

**DISCUSSION DRAFT OF PROPOSED AMENDMENTS  
October 2005**

TITLE 23: EDUCATION AND CULTURAL RESOURCES  
SUBTITLE A: EDUCATION  
CHAPTER I: STATE BOARD OF EDUCATION  
SUBCHAPTER I: NONPUBLIC ELEMENTARY AND SECONDARY SCHOOLS

PART 401  
NONPUBLIC SPECIAL EDUCATION FACILITIES UNDER SECTION 14-7.02 OF THE  
SCHOOL CODE

SUBPART A: APPROVAL OF PROGRAMS ~~NONPUBLIC FACILITIES~~

Section

- 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 School Districts
- 401.120 Placement Procedures
- 401.130 Operating Schedule
- 401.140 Provision of Instructional Program
- 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].

## DISCUSSION DRAFT OF PROPOSED AMENDMENTS October 2005

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 Reg. 14966; Part repealed, new Part adopted at 19 Ill.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 \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

### SUBPART A: APPROVAL OF PROGRAMS ~~NONPUBLIC FACILITIES~~

#### Section 401.5 Definitions

~~"Exceptional Children" means all children designated eligible for services under Article 14 of the School Code [105 ILCS 5/Art. 14].~~

~~"Individualized Education Program (IEP)" is means a written statement for a student with a disability an exceptional child that conforms to the requirements of 23 Ill. Adm. Code 226.230 (Content of the IEP). provides at least a statement of: the child's present levels of educational performance; annual goals and short term instructional objectives; specific special education and related services; the extent of participation in the regular education program; the projected dates for initiation of services; anticipated duration of services; appropriate objective criteria and evaluation procedures; and a schedule for annual determination of short term objectives.~~

~~"Instructional Programs" means those activities which are intended to meet the annual goals and the instructional objectives set forth in the individualized education programs of exceptional children.~~

"Professional Staff" means administrators, supervisors, teachers, and providers of related services who either provide or direct the provision of instruction or related services specified in the IEPs ~~IEP's~~ of students served, or who evaluate student progress or evaluate the provision of such instruction or related services. Professional staff does not include persons providing services other than instructional and related services specified in the IEP or whose duties are limited to assisting professional staff.

"Provider" is any organization that offers special education and/or residential services to students with disabilities under contract to one or more Illinois school districts and pursuant to Section 14-7.02 of the School Code.

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

## DISCUSSION DRAFT OF PROPOSED AMENDMENTS October 2005

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

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 instructional 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) means the developmental, corrective, and other supportive services provided by qualified personnel such as social workers, psychologists, guidance counselors, or other qualified personnel, which services are required to assist a handicapped child to benefit from special education and may include: speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, medical services for diagnostic or evaluation purposes, transportation, school health services, social work services, and parent counseling and training.~~

~~"Residential Programs" means programs to provide placements pursuant to 23 Ill. Adm. Code 226.420 which do not include services included in instructional programs.~~

~~"Special Education" has the meaning given to that term at 23 Ill. Adm. Code 226.75 means those instructional and resource programs and related services, unique materials, physical plant adjustments, and other special educational facilities described or implied in Article 14 of the School Code which, to meet the unique needs of exceptional children, modify, supplement, support, or are in the place of the standard educational program of the public schools. The term includes speech pathology and vocational education.~~

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

### Section 401.10 Application for Eligibility

## DISCUSSION DRAFT OF PROPOSED AMENDMENTS October 2005

Each ~~provider nonpublic facility~~ 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. 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 school districts to serve students with disabilities under Section 14-7.02 of the School Code. ~~The requirements of this Part shall also apply to the use of nonpublic facilities by public school districts pursuant to Section 14-7.03a of the School Code [105 ILCS 5/14-7.03a].~~

