



INDIANA EDUCATION EMPLOYMENT RELATIONS BOARD

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IEERB 2020 CBA COMPLIANCE RUBRIC

Introduction

IEERB is responsible for conducting compliance reviews of teacher collective bargaining agreements (CBA) and determining the penalty for any noncompliance. Pursuant to 560 IAC 2-8-1, the Board is required to develop a compliance rubric that must be reviewed and updated annually.

Using the Rubric

The Rubric is designed to assist parties in developing a compliant CBA. There were no statutory changes impacting the 2020 Rubric, but some revisions have been made for clarity. The Rubric also includes explanations, tips, and examples of compliant and noncompliant provisions, as well as sections on MOUs and penalties for noncompliance. Substantive changes or additions are noted in **red text**.

Each section of the Rubric explains a required or permitted item, subject, or provision. Because compensation plans are frequently the basis for findings of noncompliance, the Board encourages the parties to pay particular attention to the *Compensation Plan* section that begins on page 4. This section provides numerous examples and tips for ensuring a compliant compensation plan. The section on *Impermissible Items, Provisions, and Subjects* provides examples of noncompliance from previous compliance reports to assist parties in avoiding common issues of noncompliance.

The Board strongly encourages the parties to utilize the Rubric, as well as their most recent Compliance Report, to ensure that their 2020 CBA is compliant. Unfortunately, time and staffing constraints prevent IEERB staff from being able to provide an informal review of an entire tentative agreement or proposed CBA (except for those CBAs for which pre-compliance review was recommended and those that are subject to the prior approval penalty from the previous year).

There are additional resources on IEERB's website (www.in.gov/ieerb), including all applicable statutes and rules, as well as the IEERB Guide to CBA Compliance and a compliance checklist. Parties may wish to have a third party read and review their tentative agreement or proposed CBA, prior to ratification, to ensure that the terms of the CBA and compensation plan are clear and easy to understand.

2020 COMPLIANCE RUBRIC

REQUIRED PROVISIONS

All of these items must be included in the CBA and must comply with the requirements.

Required item	Description – Examples ¹ – Tips
Parties to the collective bargaining agreement (CBA)	<ul style="list-style-type: none"> • The names of the school employer and exclusive representative must be identified in the CBA.
Bargaining unit description is included and matches most recent IEERB order on unit composition	<ul style="list-style-type: none"> • The CBA’s description of the bargaining unit must match the description in the “Order Affirming Bargaining Unit” issued by IEERB in June 2016, unless the parties have complied with 560 IAC 2-2.1 to successfully amend the unit. • To be effective for the current CBA, IEERB must issue an order affirming any changes to the bargaining unit prior to ratification of the CBA. For more information on the effective date of a unit change, see 560 IAC 2-2.1. • Parties may only bargain terms for members of the bargaining unit described in the IEERB order. IEERB interprets terms in the order using their plain meaning, unless otherwise defined. For example, if the parties interpret the term “full-time” to include teachers assigned to less than 1.0 FTE positions, the unit description must reflect the parties’ interpretation prior to bargaining for those teachers. <p>TIP: Compare the unit description in your CBA to the IEERB order in effect on the date of ratification to ensure that the descriptions match. The most recent IEERB orders on bargaining units can be found on IEERB Search: (https://ieerbsearch.ieerb.in.gov).</p> <p>TIP: The Board encourages parties to review IEERB guidance documents and contact IEERB prior to making a change. (See “Representation” section on IEERB’s website at www.in.gov/ieerb/2410.htm.)</p>
Term of the CBA cannot extend beyond the state biennium	<ul style="list-style-type: none"> • The CBA must include specific beginning and ending dates. Although the beginning and ending dates may be included on the cover page, the Board recommends that they be included as a term within the CBA. • The ending date cannot extend beyond June 30, 2021. <p>Examples</p> <ul style="list-style-type: none"> ▪ Compliant <ul style="list-style-type: none"> ○ The term of the CBA is from September 15, 2020 to June 30, 2021. ○ This Agreement is effective from July 1, 2019 through June 30, 2021. ▪ Not Compliant <ul style="list-style-type: none"> ○ The CBA is effective for the 2019-20 and 2020-21 school years. ○ The term of the CBA is from September 15, 2019 to July 31, 2021.
Ratified and signed by the parties on or after September 15	<ul style="list-style-type: none"> • The CBA must be ratified on or after <u>September 15</u>. • The “ratification date” and the “effective date” of a CBA have different meanings, even if both occur on the same day. Ratification refers to the date the CBA is voted upon (ratified) by the governing body. The effective date is the date on which the CBA terms become applicable to the parties. A 2020-

¹ The examples included throughout this document are illustrative only and are intended to promote a better understanding of the particular requirement.

21 CBA can be effective July 1, 2020 but can't be ratified until September 15, 2020, or after.

- Your CBA may include terms that are **effective** prior to ratification, but terms describing a period prior to the date the CBA is effective create confusion and may be noncompliant.
- The CBA must include the date the CBA was ratified, and at least one agent of each party must sign the CBA. Although the ratification date may be included on the cover page, the Board recommends that the ratification date be included in the CBA.

Examples

- The CBA was ratified by both parties on September 20, 2019.
Signed: John Smith Signed: Alice Jones
- Signed: John Smith Date: 09/20/19
Signed: Alice Jones Date: 09/18/19

TIP: Sign and date the CBA at the time of ratification.

TIP: If you've left a blank on the signature page to write-in the day of the month the CBA was ratified, don't forget to complete it.

PERMISSIBLE PROVISIONS

These items may be included in the CBA, and if included, the item must comply with the requirements.

Permissible item	Description – Examples – Tips
Grievance procedure	<ul style="list-style-type: none"> • If arbitration is part of the grievance procedure, CBA must state whether it is advisory or binding arbitration. • If it is binding arbitration, the procedure must be limited to grievances about alleged violations of provisions within the scope of bargaining. It cannot include grievances for alleged violations of school board policy or other laws. • If it is advisory arbitration, grievances may include alleged violations of board policy, etc.
General definitions of CBA terms	<ul style="list-style-type: none"> • Definitions of general terms that apply throughout the CBA. <p>Examples</p> <ul style="list-style-type: none"> ▪ Days means calendar days unless otherwise specified. ▪ Teacher, when used in this contract, means each and every member of the bargaining unit as described.
Contract interpretation provisions	<p>Examples</p> <ul style="list-style-type: none"> ▪ Supremacy clause: This contract supersedes and cancels all previous agreements whether verbal or written between the school corporation and the association. ▪ Severability or Savings clause: If any article or section of this contract shall be held invalid by operation of law or by any tribunal of competent jurisdiction, the remainder of this contract shall not be affected.

REQUIRED SUBJECTS

The parties are required to bargain salary, wages, and salary and wage related fringe benefits. All agreements on these subjects must be included in the CBA. All bargainable increases to base salary must be included in a compensation plan that complies with Indiana Code § 20-28-9-1.5.

