

## LIMITATION, SUSPENSION AND TERMINATION (L,S&amp;T) PROCEEDINGS

## TITLE 23: EDUCATION AND CULTURAL RESOURCES

## SUBTITLE A: EDUCATION

## CHAPTER XIX: ILLINOIS STUDENT ASSISTANCE COMMISSION

## PART 2790

## LIMITATION, SUSPENSION AND TERMINATION (L,S&amp;T) PROCEEDINGS

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**AUTHORITY:** Implementing and authorized by the Higher Education Student Assistance Act [110 ILCS 947/20(f)] and the Higher Education Act of 1965, as amended (20 USCA 1070 et seq.).

**SOURCE:** Adopted at 6 Ill. Reg. 11638, effective September 13, 1982; codified at 7 Ill. Reg. 9926; amended at 9 Ill. Reg. 20836, effective January 1, 1986; amended at 11 Ill. Reg. 3214, effective January 29, 1987; transferred from Chapter IX, 23 Ill. Adm. Code 1790 (State Scholarship Commission) to Chapter XIX, 23 Ill. Adm. Code 2790 (Illinois Student Assistance Commission) pursuant to P.A. 86-168, effective July 1, 1989, at 13 Ill. Reg. 17861; amended at 15 Ill. Reg. 14264, effective September 23, 1991; amended at 16 Ill. Reg. 11269, effective July 1, 1992; amended at 20 Ill. Reg. 9206, effective July 1, 1996; amended at 21 Ill. Reg. 11148, effective July 18, 1997; amended at 22 Ill. Reg. 11123, effective July 1, 1998; amended at 23 Ill. Reg. 7581, effective July 1, 1999.

### Section 2790.10 Summary and Purpose

- a) This Part establishes rules for the limitation, suspension or termination of an otherwise eligible institution or applicant participating in any or all of the student assistance programs administered by the Illinois Student Assistance Commission (ISAC). These rules apply to an applicant who and an institution which violates the provisions of the statutes, rules, regulations, special arrangements, agreements or limitations set forth in Lender Agreements or Program Participation Agreements and the Higher Education Act of 1965, as amended (20 USCA 1070 et seq.), including but not limited to: the provisions dealing with the Guaranteed Student Loan Programs (20 USCA 1071); Need Analysis (20 USCA 1987kk); General Provisions Relating to Student Assistance Programs (20 USCA 1088); Teacher Scholarships and Fellowships (20 USCA 1111); and the regulations of the U.S. Secretary of Education relating to student assistance programs, under the Higher Education Act of 1965, as amended, including but not limited to: Institutional Eligibility (34 CFR 600); Paul Douglas

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Teacher Scholarship Program (34 CFR 653); Student Assistance General Provisions (34 CFR 668); Guaranteed Student Loan and PLUS Programs (34 CFR 682); and the State Student Incentive Grant Program (34 CFR 692).