- a) An application for initial approval of educational program(s) and/or residential program(s), presented on forms supplied by the State Board of Education and containing all the items enumerated in this subsection (a), shall be submitted to the State Board. Each application shall include:
  - 1) An accurate, written description of each program for which approval is requested, which shall indicate the categories and ages of students with disabilities for whom it is specifically intended and the maximum number of students the program is intended to accommodate.
  - 2) A written plan for the administration and organization of the program(s), including but not limited to:
    - A) The stated purpose and scope of the ~~nonpublic facility~~ and its programs;
    - B) A plan for the allocation of space solely for program purposes; and
    - C) An organizational chart that reflects the provider's governance, administrative, and educational structures ~~of the nonpublic facility~~.
  - 3) The ~~provider's facility's~~ provider's proposed calendar for the program for which approval is sought, 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.
  - 4) A copy of the State Fire Marshal's most recent inspection report for the facility, which shall be no more than 24 months old at the time of application and shall indicate no violations, or, for an out-of-state facility,

## DISCUSSION DRAFT OF PROPOSED AMENDMENTS October 2005

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) Assurances, signed by the facility's chief administrator, conveying such information as the State Board 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 ~~Department of Children and Family Services, the Department of Mental Health and Developmental Disabilities, or the Department of Public Health~~, 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 program(s) in the state where it is located, including a copy of the standards or criteria used by the responsible agency in that state.
  - 8) For instructional programs, summary information about all professional staff positions, and copies of the relevant credentials of persons employed in those positions, which demonstrate that the facility has sufficient staff available who are qualified pursuant to the requirements of Section 401.240 of this Part 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 facility under contract, demonstrating ~~which demonstrate~~ that the provider facility has sufficient related services available to operate the program.
  - 10) ~~A copy of the facility's policy and procedures for safeguarding students' privacy and dignity, as required by Section 401.220(b) of this Part.~~
- b) If the application is complete and the facility is located in Illinois or within 50 miles of Illinois, State Board staff ~~or, in the case of an out-of-state facility, a designee~~ shall conduct an on-site review visit and evaluate the facility and the programs offered for the purpose of verifying the accuracy of the application, evaluating their the facility's conformance with the other requirements of this Part, and recommending approval or disapproval of the its programs ~~program(s)~~.

**DISCUSSION DRAFT OF PROPOSED AMENDMENTS**  
**October 2005**

- 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:
    - 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 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 of this Part 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 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.
- c) 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 ~~Such~~ 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 of this Part.
  - 2) A program shall serve only the specific student population(s) described in the approved application.
- d) The nonapproval of an initial application shall include a notice of the specific deficiencies that which caused the 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).

**DISCUSSION DRAFT OF PROPOSED AMENDMENTS  
October 2005**

- e) An application for renewal of approval, consisting of all the components set forth in subsection (a) of this Section, must be submitted for any subsequent period year in which a provider facility 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 April 15 prior to the beginning of the school year in question. If April 15 is not a business day, the deadline shall fall on the next business day. The approval process for any such subsequent period year may also involve on-site reviews ~~site visits~~, at the sole discretion of the State Board 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) of this Part.
  - 2) Renewed approval 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 of this Part. However, the State Board of Education shall approve approximately half the renewal applicants for the 2006-2007 school year, selected at random, for one year only, in order to stagger the two-year renewal process for subsequent periods.
  - 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 such programs shall be treated as for initial approval.

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

**Section 401.20 Notification Requirements**

- a) A provider that operates a nonpublic facility subject to the requirements of this Part and which intends to cease operations, to move to a new location, or to discontinue any of the facility's ~~its~~ approved programs shall ensure that the State Board of Education and each school district with which it has entered into contracts for services receive no less than 60 calendar days' written notice of such an intention.

**DISCUSSION DRAFT OF PROPOSED AMENDMENTS**  
**October 2005**

- b) A ~~provider nonpublic facility~~ shall also notify the State Board of Education in writing, so that such notification is reasonably calculated to be received at the State Board's office at 100 North First Street, Springfield, Illinois 62777, within 60 ~~five~~ calendar days, after ~~of~~:
- 1) Any change in a special education program described in its approved application;
  - 2) Any change in its educational administration and organization, as described in its approved application; and
  - 3) Any change in the number, type or duties of the professional 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 Board of Education in writing, so that such notification is reasonably calculated to be received at the State Board's office at 100 North First Street, Springfield, Illinois 62777, within five calendar days, after:
- 1) 3) 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) 4) Any change in the facility's approval or licensure to provide a residential program as described in its approved application, if applicable;
  - 3) 5) 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) 6) ~~For instructional programs, any~~ Any change in the number, type or duties of the professional or paraprofessional positions identified as part of the ~~facility's~~ application for approval of an educational program or the education component of a combination program, or in the licensure status/credentials of any individual employed in such a position, if the change will affect the program's compliance with the requirements of this Part.

