

**IC 16-33**

**ARTICLE 33. SPECIAL INSTITUTIONS**

**IC 16-33-1**

**Repealed**

*(Repealed by P.L.69-1999, SEC.12.)*

**IC 16-33-2**

**Repealed**

*(Repealed by P.L.69-1999, SEC.12.)*

### **IC 16-33-3**

#### **Chapter 3. Silvercrest Children's Development Center**

### **IC 16-33-3-1**

#### **Center defined**

Sec. 1. As used in this chapter, "center" refers to the Silvercrest children's development center.

*As added by P.L.2-1993, SEC.16.*

### **IC 16-33-3-2**

#### **Establishment**

Sec. 2. The Silvercrest children's development center is established as a state center.

*As added by P.L.2-1993, SEC.16.*

### **IC 16-33-3-3**

#### **Care provided**

Sec. 3. The center shall provide for the educational diagnosis, evaluation, assessment, short term remediation, referral, and care of children who may benefit from such service, but who, because of serious disabling conditions, cannot make satisfactory progress in the programs of public schools or special institutions of the state. The provision of services shall be for the purpose of properly referring these children to more appropriate programs operated by other agencies or institutions and providing reassessment of these children as indicated.

*As added by P.L.2-1993, SEC.16. Amended by P.L.23-1993, SEC.73; P.L.142-1995, SEC.14.*

### **IC 16-33-3-4**

#### **Administration**

Sec. 4. The state department shall administer the center. The state health commissioner, subject to IC 20-35-2, has complete administrative control and responsibility for the center.

*As added by P.L.2-1993, SEC.16. Amended by P.L.1-2005, SEC.144.*

### **IC 16-33-3-5**

#### **Programs of center**

Sec. 5. The center shall provide the following:

- (1) Educational diagnosis, needs assessment, evaluation, short term remediation, reassessment, referral, and follow-up, in cooperation with other agencies or institutions, necessary to assure continuity of services and proper placement.
- (2) Short term training and retraining allowable within the confines of the client's stay to permit the client to achieve maximum potential to benefit from the services of the receiving agency or institution.
- (3) Reassessment of clients whose behavioral needs, family

structure, or services available at a receiving agency or institution change to the extent that the original assessment of the client's needs are no longer descriptive or useful to the client, the client's family, or the receiving agency or institution.

*As added by P.L.2-1993, SEC.16.*

#### **IC 16-33-3-6**

##### **Director; appointment and qualifications**

Sec. 6. (a) The director of the center is responsible for the immediate supervision of the center.

(b) The state health commissioner shall appoint the director of the center. The director of the center must possess the following qualifications:

- (1) The director must possess the appropriate knowledge, skill, and ability in education or rehabilitation.
- (2) The director must have experience and association with training programs for persons with multiple disabilities.
- (3) The director must have a master's degree or higher degree.
- (4) The director must be competent and qualified to provide the administrative services essential to the achievement of the center's intended goals.

*As added by P.L.2-1993, SEC.16. Amended by P.L.23-1993, SEC.74.*

#### **IC 16-33-3-7**

##### **Director; powers and duties**

Sec. 7. (a) The director of the center, subject to the approval of the state health commissioner, has complete charge and management of the center and is charged with the direction of the development program for the clients in attendance.

(b) The director of the center is the chief appointing authority for all employees necessary to properly conduct and operate the center.

*As added by P.L.2-1993, SEC.16.*

#### **IC 16-33-3-8**

##### **Clients; qualifications**

Sec. 8. Subject to the review and approval of the department of education and the state health commissioner or the commissioner's designee, the director of the center shall receive as clients in the center children with multiple disabilities who meet the following conditions:

- (1) Are expected to benefit from residence in the center as part of an individualized education program (as defined in IC 20-18-2-9).
- (2) Are residents of Indiana.
- (3) Possess at least two (2) major disabling conditions.
- (4) Are less than twenty-two (22) years of age.
- (5) Whose admissions have been approved by the department of education in accordance with the procedures implementing

IC 20-35-6-2.