- b) This Part establishes rules which govern the limitation, suspension or termination proceedings. Additional rules and definitions are contained in General Provisions, 23 Ill. Adm. Code 2700.
- c) The purpose of this Part is to protect the integrity of the programs and to guard against losses on behalf of the applicant, the lender, the school, ISAC or the Federal Government.
- d) ISAC's failure to invoke the provisions contained in this Part does not, however, automatically imply compliance or lessen an applicant's or an institution's obligation to follow federal or State rules and regulations governing scholarships, grants and loan programs. Any action taken under this Part will not affect an applicant's or an institution's responsibility to fulfill the requirements of the Higher Education Act, federal regulations or ISAC rules, published policies and procedures applicable to outstanding scholarships, grants and loan programs. Further, any action taken under this Part will not affect an applicant's or an institution's rights, if any, to benefits or payments that are based on prior participation in the programs.
- e) This Part does not apply to:
  - 1) a determination that an institution fails to meet the definition of an institution of higher education, a proprietary institution of higher education, a postsecondary vocational institution, as defined in Section 481 of the Higher Education Act of 1965, as amended (20 USCA 1085(c)), or an eligible lender, as defined in Section 435(d) of the Higher Education Act of 1965, as amended (20 USCA 1085(d));
  - 2) a determination of a school's loss of eligibility by the U.S. Secretary of Education due to its default experience (see Section 435(a)(2) of the Higher Education Act of 1965, as amended);
  - 3) any administrative action taken by the U.S. Department of Education (ED) against a lender (34 CFR 682.700-682.713), an educational institution (34 CFR 668.81-668.98) or an individual (34 CFR 85.300-85.420);
  - 4) any administrative action taken by the Illinois Department of Professional Regulation, the Illinois State Board of Education or the Illinois Board of Higher Education terminating, suspending or limiting an educational institution's authority to offer educational programs within the State of Illinois; or
  - 5) any administrative action taken by a nationally-recognized accreditation association (see Section 496 of the Higher Education Act of 1965, as amended) terminating, suspending or limiting an educational institution's accreditation status.

In any such case, ISAC shall terminate the participation of the institution by sending notice of such termination, certified mail return receipt requested (see Section 2790.80).

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- f) ISAC recognizes ED-s corresponding federal regulations, namely Limitation, Suspension or Termination of Lender Eligibility Under the Guaranteed Student Loan Program and the PLUS Program (34 CFR 682.700 - 682.713), Fine, Limitation, Suspension and Termination Proceedings as applied to educational institutions (34 CFR 668.81 - 668.98), and Debarment and Suspension proceedings as applied to persons (34 CFR 85.300 - 85.420).

(Source: Amended at 22 Ill. Reg. 11123, effective July 1, 1998)

**Section 2790.20 Definitions**

"Action" - An administrative proceeding conducted under this Part.

"Funds" - Any money, commitments to provide money and commitments of insurance or reinsurance provided under any or all programs.

"Hearing Officer" - An impartial person, appointed by the Executive Director or his or her designee, with no prior involvement with the facts giving rise to the limitation, suspension or termination action, who is:

an attorney who has been admitted to practice law in Illinois for at least five years preceding appointment by the Executive Director and possesses those additional qualifications as are necessary to obtain appointment as an arbitrator pursuant to Section 2-1003(A) of the Mandatory Arbitration System in Illinois [735 ILCS 5/2-1003A]; or

a person who is an arbitrator qualified by the American Arbitration Association; or

any other person who meets the qualifications for the position of Administrative Law Judge for the Federal Government.

"Institution" - For purposes of this Part, any educational or lending institution which participates in any ISAC program(s).

"ISAC Official" - An official of ISAC to whom the Executive Director has delegated the responsibility of initiating and pursuing an action under this Part.

"Lender" - Defined by Section 435(d) of the Higher Education Act of 1965, as amended (20 USCA 1085(d)).

"Limitation" - The continuation of an applicant-s or an institution-s eligibility for any or all programs subject to compliance with special conditions or restrictions which have been established by ISAC as necessary for the institution-s initial or continued participation in ISAC programs.

"School" - An institution eligible to participate in the programs established by the Higher Education Act of 1965, as amended, including an institution of higher education (as defined in 34 CFR 600.4), a proprietary institution of higher education (as defined in 34 CFR 600.5) and a postsecondary vocational institution (as defined in 34 CFR 600.6).

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"Suspension" - The removal of an applicant's or an institution's eligibility for any or all ISAC programs for a specified period of time or until the problem that initiated the limitation, suspension or termination proceeding(s) is resolved.

"Termination" - The unqualified removal of an applicant's or an institution's eligibility for any or all programs for an indefinite period of time, but in no event less than 18 months.

