§ 4355. Admission. All deaf or blind and deaf children between the age of three years and twenty-one years and of suitable capacity for instruction who are legal residents of the state shall be eligible for appointment to the New York state school for the deaf without charge for such period of time in each individual case as may be set by the commissioner, either: (i) upon the recommendation of the committee on special education or committee on preschool special education of the child's school district of residence, as applicable; or (ii) where the parents of a school age child make application directly to the commissioner or the school, upon recommendation of the school's multidisciplinary team in accordance with the joint placement procedures established in this section.

2. a. Upon receipt of an application for admission of a child who has not been recommended for placement by the committee on special education or committee on preschool special education of the child's school district of residence, the school shall immediately notify such school district of such application. Notwithstanding any inconsistent provision of law, the school shall make available to such school district of residence, upon request, all records in its possession relating the evaluation, placement and educational performance of each child who has applied for admission or is attending the school, including the results of any current evaluations of such child.

b. Prior to any meeting of its multidisciplinary team to develop an individualized education program for a school age child, either upon initial admission to the school or in an annual review, the school shall notify the school district of residence of such meeting and shall offer the district the opportunity to identify and present to the multidisciplinary team, an alternative placement recommendation for services in the least restrictive environment. In addition, such notice shall advise the school district of its right to appoint additional members to the multidisciplinary team pursuant to paragraph c of this subdivision. The multidisciplinary team shall consider such alternative and, if it rejects the alternative, shall include in its recommendation a statement of its reasons for doing so.

c. In addition to the members required for a committee on special education pursuant to subdivision one of section forty-four hundred two of this chapter, the school's multidisciplinary team may include additional members appointed by the board of education of the school district of residence pursuant to this paragraph, and shall include such members if appointed by such board of education. For each member appointed by the school, the school district may appoint a corresponding member, including a representative of the committee on special education who is qualified to teach or supervise special education, a school psychologist, the child's teacher, a parent member, a physician where the parent requests attendance of the physician member, and, for a child who has been evaluated for the first time, a person who is knowledgeable about the evaluation procedures used with the child and familiar with the results of the evaluation. The commissioner shall determine the location at which the multidisciplinary team meeting will be held. In the event of a tie vote on the multidisciplinary team, the parents shall cast the deciding vote.

d. The majority of the multidisciplinary team shall state the reasons for its recommendation, and submit such recommendation to the commissioner for consideration in determining whether to appoint the child. If the representatives appointed by the school district of residence disagree with the recommendation of the multidisciplinary team, they shall be entitled to prepare a dissenting opinion on the placement recommendation and to submit such opinion to the commissioner for consideration in determining whether to appoint the child to the school.

e. The commissioner, or his or her designee, in determining whether to appoint a school age child to the school, shall consider whether the placement at the state school is an appropriate placement in the least restrictive environment, taking into account the school district's recommended alternative placement. If the commissioner or his or her designee determines that placement in the state school is not in the least restrictive environment or otherwise disagrees with such recommendation, the commissioner shall state his or her reasons in writing and shall send the recommendation back to the multidisciplinary

team for reconsideration, with notice to the parents. If the commissioner refers the recommendation back to the multidisciplinary team for reconsideration, the commissioner shall also notify the parents and the multidisciplinary team in writing of the need to schedule a meeting to ensure timely placement.

* f. Notwithstanding any provision of law, rule or regulation to the contrary, a member of the multidisciplinary team, other than the parents or persons in parental relation to the student is not required to attend a meeting of the team, in whole or in part, if the parent or person in parental relation to the student and the department agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed at the meeting.

* NB Repealed June 30, 2027

* g. Notwithstanding any provision of law, rule or regulation to the contrary, a member of the multidisciplinary team, other than the parents or persons in parental relation to the student, may be excused from attending a meeting of the team, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services if the parent or person in parental relation to the student and the department consent, in writing, to the excusal and the excused member submits to the parent or person in parental relation to the student and the multidisciplinary team, written input into the development of the individualized education program, and in particular written input with respect to their area of curriculum or related services prior to the meeting.

* NB Repealed June 30, 2027

* h. Requests for excusal of a member of the multidisciplinary team as provided for in paragraphs f and g of this subdivision, and the written input as provided for in paragraph g of this subdivision, shall be provided not less than five calendar days prior to the meeting date, in order to afford the parent or person in parental relation a reasonable time to review and consider the request. Provided however, that a parent or person in parental relation shall retain the right to request and/or agree with the department to excuse a multidisciplinary team member at any time including where the member is unable to attend the meeting because of an emergency or unavoidable scheduling conflict and the

department submits the written input for review and consideration by the parent or person in parental relation within a reasonable time prior to the meeting and prior to obtaining written consent of the parent or person in parental relation to such excusal.

* NB Repealed June 30, 2027

* i. Notwithstanding any other provision of law, rule or regulation to the contrary, in making changes to a student's individualized education program after the annual review has been conducted, the parent or person in parental relation to the student and the department may agree not to convene a multidisciplinary team meeting for the purpose of making those changes, and instead may develop a written document to amend or modify the student's current individualized education program under the following circumstances:

(i) The parent or person in parental relation makes a request to the department for an amendment to the individualized education program and the department and such parent or person in parental relation agree in writing; or

(ii) The department provides the parent or person in parental relation with a written proposal to amend a provision or provisions of the individualized education program that is conveyed in language understandable to the parent or person in parental relation in such parent's or such person's native language or other dominant mode of communication, informs and allows the parent or person in parental relation the opportunity to consult with the appropriate personnel or related service providers concerning the proposed changes and the parent or person in parental relation agrees in writing to such amendments.

(iii) If the parent or person in parental relation agrees to amend the individualized education program without a meeting, the parent or person in parental relation shall be provided prior written notice of the changes to the individualized education program resulting from such written document and the multidisciplinary team shall be notified of such changes. If the department makes such changes by rewriting the entire individualized education program, it shall provide the parent or person in parental relation with a copy of the rewritten individualized education program. If the department amends the individualized education program without rewriting the entire document, the department shall provide the parent or person in parental relation with a copy of the

document that amends or modifies the individualized education program or, upon request of the parent or person in parental relation, a revised copy of the individualized education program with the amendments incorporated.

Amendments to an individualized education program pursuant to this paragraph shall not affect the requirement that the multidisciplinary team review the individualized education program at the annual meeting, or more often if necessary.

* NB Repealed June 30, 2027

3. The commissioner shall adopt regulations to prescribe the procedures for evaluation, placement and admission of children in accordance with this section, which shall include but not be limited to procedures to ensure that the due process rights of parents are protected and that placement recommendations are made in a timely manner.