



January 10, 2022

VIA EMAIL AND U.S. MAIL

Illinois Council of School Attorneys Executive Committee
One Imperial Place
1 East 22nd Street, Suite 20
Lombard, Illinois 60148
Email: btrojan@iasb.com

Re: Residential Placement Crisis for Illinois Students with Disabilities

Dear Illinois Council of School Attorneys Executive Committee:

This letter is in response to your request for a written commitment from the Illinois State Board of Education (“ISBE”) to review and reverse its position and begin reimbursing school districts for placements in residential facilities not approved by ISBE. We understand that there is a shortage of available ISBE approved residential programs for Illinois students with disabilities who require a residential placement pursuant to their Individualized Education Program (“IEP”).

In order to address the residential placement issue, ISBE will take the following actions immediately: 1) reverse its position and reimburse school districts for placements of students in nonapproved residential facilities as a result of a due process hearing officer decision; and 2) recommend to the Illinois Purchased Care Review Board (“IPCRB”) that the IPCRB amend its rules at 89 IAC 900.320 and 89 IAC 900.330 to allow more Illinois students to be placed in facilities without triggering additional requirements for approval as set forth in the current regulations.

I. ISBE to Reimburse School Districts for Placements in Nonapproved Facilities

As stated in your letter, in the past ISBE has reimbursed school districts for placements as a result of due process hearing officer decisions that ordered placement in a nonapproved facility. In such circumstances, ISBE reimbursed school districts for the allowable costs for room and board and tuition (after the District paid twice the per capita rate for tuition) based on a hearing decision made by the hearing officer in the due process case. This practice ended in February 2020. Therefore, in order to provide short-term relief, ISBE will immediately reinstate this practice and reimburse school districts for cases since February 2020 for placements in nonapproved facilities ordered by an ISBE appointed hearing officer, subject to necessary prorations after the school district pays twice the per capita rate for tuition. In the coming weeks, ISBE will notify school districts of procedures for requesting reimbursement for due process hearing decisions. Reimbursement will not be provided for cases that were or will be settled without proceeding with the due process hearing.

II. Recommend that the Illinois Purchased Care Review Board waive certain requirements for facilities if the number of pupils placed with the residential facility total 12 or fewer.

On December 30, 2021, ISBE took action and recommended that the IPCRB act immediately to add language to 89 IAC 900.320 that would allow the IPCRB to waive the requirement for a certified audit and/or for a cost report if the number of pupils placed total 12 or fewer rather than fewer than six as the language currently stands. ISBE also recommended that the language in 89 IAC 900.330 be amended to reflect flexibility in determining allowable costs based on facilities that have 12 or fewer students rather than fewer than six students as the language currently reads. The IPCRB met on January 4, 2022, to discuss the proposed changes. The IPCRB will make a decision on the proposed rule changes at their next board meeting, which is scheduled for February 1, 2022.

Based on feedback ISBE has received from various external stakeholders, there is some indication that certain private facilities refuse to accept additional Illinois students, even though they may have the capacity, because they do not want to meet the additional requirements set forth in these provisions of the IPCRB's regulations. Therefore, increasing this number on a temporary basis, as noted below, will likely increase the number of available beds for Illinois students while allowing ISBE to monitor the impact of this change for a set period of time.

Furthermore, this change will likely encourage more facilities to contract with Illinois school districts to serve students with disabilities under 105 ILCS 5/14-7.02 (approved facilities). ISBE recommended to IPCRB that the new language stay in effect through August 31, 2023 (this date is suggested to align with the calendar for the calculation of reimbursements for room and board, which runs from September 1st through August 31st). This would allow ISBE and IPCRB to monitor and review the impact of the new language and make any necessary changes to these rules prior to August 31, 2023.

In summary, ISBE has taken immediate action to address your concerns. More specifically, ISBE will reimburse school districts as noted above when a hearing officer orders placement in a nonapproved facility after conducting a due process hearing. ISBE also made a recommendation to the IPCRB to file emergency and permanent rules to provide needed relief, and the IPCRB is expected to vote on ISBE's recommended action at its February 1, 2022, Board meeting.

Finally, in the coming weeks, ISBE will be looking to create a working group to work collaboratively with individuals from your organization and other stakeholders to propose long-term solutions to the residential placement issue. This will include recommendations for statutory changes that may address the residential placement issue. ISBE thanks you for your recommendations on the residential placement issue, and we look forward to working collaboratively with you to find long-term solutions to meet the needs of the students of Illinois.

Sincerely,



Jeremy D. Duffy

cc: Kimberly Small, General Counsel, Illinois Association of School Boards
Darren Reisberg, Charmain of the Illinois State Board of Education
Dr. Carmen I. Ayala, State Superintendent of Education
Barbara Moore, Director of Special Education