000
 - Eligibility Criteria
 - Salary Increase Factors
 - Increase Distribution (50% Cap on Increases Based on Education and/or Experience)
 - Redistribution Plan



CBA Content: Eligibility Statement

Statutory Minimum: No salary increase for teachers rated ineffective or improvement needed

Statutory Exception

Parties may bargain an ELIGIBILITY exception for teachers in first 2 years

TIP: If your CBA uses the statutory citation to refer to the eligibility exemption for new teachers, note that the exemption was moved to Indiana Code § 20-28-9-1.5(g) in 2023.

- Eligibility criteria must apply to all teachers
- Parties have flexibility to bargain additional eligibility criteria
 - This is a useful tool when targeted increases are necessary
- Eligibility criteria must apply to comp plan as a whole, rather than individual factors
- Eligibility criteria ≠ Factor Requirements
 - BUT overlap is okay



CBA Content: **NEW** Differentiated Increase for Required Literacy Endorsement

- Effective July 1, 2023, Indiana Code 20-28-9-1.5(e) requires schools to “differentiate the amount of salary increase for teachers who possess a required literacy endorsement under IC 20-28-5-19.7.”
- However, the required literacy endorsement becomes effective in 2025, so no differentiation is applicable in the current biennium.
- Each of the 2023 Model Compensation Plans include a footnote acknowledging this new statutory requirement.



CBA Content: Nonbargainable Subjects (NBS)

- What you can bargain:
 - Salary, wages, and fringe benefits
 - Grievance procedure
- What you can't bargain:
 - Assignments (including regular teacher duties and ancillary duties)
 - Hours, days, calendar
 - Composition of school or district wide committees
 - Working conditions
 - Supplemental Payments* and Teacher Appreciation Grants
 - Anything that's not a salary, wage, or benefit
 - Any terms for employees not in the bargaining unit

NEW for 2023:
Discussion
requirement repealed.

*Reminder:
Starting in 2022,
supplemental
payments no longer
limited to specific
teachers – any teacher
may now receive a
supplemental payment.



CBA Content: Supplemental Payments

Supplemental payments are the nonbargained discretionary payments the school corporation may make to any teacher **in excess of the salary specified in the school corporation's compensation plan.**

TIP: If the parties do not bargain but wish to include a supplemental payment provision solely for informational or reference purposes, they must include a statement that the provision was not bargained, but was included for informational purposes only.

- **BUT NOTE:** Because supplemental payments are payments in excess of the salary specified in the compensation plan, the parties cannot use a nonbargained supplemental payment in lieu of a **required** compensation plan component.
- For example, the CBA should not describe an increase resulting from row or column advancement on the salary schedule as a nonbargained supplemental payment.



NBS: Ancillary Duties

In 2021, the Indiana Supreme Court affirmed that parties may not bargain what constitutes an ancillary duty or any limitations on the assignment of such a duty.

“Teachers and schools may not bargain over work assignments, including ancillary duties, because this is an impermissible bargaining subject and interferes with school’s exclusive rights to assign and direct teachers’ work.” [*Culver Cmty. Teachers Ass'n v. Ind. Educ. Emp't Relations Bd.*](#), 174 N.E.3d 601 (Ind. 2021).



NBS: Ancillary Duties

What May and May NOT be Bargained

The school determines what constitutes an ancillary duty and how such duties will be assigned



Parties may bargain only the compensation for an ancillary duty.

- The compensation for an ancillary duty may be monetary or in the form of additional release or compensatory time.
- An ancillary duty may occur during or outside of the regular teacher workday.

NOTE: The parties may bargain a limitation or condition on the wage, but not on the duty itself.



Parties cannot bargain what constitutes an ancillary duty or any parameters, restrictions, or limitations on the school's assignment of an ancillary duty.

- The school alone determines what constitutes an ancillary duty and how such duties will be assigned.
- Can't bargain: Volunteers, FCFS, Right of First Refusal, Number of Students, etc.



Ancillary Duties: Compliant Provisions

The parties **may** bargain a limitation or condition on the wage, but not on the duty itself

👍 Teachers will receive \$25 per hour when assigned the ancillary duty of covering a class period for another teacher.

👍 A teacher will be granted 1.5 hours of release/comp time for each hour that the teacher covers a class period for another teacher.


