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Practitioner's Guide to Bargaining and Impasse

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

This Practitioner's Guide is designed to assist school employers and exclusive representatives in understanding and successfully navigating collective bargaining and impasse. It is intended solely as guidance. It does not constitute legal advice and may not reflect agency or court decisions subsequent to the Guide's publication.

This Guide supersedes prior IEERB guidance on collective bargaining and impasse. IEERB may, from time to time, issue updates to this guidance. Please check IEERB's website (www.in.gov/IEERB) for applicable laws, rules, the current bargaining timelines, last best offer requirements, and additional guidance. You may also register for free IEERB updates through the *IEERB Bulletin*.

IEERB encourages all practitioners to become familiar with collective bargaining laws and rules and to be prepared for discussion, bargaining, mediation, and factfinding.

Table of Contents

COLLECTIVE BARGAINING 1

I. Bargaining Parties 1

A. Innovation Network Schools..... 1

B. Certain Transformation Zone Schools 1

C. Muncie Community School Corporation 1

D. Special Management Teams Assigned under Indiana Code § 20-31-9-4 2

II. Bargaining Subjects 2

A. Mandatory subjects 2

B. Permissible subjects 2

C. Precluded subjects..... 3

D. Discussion 4

III. Bargaining 5

A. Timeline 5

B. Public Hearings and Meetings 5

C. Bargaining 8

D. Memorandum of Understanding (MOU)..... 10

E. Collective Bargaining Report 11

IMPASSE..... 11

I. Declaration of Impasse..... 11

II. Submission of Bargaining Revenue and Expense Disclosures (BRED)..... 12

III. Impasse Mediation 12

A. Mediators..... 12

B. Appointment of a mediator 13

C. Mediation Process 13

D. Disclosing and exchanging information during mediation 14

E. Mediation sessions 15

F. Cost of mediation 15

G. Tips and Best Practices for Mediation 15

IV. Last Best Offer (LBO)..... 17

A. Requirements 17

B. Revenue Certifications..... 17

C.	Career Centers, Special Education Cooperatives and Other Special Cases	17
D.	Deficit Financing	18
E.	IEERB Staff review	19
F.	Joint LBOs.....	19
G.	Tips and Best Practices for LBOs.....	19
V.	Factfinding	20
A.	Factfinder and Financial Consultant	21
B.	Factfinding hearing	21
C.	Factfinder’s Report (Findings and Recommendations)	23
D.	Cost of Factfinding	24
VI.	Appeal of Factfinding Report	24
VII.	Stay/Suspension of Impasse Procedures	24
A.	Stay for Certain Pending Unfair Practice Complaints	25
B.	Stay for Pending Appeal of Compliance Report	25
C.	Stay for Pending Representation Matter.....	25
D.	Stay for Certain Public Access Matters.....	26
VIII.	End of Impasse	26
Appendix A: Glossary of Bargaining and Impasse Terms		27
Appendix B: Checklist for Public Meeting and Public Hearings		33

COLLECTIVE BARGAINING

Indiana Code Article 20-29 establishes the framework for teacher collective bargaining. The statutory requirements are supplemented by IEERB's administrative rules in 560 IAC 2.

I. Bargaining Parties

In general, parties subject to collective bargaining under Indiana Code Article 20-29 include school employee organizations (as defined by Indiana Code § 20-29-2-14) serving as exclusive representatives, school corporations (as defined by Indiana Code § 20-29-2-12) and charter schools established under Indiana Code Article 20-24. However, certain school entities and their exclusive representatives are subject to special rules.

A. Innovation Network Schools

A governing body is not bound by its collective bargaining agreement for employees of an innovation network school established under Indiana Code Chapter 20-25.7-4-5. Employees of an innovation network school may organize and create a separate bargaining unit to collectively bargain with the innovation network team under Indiana Code Article 20-29.¹ See Indiana Code § 20-25.7-4-7 for more information.

B. Certain Transformation Zone Schools

This section applies to schools that are part of a transformation zone as the result of three consecutive years of being in the lowest performance category or designation that are not operated by a special management team. The school corporation is not subject to Indiana Code Article 20-29 in these transformation zone schools unless the school corporation voluntarily recognizes an exclusive representative under Indiana Code § 20-29-5-2. If the school corporation voluntarily recognizes an exclusive representative under Indiana Code § 20-29-5-2, the school corporation may authorize a school within the transformation zone to opt out of bargaining allowable subjects or discussing discussion items by specifying the excluded items on the notice required under Indiana Code § 20-29-5-2(b). Such notice must be provided to IEERB at the time of the notice is posted. See [IEERB Nonrule Policy Document No. 2019-1](#) and Indiana Code § 20-31-9.5-9.5 for more information.

C. Muncie Community School Corporation

Pursuant to Indiana Code § 20-23-18-3, Muncie Community School Corporation (MCSC) is not subject to Indiana Code Article 20-29 unless the MCSC voluntarily recognizes an exclusive representative under Indiana Code § 20-29-5-2. If MCSC voluntarily recognizes an exclusive representative under Indiana Code § 20-29-5-2, the school corporation may authorize a school building within to opt out of bargaining allowable subjects or discussing discussion items by specifying the excluded items on the notice required under Indiana

¹ Similar rules apply to innovation network schools organized under former Indiana Code Article 20-25.5.

Code § 20-29-5-2(b). Such notice must be provided to IEERB at the time of the notice is posted. See [IEERB Nonrule Policy Document No. 2019-1](#) and Indiana Code § 20-23-18-3 for more information.

D. Special Management Teams Assigned under Indiana Code § 20-31-9-4

Special management teams under Indiana Code § 20-31-9-4 are not considered a school employer under Indiana Code § 20-29-2-15. The special management team makes all personnel decisions in the school. In operating the school as a turnaround academy under Indiana Code Chapter 20-31-9.5, a special management team is not bound by a contract entered into under Indiana Code Article 20-29. See Indiana Code § 20-31-9.5-1 for more information.

II. Bargaining Subjects

A. Mandatory subjects

The mandatory subjects of bargaining listed in Indiana Code § 20-29-6-4 are salary, wages, and salary and wage related fringe benefits.

1. Salary

Salary includes the amounts of pay increases available to employees under the compensation plan adopted under Indiana Code § 20-28-9-1.5. Salary does not include the teacher evaluation procedures and criteria, any components of the teacher evaluation plan, rubric, or tool, or any teacher appreciation grant or addition to base salary based on a teacher appreciation grant to an individual teacher under Indiana Code § 20-43-10-3.5.

2. Wages

Parties may bargain wages for duties outside of normal teaching duties that are performed during or outside of the regular teacher work day. Parties may bargain only the compensation for these duties. They cannot bargain which activities constitute an ancillary duty or any conditions under which a teacher may be assigned an ancillary duty. Nor can they bargain the number or type of extracurricular or co-curricular activities.

3. Salary and wage related fringe benefits

Salary and wage related fringe benefits include accident, sickness, health, dental, vision, life, disability, retirement benefits, paid time off (as permitted to be bargained under Indiana Code § 20-28-9-11), unpaid leave, wellness plans, Section 125 plans, travel allowance, severance pay, and expanded criminal history background checks.

B. Permissible subjects

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

1. a grievance procedure;
2. definitions applicable to the CBA;
3. contract interpretation provisions, such as a savings clause; and
4. other provisions not otherwise precluded.

C. Precluded subjects

There are a number of subjects that parties are specifically precluded from bargaining. Indiana Code §§ 20-29-6-4.5 and 20-29-6-4.7 provide that the following are impermissible subjects of bargaining:

1. school calendar;
2. teacher dismissal procedures and criteria;
3. restructuring options;
4. the school's ability to work with educational entities regarding postsecondary or dual credits;
5. teacher evaluation procedures and criteria;
6. any subject not required to be bargained; and
7. a matter that another statute specifies is not subject to collective bargaining, including supplemental payments for a content area master's degree, or for an elementary teacher, a master's degree earned in math, readings, or literacy, teaching a CTE, advanced placement, Cambridge International, science, technology, engineering, or mathematics course, or serving as a special education professional, pursuant to Indiana Code § 20-28-9-1.5(a), and any teacher appreciation grant stipend or addition to base salary based on a teacher appreciation grant stipend under Indiana Code § 20-43-10-3.5.

In addition, parties cannot bargain any provisions that conflict with any right or benefit established by federal or state law or with school employee or school employer rights set forth in Indiana Code §§ 20-29-4-1 and 20-29-4-2. It is also unlawful for a school employer to enter into any agreement that would place the employer in a position of deficit financing.

