



## **INDIANA EDUCATION EMPLOYMENT RELATIONS BOARD**

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### **Practitioner's Guide to Certification and/or Decertification of the Exclusive Representative**

The Indiana Education Employment Relations Board is a neutral agency that oversees relations between public school teachers and the schools they serve.

IEERB staff has compiled the following information on representation matters for **guidance only**. **IEERB cannot provide legal advice; nor does this guidance bind IEERB in any way.** This guidance is not intended to take the place of careful review of IC 20-29-5 and 560 IAC 2-2.1, or as a substitute for legal advice. The relevant statute and rules are provided on IEERB's website at <https://www.in.gov/ieerb/2410.htm>.

Questions about representation matters may be sent to [Questions@ieerb.in.gov](mailto:Questions@ieerb.in.gov). All documents to be filed in a proceeding before IEERB must be sent to [efile@ieerb.in.gov](mailto:efile@ieerb.in.gov).

All correspondence on pending proceedings filed with IEERB must be served on all other parties to the proceedings by simultaneously emailing a copy to other parties, unless the correspondence is confidential in nature (i.e. showing of interests).

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## **I. Introduction**

An exclusive representative is a school employee organization, commonly referred to as a union, which represents the bargaining unit during collective bargaining. A school employee organization has school employees as its members; and one of its primary purposes is representing school employees in dealing with their school employer. [Ind. Code § 20-29-2-14](#). The school employee organization must be certified by IEERB before it becomes the exclusive representative.

## **II. Employer Recognition of an Exclusive Representative**

A school employer may voluntarily recognize a new exclusive representative if there is no current exclusive representative or the current exclusive representative provides written notice to the school employer that it is voluntarily relinquishing its status as the exclusive representative. [560 IAC 2-2.1-6](#).

### **A. Majority of Employees**

A school employee organization seeking to be voluntarily recognized as the exclusive representative, must present the school employer and IEERB with reliable evidence that shows that a majority of employees in the bargaining unit want the school employee organization to be the exclusive representative. [560 IAC 2-2.1-6](#).

### **B. Notice**

After sufficient evidence is received by the school employer, the school employer must draft a notice of the intention to voluntarily recognize the school employee organization as the exclusive representative. The notice must include the following information:

- The school employer intends to voluntarily recognize an exclusive representative.
- The name of the exclusive representative.
- The description of the bargaining unit, including exclusions.
- That an objection to the proposed recognition of the exclusive representative may be made within 30 days of the first date of notice, by a school employee organization representing twenty percent (20%) or more of school employees in the bargaining unit or twenty percent (20%) or more of school employees.
- That an objection to the composition of a proposed unit may be made by an affected school employee within 30 days of the first date of notice.

The draft notice must be submitted to IEERB before it is given to school employees. The draft notice will be reviewed by IEERB staff and a final version will be provided to the parties. The school employer must then post the notice for thirty (30) calendar days in each of the buildings where the school employees in any unit principally work. [Ind. Code § 20-29-5-2](#).

### **C. Objections**

Objections to the proposed recognition of the exclusive representative must be made within 30 days of the first day of the posting of the public notice. Objections must be in writing and submitted to IEERB. If objections are received, the school employer or school employee organization may file a petition for recognition to move forward with the process for recognition via election. [560 IAC 2-2.1-6](#).

### **D. Recognition statement**

After the notice has been posted for 30 days, the school employer must provide a written statement of recognition to IEERB. [560 IAC 2-2.1-6](#). A sample statement of recognition may be found at: <https://www.in.gov/ieerb/2410.htm>.

### **E. Certification**

The statement of recognition will be reviewed by IEERB. If the school employer has complied with Ind. Code § 20-29-5-2 and 560 IAC 2-2.1-6, IEERB will certify the exclusive representative for the bargaining unit. The exclusive representative will become effective upon certification from IEERB. [560 IAC 2-2.1-6](#).