COMPENSATION PLAN	
Required Item	Description – Examples – Tips
<p>SALARY RANGE</p> <p>Must include salary range statement</p>	<ul style="list-style-type: none"> • The compensation plan must include a clear statement of the salary range of the lowest and highest annual salaries of all returning full-time bargaining unit members. • The lack of the required salary range statement will result in a finding of noncompliance, even if the salary range can be determined by reviewing other sections of the CBA (e.g., reviewing a salary schedule). • The required salary range statement: <ul style="list-style-type: none"> ▪ must reflect the annual salaries being paid to returning teachers at the beginning of the school year, before the contract increases (if applicable) take effect, and ▪ cannot include any increases or ISTRF contributions for the current contract period. • Parties may include other salary ranges in the compensation plan – e.g., salary range after increases, salary ranges including ISTRF contributions – but at a minimum must include the required salary range statement. <p>Example</p> <p>At the beginning of the 2020-21 school year, the salaries of returning full-time teachers were between \$35,000 and \$70,000.</p> <p>Under the compensation plan teachers will each get a \$1,500 salary increase.</p> <p>After the increase is awarded, full-time teachers will be making \$36,500 to \$71,500.</p> <ul style="list-style-type: none"> ▪ Required salary range statement: The salary range is \$35,000 to \$70,000. ▪ Optional additional salary range statements: <ul style="list-style-type: none"> ○ The salary range after increases are awarded will be from \$36,500 to \$71,500. ○ The salary range for teachers with a Bachelor’s degree is from \$35,000 to \$50,000. The range for teachers with a Master’s degree is from \$39,000 to \$70,000. ○ The salary range, including the school’s contribution to ISTRF is \$36,050 to \$72,100. <p>TIP: Avoid phrases like “will be” and “shall be” in the required salary range statement. These phrases indicate that the stated salary range “will be” as specified at some point, but may be something different currently.</p>
<p>STATEMENT IF NO SALARY INCREASE</p>	<ul style="list-style-type: none"> • If the parties bargain that there will be no base salary increase for the current contract period, the CBA must include a clear statement to that effect.

<p>Must include a statement if no increases are bargained</p>	<ul style="list-style-type: none"> • Failing to include a statement when the parties bargain no base salary increase will result in a finding of noncompliance. • Simply stating that teachers will receive a stipend is insufficient. The CBA must clearly state that there is no base salary increase. <p>Examples</p> <ul style="list-style-type: none"> ▪ For 2020-21, the parties have bargained that there will be no base salary increase. ▪ The amount of money allocated for base salary increases under the compensation plan for 2020-21 is \$0. ▪ All funds allocated to the compensation plan for 2020-21 will be paid as stipends and no base salary increases will be awarded. <p>NOTE: If the parties bargain that there are no base salary increases, but include a compensation plan, the compliance officer may review the plan. However, no findings of noncompliance will be made. The compliance officer may note any issues of noncompliance in the General Comments section.</p>
<p>ELIGIBILITY STATEMENT</p> <p>Must include a clear statement of eligibility for a salary increase</p>	<ul style="list-style-type: none"> • The compensation plan must include a statement – a description – of the criteria for salary increase eligibility. • Failing to include a statement of eligibility will result in a finding of noncompliance. Eligibility criteria will not be inferred from compensation plan factors or the factor definitions. • The statement of eligibility: <ul style="list-style-type: none"> ▪ must clearly state that teachers rated ineffective or improvement necessary in the prior school year are not eligible for any salary increase in the current year; ▪ should make it clear that teachers rated ineffective or improvement necessary in the prior year remain at their prior year salary, are not placed on to a new salary schedule, and do not advance on the current salary schedule; ▪ may include other eligibility criteria bargained by the parties; and ▪ must be stated separately from statements identifying and/or defining the compensation plan factors. • If the parties agree that teachers in their first two years of instructing students are exempt from the evaluation eligibility requirement, they must include a statement to that effect in the compensation plan. <ul style="list-style-type: none"> ▪ When bargained, this serves as an exception to the statutory evaluation rating eligibility requirement only, and not as a way to satisfy the evaluation rating factor, when used, unless that factor is so defined. • If exempting teachers as described above, parties should be sure that they use language that is consistent with the statutory requirement – e.g., use “teachers in their first two full school years of instructing students” not “teachers who have taught at the school for one or two years.” See Indiana Code § 20-28-9-1.5(e),(f).

TIP: If your CBA uses the statutory citation to refer to the eligibility exemption for new teachers, remember that the exemption was moved to Indiana Code § 20-28-9-1.5(f) in 2018.

Examples

- Teachers rated ineffective or improvement necessary in the prior school year are not eligible for any salary increase in the current year and remain at their prior year salary.
- Teachers rated ineffective or improvement necessary in the prior school year are not eligible for a salary increase and remain at their prior year salary. However, teachers **in their first two full years of instructing students** are exempt from the evaluation rating eligibility requirement and are eligible for a salary increase regardless of their evaluation rating in the prior school year.
- Only teachers rated highly effective or effective in the prior school year are eligible for a salary increase in the current year. Teachers not rated, or rated ineffective or improvement necessary remain at their prior year salary.
- To be eligible for a salary increase in the current year, a teacher:
 - must not have been rated ineffective or improvement necessary in the prior school year, and
 - must have been employed by the corporation for at least 120 days in the prior school year.

Eligibility versus Factors

- **Eligibility** criteria are not the same thing as the factors on which a salary increase is based. Although they may be similar, eligibility criteria are threshold criteria – that is, the criteria **all** teachers must satisfy in order to be considered for a salary increase.

Because **eligibility** criteria determine which teachers enter the compensation plan and not what salary increase the teacher receives, eligibility criteria **cannot** apply to only some of the teachers. Eligibility criteria must be the same for **all teachers**.

- **Factors** are the requirements that a teacher must satisfy in order to actually receive the salary increase. It is possible for a teacher to be eligible for a salary increase, but not satisfy the factors to actually receive the increase.
- Parties may define eligibility criteria and factors the same way, but each must be clearly and separately identified **and defined** in the compensation plan.
- Using evaluation rating and experience as eligibility criteria does not mean that evaluation and experience must also be used as factors.

TIP: Avoid using eligibility language in the definitions of your salary increase factors (e.g., To be eligible for an increase for the experience factor, a teacher must have been employed by the corporation for at least 120 days in the prior school year). Such language can cause confusion regarding what is intended to be an eligibility criterion and what is intended to be a salary increase factor.

