

ILLINOIS REGISTER

ILLINOIS STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

TITLE 23: EDUCATION AND CULTURAL RESOURCES

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

SUBPART A: APPROVAL OF PROGRAMS

Section

401.2	Regulatory Intent
401.5	Definitions
401.10	Application for Eligibility
401.11	Program and Facility Approval
401.20	Notification Requirements
401.30	Changes in Approval Status

SUBPART B: PLACEMENT AND EDUCATION OF STUDENTS

Section

401.110	Use by Public School Districts
401.120	Placement Procedures
401.130	Operating Schedule
401.140	Provision of Educational Program
401.145	Administration of State Assessment
401.150	Classroom Records

SUBPART C: OPERATIONAL REQUIREMENTS

Section

401.210	General Requirements
401.220	Health and Safety Requirements
401.230	Student Progress Reports and Reviews
401.240	Staffing Requirements
401.250	Staff Training
401.260	Staff Records
401.270	Student Records
401.280	Fiscal Provisions

ILLINOIS REGISTER

ILLINOIS STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

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 Reg. 14966; Part repealed, new Part adopted at 19 Ill.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 Reg. 9764, effective June 17, 2008; suspension withdrawn at 32 Ill. Reg. 13093, effective July 16, 2008; emergency amendments repealed by emergency rulemaking at 32 Ill.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; emergency expired January 22, 2022; amended at 45 Ill. Reg. 14968, effective November 10, 2021; emergency amendment at 46 Ill. Reg. 3016, effective February 4, 2022, for a maximum of 150 days; amended at 46 Ill. Reg. 6486, effective April 11, 2022; emergency rule expired July 3, 2022; amended at 46 Ill. Reg. 13278, effective July 13, 2022; amended at 48 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 a program that includes both educational and residential services.

"Educational Program" is a program consisting 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 a situation in which the life or health of a student is knowingly or blatantly disregarded by:

ILLINOIS REGISTER

ILLINOIS STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

causing a real, significant, or impending risk of harm;

permitting the life or health of a student with a disability (as defined in the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.)) to be threatened; or

causing or permitting a student 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.~~

"ISBE" means the Illinois State Board of Education.

"ISBE-approved" or "ISBE approval" means the approval of program in accordance with this Part.

~~"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, 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.- ISBE shall review the qualifications of each position to ensure comparability to the qualifications of Illinois personnel established in statute and Title 23 of the Illinois Administrative Code.- 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 provided by professional staff to meet specific needs of the unique population served.

ILLINOIS REGISTER

ILLINOIS STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

"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 shall also collect and analyze data for enrolled students with disabilities in alignment with those self-established goals. Further, this information shall be shared with the ISBE and with contracting districts to determine the nature of future technical assistance to the provider and to promote transparency.

"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 [residential](#) 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.

"School Code" means 105 ILCS 5.

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

["State Superintendent" means the State Superintendent of Education or the State Superintendent's designee.](#)

(Source: Amended at 48 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 ISBE 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), ISBE-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. ISBE 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.- Public school districts shall not use a program not approved in accordance with the requirements of this Part to serve students with disabilities under Section 14-7.02 of the

ILLINOIS REGISTER

ILLINOIS STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

School Code, except for facilities used for emergency and student-specific residential placements pursuant to 23 Ill. Adm. Code 226.330(g) or (i).

- a) An application for initial ISBE approval of educational programs and/or combination~~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:
 - 1) An accurate, written description of ~~the~~each program for which ISBE 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) Programmatic outcomes and ~~the~~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 or supporting students towards their least restrictive environment;-
 - F) Program history and mission/vision statement;
 - G) Disability and instructional style for each eligibility category the program is seeking approval for; and
 - H) A description of what related services are offered, how they will be provided, and by whom.
 - 2) A written plan for the administration and organization of the programs, including, but not limited to, the following:

ILLINOIS REGISTER

ILLINOIS STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

- A) A labeled floor 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. ~~The proposed calendar 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 student's IEP. A provider may have two full-day parent/teacher conferences. This option reduces the required number of student days to 174.~~
 - B) Educational Programming Outside of the Regular School Year
If programming takes place and is operated at a facility located within Illinois, it shall consist of at least 120 hours of instruction. Programming 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 one~~ of the appropriate following inspection reports/documentation, indicating no violations:
- A) One of the following, which shall indicate no violations:
 - i) 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;
 - iiB) ~~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; or

ILLINOIS REGISTER

ILLINOIS STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

- v) Americans With Disabilities Act of 1990 (42 U.S.C. 12101)
- vi) Titles IV and VII of the Civil Rights Act of 1964 (42 U.S.C. 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) [Illinois](#) Uniform Conviction Information Act [20 ILCS 2635]
- v) Sex Offender Community Notification [Law](#) [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]
- 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)

ILLINOIS REGISTER

ILLINOIS STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

- 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)
 - xvi) Faith's Law (Public Acts 102-0676 and 102-0702)
- 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 the student 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 ISBE 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.
- 8) For instructional programs, summary information about all professional staff positions, and copies of the relevant credentials of persons employed in those positions, demonstrating that the facility has sufficient staff available who are qualified pursuant to the requirements of Section 401.240 in order to operate the program.

ILLINOIS REGISTER

ILLINOIS STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

- 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 using disciplinary or behavioral techniques 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) An application for initial ISBE approval of residential only programs, presented on forms supplied by the State Superintendent and containing all the items enumerated in this subsection (b), shall be submitted to the State Superintendent. Each application shall include the following:
- 1) An accurate, written description of each program for which ISBE 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 maximum number of students the program is intended to accommodate; and
 - D) Program history and mission/vision statement
 - 2) A copy of the appropriate inspection reports/documentation:
 - A) One of the following, which shall indicate no violations:
 - i) 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;
 - ii) An inspection report for the facility from a local

ILLINOIS REGISTER

ILLINOIS STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

governmental agency that is no more than 12 months old;
or,

iii) 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.

B) If the program is building new construction or renovating an existing building, the occupancy permit must be provided in addition to the reports [in subparagraph \(A\)](#).

C) For an Illinois facility that is subject to the provisions of 23 Ill. Adm. Code 180 (Health/Life Safety Code for Public Schools), the full report of the regional superintendent's most recent inspection conducted pursuant to Section 3-14.21 of the School Code. In the case of a report that contains violations, a copy of the occupancy permit will be required;

3) A Statement of Assurances that requires the signature of the facility's chief administrator acknowledging that the program complies with the following laws and regulations ([see the Application for Nonpublic Programs, provided by ISBE](#)):

A) [Federal Laws](#)

i) [Adam Walsh Child Protection and Safety Act of 2006 \(42 U.S.C. 16911\)](#)

ii) [Title IX of the Education Amendments of 1972 \(20 U.S.C. 1681\)](#)

iii) [Age Discrimination in Employment Act of 1967 \(29 U.S.C. 621\)](#)

iv) [Individuals with Disabilities Education Act \(20 U.S.C. 1400\)](#)

v) [Americans With Disabilities Act of 1990 \(42 U.S.C. 12101\)](#)

ILLINOIS REGISTER

ILLINOIS STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

vi) Titles IV and VII of the Civil Rights Act of 1964 (42 U.S.C. 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) Illinois Uniform Conviction Information Act [20 ILCS 2635]

v) Sex Offender Community Notification Law [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]

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)