*As added by P.L.2-1993, SEC.16. Amended by P.L.23-1993, SEC.75; P.L.142-1995, SEC.15; P.L.291-2001, SEC.220; P.L.1-2005, SEC.145.*

### **IC 16-33-3-8.5**

#### **Placement review committee**

Sec. 8.5. (a) A placement review committee for the center is established. The committee consists of one (1) representative of each of the following:

- (1) The office of the secretary of family and social services.
- (2) The state department.
- (3) The superintendent of public instruction.

(b) The placement review committee shall meet on a quarterly basis to review the following:

- (1) Applications to the center denied through the process described in section 8 of this chapter.
- (2) All instances of dismissal from the center for reasons other than graduation, voluntary transition to another educational facility, or voluntary departure from the center.

(c) The director shall serve as an advisor to the placement review committee. The director shall provide the placement review committee with information and justification for all application denials and dismissals under review.

(d) The placement review committee may recommend that application denials or dismissals be reconsidered.

*As added by P.L.55-1997, SEC.6. Amended by P.L.253-1997(ss), SEC.17.*

### **IC 16-33-3-9**

#### **Duties of parents and center to provide for child's care**

Sec. 9. (a) The center shall provide tuition, board, room, laundry, and ordinary medical attention, including emergencies.

(b) The parents, guardian, or other persons shall provide medical, optical, and dental care involving special medication or prostheses.

(c) When a client is properly admitted to the center, the client's parents, guardian, responsible relative, or other person shall suitably provide the client with clothing at the time of the client's entrance into the center and during the client's stay at the center.

(d) The client's parent or guardian shall bear the cost of transportation not required by the client's individualized education program (as defined by IC 20-18-2-9). The school corporation in which the client has legal settlement shall bear the cost of transportation required by the client's individualized education program under IC 20-35-8-2.

(e) The client's parents, guardian, or responsible relative or other person shall provide incidental expense money needed by the client.

*As added by P.L.2-1993, SEC.16. Amended by P.L.1-2005, SEC.146.*

**IC 16-33-3-10****Parents of child in center unable to pay for costs for services; payment by county**

Sec. 10. Whenever the circuit court, superior court, or probate court having jurisdiction finds, upon application by the county office of the division of family resources, that the parent or guardian of a client placed in the center is unable to meet the costs that the parent or guardian is required to pay for the services of the center, the court shall order payment of the costs from the county general fund.

*As added by P.L.2-1993, SEC.16. Amended by P.L.4-1993, SEC.236; P.L.5-1993, SEC.249; P.L.146-2008, SEC.436; P.L.44-2009, SEC.31; P.L.84-2016, SEC.91.*

**IC 16-33-3-11****Gifts, legacies, devises, and conveyances**

Sec. 11. The director, subject to IC 4-24-3, may receive, for the use of the center, gifts, legacies, devises, and conveyances of real and personal property that may be made, given, or granted to or for the center or in the center's name.

*As added by P.L.2-1993, SEC.16.*

## **IC 16-33-4**

### **Chapter 4. Indiana Soldiers' and Sailors' Children's Home**

#### **IC 16-33-4-1**

##### **Armed forces of the United States defined**

Sec. 1. As used in this chapter, "armed forces of the United States" means the forces and components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

*As added by P.L.2-1993, SEC.16.*

#### **IC 16-33-4-2**

##### **County of residence of the child defined**

Sec. 2. As used in this chapter, the "county of residence of the child":

- (1) is the county of residence of the responsible parent; or
- (2) if there is no responsible parent, is the county within which the guardianship or wardship is established by appointment of the court.

*As added by P.L.2-1993, SEC.16.*

#### **IC 16-33-4-3**

##### **Home defined**

Sec. 3. As used in this chapter, "home" refers to the Indiana Soldiers' and Sailors' Children's Home established by this chapter.

