

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
- 401.20 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

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 Reg. 14966; Part repealed, new Part adopted at 19 Ill.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 Reg. 9764, effective June 17, 2008; suspension withdrawn at 32 Ill. Reg. 13093, effective July 16, 2008; emergency amendments repealed by emergency rulemaking at 32 Ill.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 41 Ill. Reg. _____, effective _____.

SUBPART A: APPROVAL OF PROGRAMS

Section 401.2 Regulatory Intent

An approved provider under this Part shall administer special education programs. These programs are appropriate when an IEP Team determines that no less restrictive setting on the continuum of alternative placements is available within the home district to meet the student's needs.

(Source: Added at 41 Ill. Reg. _____, effective _____)

Section 401.5 Definitions

"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. These special education programs are appropriate when an IEP Team determines that no less restrictive setting on the continuum of alternative placements are available within the home district to meet the student's needs.

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

"IEP Team" has the same meaning as ascribed in 34 CFR 300.23 (July 1, 2016).

"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 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).

"Professional Staff" means administrators, supervisors, teachers, and providers of related services, appropriately licensed in accordance with 23 Ill. Adm. Code 25, 23 Ill. Adm. Code 226.800 and 23 Ill. Adm. Code 401.240, who either provide or direct the provision of special education instruction or related services specified in the IEPs of students served, or who evaluate student progress or evaluate the provision of those special education instruction or related services. Professional staff does not include persons providing services other than special education instructional 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 goal attainment for the program and are intended to demonstrate continuous program improvement. The provider shall not only establish goals for themselves, but additionally collect/analyze data for enrolled students with disabilities, in alignment to these self-established goals. Further, such information will 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.

"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.

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

~~"Program" is a set of educational and/or residential services designed to serve students who have similar educational needs.~~

~~A "combination program" is one that includes both educational and residential services.~~

~~An "educational program" is one that consists of instruction and other activities intended to meet the annual goals and the short-term objectives set forth in IEPs for students with disabilities.~~

~~A "residential-only program" is one that provides room and board and may also include related services but provides no educational services.~~

"Related Services" has the meaning given to that term in the rules of the State

Board of Education for special education (see 23 Ill. Adm. Code 226.75).

"Residential-Only Program" is one that provides room and board and may also include related services, but provides no educational services. A residential only program must be affiliated with an approved education program.

"School Code" means 105 ILCS 5.

"School Days" are the days of student attendance as outlined on the provider's calendar.

"Special Education" has the meaning given to that term at 23 Ill. Adm. Code 226.75.

(Source: Amended at 41 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 ~~[105 ILCS 5/14-7.02]~~ shall be subject to the program 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), 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. 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.

- a) An application for initial approval of educational programs and/or residential programs, presented on forms supplied by the State Superintendent ~~of Education~~ and containing all the items enumerated in this subsection (a), shall be submitted to the State Superintendent. Initial applications are accepted September 1 through February 1 of the preceding school year for which approval is sought. A residential-only program application shall demonstrate an affiliation with a nonpublic special education program that is approved or seeking approval. Each application shall include the following:
 - 1) An accurate, written description of each program for which approval is requested shall include the following:, ~~which shall indicate the~~
 - 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 must reflect the students' learning goals as described in their respective IEPs; and

D) The maximum number of students the program is intended to accommodate; and-

E) A plan for addressing the goal of reintegration that is part of the annual IEP of the student placed.

2) A written plan for the administration and organization of the programs, including, but not limited to, the following:

A) The stated purpose and scope of the facility and its programs;

AB) A plan for the allocation of space solely for program purposes; and

BC) 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; setting forth an operating schedule reflecting at least 176 days of operation, for at least five hours per school day during the regular school year and, with respect to a summer session, if any is to be offered, at least 120 hours of operation if the facility is located in Illinois or, if the facility is located in another state, the number of hours approved by the responsible authority in that state.