	<p>Examples</p> <p><u>Eligibility Statement:</u> A teacher who did not receive a highly effective or effective evaluation rating in the prior school year is not eligible for a salary increase in the current year and remains at their prior year salary. A teacher must also have been employed by the corporation for at least 120 days in the prior school year.</p> <p><u>Factors for salary increase:</u> Evaluation: A teacher who received an evaluation rating of highly effective or effective in the prior school year will receive a \$1,000 salary increase. Experience: A teacher who satisfies the INPRS requirement for a year of experience in the prior school year will receive a \$500 salary increase.</p> <p><u>Eligibility Statement:</u> A teacher who did not receive a highly effective or effective evaluation rating in the prior school year is not eligible for a salary increase in the current year and remains at their prior year salary. A teacher must also have been employed by the corporation for at least 120 days in the prior school year.</p> <p><u>Factors for salary increase:</u> Evaluation: A teacher who received an evaluation rating of highly effective or effective in the prior school year will receive a \$1,000 salary increase. Possession of a content area Master’s degree: A teacher who has a content area Master’s degree (as defined by IDOE) will receive a \$500 salary increase.</p> <p>NOTE: If the parties use a factor but provide \$0 base salary increase for the factor, it will be treated as an eligibility criterion UNLESS the \$0 amount is part of a differentiated salary increase.</p>
<p>SALARY INCREASE Salary increase must be for the current contract period</p>	<ul style="list-style-type: none"> • If parties have bargained a salary increase, the compensation plan must limit the salary increases to the current contract term. • Increases effective at a date after the current contract expires should not be included in the current contract, but should be included in the appropriate future contract. <p>TIP: If the salary increase is not retroactive to the beginning of the school year, the Board recommends that parties include the date that the increase becomes effective – e.g., The salary increase goes into effect on January 1, 2020.</p>
<p>SALARY INCREASE Method for determining salary increase must be described</p>	<ul style="list-style-type: none"> • All bargainable salary increases must be included in the compensation plan. <ul style="list-style-type: none"> ▪ Increases provided to teachers on or returning from extended leave must also be included in the compensation plan and must satisfy the requirements of IC 20-28-9-1.5, unless such increases are otherwise required by law (e.g. certain teachers who return from military service and are entitled to pay increases they would have earned but for the absence).

- Increases described in other sections of the CBA, but not in the Compensation Plan, will result in a finding of noncompliance.
- The plan must describe either the amount of the salary increase or the method by which the increase will be calculated.
- Increases resulting from transitioning to a new salary schedule must be clearly described in the compensation plan. Such increases will no longer be inferred from the new salary schedule.
 - Failing to describe an increase resulting from the transition to a new salary schedule is likely to result in findings of noncompliance for an increase outside of the compensation plan and an increase not based on the statutory factors.
 - Additionally, because such increases are not described, the compliance officer is not able to confirm that they comply with the 50% cap on increases for education and experience.

NOTE: Adjustments to the initial salary of new teachers who were hired prior to the formal bargaining period of the current contract term are NOT considered salary increases and do not need to conform to the requirements of IC 20-28-9-1.5. Rather, such adjustments are viewed simply as the implementation of the subsequently bargained terms governing new hire salaries. (See the New Hire Salaries section below for more information on bargaining initial salaries.)

Examples

- Teachers will receive a \$500 increase to their base salary for satisfying each of the two factors.
 - Teachers will receive a 2% increase to their base salary for satisfying each of the two factors.
 - The amount of increase will be determined by the number of points the teacher earns multiplied by \$300.
 - Teachers who satisfy the evaluation factor will transition to the 2020-21 salary schedule in the same row and column, receiving a \$500 increase.
 - \$100,000 will be divided by the total number of teacher points earned by eligible teachers. The resulting dollar value per point will be multiplied by the number of points the teacher earned.
 - Teachers who satisfy the evaluation factor will advance a row in their current column. Teachers who satisfy both the evaluation and education factors will advance one column to the right, but remain in their current row.
- The parties may bargain that the Superintendent has the discretion to award salary increases to one or more teachers, regardless of whether the teacher is a new hire or a returning teacher, but the increase must be:
 - based on the Academic Needs factor;
 - limited to bargained parameters or ranges (e.g., a set amount, a range of amounts, within the salary range, etc.); and
 - awarded during the term of the CBA.

Examples

	<ul style="list-style-type: none"> • Compliant: The Superintendent shall have the discretion to increase an eligible teacher’s salary by an additional \$1,000 for meeting academic needs of students. Meeting academic needs of students is defined as the need to retain teachers important to the corporation. • Not compliant: The Superintendent shall have the discretion to increase an eligible teacher’s salary by \$1,000. (This is not compliant because the discretionary increase is not based on the Academic Needs factor.) • Not compliant: The Superintendent shall have the discretion to increase an eligible teacher’s salary based on the academic needs factor. (This is not compliant because there are no limits or ranges for the amount of the salary increase the superintendent can award.) <p>See the “Salary Increase Differential” section of the Rubric for more guidance on differentiated salary increases and the “New Hire Salaries” section for guidance on superintendent discretion in determining new hire salaries.</p> <p>TIP: Watch out for “mixing” methods for calculating a salary increase as it creates an increased possibility of noncompliance. (e.g., don’t use a percentage for one factor + a flat amount for another factor or a flat amount for one factor + a pool divided by points for another factor.)</p> <ul style="list-style-type: none"> • If parties “mix” calculation methods, it is difficult (if not impossible) to determine that the compensation plan is compliant with the 50% requirement. If the compliance officer cannot determine that the plan is compliant, a finding of noncompliance will be issued. • NOTE that this applies only to how a salary increase is calculated, not the types of compensation. Parties may continue to give stipends in lieu of a salary increase to teachers whose salary is capped at the maximum. Parties may also continue to bargain stipends in addition to salary increases. <p>TIP: Clearly identify the Compensation Plan section in the CBA and make sure that all of the salary increases are described within that section.</p>
<p>COMBINATION OF FACTORS</p> <p>Must use a combination of statutory factors as basis for salary increase</p>	<ul style="list-style-type: none"> • Salary increases must be based on at least two of the following five factors: <ul style="list-style-type: none"> ▪ The number of years of a teacher’s experience ▪ Possession of an additional content area degree or credit hours beyond the requirements for employment. ▪ The results of an evaluation ▪ Assignment of instructional leadership roles ▪ Academic needs of students in the corporation • While the total possible salary increase under the compensation plan must be based on a combination of two or more factors, portions of the total possible increase can (and should) be attributed to individual factors. <p>Example</p> <p>The compensation plan provides for a total possible salary increase of up to \$1,000. Teachers who satisfy the evaluation factor receive \$500 and teachers who possess a content area Master’s degree receive \$500. (This is compliant because the compensation plan provides for up to \$1,000 based</p>