*As added by P.L.2-1993, SEC.16.*

#### **IC 16-33-4-4**

##### **Member of the armed forces defined**

Sec. 4. As used in this chapter, "member of the armed forces" means a person who:

- (1) is on active duty in the armed forces of the United States;
- (2) has:
  - (A) served on active duty in the armed forces of the United States during any of its wars, including the Korean War, for not less than ninety (90) days; or
  - (B) while on active duty in the armed forces of the United States:
    - (i) suffered a service connected disability necessitating discharge; or
    - (ii) died in the line of duty;

before the completion of ninety (90) days of service if the person has received a discharge or certificate of service other than dishonorable from the armed forces of the United States, or the survivors of the person have received a letter of mourning or certificate of death in case of death in the armed forces of the United States; or

- (3) has:
  - (A) served on active duty in any of the authorized campaigns

or declared emergencies of the United States as evidenced by an award of authorized decorations for service outside the continental limits; and

(B) received a discharge other than dishonorable, or the survivors of the person have received a letter of mourning or certificate of death in the case of death in the armed forces.

*As added by P.L.2-1993, SEC.16.*

#### **IC 16-33-4-5**

##### **Establishment**

Sec. 5. The Indiana Soldiers' and Sailors' Children's Home is established as a state residential school and home for the care of Indiana children who are in need of residential care and would qualify for educational service. Preference shall be given to the admission of children of members of the armed forces and children of families of veterans who meet these admission criteria. A child who requires residential placement in a secure facility (as defined in IC 31-9-2-114), a juvenile detention facility, or a detention center for the safety of the child or others may not be placed at the home.

*As added by P.L.2-1993, SEC.16. Amended by P.L.142-1995, SEC.16; P.L.55-1997, SEC.7.*

#### **IC 16-33-4-6**

##### **Administration**

Sec. 6. The state department shall administer the home. The state health commissioner has administrative control and responsibility for the home.

*As added by P.L.2-1993, SEC.16.*

#### **IC 16-33-4-7**

##### **Superintendent; appointment; qualifications**

Sec. 7. (a) Except as provided in subsection (b), the superintendent of the home shall be appointed in the manner prescribed by law and must meet all of the following conditions:

- (1) Be a teacher licensed by the state or have at least a baccalaureate degree from an accredited college or university in a field related to education or child growth and development.
- (2) Have experience working with children.
- (3) At the time of appointment, be a resident and citizen of Indiana.
- (4) Have other qualifications as required by the state health commissioner.

(b) When at least two (2) candidates meet the conditions listed in subsection (a), the state health commissioner shall give preference to individuals who have been honorably discharged after service in the armed forces of the United States in appointing a candidate to the position of superintendent of the home.

*As added by P.L.2-1993, SEC.16. Amended by P.L.105-2002, SEC.1.*

**IC 16-33-4-8****Superintendent; powers and duties**

Sec. 8. The superintendent of the home, subject to the approval of the state health commissioner:

- (1) has charge and management of the home;
- (2) shall direct the care, education, and maintenance of the children of the home; and
- (3) is the chief appointing authority for all employees necessary to properly conduct and operate the home.

*As added by P.L.2-1993, SEC.16.*

**IC 16-33-4-9****Education or training of children of home; requirements**

Sec. 9. (a) The children of the home shall be:

- (1) taught and treated in a manner that promotes the children's physical, intellectual, and moral improvement; and
- (2) trained in habits of industry, studiousness, and morality.

(b) The superintendent of the home:

- (1) shall afford to the children of the home literary, art, technical, and industrial education as can reasonably be provided;
- (2) may conduct a school at the home, which must be accredited, or may otherwise arrange for the education of the children in county reorganized schools near the institution; and
- (3) shall make certain that a child attending a county school receives instruction that is not inferior in any respect to the curriculum offered in a school possessing a first class commission from the state.

