



2023 MOU Overview

Jake May

IEERB General Counsel

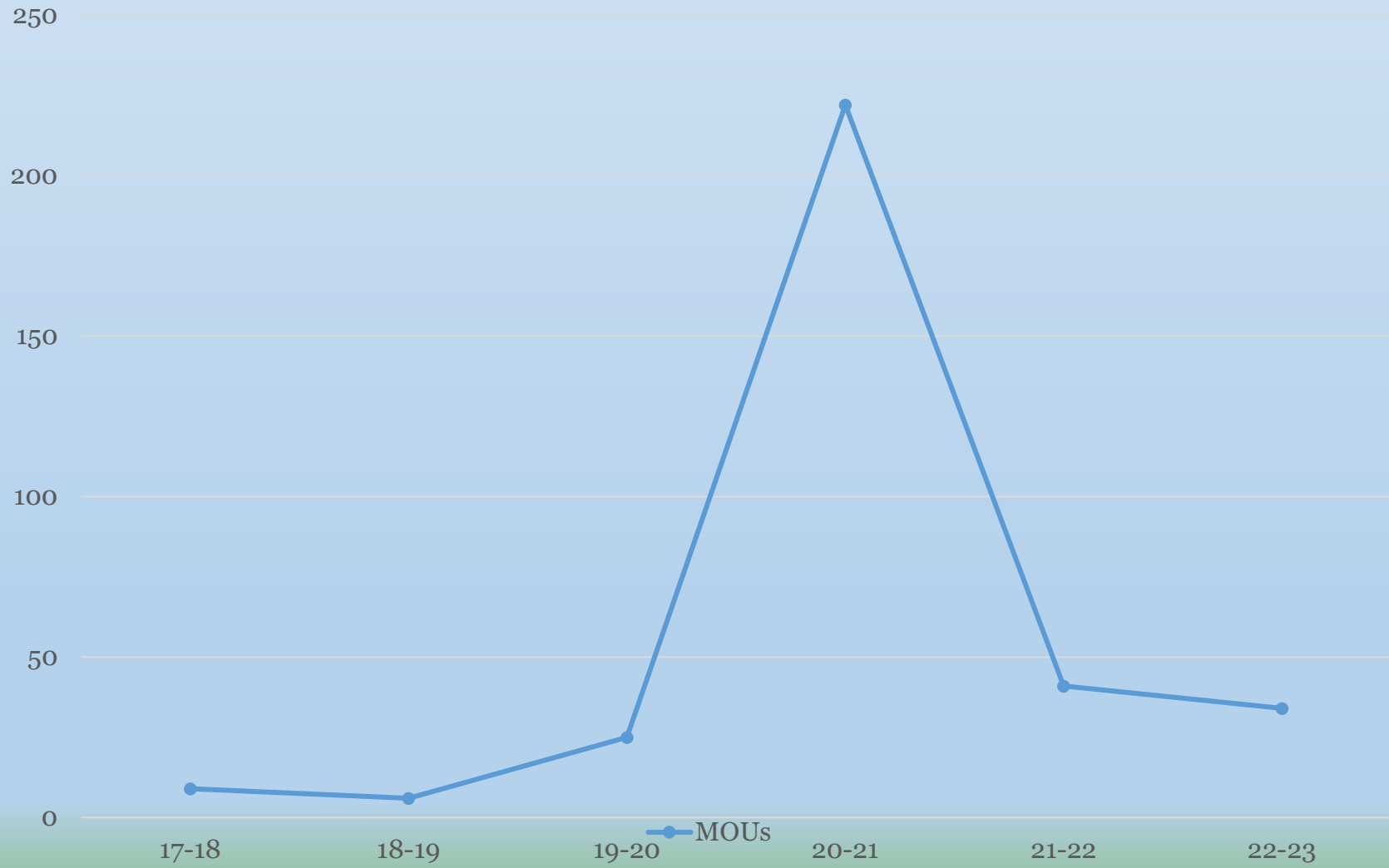


What is an MOU?

