



STATE OF INDIANA

ERIC J. HOLCOMB, Governor

INDIANA EDUCATION EMPLOYMENT RELATIONS BOARD

143 West Market Street Suite 400

Indianapolis, IN 46204

Telephone: (317) 233-6620

Fax: (317) 233-6632

<http://www.in.gov/ieerb>

IEERB 2017 CBA COMPLIANCE RUBRIC

Introduction

IEERB is responsible for conducting compliance reviews of teacher collective bargaining agreements (CBA) and determining the penalty for any noncompliance. Pursuant to 560 IAC 2-8-1, the Board is required to develop a compliance rubric that must be reviewed and updated annually. The updated Rubric is published on IEERB's website by July 1 each year. Substantive changes or additions from the 2016 Rubric are denoted in **purple text**.

Using the Rubric

The Rubric is designed to assist parties in developing a compliant CBA. The 2017 Rubric has been updated and revised to include additional explanations, tips, and examples of compliant and noncompliant provisions. It also includes sections on MOUs and a section that provides an explanation of the two possible penalties for noncompliance.

Each section of the Rubric explains a required or permitted item, subject, or provision. Because compensation plans are frequently the basis for findings of noncompliance, the Board encourages the parties to pay particular attention to the *Compensation Plan* section that begins on page 3. This section provides numerous examples and tips for ensuring a compliant compensation plan. The section on *Impermissible Items, Provisions, and Subjects* has also been expanded to provide examples of noncompliance from previous compliance reports in an effort to assist parties in avoiding common issues of noncompliance.

The Board strongly encourages the parties to utilize the Rubric, as well as their most recent Compliance Report, to ensure that their 2017 CBA is compliant. Unfortunately, time and staffing constraints prevent IEERB staff from being able to provide an informal review of a tentative agreement or proposed CBA (except for those CBAs that are subject to the prior approval penalty from the previous year). There are additional resources on IEERB's website (www.in.gov/ieerb), including all applicable statutes and rules, as well as the IEERB Guide to CBA Compliance and a compliance checklist. Parties may wish to have a third party read and review their tentative agreement or proposed CBA, prior to ratification, to ensure that the terms of the CBA (including the compensation plan) are clear and easy to understand.

IEERB 2017 COMPLIANCE RUBRIC

REQUIRED PROVISIONS

All of these items must be included in the CBA and must comply with the requirements.
 Substantive changes or additions from the 2016 Rubric are denoted in **purple text**.

Required item	Description – Examples ¹ – Tips
Parties to CBA	<ul style="list-style-type: none"> The names of the school employer and exclusive representative must be identified in the CBA.
Description of bargaining unit	<ul style="list-style-type: none"> The description of the bargaining must match the description in the “Order Affirming Bargaining Unit” issued by IEERB in June 2016, unless the parties have complied with 560 IAC 2-2 to change the unit. If parties have gone through the process to change the unit, the description of the unit in the CBA must match the most recently issued IEERB order affirming the unit. <p>TIP: IEERB has several guidance documents online to assist parties in making a change to the bargaining unit, and the Board encourages parties to read and contact IEERB prior to making a change. (See “Representation” section on IEERB’s website)</p>
Term of the CBA cannot extend beyond the state biennium	<ul style="list-style-type: none"> The CBA must include specific beginning and ending dates. The ending date cannot extend beyond June 30, 2019. <p>Examples:</p> <ul style="list-style-type: none"> Compliant: “The term of the CBA is from September 15, 2017 through July 31, 2018.”² Compliant: “This Agreement is effective from July 1, 2017 through June 30, 2019.” Not Compliant: “The CBA is effective for the 2017-18 and 2018-19 school years.” Not Compliant: “The term of the CBA is from September 15, 2017 through July 31, 2019.”
Ratified and signed by the parties	<ul style="list-style-type: none"> The CBA must be ratified on or after September 15 (no longer August 1). At least one agent of each party must sign the CBA. Ratification date must be included. <p>Examples:</p> <ul style="list-style-type: none"> Compliant: “The CBA was ratified by both parties on September 20, 2017. Signed: <u>John Smith</u> Signed: <u>Alice Jones</u>” Compliant: “Signed: <u>John Smith</u> Date: <u>09/20/17</u> Signed: <u>Alice Jones</u> Date: <u>09/18/17</u>” <p>TIP: Sign and date the CBA at the time of ratification.</p>

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

² In the first year of the biennium, a one-year CBA may end on a date other than June 30. However, in the second year of the biennium, the term of the CBA must end on or before June 30.

