

Indiana State Teachers Association

Educators' Rights Under the Law



This publication has been prepared as a resource to list laws that apply to members and to answer frequently asked questions about these laws. If you have more specific legal questions, contact your ISTA UniServ Director, who can then either answer your questions or contact ISTA legal counsel on your behalf.

Table of Contents

I.	TEACHER STATUS	1
II.	CANCELLATION OF CONTRACT	3
III.	SUSPENSION OF TEACHERS	7
IV.	EDUCATION EMPLOYMENT CONTRACTS	9
V.	LEAVES OF ABSENCE.....	11
VI.	PROTECTION FROM ATTACKS	19
VII.	RESIGNATION BY TEACHER FROM SCHOOL SYSTEM	20
VIII.	TEACHER EVALUATIONS	21
IX.	SALARY AND RELATED PAYMENTS.....	30
X.	COLLECTIVE BARGAINING	37
XI.	HEA 1260	67
XII.	FAMILY AND MEDICAL LEAVE ACT (FMLA)	69
XIII.	ADMINISTRATION OF MEDICATIONS AND HEALTH CARE SERVICES	70
XIV.	LIABILITY OF TEACHERS IN SCHOOL.....	71
XV.	DISCRIMINATORY ACTIVITY BY SCHOOL BOARD	74
XVI.	STUDENT DISCIPLINE	75
XVII.	DUTY TO REPORT SUSPECTED CHILD ABUSE OR NEGLECT	80
XVIII.	PROHIBITED POLITICAL ACTIVITIES BY GOVERNMENT EMPLOYEES (including public school employees)	81
XIX.	MISCELLANEOUS	83

EDUCATOR RIGHTS UNDER THE LAW

I. TEACHER STATUS

Teachers may be classified as “probationary” or “professional” based upon evaluations conducted under IC 20-28-11.5. It is possible for a teacher to be rated “professional” and later be rated “probationary”. Some teachers may also be classified as “established” if they meet certain criteria.

A. The Probationary Teacher Law:

IC 20-28-6-7.5

Probationary teacher; effect of evaluations

Sec. 7.5. (a) A teacher who is subject to section 8 of this chapter is not subject to this section.

(b) After June 30, 2011, a teacher who:

- (1) serves under contract as a teacher in a public school corporation;
 - (2) has not received a rating in an evaluation under IC 20-28-11.5 or receives a rating of ineffective in an evaluation under IC 20-28-11.5;
 - (3) has not at any time before July 1, 2012, entered into a teaching contract for further service with the school corporation; and
 - (4) has not received three (3) ratings in a five (5) year period of effective or highly effective in an evaluation under IC 20-28-11.5;
- shall be considered a **probationary teacher**.

B. The Professional Teacher Law:

Sec. 7.5. (c) After June 30, 2011, a teacher who receives a rating of:

- (1) effective;
- (2) highly effective; or
- (3) a combination of both subdivisions (1) and (2);

in an evaluation under IC 20-28-11.5 for at least three (3) years in a five (5) year or shorter period becomes a **professional teacher** by entering into a contract described in section 2 of this chapter.

(d) A professional teacher who receives a rating of ineffective in an evaluation under IC 20-28-11.5 shall be considered a probationary teacher but is not subject to the cancellation of the teacher's contract unless at least one (1) of the following criteria applies:

- (1) The teacher receives a rating of ineffective in an evaluation under IC 20-28-11.5 in the year immediately following the teacher's initial rating of ineffective.
- (2) The teacher's contract cancellation is due to a justifiable decrease in the number of teaching positions under IC 20-28-7.5-1(b)(3).
- (3) The teacher's contract cancellation is due to conduct set forth in IC 20-28-7.5-1(b).

As added by P.L.90-2011, SEC.29.

C. The Established Teacher Law:

IC 20-28-6-8

Indefinite contract; established teacher

Sec. 8. (a) An individual who:

(1) serves under contract as a teacher in a public school corporation before July 1, 2012; and
(2) at any time before July 1, 2012, enters into a teacher's contract for further service with the school corporation; becomes, by entering into the contract described in subdivision (2), an **established teacher** of the school corporation. When a contract between the school corporation and an established teacher expires by the contract's terms, the contract is considered to continue indefinitely as an indefinite contract, subject to IC 20-28-7.5.

(b) An indefinite contract remains in force until the indefinite contract is:

- (1) replaced by a new contract signed by both parties; or
- (2) canceled as provided in IC 20-28-7.5.

As added by P.L.1-2005, SEC.12. Amended by P.L.43-2010, SEC.1; P.L.90-2011, SEC.30.

Q: Which teachers have “probationary” status?

Any public school teacher who is not an established teacher, and who

1. Serves under a contract, and
2. Has not received an evaluation under IC 20-28-11.5, or
3. Receives a rating of ineffective in an evaluation under IC 20-28-11.5, and
4. Has not received 3 ratings in a 5 year period of effective or highly effective in an evaluation under IC 20-28-11.5.

Q: Which teachers have “professional” status?

Any teacher who, after June 30, 2011, receives an evaluation rating of “effective,” “highly effective” or a combination of “effective” and “highly effective,” for at least 3 years in a 5 year or shorter period, becomes a “professional” teacher by entering into a contract.

Q: Can a “professional” teacher become a “probationary” teacher?

Yes. A “professional” teacher who receives an evaluation rating of “ineffective” shall be considered a “probationary” teacher.

Q: Can a “professional” teacher who receives an evaluation rating of “ineffective” and is considered a “probationary” teacher be subject to contract cancellation?

No, unless at least one of the following applies:

1. The teacher receives an “ineffective” rating in an evaluation in the year immediately following the teacher’s initial rating of “ineffective.”

2. The teacher's contract cancellation is due to a justifiable decrease in the number of teaching positions.

3. The teacher's contract cancellation is for conduct set forth in IC 20-28-7.5-1(b).

Q: *Which teachers have "established" status?*

A teacher who serves under contract in a public school corporation before July 1, 2012, and at any time before July 1, 2012, entered into a teacher's contract for further service with that school corporation, becomes an "established" teacher of that school corporation.

Q: *What kind of contract does an "established" teacher have?*

When the contract between an "established" teacher and a school corporation expires by its terms, the contract is considered to continue indefinitely.

Q: *How long does an indefinite contract continue?*

An indefinite contract will remain in force until:

1. It is replaced by another contract signed by the parties, or
2. It is cancelled pursuant to IC 20-28-7.5.

II. CANCELLATION OF CONTRACT

IC 20-28-7.5-1

Application; grounds for cancellation

Sec. 1. (a) This chapter applies to a teacher in a school corporation (as defined in IC 20-18-2-16(a)).

(b) A contract with a teacher may be canceled immediately in the manner set forth in sections 2 through 4 of this chapter for any of the following reasons:

(1) Immorality.

(2) Insubordination, which means a willful refusal to obey the state school laws or reasonable rules adopted for the governance of the school building or the school corporation.

(3) Incompetence, including:

(A) for probationary teachers, receiving an ineffective designation on a performance evaluation or receiving two (2) consecutive improvement necessary ratings on a performance evaluation under IC 20-28-11.5; or

(B) for any teacher, receiving an ineffective designation on two (2) consecutive performance evaluations or an ineffective designation or improvement necessary rating under IC 20-28-11.5 for three (3) years of any five (5) year period.

(4) Neglect of duty.

(5) A conviction of an offense listed in IC 20-28-5-8(c).

(6) Other good or just cause.

(c) In addition to the reasons set forth in subsection (b), a probationary teacher's contract may be canceled for any reason relevant to the school corporation's interest in the manner set forth in

sections 2 through 4 of this chapter.

(d) After June 30, 2012, the cancellation of teacher's contracts due to a justifiable decrease in the number of teaching positions shall be determined on the basis of performance rather than seniority. In cases where teachers are placed in the same performance category, any of the items in IC 20-28-9-1.5(b) may be considered.

(e) Only the governing body may terminate, cancel, or otherwise refuse to renew a contract of a superintendent or assistant superintendent. Notice of the contract cancellation or the refusal to renew the individual's contract must be provided in the manner provided in IC 20-28-8-3(a).
As added by P.L.90-2011, SEC.31. Amended by P.L.286-2013, SEC.87; P.L.233-2015, SEC.208; P.L.239-2015, SEC.4.

IC 20-28-7.5-2

Procedure for cancellation of contracts:

Sec. 2. (a) Before a teacher's contract is cancelled, the teacher has the following rights:

(1) The principal or superintendent shall notify the teacher of the principal's or superintendent's preliminary decision. The notification must be:

(A) in writing; and

(B) delivered in person or mailed by registered or certified mail to the teacher at the teacher's last known address.

(2) The notice in subdivision (1) must include a written statement, subject to IC 5-14-3-4, giving the reasons for the preliminary decision.

(3) Notification due to a reduction in force must be delivered between May 1 and July 1. However, in the case of a school corporation that is a distressed political subdivision under IC 6-1.1-20.3, IC 6-1.1-20.3-16 applies to the cancellation of a teacher's contract in addition to this section.

(b) For a cancellation of a teacher's contract for a reason other than a reduction in force, the notice required under subsection (a)(1) must inform the teacher that, not later than five (5) days after the teacher's receipt of the notice, the teacher may request a private conference with the superintendent or the assistant superintendent. The superintendent or assistant superintendent, as applicable, must set the requested meeting not later than ten (10) days after the request.

(c) At the conference between the superintendent or the assistant superintendent, as applicable, and the teacher, the teacher may be accompanied by a representative.

(d) After the conference between the superintendent or the assistant superintendent, as applicable, and the teacher, the superintendent or the assistant superintendent, whoever attended the conference, shall make a written recommendation to the governing body of the school corporation regarding the cancellation of the teacher's contract.

(e) If the teacher does not request a conference under subsection (b), the principal's or superintendent's preliminary decision is considered final.

(f) If a probationary, professional, or established teacher files a request with the governing body for an additional private conference not later than five (5) days after the initial private conference with the superintendent or the assistant superintendent, as applicable, the teacher is entitled to an additional private conference with the governing body before the governing body makes a final decision. The final decision must be in writing and must be made not more than thirty (30) days after the governing body receives the teacher's request for the additional private conference. At the private conference the governing body shall do the following:

(1) Allow the teacher to present evidence to refute the reason or reasons for contract

cancellation and supporting evidence provided by the school corporation. Any evidence presented at the private conference must have been exchanged by the parties at least seven (7) days before the private conference.

(2) Consider whether a preponderance of the evidence supports the cancellation of the teacher's contract.

As added by P.L.90-2011, SEC.31. Amended by P.L.233-2015, SEC. 209; P.L.179-2016, SEC. 9; P.L.185-2017, SEC.6; P.L.208-2017, SEC.2; P.L.213-2018(ss), SEC.23

(It is ISTA's position that this section entitles the teacher to basic due process rights in much the same way as under previous law, including the right to representation, presentation of evidence and testimony, the right to cross-examine witnesses, the requirement for the School Board to adopt appropriate findings and conclusions, etc.)

IC 20-28-7.5-3

Governing body action

Sec. 3. At the first public meeting following a private conference with:

(1) the governing body under section 2(f) of this chapter; or

(2) the superintendent under section 2(b) of this chapter, if no conference with the governing body is requested;

the governing body may cancel a contract with a teacher by a majority vote evidenced by a signed statement in the minutes of the board. The decision of the governing body is final.

As added by P.L.90-2011, SEC.31.

IC 20-28-7.5-4

Suspension pending cancellation of contract

Sec. 4. Pending a final decision on the cancellation of a teacher's contract, the teacher may be suspended from duty.

As added by P.L.90-2011, SEC.31. (It is ISTA's position that the suspension must be with pay).

IC 20-28-7.5-5

Extension of time periods

Sec. 5. The time periods set out in section 2 of this chapter shall be extended for a reasonable period:

(1) when a teacher or school official is ill or absent from the school corporation; or

(2) for other reasonable cause.

As added by P.L.90-2011, SEC.31.

IC 20-28-7.5-6

Continuation of contract

Sec. 6. A contract entered into by a teacher and a school employer continues in force on the same terms and for the same wages, unless increased under IC 20-28-9-1.5, for the next school term following the date of the contract's termination unless one (1) of the following occurs:

(1) The school corporation refuses continuation of the contract under this chapter.

(2) The teacher delivers in person or by registered or certified mail to the school corporation the teacher's written resignation.

(3) The contract is replaced by another contract agreed to by the parties.

As added by P.L.90-2011, SEC.31. Amended by P.L.286-2013, SEC.88.

Q: *For what reasons may a teacher's contract be cancelled immediately?*

After following due process procedures, a contract with a teacher may be cancelled immediately for any of the following reasons:

1. Immorality.
2. Insubordination.
3. Incompetence, including:
 - (a) For probationary teachers, receiving an ineffective designation on a performance evaluation or receiving two (2) consecutive improvement necessary ratings on a performance evaluation under IC 20-28-11.5; or
 - (b) For any teacher, receiving an ineffective designation on two (2) consecutive performance evaluations or an ineffective designation or improvement necessary rating under IC 20-28-11.5 for three (3) years of any five (5) year period.
4. Neglect of duty.
5. A conviction for an offense listed in IC 20-28-5-8(c).
6. Other good or just cause.

Additionally, a probationary teacher's contract can be canceled for any reason relevant to the school corporation's interest.

Q: *Is a teacher entitled to notice before their contract is canceled?*

Yes. The principal or the superintendent must notify the teacher in writing, delivered in person or by registered or certified mail, of his or her preliminary decision. The notice must include the reasons for the preliminary decision.

If the notice is due to a reduction in force, the notice must be delivered between May 1 and July 1.

Q: *Is a teacher entitled to due process before their contract is cancelled?*

Yes. For a cancellation for any reason other than reduction in force, a teacher must be informed that, not later than 5 days after the teacher's receipt of the notice, the teacher may request a private conference with the superintendent or the assistant superintendent. The meeting must be set not later than 10 days after the request.

Q: *Is a teacher entitled to have a representative at this conference?*

Yes.

Q: *What happens if the teacher fails to request a conference with the superintendent or assistant superintendent?*

The principal's or the superintendent's preliminary decision is considered final.

Q: *What must the superintendent or assistant superintendent do after the conference?*

The superintendent or assistant superintendent must make a written recommendation to the governing body of the school corporation regarding the cancellation of the teacher's contract.

Q: *Is a teacher entitled to a conference with the governing body?*

Yes. A teacher should be provided an evidentiary hearing with the school board at which the teacher can present evidence and call and cross-examine witnesses.

Q: *When may the governing body act to cancel a teacher's contract?*

The governing body must act to cancel a teacher's contract within 30 days after it receives the teacher's request for a private conference with the school board.

Q: *If a teacher's contract is not canceled, but a new contract is not given to the teacher at the start of the next school year, what happens?*

The contract from the previous school year continues in force until replaced by a new contract.

III. SUSPENSION OF TEACHERS

IC 20-28-9-21

Suspension of teacher without pay; reasons

Sec. 21. (a) This section and section 22 of this chapter apply to the suspension of a teacher without pay.

(b) A teacher may be suspended from duty without pay only for the following reasons:

- (1) Immorality.
- (2) Insubordination, which means the willful refusal to obey the state school laws or reasonable rules prescribed for the government of the school corporation.
- (3) Neglect of duty.
- (4) Substantial inability to perform teaching duties.
- (5) Good and just cause.

As added by P.L.1-2005, SEC.12. Amended by P.L.90-2011, SEC.33; P.L.233-2015, SEC.216.

IC 20-28-9-22

Suspension of teacher without pay; procedure

Sec. 22. (a) A teacher may be suspended without pay only under the following procedure set forth in this section:

(1) The principal shall notify the teacher of the principal's preliminary decision. The notification must be:

(A) in writing; and

(B) delivered in person or mailed by registered or certified mail to the teacher at the teacher's last known address.

(2) The notice in subdivision (1) must include a written statement, subject to IC 5-14-3-4, giving the reasons for the preliminary decision.

(b) The notice required under subsection (a) must inform the teacher that, not later than five (5) days after the teacher's receipt of the notice, the teacher may request a private conference with the superintendent. The superintendent must set the requested meeting not later than ten (10) days after the request.

(c) At the conference between the superintendent and the teacher, the teacher may be accompanied by a representative.

(d) This subsection does not apply to the suspension of a superintendent. After the conference between the superintendent and the teacher, the superintendent shall make a written recommendation to the governing body of the school corporation regarding the teacher's suspension without pay.

(e) If the teacher does not request a conference under subsection (b), the principal's preliminary decision is considered final.

(f) If, not later than five (5) days after the initial private conference with the superintendent, the teacher files a request with the governing body for an additional private conference, the teacher is entitled to an additional private conference with the governing body before the governing body makes a final decision. The final decision must be in writing and must be made not more than thirty (30) days after the governing body receives the teacher's request for the additional private conference. At the private conference, the governing body shall do the following:

(1) Allow the teacher to present evidence to refute the reason or reasons for suspension without pay and supporting evidence provided by the school corporation. Any evidence presented at the private conference must have been exchanged by the parties at least seven (7) days before the private conference.

(2) Consider whether a preponderance of the evidence supports the teacher's suspension without pay.

(g) At the first public meeting following a private conference with:

(1) the governing body under subsection (f); or

(2) the superintendent under subsection (b), if no conference with the governing body is requested;

the governing body may suspend a teacher without pay for a reasonable time by a majority vote evidenced by a signed statement in the minutes of the board. The decision of the governing body is final.

(h) The time periods set out in this section shall be extended for a reasonable period:

(1) when a teacher or school official is ill or absent from the school corporation; or

(2) for other reasonable cause.

As added by P.L.1-2005, SEC.12. Amended by P.L.233-2015, SEC.217.

(It is ISTA's position that this section entitles the teacher to basic due process rights in much the same way as under previous law, including the right to representation, presentation of evidence

and testimony, the right to cross-examine witnesses, the requirement for the School Board to adopt appropriate findings and conclusions, etc.)

Q: *Can a teacher be suspended without pay?*

Yes. A teacher may be suspended without pay only for immorality, insubordination, neglect of duty, substantial inability to perform teaching duties or good and just cause.

Q: *Is a teacher entitled to due process before being suspended without pay?*

Yes. The procedure for suspending a teacher without pay is nearly identical to the procedure for canceling a teacher's contract.

Q: *What happens at the hearing?*

The teacher should be allowed to present evidence and call and cross-examine witnesses.

Q: *When can the governing body act to suspend a teacher without pay?*

The governing body must issue a decision within 30 days of the date when the teacher requested a private conference with the school board.

Q: *For how long can a teacher be suspended without pay?*

The governing body of the school corporation may suspend a teacher without pay for a reasonable time by a majority vote evidenced by a signed statement in the minutes of the board.

IV. EDUCATION EMPLOYMENT CONTRACTS

A. Employment of Teachers - Pre-employment consideration; qualifications (IC 20-28-6-1)

Upon a request from the governing body, the Superintendent shall make a report on an individual being considered by the school corporation for either a teaching appointment or an indefinite contract. The report must contain information on the individual's teaching preparation, experience and license.

The governing body may not employ an individual for a teaching appointment who receives an initial standard or reciprocal license after March 31, 1988, unless the individual has successfully completed a beginning teacher internship program or has at least 2 years teaching experience outside Indiana.

B. Basic Contract Requirements (IC 20-28-6-2)

A contract entered into by a teacher and a school corporation must be in writing, be signed by both parties, and must contain the following:

1. Beginning date of the school term.
2. Number of days in the school term.
3. Total salary to be paid to the teacher during the school year.
4. Number of salary payments to be made.
5. Number of hours per day the teacher is expected to work.

C. Regular Teacher's Contract (IC 20-28-6-5)

The Regular Teacher's Contract must be used statewide without amendment and, in addition to the requirements in B above, must contain the manner of salary payment and any provisions relating to the government of the school that the state superintendent includes.

D. Temporary Teacher's Contract (IC 20-28-6-6)

- (a) A temporary teacher's contract shall be used only for employing:
 - (1) a teacher to serve in the absence of a teacher who has been granted a leave of absence by the school corporation for:
 - (A) engaging in defense service or in service auxiliary to defense service;
 - (B) professional study or advancement;
 - (C) exchange teaching;
 - (D) extended disability to which a licensed physician has attested;or
 - (E) serving in the general assembly; or
 - (2) a new teacher for a position:
 - (A) that is funded by a grant outside the school funding formula for which funding is available only for a specified period or purpose;or
 - (B) vacated by a teacher who is under a regular contract and who temporarily accepts a teacher position that is funded by a grant outside the school funding formula for which funding is available only for a specified period or purpose.
- (b) The temporary teacher's contract must contain:
 - (1) the provisions of the regular teacher's contract except those providing for continued tenure of position;
 - (2) a blank space for the name of the teacher granted the leave, which may not be used on another temporary teacher's contract for the same leave of absence; and
 - (3) an expiration date that:
 - (A) is the date of the return of the teacher on leave; and
 - (B) is not later than the end of the school year.

