Educator’s Rights Under The Law

2013-2014
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.
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EDUCATOR RIGHTS UNDER THE LAW

I. TEACHER STATUS

The Indiana General Assembly made significant changes in the way teachers are classified. Teachers may be classified as “probationary” or “professional” based upon evaluations conducted under I.C. 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.
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.


II. CANCELLATION OR DISCONTINUANCE 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 principal may decline to continue a probationary teacher's contract under sections 2 through 4 of this chapter if the probationary teacher:
(1) receives an ineffective designation on a performance evaluation under IC 20-28-11.5;
(2) receives two (2) consecutive improvement necessary ratings on a performance evaluation under IC 20-28-11.5; or
(3) is subject to a justifiable decrease in the number of teaching positions or any reason relevant to the school corporation's interest.

(c) Except as provided in subsection (e), a principal may not decline to continue a professional or established teacher's contract unless the teacher is subject to a justifiable decrease in the number of teaching positions.

(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) 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) Justifiable decrease in the number of teaching positions.
(4) Incompetence, including receiving:
(A) an ineffective designation on two (2) consecutive performance evaluations under IC 20-28-11.5; or
(B) an ineffective designation or improvement necessary rating in three (3) years of any five (5) year period.

(5) Neglect of duty.

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

(7) Other good or just cause.

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

Procedure for cancellation of contracts:

IC 20-28-7.5-2 Sec. 2. (a) Before a teacher is refused continuation of the teacher's contract, the teacher has the following rights:

(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.

(3) Notification due to a reduction in force must be delivered between May 1 and July 1.

(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. 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) 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 cancellation of the teacher's contract.

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

(f) For items listed in section (1)(e)(3), (1)(e)(4), or (1)(e)(6) of this chapter, if the 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, the teacher is entitled to an additional private conference with the governing body before the governing body makes a final decision, which must be in writing, concerning the cancellation of the teacher's contract.

(g) For items listed in section (1)(e)(1), (1)(e)(2), (1)(e)(5), or (1)(e)(7) of this chapter, 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 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.
(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, the requirement for the School Board to adopt appropriate findings and conclusions, etc.)

Governing body action

IC 20-28-7.5-3
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.

III. ACQUISITION AND MAINTENANCE OF “PROBATIONARY” STATUS, “PROFESSIONAL” STATUS AND “ESTABLISHED” STATUS

Q: Which teachers have “probationary” status?

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

* serves under a contract, and
* who has not received an evaluation under I.C. 20-28-11.5,
* or who receives a rating of ineffective in an evaluation under I.C. 20-28-11.5 and
* who has not received 3 ratings in a 5 year period of effective or highly effective in an evaluation under I.C. 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”, 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 the “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 I.C. 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:

- It is replaced by another contract signed by the parties, or
- It is cancelled pursuant to I.C. 20-28-7.5
Q: For what reasons may the contract with a “probationary” teacher be non-continued?

A principal may decline to continue the contract of a “probationary” teacher if the “probationary” teacher (1) receives an ineffective designation on an evaluation, or (2) receives two consecutive “improvement necessary” ratings on evaluations, or (3) there is a justifiable decrease in the number of teaching positions, (4) or for any reason relevant to the school corporation’s interest. (I.C. 20-28-7.5-1)

Q: For what reasons may the contract with a “professional” or “established” teacher be non-continued?

A principal may not decline to continue the contract of a “professional” or “established” teacher unless the teacher is subject to a reduction in force.

Q: For what reasons may the contract of a teacher be cancelled immediately?

After following due process procedures (I.C. 20-28-7.5-2 through 4), a contract with a teacher may be cancelled immediately for any of the following reasons:
- Immorality
- Insubordination
- Justifiable decrease in the number of teaching positions
- Incompetence, including receiving:
  - An ineffective designation on two consecutive performance evaluations
  - An ineffective designation or improvement necessary rating in three years of any five year period
- Neglect of duty
- A conviction for an offense listed in IC 20-28-5-8(c)
- Other good or just cause

Q: Is a teacher entitled to notice before there is a refusal to continue the contract?