## **III. Petition for Representation**

If there is an objection to a voluntary recognition of the exclusive representative, a desire to remove (decertify) the exclusive representative or a desire to certify an exclusive representative, a Petition for Representation must be filed. When a Petition for Representation is filed, a Hearing Officer will be appointed to handle the case. The case is intended to be investigatory in nature, but despite that, a party may not initiate in *ex parte* communication with the Hearing Officer, unless specifically permitted by statute or administrative rule.

### **A. Persons or Entities that May File a Petition**

A petition can be filed by a school employer, a school employee organization that is not the exclusive representative or any group of 20% or more of the school employees in the bargaining unit.

### **B. Contents of the Petition**

According to [560 IAC 2-2.1-7\(d\)](#), a petition must contain the following information:

- A description of the proposed bargaining unit, including exceptions, if a bargaining unit composition or amendment is sought.
- Number of employees in the alleged appropriate unit.

- Any other known school employee organizations representing employees in the corporation.
- If decertification or a change in exclusive representative is sought, a statement asserting that the exclusive representative is no longer believed to represent a majority of school employees.
- Where appropriate, a concise statement of any known disputes concerning the conduct of an election.
- Whether a request for recognition by the school employer was made and if applicable, the date such request was made and declined by the school employer.
- Any other necessary information.

A sample petition may be found at: <https://www.in.gov/ieerb/2410.htm>.

### **C. Time to File the Petition**

A petition can only be filed from January 15 to February 15 or from July 1 to July 30 of the calendar year of the expiration of the collective bargaining agreement. A petition cannot be filed until after 22 months from the most recent election to certify the exclusive representative. 560 IAC 2-2.1-7. If the Petition is not filed within the appropriate time frame, the Hearing Officer may dismiss the Petition.

### **D. Notice of the Petition**

After the Petition is filed, the school employer must provide notice of the Petition to all members of the bargaining unit. The notice must be approved by IEERB and must contain the following information, pursuant to [560 IAC 2-2.1-8](#):

- A petition for representation has been filed.
- The name of the exclusive representative.
- The description of the bargaining unit, including exclusions.
- That an objection may be made by an affected school employee within thirty (30) days of the first date of notice.

### **E. Equal Access**

After a Petition for Representation has been filed, all of the parties must be allowed to have equal access to the teachers. This equal access extends from the beginning of the filing of the Petition through the conclusion of the elections. This could include equal access to mailboxes, bulletin boards and lounges during the representation case. [560 IAC 2-2.1-7](#).

### **F. Valid Question of Representation**

The Hearing Officer will determine whether a valid question concerning the representation of the school employees exists. To do this, the Hearing Officer will review, *in camera* (in private), the showing of interest or statement of good faith doubt. [560 IAC 2-2.1-10](#). If there is not a valid

question of representation, the Hearing Officer may dismiss the Petition. 560 IAC 2-2.2-10.

### 1. Showing of Interest Requirements

If a school employee organization or group of 20% school employees is the petitioner, it must provide IEERB with a written showing of interest. The showing of interest may accompany the Petition or may be provided shortly after the Petition is filed by the deadline set by the Hearing Officer. The individual showing of interest can only come from school employees in the appropriate bargaining unit. Each individual showing of interest must:

- be in writing;
- be signed;
- be dated;
- indicate that the school employee wishes to be represented for the purposes of collective bargaining by the specific school employee organization or no school employee organization;
- if there is a current exclusive representative, indicate that the school employee requests that the designated exclusive representative be decertified because it is no longer the representative of the majority of school employees in the unit;
- demonstrate at least twenty percent (20%) representation of school employees in the unit;
- include written notice that the school employee has the right to revoke his or her signature by contacting IEERB and that this showing of interest is deemed revoked if the school employee signs a different showing of interest at a later date; and
- include current contact information of IEERB.

Any showing of interest that does not include the information mentioned above will be considered invalid and not counted by IEERB. [560 IAC 2-2.1-10](#). The showing of interest is confidential and can only be provided to IEERB and the Hearing Officer. A sample showing of interest may be found at: <https://www.in.gov/ieerb/2410.htm>.

