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TITLE 23: EDUCATION AND CULTURAL RESOURCES

SUBTITLE A: EDUCATION

CHAPTER I: STATE BOARD OF EDUCATION

SUBCHAPTER f: INSTRUCTION FOR SPECIFIC STUDENT POPULATIONS

PART 226

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AUTHORITY: Implementing Article 14 and authorized by Section 2-3.6 of the School Code [105 ILCS 5].

SOURCE: Adopted August 12, 1976; rules repealed and new emergency rules adopted at 2 Ill. Reg. 37, p. 29, effective September 1, 1978, for a maximum of 150 days; rules repealed and new rules adopted at 3 Ill. Reg. 5, p. 932, effective February 1, 1979; emergency amendment at 4 Ill. Reg. 38, p. 328, effective September 15, 1980, for a maximum of 150 days; amended at 5 Ill. Reg. 8021, effective July 22, 1981; amended at 6 Ill. Reg. 558, effective December 23, 1981; emergency amendment at 7 Ill. Reg. 6511, effective May 6, 1983, for a maximum of 150 days; emergency amendment at 7 Ill. Reg. 8949, effective July 15, 1983, for a maximum of 150 days; codified at 8 Ill. Reg. 6669; amended at 8 Ill. Reg. 7617, effective May 17, 1984; emergency amendment at 10 Ill. Reg. 3292, effective January 27, 1986, for a maximum of 150 days; emergency expired June 24, 1986; amended at 10 Ill. Reg. 18743, effective October 22, 1986; amended at 10 Ill. Reg. 19411, effective October 31, 1986; amended at 13 Ill. Reg. 15388, effective September 14, 1989; emergency amendment at 14 Ill. Reg. 11364, effective June 26, 1990, for a maximum of 150 days; emergency expired November 23, 1990; amended at 15 Ill. Reg. 40, effective December 24, 1990; amended at 16 Ill. Reg. 12868, effective August 10, 1992; emergency amendment at 17 Ill. Reg. 13622, effective August 3, 1993, for a maximum of 150 days; emergency expired December 31, 1993; amended at 18 Ill. Reg. 1930, effective January 24, 1994; amended at 18 Ill. Reg. 4685, effective March 11, 1994; amended at 18 Ill. Reg. 16318, effective October 25, 1994; amended at 19 Ill. Reg. 7207, effective May 10, 1995; amended at 20 Ill. Reg. 10908, effective August 5, 1996; amended at 21 Ill. Reg. 7655, effective July 1, 1997; Part repealed, new Part adopted at 24 Ill. Reg. 13884, effective August 25, 2000; amended at 27 Ill. Reg. 8126, effective April 28, 2003; amended at 31 Ill. Reg. 9915, effective June 28, 2007; amended at 32 Ill. Reg. 4828, effective March 21, 2008; amended at 34 Ill. Reg. 17433, effective October 28, 2010; amended at 35 Ill. Reg. 8836, effective May 26, 2011; peremptory amendment, pursuant to PA 97-461, at 35 Ill. Reg. 14836, effective August 22, 2011; amended at 36 Ill. Reg. 12648, effective July 18, 2012; amended at 36 Ill. Reg. 12870, effective July 24, 2012; amended at 37 Ill. Reg. 16788, effective October 2, 2013; amended at 40 Ill. Reg.

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2220, effective January 13, 2016; emergency amendment at 44 Ill. Reg. 5917, effective March 25, 2020, for a maximum of 150 days; emergency amendment to emergency rule at 44 Ill. Reg. 6675, effective April 9, 2020, for the remainder of the 150 days; emergency rule effective March 25, 2020, as amended April 9, 2020, expired August 21, 2020; amended at 44 Ill. Reg. 14792, effective August 27, 2020; amended at 45 Ill. Reg. 1671, effective January 22, 2021; amended at 45 Ill. Reg. 3377, effective March 2, 2021; emergency amendment at 45 Ill. Reg. 11355, effective August 26, 2021, for a maximum of 150 days; emergency expired January 22, 2022; emergency amendment at 46 Ill. Reg. 3005, effective February 4, 2022, for a maximum of 150 days; amended at 46 Ill. Reg. _____, effective _____.

SUBPART D: PLACEMENT

Section 226.330 Placement by School District in State-Operated or Nonpublic Special Education Facilities

When an IEP Team determines that no less restrictive setting on the continuum of alternative placements will meet a child's needs, the child may be placed in a State-operated or nonpublic special education facility. In such a case, use of a State-operated program should be given first consideration. However, the district shall refer the child to the agency or facility which is most appropriate to the individual situation. This determination shall be based upon recent diagnostic assessments and other pertinent evidence and made in light of such other factors as proximity to the child's home. Evidence of a condition that presents a danger to the physical well-being of the student or to other students may be taken into consideration in identifying the appropriate placement for a particular child.

- a) When it appears that a child will require a placement pursuant to this Section, the IEP Team shall invite representatives of potential service providers to assist in identifying or verifying the appropriate placement for that child. If one or more needed representatives cannot attend, the district shall use other methods to ensure their participation.
- b) The local school district is responsible for ensuring implementation of the child's IEP and convening any needed IEP meetings, including the annual review. If the district allows a State-operated or nonpublic school to initiate and conduct the IEP meeting, the district must ensure that the parent and a representative of the district are invited to participate in any decision about the child's IEP and agree to any proposed changes in the program before the changes are implemented. The district remains responsible for the development and implementation of the child's IEP and for compliance with the requirements of this Part.