Yes. The Principal 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.

(I.C. 20-28-7.5-2)

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. 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?*

The Principal’s preliminary decision is considered final.

Q: *What must the Superintendent do after the conference?*

The 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.

If the reason for the proposed cancellation of a teacher’s contract is justifiable decrease in the number of teaching positions, incompetence or a conviction for an offense listed in IC 20-28-5-8(c), the teacher may file a request for an additional private conference with the governing body. This request must be filed not later than 5 days after the initial private conference with the superintendent. The additional private conference must be held before the governing body makes a final decision, which must be in writing. (IC 20-28-7.5-2(f))

If the reason for the proposed cancellation of a teacher’s contract is immorality, insubordination, neglect of duty or other good or just cause, the teacher may file a request for an additional private conference with the governing body. This request must be filed not later than 5 days after the initial private conference with the superintendent. The additional private conference must be held before the governing body makes a final decision. The final decision must be in writing and must be made not more than 30 days after the governing body receives the teacher’s request for the additional private conference.
At this private conference a teacher has the right to present evidence. Any evidence presented must be exchanged between the parties at least 7 days before the private conference. The governing body shall consider whether a preponderance of the evidence supports the cancellation of the teacher’s contract.

-It is ISTA’s position that any teacher who was a permanent or semi-permanent teacher under the old law is entitled to a full evidentiary hearing with the school board no matter what the reason is for cancellation.

(IC 20-28-7.5-2(g))

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

The governing body may act to cancel a teacher’s contract at the first public meeting following a private conference with the governing body or after the conference with the Superintendent if no conference with the governing body was requested.

IV. SUSPENSION OF TEACHERS

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. (IC 20-28-9-21)

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

Yes. The teacher must be notified in writing not more than 40 days and not less than 30 days of the date, time and place that the Board will consider suspending the teacher without pay. The teacher is entitled to a written statement of the reasons within 5 days of making a written request. The teacher may file a written request for a hearing not later than 15 days after receipt of the notice of consideration. The teacher must be given at least 5 days notice of the date, time and place of the hearing. (IC 20-28-9-22)

Q: What happens at the hearing?

The teacher is entitled to a full statement of the reasons for the proposed suspension without pay. The teacher has the right to be heard, present witnesses and present evidence to the Board.

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

A teacher may not be suspended without pay until the date set for consideration; until after a hearing is held if requested; and after the Superintendent has given
recommendations. The vote to suspend a teacher without pay must be taken by the governing body on the date, time and place specified in the original notice.

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.

V. EDUCATION EMPLOYMENT CONTRACTS

A. Employment of Teachers

1. 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 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

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:

- the beginning date of the school term
- the number of days in the school term
- the total salary to be paid to the teacher during the school year
- the number of salary payments to be made
- the number of hours per day the teacher is expected to work, as discussed pursuant to IC 20-29-6-7 (collective bargaining statute)

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.

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) If a teacher serves more than one hundred twenty (120) days on a supplemental service teacher’s contract in a school year the following apply:

(1) Sections 1, 2, 3, and 8 of this chapter

(2) IC 20-28-10-1 through IC 20-28-10-5

(d) 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 salary schedule 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.

Q: Is a teacher on a supplemental service contract entitled to leaves of absence?

Yes. IC 20-28-10-1 through IC 20-28-10-5 provide for leaves of absence for teachers employed on a supplemental service contract.

Additionally, as members of the bargaining unit, teachers on a supplemental service contract are entitled to contractually negotiated leaves.

VI. 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) Except where a contract is not required under IC 20-28-7.5 in a situation that occurs before or after the commencement of leave, the teacher and the school corporation shall execute a regular teacher's contract for each school year in which any part of the teacher's leave is granted.
(f) 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.
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 a salary schedule 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.

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.


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.


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.


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 salary schedule. 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.

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.

**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 health related fringe benefits and the right to paid time off are mandatory subjects of bargaining under IC 20-29-6-4, your local collective bargaining agreement may provide a different benefit.)