Beyond simply bargaining, the parties must reduce any agreement to writing. CBAs must include agreed-upon mandatory subjects of bargaining and any permissible items that have been bargained and agreed to. The written CBA must also include:

1. the names of the school employer and exclusive representative,
2. a description of the bargaining unit (as described in most recent IEERB order),
3. the beginning and ending dates of the CBA, and
4. the date the CBA was ratified along with the signature of at least one agent of each of the parties.

D. Discussion

Discussion is the performance of the mutual obligation of the school employer and the exclusive representative to meet at reasonable times to discuss, provide meaningful input, or exchange points of view, with respect to the following items:

1. curriculum development and revision;
2. selection of curricular materials;
3. teaching methods;
4. hiring, evaluation, promotion, demotion, transfer, assignment, and retention of certificated employees;
5. student discipline;
6. expulsion or supervision of students;
7. pupil/teacher ratio;
8. class size or budget appropriations;
9. safety issues for students and employees in the workplace, except those items required to be kept confidential by state or federal law;
10. hours;
11. funding for a plan for remediation program for any subset of students enrolled in kindergarten through grade 12;
12. Teacher appreciation grants, individual teacher appreciation grant stipends to teachers and additions to base salary based on teacher appreciation grant stipends.
13. pre-evaluation planning session required under Indiana Code § 20-28-11.5-4;
14. the superintendent's report to the governing body concerning staff performance evaluations required under Indiana Code § 20-28-11.5-9;
15. a teacher performance model.
16. superintendent's report of aggregate performance evaluation results (prior to presentation to the school board); and
17. supplemental pay for certain master's degrees pursuant to Indiana Code § 20-28-9-1.5(a).

The obligation to discuss does not require either party to enter into a contract, agree to a proposal, or make a concession related to the mandatory items of discussion. However, discussion is an important and mandatory part of labor relations. Best practices include:

1. setting an agenda of items to be discussed,
2. engage in meaningful discussion throughout the year as issues arise,
3. being prepared for the discussion of agenda items,
4. taking discussion seriously,
5. actively participating in discussions,
6. actively listening,
7. being open to alternate suggestions, and
8. having a clear understanding of next steps.²

For more information, see Indiana Code §§ 20-29-2-7, 20-29-6-6, 20-29-6-7, 20-29-6-8, 20-29-6-9, and IEERB decisions on discussion (to the extent the decision continues to be good law).

III. Bargaining

A. Timeline

1. Before September 15, 2020: Informal Bargaining
2. September 15, 2020-November 16, 2020: Formal Bargaining
3. November 16, 2020: Ratified CBAs and Bargaining Status Form must be completed/uploaded in Gateway.

B. Public Hearings and Meetings

In 2019, [Ind. Code §§ 20-29-6-1](#) and [19](#) were amended to require a public hearing before collective bargaining begins and two public meetings before the CBA can be ratified.

The timeline for formal collective bargaining did not change – it starts September 15 and ends November 15. If the parties have not reached an agreement by November 15, IEERB is statutorily required to declare an impasse. Therefore, careful planning will be necessary to ensure that the public hearing and public meetings are held within the time frames required by law.

Much of [Ind. Code §§ 20-29-6-1](#) and [19](#) overlaps with the requirements of the Open Door Law (ODL) found in [Ind. Code § 5-14-1.5](#). The Indiana Public Access Counselor (PAC) provides guidance on the requirements of the ODL on its [website](#) and has provided an in-depth [Handbook on Indiana's Public Access Laws](#). Please be aware that due to the ongoing public health emergency, some ODL requirements have been suspended, while others remain in effect.

² See *Kokomo Teachers Assoc'n et al. v. Bd. of School Trustees of the Kokomo School Corp.*, U-17-02-3500 (2017) and *Crown Point Education Assoc'n v. Teresa Eineman, et al.* U-14-08-4660, 2015 WL 13119860 at *2 (HE Order 2015) regarding a party's discussion obligation and what constitutes "adequate" discussion of an item.

1. Public Hearing

- a. **Date:** Prior to formal bargaining, the school employer and the exclusive representative must host a public hearing, utilizing the following guidelines:
- b. **Place:** The public hearing should be held in a room large enough to accommodate the number of attendees that the parties reasonably expect to attend.
- c. **Notice:** Written notice of the public hearing must be provided to the public. IEERB recommends at least the notice required by the ODL be provided.
- d. **Sample Notice Language:**
Public Hearing of the Best Teacher Union and Best School Corporation
September 20, 2020
7:00 p.m.
Board Room, 123 Best School Corporation Way, Bestpolis, Indiana
Public testimony will be taken at this meeting pursuant to Indiana Code 20-29-6-1(a)
- e. **Hosts:** One representative from both the school employer and the exclusive representative must be present at the public hearing. The governing body of the school employer is not required to attend the public hearing.
- f. **During the meeting:** The public hearing should begin with a representative of the school employer or exclusive representative giving an opening statement that explains the purpose and procedure of the public hearing. Public testimony to discuss matters relating to teacher compensation and collective bargaining in the school must be permitted at the public hearing. The school employer and/or the exclusive representative do not need to comment or answer questions. The public testimony can be written or oral. The parties should arrange to preserve the public testimony to provide to governing body the school employer and exclusive representative.

2. Tentative Agreement Public Meeting

- a. **Date:** After the parties have reached a tentative agreement, the school employer must hold a public meeting to discuss the tentative agreement (hereinafter "TA meeting").
- b. **Place:** The TA meeting should be held in a room large enough to accommodate the number of attendees that the parties reasonably expect to attend.
- c. **Notice:** 72 (calendar) hours' notice and the TA must be posted on the school employer's website. The school employer must also provide notice consistent with the ODL.
- d. **Sample Notice Language:**
Public Meeting of the Best School Corporation
October 15, 2020
7:00 p.m.

Board Room, 123 Best School Corporation Way, Bestpolis, Indiana
The School Board will meet to discuss the terms of the tentative agreement of the teacher collective bargaining agreement, which is posted at www.bestschoolcorp.org

- e. **Hosts:** The governing body of the school employer.
 - f. **During the meeting:** At the TA meeting, the governing body of the school employer must discuss the terms of the TA.
3. Ratification Public Meeting
- a. **Date:** The school employer's ratification meeting cannot take place until 72 (calendar) hours after the TA meeting.
 - b. **Place:** The ratification meeting should be held in a room large enough to accommodate the number of attendees that the parties reasonably expect to attend.
 - c. **Notice:** The school employer must provide notice consistent with the ODL. IEERB also recommends that the school employer provides 72 (calendar) hours' notice on the school employer's website.
 - d. **Sample Notice Language:**
Public Meeting of the Best School Corporation
November 1, 2020
7:00 p.m.
Board Room, 123 Best School Corporation Way, Bestpolis, Indiana
Public comment will be taken at this meeting pursuant to Indiana Code 20-29-6-19(c)
 - e. **Hosts:** The governing body of the school employer.
 - f. **During the meeting:** The governing body of the school employer must take public comment about the tentative CBA before ratification. IEERB strongly encourages the parties to develop a policy to outline the procedures of public comment.
4. Two Year CBAs
- Parties that do not open a two-year contract for bargaining in the second year of the budget biennium do not need to hold a public hearing, TA meeting or ratification public meeting in the second year of the contract.
5. Non-Compliance with Public Hearings or Meetings
- Not complying with these requirements could result in a complaint filed with the PAC, an unfair labor practice (ULP) with IEERB, or both. If both are filed, IEERB will stay its ULP until the PAC issues its advisory opinion. See [IEERB Nonrule Policy Document No. 2019-3](#).

Anyone can file a complaint with the PAC for failing to meet the requirements for a public meeting under the Open Door Law (ODL). Guidance on how to file a complaint with the [ODL](#) can be found at the website for the PAC, <https://www.in.gov/pac/>.

A ULP filed with IEERB can only be filed by a school employer or a school employee who believes that the employer or employee is aggrieved by an unfair practice. An unfair practice is defined, in part, as a failure to comply with any provision of Ind. Code § 20-29. Therefore, any complaint filed with IEERB alleging a failure to comply with the public hearing requirement of Ind. Code § 20-29-6-1 or the public meeting requirements of Ind. Code § 20-29-6-19 will be treated as a ULP case. Guidance on ULPs and how to file one can be found on the [ULP page of IEERB's website](#).