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- c) ~~No~~ [Except for emergency placements made pursuant to subsection \(g\) or \(i\), no](#) school district shall place any child in a nonpublic special education program, nor shall any such program accept placement of any child with a disability under Section 14-7.02 of the School Code [105 ILCS 5/14-7.02], unless all the following conditions have been met.
- 1) The program has been approved by the State Board of Education pursuant to the criteria set forth in 23 Ill. Adm. Code 401 (Special Education Facilities Under Section 14-7.02 of the School Code) for the school year for which placement is sought.
 - 2) The allowable costs for the program have been established pursuant to Section 14-7.02 of the School Code.
 - 3) The district has made the certification of inability to meet the student's needs to the State Superintendent of Education, if required pursuant to Section 14-7.02 of the School Code, and the State Superintendent has found the district in substantial compliance with Section 14-4.01 of the School Code [105 ILCS 5/14-4.01].
 - 4) The program has been approved by the State Board of Education for all of the disability categories applicable to the student and requiring services pursuant to the IEP.
 - 5) The program has been approved by the State Board of Education for the age range that includes the age of the student.
 - 6) The district has determined that all educational programming and related services specified on the child's IEP will be provided to the student. The use of a facility or program pursuant to 23 Ill. Adm. Code 401 does not relieve the local school district of the responsibility for ensuring that the student will receive all programming and related services required by the IEP, whether from one source or from multiple sources.
 - 7) The school district and the facility have entered into the contractual agreement required by subsection (d) of this Section.
 - 8) The child will receive an education that meets the standards applicable to education provided by the school district.

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- d) If a nonpublic school placement is chosen, the district and the facility shall enter into an agreement utilizing a format provided by the State Board of Education. The agreement shall provide for, but need not be limited to:
 - 1) The child's IEP, as developed by the local school district;
 - 2) The amount of tuition that will be charged;
 - 3) Assurance that the special education staff of the placing school district may inspect the private facility and confer with the staff at reasonable times; and
 - 4) Assurances that the placement will result in no cost to parents.
- e) When a nonpublic facility is used, the school district shall be responsible for the payment of tuition and the provision of transportation as provided by Section 14-7.02 of the School Code. (See also Section 226.750(b) of this Part.)
- f) Each local school district shall be responsible for monitoring the performance of each State-operated or nonpublic facility where it has placed one or more eligible students, to ensure that the implementation of each IEP conforms to the applicable requirements of this Part.
- g) A school district may place a student in a nonpublic special education facility ("facility") providing educational services, but not approved by the State Board of Education pursuant to 23 Ill. Adm. Code 401 or other applicable laws or administrative rules, provided that the State Board of Education provides an emergency and student-specific approval for placement. The State Board of Education shall promptly, within 10 days of the request, approve requests for emergency and student-specific approval for placement when the following have been demonstrated to the State Board of Education:
 - 1) The facility demonstrates appropriate certification of teachers for the student population;
 - 2) The facility demonstrates age-appropriate curriculum;
 - 3) The facility provides enrollment and attendance data;
 - 4) The facility demonstrates the ability to implement the child's IEP; and

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- 5) The school district demonstrates that it made good faith efforts to place the student in an approved facility, but no approved facility has accepted the student or has availability for immediate placement of the student.
- h) Resident district financial responsibility and reimbursement under Section 14-7.02 of the School Code [105 ILCS 5/14-7.02] applies for both nonpublic special education facilities that are approved by the State Board of Education pursuant to 23 Ill. Adm. Code 401 or other applicable laws or administrative rules and nonpublic special education facilities that receive emergency and student-specific approval for placement by the State Board of Education pursuant to subsection (g).
- i) When an impartial due process hearing officer contracted by the State Board of Education orders placement of a student with a disability in a residential facility that is not approved by the State Board of Education, for purposes of subsection (g), the facility shall be deemed approved for placement and resident district payments and State reimbursements shall be made accordingly.
- j) Placement in a facility approved pursuant to subsection (g) or (i) may continue to be utilized so long as:
 - 1) The student's IEP team determines annually such placement continues to be appropriate to meet the student's needs, and
 - 2) At least every 3 years following the student's placement, the IEP team reviews appropriate ISBE-approved facilities under 23 Ill. Adm. Code 401 to determine whether there are any approved facilities that can meet the student's needs, has accepted the student, and has availability for placement of the student.

(Source: Amended at 46 Ill. Reg. _____, effective _____)

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SUBTITLE A: EDUCATION

CHAPTER I: STATE BOARD OF EDUCATION

SUBCHAPTER I: NONPUBLIC ELEMENTARY AND SECONDARY SCHOOLS

PART 401

SPECIAL EDUCATION FACILITIES UNDER
SECTION 14-7.02 OF THE SCHOOL CODE

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SUBPART C: OPERATIONAL REQUIREMENTS

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401.270 Student Records

401.280 Fiscal Provisions

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AUTHORITY: Implementing and authorized by Sections 14-7.02 and 14-8.01 of the School Code [105 ILCS 5/14-7.02 and 14-8.01].