	<p>on a combination of evaluation and education factors, even though the individual \$500 increases are each attributed to a single factor.)</p> <ul style="list-style-type: none"> • If stipends are based on factors, the factors are not considered in the salary increase combination of factors requirement. <p>Example</p> <p>The compensation plan provides for both a salary increase and a stipend, using three factors: evaluation rating, a year of experience, and possession of a content area Master’s degree.</p> <ul style="list-style-type: none"> ▪ Compliant: The amounts for evaluation rating and possession of a content area Master’s degree are added to the base salary, and the amount for a year of experience is paid as a stipend. (This is compliant because the salary increase is based on at least two factors.) ▪ Not compliant: The amount for evaluation rating is added to the base salary, and the amounts for year of experience and possession of a Master’s degree are paid as a stipend. (This is not compliant because the salary increase is based on only one factor.) <p>TIP: Avoid using “education/experience” or “experience/degree” as a single factor on which a salary increase is based. If a compensation plan provides that the salary increase is based on “education/experience,” “experience/degree,” or something similar, the plan must define both of the factors and indicate how much each of the two factors contributes to the salary increase.</p>
<p>FACTOR DEFINITIONS</p> <p>Factors must be defined</p>	<ul style="list-style-type: none"> • The factors should be clearly defined so that teachers know what is required to satisfy the factor. • Increases attributed to a factor must be distributed in a manner consistent with the factor’s definition and not according to additional parameters beyond those required to satisfy the factor. • “Years of experience” (if used as a factor) must be defined with some measurable specificity (e.g., employed 120 days in a given school year; a year of service as defined by INPRS, etc.) • “Possession of an additional degree or credit hours” (if used as a factor) must be defined to show that the degree and/or credit hours are limited to content area and are in addition to what is required for employment. Content area is defined by the Indiana Department of Education (IDOE) and can be found on IEERB’s website at www.in.gov/ieerb/2411.htm. Only degrees meeting the IDOE definition of content area qualify and parties may not approve additional content areas that do not satisfy the IDOE definition. • “Assignment of instructional leadership roles” (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. • “Academic needs of students” (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 Indiana Code §20-28-9-1.5(c):

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

Examples

Compliant

- Year of experience is defined as having been employed by the school for at least 120 days in the prior school year.
- Eligible teachers will receive a \$1,000 increase to their base salary for possession of an eligible content area Master’s degree that is not otherwise required for employment. Eligible content areas mean any content area, as defined by IDOE, in which the teacher currently teaches or any other content area approved by the superintendent.
- Assignment of instruction leadership role means completing 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.
- Academic Needs is satisfied by any one of the following: (1) attaining National Board certification; (2) serving on a curriculum development committee; or (3) participating in at least three hours of professional development to improve student outcomes.
- Academic needs is defined as the need to retain teachers important to the corporation to ensure educational continuity.

Not compliant

- Year of experience means an additional year of teaching. (“Additional year” needs more specificity – e.g., does it require 180 days? 120 days? etc.)
- Eligible teachers will receive a \$1,000 increase to their base salaries for having a Master’s degree. (Salary increases for possession of a Master’s degree must be limited to content area (as defined by IDOE) Master’s degree only.)
- Eligible teachers will receive a \$1,000 increase to their base salaries for having a Master’s degree in a content area as defined by IDOE or another content area approved by the superintendent. (The superintendent does not have authority to define something as “content area” if it does not meet the IDOE definition.)
- Instructional leadership means engaging in activities in one of the five tiers of leadership. (Insufficient definition because it can’t be determined if it impacts the 50% restriction. If leadership factor is defined to include education or experience, it is considered in determining compliance with the 50% restriction.)

	Academic needs means meeting students' academic needs.
<p>50% LIMITATION</p> <p>Education (“possession of an additional content area degree or credit hours”) and experience cannot account for more than 50% of the increase, except where intended to “reduce the gap” or implement a teacher retention catch-up increase</p>	<ul style="list-style-type: none"> ▪ The 50% calculation is based on the total possible increase available under the compensation plan, not the actual increase for an individual teacher. ▪ The compensation plan must demonstrate that education and experience do not account for more than 50% of the increase unless the intent of the increase is to reduce the gap between the minimum salary and the average of the minimum and maximum salary (I.C. § 20-28-9-1.5(d)(1)) or to implement a teacher retention catch-up increase (I.C. § 20-28-9-1.5(d)(2)). (See the Salary Increase Differential section of the Rubric for additional guidance on a salary increase to reduce the gap and teacher retention catch-up increases.) ▪ If the parties use education and/or experience as factors without indicating how much each factor contributes to the salary increase, the factors will be equally weighted. For example, if the increase is based on evaluation rating, experience and education, but no percentage or weight is attached, each factor is considered to be 33.33% of the increase, and therefore not compliant because education and experience make up 66.67% of the increase (unless the education or experience are intended to reduce the gap or implement a teacher retention catch-up). ▪ The total amount of increase attributable to education and/or experience must be paid in the current contract year. The parties cannot bargain to defer any part of the increase to a future year as a means of complying with the 50% requirement in the current contract period. <p>Examples – Demonstrating compliance with 50%</p> <p><u>Compensation plan clearly demonstrates compliance</u></p> <p>Factors and amounts of increase</p> <ul style="list-style-type: none"> ▪ Evaluation of highly effective or effective = \$1,000 ▪ Experience = \$500 ▪ Possession of a content area Master’s degree = \$500 <p>The maximum available increase = \$2,000.</p> <p>Experience and education account for \$1,000 – or 50% - of the maximum increase available.</p> <p><u>Compensation plan demonstrates compliance</u></p> <p>Factors and amount of increase</p> <ul style="list-style-type: none"> ▪ Evaluation rating of highly effective or effective ▪ Experience ▪ Teachers who satisfy both factors will receive a \$1,000 increase. <p>The maximum increase = \$1,000.</p> <p>Because the factors are not weighted, the compliance officer assumes each factor contributes equally (50%) to the salary increase. Because there are no increases for education and experience does not exceed 50% of the total possible salary increase, it is compliant.</p>

Compensation plan fails to demonstrate compliance

Factors and amounts of increase

- Evaluation of highly effective or effective
- Experience
- Teachers who satisfy both evaluation and experience will receive a \$1,000 increase.
- Possession of a content area Master's degree = \$500

The maximum available increase = \$1,500.

Because experience and evaluation are not weighted, the compliance officer assumes each factor contributes equally (50%) to the \$1000 salary increase. The \$500 increase for experience and the \$500 increase for education, when combined, account for \$1000 – or 66.67% - of the \$1,500 maximum possible increase. Because experience and education account for greater than 50% of the increase, it is not compliant.

- If parties bargain a salary increase to **reduce the gap** or a teacher retention catch-up increase, the amount of the specific increase is included in the maximum available increase, but is exempt from being included in the calculation of the 50% cap.
- In order to have the benefit of the reduce-the-gap exemption, the gap between the minimum and average salary must actually be reduced. If the gap is not reduced, the salary increase must comply with the 50% requirement.
- In order to have the benefit of a teacher retention catch-up increase, the increase must adjust the salary of teachers currently employed by the school corporation **in comparison to the starting salaries of new teachers**. If the increase does not demonstrate that it is made in comparison to new teacher salaries, it must comply with the 50% requirement.
- Any salary increase outside the compensation plan that is based on education and/or experience will be included in the 50% calculation.
- Any salary increase not described in the CBA or not attributed to a factor will be included in the 50% calculation.
- If the definition of “instructional leadership” or “academic needs of students” includes experience and/or possession of an additional content area degree or credit hours as criteria within the factor or the manner for distributing factor increases, the factor will be included in the calculation of the 50%. **But Note** -- If the academic needs factor is: (1) defined as experience or possession of a content area degree or credit hours and (2) is used as the salary increase to reduce the gap or implement a teacher retention catch-up, the amount of salary increase for the academic needs factor is exempt from the 50% restriction as long as the requirements for those exceptions have been met (see Salary Increase Differential section below).

