

COLLECTIVE BARGAINING for STUDENT ACHIEVEMENT

Collective Bargaining, Goal Setting and Bargaining for Student Achievement

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I.

WHAT MUST A SCHOOL COMMITTEE MEMBER KNOW ABOUT COLLECTIVE BARGAINING AND LABOR RELATIONS

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Collective Bargaining is Both Law and Art

☐ BARGAINING AS LAW

■ Chapter 150E of MA General Laws

- ☐ Defines legal parameters and scope of collective bargaining.
- ☐ Heavily directed by technical requirements.
- ☐ Greater Management Authority for Underperforming Districts
- ☐ Greater Management Authority for Health Insurance Bargaining
- ☐ Certain Elements of Educator Evaluation Included

■ Chapter 71, Sec. 38 applies to bargaining on Educator Evaluation

- ☐ Addresses bargaining on standards
- ☐ Uses expedited interest based arbitration

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“Collective Bargaining” Includes.....

- ☐ Negotiations and Approval of Collective Bargaining Agreement(s) with Bargaining Unit(s)
 - I.E., teachers, paraprofessionals, custodians, administrative personnel, etc.
- ☐ Contract Implementation
- ☐ Mediation and Arbitration
 - Addressing Grievances

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Collective Bargaining in Practice

- ☐ Fine in Detail/Broad in Vision
 - Demands Knowledge of Law
 - Experience with Process
 - Interpersonal Skill
 - Psychology
 - Ingenuity, Judgment, Teamwork, and Timing
 - AND a Whole Spectrum of Policy and Planning Skills

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Collective Bargaining as an Instrument of Policy

- ☐ Contracts are Policy Documents.
 - May Incorporate “Past Practices” and Traditions.
 - Involve Important Elements of Policy:
 - ☐ Wage Levels and Practices
 - ☐ Benefits
 - ☐ Transfer Procedures
 - ☐ Criteria for Educator Evaluation
 - ☐ Commitment to Educator Practice Improvement and Professional Development
 - ☐ Impact on Goals and Strategic Plans

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Collective Bargaining as a Strategic Tool

- ☐ District Goals May Be Linked to Bargaining.
 - Roles of Educators May Be Defined
 - Need for Consensus to Support Goals
 - Financial Parameters are Impacted
 - Morale and Climate Linked to Compensation, Benefits, and Other Elements of Bargaining.
 - ☐ Including Educator Evaluation

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Collective Bargaining as a Shared Responsibility

- ☐ School Committee is Employer of Record
 - Usually relies on expertise of Superintendent to plan and negotiate.
 - May not undermine ability of Superintendent to manage district.
- ☐ Superintendent Implements the Agreements
 - ☐ School Committee Ensures that Contract is Followed

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WHAT IS COLLECTIVE BARGAINING ?

- ☐ Mutual obligation of employers' and employee's representatives to meet:
 - At reasonable times
 - Confer in good faith with respect to:
 - ☐ Wages, hours, standards of productivity and performance
 - ☐ Other terms and conditions of employment
 - ☐ Negotiation of agreement
 - ☐ Questions rising under agreement (e.g., grievances)

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EDUCATION REFORM AND COLLECTIVE BARGAINING

- ☐ School committees are “employer” under the law.
- ☐ School committees have extensive responsibilities.
- ☐ You’re the employer, not the mediator.
 - You and your superintendent & principals are on the same side.
 - ☐ Avoid language that impedes the administration in personnel matters.
 - Don’t fall into the mediator’s role

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How is Bargaining Conducted: Option 1: Traditional Bargaining

- ☐ Parties announce their intent to negotiate or renegotiate a contract.
- ☐ Parties prepare their positions (known as “demands.”
- ☐ Negotiations take place until issues are resolved and an agreement is approved by both sides.

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Traditional Bargaining - 2

- ☐ Negotiations are usually conducted under formal rules and procedures.
- ☐ Negotiations can be contentious.
- ☐ Often reach “impasse” and call for a mediator or a fact finder.

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ALTERNATIVE BARGAINING STRATEGY: Collaborative (Interest Based) Bargaining

- ☐ Entire school committee is involved
 - However, not all members are at the table because it is not always advisable to have a quorum at the table.
- ☐ Requires skilled facilitator
- ☐ Search to identification of problems so you can solve them rather than focus exclusively on money and language changes
 - Then focus on how to solve the problem.
 - Allows more brainstorming without making a formal offer

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COLLABORATIVE BARGAINING - 2

- ☐ Attorneys play a less active role
 - Often not at the table
 - Allows problem solving rather than legal wrangling on fine language
- ☐ Everyone is encouraged to speak
- ☐ Works best when economic issues are not the most critical issues

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SHOULD YOU BE AT THE TABLE ?