SOURCE: Adopted July 25, 1973; emergency amendment at 4 Ill. Reg. 39, p. 323, effective September 15, 1980, for a maximum of 150 days; amended at 5 Ill. Reg. 4576, effective April 9, 1981; codified at 7 Ill. Reg. 14966; Part repealed, new Part adopted at 19 Ill. Reg. 7185, effective May 10, 1995; amended at 30 Ill. Reg. 8818, effective April 25, 2006; amended at 31 Ill. Reg. 14050, effective September 24, 2007; emergency amendment at 32 Ill. Reg. 4843, effective March 21, 2008, for a maximum of 150 days; emergency amendment suspended at 32 Ill. Reg. 9764, effective June 17, 2008; suspension withdrawn at 32 Ill. Reg. 13093, effective July 16, 2008; emergency amendments repealed by emergency rulemaking at 32 Ill. Reg. 13079, effective July 16, 2008, for the remainder of the 150 days; amended at 33 Ill. Reg. 15285, effective October 20, 2009; amended at 39 Ill. Reg. 14758, effective October 22, 2015; amended at 42 Ill. Reg. 6471, effective March 21, 2018; emergency amendment at 45 Ill. Reg. 3691, effective March 3, 2021, for a maximum of 150 days; emergency expired July 30, 2021; emergency amendment at 45 Ill. Reg. 11407, effective August 26, 2021, for a maximum of 150 days; amended at 45 Ill. Reg. 14968, effective November 10, 2021; emergency expired January 22, 2022; emergency amendment at 46 Ill. Reg. 3016, effective February 4, 2022, for a maximum of 150 days; amendment at 46 Ill. Reg. _____, effective _____.

SUBPART A: APPROVAL OF PROGRAMS

Section 401.5 Definitions

"Business Day" means Monday through Friday, except federal and State holidays.

"Combination Program" is one that includes both educational and residential services.

"Educational Program" is one that consists of special education and related services intended to meet the specific needs of the unique populations served.

"Facility" is the physical premises where a provider offers services.

"IEP Team" has the meaning ascribed in 34 CFR 300.23.

"Imminent Danger" is an act committed when the life or health of a child is knowingly or blatantly disregarded by causing a real, significant or impending risk of harm; permitting the life or health of the student with a disability (as

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defined in the Individuals with Disabilities Education Act (20 USC 1400 et seq.)) to be threatened; or causing or permitting a child to be placed in circumstances that endanger the student's life or health.

"Individualized Education Program" or "IEP" is a written statement for a student with a disability that conforms to the requirements of 34 CFR 300.320 and, for Illinois students, meets the requirements of 23 Ill. Adm. Code 226.230 (Content of the IEP).

"Individual Student Aide (noninstructional duties)" shall have the meaning ascribed in 23 Ill. Adm. Code 226.860.

"Paraprofessional Educator" or "Paraprofessional" shall have the meaning ascribed in 23 Ill. Adm. Code 226.860.

"Professional Staff" means administrators, supervisors, teachers and providers of related services, appropriately licensed in accordance with 23 Ill. Adm. Code 25 or 226.800 or Section 401.240 of this Part, who either provide or direct the provision of special education or related services specified in the IEPs of students served, or who evaluate student progress or evaluate the provision of those special education or related services. Facilities located outside the State of Illinois shall provide evidence of professional licensure/certification granted by their respective state licensing agencies for all employed personnel. The qualifications of each position shall be reviewed by the State Board to ensure comparability to the qualifications of Illinois personnel established by regulation and/or law. Professional staff does not include persons providing services other than special education and related services specified in the IEP or whose duties are limited to assisting professional staff.

"Program" is a set of educational and/or residential services, with professional staff to meet specific needs of the unique population served.

"Programmatic Outcomes" are evidence of progress towards goals established by the program and are intended to demonstrate continuous program improvement. The provider shall not only establish goals for itself, but additionally collect/analyze data for enrolled students with disabilities, in alignment with these self-established goals. Further, this information shall be shared with the State Board of Education and with contracting districts, so that the nature of future technical assistance to the provider can be determined and to promote transparency.

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"Provider" is any organization that offers special education and/or residential services to students with disabilities under contract with one or more Illinois public school districts and pursuant to Section 14-7.02 of the School Code. A provider under this Part does not include an organization providing emergency and student-specific placements pursuant to 23 Ill. Adm. Code 226.330 (g) or (i).

"Related Services" has the meaning ascribed in 23 Ill. Adm. Code 226.75 (special education).

"SBE Approved" or "SBE Approval" means approval of a program in accordance with this Part.

"School Code" means 105 ILCS 5.

"Special Education" has the meaning ascribed in 23 Ill. Adm. Code 226.75.