ILLINOIS REGISTER

ILLINOIS STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

- xiv) Contested Cases and Other Formal Hearings (23 Ill. Adm. Code 475)
 - xv) Illinois Purchased Care Review Board (89 Ill. Adm. Code 900)
 - xvi) Faith's Law (Public Acts 102-0676 and 102-0702)
- 4) If the facility is located in Illinois, evidence of the facility's current licensure, certification, or approval by the responsible agency of Illinois government. The requirements of this subsection (b)(4) shall apply to contractual agreements for placements entered into on or after July 1, 2018. Nothing in this subsection (b)(4) 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 the student is no longer eligible for services under the IEP.
- 5) If the facility is located outside Illinois, evidence of the facility's current licensure, certification, or approval to operate its program 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 ISBE approval. The requirements of this subsection (b)(5) shall apply to contractual agreements for placements entered into on or after July 1, 2018. Nothing in this subsection (b)(5) 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.
- 6) 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 using disciplinary or behavioral techniques 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.

ILLINOIS REGISTER

ILLINOIS STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

- ~~cb)~~ 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. This requirement may be waived for providers.~~ Providers that have completed ~~one or more~~ onsite reviews and/or two-year renewal ~~compliance monitoring~~ reviews that yielded no findings and have ~~not had a status change~~ within the last five years ~~are exempt from orientation~~.
- ~~de)~~ If the application is complete and the facility is located in Illinois or within 50 miles of Illinois, ISBE 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 compliance with the other requirements of this Part, and recommending approval or disapproval of the programs.
- 1) An out-of-state program ~~located~~ ~~conducted~~ more than 50 miles outside of Illinois ~~may~~ ~~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 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 ~~located~~ ~~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 ISBE 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 if the other requirements of Section 401.110 of this Part have also been met. The provider operating the facility shall be notified in~~

ILLINOIS REGISTER

ILLINOIS STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

~~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) Applications will be reviewed on a rolling basis as they are received. There is no specific timeline for the processing of applications.

fe) 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, ISBE shall deny the provider's approval.

gf) An application for renewal of ISBE approval, consisting of all the components set forth in subsection (a), shall be submitted for any subsequent period in which a 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 ISBE 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 ISBE 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 ISBE 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 48 Ill. Reg. _____, effective _____)

ILLINOIS REGISTER

ILLINOIS STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

Section 401.11 Program and Facility Approval

A program is deemed eligible for Approval upon satisfactory completion of all components under Sections 401.10 and 401.110 of this Part. The provider operating the facility shall be notified in writing of the date of program approval. Upon the date of the initial one-year approval letter, the program shall be made available to Illinois public school districts to service students with disabilities under Section 14-7.02 of the School Code.

- a) Initial approval shall end no later than one calendar year from the approval date, inclusive of the one-year onsite visit, unless approval is changed pursuant to Section 401.30.
- b) A program shall serve only the specific student demographics described in the application. All program changes or additions to disability categories or services, age range service, or changes in location shall be approved by the State Superintendent prior to that change or addition being made.

(Source: Added at 48 Ill. Reg. _____, effective _____)

Section 401.20 Notification Requirements

- a) A provider that operates a facility subject to the requirements of this Part and intends to cease operations, ~~to~~ move to a new location, **expand existing physical facilities**, or to discontinue any of the facility's approved programs shall ensure that the State Superintendent and each public school district with which it has entered into contracts for services receive no less than 40 business days' written notice of that intention. A provider shall also notify the State Superintendent in writing, so that the notification is reasonably calculated to be received at the State Board of Education's office at 100 North First Street, Springfield, Illinois 62777, within 40 business days after the following:
 - 1) Any change in its educational administration and organization, as described in its SBE approved application; and
 - 2) Any change in the number, type, or duties of the professional staff positions identified as part of the application for SBE approval or in the licensure status or credentials of any individual employed in such a position, provided that the change does not affect the program's or facility's compliance with the requirements of this Part.