TIP: If the parties use, but fail to define, the academic needs or instructional leadership factors, the Compliance Officer may be unable to confirm compliance with the 50% cap because they can't tell if education and/or

	<p>experience are criteria in these factors. Not being able to confirm compliance with the requirement may result in a finding of noncompliance.</p> <p>TIP: If the compensation plan provides for both a salary increase and a stipend, only the factors used for the salary increase will be considered in the 50% calculation. The factors used as the basis for the stipend are not included in the calculation.</p>
<p>SALARY INCREASE DIFFERENTIAL</p> <p>Any differential in 2020-21 salary increases is based on one or more of the statutory factors and complies with Indiana Code § 20-28-9-1.5</p>	<p>NOTE REGARDING SALARY INCREASE DIFFERENTIALS: Due to the complexity in identifying and assessing the compliance of salary increase differentials and in recognition of the numerous methods by which they may permissibly be bargained, the Board has determined for the 2019-21 biennium that parties are presumed to have exercised good faith in complying with the statutory prohibition on noncompliant salary increase differentials.</p> <p><u>IEERB will NOT issue findings of noncompliance for impermissible salary increase differentials during this biennium, but will note such issues as General Comments where they are found.</u></p> <ul style="list-style-type: none"> • A salary increase differential occurs when teachers receive a different amount or percentage of increase for satisfying the same factor or sub-factor – that is, the dollar amount or percentage amount that one teacher receives is different than another teacher who satisfies the same factor or sub-factor. • If teachers receive the same amount of increase for a factor, there is no salary increase differential. If teachers receive different increase amounts for a factor, there is a salary increase differential. • A salary increase differential is permissible if all teachers who satisfy a compliant sub-factor receive the same amount of salary increase for the sub-factor. <p>Academic Needs (Indiana Code § 20-28-9-1.5(c))</p> <ul style="list-style-type: none"> • A salary increase differential, based on the Academic Needs factor, may be for: <ul style="list-style-type: none"> ○ A single teacher (e.g., AP Calculus teacher) ○ Multiple teachers (e.g., Chemistry, Physics, and Computer Science teachers), or ○ A categorical group of teachers (e.g., all STEM teachers). • Parties have additional flexibility in defining Academic Needs – see the Factor Definitions section of the Rubric for additional guidance on defining the factor. • Parties can continue to use Academic Needs as the basis of a salary increase differential for some or all teachers. <p>For an example of a salary increase differential based on Academic Needs, see Model Compensation Plans at www.in.gov/ieerb/2411.htm.</p> <p>Reducing the gap (Indiana Code § 20-28-9-1.5(d)(1))</p> <ul style="list-style-type: none"> • 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.

- 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.
- If the gap is not reduced, there is no exemption from the 50% requirement.
- The particular increase to reduce the gap must be clearly identified as such – e.g., “The salary increase for experience is to reduce the gap.”
- The salary range on which the “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. (NOTE: This should be the same as your required salary range statement.)
- If the salary range is incorrect, parties risk potential noncompliance if the compliance officer is unable to confirm that the salary increase reduces the gap as intended.
- The compensation plan must include sufficient information for the compliance officer to confirm that the gap has been reduced.
- The “average” and the “gap” can change each year because they are determined by the current year’s salary range for returning teachers.

How to reduce the gap

- The **average salary** is determined by adding the minimum and maximum salary in the salary range and dividing by two.
- The **gap** is the difference between the minimum and the average salary.
- To be compliant, the gap between the minimum and average salary must be smaller as a result of the specific “reduce the gap” salary increase. **NOTE:** Only the specific “reduce the gap” salary increase is used in determining if the gap has been reduced. The salary increases for other factors are not used in this determination.

Example

Salary range = \$32,000 to \$65,000

Average salary = \$48,500

Gap = \$16,500

Evaluation factor = \$1,000

Experience factor (The salary increase for experience is to reduce the gap)

- Teachers with 1 or 2 years’ experience = \$2,000
- Teachers with 3 or 4 years’ experience = \$1,500
- Teachers with more than 4 years’ experience = \$500

Minimum + reduce the gap increase = \$34,000 (\$32,000 + \$2,000)

Maximum + reduce the gap increase = \$65,500 (\$65,000 + \$500)

New range = \$34,000 to \$65,500

New average salary = \$49,550

New gap = \$15,550

The gap has been reduced by \$950. (\$16,500 - \$15,550)

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

- Parties must clearly identify the specific salary increase they are using 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 at www.in.gov/ieerb/2411.htm.

Teacher Retention Catch-up (Indiana Code § 20-28-9-1.5(d)(2))

- 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.”
- A specific “**teacher retention catch-up**” increase is exempt from the 50% requirement.
- Teacher retention catch-up increases **should be attributed to the academic needs factor**, but the teachers who receive the catch-up increase may be identified using education and/or experience without risk of exceeding the 50% cap.
- The particular 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.”
- 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. (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.)

How to use a teacher retention catch-up

- Use the Academic Needs factor.
- 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.
- 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).

	<ul style="list-style-type: none"> Describe how the increase amount represents a comparison to the starting salaries of new teachers. <p>Examples</p> <ul style="list-style-type: none"> The academic needs factor is a teacher retention catch-up and is defined as the need to retain teachers with one or more years' experience making less than the new teacher minimum by increasing these teachers' salaries an additional \$1,000 in comparison to the \$1,000 increase in the new teacher minimum salary. The academic needs factor is a teacher retention catch-up and is defined as the superintendent's discretion to adjust the salary of a current teacher up to an additional \$500 or the amount on the new teacher salary grid for a new teacher with comparable education and experience, whichever is lower. The academic needs factor is a teacher retention catch-up and is defined as the need to retain teachers making \$43,000 or more but less than \$45,000 with 8 years of experience by increasing their base salary to \$45,000, the starting salary of a new teacher with 8 years of experience. The academic needs factor is a teacher retention catch-up and is defined as the need to provide teachers in a hard-to-fill content area with an increase not to exceed the amount of superintendent discretion in hiring a new teacher in that content area. <p>For an example of a teacher retention catch-up salary increase, see Model Compensation Plans at www.in.gov/ieerb/2411.htm.</p>
<p>REDISTRIBUTION</p> <p>Any money for increases that would otherwise have gone to teachers rated ineffective or improvement necessary must be redistributed to eligible teachers</p>	<ul style="list-style-type: none"> A redistribution plan is required when a compensation plan: <ul style="list-style-type: none"> Does not provide for distribution of all funds in an identified pot of money 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.) Provides for movement within a salary schedule A redistribution plan is not required when the compensation plan utilizes only a pot of money that is entirely distributed under the plan. Required components of a redistribution plan: <ul style="list-style-type: none"> The redistribution will be made to all teachers rated effective and highly effective based on one or more of the factors in Indiana Code § 20-28-9-1.5(b) The manner in which the redistribution will be paid (i.e., as a stipend or as an increase to base salary) The redistribution will be made in the current contract year Merely reciting the statutory requirement that redistribution will occur, without the components described above, is insufficient and will result in a finding of noncompliance. A redistribution plan that provides for the parties to agree on a redistribution plan at a later date will result in a finding of noncompliance.