A) Regular School Year
Each provider's operating schedule shall include 176 days of student attendance for at least 5.5 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 do not include lunch, passing time or recess. 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 2019-2020 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 2019-2020 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) Forfoe 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 ~~{105 ILCS 5/3-14.21}~~; or
 - B) Forfoe 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 Statement of Assurance shall be Assurances, signed by the facility's chief administrator on the Application for Nonpublic Programs, as provided by the State Board of Education acknowledging compliance with the provided laws and regulations, conveying such information as the State Superintendent of Education may require regarding the facility's compliance with other applicable federal, state, and local laws, ordinances, and regulations (such as public health and safety codes, building codes, and licensure requirements).
- 6) If the facility is located in Illinois and offers a residential component, evidence of the facility's current licensure or approval by the responsible agency of Illinois government, if applicable.
- 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 recognize the program, the program is ineligible for Illinois approval. This subsection (a)(7) will be effective against those facilities whose approval shall be renewed in odd-

numbered years beginning in 2019 and for facilities whose approval shall be renewed in even-numbered years beginning in 2020.

- 8) For instructional programs, summary information about all professional staff positions, and copies of the relevant credentials of persons employed in those positions ~~that, which~~ 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 2018-2019 school year providers utilizing disciplinary or behavioral techniques and/or interventions prohibited in Illinois are not eligible for approval in Illinois.
- 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.
- 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~~ 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~~ the residential component, if any, is licensed 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~~ shall be visited by a representative of the ~~Illinois~~ 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.

de) A program determined to comply with the requirements of 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~~ populations described in the approved application. All program changes or additions shall be approved by the State Superintendent prior to that change or addition being made. This includes, but is not limited to, disability categories and services, age ranges served or any approved programmatic component within this Section.

ed) The ~~denial~~ nonapproval of an initial application shall include a notice of the specific deficiencies that caused the denial. The denial will not prohibit future consideration of a provider's new submission of an initial application that addresses the deficiencies noted; however, a minimum of one submission cycle is required prior to resubmission of an initial application for consideration. ~~nonapproval and the opportunity for the provider to request a hearing pursuant to the Illinois Administrative Procedure Act [5 ILCS 100] and the State Board's rules for Contested Cases and Other Formal Hearings (23 Ill. Adm. Code 475).~~

fe) An application for renewal of approval, consisting of all the components set forth in subsection (a) ~~of this Section~~, ~~shall~~ must 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~~ April 15 prior to the beginning of the school year in question. If ~~March~~ April 15 is not a business day, the deadline shall fall on the next business day. The approval process for any

subsequent period may also involve on-site reviews, at the sole discretion of the State Superintendent of Education.

- 1) The denial of an application for renewal of 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 ~~shall granted for the 2006-2007 school year or later shall generally~~ 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. ~~However, the State Superintendent of Education shall approve approximately half the renewal applicants for the 2006-2007 school year for one year only, in order to stagger the two-year renewal process for subsequent periods.~~
 - A) ~~Applications shall be selected at random, provided that, once one program offered by a particular provider has been selected, all that provider's programs will be placed on the same renewal schedule.~~
 - B) The first renewal of 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.
- 3) ~~A program shall not be eligible for two-year renewed approval if it was not approved for the immediately preceding year, or if it was approved "pending further review" at any time during the immediately preceding period of approval. Applications for approval of these programs shall be treated as for initial approval.~~

(Source: Amended at 41 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, or to discontinue any of the facility's approved programs shall ensure that the State Superintendent of Education and each public school district with which it has entered into contracts for services receive no less than ~~40 school days' 60 calendar days'~~ written notice of such an intention. A provider shall also notify the State Superintendent of Education in writing, so that ~~the such~~ notification is reasonably calculated to be received at the State Board of Education's Board's office at 100 North First Street, Springfield, Illinois 62777, within ~~40 school 60 calendar~~ days after the following:

- 1) ~~Any change in a special education program described in its approved application;~~
 - 12) Any change in its educational administration and organization, as described in its approved application; and
 - 23) Any change in the number, type or duties of the professional staff positions identified as part of the application for 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.
- b) A provider shall notify the State Superintendent ~~of Education~~ in writing, so that ~~the~~such 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 ~~school~~calendar 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) ~~of this Part~~, 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, ~~if applicable~~;
 - 3) Any change in the facility's approval or licensure to operate in a state other than Illinois as described in its approved application, ~~if applicable~~;
 - 4) Any change in the number, type or duties of the professional or paraprofessional positions identified as part of the application for approval of an educational program or the education component of a combination program, or in the licensure 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~~must provide written notification to the State Superintendent and to the placing public school districts after 20 school~~30 calendar~~ days and again after 40 school~~60 calendar~~ days of its attempts to permanently fill ~~those~~such 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 ~~of this Part.~~

- c) Should a provider elect to terminate a student's placement in a facility under this Part, the provider shall give written notice to this effect to the contracting public placing school district at least 20 school30 calendar days prior to the date of termination, unless the health and safety of any student are endangered. The notice 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 ~~of this Part.~~

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 401.30 Changes in Approval Status

Programs approved to 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. ~~TheSuch~~ 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 ~~or may not~~ involve an on-site review. ~~TheSuch~~ 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 such 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 no more than 80 school60 calendar days to remedy all areas of the noncompliance.
 - 1) Every 20 schoolNo more than 30 calendar days after notification that it is approved with administrative review (up to the 80 school day timeframe for this status), an affected provider shall file with the State Superintendent ~~of Education~~ 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.

- 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 in the event that the State Superintendent notifies the district that the violations are not remedied.~~the provider shall not accept any new students from public school districts into the affected programs, nor shall it be approved for any programs for the next school year unless the noncompliance has been resolved.~~
- 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 ~~exhibit~~exhibits recurrent instances of minor noncompliance. The provider shall have 40 school ~~30 calendar~~ days to remedy the noncompliance.
 - 1) No more than 10 school ~~seven~~-calendar 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 school 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 school day timeline.
 - 2) If the provider demonstrates that it has corrected ~~all~~the instances of noncompliance within the time allotted, its "Approved" status shall be restored.
 - 3) If the provider has corrected the instances of noncompliance that may substantially affect the safety or the provision of appropriate education to students 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, ~~within the~~

~~time allotted,~~ its status shall be changed to "Nonapproved." If the provider exhibits recurring instances of documented noncompliance, its status shall be changed to "Nonapproved".

54) 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" ~~and public school districts shall not make new placements into such programs.~~ 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 ~~of Education~~ notifies the district that the violations are not remedied. ~~Notification of "Pending Further Review" status shall not be used as a basis for removing students from the program by the public school district.~~

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 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 that school year. The public school district is ineligible to receive reimbursement under Section 14-7.02 of the School Code for placement in a nonapproved program.

2) Providers shall be given 10 school ~~ten business~~ days' notice by the State Superintendent before nonapproval becomes effective, unless imminent danger to students precludes ~~that such~~ notice. The State Superintendent shall also give 10 school ~~ten 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 Board'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~~approved pending 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 admission hold placed on a residential program by their 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 its licensing agent will constitute a reciprocal admissions hold barring public school districts from making new placements to 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, and the provider shall be ineligible to contract with Illinois public school districts for the nonapproved program ~~for the remainder of the school year in question~~. A nonapproved provider shall be eligible to reapply (during the initial application time period) 1 calendar year after the effective date of nonapproval.

(Source: Amended at 41 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 facility where its students are placed, to ensure that the implementation of each student's ~~Individualized Education Program (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, 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 ~~such~~ 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 approved by the State Board of Education for the school year for which placement is sought:-
- b) The allowable costs for the program have been established 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 ~~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]~~.
- d) The program has been approved by the State Board of Education for all of the categories of impairment applicable to the student and requiring services as identified in the IEP:-
- e) The program has been approved by the State Board of Education 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 41 Ill. Reg. _____, effective _____)

Section 401.120 Placement Procedures

Placement of students shall conform to the applicable requirements of 23 Ill. Adm. Code 226; ~~Subpart D (Placement)~~.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 401.130 Operating Schedule

Each provider's operating schedule shall meet the following requirements:

- a) Regular School Year
Each provider's operating schedule shall include 176 days of student attendance for at least 5.5 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 do not include lunch, passing time or recess. A provider may have two full day parent/teacher conferences. This option reduces the required number of student attendance days to 174. This subsection (a)(3)(B) will be effective beginning with the 2019-2020 school year.
- b) Educational Programing Outside 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 2019-2020 school year.

