

Final Rule

LSA Document #17-443(F)

DIGEST

Amends [560 IAC 2-1-2](#) to add definitions for "affected school employee", "executive director", "last best offer" or "LBO", and "unit" and deletes certain outdated or unnecessary definitions. Adds [560 IAC 2-2.1](#) to set forth new representation rule. Adds [560 IAC 2-3.1](#) to set forth new unfair practice rule. Amends [560 IAC 2-4-1](#) to clarify timeline for declaration of impasse and clarify responsibilities for exchange of information relating to LBOs during bargaining. Amends [560 IAC 2-4-3](#) to outline mediation processes with greater specificity. Amends [560 IAC 2-4-3.1](#) to update language regarding submission of LBOs and clarify when modified LBO requirements are appropriate. Amends [560 IAC 2-4-4](#) to clarify timelines for impasse and factfinding, as well as define certain statutory responsibilities and powers of the factfinder. Amends [560 IAC 2-4-6](#) to clarify IEERB's statutory responsibilities and powers in appeal of factfinding reports. Adds [560 IAC 2-4-7](#) to set forth procedures for stay of impasse. Amends [560 IAC 2-5-1](#) to update use of terms. Adds [560 IAC 2-5-2](#) to include statutory authority for submission of documents to IEERB. Adds [560 IAC 2-6-1.1](#) electronic filing provisions. Amends [560 IAC 2-6-2](#) to clarify unauthorized practice of law. Amends [560 IAC 2-6-7](#) to update use of terms. Amends [560 IAC 2-6-8](#) to update style. Adds [560 IAC 2-6-10](#) to set forth mediation section. Adds [560 IAC 2-6-11](#) to set forth section governing ad hoc panel. Amends [560 IAC 2-8-1](#) to update statutory timeline change. Amends [560 IAC 2-8-2](#) to reflect statutory provision of compensation plan to IEERB. Amends [560 IAC 2-8-4](#) to extend timeline for provision of MOUs. Amends [560 IAC 2-8-5](#) to clarify transfer of jurisdiction of compliance report to IEERB on appeal. Amends [560 IAC 2-8-6](#) to delete stay provision. Amends [560 IAC 2-8-7](#) to clarify timeline for issuance of final IEERB order. Amends [560 IAC 2-8-8](#) to update appointment date of compliance officer for prior approval and include provision of stays. Makes numerous technical changes to the foregoing rules and sections. Repeals [560 IAC 2-1-1](#), [560 IAC 2-2](#), [560 IAC 2-3](#), [560 IAC 2-4-5](#), [560 IAC 2-6-1](#), [560 IAC 2-6-3](#), [560 IAC 2-6-4](#), [560 IAC 2-6-5](#), [560 IAC 2-6-6](#), [560 IAC 2-6-9](#), and [560 IAC 2-7](#). Effective 30 days after filing with the Publisher.

[560 IAC 2-1-1](#); [560 IAC 2-1-2](#); [560 IAC 2-2](#); [560 IAC 2-2.1](#); [560 IAC 2-3](#); [560 IAC 2-3.1](#); [560 IAC 2-4-1](#); [560 IAC 2-4-3](#); [560 IAC 2-4-3.1](#); [560 IAC 2-4-4](#); [560 IAC 2-4-5](#); [560 IAC 2-4-6](#); [560 IAC 2-4-7](#); [560 IAC 2-5-1](#); [560 IAC 2-5-2](#); [560 IAC 2-6-1](#); [560 IAC 2-6-1.1](#); [560 IAC 2-6-2](#); [560 IAC 2-6-3](#); [560 IAC 2-6-4](#); [560 IAC 2-6-5](#); [560 IAC 2-6-6](#); [560 IAC 2-6-7](#); [560 IAC 2-6-8](#); [560 IAC 2-6-9](#); [560 IAC 2-6-10](#); [560 IAC 2-6-11](#); [560 IAC 2-7](#); [560 IAC 2-8-1](#); [560 IAC 2-8-2](#); [560 IAC 2-8-4](#); [560 IAC 2-8-5](#); [560 IAC 2-8-6](#); [560 IAC 2-8-7](#); [560 IAC 2-8-8](#)

SECTION 1. [560 IAC 2-1-2](#) IS AMENDED TO READ AS FOLLOWS:

[560 IAC 2-1-2](#) Definitions

Authority: [IC 20-29-2](#); [IC 20-29-3-11](#); [IC 20-29-6-6.1](#)

Affected: [IC 4-21.5](#); [IC 20-28-9-1.5](#); [IC 20-29](#)

Sec. 2. The definitions in [IC 20-29-2](#) and the following apply throughout this article:

(1) **"Affected school employee" means an individual school employee from whom a proposed change in the bargaining unit will result in the employee's inclusion or exclusion from the unit.**

(1) (2) "Board" has the meaning set forth in [IC 20-29-2-3](#).

(2) (3) "Certificated employee" has the meaning set forth in [IC 20-29-2-4](#).

(3) "Chairman" or "chairperson" means the full-time member of the board as defined in [IC 20-29-3-3](#) or such other board member who may perform such duties pro tempore.

(4) "Collective bargaining agreement" or "CBA" means any and all agreements between the school employer and exclusive representative on any subject of bargaining, 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.

(5) "Compensation plan" means the local plan under which salary increases or increments will be determined **that provides for salary increases or increments** pursuant to [IC 20-28-9-1.5\(b\)](#).

(6) "Compliance officer" means the staff member or ad hoc panel member appointed by the board pursuant to [IC 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 [IC 20-29](#) and [IC 20-28-9-1.5](#), including any penalty for noncompliance.

(7) "Days" means calendar days in accordance with the **Indiana** Trial Rules. ~~of the Indiana Rules of Trial Procedure.~~

- (8) "Deficit financing" has the meaning set forth in [IC 20-29-2-6](#).
- (9) "Exclusive representative" has the meaning set forth in [IC 20-29-2-9](#).
- (10) "Executive director" refers to the executive director appointed by the board under [IC 20-29-3-3.1](#).**
- ~~(10)~~ **(11) "Hearing examiner" means the person any agent of the board conducting a hearing in a proceeding under [IC 20-29-7-4](#)(e), and includes any agent of the board, who may be a member of the board, when such agent conducts an unfair practice hearing.**
- ~~(11)~~ **(12) "Hearing officer" means any agent of the board conducting the hearing in a proceeding under [IC 20-29-5-1](#)(c).**
- ~~(12)~~ "IEERB" refers to the Indiana education employment relations board as established by [IC 20-29-3-1](#).
- (13) "Last best offer" or "LBO" means the contract terms a party at impasse would like to have as the parties' CBA, as well as supporting documents and information.**
- ~~(13)~~ **(14) "Memorandum of understanding" or "MOU" means any agreement ratified by the school employer and the exclusive representative, subsequent to a ratified collective bargaining agreement, that changes or modifies the collective bargaining agreement.**
- ~~(14)~~ **(15) "Party" means any school employer, school employee, or school employee organization with standing in a proceeding.**
- ~~(15)~~ **(16) "Salary and wage related fringe benefit" means 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.**
- ~~(16)~~ **(17) "Salary range" means the lowest and highest base salaries for full-time bargaining unit members on which any increase for the current year will be based.**
- ~~(17)~~ **(18) "School corporation" has the meaning set forth in [IC 20-29-2-12](#).**
- ~~(18)~~ **(19) "School employee" has the meaning set forth in [IC 20-29-2-13](#).**
- ~~(19)~~ **(20) "School employee organization" has the meaning set forth in [IC 20-29-2-14](#).**
- ~~(20)~~ **(21) "School employer" has the meaning set forth in [IC 20-29-2-15](#).**
- ~~(21)~~ "Strike" has the meaning set forth in [IC 20-29-2-16](#).
- ~~(22)~~ **(22) "Superintendent" has the meaning set forth in [IC 20-29-2-18](#).**
- (23) "Unit" means a group of two (2) or more certificated school employees who share a community of interest and are grouped together for purposes of collective bargaining, under [IC 20-29-5](#).**

(Indiana Education Employment Relations Board; [560 IAC 2-1-2](#); filed Oct 6, 1988, 11:15 a.m.: 12 IR 301; readopted filed Sep 12, 2001, 10:55 a.m.: 25 IR 529; readopted filed Nov 30, 2007, 11:19 a.m.: [20071226-IR-560070368RFA](#); filed Aug 28, 2012, 2:06 p.m.: [20120926-IR-560120112FRA](#); readopted filed Sep 10, 2013, 10:25 a.m.: [20131009-IR-560130214RFA](#); filed Jan 7, 2016, 8:13 a.m.: [20160203-IR-560150200FRA](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

SECTION 2. [560 IAC 2-2.1](#) IS ADDED TO READ AS FOLLOWS:

Rule 2.1. Representation

[560 IAC 2-2.1-1](#) Agreed composition or amendment of bargaining unit

Authority: [IC 20-29-3-11](#)

Affected: [IC 20-29-5-1](#)

Sec. 1. (a) A school employer and a voluntarily recognized school employee organization may agree as to the initial composition of a bargaining unit, consistent with [IC 20-29-5-1](#).

(b) A school employer and an exclusive representative may agree to amend an existing unit at any time. A unit amendment is appropriate when:

- (1) a position has been newly created and is to be added to or excluded from the existing unit; or
- (2) an existing position is to be added to or excluded from the existing unit.

(c) An agreed change in the description of the bargaining unit that does not include or exclude any school employee is not the composition of or an amendment to a bargaining unit and does not require notice under this rule. The school employer shall submit the new proposed bargaining unit description to the board and affirm that no school employee is affected by the proposed language. If there is no affected school employee, the executive director shall issue a bargaining unit order that reflects the new description of the bargaining unit.

(d) A school employer shall provide notice to all certificated school employees of any agreed composition of or amendment to a unit, which includes the following information:

- (1) A description of the existing bargaining unit.
- (2) A description of the proposed changes to the bargaining unit.
- (3) The current address, telephone number, and email address for the board.
- (4) That objections to the composition or amendment may be made to the board within thirty (30) days of the first date of notice.

(e) The executive director shall provide a sample notice accessible on the board's website in an electronic format.

(f) Prior to issuing such notice, the school employer may submit the proposed notice to the executive director and obtain approval of the contents, timing, and the intended method of notice from the executive director. If a school employer does not submit the proposed notice for preapproval, the executive director will review the notice after posting to ensure substantial compliance with this rule.

