

STATE OF NEW YORK

545--A

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. L. ROSENTHAL, OTIS, STIRPE, BENEDETTO, CUSICK, ABINANTI, FAHY, ZEBROWSKI, DICKENS, PAULIN, DE LA ROSA, HEVESI, CRUZ, REYES, MIKULIN, WALSH -- Multi-Sponsored by -- M. of A. BRAUNSTEIN, EPSTEIN, GALEF, LALOR, LUPARDO, McDONOUGH, MONTESANO -- read once and referred to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law and the social services law, in relation to the practice of school psychology, and establishing a pilot program of a multi-tiered system of support to address the social and emotional needs of students

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative intent and findings. The legislature finds that
2 while significant steps have been taken to address the social and
3 emotional needs of students that have been intensified by the COVID-19
4 pandemic, much more must be done to identify risk factors, develop
5 community response and support strategies and to increase access to
6 mental health services.
7 The legislature intends to build on the initial aggressive efforts of
8 the executive and legislative by recognizing the significant role mental
9 and behavioral health professionals play in identifying the warning
10 signs of social and emotional distress in our children and the maladaptive
11 behaviors that contribute to mental health crises and suicide. The
12 legislature recognizes that certified school psychologists are uniquely
13 qualified to identify the risk and protective factors, coupled with
14 adverse childhood experiences which contribute to the intensified mental
15 health needs in children during the isolation of the COVID-19 pandemic.
16 However, these highly trained specialists are constrained to provide
17 vital services to the school setting only, despite many school psychol-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 ogists successfully working with students virtually outside of the
 2 school setting during the COVID-19 pandemic, a time when students were
 3 in great need of support. The legislature finds that the state's
 4 mission to address the ever-growing social and emotional needs of
 5 students, which have only been intensified by the COVID-19 pandemic,
 6 will be advanced through the licensure of school psychologists and the
 7 meaningful involvement of these trained practitioners in the development
 8 of a school and community based strategy of response and support.

9 § 2. The education law is amended by adding a new article 166-A to
 10 read as follows:

11 ARTICLE 166-A
 12 SCHOOL PSYCHOLOGY

13 Section 8720. Introduction.

14 8721. Practice of school psychology and use of the title "school
 15 psychologist".

16 8722. Definition of the practice of school psychology.

17 8723. Requirements for a professional license.

18 8724. Boundaries of professional competency.

19 8725. Limited permits.

20 8726. Exemptions.

21 8727. Special provisions.

22 § 8720. Introduction. This article applies to the profession and prac-
 23 tice of school psychology and to the use of the title "licensed school
 24 psychologist". The general provisions for all professions contained in
 25 article one hundred thirty of this title apply to this article.

26 § 8721. Practice of school psychology and use of the title "school
 27 psychologist". Only a person licensed or exempt under this article
 28 shall practice school psychology or use the title "licensed school
 29 psychologist".

30 § 8722. Definition of the practice of school psychology. The practice
 31 of school psychology is:

32 1. the assessment, including psycho-educational, developmental and
 33 vocational assessment, evaluation and interpretation of intelligence,
 34 cognitive processes, aptitudes, interests, academic achievement,
 35 adjustment, personality factors and motivations, or any other attri-
 36 butes, to individuals or groups of individuals aged birth to twenty-five
 37 years that relate to learning, education or adjustment needs;

38 2. the development and implementation of educationally-related
 39 psychotherapeutic and behavioral approaches to increase school adjust-
 40 ment and academic success, counseling and interpretive services to
 41 reduce education-related problems including, but not limited to, verbal
 42 interaction, interviewing, behavior techniques, developmental and voca-
 43 tional intervention, environmental management and group processes;

44 3. consultation with representatives of schools, agencies and organ-
 45 izations, families or individuals, including psycho-educational, devel-
 46 opmental and vocational assistance or direct educational services,
 47 related to learning problems and adjustments to those problems to the
 48 benefit of an individual or group of individuals age birth to twenty-
 49 five years; and

50 4. the development of programming, including designing, implementing
 51 or evaluating educationally and psychologically sound learning environ-
 52 ments and the facilitation of psycho-educational development of individ-
 53 uals, families or groups.