(Source: Amended at 23 Ill. Reg. 7581, effective July 1, 1999)

**Section 2790.30 Informal Compliance Procedures and Pre-Hearing Conferences**

- a) If the Executive Director receives a complaint or other information which s/he believes to be reliable, indicating that an applicant or an institution is, or may be, in violation of applicable laws, regulations, special arrangements, agreements, rules or limitations, the Executive Director may call the matter to the attention of the applicant or the institution and may provide a reasonable opportunity to:
  - 1) respond to the complaint or other information;
  - 2) show that the matter has been corrected; or
  - 3) submit an acceptable plan to correct the violation and prevent its recurrence.
  
- b) The procedures provided in this Part for limitation, suspension or termination need not be delayed during the informal compliance procedure if the Executive Director believes the:
  - 1) delay would have an adverse effect on any or all programs administered by ISAC; or
  - 2) informal compliance procedure will not result in a correction of the alleged violation.
  
- c) The purpose of a pre-hearing conference is to allow the parties to settle or narrow the dispute.
  - 1) The pre-hearing conference may be convened at the request of ISAC, the affected applicant or institution or the hearing officer.
  - 2) The scope of a pre-hearing conference is to discuss matters relating to the proposed action, including settlement without a hearing, or the narrowing of legal or factual issues to be resolved at the hearing.
  - 3) The pre-hearing conference is not subject to any procedural requirements except as may be mutually agreed upon by ISAC, the applicant and/or the institution.
  - 4) The pre-hearing conference may be held in any manner, including telephone conference call, an informal meeting or written submission of materials from the applicant or the institution to the ISAC official.
  - 5) As a result of the pre-hearing conference, the ISAC official and the applicant or the institution may enter into a pre-hearing agreement whereby both the ISAC official and the applicant or the institution stipulate in writing, signed by the parties, to certain facts, points of law, regulations, or policies and procedures.
  - 6) The Executive Director and the applicant or the institution may enter into a written consent agreement which fully or partially settles the dispute between the parties. The consent agreement may specify that any pending hearing shall be canceled.
  - 7) A violation of any of the provisions of the consent agreement shall constitute the basis for a termination action against an applicant or an institution.

(Source: Amended at 22 Ill. Reg. 11123, effective July 1, 1998)

**Section 2790.40 Emergency Action**

- a) The Executive Director may take emergency action to withhold funds from an applicant or an institution or its associated students, and to withdraw the authority of an applicant or an institution to participate in ISAC-administered programs if the Executive Director:
  - 1) receives information which he believes to be reliable that an applicant or an institution is in violation of applicable laws, regulations, rules, special arrangements, agreements or limitations which had been previously established;
  - 2) determines that such action is necessary to prevent the likelihood of substantial loss of funds to the State, to ISAC, to ED, to borrowers or to the students associated with the institution; and
  - 3) determines that the likelihood of loss requires immediate action prior to completion of the procedures set forth in this Part for limitation, suspension or termination.
  
- b) The Executive Director begins an emergency action by notifying the applicant or the institution, by certified mail with return receipt requested, of the action and the basis for the action. The effective date of the action is the date on which the notice is received by the applicant or the institution. The notice shall state:
  - 1) the basis of the emergency action;
  - 2) the consequences of the emergency action to the applicant or the institution;
  - 3) that the applicant or the institution may request an opportunity to show cause why the emergency action is unwarranted; and
  - 4) that the failure to request an opportunity to show cause why the emergency action is unwarranted, at least five days after and including the effective date, is a waiver of that right.
  
- c) An emergency action shall not exceed 30 days unless a limitation, suspension or termination proceeding is begun under this Part before the expiration of that period. In such case, the period may be extended until the completion of that proceeding, including any appeal to the Commission.
  
- d) An emergency action may be terminated upon the Executive Director's verification that the applicant or the institution has corrected all violations on which the emergency action was based. Verification includes, but is not limited to, submitting documentation showing that the violation(s) has been corrected or submitting an acceptable plan for correcting the violation(s) and preventing a recurrence(s).