~~Each facility's operating schedule shall ensure that 176 school days are provided for each program. If a summer program is operated at a facility located within Illinois, it shall consist of at least 120 hours of instruction. A summer program 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.~~

(Source: Amended at 41 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 his 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.
- b) Each educational program shall be conducted in accordance with the requirements of 23 Ill. Adm. Code 226.720 (Facilities and Classes).
- c) Each class offered in a program subject to this Part shall have a maximum enrollment of five students per licensed special education teacher. The, except that enrollment may be increased by a maximum of two students in response to unique circumstances that occur during the school year so long as the educational needs of all students in the class can be adequately and appropriately met. Alternatively, the enrollment in a class may be increased by a maximum of five students when a full-time paraprofessional is provided for a maximum of 10 students.

- d) Deviations from the allowable class size requirements of subsection (c) or from the age range requirements of Section 226.720 may be requested in writing. A rationale for the request and plan for evaluation of the deviations shall be submitted with the request. No deviation request can be submitted or approved at the start of or within the first 30 school days of the academic year.~~Initial denial of a request for deviation may be appealed to the State Superintendent of Education.~~

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 401.145 Administration of State Assessment

A facility approved under this Part and located in Illinois may serve as a testing site for the State assessments required pursuant to Section 2-3.64a-5 of the School Code ~~[105 ILCS 5/2-3.64a-5]~~ in accordance with the provisions of this Section. For purposes of this Section, a "testing site" is a facility at which responsible staff is permitted to order and receive test materials directly from the testing contractor according to the contractor's arrangement with the State Board of Education. A provider seeking designation of a facility as a testing site under this Section shall follow the specific communication procedures established by the State Superintendent ~~of Education~~ for making the request, supplying the necessary information, and receiving the designation, as applicable to the examinations to be administered. The provider and responsible staff shall abide by all technical specifications established by the State Superintendent ~~of Education~~ and test contractors to implement the requirements set forth at 23 Ill. Adm. Code 1.30 (State Assessment).

a) **Required Conditions**

If a provider operating an Illinois facility under this Part wishes to have the facility serve as a testing site for one or more State assessments, certain required conditions ~~shall~~must exist at the facility that will ensure the security and confidentiality of test materials and the validity of the resulting scores. The specifics of these requirements will vary according to which of the State assessments will be involved.

- 1) Locked facilities and storage for secure test materials ~~shall~~must exist, and access to these ~~shall~~must be limited to authorized individuals.
- 2) ~~An There must be an~~ adequate amount of space ~~shall~~exist for the number of examinees, and each ~~shall~~must have an appropriate space in which to work. The facility ~~shall~~must provide an environment that will meet technical requirements for particular types of test administration, including accommodations for students with disabilities or English Language Learners limited English proficiency.
- 3) The facility ~~shall~~must afford lighting, temperature, and quiet such that

the test environment will be free from interruptions and distractions.

b) Required Personnel Assignments and Qualifications

- 1) Each individual appointed to a role under this subsection (b) shall be an employee of the provider or facility. No volunteers or parents may serve in these positions.
- 2) The provider or chief administrator shall designate a testing coordinator for each assessment to be administered at a facility. An individual may serve as coordinator for more than one of the assessments. The responsibilities of the testing coordinator shall include the following:
 - A) ~~Ordering~~ordering, distributing, collecting, and returning test materials;
 - B) ~~Training~~training test administrators and proctors regarding their responsibilities;
 - C) ~~Arranging~~arranging for the accommodations called for in ~~individual~~ students' IEPs;
 - D) ~~Ensuring~~ensuring that neither test security nor the purpose of testing is compromised by any accommodations afforded to students; and
 - E) ~~Overall~~overall monitoring of testing activities to ensure that required procedures are followed.
- 3) The assessment may be administered only by the following individuals:
 - A) ~~Administrators~~administrators holding educator licensure appropriate to their positions (e.g., assistant principals, principals, or chief administrators);
 - B) ~~Teacher~~teachers holding educator licensure with endorsements appropriate to their positions (including holders of substitute teaching licenses and educator licenses with stipulations for provisional ~~educators~~educator) and employed by the provider as teachers at the facility;
 - C) ~~School~~school psychologists, school social workers; and school counselors holding educator licensure appropriate to their positions and employed by the provider at the facility in their respective