PERMISSIBLE PROVISIONS

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

Permissible item	Description – Examples – Tips
Grievance procedure	<ul style="list-style-type: none"> • If arbitration is part of the grievance procedure, CBA must state whether it is advisory or binding arbitration. • If it is binding arbitration, the procedure must be limited to grievances about alleged violations of things within the scope of bargaining. It cannot include grievances for alleged violations of school board policy or other laws. • If it is advisory arbitration, grievances may include alleged violations of board policy, etc.
General definitions of CBA terms	<ul style="list-style-type: none"> • Definitions of general terms that apply throughout the CBA. Examples: <ul style="list-style-type: none"> ▪ “Days means calendar days unless otherwise specified.” ▪ “Teacher, when used in this contract, means each and every member of the bargaining unit as described.”
Contract interpretation provisions	<p>Examples</p> <ul style="list-style-type: none"> ▪ Supremacy clause: “This contract supersedes and cancels all previous agreements whether verbal or written between the school corporation and the association.” ▪ Severability or Savings clause: “If any article or section of this contract shall be held invalid by operation of law or by any tribunal of competent jurisdiction, the remainder of this contract shall not be affected.”
Other permissible non-subject provisions	<ul style="list-style-type: none"> • The parties cannot create a non-bargainable right or a right that is contrary to law (e.g., union gets a bulletin board in the teachers’ lounge; superintendent unilaterally sets all teacher salaries and may decrease salaries to an amount below the teacher’s July 1, 2015 salary, solely to conform to compensation plan). <p>TIP: Teacher rights’ provisions should not be confused with union rights and cannot conflict with school employer rights, such as rights set forth in Indiana Code § 20-29-4-2. Teacher rights’ provisions that are limited to the text of Indiana Code § 20-29-4-1 are compliant.</p>

REQUIRED SUBJECTS

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

COMPENSATION PLAN	
Required Item	Description – Examples - Tips
Must include salary range statement	<ul style="list-style-type: none"> • The compensation plan must include a clear statement of the salary range of the lowest and highest salaries of all full-time bargaining unit members. • The required salary range cannot include any increases or ISTRF contributions for the current contract period. The range must reflect the range of salaries being paid at the beginning of the school year without ISTRF contributions and prior to any salary increases for the current contract period. <p>Examples:</p> <ul style="list-style-type: none"> ▪ Compliant: “The salary range is \$35,000 to \$70,000.” ▪ Not compliant: “The salary range may be found on the school corporation’s website.” ▪ Not compliant: “The salary range is \$35,000 to \$70,000 and includes the school’s ISTRF contribution for the teachers.” <p>TIP: The lack of a salary range statement will result in a finding of noncompliance, even if the salary range can be determined by reviewing other sections of the CBA (e.g., reviewing a salary schedule).</p> <p>TIP: The parties may include more than one salary range in the CBA (e.g. salary range that includes ISTRF contributions), but at a minimum, must include the salary range as described above.</p>
Must include a statement if no increases are bargained or if it is a transition year for the CBA	<ul style="list-style-type: none"> • If the parties bargain that there will be no increases for the current contract period, they must include a statement to that effect. • If this is a transition year for the CBA (i.e., the first year the parties have bargained a contract or MOU since the 2011 changes to the collective bargaining requirements), the compensation plan must include a statement to that effect. <p>Examples:</p> <ul style="list-style-type: none"> ▪ “2017-2018 is a transition year because it is the first year the parties have bargained a contract or MOU since the 2011 changes to collective bargaining requirements.” ▪ “The parties have bargained that there will be no salary increase for the 2017-2018 school year.” <p>NOTE: If the parties include a compensation plan, even though it is a transition year or there are no salary increases, the plan will be reviewed for compliance, but no findings of noncompliance on the compensation plan will be made. Any issues of noncompliance will be noted in the General Comments section.</p>
Must include a clear statement of eligibility for a salary increase	<ul style="list-style-type: none"> • The plan must clearly state that teachers rated ineffective or improvement necessary in the prior school year are not eligible for any salary increase in the current year.