ILLINOIS REGISTER

ILLINOIS STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

- b) A provider shall notify the State Superintendent in writing, so that the notification is reasonably calculated to be received at the State Board of Education's office at 100 North First Street, Springfield, Illinois 62777, within five business days after the following:
- 1) Any change in the facility's compliance with applicable fire prevention regulations or other federal, state, and local laws, ordinances, or regulations, as described in its approved application pursuant to Section 401.10(a)(5), or in the physical facilities used;
 - 2) Any change in the facility's approval or licensure to provide a residential program as described in its approved application;
 - 3) Any change in the facility's approval or licensure to operate in a state other than Illinois as described in its approved application;
 - 4) Any change in the number, type, or duties of the professional or paraprofessional positions identified as part of the application for SBE approval of an educational program or the education component of a combination program, or in the licensure/certification status or credentials of any individual employed in such a position, if the change will affect the program's compliance with the requirements of this Part.
 - A) If any professional staff position subject to the notification requirements of this subsection (b)(4) remains vacant, the provider shall provide written notification to the State Superintendent and to the placing public school districts after 20 business days and again every after 40 business days thereafter until the vacant position has been filled of its attempts to permanently fill those positions and of other efforts, including the use of substitutes, undertaken in order to provide necessary instruction and related services to the students enrolled.
 - B) If the State Superintendent determines that the provider has not reported staffing changes in a program as required, the State Superintendent shall change the approval status of the program accordingly, pursuant to the provisions of Section 401.30.
- c) ~~Before~~Should a provider that operates a nonpublic special education facility-elect ~~to terminate~~ a student's placement in a facility under this Part,. the provider must request an IEP meeting from the contracting school district. If the provider elects

ILLINOIS REGISTER

ILLINOIS STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

~~to terminate the student's placement following the IEP meeting, the provider must shall~~ give written notice to this effect to the contracting public school district, ~~the student's parent or guardian, and the State Board of Education no later than~~ at least 20 business days ~~before~~ prior to the date of termination, unless the health and safety of any student are endangered. ~~The notice must include the detailed reasons for the termination and any actions taken to address shall include~~ the reasons for the termination.

- d) Notification to ~~the~~ State Superintendent regarding any breaches of test security or other testing irregularities in connection with the State assessment shall conform to the requirements of Section 401.145.

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 401.30 Changes in Approval Status

SBE approved programs that serve students with disabilities under Section 14-7.02 of the School Code, whether located in Illinois or out of state, shall be evaluated periodically by the State Board of Education. ~~The evaluation may take place for any reason, with or without prior notice to the provider, and at the sole discretion of the State Board of Education and may involve an on-site review. The evaluation shall result in either retention of approved status or assignment of one of the following statuses:~~

- a) A status of "Approved with Administrative Review" shall be assigned when an instance of noncompliance by an approved program is first identified during a school year and the State Superintendent determines that that noncompliance does not substantially affect the safety of, or provision of appropriate education to, the students enrolled. The State Superintendent shall outline each area of noncompliance in a written report with the corrective actions and timeline required to remedy each area. ~~The provider shall have 80 business days to remedy all areas of noncompliance.~~
- 1) Every 20 business days after notification that it is approved with administrative review (up to the ~~80-business-day~~ timeframe for this status), an affected provider shall file with the State Superintendent a progress report describing actions taken to correct the instances of noncompliance identified.
 - 2) If the State Superintendent determines that the provider has corrected the instances of noncompliance within the time allotted, the program's "Approved" status shall be restored.