- ☐ Decision Must Be Made Locally:
 - Consider whether to use traditional or collaborative bargaining
 - You can use administration and experts, including labor counsel
 - ☐ Expertise is a major factor
 - The other side has experts with them
 - You are more vulnerable to political attack than experts you retain.

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KEY STEPS FOR SCHOOL COMMITTEES: First Phase

- ☐ Review your bargaining history
- ☐ Assess where you stand academically, fiscally, and politically.
 - What are your principal goals for students, schools and district?
 - What are your financial resources to pay for achievement of your goals?
 - What external factors are in play?
- ☐ Prepare your proposals.

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KEY STEPS FOR SCHOOL COMMITTEES: Step 2

- ☐ Identify your principal negotiator
- ☐ Identify your spokesperson to communicate with media and the community.
- ☐ Keep negotiations confidential
- ☐ No surprises – be clear about your financial condition

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MUST PARTIES AGREE ?

☐ **NO**

- BUT SIDES MUST BARGAIN IN GOOD FAITH
- IF AGREEMENT IS REACHED, IT MUST BE PUT IN WRITING AND SIGNED BY BOTH PARTIES

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WHAT HAPPENS IF AN AGREEMENT IS NOT REACHED WITH THE UNION ?

- ☐ This is called "impasse"
- ☐ Specific steps follow
 - Mediation
 - Fact finding
 - Interest based arbitration
 - ☐ Not always best strategy.
 - ☐ School committee should seek advise of counsel.

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IMPASSE STEPS

- ☐ Parties may ask the state to intervene agency for conciliation and arbitration.

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MEDIATION

- ☐ After reasonable negotiation period:
 - Board of conciliation and arbitration investigates to determine if
 - ☐ Parties have negotiated for reasonable period of time
 - ☐ Impasse exists.
- ☐ If impasse exists, a mediator may be brought in.

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MEDIATORS

- ❑ Both parties may agree to proceed to mediation on their own.
 - **Not always a good strategy**

Note: the mediator may be impartial based on the facts, but the mediator doesn't have to live with the outcome!

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IF MEDIATION FAILS

- ❑ Mediator will ask board of conciliation and arbitration to certify the case for "fact-finding" when either or both parties request it.

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FACT-FINDING

- ❑ Fact-finder will study and submit report to parties and the board.
- ❑ May make non-binding recommendations.
- ❑ If impasse continues for 10 more days, recommendations can be made public.

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A WORD ABOUT THE RHETORIC OF COLLECTIVE BARGAINING

☐ OFTEN HEARD CLICHES:

- **The school committee is not bargaining in good faith.**
- **Morale in this school system has never been lower**
- **We do not feel respected as educators.**
- **We're working without a contract!**

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"GOOD FAITH BARGAINING"

Just because:

- you refuse to give in to union demands, or
- the contract expiration date has passed, or
- you have not approved a salary increase

It does not necessarily mean you are failing to bargain in good faith.

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GOOD FAITH BARGAINING MAY MEAN

- ☐ Meeting at reasonable times and places.
- ☐ Devoting reasonable time to negotiating.
- ☐ Preparing for negotiations and come to the table with proposals and reactions to the other side's proposals after reading them.
- ☐ Providing information necessary to intelligent bargaining.
- ☐ Bargaining reasonably.

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GOOD FAITH BARGAINING -2

- ☐ Maintaining prior agreements in later bargaining stages.
- ☐ Reducing all agreements to writing.
- ☐ Discussing all issues in detail.
- ☐ Accepting the employees' designated agent as exclusive negotiator
- ☐ Not bypassing the authority of the union's representative by appealing directly to union membership.
- ☐ Avoiding threats

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ANOTHER TECHNIQUE FOR NEGOTIATIONS: Interest Based Bargaining

- ☐ Alternative Strategy to Traditional Bargaining
- ☐ Less Adversarial
- ☐ Focuses on Mutual Concerns and Goals
- ☐ Less Reliance on Lawyers but Uses Facilitators

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Interest Based Bargaining: The Process

1. Describe the issues in problem statements.
2. Share all relevant information on the issue
3. Discuss both sides' shared and separate interests.
4. Brainstorm a variety of options to resolve issues.
5. Narrow options with jointly developed criteria or standards
6. Use consensus to agree on the best options.