(c) If a school is maintained at the home, the superintendent shall do the following:

- (1) Cause to be provided the proper educational materials for use in the school.
- (2) Employ the necessary teachers.

(d) A person who teaches in a department of the school must be qualified and properly certified by the Indiana state board of education.

*As added by P.L.2-1993, SEC.16.*

**IC 16-33-4-10****Vocational school; establishment and maintenance on grounds of home; financing**

Sec. 10. (a) The superintendent shall establish and maintain a vocational school on the grounds of the home and maintain suitable facilities in which vocational trades and arts are taught.

(b) The superintendent may utilize donated money or state money without limitation to finance vocational construction projects that are:

- (1) authorized by the budget agency; and

(2) in accordance with designs approved by the public works division of the Indiana department of administration.  
*As added by P.L.2-1993, SEC.16. Amended by P.L.142-1995, SEC.17.*

#### **IC 16-33-4-11**

##### **Admission of children as residents of home; requirements**

Sec. 11. (a) After an adequate investigation as determined by the superintendent of the home or the superintendent's designee, including consideration of appropriateness of placement, and with the approval of the state health commissioner or the commissioner's designee, the superintendent of the home shall receive as a resident in the home a child if the child meets the requirements under subsection (b).

(b) Before the child may be received as a resident in the home under subsection (a) the child must meet the following requirements:

- (1) The parent or parents of the child are Indiana residents immediately before application or the child is physically present in Indiana immediately before application.
- (2) The child is at least three (3) years of age but less than eighteen (18) years of age.
- (3) The child is in need of residential care and education.

(c) If the applications of all children of members of the armed forces have been considered and space is available, the superintendent of the home may, if a child meets the requirements under subsection (b), receive as residents in the home the:

- (1) grandchildren;
- (2) stepchildren;
- (3) brothers;
- (4) sisters;
- (5) nephews; and
- (6) nieces;

of members of the armed forces who are in need of residential care and education.

(d) If the applications of all children eligible for residence under subsections (a) through (c) have been considered and if space is available, the superintendent may accept for residence children referred:

- (1) by the department of child services established by IC 31-25-1-1; or
- (2) by the division of special education established by IC 20-35-2-1;

subject to an adequate investigation as determined by the superintendent of the home or the superintendent's designee, including a consideration of appropriateness of placement, and the approval of the state health commissioner or the commissioner's designee.

*As added by P.L.2-1993, SEC.16. Amended by P.L.142-1995,*

*SEC.18; P.L.55-1997, SEC.8; P.L.253-1997(ss), SEC.18; P.L.105-2002, SEC.2; P.L.1-2005, SEC.147; P.L.145-2006, SEC.136; P.L.1-2007, SEC.135.*

#### **IC 16-33-4-12**

##### **Application for admission to home; requisites**

Sec. 12. (a) An application for admission to the home may be made by a responsible parent, a guardian, a representative of the court, or the department of child services.

(b) If an application is submitted by a person other than a responsible parent or guardian, the superintendent of the home shall cooperate with the department of child services to ensure that an appropriate case study is made upon application and continued throughout the period the child resides at the home.

*As added by P.L.2-1993, SEC.16. Amended by P.L.4-1993, SEC.237; P.L.5-1993, SEC.250; P.L.142-1995, SEC.19; P.L.145-2006, SEC.137; P.L.146-2008, SEC.437.*

#### **IC 16-33-4-13**

##### **Care, control, and training of children; responsibilities**

Sec. 13. (a) The superintendent is responsible for the care, control, and training of children admitted to and living in the home from the day a child is admitted to the home until the child is:

- (1) eighteen (18) years of age; or
- (2) discharged from the home.

(b) The superintendent shall make certain in the case of every child in the home that:

- (1) there is a responsible parent;
- (2) there is a responsible relative; or
- (3) if a responsible parent or relative is not available, the child is a ward of the department of child services from which there is a representative;

who is regularly and frequently concerned with the welfare of the child.

