**Section 226.330 Placement by School District in State-Operated or Nonpublic Special Education Facilities**

When an IEP Team determines that no less restrictive setting on the continuum of alternative placements will meet a child's needs, the child may be placed in a State-operated or nonpublic special education facility. In such a case, use of a State-operated program should be given first consideration. However, the district shall refer the child to the agency or facility which is most appropriate to the individual situation. This determination shall be based upon recent diagnostic assessments and other pertinent evidence and made in light of such other factors as proximity to the child's home. Evidence of a condition that presents a danger to the physical well-being of the student or to other students may be taken into consideration in identifying the appropriate placement for a particular child.

a) When it appears that a child will require a placement pursuant to this Section, the IEP Team shall invite representatives of potential service providers to assist in identifying or verifying the appropriate placement for that child. If one or more needed representatives cannot attend, the district shall use other methods to ensure their participation.

b) The school district in which the child resides is responsible for ensuring implementation of the child's IEP and convening any needed IEP meetings, including the annual review. If the district allows a State-operated or nonpublic school to initiate and conduct the IEP meeting, the district must ensure that the parent and a representative of the district are invited to participate in any decision about the child's IEP and agree to any proposed changes in the program before the changes are implemented. The district remains responsible for the development and implementation of the child's IEP and for compliance with the requirements of this Part.

c) Except for emergency placements made pursuant to subsection (g) or (i), no school district shall place any child in a nonpublic special education program, nor shall any such program accept placement of any child with a disability under Section 14-7.02 of the School Code [105 ILCS 5/14-7.02], unless all the following conditions have been met.

1) The program has been approved by the State Board of Education pursuant to the criteria set forth in 23 Ill. Adm. Code 401 (Special Education Facilities Under Section 14-7.02 of the School Code) for the school year for which placement is sought.

2) Pursuant to Section 14-7.02 of the School Code, the school district made referrals to in-state residential facilities prior to considering out-of-state residential facilities for placement of the child.

3) The allowable costs for the program have been established pursuant to Section 14-7.02 of the School Code.

4) 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.

5) The State Board has approved the program for all of the disability categories applicable to the student and requiring services pursuant to the IEP.

6) The program has been approved by the State Board of Education for the age range that includes the age of the student.

7) The district has determined that the program will provide all educational programming and related services specified on the child's IEP. The use of a facility or program pursuant to 23 Ill. Adm. Code 401 does not relieve the local school 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.

8) The school district and the facility have entered into the contractual agreement required by subsection (d).

9) The child will receive an education that meets the standards applicable to education provided by the school district.

d) If a nonpublic school placement is chosen, the district and the facility shall enter into an agreement using a format provided by the State Board of Education. The agreement shall provide for, but need not be limited to:

1) The child's IEP, as developed by the school district in which the child resides;

2) The amount of tuition that will be charged;

3) Assurance that the special education staff of the placing school district may inspect the private facility and confer with the staff at reasonable times; and

4) Assurances that the placement will result in no cost to parents.

e) When a school district uses a nonpublic facility, the district shall be responsible for the payment of tuition and the provision of transportation as provided by Section 14-7.02 of the School Code. (See also Section 226.750(b) of this Part.)

f) Each school district shall be responsible for monitoring the performance of each State-operated or nonpublic facility where it has placed one or more eligible students, to ensure that the implementation of each IEP conforms to the applicable requirements of this Part.

g) A school district may place a student in a nonpublic special education facility (“facility”) providing educational services, but not approved by the State Board of Education pursuant to 23 Ill. Adm. Code 401 or other applicable laws or administrative rules, provided that the State Board of Education provides an emergency and student-specific approval for placement. The State Board of Education shall promptly, within 10 days of the request, approve requests for emergency and student-specific approval for placement when the following have been demonstrated to the State Board of Education:

1) The facility demonstrates appropriate certification of teachers for the student population;

2) The facility demonstrates age-appropriate curriculum;

3) The facility provides enrollment and attendance data;

4) The facility demonstrates the ability to implement the child's IEP; and

5) The school district demonstrates that it made good faith efforts to place the student in an approved facility, but no approved facility has accepted and can immediately place the student.

h) Resident district financial responsibility and reimbursement under Section 14-7.02 of the School Code applies for both nonpublic special education facilities that are approved by the State Board of Education pursuant to 23 Ill. Adm. Code 401 or other applicable laws or administrative rules and nonpublic special education facilities that receive emergency and student-specific approval for placement by the State Board of Education pursuant to subsection (g).

i) When an impartial due process hearing officer contracted by the State Board of Education orders placement of a student with a disability in a residential facility that is not approved by the State Board of Education, for purposes of subsection (g), the facility shall be deemed approved for placement and resident district payments and State reimbursements shall be made accordingly.

j) A district may continue a placement in a facility approved pursuant to subsection (g) or (i) so long as:

1) The student’s IEP team determines annually that such placement continues to be appropriate to meet the student’s needs, and

2) At least every 3 years following the student’s placement, the IEP team reviews appropriate ISBE-approved facilities under 23 Ill. Adm. Code 401 to determine whether there is any approved facility that can meet the student’s needs, has accepted the student, and has availability for placement of the student.

(Source: Amended at 47 Ill. Reg. 2244, effective February 6, 2023)