professional capacities; and

- D) ~~Paraprofessional~~~~paraprofessional~~ educators, provided that constant, line-of-sight supervision by an educator licensed teacher employed by the provider as a teacher at the facility shall be required (including supervision for individuals employed as paraprofessional educators who are also educator licensed teachers).
- c) Required Procedures
Following procedures announced annually by the State Superintendent ~~of Education~~ and using the materials provided, the responsible individual at each testing site shall communicate with the testing contractors for the examinations to be administered at that site. The State Superintendent ~~of Education~~ shall furnish to staff at each testing site the same technical guidance as is provided to the public schools regarding details of the test administration, and responsible staff at each testing site shall ensure that these technical specifications are followed, including, but not limited to the following:
 - 1) ~~The~~ dates established as the testing window;
 - 2) ~~The~~ handling of test documents and other secure materials;
 - 3) ~~Permissible~~~~permissible~~ and impermissible objects in the testing environment;
 - 4) ~~Permissible~~~~permissible~~ and impermissible behavior on the part of test-takers;
 - 5) ~~Required~~~~required~~, permissible, and impermissible actions on the part of staff at the testing site.
- d) The public school district that has placed a student with a disability into a program approved under this Part remains responsible for determining, in accordance with the student's IEP, where the student will take the appropriate State assessment and whether the test materials for that student are to be ordered and handled by district or facility personnel, even if the facility where the student is placed serves as a testing site for that assessment.
- e) No State assessment shall be administered to any student who is not required to participate in the State assessment pursuant to Section 2-3.64a-5 of the School Code and 23 Ill. Adm. Code 1 (see Sections 1.30 (State Assessment) and 1.50 (Calculation of Participation Rate)).
- f) Any breach of test security or other testing irregularity shall be reported to the

State Superintendent of Education ~~or designee~~ in accordance with instructions applicable to particular types of problems, using one of the methods identified by the State Superintendent. Responsible staff at the affected facility shall then follow the instructions provided by the State Superintendent or the relevant test contractor regarding the next steps to be taken in investigating the source of the problem, its implications, and its potential resolution.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 401.150 Classroom Records

In addition to records meeting the requirements of 23 Ill. Adm. Code 226.740 (Records; Confidentiality), there shall be an educational file for each student, maintained by the classroom teacher on a daily basis and updated as circumstances may require. This file shall contain at least the following:

- a) The student's IEP, including a copy of any behavior management plan;
- b) Documentation of ongoing evaluation procedures, indicating the student's progress toward fulfillment of the objectives set forth in the IEP according to the criteria specified in the IEP therein;
- c) A schedule that accurately reflects the type and frequency of all related services received; and
- d) Medically related information necessary to ensure the student's health and safety.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

SUBPART C: OPERATIONAL REQUIREMENTS

Section 401.210 General Requirements

- a) Every provider with one or more facilities or programs subject to this Part shall maintain the written program descriptions and the educational administration and organization plans described in Section 401.10 ~~of this Part~~, as well as the current, approved application for each affected program, and shall make these available to the public schools, parents and guardians of students, and other interested individuals and organizations upon request.
- b) Every provider subject to this Part shall maintain the following records:
 - 1) Copies of this Part and the State Board of Education's ~~Board's~~ rules

for Special Education (23 Ill. Adm. Code 226) and make these available to staff and parents or guardians of students enrolled, so that these parties may be aware of rules that pertain to the education of students with disabilities served under Section 14-7.02 of the School Code;