	<ul style="list-style-type: none"> • If the parties agree that the evaluation eligibility requirement does not apply to teachers in their first two full school years of instructing students, they must include a statement to that effect. • Any other eligibility criteria bargained by the parties must be included in the plan. Example: <ul style="list-style-type: none"> ▪ “To be eligible for a salary increase, a teacher must have been employed by the school for at least 90 days in the prior school year.” <p>TIP: The parties should make it clear that teachers rated ineffective or improvement necessary in the prior year remain at their prior year salary, are not placed on to a new salary schedule, and do not advance on the current salary schedule.</p> <p>TIP: If exempting teachers in their first two full years of instructing students from the evaluation rating requirement, be sure to use language that is consistent with the statutory requirement. See Indiana Code § 20-28-9-1.5(d)</p> <p>Examples:</p> <ul style="list-style-type: none"> ▪ Compliant: “Teachers in their first two full years of instructing students are exempt from the evaluation rating eligibility requirement and are eligible for a salary increase regardless of their evaluation rating in the prior school year.” ▪ Not compliant: “Teachers who have taught at the school for one or two years are eligible for a salary increase regardless of their evaluation rating in the prior school year.” <p>TIP: Eligibility criteria are not the same thing as the factors on which a salary increase is based. Although they may be similar, eligibility criteria are threshold criteria – the criteria a teacher must satisfy in order to be considered for a salary increase. Factors are the criteria that a teacher must satisfy in order to actually receive the salary increase. It is possible that a teacher may be eligible for a salary increase, but not satisfy the factors to actually receive the increase. (See Factors Must Be Defined section below.) Parties can define eligibility and factors the same way, but that must be clear from the face of the compensation plan. Also, factors with 0% will be considered an eligibility requirement rather than a factor.</p>
Salary increase must be for the current contract period	<ul style="list-style-type: none"> • The plan must describe the salary increases to be awarded to teachers <u>during the current contract term</u> (or must state that the parties bargained no increases for the current contract). • Increases effective at a date after the current contract expires should not be included in the current contract, but should be included in the appropriate future contract. <p>TIP: The date the salary increase becomes effective should be clearly stated to ensure compliance.</p> <p>TIP: If the 2016-17 CBA included a method for determining salary increases to be awarded in 2017-18, the compensation plan in the 2017-18 CBA must include those increases. Failing to include the previously described increases in the current contract may result in a finding of noncompliance.</p>
Method for determining salary	<ul style="list-style-type: none"> • All salary increases must be included in the compensation plan.

<p>increase must be described</p>	<ul style="list-style-type: none"> • Increases described in other sections of the CBA, but not in the Compensation Plan, will result in a finding of noncompliance. • The plan must describe either the amount of the salary increase or the method by which increase will be calculated. Examples: <ul style="list-style-type: none"> ▪ “Teachers who satisfy all of the criteria will receive a \$1,000 increase to their base salary.” ▪ “Teachers who satisfy all of the criteria will receive a 2% increase to their base salary.” ▪ “The amount of increase will be determined by the number of points the teacher earns multiplied by \$300.” ▪ “The \$100,000 available for salary increases will be divided by the total number of teacher points. The resulting dollar value per point will be multiplied by the number of points the teacher earned.” ▪ “Teachers who satisfy factors A and B will advance a row in their current column. Teachers who satisfy factors B and C will advance one column to the right, but remain in their current row.” • If the compensation plan provides that the prior year’s stipends will be added to the base salary for the current year, the resulting salary increase in the current year must comply with eligibility and other requirements of Indiana Code § 20-28-9-1.5. • If this is a transition year contract, the parties must include a method for determining any salary increases, but the method is not subject to the restrictions of Indiana Code § 20-28-9-1.5 UNLESS the parties used an evaluation plan compliant with Indiana Code § 20-28-11.5. If the parties used a compliant evaluation plan, they may not give increases to teachers rated ineffective or improvement necessary in the prior year, with the limited exception for teachers in their first two full years of instructing students. (See Eligibility section above) <p>TIP: Clearly identify the Compensation Plan section in the CBA and make sure that all of the salary increases are described within that section.</p> <p>IMPORTANT: NOTE ON SALARY INCREASE DIFFERENTIAL:</p> <p>Salary increases must be based on a combination of the statutory factors. To be compliant, increases based on the same set of weighted factors must be the same percentage, dollar amount, number of points, or dollar amount per point. A compensation plan that provides increases that do not have either the same amounts or percentages based on the same set of weighted factors must include a compliant basis for the differentiation.</p> <p>Compensation plans that failed to satisfy this requirement in 2016-2017 were provided notice of the issue in a General Comment, but were not issued a compliance finding. To assist parties in ensuring compliance with this requirement, the Board has determined that 2017-2018 will be a transition year. Therefore, as in 2016-2017, salary increase differentials that do not comply with these requirements will not result in a formal finding of noncompliance, but will be noted in a General Comment. Additionally, IEERB will not make compliance findings for increases based solely on attempts to conform to a new compliant compensation plan.</p>
-----------------------------------	---