(g) The school employer shall provide a dated copy of the notice to the board with a signed verification of the notice date. Should no complaint by an affected school employee be filed within thirty (30) days of the first date of notice indicated on the certification, the proposed amendment shall be certified by the executive director.

(h) The executive director shall deny an agreed unit amendment if it includes a position in the bargaining unit that is contrary to this rule or to [IC 20-29-5-1](#). The executive director may require documentation or evidence to support an agreed addition or removal of a position from the bargaining unit to ensure compliance.

(i) Initial unit composition becomes effective upon certification by the executive director or the date upon which the employee organization becomes the exclusive representative.

(j) Unit amendments become effective upon certification by the executive director and constitute the unit to be used for the next collective bargaining agreement. Certification of a new bargaining unit does not modify the unit in an existing collective bargaining agreement.

(Indiana Education Employment Relations Board; [560 IAC 2-2.1-1](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-2.1-2](#) Complaint by affected school employee

Authority: [IC 20-29-3-11](#)

Affected: [IC 20-29-5-1](#)

Sec. 2. (a) Any affected school employee may file a complaint objecting to the composition of or amendment to a unit, whether agreed under section 1 of this rule or disputed under section 3 of this rule.

(b) A complaint shall be filed within thirty (30) days of provision of notice under section 1 of this rule and include a statement as to the nature of the affected school employee's complaint regarding any proposed composition of or amendment to a unit.

(c) The executive director shall provide a sample complaint accessible on the board's website in an electronic format.

(d) A complaint filed by an affected school employee, without representation, shall be construed liberally, and will be accepted so long as it is substantially compliant with this section.

(Indiana Education Employment Relations Board; [560 IAC 2-2.1-2](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-2.1-3](#) Petition for disputed unit composition or amendment

Authority: [IC 20-29-3-11](#)

Affected: [IC 20-29-5-1](#)

Sec. 3. (a) A school employer and exclusive representative that do not agree on the composition of or amendment to a unit may file a petition at any time to determine the appropriate unit.

(b) A petition under this section shall contain the following:

- (1) A description of the present bargaining unit and date of certification or recognition, if applicable.
- (2) A description of the proposed composition or amendment.
- (3) The reason why the proposed composition or amendment is sought.

(c) The executive director shall provide a sample petition accessible on the board's website in an electronic format.

(d) A school employer shall provide notice to all certificated school employees of any disputed composition of or amendment to a unit after a petition is filed. Such notice shall contain the following:

- (1) A description of the existing bargaining unit.
- (2) A description of the proposed changes to the bargaining unit.
- (3) The current address, telephone number, and email address for the board.
- (4) That objections to the composition or amendment may be made to the board within thirty (30) days of the first date of notice.

(e) Prior to issuing such notice, the school employer shall submit the proposed notice to the executive director and obtain approval of the contents of the notice and the intended method of notice from the executive director.

(f) The executive director shall provide a sample notice accessible on the board's website in an electronic format.

(Indiana Education Employment Relations Board; [560 IAC 2-2.1-3](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-2.1-4](#) Disputed unit determination

Authority: [IC 20-29-3-11](#)

Affected [IC 20-29-5-1](#)

Sec. 4. (a) Upon the filing of any such petition or complaint the executive director shall appoint a hearing officer to determine the proper unit in accordance with [IC 20-29-5-1\(c\)](#).

(b) The executive director shall provide the initial notice of the filing of any petition or complaint to all known parties. The filing party bears the burden of providing subsequent service of documents on known parties before the board consistent with [560 IAC 2-6-1.1](#).

(c) A school employee organization seeking recognition, an exclusive representative, or a school employer, which opposes a petition to amend or a complaint, may file a response to such petition or complaint within twenty (20) days of receipt of initial notice from the executive director.

(d) The hearing officer may make a determination, after a hearing, based upon the evidence presented by the parties. The parties may waive a hearing and request determination based solely on written submissions.

(Indiana Education Employment Relations Board; [560 IAC 2-2.1-4](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-2.1-5](#) Assignment of adjudicators to matters involving the same parties

Authority: [IC 20-29-3-11](#)

Affected [IC 20-29-5-1](#)

Sec. 5. In the event that any unit composition or amendment matters, pursuant to sections 1 through 4 of this rule, representation matters, pursuant to section 7 of this rule, unfair practice matters, pursuant to [560 IAC 2-3.1](#), or impasse matters, pursuant to [560 IAC 2-4](#), are concurrently pending and involve the same school employer, they shall be assigned the same hearing officer for determination regarding consolidation of the matters or simultaneous adjudication thereof, unless otherwise determined by the executive director.

(Indiana Education Employment Relations Board; [560 IAC 2-2.1-5](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-2.1-6](#) Employer recognition of exclusive representation

Authority: [IC 20-29-3-11](#)

Affected: [IC 20-29-5-2](#)

Sec. 6. (a) A school employer may voluntarily recognize a school employee organization as an exclusive representative, in accordance with [IC 20-29-5-2](#), when:

- (1) there is no exclusive representative; or
- (2) an exclusive representative provides written notice to the employer of voluntary relinquishment of its status as exclusive representative.

(b) A school employee organization shall provide reliable evidence supporting its representation of a majority of employees to the school employer and the board to be recognized as an exclusive representative.

(c) Prior to recognizing an exclusive representative, the school employer shall provide public notice of the intention to recognize the school employee organization as the exclusive representative, which includes the following:

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

(d) Prior to issuing such notice, the school employer shall submit the proposed notice to the executive director and obtain approval of the contents of the notice and the intended method of notice from the executive director.

(e) In the event no objections are made to the recognition within thirty (30) days, the school employer shall furnish a statement of recognition to the board. Such statement of recognition shall be in writing. The executive director shall provide a sample statement of recognition accessible on the board's website in an electronic format, including guidance as to contents of the statement of recognition.

(f) Should there be no written objections relating to the proposed recognition, the executive director will certify the result upon receipt of the recognition statement. Should there be any written objections, either the school employer or the school employee organization may file a petition for recognition to move forward with the process for recognition via election.

(g) Voluntary recognition becomes effective upon certification by the executive director.

(Indiana Education Employment Relations Board; [560 IAC 2-2.1-6](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-2.1-7](#) Petition for representation

Authority: [IC 20-29-3-11](#)

Affected: [IC 20-29-5-3](#)

Sec. 7. (a) A petition for representation seeks to:

- (1) decertify an exclusive representative;**
- (2) certify an exclusive representative; or**
- (3) both decertify an exclusive representative and certify a new exclusive representative.**

(b) A school employer, the exclusive representative, a school employee organization that is not the exclusive representative, or any group of twenty percent (20%) or more of the school employees in a unit or proposed unit are parties to a representation matter. Any of the entities listed in this subsection, except the exclusive representative, may file a petition for representation.

(c) A petition for representation may only be filed:

- (1) after January 14 and before February 16; or**
- (2) after June 30 and before July 31;**

of the calendar year of the expiration of the collective bargaining agreement.

(d) A petition for representation shall contain the following information:

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

(e) The executive director shall provide a sample petition for representation accessible on the board's website in an electronic format.

(f) All parties in a representation matter shall have equal access to teachers upon the filing of a petition for representation through final resolution of the petition or conclusion of an election.

(g) No petition for representation may be filed, unless twenty-two (22) months have elapsed since the most recent election. No election shall be held until twenty-four (24) months have elapsed since the most recent election.

(Indiana Education Employment Relations Board; [560 IAC 2-2.1-7](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-2.1-8](#) Initiation of representation matter

Authority: [IC 20-29-3-11](#)

Affected: [IC 20-29-5-3](#)

Sec. 8. (a) Upon the filing of a petition for representation the executive director shall appoint a hearing officer.

(b) In the event that a petition for representation is filed, any pending collective bargaining or impasse case shall be stayed by the executive director until such time as the petition for representation is dismissed or resolved on the merits.

(c) After the filing of a petition or receipt of a petition filed by another party, the school employer shall provide notice of the petition to all members of the unit by any method of notice approved by the board. Such notice shall contain the following:

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

(d) The executive director shall provide a sample notice accessible on the board's website in an electronic format, including publicly accessible information and guidance as to contents of the notice and permissible methods of notice.

(e) Prior to issuing the notice of pending petition under subsection (c), the school employer shall obtain approval of the contents of the notice and intended method of notice from the executive director.

(f) The hearing officer shall set a deadline for when a petitioner shall provide evidence demonstrating that a showing of interest or a good faith doubt that the exclusive representative represents a majority of school employees exists, as provided in section 10 of this rule.

(g) Any party to a petition for representation may file a response to such petition within thirty (30) days of service of the petition on the party by the board.

(Indiana Education Employment Relations Board; [560 IAC 2-2.1-8](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-2.1-9](#) Intervenors

Authority: [IC 20-29-3-11](#)

Affected: [IC 20-29-5-3](#)

Sec. 9. (a) Either of the following may intervene in any representation action:

- (1) A school employee organization who represents twenty percent (20%) or more school employees.
- (2) Twenty percent (20%) of school employees.

(b) The intervening party bears the burden of proof in making a showing of interest.

(c) A party may intervene as a matter of right during the thirty (30) day notice period required by section 8 of this rule. After the expiration of the notice period, a party may only intervene, at the discretion of the hearing officer, if good cause is shown as to why the party could not intervene within the time prescribed.

(d) Any party seeking to intervene in any representation proceeding shall file a petition to intervene and serve such petition on the existing parties to the matter.

(Indiana Education Employment Relations Board; [560 IAC 2-2.1-9](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-2.1-10](#) Showing of interest or good faith doubt

Authority: [IC 20-29-3-11](#)

Affected: [IC 20-29-5-3](#)

Sec. 10. (a) Evidence of a showing of interest provided by a school employee organization or twenty percent (20%) of the school employees shall:

- (1) be in writing and signed and dated by individual school employees in the appropriate unit;**
- (2) indicate each school employee's wish to be represented by such school employee organization, or no school employee organization, for the purpose of collective bargaining;**
- (3) indicate the school employee's request to decertify the designated exclusive representative by asserting it is no longer the representative of the majority of school employees in the unit, should there be an exclusive representative; and**
- (4) demonstrate at least twenty percent (20%) representation of school employees in the unit.**

(b) Any showing of interest document signed by school employees must include a written notice:

- (1) that the employee has the right to revoke the employee's signature by contacting the board;**
- (2) of the current contact information for the board; and**
- (3) that subsequently signed documents evidencing a showing of interest revoke any prior signed documents.**

(c) Documentation of a showing of interest that fails to comply with subsection (a) shall be invalid for purposes of initially determining a showing of interest under this rule.

