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# HOUSE BILL No. 1477

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 20-7.5-1; IC 20-17.

**Synopsis:** Employment of school employees. Allows noncertificated school employees to engage in collective bargaining. Provides for disciplinary procedures for noncertificated employees of a school corporation. Provides certain procedural requirements before a noncertificated employee of a school corporation may be discharged.

**Effective:** July 1, 2005.

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January 18, 2005, read first time and referred to Committee on Education.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

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**HOUSE BILL No. 1477**



A BILL FOR AN ACT to amend the Indiana Code concerning education.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 20-7.5-1-1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. ~~Intent~~. The Indiana  
3 general assembly ~~hereby~~ declares that:  
4 (a) (1) the citizens of Indiana have a fundamental interest in the  
5 development of harmonious and cooperative relationships  
6 between school corporations and their ~~certificated~~ employees;  
7 (b) (2) recognition by school employers of the right of school  
8 employees to organize and acceptance of the principle and  
9 procedure of collective bargaining between school employers and  
10 school employee organizations can alleviate various forms of  
11 strife and unrest;  
12 (c) (3) the state has a basic obligation to protect the public by  
13 attempting to prevent any material interference with the normal  
14 public school educational process; **and**  
15 (d) (4) the relationship between school corporation employers and  
16 ~~certificated~~ school employees is not comparable to the ~~relation~~  
17 **relationship** between private employers and employees among



others for the following reasons:

(i) (A) A public school corporation is not operated for profit but to ~~insure~~ ensure the citizens of the state rights guaranteed them by the ~~Indiana State~~ Constitution of the State of Indiana.

(ii) (B) The obligation to educate children and the methods by which such education is effected will change rapidly with increasing technology, the needs of an advancing civilization, and requirements for substantial educational innovation.

(iii) (C) The Indiana general assembly has delegated the discretion to carry out this changing and innovative educational function to the local governing bodies of school corporations, composed of citizens elected or appointed under applicable law, a delegation which these bodies may not and should not bargain away. ~~and:~~

(iv) (D) Public school corporations have different obligations with respect to ~~certificated~~ school employees under constitutional and statutory requirements than private employers have to their employees.

SECTION 2. IC 20-7.5-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. As used in this chapter:

(a) "School corporation" means any local public school corporation established under Indiana law and, in the case of public vocational schools or schools for children with disabilities established or maintained by two (2) or more school corporations, shall refer to ~~such~~ those schools.

(b) "Governing body" means:

(1) the board or commission charged by law with the responsibility of administering the affairs of the school corporation; or

(2) the body that administers a charter school established under IC 20-5.5.

(c) "School employer" means:

(1) the governing body of ~~each~~ a;

(A) school corporation; or

(B) charter school established under IC 20-5.5; and

(2) ~~any a person or persons~~ authorized to act for the governing body of the school employer in dealing with its employees.

(d) "Superintendent" shall mean:

(1) the chief administrative officer of ~~any~~ a;

(A) school corporation; or

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1 (B) charter school established under IC 20-5.5; or  
 2 (2) ~~any a person or persons~~ designated by the officer or by the  
 3 governing body to act in the officer's behalf in dealing with school  
 4 employees.  
 5 (e) "School employee" means ~~any a~~ full-time ~~certificated~~ person in  
 6 the employment of the school employer. A school employee shall be  
 7 considered full time even though the employee does not work during  
 8 school vacation periods, and accordingly works less than a full year.  
 9 ~~There shall be excluded from the meaning of The term does not~~  
 10 ~~include~~ school employee supervisors, confidential employees, ~~and~~  
 11 ~~employees performing security work. and noncertificated employees.~~  
 12 (f) "Certificated employee" means a person:  
 13 (1) whose contract with the school corporation requires that the  
 14 person hold a license or permit from the **Indiana** state board of  
 15 education or a commission ~~thereof~~ as provided in IC 20-6.1; or  
 16 (2) who is employed as a teacher by a charter school established  
 17 under IC 20-5.5.  
 18 (g) "Noncertificated employee" means ~~any a~~ school employee  
 19 whose employment is not dependent upon the holding of a license or  
 20 permit as provided in IC 20-6.1.  
 21 (h) "Supervisor" means ~~any an~~ individual who has:  
 22 (1) authority, acting for the school corporation, to hire, transfer,  
 23 suspend, lay off, recall, promote, discharge, assign, reward, or  
 24 discipline school employees;  
 25 (2) responsibility to direct school employees and adjust their  
 26 grievances; or  
 27 (3) responsibility to effectively recommend the action described  
 28 in subdivisions (1) ~~through~~ and (2);  
 29 that is not ~~of a~~ merely routine or clerical ~~in~~ nature but requires the use  
 30 of independent judgment. The term includes superintendents, assistant  
 31 superintendents, business managers and supervisors, directors with  
 32 school corporation-wide responsibilities, principals and vice principals,  
 33 and department heads who have responsibility for evaluating teachers.  
 34 (i) "Confidential employee" means a school employee whose  
 35 unrestricted access to confidential personnel files or whose functional  
 36 responsibilities or knowledge in connection with the issues involved in  
 37 dealings between the school corporation and its employees would make  
 38 the confidential employee's membership in a school employee  
 39 organization incompatible with the employee's official duties.  
 40 (j) ~~Employees~~ "**Employee** performing security work" means ~~any~~  
 41 ~~a~~ school employee whose primary responsibility is the protection of  
 42 personal and real property owned or leased by the school corporation