Formal findings of noncompliance will be issued for salary increase differentials for 2018-2019 CBAs.

NOTE: Two-year CBAs must include a compensation plan for 2018-2019 that is compliant with the salary increase differential.

TIP: See Model Compensation Plans for examples of compliant plans.

TIP: See Compliance Handbook for more information.

TIP: Check “catch-up” provisions carefully to ensure compliance.

Examples:

- Compliant: All eligible teachers who receive an effective or highly effective evaluation for the 2016-17 school year will receive \$1,000.³
- Compliant: All eligible teachers who receive an effective or highly effective evaluation for the 2016-17 school year will move down a row (where all row movements are the same, either as a flat dollar amount (e.g., \$1,000) or same percentage (e.g., 2%)).⁴

Row	Salary	Differential
A	\$ 37,000	N/A
B	\$ 38,000	\$1,000
C	\$ 39,000	\$1,000
D	\$ 40,000	\$1,000
E	\$ 41,000	\$1,000

- Not compliant: All eligible teachers who receive an effective or highly effective evaluation for the 2016-17 school year (where row movements are not the same amount or percentage).⁵

Row	Salary	Differential \$	Differential %
A	\$ 37,000	N/A	N/A
B	\$ 37,500	\$500	1.4%
C	\$ 37,750	\$250	.7%
D	\$ 38,750	\$1,000	2.6%
E	\$ 41,000	\$2,250	5.8%

The foregoing example is non-compliant because, despite meeting the same statutory factors, teachers receive different monetary and percentage-based increases. No justification is provided for the difference.

Must use a combination of statutory factors

- Salary increases must be based on at least two of the following **five**⁶ factors:
 - Year of experience

³ Other factor, resulting in an additional potential increase, not shown here.

⁴ Other factor, resulting in a column change, not shown here.

⁵ Other factor, resulting in a column change, not shown here.

⁶ Previous guidance described “education and experience” as a single factor. Although the “experience” and “education” factors are considered together in calculating compliance with the 33.33% restriction, they are separate and distinct factors.