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STRIKES

- ☐ Public employees may not:
 - Strike
 - Withhold services
- ☐ Public employees and unions may not:
 - Encourage or condone any public employee strike

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LEGAL DEFINITION STRIKE

- ☐ *"A public employee's refusal, in concerted action with others, to:*
- ☐ *report for duty, or*
- ☐ *his willful absence from his position, or*
- ☐ *his stoppage of work, or*

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DEFINITION OF STRIKE - 2

- ☐ *"his abstinence in whole or in part from the performance of the duties of employment as established by an existing collective bargaining agreement or in a collective bargaining agreement expiring immediately preceding the alleged strike, or ...*

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DEFINITION OF A STRIKE -3

- ☐ *"in the absence of any such agreement, by written personnel policies in effect at least one year prior to the alleged strike; provided that nothing herein shall limit or impair the right of any public employee to express or communicate a complaint or opinion on any matter related to conditions of employment."*

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WHEN THE PUBLIC EMPLOYER BELIEVES A STRIKE IS TAKING PLACE

- ☐ Complaint filed with Department of Labor Relations
- ☐ Commission investigates
 - **Employer must prove strike exists or is about to occur**
- ☐ If commission believe strike exists, it may begin proceedings in superior court.

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UPDATE FOR 2013-2014 ETHICS LAW AND LABOR RELATIONS

- ☐ School committee members should be careful to avoid conflicts of interest when immediate family members are members of a particular bargaining unit.
 - Do not participate in bargaining

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UPDATE FOR 2013-14: HEALTH INSURANCE

- ☐ Stronger Management Authority to Modify Health Insurance Benefits.
 - Opportunity to Control costs.
 - Subject to expedited bargaining and demonstration that alternatives are effective cost saving strategies.
- Regional School Committees are the sole employer in a regional district.

BARGAINING EDUCATOR EVALUATIONS

- ☐ New Requirements in Effect for All Districts to be Integrated into Labor Agreements by
 - 2012-2013 for districts in sanction status (Level IV and "Early Adopters")
 - FY 2013 (for Race to the Top Districts)
 - FY 2014 (for all other districts).

Educator Evaluation: What is New

- ☐ Consistent standards for evaluation implemented statewide.
- ☐ Steps in evaluation are more prescriptive
- ☐ Multiple measures of student achievement to evaluate educators.
- ☐ Bargaining may take place on major provisions of the law and regulations.
- ☐ Uses of evaluation process and degree of inclusion of various measures for overall evaluation rating are bargainable.

Bargaining over Evaluation

- Two separate statutes define how bargaining proceeds:
 - Ch. 71, Sec. 38 defines how negotiations and expedited bargaining can take place over performance standards.
 - Ch. 150E defines how other elements of bargaining take place. Expedited bargaining is not included in the same way as for standards.

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Before You Begin

- DESE has issued model language for bargaining educator evaluation.
- You may agree to use model language or try to bargain language more to your liking.
- Expert guidance is essential
 - Your legal counsel
 - Your superintendent

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Chapter 71 vs. Chapter 150E

- Ch. 71, Sec. 38
 - Performance Standards (Could be subject to interest arbitration upon request of union or school committee.)
- Chapter 150E
 - Evaluation Procedures for determining if educators are meeting those standards. (Not subject to interest arbitration.)

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Bargaining the Evaluation Language: Setting Standards

☐ Chapter 71, Sec. 38

- School Committee sets performance standards upon recommendation of the superintendent.
 - ☐ Must be done in public where public comments may be heard.
- School Committee and Teachers Union bargain on performance standards.
- Failure to reach agreement may lead to expedited interest Bargaining.

Bargaining Standards (2) Expediting Interest Arbitration

- ☐ If no agreement is reached within a "reasonable" period*, petition for expedited bargaining is filed, an arbitration will take place.
 - Arbitrator must base decision on :
 - ☐ Advancing goals of encouraging innovation in teaching.
 - ☐ Holding teachers accountable for improving student performance.

*There is precedent for six bargaining sessions to be considered "reasonable."

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What are Standards and Indicators that Must be Developed ? (CH 71, Sec. 38)

- ☐ Standards (Educators have 4)
 1. Curriculum, Planning and Assessment
 2. Teaching All Students
 3. Family and Community Engagement
 4. Professional Culture

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All standards have several Indicators to define them further.