(c) If:

- (1) the parent or parents have been deprived of the custody and control of a child by order of the court; and
- (2) custody has been given by the court to the department of child services;

the wardship shall be retained by the department of child services.

*As added by P.L.2-1993, SEC.16. Amended by P.L.4-1993, SEC.238; P.L.5-1993, SEC.251; P.L.146-2008, SEC.438.*

#### **IC 16-33-4-14**

##### **Placement of child upon admission; removal or discharge of child**

Sec. 14. (a) Either parent, a guardian, a relative, or the department of child services applying for the admission of a child to the home shall, in securing admittance of the child, place the child in the home

for the length of time determined to be in the best interests of the child.

(b) A child shall be returned at any time to the:

- (1) parent or parents;
- (2) relative; or
- (3) department of child services that placed the child in the home;

if removal of the child from the home is applied for upon written application. The superintendent may require not more than thirty (30) days notice when a discharge is requested.

(c) If the superintendent finds that a child does not adjust to institutional living or is not educable, the superintendent:

- (1) may:
  - (A) with the approval of the state health commissioner; and
  - (B) upon proper notification;discharge the child to the applicant placing the child in the home; and
- (2) shall cooperate with the department of child services for further disposition of the case as necessary.

*As added by P.L.2-1993, SEC.16. Amended by P.L.4-1993, SEC.239; P.L.5-1993, SEC.252; P.L.142-1995, SEC.20; P.L.146-2008, SEC.439.*

#### **IC 16-33-4-15**

##### **Removal or other placement of child; approval**

Sec. 15. A child admitted to the home may not be permanently removed from the home and placed elsewhere without the express approval of the:

- (1) parent or parents who;
- (2) guardian who;
- (3) relative who; or
- (4) department of child services that;

applied for admission of the child to the home.

*As added by P.L.2-1993, SEC.16. Amended by P.L.4-1993, SEC.240; P.L.5-1993, SEC.253; P.L.142-1995, SEC.21; P.L.146-2008, SEC.440.*

#### **IC 16-33-4-16**

##### **Visitation**

Sec. 16. Either parent, a guardian, a relative, a representative of the department of child services, or other person approved by the superintendent may visit a child being maintained in the home at times or places the superintendent prescribes.

*As added by P.L.2-1993, SEC.16. Amended by P.L.4-1993, SEC.241; P.L.5-1993, SEC.254; P.L.142-1995, SEC.22; P.L.146-2008, SEC.441.*

#### **IC 16-33-4-17**

**Maintenance charges; liability for payment; procedures**

Sec. 17. (a) Each child, the estate of the child, the parent or parents of the child, or the guardian of the child, individually or collectively, are liable for the payment of the costs of maintenance of the child of up to one hundred percent (100%) of the per capita cost, except as otherwise provided. The cost shall be computed annually by dividing the total annual cost of operation for the fiscal year, exclusive of the cost of education programs, construction, and equipment, by the total child days each year. The maintenance cost shall be referred to as maintenance charges. The charge may not be levied against any of the following:

- (1) The department of child services.
- (2) A county or any person or office, to be derived from county tax sources.
- (3) A child orphaned by reason of the death of the natural parents.

(b) The billing and collection of the maintenance charges as provided for in subsection (a) shall be made by the superintendent of the home based on the per capita cost for the preceding fiscal year. All money collected shall be deposited in a fund to be known as the Indiana soldiers' and sailors' children's home maintenance fund. The fund shall be used by the state health commissioner for the:

- (1) preventative maintenance; and
- (2) repair and rehabilitation;

of buildings of the home that are used for housing, food service, or education of the children of the home.

(c) The superintendent of the home may, with the approval of the state health commissioner, agree to accept payment at a lesser rate than that prescribed in subsection (a). The superintendent of the home shall, in determining whether or not to accept the lesser amount, take into consideration the amount of money that is necessary to maintain or support any member of the family of the child. All agreements to accept a lesser amount are subject to cancellation or modification at any time by the superintendent of the home with the approval of the state health commissioner.