	<ul style="list-style-type: none"> ▪ Possession of an additional content area degree or credit hours beyond the requirements for employment. (This is a change for 2017 – “possession of” replaced “attainment of.”) ▪ Evaluation results ▪ Assignment of instructional leadership roles ▪ Academic needs of students in the corporation <p>Example:</p> <ul style="list-style-type: none"> ▪ The compensation plan provides for both a salary increase and a stipend and uses three factors: evaluation rating, year of experience, and possession of a content area Master’s degree. <ul style="list-style-type: none"> ○ Compliant: “The amounts for evaluation rating and possession of a content area Master’s degree are added to the base salary, and the amount for year of experience is paid as a stipend.” This is compliant because the salary increase is based on at least two factors. ○ Not compliant: “The amount for evaluation rating is added to the base salary, and the amounts for year of experience and possession of a Master’s degree are paid as a stipend.” This is not compliant because the salary increase is based on only one factor. <ul style="list-style-type: none"> • A provision giving the Superintendent the discretion or authority to set veteran teacher salaries is permitted, but the increase must be compliant with compensation plan restrictions. <p>Examples:</p> <ul style="list-style-type: none"> ▪ Compliant: “The parties agree that the Superintendent shall have the discretion to increase an eligible teacher’s salary by an additional \$1,000 for meeting academic needs of students. Meeting academic needs of students is defined as teaching a dual-credit or AP course.” ▪ Not compliant: “The parties agree that the Superintendent shall have the discretion to increase an eligible teacher’s salary by \$1,000 if necessary to retain the teacher in the school corporation.” <p>TIP: Avoid using “education/experience” or “experience/degree” as a single factor on which a salary increase is based. If a compensation plan provides that the salary increase is based on “education/experience,” “experience/degree,” or something similar, the plan must define both of the factors and indicate how much each of the two factors contributes to the salary increase.</p>
Factors must be defined	<ul style="list-style-type: none"> • Parties have some flexibility in defining the “assignment of instructional leadership roles” and “academic needs of students” factors, but if either is defined to include experience or possession of an additional content area degree or credit hours, the factors will be included in the calculation of the 33.33% cap on “education and experience.” <p>TIP: If using “assignment of instructional leadership roles” or “academic needs of students” as factors, failing to define those factors will result in two findings of noncompliance: (1) a finding of noncompliance for failing to define the factors and (2) a finding of noncompliance on the 33.33% requirement. (See the section on the 33.33% requirement below)</p> <ul style="list-style-type: none"> • “Academic needs of students” and “assignment of instructional leadership roles” (if either is used as a factor) must be defined with some measurable specificity.

	<p>Examples:</p> <ul style="list-style-type: none"> ▪ Compliant: “To satisfy the assignment of instructional leadership roles factor, a teacher must complete one of the following: (1) Teach a dual credit course; (2) Participate in a minimum of six hours of professional development related to improving student outcomes; (3) provide volunteer tutoring or after school hours assistance to students at least 10 hours per semester; or (4) serve as a trainer in a professional development activity that has been pre-approved by the superintendent.” ▪ Compliant: “A teacher satisfies the academic needs of students factor by participating in all corporation-wide professional development.” ▪ Not compliant: “A teacher satisfies the assignment of instructional leadership roles factor by engaging in activities in one of the five tiers of leadership.” ▪ Not compliant: “Academic needs of students is defined as the need to attract and retain quality teachers to provide continuity within the educational environment.” <ul style="list-style-type: none"> • “Year of experience” (if used as a factor) must be defined with some measurable specificity. Examples: <ul style="list-style-type: none"> ▪ Compliant: “Year of experience is defined as having been employed by the school for at least 120 days in the prior school year.” ▪ Not compliant: “Year of experience means an additional year of teaching.” <p>TIP: An eligibility requirement that a teacher has to have been employed a certain number of days in order to be eligible for a salary increase is not the same thing as the experience factor on which the salary increase is based. The experience factor must be separately defined or clear on its face that it is the same requirement). The eligibility requirement will not suffice for the factor definition. (See “Must include a clear statement of eligibility for a salary increase” item above.)</p> <ul style="list-style-type: none"> • “Possession of an additional degree or credit hours” must be defined to show that the degree and/or credit hours are limited to content area and are in addition to what is required for employment. Examples: <ul style="list-style-type: none"> ▪ Compliant: “Eligible teachers will receive a \$1,000 increase to their base salaries for possession of an eligible content area Master’s degree that is not otherwise required for employment. Eligible content areas mean any content area, as defined by IDOE, in which the teacher currently teaches or any other content area approved by the superintendent.” ▪ Not compliant: “Eligible teachers will receive a \$1,000 increase to their base salaries for having a Master’s degree.” ▪ Not compliant: “Eligible teachers will receive a \$1,000 increase to their base salaries for having a Master’s degree in an area approved by the superintendent.”
<p>Education (“possession of an additional content area degree or credit hours”) and experience cannot</p>	<ul style="list-style-type: none"> • The percentage has changed from 33% to 33.33% (one-third). • The 33.33% calculation is based on the total increase available, not the actual increase for an individual teacher. • If the parties use education and/or experience as factors and fail to indicate the “weight” of each factor used as the basis of the salary increase, the factors will be