**Q:** Can unused sick leave days accumulate?

Yes. IC 20-28-9-9 provides that unused sick leave days accumulate to 90. (NOTE: since health related fringe benefits and the right to paid time off are mandatory subjects of bargaining under IC 20-29-6-4, your local collective bargaining agreement may provide a different benefit.)

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

Yes. IC 20-28-9-13 provides that a school employer may establish a sick leave bank. The statute does not appear to require that a teacher participate in the 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 health related fringe benefits and the right to paid time off are
mandatory subjects of bargaining under IC 20-29-6-4, your local collective bargaining agreement may provide a different benefit.)

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 benefit.)

Q:  Must a teacher give a reason to use personal leave?

The statute requires a written statement describing 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 benefit.)

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.

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 sabbatical leave for professional improvement. Partial compensation may be granted during a sabbatical leave and the teacher is to return for a period of time equal to the leave.

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 as a teacher and the teacher’s rights 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, except as specified in section 8 of this chapter, 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 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. In 1995 the Indiana Court of Appeals held that a teacher can change the expected length of her leave.

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 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.

**VII. 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, I.C. 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.

VIII. 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 entered into after August 15 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. However, another contract may be signed by the teacher that will be effective if the teacher:

1. furnishes the principal a release by the employer under the previous contract; 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.

Q: Can a teacher who is under contract to one school corporation enter into a contract with a second school corporation after August 15?

A contract entered into after August 15 is void if the teacher was bound by a previous contract with another public school. However, a contract entered into after August 15 will be effective if 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.
IX. TEACHER EVALUATIONS

IC 20-28-11.5
Chapter 11.5. Staff Performance Evaluations

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).

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 (as defined in IC 20-29-2-4). 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.
   (d) The evaluator shall discuss the evaluation with the certificated employee.

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

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 20-32-4-1(a)(1) and IC 20-32-5-2.

(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.

**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.


IC 20-28-11.5-9
Department report of evaluation results
Sec. 9. (a) Before August 1 of each year, each school corporation shall provide the disaggregated results of staff performance evaluations by teacher identification numbers to the department.

(b) Before September 1 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; and
2. the aggregate of graduates of each teacher preparation program in Indiana.


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 Chapter.

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. IC 20-28-11.5-4 (c) requires that a plan must include the following components:

1. Annual evaluations

2. Objective measures of student achievement and growth which must include:
- student assessment results from statewide assessments for teachers who instruct in those areas

- methods for assessing student growth for teachers who do not teach in tested areas

- 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.

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

IC 20-28-11.5-4 (c) (4) requires that teachers be placed into one of the following categories:

(A) Highly Effective

(B) Effective

(C) Improvement Necessary

(D) 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 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. IC 20-28-11.5-4 (b) specifically includes the System for Teacher and Student Advancement (TAP) and the Peer Assistance and Review Teacher Evaluation System (PAR)
Q: Can school corporations adopt their own locally developed plan?

Yes. School corporations may develop plans locally. Locally developed plans must meet the requirements of 20-28-11.5-4

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: In order to qualify for any grant funding related to staff performance evaluations, must a corporation’s evaluation plan be approved by the department?

Yes.

Q: Who can conduct teacher evaluations?

Under 20-28-11.5-1 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 evaluations as a significant part of their responsibilities.

20-28-11.5-4 (b)(1) provides that master teachers may be evaluators and that the corporation may contract with outside vendors to provide master teachers.

20-28-11.5-5 provides that evaluations may be conducted by an external provider. An evaluator must receive training and support.

Q: Is the evaluator required to discuss the evaluation with 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.

X. **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 applies to a contract in effect July 1, 2012, or upon the expiration of a contract in existence on July 1, 2011, whichever is earlier, and governs salary increases for a teacher employed by a school corporation on or after the date this subsection takes effect. Compensation attributable to additional degrees or graduate credits earned before the effective date of the local salary schedule created under this chapter shall continue. 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.