(d) To make a showing of good faith doubt as to the representation of school employees by the exclusive representative, a school employer shall demonstrate by a preponderance of evidence that the exclusive representative does not represent a majority of employees in the bargaining unit.

(e) Any evidence of probative value supporting or disproving that a question of representation exists may be considered by the hearing officer.

(f) To rebut an alleged showing of interest, an exclusive representative shall demonstrate greater than eighty percent (80%) representation of school employees in the unit complying with the same documentation requirements for a showing of interest in subsection (a).

(g) To rebut an alleged good faith doubt, an exclusive representative shall demonstrate greater than fifty percent (50%) representation of school employees in the unit complying with the same documentation requirements for a showing of interest in subsection (a).

(h) Any personally identifying information in a showing of interest or good faith doubt is strictly confidential, shall be furnished only to the board and hearing officer, and shall not be made available to opposing parties or the public. Upon request, parties may obtain the documentation with identifying information redacted. Determination of the adequacy of the showing of interest or good faith doubt shall be made by the hearing officer in camera.

(i) For purposes of ascertaining a showing of interest, the school employer shall furnish the hearing officer the names and addresses of all current unit members on the school employer's payroll or on approved leave of absence on the date of the filing of the petition. The date for submission of the eligibility list shall be at the discretion of the hearing officer. Only eligible employees may be considered for a showing of interest. Employees not part of the unit or retirees shall not be considered to support a showing of interest.

(j) A party may challenge with the hearing officer:

- (1) names appearing on the eligibility list that are ineligible; or**
- (2) whether a name should be added to the eligibility list that was omitted.**

(Indiana Education Employment Relations Board; [560 IAC 2-2.1-10](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-2.1-11](#) Investigation and adjudication of petitions

Authority: [IC 20-29-3-11](#); [IC 20-29-5-4](#)

Affected: [IC 4-21.5](#); [IC 20-29-5-1](#); [IC 20-29-5-3](#)

Sec. 11. (a) The hearing officer shall determine whether:

- (1) a valid question concerning the representation of school employees exists; and**
- (2) a determination of the appropriate unit is necessary.**

(b) The hearing officer shall take appropriate measures to resolve the question of representation, including briefing by the parties, submission of evidence, and a hearing.

(c) The hearing officer may dismiss a petition without motion from the parties, prior to a hearing, if:

- (1) the petition was not timely filed; or**
- (2) based on the written submissions and evidence of the parties, no valid question of representation exists.**

(d) Parties may request adjudication under section 11(c) of this rule [subsection (c)], prior to a hearing, via dispositive motions.

(e) If the hearing officer has reasonable cause to believe that a question of representation exists a hearing shall be scheduled within thirty (30) days of such determination for oral argument on the parties' written submissions and evidence. The parties may waive a hearing and request determination based solely on written submissions.

(f) Once a determination that the showing of interest or good faith doubt has been made, such showing establishes a presumption that a question of representation exists requiring an election be held. A showing of interest or good faith doubt, once established, may not be rebutted except by showing fraud, duress, mistake, or bad faith.

(g) Should the parties choose to forego a hearing or determination by mutually entering a consent election, the parties may, with the approval of the hearing officer, enter such a consent election agreement on the following subjects:

- (1) Description of the appropriate unit.**
- (2) The date to be used in determining the list of eligible employees.**
- (3) The date, manner, and time of balloting.**

However, the board retains authority and control over all other aspects of the election.

(h) If the hearing officer finds that a question of representation exists, the hearing officer shall order that an election be had, including the procedures of the election. The parties may provide recommendations to the hearing officer as to the time, place, and manner of the election in accordance with this article.

(i) Hearings under [IC 20-29-5-1](#) and [IC 20-29-5-3](#) shall be considered investigatory and not adversarial. [IC 4-21.5](#) does not apply to adjudications under this rule.

(Indiana Education Employment Relations Board; [560 IAC 2-2.1-11](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-2.1-12](#) Stay of representation matter

Authority: [IC 20-29-3-11](#)

Affected: [IC 20-29-5-3](#); [IC 20-29-7-1](#)

Sec. 12. (a) A petition for representation may be stayed at the discretion of the presiding hearing officer, or the executive director, when an unfair practice complaint is filed alleging that the school employer violated [IC 20-29-7-1\(a\)\(2\)](#) by dominating, interfering, or assisting in the formation or administration of the school employee organization.

(b) If an [IC 20-29-7-1\(a\)\(2\)](#) violation is alleged in the complaint and the complaint requests a stay of the election or is otherwise determined appropriate by the hearing officer, proceedings on the representation petition shall be stayed until a determination of the unfair practice complaint is made under the procedures provided for unfair practices.

(c) A complaint pursuant to [IC 20-29-7-1\(a\)\(2\)](#) shall be given priority over other unfair practice complaints and shall proceed on an expedited time frame.

(d) A hearing officer may proceed with a stayed representation petition where:

- (1) the complaining party in the unfair practice complaint requests that the election proceed;
- (2) the unfair practice complaint does not request the election be stayed and the hearing officer determines that school employees would be able to freely exercise their choice;
- (3) the unfair practice complaint is filed too late to permit an investigation of the complaint before the scheduled election; or
- (4) any other reason determined by the hearing officer to impact employees' free choice in the election.

(Indiana Education Employment Relations Board; [560 IAC 2-2.1-12](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-2.1-13](#) Notice of election

Authority: [IC 20-29-3-11](#)

Affected: [IC 20-29-5-4](#)

Sec. 13. (a) The hearing officer shall furnish the school employer with a notice of election for service. Such notice shall:

- (1) set forth the details and procedures for the election;
- (2) set forth the appropriate unit;
- (3) set forth the eligibility period;
- (4) set forth the date or dates, hours, and place or places of the election; and
- (5) contain a sample ballot.

(b) Such notice shall be provided to all eligible employees at least five (5) days prior to the date of the election, in a manner approved by the hearing officer.

(Indiana Education Employment Relations Board; [560 IAC 2-2.1-13](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-2.1-14](#) Eligible voters

Authority: [IC 20-29-3-11](#); [IC 20-29-5-3](#)

Affected: [IC 20-29-5](#); [IC 20-29-7](#)

Sec. 14. (a) Except as otherwise provided in subsection (b), "eligible employee" or "eligible voter" for purposes of an election shall be school employees who are:

- (1) included in the bargaining unit as that unit is described in the most recent board order; and
- (2) employed during the payroll period immediately preceding the election.

Employees who did not work during that period due to a school employer approved absence are eligible to vote.

(b) The school employer shall file with the hearing officer and the school employee organization or organizations a certified list of eligible voters as defined in subsection (a) at least ten (10) days prior to the election. The list shall include an alphabetical listing of the school employees and any additional information as determined by the hearing officer. The school employer shall provide at the end of the voting period an updated eligibility list, if applicable.

(c) Challenges to the eligibility of any voters shall be filed with the hearing officer within five (5) days

of receipt of any eligibility list. Failure to bring any challenge to the eligibility of any voter shall waive any future challenge to eligibility, except for good cause shown that grounds for the challenge was not discoverable prior to such time. Challenges to the eligibility of any voter shall:

- (1) be in writing;
- (2) specify the nature of the challenge and facts in support;
- (3) be signed by the party;
- (4) be electronically filed with the board in accordance with [560 IAC 2-6-1.1](#); and
- (5) be electronically served on all parties.

(d) The hearing officer shall resolve any challenges to voter eligibility prior to the first day of the election by the hearing officer. Any other challenges may be brought at any time if good cause is shown why the challenge was not otherwise discoverable prior to the challenge deadline.

(e) Unless determined otherwise by the hearing officer, a school employee whose name does not appear on the eligibility list shall not be precluded from voting but shall be challenged on the day the votes are tallied.

(Indiana Education Employment Relations Board; [560 IAC 2-2.1-14](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-2.1-15](#) Conduct of the election

Authority: [IC 20-29-3-11](#); [IC 20-29-5-3](#)

Affected: [IC 20-29-5](#); [IC 20-29-7](#)

Sec. 15. (a) In the event the parties do not enter a consent election agreement under section 11(g) of this rule, the hearing officer shall determine and issue an election order setting forth the appropriate date or dates, time or times, voting period, place or places, form of balloting, and procedures for conducting the election after considering the following:

- (1) The size of the eligible voter population.
- (2) The available technology.
- (3) The unique circumstances of the school employer's geographic location.
- (4) The parties' recommendations as to the time, place, and manner of the election.
- (5) The cost.
- (6) Security and reliability.
- (7) Facilitation of eligible voters' ability to cast ballots.
- (8) Any other factors the hearing officer deems relevant.

(b) The hearing officer may utilize any form of balloting including, but not limited to, the following:

- (1) Mail ballots by United States Post.
- (2) In person paper ballots.
- (3) In person electronic ballots.
- (4) Email ballots.
- (5) Electronic ballots via the Internet.
- (6) Telephonic ballots.
- (7) Any other method deemed appropriate by the hearing officer.

(c) Except in a runoff election, ballots shall list all school employee organizations determined by the hearing officer to be eligible to be placed on the ballot, and the choice of "no representation by a school employee organization".

(d) Voting shall be by secret ballot.

(e) All elections shall be conducted and supervised by the hearing officer, and the board's agent or agents, if needed.

(Indiana Education Employment Relations Board; [560 IAC 2-2.1-15](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-2.1-16](#) Tabulation of ballots

Authority: [IC 20-29-3-11](#); [IC 20-29-5-3](#)

Affected: [IC 20-29-5](#); [IC 20-29-7](#)

Sec. 16. (a) The hearing officer shall prepare and furnish to each of the parties a tally of the votes cast and shall exclude any votes cast by ineligible voters. The tally shall indicate whether the results of the election were conclusive or inconclusive. To the extent a physical tally occurs or determinations as to the validity of ballots are made by the hearing officer, an observer for each party may be present.

(b) Challenges to the tabulation shall be filed with the hearing officer within five (5) days of receipt of the tabulation.

(Indiana Education Employment Relations Board; [560 IAC 2-2.1-16](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-2.1-17](#) Election requiring a runoff ballot or new election

Authority: [IC 20-29-3-11](#); [IC 20-29-5-3](#)

Affected: [IC 20-29-5](#); [IC 20-29-7](#)

Sec. 17. (a) A runoff election shall be held when there are more than two (2) options in an election, including "no representation by a school employee organization" and no option receives greater than fifty percent (50%) of all eligible voters.