<p>account for more than 33.33% of the increase</p>	<p>equitably weighted. For example, if the increase is based on evaluation rating and experience, but no percentage or weight is attached, each factor is considered to be 50% of the increase, and therefore not compliant with the 33.33% requirement.</p> <ul style="list-style-type: none"> • Any salary increase outside the compensation plan that is based on education and/or experience will be included in the 33.33% calculation (and an increase outside of the plan will result in a finding of noncompliance). • If the definition of “instructional leadership” or “academic needs of students” includes experience and/or possession of an additional content area degree or credit hours as criteria within the factor, the factor will be included in the calculation of the 33.33%. <p>TIP: If the parties use, but fail to define, “academic needs of students” or “instructional leadership” factors, the Compliance Officer may be unable to confirm compliance with the 33.33% cap because they can’t tell if education and/or experience are criteria in these factors. Not being able to confirm compliance with the requirement results in a finding of noncompliance.</p> <p>TIP: If the compensation plan provides for both a salary increase and a stipend, only the factors used for the salary increase will be considered in the 33.33% calculation. The factors used as the basis for the stipend are not included in the calculation.</p>
<p>Any money for increases that would otherwise have gone to teachers rated ineffective or improvement necessary must be redistributed to eligible teachers</p>	<ul style="list-style-type: none"> • A redistribution plan is required when a compensation plan: <ul style="list-style-type: none"> ▪ Does not provide for distribution of all funds in an identified pot of money ▪ Provides for a set amount per teacher, factor, or point (e.g., \$1,000 if teacher satisfies all factors, \$500 for effective rating, \$100 per point, etc.) ▪ Provides for movement within a salary schedule ▪ A redistribution plan is not required when the compensation plan utilizes a pot of money that is entirely distributed under the plan Example: <ul style="list-style-type: none"> ▪ “\$100,000 will be divided by the total number of teacher points. The resulting dollar value per point will be multiplied by the number of points the teacher earned, and the entire \$100,000 will be distributed to eligible teachers. Therefore, a redistribution plan is not required.” • Redistribution of funds must occur in the current contract year. <p>TIP: If the compensation plan does not clearly demonstrate that a redistribution plan is not necessary, the parties must either include a redistribution plan or explain why a plan is not necessary. Example: <ul style="list-style-type: none"> ▪ “Based on anticipated evaluation results, the parties believe that all funds will be distributed and that no redistribution will be necessary. However, in the event that there are funds that were otherwise allocated for teachers rated ineffective or improvement necessary, those funds will be redistributed to all eligible teachers in the form of a stipend.” </p> <p>TIP: Where applicable, the contract must include a redistribution plan, including specificity as to how and to whom the redistribution shall be made. Mere recitation of the statute or a statement that redistribution will occur are insufficient and will result in a finding of noncompliance. Moreover, the parties are reminded that they may not</p>