👍 Teachers will receive \$75 when assigned a detention session for 10 or fewer students and \$100 when assigned a detention session for 11 or more students. (*Different payment amounts for different size groups is a condition on the wage, rather than a condition on the assignment, and this is compliant.*)

👍 The School Corporation has determined that supervision of after school detention is a compensable ancillary duty. The parties agree that teachers assigned this duty will be compensated \$75 for each detention session.



Ancillary Duties: Noncompliant Examples

The parties **may** bargain a limitation or condition on the wage, but not on the duty itself.

 The parties have agreed that covering a class period for another teacher is an ancillary duty and that the school will not assign a teacher to cover except in an emergency situation. No teacher will be assigned to cover a class period of another teacher more than one time per semester.


- *Parties cannot bargain what constitutes an ancillary duty. Schools alone can define what ancillary duties may be required of teachers. “[E]xcept in an emergency situation” and “No...more than one time per semester” are impermissibly bargained conditions that interfere with the school’s ability to assign the duty.*

 Evening detention (up to 10 students) shall be paid at a flat rate of \$75.


- *“10 students or less” is an impermissibly bargained condition that interferes with the school’s **ability to assign** a teacher to supervise detention – specifically, it limits assignment by group size.*
 - NOTE: By removing the “flat rate” reference and adding an additional pay rate for 11 or more students, a similar provision is compliant, because what has been bargained there is a condition on the wage vs. a condition on the actual assignment – see previous slide.



Ancillary Duties: Noncompliant Examples

 Upon mutual agreement, a teacher may be requested to supervise a class's instructional time during his/her preparation period.

- *This provision is noncompliant because the parties bargained to require “mutual agreement” of the teacher before the school could assign the teacher to serve as a substitute. The parties cannot bargain any limitations or restrictions on the school’s ability to assign the duty.*

 If a teacher is asked to, and accepts, responsibility for completing [ancillary duty], the teacher will receive \$100,

- *This provision is noncompliant because it requires the teacher to accept the duty. The parties cannot bargain any limitations or restrictions on the school’s ability to assign the duty.*

Avoid language indicating that an ancillary duty assignment is voluntary or requires the agreement of the teacher.



2023 CBA Compliance Guidance / Resources

- [2023 CBA Compliance Rubric](#)

- A “how-to” reference guide for CBA Compliance
- Organized by topic, this document provides explanations, tips, and examples
 - Updates and changes to the Rubric are noted in **RED**.

- [2023 CBA Compliance Checklist](#)

- One page tool to note the page of various CBA components and check off completion
- Useful during drafting and for final review of CBA



Recommended CBA Format

The [Recommended CBA Format](#) has been updated for 2023 and may be used to assist parties in developing a compliant CBA that includes required terms and provisions, as well as mandatory subjects of bargaining.

2023 Recommended CBA Format

Article I – Introduction

- A. Parties
- B. Recognition Clause / Composition of Bargaining Unit
- C. Definitions
- D. Contract Interpretation Provisions (optional)
- E. Permissible Provisions (optional)

Article II – Salary / Wages

- A. Salary Range (before increases)
Optional Statement Demonstrating Compliance with \$40,000 Minimum Salary Requirement (recommended if salary range before increases is not at \$40,000)*
- B. Base Salary Increases¹ (Compensation Plan)
 - 1. Eligibility Statement (or Statement of No Increase or Increment, if applicable)
 - 2. Factors and Definitions
 - 3. Distribution
 - 4. Redistribution Plan
 - 5. Other Permissible Salary Items (optional)
- C. Stipends
- D. New Hire Salaries
- E. Wages
 - 1. Ancillary Duty Pay (optional)
 - 2. Extracurricular or Co-Curricular Activity Pay Schedule

Article III – Wage / Salary-Related Fringe Benefits

- A. Leaves
- B. Insurance
- C. Retirement Benefits
- D. Other Permissible Wage / Salary-Related Fringe Benefits

Article IV – Grievance Procedure (optional)

Article V – CBA Term, Hearing/Meeting Attestations, and Ratification

Appendix

*Attach report Submitted to IDOE if 2023 Minimum Salary for Full-time Classroom Teachers < \$40,000

¹ Effective July 1, 2023, Indiana Code 20-28-9-1.5(e) requires schools to "differentiate the amount of salary increase for teachers who possess a required literacy endorsement under IC 20-28-5-19.7." However, the required literacy endorsement becomes effective in 2025, so no differentiation is applicable in the current biennium.



