**Section 401.10 Application for Eligibility**

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

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

1) An accurate, written description of each program for which ISBE approval is requested shall include the following:

A) The disability categories and ages of students with disabilities for whom it is specifically intended;

B) The purpose and scope of the provider and its specific program services;

C) The data that will be collected on the programmatic outcomes achieved by those students, which shall reflect the students' learning goals as described in their respective IEPs;

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

E) A description of the program's philosophy and methodology behind working towards reintegrating students into the general education environment or supporting students towards their least restrictive environment.

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

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

B) An organizational chart that reflects the provider's governance, administrative, and educational structures.

3) The provider's proposed calendar for the program for which approval is sought. The proposed calendar shall meet the following requirements:

A) Regular School Year

Each provider's operating schedule shall include at least 176 days of student attendance for at least 5 instructional hours per school day during the regular school year. Related services listed in the student's IEP are included in meeting the instructional hour requirement. Instructional hours shall not include lunch, passing time or recess, unless otherwise specified by the individual student's IEP. A provider may have two full-day parent/teacher conferences. This option reduces the required number of student days to 174.

B) Educational Programming Outside of the Regular School Year

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

4) A copy of one of the following inspection reports, indicating no violations:

A) 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;

B) 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;

C) For an Illinois facility that is subject to the provisions of 23 Ill. Adm. Code 180 (Health/Life Safety Code for Public Schools), the report of the regional superintendent's most recent inspection conducted pursuant to Section 3-14.21 of the School Code; or

D) For an out-of-state facility, equivalent, current documentation of compliance with applicable state fire codes, or, if there is no state fire code, the applicable local fire code, clearly identifying the issuing authority.

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

A) Federal Laws

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

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

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

iv) Individuals with Disabilities Education Act (20 U.S.C. 1400)

v) Americans With Disabilities Act of 1990 (42 U.S.C. 12101)

vi) Titles IV and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000d)

B) State Laws and Regulations

i) Administrative Hearings [5 ILCS 100/Art. 10]

ii) Provisions of the School Code [105 ILCS 5/2-3.64a-5, 3-14.21, 10-20.14b, 10-22.21b, 10-21.4a, 14-4.01 and 14-7.02]

iii) Illinois School Student Records Act [105 ILCS 10]

iv) Uniform Conviction Information Act [20 ILCS 2635]

v) Sex Offender Community Notification [730 ILCS 152]

vi) Certification of Information to Licensing Agencies [305 ILCS 5/10-17.6]

vii) Illinois Murderer and Violent Offender Against Youth Registry [730 ILCS 154/85]

viii) Illinois Human Rights Act [775 ILCS 5]

ix) Public Works Employment Discrimination Act [775 ILCS 10]

x) Public Schools Evaluation, Recognition and Supervision (23 Ill. Adm. Code 1.30, 1.50, 1.280 and 1.285)

xi) Educator Licensure (23 Ill. Adm. Code 25.510)

xii) Health/Life Safety Code for Public Schools (23 Ill. Adm. Code 180)

xiii) Special Education (23 Ill. Adm. Code 226)

xiv) Contested Cases and Other Formal Hearings (23 Ill. Adm. Code 475)

xv) Illinois Purchased Care Review Board (89 Ill. Adm. Code 900)

6) If the facility is located in Illinois and offers a residential component, evidence of the facility's current licensure, certification or approval by the responsible agency of Illinois government. The requirements of this subsection (a)(6) shall apply to contractual agreements for placements entered into on or after July 1, 2018. Nothing in this subsection (a)(6) shall be construed to disrupt, impact or nullify current contractual agreements for placements unless the IEP team determines another placement is more appropriate or the student reaches an age at which the student is no longer eligible for services under the IEP.

7) If the facility is located outside Illinois, evidence of the facility's current licensure, certification or approval to operate its educational and/or residential programs in the state where it is located, including a copy of the standards or criteria used by the responsible agency in that state. If the state in which the facility is located does not regulate the program, the program is ineligible for ISBE approval. The requirements of this subsection (a)(7) shall apply to contractual agreements for placements entered into on or after July 1, 2018. Nothing in this subsection (a)(7) shall be construed to disrupt, impact or nullify contractual agreements for placements in effect on or before June 30, 2018. A sibling of a student who is placed pursuant to a contractual agreement in place on or before June 30, 2018 who is also served under Section 14-7.02 of the School Code may be placed at the same facility after July 1, 2018 if the sibling's IEP team determines that is the most appropriate placement.