6. Checklist

A checklist can be found in Appendix B

C. Bargaining

1. Exchanging Collective Bargaining Information

A free flow of information is essential to a good bargaining relationship.³ IEERB encourages parties to voluntarily and readily exchange information needed for bargaining. Parties have a duty to timely provide “information about mandatory subjects of bargaining for purposes of making future bargaining proposals, current bargaining proposals, or for contract administration.”⁴

2. Releasing information about collective bargaining or discussion meetings

Pursuant to Indiana Code § 5-14-1.5-6.5, whenever a governing body, or any person authorized to act for a governing body, meets with an employee organization or any person authorized to act for an employee organization, any party may inform the public of the status of collective bargaining or discussion as it progresses by release of factual information and expression of opinion based upon factual information.⁵

3. Tips

Being prepared and actively engaging in collective bargaining will help all the parties resolve matters more quickly and efficiently. Here are some tips to help you prepare:

³ *Lebanon Community Schools*, U-10-13-0665, 2012 WL 3549830, at *3 (IEERB HE Order, Mar. 27, 2012).

⁴ *Id.*

⁵ *See, e.g., Carmel Clay Schs.*, U-12-04-3060, at 4 (IEERB Bd. 2013).

- a. Review the law, rules, and guidance provided by IEERB and your attorney.
 - b. Exchange collective bargaining information.
 - c. Prepare a history of general/education fund revenue and expenditures.
 - d. Prepare a report on any recent referenda passed or requested by the school corporation.
 - e. For each issue, determine the overall cost compared to available funds.
 - f. For each issue, determine the source of the funding, and whether it will be available if the parties go to factfinding.
 - g. For each contested issue, be sure you can articulate the reason for your position and counter any reasons against it that may be offered by the other side.
 - h. Start informally bargaining early, and determine what, if any, issues may be quickly resolved.
 - i. Be open to creative solutions that address the interests of both parties.
 - j. Begin researching comparable information. Comparable information for public employees may be found on Gateway at <https://gateway.ifionline.org>.
4. Pre-Impasse Mediation & Financial Consulting

Parties have only 60 days to formally bargain, and once impasse is declared, they have only 30 days to mediate. Because of the limited time in which to mediate impasse, IEERB encourages and facilitates additional opportunities for the parties to engage in alternative dispute resolution during the course of formal bargaining and prior to a declaration of impasse, in an attempt to avoid impasse altogether.

At any time after September 15 and before November 15, the parties may mutually request that IEERB appoint a mediator or financial consultant. The request must be in the form, and in the manner, requested by IEERB staff.

The Executive Director will appoint a mediator or financial consultant from IEERB's staff or ad hoc panel. However, the Executive Director will attempt to honor mutual appointment requests to the extent possible.

IEERB will attempt to provide cost-free pre-impasse mediation whenever possible. Otherwise, all costs of the pre-impasse mediation and financial consulting, including mileage and other travel expenses approved by IEERB, will be shared equally by the parties. 560 IAC 2-4-3(d). A party who fails to attend scheduled sessions will be charged the entire amount for the missed session, including the ad hoc's mileage and other travel expenses, any preparation by the ad hoc for the session, the ad hoc's time in traveling to and from the session, and any reasonable time spent by the ad hoc at the session waiting for the absentee party.

IEERB will pay the ad hoc, and then invoice the parties accordingly. Payment of invoices is due within 30 days of receipt. The number of sessions will be determined by the parties. Pre-impasse mediation/financial consulting will end no later than November 15. The mediator conducting pre-impasse mediation will not conduct impasse mediation between the same parties in the same bargaining season unless mutually requested by the parties and logistically feasible given the requested mediator's schedule and availability.

5. Ratification

Once the parties have reduced their agreement to writing, the CBA must be ratified and signed by the governing body of the school employer and the exclusive representative. Once it is ratified, the school employer must upload the CBA to Gateway at <https://gateway.ifionline.org> and post it on the school's website. If the signed and ratified CBA is not uploaded to Gateway by November 16, 2020, IEERB will declare impasse on the parties.

6. Bargaining Status Form

Each year IEERB collects bargaining information from all parties who collectively bargain under Indiana Code Article 20-29.

The Bargaining Status Form (BSF) must be completed in Gateway by the parties no later than November 16, 2020. Both the school employer and the exclusive representative will be provided a Gateway username and password to complete this section. Information submitted on the BSF or the failure to submit the BSF may be used in IEERB's declaration of impasse.

D. Memorandum of Understanding (MOU)

Parties must incorporate all agreed-upon subjects of bargaining into a ratified CBA. Any agreement ratified by the school employer and the exclusive representative that changes or modifies a collective bargaining agreement is a memorandum of understanding (MOU). If the MOU is ratified within the formal bargaining period, it must be submitted with the CBA. If ratified outside the formal bargaining period, the ratified MOU must be submitted to IEERB at compliance@ieerb.in.gov and uploaded to Gateway with the current CBA within 10 business days of ratification. An MOU that is bargained and ratified outside of the time period for formal bargaining is not compliant unless one of the following exceptions applies:

1. Newly discovered information or an unanticipated event that was not known or available at the time the parties ratified the original CBA. Generally, discovering an inadvertent error or omission in the CBA subsequent to ratification does not constitute newly discovered information or an unanticipated event not known or available at the time the original CBA was ratified.
2. Non-rule policy guidance issued by the board addressing unanticipated circumstances impacting multiple bargaining parties and allowing parties to bargain and ratify a limited MOU outside the bargaining timelines.

An MOU is considered part of the CBA, and therefore must be submitted to IEERB to review for compliance. When parties submit an MOU, they must also submit a written explanation of the need for the MOU. 560 IAC 2-8-4. The written explanation is a key element in determining if the MOU satisfies one of the exceptions. In addition to being reviewed to determine if it satisfies either of the exceptions, the compliance officer also reviews the MOU for compliance with all other applicable requirements. Once the MOU is reviewed, the compliance officer issues an *Addendum* report. See IEERB's Guide to CBA Compliance for more information.

At the parties' request, IEERB will review an MOU for provisional approval prior to ratification. Parties desiring such review should submit their proposed MOU to IEERB at compliance@ieerb.in.gov including their written justification for the MOU. Parties should provide the compliance officer ample time to approve an MOU prior to the anticipated ratification date.

E. Collective Bargaining Report

The school employer must complete the Collective Bargaining Report in Gateway every year.

IMPASSE

I. Declaration of Impasse

No later than 60 days after the start of formal bargaining, parties must upload their ratified CBA to Gateway and complete the Bargaining Status Form (BSF) in Gateway. If parties have not uploaded a ratified CBA by 60 days after the start of formal bargaining, IEERB will declare impasse. Once impasse is declared, impasse will continue until IEERB (1) receives a ratified CBA, or (2) a factfinder's report is issued. A Declaration of Impasse will be sent to the school employer and exclusive representative contacts listed in the BSF. The Declaration advises the parties of impasse and that a mediator will be appointed within 15 days. Attached to the Declaration of Impasse will be the Bargaining Revenue and Expense Disclosures (BRED) and Last Best Offer (LBO) Requirements.

If a party's contact information changes during the course of impasse, the party must immediately submit a change in [contact information](#). Unless otherwise indicated in the rules,

all correspondence for impasse procedures will be via e-mail. Receipt of email is presumed upon its dispatch.

II. Submission of Bargaining Revenue and Expense Disclosures (BRED)

Pursuant to 560 IAC 2-4-1(c), the school employer must share the following information upon which it will rely in supporting an LBO within 14 days of the declaration of impasse: (1) all revenue; (2) bargained teacher expenses; (3) nonbargained teacher expenses; and (4) nonteacher expenses. A school employer shall be precluded from relying on any numbers not provided to the board and the exclusive representative, unless the school employer can demonstrate a good faith showing as to why the information and documents were not available at that time. IEERB will provide a sample BRED similar to the LBO requirements to assist school employers in providing the correct information.

III. Impasse Mediation

Once impasse is declared, a mediator will be appointed within 15 days. Mediation is mandatory, cannot be waived, and the cost is shared equally by the parties. 560 IAC 2-4-3. Mediation consists of up to three sessions and can last up to 30 days. 560 IAC 2-4-3(b). During mediation, the mediator will attempt to help the parties reach a settlement but cannot force a settlement. If for any reason either party does not feel that mediation will be successful, they should advise the mediator immediately so the mediator can decide how to proceed.

A. Mediators

Impasse mediators are appointed from IEERB's staff or ad hoc panel. Persons serving as mediators must:

1. have no interest in the outcome of the proceeding;
2. be impartial;
3. have knowledge of rules and regulations relating to collective bargaining and impasse;
4. be qualified consistent with applicable laws and rules; and
5. not be an employee of, or related to, either party or attorneys involved in the proceeding.

