**§ 509. Transfers to state hospitals and schools in the department of mental hygiene.** 1. (a) The director of the division for youth may apply for the transfer of any child in the care of the division to the department of mental hygiene for care and treatment in a state hospital or school under the jurisdiction of said department whenever it appears to the satisfaction of the director of the division:

(i) that such child is living with mental illness or a developmental disability and will substantially benefit from care and treatment in such a state school or hospital; and

(ii) that the interests of the state will be best served thereby.

(b) The office for people with developmental disabilities may receive, treat and otherwise care for such a child pursuant to article nine or fifteen of the mental hygiene law if suitable for admission thereunder.

2. (a) Except in the case of an emergency requiring immediate admission to a state hospital pursuant to the mental hygiene law, a child in the care of the division may be transferred:

(i) after notice thereof has been given to the child to be transferred, his parents or legal guardian, and his attorney of record, if any; and

(ii) after he has been afforded an opportunity to be heard with respect thereto at a hearing conducted by an impartial hearing officer and to be represented at such hearing by counsel. If in the judgment of the division such child is financially unable to obtain counsel, the division shall pay such counsel's fees as shall be necessary to assure adequate representation for such child.

(b) The hearing officer may accept the written waiver by a child of his right to a hearing, provided the child knowingly and voluntarily executed such waiver with the advice of counsel.

3. A child transferred pursuant to this section:

(a) shall continue to be under the general care and supervision of the division for youth except that he shall be temporarily cared for and treated by the institution to which the transfer is made.

(b) shall be subject to the laws and rules pertaining to the institution to which he is admitted; and

(c) shall be entitled to the same rights and procedures under the

mental hygiene law as any other person admitted or converted in status thereunder.

4. Whenever the commissioner of mental health or the director of a residential treatment facility for children and youth, or the commissioner of developmental disabilities finds that care and treatment of a child transferred pursuant to this section or section 353.4 of the family court act is no longer suitable under the mental hygiene law, he or she shall forthwith so certify and discharge the child to the custody of the child himself or herself, his or her parents, his or her legal guardian, the local department of social services or the office of children and family services, as appropriate, except that so long as there is a valid order of the family court placing the child with the office of children and family services, or a valid order of a criminal court sentencing a child to the office of children and family services, the child shall be returned to the care and custody of the office of children and family services. The duration of the placement or sentence with the such office of a child transferred pursuant to this section shall not be extended or increased by reason of any such transfer.

5. All expenses incident to a transfer under this section shall be borne by the division, subject to the provisions of title four of this article. All expenses for the care and treatment of a child transferred to the department of mental hygiene pursuant to this section shall be borne by the department of mental hygiene.

6. An application by the director for admission of a child to a state hospital shall be considered an application for voluntary admission in accordance with section 9.13 of the mental hygiene law if such child is under the age of sixteen or if the child is sixteen years of age or older and has waived his right to a hearing in accordance with subdivision two of this section. An application by the director for admission to a state hospital of a child sixteen years of age or older who has not knowingly and voluntarily consented to such application in accordance with paragraph (b) of subdivision two of this section shall be considered an application for involuntary admission in accordance with section 9.27 of the mental hygiene law.

7. The director may, following the procedures outlined in this section and subject to the requirements of section 9.51 of the mental hygiene law, apply for the transfer of any child in the care of the division who has not been sentenced as a juvenile offender pursuant to section 70.05 of the penal law, and who is not subject to a restrictive placement pursuant to section 353.5 of the family court act, to a residential treatment facility for children and youth.

8. Notwithstanding any other provision of law to the contrary, juvenile offenders shall be transferred only to a facility under the jurisdiction of the office of mental health specially designed for the care and treatment of juvenile offenders which is characterized by physically restricting construction, hardware and procedures.