(b) Increases or increments in a local salary scale 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 thirty-three percent (33%) of the calculation used to determine a teacher's increase or increment:
   (A) The number of years of a teacher's experience.
   (B) The attainment 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) 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).
(d) A teacher who does not receive a raise or increment under subsection (c) 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.

(e) Not later than January 31, 2012, the department shall publish a model salary schedule that a school corporation may adopt.

(f) Each school corporation shall submit its local salary schedule to the department. The department shall publish the local salary schedules on the department's Internet web site.

(g) The department shall report any noncompliance with this section to the state board.

(h) The state board shall take appropriate action to ensure compliance with this section.

(i) 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, 2012, if that decrease would be made solely to conform to the new salary scale.

(j) 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.

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 on the pay schedule 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 on the regular pay
schedule for teachers of the school corporation the individual serves.

IC 20-28-9-8
Substitute teacher with substitute license; compensation schedule
Sec. 8. An individual who holds a substitute license shall be compensated on the pay schedule
for substitutes of the school corporation the individual serves.
As added by P.L.1-2005, SEC.12.

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 general 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.

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.

IC 20-28-9-21
Suspension of teacher without pay; reasons
Sec. 21. (a) This section and sections 22 through 23 of this chapter apply to the suspension of a teacher without pay when the procedure for the cancellation of the teacher's contract under IC 20-28-7.5 does not apply.

(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.


IC 20-28-9-22
Suspension of teacher without pay; procedure
Sec. 22. A teacher may be suspended without pay only under the following procedure:

1. The teacher must be notified in writing not more than forty (40) days and not less than thirty (30) days before the date of the consideration of the date, time, and place for the consideration by the school corporation of the suspension of the teacher without pay.

2. The teacher shall be furnished, not later than five (5) days after a written request, a written statement of the reasons for the consideration.

3. The teacher may file a written request for a hearing not later than fifteen (15) days after receipt of the notice of this consideration.

4. If a request for a hearing is filed, the teacher must be given a hearing before the governing body on a day not earlier than five (5) days after filing the request.

5. The teacher must be given at least five (5) days notice of the date, time, and place of the hearing.

6. At the hearing, the teacher is entitled:

(A) to a full statement of the reasons for the proposed suspension without pay; and
(B) to be heard and to present the testimony of witnesses and other evidence bearing on the reasons for the proposed suspension without pay.

7. A teacher may not be suspended without pay until:

(A) the date is set for consideration of the suspension without pay;
(B) after a hearing is held, if a hearing is requested by the teacher; and
(C) except on the suspension of a superintendent's contract, the superintendent has given recommendations on the suspension not later than five (5) days after the school corporation makes the request for recommendations.

(8) After complying with this section, 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.

The vote to suspend a teacher without pay described in subdivision (8) must be taken by the governing body on the date and at the time and place specified in subdivision (1).

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

IC 20-28-9-23
Hearing regarding suspension of teacher without pay; subpoenas
Sec. 23. The governing body may appoint an agent (who is not an employee of the school corporation but who may be a member of the governing body or an attorney retained to administer the hearing proceedings under this section) to issue subpoenas for the attendance of witnesses for either party at the hearing under section 22 of this chapter. A subpoena issued under this section shall be:

(1) served by the party who seeks to compel the attendance of a witness; and

(2) upon application to the court by the party, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

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

IC 20-28-9-24
Examination for teacher licensure; furnishing of test scores
Sec. 24. (a) This section applies to an examination that is required for teacher licensure under this chapter.

(b) If an individual does not demonstrate the level of proficiency required to receive a license on all or a part of an examination, the examination's scorer must provide the individual with the individual's test scores, including sub-scores for each area tested.

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

XI. 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.


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.

**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"
   Sec. 6. "Deficit financing" for a budget year means actual expenditures exceeding the employer's current year actual general fund revenue.

**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.

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).