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1 or who performs police or quasi-police powers.

2 (k) "School employee organization" means:

3 **(1) for certificated employees, any an** organization which has  
4 school employees as members and one (1) of whose primary  
5 purposes is representing school employees in dealing with their  
6 school employer; **and**

7 **(2) for noncertificated employees, an organization that has**  
8 **school employees as members;**

9 and includes ~~any a person or persons~~ authorized to act on behalf of  
10 such organizations.

11 (l) "Exclusive representative" means the school employee  
12 organization which has been certified for the purposes of this chapter  
13 by the board or recognized by a school employer as the exclusive  
14 representative of the employees in an appropriate unit as provided in  
15 section 10 of this chapter, or the person ~~or persons~~ **duty** authorized to  
16 act on behalf of ~~such the~~ representative.

17 (m) "Board" means the Indiana education employment relations  
18 board ~~provided~~ **created** by this chapter.

19 (n) "Bargain collectively" means the performance of the mutual  
20 obligation of the school employer and the exclusive representative to  
21 meet at reasonable times to negotiate in good faith with respect to items  
22 enumerated in section 4 of this chapter and to execute a written  
23 contract incorporating ~~any an~~ agreement relating to ~~such those~~ matters.  
24 Such ~~an~~ obligation shall not include the final approval of any contract  
25 concerning these or any other items. Agreements reached through  
26 collective bargaining are binding as a contract only if ratified by the  
27 governing body of the school corporation and the exclusive  
28 representative. The obligation to bargain collectively does not require  
29 the school employer or the exclusive representative to agree to a  
30 proposal of the other or to make a concession to the other.

31 (o) "Discuss" means the performance of the mutual obligation of the  
32 school corporation through its superintendent and the exclusive  
33 representative to meet at reasonable times to discuss, to provide  
34 meaningful input, **and** to exchange points of view, with respect to items  
35 enumerated in section 5 of this chapter. This obligation shall not,  
36 however, require either party to enter into a contract, to agree to a  
37 proposal, or to require the making of a concession. A failure to reach  
38 an agreement on ~~any a~~ matter of discussion shall not require the use of  
39 any part of the impasse procedure, as provided in section 13 of this  
40 chapter. Neither the obligation to bargain collectively nor to discuss  
41 any matter shall prevent any school employee from petitioning the  
42 school employer, the governing body, or the superintendent for a

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1 redress of the employee's grievances either individually or through the  
2 exclusive representative, nor shall either such obligation prevent the  
3 school employer or the superintendent from conferring with **any a**  
4 citizen, taxpayer, student, school employee, or other person considering  
5 the operation of the schools and the school corporation.

6 (p) "Strike" means **the** concerted failure to report for duty, willful  
7 absence from one's position, stoppage of work, or abstinence in whole  
8 or in part from the full, faithful, and proper performance of the duties  
9 of employment, without the lawful approval of the school employer, or  
10 in any concerted manner interfering with the operation of the school  
11 employer for any purpose.

12 (q) "Deficit financing" with respect to any budget year shall mean  
13 expenditures in excess of money legally available to the employer.

14 SECTION 3. IC 20-7.5-1-5 IS AMENDED TO READ AS  
15 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) A school  
16 employer shall discuss with the exclusive representative of certificated  
17 employees and may, but shall not be required to bargain collectively,  
18 negotiate, or enter into a written contract concerning or be subject to or  
19 enter into impasse procedures on the following matters:

- 20 (1) Working conditions, other than those provided in section 4 of
- 21 this chapter.
- 22 (2) Curriculum development and revision.
- 23 (3) Textbook selection.
- 24 (4) Teaching methods.
- 25 (5) Hiring, promotion, demotion, transfer, assignment, and
- 26 retention of certificated employees, and changes to any of the
- 27 requirements set forth in IC 20-6.1-4.
- 28 (6) Student discipline.
- 29 (7) Expulsion or supervision of students.
- 30 (8) Pupil-teacher ratio.
- 31 (9) Class size or budget appropriations.