## DISCUSSION DRAFT OF PROPOSED AMENDMENTS October 2005

- A) If any professional position subject to the notification requirements of this subsection (b)(4) Section remains vacant, the provider ~~nonpublic facility~~ must provide written notification to the State Board and to the placing school districts after 30 calendar days and again after 60 calendar days of its attempts to permanently fill 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 Board determines that the provider facility has not reported staffing changes in a program as required, the State Board shall change the approval status of the program accordingly, pursuant to the provisions of Section 401.30 of this Part.
  
- c) Should a provider wish to terminate a student's placement in a facility under this Part, the provider shall give written notice to this effect to the placing school district at least 30 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.

(Source: Amended at \_\_ 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. Such evaluation may take place for any reason, with or without prior notice to the provider facility, and at the sole discretion of the State Board of Education and may or may not involve an on-site review ~~a site visit~~. Such evaluation shall result in either retention of approved status or assignment of one of the following.

- 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 Board determines that such noncompliance does not substantially affect the safety of, or provision of appropriate education to, the students enrolled. The provider facility shall have 60 calendar days to remedy the noncompliance.
  - 1) No more than 30 calendar days after notification that it is approved with administrative review, an affected provider facility shall file with the State

**DISCUSSION DRAFT OF PROPOSED AMENDMENTS**  
**October 2005**

- Superintendent Board of Education a progress report describing actions taken to correct the instance(s) of noncompliance identified.
- 2) If the State Superintendent Board determines that the provider nonpublic-facility has corrected the instances of noncompliance within the time allotted, the program's "Approved" status shall be restored.
  - 3) If the State Superintendent Board determines that the provider nonpublic-facility has failed to correct the instances of noncompliance within the time allotted, the provider facility shall not accept any new students from public school districts into the affected program(s), 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~~ which may substantially affect the safety of or provision of appropriate education to students but ~~that~~ which does not constitute imminent danger, or exhibits recurrent instances of minor noncompliance. The provider facility shall have 30 calendar days to remedy the noncompliance.
- 1) No more than seven calendar days after receipt of notification from the State Superintendent Board of Education that program approval status is pending further review, an affected provider facility shall submit a written report to the State Superintendent Board of Education describing its plans for correcting the noncompliance identified and the actions taken to correct it.
  - 2) If the provider facility demonstrates that it has corrected the instances of noncompliance within the time allotted, its "Approved" status shall be restored.
  - 3) If the provider facility fails to demonstrate that it has corrected the instances of noncompliance within the time allotted, its status shall be changed to "Nonapproved."
  - 4) A provider nonpublic facility 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

**DISCUSSION DRAFT OF PROPOSED AMENDMENTS**  
**October 2005**

school district shall identify alternative arrangements for its students in the program, for implementation in the event that the State Superintendent Board 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 facility 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 which present imminent danger to the students exist or if the State Superintendent Board verifies that the provider facility has unilaterally and intentionally ceased providing appropriate education pursuant to a school district's contract(s) and one or more students' IEPs IEP's.
- 1) A status of "Nonapproved" voids the provider's facility'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 program(s) for the remainder of that school year.
  - 2) Providers Facilities shall be given ten business days' notice by the State Superintendent Board before nonapproval becomes effective, unless imminent danger to students precludes such notice. The State Superintendent Board shall also give ten business days' notice to affected school districts to enable them to implement other arrangements prior to the effective date of nonapproval, as required.
  - 3) The provider of any Any previously approved program placed on nonapproved status shall be afforded an opportunity for a hearing pursuant to the Illinois Administrative Procedure Act and the State Board's rules for Contested Cases and Other Formal Hearings. Unless the State Superintendent Board 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 approved pending the hearing.