ILLINOIS REGISTER

ILLINOIS STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

- 3) If the State Superintendent determines that the provider has failed to correct the instances of noncompliance within the time allotted, a status of "Pending Further Review" shall be assigned to the program. A provider that is subject to the requirements of this Part shall not accept a new student from a public school district into a program whose status is "Pending Further Review". Upon notification of the "Pending Further Review" status, a public school district shall not make new placements into those programs ~~and shall identify alternative arrangements for the students, or were recurrent instances of minor noncompliance, in the event that the State Superintendent notifies the district that the violations are not remedied.~~
- b) A status of "Pending Further Review" shall be assigned whenever a program is determined to be in noncompliance with one or more requirements of this Part that may substantially affect the safety of or provision of appropriate education to students but that does not constitute imminent danger, or exhibits recurrent instances of minor noncompliance. ~~The provider shall have 40 business days to remedy the noncompliance.~~
 - 1) As soon as practicable , but no longer than 5 business days, following the receipt of notification from the State Superintendent that a program has been assigned a status of "Pending Further Review," the program shall notify all contracting public school districts of the change in status, including the cited violations upon which the change in status is based and the established timeline to remedy the noncompliance. A copy of this notification must be provided to the State Superintendent.
 - 24) No more than 10 business days after receipt of notification from the State Superintendent of Education that program approval status is pending further review, an affected provider shall submit a written report to the State Superintendent describing its plans for correcting the noncompliance identified and the actions taken to correct it. Every 10 business days thereafter, an affected provider shall file with the State Superintendent a progress report describing the actions taken to correct the instances of noncompliance or the expiration of the 40-business-day timeline.
 - 32) If the provider demonstrates that it has corrected all instances of noncompliance within the time allotted, its "Approved" status shall be restored.

ILLINOIS REGISTER

ILLINOIS STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

- 43) If the provider has corrected the instances of noncompliance that may substantially affect the safety or the provision of appropriate education to students, or were recurrent instances of minor noncompliance, but has not remedied other instances of noncompliance, its status must be changed to "Approved with Administrative Review".
- 54) If the provider fails to demonstrate within the time allotted that it has corrected the instances of noncompliance that may substantially affect the safety or the provision of appropriate education to students, its status shall be changed to "Nonapproved". If the State Superintendent determines the provider is demonstrating progress toward correcting instances of noncompliance that may substantially affect the safety of or the provision of appropriate education to students, and any continued instances of noncompliance do not constitute imminent danger, then the provider will be assigned a subsequent status of "Pending Further Review". If the provider continues to exhibit recurring instances of documented noncompliance, or it is determined that the provider is no longer demonstrating progress toward correcting instances of noncompliance, its status shall be changed to "Nonapproved".
- 65) A provider that is subject to the requirements of this Part shall not accept any new students from public school districts into any program whose status is "Pending Further Review". -Upon notification of the designation of "Pending Further Review" status, a public school district shall not make a new placements into those programs, and it shall identify alternative arrangements for its students in the program, for implementation in the event that the State Superintendent notifies the district that the violations are not remedied.
- c) A status of "Nonapproved" shall be assigned to a program or programs previously assigned a status of "Approved with Administrative Review" or "Pending Further Review" when the nonpublic facility or any of its programs exhibits substantial and/or recurrent instances of noncompliance, showing that the provider is consistently unable to meet the approval requirements of this Part. A program may be determined "Nonapproved" without previously having been assigned a status of "Approved with Administrative Review" or "Pending Further Review," if any instances of noncompliance that present imminent danger to the students exist or if the State Superintendent verifies that the provider has unilaterally and intentionally ceased providing appropriate education pursuant to a public school district's contracts and one or more students' IEPs.