32 However, any items included in the 1972-1973 agreements between  
33 any employer school corporation and the employee organization shall  
34 continue to be bargainable.

35 **(b) A school employer shall discuss with the exclusive**  
36 **representative of noncertificated employees and may, but is not**  
37 **required to:**

- 38 **(1) bargain collectively concerning;**
- 39 **(2) negotiate or enter into impasse procedures regarding; or**
- 40 **(3) enter into a written contract concerning;**

41 **working conditions, other than those provided in section 4 of this**  
42 **chapter, and the selection, assignment, or promotion of personnel.**

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1 Any items included in the 2003-2004 agreements between an  
2 employer school corporation and an employee organization  
3 continue to be bargainable.

4 ~~(b)~~ (c) Nothing shall prevent a superintendent or ~~his~~ the  
5 superintendent's designee from making recommendations to the  
6 school employer.

7 ~~(c)~~ (d) This chapter may not be construed to limit the rights of the  
8 school employer and the exclusive representative to mutually agree to  
9 the matters authorized under IC 20-6.1-4-14.5.

10 SECTION 4. IC 20-17 IS ADDED TO THE INDIANA CODE AS  
11 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
12 2005]:

13 ARTICLE 17. EMPLOYMENT PROTECTION FOR  
14 EDUCATIONAL EMPLOYEES

15 Chapter 1. Definitions

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

18 Sec. 2. "Board" refers to the Indiana education employment  
19 relations board established by IC 20-7.5-1-9.

20 Sec. 3. "Classification seniority" means the length of the most  
21 recent continuous service in an employee's classification with a  
22 single employer.

23 Sec. 4. "Employee" refers to a noncertificated employee (as  
24 defined in IC 20-7.5-1-2(g)) of a school corporation.

25 Sec. 5. "Employer" means a school employer (as defined in  
26 IC 20-7.5-1-2(c)).

27 Sec. 6. "Just cause", as the term pertains to the discipline of  
28 employees, includes any of the following:

- 29 (1) Falsification of an employment application to obtain
- 30 employment through subterfuge.
- 31 (2) Knowing violation of a reasonable and uniformly enforced
- 32 rule of an employer.
- 33 (3) Unsatisfactory attendance, if the employee is unable to
- 34 show cause for the employee's absences or tardiness.
- 35 (4) Damaging the employer's property through willful
- 36 negligence.
- 37 (5) Refusing to obey lawful instructions.
- 38 (6) Reporting to work under the influence of alcohol in a state
- 39 of intoxication or a controlled substance (as set forth in
- 40 IC 35-48-2), consuming alcohol or a controlled substance on
- 41 the employer's premises or while operating the employer's
- 42 vehicles, or committing a disqualifying offense under

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- 1           **IC 9-24-6-8 while driving a commercial motor vehicle.**
- 2           **(7) Conduct endangering the safety of the employee or**
- 3           **another employee.**
- 4           **(8) Breach of a duty in connection with the employee's**
- 5           **employment that is reasonably owed the employer by an**
- 6           **employee.**
- 7           **(9) Conduct endangering the safety of students.**
- 8           **(10) Commission of child molesting (IC 35-42-4-3), child**
- 9           **exploitation (IC 35-42-4-4(b)), vicarious sexual gratification**
- 10           **(IC 35-42-4-5), child solicitation (IC 35-42-4-6), child**
- 11           **seduction (IC 35-42-4-7(h)), or sexual misconduct with a**
- 12           **minor (IC 35-42-4-9).**

13           **Sec. 7. "School corporation" has the meaning set forth in**  
 14           **IC 20-7.5-1-2(a).**

15           **Chapter 2. Classification**

16           **Sec. 1. An employee may not attain classification seniority until**  
 17           **completion of a probationary period of thirty (30) days, at which**  
 18           **time classification seniority relates back to the employee's date of**  
 19           **hire.**

20           **Sec. 2. If a permanent or prolonged reduction within any**  
 21           **classification of employees is determined necessary by an**  
 22           **employer, classification seniority shall be the determining factor in**  
 23           **making the reduction and any subsequent recall from reduction.**

24           **Chapter 3. Representation**

25           **Sec. 1. An employee is entitled to representation by an employee**  
 26           **organization or legal counsel, or both, during any proceeding**  
 27           **under this article.**

28           **Chapter 4. Discipline and Discharge of Employees**

29           **Sec. 1. An employee may be disciplined before suspension or**  
 30           **discharge only for just cause as enumerated in IC 20-17-1-6(1)**  
 31           **through IC 20-17-1-6(8) and must be:**

- 32           **(1) informed in writing of all details of any offense or**
- 33           **violation:**
  - 34           **(A) with which the employee is charged; and**
  - 35           **(B) that would constitute just cause for discipline; and**
- 36           **(2) given a reasonable time to correct the behavior**
- 37           **constituting the identified offense or violation described in**
- 38           **subdivision (1).**

39           **Sec. 2. A discharge may not take effect unless the employer, at**  
 40           **least ten (10) days before the effective date of the discharge:**

- 41           **(1) provides the employee with written notice of all offenses or**
- 42           **violations for which the employee is being discharged; and**

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1 (2) affords the employee an opportunity to request, in writing,  
2 a hearing before an impartial hearing examiner under  
3 IC 20-17-5.