- ❑ For every Standard there may be several Indicators that are prescribed.
- ❑ For every Indicator, there may be several "Elements" defining them further that may be adopted or adapted, or revised by district as part of Ch 71, Sec. 38 bargaining.

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Standards, Indicators, Elements & Descriptors

SAMPLE STANDARD: Promotes High Quality Learning
Teacher will promote learning with high quality instruction.

SAMPLE INDICATOR: Knows Subject Matter/How Kids Learn
Knows subject matter, how children learn, etc.

SAMPLE ELEMENT: Knows Subject matter
Subject Matter Knowledge

SAMPLE DESCRIPTOR:
The teacher demonstrates subject matter and pedagogy; engages all students; enables them to synthesize complex knowledge, and models this for students

Standards and Indicators of Effective Teaching Practice

I. Curriculum, Planning, & Assessment	II. Teaching All Students	III. Family & Community Engagement	IV. Professional Culture
A. Curriculum and Planning <ul style="list-style-type: none"> i. Subject Matter Knowledge ii. Child and Adolescent Development iii. Rigorous Standards-Based Unit Design iv. Well-Structured Lessons B. Assessment <ul style="list-style-type: none"> i. Variety of Assessment Methods ii. Adjustments to Practice C. Analysis <ul style="list-style-type: none"> i. Analysis and Conclusions ii. Sharing Conclusions with Colleagues iii. Sharing Conclusions with Students 	A. Instruction <ul style="list-style-type: none"> i. Quality and Effort of Work ii. Student Engagement iii. Meeting Diverse Needs B. Learning Environment <ul style="list-style-type: none"> i. Safe Learning Environment ii. Collaborative Learning Environment iii. Student Motivation C. Cultural Proficiency <ul style="list-style-type: none"> i. Respects Differences ii. Maintains Respectful Environment D. Expectations <ul style="list-style-type: none"> i. Clear Expectations ii. High Expectations iii. Access to Knowledge 	A. Engagement <ul style="list-style-type: none"> i. Parent/Family Engagement B. Collaboration <ul style="list-style-type: none"> i. Learning Expectations ii. Curriculum Support C. Communication <ul style="list-style-type: none"> i. Two-Way Communication ii. Culturally Proficient Communication 	A. Reflection <ul style="list-style-type: none"> i. Reflective Practice ii. Goal Setting B. Professional Growth <ul style="list-style-type: none"> i. Professional Learning and Growth C. Collaboration <ul style="list-style-type: none"> i. Professional Collaboration D. Decision-making <ul style="list-style-type: none"> i. Decision-Making E. Shared Responsibility <ul style="list-style-type: none"> i. Shared Responsibility F. Professional Responsibilities <ul style="list-style-type: none"> i. Judgment ii. Reliability and Responsibility

What are critical areas of bargaining?

- ☐ "Elements" for evaluation.
- ☐ Timetable for meeting evaluation process deadlines.
- ☐ Specific evidence of student achievement and performance.
- ☐ Degree to which specific elements of student achievement should be used in overall evaluation.
- ☐ Who may be an evaluator.

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Other Critical Areas of Bargaining

- ☐ How Evaluation will be used
- ☐ Compensation linked to evaluation.
- ☐ "Merit Pay" in various forms.
- ☐ Additional opportunities for successful educators to perform additional work for additional wages.
- ☐ Professional development
- ☐ Use of mentoring or peer evaluation.

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THE EVALUATION PROCESS

Based on DESE Model Contract Language

Model language was developed by DESE in collaboration with MASC, the MTA, and the MA Association of School Superintendents.

What follows are highlights of the process.

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Caution

- ❑ MASC urges caution in negotiating an agreement that is dependent on strict timelines and recommends more flexibility in scheduling conference milestones.

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Key Steps in Evaluation (Model Contract)

1. Annual Orientation for all educators and evaluators.
2. Educator submits a self assessment that must include:
 - One goal to improve educator practice.
 - One goal to improve student learning.
 - Induction and Mentoring (new staff)
 - Complete by 10/1 or within 4 weeks of starting at a school.

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Evaluation Steps – 2 (Model Contract)

3. Complete professional learning activity about self assessment/goal setting by November 1.
4. Observations
 - Year 1: One “announced” and four “unannounced” observations during school year.
 - Years 2/3: Three unannounced observations.

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Evaluation Steps – 3 (Model Contract)

5. Observation for Teachers with Professional Status

- ❑ If “Proficient” or “Exemplary”: One unannounced observation per year.
- ❑ If “Needs Improvement”: Two unannounced observations.
- ❑ If “Unsatisfactory”: One announced and four unannounced observations per year.