(d) A person who has been issued a statement of amounts due as maintenance charges may petition the superintendent of the home for a release from or modification of the statement and the superintendent shall provide for hearings to be held on the petition. The superintendent of the home may, with the approval of the state health commissioner and after the hearing, cancel or modify the former statement and at any time for due cause may increase the amounts due for maintenance charges to an amount not to exceed the maximum cost as determined under subsection (a).

(e) The superintendent of the home may arrange for the establishment of a graduation or discharge trust account for a child by arranging to accept a lesser rate of maintenance charge. The trust fund must be of sufficient size to provide for immediate expenses

upon graduation or discharge.

(f) The superintendent may make agreements with instrumentalities of the federal government for application of any monetary awards to be applied toward the maintenance charges in a manner that provides a sufficient amount of the periodic award to be deposited in the child's trust account to meet the immediate personal needs of the child and to provide a suitable graduation or discharge allowance. The amount applied toward the settlement of maintenance charges may not exceed the amount specified in subsection (a).

(g) The superintendent of the home may do the following:

(1) Investigate, either with the superintendent's own staff or on a contractual or other basis, the financial condition of each person liable under this chapter.

(2) Make determinations of the ability of:

(A) the estate of the child;

(B) the legal guardian of the child; or

(C) each of the responsible parents of the child;

to pay maintenance charges.

(3) Set a standard as a basis of judgment of ability to pay that shall be recomputed periodically to do the following:

(A) Reflect changes in the cost of living and other pertinent factors.

(B) Provide for unusual and exceptional circumstances in the application of the standard.

(4) Issue to any person liable under this chapter statements of amounts due as maintenance charges, requiring the person to pay monthly, quarterly, or otherwise as may be arranged, an amount not exceeding the maximum cost as determined under this chapter.

*As added by P.L.2-1993, SEC.16. Amended by P.L.4-1993, SEC.242; P.L.5-1993, SEC.255; P.L.142-1995, SEC.23; P.L.145-2006, SEC.138; P.L.146-2008, SEC.442.*

#### **IC 16-33-4-17.5**

#### **Reimbursement for costs of services ordered by juvenile court; nonresident child**

Sec. 17.5. (a) In the case of a child who is:

(1) adjudicated to be a delinquent child or child in need of services by a juvenile court; and

(2) placed by or with the consent of the department of child services in the home;

the department of child services shall reimburse the cost of services provided to the child, including related transportation costs, and any cost incurred by a county where the home is located to transport or detain the child before the child is adjudicated to be a delinquent child or child in need of services.

(b) The department of child services shall reimburse and pay costs under this section.

(c) The department of child services may require the parent or guardian of the child, other than a parent, guardian, or custodian associated with the home, to reimburse the department for an amount paid under this section.

(d) A child who is admitted to the home does not become a resident of the county where the home is located.

(e) When an unemancipated child is released from the home, the department of child services is responsible for transporting the child to the parent or guardian of the child. If a parent or guardian does not exist for an unemancipated child released from the home, the department of child services shall obtain custody of the child.

*As added by P.L.55-1997, SEC.9. Amended by P.L.146-2008, SEC.443.*

#### **IC 16-33-4-18**

##### **Maintenance charges and agreements; enforcement**

Sec. 18. (a) The attorney general shall, upon notification by the superintendent of the home through the state health commissioner, bring suit in the name of the state of Indiana on behalf of the superintendent of the home against the estate of a person failing to make payments as required in this chapter.

(b) If a judgment is obtained under this section, the judgment constitutes a lien against that part of the estate of a person as described in the complaint.