IEERB strives to appoint quality mediators who will best facilitate settlement and uses several factors in making appointments, including but not limited to, mutual party requests, appointee background, nature of dispute, and appointee availability. The Executive Director may appoint co-mediators or team mediators. Parties may jointly request a mediator. Such a request will be taken into consideration by IEERB but may not be granted. A list of approved ad hoc panelists can be found on IEERB's website at <http://www.in.gov/ieerb/2390.htm>.

B. Appointment of a mediator

As part of the mediator appointment, IEERB will:

1. inform the parties of the mediator rate and billing/collection procedure;
2. advise the parties that the mediator does not represent either or both of the parties;
3. define and describe the process of mediation to the parties;
4. disclose the nature and extent of any relationships (of which the Board is aware) that the mediator has with the parties and any personal, financial, or other interest that may result in bias or a conflict of interest;
5. advise the parties to consider independent legal advice;
6. advise the parties that mediation must result in either a settled and ratified collective bargaining agreement or the exchange of LBOs;
7. advise the parties that neither a mediator nor a mediator's work product is subject to judicial processes; and
8. set the deadline for ending mediation ("End Date").

C. Mediation Process

The mediator must inform the parties of:

1. the nature and extent of any relationships the mediator has with the parties;
2. any personal, financial, or other interest that may result in bias or a conflict of interest; and
3. the date, time, and location of the mediation session(s) reasonably in advance of the session.

In addition, the mediator may provide information on the mediator's general style of mediation. For example, many mediators will start with a joint session where the parties present an opening statement and then split the parties into separate rooms for the remainder of the session. Other mediators will have no joint sessions; others will not separate the parties. Moreover, the mediations may differ from session to session. If not provided, the parties may ask the mediator what the parties can expect from the first mediation session, such as whether they will be asked to provide opening statements. The person listed by the parties as the chief spokesperson will be the main point of contact by the mediator, unless a party notifies the mediator of a change.

Mediation begins on the date of the mediator appointment and will last until the earlier of:

1. the End Date, which is 30 days after the appointment of the mediator;
2. the date set by the mediator after at least one mediation session;
3. the date mutually agreed upon by the parties after at least one mediation session; or
4. submission to IEERB of a ratified collective bargaining agreement.

During the mediation time period, the mediator must inform IEERB immediately if:

1. the mediation will end prior to the End Date;
2. the parties have reached a tentative agreement; or
3. LBOs will be exchanged.

If mediation does not result in a ratified collective bargaining agreement, the mediator must set a date – which can be no later than the End Date – for the parties to exchange LBOs.

D. Disclosing and exchanging information during mediation

Information disclosed by a party to a mediator in the performance of mediation functions may not be disclosed by the mediator voluntarily or by compulsion outside of the mediation process. All files, records, reports, documents, or other papers prepared by a mediator, aside from a final report pursuant to Indiana Code § 5-14-1.5-6.5, shall be confidential. The mediator shall not produce any confidential records of, or testify in regard to any mediation conducted by the mediator on behalf of any party to any cause pending in any type of proceeding. IEERB mediators are subject to the Indiana Rules of Alternate Dispute Resolution regarding mediation and additional requirements pursuant to 560 IAC 2-6-10.

Providing information to the mediator, particularly prior to the first session, will help the mediator devise a mediation strategy based on the case, and will likely lead to a quicker (and cheaper) resolution. Therefore, IEERB provides the following guidance regarding the exchange of information. A party may engage in a private and confidential discussion with the mediator about the bargaining impasse via telephone outside of a mediation session. During this discussion, the party may inform the mediator of:

1. the legal and factual contentions of the party;
2. the party's settlement posture;
3. the negotiations to date;
4. the parties' collective bargaining history; and/or
5. any other relevant information the party believes will help settlement.

Additionally, or alternatively, a party may provide the mediator with a confidential statement of the bargaining impasse during the mediation time period. The statement may include the information listed above. A confidential statement may be supplemented by exhibits or evidence. A confidential statement and any exhibits or evidence attached to it is privileged and confidential unless the submitting party provides a written statement to the mediator providing otherwise.

E. Mediation sessions

Mediation will consist of one, two, or three sessions and may not be waived. When possible, the school employer shall host the mediation sessions, unless the mediator determines otherwise. Each mediation session will last until either the mediator deems it improper, unproductive, or unconscionable to continue, or the session is concluded by mutual agreement of the parties. At least one individual with authority to enter into a tentative agreement from each party must be present at all times during a mediation session unless excused by the mediator. Mediations will be private unless the mediator and both parties agree otherwise.

F. Cost of mediation

The cost of mediation is shared equally by the parties. The mediator submits a formal report to IEERB regarding the number of hours worked and expenses incurred during mediation. Mediators are paid at a rate of \$800 per 7.5 hour or \$106.67 per hour.

Mediators will charge all time spent working on the matter. This includes, but is not limited to, time spent reviewing the file, speaking with the parties or IEERB, travel, and the mediation session. A party who fails to attend scheduled sessions will be charged the entire amount for the missed session, including the ad hoc's mileage and other travel expenses, any preparation by the ad hoc for the session, the ad hoc's time in traveling to and from the session, and any reasonable time spent by the ad hoc at the session waiting for the absentee party.

IEERB pays the mediator, and then invoices each party for half of the cost. Payment of the invoice is expected within 30 days of receipt. For more information on the billing and collection process, please contact IEERB's Chief Financial Officer.

G. Tips and Best Practices for Mediation

Successful mediation requires time and effort by the parties and the mediator. This time and effort can pay off in a big way – if you settle and ratify a CBA, not only are you done with impasse, but you will not have to participate in factfinding (and may not have to draft an LBO, depending on when settlement occurs), which may involve significant time and money. Preparing for mediation and taking it seriously helps all parties resolve matters quickly and efficiently. Here are some tips for preparing for mediation:

1. Review the law, rules, and guidance provided by IEERB and your attorney.
2. Determine which issues are contested.
3. For each contested issue, determine the overall cost compared to available funds, the source of funding, and whether that funding source will be available if the parties go to factfinding.
4. Be prepared to provide the mediator with requested information to help the mediator understand the nature of impasse prior to the start of mediation.
5. Be as flexible as possible with scheduling.
6. Be prepared to stay at mediation for as long as it takes to settle, or for the session to become unproductive.
7. Be open to creative solutions that address the interests of both parties.
8. Exchange collective bargaining information. If a party needs information from the other party in order to be prepared for mediation, the party should request this information as far in advance as possible. Requesting the information in advance allows the other party time to respond.
9. Key bargaining team members should attend the mediation. This team should meet PRIOR to mediation to sort through and determine the party's position on key issues. The mediator mediates between the parties, not within a party. Because varying interests may be represented within a party, as well as on opposite sides of the table, having a prepared team will establish a unified front and ultimately may facilitate settlement.
10. Be prepared to explain your position on the disputed issues (as well as the support for that position) to the mediator and the other party. To do this well, the parties must know and understand the basics of the law and procedures, the cost and source of funding for their proposals, and the reason their position should be adopted. Be sure you can articulate the reason for your position and can counter any reasons against it that may be offered by the opposing party. A good place to start is with the factors a factfinder takes into consideration in making a determination. See [Factors](#). Also, knowing – and being able to articulate – why your position is important to you may help the mediator work with the parties toward a solution that addresses both parties' interests.
11. Plan for possible ratification within the mediation timelines. The time period for mediation is limited to 30 days. The parties must attend at least one mediation session and may attend up to three. If the parties settle, the CBA must be ratified within the 30-day mediation period.
12. Familiarize yourselves with the LBO requirements and begin preparing your LBOs. If the parties do not agree upon and ratify a CBA during the mediation period, they will have to exchange LBOs by the date given by the mediator within the mediation period.

IV. Last Best Offer (LBO)

An LBO is comprised of the terms a party would like to have as the parties' CBA, as well as supporting documents and information. If parties at impasse do not settle during mediation, they must exchange LBOs and send a copy to IEERB. During the factfinding process, the factfinder will choose one party's LBO as the parties' CBA.

IEERB's rules require that the school employer provide all financial information and documents upon which the school employer will rely in supporting an LBO within 14 days of the declaration of impasse. That information must include: (1) all revenue; (2) bargained teacher expenses; (3) nonbargained teacher expenses; and (4) nonteacher expenses. See 560 IAC 2-4-1(c).