IC 20-29-2-10
"Governing body"
Sec. 10. "Governing body" means:
   (1) a township trustee and the township board of a school township;
   (2) a county board of education;
   (3) a board of school commissioners;
   (4) a metropolitan board of education;
   (5) a board of trustees;
   (6) any other board or commission charged by law with the responsibility of administering
       the affairs of a school corporation; or (7) the body that administers a charter school established
       under IC 20-24.

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.

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


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.


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.


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.

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.

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.

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.

IC 20-29-3
Chapter 3. Indiana Education Employment Relations Board

IC 20-29-3-1
Establishment of board
Sec. 1. The Indiana education employment relations board is established.
IC 20-29-3-2
Members
Sec. 2. The board consists of three (3) members appointed by the governor to serve at the governor's pleasure.

IC 20-29-3-3
Chairperson
Sec. 3. The governor shall designate one (1) member of the board to serve as chairperson.

IC 20-29-3-4
Political affiliation of board members
Sec. 4. Not more than two (2) members of the board may be members of the same political party.

IC 20-29-3-5
Terms and vacancies
Sec. 5. Each member of the board is appointed for a term of four (4) years. A member appointed to fill a vacancy is appointed for the unexpired term of the member whom the appointed member is to succeed.

IC 20-29-3-6
Qualifications
Sec. 6. Members may not:
(1) hold:
   (A) another public office; or
   (B) employment by the state, a public agency, or a public employer;
(2) be an officer or employee of a school employee organization or any affiliate of an organization; or
(3) represent a:
   (A) school employer; or
   (B) school employee organization, or an organization's affiliates.

IC 20-29-3-7
Member on university teaching staff
Sec. 7. Section 6 of this chapter does not apply to an individual on the teaching staff of a university who is knowledgeable in public administration or labor law if the individual is not actively engaged, other than as a member, with any labor or employee organization. This section shall be construed liberally to effectuate the intent of the general assembly.
IC 20-29-3-8
Chairperson's duties
    Sec. 8. The chairperson of the board shall give full time to the chairperson's duties and may not engage in any other business, vocation, or employment.

IC 20-29-3-9
Compensation
    Sec. 9. The members of the board (other than the chairperson) receive as compensation payment equal to that of the chairperson, computed on a daily rate and paid for every day actually spent serving on the board.

IC 20-29-3-10
Quorum
    Sec. 10. Two (2) members of the board constitute a quorum.

IC 20-29-3-11
Powers
    Sec. 11. The board has the following powers:
        (1) To adopt an official seal and prescribe the purposes for which the seal may be used.
        (2) To hold hearings and make inquiries as the board considers necessary to carry out properly the board's functions and powers.
        (3) To establish a principal office in Indianapolis.
        (4) To meet and exercise the board's powers at any other place in Indiana.
        (5) To conduct in any part of Indiana a proceeding, a hearing, an investigation, an inquiry, or an election necessary to the performance of the board's functions. For this purpose, the board may designate one (1) member, or an agent or agents, as hearing examiners. The board may use voluntary and uncompensated services as needed.
        (6) To appoint staff and attorneys as the board finds necessary for the proper performance of its duties. The attorneys appointed under this section may, at the direction of the board, appear for and represent the board in court.
        (7) To pay the reasonable and necessary traveling and other expenses of an employee, a member, or an agent of the board.
        (8) To subpoena witnesses and issue subpoenas requiring the production of books, papers, records, and documents that may be needed as evidence in any matter under inquiry, and to administer oaths and affirmations. In cases of neglect or refusal to obey a subpoena issued to a person, the circuit or superior court of the county in which the investigations or the public hearings are taking place, upon application by the board, shall issue an order requiring the person to:
            (A) appear before the board; and
            (B) produce evidence about the matter under investigation.
            A failure to obey the order may be punished by the court as a contempt. A subpoena, notice of hearing, or other process of the board issued under this chapter shall be served in the manner prescribed by the Indiana Rules of Trial Procedure.
(9) To adopt, amend, or rescind rules the board considers necessary and administratively feasible to carry out this chapter under IC 4-22-2.

(10) To request from any public agency the assistance, services, and data that will enable the board properly to carry out the board's functions and powers.