- (c) If a teacher is employed on the temporary teacher's contract for at least sixty (60) days in a school year, the teacher may, on request, receive the service credit that the teacher would otherwise receive with regard to the Indiana state teachers' retirement fund.
- (d) A school corporation is not required to use a temporary teacher's contract for employing a teacher to serve in the absence of a teacher who has been granted a leave of absence.

E. Supplemental service teacher's contract (IC 20-28-6-7)

- Sec. 7. (a) As used in this section, "teacher" includes an individual who:
- (1) holds a substitute teacher's license; and
 - (2) provides instruction in a joint summer school program under IC 20-30-7-5.
- (b) The supplemental service teacher's contract shall be used when a teacher provides professional service in evening school or summer school employment, except when a teacher or other individual is employed to supervise or conduct noncredit courses or activities.
- (c) The salary of a teacher on a supplemental service contract shall be determined by the superintendent. The superintendent may, but is not required to, base the salary on the regular compensation plan for the school corporation.

Q: *When should a supplemental service contract be used?*

The supplemental service contract should be used when a teacher provides professional services in evening school and summer school.

Q: *Are substitute teachers employed on a supplemental service contract?*

No.

Q: *Can a teacher be employed on a regular contract and on a supplemental service contract at the same time?*

Yes. A teacher could be teaching both regular classes and night school or homebound instruction.

V. LEAVES OF ABSENCE

IC 20-28-10-1

Leave of absence; generally

Sec. 1. (a) A school corporation may grant a teacher a leave of absence not to exceed one (1) year for:

- (1) a sabbatical;
- (2) a disability leave; or

(3) a sick leave.

(b) The school corporation may grant consecutive leaves to a teacher.

(c) A school corporation may grant partial compensation for a leave in an amount the school corporation determines. However, if a teacher on a sabbatical serves an employer that agrees to reimburse the school corporation in whole or in part of the amount of the teacher's regular salary, the school corporation may grant full or partial compensation.

(d) A teacher who is pregnant shall be granted a leave of absence for the period provided in and subject to section 5 of this chapter.

(e) The teacher has the right to return to a teaching position for which the teacher is certified or otherwise qualified under the rules of the state board.

As added by P.L.1-2005, SEC.12. Amended by P.L.90-2011, SEC.34; P.L.233-2015, SEC.219.

IC 20-28-10-2

Leave of absence; rights of teacher; group insurance coverage; sick leave; probationary years of service; charges against teacher's accumulated sick days

Sec. 2. (a) Except as provided in section 1 of this chapter, rights existing at the time a leave commences that arise from a teacher's:

- (1) status as a professional or established teacher;
- (2) accumulation of successive years of service;
- (3) service performed under a teacher's contract under IC 20-28-6-8; or
- (4) status or rights negotiated under IC 20-29;

remain intact.

(b) During a leave the teacher may maintain coverage in a group insurance program by paying the total premium including the school corporation's share, if any, attributable to the leave period. The school corporation may elect to pay all or part of the cost of the premium as an adopted or negotiated fringe benefit to teachers on leave.

(c) During a leave extending into a part of a school year, a teacher accumulates sick leave under IC 20-28-9-9 through IC 20-28-9-12, or the salary range of the school corporation that provides greater sick leave, in the same proportion that the number of days the teacher is paid during the year for work or leave bears to the total number of days for which teachers are paid in the school corporation.

(d) Except as provided in section 1 of this chapter, during a leave of a probationary teacher, the period of probationary successive years of service under a teacher's contract that is a condition precedent to becoming a professional or established teacher under IC 20-28-6-8 is uninterrupted for that teacher. However, this probationary period may not include an entire school year spent on leave.

(e) All or part of a leave granted for sickness or disability, including pregnancy related disability, may be charged at the teacher's discretion to the teacher's available sick days. However, the teacher is not entitled to take accumulated sick days when the teacher's physician certifies that the teacher is capable of performing the teacher's regular teaching duties. The teacher is entitled to complete the remaining leave without pay.

As added by P.L.1-2005, SEC.12. Amended by P.L.90-2011, SEC.35; P.L.213-2015, SEC.182.

IC 20-28-10-3

Leave of absence; sabbatical

Sec. 3. (a) A school corporation may grant a teacher, on written request, a sabbatical for

improvement of professional skills through:

- (1) advanced study;
- (2) work experience;
- (3) teacher exchange programs; or
- (4) approved educational travel.

(b) After taking a sabbatical, the teacher shall return for a length of time equal to that of the sabbatical leave.

As added by P.L.1-2005, SEC.12.

IC 20-28-10-4

Leave of absence; disability or sick leave

Sec. 4. (a) A school corporation may place a teacher, with or without written request, on a disability or sick leave not to exceed one (1) year.

(b) A teacher placed on a disability or sick leave without a written request is entitled to a hearing on that action under IC 20-28-7.5.

As added by P.L.1-2005, SEC.12. Amended by P.L.90-2011, SEC.36.

IC 20-28-10-5

Leave of absence; pregnancy

Sec. 5. (a) A teacher who is pregnant may continue in active employment as late into pregnancy as the teacher wishes, if the teacher can fulfill the requirements of the teacher's position.

(b) Temporary disability caused by pregnancy is governed by the following:

(1) A teacher who is pregnant shall be granted a leave of absence any time between the commencement of the teacher's pregnancy and one (1) year following the birth of the child, if the teacher notifies the superintendent at least thirty (30) days before the date on which the teacher wishes to start the leave. The teacher shall notify the superintendent of the expected length of this leave, including with this notice either:

(A) a physician's statement certifying the teacher's pregnancy; or

(B) a copy of the birth certificate of the newborn;

whichever is applicable. However, in the case of a medical emergency caused by pregnancy, the teacher shall be granted a leave, as otherwise provided in this section, immediately on the teacher's request and the certification of the emergency from an attending physician.

(2) All or part of a leave taken by a teacher because of a temporary disability caused by pregnancy may be charged, at the teacher's discretion, to the teacher's available sick days. However, the teacher is not entitled to take accumulated sick days when the teacher's physician certifies that the teacher is capable of performing the teacher's regular teaching duties. The teacher is entitled to complete the remaining leave without pay. However, the teacher may receive compensation for the pregnancy leave under a collective bargaining agreement or, if the teacher is not represented by an exclusive representative, by governing body policy.

As added by P.L.1-2005, SEC.12.

IC 20-28-10-6

Full-time defense service

Sec. 6. (a) This section and sections 7 through 11 of this chapter apply to a teacher who through:

- (1) volunteering; or
- (2) statutory selection;

enters defense service on a full-time basis.

(b) Because the United States Congress has decreed that it is imperative to increase and train United States armed forces personnel, this section and sections 7 through 11 of this chapter:

(1) provide protection for teachers who have been called to leave their positions to defend the nation due to the necessity of war or a state of emergency;

(2) preserve the status and contract rights under the laws to any teacher who enters the defense service; and

(3) place those teachers in a position that the defense service does not operate as an interruption of teaching service because the contract rights that each teacher had when entering the defense service are preserved during that service the same as if the teacher had not entered the service.

As added by P.L.1-2005, SEC.12.

IC 20-28-10-7

Defense service; professional or established teacher

Sec. 7. A professional or established teacher:

- (1) with an indefinite contract under IC 20-28-6-8; and
- (2) who is described in section 6(a) of this chapter;

is granted a leave of absence during the defense service.

As added by P.L.1-2005, SEC.12. Amended by P.L.90-2011, SEC.37.

IC 20-28-10-8

Defense service; probationary teacher

Sec. 8. (a) If a probationary teacher who is described in section 6(a) of this chapter enters the defense service, the teacher's contract as a teacher and the teacher's rights to probationary successive years under contract are preserved with the school corporation as the teacher had them when entering the defense service.

(b) The period of probationary successive years of service under a teacher's contract that is a condition precedent to becoming a professional or established teacher under IC 20-28-6-8 is considered uninterrupted for a teacher to whom this section applies. However, this probationary period may not include the time spent in defense service. The teacher is granted a leave of absence during the defense service.

As added by P.L.1-2005, SEC.12. Amended by P.L.90-2011, SEC.38.

IC 20-28-10-9

Defense service; teacher's reinstatement status

Sec. 9. On reinstatement, the status of the teacher described in section 6(a) of this chapter is the same as when the teacher entered the defense service. All rights to changes of salary or position, except as specified in section 8 of this chapter, accrue to the teacher as if no interruption had occurred.

As added by P.L.1-2005, SEC.12.

IC 20-28-10-10

Defense service; rights under teachers' retirement fund

Sec. 10. (a) A teacher described in section 6(a) of this chapter retains the teacher's contractual rights in the Indiana state teachers' retirement fund.

(b) Contributions and payments into the retirement fund shall be made in the same manner as they are made for a member of the fund who is granted a leave of absence under the law pertaining to that fund.

(c) The teacher is granted a leave of absence during the defense service.

As added by P.L.1-2005, SEC.12.

IC 20-28-10-11

Defense service; reinstatement period

Sec. 11. (a) Not later than sixty (60) days after:

(1) an honorable or medical discharge; or

(2) release from active participation in the defense service;

a teacher who has received a leave of absence for defense service shall return to the school corporation for reinstatement. The school corporation shall then reinstate the teacher.

(b) If the teacher is unable to return for reinstatement within the sixty (60) day period for any reason arising from mental or physical disability, the teacher has sixty (60) days after the date of removal of the disability to apply for reinstatement.

(c) On reinstatement or on written resignation submitted to the school corporation, the teacher's leave of absence and defense service is considered terminated.

As added by P.L.1-2005, SEC.12.

IC 20-28-10-12

Antidiscrimination; marital status

Sec. 12. A governing body or the governing body's agent may not make or enforce a rule or regulation concerning the employment of teachers that discriminates because of marital status.

As added by P.L.1-2005, SEC.12.

IC 20-28-10-13

Antidiscrimination; residence requirements

Sec. 13. (a) A governing body may not adopt residence requirements for teachers or other school employees in the governing body's employment, assignment, or reassignment for services in a prescribed area.

(b) A school corporation that violates subsection (a) is ineligible for state funds under all enactments regarding that subject. The state superintendent and other state officials shall administer the funds accordingly on the submission of sworn proof of the existence of the discriminatory residence requirements.

As added by P.L.1-2005, SEC.12.

IC 20-28-10-14

Teacher's freedom of association

Sec. 14. (a) A school corporation may not dismiss or suspend any employee because of affiliation with or activity in an organization unless that organization advocates:

(1) the overthrow of the United States government by:

(A) force; or
(B) the use of violence; or
(2) the violation of law;
to achieve its objective.
(b) A rule or regulation contrary to subsection (a) is void.
As added by P.L.1-2005, SEC.12.

IC 20-28-10-15

Teacher as public office candidate

Sec. 15. A governing body may not dismiss, suspend, or enforce a mandatory leave of absence on a teacher who is a candidate for public office unless evidence is submitted to the governing body that would substantiate a finding that the teacher's activity has:

- (1) impaired the teacher's effectiveness in the teacher's service; or
- (2) interfered with the performance of the teacher's contractual obligations.

A suspension is valid only during the period of the impairing activity.

As added by P.L.1-2005, SEC.12.

IC 20-28-10-16

Teacher serving in the general assembly

Sec. 16. (a) If a teacher serves in the general assembly, the teacher shall be given credit for the time spent in this service, including the time spent for council or committee meetings. The leave for this service does not diminish the teacher's rights under the Indiana state teachers' retirement fund or the teacher's advancement on the state or a local compensation plan. For these purposes, the teacher is, despite the leave, considered teaching for the school during that time.

(b) The compensation received while serving in the general assembly shall be included for teachers retiring after June 30, 1980, in the determination of the teacher's annual compensation to compute the teacher's retirement benefit under IC 5-10.2-4. A teacher serving in the general assembly may choose to have deductions made from the teacher's salary as a legislator for contributions under either IC 5-10.4-4-11 or IC 5-10.3-7-9.

As added by P.L.1-2005, SEC.12. Amended by P.L.2-2006, SEC.139; P.L.213-2015, SEC.183.

IC 20-28-10-17

School counselors; privileged or confidential information

Sec. 17. (a) Except as provided in IC 31-32-11-1, a school counselor is immune from disclosing privileged or confidential communication made to the counselor as a counselor by a student.

(b) Except as provided in IC 31-32-11-1, the matters communicated are privileged and protected against disclosure.

As added by P.L.1-2005, SEC.12.

IC 20-28-10-18

Teacher's legal recourse for infringement of rights and privileges

Sec. 18. A teacher whose rights and privileges under sections 14 through 17 of this chapter are or are about to be infringed by a rule or regulation may, in accord with the law governing injunctions, seek to enjoin the school corporation from the infringement. A circuit or superior

court shall issue the injunction if the court finds an infringement.
As added by P.L.1-2005, SEC.12.

IC 20-28-10-19

Daily free time for teachers

Sec. 19. (a) Each governing body and its administrators shall arrange each teacher's daily working schedule to provide at least thirty (30) minutes between 10 a.m. and 2 p.m. for a period free of duties.

(b) The state superintendent shall report each failure to comply with subsection (a) to the state board, which shall immediately inform the governing body of each alleged violation.

(c) If the school corporation persistently fails or refuses to comply with subsection (a) for one (1) year, the state board shall:

(1) lower the grade of accreditation of the school corporation; and

(2) publish notice of that action in at least one (1) newspaper published in the county.

As added by P.L.1-2005, SEC.12.

EXTENDED LEAVES OF ABSENCE

Q: May a school corporation grant extended leaves of absence to a teacher?

Yes. Teachers may be granted leaves for up to one year for sickness or disability or as a sabbatical leave for professional improvement. A school corporation may grant consecutive leaves to a teacher.

MILITARY LEAVE

Q: What rights does an Indiana teacher have if he or she enters military service?

A "professional" or "established" teacher with an indefinite contract who volunteers or is inducted into the defense service on a full time basis is granted a leave of absence during the defense service.

If a "probationary" teacher enters the defense service, the teacher's contract and the teacher's right to probationary successive years under contract are preserved. The teacher is granted a leave of absence during the defense service.

Q: What is the status of a teacher who returns from military service?

On reinstatement, the status of the teacher is the same as when the teacher entered the defense service. All rights to changes of salary or position, accrue to the teacher as if no interruption had occurred.

Q: How soon must a teacher return to work after discharge from military service?

Generally, a teacher must present himself or herself within 60 days after discharge or release from defense service. If a teacher is unable to return within 60 days because of mental or

physical disability, the teacher has 60 days from the date of removal of the disability to apply for reinstatement.

Q: *What about reserve duty?*

Any member of the reserve armed forces who is called to temporary duty, including annual training, is entitled to a temporary leave of absence not to exceed 15 days in any calendar year. (IC 10-17-4-1).

MATERNITY LEAVE

Q: *How long may a pregnant teacher continue to teach?*

A teacher who is pregnant may continue in active employment as late into pregnancy as the teacher wishes, if the teacher can fulfill the requirements of the teacher's position.

Q: *How long can maternity leave last?*

Indiana law allows a pregnant teacher to take a leave of absence for any time between the commencement of the teacher's pregnancy and one (1) year following the birth of the child.

Q: *How does a teacher arrange for maternity leave?*

The teacher should notify the school superintendent at least 30 days in advance of the date on which she desires to start the leave. The teacher should include a copy of a physician's statement certifying her pregnancy, or a copy of the child's birth certificate, whichever is applicable. The teacher should state the expected length of her leave. A teacher can change the expected length of her leave after the leave has begun.

Q: *What if a medical emergency caused by the pregnancy arises?*

In the case of a medical emergency caused by pregnancy, the teacher shall be granted a leave immediately on the teacher's request and the certification of the emergency from an attending physician.

Q: *Can available sick leave days be used during maternity leave?*

Yes. All or part of a leave taken by a teacher because of a temporary disability caused by pregnancy may be charged, at the teacher's discretion, to the teacher's available sick days.

Q: *What happens when available sick leave has been exhausted?*

The teacher may complete the remaining leave without pay. However, the teacher may receive compensation under the terms of a sick leave bank, collective bargaining agreement or board policy.

Q: *Is a school employer obligated to provide pregnancy disability benefits?*

If a school employer does not provide disability benefits or paid sick leave to other employees, the employer is under no obligation to provide them for pregnant workers. However, under the pregnancy disability amendment to Title VII of the Civil Rights Act of 1964, if an employer does provide disability benefits or paid sick leave to other employees, he/she must provide them to pregnant workers on the same terms. Pregnancy related disabilities may not be excluded from coverage. The amendment to Title VII requires employers to treat pregnancy and childbirth like any other disability under a fringe benefit plan. In addition, it prohibits termination of employment solely because a woman is pregnant, and it bars mandatory leaves for pregnant women at arbitrarily set times in their pregnancy unrelated to their ability to work. The amendment protects reinstatement rights for women on leave from pregnancy related reasons, including credit for previous service, accrued retirement benefits and accrued seniority.

VI. PROTECTION FROM ATTACKS

Q. *What protection do I have if I am attacked or threatened by a student or parent?*

ISTA has adopted a Member Protection Policy to ensure that every member will be able to work in a safe environment. The Policy advocates that every school board adopt policies guaranteeing fair and safe treatment of members by students and parents.

The policy should prohibit abusive, threatening, harassing or intimidating words or actions. The principal and other administrators will be expected to enforce this school board policy and members are entitled to the assistance of staff in encouraging administrators to enforce safety policies.

A member who is threatened by students or parents should immediately notify the building representative and the UniServ Director. The UniServ Director has resources to send appropriate communications to the administration, and to the parent or student, and if necessary, to the juvenile prosecutor or the police departments to help protect the teacher.

If the threats against the member cannot be resolved through these measures, ISTA staff is authorized to retain an attorney for the member for representation at meetings with school officials, authorities, or the parent or student who is threatening the teacher.

Additionally, IC 20-33-9-10 requires that an individual who has reason to believe that a school employee: (1) has received a threat; (2) is the victim of intimidation; (3) is the victim of battery; or (4) is the victim of harassment; shall report that information to their principal who must then report that information to the police.

VII. RESIGNATION BY TEACHER FROM SCHOOL SYSTEM

IC 20-28-7.5-8

Void contract; teacher bound by previous contract to teach in public school

Sec. 8. (a) This section does not apply to an individual who works at a conversion charter school (as defined in IC 20-24-1-5) for purposes of the individual's employment with the school corporation that sponsored the conversion charter school.

(b) A contract between a school corporation and a teacher is void if the teacher, at the time of signing the contract, is bound by a previous contract to teach in a public school and the contract is entered into at any time during the school year or less than fourteen (14) days before the day on which the teacher must report for work at that school. However, another contract may be signed by the teacher that will be effective if the teacher:

(1) furnishes the principal a release by the first employer; or

(2) shows proof that thirty (30) days written notice was delivered by the teacher to the first employer.

(c) A principal may request from a teacher, at the time of contracting, a written statement as to whether the teacher has signed another teaching contract. However, the teacher's failure to provide the statement is not a cause for subsequently voiding the contract.

As added by P.L.90-2011, SEC.31. Amended by P.L.43-2014, SEC.4; P.L.233-2015, SEC.211; P.L.179-2016, SEC.10.

Q: *Can a teacher who is under contract to one school corporation enter into a contract with a second school corporation shortly before the school year begins or during the school year?*

A contract entered into less than 14 days before school starts, or during the school year, where a teacher was bound by a previous contract with another public school is void unless the teacher furnishes a release from the first corporation or shows proof that 30 days written notice was given to the first corporation. A void contract can be terminated immediately without warning or due process.

Q: *Can a teacher withdraw a resignation once it has been presented to the school corporation?*

IC 5-8-4-1 provides that whenever any employee of a school corporation submits a resignation in writing, he or she has no right to withdraw, rescind, annul or amend such resignation without the consent of the school corporation.

Any condition contained in the resignation, except the time the resignation takes effect, is null and void.

VIII. TEACHER EVALUATIONS

IC 20-28-11.5

Chapter 11.5. Staff Performance Evaluations

IC 20-28-11.5-0.5

“Certificated employee”

Sec. 0.5. As used in this chapter, “certificated employee” includes the following:

- (1) A certificated employee (as defined in IC 20-29-2-4).
- (2) For purposes of annual performance evaluations conducted for a school year beginning after June 30, 2014, a teacher (as defined in IC 20-18-2-22), regardless of whether the individual is a certificated employee (as defined in IC 20-29-2-4).

As added by P.L.239-2015, SEC.6.

IC 20-28-11.5-1

"Evaluator"

Sec. 1. As used in this chapter, "evaluator" means an individual who conducts a staff performance evaluation. The term includes a teacher who:

- (1) has clearly demonstrated a record of effective teaching over several years;
- (2) is approved by the principal as qualified to evaluate under the plan; and
- (3) conducts staff performance evaluations as a significant part of teacher's responsibilities.

As added by P.L.90-2011, SEC.39.

IC 20-28-11.5-2

"Plan"

Sec. 2. As used in the chapter, "plan" refers to a staff performance evaluation plan developed under this chapter.

As added by P.L.90-2011, SEC.39.

