§ 409-h. Assessment of appropriateness of placement in a qualified residential treatment program. 1. (a) Prior to a child's placement in a qualified residential treatment program, as defined in subdivision four of this section, but at least within thirty days of the start of a placement in a qualified residential treatment program of a child in the care and custody or the custody and guardianship of the commissioner of a local social services district or the office of children and family services that occurs on or after September twenty-ninth, two thousand twenty-one, a qualified individual as defined in subdivision five of this section shall complete an assessment as to the appropriateness of such placement utilizing an age-appropriate, evidence-based, validated, functional assessment tool approved by the federal government for such purpose. Such assessment shall be in accordance with 42 United States Code sections 672 and 675a and the state's approved title IV-E state plan and shall include, but not be limited to: (i) an assessment of the strengths and needs of the child; and (ii) a determination of the most effective and appropriate level of care for the child in the least restrictive setting, including whether the needs of the child can be met with family members or through placement in a foster family home, or in a setting specified in paragraph (c) of this subdivision, consistent with the short-term and long-term goals for the child as specified in the child's permanency plan. Such assessment shall be completed in conjunction with the family and permanency team established pursuant to paragraph (b) of this subdivision.

(b) The family and permanency team shall consist of all appropriate biological family members, relatives, and fictive kin of the child, as well as, as appropriate, professionals who are a resource to the family of the child, including but not limited to, the attorney for the child or the attorney for the parent if applicable, teachers, medical or mental health providers who have treated the child, or clergy. In the case of a child who has attained the age of fourteen, the family and permanency team shall include the members of the permanency planning team for the child in accordance with 42 United States Code section 675 and the state's approved title IV-E state plan.

(c) Where the qualified individual determines that the child may not be placed in a foster family home, the qualified individual must specify in writing the reasons why the needs of the child cannot be met by the

child's family or in a foster family home. A shortage or lack of foster family homes shall not constitute circumstances warranting a determination that the needs of the child cannot be met in a foster family home. The qualified individual shall also include why such a placement is not the most effective and appropriate level of care for such child. Such determination shall include whether the needs of the child can be met through placement in:

(i) An available supervised setting, as such term is defined in section three hundred seventy-one of this article;

(ii) If the child has been found to be, or is at risk of becoming, a sexually exploited child as defined in subdivision one of section four hundred forty-seven-a of this article, a setting providing residential care and supportive services for sexually exploited children;

(iii) A setting specializing in providing prenatal, post-partum or parenting supports for youth; or

(iv) A qualified residential treatment program.

2. The qualified individual or their designee shall promptly, but no later than five days following the completion of the assessment, provide the assessment, determination and documentation pursuant to subdivision one of this section to the court, the parent or guardian of the child, and to the attorney for the child and the attorney for the parent, if applicable, and a written summary detailing the assessment findings required pursuant to subdivision one of this section to either the local social services district or the office of children and family services that has care and custody or custody and guardianship of the child, as applicable, and the parties to the proceeding, redacting any information necessary to comply with federal and state confidentiality laws.

3. Where the qualified individual determines that the placement of the child in a qualified residential treatment program is not appropriate after the assessment conducted pursuant to subdivision one of this section, the child's placement shall continue until the court has an opportunity to hold a hearing to consider the qualified individual's assessment and make an independent determination required pursuant to section three hundred ninety-three of this article or sections 353.7, seven hundred fifty-six-b, one thousand fifty-five-c, one thousand

ninety-one-a or one thousand ninety-seven of the family court act, as applicable. Provided however, nothing herein shall prohibit a motion from being filed pursuant to sections 355.1, seven hundred sixty-four or one thousand eighty-eight of the family court act, as applicable. If the appropriate party files such motion, the court shall hold a hearing, as required, and also complete the assessment required pursuant to section three hundred ninety-three of this article or sections 353.7, seven hundred fifty-six-b, one thousand fifty-five-c, one thousand ninety-one-a or one thousand ninety-seven of the family court act, as applicable, at the same time. The court shall consider all relevant and necessary information as required and make a determination about the appropriateness of the child's placement based on standards required pursuant to the applicable sections.

4. "Qualified residential treatment program" means a program that is a non-foster family residential program in accordance with 42 United State Code sections 672 and 675a and the state's approved title IV-E state plan.

5. "Qualified individual" shall mean a trained professional or licensed clinician acting within their scope of practice who shall have current or previous relevant experience in the child welfare field. Provided however, such individual shall not be an employee of the office of children and family services, nor shall such person have a direct role in case management or case planning decision making authority for the child for whom such assessment is being conducted, in accordance with 42 United States Code sections 672 and 675a and the state's approved title IV-E state plan.