54 § 8723. Requirements for a professional license. To qualify for a
 55 license as a licensed school psychologist, an applicant shall fulfill
 56 the following requirements:

1 1. Application: File an application with the department;

2 2. Education: Complete a minimum of sixty graduate semester hours in
3 psychology credits including a master's degree and fulfill the require-
4 ments of an advanced certificate in school psychology or its equivalent
5 or doctoral degree in school psychology from a program registered by the
6 department, or determined by the department to be the substantial equiv-
7 alent in accordance with the commissioner's regulations. The graduate
8 coursework shall include, but not be limited to, the following areas:

9 (i) biological, social and cultural bases of development;

10 (ii) psychopathology and exceptionality in learning and behavior;

11 (iii) assessment and appraisal of learners in home and school
12 contexts;

13 (iv) consultation and collaboration in family, school and community
14 systems;

15 (v) effective instruction and development of cognitive and academic
16 skills;

17 (vi) prevention and treatment of behavioral and emotional disorders
18 and deficits;

19 (vii) school organization, curriculum, policy and law;

20 (viii) research and program evaluation;

21 (ix) profession and ethical practice of psychology in schools; and

22 (x) completion of a twelve hundred hour supervised internship in
23 school psychology, with no less than six hundred hours completed within
24 a school setting.

25 3. Experience: Complete a minimum of two thousand four hundred hours
26 of post-master's supervised experience relevant to the practice of
27 school psychology satisfactory to the board and in accordance with the
28 commissioner's regulations, such supervised experience which may include
29 one thousand two hundred hours completed as part of a program in school
30 psychology. Satisfactory experience obtained in an entity operating
31 under a waiver issued by the department pursuant to section sixty-five
32 hundred three-a of this title may be accepted by the department,
33 notwithstanding that such experience may have been obtained prior to the
34 effective date of such section sixty-five hundred three-a and/or prior
35 to the entity having obtained a waiver. The department may, for good
36 cause shown, accept satisfactory experience that was obtained in a
37 setting that would have been eligible for a waiver but which has not
38 obtained a waiver from the department or experience that was obtained in
39 good faith by the applicant under the belief that appropriate authori-
40 zation had been obtained for the experience, provided that such experi-
41 ence meets all other requirements for acceptable experience;

42 4. Examination: Pass an examination satisfactory to the board and in
43 accordance with the commissioner's regulations;

44 5. Age: Be at least twenty-one years of age;

45 6. Character: Be of good moral character as determined by the depart-
46 ment; and

47 7. Fees: Pay a fee of one hundred seventy-five dollars to the depart-
48 ment for admission to a department conducted examination and for an
49 initial license and a fee of one hundred seventy dollars for each trien-
50 nial registration period.

51 § 8724. Boundaries of professional competency. 1. It shall be deemed
52 practicing outside the boundaries of his or her professional competence
53 for a person licensed pursuant to this article, in the case of treatment
54 of any serious mental illness, to provide any mental health services
55 for such illness on a continuous and sustained basis without a medical
56 evaluation of the illness by, and consultation with, a physician regard-

1 ing such illness. Such medical evaluation and consultation shall be to
2 determine and advise whether any medical care is indicated for such
3 illness. For purposes of this section, "serious mental illness" means
4 schizophrenia, schizoaffective disorder, bipolar disorder, major
5 depressive disorder, panic disorder and obsessive-compulsive disorder.
6 Nothing in this section shall be construed to prevent, limit or impair
7 consultation with any other health or mental health professional. Noth-
8 ing herein contained shall limit, modify, restrict or otherwise affect
9 the definition of the practice of school psychology as provided in
10 section eighty-seven hundred twenty-two of this article.

11 2. Any individual whose license or authority to practice derives from
12 the provisions of this article shall be prohibited from:

13 (a) prescribing or administering drugs as defined in this chapter as a
14 treatment, therapy, or professional service in the practice of his or
15 her profession; or

16 (b) using invasive procedures as a treatment, therapy, or professional
17 service in the practice of his or her profession. For purposes of this
18 subdivision, "invasive procedure" means any procedure in which human
19 tissue is cut, altered, or otherwise infiltrated by mechanical or other
20 means. Invasive procedure includes surgery, lasers, ionizing radiation,
21 therapeutic ultrasound, or electroconvulsive therapy; or

22 (c) engaging in dual setting practice, or otherwise offering or
23 providing private practice services to a student of a school or special
24 education program where the practitioner is currently employed or under
25 contract with such school or program.

