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ILLINOIS STATE BOARD OF EDUCATION

NOTICE OF PROPOSED AMENDMENT

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

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

**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 Reg. 14966; Part repealed, new Part adopted at 19 Ill.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 Reg. 9764, effective June 17, 2008; suspension withdrawn at 32 Ill. Reg. 13093, effective July 16, 2008; emergency amendments repealed by emergency rulemaking at 32 Ill.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; amended at 45 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART A: APPROVAL OF PROGRAMS

**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

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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.
  - 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) 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.
  - 2) If the provider demonstrates that it has corrected all instances of noncompliance within the time allotted, its "Approved" status shall be restored.

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- 3) 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".
  - 4) 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 exhibits recurring instances of documented noncompliance, its status shall be changed to "Nonapproved".
  - 5) 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 placement 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.
- 1) A status of "Nonapproved" voids the provider's eligibility to contract with

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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 10 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 10 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.
- 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.
- 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,

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and the provider shall be ineligible to contract with Illinois public school districts for the nonapproved program.

(Source: Amended at 45 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)