### 2. Rebutting the Showing of Interest

The current exclusive representative may rebut the showing of interest by demonstrating that more than 80% of the school employees in the bargaining unit desire the current exclusive representative to remain as the school employee organization that represents the school employees during collective bargaining. The exclusive representative must include the same requirements necessary for a showing of interest. [560 IAC 2-2.1-10](#).

### 3. Statement of Good Faith Doubt Requirements

If the school employer is the Petitioner, it must provide IEERB with a written statement of good faith doubt that the exclusive representative represents a majority of school employees. The statement of good faith doubt may accompany the Petition or may be provided shortly after the

Petition is filed by the deadline date set by the appointed Hearing Officer. It will be the expectation that the statement of good faith doubt is available to the school employer at the time of the filing of the Petition. The good faith doubt must be proven by the school employer by preponderance of the evidence. [560 IAC 2-2.1-10](#).

#### 4. Rebutting the Statement of Good Faith Doubt.

The exclusive representative can rebut the school employer's good faith doubt by providing documentation that meets the requirement of a [showing of interest](#), which shows that greater than 50% of school employees in the bargaining unit wish to have the current exclusive representative remain as the school employee organization that represents the school employees during collective bargaining. [560 IAC 2-2.1-10](#).

### G. Hearing

If the Hearing Officer has determined that the Petition was timely filed and there is reasonable cause to believe that a question of representation exists, a hearing will be scheduled. The hearing must be scheduled within thirty (30) days from the date of the Hearing Officer's determination that there is reasonable cause to believe that a question of representation exists. The Hearing Officer will hold a hearing and allow the parties to submit evidence and briefs on the issue. The parties can agree to not have a hearing and allow the Hearing Officer to make a determination based upon the submission of written evidence. The parties may also agree that a question of representation exists, in which case the Hearing Officer will order that an election be held. If the parties do not agree, the Hearing Officer will review the evidence and make a determination as to whether a question of representation exists and whether an election needs to be held. When a determination that a showing of interest or good faith doubt has been made, a presumption arises that a question of representation exists, requiring an election to be held. [560 IAC 2-2.1-11](#).

### H. Elections

The elections will be conducted and supervised by the Hearing Officer and any agents of IEERB, if necessary.

#### 1. Eligible Voters

Ten (10) days prior to the election, the school employer must submit a certified list of all eligible voters for the election to the Hearing Officer and the school employee organization(s). Eligible voters are ones that are in the bargaining unit and were employed during the payroll period immediately prior to the election. [560 IAC 2-2.1-14](#).

#### 2. Notice of Elections

The Hearing Officer will issue an election order that advises the parties of the appropriate dates,

time(s), voting period, place(s), voting method, a sample ballot and procedures for conducting the election. [560 2-2.1-15](#). The Hearing Officer will send a notice of elections to the school employer and will tell the school employer how notice shall be given to the eligible voters. The notice of the election must be provided to the eligible employees no later than five (5) days before the election. [560 IAC 2-2.1-13](#).

### 3. Voting

The Hearing Officer will determine the mechanism of voting, which may include ballots in the following form: mail, in person paper, in person electronic, email, internet or telephone. All voting will be by secret ballot of eligible employees. [560 IAC 2-2.1-15](#).

### 4. Voting Results

The Hearing Officer will tally the votes. If the tabulation includes a physical tally of votes, an observer for each party may be present. The Hearing Officer will then provide a tally of the votes to each party. [560 IAC 2-2.1-16](#). If no option receives more than 50% of all eligible (not actual) voters, a runoff election will be conducted using the top two (2) voted selections. The runoff election will be held using the same procedures used for the original election. [560 IAC 2-2.1-17](#).

#### I. Challenges to the Election

A party can file a challenge to the conduct of or interference with the election within five (5) days of the discovery of the conduct or initial tally of the ballots, whichever occurs first. The challenge must come in the form of a signed, written petition that states the basis for the challenge with supporting facts. The challenge must be filed with IEERB at [efile@ieerb.in.gov](mailto:efile@ieerb.in.gov) and sent electronically to the opposing parties. An opposing party may file a response to the challenge within five (5) days of receipt of the challenge.