(b) The runoff election shall be held under the same procedures as the original election, except that the ballot for the runoff election shall contain only the top two (2) voted selections from the original election. Only one (1) runoff may be had.

(c) Notwithstanding subsection (b), if a new election is required under subsection (d), then an additional runoff election may be necessary as determined appropriate by the hearing officer.

(d) A new election shall be held if, after the conduct of an initial election under this rule, a hearing officer determines that:

- (1) any substantial procedural irregularities occur;
- (2) a challenge to the conduct of the election is successful; or
- (3) a runoff election is appropriate, but cannot be held due to:
 - (A) all options tie; or
 - (B) two (2) options tie and another option receives more votes than the tying options.

(e) The new election shall be held under the same procedures as the original election. A new election may be ordered as many times as necessary to cure any procedural irregularities or improper conduct in the election preceding the new election.

(f) School employees who resign, are discharged, or retire prior to the end of the voting period in any new or runoff election, are ineligible to vote.

(g) The rules governing initial elections shall apply to any runoff or new election except as otherwise provided in this rule.

(Indiana Education Employment Relations Board; [560 IAC 2-2.1-17](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-2.1-18](#) Challenging the conduct of or interference with an election

Authority: [IC 20-29-3-11](#); [IC 20-29-5-3](#)

Affected: [IC 20-29-5](#); [IC 20-29-7](#)

Sec. 18. (a) A party may file a challenge to the conduct of or interference with an election within five (5) days of whichever of the following first occurs:

- (1) The discovery of the conduct or interference.
- (2) The initial tally of the ballots.

Such challenge shall be electronically filed with the board in accordance with [560 IAC 2-6-1.1](#) and electronically served on all parties.

(b) The following procedures apply when a party files a challenge:

(1) A petition to challenge shall:

- (A) be in writing;
- (B) state the nature of the challenge with some particularity and the facts in support;
- (C) be signed by the party;
- (D) be electronically filed with the board in accordance with [560 IAC 2-6-1.1](#); and
- (E) be electronically served on all parties.

(2) All additional documents, evidence, and briefs in support of the challenge shall be filed at the same time as the petition to challenge the conduct of the election and concurrently served on all parties.

(3) Any response to the challenge shall be electronically filed with the board no later than five (5) days from receipt of the challenge and concurrently served on all parties.

(4) Unless the hearing officer's conduct is the basis of the challenge, the hearing officer shall conduct an investigation, which may include a hearing on the challenge, and issue a recommended determination regarding the challenge within fifteen (15) days of the date the response is due. The recommended determination may either:

- (A) set aside the election and direct a new election; or
- (B) dismiss the challenge and certify the election.

(5) In the event the hearing officer's conduct is the basis of the challenge, the hearing officer shall not participate in the investigation, and the executive director will appoint another hearing officer.

(6) The new hearing officer shall conduct an investigation, which may include a hearing on the challenge, and issue a recommended determination regarding the challenge, either setting aside the election and directing a new election or dismissing the challenge and certifying the election.

(7) The recommended determination may be appealed to the board within five (5) days of service. The appeal must be in writing, state the specific nature of each ground for the appeal, be filed with the board, and be served on all parties. A brief in support shall be filed within ten (10) days of the date the appeal was filed with the board and be served on all parties. Any party in opposition to the appeal may file an answering brief within fifteen (15) days of receipt of the brief in support. 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.

(Indiana Education Employment Relations Board; [560 IAC 2-2.1-18](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-2.1-19](#) Certification and closing of matter

Authority: [IC 20-29-3-11](#); [IC 20-29-5-3](#)

Affected: [IC 20-29-5](#); [IC 20-29-7](#)

Sec. 19. (a) At the conclusion of the election, the hearing officer shall issue to the parties a recommended certification of results of the election.

(b) In cases where the conduct of or interference with an election has been challenged, the hearing officer shall rule on all challenges. If the hearing officer finds no grounds sufficient to call for a new election and no grounds to order a runoff, the executive director shall affirm the initial recommended certification, unless an appeal is timely made.

(c) Unless a timely appeal is made to the board of the hearing officer's determination that no grounds exist to order a new election, the executive director shall, after the expiration of the appeal period, issue a final certification of the election on behalf of the board.

(d) If no choice receives a majority of all eligible voters, the election shall result in the status quo prior to the election.

(Indiana Education Employment Relations Board; [560 IAC 2-2.1-19](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-2.1-20](#) Verification of exclusive representative membership

Authority: [IC 20-29-3-11](#); [IC 20-29-5-7](#)

Affected: [IC 20-29-5](#)

Sec. 20. (a) By September 15 of each year, an exclusive representative shall submit the affidavit of membership to the school employer. Upon submission of the affidavit of membership, the exclusive representative may provide verification of the total number of school employees that are included in the bargaining unit.

(b) By October 1 of each year, school employers shall file a copy of the affidavit of membership provided by the exclusive representative with the board, in the manner prescribed by the board. Upon submission of the affidavit of membership, the school employer representative shall provide the total number of school employees that are included in the bargaining unit.

(c) Should a discrepancy in the number of employees in the bargaining unit arise that would impact whether a majority of bargaining unit members are represented by the exclusive representative, the executive director or an agent of the board will investigate and determine the appropriate number of employees in the bargaining unit.

(d) If membership in the exclusive representative is less than a majority of the school employees in the bargaining unit, the executive director or the executive director's designee shall notify school employees of their right to representation under [IC 20-29-5](#) and ability to change their exclusive representative under [IC 20-29-5-3](#).

(e) The executive director shall determine the appropriate manner of notice consistent with the efficient use of board resources and the effectiveness of such notice.

(Indiana Education Employment Relations Board; [560 IAC 2-2.1-20](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-2.1-21](#) Change of exclusive representative affiliation

Authority: [IC 20-29-3-11](#)

Affected: [IC 20-29-5-1](#)

Sec. 21. (a) Internal organizational or name changes to an exclusive representative do not require board approval. However, if the existing exclusive representative changes its name, the exclusive representative shall notify the board of the change, including affirmation, by the exclusive representative president, that the exclusive representative organization itself is not changing.

(b) A change in name of a school employer name does not require board approval. A school employer shall notify the board of a change in the name of the school employer.

(c) The executive director shall issue a new unit order that reflects the change in name of an exclusive representative or school employer.

(Indiana Education Employment Relations Board; [560 IAC 2-2.1-21](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

SECTION 3. [560 IAC 2-3.1](#) IS ADDED TO READ AS FOLLOWS:

Rule 3.1. Unfair Practice Procedure

[560 IAC 2-3.1-1](#) Filing a complaint

Authority: [IC 20-29-3-11](#)

Affected: [IC 4-21.5-3-1](#); [IC 20-29-7](#)

Sec. 1. (a) A verified complaint alleging that an individual, school employer, or school employee organization has engaged or is engaging in an unfair practice as described in [IC 20-29-7-1](#) and [IC 20-29-7-2](#) may be filed by any school employee, school employer, or by an exclusive representative on behalf of one (1) or more school employees.

(b) A complaint shall:

- (1) be in writing;
- (2) comply with [IC 20-29-7-4\(b\)](#);
- (3) be verified and signed by the complainant;
- (4) include a statement of the remedy sought;
- (5) be filed with the board, as prescribed in [560 IAC 2-6-1.1](#); and
- (6) be served on the respondent in accordance with [IC 4-21.5-3-1](#).

(c) The complainant may but is not required to use the complaint form on the board's website. When completed, the form shall be filed and served as required in subsection (b).

(d) A complaint filed by an affected school employee, without representation, shall be construed liberally, and will be accepted so long as it is substantially compliant with this rule.

(Indiana Education Employment Relations Board; [560 IAC 2-3.1-1](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-3.1-2](#) Appointment of hearing examiner

Authority: [IC 20-29-3-11](#)

Affected: [IC 4-21.5-3](#); [IC 20-29-7-4](#)

Sec. 2. (a) Upon the filing of a complaint or in the event the appointed hearing examiner is unable to continue to serve, the executive director shall appoint a hearing examiner.

(b) Until the case is transferred to the board, the hearing examiner shall have all authority vested in administrative law judges pursuant to [IC 4-21.5-3](#).

(c) The issuance of the hearing examiner's recommended order shall operate to transfer the case to the board.

(Indiana Education Employment Relations Board; [560 IAC 2-3.1-2](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-3.1-3](#) Answer

Authority: [IC 20-29-3-11](#)

Affected: [IC 4-21.5-3-1](#); [IC 20-29-7-4](#)

Sec. 3. (a) The respondent shall file an answer within twenty (20) days of service of the complaint.

(b) The answer shall:

- (1) be in writing;
- (2) for each allegation, specifically admit, deny, explain, or indicate that the respondent is without sufficient knowledge to respond;
- (3) be filed electronically with the board, as prescribed in [560 IAC 2-6-1.1](#) or as otherwise permitted by [IC 4-21.5-3-1](#); and

(4) be served on the complainant in accordance with [IC 4-21.5-3-1](#).

(c) Upon the respondent's request, the hearing examiner may extend the time in which the respondent shall file an answer.

(Indiana Education Employment Relations Board; [560 IAC 2-3.1-3](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-3.1-4](#) Amending complaint or answer

Authority: [IC 20-29-3-11](#)

Affected: [IC 20-29-7-4](#)

Sec. 4. (a) The complainant may file an amended complaint at any time before an answer is filed.

(b) After an answer is filed, a party may file a request to amend a complaint or answer.

(c) The hearing examiner may grant the request to amend upon such terms as the hearing examiner deems appropriate.

(d) Notwithstanding subsection (c), the respondent shall have the right to amend the answer if an amended complaint has been filed.

(Indiana Education Employment Relations Board; [560 IAC 2-3.1-4](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-3.1-5](#) Hearing

Authority: [IC 20-29-3-11](#)

Affected: [IC 4-21.5-3](#); [IC 20-29-7-4](#)

Sec. 5. (a) The hearing examiner shall conduct a hearing to take evidence on the complaint.

(b) The hearing shall be conducted in accordance with [IC 4-21.5-3](#) and this rule.

(c) Parties shall present evidence and may cross-examine witnesses.

(d) All testimony shall be taken under oath.

(e) The hearing examiner shall issue a recommended order within ninety (90) days of the later of:

- (1) the conclusion of the hearing; or
- (2) submission of post-hearing briefs or proposed findings of fact and conclusions of law.