ILLINOIS REGISTER

ILLINOIS STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

- 1) A status of "Nonapproved" voids the provider's eligibility to contract with Illinois public school districts to serve students and receive funds under Section 14-7.02 of the School Code in the nonapproved programs for the remainder of the school year.
- 2) Providers shall be given ~~2040~~ business days' notice by the State Superintendent before nonapproval becomes effective, unless imminent danger to students precludes that notice. The State Superintendent shall also give ~~2040~~ business days' notice to affected public school districts to enable them to implement other arrangements prior to the effective date of nonapproval, as required.
- 3) The provider of any previously approved program placed on nonapproved status shall be afforded an opportunity for a hearing pursuant to the Illinois Administrative Procedure Act [5 ILCS 100] and the State Board of Education's rules for Contested Cases and Other Formal Hearings (23 Ill. Adm. Code 475). -Unless the State Superintendent identifies that the reasons for nonapproved status are a danger to student health or safety, a request for a hearing shall stay the effect of the change in status and the program shall remain at the last assigned status prior to nonapproval pending the outcome of the hearing.
- d) Any provider whose license or approval to operate a residential program is revoked shall immediately have its residential programs nonapproved and will be ineligible to provide residential services to students under Section 14-7.02 of the School Code. An admissions hold placed on a residential program by the residential program's licensing agent will constitute a reciprocal admissions hold barring public school districts from making new placements to that provider residentially. The provider shall notify ISBE when an admissions hold is placed on the residential program no later than 5 business days after the admissions hold takes effect.
- e) Any out-of-state provider whose license or approval to operate a program is revoked by the responsible authority in the state where its facility is located shall immediately have its affected programs nonapproved and will be ineligible to contract with Illinois public school districts to serve students under Section 14-7.02 of the School Code. An admissions hold placed on a residential program by the residential program's licensing agent will constitute a reciprocal admissions hold barring public school districts from making new placements with that provider educationally. The provider shall notify ISBE when an admissions hold is placed on the residential program no later than 5 business days after the

ILLINOIS REGISTER

ILLINOIS STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

admissions hold takes effect.

- f) Nonapproval of a program during a school year shall be cause for termination of all the provider's contracts with Illinois public school districts for that program, and the provider shall be ineligible to contract with Illinois public school districts for the nonapproved program.

(Source: Amended at 48 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 residential 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) ISBE has approved the program for the school year for which placement is sought;
- b) The Purchased Care Review Board has established the allowable costs for the program pursuant to Section 14-7.02 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) ISBE has approved the program for all of the categories of impairment applicable to the student and requiring services as identified in the IEP;
- e) ISBE has approved the program for the age range that includes the age of the student;

ILLINOIS REGISTER

ILLINOIS STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

- 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 48 Ill. Reg. _____, effective _____)

Section 401.140 Provision of Educational Program

- a) Each provider shall ensure that each student receives special education and related services in accordance with the student's ~~this or her~~ IEP, provided that the use of behavioral intervention strategies that would jeopardize the safety or security of students or would rely upon pain as an intentional method of control shall not be permitted. ~~Providers utilizing disciplinary or behavioral techniques or interventions prohibited in Illinois are not eligible for approval, except as otherwise provided in Section 14-7.02 of the School Code.~~
- b) Each educational program shall be conducted in accordance with the requirements of 23 Ill. Adm. Code 226.720 (Facilities and Classes).
- c) Each classroom offered in a program subject to this Part shall have a maximum enrollment of five students per licensed/certified special education teacher in the classroom. ~~The enrollment in a class may be increased by a maximum of five students when a full-time paraprofessional or other professional staff is provided, for a maximum of 10 students.~~
- d) Deviations from the allowable class size requirements of subsection (c) or from subsection (b) may be requested in writing. ~~A rationale for the request (e.g., a staff member resigns right before the start of the school year and the facility can provide documentation that it is actively pursuing filling the vacancy but has not yet found a qualified individual for the position) and plan for evaluation of the deviations shall be submitted with the request.~~

(Source: Amended at 48 Ill. Reg. _____, effective _____)