IC 20-28-11.5-3

"School corporation"

Sec. 3. As used in this chapter, "school corporation" includes:

- (1) a school corporation;
- (2) a school created by an interlocal agreement under IC 36-1-7;
- (3) a special education cooperative under IC 20-35-5; and
- (4) a joint career and technical education program created under IC 20-37-1.

However, for purposes of section 4(a) and 4(b) of this chapter, "school corporation" includes a charter school, a virtual charter school, an eligible school (as defined in IC 20-51-1-4.7).

As added by P.L.90-2011, SEC.39. Amended by P.L.229-2011, SEC.176; P.L.172-2011, SEC.122.

IC 20-28-11.5-4

School corporation plan; plan components

Sec. 4. (a) Each school corporation shall develop a plan for annual performance evaluations for each certificated employee. A school corporation shall implement the plan beginning with the 2012-2013 school year.

(b) Instead of developing its own staff performance evaluation plan under subsection (a), a school corporation may adopt a staff performance evaluation plan that meets the requirements set forth in this chapter or any of the following models:

(1) A plan using master teachers or contracting with an outside vendor to provide master teachers.

(2) The System for Teacher and Student Advancement (TAP).

(3) The Peer Assistance and Review Teacher Evaluation System (PAR).

(c) A plan must include the following components:

(1) Performance evaluations for all certificated employees, conducted at least annually.

(2) Objective measures of student achievement and growth to significantly inform the evaluation. The objective measures must include:

(A) student assessment results from statewide assessments for certificated employees whose responsibilities include instruction in subjects measured in statewide assessments;

(B) methods for assessing student growth for certificated employees who do not teach in areas measured by statewide assessments; and

(C) student assessment results from locally developed assessments and other test measures for certificated employees whose responsibilities may or may not include instruction in subjects and areas measured by statewide assessments.

(3) Rigorous measures of effectiveness, including observations and other performance indicators.

(4) An annual designation of each certificated employee in one (1) of the following rating categories:

(A) Highly effective.

(B) Effective.

(C) Improvement necessary.

(D) Ineffective.

(5) An explanation of the evaluator's recommendations for improvement, and the time in which improvement is expected.

(6) A provision that a teacher who negatively affects student achievement and growth cannot receive a rating of highly effective or effective.

(7) For annual performance evaluations for school years beginning after June 30, 2015, provide for a pre-evaluation planning session conducted by the superintendent or equivalent authority for the school corporation with the principals in the school corporation.

(d) In developing a performance evaluation model, a school corporation may consider the following:

(1) Test scores of students (both formative and summative).

(2) Classroom presentation observations.

(3) Observation of student-teacher interaction.

(4) Knowledge of subject matter.

(5) Dedication and effectiveness of the teacher through time and effort on task.

(6) Contributions of teachers through group teacher interactivity in fulfilling the school improvement plan.

(7) Cooperation of the teacher with supervisors and peers.

(8) Extracurricular contributions of the teacher.

(9) Outside performance evaluations.

(10) Compliance with school corporation rules and procedures.

(11) Other items considered important by the school corporation in developing each student to the student's maximum intellectual potential and performance.

The state board and the department may recommend additional factors, but may not require additional factors unless directed to do so by the general assembly.

(e) The state board may create a method or model to align currently used performance evaluation plan factors with each of the following indicators:

- (1) maximizing instructional time;
- (2) student engagement;
- (3) developing student understanding and mastery of lesson objectives;
- (4) tracking student data and analyzing progress; and
- (5) checking for student understanding.

(f) This subsection applies to plans applicable to annual performance evaluations for school years beginning after June 30, 2015. The plan must:

- (1) be in writing; and
- (2) be explained to the governing body in a public meeting:

before the evaluations are conducted. Before explaining the plan to the governing body, the superintendent of the school corporation shall discuss the plan with teachers or the teachers' representative, if there is one. This discussion is not subject to the open door law (IC 5-14-1.5). The plan is not subject to bargaining, but a discussion of the plan must be held.

(g) The evaluator shall discuss the evaluation with the certificated employee.

As added by P.L.90-2011, SEC.39. Amended by P.L. 239-2015, SEC.7; P.L. 275-2019, SEC. 7

IC 20-28-11.5-5

Conduct of evaluations

Sec. 5. (a) The superintendent or equivalent authority, for a school corporation that does not have a superintendent, may provide for evaluations to be conducted by an external provider.

(b) An individual may evaluate a certificated employee only if the individual has received training and support in evaluation skills.

As added by P.L.90-2011, SEC.39.

IC 20-28-11.5-6

Completed evaluation; remediation plan; conference with superintendent

Sec. 6. (a) A copy of the completed evaluation, including any documentation related to the evaluation, must be provided to a certificated employee not later than seven (7) days after the evaluation is conducted.

(b) If a certificated employee receives a rating of ineffective or improvement necessary, the evaluator and the certificated employee shall develop a remediation plan of not more than ninety (90) school days in length to correct the deficiencies noted in the certificated employee's evaluation. The remediation plan must require the use of the certificated employee's license renewal credits in professional development activities intended to help the certificated employee achieve an effective rating on the next performance evaluation. If the principal did not conduct the performance evaluation, the principal may direct the use of the certificated employee's license renewal credits under this subsection.

(c) A teacher who receives a rating of ineffective may file a request for a private conference with the superintendent or the superintendent's designee not later than five (5) days after receiving notice that the teacher received a rating of ineffective. The teacher is entitled to a

private conference with the superintendent or superintendent's designee.
As added by P.L.90-2011, SEC.39.

IC 20-28-11.5-7

Student instructed by teachers rated ineffective; notice to parents required

Sec. 7. (a) This section applies to any teacher instructing students in a content area and grade subject to IC 20-32-5-2 (for a school year ending before July 1, 2018), and IC 20-32-5.1 (for a school year ending after June 30, 2018).

(b) A student may not be instructed for two (2) consecutive years by two (2) consecutive teachers, each of whom was rated as ineffective under this chapter in the school year immediately before the school year in which the student is placed in the respective teacher's class.

(c) If a teacher did not instruct students in the school year immediately before the school year in which students are placed in the teacher's class, the teacher's rating under this chapter for the most recent year in which the teacher instructed students, instead of for the school year immediately before the school year in which students are placed in the teacher's class, shall be used in determining whether subsection (b) applies to the teacher.

(d) If it is not possible for a school corporation to comply with this section, the school corporation must notify the parents of each applicable student indicating the student will be placed in a classroom of a teacher who has been rated ineffective under this chapter. The parent must be notified before the start of the second consecutive school year.

As added by P.L.90-2011, SEC.39. Amended by P.L.242-2017, SEC.21; P.L.192-2018, SEC.13.

IC 20-28-11.5-8

State board actions; model plan; approval of plan by teachers

Sec. 8. (a) To implement this chapter, the state board shall do the following:

(1) Before January 31, 2012, adopt rules under IC 4-22-2 that establish:

(A) the criteria that define each of the four categories of teacher ratings under section 4(c)(4) of this chapter;

(B) the measures to be used to determine student academic achievement and growth under section 4(c)(2) of this chapter;

(C) standards that define actions that constitute a negative impact on student achievement; and

(D) an acceptable standard for training evaluators.

(2) Before January 31, 2012, work with the department to develop a model plan and release it to school corporations. Subsequent versions of the model plan that contain substantive changes must be provided to school corporations.

(3) Work with the department to ensure the availability of ongoing training on the use of the performance evaluation to ensure that all evaluators and certificated employees have access to information on the plan, the plan's implementation, and this chapter.

(b) A school corporation may adopt the department's model plan, or any other model plan approved by the department, without the state board's approval.

(c) A school corporation may substantially modify the model plan or develop the school corporation's own plan, if the substantially modified or developed plan meets the criteria established under this chapter. If a school corporation substantially modifies the model plan or develops its own plan, the department may request that the school corporation submit the plan to

the department to ensure the plan meets the criteria developed under this chapter. If the department makes such a request, before submitting a substantially modified or new staff performance evaluation plan to the department, the governing body shall submit the staff performance evaluation plan to the teachers employed by the school corporation for a vote. If at least seventy-five percent (75%) of the voting teachers vote in favor of adopting the staff performance evaluation plan, the governing body may submit the staff performance evaluation plan to the department.

(d) Each school corporation shall submit its staff performance evaluation plan to the department. The department shall publish the staff performance evaluation plans on the department's Internet web site. A school corporation must submit its staff performance evaluation plan to the department for approval in order to qualify for any grant funding related to this chapter.

As added by P.L.90-2011, SEC.39. Amended by P.L.160-2012, SEC.50.

IC 20-28-11.5-8.5

Plan for performance evaluations not subject to bargaining; review of plans by the department and the Indiana education employment relations board; requirement to present plans selected to the state board of education

Sec. 8.5. A plan for performance evaluations under this chapter may be discussed, but is not subject to bargaining. Selection of a performance evaluation model is at the discretion of the school corporation, but the developed plan must be reported to the department and the Indiana education employment relations board in a timely manner, as established by the department. The department may review the plan for efficacy and the Indiana education employment relations board may review the plan for legality, and both may comment to the school corporation. The department shall annually present to the state board of education plans selected by the school corporations. The state board may recommend model plans to school corporations, but shall not mandate any plan.

As added by P.L.213-2015, SEC.184.

IC 20-28-11.5-9

Department report of evaluation results

Sec. 9. (a) The principal of a school in a school corporation shall report in the aggregate the results of staff performance evaluations for the school for the previous school year to the superintendent and the governing body for the school corporation before August 15 of each year on the schedule determined by the governing body. The report must be presented in a public meeting of the governing body. Before presentation to the governing body, the superintendent of the school corporation shall discuss the report of completed evaluations with the teachers. This discussion is not subject to the open door law (IC 5-14-1.5). The report of completed evaluations is not subject to bargaining, but a discussion of the report must be held.

(b) A school corporation annually shall provide the disaggregated results of staff performance evaluations by teacher identification numbers to the department:

(1) after completing the presentations required under subsection (a) for all schools for the school corporation; and

(2) before November 15 of that year.

Before November 15 of each year, each charter school (including a virtual charter school) shall provide the disaggregated results of staff performance evaluations by teacher identification numbers to the department.

(c) Before August 1 of each school year, each charter school and school corporation shall provide to the department:

(1) the name of the teacher preparation program that recommended the initial license for each teacher employed by the school; and

(2) the annual retention rate for teachers employed by the school.

(d) Not before the beginning of the second semester (or the equivalent) of the school year and not later than August 1 of each year, the principal at each school described in subsection (b) shall complete a survey that provides information regarding the principal's assessment of the quality of instruction by each particular teacher preparation program located in Indiana for teachers employed at the school who initially received their teaching license in Indiana in the previous two (2) years. The survey shall be adopted by the state board and prescribed on a form developed not later than July 30, 2016, by the department that is aligned with the matrix system established under IC 20-28-3-1(i). The school shall provide the surveys to the department along with the information provided in subsection (c). The department shall compile the information contained in the surveys, broken down by each teacher preparation program located in Indiana. The department shall include information relevant to a particular teacher preparation program located in Indiana in the department's report under subsection (g).

(e) During the second semester (or the equivalent) of the school year and not later than August 1 of each year, each teacher employed by a school described in subsection (b) in Indiana who initially received a teacher's license in Indiana in the previous three (3) years shall complete a form after the teacher completes the teacher's initial year teaching at a particular school. The information reported on the form must:

(1) provide the year in which the teacher was hired by the school;

(2) include the name of the teacher preparation program that recommended the teacher for an initial license;

(3) describe subjects taught by the teacher;

(4) provide the location of different teaching positions held by the teacher since the teacher initially obtained an Indiana teaching license;

(5) provide a description of any mentoring the teacher has received while teaching in the teacher's current teaching position;

(6) describe the teacher's current licensure status; and

(7) include an assessment by the teacher of the quality of instruction of the teacher preparation program in which the teacher participated.

The form shall be prescribed by the department. The forms shall be submitted to the department with the information provided in subsection (c). Upon receipt of the information provided in this subsection, the department shall compile the information contained in the forms and include an aggregated summary of the report on the department's Internet web site.

(f) Before December 15 of each year, the department shall report the results of staff performance evaluations in the aggregate to the state board, and to the public via the department's Internet web site for:

(1) the aggregate of certificated employees of each school and school corporation;

(2) the aggregate of graduates of each teacher preparation program in Indiana;

(3) for each school described in subsection (b), the annual rate of retention for certificated employees for each school within the charter school or school corporation; and

(4) the aggregate results of staff performance evaluations for each category described in section 4(c)(4) of this chapter. In addition to the aggregate results, the results must be broken down:

(A) by the content area of the initial teacher license received by teachers upon completion of a particular teacher preparation program; or

(B) as otherwise requested by a teacher preparation program, as approved by the state board.

(g) Beginning November 1, 2016, and before September 1 of each year thereafter, the department shall report to each teacher preparation program in Indiana for teachers with three (3) or fewer years of teaching experience:

(1) information from the surveys relevant to that particular teacher education program provided to the department under subsection (d);

(2) information from the forms relevant to that particular teacher preparation program compiled by the department under subsection (e); and

(3) the results from the most recent school year for which data are available of staff performance evaluations for each category described in section 4(c)(4) of this chapter with three (3) or fewer years of teaching experience for that particular teacher preparation program. The report to the teacher preparation program under this subdivision shall be in the aggregate form and shall be broken down by the teacher preparation program that recommended an initial teaching license for the teacher.

As added by P.L.90-2011, SEC.39. Amended by P.L.6-2012, SEC.138; P.L.254-2013, SEC.3; P.L.192-2014, SEC.5; P.L.239-2015, SEC.8.

IC 20-28-11.5-10 Expired.

As added by P.L.242-2017, SEC.22. Expired 7-1-2018 by P.L. 242-2017, SEC.22.

Q: Are charter schools required to develop staff performance evaluation plans?

Yes. Charter schools are included in the definition of “school corporation” for purposes of this law.

Q: How often must teachers be evaluated?

The statute requires that each school corporation develop a plan for annual performance evaluations for each certificated employee.

Q: Are there mandatory components of any performance evaluation plan?

Yes. Performance evaluation plans must include the following components:

1. Annual evaluations.

2. Objective measures of student achievement and growth which must include:

(a) student assessment results from statewide assessments for teachers who instruct in those areas

- (b) methods for assessing student growth for teachers who do not teach in tested areas
 - (c) student assessment results from locally developed assessments and other test measures for teachers who may or may not teach in areas tested by statewide assessments.
3. Rigorous measures of effectiveness, including observations and other performance indicators.
 4. Annual designation of teachers into one of four rating categories.
 5. An explanation of the evaluator's recommendations for improvement, and the time in which improvement is expected.
 6. A provision that a teacher who negatively affects student achievement and growth cannot receive a rating of highly effective or effective.
 7. A pre-evaluation planning session conducted by the superintendent with the school corporation's principals.

Q: *What are the rating categories into which teachers must be placed?*

Teachers must be placed into one of the following categories:

1. Highly Effective
2. Effective
3. Improvement Necessary
4. Ineffective

Q: *Can a school corporation adopt the state model plan for teacher evaluations?*

Yes. The state board and the IDOE are to develop a model plan and release it to school corporations.

Q: *Can a school corporation be required to use a specific evaluation plan?*

No. The state board may recommend model plans and factors to be considered in evaluations, but cannot mandate any plan or factors.

Q: *Can school corporations use other model plans?*

Yes. A school corporation may adopt the department's model plan or any other model plan approved by the department, including the System for Teacher and Student Advancement (TAP), the Peer Assistance and Review Teacher Evaluation System (PAR), or a plan using master teachers.

Q: *Can school corporations adopt their own locally developed plan?*

Yes. School corporations may develop plans locally that must meet the requirements of the law.

Q: *Must a locally developed evaluation plan be approved by the IDOE?*

IC 20-28-11.5-8(c) provides that if a corporation substantially modifies the model plan or develops its own plan, the department may request that the plan be submitted to ensure that it meets the requirements of the statute. If the department requests submission of a local plan, the corporation shall submit the evaluation plan to the teachers for a vote. If at least 75% of the voting teachers vote in favor of adopting the evaluation plan, the corporation may submit the plan to the department.

Q: *Is each corporation required to submit its evaluation plan to the IDOE?*

Yes. Each corporation must submit its evaluation plan to the department. The department must publish the plans on the department's Internet web site.

Q: *Who can conduct teacher evaluations?*

An evaluator means an individual who conducts evaluations and includes a teacher who (1) has clearly demonstrated a record of effective teaching over several years; (2) is approved by the principal as qualified to evaluate; and (3) conducts staff performance evaluations as a significant part of their responsibilities. Additionally, an evaluator must have received training and support in evaluation skills.

Q: *Is the evaluator required to provide the evaluation to the teacher?*

Yes. A copy of the completed evaluation must be provided to the teacher not later than seven (7) days after the evaluation is conducted.

Q: *Is a teacher entitled to an improvement plan?*

Yes. If a teacher receives a rating of ineffective or improvement necessary, the evaluator and the teacher shall develop a remediation plan of not more than ninety (90) school days in length to correct the deficiencies noted in the evaluation. The remediation plan must require the use of the teacher's license renewal credits in professional development activities to help achieve an effective rating on the next performance evaluation.

Q: *If a teacher receives a rating of ineffective, is the teacher entitled to a conference with the Superintendent or the Superintendent's designee?*

Yes. A teacher who receives a rating of ineffective may request a private conference with the superintendent or designee not later than five (5) days after receiving notice that the teacher received an ineffective rating.

Q: *What evaluation information must be provided to the school board and local Association?*

The evaluation plan must be in writing and explained to the school board in a public meeting before evaluations are conducted. Before explaining the plan to the school board, the superintendent must discuss the evaluation plan with the local Association.

IX. SALARY AND RELATED PAYMENTS

IC 20-28-9-1

Repealed

(Repealed by P.L.48-2011, SEC.39; P.L.286-2013, SEC.89.)

IC 20-28-9-1.5

Teacher's minimum salary; basis

Sec. 1.5. (a) This subsection governs salary increases for a teacher employed by a school corporation. Compensation attributable to additional degrees or graduate credits earned before the effective date of a local compensation plan created under this chapter before July 1, 2015, shall continue for school years beginning after June 30, 2015. Compensation attributable to additional degrees for which a teacher has started course work before July 1, 2011, and completed course work before September 2, 2014, shall also continue for school years beginning after June 30, 2015. For school years beginning after June 30, 2015, a school corporation may provide a supplemental payment to a teacher in excess of the salary specified in the school corporation's compensation plan under any of the following circumstances:

(1) The teacher:

(A) teaches an advanced placement course or a Cambridge International course; or

(B) has earned a master's degree from an accredited postsecondary educational institution in a content area directly related to the subject matter of:

(i) a dual credit course; or

(ii) another course;

taught by the teacher.

(2) Beginning after June 30, 2018, the teacher:

(A) is a special education professional; or

(B) teaches in the areas of science, technology, engineering, or mathematics.

In addition, a supplemental payment may be made to an elementary school teacher who earns a master's degree in math, reading, or literacy. A supplement provided under this subsection is not subject to collective bargaining, but a discussion of the supplement must be held. Such a supplement is in addition to any increase permitted under subsection (b).

(b) Increases or increments in a local salary range must be based upon a combination of the following factors:

(1) A combination of the following factors taken together may account for not more than fifty percent (50%) of the calculation used to determine a teacher's increase or increment:

(A) The number of years of a teacher's experience.

(B) The possession of either:

(i) additional content area degrees beyond the requirements for employment; or

(ii) additional content area degrees and credit hours beyond the requirements for employment, if required under an agreement bargained under IC 20-29.

(2) The results of an evaluation conducted under IC 20-28-11.5.

(3) The assignment of instructional leadership roles, including the responsibility for conducting evaluations under IC 20-28-11.5.

(4) The academic needs of students in the school corporation.

(c) To provide greater flexibility and options, a school corporation may differentiate the amount of salary increases or increments determined for teachers under subsection (b)(4). A

school corporation shall base a differentiated amount under this subsection on any academic needs the school corporation determines are appropriate, which may include the:

(1) subject or subjects, including the subjects described in subsection (a)(2), taught by a given teacher;

(2) importance of retaining a given teacher at the school corporation; and

(3) need to attract an individual with specific qualifications to fill a teaching vacancy.

(d) A school corporation may provide differentiated increases or increments under subsection (b), and in excess of the percentage specified in subsection (b)(1), in order to:

(1) reduce the gap between the school corporation's minimum teacher salary and the average of the school corporation's minimum and maximum teacher salaries; or

(2) allow teachers currently employed by the school corporation to receive a salary adjusted in comparison to starting base salaries of new teachers.

(e) Except as provided in subsection (f), a teacher rated ineffective or improvement necessary under IC 20-28-11.5 may not receive any raise or increment for the following year if the teacher's employment contract is continued. The amount that would otherwise have been allocated for the salary increase of teachers rated ineffective or improvement necessary shall be allocated for compensation of all teachers rated effective and highly effective based on the criteria in subsection (b).

(f) Subsection (e) does not apply to a teacher in the first two (2) full school years that the teacher provides instruction to students in elementary school or high school. If a teacher provides instruction to students in elementary school or high school in another state, any full school year, or its equivalent in the other state, that the teacher provides instruction counts toward the two (2) full school years under this subsection.