(Source: Amended at 22 Ill. Reg. 11123, effective July 1, 1998)

**Section 2790.50 Suspension Proceedings**

- a) Scope and Consequences: From its effective date, a suspension removes an applicant's or an institution's eligibility for any or all ISAC programs for a period of time not exceeding 60 days unless the:
  - 1) applicant or the institution and the Executive Director agree to an extension; or
  - 2) Executive Director begins a limitation or termination proceeding.
- b) Procedures: The Executive Director begins a suspension proceeding by sending a notice to an applicant or an institution by certified mail with return receipt requested. The notice must:
  - 1) inform the applicant or the institution of the intent of ISAC to suspend the applicant's or the institution's eligibility, cite the consequences of that action and identify the alleged violations which constitute the basis for the action;
  - 2) specify the proposed effective date of the suspension, which shall be at least 20 days after the date of mailing of notice of intent;
  - 3) inform the applicant or the institution that the suspension will be effective on the date specified in the notice unless the Executive Director receives, at least five days before the proposed effective date, a request for a hearing or written material indicating why the suspension should not take place;
  - 4) invite voluntary efforts to correct the violation(s) which led to the commencement of the action; and
  - 5) inform the applicant or the institution that the failure to request a hearing will be deemed a waiver of that right.
- c) If the applicant or the institution does not request a hearing but submits written material, the Executive Director, after considering that material, notifies the applicant or the institution that the:
  - 1) proposed suspension is dismissed; or
  - 2) suspension is effective as of a specified date.
- d) Notice of Suspension will be promptly mailed to the applicant or the institution. The suspension takes effect either upon the date on which the notice is received by the applicant or the institution or the originally proposed effective date stated in the notice of intent, whichever is later.
- e) A suspension shall not exceed 60 days unless a limitation or termination proceeding is begun under this Section before the expiration of that period. In such case, the period may be extended until the completion of that proceeding, including any appeal to the Commission. (See Section 2790.70, Recommended and Final Decisions.)

- f) If the applicant or the institution requests a hearing, at least five days before the proposed effective date, the procedures outlined in Section 2790.140, Hearings, shall be followed.

(Source: Amended at 22 Ill. Reg. 11123, effective July 1, 1998)

**Section 2790.60 Limitation or Termination Proceeding**

- a) Scope and Consequences: From its effective date, a limitation or termination shall either:
  - 1) result in limitations on an applicant's or an institution's eligibility; or
  - 2) end the eligibility of an applicant or an institution for any or all programs administered by ISAC.
- b) Procedures: The Executive Director begins a limitation or termination proceeding, whether or not a suspension proceeding or an emergency action has begun, by sending an applicant or an institution a notice, by certified mail with return receipt requested. This notice must:
  - 1) inform the applicant or the institution of the intent of ISAC to limit or terminate the applicant's or the institution's eligibility, cite the consequences of that action and identify the alleged violations which constitute the basis for the action, and in the case of a limitation proceeding, state the limits to be imposed;
  - 2) specify the proposed effective date of the limitation or termination which shall be at least 20 days after the date of mailing of the notice of intent;
  - 3) inform the applicant or the institution that the limitation or termination will not be effective on the date specified in the notice if the Executive Director receives, at least five days before the proposed effective date, a request for a hearing or written material indicating why the limitation or termination should not take place;
  - 4) invite voluntary efforts to correct the violation(s) which led to the initiation of the action; and
  - 5) inform the applicant or the institution that the failure to request a hearing will be deemed a waiver of that right.
- c) If the applicant or the institution does not request a hearing but submits written material, the Executive Director, after considering that material, notifies the applicant or the institution that the:
  - 1) proposed action is dismissed; or
  - 2) limitations are effective as of a specified date; or
  - 3) termination is effective as of a specified date.
- d) If the applicant or the institution requests a hearing, at least five days before the proposed effective date, the procedures outlined in Section 2790.140, Hearings, shall be followed.