(f) The hearing examiner's recommended order shall include:

- (1) findings of fact;
- (2) conclusions of law; and
- (3) recommended remedy, if applicable.

(Indiana Education Employment Relations Board; [560 IAC 2-3.1-5](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-3.1-6](#) Appeal; objection to hearing examiner's recommended order; deadline; transcript

Authority: [IC 20-29-3-11](#)

Affected: [IC 4-21.5-3](#); [IC 20-29-7-4](#)

Sec. 6. (a) An appeal of the hearing examiner's recommended order may be initiated by filing a notice

of objection with the board.

(b) A party has fifteen (15) days from the date the recommended order is issued to file a notice of objection, subject to the requirements of [IC 4-21.5-3](#).

(c) The notice shall:

- (1) be in writing;
- (2) identify the part or parts of the hearing examiner's recommended order to which the party objects;
- (3) state whether the party wants a transcript prepared;
- (4) state the basis of the objection or objections with reasonable particularity;
- (5) be filed electronically with the board, as prescribed in [560 IAC 2-6-1.1](#) or as otherwise permitted by [IC 4-21.5-3-1](#); and
- (6) be served on the opposing party in accordance with [IC 4-21.5-3-1](#).

(d) The party objecting to the recommended order shall bear the cost of both the preparation of the transcript of the proceedings and the cost of printing the transcript, if the objecting party requested a transcript be prepared or printed.

(e) The board may review the recommended order without objection pursuant to [IC 4-21.5-3-29](#).

(Indiana Education Employment Relations Board; [560 IAC 2-3.1-6](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-3.1-7](#) Board action

Authority: [IC 20-29-3-11](#)

Affected: [IC 4-21.5-3-29](#); [IC 20-29-7-4](#)

Sec. 7. (a) In the event that no notice of objection is timely filed and the board does not set a meeting to revise the hearing examiner's recommended order within fifteen (15) days from the date the recommended order is issued, such order shall become the final order of the board. The executive director shall issue a final order adopting the hearing examiner's recommended order as the board's final order without further action of the board.

(b) If a notice of objection is timely filed pursuant to section 6 of this rule, the executive director shall establish a briefing schedule.

(c) If a notice of objection is filed, the board shall hear oral argument, if requested by a party.

(d) The board shall issue a final order in accordance with [IC 4-21.5-3-29](#).

(Indiana Education Employment Relations Board; [560 IAC 2-3.1-7](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

[560 IAC 2-3.1-8](#) Mediation

Authority: [IC 20-29-3-11](#)

Affected: [IC 20-29-7-4](#)

Sec. 8. (a) The parties may agree to engage in mediation to resolve the unfair practice claim or claims at any time prior to the board's final decision.

(b) A request for mediation shall be made to the executive director and the hearing examiner, if appointed.

(c) The executive director shall appoint a mediator as soon as practicable after receiving the request

and notify the parties of such appointment.

(d) Mediations under this rule shall be subject to [560 IAC 2-6-10](#).

(Indiana Education Employment Relations Board; [560 IAC 2-3.1-8](#); filed May 24, 2018, 11:06 a.m.:
[20180620-IR-560170443FRA](#))

[560 IAC 2-3.1-9](#) Expedited proceedings when impasse is stayed due to unfair practice complaint

Authority: [IC 20-29-3-11](#)

Affected: [IC 4-21.5-3](#); [IC 20-29-7-4](#)

Sec. 9. (a) In the event impasse is stayed as the result of an unfair practice complaint, the unfair practice proceedings shall be conducted in accordance with [IC 4-21.5-3](#) and this section.

(b) The executive director shall appoint a hearing examiner within two (2) business days of the date the complaint is filed.

(c) The hearing examiner shall set an expedited discovery schedule, and all discovery shall be completed no later than sixty (60) days of the date the complaint was filed.

(d) Any motion for summary judgment shall be filed no later than ninety (90) days of the date the complaint was filed.

(e) The hearing examiner may not grant any extension of time to file a motion for summary judgment or any responses thereto.

(f) The hearing shall be conducted within one hundred eighty (180) days of the date the complaint was filed.

(g) The hearing examiner shall not grant any extensions of time unless an emergency exists.

(h) The hearing examiner shall issue a written report within thirty (30) days of the later of:

- (1) the conclusion of the hearing; or
- (2) submission of proposed findings of fact.

(i) The parties may not waive the expedited timelines.

(j) If the parties request mediation, engaging in mediation does not toll the expedited timelines in this section.

(k) In the event the stay of impasse is lifted, the expedited timelines and this section no longer apply to the proceeding.

(Indiana Education Employment Relations Board; [560 IAC 2-3.1-9](#); filed May 24, 2018, 11:06 a.m.:
[20180620-IR-560170443FRA](#))

[560 IAC 2-3.1-10](#) Compliance and enforcement

Authority: [IC 20-29-3-11](#)

Affected: [IC 4-21.5-6](#)

Sec. 10. Compliance or enforcement of a board order may be pursued in accordance with [IC 4-21.5-6](#).

(Indiana Education Employment Relations Board; [560 IAC 2-3.1-10](#); filed May 24, 2018, 11:06 a.m.:
[20180620-IR-560170443FRA](#))

SECTION 4. [560 IAC 2-4-1](#) IS AMENDED TO READ AS FOLLOWS:

[560 IAC 2-4-1](#) Resolution of an impasse; petition for assistance

Authority: [IC 20-29-3-11](#); [IC 20-29-6-13](#)

Affected: [IC 20-29-6](#)

Sec. 1. (a) The ~~IEERB~~ **executive director** shall declare impasse ~~after September 30~~ **sixty (60) days following the beginning of formal bargaining** if either of the following occurs:

- (1) The parties notify the board of impasse. ~~or~~
- (2) The parties are, or are supposed to be under the terms of their ~~contract~~, **CBA**, in collective bargaining for all or part of a ~~contract~~ **CBA** and have not submitted a ~~contract~~ **CBA** to the ~~IEERB~~: **board**.

(b) Upon the declaration of impasse, each party is required to provide the ~~IEERB~~ **board** with the name, position, address, ~~e-mail~~ **email** address, and phone number of its chief spokesperson, and of the individual to whom billing invoices should be submitted. Each party is required to immediately submit a change in contact information occurring during a mediation or ~~fact-finding~~ **factfinding** process.

(c) A school employer shall provide to the board and the exclusive representative the following information, upon which the school employer intends to rely to support the school employer's LBO, from the general fund, or for LBOs occurring on or after January 1, 2019, the education fund, and documents supporting that information:

- (1) all revenue;
- (2) bargained teacher expenses;
- (3) nonbargained teacher expenses; and
- (4) nonteacher expenses.

All such information or documentation shall be provided within fourteen (14) days of the declaration of impasse, except in circumstances where modified LBO requirements are necessary pursuant to section 3.1 of this rule wherein the executive director shall determine the time within which such documentation shall be provided. 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.

~~(e)~~ (d) Unless otherwise indicated in these rules, **this article** all correspondence for impasse procedures shall be via ~~e-mail~~: **email**. Parties or the ~~IEERB~~ **board** may, in addition to ~~e-mail~~, **email**, correspond via mail, facsimile, or hand delivery. Receipt of an ~~e-mail~~ **email** will be presumed upon dispatch.

(Indiana Education Employment Relations Board; [560 IAC 2-4-1](#); filed Oct 6, 1988, 11:15 a.m.: 12 IR 315; readopted filed Sep 12, 2001, 10:55 a.m.: 25 IR 529; readopted filed Nov 30, 2007, 11:19 a.m.: [20071226-IR-560070368RFA](#); filed Aug 28, 2012, 2:06 p.m.: [20120926-IR-560120112FRA](#); readopted filed Sep 10, 2013, 10:25 a.m.: [20131009-IR-560130214RFA](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

SECTION 5. [560 IAC 2-4-3](#) IS AMENDED TO READ AS FOLLOWS:

[560 IAC 2-4-3](#) Mediation

Authority: [IC 20-29-3-11](#); [IC 20-29-6-13](#)

Affected: [IC 20-29-6](#)

Sec. 3. (a) Upon a declaration of impasse, ~~a mediator shall be appointed by the board~~: **executive director shall appoint a mediator within fifteen (15) days of declaration of impasse**.

(b) **Mediation will consist of one (1) to three (3) sessions and shall continue no more than thirty (30) days. Mediation will end with the submission to the board of a ratified CBA or the exchange of last best offers.**

(c) **Parties at impasse shall engage in at least one (1) mediation session prior to the initiation of**

factfinding.

(d) Prior to declaration of impasse, parties may request appointment of a mediator through the board. The parties shall split the cost of pre-impasse mediation equally. The pre-impasse mediator shall not be the impasse mediator unless both parties agree to continue to utilize the pre-impasse mediator.

(e) Mediations under this rule shall be subject to [560 IAC 2-6-10](#).

(Indiana Education Employment Relations Board; [560 IAC 2-4-3](#); filed Oct 6, 1988, 11:15 a.m.: 12 IR 315; readopted filed Sep 12, 2001, 10:55 a.m.: 25 IR 529; readopted filed Nov 30, 2007, 11:19 a.m.: [20071226-IR-560070368RFA](#); filed Aug 28, 2012, 2:06 p.m.: [20120926-IR-560120112FRA](#); readopted filed Sep 10, 2013, 10:25 a.m.: [20131009-IR-560130214RFA](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

SECTION 6. [560 IAC 2-4-3.1](#) IS AMENDED TO READ AS FOLLOWS:

[560 IAC 2-4-3.1](#) Last best offer

Authority: [IC 20-29-3-11](#); [IC 20-29-6-15.1](#)

Affected: [IC 20-29-6-12.5](#)

Sec. 3.1. (a) ~~The~~ **Each party shall submit its last best offer LBO shall be presented to the opposing party and the board** at the end of **the thirty (30) day period for mediation**. ~~The LBO must be submitted to the IEERB electronically within two (2) days after mediation has ended. The LBO submitted to IEERB must be identical to the LBO presented to the opposing party at the end of mediation.~~

(b) Each party's LBO shall contain a signed verification stating that all information is correct and that the LBO does not place the **school** employer in a position of deficit financing. ~~due to a reduction in the employer's actual general fund revenue or an increase in the employer's expenditures when the expenditures exceed the employer's current year actual general fund revenue.~~ The LBO shall:

- (1) be submitted in the format required by the ~~IEERB;~~ **board**; and
- (2) include all information and documents required by the ~~IEERB;~~ **board**.

