

Guide to Exclusive Representative Affidavit & Teacher Letter

In 2018, the General Assembly passed SEA 407 (codified at Indiana Code § 20-29-5), which requires IEERB to send letters to school employees in corporations where less than a majority of school employees are members of the exclusive representative/union. This Guide provides information on this process. This Guide does not constitute legal advice, and does not bind IEERB or its Board in any way. For more information, visit www.in.gov/ieerb. If you have any questions, please email Questions@ieerb.in.gov.

I. Definitions

1. **Bargaining Unit Member:** School employees in the bargaining unit certified by IEERB, the definition of which should be included in the parties' CBA. Bargaining unit members are represented by the exclusive representative regardless whether they are members of the exclusive representative.
2. **Exclusive Representative:** The school employee organization that has been voluntarily recognized by the school employer or certified by IEERB after an election.
3. **Member of Exclusive Representative:** A school employee who belongs to/has joined the exclusive representative. School employees are not required to be members of the exclusive representative.

II. Process

1. Exclusive Representative Submits Affidavit to School by September 15

- Sample Affidavit is attached
- Affidavit must contain:
 - Name of Exclusive Representative
 - Name of School Corporation
 - Certification of number of exclusive representative members corporation-wide
 - Certification of the number of exclusive representative members by school
 - Signature of President of Exclusive Representative
 - Contact Information of Exclusive Representative
- [recommended] Include in submission to school the number bargaining unit members corporation-wide (does not have to be part of affidavit)
- **DO NOT SEND ANY INFORMATION THAT WOULD IDENTIFY A PARTICULAR SCHOOL EMPLOYEE, INCLUDING BUT NOT LIMITED TO NAMES** (with the exception of the president, who must provide name and sign the affidavit)

2. School submits membership information into Gateway by October 1

- School will upload affidavit and complete online form on Gateway
- School will be required to provide number of bargaining unit members
- Gateway questions attached see Users Guide

3. IEERB Review

- IEERB will review information and contact parties regarding any discrepancies
- If IEERB determines that less than a majority of bargaining unit members are members of the exclusive representative, IEERB will notify parties.
- School will be required to send IEERB email addresses of all bargaining unit members.

4. Issuance of IEERB Letter

- IEERB will issue letter by email to all teachers
- Draft Letter attached

III. FAQs

1. How do I determine the number of bargaining unit members?
 - Your CBA has the bargaining unit positions listed. That information should be checked with school records on certificated employees. For example, if your unit description is all certificated employees except the superintendent, assistant superintendent and principals, then take a list of certificated employees, count everyone and subtract the exceptions.
2. What date should I use to count bargaining unit members?
 - September 15
3. Does the exclusive representative have to list the number of bargaining unit members?
 - No. However, if no number is listed, the exclusive representative will have waived any objections to the school corporation's number.
4. What if the parties do not agree on the number of bargaining unit members?
 - IEERB will take no action unless the disagreement impacts whether the majority threshold has been reached. If it does, IEERB will conduct an investigation and determine whether the threshold has been reached.
5. What if the membership is 50%?
 - This does not constitute a majority; the teacher letter will be sent.
6. Does the exclusive representative have to use the draft affidavit?
 - No. However, the affidavit must include the information listed under step 1 of Process, above.
7. Who will receive the letter?
 - All schools employees in the unit.

8. Will the exclusive representative send names?
 - No, neither the exclusive representative nor the school employer should send each other or IEERB any information that could identify a particular school employee as a member (or non-member) of the exclusive representative. The exception is for the president of the exclusive representative, who will need to provide contact information.
9. Is this a one-time process?
 - No, the statute requires that this process be repeated every year. Therefore, you could have some years where a letter is sent and other years where a letter is not sent.

IV. Tips, Reminders, & Additional Information

We strongly recommend that the parties meet in early September to discuss the number of bargaining unit members.

We believe this process will result in a higher than normal level of inquiries to IEERB, exclusive representatives, school employers, and other stakeholders. IEERB reminds all parties to be careful not to engage in an unfair practice.

This process will eliminate the need for the annual exclusive representative survey; therefore, the parties should ensure that the contact information provided is accurate as it will be used for the purposes of sending information relating to collective bargaining.