- e) If the applicant or the institution wishes to appeal the decision of the hearing officer, the procedures outlined in Section 2790.70, Recommended and Final Decisions, shall be followed.

(Source: Amended at 22 Ill. Reg. 11123, effective July 1, 1998)

**Section 2790.70 Decisions**

- a) The hearing officer issues a decision based on findings of fact and conclusions of law. Findings of fact shall be based only on evidence considered at the hearing and matters of which official notice has been taken. A recommended decision must be issued no later than 30 days after the conclusion of the hearing.
- b) The hearing officer's decision will be promptly mailed to all parties.
- c) The hearing officer's decision is final.

(Source: Amended at 23 Ill. Reg. 7581, effective July 1, 1999)

**Section 2790.80 Verification of Mailing and Receipt Dates**

- a) ISAC's verification of the mailing dates and receipt dates referred to in this Part is evidenced by the original receipt from the U.S. Postal Service.
- b) If an applicant or an institution refuses to accept a notice mailed under this Section, ISAC considers the notice received on the date the applicant or the institution refuses to accept the notice.

(Source: Amended at 21 Ill. Reg. 11148, effective July 18, 1997)

**Section 2790.90 Limitation**

A limitation may include, as appropriate to the program in question:

- a) a limit on the number or percentage of students enrolled in an educational institution who may receive ISAC-administered funds;
- b) a limit on the guaranteed loans that a lending institution may make, purchase or hold;
- c) a requirement that an institution obtain and continue to hold in force and effect a bond, in a specified amount, to assure its ability to meet its financial obligations to students who receive ISAC funds; or
- d) such other conditions as may be determined to be reasonable and appropriate.

(Source: Amended at 21 Ill. Reg. 11148, effective July 18, 1997)

**Section 2790.100 Termination**

A termination may include, as appropriate to the program in question:

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- a) ending an applicant's or an institution's eligibility for any or all gift assistance programs administered by ISAC;
- b) prohibiting an institution from making or increasing financial aid awards administered by ISAC;
- c) prohibiting an institution from making any new obligations against funds administered by ISAC;
- d) prohibiting additional ISAC Guaranteed Student Loans for students enrolled at that institution or additional guaranteed student loans for an applicant;
- e) prohibiting a lending institution from obtaining ISAC guarantees for any borrowers after the effective date of the termination; or
- f) prohibiting a lending institution from disbursing loan proceeds.

(Source: Amended at 21 Ill. Reg. 11148, effective July 18, 1997)

**Section 2790.110 Payment Period**

- a) If an educational institution is terminated during a payment period, any eligible recipient at that school who has received an award or to whom a commitment has been made before the effective date of termination may receive payment for that payment period.
- b) The payment period for grant programs is the academic year or from the midpoint to the end of the academic year. The payment period for loan programs is the period certified on the loan.
- c) If a lending institution is terminated, the lender shall proceed with due diligence on all loans made prior to the effective date of the termination.

(Source: Amended at 21 Ill. Reg. 11148, effective July 18, 1997)

**Section 2790.120 Reimbursements, Refunds, Offsets and Penalties**

- a) The Executive Director, appointed hearing officer, or the Commission may require an applicant or an institution to take reasonable and appropriate corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements or limitations.
- b) The corrective action may include payment of any funds to ISAC, or to designated recipients, that the applicant or the institution improperly received, withheld, disbursed or caused to be disbursed.
- c) If any final decision requires an applicant or an institution to reimburse or make any other payment to ISAC, ISAC may deduct these claims from any benefits or claims due the applicant or the institution.