- ~~2e) A Every provider subject to this Part shall maintain a~~ separate and current roster of students served in that provider's facility and programs pursuant to Section 14-7.02 of the School Code; ~~and.~~
- ~~3d) Records~~ Every provider subject to this Part shall maintain records of and report changes in its administration, staff, ~~instructional programs,~~ and physical facilities, as required pursuant to Section 401.20 ~~of this Part.~~

~~ce)~~ All facilities, programs, and records required, established, or maintained pursuant to this Part shall be made available by the provider at any time, with or without prior notification, for inspection and evaluation by official representatives of the State Board of Education.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 401.220 Health and Safety Requirements

- a) 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, 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.)
 - ~~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 and out-of-state facilities' staff shall maintain and make available such evidence of compliance with applicable codes. Any ~~such~~ documentation shall clearly identify the issuing authority.
- b) Responsible staff at every facility subject to this Part shall develop a written policy and ~~procedure~~ procedures 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 ~~thesuch~~ policy and ~~procedureprocedures~~ at all times and shall make copies available upon request.

- c) 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 ~~[105 ILCS 5/10-20.14b and 10-22.21b]~~. Facility staff shall adhere to this policy at all times and shall make copies available upon request.
- d) Every facility subject to this Part and all materials used by students shall be maintained in a clean, sanitary, and safe condition.
- e) Smoking and the use of tobacco products by students shall not be permitted on the campus of any facility subject to this Part.
- f) 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 districts~~ school district of residence of any enrolled student.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 401.230 Student Progress Reports and Reviews

- a) Responsible staff at each facility shall maintain attendance records for each student served pursuant to Section 14-7.02 of the School Code.
 - 1) Each student's attendance shall be reported in writing or electronically to the public school district of residence by the 15th of each month for the preceding month.
 - 2) A student's public school district of residence shall be notified immediately in writing or electronically after five consecutive days of ~~unexcused absences~~ absence, unless the district requires a more frequent reporting schedule.
 - 3) Attendance records shall be retained as long as the student is placed at the facility.
- b) Each student's progress, (goals, reintegration, and transition) shall be reviewed with his or her parent or guardian and the respective public school district of residence as set forth in the child's IEP and in accordance with 34 CFR 300.320.

- c) Responsible staff at each facility shall notify the respective public school district of residence immediately, should they become aware of a change in residence or change in guardianship for the student.

(Source: Amended at 41 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 professional staff, including staff having professional expertise and training in the disability-related educational needs of the students served, to meet the ~~applicable~~ requirements of 23 Ill. Adm. Code 226, Subpart I (Personnel), as those requirements are affected by Section 10-21.4a of the School Code ~~[105 ILCS 5/10-21.4a]~~, if applicable, and 23 Ill. Adm. Code 25 (Educator Licensure). A head teacher serving in place of a principal as permitted by Section 10-21.4a of the School Code shall be required to hold a supervisory endorsement. 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 issued by the Illinois Department of Financial and Professional Regulation (IDFPR) 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. Adm. Code 226, Subpart I, 23 Ill. Adm. Code 25 and/or the licenses issued by IDFPR or the licensing agency in the state in which the facility is located.
- b) A substitute teacher holding a valid professional educator license endorsed for early childhood, elementary, secondary, special K-12, special preschool-age 21, or holding a substitute teaching license, shall be employed to replace absent teachers. Only teachers holding educator licensure 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 school ~~60 consecutive calendar~~ days in noncompliance with the requirements of this Section, the State Superintendent shall change the provider's approval status accordingly, pursuant to the provisions of Section 401.30.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 401.250 Staff Training

Each provider subject to this Part shall develop and implement ongoing inservice training programs related to the duties of all staff.