26 3. Nothing in this article shall be deemed to authorize, grant or
27 extend hospital privileges to individuals licensed under this article.

28 § 8725. Limited permits. 1. The department may issue a limited permit
29 to an applicant whose qualifications have been approved for admission to
30 the examination in accordance with regulations promulgated therefor.

31 2. Limited permits shall be for one year and be renewed, at the
32 discretion of the department, for one additional year.

33 3. The fee for each limited permit and for each renewal shall be
34 seventy dollars.

35 § 8726. Exemptions. Nothing contained in this article shall be
36 construed to:

37 1. apply to the practice, conduct, activities, services or use of any
38 title by any person licensed or otherwise authorized to practice medi-
39 cine within the state pursuant to article one hundred thirty-one of this
40 title or by any person registered to perform services as a physician
41 assistant within the state pursuant to article one hundred thirty-one-B
42 of this title or by any person licensed or otherwise authorized to prac-
43 tice psychology within this state pursuant to article one hundred
44 fifty-three of this title or by any person licensed or otherwise author-
45 ized to practice as a licensed clinical social worker within this state
46 pursuant to article one hundred fifty-four of this title, or by any
47 person licensed or otherwise authorized to practice nursing as a regis-
48 tered professional nurse within this state pursuant to article one
49 hundred thirty-nine of this title, or by any person licensed or other-
50 wise authorized to practice mental health counseling, marriage and fami-
51 ly therapy, creative arts therapy, or psychoanalysis within the state,
52 or by any person licensed or otherwise authorized to practice applied
53 behavior analysis within the state pursuant to this article; provided,
54 however, that no physician, physician's assistant, registered profes-
55 sional nurse, psychologist, licensed clinical social worker, licensed
56 mental health counselor, licensed marriage and family therapist,

1 licensed creative arts therapist, licensed psychoanalyst or licensed
2 applied behavior analyst may use the title unless licensed under this
3 article;

4 2. prohibit or limit any individual who is credentialed under any law,
5 including attorneys, rape crisis counselors, certified alcoholism coun-
6 selors and certified substance abuse counselors from providing mental
7 health services within their respective established authorities;

8 3. prohibit or limit the practice of a profession licensed pursuant
9 to this article by a student, intern or resident in, and as a part of, a
10 supervised educational program in an institution approved by the depart-
11 ment;

12 4. prohibit or limit the provision of pastoral counseling services by
13 any member of the clergy or Christian Science practitioner, within the
14 context of his or her ministerial charge or obligation;

15 5. prohibit or limit individuals, churches, schools, teachers, organ-
16 izations, or not-for-profit businesses, from providing instruction,
17 advice, support, encouragement, or information to individuals, families,
18 and relational groups;

19 6. prohibit or limit an occupational therapist from performing work
20 consistent with article one hundred fifty-six of this title; or

21 7. affect or prevent the activities or services on the part of a
22 person in the employ of a federal, state, county, or municipal agency,
23 other political subdivision, or a chartered elementary or secondary
24 school or degree-granting educational institution insofar as such activ-
25 ities and services are a part of the duties of such person's salaried
26 position.

27 § 8727. Special provisions. 1. Any nonexempt person practicing the
28 profession of school psychology shall apply for a license of such
29 profession within one year of the effective date of this section.

30 (a) If such person does not meet the requirements for a license estab-
31 lished within this article, such person may meet alternative criteria
32 determined by the department to be the substantial equivalent of such
33 criteria.

34 (b) If such person meets the requirements for a license established
35 within this article, except for examination, and has been certified or
36 registered by a national certifying or registering body having certif-
37 ication or registration standards acceptable to the commissioner, the
38 department shall license without examination.

39 2. Notwithstanding the requirements of section eighty-seven hundred
40 twenty-three of this article, and for a period of time not to exceed two
41 years from the effective date of this article, an individual may be
42 licensed as a school psychologist provided such person has either:

43 (a) met the educational requirements as defined in section eighty-sev-
44 en hundred twenty-three of this article and performed the duties of a
45 school psychologist as authorized by article one hundred fifty-three of
46 this title or any other provision of law, for two of the past five years
47 prior to the effective date of this article; or

48 (b) performed the duties of a school psychologist as authorized by
49 article one hundred fifty-three of this title or any other provision of
50 law, for at least five years prior to the effective date of this arti-
51 cle.