A. Requirements

A party must provide its LBO to the opposing party and IEERB at the conclusion of mediation if the parties have not agreed upon and ratified a CBA. The LBO must be submitted in the format required by IEERB and include all required information and documents. Prior to the end of formal bargaining each year, IEERB will post on its website the required format, information, and documents for an LBO for that year's bargaining season. This information also will be sent to the parties with the Declaration of Impasse. Check IEERB's website for the latest LBO Requirements.

B. Revenue Certifications

Before September 15 of the first year of the state budget biennium, the IDOE must provide the parties with an estimate of the education fund revenue available from the school funding formula for bargaining in the school corporation. Within 30 days after the date of the fall count of Average Daily Membership ("ADM"), the IDOE must also provide the parties with a certification of estimated education fund revenue available from the school funding formula for bargaining. The certifications or estimates (where the parties have not received a certification) must be used as the basis for a factfinder's determination and must be provided in the BRED.

A school employer that has passed an operating or school safety general referendum must obtain that amount from the County Auditor before the conclusion of bargaining.

For more information, see Indiana Code § 20-29-6-12.5 or contact IDOE or your County Auditor.

C. Career Centers, Special Education Cooperatives and Other Special Cases

In situations in which a school employer does not receive an IDOE Certification pursuant to Indiana Code § 20-29-6-12.5 or in which impasse has been stayed will be provided with modified LBO requirements from IEERB.

For any other parties, a party may request modified LBO requirements. However, such modifications will be advisory unless agreed to by both parties. The request must be in writing and may be made at any time up to 10 days prior to the end of the 30 day period for mediation.

IEERB staff will hold a conference with the parties to determine the funding mechanisms particular to the school employer. Within one week of the conference, IEERB staff will issue a non-binding advisory opinion on the revenue available to the parties for use in their LBO, as well as any modified LBO Requirements.

D. Deficit Financing

Deficit financing is defined as actual expenditures exceeding the employer’s current year actual education and referendum funds revenue for a budget year. It is unlawful for a school employer to enter into a CBA that would place it in deficit financing. A CBA that provides for deficit financing is void to that extent, as is an individual teacher’s contract executed under the CBA.

At factfinding, the parties must show how the school employer can afford their proposal.⁶ In determining if an LBO places the school employer in a position of deficit financing, the factfinder and the Board will compare the amount available to fund an LBO to the actual cost of the LBO. In determining the amount of money available to fund an LBO, the factfinder and Board will use the following formula:⁷

Education Fund Revenue
+ Operating Referendum revenue
+ School Safety Referendum revenue
+Transfers from Operations fund, per school board resolution
(-) Education fund expenses
= Must be greater than or equal to zero

This determination (calculation) will be made on the basis of the state fiscal year: July 1 – June 30.

See Indiana Code §§ 20-29-2-6 and 20-29-6-3, and IEERB cases cited in footnotes.

⁶ *Jay Classroom Teachers Association vs. Jay Sch. Corp. and IEERB*, 55 N.E. 3d 813 Ind. (2016).

⁷ *Muncie Teachers Association and Muncie Community School Corporation*, I-15-006-1970 I-16-022-1970 (IEERB Bd. 2017); *Indiana Education Employment Relations Board and Nettle Creek Sch. Corp vs. Nettle Creek Classroom Teachers Association*, 26 N.E.3d at 56 Ind. Ct. App. (2015); *Carmel Clay Schs.*, F-12-01- 3060, at 2 (IEERB Bd. 2013).

E. IEERB Staff review

IEERB staff will review submitted LBOs to ensure that the LBOs are in the required format and include the required information and documents.

If a party has substantially, but not fully, complied with the LBO requirements, IEERB staff will notify the submitting party. The party will have 48 hours to provide the requested format, information, or documents. 560 IAC 2-4-3.1(h). If IEERB staff determines a party's LBO to be substantially non-compliant, IEERB staff will communicate that determination to the party. The party may make an offer of proof within the timeframe provided by IEERB. An offer of proof shall consist of the party's LBO or supplementation the party wishes to offer. The offer of proof will be forwarded with the recommendation that the LBO is substantially noncompliant. Failure to substantially comply with the requirements of an LBO, or to submit an LBO as requested by IEERB, could result in rejection of the submitted LBO and acceptance of the opposing party's LBO.⁸ The factfinder will determine what actions, if any, are appropriate. A factfinder's determination on an LBO may be appealed to IEERB through the normal appeal process explained below.⁹

F. Joint LBOs

Parties who settle during factfinding must submit a joint LBO to the factfinder. 560 IAC 2-4-4(c). The parties may file a joint LBO at any time during factfinding, but should file it as soon as practicable, giving as much notice as possible to the factfinder. Joint LBOs must include the proposed CBA and deficit financing verifications. The factfinder may require the parties to submit any other information the factfinder deems necessary to rule on the joint LBO.¹⁰

G. Tips and Best Practices for LBOs

Preparing an LBO is a time-consuming process and requires the submission of financial information and documents. Here are some tips that may assist you in the preparation process:

⁸ See *Carmel Clay Schs.*, F-13-04-3060 (FF Order 2013) *aff'd in relevant part by Carmel Clay Schs.*, F-13-04-3060 (IEERB Bd. 2014) (factfinder rejected an LBO because it did not substantially comply with the LBO requirements).

⁹ See 560 I.A.C. 2-4-3.1; *Carmel Clay Schs.*, F-13-04-3060, at 3-4 (FF Order 2013), *aff'd in relevant part by Carmel Clay Schs.*, F-13-04-3060 (IEERB Bd. 2013).

¹⁰ See *Flat Rock Hawcreek*, F-13-02-0370 (FF Order 2013).

1. **Request all necessary financial information and documents prior to the start of mediation.** Even if parties don't have the documents prior to mediation, they should ensure that they request the information and documents from the other party early enough so that the other party has time to produce them and so that the requesting party has sufficient time to review, analyze, and explain them in the LBO. A party may also want to request information beyond that required for the LBO in order to sufficiently explain their LBO. For more information, see the Exchanging Collective Bargaining Information and the Disclosing and Exchanging Information during Mediation sections of this guide.
2. **Don't wait until the last minute to start preparing your LBO.** Although it is necessary to have financial information and documents, a good LBO will go further and explain the proposed CBA terms in relation to the financial documents and information. This will likely take time and preparation. Moreover, such preparation may be helpful in negotiations, including at mediation.
3. **Once LBOs are exchanged, read and analyze the other party's LBO.** Reading and analyzing the other party's LBO not only helps you to prepare for factfinding (explained in more detail below), but also to determine whether settlement is possible. Parties may agree upon and ratify a CBA without a factfinder's approval prior to the appointment of a factfinder. An End of Impasse notice will be issued upon receipt of a ratified CBA.

For more information, see Indiana Code §§ 20-29-6-15.1(b), 20-29-8-7, and 20-29-8-8, as well as 560 IAC 2-4-3.1.

V. Factfinding

If mediation is unsuccessful, IEERB will appoint a factfinder within 15 days from the end of mediation, and factfinding will commence. The purpose of factfinding is to provide a final solution on collective bargaining when the parties are unable by themselves, or through a mediator, to timely agree upon and ratify a CBA. The factfinder will conduct an investigation, which may include a public hearing, into the parties' LBOs. The factfinder must select one party's LBO as the binding contract.

Factfinding may not last longer than 30 days from the date of the factfinder appointment. As such, it is important that the parties work with the factfinder and make themselves available for a hearing. **The factfinder may unilaterally set the hearing time and date.** The parties split the cost of the factfinding.

A. Factfinder and Financial Consultant

IEERB appoints a factfinder from its staff or ad hoc panel. IEERB may also appoint a financial consultant to assist the factfinder with the financial aspects of the parties' LBOs during the factfinding process.¹¹ Persons serving as factfinders and financial consultants must:

1. have no interest in the outcome of the proceeding;
2. be impartial;
3. have knowledge of rules and regulations relating to collective bargaining and impasse;
4. be qualified as determined by IEERB consistent with all applicable laws and rules; and
5. not be an employee of, or related to, either party or attorneys involved in the proceeding.

IEERB trains factfinders and financial consultants on the laws and rules of teacher collective bargaining at no cost to the parties. In appointing a factfinder and a financial consultant, IEERB attempts to find a good fit between the parties and the appointees based on several factors including, but not limited to, mutual party requests, appointee background, nature of dispute, and appointee availability. A list of approved ad hoc panelists can be found on IEERB's website at <http://www.in.gov/ieerb/2390.htm>. IEERB will take mutual requests for specific appointees into consideration, but such requests may not be granted.