(Source: Amended at 46 Ill. Reg. _____, effective _____)

Section 401.10 Application for Eligibility

Each provider seeking to become eligible to contract with Illinois public school districts to serve students with disabilities under Section 14-7.02 of the School Code shall be subject to the SBE approval process described in this Section. The provider shall be a nonpublic special education program designed to serve students with disabilities. In accordance with 23 Ill. Adm. Code 226.330 (Placement by School District in State-Operated or Nonpublic Special Education Facilities), SBE approved nonpublic special education programs shall provide a highly specialized option for public school districts to use when an IEP Team determines that no less restrictive setting on the continuum of alternative placements will meet the student's needs. SBE approval shall be specific to individual programs offered by a provider, and the same type of program conducted at two separate facilities shall be treated as two separate programs for purposes of approval. A program not approved in accordance with the requirements of this Part shall not be used by public school districts to serve students with disabilities under Section 14-7.02 of the School Code, except for facilities used for emergency and student-specific placements pursuant to 23 Ill. Adm. Code 226.330 (g) or (i).

- a) An application for initial SBE approval of educational programs and/or residential programs, presented on forms supplied by the State Superintendent and containing all the items enumerated in this subsection (a), shall be submitted to the State Superintendent. Each application shall include the following:

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- 1) An accurate, written description of each program for which SBE approval is requested shall include the following:
 - A) The disability categories and ages of students with disabilities for whom it is specifically intended;
 - B) The purpose and scope of the provider and its specific program services;
 - C) The data that will be collected on the programmatic outcomes achieved by those students, which shall reflect the students' learning goals as described in their respective IEPs;
 - D) The maximum number of students the program is intended to accommodate; and
 - E) A description of the program's philosophy and methodology behind working towards reintegrating students into the general education environment and/or supporting students towards the least restrictive environment.
- 2) A written plan for the administration and organization of the programs, including, but not limited to, the following:
 - A) A plan for the allocation of space solely for program purposes; and
 - B) An organizational chart that reflects the provider's governance, administrative and educational structures.
- 3) The provider's proposed calendar for the program for which approval is sought shall meet the following requirements:
 - A) Regular School Year
Each provider's operating schedule shall include at least 176 days of student attendance for at least 5 instructional hours per school day during the regular school year. Related services listed in the student's IEP are included in meeting the instructional hour requirement. Instructional hours shall not include lunch, passing time or recess, unless otherwise specified by the individual

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student's IEP. A provider may have two full day parent/teacher conferences. This option reduces the required number of student days to 174. This subsection (a)(3)(A) will be effective beginning with the 2020-2021 school year.

- B) Educational Programing Outside of the Regular School Year
If programing takes place and is operated at a facility located within Illinois, it shall consist of at least 120 hours of instruction. Programing operated at a facility in another state may consist of fewer than 120 hours of instruction if approved by the responsible authority in that state. This subsection (a)(3)(B) will be effective beginning with the 2020-2021 school year.

- 4) A copy of the State Fire Marshal's most recent inspection report for the facility, which shall be no more than 36 months old at the time the application is approved, or, if the State Fire Marshal's report is unavailable, an inspection report for the facility from a local governmental agency that is no more than 12 months old, neither of which shall indicate violations, or, as applicable, the following:

- A) For an Illinois facility that is subject to the provisions of 23 Ill. Adm. Code 180 (Health/Life Safety Code for Public Schools), the report of the regional superintendent's most recent inspection conducted pursuant to Section 3-14.21 of the School Code; or
- B) For an out-of-state facility, equivalent, current documentation of compliance with applicable state fire codes, or, if there is no state fire code, the applicable local fire code, clearly identifying the issuing authority.

- 5) The Application for Nonpublic Programs, provided by the State Board of Education, includes a Statement of Assurances that requires the signature of the facility's chief administrator acknowledging that the program is in compliance with the following laws and regulations:

- A) Federal Laws
 - i) Adam Walsh Child Protection and Safety Act of 2006 (42 USC 16911)

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- ii) Title IX of the Education Amendments of 1972 (20 USC 1681)
- iii) Age Discrimination in Employment Act of 1967 (29 USC 621)
- iv) Individuals with Disabilities Education Act (20 USC 1400)
- v) Americans With Disabilities Act of 1990 (42 USC 12101)
- vi) Titles IV and VII of the Civil Rights Act of 1964 (42 USC 2000d)

B) State Laws and Regulations

- i) Administrative Hearings [5 ILCS 100/Art. 10]
- ii) Provisions of the School Code [105 ILCS 5/2-3.64a-5, 3-14.21, 10-20.14b, 10-22.21b, 10-21.4a, 14-4.01 and 14-7.02]
- iii) Illinois School Student Records Act [105 ILCS 10]
- iv) Uniform Conviction Information Act [20 ILCS 2635]
- v) Sex Offender Community Notification [730 ILCS 152]
- vi) Certification of Information to Licensing Agencies [305 ILCS 5/10-17.6]
- vii) Illinois Murderer and Violent Offender Against Youth Registry [730 ILCS 154/85]
- viii) Illinois Human Rights Act [775 ILCS 5]
- ix) Public Works Employment Discrimination Act [775 ILCS 10]