(g) A teacher who does not receive a raise or increment under subsection (e) may file a request with the superintendent or superintendent's designee not later than five (5) days after receiving notice that the teacher received a rating of ineffective. The teacher is entitled to a private conference with the superintendent or superintendent's designee.

(h) The Indiana education employment relations board established in IC 20-29-3-1 shall publish a model compensation plan with a model salary range that a school corporation may adopt.

(i) Each school corporation shall submit its local compensation plan to the Indiana education employment relations board. For a school year beginning after June 30, 2015, a local compensation plan must specify the range for teacher salaries. The Indiana education employment relations board shall publish the local compensation plans on the Indiana education employment relations board's Internet web site.

(j) The Indiana education employment relations board shall review a compensation plan for compliance with this section as part of its review under IC 20-29-6-6.1. The Indiana education employment relations board has jurisdiction to determine compliance of a compensation plan submitted under this section.

(k) This chapter may not be construed to require or allow a school corporation to decrease the salary of any teacher below the salary the teacher was earning on or before July 1, 2015, if that decrease would be made solely to conform to the new compensation plan.

(l) After June 30, 2011, all rights, duties, or obligations established under IC 20-28-9-1 before its repeal are considered rights, duties, or obligations under this section.

As added by P.L.286-2013, SEC.90. Amended by P.L.213-2015, SEC.179; P.L.106-2016, SEC.10; P.L.216-2017, SEC.2; P.L.228-2017, SEC.3; P.L.170-2018, SEC.4; P.L.191-2018,

SEC.11, P.L.215-2018(ss), SEC.9; P.L. 118-2019, SEC.1, P.L. 143-2019, SEC.21; P.L. 211-2019, SEC. 23.

IC 20-28-9-2

Repealed

(Repealed by P.L.48-2011, SEC.39; P.L.90-2011, SEC.50.)

IC 20-28-9-3

Repealed

(Repealed by P.L.48-2011, SEC.39; P.L.90-2011, SEC.50.)

IC 20-28-9-4

Repealed

(Repealed by P.L.48-2011, SEC.39; P.L.90-2011, SEC.50.)

IC 20-28-9-5

Computation of annual salary of teacher or distribution of state funds; rounding to nearest dollar

Sec. 5. In computing the annual salary of a teacher or when distributing state funds, an amount of less than fifty cents (\$0.50) is dropped while an amount of fifty cents (\$0.50) or more is rounded up to the next whole dollar.

As added by P.L.1-2005, SEC.12.

IC 20-28-9-6

Substitute teachers; wages; no written contract required

Sec. 6. (a) The governing body shall fix wages for substitute teachers.

(b) A substitute teacher may be engaged without a written contract.

As added by P.L.1-2005, SEC.12.

IC 20-28-9-7

Substitute teachers; certain licenses; pay schedule

Sec. 7. (a) An individual who:

(1) holds:

(A) a professional license;

(B) a provisional license;

(C) a limited license; or

(D) an equivalent license issued by the department; and

(2) serves as an occasional substitute teacher;

shall be compensated in conformity with the pay range for substitutes of the school corporation the individual serves.

(b) An individual who:

(1) holds a:

(A) professional license; or

(B) provisional license; and

(2) serves as a substitute teacher in the same teaching position for more than fifteen (15) consecutive school days;

shall be compensated in conformity with the regular pay range for teachers of the school corporation the individual serves.

As added by P.L.1-2005, SEC.12. Amended by P.L.246-2005, SEC.168; P.L.213-2015, SEC.180.

IC 20-28-9-8

Substitute teacher with substitute license; compensation schedule

Sec. 8. An individual who holds a substitute license shall be compensated in conformity with the pay range for substitutes of the school corporation the individual serves.

As added by P.L.1-2005, SEC.12. Amended by P.L.213-2015, SEC.181.

IC 20-28-9-9

Teacher absence from work with pay; accumulated unused days

Sec. 9. (a) Each teacher may be absent from work with pay:

(1) on account of illness or quarantine for ten (10) days the first year and seven (7) days in each succeeding year (referred to as "sick days" in this chapter); and

(2) for death in the teacher's immediate family for a period extending not more than five (5) days beyond the death.

(b) If the teacher does not use all the teacher's sick days in a school year, the unused days accumulate up to a total of ninety (90) days. However, each teacher shall be credited with the accumulative days accrued to the teacher on January 1, 1966.

As added by P.L.1-2005, SEC.12.

IC 20-28-9-10

Teacher with at least one accumulated sick day; employment by another school corporation

Sec. 10. (a) This section applies whenever a teacher accumulates at least one (1) sick day and then is employed in another school corporation.

(b) Beginning in the teacher's second year, the teacher's employer shall add up to three (3) sick days each year to the number of sick days to which the teacher is entitled under section 9(a) of this chapter until the accumulated sick days to which the teacher was entitled in the teacher's last employment are exhausted.

As added by P.L.1-2005, SEC.12.

IC 20-28-9-11

Teacher absence from work with pay; agreement between school employer and exclusive representative

Sec. 11. Absences that are not described in sections 9 through 10 of this chapter may be taken with pay when agreed on by the school employer and the exclusive representative under IC 20-29.

As added by P.L.1-2005, SEC.12.

IC 20-28-9-12

Adoption of regulations by school corporation governing payment or part payment of teachers; conditions

Sec. 12. A school corporation may adopt regulations governing the payment or part payment of teachers and then make payments in accordance with those regulations to teachers who are absent because of:

- (1) sickness;
- (2) attending school conventions or meetings;
- (3) visiting other schools; or
- (4) a death in the immediate family.

As added by P.L.1-2005, SEC.12.

IC 20-28-9-13

Voluntary sick day bank

Sec. 13. A school corporation may establish a voluntary sick day bank:

- (1) to which a teacher may contribute unused sick days; and
- (2) from which a contributing teacher may draw sick days when the contributing teacher's accumulated sick days are exhausted.

As added by P.L.1-2005, SEC.12.

IC 20-28-9-14

Teacher personal days

Sec. 14. Each teacher may have at least two (2) days each year with pay for the transaction of personal business or the conduct of personal or civic affairs. The teacher shall submit to the superintendent a written statement describing the reason and necessity for the absence.

As added by P.L.1-2005, SEC.12.

IC 20-28-9-15

Teacher payment when school is closed

Sec. 15. If during the term of the teacher's contract:

- (1) the school is closed by order of the:
 - (A) school corporation; or
 - (B) health authorities; or
- (2) school cannot be conducted through no fault of the teacher; the teacher shall receive regular payments during that time. If a canceled student instructional day (as defined in IC 20-30-2-2) is rescheduled to comply with IC 20-30-2, each teacher and (notwithstanding IC 20-27-8-7) each school bus driver shall work on that rescheduled day without additional compensation.

As added by P.L.1-2005, SEC.12.

IC 20-28-9-16

School closure for Christmas holidays; no payment of teachers' salaries; length of school term

Sec. 16. A school may be closed for up to two (2) weeks for Christmas holidays without payment of teachers' salaries. Closing the school for Christmas holidays does not shorten the length of the school term.

As added by P.L.1-2005, SEC.12.

IC 20-28-9-17

Teacher payment for Saturdays

Sec. 17. The governing body of a school city may pay the salary of teachers for Saturdays in addition to the other days that school is in session.

As added by P.L.1-2005, SEC.12.

IC 20-28-9-18

Salary deductions

- Sec. 18. (a) Upon a teacher's written request, a governing body shall withhold the requested amount of money from the salary of the teacher for a purpose described in subsection (c).
- (b) Upon a written request from a beneficiary of the Indiana state teachers' retirement fund, a governing body may receive a given amount of money for a purpose described in subsection (c).
- (c) The governing body shall hold the amounts described in subsections (a) and (b) and pay the amounts, as requested by the teacher or the beneficiary, to an insurance company or other agency or organization in Indiana that provides, extends, supervises, or pays for:
- (1) insurance or other protection; or
 - (2) the establishment of or payment on an annuity account;
- for the teacher. If a dividend accrues on a policy, the dividend shall be paid or credited to the teacher.
- (d) If less than twenty percent (20%) of the teachers employed by a governing body request payment of the amounts described in subsection (c) to a single recipient, withholding the amounts of money for insurance, dues, or other purposes is discretionary with the governing body.

As added by P.L.1-2005, SEC.12.

IC 20-28-9-19

Retirement, savings, or severance pay plan

- Sec. 19. (a) If a governing body of a school corporation agrees to a retirement, savings, or severance pay plan with a teacher or with an exclusive representative under IC 20-29, the benefits may be paid to:
- (1) the teacher who is eligible under a negotiated retirement, savings, or severance pay plan; or
 - (2) in the case of the teacher's death:
 - (A) the teacher's designated beneficiary; or
 - (B) the teacher's estate, if there is no designated beneficiary.
- Payments may be made in a lump sum or in installments as agreed upon by the parties or to a savings plan established under IC 5-10-1.1-1(2).
- (b) Notwithstanding IC 6-1.1-20, the payments under this section shall be made from the education fund of the school corporation and may be made for a period exceeding one (1) year.
- As added by P.L.1-2005, SEC.12; Amended by P.L.244-2017, SEC.54.*

IC 20-28-9-20

Participation in health insurance plan upon retirement

- Sec. 20. A teacher who is employed by a school corporation that provides a health insurance plan for its employees may participate in the health insurance plan upon retirement under IC 5-10-8.
- As added by P.L.1-2005, SEC.12.*

SICK LEAVE

Q: How many days of sick leave is a teacher entitled to?

A teacher is entitled to be absent from work on account of illness for ten (10) days for the first year in a given school corporation and seven (7) days for each succeeding year in that

corporation. (IC 20-28-9-9) (NOTE: Since the right to paid time off is a mandatory subject of bargaining under IC 20-29-6-4, your local collective bargaining agreement may provide more sick leave days.)

Q: *Can unused sick leave days accumulate?*

Yes. IC 20-28-9-9 provides that unused sick leave days accumulate to 90. (NOTE: Since the right to paid time off is a mandatory subject of bargaining under IC 20-29-6-4, your local collective bargaining agreement may allow sick days to accumulate above 90 days.)

Q: *May a school employer establish a sick leave bank?*

Yes. IC 20-28-9-13 provides that a school employer may establish a voluntary sick leave bank.

Q: *May a school employer charge a teacher with a sick or personal leave day if school is closed for inclement weather?*

If a teacher calls in sick or takes a personal day and school is commenced but is thereafter cancelled, the teacher can be charged for a sick or personal day. However, if the teacher takes a sick or personal leave day and school is cancelled before the beginning of the school day, the teacher may not be charged with a day of sick leave or personal leave. Van Camp v. Oak Hill United School Corporation, 476 N.E. 2d 152 (Ind. Ct. App. 1985).

PERSONAL LEAVE

Q: *How many personal leave days is a teacher entitled to each school year?*

IC 20-28-9-14 provides that a teacher may have at least 2 personal leave days each year with pay. (NOTE: Since the right to paid time off is a mandatory subject of bargaining under IC 20-29-6-4, your local collective bargaining agreement may provide more personal leave days.)

Q: *How does a teacher request a personal leave day?*

A teacher should submit a written statement setting forth the reason and necessity for the absence. (NOTE: Since the right to paid time off is a mandatory subject of bargaining under IC 20-29-6-4, your local collective bargaining agreement may provide a different process for requesting a personal day.)

Q: *Can personal leave days accumulate from one school year to another?*

The statute is silent on the accumulation of personal leave days. However, because the right to paid time off is a mandatory subject of bargaining under IC 20-29-6-4, many collective bargaining agreements provide for the accumulation of personal leave days.

X. COLLECTIVE BARGAINING

IC 20-29-2

Chapter 2. Definitions

IC 20-29-2-1

Application of chapter

Sec. 1. The definitions in this chapter apply throughout this article.

As added by P.L.1-2005, SEC.13.

IC 20-29-2-2

"Bargain collectively"

Sec. 2. "Bargain collectively" means the performance of the mutual obligation of the school employer and the exclusive representative to:

(1) meet at reasonable times to negotiate in good faith concerning the items enumerated in IC 20-29-6-4; and

(2) execute a written contract incorporating any agreement relating to the matters described in subdivision (1).

As added by P.L.1-2005, SEC.13.

IC 20-29-2-3

"Board"

Sec. 3. "Board" refers to the Indiana education employment relations board established by IC 20-29-3-1.

As added by P.L.1-2005, SEC.13.

IC 20-29-2-4

"Certificated employee"

Sec. 4. "Certificated employee" means a person:

(1) whose contract with the school corporation requires that the person hold a license or permit from the division of professional standards of the department under IC 20-28; or

(2) who is employed as a teacher by a charter school established under IC 20-24.

As added by P.L.1-2005, SEC.13. Amended by P.L.1-2007, SEC.145.

IC 20-29-2-5

"Confidential employee"

Sec. 5. "Confidential employee" means a school employee whose:

(1) unrestricted access to confidential personnel files; or

(2) functional responsibilities or knowledge in connection with the issues involved in dealings between the school corporation and its employees; makes the school employee's membership in a school employee organization incompatible with the school employee's official duties.

As added by P.L.1-2005, SEC.13.

IC 20-29-2-6

"Deficit financing"; Gary and Muncie school corporations

Sec. 6. "Deficit financing" for a budget year:

(1) means, except as provided in subdivision (2), actual expenditures exceeding the employer's current year actual education fund revenue and, for a school employer for which the voters have passed an operating referendum tax levy under IC 20-46-1 or a school safety referendum tax levy under IC 20-46-9, the amount of revenue certified by the department of local government finance; or

(2) means, in the case of any distressed school corporation, the Gary Community School Corporation, or the Muncie Community school corporation, actual expenditures plus additional payments against any outstanding debt obligations exceeding the employer's current year actual education fund revenue, and, for a school employer for which the voters have passed an operating referendum tax levy under IC 20-46-1 or a school safety referendum tax levy under IC 20-46-9, the amount of revenue certified by the department of local government finance.

Except as provided in IC 20-29-6-3(c), revenue does not include money estimated to be or actually transferred from the school corporation's operations fund to its education fund.

As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.7. P.L.213-2018(ss), SEC.24; P.L. 272-2019, SEC.5.

IC 20-29-2-7

"Discuss"

Sec. 7. "Discuss" means the performance of the mutual obligation of the school corporation through its superintendent and the exclusive representative to meet at reasonable times to:

- (1) discuss;
- (2) provide meaningful input; or
- (3) exchange points of view;

with respect to items enumerated in IC 20-29-6-7.

As added by P.L.1-2005, SEC.13.

IC 20-29-2-8

"Employees performing security work"

Sec. 8. "Employees performing security work" means a school employee:

(1) whose primary responsibility is the protection of personal and real property owned or leased by the school corporation; or

(2) who performs police or quasi-police powers.

As added by P.L.1-2005, SEC.13.

IC 20-29-2-9

"Exclusive representative"

Sec. 9. "Exclusive representative" means the:

(1) school employee organization that has been:

(A) certified for purposes of this article by the board; or

(B) recognized by a school employer as the exclusive representative of the employees in an appropriate unit;

under IC 20-29-5-1 through IC 20-29-5-5; or

(2) person or persons authorized to act on behalf of a representative described in subdivision

(1).

As added by P.L.1-2005, SEC.13.

IC 20-29-2-10

"Governing body"

Sec. 10. "Governing body" means:

- (1) a board of school commissioners;
- (2) a metropolitan board of education;
- (3) a board of trustees;
- (4) any other board or commission charged by law with the responsibility of administering the affairs of a school corporation; or

(5) the body that administers a charter school established under IC 20-24.

As added by P.L.1-2005, SEC.13. Amended by P.L.233-2015, SEC.220.

IC 20-29-2-11

"Noncertificated employee"

Sec. 11. "Noncertificated employee" means a school employee whose employment is not dependent on the holding of a license or permit under IC 20-28.

As added by P.L.1-2005, SEC.13.

IC 20-29-2-12

"School corporation"

Sec. 12. "School corporation" means a local public school corporation established under Indiana law. The term includes any:

- (1) school city;
- (2) school town;
- (3) consolidated school corporation;
- (4) metropolitan school district;
- (5) township school corporation;
- (6) county school corporation;
- (7) united school corporation;
- (8) community school corporation; and
- (9) public career and technical education center or school or school for children with disabilities established or maintained by two (2) or more school corporations.

As added by P.L.1-2005, SEC.13. Amended by P.L.234-2007, SEC.109; P.L.233-2015, SEC.221.

IC 20-29-2-13

"School employee"

Sec. 13. "School employee" means a full-time certificated person in the employment of the school employer. A school employee is considered full time even though the employee does not work during school vacation periods and accordingly works less than a full year. The term does not include:

- (1) supervisors;
- (2) confidential employees;
- (3) employees performing security work; and

(4) noncertificated employees.
As added by P.L.1-2005, SEC.13.

IC 20-29-2-14

"School employee organization"

Sec. 14. "School employee organization" means an organization that:

- (1) has school employees as members; and
- (2) as one (1) of its primary purposes, represents school employees in dealing with their school employer. The term includes a person or persons authorized to act on behalf of the organization.

As added by P.L.1-2005, SEC.13.

IC 20-29-2-15

"School employer"

Sec. 15. "School employer" means:

- (1) the governing body of each:
 - (A) school corporation; or
 - (B) charter school established under IC 20-24; and
- (2) a person or persons authorized to act for the governing body of the school employer in dealing with its employees.

As added by P.L.1-2005, SEC.13.

IC 20-29-2-16

"Strike"

Sec. 16. "Strike" means:

- (1) concerted failure to report for duty;
 - (2) willful absence from one's position;
 - (3) stoppage of work; or
 - (4) abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment;
- without the lawful approval of the school employer or in any concerted manner interfering with the operation of the school employer for any purpose.

As added by P.L.1-2005, SEC.13.

IC 20-29-2-17

Repealed

(Repealed by P.L.48-2011, SEC.39.)

IC 20-29-2-18

"Superintendent"

Sec. 18. "Superintendent" means:

- (1) the chief administrative officer of a:
 - (A) school corporation; or
 - (B) charter school established under IC 20-24; or
- (2) a person or persons designated by the officer or by the governing body to act in the

officer's behalf in dealing with school employees.
As added by P.L.1-2005, SEC.13.

IC 20-29-2-19

"Supervisor"

Sec. 19. "Supervisor" means an individual who has:

- (1) authority, acting for the school corporation, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline school employees;
- (2) responsibility to direct school employees and adjust their grievances; or
- (3) responsibility to effectively recommend the action described in subdivisions (1) through (2); that is not of a merely routine or clerical nature but requires the use of independent judgment. The term includes superintendents, assistant superintendents, business managers and supervisors, directors with school corporation wide responsibilities, principals and vice principals, and department heads who have responsibility for evaluating teachers.

As added by P.L.1-2005, SEC.13.

IC 20-29-4

Chapter 4. Rights and Responsibilities of School Employees and Employers

IC 20-29-4-1

Rights of school employees

Sec. 1. School employees may:

- (1) form, join, or assist school employee organizations;
 - (2) participate in collective bargaining with school employers through representatives of their own choosing; and
 - (3) engage in other activities, individually or in concert;
- to establish, maintain, or improve salaries, wages, salary and wage related fringe benefits, and other matters set forth in IC 20-29-6-4 and IC 20-29-6-5.

As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.8; P.L.229-2011, SEC.177.

IC 20-29-4-2

School employee not required to join or financially support school employee organization

Sec. 2. (a) A school employee may not be required to join or financially support through the payment of:

- (1) fair share fees;
- (2) representation fees;
- (3) professional fees; or
- (4) other fees;

a school employee organization.

(b) A rule, regulation, or contract provision requiring financial support from a school employee to a school employee organization is void.

As added by P.L.1-2005, SEC.13.

IC 20-29-4-3

Responsibilities of school employers

Sec. 3. School employers have the responsibility and authority to manage and direct on behalf

of the public the operations and activities of the school corporation to the full extent authorized by law, including but not limited to the following:

- (1) Direct the work of the school employer's employees.
 - (2) Establish policy through procedures established in IC 20-29-6-4 and IC 20-29-6-5.
 - (3) Hire, promote, demote, transfer, assign, and retain employees.
 - (4) Suspend or discharge employees in accordance with applicable law through procedures established under state law.
 - (5) Maintain the efficiency of school operations.
 - (6) Relieve employees from duties because of lack of work or other legitimate reason through procedures established in IC 20-29-6-4, IC 20-29-6-5, and IC 20-29-6-7.
 - (7) Take actions necessary to carry out the mission of the public schools as provided by law.
- As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.9.*

IC 20-29-5

Chapter 5. Units and Exclusive Representatives

IC 20-29-5-1

Exclusive representatives; selection of unit

Sec. 1. (a) The exclusive representative shall serve for school employees within certain groups referred to in this chapter as units or bargaining units. A bargaining unit may not contain both certificated and noncertificated employees. Subject to this limitation, the units for which an exclusive representative serves are determined in accordance with subsections (b) through (d).