B. Factfinding hearing

As noted above, although the factfinder will work with the parties to set the date and time of the factfinding hearing, the factfinder may unilaterally establish the date and time of the hearing. The school employer is responsible for providing a room for the factfinding hearing, as well as the equipment and necessary materials to record the proceedings.¹² However, IEERB is the keeper and creator of the official agency record. Factfinding hearings are open to the public. However, no testimony or comments from the general public are permitted at the hearing or at any phase of the factfinding process.

1. Written materials

If a party uses written materials as part of their presentation (e.g., documents, PowerPoint presentation, etc.) the party must provide three copies of all written materials to the factfinder at the beginning of the hearing. Each party shall present fully its LBO, including the fiscal rationale for the offer. Unless otherwise determined by the factfinder (pursuant to a party's motion, the parties' agreed motion, or at the

¹¹ The financial consultant will have a background in school finance. The financial consultant will contact the parties through the factfinder and will not make a determination on the LBOs.

¹² IEERB will also provide, at its expense, either recording equipment or a court reporter or both.

factfinder's discretion), the school employer, as the keeper of the school's records, will present first.

2. Presentations by the parties

Each party has a maximum of 2 hours to make their initial presentation. The initial presentation generally consists of two parts – a presentation on why the party's LBO should be chosen and a presentation on why the other party's LBO should not be chosen. After the initial presentations, each party has one hour for rebuttal. The factfinder may extend the parties' time equally if determined necessary by the factfinder.

Unless the parties and the factfinder agree to a different procedure, the party who presents first shall make the first rebuttal.¹³ The parties shall alternate rebuttals, with the party who presented second closing rebuttals. During rebuttals, a party may introduce new facts and respond to arguments made by the opposing party, but may not raise a new argument. A factfinder may either disregard new arguments or allow the opposing party extra time to respond. A factfinder may, but is not required to, provide additional time for closing arguments. If closing arguments are made, the party who presented second should present last.

Factfinding hearings are not subject to the Indiana Administrative Orders and Procedures Act or the Indiana Rules of Evidence. However, parties should provide a foundation for all evidence, as well as information indicating authenticity. Parties may make objections that will be ruled upon by the factfinder.

Sample Order of Hearing

Opening of Hearing by Factfinder

- Introductions
- Ground rules and expectations
- Hearing agenda
- Swearing in of all individuals who will provide facts

Initial Presentations (two hours for each party)

- School employer presents on why its LBO should be chosen – one hour
- Exclusive representative presents on why its LBO should be chosen – one hour
- School employer presents on why the exclusive representative's LBO should not be chosen – one hour
- Exclusive representative presents on why the school employer's LBO should not be chosen – one hour

Rebuttals (one hour for each party)

- School employer responds to exclusive representative's arguments – 30 minutes

¹³ Although the parties and factfinder may agree to an alternate procedure, such procedure must be consistent with all applicable laws and rules.

- Exclusive representative responds to school employer's arguments – 30 minutes
- School employer responds to exclusive representative's rebuttal – 30 minutes
- Exclusive representative responds to school employer's rebuttal – 30 minutes

Closing the Hearing by Factfinder

3. Questions from the Factfinder or Financial Consultant

Parties must designate at least one person who can provide facts and answer factual questions posed by the factfinder. All such persons must be sworn in (by oath or affirmation), which may take place at the beginning of the hearing, or at any other time during the hearing prior to the presentation of facts. Representatives do not need to be sworn in unless presenting facts not otherwise in the record.

C. Factfinder's Report (Findings and Recommendations)

The factfinder must issue a report, including findings and recommendations, no later than 30 days from the date the factfinder was appointed and select one party's LBO as the binding contract terms. In making the findings and recommendations, the factfinder may use evidence furnished to the factfinder by the parties, the Board, IEERB staff, or any other state agency.

1. Factors

The factfinder shall consider the following factors when making a determination:

- a. the public interest;
- b. the financial impact on the school employer and whether any settlement will cause the school employer to engage in deficit financing;
- c. past memoranda of agreements and contracts between the parties; and
- d. comparisons of wages and hours of the employees involved with wages of other employees working for other public agencies and private concerns doing comparable work, giving consideration to factors peculiar to the school employer.

2. Findings

In making formal findings and a recommendations, the factfinder:

- a. may restrict the findings to those issues the factfinder deems significant;
- b. must restrict the findings to those subjects of bargaining listed in Indiana Code § 20-29-6-4;
- c. must not put the employer in a position of deficit financing;
- d. may not impose terms beyond those proposed by the parties in their LBOs;
- e. may strike noncompliant provisions from an LBO; and
- f. may strike or modify provisions, where both LBOs are in deficit financing.

The factfinder will provide the report to the parties and the Board. The Board may make additional findings and recommendations based on information in the factfinder's report or in the Board's possession. However, the Board's findings and recommendations, like the factfinder's, are limited to the subjects of bargaining listed in Indiana Code § 20-29-6-4.

D. Cost of Factfinding

The cost of factfinding is shared equally by the parties. However, IEERB pays the costs for any financial consultant. The factfinder submits a formal report to IEERB regarding the number of hours worked and expenses incurred during factfinding. The current rate for the factfinder is \$160 per hour.

IEERB pays the factfinder and then invoices each party for half of the cost. Payment of the invoice is expected within 30 days of receipt. For more information on the billing and collection process, please contact IEERB's Executive Director.

VI. Appeal of Factfinding Report

To obtain Board review of a factfinding report, a party must make a request for review within 30 days after issuance of the report. 560 IAC 2-4-6(a). The request for review must state the nature of the objection to the Report.

The appealing party's brief in support must be: (1) filed simultaneously with the request for review, (2) in writing, and (3) state the specific nature of each objection to the Report. Any party in opposition to the appeal may file an answering brief within 15 days of the filing of the appeal with the Board. Any answering brief shall be filed within 15 days of the filing of the appeal with the board. No additional briefs may be filed unless requested by the board. The board shall decide the matter upon the record, with or without oral argument, at the board's discretion. The appealing party must bear the cost for preparation of a hearing transcript.

A party may appeal the Board's final order to a court of competent jurisdiction within the applicable statute of limitations.

For more information on factfinding, see Indiana Code Chapters 20-29-6 and 20-29-8, as well as 560 IAC 2-4.

VII. Stay/Suspension of Impasse Procedures

IEERB may stay or suspend impasse proceedings in certain situations.

A. Stay for Certain Pending Unfair Practice Complaints

IEERB will issue a stay of impasse procedures when an unfair practice complaint is filed and the complaint:

1. requests a stay of impasse procedures; and
2. alleges that a school employer committed an unfair labor practice; and
3. the subject matter of the case effects impasse procedures or the ability of a party to bargain.

IEERB may issue a stay of impasse without request by the parties when an unfair practice complaint:

1. alleges that a school employer committed an unfair labor practice; and
2. the subject matter of the case effects impasse procedures or the ability of a party to bargain.

The stay will continue until the unfair labor practice complaint is resolved.

IEERB may proceed with impasse procedures when:

1. the complaining party in the unfair labor practice complaint does not request a stay; or
2. the complaining party in the unfair practice complaint later requests that impasse procedures proceed; or
3. a stay is inappropriate given the nature of the allegations.¹⁴

B. Stay for Pending Appeal of Compliance Report

IEERB may grant a stay of impasse procedures pending the Board's final order in an appeal of:

- (1) a compliance officer's Compliance Report and Recommendation, or
- (2) a compliance officer's denial of written approval required to ratify a subsequent CBA or MOU.

The stay will continue until the Board issues its final order.

C. Stay for Pending Representation Matter

IEERB will grant a stay of impasse procedures pending the outcome of a representation petition. The stay will continue until the representation matter is dismissed or resolved on the merits.

¹⁴ See *Carmel Clay Schs.*, U-12-04-3060, at 4 (IEERB Bd. 2013).

D. Stay for Certain Public Access Matters

IEERB may stay a case if a parallel complaint has been filed with the PAC or in any court of competent jurisdiction and the complaint alleges non-compliance with the public meetings required by IC 20-29-6-19. See [NPD 2019-3](#) for more information.

VIII. End of Impasse

IEERB will issue an End of Impasse Notice upon the parties' submission of a ratified CBA.

APPENDIX A: GLOSSARY OF BARGAINING AND IMPASSE TERMS

Bargain Collectively – The performance of the mutual obligation of the school employer and the exclusive representative to meet at reasonable times to negotiate in good faith concerning the mandatory subjects of bargaining; and to execute a written contract, incorporating any agreement relating to the mandatory subjects of bargaining. The obligation to bargain collectively does not require the school employer or the exclusive representative to agree to a proposal of the other or to make a concession to the other. See Indiana Code §§ 20-29-2-2, 20-29-6-1, 20-29-6-4, 20-29-6-6.