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- x) Public Schools Evaluation, Recognition and Supervision (23 Ill. Adm. Code 1.30, 1.50, 1.280 and 1.285)
 - xi) Educator Licensure (23 Ill. Adm. Code 25.510)
 - xii) Health/Life Safety Code for Public Schools (23 Ill. Adm. Code 180)
 - xiii) Special Education (23 Ill. Adm. Code 226)
 - xiv) Contested Cases and Other Formal Hearings (23 Ill. Adm. Code 475)
 - xv) Illinois Purchased Care Review Board (89 Ill. Adm. Code 900)
- 6) If the facility is located in Illinois and offers a residential component, evidence of the facility's current licensure, certification or approval by the responsible agency of Illinois government. The requirements of this subsection (a)(6) shall apply to contractual agreements for placements entered into on or after July 1, 2018. Nothing in this subsection (a)(6) shall be construed to disrupt, impact or nullify current contractual agreements for placements unless the IEP team determines another placement is more appropriate or the student reaches an age at which he or she is no longer eligible for services under the IEP.
- 7) If the facility is located outside Illinois, evidence of the facility's current licensure, certification or approval to operate its educational and/or residential programs in the state where it is located, including a copy of the standards or criteria used by the responsible agency in that state. If the state in which the facility is located does not regulate the program, the program is ineligible for SBE approval. The requirements of this subsection (a)(7) shall apply to contractual agreements for placements entered into on or after July 1, 2018. Nothing in this subsection (a)(7) shall be construed to disrupt, impact or nullify contractual agreements for placements in effect on or before June 30, 2018. A sibling of a student who is placed pursuant to a contractual agreement in place on or before June 30, 2018 who is also served under Section 14-7.02 of the School Code may be placed at the same facility after July 1, 2018 if the sibling's IEP team determines that is the most appropriate placement.

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- 8) For instructional programs, summary information about all professional staff positions, and copies of the relevant credentials of persons employed in those positions that demonstrate that the facility has sufficient staff available who are qualified pursuant to the requirements of Section 401.240 in order to operate the program.
 - 9) For instructional programs, summaries of related services provided by the facility's professional staff or available to the provider under contract, demonstrating that the provider has sufficient related services available to operate the program.
 - 10) For programs serving students for whom behavioral interventions may be appropriate, a description of the provider's formalized approach to the use of these interventions, subject to the limitation stated in Section 401.140(a). Starting with the 2019-2020 school year, providers utilizing disciplinary or behavioral techniques and/or interventions prohibited in Illinois are not eligible for approval in Illinois, except as otherwise provided in Section 14-7.02 of the School Code.
- b) Upon submission of an initial application for an educational or combination program, the provider will be required to complete a scheduled nonpublic special education orientation. The orientation shall be completed prior to a final determination being made on the application. Providers that have completed a compliance monitoring review that yielded no findings within the last five years are exempt from orientation.
 - c) If the application is complete and the facility is located in Illinois or within 50 miles of Illinois, State Board of Education staff shall conduct an on-site review and evaluate the facility and the programs offered for the purpose of verifying the accuracy of the application, evaluating their conformance with the other requirements of this Part and recommending approval or disapproval of the programs.
 - 1) An out-of-state program conducted more than 50 miles outside of Illinois shall be approved without a site visit from an Illinois representative if the following conditions are satisfied:
 - A) The educational program is an approved special education program in the state where the facility is located and this approval was

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granted in light of the information gathered during a site visit by a representative of the responsible agency;

- B) The residential component, if any, is regulated by the responsible agency in the state where the facility is located; and
 - C) The application provides evidence that the requirements of Section 410.140 will be met.
- 2) An out-of-state program conducted more than 50 miles outside of Illinois that was approved in the state where the facility is located without a site visit by the responsible agency may be visited by a representative of the State Board of Education in order to verify the accuracy of the application and determine whether the requirements of this Part have been met so that Illinois approval can be granted.
- d) A program determined to comply with this Part shall be designated as "Approved" and shall be available to Illinois public school districts to serve students with disabilities under Section 14-7.02 of the School Code beginning on the day the application is approved, provided that the other requirements of Section 401.110 of this Part have also been met. The provider operating the facility shall be notified in writing of the date of program approval.
- 1) Initial approval shall end on the last day of the program's approved calendar for the school year in question, unless approval is changed pursuant to Section 401.30.
 - 2) A program shall serve only the specific student demographics described in the approved application. All program changes or additions to disability categories or services, age range service, or changes in location shall be approved in a manner prescribed by the State Superintendent prior to that change or addition being made.
- e) An initial application that does not meet the requirements of this Part shall be provided with a notice of the specific deficiencies. If the deficiencies have not been remedied in their entirety within one year after receipt of the notice, the provider shall receive a denial of its application.
- f) An application for renewal of SBE approval, consisting of all the components set forth in subsection (a), shall be submitted for any subsequent period in which a

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provider seeks to contract with Illinois public school districts to serve students with disabilities in the facility under Section 14-7.02 of the School Code. The submission deadline shall be the March 15 prior to the beginning of the school year in question. If March 15 is not a business day, the deadline shall fall on the next business day. The SBE approval process for any subsequent period may also involve on-site reviews, at the sole discretion of the State Superintendent.

- 1) The denial of an application for renewal of SBE approval shall cause the program approval status to change to "nonapproved" subject to the procedures set forth in Section 401.30(c).
- 2) Renewed approval generally shall be valid for two school years, ending on the last day of the program's approved calendar for the second school year, unless approval is changed pursuant to Section 401.30. The first renewal of SBE approval for a new program offered by a provider that already operates other approved programs shall be granted for the number of years that will place it on the cycle already established for that provider.