- “Memorandum of Understanding”
- Term of Art
- Defined in [560 IAC 2-1-2\(14\)](#)
 - any agreement ratified by both the school employer and exclusive representative that changes or modifies the terms of the CBA



MOU Submissions by School Year





When do you need an MOU?

- Any time the parties bargain a deviation from, or supplement to the terms agreed upon in the CBA, it must be memorialized in an MOU
- So, whether you need an MOU depends on whether the CBA already contemplates what you're trying to achieve
 - Examples: Grant based stipends, virtual instruction wages, employer health insurance contributions



When do you need an MOU?

- Example: 2020 Health Insurance “Premium Holiday”
- CBA Health Insurance Terms:
 - #1: The school employer will pay \$x toward family health ins. premium
 - #2: The school employer will pay x% of family health ins. premium
- Who gets the benefit of the “Premium Holiday”?
 - Under #1, the teachers get the benefit of the premium reduction
 - Under #2, the school employer and teachers share the benefit
- But what if it was an unexpected premium increase instead?



When is an MOU allowed?

- During the formal bargaining period (September 15 – November 15)
- Outside the formal bargaining period, in either of the following circumstances (560 IAC 2-8-4(d)):
 - Newly discovered information / unanticipated event not known at CBA ratification; or
 - IEERB issued [nonrule policy guidance](#) re: unanticipated circumstances impacting multiple parties



What is the scope of an MOU?

- Just like the CBA it modifies, an MOU's scope is limited to bargainable subjects:
 - Salary
 - Wages
 - Salary and Wage related fringe benefits



How should you draft your MOU?

- Describe amendment of CBA provisions
 - Useful with simple changes to specified amounts or percentages
- Supplement CBA provisions
 - Useful with stand-alone additions to CBA terms
- Restate CBA provisions as amended
 - Useful with complex revisions to specified CBA terms
 - aka Supersede and Replace



MOU Compliance

- **Timing:** During formal bargaining or subject to exception
- **MOU Terms:** Same compliance requirements applicable to CBAs
- **Pre-approval** is available upon request by emailing draft and written explanation to compliance@ieerb.in.gov
 - Remember to copy other party on your email request
 - Include desired turnaround time
 - Leave yourself some time for changes
- **Compliance findings/comments** are issued in subsequent CRR or in Addendum if CRR already issued



MOU Submission

- Must be signed (ratified) by a representative of each party
 - Union President
 - School Board Member(s)
- Ratification dates required
- If outside formal bargaining period, parties must draft written statement of why MOU is needed, and how it meets one of the exceptions



MOU Submission (continued)

- Gateway upload
 - MOU and written statement must be uploaded through MOU module
 - No longer attached to CBA and reuploaded
- Submission must occur within 10 business days of ratification
 - See 560 IAC 2-8-4(b) re: prior approval penalty for failure to submit
- MOU must be posted on corp. website within 14 business days of ratification
 - Put it in the same place the CBA is published
- Submissions emailed to ratifiedcontracts@ieerb.in.gov will still be accepted
 - BUT school employer will need to follow up with Gateway upload
- Review subsequent Compliance Report or Addendum for any issues



Why should MOUs be avoided?

- Remember that all bargaining should occur during the formal bargaining period
 - Exceptions should be rare
- MOUs can be time intensive and require action of governing body
- Risk of noncompliance
- Can lead to complacency during formal bargaining



How can MOUs be avoided?

- Anticipate future needs
- Consider the status quo period
- Build flexibility into CBA provisions
 - Catch-all terms
 - Conditional terms
- Incorporate continuing MOU terms into body of subsequent CBA
 - MOU expires along with the CBA it modifies



Additional MOU Guidance

- Review the [MOU Quick Reference Guide](#) at in.gov/ieerb
- Review the [2023 CBA Compliance Rubric](#)
- Email questions@ieerb.in.gov and request technical assistance
- Email compliance@ieerb.in.gov (copy bargaining counterpart) and request pre-approval of a tentative MOU