**DISCUSSION DRAFT OF PROPOSED AMENDMENTS  
October 2005**

- d) Any provider facility whose license or approval to operate a residential program is revoked shall immediately have its residential program(s) nonapproved and will be ineligible to provide residential services to students under Section 14-7.02 of the School Code.
- e) Any out-of-state provider facility 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 program(s) nonapproved and will be ineligible to contract with Illinois public school districts to serve students under Section 14-7.02 of the School Code.
- f) Nonapproval of a program during a school year shall be cause for termination of all the provider's facility's contracts with Illinois school districts for that program, and the provider facility shall be ineligible to contract with Illinois public school districts for the nonapproved program for the remainder of the school year in question.

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

SUBPART B: PLACEMENT AND EDUCATION OF STUDENTS

**Section 401.110 Use by School Districts**

Each school district shall be responsible for monitoring the performance of each ~~nonpublic~~ 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 23 Ill. Adm. Code 226 (Special Education). In addition, no school district shall place any student in a ~~nonpublic~~ 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].

**DISCUSSION DRAFT OF PROPOSED AMENDMENTS  
October 2005**

- 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 ~~all~~ educational programming and related services specified on the student's IEP will be provided to the student ~~by the facility~~. The use of a ~~nonpublic~~ facility or program in accordance with this Part does not relieve the district of the responsibility for ensuring that the student will receive providing all programming and related services required by the IEP, whether from one source or from multiple sources.
- g) The district and the provider facility have entered into the contractual agreement called for in 23 Ill. Adm. Code 226.330 226.440.

(Source: Amended at \_\_ 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) Subparts H (State Operated or Private Programs) and I (Identification, Evaluation and Placement of Exceptional Children).

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

**Section 401.130 Operating Schedule**

Each ~~nonpublic~~ facility's operating schedule shall ensure that 176 school days and, if a summer program is operated, 120 hours of instruction, are provided for each program.

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

**Section 401.140 Provision of Educational Instructional Program**

Each educational instructional program shall be conducted in accordance with the requirements of 23 Ill. Adm. Code 226.720, 226.730, and 226.800, the latter as affected by the policies of the State Board of Education that are in effect due to a federal court order of August 15, 2001, in the matter of Corey H., et al., v. Board of Education of the City of Chicago, et al.) 226, Subpart D- (Special Education Instructional Programs and Resource Programs). All students placed in

## DISCUSSION DRAFT OF PROPOSED AMENDMENTS October 2005

facilities that are subject to this Part are considered to require a student-staff ratio that is no greater than the ratio specified in 23 Ill. Adm. Code 226.730(a)(2), regardless of age or primary disability, subject also to the provisions of Section 226.730(a)(7). Deviations from this ratio or from the age range and class-size requirements of Section 226.720 Sections 226.220 and 226.225 may be requested in writing. A rationale for the request and plan for evaluation of the deviations shall be submitted with the request. Initial denial of a request for deviation may be appealed to the State Superintendent of Education.

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

### **Section 401.150 Classroom Records**

In addition to records meeting the requirements of 23 Ill. Adm. Code ~~226.740~~ 226.135, 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 components of the student's IEP that are applicable to the classroom program, including at least the student's goals and objectives, a copy of any behavior management plan, and a list of required related services;
- 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 therein;
- c) A schedule that accurately reflects the type and frequency of all related services received;
- d) Medically related information necessary to ensure the student's health and safety.

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

### SUBPART C: OPERATIONAL REQUIREMENTS

### **Section 401.210 General Requirements**

- a) Every provider with one or more facilities or programs ~~facility~~ 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.

**DISCUSSION DRAFT OF PROPOSED AMENDMENTS**  
**October 2005**

- b) Every provider facility subject to this Part shall maintain copies of this Part and the State 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 ~~in nonpublic facilities~~ under Section 14-7.02 of the School Code.
- c) Every provider facility subject to this Part shall maintain a separate and current roster of students served in that provider's facility and programs ~~there~~ pursuant to Section 14-7.02 of the School Code.
- d) Every provider facility 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.
- e) All facilities, programs, and records required, established, or maintained pursuant to this Part shall be made available by the provider ~~nonpublic facility~~ at any time, with or without prior notification, for inspection and evaluation by official representatives of the State Board of Education.