The Hearing Officer will review the petition and response and issue a recommended determination that either sets aside the election and directs a new election or dismisses the challenge and certifies the election. If the Hearing Officer's conduct is the basis of the petition, a new Hearing Officer will be appointed. The Hearing Officer's recommended determination can be appealed to the board within five (5) days of service. [560 IAC 2-2.1-18](#).

#### J. Certification

At the conclusion of the election, the Hearing Officer will issue a recommended certification of the results of the election. [560 IAC 2-2.1-19](#). If there is no appeal to the board, the executive director will issue a final certification of the election on behalf of the board.

## IV. Frequently Asked Questions about Exclusive Representation

**A. What is required to be considered a school employee organization?**

A school employee organization has to be an actual organization with officers and governing documents. It can't be an informal grouping of employees. The school employee organization has school employees as members and one of its primary purposes is to represent school employees when interacting with the school employer.

**B. Can I file a Petition for Representation at any time?**

No, a petition for representation may only be filed between January 14 and February 16; or after June 30 and before July 31 of the calendar year of the expiration of the collective bargaining agreement.

**C. Does a Petition for Representation need to be filed if the Exclusive Representative changes its name or affiliation?**

No. A change to the name or affiliation of the exclusive representative does not normally require a petition, however, the parties must notify IEERB of the change.

**D. Are there specific items that need to be in my Petition for Representation?**

Yes, the Petition must include the following information:

- A description of the proposed bargaining unit, including exceptions, if a bargaining unit composition or amendment is sought.
- Number of employees in the alleged appropriate unit.
- Any other known school employee organizations representing employees in the corporation.
- If decertification or a change in exclusive representative is sought, a statement asserting that the exclusive representative is no longer believed to represent a majority of school employees.
- Where appropriate, a concise statement of any known disputes concerning the conduct of an election.
- Whether a request for recognition by the school employer was made and if applicable, the date such request was made and declined by the school employer.
- Any other necessary information.

**E. Can I use a list of employees and their signature for my Showing of Interest?**

If list of employees and signatures clearly indicate that all of the requirements for a showing of interested are made, the list may be sufficient. Best practice, however, is to have an individually signed document. A showing of interest is often referred to as a "card" individually signed by the school employee. A sample showing of interest card can be found at <https://www.in.gov/ieerb/2410.htm>.

**F. What is a Good Faith Doubt?**

The school employer's good faith doubt must show, by a preponderance of evidence, that the exclusive representative no longer represents more than 50% of the school employees. Rumors, without facts to back them up, will not equate to evidence established by a preponderance of the evidence. The facts need to show that the school employees in the bargaining unit no longer want to be represented by the exclusive representative.

**G. Do I have to file the Showing of Interest or Good Faith Doubt when I file the Petition for Representation?**

No, neither have to be filed with the Petition but it can be filed with the Petition, if available. The showing of interest or good faith doubt will need to be filed by the deadline that is established by the Hearing Officer assigned to the case.

**H. Can a Showing of Interest or Good Faith Doubt be rebutted?**

Yes. To rebut an alleged showing of interest, an exclusive representative must provide evidence that it represents greater than 80% of school employees in the unit complying with the same documentation requirements for a showing of interest. To rebut an alleged good faith doubt, an exclusive representative must provide evidence that it represents greater than 50% of school employees in the unit.

**I. If there is an election, will the school employer or school employee organization know how I voted?**

No, voting is conducted by secret ballot. IEERB will determine eligible voters as well as election procedures in accordance with its rules insert rule citation. The ballot choices will include the exclusive representative, any school employee organization with a showing of interest, and an option for no representation. The appointed Hearing Officer and IEERB agents will count the ballots and provide the results to the school employer and school employee organization?

**J. What is required to win an election?**

A new exclusive representative cannot be certified unless it receives a majority of eligible (not actual) votes.