(11) To publish and report in full an opinion in every case decided by the board.


IC 20-29-3-12
Repealed
(Repealed by P.L.48-2011, SEC.39.)

IC 20-29-3-13
Repealed
(Repealed by P.L.48-2011, SEC.39.)

IC 20-29-3-14
Research division
Sec. 14. The board's research division must be organized to provide:
(1) statistical data on the resources of each school corporation;
(2) the substance of any agreements reached by each school corporation; and
(3) other relevant data.


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.


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.


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.


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.

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.


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.


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.


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."


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.


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.

As added by P.L.48-2011, SEC.10.

IC 20-29-6
Chapter 6. Collective Bargaining

IC 20-29-6-1
Duty to bargain collectively and discuss

Sec. 1. 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.


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
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 revenue or an increase in the employer's expenditures when the expenditures exceed the employer's current year actual general fund revenue.
(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.

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 salary scale adopted under IC 20-28-9-1.5, but do not include the teacher evaluation procedures and criteria, or any components of the teacher evaluation plan, rubric, or tool.

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) A subject set forth in subsection (a) 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.
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.

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.

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.

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.
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.

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.

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) August 1 in the first year of the state budget biennium; or
(2) August 1 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 August 1.

IC 20-29-6-12.5
Certification of estimated available revenue
Sec. 12.5. (a) Before August 1 of the first year of the state budget biennium, the department shall provide the parties with an estimate of the general fund 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 revenue available for bargaining from the school funding formula. A school employer that has passed a general fund operating referendum under IC 20-46-1 must have that amount certified by the department of local government finance. The school corporation must obtain the certification before the commencement of bargaining. These certifications must be the basis for determinations throughout impasse proceedings under this chapter.
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.

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 fifteen (15) days.
As added by P.L.229-2011, SEC.181.
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, 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, unless continuation would put the school employer in a position of deficit financing due to a reduction in the employer's actual general fund revenue or an increase in an employer's expenditures when the expenditures exceed the current year actual general fund revenue.

(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.


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

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 thirty (30) days after receipt of notice of appeal.


IC 20-29-6-19
Internet posting of collective bargaining agreement provisions

Sec. 19. 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.

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.


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.

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.

IC 20-29-7-4
Prevention of unfair practices
Sec. 4. (a) Unfair practices are remediabably 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.

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.

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 20-29-6-6, the board shall appoint a factfinder from the staff or panel established under section 6 of this chapter.
(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 October 1 in the first year of the state budget biennium and must be concluded by December 31 of the same year.
(f) The factfinding process may not exceed fifteen (15) 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 general operating funds and those funds certified by the department of education and the department of local government finance may be
considered as a source of the funding for items, unless the school funding formula allows other funds to be used for certain 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.


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.


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 Version a
Payment of expenses by board
   Note: This version of section amended by P.L.48-2011, SEC.31. See also following version of this section repealed by P.L.229-2011, SEC.274.
   Sec. 12. The board shall pay the cost of an arbitrator, which shall be reimbursed equally by the two (2) parties under procedures for collection and payment established by the board.

IC 20-29-8-12 Version b
Repealed
   (Repealed by P.L.229-2011, SEC.274.)
   Note: This section repealed by P.L.229-2011, SEC.274. See also preceding version of this section amended by P.L.48-2011, SEC.31.

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.)*

**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.

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: Are there any subjects which are prohibited from being included in a contract?

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

- any right established by federal or state law;
- any school employee rights contained in IC 20-29-4-1 and 2;
- any school employer rights contained in IC 20-29-4-3;
- 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;
- a school employer’s ability to contract, partner or operate jointly with an educational entity that provides postsecondary credits to students or dual credits;
- any items not permitted to be bargained under IC 20-29-6-4.5

-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 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:

- school calendar
- teacher dismissal procedures and criteria
- 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.
- 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.

- any subject not expressly listed in IC 20-29-6-4.

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 salary, wages and 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. (NOTE: Except as modified by current law, the IEERB determinations of what constitutes salary, wages and salary and wage related fringe benefits may still be relied upon.)