Model Compensation Plans

- Total of 13 [Model Compensation Plans](#)
- Table of contents identifies plans by function
- 2023 CBA Compliance Rubric includes references to MCPs by number to illustrate specific compliance concepts



Model Compensation Plan Row Advancement with Subfactors

2023 MODEL COMPENSATION PLAN #2B
Salary Schedule: Row Advancement Only
Education and Instructional Leadership Subfactors

A. Salary Range

\$40,000 to \$66,750, not including current year increases or TRF contributions.

B. Base Salary Increases¹

1. General Eligibility: Teachers are eligible for a base salary increase if they received an evaluation of "Highly Effective" or "Effective" on their most recent annual evaluation.
 2. Factors and Definitions
 - a. Evaluation Rating – The teacher received a highly effective or effective evaluation rating on their most recent evaluation.
 - b. Years of Experience – The teacher was employed at least 120 days by the corporation in the prior school year.
 - c. Possess a Content Area Master's Degree (Education) – The teacher earned a master's degree in a content area as defined by 511 IAC 10.1-1-1(9).
 - d. Assignment of Instructional Leadership – The teacher completes at least one of the following: (1) teach a dual credit course; (2) be a volunteer tutor or provide after school hours assistance to students at least 10 hours per semester; or (3) serve as a trainer in a professional development activity that has been pre-approved by the superintendent.
 3. Distribution – Advancing on the Salary Schedule (See Salary Schedule attached as Appendix A):
 - a. A teacher who satisfies the evaluation rating factor will advance 2 rows.
 - b. A teacher who satisfies the years of experience factor will advance 2 rows.
 - c. A teacher who newly obtained a Master's Degree in the previous year will advance 4 rows; a teacher who earned a Master's Degree prior to the previous year will advance 1 row.
 - d. A teacher who satisfies the assignment of instructional leadership will advance* as follows:
 - i. Teaching a dual credit course = 6 rows.
 - ii. Serving as a volunteer tutor or providing after school hours assistance to students at least 10 hours per semester = 2 rows.
 - iii. Serving as a training in a professional development activity that has been pre-approved by the superintendent = 1 row.
- *Teachers may advance once for each instructional leadership subfactor, for a maximum movement of 9 rows for this factor.
- The increase for advancing a row is \$250.
The experience and education factors accounts for 35% of the maximum available salary increase (\$1,500/\$4,250)
4. Redistribution
Any funds otherwise allocated for teachers who were rated ineffective or improvement necessary will be equally redistributed to all teachers rated effective or highly effective. The redistribution will be in the form of a stipend that will be paid at the end of the school year.

¹ Effective July 1, 2023, Indiana Code 20-28-9-1.5(e) requires schools to "differentiate the amount of salary increase for teachers who possess a required literacy endorsement under IC 20-28-5-19.7." However, the required literacy endorsement becomes effective in 2025, so no differentiation is applicable in the current biennium.

Appendix A
2023-24 Salary Schedule

Row	Salary (Dollars)
1	40,000
2	40,250
3	40,500
4	40,750
5	41,000
6	41,250
7	41,500
8	41,750
9	42,000
10	42,250
11	42,500
12	42,750
13	43,000
14	43,250
15	43,500
16	43,750
17	44,000
18	44,250
19	44,500
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21	45,000
22	45,250
23	45,500
24	45,750
25	46,000
26	46,250
27	46,500
28	46,750
29	47,000
30	47,250
31	47,500
32	47,750
33	48,000
34	48,250
35	48,500
36	48,750
37	49,000
38	49,250
39	49,500
40	49,750

41	50,000
42	50,250
43	50,500
44	50,750
45	51,000
46	51,250
47	51,500
48	51,750
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105	66,000
106	66,250
107	66,500
108	66,750
109	67,000
110	67,250
111	67,500
112	67,750
113	68,000
114	68,250
115	68,500
116	68,750
117	69,000
118	69,250
119	69,500
120	69,750
121	70,000
122	70,250

Some parties have expressed concern about multiple column salary schedules causing confusion.

This plan maximizes flexibility in providing salary increases, while maintaining the simplicity of a single column salary schedule.