(Source: Amended at 46 Ill. Reg. _____, effective _____)

SUBPART B: PLACEMENT AND EDUCATION OF STUDENTS

Section 401.110 Use by Public School Districts

Each public school district shall be responsible for monitoring the performance of each program where its students are placed, to ensure that the implementation of each student's IEP conforms to the applicable requirements of all applicable federal and State laws and regulations, including, but not limited to, 23 Ill. Adm. Code 226 (Special Education). Contracting with a program in accordance with this Part does not relieve the district of the responsibility for ensuring that the student will receive all programming and related services required by the IEP, whether from one source or from multiple sources. In addition, except for emergency and student-specific placements made pursuant to 23 Ill. Adm. Code 226.330 (g) or (i), no public school district shall place any student in a special education program that is subject to the requirements of this Part, nor shall the provider of any program accept placement of any student under Section 14-7.02 of the School Code, unless all the following conditions have been met:

- a) The program has been SBE approved for the school year for which placement is sought;
- b) The allowable costs for the program have been established pursuant to Section 14-

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7.02 of the School Code;

- c) The district has made the certification of inability to meet the student's needs to the State Superintendent, if required pursuant to Section 14-7.02 of the School Code, and the State Superintendent has found the district in substantial compliance with Section 14-4.01 of the School Code;
- d) The program has been SBE approved for all of the categories of impairment applicable to the student and requiring services as identified in the IEP;
- e) The program has been SBE approved for the age range that includes the age of the student;
- f) The district has determined that educational programming and related services specified on the student's IEP will be provided to the student. The use of a facility or program in accordance with this Part does not relieve the district of the responsibility for ensuring that the student will receive all programming and related services required by the IEP, whether from one source or from multiple sources; and
- g) The district and the provider have entered into the contractual agreement called for in 23 Ill. Adm. Code 226.330.

(Source: Amended at 46 Ill. Reg. _____, effective _____)

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TITLE 89: SOCIAL SERVICES

CHAPTER V: ILLINOIS PURCHASED CARE REVIEW BOARD

PART 900

ILLINOIS PURCHASED CARE REVIEW BOARD

Section	
900.110	Applicability and Purpose; Severability
900.310	General Provisions Relating to Determining Allowable Costs
900.315	Effective Dates of Rate Determinations
900.320	Cost Reports – General Requirements
900.321	Non-Allowable Costs and Revenue Offsets
900.322	Allowable Costs
900.330	Reasonable Cost Provisions
900.331	Reimbursement for Allowable Costs
900.340	Notice and Filing of Appeal
900.341	Principles of Appeals Process
900.342	Basis for Appeals
900.343	Effective Dates of Rates Changed on Appeal
900.344	Conditional Increases
900.345	Procedure for Filing Appeals
900.346	Review by Appeals Committee (Repealed)
900.347	Review by Board (Repealed)
900.348	Final Decision of Board
900.349	Mathematical and Clerical Errors in Calculation
900.351	Factors in Evaluating Appeals (Repealed)

AUTHORITY: Implementing and authorized by Section 14-7.02 of the School Code [105 ILCS].

SOURCE: Filed May 8, 1979, effective May 18, 1978; amended at 4 Ill. Reg. 9, pp. 241, 244 and 247, effective February 15, 1980; amended at 5 Ill. Reg. 4171, effective April 7, 1981; amended at 5 Ill. Reg. 5633, effective May 15, 1981; amended at 5 Ill. Reg. 9095, effective September 1, 1981; codified at 6 Ill. Reg. 12452; amended at 7 Ill. Reg. 6079, effective May 4, 1983; amended at 9 Ill. Reg. 9551, effective June 10, 1985; amended at 11 Ill. Reg. 20552, effective December 8, 1987; amended at 16 Ill. Reg. 5311, effective March 23, 1992; emergency amendment at 19 Ill. Reg. 13590, effective September 25, 1995, for a maximum of 150 days; emergency expired February 21, 1996; amended at 28 Ill. Reg. 7242, effective May 5, 2004; amended at 44 Ill. Reg. 1954, effective January 8, 2020; emergency amendment at 46 Ill. Reg.

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3031, effective February 4, 2022, for a maximum of 150 days; amended at 46 Ill. Reg. _____, effective _____.

Section 900.310 General Provisions Relating to Determining Allowable Costs

- a) The Illinois Purchased Care Review Board (Board) approves costs for providers of special educational and related services and also room and board for children whose educational needs, because of their disabilities, cannot be met by the special education program of the district in which they reside.
- b) Each program is subject to prior approval of the Illinois State Board of Education (ISBE).
- c) Providers must comply with the minimum educational standards as found in the rules of the State Board of Education regarding Nonpublic Special Education Facilities (23 Ill. Adm. Code 401), except for providers providing emergency and student-specific placements pursuant to 23 Ill. Adm. Code 226.330(g) or (i).
- d) A "provider" is any organization that offers special education and/or residential services to students with disabilities under Section 14-7.02 of the School Code.
 - 1) A "facility" is the physical premises where a provider offers services.
 - 2) A "program" is a set of special education services designed to serve students who have similar educational needs.
 - 3) A "private for-profit provider" is one that is registered as for-profit by the Secretary of State in the provider's principal location and recognized as a for-profit by the Internal Revenue Service.
 - 4) "Organization" or "organizational" pertains to the business and administrative structure of an entity that serves as a provider under this Part.
- e) "School health services" are those direct or indirect services normally associated with the function of a school nurse, limited to health counseling, health education, personal hygiene/grooming, first aid/emergency care, administration and monitoring of medications, safety, and health protection (prevention) services provided by licensed, registered, or certified nurses or other non-physician health care professionals employed by a nonpublic special education provider for the

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purpose of serving students placed in such facilities and those services required by the students' Individualized Education Programs (IEP).