(Source: Amended at 21 Ill. Reg. 11148, effective July 18, 1997)

**Section 2790.130 Reinstatement After Termination**

- a) An applicant or an institution whose eligibility has been terminated may not file a request for reinstatement until 18 months after the effective date of termination.
- b) After the minimum termination period, the applicant or the institution may request Commission reinstatement of eligibility. The request must be in writing and must show that the applicant or the institution has corrected the violations on which the termination was based; has paid in full all liabilities, reimbursements and refunds; and meets all qualifications for eligibility.
- c) Within 90 days after receipt of the request for reinstatement, the Commission shall respond to the applicant or the institution by:
  - 1) granting its request;
  - 2) denying its request;
  - 3) granting the request subject to other limitations; or
  - 4) conducting a program review to determine that all violations have been corrected, in accordance with Section 2700.60, Audits and Investigations.
- d) If the Commission denies the request or establishes limitations, the applicant or the institution, upon request, will be granted an opportunity to show cause why eligibility should be fully reinstated.
- e) The applicant's or the institution's request for a show cause meeting shall not waive the right to participate in any or all programs administered by the Commission if it complies with such continuing limitations pending the outcome of the meeting.
- f) A school that is also a lender and whose eligibility as a participating school has been terminated, may not be considered for reinstatement as a lender until it is reinstated as an eligible school.
- g) If a request for reinstatement is denied, the applicant or the institution may request reinstatement 18 months after the most recent request, unless the Commission agrees to consider an earlier request.

(Source: Amended at 22 Ill. Reg. 11123, effective July 1, 1998)

**Section 2790.140 Hearings**

- a) If the applicant or the institution requests a hearing at least five days before the proposed effective date of a suspension, limitation or termination, the Executive Director sets the date and place for the hearing. The date will be at least 15 days after the Executive Director receives the request.
- b) A hearing officer appointed by the Executive Director or his or her designee, conducts the hearing on the record.

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- c) The hearing officer shall regulate the course of the proceedings, direct the conduct of the parties during the hearing, provide for the orderly presentation of arguments and evidence and take all steps necessary to conduct a fair and impartial hearing.
- d) The hearing officer shall take whatever measures are appropriate to expedite the proceeding, which may include, but are not limited to:
  - 1) scheduling of pre-hearing conferences;
  - 2) restricting the number or length of submissions;
  - 3) accepting stipulations as to facts and legal authorities;
  - 4) setting time limits for hearings and submission of written documents; and
  - 5) declaring any party who fails to comply with a valid order of the hearing officer to be in default, terminating the proceedings and issuing a decision against the non-complying party.
- e) At the hearing, the appointed hearing officer shall consider any written material presented before the hearing, or any material or other evidence presented during the course of the hearing. The hearing shall be conducted in accordance with Article 10 of the Administrative Procedure Act [5 ILCS 100/Art. 10].
- f) The hearing officer shall not have authority to issue subpoenas. If requested by the hearing officer, ISAC, the applicant and/or the institution shall provide persons who have knowledge about the matter under review for oral or written examination.
- g) The ISAC official has the burden of proof by a preponderance of the evidence in any suspension, limitation or termination hearing.
- h) The hearing officer shall accept only evidence that is relevant to the proceedings and not unduly repetitious.
- i) The hearing officer shall base findings of fact only on evidence considered at the hearing and on matters given judicial notice.
- j) If, after considering the evidence, the appointed hearing officer concludes that a limitation, suspension, termination or penalty is warranted, the hearing officer will issue a decision that may limit, suspend, terminate or affect the applicant-s or the institution-s eligibility in whole or in part.
- k) If a termination proceeding is brought against an applicant or an institution, the appointed hearing officer may, at his or her discretion, issue a decision to impose one or more limitations or penalties on an applicant or an institution rather than terminating eligibility.
- l) Expedited Hearing: With the approval of the hearing officer and the mutual consent of the parties, any time schedule specified in this Section may be shortened.
- m) The applicant or the institution may be represented by legal counsel at a hearing, but ISAC is under no obligation to provide such counsel.

(Source: Amended at 22 Ill. Reg. 11123, effective July 1, 1998)

**Section 2790. APPENDIX A Matrix (Repealed)**

(Source: Repealed at 16 Ill. Reg. 11269, effective July 1, 1992)