V. Appendix

1. Sample Affidavit
2. Gateway Exclusive Representative Organization Membership Affidavit Users Guide
3. Teacher Letter

School Employee Exclusive Representative Affidavit

[NOTE: DO NOT SEND ANY INFORMATION THAT WOULD IDENTIFY A PARTICULAR SCHOOL EMPLOYEE, INCLUDING BUT NOT LIMITED TO NAMES (with the exception of the president, who must provide name and sign the affidavit)]

Comes now _____, President of the _____, the exclusive representative of the bargaining unit of school employees of _____, being first duly sworn upon his or her oath, and testifies as follows:

1. Number of members of the exclusive representative (corporation-wide) as of September 15, 2020: _____
2. [EITHER] Number of members of the exclusive representative as of September 15, 2020 by building:[name of building]____; [number of members]____; [OR] Attached is a signed, separate document to this affidavit that lists the number of members of the exclusive representative by building as of September 15, 2020.

I affirm under penalties for perjury that the foregoing representations are true and accurate to the best of my knowledge and belief.

Exclusive Representative President Name

Date

Exclusive Representative President Signature

Exclusive Representative Email Address

[Recommended] To the best of my knowledge, the number of bargaining unit members¹ (corporation-wide) as of September 15, 2020, is _____.

Exclusive Representative President Signature

¹ A bargaining unit member is defined as an employee who is paid under the terms of the teacher collective bargaining agreement also known as the teacher contract.



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Exclusive Representative Organization Membership Affidavit Gateway Users Guide

The school employer uses data from the membership affidavit to complete the Gateway Exclusive Representative Organization Membership Verification application. The affidavit is due to the employer on September 15th. The employer must enter the data and upload the affidavit in Gateway by October 1st.

After logging into Gateway and selecting the Exclusive Representative Organization Membership Affidavit, the submitter will see the following information:

This file has NOT been uploaded.

Each public school corporation is required to report the number of members of the exclusive representative organization and the total number of employees covered by the teachers collective bargaining agreement (CBA).

How many employees covered by the CBA are members of the exclusive representative organization (union)?

How many employees does the exclusive representative organization claim are covered by the CBA?

How many employees does the corporation claim are covered by the CBA?

Exclusive Representative Email

Exclusive Representative Name

Upload the exclusive representative organization membership verification affidavit PDF file:

The employer uses the information on the affidavit to answer the first two and last two questions.

The first question, “How many employees covered by the CBA are members of the exclusive representative organization (union)?” means how many teachers belong to the union.

The second question, “How many employees does the exclusive representative organization claim are covered by the CBA?” is referring to the **total** number of teachers in the corporation who are paid by the terms of the teachers contract.

The third question, “How many employees does the corporation claim are covered by the CBA?” means all union and non-union members who are paid by the terms of the teachers contract.



STATE OF INDIANA

ERIC J. HOLCOMB, Governor

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November 15, 2020

Dear School Employee:

You are receiving this letter pursuant to statute because less than a majority of represented school employees in your school corporation are members of the exclusive representative/union. *See Ind. Code § 20-29-5-8.*

The following is an overview of your right to representation in collective bargaining and the ability to change your exclusive representative:

- **Right to representation:** You have the right to form, join, or assist school employee organizations, and to participate in collective bargaining with school employers through an exclusive representative. The exclusive representative represents all bargaining unit members. You must receive notice of all changes to the unit. You have the right to challenge any change to the bargaining unit that impacts you by filing a complaint. A draft complaint is available on IEERB's website.
- **Right to change your representative or have no representative:** 20% of bargaining unit members may file a petition asserting that the exclusive representative is no longer the representative of the majority of school employees in the unit. A school employee organization may file a petition asserting that 20% of the employees in the bargaining unit wish to be represented by the school employee organization, or that the designated exclusive representative is no longer the representative of the majority of school employees in the unit. A petition for representation may be filed January 15 through February 15 or July 1 through July 30. A draft petition is available on IEERB's website.

This letter is for informational purposes only. It does **not** change the status of your exclusive representative.

Additional information about representation can be found on IEERB's website at <http://www.in.gov/ieerb/2410.htm>. If you have questions about the information presented in this letter or about representation, please contact IEERB at Questions@ieerb.in.gov.

Sincerely,

Stacey Hughes, Ph.D.

Stacey Hughes, Ph.D., Executive Director
Indiana Education Employment Relations Board