Bargaining Unit – A group of school employees that the employer has recognized, or IEERB has certified, as appropriate to be represented by an employee organization for the purpose of collective bargaining. See Indiana Code § 20-29-5-1; 560 IAC 2-2.1-1.

Bargaining Status Form (BSF) – The BSF must be completed in Gateway by the parties within 60 days of the beginning of formal bargaining. Both the school employer and the exclusive representative will be provided a Gateway username and password to complete this section. Information submitted on the BSF or the failure to submit the BSF may be used in IEERB's declaration of impasse.

Bargaining Revenue and Expense Disclosures (BRED) – Pursuant to 560 IAC 2-4-1(c), the school employer must share the following information upon which it will rely in supporting an LBO within 14 days of the declaration of impasse. That information must include: (1) all revenue; (2) bargained teacher expenses; (3) nonbargained teacher expenses; and (4) nonteacher expenses. A school employer shall be precluded from relying on any numbers not provided to the board and the exclusive representative, unless the school employer can demonstrate a good faith showing as to why the information and documents were not available at that time. IEERB will provide a sample BRED similar to the LBO requirements to assist school employers in providing the correct information.

Collective Bargaining Agreement (CBA) – Any and all agreements between the school employer and exclusive representative on any aspect of the bargaining relationship, including, but not limited to, the mandatory subjects of bargaining, a grievance procedure, a compensation plan, and any memorandum of understanding ratified subsequent to the collective bargaining agreement. A CBA may not extend past the end of a state budget biennium. Once a CBA has been ratified, it must be sent to IEERB and posted on the school employer's website. See Indiana Code Chapter 20-29-6; 560 IAC 2-5-1.

Compensation Plan – The local plan that provides for salary increases or increments pursuant to Indiana Code § 20-28-9-1.5(b).

Compliance Officer – The staff member or ad hoc panel member appointed by the board pursuant to Indiana Code § 20-29-6-6.1(b) to review a collective bargaining agreement and make a written recommendation regarding the collective bargaining agreement's compliance with Indiana Code Article 20-29, including any penalty for noncompliance.

Committee Appointments – The percentage of teacher positions the exclusive representative may appoint to serve on a statutory or locally created school or district wide committee may not exceed the percentage of teachers in the school employer who are members of the exclusive representative. Committees under this section may not address subjects of bargaining. This section does not apply to the bargaining team for the exclusive representative. See Indiana Code § 20-29-5-7.

Deficit Financing – Actual expenditures exceeding the employer’s current year actual education fund revenue for a budget year and, for a school employer for which the voters have passed an operating referendum tax levy or school safety referendum tax levy, the amount of revenue from the County Auditor. Revenue does not include money estimated to be or actually transferred from the school corporation’s operations fund to its education fund unless authorized pursuant to Indiana Code 20-29-6-3(c). It is unlawful for a school employer to enter into any agreement that would place it in a position of deficit financing. A contract that provides for deficit financing is void to that extent, and an individual teacher’s contract executed under the contract is void to that extent. *Indiana Education Employment Relations Board and Nettle Creek Sch. Corp vs. Nettle Creek Classroom Teachers Association*, 26 N.E.3d at 56 Ind. Ct. App. (2015); *Muncie Teachers Association and Muncie Community School Corporation*, I-15-006-1970 I-16-022-1970 (IEERB Bd. 2017); *Carmel Clay Schs.*, F-12-01-3060, at 2 (IEERB Bd. 2013). Such determinations will be made on the state fiscal year, from July 1 – June 30. *Muncie Community Schs.*, I-15-006-1970 I-16-022-1970; *Carmel Clay Schs.*, F-12-01-3060, at 2. See Indiana Code §§ 20-29-2-6, 20-29-6-3.

Discussion – The performance of the mutual obligation of the school employer through its superintendent and the exclusive representative to meet at reasonable times to discuss, provide meaningful input, or exchange points of view, with respect to the following items: (1) curriculum development and revision; (2) selection of curricular materials; (3) teaching methods; (4) hiring, evaluation, promotion, demotion, transfer, assignment, and retention of certificated employees; (5) student discipline; (6) expulsion or supervision of students; (7) pupil/teacher ratio; (8) class size or budget appropriations; (9) safety issues for students and employees in the workplace, except those items required to be kept confidential by state or federal law; (10) hours; (11) funding for a plan for remediation program for any subset of students enrolled in kindergarten through grade 12; (12) pre-evaluation planning session required under Indiana Code § 20-28-11.5-4; (13) superintendent’s aggregate performance evaluation results (prior to presentation at the school board); (14) supplemental pay for certain master’s degrees pursuant to Indiana Code § 20-28-9-1.5(a); (15) teacher appreciation grants and individual teacher appreciation grant stipends to teachers pursuant to Indiana Code § 20-43-10-3.5; (16) additions to base salary based on teacher appreciation grant stipends pursuant to Indiana Code § 20-43-10-3.5; and (17) a teacher performance model. The obligation to discuss does not require either party to enter into a contract, agree to a proposal, or make a concession related to the mandatory subjects of discussion. See Indiana Code §§ 20-29-2-7, 20-29-6-7, 20-29-6-8.

Employee Rights – School employees may: form, join, or assist employee organizations; participate in collective bargaining with school employers through representatives of their own choosing; and engage in other activities, individually or in concert; to establish, maintain, or improve salaries, wages, salary and wage related fringe benefits, and other matters set forth in Indiana Code §§ 20- 29-6-4, 20-29-6-5. Additionally, school employees may not be required to join or financially support a school employee organization through the payment of fair share fees, representation fees, professional fees, or other fees. See Indiana Code §§ 20-29-4-1, 20-29-4-2.

Employer responsibilities and authority – School employers have the responsibility and authority to manage and direct on behalf of the public the operations and activities of the school corporation to the full extent authorized by the law, including but not limited to the following: (1) direct the work of the school employer's employees; (2) establish policy through procedures established in Indiana Code § 20-29-6-4 and Indiana Code § 20-29-6-5; (3) hire, promote, demote, transfer, assign, and retain employees; (4) suspend or discharge employees in accordance with applicable law through procedures established under state law; (5) maintain the efficiency of school operations; (6) relieve employees from duties because of lack of work or other legitimate reason through procedures established in Indiana Code §§ 20-29-6-4, 20-29-6-5, 20-29-6-7; and (7) take actions necessary to carry out the mission of the public school as provided by law. See Indiana Code § 20-29-4-3.

Exclusive Representative – The school employee organization that has been certified by IEERB, or voluntarily recognized by the school employer, to be the exclusive representative of the school employees in the appropriate bargaining unit, or persons authorized to act on the organization's behalf. See Indiana Code § 20-29-2-9.

Exclusive Representative Affidavit – By September 15 of each year, the exclusive representative shall certify by affidavit to the school employer the number of teachers in each school and in the entire school corporation who are members of the exclusive representative. See Indiana Code § 20-29-5-7(e).

Expiration (of Collective Bargaining Agreement) – Collective bargaining agreements may not extend past the end of a state budget biennium. Upon the expiration of the current contract that is in effect, except for performance stipends and additions to base salary provided under Indiana Code § 20-43-10-3, the school employer shall continue under the terms of the current contract that is in effect, with no increase or increment in salary, wages, or benefits for any bargaining unit employee until a new contract is executed. If an agreement has not been reached on the items to be bargained collectively by November 1, as provided in Indiana Code § 6-1.1-17-5, the parties shall continue the terms of the current contract that is in effect, and the school employer may issue tentative individual contracts and prepare its budget on that basis. During this period, the school employer may not unilaterally change the terms or conditions of employment that are issues in dispute. The only parts of the contract that must continue are those contained in the contract and listed in Indiana Code § 20-29-6-4. See Indiana Code §§ 20-29-6-4.7, Indiana Code § 20-29-6-16.

Factfinder – The individual appointed by IEERB to conduct the factfinding process.

Factfinding – Mandatory impasse process that provides a final solution when parties cannot timely settle their collective bargaining agreement on their own or with the help of mediation. The factfinder, appointed by IEERB, conducts an investigation, which may include a public hearing, into the parties' Last, Best Offers. The factfinder must then select one party's LBO as the binding contract terms. The factfinder's report (findings and recommendations) is restricted to only those items permitted to be bargained and included in the collective bargaining agreement. The order must not put the employer in a position of deficit financing and may not impose terms beyond those proposed by the parties in their LBOs. The factfinder must consider the following factors: public interest; the financial impact on the school employer and whether any settlement will cause the

school employer to engage in deficit financing; past memoranda of agreements and contracts between the parties; and comparisons of wages and hours of the employees involved with wages of other employees working for other public agencies and private concerns doing comparable work, giving consideration to factors peculiar to the school employer. The parties share the cost of factfinding. Factfinding may not last longer than 30 days. See Indiana Code § 20-29-6-15.1; Indiana Code Chapter 20-29-8; 560 IAC 2-4.