(b) The parties may agree on the appropriate unit. For this purpose, the parties consist of the school employer and a school employee organization representing at least twenty percent (20%) of the school employees in a proposed unit.

(c) If the parties do not reach an agreement on the appropriate unit, or if a school employee in the proposed unit files a complaint about the unit with the board, the board shall determine the proper unit after a hearing. The board's decision must be based on but not limited to the following considerations:

- (1) Efficient administration of school operations.
- (2) The existence of a community of interest among school employees.
- (3) The effects on the school corporation and school employees of fragmentation of units.
- (4) Recommendations of the parties involved.

(d) In making a determination under subsection (c), the board shall give notice to all interested parties in accordance with the rules of the board. In giving notice under this subsection, the board is not required to follow IC 4-21.5.

As added by P.L.1-2005, SEC.13.

IC 20-29-5-2

Recognition of school employer organization as exclusive representative by school employer

Sec. 2. (a) A school employer may recognize as the exclusive representative of the school employer's employees within an appropriate unit a school employee organization that presents to the employer evidence of the school employee organization's representation of a majority of the school employees within the unit, unless:

- (1) another school employee organization representing twenty percent (20%) of the school

employees within the unit files written objections to the recognition; or

(2) a school employee files a complaint to the composition of the unit with the school employer or the board within the notice period set forth in this section.

(b) Before recognizing an exclusive representative under this section, the school employer shall post a written public notice of the school employer's intention to recognize the school employee organization as exclusive representative of the school employees within the unit. The notice must be posted, for thirty (30) calendar days immediately preceding recognition, in each of the buildings where the school employees in any unit principally work.

As added by P.L.1-2005, SEC.13.

IC 20-29-5-3

Determination of exclusive representative other than exclusive school employee organization

Sec. 3. (a) If an exclusive school employee organization is not determined under section 2 of this chapter, the determination of whether a school employee organization shall be the exclusive representative shall be determined under this section.

(b) A school employee organization may file a petition asserting that:

(1) twenty percent (20%) of the employees in an appropriate unit wish to be represented for collective bargaining by the school employee organization as exclusive representative; or

(2) the designated exclusive representative is no longer the representative of the majority of school employees in the unit.

(c) The school employer may file a petition asserting:

(1) that one (1) or more school employee organizations have presented to the school employer a claim to be recognized as the exclusive representative in an appropriate unit; or

(2) that the school employer has good faith doubt that the previously certified school employee organization represents a majority of employees in the bargaining unit.

(d) Twenty percent (20%) of the school employees in a unit may file a petition asserting that the designated exclusive representative is no longer the representative of the majority of school employees in the unit.

(e) The board shall investigate a petition filed under subsection (b), (c), or (d). If the board has reasonable cause to believe that a question exists as to whether the designated exclusive representative or any school employee organization represents a majority of the school employees in a unit, the board shall provide for an appropriate hearing within thirty (30) days. In holding a hearing, the board is not required to comply with IC 4-21.5.

(f) If the board finds, based on the record of a hearing held under subsection (e), that a question of representation exists, the board shall direct an election by secret ballot in a unit the board determines to be appropriate.

(g) Certification as the exclusive representative may be granted only to a school employee organization that has been selected in a secret ballot election under subsection (f), by a majority of all the employees in an appropriate unit as their representative.

(h) An election described in subsection (f) may not be held in a bargaining unit if a valid election has been held in the preceding twenty-four (24) month period.

As added by P.L.1-2005, SEC.13. Amended by P.L.1-2006, SEC.333.

IC 20-29-5-4

Elections

- Sec. 4. In any election under this chapter, the board shall:
- (1) determine who is eligible to vote in the election; and
 - (2) establish rules governing the election.

As added by P.L.1-2005, SEC.13.

IC 20-29-5-5

Ballots

Sec. 5. The ballot in an election under this chapter must contain the following:

- (1) The name of the petitioning school employee organization.
- (2) The names of any other school employee organization showing written evidence satisfactory to the board of at least twenty percent (20%) representation of the school employees within the unit.
- (3) A provision for choosing "No representation by a school employee organization."

As added by P.L.1-2005, SEC.13.

IC 20-29-5-6

Dues deductions

Sec. 6. (a) The school employer shall, on receipt of the written authorization of a school employee:

- (1) deduct from the pay of the employee any dues designated or certified by the appropriate officer of a school employee organization that is an exclusive representative of any employees of the school employer; and
 - (2) remit the dues described in subdivision (1) to the school employee organization.
- (b) Deductions under this section must be consistent with:
- (1) IC 22-2-6;
 - (2) IC 22-2-7; and
 - (3) IC 20-28-9-18.

As added by P.L.1-2005, SEC.13.

IC 20-29-5-7

Teacher members on committees

Sec. 7. (a) This section does not apply to the bargaining team for the exclusive representative.

(b) The percentage of teacher positions the exclusive representative may appoint to serve on a statutory or locally created district wide committee may not exceed the percentage of teachers in the school corporation who are members of the exclusive representative. If multiplying the number of teacher positions on the committee by the percentage of teachers in the school corporation who are members of the exclusive representative does not produce a whole number, the product must be rounded up to the nearest whole number. The percentage of positions applies to the number of teacher positions on a committee and not to the total number of positions on a committee.

(c) The percentage of teacher positions the exclusive representative may appoint to serve on a statutory or locally created school wide committee may not exceed the percentage of teachers in the school who are members of the exclusive representative. If multiplying the number of teacher positions on the committee by the percentage of teachers in the school who are members of the exclusive representative does not produce a whole number, the product must be rounded up to the nearest whole number. The percentage of positions applies to the number of teacher positions

on a committee and not to the total number of positions on a committee.

(d) A committee to which this section applies may not address subjects of bargaining under this article. A school employer's appointment of a teacher to a committee is not an unfair practice as it relates to the appointment of the teacher committee members.

(e) By September 15 of each school year, the local president or other officer or designee of the exclusive representative shall certify by affidavit to the school employer the number of teachers in each school and in the entire school corporation who are members of the exclusive representative.

(f) By October 1 of each school year, the school employer shall provide the board with a copy of the affidavit submitted to the school employer under subsection (e). The board shall compile information included in the affidavit from each school corporation and post the information on the board's Internet web site. The information posted by the board under this subsection may only include aggregate data for each school corporation and may not include any information that would identify a particular school employee.

As added by P.L.48-2011, SEC.10. Amended by P.L.212-2017, SEC.1; P.L.86-2018, SEC.179.

IC 20-29-5-8

Training materials

Sec. 7. (a) The board shall develop and maintain training modules, videos, or other instructional material on the board's Internet web site to instruct school employees of their rights under this chapter.

(b) Each school year in which school employee participation in a school employee organization currently serving as the exclusive representative of the bargaining unit does not represent a majority of the school employees within the unit, the board shall notify, in a manner prescribed by the board, the school employees of the bargaining unit of their right to:

(1) representation under this chapter; and

(2) the ability to change their exclusive representative under section 3 of this chapter.

As added by P.L.212-2017, SEC.2.

IC 20-29-6

Chapter 6. Collective Bargaining

IC 20-29-6-1

Duty to bargain collectively and discuss

Sec. 1. (a) School employers and school employees shall:

(1) have the obligation and the right to bargain collectively the items set forth in section 4 of this chapter;

(2) have the right and obligation to discuss any item set forth in section 7 of this chapter; and

(3) enter into a contract embodying any of the matters listed in section 4 of this chapter on which they have bargained collectively.

(b) Notwithstanding any other law, before a school employer and school employees may privately negotiate the matters described in subsection (a)(1) during the time period for formal collective bargaining established in section 12 of this chapter, the parties must hold at least one (1) public hearing and take public testimony to discuss the items described in subsection (a).

As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.11; P.L. 274-2019, SEC.1.

IC 20-29-6-2

Contracts

Sec. 2. (a) Any contract may not include provisions that conflict with:

- (1) any right or benefit established by federal or state law;
- (2) school employee rights set forth in IC 20-29-4-1 and IC 20-29-4-2;
- (3) school employer rights set forth in IC 20-29-4-3;
- (4) restructuring options available to a school employer under federal or state statutes, regulations, or rules because of the failure of the school corporation or a school to meet federal or state accountability standards;
- (5) a school employer's ability to contract, partner, or operate jointly with an educational entity that provides postsecondary credits to students of the school employer or dual credits from the school employer and the educational entity; or
- (6) section 4.5(a) of this chapter.

(b) A subject that is set forth in section 4.5(a) of this chapter may not be included in any contract after June 30, 2011.

As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.12.

IC 20-29-6-3

Unlawful deficit financing

Sec. 3. (a) It is unlawful for a school employer to enter into any agreement that would place the employer in a position of deficit financing due to a reduction in the employer's actual general fund (before January 1, 2019) or education fund (after December 31, 2018) revenue or an increase in the employer's expenditures when the expenditures exceed the employer's current year actual general fund (before January 1, 2019) or education fund (after December 31, 2018) revenue. Except as provided in subsection (c), revenue does not include money estimated to be or actually transferred from the school corporation's operations fund to its education fund.

(b) A contract that provides for deficit financing is void to that extent, and an individual teacher's contract executed under the contract is void to that extent.

(c) Notwithstanding subsection (a), before September 15 of any year, a governing body may pass a one (1) year resolution indicating that a portion or percentage of money transferred from the operations fund to the education fund may be considered education fund revenue for purposes of funding a contract under this chapter and to determine whether an agreement would place the employer in a position of deficit financing. The resolution shall expire within one (1) year of the resolution's adoption by the governing body.

As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.13; P.L.244-2017, SEC.56; P.L.254-2019, SEC.2.

IC 20-29-6-4

Subjects of bargaining

Sec. 4. (a) A school employer shall bargain collectively with the exclusive representative on the following:

- (1) Salary.
- (2) Wages.
- (3) Salary and wage related fringe benefits, including accident, sickness, health, dental, vision, life, disability, retirement benefits, and paid time off as permitted to be bargained under IC 20-28-9-11.

(b) Salary and wages include the amounts of pay increases available to employees under the compensation plan adopted under IC 20-28-9-1.5, but do not include the teacher evaluation procedures and criteria, any components of the teacher evaluation plan, rubric, or tool, or any performance stipend or addition to base salary based on a stipend to an individual teacher under IC 20-43-10-3.5.

As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.14; P.L.213-2015, SEC.186; P.L.217-2017, SEC.101.

IC 20-29-6-4.5

Prohibited subjects of collective bargaining

Sec. 4.5. (a) For a contract entered into after June 30, 2011, a school employer may not bargain collectively with the exclusive representative on the following:

(1) The school calendar.

(2) Teacher dismissal procedures and criteria.

(3) Restructuring options available to a school employer under federal or state statutes, regulations, or rules because of the failure of the school corporation or a school to meet federal or state accountability standards.

(4) The ability of a school employer to contract, partner, or operate jointly with an educational entity that provides postsecondary credits to students of the school employer or dual credits from the school employer and the educational entity.

(5) Any subject not expressly listed in section 4 of this chapter.

(b) For a contract entered into after January 1, 2015, for a school year beginning after June 30, 2015, a school employer may not bargain collectively with the exclusive representative for the following:

(1) A matter described in subsection (a).

(2) A matter that another statute specifies is not subject to collective bargaining, including IC 20-28-9-1.5 and IC 20-43-10-3.5.

(c) A subject set forth in subsection (a) or (b) that may not be bargained collectively may not be included in an agreement entered into under this article.

As added by P.L.48-2011, SEC.15. Amended by P.L.213-2015, SEC.187; P.L.217-2017, SEC.102.

IC 20-29-6-4.7

Bargaining on teacher evaluation procedures and criteria prohibited; duration of contract

Sec. 4.7. (a) A school employer may not bargain collectively with the exclusive representative on teacher evaluation procedures and criteria after this section has been enacted into law.

(b) A contract entered into between a school employer and an exclusive representative after this section has been enacted into law may not extend past the end of a state budget biennium.

As added by P.L.48-2011, SEC.16.

IC 20-29-6-5

Grievance procedure

Sec. 5. A contract entered into under this chapter may contain a grievance procedure.

As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.17.

IC 20-29-6-6

Limitations on obligation to bargain collectively

Sec. 6. The obligation to bargain collectively does not include the final approval of a contract concerning any items. Agreements reached through collective bargaining are binding as a contract only if ratified by the governing body of the school corporation and the exclusive representative. The obligation to bargain collectively does not require the school employer or the exclusive representative to agree to a proposal of the other or to make a concession to the other. *As added by P.L.1-2005, SEC.13.*

IC 20-29-6-6.1

Review of collective bargaining agreement

Sec. 6.1. (a) After ratification of a contract under section 6 of this chapter, a school employer shall submit the ratified collective bargaining agreement, including the compensation model developed under IC 20-28-9-1.5, to the board.

(b) The board shall appoint a staff member or an ad hoc panel member to review each submitted collective bargaining agreement and to make a written recommendation concerning the collective bargaining agreement's compliance with this chapter, including a penalty for any noncompliance. The review must be completed before May 31 of the year in which the current collective bargaining agreement expires.

(c) Not later than fifteen (15) days after a recommendation has been made under subsection (b), one (1) or both parties to a collective bargaining agreement may appeal to the board, in writing, the decision made in the recommendation. If the board does not receive an appeal not later than fifteen (15) days after issuing a recommendation, the recommendation becomes the final order of the board.

(d) If the board receives a timely appeal, the board may make a decision on the recommendation with or without oral argument. The board may request that the parties submit briefs. The board must issue a ruling on the appeal not later than thirty (30) days after the last of the following occurs:

- (1) The appeal is received.
- (2) Briefs are received.
- (3) Oral arguments are held.

(e) IC 4-21.5 does not apply to a review under subsection (b) or (d).

(f) If, following the review of a collective bargaining agreement, the board finds the collective bargaining agreement does not comply with this chapter, the board shall issue an order that may include one (1) or more of the following items:

- (1) Ordering the parties to cease and desist from all identified areas of noncompliance.
- (2) Preventing the parties from ratifying any subsequent collective bargaining agreements until the parties receive written approval from the board or the board's agent.
- (3) Requiring other action as deemed appropriate by the board as authorized by state law.

(g) The board may send the board's compliance findings to other state agencies as necessary.

(h) After a school employer has submitted a collective bargaining agreement under subsection (a), the school employer and an exclusive representative may not enter into a new collective bargaining agreement containing the noncompliant provision until the school employer has received either:

- (1) the board's order regarding the compliance of the submitted collective bargaining agreement with this chapter; or

(2) other written approval from the board or an agent of the board.

(i) If any provision of the collective bargaining agreement is found not to be compliant with this chapter, the provision that is found to be noncompliant with this chapter shall not affect other provisions of the collective bargaining agreement that can be given effect without the noncompliant provision, and to this end the provisions of the collective bargaining agreement are severable.

(j) The board:

(1) shall adopt rules under IC 4-22; and

(2) may adopt emergency rules in the manner provided under IC 4-22-2-37.1;

as necessary to implement this section.

(k) An emergency rule adopted by the board under subsection (j) expires on the earliest of the following dates:

(1) The expiration date stated in the emergency rule.

(2) The date the emergency rule is amended or repealed by a later rule adopted under IC 4-22-2-22.5 through IC 4-22-2-36 or IC 4-22-2-37.1.

(3) One (1) year after the date the emergency rule is adopted.

(l) This subsection applies only to a school corporation that has a compensation plan developed under IC 20-28-9-1.5 but does not have a ratified collective bargaining agreement. A school corporation shall, not later than October 1 of the year in which the compensation plan becomes effective, submit the school corporation's compensation plan to the board.

(m) If a school corporation fails to timely file a compensation plan as required under subsection (l), the school corporation's compensation plan is considered not in compliance with IC 20-28-9-1.5 and this section unless a compliance officer of the board finds good cause shown for the delay.

As added by P.L.213-2015, SEC.188. Amended by P.L.214-2017, SEC.1; P.L.228-2017, SEC.4.

IC 20-29-6-7

Subjects of discussion

Sec. 7. A school employer shall discuss with the exclusive representative of certificated employees the following items:

(1) Curriculum development and revision.

(2) Selection of curricular materials.

(3) Teaching methods.

(4) Hiring, evaluation, promotion, demotion, transfer, assignment, and retention of certificated employees.

(5) Student discipline.

(6) Expulsion or supervision of students.

(7) Pupil/teacher ratio.

(8) Class size or budget appropriations.

(9) Safety issues for students and employees in the workplace, except those items required to be kept confidential by state or federal law.

(10) Hours.

(11) Funding for a plan for a remediation program for any subset of students enrolled in kindergarten through grade 12.

(12) The following nonbargainable items under IC 20-43-10-3.5:

(A) Teacher appreciation grants.

(B) Individual teacher appreciation grant stipends to teachers.

(C) Additions to base salary based on teacher appreciation grant stipends.

(13) The pre-evaluation planning session required under IC 20-28-11.5-4.

(14) The superintendent's report to the governing body concerning staff performance evaluations required under IC 20-28-11.5-9.

(15) A teacher performance model.

As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.18; P.L.286-2013, SEC.92; P.L.213-2015, SEC.189; P.L.106-2016, SEC.11; P.L.217-2017, SEC.103; P.L. 73-2019, SEC. 7.

IC 20-29-6-8

Contract, agreement, or concession not required

Sec. 8. The obligation to discuss does not require either party to enter into a contract, agree to a proposal, or make a concession related to the items listed in section 7 of this chapter. A failure to reach an agreement on a matter of discussion does not allow the use of any part of the impasse procedure under IC 20-29-8.

As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.19.

IC 20-29-6-9

Discussions outside obligation to bargain collectively

Sec. 9. The obligation to bargain collectively or discuss a matter does not prevent:

(1) a school employee from petitioning the school employer, governing body, or superintendent for a redress of the employee's grievances, either individually or through the exclusive representative; or

(2) the school employer or superintendent from conferring with a citizen, taxpayer, student, school employee, or other person considering the operation of the schools and the school corporation.

As added by P.L.1-2005, SEC.13.

IC 20-29-6-10

Recommendations by superintendent

Sec. 10. Nothing shall prevent a superintendent or the superintendent's designee from making recommendations to the school employer.

As added by P.L.1-2005, SEC.13.

IC 20-29-6-11

Repealed

(Repealed by P.L.48-2011, SEC.39; P.L.90-2011, SEC.50.)

IC 20-29-6-12

Commencement of collective bargaining

Sec. 12. Formal collective bargaining between a school corporation and the exclusive representative shall not begin before:

(1) September 15 in the first year of the state budget biennium; or

(2) September 15 in the second year of the state budget biennium if the parties agreed to a one (1) year contract during the first year of the state budget biennium or the contract provides for renegotiating certain financial items the second year of a two (2) year contract.

Informal negotiations may be held before September 15.

As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.20; P.L.229-2011, SEC.178; P.L.214-2017, SEC.2.

IC 20-29-6-12.5

Certification of estimated available revenue

Sec. 12.5. (a) Before September 15 of the first year of the state budget biennium, the department shall provide the parties with an estimate of the general fund (before January 1, 2019) or education fund (after December 31, 2018) revenue available for bargaining in the school corporation from the school funding formula.

(b) Within thirty (30) days after the date of the fall count of ADM of the school year in the first year of the state budget biennium, the department shall provide the parties with a certification of estimated general fund (before January 1, 2019) or education fund (after December 31, 2018) revenue available for bargaining from the school funding formula. If the parties do not receive a certified estimate from the department within thirty (30) days after the fall count of ADM, the parties may use the school corporation's estimate of the general fund (before January 1, 2019) or education fund (after December 31, 2018) revenue available based on the school corporation's fall count of ADM for purposes of collective bargaining. However, if the parties subsequently receive the certification of estimated general fund (before January 1, 2019) or education fund (after December 31, 2018) revenue available for bargaining before an impasse is declared, the parties shall use the certified general fund (before January 1, 2019) or education fund (after December 31, 2018) revenue from the school funding formula for purposes of collective bargaining.

(c) A school employer for which the voters have passed a general fund operating referendum (before January 1, 2019), an operating referendum tax levy (after December 31, 2018) under IC 20-46-1, or a school safety referendum tax levy under IC 20-46-9 must have that amount certified by the department of local government finance.

(d) A school employer that passes a resolution under section 3(c) of this chapter to consider a portion or percentage of money transferred from the school employer's operations fund to the education fund as education fund revenue for purposes of determining whether an agreement places a school corporation in a position of deficit financing must submit a copy of the resolution to the department of local government finance on or before November 1. The resolution shall include:

- (1) all transfers between the operations fund and the education fund; and
- (2) a statement regarding whether or not the transfer is for the purpose of funding teacher contracts.

(e) The school corporation must obtain the certification described in subsection (c) before the conclusion of bargaining. The certifications or estimate described in subsection (c) before the conclusion of bargaining. The certifications or estimate described in subsection (b) must be the basis for determinations throughout impasse proceedings under this chapter..

As added by P.L.48-2011, SEC.21. Amended by P.L.229-2011, SEC.179; P.L.205-2013, SEC.254; P.L.213-2015, SEC.190; P.L.214-2017, SEC.3; P.L. 272-2019, SEC.6.