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Evaluation Steps – 4 (Model Contract)

6. Unannounced Observations

- May be full or partial period visits
- Feedback provided within 3-5 days.
- If finding of “unsatisfactory” for any standard, follow up visit of at least 30 minutes required within 30 days.

7. Announced Observations

- Post Visit Evaluation within 5 days.

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Evaluation Steps – 5 (Model Contract)

8. Formative Assessment

- May be ongoing throughout the year (but typically mid-year).
- Educator must sign report within 5 days of receipt.

9. Formative Evaluation for 2-Year Self Directed Plans

- High performing educators may be on a 2-year, self directed plan.

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Evaluation Steps – 6 (Model Contract)

10. For educators with professional status whose overall rating is “unsatisfactory.”
- Educator may request meeting to discuss improvement plan. Union representative may be present.
 - Improvement plan may be 30-days to one school year long.

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II.

Bargaining for Student Achievement

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BARGAINING FOR STUDENT ACHIEVEMENT: Step 1

ESTABLISH YOUR GOALS AND IDENTIFY WHICH ONES REQUIRE BARGAINING EXAMPLES

- Organizing School-Based Resources to teachers have time to work together and focus on students.
- Setting spending levels to support student learning.
- Compensation to attract and retain best teachers.
- Using meaningful student achievement measures in educator evaluation.
- Put appropriate people in the best places.
- Effective and targeted professional development.
- Giving local administrators authority to make adjustments to benefit kids.
- Working to obtain trust of the community to make most productive use of education dollars.

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BARGAINING FOR STUDENT ACHIEVEMENT: Step 2-a

EXAMINE STRATEGIC OPTIONS THAT CAN TRANSLATE INTO BARGAINING STRATEGIES

- ☐ **Rethinking school time issues, staffing patterns, and organization.**
 - Restructure school start time to incorporate common planning time for teachers.
 - Schedule time for weekly professional development and team planning activities.
 - Rethink student instructional time to focus on academics (i.e., longer blocks for literacy and math)
 - Integrate academic goals throughout the day in all subjects.
 - Provide extended learning time such as before- and after-school.
 - Reorganize grades to focus on core academic subjects (including the "middle school thing")
 - Rethink staffing and schedules to create smaller group sizes and reduced teacher loads in academic subjects.
 - Create smaller class sizes strategically such as reading or in key grades.
 - Look at school structuring reform including Innovation Schools.

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BARGAINING FOR STUDENT ACHIEVEMENT: Step 2-b

- 1. Bargain an Extended Day and Year**
 - Additional time on school day
 - Additional days for professional development or classroom instruction
- 2. Rethink District Spending** to Support Standards Based Reform and to Identify Needed Savings or Reallocations
- 3. Examine compensation**, including teacher salaries, to attract, develop and retain accomplished academic teachers.
- 4. Re-examine Teacher Transfer, Layoff and Bumping Rights** and Processes
- 5. Empower School-Based Administrators** and Resource Usage
 - Increase school's ability to control resources.
 - Local flexibility on organizing staff, time and money
 - Consolidate resources from various programs to support school transformation.
- 6. Review Teacher Evaluation Tool** and Process
 - ☐ Relationship to Student Achievement
 - ☐ Requirements for Truly Effective Practices (i.e., Good Prof. Development)

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CRITICAL BARGAINING ISSUES: Most Common

- ☐ **Most Frequent Sources of Gridlock:**
 - Salary Scale Adjustments
 - Step and Lane Adjustments
 - Extra Compensation for Additional Work
 - Cash Value Benefits
 - Benefits Buy-Back
 - Alternative Benefit Structure (i.e., Disability Coverage vs. Unlimited Sick Leave)
 - Health Insurance
 - Educator Assignments
 - Evaluation Process

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Critical Bargaining Issue

- ☐ Teacher Time
 - Organizing of Teaching Time
 - Planning Time
 - Collaborative Time
 - School Scheduling
- ☐ Staff Assignment
 - Transfer, Bumping, Reassignment
- ☐ Control over Staff Organization, Time and Money

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CRITICAL BARGAINING ISSUES

- ☐ Grievance Process and Grievance Appeals, Arbitration
- ☐ School Day and Year
- ☐ Flexibility of Staffing, Use of Paraprofessionals, Variable Criteria
- ☐ Privatizing of Services
- ☐ Class Size

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