52 3. Any person licensed pursuant to this article may use accepted codes
53 and classifications of signs, symptoms, dysfunctions and disorders, as
54 approved in accordance with regulations promulgated by the department,
55 in the practice of such licensed profession.

1 4. Nothing in this article shall be deemed to alter, modify or affect
2 the provisions of section three thousand twelve or twenty-five hundred
3 ten of this chapter or otherwise affect the certification of a school
4 psychologist.

5 § 3. Paragraph a of subdivision 3 of section 6507 of the education
6 law, as amended by chapter 672 of the laws of 2019, is amended to read
7 as follows:

8 a. Establish standards for preprofessional and professional education,
9 experience and licensing examinations as required to implement the arti-
10 cle for each profession. Notwithstanding any other provision of law, the
11 commissioner shall establish standards requiring that all persons apply-
12 ing, on or after January first, nineteen hundred ninety-one, initially,
13 or for the renewal of, a license, registration or limited permit to be a
14 physician, chiropractor, dentist, registered nurse, podiatrist, optome-
15 trist, psychiatrist, psychologist, licensed school psychologist,
16 licensed master social worker, licensed clinical social worker, licensed
17 creative arts therapist, licensed marriage and family therapist,
18 licensed mental health counselor, licensed psychoanalyst, dental hygien-
19 ist, licensed behavior analyst, or certified behavior analyst assistant
20 shall, in addition to all the other licensure, certification or permit
21 requirements, have completed two hours of coursework or training regard-
22 ing the identification and reporting of child abuse and maltreatment.
23 The coursework or training shall be obtained from an institution or
24 provider which has been approved by the department to provide such
25 coursework or training. The coursework or training shall include infor-
26 mation regarding the physical and behavioral indicators of child abuse
27 and maltreatment and the statutory reporting requirements set out in
28 sections four hundred thirteen through four hundred twenty of the social
29 services law, including but not limited to, when and how a report must
30 be made, what other actions the reporter is mandated or authorized to
31 take, the legal protections afforded reporters, and the consequences for
32 failing to report. Such coursework or training may also include informa-
33 tion regarding the physical and behavioral indicators of the abuse of
34 individuals with [~~mental retardation and other~~] developmental disabili-
35 ties and voluntary reporting of abused or neglected adults to the office
36 for people with developmental disabilities or the local adult protective
37 services unit. Each applicant shall provide the department with documen-
38 tation showing that he or she has completed the required training. The
39 department shall provide an exemption from the child abuse and maltreat-
40 ment training requirements to any applicant who requests such an
41 exemption and who shows, to the department's satisfaction, that there
42 would be no need because of the nature of his or her practice for him or
43 her to complete such training;

44 § 4. Section 7602 of the education law, as added by chapter 987 of the
45 laws of 1971, is amended to read as follows:

46 § 7602. State board for psychology. A state board for psychology
47 shall be appointed by the board of regents on recommendation of the
48 commissioner for the purpose of assisting the board of regents and the
49 department on matters of professional licensing and professional conduct
50 in accordance with section sixty-five hundred eight of this title. The
51 board shall be composed of not less than eleven [~~psychologists licensed~~
52 ~~in this state~~] members, a number of whom shall be licensed school
53 psychologists sufficient to assure meaningful participation in board
54 activities. An executive secretary to the board shall be appointed by
55 the board of regents upon the recommendation of the commissioner and
56 shall be a psychologist, licensed in this state.

1 § 5. Paragraph (a) of subdivision 1 of section 413 of the social
2 services law, as amended by section 7 of part C of chapter 57 of the
3 laws of 2018, is amended to read as follows:

