§ 4005. Placement and evaluation of children. 1. a. Children placed by the family court. When the placement of a child is being considered by the family court pursuant to section 353.3, seven hundred fifty-six or one thousand fifty-five of the family court act and such child is thought to have a handicapping condition and may be placed in a child care institution, the family court judge or the probation department shall request the school district of residence to provide that the committee on special education of such district evaluate such child and make written recommendations for appropriate educational services and to forward a written evaluation and recommendation within forty-two days of such request. Such information shall be used to determine the most appropriate placement for the child, and if the family court places the child in the custody of a social services district, it shall transmit such information to such district. If the committee on special education determines that the child does not have a handicapping condition, it shall notify the family court of such determination within forty-two days. If the committee on special education fails to make a recommendation pursuant to the provisions of this paragraph, the family court shall obtain such information from the school district pursuant to section two hundred fifty-five of the family court act.

b. Children placed by a local social services district. When a local social services district is considering the placement of a child thought to have a handicapping condition in a child care institution, the social services district shall request the school district of residence to provide that the committee on special education of such district evaluate such child and make written recommendations for appropriate educational services within forty-two days, except where such information has been obtained by the family court. Such information shall be used to determine the most appropriate placement for the child. If the committee on special education determines that the child does not have a handicapping condition, it shall notify the social services district of such determination within forty-two days.

c. Children placed by the division for youth. (i) Any educational information obtained by the family court pursuant to this section shall be transmitted to the division for youth pursuant to section five

hundred seven-b of the executive law. The division shall use such information to determine the most appropriate placement for the child.

(ii) When the division for youth is considering the placement of a child thought to have a handicapping condition in a child care institution, pursuant to article nineteen-G of the executive law, the division shall request the school district of residence to provide that the committee on special education of such district evaluate such child and make written recommendations for appropriate educational services within forty-two days. Such information shall be used to determine the most appropriate placement for the child. If the committee on special education determines that the child does not have a handicapping condition, it shall notify the division of such determination within forty-two days.

d. Children placed in residential treatment facilities for children and youth. When a pre-admission certification committee established pursuant to section 9.51 of the mental hygiene law is considering the placement of a child who has not previously been placed in a child care institution by a public agency in a residential treatment facility for children and youth and such child is thought to have a handicapping condition, the committee shall request the school district of residence to provide that the committee on special education of such district evaluate such child and make written recommendations for appropriate educational services and to forward a written evaluation and recommendation within forty-two days of such request. Notwithstanding the definition set forth in subdivision eleven of section forty hundred one of this article, if a child being considered for initial placement in a residential treatment facility is a patient in a hospital operated or licensed by the office of mental health, the school district of residence shall be the school district of residence at the time he or she entered the hospital. Such information shall be used to determine the most appropriate placement for the child. If the committee on special education determines that the child does not have a handicapping condition, it shall notify the pre-admission certification committee and the operator of a residential treatment facility for children and youth which has admitted the child for care and treatment of such determination within forty-two days.

e. Any information obtained from a committee on special education pursuant to this section shall be considered confidential in accordance with regulations of the commissioner and shall be forwarded by the local social services district, the division for youth or the appropriate pre-admission certification committee established pursuant to section 9.51 of the mental hygiene law to the child care institution or other facility in which the child is placed.

f. For the purposes of this section, an emergency placement shall mean a child who must be placed in a child care institution to protect the health and welfare of the child or his family within thirty days of the presentation of the child to the family court or a local social services district. Children in an emergency placement shall not be exempted from the requirements of paragraphs a and b of this subdivision, except that the required educational evaluation shall be performed and recommendations made subsequent to the emergency placement but in no case later than forty-two days after such placement.

2. a. Upon the placement of a child who is at least five years of age in a child care institution that operates a private school or in a special act school district, by a public agency, or in a residential treatment facility for children and youth which, independently or as part of an authorized agency, operates a private school or a special act school district, the committee on special education of the private school or the special act district shall follow the procedures contained in section forty-four hundred two of this chapter including the involvement of the parents or guardians of the child and shall:

(i) consider and review the evaluation performed by the committee on special education of the school district of residence.

(ii) prepare an individualized education program for each child who has been determined to be handicapped which takes into account recommendations made by the committee on special education of the school district of residence.

(iii) place the child in the most appropriate program specified in subdivision two of section forty hundred two of this article. The committee shall review at least annually and prepare a written report

concerning the status of each child with a handicapping condition under its jurisdiction which shall include a determination whether a child's educational program should be continued, modified or terminated.

(iv) forward to the social services district or the division for youth the individualized education program and in each year forward an annual report for each child, as specified in this paragraph. The social services district, the division for youth or the operator of a residential treatment facility for children and youth which is not operated by an authorized agency, as the case may be, shall transmit a copy of such documents to the parents or guardians of the child and to the committee on special education of the school district of origin and shall forward a copy of the evaluation performed by the committee on special education of the school district of residence to the parents or guardians of the child.

* b. If the individual educational evaluation, individualized education program, educational placement decision, or the annual report for the child or any other matter relating to the provision of a free appropriate public education to the student is not acceptable to the parents or persons in parental relation to the student, an impartial hearing may be initiated by such parties pursuant to section forty-four hundred four of this title and mediation shall be made available pursuant to section forty-four hundred four-a of this title.

* NB Effective until June 30, 2027

* b. If the educational evaluation, educational placement decision or the annual report for the child is not acceptable to the parents or guardians of the child, the child, or the social services district or the division for youth, appeals may be made by such parties pursuant to section forty-four hundred four of this chapter.

* NB Effective June 30, 2027

* c. A child care institution or the social services district or the division for youth may request a review by the board of education of the school district of residence of the fact that a child has been determined not to be handicapped by the committee on special education of such district. An appeal to the commissioner will lie from any determination of the board of education.

* NB Effective June 30, 2027

3. In the event that it has been determined by a private school operated by a child care institution or a special act school district, subject to any review or modification provided for in this article, that a child should receive educational services in a public school, other than a special act school district, or board of cooperative educational services program or if a child resides in a child care institution that does not maintain an approved private school program or special act school district, then any such child residing in a child care institution shall be admitted to the school district in which the child care institution is located pursuant to regulations of the commissioner. For the purposes of this subdivision a special act school district shall not be considered to be the school district in which such institution is located.

4. During the pendency of any proceeding concerning any individual child described above, the child care institution or special act school district shall continue to be reimbursed by the social services district for the approved cost of the current educational placement of the child, including the transportation of such child to and from any interview required by the committee on special education of the child's school district of residence where an evaluation must be performed subsequent to the placement of a child pursuant to this section or any costs of an independent evaluation deemed necessary by such committee.

5. Nothing in this section shall be deemed to affect the placement or removal of a child from a child care institution by a public agency or the admission or discharge of children to and from Blythedale Children's Hospital.