Additional Compliance Guidance

[IEERB Compliance Webpage](#)

- [2023 MOU Quick Reference Guide](#)
- [2023 Compensation Plan FAQs](#)
- [2023 Guide to CBA Compliance](#)
- [2023 Guide to Compensating Teachers for Graduate Degrees and Credit Hours](#)
- [How to Ensure Compliance When Moving to A New Salary Schedule](#)
- [IEERB Gateway Apps](#)



Avoiding Common Noncompliance Issues



Bargaining Unit Description (Recognition Clause)

- Must match most recent IEERB Order in effect on date of CBA ratification
 - Close does not count – it should match word for word
 - Tip: Avoid defining “teacher” differently than the unit description
- Unit changes, once certified by IEERB in an Order, are only applicable to subsequently ratified agreements, and do not modify the unit in the existing CBA.
- Ratifying a CBA with an amended unit description before an Order Amending the Bargaining Unit has been issued will result in an FNC



NBS: Terms for non-unit-members

- **Tips:**

- Clarify ambiguities in unit description
 - Example: use “boys and girls varsity high school basketball coaches” instead of “basketball coaches” to exclude those positions from the BU
- Avoid adding wages for excluded ECA positions or lay staff to your ECA schedule
 - If you DO add them there, be sure to clearly indicate that the wage for that position was not bargained and was included for informational purposes only
- If BU limited to “full-time” don’t bargain for teachers employed part-time, less than a full day, less than a full load, or less than full-time



Failure to Attribute Increase to a Factor

Statutory Factors

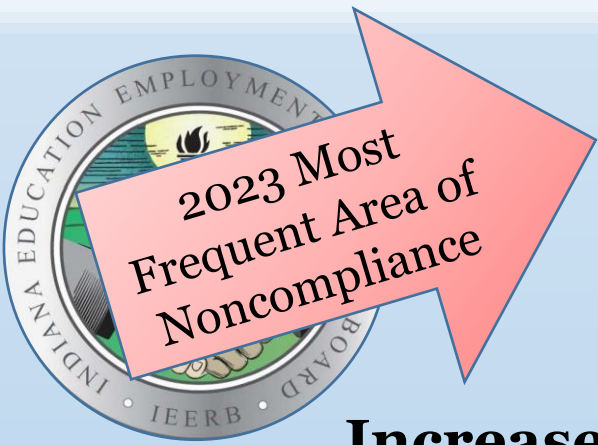
1. Experience
2. Possession of an additional content area degree or credit hours (“Education”)
3. Evaluation
4. Instructional Leadership
5. Academic Needs

- Across-the-board increases / transition to new salary schedule (see next slide)
- Often an increase is described in the compensation plan, but not attributed to a factor
- **Attributing Increases to Something other than a Statutory Factor**
 - **Common Errors**
 - Increase attributed to PGP points
 - Increase attributed to teaching dual credit course
 - Increase attributed to tutoring
 - **Fix: Identify reasons as subfactors under Instructional Leadership or Academic Needs**
See [Model Compensation Plan #2B](#)
- **Salary Increase Provisions for Teachers Returning from Leave**
 - **Error: Bargained provisions for teachers returning from leave are memorialized in “Leave” section of CBA, potentially resulting in multiple findings:**
 - Increase not attributed to factor; and
 - Increase outside of compensation plan, AND
 - Increase included in 50% cap



Transition to New Salary Schedule NOT Described

- **Example:** Salary schedule includes \$1,000 across-the-board increase from last year, but the compensation plan only describes increase amounts from advancing rows and columns
- **Result:**
 - FNC for increase not in compensation plan
 - FNC for increase not attributed to statutory factor
 - Amount of transition increase included in the 50% calculation due to lack of factor attribution
- **Solution:** “Teachers that satisfy the evaluation rating factor transition to the 2023-24 SS in the same row and column and receive a \$500 increase”
- **Resource:** [How to Ensure Compliance When Moving to A New Salary Schedule](#)



50% Cap on Education & Experience

Increases Subject to Cap

Years of experience factor

Content area degrees and **hours** factor (“education”)

Other factors, *if defined, distributed, or differentiated according to teachers’ education and/or experience*

Increases NOT Subject to Cap

Increases to reduce-the-gap*

Teacher retention catch-up increases*

Evaluation, Academic Needs, and Instructional Leadership factors without ed/exp component

**subject to statutory restrictions*



Calculation based on percentage of TOTAL possible increase



Exception to 50% Cap on Ed & Exp: Salary Increase to **Reduce the Gap**

- A salary increase differential may be used to “**reduce the gap**” between the minimum teacher salary and the average of the minimum and maximum teacher salary (i.e., the median).
Indiana Code § 20-28-9-1.5(d)(1)
- A specific salary increase to reduce the gap **is exempt from the 50% requirement**. The 50% cap does not apply to the specific salary increase that is intended to reduce the gap as long as the gap is actually reduced.