IC 20-29-6-13

Appointment of mediator

Sec. 13. (a) If, at any time after at least sixty (60) days following the beginning of formal

bargaining collectively between the parties, an impasse is declared, the board shall appoint a mediator from the board's staff or an ad hoc panel.

(b) The mediator shall begin mediation within fifteen (15) days after the board receives notice of impasse.

(c) The mediation must consist of not more than three (3) mediation sessions and must result in one (1) of the following:

(1) An agreement between the parties on the items permitted to be bargained under section 4 of this chapter.

(2) Each party's last best offer, including fiscal rationale, related to items permitted to be bargained under section 4 of this chapter.

(d) Costs for the mediator shall be borne equally by the parties.

(e) Mediation shall be completed within thirty (30) days.

As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.22; P.L.229-2011, SEC.180; P.L.6-2012, SEC.139.

IC 20-29-6-14

Repealed

(Repealed by P.L.48-2011, SEC.39.)

IC 20-29-6-15

Repealed

(Repealed by P.L.48-2011, SEC.39.)

IC 20-29-6-15.1

Initiation of factfinding

Sec. 15.1. (a) If an agreement has not been reached on the items permitted to be bargained collectively under section 4 of this chapter, within fifteen (15) days after mediation under section 13 of this chapter has ended, the board shall initiate factfinding.

(b) Factfinding must culminate in the factfinder imposing contract terms on the parties. The factfinder must select one (1) party's last best offer as the contract terms. The factfinder's order must be restricted to only those items permitted to be bargained and included in the collective bargaining agreement under section 4 of this chapter and must not put the employer in a position of deficit financing (as defined in IC 20-29-2-6). The factfinder's order may not impose terms beyond those proposed by the parties in their last, best offers.

(c) Costs for the factfinder shall be borne equally by the parties.

(d) Factfinding may not last longer than thirty (30) days.

As added by P.L.229-2011, SEC.181; P.L.219-2015, SEC.4.

IC 20-29-6-16

Continuation of existing agreement; circumstances

Sec. 16. (a) If an agreement has not been reached on the items to be bargained collectively by November 1, as provided in IC 6-1.1-17-5, the parties shall continue the terms of the current contract that is in effect, and the school employer may issue tentative individual contracts and prepare its budget on that basis. During this period, in order to allow the successful resolution of the dispute, the school employer may not unilaterally change the terms or conditions of employment that are issues in dispute.

(b) Upon the expiration of the current contract that is in effect, except for teacher appreciation grant stipends and additions to base salary provided under IC 20-43-10-3.5, the school employer shall continue under the terms of the current contract that is in effect, with no increase or increment in salary, wages, or benefits for any bargaining unit employee until a new contract is executed.

(c) The only parts of the contract that must continue under this section are the items contained in the contract and listed in section 4 of this chapter.

(d) This section may not be construed as relieving the school employer or the school employee organization from the duty to bargain collectively until a mutual agreement has been reached and a contract entered as called for in this chapter.

As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.24; P.L.229-2011, SEC.182; P.L.239-2015, SEC.9; P.L.214-2017, SEC.4; P.L.217-2017, SEC.104.

IC 20-29-6-16.5

Petition for representation

Sec. 16.5. The board shall amend 560 IAC 2-2-13(d) to provide that a petition for representation filed under 560 IAC 2-2-3(c) shall not be dismissed if the petition is filed:

- (1) after January 14 and before February 16 of the calendar year of the expiration of the collective bargaining agreement; or
- (2) during a period not to exceed thirty (30) days, as determined by the board, in the calendar year of the expiration of the collective bargaining agreement.

As added by P.L.214-2017, SEC. 5.

IC 20-29-6-17

Repealed

(Repealed by P.L.48-2011, SEC.39.)

IC 20-29-6-18

Appeal of fact finder's decision - Version a

Sec. 18. (a) Either party may appeal the decision of the factfinder under IC 20-29-6-15.1. The appeal must be filed not later than thirty (30) days after receiving the factfinder's decision.

(b) The board's decision must be restricted to only those items permitted to be bargained and included in the collective bargaining agreement under section 4 of this chapter and must not put the employer in a position of deficit financing, as defined in IC 20-29-2-6 or prohibit the employer from making any reductions described in section 3(b) of this chapter. The board's decision may not impose terms beyond those proposed by the parties in their last, best offers.

(c) The board must rule on the appeal within thirty (30) days after receipt of notice of appeal.
As added by P.L.48-2011, SEC.25. Amended by P.L.6-2012, SEC.140; P.L.239-2015, SEC.10.

IC 20-29-6-18

Appeal of fact finder's decision - Version b

Sec. 18. (a) Either party may appeal the decision of the factfinder under IC 20-29-6-15.1. The appeal must be filed not later than thirty (30) days after receiving the factfinder's decision.

(b) The board's decision must be restricted to only those items permitted to be bargained and included in the collective bargaining agreement under section 4 of this chapter and must not put the employer in a position of deficit financing, as defined in IC 20-29-2-6. The board's decision

may not impose terms beyond those proposed by the parties in their last, best offers.

(c) The board must rule on the appeal within sixty (60) days after receipt of notice of appeal. *As added by P.L.48-2011, SEC.25. Amended by P.L.6-2012, SEC.140; P.L.219-2015, SEC.5.*

IC 20-29-6-19

Public meeting; posting of information; public comment; posting of collective bargaining agreement

Sec. 19. (a) In addition to holding at least one (1) public hearing with public testimony as described in section 1(b) of this chapter, the school employer must conduct a public meeting to discuss a tentative collective bargaining agreement at least seventy-two (72) hours before it is ratified by the school employer.

(b) Notice of the time and the location of the public meeting and a tentative collective bargaining agreement established under this chapter must be posted on the school employer's Internet web site at least seventy-two (72) hours prior to the public meeting described in subsection (a).

(c) A school employer must allow for public comment at the meeting at which a tentative collective bargaining agreement is ratified.

(d) Not later than fourteen (14) business days after the parties have reached an agreement under this chapter, the school employer shall post the contract upon which the parties have agreed on the school employer's Internet web site.

As added by P.L.148-2012, SEC.4. Amended by P.L.274-2019, SEC.2.

Q: *If a recognized school employee organization requests to bargain and discuss, is the school employer required to do so?*

Yes. IC 20-29-6-1 makes bargaining and discussion both a right and a duty.

Q: *Do teachers in charter schools have the right to organize and bargain?*

Yes. IC 20-24-6-3 provides that employees of a charter school may organize and bargain collectively under IC 20-29.

Q: *Over what subjects must a school employer collectively bargain with the exclusive representative?*

IC 20-29-6-4 requires a school employer to bargain collectively on (1) salary, (2) wages, and (3) salary and wage related fringe benefits, including accident, sickness, health, dental, vision, life, disability, retirement benefits, and paid time off. Salary includes pay increases available to teachers under the salary scale.

Q: *Are there any subjects which are prohibited from being bargained?*

Yes. IC 20-29-6-2 prohibits a contract from containing a provision in conflict with:

1. Any right established by federal or state law.

2. Any school employee rights contained in IC 20-29-4-1 and 2.
3. Any school employer rights contained in IC 20-29-4-3.
4. Any restructuring options available to a school employer under federal or state statutes, regulations or rules because of the failure of the school corporation or a school to meet federal or state accountability standards.
5. A school employer's ability to contract, partner or operate jointly with an educational entity that provides postsecondary credits to students or dual credits.
6. Any items not permitted to be bargained under IC 20-29-6-4.5.
7. IC 20-29-6-4.7 prohibits a school employer from bargaining on teacher evaluation procedures and criteria after April 20, 2011. (NOTE: IC 20-29-6-7 requires that the school employer discuss teacher evaluations with the exclusive representative.)

Q: *What other items are not permitted to be bargained under IC 20-29-6-4.5?*

IC 20-29-6-4.5 provides that for a contract entered into after June 30, 2011, a school employer may not bargain collectively on the following:

1. School calendar.
2. Teacher dismissal procedures and criteria.
3. Restructuring options available under federal or state statutes, regulations, or rules because of the failure of the school corporation or a school to meet federal or state accountability standards.
4. The ability of a school employer to contract, partner, or operate jointly with an educational entity that provides postsecondary credits to students of the school employer or dual credits from the school employer and the educational entity.
5. Any subject not expressly listed in IC 20-29-6-4.

Q: *May a collective bargaining agreement contain a grievance procedure?*

Yes. IC 20-29-6-5 provides that a collectively bargained contract may contain a grievance procedure.

Q: *May a grievance procedure culminate in final and binding arbitration?*

Yes. Prior law specifically authorized final and binding arbitration of grievances. The current statute (IC 20-29-6-5) is silent. However, final and binding arbitration of grievances is not prohibited in IC 20-29-6-2 or IC 20-29-6-4.5.

Q: *When does a collective bargaining agreement become binding on the parties?*

Agreements reached through collective bargaining are binding as a contract only if ratified by the governing body of the school corporation and the exclusive representative. After ratification, IEERB will review the contract for compliance with Indiana law.

Q: *What items must a school corporation discuss with the exclusive representative?*

IC 20-29-6-7 requires a school employer to discuss with the exclusive representative the following items:

1. Curriculum development and revision.
2. Selection of curricular materials.
3. Teaching methods.
4. Hiring, evaluation, promotion, demotion, transfer, assignment, and retention of certificated employees.
5. Student discipline.
6. Expulsion or supervision of students.
7. Pupil/teacher ratio.
8. Class size or budget appropriations.
9. Safety issues for students and employees in the workplace.
10. Hours.
11. Funding for a plan for a remediation program for any subset of students enrolled in kindergarten through grade 12.
12. The following nonbargainable items:
 - (A) Teacher appreciation grants.
 - (B) Individual teacher appreciation grant stipends to teachers.
 - (C) Additions to base salary based on teacher appreciation grant stipends.
13. The pre-evaluation planning session required under IC 20-28-11.5-4.

14. The superintendent's report to the governing body concerning staff performance evaluations required under IC 20-28-11.5-9.

15. A teacher performance model.

Additionally, IC 20-28-9-1.5 requires a school corporation to discuss with the exclusive representative any supplemental payments made in excess of the salary specified in the compensation plan for teachers who: (1) teach an AP course or Cambridge International course; (2) have earned a master's degree in a content area directly related to the subject matter of a dual credit course or another course taught by the teacher; (3) are special education professionals or teach in the areas of science, technology, engineering, or mathematics; or (4) teach elementary school and earn a master's degree in math, reading, or literacy.

Q: *If the parties to discussion cannot reach agreement on an item of discussion, can either party invoke the impasse procedures under IC 20-29-8?*

No. IC 20-29-6-8 provides that failure to reach agreement on a matter of discussion does not allow the use of the impasse procedures.

Q: *When must collective bargaining begin?*

Formal collective bargaining between a school corporation and the exclusive representative shall not begin before September 15 in the first year of the state budget biennium; or September 15 in the second year of the state budget biennium if the parties agreed to a one (1) year contract during the first year of the state budget biennium or if the contract provides for renegotiating certain financial items the second year of a two (2) year contract.

Also, before the parties can formally collectively bargain in private, the parties must hold at least one (1) public hearing and take public testimony to discuss the items the law requires to be collectively bargained. Additionally, before ratification, a school corporation must conduct a public meeting to discuss a tentative CBA at least 72 hours before ratification by the school board, and must allow public comment at the school board ratification meeting.

Q: *Can the parties bargain before September 15?*

Yes. The parties may engage in informal negotiations before September 15.

Q: *Can a school corporation enter into a contract that would place the employer in a position of deficit financing?*

No. IC 20-29-6-3 prohibits entering into a contract causing deficit financing.

Q: *What is the consequence if it is determined that a contract was entered into that placed an employer in a position of deficit financing?*

The contract is void to the extent of the deficit financing and an individual teacher's contract executed under the contract is void to that extent.

Q: *Must the IDOE provide the parties with education fund revenue estimates?*

Yes. Before September 15 of the first year of the state budget biennium, the department shall provide the parties with an estimate of the education fund revenue available for bargaining from the school funding formula.

Within thirty (30) days after the date of the fall count of ADM of the school year in the first year of the state budget biennium, the department shall provide the parties with a certification of estimated education fund revenue available for bargaining from the school funding formula.

Q: *What if a school corporation has passed a referendum?*

The department of local government finance must certify the amount of any general fund operating referendum, any operating referendum tax levy, or any school safety referendum tax levy before the conclusion of bargaining.

Q: *How are these revenue estimates used during collective bargaining?*

Indiana law does allow the referendum dollars to be used for collective bargaining under certain circumstances. See IC 20-29-6-3(c) and IC 20-29-6-12.5(d).

Q: *When does mediation begin?*

If any time after at least sixty (60) days following the beginning of formal bargaining, an impasse is declared, the IEERB shall appoint a mediator. Mediation shall begin within fifteen (15) days after the IEERB receives notice of the impasse. Mediation cannot consist of more than three (3) mediation sessions.

Mediation must result in one of the following:

- (1) An agreement on the items to be bargained under section 4.
- (2) Each party's last best offer, including fiscal rationale, on items permitted to be bargained under section 4.

Q: *How long can mediation last?*

Mediation must be completed within thirty (30) days.

Q: *Who pays for mediation?*

Costs for the mediator shall be borne equally by the parties.

Q: *What happens if there is no agreement reached in mediation?*

Within fifteen (15) days after mediation, if no agreement has been reached on the items to be bargained under Section 4, the IEERB shall initiate factfinding.

Q: *Who pays for factfinding?*

The cost of factfinding is borne equally by the parties.

Q: *Can the factfinder's decision be appealed?*

Yes. Either party may appeal the decision of the factfinder. An appeal must be filed not later than thirty (30) days after receiving the factfinder's decision. The IEERB's decision must be restricted to only those items permitted to be bargained and included in a collective bargaining agreement under section 4 and must not put the employer in a position of deficit financing. The IEERB's decision may not impose terms beyond those proposed by the parties in their last, best offers.

Q: *When must the IEERB rule on an appeal of a factfinder's order?*

IEERB must rule on the appeal within thirty (30) days after receipt of notice of appeal.

Q: *Does the collective bargaining agreement have to be posted on the corporation's web site?*

Yes. Not later than fourteen (14) business days after the parties have reached an agreement the school employer shall post the contract on the web site.

Q: *Is there a status quo period?*

Yes. IC 20-29-6-16 provides for the parties to continue the terms of the current contract if an agreement has not been reached on the items to be bargained by November 1. During this period the school employer may not unilaterally change the terms or conditions of employment that are issues in dispute.

Q: *What parts of the collective bargaining agreement must be continued?*

IC 20-29-6-16 provides that the only parts of the contract that must continue under this section are the items contained in the contract and listed in Section 4 of this chapter.

Q: *Do teachers receive their increments or other increases in salary, wages or benefits during the status quo period?*

IC 20-29-6-16 provides that the school employer shall continue under the terms of the current contract that is in effect, with no increase or increment in salary, wages, or benefits for any bargaining unit employee until a new contract is executed.

IC 20-29-7

Chapter 7. Unfair Practices

IC 20-29-7-1

Unfair practices by school employer

Sec. 1. (a) It is an unfair practice for a school employer to do any of the following:

(1) Interfere with, restrain, or coerce school employees in the exercise of the rights guaranteed in IC 20-29-4.

(2) Dominate, interfere, or assist in the formation or administration of any school employee organization or contribute financial or other support to the organization. Subject to rules adopted by the governing body, a school employer may permit school employees to confer with the school employer or with any school employee organization during working hours without loss of time or pay.

(3) Encourage or discourage membership in any school employee organization through discrimination in regard to:

(A) hiring;

(B) tenure of employment; or

(C) any term or condition of employment.

(4) Discharge or otherwise discriminate against a school employee because the employee has filed a complaint, affidavit, petition, or any information or testimony under this article.

(5) Refuse to:

(A) bargain collectively; or

(B) discuss;

with an exclusive representative as required by this article.

(6) Fail or refuse to comply with any provision of this article.

(b) If:

(1) a complaint is filed that alleges an unfair practice has occurred with respect to a subject that may be discussed under this article; and

(2) the complaint is found to be frivolous;

the party that filed that complaint is liable for costs and attorney's fees.

As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.26.

IC 20-29-7-2

Unfair practices by school employee organization

Sec. 2. It is an unfair practice for a school employee organization or the organization's agents to do any of the following:

(1) Interfere with, restrain, or coerce:

(A) school employees in the exercise of the rights guaranteed by this article; or

(B) a school employer in the selection of its representatives for the purpose of bargaining collectively, discussing, or adjusting grievances.

This subdivision does not impair the right of a school employee organization to adopt its own rules with respect to the acquisition or retention of membership in the school employee organization.

(2) Cause or attempt to cause a school employer to discriminate against an employee in violation of section 1 of this chapter.

(3) Refuse to bargain collectively with a school employer if the school employee

organization is the exclusive representative.

(4) Fail or refuse to comply with any provision of this article.

As added by P.L.1-2005, SEC.13.

IC 20-29-7-3

Right of school employer or school employee organization to bring suit

Sec. 3. This chapter does not in any way restrict the right of a:

- (1) school employer; or
- (2) school employee organization;

to bring suit for specific performance or breach of performance, or both, of a collective bargaining contract in any court having jurisdiction.

As added by P.L.1-2005, SEC.13.

IC 20-29-7-4

Prevention of unfair practices

Sec. 4. (a) Unfair practices are remediable under this section.

(b) A school employer or a school employee who believes the employer or employee is aggrieved by an unfair practice may file a complaint under oath:

- (1) setting out a summary of the facts involved; and
- (2) specifying the section or sections of this article alleged to have been violated.

(c) The board shall:

(1) give notice to the person or school employee organization against whom the complaint is directed; and

(2) determine the matter raised in the complaint.

(d) Appeals may be taken under IC 4-21.5-3.

(e) A hearing examiner or agent of the board, who may be a member of the board, may:

- (1) take testimony; and
- (2) make findings and conclusions.

(f) The board, but not a hearing examiner or agent of the board, may enter the interlocutory orders, after summary hearing, the board considers necessary in carrying out the intent of this chapter.

As added by P.L.1-2005, SEC.13.

IC 20-29-7-5

Unfair practice; civil penalty

Sec. 5. If:

- (1) a complaint is filed that alleges that a school employer or an exclusive representative has engaged in an unfair practice described in section 1(a)(1) or 2(1)(A) of this chapter; and
- (2) the board determines that the school employer or exclusive representative engaged in the unfair practice in violation of section 1(a)(1) or 2(1)(A) of this chapter, whichever is applicable;

the board may assess a civil penalty of at least five hundred dollars (\$500) but not more than five thousand dollars (\$5,000) for each violation.

As added by P.L.274-2019, SEC.3.

IC 20-29-8
Chapter 8. Impasse Procedures

IC 20-29-8-1

Repealed

(Repealed by P.L.48-2011, SEC.39.)

IC 20-29-8-2

Repealed

(Repealed by P.L.48-2011, SEC.39.)

IC 20-29-8-3

Repealed

(Repealed by P.L.48-2011, SEC.39.)

IC 20-29-8-4

Repealed

(Repealed by P.L.48-2011, SEC.39.)

IC 20-29-8-5

Purpose of factfinding

Sec. 5. The purpose of factfinding 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.

As added by P.L.1-2005, SEC.13. Amended by P.L.48-2001, SEC.27.

IC 20-29-8-6

Repealed

(Repealed by P.L.48-2011, SEC.39.)

IC 20-29-8-7

Appointment of factfinder

Sec. 7. (a) When a factfinder is requested or required under IC 20-29-6, the board shall appoint a factfinder.

(b) The factfinder shall make an investigation and hold hearings as the factfinder considers necessary in connection with a dispute.

(c) The factfinder:

(1) may restrict the factfinder's findings to those issues that the factfinder determines significant;

(2) must restrict the findings to the items listed in IC 20-29-6-4; and

(3) may not impose terms beyond those proposed by the parties in their last, best offers.

(d) The factfinder may use evidence furnished to the factfinder by:

(1) the parties;

(2) the board;

(3) the board's staff; or

(4) any other state agency.

(e) The factfinder shall conduct the factfinding hearing in public in a room or facility owned by the county or local unit of government located in the county in which the school employer is located, or if the school employer is located in more than one (1) county, in the county in which the greatest number of students who attend the school employer's schools reside. The public hearing may begin not earlier than November 15 in the first year of the state budget biennium and must be concluded by February 15 of the calendar year after the start of formal collective bargaining.

(f) The factfinding process may not exceed thirty (30) days from beginning to end, and not more than two (2) of those days may be used for public testimony, which may be taken at the discretion of the factfinder. During the public hearing, each party shall present fully its last, best offer, including the fiscal rationale for the offer. Only education fund revenue and, for a school employer for which the voters have passed an operating referendum tax levy under IC 20-46-1 or a school safety referendum tax levy under IC 20-46-9, the amount of revenue certified by the department of local government finance, may be considered a source of the funding for items. Money estimated to be or actually transferred from the school corporation's operations fund to its education fund may not be considered a source of funding for items.