	<ul style="list-style-type: none"> • If the compensation plan does not clearly demonstrate that a redistribution plan is not necessary, the parties must either include a redistribution plan or explain why a plan is not necessary (see third example below). <p>TIP: Be cautious when your compensation plan uses a pot of money divided by points to allocate some, but not all, of the possible salary increases (e.g., a catch up increase of \$500 attributed to the academic needs factor is also bargained for a small group of teachers making less than a certain salary). The compensation plan may still require a redistribution plan for the portion of salary increases not based on the pot of money.</p> <p>Examples</p> <ul style="list-style-type: none"> • Any funds otherwise allocated for teachers rated ineffective or improvement necessary will be equally distributed to all teachers rated effective or highly effective. The redistribution will be paid as a stipend after all salary increases have been awarded for the current contract period. • \$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. • Based on anticipated evaluation results, the parties believe that all funds will be distributed and that no redistribution will be necessary. However, in the event that there are funds that were otherwise allocated for teachers rated ineffective or improvement necessary, those funds will be equally redistributed to all teachers rated effective or highly effective. The redistribution will be paid as a stipend in the last payroll of the school year.
<p>NEW HIRE SALARIES</p> <p>Must describe how salaries for newly hired teachers will be determined</p>	<ul style="list-style-type: none"> • Starting salaries for new hires must be bargained. • Starting salaries for new hires do not have to be specific salary amounts, but may include a range or a method of calculating. • Failing to include a provision for determining starting salaries for newly hired teachers will result in a finding of noncompliance. • The parties may bargain that the superintendent has the authority to set new hire salaries, but the authority must be limited to certain bargained parameters or ranges. <p>NOTE: Because the initial salaries of newly hired teachers are typically bargained after those teachers have already been hired, it is common for new hire salaries to be adjusted to conform with the CBA for that time period. Such adjustments to new teacher salaries are not considered salary increases and are governed by the bargained new hire salary provision rather than the compensation plan’s salary increase terms.</p> <p>Examples</p> <p><u>Compliant</u></p> <ul style="list-style-type: none"> • The salary range for teachers hired at the beginning of 2020-21 is \$40,000 to \$70,000. The Superintendent has the discretion to set the new hire salary within this range, but the salary cannot exceed the

	<p>salary of a veteran teacher with similar experience and education credentials.</p> <ul style="list-style-type: none"> • A newly hired teacher shall be placed on the new teacher salary schedule in the column and row that corresponds to the teacher’s education and experience. The Superintendent has the discretion to place the new teacher one or two rows higher based on the needs of the corporation. <p><u>Not compliant</u></p> <ul style="list-style-type: none"> • The Superintendent has the discretion to determine the salary of a newly hired teacher based on the needs of the school corporation. (This is not compliant because there are no parameters or limitations on the amount of increase at the superintendent’s discretion.)
STIPENDS (Optional)	<ul style="list-style-type: none"> ▪ A stipend is not an increase to the base salary and is a non-recurring payment. ▪ Stipends are not subject to the requirements of Indiana Code § 20-28-9-1.5. This means stipends do not have to be part of the compensation plan, are not limited to teachers with effective or highly effective evaluation ratings, are not required to be based on a combination of factors, are not subject to the 50% restriction, and are not subject to the redistribution requirement. ▪ Stipends must be clearly labeled as such. If not identified as a stipend, it may be assumed to be a salary increase and found to be noncompliant. <p>Examples</p> <ul style="list-style-type: none"> • Clearly identified stipend: A teacher will receive a \$3,000 stipend for teaching a dual credit course. The stipend will be paid at the end of the school year. • Not clearly identified and treated as subject to compensation plan requirements: A teacher will receive an additional \$3,000 for teaching a dual credit course. <p>TIP: Although not required, the Board recommends that stipends be listed in the compensation plan.</p>
WAGES	
Ancillary duties – wages and other compensation	<ul style="list-style-type: none"> • The parties may bargain only the compensation for an ancillary duty. • The 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 determines what constitutes an ancillary duty and how such duties will be assigned. However, duties and assignments are topics of discussion between the school employer and the exclusive representative. • 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 work day. <p>Examples <u>Compliant</u></p>

	<ul style="list-style-type: none"> ▪ 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. <p><u>Not compliant</u></p> <ul style="list-style-type: none"> ▪ 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. <p>TIP: When describing wages (or other compensation) for an ancillary duty, clearly identify the wage/release time as compensation for an ancillary duty.</p> <p>TIP: Avoid language indicating that an ancillary duty assignment is voluntary or requires the agreement of the teacher. If parties have bargained the wage only for those teachers who volunteer for an ancillary duty, be sure to indicate the wage for those who don't volunteer but are assigned, even if that wage is \$0.</p>
<p>Extracurricular or co-curricular duties - wages</p>	<ul style="list-style-type: none"> • The parties may bargain only the compensation for an extracurricular or a co-curricular duty and only for unit members (e.g., they cannot bargain compensation for “lay”, “non-certified”, or “administrative” staff who are hired for an ECA or CCA position). • The parties cannot bargain a specific extracurricular or co-curricular position, or any parameters, restrictions, or limitations on the number of positions, the parameters of the position or duty, or who is selected for the position.
<p>Other permissible wage/salary items</p>	<ul style="list-style-type: none"> • Wage payments may be in the form of an hourly wage or a set amount per activity or duty. • Parties must include all bargained and agreed upon items relating to salary and wages. <p>Examples</p> <ul style="list-style-type: none"> ▪ Wage payment agreements ▪ Dues deductions ▪ Salary for extended contracts ▪ Salary for supplemental service contracts² ▪ General payroll deductions <p>Wage payment agreements are agreements pursuant to Indiana Code § 20-26-5-32.2 between the parties regarding the frequency of salary payments where the frequency will be different than that required under Indiana wage payment laws.</p>
<p>SALARY AND WAGE RELATED FRINGE BENEFITS</p>	

² Indiana Code § 20-28-6-7(d) provides that the superintendent shall determine the salary for a supplemental service (including summer school) contract. However, the superintendent may determine that the supplemental service salary will be bargained.