In order to take advantage of the reduce-the-gap exemption from the 50% requirement:

TIP

- Parties must clearly identify the specific salary increase they are using to reduce the gap as such - e.g., “The salary increase for experience is to reduce the gap.”
 - The specific salary increase must actually reduce the gap between the minimum and average salaries.
- If the specific increase is not identified, or the increase does not reduce the gap, the increase will be subject to the 50% restriction.

For an example of a salary increase differential designed to “reduce the gap,” see Model Compensation Plans 4 and 4A at: www.in.gov/ieerb/files/2023-Model-Compensation-Plans.pdf



Exception to 50% Cap on Ed & Exp: **Teacher Retention Catch-Up**

A salary increase differential may be used to “allow teachers currently employed by the school corporation to receive a salary adjusted in comparison to starting base salaries of new teachers.” Indiana Code § 20-28-9-1.5(d)(2)

How to use a teacher retention catch-up

- Use one of the five factors.
- Clearly identify the increase as a teacher retention catch-up.
- Describe the current teachers who will receive the increase.
 - May be a specific teacher or group of teachers, or subject to superintendent discretion.
 - May 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.



Exception to 50% Cap on Ed & Exp: Teacher Retention Catch-Up

- 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.
 - **NOTE:** If parties bargain that new teachers receive a salary commensurate with current teachers with similar education and experience, the parties will not be able to use a teacher retention catch-up.



Redistribution Plan (RDP)

- All compensation plans (CPs) must include RDP, unless it's clear that one is not needed
- Simply saying that a specified amount of money will be fully distributed, when that is not demonstrated by the CP, is insufficient and will result in an FNC
 - See [Model Compensation Plans](#) #1 and 2A for examples of full distribution of pot of funds
- Examples of CPs that need a redistribution plan:
 - Increases based on advancement on a salary schedule
 - An increase is described as a set amount per teacher, point, or factor (even if CP uses pool/points, for example, to distribute other factor increases)
- Required components of RDP:
 - To all teachers rated effective or highly effective
 - In current contract year
 - METHOD: as a stipend or base increase



Public Hearing / Meeting Attestations

Per I.C. § 20-29-6-6(b), the CBA must include attestations signed by both parties as to:

- The **dates** that the **public hearing** described in I.C. § 20-29-6-1(b) and the **public meeting** described in I.C. § 20-29-6-19 occurred, and
- whether **governing body members** or **members of the public** were allowed to **participate** in the public hearing and public meeting by means of **electronic communication**.

- Include the attestations on your signature page for ease in obtaining signatures.
- The dates of the public hearing and the public meeting, as well as the electronic participation information in the parties' attestations, must match the data entered for those same fields in Gateway. (114 out of 305 CBAs reviewed in 2023 were inconsistent)



General Tips for CBA Compliance

- Review your last compliance report carefully and don't skip the footnotes or general comments
- When bargaining: Is it salary, wages, or fringe benefits? If no, don't bargain it
- Including policy for reference purposes? Be sure to say that it wasn't bargained and was included for informational purposes only
- Beware of old language and remove if possible
- Content of prior year MOUs (originally attached to CBA) should be moved to body of CBA if the parties bargain to continue the terms
- Check dates and internal citations for accuracy and consistency
- Keep it simple



General Tips for CBA Compliance

Avoid defining factors using terms identified by the parties during bargaining but not memorialized in the CBA.

**Common
Error**

Noncompliant Definition

“Academic needs means the importance of retaining particular teachers identified by the parties during bargaining.”

- This definition does not provide the level of clarity needed for teachers to know what is required to earn the increase.
- This 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.



Questions?

- Be proactive – ask questions to avoid noncompliance
- Ask questions@ieerb.in.gov

Thank You