- a) Each provider shall prepare and keep on file an annual plan for inservice training in areas where improvement is desirable. The provider shall identify these areas based upon an analysis of each program's outcome data and based on student achievement in relation to the goals and objectives of the program implementation in relation to the approved application and based upon data illustrating the achievement of the students served in relation to the goals and objectives stated in their IEPs and on the State assessments in which they participate. Training sessions shall be planned and designed to assist staff members in improving their ability to fulfill their duties as defined in their job descriptions, as necessary to educate the student population served and with specific reference to areas of need identified in the annual plan.
- b) As appropriate to the student population served, each provider shall provide specific training to all personnel, including, but not limited to the following:
 - 1) ~~The~~ the policy and procedures regarding the maintenance of student privacy and dignity;
 - 2) ~~Disposal~~ disposal of hazardous waste materials;
 - 3) ~~Procedures~~ procedures for preventing the transmission of blood-borne pathogens;
 - 4) ~~The~~ the use of isolated time out or physical restraint, if any, subject to the requirements of 23 Ill. Adm. Code 1.280 (Discipline) and 1.285 (Requirements for the Use of Isolated Time Out and Physical Restraint);
 - 5) Behavioral ~~behavioral~~ intervention strategies; and
 - 6) ~~The~~ the administration of medication.
- c) Each provider shall provide training to all paraprofessionals and personal care aides ~~assistants and aides~~ before they assume their duties.
- d) Each provider shall maintain accurate, written and dated records of all training provided, as described in Section 401.260 ~~of this Part~~.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 401.260 Staff Records

- a) A separate, current record shall be maintained for each staff member employed either full-time or part-time who provides direct services or who is directly involved in the development and implementation of instructional and related services for students enrolled under Section 14-7.02 of the School Code. All staff files shall be located at the school available on site for inspection by representatives of the State Board of Education and placing public school districts and shall include the following:
 - 1) Individual job descriptions that reflect the duties to be performed and the qualifications required and that are updated as this information changes;
 - 2) Reports of initial physical examinations, records indicating freedom from tuberculosis for staff working with preschool aged students, evidence of compliance with 29 CFR 1910.1030 (July 1, 2016), and reports of ~~such~~ subsequent medical examinations as may be required by the facility;
 - 3) Copies of high school, college, or university transcripts indicating graduation, degrees, or special training or education completed, and/or copies of state certificates, approvals, licenses, or registrations, as applicable to the individual staff member and position;
 - 4) Copies of the following:
 - A) ~~The~~ results of fingerprint-based criminal history records checks performed pursuant to the Uniform Conviction Information Act [20 ILCS 2635] or, for a facility located in another state, pursuant to that state's uniform conviction information act, and pursuant to the Adam Walsh Child Protection and Safety Act of 2006 (42 USC 16911 et seq. P.L. 109-240); and
 - B) ~~The~~ results of checks of the Statewide Sex Offender Database maintained in accordance with Section 115 of the Sex Offender Community Notification Law [730 ILCS 152/~~415~~] or, for a facility located in another state, checks of that state's sex offender database.
 - 5) Records of the transmission for each employee completing the criminal background investigation process will be submitted to each placing public school district currently contracting with the provider and those reports can be reviewed at the facility of all criminal background investigation

~~reports to each public school district currently contracting with the provider.~~

6) The results of checks of the Illinois Murderer and Violent Offender Against Youth Registry or the comparable registry for a facility located out of state.

- b) Responsible staff at each facility shall maintain a separate file containing a record of all inservice training. This file shall be available for inspection and shall include at least the following:
- 1) Records of initial orientation and training for new staff members, showing that each received training appropriate to the position held at the site;
 - 2) The agenda of each formal staff training session conducted at the facility, showing the dates and amount of time used;
 - 3) Records of seminars, conferences, lectures, and other training events attended by staff members off the facility's premises;
 - 4) Records of ongoing training offered as a part of the assignment of professional support personnel; and
 - 5) The signatures of the staff members who attended each session or event referred to in subsections (b)(1) through (4) ~~of this Section~~.
- c) The training file referred to in subsection (b) ~~of this Section~~ may also contain such similar records as may be required by other state or federal agencies.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 401.270 Student Records

- a) A separate student record file shall be maintained for each student served under Section 14-7.02 of the School Code. ~~Files~~ ~~Such files~~ shall be maintained in a secured central location on the premises of the facility. Each student's file shall contain the information listed below, or the information shall be made readily accessible for inspection.
- 1) Documentation of the date of the student's most recent enrollment in the program in question under Section 14-7.02 of the School Code.
 - 2) Copies of the most recent reports that address the domains covered in the student's most recent evaluation, documentation of the IEP Team's determination of the domains that would be included (see 23 Ill. Adm.