(c) The attorney general may bring suit against the parent or parents or legal guardian of a child for failure to comply with the maintenance agreement established or for failure to make an agreement. Suit may be brought for the amount due the state for the maintenance charges of the child. The court may order the payment of amounts due for maintenance charges for a period of time as the circumstances require. The order may be entered against any or all of the defendants and may be based upon the proportionate ability of each defendant to contribute to the payment of amounts representing maintenance charges. Orders for the payment of money may be enforced by attachment as in contempt proceedings against the persons of the defendants, and in addition as other judgments at law, and costs may be adjudged against and apportioned among the defendants.

*As added by P.L.2-1993, SEC.16.*

#### **IC 16-33-4-19**

##### **Maintenance of home and grounds; cultivation of connected lands; assistance of children**

Sec. 19. (a) The superintendent shall do the following:

(1) Cause the grounds of the home to be:

(A) kept in proper order; and

(B) ornamented with trees, shrubs, and flowers.

(2) Provide and maintain conservatories or greenhouses.

(b) The superintendent:

- (1) may have any suitable land connected with the home cultivated for the use and benefit of the home; and
- (2) shall have the children in the home assist in the work.

*As added by P.L.2-1993, SEC.16.*

#### **IC 16-33-4-20**

##### **Housekeeping, manufacturing and repair of clothing, and other necessary services; assistance of children**

Sec. 20. The superintendent shall have the children in the home assist in the following:

- (1) Housekeeping services of the home.
- (2) Manufacture and repair of the clothing of children.
- (3) The provision of services necessary for the home.

*As added by P.L.2-1993, SEC.16.*

#### **IC 16-33-4-21**

##### **Labor, service, and study prescribed for children; consideration given proper education and training of children**

Sec. 21. In prescribing labor, service, and study for the children of the home, the superintendent shall consider the proper education and training of the children.

*As added by P.L.2-1993, SEC.16.*

#### **IC 16-33-4-22**

##### **Gifts, legacies, devises, and conveyances**

Sec. 22. The superintendent may, subject to IC 4-24-3-2, receive for the use of the home:

- (1) gifts;
- (2) legacies;
- (3) devises; and
- (4) conveyances of real and personal property;

that are made, given, or granted to or for the home or in the name of the home.

*As added by P.L.2-1993, SEC.16.*

#### **IC 16-33-4-23**

##### **Employee wage payment arrangements**

Sec. 23. (a) Notwithstanding IC 22-2-5-2, the home and:

- (1) an employee if there is no representative described under subdivision (2) or (3) for that employee;
- (2) the exclusive representative of its certificated employees with respect to those employees; or
- (3) a labor organization representing its noncertificated employees with respect to those employees;

may agree in writing to a wage payment arrangement.

(b) A wage payment arrangement under subsection (a) may provide that compensation earned during a school year may be paid:

- (1) using equal installments or any other method; and
- (2) over:

- (A) all or part of that school year; or
- (B) any other period that begins not earlier than the first day of that school year and ends not later than thirteen (13) months after the wage payment arrangement period begins.

Such an arrangement may provide that compensation earned in a calendar year is paid in the next calendar year, so long as all the compensation is paid within the thirteen (13) month period beginning with the first day of the school year.

(c) A wage payment arrangement under subsection (a) must be structured in such a manner so that it is not considered:

- (1) a nonqualified deferred compensation plan for purposes of Section 409A of the Internal Revenue Code; or
- (2) deferred compensation for purposes of Section 457(f) of the Internal Revenue Code.

(d) Absent an agreement under subsection (a), the home remains subject to IC 22-2-5-1.

(e) Wage payments required under a wage payment arrangement entered into under subsection (a) are enforceable under IC 22-2-5-2.

(f) If an employee leaves employment for any reason, either permanently or temporarily, the amount due the employee under IC 22-2-5-1 and IC 22-2-9-2 is the total amount of the wages earned and unpaid.

(g) Employment with the home may not be conditioned upon the acceptance of a wage payment arrangement under subsection (a).

(h) An employee may revoke a wage payment arrangement under subsection (a) at the beginning of each school year.

*As added by P.L.41-2009, SEC.3.*