(c) ~~Prior to October 1st the end of formal bargaining~~ of each year, ~~IEERB~~ **the board** 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 upon declaration of impasse.

~~(e)~~ (d) The LBO shall be submitted to ~~IEERB~~ **the board** electronically. ~~If the large size of any supporting documentation precludes electronic delivery, the supporting documentation may be submitted to IEERB~~ **The board may also require the LBO to be submitted** in hard copy. ~~or an electronic format within twenty-four (24) hours of the submission of the LBO.~~

(e) **The executive director shall provide modified LBO requirements for parties when:**

- (1) **the school employers that do not receive a certification of estimated general fund revenue, or after January 1, 2019, education fund revenue, available for bargaining from the school funding formula pursuant to [IC 20-29-6-12.5](#); or**
- (2) **impasse has been stayed.**

(f) **Any party may seek modified LBO requirements within ten (10) days prior to the end of the thirty (30) day period for mediation. Such modifications shall be advisory unless otherwise agreed to by both parties.**

~~(e)~~ (g) **The board staff** shall review the LBOs to ensure that the LBO is in the required format and contains the required information and documents. Failure to substantially comply with the requirements of an LBO could result in rejection of the submitted LBO and acceptance of the opposing party's LBO.

~~(e)~~ **(h)** If a party has substantially complied with the LBO requirements, ~~IEERB~~ **the executive director** will notify the submitting party, who will have ~~twenty-four (24)~~ **forty-eight (48)** hours to provide the requested format, information, or documents. Failure to submit an LBO as requested by ~~IEERB~~ **the board** could result in rejection of the submitted LBO and acceptance of the opposing party's LBO.

(Indiana Education Employment Relations Board; [560 IAC 2-4-3.1](#); filed Aug 28, 2012, 2:06 p.m.: [20120926-IR-560120112FRA](#); readopted filed Sep 10, 2013, 10:25 a.m.: [20131009-IR-560130214RFA](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

SECTION 7. [560 IAC 2-4-4](#) IS AMENDED TO READ AS FOLLOWS:

[560 IAC 2-4-4](#) Factfinding

Authority: [IC 20-29-3-11](#); [IC 20-29-6-15.1](#); [IC 20-29-8-7](#)

Affected: [IC 20-29-6](#); [IC 20-29-8-8](#)

~~Sec. 4. (a) Parties at impasse must engage in at least one (1) session prior to the initiation of fact-finding.~~ **Within fifteen (15) days of the end of an unsuccessful mediation, the executive director will appoint a factfinder.**

(b) The factfinder shall, within thirty (30) days of appointment, investigate the parties' LBOs and pick one (1) to be the parties' CBA.

~~(b) (c) If parties in the fact-finding process are able to reach a settlement, they shall submit identical LBOs to the fact-finder, and the fact-finder shall impose the terms of the joint LBO as the contract.~~ **(c) If parties in the fact-finding process are able to reach a settlement, they shall submit identical LBOs to the factfinder, and the factfinder shall impose the terms of the joint LBO as the contract. CBA, if the LBO does not place the school employer in a position of deficit financing and is otherwise compliant. Each party's LBO must shall contain a verification statement, as required by section 3.1 of this rule.**

~~(e) The school corporation is responsible for providing a room for the fact-finding hearing and equipment and necessary materials for recording of the proceedings.~~

(d) Each party has a maximum of two (2) hours to present in the fact-finding hearing and one (1) hour for rebuttal. The factfinder may allow additional time for the hearing.

~~(d) The purpose of fact-finding is to provide a final solution on the items permitted to be bargained under [IC 20-29-6-4](#) whenever the parties are unable by themselves, or through a mediator, to resolve a dispute.~~

(e) The factfinder shall issue a report with proposed findings of fact and conclusions of law.

(f) The factfinder may consult with, utilize, and rely upon a neutral financial consultant or other expert during the factfinding investigation. Neutral shall mean that the financial consultant or other expert does not have any conflicts of interest with either party.

(g) For LBOs that do not place a school employer in a position of deficit financing, the factfinder may strike noncompliant terms. Where both LBOs place the school employer in a position of deficit financing, the factfinder may modify or strike terms of the LBO most consistent with [IC 20-29-8-8](#) to ensure the LBO does not place the school in a position of deficit financing and is otherwise compliant. Nothing in this rule shall be construed to permit the factfinder to impose terms beyond those proposed by the parties.

~~(e) If no request for review has reached the board, and it will be released to the public within ten (10) days after delivery to the board.~~ **(h) The board within five (5) days after the parties have received the fact-finding report under section 6 of this rule, shall issue the fact-finding factfinder's report, of the issuance of the report. The board may make changes to correct any errors to the factfinder's report, prior to its issuance, but is not required to do so.**

(Indiana Education Employment Relations Board; [560 IAC 2-4-4](#); filed Oct 6, 1988, 11:15 a.m.: 12 IR 315;

readopted filed Sep 12, 2001, 10:55 a.m.: 25 IR 529; readopted filed Nov 30, 2007, 11:19 a.m.: [20071226-IR-560070368RFA](#); filed Aug 28, 2012, 2:06 p.m.: [20120926-IR-560120112FRA](#); readopted filed Sep 10, 2013, 10:25 a.m.: [20131009-IR-560130214RFA](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

SECTION 8. [560 IAC 2-4-6](#) IS AMENDED TO READ AS FOLLOWS:

[560 IAC 2-4-6](#) Appeal of factfinding reports

Authority: [IC 20-29-3-11](#); [IC 20-29-6-18](#)

Affected: [IC 20-29-6](#); [IC 20-29-8-8](#)

Sec. 6. (a) To obtain board review of a ~~fact-finding~~ **factfinding** report, a request ~~must for review shall~~ be made by the school employer or the exclusive representative within thirty (30) days after ~~receipt~~ **issuance** of the report **or revised issuance by the board, whichever is later.**

(b) ~~The oral or written request must for review shall~~ state the nature of the objection to the report. ~~If the request is oral, a written confirmation of the request must be received by the board within two (2) days.~~

(c) The appeal of a ~~fact-finding~~ **factfinding** report must be in writing, stating the specific nature of each objection to the report. Any party in opposition to the appeal may file an answering brief. Any answering brief ~~must shall~~ be filed ~~within ten (10) days of service of the appeal and~~ within fifteen (15) days of the filing of the appeal with the ~~IEERB~~ **board**. No additional briefs may be filed unless requested by the board. The board ~~will~~ **shall** decide the matter upon the record, with or without oral argument, **at the board's discretion.**

(d) The appealing party ~~must~~ **shall** bear the cost for preparation of a hearing transcript.

(e) **The board may consult with, utilize, and rely upon a neutral financial consultant or other expert in its review of a factfinding report. Neutral shall mean that the financial consultant or other expert does not have any conflicts of interest with either party.**

(f) **For LBOs that do not place a school employer in a position of deficit financing, the board may strike noncompliant terms. Where both LBOs place the school employer in a position of deficit financing, the board may modify or strike terms of the LBO most consistent with [IC 20-29-8-8](#) to ensure the LBO does not place the school in a position of deficit financing and is otherwise compliant. Nothing in this rule shall be construed to permit the board to impose terms beyond those proposed by the parties.**

(Indiana Education Employment Relations Board; [560 IAC 2-4-6](#); filed Oct 6, 1988, 11:15 a.m.: 12 IR 316; readopted filed Sep 12, 2001, 10:55 a.m.: 25 IR 529; readopted filed Nov 30, 2007, 11:19 a.m.: [20071226-IR-560070368RFA](#); filed Aug 28, 2012, 2:06 p.m.: [20120926-IR-560120112FRA](#); readopted filed Sep 10, 2013, 10:25 a.m.: [20131009-IR-560130214RFA](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

SECTION 9. [560 IAC 2-4-7](#) IS ADDED TO READ AS FOLLOWS:

[560 IAC 2-4-7](#) Stay of impasse

Authority: [IC 20-29-3-11](#); [IC 20-29-6-13](#)

Affected: [IC 20-29-6](#)

Sec. 7. (a) Impasse shall be stayed when an unfair practice complaint is filed and:

- (1) the complaint requests a stay of impasse procedures;
- (2) the complaint 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.

(b) **The executive director may at the executive director's discretion 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.

(c) The stay of impasse will continue until a determination of the unfair practice complaint is made. The complaint shall be given priority over other unfair practice complaints.

- (d) The executive director may proceed with the impasse procedures where:
- (1) the complaining party in the unfair practice complaint does not request a stay;
 - (2) the complaining party in the unfair practice complaint later requests that impasse procedures proceed; or
 - (3) the executive director determines that a stay is inappropriate given the nature of the allegations.

(e) The executive director 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 collective bargaining agreement or memorandum of understanding.

(Indiana Education Employment Relations Board; [560 IAC 2-4-7](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

SECTION 10. [560 IAC 2-5-1](#) IS AMENDED TO READ AS FOLLOWS:

[560 IAC 2-5-1](#) Collective bargaining agreements; filing

Authority: [IC 20-29-3-11](#)

Affected: [IC 20-29-3-14](#)

Sec. 1. Every school employer entering into a written contract ~~collective bargaining agreement~~ with an exclusive representative shall file an ~~executed~~ **ratified** copy of the ~~master contract collective bargaining agreement~~ with the board within thirty (30) days after the contract is executed. **consistent with [560 IAC 2-8-2](#).**

(Indiana Education Employment Relations Board; [560 IAC 2-5-1](#); filed Oct 6, 1988, 11:15 a.m.: 12 IR 316; readopted filed Sep 12, 2001, 10:55 a.m.: 25 IR 529; readopted filed Nov 30, 2007, 11:19 a.m.: [20071226-IR-560070368RFA](#); readopted filed Sep 10, 2013, 10:25 a.m.: [20131009-IR-560130214RFA](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

SECTION 11. [560 IAC 2-5-2](#) IS ADDED TO READ AS FOLLOWS:

[560 IAC 2-5-2](#) Provision of information and documents

Authority: [IC 20-29-3-11](#)

Affected: [IC 20-29-3-14](#)

Sec. 2. (a) Every school employer and exclusive representative shall timely submit any documents or information required by the board or the executive director, as permitted by law.

(b) The documents and information required to be submitted shall be communicated to school employers electronically, and posted on the board's website.