- f) "Occupancy costs" are those costs associated with the operation and maintenance of the physical plant, and all depreciation, all lease or rental, and all interest.
- g) "Support costs" are those costs normally associated with the provision of food and dietary services, laundry services, housekeeping services, and other costs associated with the provision of domestic services, including salaries, wages, fringe benefits, and supplies used in providing such services.
- h) "Administrative costs" are those costs normally associated with the overall organizational leadership and direction of the various program service entities within the provider's organization. Such costs include salaries, wages, fringe benefits and supplies related to executive officers and assistants, clerical and bookkeeping staff and other costs and fees associated with organizational leadership and direction.
- i) When a provider purchases goods or services from a related organization, the cost of the goods or services shall be allowable only to the extent that it does not exceed the cost to that related organization. That is, a provider may not build a profit for a related organization into its cost structure. A "related organization" is one that:
 - 1) directly or indirectly controls, or is controlled by, the provider; or
 - 2) influences, or is influenced by, the provider in terms of financial and operational policies; or
 - 3) is controlled or influenced by another organization that also controls or influences the provider.

(Source: Amended at 46 Ill. Reg. _____, effective _____)

Section 900.320 Cost Reports – General Requirements

- a) The Board shall require the annual filing of an attested cost report on such financial schedules as the Board may prescribe. Attested cost reports shall convey information on those items of cost defined as nonallowable in Section 900.321, as well as those defined as allowable in Section 900.322, and shall

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attribute allowable costs to special education, related services, or room and board. The time period covered by this report must correspond with the provider's fiscal year. Whenever possible, the Board will accept cost reports filed with other State agencies as fulfilling this requirement. Cost reports submitted to the Board for purposes of determining allowable costs must be accompanied by a certified audit for the most recently ended fiscal year unless this requirement is waived by the Board.

- b) The Board may waive the requirement for a certified audit and/or for a cost report when it deems either of these to be unnecessary; for example, if:
 - 1) the number of pupils placed with a provider by Illinois school districts totals fewer than six except that until August 31, 2023, the Board may waive the requirement for a certified audit and/or for a cost report when it deems the number of pupils placed with a provider by Illinois school districts totals twelve or fewer;
 - 2) the rate for an out-of-state provider is not negotiable according to law or rules in that state; ~~or~~
 - 3) the provider's annual operating budget is very low; or;
 - 4) the provider is providing emergency and student-specific placements pursuant to 23 Ill. Adm. Code 226.330(g) or (i).
- c) Unless prior arrangements for an extension of the deadline are made with the Board due to extenuating circumstances (such as unexpected loss of key personnel, inadvertent destruction of records due to fire or flooding, bankruptcy, etc.), this report must be filed by the latter of either January 15 or 90 days after the end of the provider's fiscal year.
- d) Financial data must be reported using the accrual basis for accounting, unless prior arrangements are made with the Board.
- e) The Board may request such additional financial information as is necessary to fulfill its duties. Circumstances that would cause the Board to request additional information include, but are not limited to, substantial revisions in the provider's program or substantial changes in the population served by the provider. This may include requiring a provider to submit a certified financial statement if the Board determines that such a statement is needed.

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- f) Providers shall cooperate in audits undertaken to verify the truth, accuracy and completeness of reported costs.

(Source: Amended at 46 Ill. Reg. _____, effective _____)

Section 900.330 Reasonable Cost Provisions

- a) Only reasonable costs that are necessary for the accomplishment of program goals and objectives shall be allowable. A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent buyer under the circumstances prevailing at the time the decision was made to incur the costs. Accordingly, the Board shall seek to approve expenditures for goods and services at a cost that is as low as possible without sacrificing the quality of goods or services received. Parameters for frequently incurred costs, including staffing costs, will be developed by the Board based on analysis of regional variations in costs for comparable services.
- 1) In determining allowable costs for new programs (i.e., those without audited historical cost data), the Board will consider the special education and related services that will be required in response to the unique characteristics of the children to be served.
 - 2) For new residential programs, allowable costs may be determined based on costs approved by another child care agency of the State of Illinois.
- b) Reasonable cost ceilings for support, administration and occupancy costs shall be determined as follows:
- 1) All providers will be grouped by type of program offered on the basis of actual costs for support, administration, and occupancy of facilities. Allowable costs for support, administration and occupancy utilize a cost range ceiling of 125% of the median as a reasonable upper limit.
 - 2) For a private for-profit provider, reimbursement will be allowable at 115% of the median cost for support, administration and the physical plant operation and maintenance portion of the occupancy costs for all facilities where a similar type of program is offered. When actual costs exceed 115% of these medians, a cost ceiling of 125% of these medians will be utilized.