<p>Any benefit, other than direct salary or compensation, received by the school employee from the school employer must be bargained</p>	<ul style="list-style-type: none"> • Statutory examples of salary and wage related fringe benefits: <ul style="list-style-type: none"> ▪ Accident ▪ Sickness ▪ Health ▪ Dental ▪ Vision ▪ Life ▪ Disability ▪ Retirement benefits ▪ Paid time off as may be bargained under Indiana Code § 20-28-9-11 • Other examples include, but are not limited to: <ul style="list-style-type: none"> ▪ Unpaid leave ▪ Wellness plans ▪ Section 125 plans ▪ Travel allowance ▪ Severance pay ▪ Expanded criminal history background checks³ <p>TIP: Make sure that any payments for fringe benefits are clearly marked as stipends in the CBA. Examples include severance pay for years of service upon retirement, purchase of unused sick leave days, and payments to those who decline health plan coverage. The Compliance Office may assume payments not noted as stipends are base increases and noncompliant.</p>
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³ Beginning July 1, 2017, “A school corporation, charter school, or nonpublic school may agree to pay the costs associated with obtaining an expended criminal history background check for an employee.” Indiana Code § 20-26-5-10(i).

IMPERMISSIBLE ITEMS, PROVISIONS, AND SUBJECTS

Bargaining is limited to salaries, wages, and salary and wage related fringe benefits. The list of items, provisions, and subjects that cannot be bargained is lengthy. The following list of non-bargainable items, provisions, and subjects is not exhaustive and is derived from prior compliance reports. Including any of these items, provisions, or subjects in the CBA will generally result in a finding of noncompliance.

Item/provision/subject	Description – Examples - Tips
Rights or provisions for non-unit members	<ul style="list-style-type: none"> • The exclusive representative does not have authority to bargain any rights or provisions on behalf of individuals who are not bargaining unit members.
Rights of the exclusive representative president, designee, or members	<ul style="list-style-type: none"> • The parties may bargain leave time for the association president, designee, or members, but cannot bargain things like: the right to visit schools, access to buildings, use of school email, access to mailboxes, etc. Bargaining is limited to leave time and other salary/wage related fringe benefits. • The parties cannot bargain preferences for unit members (e.g., right of first refusal for an ECA position).
Number of ECA/CCA positions	<ul style="list-style-type: none"> • The parties cannot bargain the number of or any limit on the number of ECA or CCA positions. See extracurricular/co-curricular duties in Wages section above. • The parties cannot bargain to create or eliminate an ECA position. The school corporation determines which ECA positions are necessary, and the parties bargain the compensation for those positions/duties. <p>TIP: If the parties do not bargain but wish to include the number of or limits on the number of ECA/CCA positions solely for informational or reference purposes, they must include a statement that the number of positions was not bargained, but is included for informational purposes only – e.g., Any information in the ECA schedule beyond the name of the position and the salary/wage for the position was not bargained and is included for informational purposes only. Failure to include this or a similar statement will result in a finding of noncompliance.</p>
Limits on school corporation’s ability to rehire retired teachers	<ul style="list-style-type: none"> • The parties cannot bargain any restrictions on the school corporation’s ability to “rehire” a retired teacher (e.g., school can rehire a retired teacher only for shortage areas, only if no other candidates, only for one year, etc.). • The parties may only bargain salary, wages, and salary and wage related fringe benefits for rehired retired teachers.
What constitutes an ancillary duty and limits on the school’s assignment of an ancillary duty	See ancillary duties in the Wages section above
The number of teacher contract or extended contract days or the use of contract days	<ul style="list-style-type: none"> • The parties cannot bargain: <ul style="list-style-type: none"> ▪ the number of regular teacher contract days ▪ the number of extended contract days ▪ which teachers will receive extended contracts ▪ how contract days will be used <p>TIP: If the parties do not bargain but wish to include the number of regular or extended contract days solely for informational or reference purposes, they must include a statement that the number of days was not bargained, but is included for</p>

	informational purposes only. Failure to include this statement will result in a finding of noncompliance.
Miscellaneous provisions that resulted in a finding of noncompliance. These types of provisions are not bargainable.	<ul style="list-style-type: none"> • Restrictions on conversations between prospective retirees and school corporation officials regarding potential post-retirement employment • Terms related to scheduling faculty meetings or professional development • Provision of a certified substitute as a full-time aide to be assigned to the association president • Teacher participation in parent-teacher conferences • Required attendance at professional development (can bargain compensation for attendance, but can't bargain that attendance is required) • Preparation or planning time • The number of members on a committee or when the committees will meet • Distribution of the teacher appreciation grant award • Any component of the teacher evaluation plan or process • Teachers rated improvement necessary may request a private conference with the Superintendent.⁴ • Supplemental payments pursuant to IC 20-28-9-1.5(a)⁵
MOU bargained outside the timeline unless pursuant to a Board order or falls within one of the exceptions	<p>Any MOU ratified by the parties outside the bargaining timeline is noncompliant unless one of the following exceptions applies:</p> <ol style="list-style-type: none"> (1) Newly discovered information or an unanticipated event that was not known or available at the time the parties ratified the original CBA. This exception will be decided on a case-by-case basis by the compliance officer. (2) Nonrule policy guidance issued by the board addressing unanticipated circumstances impacting multiple bargaining parties and allowing parties to bargain and ratify a limited MOU outside of the bargaining timelines.
Provisions not permitted per Indiana Code § 20-29-6-2	<p>Any provisions that conflict with:</p> <ul style="list-style-type: none"> ▪ any right or benefit established by federal or state law ▪ school employee rights as set forth in I.C. §§ 20-29-4-1, 20-29-4-2 ▪ school employer rights set forth in I.C. § 20-29-4-3 ▪ restructuring options available as described in I.C. § 20-29-6-2(a)(4) ▪ the school employer's ability to work with an education entity as provided in I.C. § 20-29-6-2(a)(5)

⁴ While this may be part of the evaluation plan, it is not a permitted subject of bargaining.

⁵ The supplemental payments under IC 20-28-9-1.5(a) are the discretionary payments the school corporation may make to a teacher who: (1) teaches an advanced placement course or a Cambridge International course; (2) earned a Master's degree in a content area directly related to a dual credit or another course taught by the teacher; (3) is a special education professional; (4) teaches in the areas of science, technology, engineering, or mathematics; or (5) an elementary school teacher who earns a Master's degree in math, reading, or literacy. This is not the same as the compensation for a supplemental service contract pursuant to IC 20-28-6-7(d).