4 (a) The following persons and officials are required to report or
5 cause a report to be made in accordance with this title when they have
6 reasonable cause to suspect that a child coming before them in their
7 professional or official capacity is an abused or maltreated child, or
8 when they have reasonable cause to suspect that a child is an abused or
9 maltreated child where the parent, guardian, custodian or other person
10 legally responsible for such child comes before them in their profes-
11 sional or official capacity and states from personal knowledge facts,
12 conditions or circumstances which, if correct, would render the child an
13 abused or maltreated child: any physician; registered physician assist-
14 ant; surgeon; medical examiner; coroner; dentist; dental hygienist;
15 osteopath; optometrist; chiropractor; podiatrist; resident; intern;
16 psychologist; licensed school psychologist; registered nurse; social
17 worker; emergency medical technician; licensed creative arts therapist;
18 licensed marriage and family therapist; licensed mental health counse-
19 lor; licensed psychoanalyst; licensed behavior analyst; certified behav-
20 ior analyst assistant; hospital personnel engaged in the admission,
21 examination, care or treatment of persons; a Christian Science practi-
22 tioner; school official, which includes but is not limited to school
23 teacher, school guidance counselor, school psychologist, school social
24 worker, school nurse, school administrator or other school personnel
25 required to hold a teaching or administrative license or certificate;
26 full or part-time compensated school employee required to hold a tempo-
27 rary coaching license or professional coaching certificate; social
28 services worker; employee of a publicly-funded emergency shelter for
29 families with children; director of a children's overnight camp, summer
30 day camp or traveling summer day camp, as such camps are defined in
31 section thirteen hundred ninety-two of the public health law; day care
32 center worker; school-age child care worker; provider of family or group
33 family day care; employee or volunteer in a residential care facility
34 for children that is licensed, certified or operated by the office of
35 children and family services; or any other child care or foster care
36 worker; mental health professional; substance abuse counselor; alcohol-
37 ism counselor; all persons credentialed by the office of [~~alcoholism and~~
38 ~~substance abuse~~] addiction services and supports; employees, who are
39 expected to have regular and substantial contact with children, of a
40 health home or health home care management agency contracting with a
41 health home as designated by the department of health and authorized
42 under section three hundred sixty-five-1 of this chapter or such employ-
43 ees who provide home and community based services under a demonstration
44 program pursuant to section eleven hundred fifteen of the federal social
45 security act who are expected to have regular and substantial contact
46 with children; peace officer; police officer; district attorney or
47 assistant district attorney; investigator employed in the office of a
48 district attorney; or other law enforcement official.

49 § 6. The education department, the office of children and family
50 services, and the office of mental health are hereby directed to estab-
51 lish a multi-tiered system of support (MTSS) model of prevention and
52 intervention utilizing tiered levels of universal support services and
53 secondary and tertiary intervention services to address the social and
54 emotional needs of students, that have been intensified by the COVID-19
55 pandemic, and to pilot such model in communities determined to be mental
56 health professional shortage areas for children under the age of twen-

1 ty-five in New York state. Such model shall be designed with the mean-
2 ingful participation of mental and behavioral health practitioners whose
3 training focuses on the needs of children under the age of twenty-five
4 including, but not limited to, school psychologists, such practitioners
5 being uniquely qualified to implement the model to the fullest extent
6 possible. Such pilot shall be designed for implementation by September
7 1, 2021.

8 § 7. Subparagraph (i) of paragraph a of subdivision 1 of section
9 6503-a of the education law, as amended by chapter 554 of the laws of
10 2013, is amended to read as follows:

11 (i) services provided under article one hundred fifty-four, one
12 hundred sixty-three [~~ex~~], one hundred sixty-seven or one hundred sixty-
13 six-A of this title for which licensure would be required, or

14 § 8. Severability. If any clause, sentence, paragraph, section or part
15 of this act shall be adjudged by any court of competent jurisdiction to
16 be invalid, the judgment shall not affect, impair, or invalidate the
17 remainder thereof, but shall be confined in its operation to the clause,
18 sentence, paragraph, section or part thereof directly involved in the
19 controversy in which the judgment shall have been rendered.

20 § 9. This act shall take effect twelve months after it shall have
21 become a law; provided, however, that effective immediately the depart-
22 ment of education is authorized to promulgate any and all rules and
23 regulations and take any other measure necessary to implement this act
24 on or before its effective date, including, but not limited to, the
25 appointment of the state board for psychology, the acceptance and proc-
26 essing of applications for licensure and the issuance of licenses; and
27 provided, further, that the provisions of article 166-A of the education
28 law, as added by section two of this act, requiring a license or limited
29 permit to practice under such article shall not be enforced until twen-
30 ty-four months after the effective date of this act.