8) For instructional programs, summary information about all professional staff positions, and copies of the relevant credentials of persons employed in those positions, demonstrating that the facility has sufficient staff available who are qualified pursuant to the requirements of Section 401.240 in order to operate the program.

9) For instructional programs, summaries of related services provided by the facility's professional staff or available to the provider under contract, demonstrating that the provider has sufficient related services available to operate the program.

10) For programs serving students for whom behavioral interventions may be appropriate, a description of the provider's formalized approach to the use of these interventions, subject to the limitation stated in Section 401.140(a). Starting with the 2019-2020 school year, providers using disciplinary or behavioral techniques or interventions prohibited in Illinois are not eligible for approval in Illinois, except as otherwise provided in Section 14-7.02 of the School Code.

b) Upon submission of an initial application for an educational or combination program, the provider will be required to complete a scheduled nonpublic special education orientation. The orientation shall be completed prior to a final determination being made on the application. Providers that have completed a compliance monitoring review that yielded no findings within the last five years are exempt from orientation.

c) If the application is complete and the facility is located in Illinois or within 50 miles of Illinois, ISBE staff shall conduct an on-site review and evaluate the facility and the programs offered for the purpose of verifying the accuracy of the application, evaluating their compliance with the other requirements of this Part, and recommending approval or disapproval of the programs.

1) An out-of-state program conducted more than 50 miles outside of Illinois shall be approved without a site visit from an Illinois representative if the following conditions are satisfied:

A) The educational program is an approved special education program in the state where the facility is located and this approval was granted in light of the information gathered during a site visit by a representative of the responsible agency;

B) The residential component, if any, is regulated by the responsible agency in the state where the facility is located; and

C) The application provides evidence that the requirements of Section 410.140 will be met.

2) An out-of-state program conducted more than 50 miles outside of Illinois that was approved in the state where the facility is located without a site visit by the responsible agency may be visited by a representative of ISBE in order to verify the accuracy of the application and determine whether the requirements of this Part have been met so that Illinois approval can be granted.

d) A program determined to comply with this Part shall be designated as "Approved" and shall be available to Illinois public school districts to serve students with disabilities under Section 14-7.02 of the School Code beginning on the day the application is approved if the other requirements of Section 401.110 of this Part have also been met. The provider operating the facility shall be notified in writing of the date of program approval.

1) Initial approval shall end on the last day of the program's approved calendar for the school year in question, unless approval is changed pursuant to Section 401.30.

2) A program shall serve only the specific student demographics described in the approved application. All program changes or additions to disability categories or services, age range service, or changes in location shall be approved in a manner prescribed by the State Superintendent prior to that change or addition being made.

e) An initial application that does not meet the requirements of this Part shall be provided with a notice of the specific deficiencies. If the deficiencies have not been remedied in their entirety within one year after receipt of the notice, ISBE shall deny the provider's approval.

f) An application for renewal of ISBE approval, consisting of all the components set forth in subsection (a), shall be submitted for any subsequent period in which a provider seeks to contract with Illinois public school districts to serve students with disabilities in the facility under Section 14-7.02 of the School Code. The submission deadline shall be the March 15 prior to the beginning of the school year in question. If March 15 is not a business day, the deadline shall fall on the next business day. The ISBE approval process for any subsequent period may also involve on-site reviews, at the sole discretion of the State Superintendent.

1) The denial of an application for renewal of ISBE approval shall cause the program approval status to change to "nonapproved" subject to the procedures set forth in Section 401.30(c).

2) Renewed approval generally shall be valid for two school years, ending on the last day of the program's approved calendar for the second school year, unless approval is changed pursuant to Section 401.30. The first renewal of ISBE approval for a new program offered by a provider that already operates other approved programs shall be granted for the number of years that will place it on the cycle already established for that provider.

(Source: Amended at 46 Ill. Reg. 13278, effective July 13, 2022)