	bargain outside the bargaining year so an agreement to agree on a plan also is non-compliant.
Salaries for newly hired teachers	<ul style="list-style-type: none"> Starting salaries for new hires do not have to be specific numbers, but may include a range or a method of calculating. The parties may bargain that the superintendent has the authority to set new hire salaries within certain bargained parameters or ranges.
Stipends (OPTIONAL)	<ul style="list-style-type: none"> A stipend is not an increase to the base salary and is a non-recurring payment. Stipends are not subject to the requirements of Indiana Code § 20-28-9-1.5. This means stipends do not have to be part of the compensation plan, are not limited to teachers with effective or highly effective evaluation ratings, are not required to be based on a combination of factors, are not subject to the 33.33% restriction, and are not subject to the redistribution requirement. Stipends must be clearly labeled as such. If not identified as a stipend, it may be assumed to be a salary increase and found to be noncompliant. Example: <ul style="list-style-type: none"> Not subject to compensation plan requirements: “A teacher will receive a \$3,000 stipend for teaching a dual credit course. The stipend will be paid at the end of the school year.” Subject to compensation plan requirements: “A teacher will receive an additional \$3000 for teaching a dual credit course.” <p>TIP: Although not required, the Board recommends that stipends be listed in the compensation plan.</p>
WAGES	
Ancillary duties – wages and other compensation	<ul style="list-style-type: none"> The parties may bargain only the compensation for an ancillary duty. The parties cannot bargain what constitutes an ancillary duty or any parameters, restrictions, or limitations on the school’s assignment of an ancillary duty. The school determines what constitutes an ancillary duty and how such duties will be assigned. However, duties and assignments are topics of discussion between the school employer and the exclusive representative. The compensation for an ancillary duty may be monetary or in the form of additional release or compensatory time. An ancillary duty may occur during or outside of the regular teacher work day. Examples: <ul style="list-style-type: none"> Compliant: “Teachers will receive \$25 per hour when assigned the ancillary duty of covering a class period for another teacher.” Compliant: “Ancillary duty – covering a class period for another teacher: A teacher will be granted 1.5 hours of release/comp time for each hour the teacher covers a class period for another teacher.”

	<ul style="list-style-type: none"> ▪ Not compliant: The parties have agreed that covering a class period for another teacher is an ancillary duty and that the school will not assign a teacher to cover except in an emergency situation. No teacher will be assigned to cover a class period of another teacher more than one time per semester. <p>TIP: When describing wages (or other compensation) for an ancillary duty, clearly identify the wage/release time as compensation for an ancillary duty.</p>
Extracurricular or co-curricular duties - wages	<ul style="list-style-type: none"> • The parties may bargain only the compensation for an extracurricular or a co-curricular duty and only for unit members (e.g., they cannot bargain compensation for “lay” or “non-certified” staff who are hired for an ECA or CCA position). • The parties cannot bargain a specific extracurricular or co-curricular position, or any parameters, restrictions, or limitations on the number of positions or who is selected for the position.
Other permissible wage/salary items	<ul style="list-style-type: none"> • Wage payments may be in the form of an hourly wage or a set amount per activity or duty. • Parties must include all bargained and agreed to items relating to salary and wages. Examples: <ul style="list-style-type: none"> ▪ Wage payment agreements ▪ Dues deductions ▪ Salary for extended contracts ▪ Salary for supplemental service contracts⁷ ▪ General payroll deductions • Wage payment agreements are agreements pursuant to Indiana Code § 20-26-5-32.2 between the parties regarding the frequency of salary payments where the frequency will be different than that required under Indiana wage payment laws.
SALARY AND WAGE RELATED FRINGE BENEFITS	
Any benefit, other than direct salary or compensation, received by the school employee from the school employer must be bargained	<ul style="list-style-type: none"> • Statutory examples of salary and wage related fringe benefits: <ul style="list-style-type: none"> ▪ Accident ▪ Sickness ▪ Health ▪ Dental ▪ Vision ▪ Life ▪ Disability ▪ Retirement benefits

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

	<ul style="list-style-type: none">▪ Paid time off as permitted to be bargained under Indiana Code § 20-28-9-11• Other examples include, but are not limited to:<ul style="list-style-type: none">▪ Unpaid leave▪ Wellness plans▪ Section 125 plans▪ Travel allowance▪ Severance pay▪ Expanded criminal history background checks⁸

⁸ Beginning July 1, 2017, “A school corporation, charter school, or nonpublic school may agree to pay the costs associated with obtaining an expended criminal history background check for an employee.” Ind. Code § 20-26-5-10(i) as added by P.L. 185-2017.