(Indiana Education Employment Relations Board; [560 IAC 2-5-2](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

SECTION 12. [560 IAC 2-6-1.1](#) IS ADDED TO READ AS FOLLOWS:

[560 IAC 2-6-1.1](#) Electronic filing and service

Authority: [IC 20-29-3-11](#)

Affected: [IC 4-21.5-3-1](#); [IC 20-29](#)

Sec. 1.1. (a) This section shall apply to all board actions and filings. Filings in unfair labor actions pursuant to [560 IAC 2-3.1](#) may also be filed by any means permitted by [IC 4-21.5-3-1](#).

(b) An action shall be commenced by filing electronically in a manner prescribed by the board (e-filing).

(c) Electronic filing of documents is as follows:

(1) Unless otherwise permitted by this article, all documents submitted for filing shall be filed electronically with the board using the electronic filing method prescribed by the board.

(2) Attorneys, non-attorney representatives, or unrepresented litigants who wish to be exempted from the requirement that they file electronically may file a petition for electronic filing exemption. The petition shall be filed in each pending case to which these rules are applicable. The petition will be reviewed by the adjudicator assigned to that case and granted only upon a showing of good cause.

(d) Filers shall print or otherwise save each submission with an electronic time stamp as proof of filing. Confirmation of e-filing may also be made by contacting board staff during business hours.

(e) Unless otherwise indicated in this article, all service of documents shall be electronically in a manner prescribed by the board. A party may, but is not required to, serve parties in addition to electronic service, by any other method authorized by [IC 4-21.5-3](#).

(f) All documents electronically filed that require a signature shall include a person's signature using one (1) of the following methods:

(1) A graphic image of a handwritten signature, including an actual signature on a scanned document.

(2) The indicator "/s/" followed by the person's name.

(g) A document that is signed and e-filed shall be subject to the terms and provisions of Indiana Trial Rule 11(A). A filer may include the signature of other attorneys in documents e-filed with the board only if such signature is authorized.

(h) A document is considered e-filed with the board on the date and time reflected on the time stamp associated with the transmission of the document. E-filing shall be completed before midnight to be considered filed that day, and compliance with filing deadlines is determined in accordance with eastern time (ET), the time zone of the principal office of the board. E-filing under this article shall be available twenty-four (24) hours a day, except for times of required maintenance, if applicable.

(i) The electronic version of a document filed with or issued by the board or its agent under this section becomes part of the official agency record.

(j) Where an e-filed document does not conform to this article, the adjudicator, board, or the board's agent may strike the nonconforming document or allow the party to cure the defect.

(k) When e-filing is prevented by any circumstance not caused by the filer who was adversely affected, the filer may bring such circumstances to the attention of the board or its agent and request relief, or the filer may revert to conventional filing with an appropriate explanation submitted with the document, prior to the due date. If it is determined that e-filing was prevented due to no fault of the filer, the filing shall be deemed to have been made timely.

(l) Orders issued by the board or its agent will be issued via electronic means approved by the board. Parties before the board or its agents shall provide working email addresses or means of electronic communications consistent with board policy to facilitate service of orders or other communications. Receipt of an email or electronic communication shall be presumed upon dispatch.

(Indiana Education Employment Relations Board; [560 IAC 2-6-1.1](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

SECTION 13. [560 IAC 2-6-2](#) IS AMENDED TO READ AS FOLLOWS:

[560 IAC 2-6-2](#) Representatives of parties and attorneys

Authority: [IC 20-29-3-11](#)

Affected: [IC 20-29](#)

Sec. 2. (a) A party may be represented by any person or attorney it may authorize to appear before the board on the party's behalf, and there shall be no limit on the number of such representatives who may appear. Each person or attorney appearing for a party shall file an appearance form. However, each party shall designate one (1) person for the purpose of service of notice, pleadings, and papers by the board and other parties. Service on the designated representative shall be deemed to be service on the party and all other representatives.

(b) This rule shall not be read to permit non-attorneys to engage in legal representation for which admission by the Indiana supreme court is required.

(Indiana Education Employment Relations Board; [560 IAC 2-6-2](#); filed Oct 6, 1988, 11:15 a.m.: 12 IR 316; readopted filed Sep 12, 2001, 10:55 a.m.: 25 IR 529; readopted filed Nov 30, 2007, 11:19 a.m.: [20071226-IR-560070368RFA](#); readopted filed Sep 10, 2013, 10:25 a.m.: [20131009-IR-560130214RFA](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

SECTION 14. [560 IAC 2-6-7](#) IS AMENDED TO READ AS FOLLOWS:

[560 IAC 2-6-7](#) Correspondence with the board and its agents

Authority: [IC 20-29-3-11](#)

Affected: [IC 20-29](#)

Sec. 7. All correspondence on pending proceedings directed to the board, individual members of the board, a hearing officer, a hearing examiner, a mediator, a ~~fact finder~~, **factfinder**, or any other agent of the board, shall be served on all other parties to such proceedings by simultaneously ~~mailing~~ **emailing** a copy to other parties; provided, however, this section in no way shall be construed to impair the confidentiality of the mediation, ~~fact finding~~, **factfinding**, or representation process.

(Indiana Education Employment Relations Board; [560 IAC 2-6-7](#); filed Oct 6, 1988, 11:15 a.m.: 12 IR 317; readopted filed Sep 12, 2001, 10:55 a.m.: 25 IR 529; readopted filed Nov 30, 2007, 11:19 a.m.: [20071226-IR-560070368RFA](#); readopted filed Sep 10, 2013, 10:25 a.m.: [20131009-IR-560130214RFA](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

SECTION 15. [560 IAC 2-6-8](#) IS AMENDED TO READ AS FOLLOWS:

[560 IAC 2-6-8](#) Time limits

Authority: [IC 20-29-3-11](#)

Affected: [IC 4-21.5-3-2](#); [IC 20-29](#)

Sec. 8. (a) ~~How certain time limits are set.~~ In instances where ~~[560 IAC 2-](#)[IC 20-7.5-1](#)~~, **this article, [IC 20-29](#)**, and [IC 4-21.5-3](#) do not provide a time by which an act must be accomplished, the ~~chairman~~, **executive director**, hearing officer, hearing examiner, board, or an agent of the board may set the time. For good cause shown, the ~~chairman~~, **executive director**, hearing officer, hearing examiner, board, or an agent of the board may also extend the time by which an act may be accomplished.

(b) ~~Computation of time.~~ In computing any period of time under ~~these rules~~ **this article, not otherwise specified**, the board shall refer to [IC 4-21.5-3-2](#) to compute a period of time for the filing of papers or accomplishing an act.

(Indiana Education Employment Relations Board; [560 IAC 2-6-8](#); filed Oct 6, 1988, 11:15 a.m.: 12 IR 317; readopted filed Sep 12, 2001, 10:55 a.m.: 25 IR 529; readopted filed Nov 30, 2007, 11:19 a.m.: [20071226-IR-560070368RFA](#); readopted filed Sep 10, 2013, 10:25 a.m.: [20131009-IR-560130214RFA](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

SECTION 16. [560 IAC 2-6-10](#) IS ADDED TO READ AS FOLLOWS:

[560 IAC 2-6-10](#) Mediation

Authority: [IC 20-29-3-11](#)

Affected: [IC 20-29](#)

Sec. 10. (a) All mediations conducted under this article shall be confidential and subject to Rule 2 Mediation of the Indiana Rules for Alternative Dispute Resolution adopted by the Indiana supreme court, last amended on February 9, 2017, not including any subsequent amendments, which is incorporated in this article by reference and may be obtained from the Indiana supreme court online, except to the extent outlined in this article. All mediations shall be subject to Rule 2 of the Indiana Rules for Alternative Dispute Resolution, except to the extent such rule is inconsistent with this article.

(b) Mediators shall be appointed by the executive director from the board's staff or ad hoc panel.

(c) Mediators are not required to be registered mediators or attorneys.

(d) A mediator shall not be subject to process requiring the disclosure of any matter occurring during the mediation except in a separate matter as required by law.

(e) Mediation shall be regarded as settlement negotiations.

(Indiana Education Employment Relations Board; [560 IAC 2-6-10](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

SECTION 17. [560 IAC 2-6-11](#) IS ADDED TO READ AS FOLLOWS:

[560 IAC 2-6-11](#) Ad hoc panel

Authority: [IC 20-29-3-3.1](#); [IC 20-29-3-11](#)

Affected: [IC 20-29](#)

Sec. 11. (a) The executive director shall maintain an ad hoc panel comprised of qualified individuals to serve as mediators, hearing examiners, hearing officers, factfinders, compliance officers, financial consultants, and trainers.

(b) To be considered for the ad hoc panel, individuals must submit an ethics obligation and acknowledgment, information sheet, application, and resume to the executive director.

(c) The executive director and any board member may recommend potential ad hocs to the panel.

(d) The executive director, at the executive director's discretion, may:

(1) remove individuals from the ad hoc panel:

(A) for violations of subsection (f);

(B) if requested by the ad hoc;

(C) if the ad hoc's current employment presents a conflict of interest or is otherwise barred by statute;

(D) if the ad hoc has not had an appointment in the past five (5) years; or

(E) for other good or just cause after notice to the ad hoc; and

(2) appoint eligible ad hoc panel members to matters.

(e) All ad hoc panelists shall be required to attend one (1) training session conducted by board staff to be eligible for assignment to matters. The executive director or the board may require additional training for assignment to matters.

(f) Any past professional discipline history of dishonesty or present findings of ethical violations shall disqualify an ad hoc panelist from appointment or continuation on the ad hoc panel. Ad hoc panelists shall inform the executive director of any pending ethics matters to which they are subject.

(g) Ad hoc panel members shall be entitled to pay for training and assignment of matters as indicated on the current ad hoc panel.

(Indiana Education Employment Relations Board; [560 IAC 2-6-11](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

SECTION 18. [560 IAC 2-8-1](#) IS AMENDED TO READ AS FOLLOWS:

[560 IAC 2-8-1](#) Compliance rubric

Authority: [IC 20-29-3-11](#); [IC 20-29-6-6.1](#)

Affected: [IC 20-29-6](#)

Sec. 1. The board shall do the following:

- (1) Develop a rubric for use in reviewing a CBA to determine its compliance with [IC 20-29-6](#).
- (2) Publish the rubric on the board's website no later than July 1, 2015.
- (3) Annually review and update the **compliance rubric for use in reviewing a CBA to determine its compliance**, as needed.
- (4) Publish ~~any the~~ updated rubric on the board's website no later than July 1 each year thereafter. **thirty (30) days prior to the start of formal bargaining.**

(Indiana Education Employment Relations Board; [560 IAC 2-8-1](#); filed Jan 7, 2016, 8:13 a.m.: [20160203-IR-560150200FRA](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

SECTION 19. [560 IAC 2-8-2](#) IS AMENDED TO READ AS FOLLOWS:

[560 IAC 2-8-2](#) Submission of ratified collective bargaining agreement; compliance officer appointment

Authority: [IC 20-29-3-11](#); [IC 20-29-6-6.1](#)

Affected: [IC 20-29-6-6.1](#)

Sec. 2. (a) As soon as practicable after ratification by both parties, the school employer shall submit a copy of the ratified CBA (as defined in [560 IAC 2-1-2](#)), **including the compensation plan**, to the board in the manner prescribed by the board.