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- 3) Calculation of median costs for the coming rate year will be based on cost reports received prior to April 15. Cost reports not received prior to April 15 may be included in the median calculation using the prior year's cost report, adjusted for inflation, as established by the Board.
- c) Reported costs will be updated for inflation experienced and projected for the time between the period covered on the cost report and the middle of the current school year. The Board will develop an appropriate index for inflation factors each year using the component method to update costs of programs for the same time periods.
- d) Allowable costs approved by the Illinois Purchased Care Review Board for any nonpublic school program or segment thereof shall not exceed the allowable costs for that program approved by any other Illinois State agency for the same program or program segment.
- e) Each Illinois State agency that approves room and board rates for nonpublic providers shall notify the Illinois Purchased Care Review Board of the approved rate for each nonpublic program receiving funding subject to Section 14-7.02 of the School Code.
- f) The Board may use as bases for allowable costs those costs reimbursed by the state in which a provider's facility is located. These may, however, be adapted to meet known differences in cost determination methodologies. The Board may waive allowable cost provisions for a provider's out-of-state program or programs. Circumstances that would lead the Board to waive allowable cost provisions include but are not limited to the following:
 - 1) Fewer than six Illinois children are served by the program or programs except that until August 31, 2023, the Board may waive this requirement when it deems the number of pupils placed with a provider by Illinois school districts totals twelve or fewer;
 - 2) The out-of-state provider submits a substitute cost report as prescribed by the Board and/or the provider requests that the Board adopt the official rate of another state or local governmental agency;
 - 3) The out-of-state provider will only provide treatment services at a non-negotiable or stated cost and the treatment services are not available in

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other settings;

4) The placement of a child in the out-of-state program is the result of a court order; or-

5) The provider is providing emergency and student-specific placement pursuant to 23 Ill. Adm. Code 226.330(g) or (i).

g) For school year 2022 (“SY22”) only, any out-of-state provider accepting six to twelve Illinois students for which a rate was calculated for SY22 the rate will remain for SY22 (no retroactive adjustments for SY22). Effective school year 2023, for such providers with twelve or fewer students, the Board may waive the certified audit and/or cost report per Section 900.320(b)(1) regardless if rates were calculated for SY22.

h) Per-student allowable costs shall be determined in the following manner:

- 1) Per-student allowable costs for room and board will be determined on the basis of actual enrollment or 90% of licensed capacity, whichever is larger.
- 2) Per-student allowable education costs shall be determined on the basis of program enrollment, as reported by the provider and verified by the Illinois State Board of Education. Such verification shall be based on the total reimbursement days claimed by all school districts for each program. In the event of a discrepancy between the enrollment reported by the provider and the enrollment reported by the Illinois State Board of Education, the higher enrollment figure shall be used in determining the per-student allowable education cost, except as provided for in Section 900.342(a)(6) of this Part.

ih) Cost determination for an out-of-state public school program shall be made on the basis of documented prior costs or the operating budget for the public program.

- 1) Cost information shall be reported annually by an authority representing the out-of-state public school district or other public entity operating the program.
- 2) Additional information such as enrollment, school calendar, weighting factors, or budget detail may be required if such information is not

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included with the cost information submitted for review.

- 3) Any increase in the actual costs of a program, determined after the original cost determination, shall be submitted to the Board in the form of an appeal, to be approved by the Board prior to payment being made by any Illinois school district. Only appeals that address changes in the current school year shall be considered.

(Source: Amended at 46 Ill. Reg. _____, effective _____)

Section 900.331 Reimbursement for Allowable Costs

- a) Reimbursement shall be made on the basis of days of enrollment in a program at a nonpublic school approved by the Illinois State Board of Education or approved for emergency and student-specific placement pursuant to 23 Ill. Adm. Code 226.330(g) or (i).
- b) Reimbursement to the school district shall be made on the basis of allowable costs approved by the Illinois Purchased Care Review Board, subject to appropriation.
- c) Terms of enrollment shall be as contracted for by the school district.
- d) The Illinois State Board of Education will reimburse for room and board payments only when no other State agency is involved in the placement of the child. (See Sections 14-7.02 and 14-8.01 of the School Code [105 ILCS 5/14-7.02 and 14-8.01].)
- e) A school district shall receive no reimbursement for any portion of an established rate that has been covered by a third-party payor.
- f) Other State agencies may reimburse for costs that are otherwise nonreimbursable, but their responsibility for so doing shall be limited by their own rules and procedures regarding such payments. To the extent no other State agency has responsibility for these costs, parents or other responsible parties will be assumed to have accepted responsibility for these costs. In no event shall State agencies, parents or other parties be allowed to pay for special education, related services and room and board fees in excess of those determined allowable by the Board for a child placed only by a local school district. Any such payments made by other than the Illinois State Board of Education for a child placed only by the local school district would be used to offset the allowable costs for special education,

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related services and/or room and board approved by the Board for that particular student.

- g) Nothing in this Part will preclude a public school district from placing a student in a program pursuant to 23 Ill. Adm. Code 226.330(g) or (i) while allowable costs are being established by the Board.

(Source: Amended at 46 Ill. Reg. _____, effective _____)