IMPERMISSIBLE ITEMS, PROVISIONS, AND SUBJECTS

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

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

<p>of noncompliance. These types of provisions are not bargainable.</p>	<ul style="list-style-type: none"> • Criteria on which additional periods will be assigned or a limitation on the number of additional periods per semester • Restrictions or limitations on the school employer’s ability to assign job sharing positions or other assignments • Terms related to scheduling faculty meetings or professional development • Provision of a certified substitute as a full-time aide to be assigned to the association president • Teacher participation in parent-teacher conferences • Terms related to how department chairs will be appointed • Required attendance at professional development (can bargain compensation for attendance, but can’t bargain that attendance is required) • Preparation or planning time • The number of members on a committee or when the committees will meet • Distribution of the state performance grant award • Any component of the teacher evaluation plan or process • Supplemental payments pursuant to IC 20-28-9-1.5(a)⁹
<p>MOU bargained outside the timeline unless pursuant to a Board order or falls within one of the exceptions</p>	<ul style="list-style-type: none"> • Any MOU ratified by the parties outside the bargaining timeline is noncompliant unless one of the following exceptions applies: <ul style="list-style-type: none"> (1) Newly discovered information or an unanticipated event that was not known or available at the time the parties ratified the original CBA. This exception will be decided on a case-by-case basis by the compliance officer. (2) Nonrule policy guidance issued by the board addressing unanticipated circumstances impacting multiple bargaining parties and allowing parties to bargain and ratify a limited MOU outside of the bargaining timelines.
<p>Provisions not permitted per Indiana Code § 20-29-6-2</p>	<p>Any provisions that conflict with:</p> <ul style="list-style-type: none"> ▪ any right or benefit established by federal or state law ▪ school employee rights as set forth in I.C. §§ 20-29-4-1, 20-29-4-2 ▪ school employer rights set forth in I.C. § 20-29-4-3 ▪ restructuring options available as described in I.C. § 20-29-6-2(a)(4) ▪ the school employer’s ability to work with an education entity as provided in I.C. § 20-29-6-2(a)(5)

MOUs

An MOU is an agreement ratified by the school employer and the exclusive representative, subsequent to a ratified CBA, that changes or modifies the CBA. Any MOU that changes or modifies the CBA must be submitted for compliance review. **In addition to the items listed below, the items, provisions, and subjects**

⁹ The supplemental payments under IC 20-28-9-1.5(a) are the discretionary payments the school corporation may make to a teacher who teaches an advanced placement course or earned a Master’s degree in a content area directly related to a dual credit or other course or an elementary school teacher who earns a Master’s degree in math or reading and literacy. This is not the same as the compensation for a supplemental service contract pursuant to IC 20-28-6-7(d).

of an MOU are subject to the same requirements as the items, provisions, and subjects in a CBA as described above.

Item	Description – Examples - Tips
MOU must be ratified, signed, and dated.	<ul style="list-style-type: none"> • At least one agent of each party must sign the MOU. Examples: <ul style="list-style-type: none"> ▪ Compliant: “The MOU was ratified by both parties on February 5, 2018. Signed: <u>John Smith</u> Signed: <u>Alice Jones</u>” ▪ Compliant: “Signed: <u>John Smith</u> Date: <u>02/05/18</u> Signed: <u>Alice Jones</u> Date: <u>02/06/18</u>” <p>TIP: Sign and date the MOU at the time of ratification.</p>
MOU must be submitted within two (2) business days after ratification	<ul style="list-style-type: none"> • Failing to submit the MOU within the timeline may result in a finding of noncompliance and a potential penalty of prior approval for subsequent CBAs or MOUs. <p>TIP: Submit the MOU immediately after last signature obtained.</p>
Written statement of need for MOU	<ul style="list-style-type: none"> • When submitting an MOU, the parties must include a written explanation of the need for the MOU. • Because an MOU is not compliant unless it satisfies one of the exceptions (see section below), it is essential that the parties provide the information to IEERB, explaining why the MOU is necessary.
If MOU is ratified outside of the bargaining timelines, it must satisfy one of the exceptions for compliance	<ul style="list-style-type: none"> • An MOU ratified outside the bargaining timelines is not compliant UNLESS either of the following is applicable: <ul style="list-style-type: none"> ▪ Newly discovered information or an unanticipated event that was not known or available at the time the parties ratified the original CBA; or ▪ Nonrule policy guidance issued by the board addressing unanticipated circumstances impacting multiple bargaining parties allowed the parties to bargain and ratified a limited MOU outside the bargaining timelines. <p>TIP: At the parties’ request, IEERB will review and “pre-approve” a proposed MOU.</p>

PENALTY FOR NONCOMPLIANCE

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

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