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

**Section 401.220 Health and Safety Requirements**

- a) Responsible staff at every ~~Every~~ Illinois facility subject to this Part shall maintain and make available for review a copy of the most recent inspection report issued by the State Fire Marshal. To the extent that evidence of compliance is routinely issued by state or local fire, building, or health authorities, Illinois and out-of-state facilities' staff facilities 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 ~~Every~~ facility subject to this Part shall develop a written policy and 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 such policy and procedures at all times and shall make copies available upon request.
- c) Responsible staff at every ~~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-

## DISCUSSION DRAFT OF PROPOSED AMENDMENTS October 2005

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) Responsible staff at every ~~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 ~~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 school district of residence of any enrolled student.

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

### Section 401.230 Student Progress Reports and Reviews

- a) Responsible staff at each ~~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 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 shall be reviewed with his or her parent or guardian and school district of residence in accordance with 23 Ill. Adm. Code 226.230 ~~226,~~ Subparts H (State Operated or Private Programs) and I (Identification, Evaluation and Placement of Exceptional Children).

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

### Section 401.240 Staffing Requirements

**DISCUSSION DRAFT OF PROPOSED AMENDMENTS**  
**October 2005**

- a) The composition and qualifications of each ~~nonpublic~~ facility's professional and paraprofessional staff shall be in accordance with the needs and requirements of the ~~categories of~~ students with disabilities placed under Section 14-7.02 of the School Code. Each provider facility 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 affected by the policies of the State Board of Education regarding the certification of instructional personnel in special education that took effect on July 1, 2001, pursuant to a federal court order in the matter of Corey H., et al., v. Board of Education of the City of Chicago, et al. 226.225. Paraprofessionals employed by facilities under this Part shall be subject to the requirements of 23 Ill. Adm. Code 25.510 (Paraprofessionals; Teacher Aides).
- b) ~~For applications for approval for the 1995-96 school year submitted after July 1, 1995, at least 67 percent of the professional staff members who are teachers providing direct instruction shall be qualified in accordance with applicable State Board certification requirements. All professional staff who are administrators, supervisors, or providers of related services who either provide or direct the provision of related services specified in the IEP's of students served, or who evaluate student progress or evaluate the provision of such instruction or related services, but who do not provide direct instruction, shall either be qualified in accordance with State Board certification requirements or have credentials or licensure appropriate to their duties. Until April 15, 1999, "qualified in accordance with applicable State Board certification requirements" shall include persons who have experience in providing instruction to students with disabilities appropriate to the students being served and who hold an Early Childhood Education (Type 02 or 04), Elementary (Type 03), High School (Type 09), or Special (Type 10) certificate.~~
- e) ~~Beginning with the 1996-97 school year, 100% of the professional staff members who are teachers providing direct instruction shall be qualified in accordance with requirements of subsection (b) of this Section.~~
- d) Substitute teachers holding valid early childhood, elementary, secondary, special K-12, special preschool-age 21, certificates, special education approvals, or substitute certificates shall be employed to replace absent teachers. Only teachers holding certification or teaching approval in special education, as applicable to the students to be taught, shall ~~Substitute teachers may not 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 a facility's application for eligibility.~~

**DISCUSSION DRAFT OF PROPOSED AMENDMENTS  
October 2005**

- e) ~~Facilities~~ ~~Nonpublic 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.
  
- f) If the State ~~Superintendent Board~~ determines that a program has been operated for more than 60 consecutive calendar days in noncompliance with the requirements of this Section, the State ~~Superintendent Board~~ shall change the provider's approval status ~~of the facility~~ accordingly, pursuant to the provisions of Section 401.30 of this Part.

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

**Section 401.250 Staff Training**

Responsible staff at each ~~Each nonpublic~~ facility subject to this Part shall develop and implement ongoing inservice training programs related to the duties of all staff.

- a) 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.
  
- b) As appropriate to the student population served, each facility shall provide specific training to all personnel, including but not limited to:
  - 1) the ~~facility's~~ policy and procedures regarding the maintenance of student privacy and dignity;
  - 2) disposal of hazardous waste materials;
  - 3) procedures for preventing the transmission of blood-borne pathogens;
  - 4) the use of physical restraint, if any, subject to the requirements of 23 Ill. Adm. Code 1.285;
  - 5) behavior management procedures; and
  - 6) the administration of medication.
  
- c) Responsible staff at each ~~Each~~ facility shall provide training to all assistants and aides before they assume their duties.