ILLINOIS REGISTER

ILLINOIS STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

SUBPART C: OPERATIONAL REQUIREMENTS

Section 401.220 Health and Safety Requirements

- a) Illinois Facilities
- Responsible staff at every Illinois facility subject to this Part shall maintain and make available for review a copy of the most recent inspection report, which shall be no more than 36 months old, ~~if~~ issued by the State Fire Marshal 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:
- 1) For purposes of this subsection (a), a program operated within a facility that houses public school students or is otherwise used for public school purposes shall not be considered to be located in a "facility subject to this Part" because 23 Ill. Adm. Code 180 (Health/Life Safety Code for Public Schools) applies. In the case of a report that contains violations, a copy of the occupancy permit is required.
 - 2) To the extent that evidence of compliance is routinely issued by State or local fire, building or health authorities, or is required to be issued by the regional superintendent of schools, Illinois facilities' staff shall maintain and make available that evidence of compliance with applicable codes. Any documentation shall clearly identify the issuing authority.
- b) Illinois and Out-of-State Facilities
- 1) Responsible staff at every facility subject to this Part shall develop a written policy and procedure for safeguarding students' privacy and dignity during toileting, diapering, and other activities of personal care, as appropriate for the student population served.- Facility staff shall adhere to the policy and procedure at all times and shall make copies available upon request.
 - 2) Responsible staff at every facility subject to this Part shall develop a written policy addressing the administration of medication to students who may require it.- Each facility's policy shall conform to the requirements set forth in Sections 10-20.14b and 10-22.21b of the School Code.- Facility staff shall adhere to this policy at all times and shall make copies available upon request.

ILLINOIS REGISTER

ILLINOIS STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

- 3) Every facility subject to this Part and all materials used by students shall be maintained in a clean, sanitary, and safe condition.
 - 4) Smoking and the use of tobacco products by students shall not be permitted on the campus of any facility subject to this Part.
 - 5) The policies of every facility subject to this Part shall allow visitation at any time, with or without prior notice, by personnel from the State Board of Education or the contracting public school district of any enrolled student.
- c) **Out-of-State Facilities**
To the extent that evidence of compliance is routinely issued by state or local fire, building or health authorities, out-of-state facility staff shall maintain and make available that evidence of compliance with applicable codes. Any documentation shall clearly identify the issuing authority.

(Source: Amended at 48 Ill. Reg. _____, effective _____)

Section 401.240 Staffing Requirements

- a) The composition and qualifications of each facility's professional and paraprofessional staff shall be in accordance with the needs and requirements of the students with disabilities placed under Section 14-7.02 of the School Code. Each provider subject to this Part shall employ sufficient onsite professional staff, including staff having professional expertise and training in the disability-related educational needs of the students served, to meet the requirements of 23 Ill. Adm. Code 226, Subpart I (Personnel), as those requirements are affected by Section 10-21.4a of the School Code and 23 Ill. Adm. Code 25 (Educator Licensure). Each facility's staff must include a full-time chief administrator of a special school located onsite that meets the requirements of 23 Ill. Adm. Code 226.800(h), unless a head teacher is serving in place of a principal as permitted by Section 10-21.4a of the School Code, in which case the head teacher shall be required to hold a supervisory endorsement. This shall be allowable at educational programs with no more than 3 teachers, including the head teacher. Paraprofessional educators employed by facilities under this Part shall be subject to the requirements of 23 Ill. Adm. Code 25.510 (Endorsement for Paraprofessional Educators). Licenses/certificates issued by the Illinois Department of Financial and Professional Regulation (DFPR) or the licensing agency in the state in which the facility is located, are acceptable credentials. The position title listed on the application shall match the position titles listed in 23 Ill.

ILLINOIS REGISTER

ILLINOIS STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENTS

Adm. Code 226, Subpart I or 23 Ill. Adm. Code 25 and/or the licenses/certificates issued by DFPR or the licensing agency in the state in which the facility is located.

- b) A substitute teacher holding a valid license endorsed for early childhood, elementary, secondary, special K-12, or special preschool-age 22 or holding a substitute teaching license/certificate, shall be employed to replace absent teachers. -Only teachers holding a license/certificate or teaching approval in special education, as applicable to the students to be taught, shall be used to open new classrooms, begin a school year, or meet the staffing requirements set forth in this Section for purposes of approval of an application for eligibility.
- c) Facilities located outside Illinois shall employ personnel who possess the specific qualifications comparable to those issued in Illinois in connection with the positions in question.
- d) If the State Superintendent determines that a program has been operated for more than 40 business days in noncompliance with the requirements of this Section, the State Superintendent shall change the provider's SBE approval status accordingly, pursuant to the provisions of Section 401.30.

(Source: Amended at 48 Ill. Reg. _____, effective _____)