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 5-10-2.6 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:

- Medicare eligibility, or
- the employer terminates the health insurance program, or
- two years following the death of the employee, or
- remarriage.

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.

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:

- curriculum development and revision
- selection of curricular materials
- teaching methods
- hiring, evaluation, promotion, demotion, transfer, assignment, and retention of certificated employees
- student discipline
- expulsion or supervision of students
- pupil/teacher ratio
- class size or budget appropriations
- safety issues for students and employees in the workplace
- hours

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 August 1 in the first year of the state budget biennium; or August 1 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.

Q: Can the parties bargain before August 1?

Yes. The parties may engage in informal negotiations before August 1. (IC 20-29-6-12)

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 due to a reduction in the employer’s actual general fund revenue or an increase in the employer’s expenditures when the expenditures exceed the employer’s current year actual general fund revenue. However, cash balance can be used up to and including at mediation, but not at fact-finding.

(NOTE: this statute prohibits “entering into” a contract that would place the employer in a position of deficit financing for the reasons set out in the statute.)

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. (IC 20-29-6-3 (b))
Q: **Must the IDOE provide the parties with general fund revenue estimates?**

Yes. Before August 1 of the first year of the state budget biennium, the department shall provide the parties with an estimate of the general 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 general fund revenue available for bargaining from the school funding formula.

(NOTE: These figures are only from the school funding formula and do not take into account other sources of revenue available to the general fund)

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

The department of local government finance must certify that amount. The school corporation must obtain the certification before the commencement of bargaining.

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

The statute (IC 20-29-6-12.5) does not restrict the parties from considering and bargaining on the basis of all available general fund revenue. However, throughout impasse proceedings (mediation and fact-finding) the statute provides that “these certifications must be the basis for determinations throughout impasse proceedings.”

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: 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 October 1 in the first year of the state budget biennium and must be concluded by December 31 of the same year.

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 general operating funds, and those funds certified by the department of education and the department of local government finance may be considered as a source of the funding for items, unless the school funding formula allows other funds to be used for certain items. (IC 20-29-8-7 (f))

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 fifteen (15) 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: 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?**

The 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, unless continuation would put the school employer in a position of deficit financing due to a reduction in the employer’s actual general fund revenue or an increase in an employer’s expenditures when the expenditures exceed the current year actual general fund revenue.

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.
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: Can a teacher have his or her Association dues payroll deducted?

Yes. Pursuant to IC 22-2-6-2 (5) a teacher can voluntarily authorize a wage assignment for dues payable to a labor organization of which the teacher is a member.

XII. 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, 2012.
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 January 31, 2012, 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 department of personnel a plan to achieve compliance. The plan may include health plan benefit changes and implementation of best practices described in section 6 of this chapter.
(2) Twelve (12) months after the date a plan is submitted under subdivision (1), certify to the state department of personnel 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.

Sec. 5. 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 shall perform triennial audits to ensure that covered dependents of school corporation employees are entitled to coverage under the school corporation's employee health coverage program.

(3) 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.

(4) 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) shall pay the same amount for the coverage; regardless of health status or other differentiating factors. However, the amount paid under clause (B) may be increased for a noncertificated employee.

Sec. 6. A school corporation may consider the following best practices with respect to the school corporation's employee health coverage program:

(1) Obtaining more than one (1) estimate for the coverage, including use of health care service discounts and medical management, to obtain the most cost savings in the program.

(2) Requiring employer contributions of at least sixty percent (60%) and not more than ninety percent (90%) of the cost of the coverage.

(3) Offering at least one (1) of each of the following, in accordance with the requirements of the Internal Revenue Code, as an option for the school corporation's employees:
   (A) A high deductible health plan with a health savings account.
   (B) A health reimbursement arrangement.

(4) Offering wellness programs to the school corporation's employees.

(5) Joining a consortium or trust of school corporations to provide school corporation employee health coverage to all school corporation employees.

(6) Providing medical clinics on the property of the school corporation for individuals insured under the school corporation employee health coverage program.