(g) The factfinder shall make a recommendation as to the settlement of the disputes over which the factfinder has jurisdiction.

(h) The factfinder shall:

(1) make the investigation, hearing, and findings as expeditiously as the circumstances permit; and

(2) deliver the findings to the parties and to the board.

(i) The board, after receiving the findings and recommendations, may make additional findings and recommendations to the parties based on information in:

(1) the report; or

(2) the board's own possession.

The board may not make any recommendations to the parties related to any items not specifically identified in IC 20-29-6-4.

(j) At any time within five (5) days after the findings and recommendations are delivered to the board, the board may make the findings and recommendations of the factfinder and the board's additional findings and recommendations, if any, available to the public through news media and other means the board considers effective.

(k) The board shall make the findings and recommendations described in subsection (j) available to the public not later than ten (10) days after the findings and recommendations are delivered to the board.

As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.28; P.L.229-2011, SEC.183; P.L.219-2015, SEC.6; P.L.214-2017, SEC.6; P.L. 272-2019, SEC.7.

IC 20-29-8-8

Factors considered by factfinder

Sec. 8. In conducting hearings and investigations, the factfinder is not bound by IC 4-21.5. The factfinder shall, however, consider the following factors:

(1) Past memoranda of agreements and contracts between the parties.

(2) Comparisons of wages and hours of the employees involved with wages of other employees working for other public agencies and private concerns doing comparable work,

giving consideration to factors peculiar to the school corporation.

(3) The public interest.

(4) The financial impact on the school corporation and whether any settlement will cause the school corporation to engage in deficit financing as described in IC 20-29-6-3.

As added by P.L.1-2005, SEC.13. Amended by P.L.48-2011, SEC.29.

IC 20-29-8-9

Repealed

(Repealed by P.L.48-2011, SEC.39.)

IC 20-29-8-10

Repealed

(Repealed by P.L.48-2011, SEC.39.)

IC 20-29-8-10.1

Prohibition; serving as mediator and factfinder

Sec. 10.1. A person who has served as a mediator in a dispute between a school employer and an exclusive representative may not serve as a factfinder in a dispute arising in the same school corporation within a period of five (5) years except by the mutual consent of the parties.

As added by P.L.229-2011, SEC.184.

IC 20-29-8-11

Repealed

(Repealed by P.L.48-2011, SEC.39.)

IC 20-29-8-12

Payment of expenses by board

(Repealed by P.L.109-2015, SEC.40).

IC 20-29-8-13

Repealed

(Repealed by P.L.48-2011, SEC.39.)

IC 20-29-8-13.1

Findings and recommendations of factfinder; distribution; review

Sec. 13.1. (a) The investigation, hearing, and findings of the factfinder must be:

- (1) made as expeditiously as the circumstances allow; and
- (2) delivered to the parties and to the board.

(b) The board, after receiving the findings and recommendations under subsection (a), may make additional findings and recommendations to the parties based upon information in the report or in the board's possession. The board may not make any recommendations to the parties related to any items not specifically identified in IC 20-29-6-4 and may not address items beyond those proposed by the parties in their last, best offers.

(c) The board:

- (1) may, at any time within five (5) days; and
- (2) shall, within ten (10) days;

after receiving the findings and recommendations delivered under subsection (a), make the findings and recommendations of the factfinder and the board's additional findings and recommendations, if any, available to the public through the news media and any other means. *As added by P.L.229-2011, SEC.185.*

IC 20-29-8-14

Repealed

(Repealed by P.L.48-2011, SEC.39.)

Q: *Is the factfinder required to hold a hearing?*

No. IC 20-29-8-7 provides that a factfinder shall make an investigation and hold hearings as the factfinder considers necessary.

Q: *If the factfinder holds a hearing, what requirements must he/she meet?*

The factfinder must conduct the hearing in public in a room or facility owned by the county or local unit of government located in the county in which the school employer is located, or if the school employer is located in more than one (1) county, in the county in which the greatest number of students who attend the school employer's schools reside.

The public hearing may begin not earlier than November 15 in the first year of the state budget biennium and must be concluded by February 15 of the calendar year after the start of formal collective bargaining.

Q: *What happens in factfinding?*

If the factfinder conducts a hearing, each party shall present fully its last, best offer, including the fiscal rationale for the offer. Only education fund revenue and, for a school employer for which the voters have passed an operating referendum tax levy or a school safety referendum tax levy, the amount of revenue certified by the department of local government finance, may be considered a source of the funding for items. Money estimated to be or actually transferred from the school corporation's operations fund may not be considered a source of funding for items.

IC 20-29-6-15.1 requires the factfinder to impose contract terms on the parties. The factfinder must select one (1) party's last best offer as the contract terms. The factfinder's order must be restricted to only those items permitted to be bargained and included in the collective bargaining agreement under section 4 and must not put the employer in a position of deficit financing as defined in IC 20-29-2-6. The factfinder's order may not impose terms beyond those proposed by the parties in their last best offers.

Q: *How long can factfinding last?*

The factfinding process may not last longer than thirty (30) days from beginning to end. Not more than two (2) of those days may be used for public testimony. Taking public testimony is at the discretion of the factfinder.

Q: *Is there any restriction on who may serve as a factfinder?*

Yes. A person who has served as a mediator in a dispute between a school employer and an exclusive representative may not serve as a factfinder in a dispute arising in the same school corporation within a period of five (5) years except by the mutual consent of the parties.

IC 20-29-9

Chapter 9. Strikes

IC 20-29-9-1

Unlawful participation in strike

Sec. 1. It is unlawful for:

- (1) a school employee;
- (2) a school employee organization; or
- (3) an affiliate, including state or national affiliates, of a school employee organization;

to take part in or assist in a strike against a school employer or school corporation.

As added by P.L.1-2005, SEC.13.

IC 20-29-9-2

Actions taken for aiding or abetting in a strike

Sec. 2. A school corporation or school employer may in:

- (1) an action at law;
- (2) a suit in equity; or
- (3) another proper proceeding;

take action against a school employee organization, an affiliate of a school employee organization, or any person aiding or abetting in a strike for redress of the unlawful act.

As added by P.L.1-2005, SEC.13.

IC 20-29-9-3

Loss of dues deduction privilege by exclusive representative for participating in strike

Sec. 3. If an exclusive representative:

- (1) engages in; or
- (2) aids or abets in;

a strike, the exclusive representative shall lose the exclusive representative's dues deduction privilege for one (1) year.

As added by P.L.1-2005, SEC.13.

IC 20-29-9-4

Minimum length of school year

Sec. 4. A regulation, rule, or law concerning the minimum length of a school year may not:

- (1) apply; or
- (2) require makeup days;

if schools in a school corporation are closed as a result of a school employee strike.

As added by P.L.1-2005, SEC.13.

IC 20-29-9-5

School corporation not required to pay salary for days on strike

Sec. 5. A school corporation shall not pay a school employee for any day when the school employee fails, as a result of a strike, to report for work as required by the school year calendar. *As added by P.L.1-2005, SEC.13.*

XI. HEA 1260

Requires that the employer's share of the cost of coverage under a health plan provided by the school corporation for the school corporation's employees may not exceed by more than twelve percent (12%) the employer's share of the cost of coverage under the same type of health plan provided by the state for state employees for any twelve (12) month period beginning on the first health plan issue or renewal date that occurs after 12/31/11.

The governing statute is provided:

IC 20-26-17

Chapter 17. School Corporation Employee Health Coverage

Sec. 1. As used in this chapter, "cost of coverage" includes any deposit to a health savings account that is related to a high deductible health plan.

Sec. 2. As used in this chapter, "health plan" refers to any of the following:

- (1) A hospital or medical expense incurred policy or certificate.
- (2) A hospital or medical service plan contract.
- (3) A health maintenance organization subscriber contract.
- (4) A self-funded employer plan that provides coverage for health care services.

The term includes a high deductible health plan with a related health savings account.

Sec. 3. The employer share of the cost of coverage under a health plan provided by a school corporation for the school corporation's employees may not exceed by more than twelve percent (12%) the employer share of the cost of coverage under the same type of health plan:

- (1) described in IC 5-10-8-7(b) or IC 5-10-8-7(c); and
- (2) provided by the state for state employees;

for any twelve (12) month period beginning on the first health plan issue or renewal date that occurs after January 31, 2011.

Sec. 4. If a school corporation for any twelve (12) month period beginning on the first health plan issue or renewal date that occurs after December 31, 2011, spends in excess of the amount specified in section 3 of this chapter, the school corporation shall do the following:

- (1) Not more than forty-five (45) days after the renewal date on which the school corporation is determined to be noncompliant with section 3 of this chapter, submit to the state personnel department a plan to achieve compliance.
- (2) Twelve (12) months after the date a plan is submitted under subdivision (1), certify to the state personnel department the school corporation's compliance with section 3 of this chapter.
- (3) If the school corporation fails to file the certification described in subdivision (2), beginning on the first renewal or expiration date of the school corporation's health plan after the twelve (12) month period described in subdivision (2) expires, elect to participate in the state employee health plan as provided in IC 5-10-8-6.7 to provide any school corporation employee health coverage.

A school corporation shall provide additional information, data, and documentation that is requested by the state personnel department to substantiate compliance with this section.

Sec. 5. (a). The following apply with respect to a school corporation's employee health coverage program:

(1) If the school corporation pays a commission, a bonus, an override, a contingency fee, or any other compensation to an insurance producer or other adviser in connection with the health coverage, the school corporation shall:

(A) specify the commission, bonus, override, contingency fee, or other compensation in the school corporation's annual budget fixed under IC 6-1.1-17; and

(B) make the information specified under clause (A) available to the public upon request.

(2) The school corporation may allow:

(A) members of the school corporation's governing body; or

(B) an attorney of the school corporation's governing body;

to be covered under the school corporation's employee health coverage program.

(3) Except as provided in subsection (b), all individuals insured under the school corporation's employee health coverage program:

(A) are eligible for the same coverage as all other individuals insured under the program; and

(B) to the extent allowed by federal law, may pay different amounts for the coverage.

(b) Except as provided in IC 5-10-8-6.7(b), a school corporation:

(1) may:

(A) make an assignment of wages upon the request of a school corporation employee in accordance with IC 22-2-6-2 to pay the school corporation employee's share of premiums for health insurance that is available to the school corporation employee as a result of a collective bargaining agreement:

(i) negotiated with the school corporation by a labor organization; and

(ii) under which the school corporation employee is covered; and

(B) pay the school corporation's share of premiums for the bargained health insurance; and

(2) is not required to make the bargained health insurance available to all school employees.

Sec. 6. *(Repealed by P.L.233-2015, SEC.176).*

Sec. 7. *(Repealed by P.L.233-2015, SEC.177).*

Sec. 8. *(Repealed by P.L.233-2015, SEC.178).*

Sec. 9. *(Repealed by P.L.233-2015, SEC.179).*

Q: *Are there restrictions on how much the employer may contribute to the cost of a health care plan?*

Yes. IC 20-26-17-3 limits the employer share of the cost of coverage under a health plan provided by a school corporation for its employees to 112% of the cost of coverage under the same type of health plan issued to state employees under IC 5-10-8-6.7.

Q: *When a teacher retires, may he or she continue to participate in the school corporation's health insurance plan?*

Yes. IC 5-10-8-2.6 provides that a public employer shall provide a group health insurance program to each retired employee who is 55 years of age; not Medicare eligible; has completed

20 years of service 10 years of which immediately precede retirement, and who has completed at least 15 years of participation in the retirement plan of which the employer is a member. This retirement plan must be equal in coverage to that offered to active employees and must permit the retired employee to participate if the retired employee pays the full premium. However, the employer may elect to pay any part of the retired employee's premiums. (NOTE: payment for insurance premiums is a mandatory subject of bargaining)

Q: *How long may a retired teacher remain on the employer's health insurance plan?*

A retired employee's eligibility to continue in the employer's insurance plan ends when the employee becomes eligible for Medicare coverage.

Q: *May the teacher's spouse also remain on the employer's health insurance plan?*

Yes.

Q: *What happens to the spouse's eligibility if the teacher dies?*

If the retired employee's spouse pays the amount the retired employee would have paid, the surviving spouse may continue to participate in the insurance plan until the earliest of: (1) Medicare eligibility, (2) The employer terminates the health insurance program, (3) Two years following the death of the employee, or (4) Remarriage.

XII. FAMILY AND MEDICAL LEAVE ACT (FMLA)

Overview

The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Eligible employees are entitled to:

Twelve workweeks of leave in a 12-month period for:

- the birth of a child and to care for the newborn child within one year of birth;
- the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- to care for the employee's spouse, child, or parent who has a serious health condition;
- a serious health condition that makes the employee unable to perform the essential functions of his or her job;
- any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" **or**

Twenty-six workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the eligible employee is the service member's spouse, son, daughter, parent, or next of kin (military caregiver leave).

XIII. ADMINISTRATION OF MEDICATIONS AND HEALTH CARE SERVICES

IC 34-30-14

Chapter 14. Health Care: Immunity of Certain Persons Who Administer Medications to Pupils at School

IC 34-30-14-1

Compelling certain school personnel to administer medication to pupils prohibited

Sec. 1. A school or school board may not:

(1) require a teacher or other school employee who is not employed as a school nurse or physician to administer:

(A) medication, drugs, or tests described in section 2 of this chapter; or

(B) health care services, basic life support, or other services that require the teacher or employee to place the teacher's or employee's hands on a pupil for therapeutic or sanitary purposes; or

(2) discipline a teacher or other school employee who is not employed as a school nurse or physician and who:

(A) refuses to administer medication, drugs, or tests without the written:

(i) authority of a pupil's parent or guardian; or

(ii) order of a practitioner;

required under section 2 of this chapter; or

(B) refuses to administer health care services, basic life support, or other services that require the teacher or employee to place the teacher's or employee's hands on a pupil for therapeutic or sanitary purposes.

As added by P.L.1-1998, SEC.26. Amended by P.L.166-2007, SEC.4; P.L.3-2008, SEC.246.

IC 34-30-14-2

Administering medication to pupils; immunity

Sec. 2. If compliance with sections 3 and 4 of this chapter has occurred, a school administrator, teacher, or other school employee designated by the school administrator, after consultation with the school nurse, who in good faith administers to a pupil:

(1) a nonprescription medication in compliance with the written permission of the pupil's parent or guardian, except in the case of a life threatening emergency;

(2) a legend drug (as defined in IC 16-18-2-199 and including injectable insulin) in compliance with the:

(A) written order of a practitioner; and

(B) written permission of the pupil's parent or guardian, except in the case of a life threatening emergency;

(3) a glucose test in compliance with the written order of a practitioner;

(4) health care services, basic life support, or other services that require the administrator, teacher, or employee to place the administrator's, teacher's, or employee's hands on the pupil for therapeutic or sanitary purposes; or

(5) any combination of subdivisions (1) through (4);

is not personally liable for civil damages for any act that is incident to or within the scope of the duties of the employee as a result of the administration except for an act or omission amounting

to gross negligence or willful and wanton misconduct.
As added by P.L.1-1998, SEC.26. Amended by P.L.166-2007, SEC.5.

IC 34-30-14-7

Teachers; immunity for providing cardiopulmonary resuscitation or the Heimlich maneuver or for using an automated external defibrillator

Sec. 7. A teacher:

(1) who meets the requirement of IC 20-28-5-3(c); and (2) who:

(A) performs cardiopulmonary resuscitation on;

(B) performs the Heimlich maneuver on;

(C) removes a foreign body that is obstructing an airway of; or

(D) uses an automated external defibrillator on;

another person, in the course of employment as a teacher;

is not liable in a civil action for damages resulting from an act or omission occurring during the provision of emergency assistance under this section, unless the act or omission constitutes gross negligence or willful and wanton misconduct.

As added by P.L.166-2007, SEC.6. Amended by P.L.146-2011, SEC.2.

XIV. LIABILITY OF TEACHERS IN SCHOOL

Q. May a teacher be held personally liable for an injury in school to a pupil?

Yes. A teacher may be held liable for injury to pupils in his/her charge caused by his/her negligence or failure to exercise reasonable care.

Q. What is the general definition of negligence?

Negligence may be defined as failure to exercise the degree of care for the safety and well-being of others that a reasonable and prudent person would have exercised under similar circumstances.

Q. What is the rule of “in loco parentis?”

The teacher stands “in loco parentis” in the place of the parent, to pupils who are in his/her care and will be liable for any injuries which they sustain as a result of said teacher’s negligence.

Q. Does a teacher have a duty to warn pupils of dangers which are associated with a given activity?

The answer to this question depends largely on the facts and circumstances of each individual case. The duty can be exceedingly important where the pupils use inherently dangerous equipment or where the activity itself is inherently dangerous.

Q. Can a teacher be required to administer medication, drugs or tests to students or health care services, basic life support or other services that require the teacher to place the teacher’s hands on a pupil for therapeutic or sanitary purposes?

No. An Indiana statute specifies that a school board may not require a teacher or any other school employee who is not a nurse or doctor to provide any of these services. (IC 34-30-14-1).

Q. If a teacher decides to administer medicine or health care services and a child is injured, can the teacher be held liable?

A teacher would be liable for gross negligence or willful or wanton misconduct in this situation. If a written parent permission slip is on file, and if the teacher has received the appropriate medical training, the teacher would not be liable for negligence.

Q. What should a teacher do in the event that a pupil is injured or becomes ill?

If a school nurse or school physician is available, the child should be referred to such person for care. The building principal and the parents should also be notified as soon as possible.

Q. Should the teacher attempt to treat the child in the absence of a doctor?

Unless an emergency exists, a teacher or principal should never treat a sick or injured child except to render the first aid that a reasonable and prudent person would render under similar circumstances.

One court outside of Indiana has stated that a medical emergency exists only when there is proof that the decision to secure medical aid cannot safely await the decision of the parent.

Q. What test is applied to a teacher with regard to his/her treatment of injuries?

Teachers are not expected to possess expert medical knowledge concerning the treatment of injuries. They are only required to take that action which a reasonable and prudent layperson untrained in the practice of medicine would have taken.

Q. What steps should be taken if the teacher learns he/she is being sued or may be sued?

The teacher should contact school officials and the ISTA immediately.

Q. What coverage is supplied by the ISTA liability policy?

The liability policy, provided through your ISTA membership, gives protection up to \$1,000,000 for any civil suit damages. In the event you have criminal charges placed against you for actions committed in the performance of your professional duties and are found not guilty, your bail bond cost and attorney fees may be reimbursed within the limits specified in your policy. For more complete information, consult your copy of the certificate issued with your membership each year.

The insurance policies only cover you for actions taken in the performance of your professional duties. Consequently, you should be very careful that any activities that you have with students,

such as field trips or awards ceremonies, are within the scope of your duties, and not personal efforts on your part.

Q. What steps should you take if you are involved in a situation which might result in legal action against you? Examples of such situations could be paddling a student or having a student under your supervision receive an injury.

Immediately file a complete report, including statements from other teachers if they were witnesses, with the principal. It is important to get details written down while the incident is fresh in your memory. If any form of legal action actually materializes, contact the ISTA at once.

XV. DISCRIMINATORY ACTIVITY BY SCHOOL BOARD

Q. Is it legal for a school board to adopt requirements for the residence of its teachers?

An Indiana statute specifically forbids a school board from adopting residence requirements for teachers. (IC 20-28-10-13)

Q. Are there any sanctions against a school board which adopts such residence requirements?

Yes. Failure to observe provisions of that Act can cause the school corporation to become ineligible for State funds upon the submission of sworn proof of existence of such discriminatory residence requirements to the State Superintendent of Public Instruction. (IC 20-28-10-13)

Q. Is there an Indiana statute with regard to suspension or dismissal of a teacher for political or organizational activity?

Yes. An Indiana statute makes it illegal to dismiss or suspend any teacher because of that teacher's affiliation with or activity in any organization, provided the organization does not advocate the overthrow of the United States Government by force or the use of violence, or the violation of law to achieve its objective. (IC 20-28-10-14)

Q. What restrictions can be placed upon a teacher who decides to run for political office?

Indiana statute makes it unlawful to dismiss, suspend or enforce a mandatory leave of absence against any teacher as a result of that teacher's candidacy for public office unless there is evidence submitted to the school board to support a reasonable finding that the teacher's activity has impaired his or her effectiveness in the service of the school or interfered with the proper carrying out of contractual obligations. If such a finding is made, any suspension shall be valid only during the period of such impaired activity. (IC 20-28-10-15)

Q. Does a teacher have a legal right against a board which infringes upon the above rights?

Yes. The statute specifically authorizes an injunction to enjoin the school corporation from continuing to abridge that teacher's rights. (IC 20-28-10-18)

Q. What are the rights of a teacher who serves in the Indiana General Assembly?

Any teacher who serves in the Indiana General Assembly shall not have any rights diminished with regard to retirement benefits or for advancement on a local compensation plan. (IC 20-28-10-16)

Q. Is it illegal for a school board to discriminate against a teacher because of marital status?

Yes. It is illegal for a school board to make or enforce any rule or regulation which in any way discriminates against a teacher because of marital status. (IC 20-28-10-12)

Q. Is it illegal for a school board to refuse to employ a teacher for the sole reason that his/her spouse is also employed by the same school system?