MOUs

An MOU is an agreement ratified by the school employer and the exclusive representative that changes or modifies the CBA. Any MOU that changes or modifies the CBA must be submitted for compliance review. **In addition to the items listed below, the items, provisions, and subjects of an MOU are subject to the same requirements as the items, provisions, and subjects in a CBA as described above.**

Item	Description – Examples - Tips
MOU must be ratified, signed, and dated.	<ul style="list-style-type: none"> • At least one agent of each party must sign the MOU. For a school employer, this must usually be the school board president or secretary. See I.C. § 20-26-4-8. <p>Examples</p> <ul style="list-style-type: none"> ▪ Compliant: “The MOU was ratified by both parties on February 5, 2020. Signed: <u>John Smith</u> Signed: <u>Alice Jones</u>” ▪ Compliant: “Signed: <u>John Smith</u> Date: <u>02/05/20</u> Signed: <u>Alice Jones</u> Date: <u>02/06/20</u>” <p>TIP: Sign and date the MOU at the time of ratification.</p>
MOU must be submitted within ten (10) business days after ratification	<ul style="list-style-type: none"> • Ratified MOUs must be submitted to IEERB by email to ratifiedcontracts@ieerb.in.gov within 10 business days. • Failing to submit the MOU within the timeline may result in a finding of noncompliance and a potential penalty of prior approval for subsequent CBAs or MOUs. • In addition to submission to IEERB by email, the ratified MOU must be attached to the ratified CBA and uploaded to Gateway (https://gateway.ifionline.org/) as a single pdf file. The MOU, like the CBA, must also be posted on the corporation’s webpage. <p>TIP: Submit the MOU to ratifiedcontracts@ieerb.in.gov immediately after the last signature is obtained.</p> <p>NOTE: The 2017 changes to the bargaining timeline have resulted in numerous MOUs regarding health insurance benefits that must be determined prior to the start of formal bargaining for a new collective bargaining agreement. Such MOUs are addressed in Nonrule Policy Document No. 2018-2 (available at https://www.in.gov/ieerb/2334.htm). Because these MOUs predate the corresponding CBA, rather than occurring subsequent to it, they should be uploaded to Gateway and posted on the school corporation’s website when the CBA is uploaded/posted. However, these MOUs must still be submitted to IEERB by email within 10 business days of ratification.</p>
Written statement of need for MOU	<ul style="list-style-type: none"> • When submitting an MOU, the parties must include a written explanation of the need for the MOU. • Because an MOU is not compliant unless it satisfies one of the exceptions (see section below), it is essential that the parties provide sufficient information explaining why the MOU is necessary.
If MOU is ratified outside of the bargaining timelines, it must satisfy one of the	<ul style="list-style-type: none"> • An MOU ratified outside the bargaining timelines is not compliant UNLESS either of the following is applicable: <ul style="list-style-type: none"> ▪ Newly discovered information or an unanticipated event that was not known or available at the time the parties ratified the original CBA; or

<p>exceptions for compliance</p>	<ul style="list-style-type: none"> ▪ Nonrule policy guidance issued by the board addressing unanticipated circumstances impacting multiple bargaining parties allowed the parties to bargain and ratified a limited MOU outside the bargaining timelines. <p>TIPS</p> <ul style="list-style-type: none"> ▪ Correcting an error in a CBA is not considered “newly discovered information or an unanticipated event.” ▪ If an event is originally unanticipated, but likely to recur in the future, the parties may use an MOU to address the issue initially, but should address the issue in the next CBA. Multiple MOUs on the same event or issue do not satisfy the exception for an “unanticipated event.” ▪ At the parties’ request, IEERB will review and “pre-approve” a proposed MOU. <ul style="list-style-type: none"> ▪ 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. <p>EXAMPLES</p> <p>Pre-approved and compliant</p> <ul style="list-style-type: none"> ▪ Parties are notified on April 1 that health insurance premiums are going to increase effective September 1. Open enrollment for teachers is August 1 to August 31. The parties need to bargain how the increase will be apportioned between the school and the teachers in order for teachers to make an informed decision during open enrollment. Because formal bargaining does not begin until after open enrollment and the effective date of the insurance increase, the parties ratify an MOU for the 2020-21 school year. ▪ Parties learn from their spring ADM count that there will be a significant decline in state tuition support for the following year. In an effort to offset the loss of revenue, the parties want to offer a retirement incentive for teachers to retire at the end of the current school year. They bargain the retirement incentive in May and ratify an MOU that expires the same date as the current CBA. <p>Not pre-approved and not compliant</p> <ul style="list-style-type: none"> ▪ During the formal bargaining period, parties discovered a discrepancy in how credit for prior experience was calculated for teachers hired before the 2013-14 school year. They wanted to adjust the experience credit of the affected teachers (and the teacher’s respective salary) to conform to the experience credit awarded to teachers hired since the 2013-14 school year, but could not reach agreement prior to the end of formal bargaining. The parties ratified the CBA without including the “adjustment” provision.
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	<p>Three months later, the parties propose an MOU to address the discrepancy adjustment and request that IEERB review their tentative MOU for approval before they ratify.</p> <p>IEERB does not approve the MOU because it does not satisfy the exception for newly discovered or unanticipated information at the time of bargaining. The parties were aware of this discrepancy at the time of bargaining, but did not include it in the CBA. Citing a lack of time to complete negotiation on the issue prior to ratifying the CBA as the reason for the MOU is not compliant.</p>
MOU expiration	<ul style="list-style-type: none"> • Because an MOU modifies a corresponding CBA, it is effective only for the life of the CBA and expires when the CBA expires. • Except in the limited circumstances addressed in NPD 2018-2 regarding certain health insurance MOUs, an MOU should not include terms bargained for a subsequent contract period. <p>TIP: If you originally bargained a salary, wage, or benefit provision in an MOU, but agree to continue that provision when bargaining your subsequent CBA, you should incorporate the provision into the body of your new CBA rather than attaching the expired MOU to your new contract.</p>

PENALTY FOR NONCOMPLIANCE

Indiana Code § 20-29-6-6.1(f) provides that, if the Board finds that a collective bargaining agreement, including a compensation plan, is not compliant, it must issue an order that may require the parties to “cease and desist from all identified areas of noncompliance” or that prevents parties “from ratifying any subsequent collective bargaining agreements until the parties receive written approval from the board or the board’s agent.”

Penalty	When the penalty is ordered and what it means
Cease and desist	<ul style="list-style-type: none"> • Will be ordered if there are any findings of noncompliance. • “Cease and desist” means that, for any finding of noncompliance, the parties must fix it in the next CBA – i.e., add a provision, remove a provision or change a provision to make it compliant. <p>TIP: Failure to correct a previous finding of noncompliance is a factor in the determination of prior approval.</p>
Prior approval	<ul style="list-style-type: none"> • An order of prior approval is based on the nature and seriousness of the noncompliance. • The Board looks at: <ul style="list-style-type: none"> ▪ the number of findings of noncompliance; ▪ the gravity or substance of the noncompliance; and ▪ The number of repeat findings of noncompliance. • Multiple repeat findings of noncompliance are more likely to result in a penalty of prior approval because the parties have been given a year or more to correct the noncompliance, but failed to do so. • “Prior approval” means that the parties must submit their tentative/proposed agreement to the compliance officer to review and approve before they can ratify the agreement. • Before the parties can ratify their tentative/proposed agreement, they must have received written approval from the compliance officer. <p>TIP: If parties receive a prior approval penalty on their previous CBA, they are encouraged to submit their subsequent tentative/proposed agreement for the compliance officer’s review as early as possible. If the review requires the parties to make any changes before written approval is given, early submission allows the parties to make those changes and receive approval within the bargaining timelines.</p>