(b) The ~~board chair~~ **executive director** shall appoint a ~~staff member or ad hoc panel member to serve as the~~ compliance officer to review the CBA using the rubric described in section 1 of this rule.

(Indiana Education Employment Relations Board; [560 IAC 2-8-2](#); filed Jan 7, 2016, 8:13 a.m.: [20160203-IR-560150200FRA](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

SECTION 20. [560 IAC 2-8-4](#) IS AMENDED TO READ AS FOLLOWS:

[560 IAC 2-8-4](#) Memorandum of understanding; compliance review

Authority: [IC 20-29-3-11](#); [IC 20-29-6-6.1](#)

Affected: [IC 20-29-6-6.1](#)

Sec. 4. (a) Any MOU as defined in [560 IAC 2-1-2](#) is subject to review by a compliance officer pursuant to this rule.

(b) Any MOU not submitted as required by this rule constitutes a failure to submit a complete CBA and may result in a finding of noncompliance with a penalty of requiring board approval prior to ratifying any subsequent CBA or MOU.

(c) Any MOU ratified by the parties outside the bargaining timelines, except to the extent permitted by this section, is noncompliant.

(d) Notwithstanding subsection (c), the following may constitute an exception to a finding of noncompliance for bargaining outside the allowable bargaining timelines:

- (1) Newly discovered information or an unanticipated event that was not known or available at the time the parties ratified the original CBA.
- (2) Nonrule policy guidance issued by the board addressing unanticipated circumstances impacting multiple bargaining parties and allowing parties to bargain and ratify a limited MOU outside of the bargaining timelines.

(e) Within ~~two (2)~~ **ten (10)** business days of ratification of the MOU by both parties, the school employer shall submit a copy of the ratified MOU and a written explanation of the need for the MOU to the board in the manner prescribed by the board.

(f) Upon receipt of a ratified MOU, and to the extent practicable, the ~~board chair~~ **executive director** shall appoint the original compliance officer to review the MOU.

(g) The compliance officer shall review the MOU and accompanying documentation to determine if an exception to a finding of noncompliance is warranted.

(h) The compliance officer shall issue an addendum as described in section 3 of this rule.

(Indiana Education Employment Relations Board; [560 IAC 2-8-4](#); filed Jan 7, 2016, 8:13 a.m.: [20160203-IR-560150200FRA](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

SECTION 21. [560 IAC 2-8-5](#) IS AMENDED TO READ AS FOLLOWS:

[560 IAC 2-8-5](#) Compliance officer's report or addendum to parties

Authority: [IC 20-29-3-11](#); [IC 20-29-6-6.1](#)

Affected: [IC 20-29-6-6.1](#)

Sec. 5. (a) The ~~board or its agent~~ **compliance officer** will provide the parties with a copy of the compliance officer's report or addendum via ~~e-mail~~ **email** to each party's contact information on file with the board.

(b) Unless otherwise indicated in this rule, all correspondence for CBA and MOU compliance reviews, including approval or denial of approval to ratify as described in section 8 of this rule, shall be via ~~e-mail~~ **email**. Receipt of an ~~e-mail~~ **email** will be presumed upon dispatch.

(c) Until such time as the board has issued a final order or a party has appealed, the compliance officer shall retain jurisdiction of the compliance report and may correct a compliance report to ameliorate any errors or omissions in the compliance report.

(Indiana Education Employment Relations Board; [560 IAC 2-8-5](#); filed Jan 7, 2016, 8:13 a.m.: [20160203-IR-560150200FRA](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

SECTION 22. [560 IAC 2-8-6](#) IS AMENDED TO READ AS FOLLOWS:

[560 IAC 2-8-6](#) Appeal of findings of noncompliance or penalty

Authority: [IC 20-29-3-11](#); [IC 20-29-6-6.1](#)

Affected: [IC 20-29-6-6.1](#)

Sec. 6. (a) Parties have fifteen (15) days from the date the report, **corrected report**, or addendum is issued to appeal:

- (1) a finding of noncompliance;
- (2) a recommended penalty; or

(3) both a finding of noncompliance and a recommended penalty.

(b) The appeal must:

- (1) be in writing;
- (2) state the basis of the appeal with reasonable particularity; and
- (3) be filed with the board electronically.

(c) Upon the timely filing of an appeal, the board shall review the appeal and issue a final order.

(d) As part of its review, the board may:

- (1) decide the appeal without briefs or oral argument;
- (2) receive briefs from the parties;
- (3) hear oral argument; or
- (4) both receive briefs and hear oral argument.

~~(e) The board may stay impasse proceedings pending the board's final order in an appeal under this section.~~

(Indiana Education Employment Relations Board; [560 IAC 2-8-6](#); filed Jan 7, 2016, 8:13 a.m.: [20160203-IR-560150200FRA](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

SECTION 23. [560 IAC 2-8-7](#) IS AMENDED TO READ AS FOLLOWS:

[560 IAC 2-8-7](#) Board order on appeal

Authority: [IC 20-29-3-11](#); [IC 20-29-6-6.1](#)

Affected: [IC 20-29-6-6.1](#)

Sec. 7. (a) The board shall issue a final order within thirty (30) days of the ~~later of~~ **board hearing on the following: appeal.**

- ~~(1) The timely filing of an appeal.~~
- ~~(2) Receipt of the last brief from the parties.~~
- ~~(3) Conclusion of oral argument.~~

(b) In the event no timely appeal is filed, the compliance officer's report or addendum shall become the final order of the board.

(Indiana Education Employment Relations Board; [560 IAC 2-8-7](#); filed Jan 7, 2016, 8:13 a.m.: [20160203-IR-560150200FRA](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

SECTION 24. [560 IAC 2-8-8](#) IS AMENDED TO READ AS FOLLOWS:

[560 IAC 2-8-8](#) Prior approval for ratifying subsequent agreement

Authority: [IC 20-29-3-11](#); [IC 20-29-6-6.1](#)

Affected: [IC 20-29-6-6.1](#); [IC 20-29-6-13](#)

Sec. 8. (a) If the final order of the board requires the parties to obtain written approval ~~from the board or board's agent~~ prior to ratifying any subsequent CBA or MOU, the following shall occur:

- (1) The ~~board chair~~ **executive director** shall appoint a ~~staff member or ad hoc panel member to serve as the~~ compliance officer to review the tentatively agreed upon CBA or MOU.
- (2) The written appointment shall:
 - (A) be made no later than ~~August 1~~; **the first day of formal bargaining**; and
 - (B) be provided to both the school employer and the exclusive representative.
- (3) The school employer shall submit a copy of the tentatively agreed upon CBA or MOU to the compliance officer in the manner prescribed by the compliance officer.
- (4) The compliance officer shall review the CBA or MOU and provide the parties with a written notice of approval or denial.

(b) If the compliance officer issues a denial of approval to ratify, the notice shall identify the terms of the CBA or MOU that preclude the compliance officer's approval.

(c) Absent a timely appeal and as soon as practicable, the parties shall correct the noncompliant terms and submit a new tentatively agreed upon CBA or MOU to the compliance officer for review in accordance with this section.

(d) Parties have four (4) business days from the date the notice of denial is e-mailed **emailed** to appeal the compliance officer's decision.

(e) The appeal ~~must~~ **shall** be in writing and describe, with reasonable particularity, the reason the identified terms of the CBA or MOU should be approved.

(f) Upon the timely filing of an appeal, the board shall make a determination and issue a final notice of approval or denial no later than thirty (30) days after receipt of the appeal.

~~(g) The board or its agent may stay impasse proceedings pending the board's final order in an appeal under this section.~~

~~(g)~~ **(g)** Failure to obtain approval to ratify a CBA subjects the parties to impasse procedures pursuant to [IC 20-29-6-13](#) unless impasse is otherwise stayed by the board or the board's agent.

~~(h)~~ **(h)** Any ratification of a subsequent CBA or MOU without the written approval of the board or the board's agent as required in this section, shall be considered null and void, and the parties will proceed through impasse proceedings pursuant to [IC 20-29-6-13](#) as applicable. **The executive director may stay impasse proceedings pending the board's final order in an appeal under this section, pursuant to [560 IAC 2-4-7](#).**

(Indiana Education Employment Relations Board; [560 IAC 2-8-8](#); filed Jan 7, 2016, 8:13 a.m.: [20160203-IR-560150200FRA](#); filed May 24, 2018, 11:06 a.m.: [20180620-IR-560170443FRA](#))

SECTION 25. THE FOLLOWING ARE REPEALED: [560 IAC 2-1-1](#); [560 IAC 2-2](#); [560 IAC 2-3](#); [560 IAC 2-4-5](#); [560 IAC 2-6-1](#); [560 IAC 2-6-3](#); [560 IAC 2-6-4](#); [560 IAC 2-6-5](#); [560 IAC 2-6-6](#); [560 IAC 2-6-9](#); [560 IAC 2-7](#).

LSA Document #17-443(F)

Notice of Intent: [20171004-IR-560170443NIA](#)

Proposed Rule: [20171115-IR-560170443PRA](#)

Hearing Held: December 11, 2017

Approved by Attorney General: May 16, 2018

Approved by Governor: May 24, 2018

Filed with Publisher: May 24, 2018, 11:06 a.m.

Documents Incorporated by Reference: West's Annotated Indiana Code, Rules for Alternative Dispute Resolution, Rule 2 Mediation, current with amendments received through January 1, 2018, published by Thomson Reuters (2018)

Small Business Regulatory Coordinator: John A. Henry, Director of Dispute Resolution, Indiana Education Employment Relations Board, 143 West Market Street, Suite 500, Indianapolis, IN 46204, (317) 233-6617, johenny@ieerb.in.gov

Posted: 06/20/2018 by Legislative Services Agency

An [html](#) version of this document.