Financial Consultant – The individual appointed by IEERB to assist the factfinder or the Board in the financial aspects of the factfinding or appeal process.

Formal Bargaining – The 60-day time frame (September 15 – November 15) in which parties may ratify a CBA every year.

Impasse – When the parties are unable by themselves to timely settle and ratify a collective bargaining agreement. IEERB shall declare impasse after November 15, if either the parties notify IEERB of impasse, or the parties are, or are supposed to be under the terms of their CBA, in collective bargaining for all or part of a contract and have not submitted a ratified CBA to IEERB. See Indiana Code § 20-29-6-13 and 560 IAC 2-4-1.

Last Best Offer (LBO) – The contract terms a party would like to have as the parties' CBA, as well as supporting documents and information. If parties at impasse do not ratify a CBA during mediation, they must exchange LBOs and send a copy to IEERB. An IEERB-appointed factfinder will conduct an investigation, which may include a public hearing, into the parties' LBO. The factfinder must then select one party's LBO as the binding contract terms. LBO requirements for any given year will be posted on IEERB's website prior to the end of formal bargaining and will be sent to parties upon declaration of impasse. See Indiana Code Chapters 20-29-6, 20-29-8; 560 IAC 2-1-2 and 560 IAC 2-4. The parties should also be cognizant of whether modified LBO requirements are necessary due to the school employer not receiving a IDOE certification of revenue or other unique circumstances and address those issues as soon as practicable with the Executive Director.

Mandatory reopener – A reopener provision that requires the parties to bargain part of the CBA during the term of the CBA.

Mandatory subjects of collective bargaining – Salary; wages; and salary and wage related fringe benefits, including accident, sickness, health, dental, vision, life, disability, retirement benefits, and paid time off as permitted to be bargained under Indiana Code § 20-28-9-11. Salary and wages include the amounts of pay increases available to employees under the compensation model adopted under Indiana Code § 20-28-9-1.5, but do not include the teacher evaluation procedures and criteria, any components of the teacher evaluation plan, rubric, or tool, or any performance stipend or addition to base salary based on a performance stipend to an individual teacher under Indiana Code § 20-43-10-3.5. See Indiana Code § 20-29-6-4.

Mediation – An attempt by an impartial third party, called a mediator, to help parties settle disputes. Mediation services are provided by IEERB. Mediation is mandatory in impasse cases. In impasse cases, mediation will last up to 30 days, the cost will be split by the parties, and the mediation will result in either a ratified collective bargaining agreement or the exchange by the parties of their LBOs. See Indiana Code § 20-29-6-13; 560 IAC 2-4-3; 560 IAC 2-4-3.1, 560 IAC 2-6-10.

Mediator – An impartial third party who helps school employers and their exclusive representatives settle disputes. 560 IAC 2-6-10.

Memorandum of Understanding (MOU) – Any agreement ratified by the school employer and the exclusive representative that changes or modifies the collective bargaining agreement. See IEERB Nonrule Policy Document No. 2018-2 and 560 IAC 2-1-2(14).

Negotiator – An individual who represents the employer or exclusive representative in collective bargaining negotiations to reach an agreement. Often committees or teams represent each party, and one of the committee members acts as chief negotiator or spokesperson for the group.

Permissive reopener – A provision in the CBA that permits the parties to bargain a portion of the CBA during the CBA's term.

Public Hearing – A hearing that must take place before the parties can formally bargain in private. The parties must allow for public testimony on teacher collective bargaining.

Ratification – Formal approval by the governing body of the school employer and the exclusive representative of a tentative agreement, generally a newly negotiated collective bargaining agreement. Agreements reached through collective bargaining under Indiana Code Article 20-29 are binding as a contract only if ratified by the governing body of the school employer and the exclusive representative. See Indiana Code § 20-29-6-6. School employers must allow public comment at the ratification meeting.

Reopener – A CBA provision that requires or permits parties to bargain a portion of the CBA during the CBA's term.

Salary and wage related fringe benefit – A benefit, other than direct salary or compensation, received by a school employee from a school employer, including but not limited to health insurance, retirement plans, and paid time off.

Salary range – The lowest and highest base salaries for full-time bargaining unit members not including any increases for that year. A salary range must be included as part of a compensation plan. The salary range contains only the base salary for direct teaching functions – it does not include payments for ancillary, co-curricular, or extra-curricular duties or activities. See Indiana Code § 20-29-6-6.1.

School Corporation – A local public school corporation established under Indiana law. The term includes any: school city, school town, consolidated school corporation, metropolitan school district, township school corporation, county school corporation, united school corporation, community school corporation, and public career and technical education center or school or school for children with disabilities established or maintained by two or more school corporations. See Indiana Code § 20-29-2-12.

School Employee – A full-time certificated person in the employment of a school employer, but not including supervisors, confidential employees, employees performing security work, and noncertificated employees. A certificated employee means a person whose contract requires that the person hold a license or permit from the division of professional standards of the department of education under Indiana Code Article 20-28; or who is employed as a teacher by a charter school established under Indiana Code Article 20-24. See Indiana Code §§ 20-29-2-4, 20-29-2-13.

School Employee Organization – An organization that has school employees as members and one of its primary purposes is representing school employees in dealing with their school employer. See Indiana Code § 20-29-2-14.

School Employer – The governing body of a school corporation or charter school established under Indiana Code Article 20-24, and a person or persons authorized to act for the

governing body of the school employer in dealing with its employees. Governing body is defined as a board of school commissioners; a metropolitan board of education; a board of trustees; any other board or commission charged by law with the responsibility of administering the affairs of a school corporation; or the body that administers a charter school established under Indiana Code Article 20-24. See Indiana Code §§ 20-29-2-10, 20-29-2-15.

Scope of bargaining – The range of issues made bargainable by Indiana Code Chapter 20-29-6.

TA Meeting – Once a tentative agreement has been reached, the school employer must have a board meeting to discuss the terms of the TA. The TA and notice must be posted 72 hours before the meeting.

Teacher Letter – Each school year in which school employee participation in the exclusive representative does not represent a majority of the school employees within the unit. The board shall notify the school employees of the bargaining unit of their right to: (1) representation under Indiana Code Chapter 20-29-5; and (2) the ability to change their exclusive representative under Indiana Code § 20-29-5-3.

Term of a CBA – The dates a collective bargaining agreement is in effect. Collective bargaining agreements may not extend past the end of a state budget biennium, which occurs on June 30 of odd-numbered years. See Indiana Code § 20-29-6-4.7(b).

APPENDIX B: CHECKLIST FOR PUBLIC MEETING AND PUBLIC HEARINGS

Public Hearing (Ind. Code § 20-29-6-1)

- Before the first meeting of formal collective bargaining
- Hosted by a representative of the school employer and the exclusive representative
- Room reserved large enough to accommodate the number of expected attendees
- Public testimony allowed
- Notice provided to the public. Recommended: notice pursuant to Open Door Law; Remember: November 3, 2020, and November 11, 2020, are holidays.
- Method for preserving public testimony to provide to school employer's governing body (recommended: record the hearing)
- Rec. Policy created that outlines procedures for taking public testimony

Tentative Agreement Meeting (Ind. Code § 20-29-6-19)

- Tentative agreement reached
- Tentative agreement posted on the school's website 72 hours before the meeting
- Meeting hosted by the school board
- School board discusses the tentative agreement
- The notice must be made pursuant to Open Door Law. In addition, notice and the TA must be posted at least 72 (calendar) hours and 48 business hours before the meeting. Remember: November 3, 2020, and November 11, 2020, are holidays.
- Room reserved large enough to accommodate the number of expected attendees.

Ratification Meeting (Ind. Code § 20-29-6-19)

- Held at least 72 hours after the TA Meeting
- Hosted by the School Board
- Public comment allowed
- Policy created that outlines procedures for taking public comment
- Notice made pursuant to Open Door Law. Remember: November 3, 2020, and November 11, 2020, are holidays. Recommended: 72 calendar hours' notice
- Room reserved large enough to accommodate the number of expected attendees.

- Ratified CBA uploaded on Gateway