4 Sec. 3. A request for a hearing under IC 20-17-5 must be made  
5 by an employee before the effective date of the discharge. If the  
6 employee fails to request the hearing, the employee is considered  
7 discharged on the effective date of the employer's written notice.

8 Sec. 4. If an employee requests a hearing under IC 20-17-5, the  
9 employer may suspend the employee with pay on the effective date  
10 of discharge, pending the determination of the hearing examiner.

11 Sec. 5. The employer may suspend, with pay and without notice,  
12 an employee pending discharge if:

- 13 (1) the employer reasonably believes the nature of the
- 14 employee's misconduct warrants immediate suspension; or
- 15 (2) the suspension is for just cause as enumerated in
- 16 IC 20-17-1-6(9) through IC 20-17-1-6(10).

17 In this instance, the employer shall afford to the employee the  
18 formal procedures described in section 1(1) of this chapter.

19 Chapter 5. Hearings

20 Sec. 1. Upon receipt of a written request by an employee subject  
21 to discharge as described in IC 20-17-4-2, the employer shall  
22 request the board to appoint a hearing examiner to preside over  
23 the hearing.

24 Sec. 2. A hearing examiner has the following duties:

- 25 (1) To give the notice required in section 3 of this chapter.
- 26 (2) To schedule the hearing at a specified date, time, and
- 27 location, with the authority to postpone the date or time or
- 28 change the location for good cause.
- 29 (3) To take charge of the hearing in accordance with
- 30 IC 4-21.5-3-25 and IC 4-21.5-3-26, subject to this chapter.
- 31 (4) To render a written decision in the matter, including
- 32 findings of fact and conclusions of law, that is:
  - 33 (A) binding on all parties as of the date of the decision; and
  - 34 (B) contains a notice of the right to seek review of the
  - 35 decision before the board.
- 36 (5) To file the original of the hearing examiner's findings,
- 37 conclusions, decision, and record in the case with the board.
- 38 (6) To cause a copy of the hearing examiner's findings,
- 39 conclusions, and decision to be served on each of the parties.

40 Sec. 3. The following constitutes the hearing procedure by which  
41 an employee may be discharged:

- 42 (1) The hearing examiner shall send notice to the parties of

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1 the date, time, and location set for the hearing not more than  
2 five (5) days after the hearing examiner's appointment by the  
3 board.

4 (2) The hearing examiner shall conduct the hearing under  
5 IC 4-21.5-3-25 and IC 4-21.5-3-26.

6 Sec. 4. A party to the hearing who is aggrieved by the decision  
7 of the hearing examiner may appeal the decision to the board as  
8 follows:

9 (1) Not more than twenty (20) days after the date the hearing  
10 examiner files the hearing examiner's findings, conclusions,  
11 and decision with the board, the party aggrieved by the  
12 decision may file a petition for review of the hearing  
13 examiner's findings, conclusions, or decision. The filing and  
14 pendency of a petition for review shall operate to stay the  
15 decision unless otherwise ordered by the board.

16 (2) The petition for review must be in writing and be filed  
17 with the board. At the same time, a copy of the petition for  
18 review must also be filed with the opposing party. The petition  
19 must specifically set forth the reasons for the objections of the  
20 aggrieved party to the decision of the hearing examiner.

21 (3) Not more than ten (10) days after the date on which the  
22 petition for review is filed with the board, a party to the  
23 proceeding before the hearing officer may file a reply to the  
24 petition for review with the board, with simultaneous service  
25 upon the opposing party. The reply must specifically set forth  
26 the party's reply to the objections of the aggrieved party to  
27 the decision of the hearing examiner.

28 (4) Not more than fifteen (15) days after the filing of a reply  
29 to the petition for review, if any, the board shall render a final  
30 decision consisting of the board's findings of fact, conclusions  
31 of law, and final order in the matter.

32 (5) A party to the board's final decision may seek judicial  
33 review under IC 4-21.5-5.

34 Sec. 5. The board may enforce the board's orders and take other  
35 appropriate action, including reinstating an employee with back  
36 pay.

37 Chapter 6. Construction

38 Sec. 1. This article may not be construed to limit the application  
39 of an agreement negotiated between:

- 40 (1) an employer; and  
41 (2) the recognized representative of employees with a  
42 particular employer.

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