**DISCUSSION DRAFT OF PROPOSED AMENDMENTS  
October 2005**

- d) Responsible staff at each ~~Each~~ facility shall maintain accurate, written and dated records of all training provided, as described in Section 401.260 of this Part.

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

**Section 401.260 Staff Records**

- a) ~~Facilities subject to this Part shall maintain 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 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 which~~ reflect the duties to be performed and the qualifications required and ~~that which~~ are updated as this information changes;
  - 2) Reports of initial physical examinations, records indicating freedom from tuberculosis, 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 criminal background investigation reports completed for all personnel pursuant to Section 10-21.9 of the School Code [105 ILCS 5/10-21.9];
  - 5) Records of the transmission of all criminal background investigation reports to each public school district currently contracting with the provider ~~nonpublic facility~~.
- b) Responsible staff at each ~~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:

## DISCUSSION DRAFT OF PROPOSED AMENDMENTS October 2005

- 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 date(s) 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 \_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 401.270 Student Records**

- a) ~~Each facility subject to this Part shall maintain a~~ A separate student record file shall be maintained for each student served under Section 14-7.02 of the School Code. Such files shall be maintained in a 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 all reports that address the domains covered in used by the public school district of residence as part of the student's most recent case study evaluation, documentation of the IEP Team's determination of the domains that would be included (see 23 Ill. Adm. Code 226.120), and a copy of the most recent eligibility determination including a copy of the case study evaluation report.
  - 3) Evidence of compliance with 23 Ill. Adm. Code 226.330(d) 226.440.

**DISCUSSION DRAFT OF PROPOSED AMENDMENTS**  
**October 2005**

- 4) The student's current IEP developed for the ~~nonpublic~~ placement in accordance with 23 Ill. Adm. Code 226, Subpart C (The Individualized Education Program (IEP)) 226.560.
  - 5) ~~Accurate, current attendance records, and evidence that the student's attendance has been reported to the public school district of residence as required by Section 401.230 of this Part.~~
  - 6) Reports of review procedures conducted with respect to the student's progress as specified in Section 401.230(b) 401.230 of this Part, including copies of all progress reports provided to parents and the sending school district.
  - 7) ~~Copies of all progress reports to the public school district of residence.~~
  - 8) ~~Copies of all progress reports to parents.~~
  - 9) ~~Termination records, when applicable.~~
- 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 school district to govern school student records and to the provisions of the Illinois School Student Records Act [105 ILCS 10] regarding confidentiality of such records.
  - d) When a student is no longer served in a ~~nonpublic~~ facility under this Part for any reason, and regardless of any monetary amount due to the provider ~~nonpublic-facility~~ from the public school district that placed the student, all the student's records shall be returned or provided to the district within 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:
    - 1) The temporary public school records that were provided by the district at the time of the student's placement.

**DISCUSSION DRAFT OF PROPOSED AMENDMENTS**  
**October 2005**

- 2) Other records of an academic or instructional nature that have accumulated during the student's enrollment at the nonpublic facility, including:
  - 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 ~~nonpublic~~ facility.
- 4) Records of the student's attendance while served at the ~~nonpublic~~ facility.

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

**Section 401.280 Fiscal Provisions**

- a) Tuition charged a public school district by a provider ~~nonpublic facility~~ for the term specified in an individual student's placement agreement shall not exceed the allowable costs approved pursuant to Section 14-7.02 of the School Code.
- b) A status of "Nonapproved" shall be assigned to any program whose provider ~~which~~ has not accepted the allowable costs approved pursuant to Section 14-7.02 of the School Code within 60 days after their approval or within 60 days after approval of the ~~facility's~~ 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 ~~Nonpublic facilities~~ shall not charge parents for special education, related services, or room and board provided to students placed by Illinois public school districts.
- e) Nothing in this Part shall be construed as prohibiting a provider ~~facility~~ from contracting with any local school district for individual student services, transportation, diagnosis and evaluation, or other services that ~~which~~ are not included in the determination of allowable costs.

**DISCUSSION DRAFT OF PROPOSED AMENDMENTS  
October 2005**

- 1) Contracts for any such services must be separate from individual placement agreements.
- 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 \_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)