Yes. An opinion of the Indiana Attorney General states that it would be illegal. (1965 OAG., p. 102, No. 20)

Q. Is it illegal for a school board to discriminate against a teacher because of his/her race, sex, religion, national origin, age (over 40), or handicap?

Yes. All of these forms of discrimination are unlawful under various federal and state laws.

Q. Is it illegal for a teacher to be subjected to sexual harassment by administrators or other teachers?

Yes. Numerous court decisions have held sexual harassment in employment to be unlawful.

Q. Is a handicapped teacher entitled to reasonable accommodations from a school employer?

Yes. Federal and state law provides that an employer must make reasonable accommodations for a teacher with a disability. The definition of a teacher with a disability is very broad and includes mental conditions as well as physical conditions such as immobility or incapacity.

XVI. STUDENT DISCIPLINE

IC 20-33-8-8

Duty and powers of school corporation to supervise and discipline students

Sec. 8. (a) Student supervision and the desirable behavior of students in carrying out school purposes is the responsibility of:

- (1) a school corporation; and
- (2) the students of a school corporation.

(b) In all matters relating to the discipline and conduct of students, school corporation personnel:

- (1) stand in the relation of parents to the students of the school corporation;
- (2) have the right to take any disciplinary action necessary to promote student conduct that conforms with an orderly and effective educational system, subject to this chapter; and
- (3) have qualified immunity with respect to a disciplinary action taken to promote student conduct under subdivision (2) if the action is taken in good faith and is reasonable.

(c) Students must:

- (1) follow responsible directions of school personnel in all educational settings; and
- (2) refrain from disruptive behavior that interferes with the educational environment.

As added by P.L.1-2005, SEC.17. Amended by P.L.121-2009, SEC.12.

IC 20-33-8-9

Disciplinary powers of teachers and school staff members

Sec. 9. (a) This section applies to an individual who:

- (1) is a teacher or other school staff member; and
- (2) has students under the individual's charge.

(b) An individual may take any action that is reasonably necessary to carry out or to prevent an interference with an educational function that the individual supervises.

(c) Subject to rules of the governing body and the administrative staff, an individual may remove a student for a period that does not exceed five (5) school days from an educational function supervised by the individual or another individual who is a teacher or other school staff member.

(d) If an individual removes a student from a class under subsection (c), the principal may place the student in another appropriate class or placement or into inschool suspension. The principal may not return the student to the class from which the student was removed until the principal has met with the student, the student's teacher, and the student's parents to determine an appropriate behavior plan for the student. If the student's parents do not meet with the principal and the student's teacher within a reasonable amount of time, the student may be moved to another class at the principal's discretion.

As added by P.L.1-2005, SEC.17. Amended by P.L.121-2009, SEC.13.

IC 20-33-8-10

Disciplinary powers of principals

Sec. 10. (a) A principal may take action concerning the principal's school or a school activity within the principal's jurisdiction that is reasonably necessary to carry out or prevent interference with an educational function or school purposes.

(b) Subsection (a) allows a principal to write regulations that govern student conduct.

As added by P.L.1-2005, SEC.17.

IC 20-33-8-11

Disciplinary powers of superintendents and administrative staff members

Sec. 11. A:

- (1) superintendent; or
 - (2) member of the superintendent's administrative staff, with the superintendent's approval;
- may take any action with respect to all schools within the superintendent's jurisdiction that is reasonably necessary to carry out or prevent interference with an educational function or school purposes.

As added by P.L.1-2005, SEC.17.

IC 20-33-8-25

Additional disciplinary actions authorized

Sec. 25. (a) This section applies to an individual who:

- (1) is a member of the administrative staff, a teacher, or other school staff member; and
- (2) has students under the individual's charge.

(b) An individual may take disciplinary action instead of or in addition to suspension and expulsion that is necessary to ensure a safe, orderly, and effective educational environment.

Disciplinary action under this section may include the following:

- (1) Counseling with a student or group of students.
- (2) Conferences with a parent or group of parents.
- (3) Assigning additional work.
- (4) Rearranging class schedules.
- (5) Requiring a student to remain in school after regular school hours:
 - (A) to do additional school work; or
 - (B) for counseling.
- (6) Restricting extracurricular activities.
- (7) Removal of a student by a teacher from that teacher's class for a period not to exceed:
 - (A) five (5) class periods for middle, junior high, or high school students; or
 - (B) one (1) school day for elementary school students;
 if the student is assigned regular or additional school work to complete in another school setting.
- (8) Assignment by the principal of:
 - (A) a special course of study;
 - (B) an alternative educational program; or
 - (C) an alternative school.
- (9) Assignment by the principal of the school where the recipient of the disciplinary action is enrolled of not more than one hundred twenty (120) hours of service with a nonprofit organization operating in or near the community where the school is located or where the student resides. The following apply to service assigned under this subdivision:
 - (A) A principal may not assign a student under this subdivision unless the student's parent approves:
 - (i) the nonprofit organization where the student is assigned; and
 - (ii) the plan described in clause (B)(i).
 A student's parent may request or suggest that the principal assign the student under this subdivision.
 - (B) The principal shall make arrangements for the student's service with the nonprofit organization. Arrangements must include the following:
 - (i) A plan for the service that the student is expected to perform.
 - (ii) A description of the obligations of the nonprofit organization to the student, the student's parents, and the school corporation where the student is enrolled.
 - (iii) Monitoring of the student's performance of service by the principal or the principal's designee.
 - (iv) Periodic reports from the nonprofit organization to the principal and the student's parent or guardian of the student's performance of the service.
 - (C) The nonprofit organization must obtain liability insurance in the amount and of the type specified by the school corporation where the student is enrolled that is sufficient to cover liabilities that may be incurred by a student who performs service under this subdivision.
 - (D) Assignment of service under this subdivision suspends the implementation of a student's suspension or expulsion. A student's completion of service assigned under this subdivision to the satisfaction of the principal and the nonprofit organization terminates the student's suspension or expulsion.
 - (10) Removal of a student from school sponsored transportation.

(11) Referral to the juvenile court having jurisdiction over the student.

(c) As used in this subsection, "physical assault" means the knowing or intentional touching of another person in a rude, insolent, or angry manner. When a student physically assaults a person having authority over the student, the principal of the school where the student is enrolled shall refer the student to the juvenile court having jurisdiction over the student. However, a student with a disability (as defined in IC 20-35-1-8) who physically assaults a person having authority over the student is subject to procedural safeguards under 20 U.S.C. 1415.

As added by P.L.1-2005, SEC.17. Amended by P.L.66-2009, SEC.4; P.L.233-2015. SEC.262.

Q: *May teachers administer corporal punishment in Indiana?*

Yes, based on previous court decisions. Additionally, IC 20-33-8-8 places school personnel in the position of parents to the students of the corporation and provides the right to take any disciplinary action necessary to promote student conduct that conforms with an orderly and effective educational system. However, almost all school corporations have policies prohibiting corporal punishment.

Q: *Are teachers protected when they administer discipline that is within the corporation's guidelines?*

Yes. IC 20-33-8-8(b)(3) provides that school corporation personnel have qualified immunity with respect to a disciplinary action taken to promote student conduct if the action is taken in good faith and is reasonable. Reasonable corporal punishment must take into account the age, physical condition and health of the student and should not be applied in anger.

Q: *May teachers remove a student from class?*

Yes. IC 20-33-8-9 provides that a teacher may take any action that is reasonably necessary to carry out or prevent interference with an educational function. Subject to the rules of the governing body, a teacher may remove a student for a period that does not exceed five (5) school days. Additionally, IC 20-33-8-25 provides that a teacher may remove a student for a period not to exceed five (5) class periods for middle, junior high, or high school students, or one (1) school day for elementary school students as disciplinary action that is necessary to ensure a safe, orderly, and effective educational environment. This statute does not require administrative approval. While the child is out of the classroom, the teacher must assign regular or additional school work for the student to complete in another school setting.

Q: *If a teacher removes a student from class consistent with the rules of the governing body, what action must the principal take?*

The principal may not return the student to the class until the principal has met with the student, the student's teacher, and the student's parents to determine an appropriate behavior plan for the student.

Q: *Is bullying prohibited?*

Yes. Under IC 20-33-8-12, the governing body must establish written discipline rules which must prohibit bullying. (IC 20-33-8-13.5)

Q: *What constitutes “bullying”?*

IC 20-33-8-0.2 defines bullying as overt, unwanted, repeated acts or gestures, including verbal or written communications transmitted, physical acts committed, or any other behaviors committed by a student or group of students against another student with the intent to harass, ridicule, humiliate, intimidate, or harm the other student.

Q: *May a student be suspended from school?*

Yes. IC 20-33-8-18 provides that a principal may suspend a student for not more than ten (10) school days for misconduct, substantial misconduct, unlawful activity that may reasonably be considered to interfere with school purposes or an educational function; or to restore order or protect persons on school property. (IC 20-33-8-14 and 15). IC 20-33-8-23 provides for suspension beyond the ten (10) days until the time of an expulsion decision.

Q: *What is the difference between suspension and expulsion?*

Expulsion means a disciplinary action whereby a student is separated from school attendance for a period exceeding ten (10) school days.

Q: *What happens to a student who possesses a firearm or destructive device on school property?*

IC 20-33-8-16 requires that a student who brings a firearm or destructive device (bomb, grenade, rocket, Molotov cocktail, etc.) to school or is in possession of a firearm or destructive device on school property must be expelled for at least one calendar year.

Q: *Can school authorities search the locker of a student?*

Yes. A principal may search a student’s locker and the locker’s contents at any time. A school corporation must provide each student and the student’s parent with a copy of the rules governing searches of students’ lockers and contents. Students have no expectation of privacy when using the school corporation’s locker.

Q: *Can law enforcement officers assist the principal in searching a student’s locker?*

Yes. This includes the use of canine locker searches. See *Doe v. Renfrow*, 475 F. Supp. 1012 (N.D. Ind. 1979)

XVII. DUTY TO REPORT SUSPECTED CHILD ABUSE OR NEGLECT

IC 31-33-5

Chapter 5. Duty to Report Child Abuse or Neglect

IC 31-33-5-1

Duty to make report

Sec. 1. In addition to any other duty to report arising under this article, an individual who has reason to believe that a child is a victim of child abuse or neglect shall make a report as required by this article.

As added by P.L.1-1997, SEC.16.

IC 31-33-5-2

Notification of individual in charge of institution, school, facility, or agency; report

Sec. 2. (a) [Deals with hospital staff]

(b) If an individual is required to make a report under this article in the individual's capacity as a member of the staff of a medical or other public or private institution, school, facility, or agency, the individual shall immediately make a report to:

- (1) the department; or
- (2) the local law enforcement agency.

After making the report, the individual shall notify the individual in charge of the institution, school, facility, or agency or the designated agent of the individual in charge of the institution, school, facility, or agency that the report was made.

As added by P.L.1-1997, SEC.16. Amended by P.L.106-2016, SEC.24; P.L.183-2017, SEC.32.

IC 31-33-5-3

Effect of compliance on individual's own duty to report

Sec. 3. This chapter does not relieve an individual of the obligation to report on the individual's own behalf, unless a report has already been made to the best of the individual's belief.

As added by P.L.1-1997, SEC.16.

IC 31-33-5-4

Immediate oral report to department of child services or law enforcement agency

Sec. 4. A person who has a duty under this chapter to report that a child may be a victim of child abuse or neglect shall immediately make an oral or written report to:

- (1) the department; or
- (2) the local law enforcement agency.

As added by P.L.1-1997, SEC.16. Amended by P.L.234-2005, SEC.107; P.L.183-2017, SEC.34.

Q: *If a teacher suspects that a child has been abused or is neglected, is the teacher required to make a report to the department of child services or local law enforcement?*

Yes. The teacher must immediately make an oral or written report to the department of child services or to local law enforcement. The teacher must then notify the principal of the report.

Q: *Is a teacher protected if he or she makes a report of suspected child abuse or neglect?*

Yes. Unless a report is made maliciously or in bad faith, a teacher who makes a report that a child may be a victim of child abuse or neglect is immune from any civil or criminal liability that might otherwise be imposed. (IC 31-33-6-1)

XVIII. PROHIBITED POLITICAL ACTIVITIES BY GOVERNMENT EMPLOYEES (including public school employees)

In 2013, the General Assembly created a new law prohibiting government employees at every level from using the government employer's property to solicit contributions, advocate the election or defeat of a candidate, or advocate the approval or defeat of a public question. The law also prohibits distributing campaign material for or against a candidate or public question during regular work hours on the employer's property.

A violation of any of these prohibitions is a Class A misdemeanor. It becomes a Level 6 felony if the person has a prior unrelated conviction under this new law.

Specifically, the law reads as follows:

IC 3-14-1-17

Use of government employer's property for soliciting contribution, advocating election or defeat of a candidate, or advocate approval or defeat of a public question

Sec. 17. (a) As used in this section, "government employee" refers to any of the following:

- (1) An employee of the state.
- (2) An employee of a political subdivision.
- (3) A special state appointee (as defined in IC 4-2-6-1).
- (4) An employee of a charter school (as defined in IC 20-24-1-4).

(b) As used in this section, "government employer" refers to the state or a political subdivision.

(c) As used in this section, "property" refers only to the following:

- (1) Equipment, goods, and materials, including mail and messaging systems.
- (2) Money.

(d) A government employee may not knowingly or intentionally use the property of the employee's government employer to do any of the following:

- (1) Solicit a contribution.
- (2) Advocate the election or defeat of a candidate.
- (3) Advocate the approval or defeat of a public question.

(e) A government employee may not knowingly or intentionally distribute campaign materials advocating:

- (1) the election or defeat of a candidate; or
- (2) the approval or defeat of a public question;

on the government employer's real property during regular working hours.

(f) This section does not prohibit:

- (1) Activities permitted under IC 6-1.1-20.

(2) A government employee from carrying out administrative duties under the direction of an elected official who is the government employee's supervisor.

(g) A government employee who knowingly or intentionally performs several actions described in subsection (d) or (e) in a connected series that are closely related in time, place, and circumstance may be charged with only one (1) violation of this section for that connected series of actions.

(h) A government employee who violates this section commits a Class A misdemeanor. However, the offense is a Level 6 felony if the person has a prior unrelated conviction under this section.

As added by P.L.258-2013, SEC.85. Amended by P.L.219-2013, SEC.72; P.L.168-2014, SEC.2; P.L.169-2015, SEC.157; P.L.216-2015, SEC.34.

Q: Does this apply to just public school teachers?

No. The law applies to state employees, public school employees (including charter school employees), county, city, town, township, municipal employees, and other local government employees, and includes certain appointees.

Q: What kind of activity is the law intending to prohibit?

One part of the law states that the employee “may not knowingly or intentionally use the property of the employer” to solicit a contribution, advocate the election or defeat of a candidate, or advocate the approval or disapproval of a public question (referendum).

“Using the property of the employer” could be interpreted to include any mode of communication owned by the employer, including, but not limited to, using the employer's:

- (1) internet service;
- (2) email service;
- (3) computers;
- (4) cell/smart phones;
- (5) ipads, flash drives, or other electronic devices owned by the employer and distributed to employees;
- (6) school printers and copiers;
- (7) school mail boxes;
- (8) school paper and writing instruments; and
- (9) bulletin boards on school property, etc.

Q: If I receive an email at my school email address from someone that purports to solicit a political contribution for a candidate, to advocate the defeat or election of a candidate, or to advocate the approval or disapproval of a public question, what should I do?

The better question is “*what should I not do?*” The answer to that is **DO NOT FORWARD OR PRINT OUT** any of those emails. Do not forward the email to your home email address either because that could be interpreted as “using the property of the employer” just as if you had forwarded it to someone else. Remember, the law does not prohibit non-government employees from sending you messages. Nor does it prohibit you from reading the messages. The restriction

squarely rests on you, the employee, sharing the message using school property (broadly defined).

Q: Is there other activity that is being restricted?

Yes. The law also prohibits employees from knowingly or intentionally distributing campaign material (on behalf of a candidate or a public question outcome) during regular school hours while on the employer's real property. Real property will generally mean school grounds.

Q: What is the penalty for violating this new law?

The penalty is serious. A conviction means a Class A misdemeanor which under Indiana law carries with it the following sentencing:

A person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one (1) year; in addition, he may be fined not more than five thousand dollars (\$5,000). IC 35-50-3-2

If there is a 2nd unrelated conviction under this law, the penalty is increased to a Level 6 felony.

Q: If I am unsure, what should I do?

A. First, don't distribute campaign materials (be they for a candidate or a public question) during regular working hours while on school grounds.

B. Next, ask yourself, "Does the message I want to share or convey fit within any of the prohibited areas?"

(1) Is it soliciting a contribution?

(2) Is it advocating the election or defeat of a candidate?

(3) Is it advocating the approval or defeat of a public question?

If you can answer "no" to all of these questions, there is no prohibition.

C. If the answer to any one of the (B) questions is "yes," then ask yourself "Is any part of the method I wish to use to communicate owned or operated by my employer school district?" If the answer to that question is "yes," then don't do it. There will always be other ways to share information that are within the law.

XIX. MISCELLANEOUS

Q. Is a teacher entitled to be paid if a school is closed during the regular session because of an emergency which is not the fault of a teacher?

An Indiana statute states that teachers should receive their regular payments during the time when a school is closed due to no fault of the teachers. (IC 20-28-9-15)

Q. Is a school corporation required to pay teachers for "make up" days when the schools are closed by reason of inclement weather and other such causes?

Under IC 20-28-9-15, teachers are not entitled to additional compensation if a day is made up in order to comply with the state's minimum number of student instructional days.

Q. *May a school corporation hire lay coaches?*

A school board may now hire athletic coaches whether or not they are otherwise employed by a school corporation and whether or not they are licensed to teach in Indiana. (IC 20-26-5-4(a)(8)). The salary for lay athletic coaches is to be budgeted from the school corporation's education fund. (IC 20-40-2-5).

Q. *May a school corporation establish a self-insurance program to cover employees' accident, sickness or dental insurance?*

A school corporation is empowered to establish a self-insurance program for the benefit of school corporation employees which may include accident, sickness, health or dental coverage.

Q. *Are the public records of school boards available for public inspection?*

Yes. By statute, the public records of any political subdivision of the state are open to inspection during regular business hours. This statute does not provide access to public records which are considered by law to be confidential. (IC 5-14-3-3)

Q. *Can a list of employees, provided by the school board, be used for commercial purposes?*

No. If the school board provides a list of employees, it may not be used for commercial purposes.

Q. *Are public proceedings of school board meetings to be open to the public?*

Yes. Public proceedings, which means the convening of a political subdivision for the purpose of transacting the governmental function, should be open to the public. This statute does not provide access to executive sessions held on confidential matters. (IC 5-14-1.5-3)

Q. *Are school boards entitled to conduct executive sessions?*

Yes. School boards are entitled to hold executive sessions for certain specific reasons. However, the notice of the executive session must specifically refer to the statutory reason for which the session is held and the minutes must contain a certification that no other matters were discussed at the executive session. (IC 5-14-1.5-6.1)

Q. *Can a school board close schools to permit teachers to attend professional conferences and receive part payment?*

Yes. A statute allows a school board to adjourn school to allow teachers to attend teacher association conferences, and the school board may pay teachers for time spent equal to the per diem of such teacher. (IC 20-28-9-12)

Q. *What are the obligations of a school board to withhold teacher association dues?*

Indiana law provides that the school employer shall, on written authorization from a school employee, deduct any dues designated by the exclusive representative and remit the dues to the exclusive representative. (IC 20-29-5-6)

Q. *Can a local school corporation pay the total cost of health insurance for teachers?*

No. A school corporation cannot pay the total cost of health insurance for a teacher, but can pay all but one (1) dollar. (IC 5-10-8-2.6)

Q. *Can an employer fire an employee for being at work while under the influence of alcohol or an illegal drug?*

Yes. Alcohol and drug use in the workplace are not protected by any state or federal law. However, under the Federal Rehabilitation Act of 1973 and the Americans with Disabilities Act, an employer may not fire an employee solely because of a history of drug or alcohol addiction.

Q: *If the school corporation overpays a teacher, can the corporation recoup all of the overpayment from one pay check?*

If an employer overpays a teacher, generally, the maximum part of the aggregate disposable earnings of an employee for any work week that is subjected to an employer deduction for overpayment may not exceed the lesser of:

(A) 25% of the employee's disposable earnings for that week; or

(B) the amount by which the employee's disposable earnings for that week exceed 30 times the federal minimum hourly wage.

However, if a single gross wage overpayment is equal to 10 times the employee's gross wages earned due to an inadvertent misplacement of a decimal point, the entire overpayment may be deducted immediately. (IC 22-2-6-4)

Q: *Is the school corporation required to provide paid break time to an employee who needs to express breast milk for the employee's infant child?*

Yes. School corporations are required to provide reasonable paid break time each day to an employee who needs to express breast milk for the employee's infant child. (IC 5-10-6-2).

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