Code 226.75 (Definitions) and 226.110(Evaluation Procedures)), and a copy of the most recent eligibility determination.

- 3) Evidence of compliance with 23 Ill. Adm. Code 226.330(d).
 - 4) The student's current IEP developed for the placement in accordance with 23 Ill. Adm. Code 226, Subpart C (The Individualized Education Program (IEP)).
 - 5) Reports of review procedures conducted with respect to the student's progress as specified in Section 401.230(b)-~~of this Part~~, including copies of all progress reports provided to parents and the placing public sending school district.
- b) All material in the student record file shall be signed as required, dated, and placed in chronological order for the purpose of inspection and evaluation by representatives of the State Board of Education and the public school district of the student's residence.
 - c) The record of a student enrolled in a program at a facility subject to this Part pursuant to Section 14-7.02 of the School Code shall be the property of the student's public school district of residence and shall be subject to the policies and procedures established by that public school district to govern school student records and to the provisions of the Illinois School Student Records Act [105 ILCS 10] regarding confidentiality of ~~thosesuch~~ records.
 - d) When a student is no longer served in a facility under this Part for any reason, and regardless of any monetary amount due to the provider from the public school district that placed the student, all the student's records shall be returned or provided to the district within 20 school~~30 calendar~~ days, and staff of the facility shall maintain a record of having returned them. The records to be returned include, but are not limited to the following:
 - 1) The temporary public school records that were provided by the district at the time of the student's placement.
 - 2) Other records of an academic or instructional nature that have accumulated during the student's enrollment at the nonpublic facility, including the following:
 - A) Records of behavior management plans; and
 - B) Records of all psychological and social work and any therapeutic tests related to goals and objectives included in the student's IEP.

- 3) A transcript of any academic credits earned while the student was served at the facility.
- 4) Records of the student's attendance while served at the facility.

(Source: Amended at 41 Ill. Reg. _____, effective _____)

Section 401.280 Fiscal Provisions

- a) Tuition charged to a public school district by a provider for the term specified in an individual student's State Board of Education 19-38 Nonpublic Facility Placement Contract~~placement agreement~~ shall not exceed the allowable costs approved pursuant to 89 Ill. Adm. Code 900 (Illinois Purchased Care Review Board)~~Section 14-7.02 of the School Code~~.
- b) A status of "Nonapproved" shall be assigned to any program whose provider has not accepted the rate set by the Illinois Purchased Care Review Board~~allowable costs approved~~ pursuant to 89 Ill. Adm. Code 900~~Section 14-7.02 of the School Code~~ ~~within~~ 60 days after their approval or within 60 days after approval of the application for eligibility by the State Board of Education, whichever occurs later.
- c) The tuition charge for all students with disabilities who, pursuant to the IEP, are served in a facility less than full-time shall be prorated according to the percentage of the time the students are actually served in the program.
- d) Providers shall not engage in the following conduct:
 - 1) Pre-bill public school districts;
 - 2) Bill public school districts for services until after those services have actually been provided; and
 - 3) Charge~~Providers shall not charge~~ parents for special education, related services; or room and board, as outlined in the IEP,~~provided to students placed by Illinois public school districts.~~
- e) Nothing in this Part shall be construed as prohibiting a provider from contracting with any local public school district for individual student services, transportation, diagnosis and evaluation, or other services that are not included in the determination of allowable costs set by the Illinois Purchased Care Review Board.
 - 1) Contracts for any ~~such~~ services ~~shall~~must be separate from individual placement agreements.

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- 2) All costs and revenues resulting from ~~such~~ contracts shall be included in the facility's rate calculations under Section 14-7.02 of the School Code.

(Source: Amended at 41 Ill. Reg. _____, effective _____)