(7) If the school corporation provides health coverage for less than one hundred (100) school corporation employees:
   (A) joining a consortium or trust of school corporations; or
   (B) electing to participate in the state employee health plan as provided in IC 5-10-8-6.7;
to provide health coverage.
Sec. 7. A consortium or trust of school corporations referred to in this chapter shall accept any school corporation for participation in the consortium or trust if the school corporation agrees to participate in the consortium's or trust's best practice requirements.
Sec. 8. (a) This chapter does not require a school corporation employee to participate in a school corporation's employee health coverage program. (b) With respect to a collective bargaining agreement that is in effect on July 1, 2011, this chapter does not:
(1) give a party to the collective bargaining agreement any greater rights under the collective bargaining agreement than the party had before July 1, 2011; or
(2) annul, modify, or limit the collective bargaining agreement.
Sec. 9. Not later than December 31 in each calendar year, a school corporation shall report the following information for the school year ending in the calendar year to the legislative council in an electronic format under IC 5-14-6 and the state personnel department:
(1) The employer's share of the cost of coverage of the state employee health plan used by the school corporation, in total and separated out to show the amount payable per covered individual by type of family or single coverage plan.
(2) The covered individual's share of the cost of coverage of the state employee health plan used by the school corporation, in total and separated out to show the amount payable per covered individual by type of family or single coverage plan.
(3) The total cost of coverage incurred by the individual's covered by the health plan and the school corporation.
A school corporation shall provide additional information, data, and documentation that is requested by the state personnel department to substantiate compliance with this section.

XIII. FAMILY AND MEDICAL LEAVE ACT (FMLA)

Enacted by Congress in 1993 Wage and Hour Division (WHID)

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).

Department of Labor regulations are the primary source of FMLA authority.

FMLA regulations. The FMLA regulations are contained in Part 825 of Title 29 of the Code of Federal Regulations (CFR). The regulations are available at DOL offices and online at www.gpoaccess.gov/cfr/retrieve.html.

XIV. 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.


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.

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.

XV. 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.

XVI. 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 salary schedule. (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.

XVII. STUDENT DISCIPLINE

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.

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 disabilities (as defined in IC 20-35-7-7) who physically assaults a person having authority over the student is subject to procedural safeguards under 20 U.S.C. 1415.


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.

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 must 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, 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)

XVIII. 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) 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 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.
(b) An individual notified under subsection (a) shall report or cause a report to be made.
As added by P.L.1-1997, SEC.16.

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 report to:
(1) the department; or
(2) the local law enforcement agency.
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 should first make a report to the principal who is then required to make an oral report to the department of child services or to local law enforcement. If the principal fails to make a report, the teacher must then make 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)

Q: Is it sufficient that the teacher makes the report to the principal or other administrator at the school?

No. IC 31-33-5-3 requires that an individual with a duty to report is not relieved of the duty to report on their own behalf unless a report has already been made to the best of the individual’s belief.

XIX. 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 Class D felony if the person has prior unrelated conviction under this new law.

Specifically, the law reads as follows:

IC 3-14-1-17
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 activities permitted under IC 6-1.1-20.
(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 Class D felony if the person has a prior unrelated conviction under this section.

**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 Class D 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.
XX. 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(8)) The salary for lay athletic coaches is to be budgeted from the school corporation’s general 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 now 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 there requirements for self-insurance programs for health and dental coverage?

Yes. As the result of a statute passed in 2000, referred to as P.L. 232, school corporations are required to keep the funds for self-funded insurance programs separate from other school corporation funds. They are also required to have a review panel to consider appeals when claims are denied. Additionally, they are required to fund the plan on an “incurred claims” basis, which means that they are required to put in enough money to cover all anticipated claims, even if the claim is filed after the self-insurance program ends.

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.

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?

Public Law 217, the collective bargaining statute, 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 5-2-8-2.6)

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. The state and political subdivisions of the state 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) (School Corporations are a political subdivision pursuant to IC 36-1-2-10 and 36-1-2-13)