STATE OF NEW YORK

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2021-2022 Regular Sessions

IN SENATE

February 3, 2021

Introduced by Sens. BROUK, HOYLMAN, MARTUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Higher Education in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, amended on second report, ordered to a third reading, and to be reprinted as amended, retaining its place in the order of third reading

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:

Section 1. Legislative intent and findings. The legislature finds that while significant steps have been taken to address the social and emotional needs of students that have been intensified by the COVID-19 pandemic, much more must be done to identify risk factors, develop community response and support strategies and to increase access to mental health services.

The legislature intends to build on the initial aggressive efforts of the executive and legislative by recognizing the significant role mental and behavioral health professionals play in identifying the warning signs of social and emotional distress in our children and the maladaptive behaviors that contribute to mental health crises and suicide. The legislature recognizes that certified school psychologists are uniquely qualified to identify the risk and protective factors, coupled with adverse childhood experiences which contribute to the intensified mental health needs in children during the isolation of the COVID-19 pandemic. However, these highly trained specialists are constrained to provide

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

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

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

ARTICLE 166-A
SCHOOL PSYCHOLOGY

Section 8720. Introduction.
8721. Practice of school psychology and use of the title "school psychologist".
8722. Definition of the practice of school psychology.
8723. Requirements for a professional license.
8724. Boundaries of professional competency.
8725. Limited permits.
8726. Exemptions.
8727. Special provisions.

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

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

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

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

2. the development and implementation of educationally-related psychotherapeutic and behavioral approaches to increase school adjustment and academic success, counseling and interpretive services to reduce education-related problems including, but not limited to, verbal interaction, interviewing, behavior techniques, developmental and vocational intervention, environmental management and group processes;

3. consultation with representatives of schools, agencies and organizations, families or individuals, including psycho-educational, developmental and vocational assistance or direct educational services, related to learning problems and adjustments to those problems to the benefit of an individual or group of individuals age birth to twenty-five years; and

4. the development of programming, including designing, implementing or evaluating educationally and psychologically sound learning environments and the facilitation of psycho-educational development of individuals, families or groups.

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

1. Application: File an application with the department;

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

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

(ii) psychopathology and exceptionality in learning and behavior;

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

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

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

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

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

(viii) research and program evaluation;

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

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

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

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

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

6. Character: Be of good moral character as determined by the department; and

7. Fees: Pay a fee of one hundred seventy-five dollars to the department for admission to a department conducted examination and for an initial license and a fee of one hundred seventy dollars for each triennial registration period.

§ 8724. Boundaries of professional competency. 1. It shall be deemed practicing outside the boundaries of his or her professional competence for a person licensed pursuant to this article, in the case of treatment

of any serious mental illness, to provide any mental health services for such illness on a continuous and sustained basis without a medical evaluation of the illness by, and consultation with, a physician regarding such illness. Such medical evaluation and consultation shall be to determine and advise whether any medical care is indicated for such illness. For purposes of this section, "serious mental illness" means schizophrenia, schizoaffective disorder, bipolar disorder, major depressive disorder, panic disorder and obsessive-compulsive disorder. Nothing in this section shall be construed to prevent, limit or impair consultation with any other health or mental health professional. Nothing herein contained shall limit, modify, restrict or otherwise affect the definition of the practice of school psychology as provided in section eighty-seven hundred twenty-two of this article.

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

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

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

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

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

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

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

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

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

1. apply to the practice, conduct, activities, services or use of any title by any person licensed or otherwise authorized to practice medicine within the state pursuant to article one hundred thirty-one of this title or by any person registered to perform services as a physician assistant within the state pursuant to article one hundred thirty-one-B of this title or by any person licensed or otherwise authorized to practice psychology within this state pursuant to article one hundred fifty-three of this title or by any person licensed or otherwise authorized to practice as a licensed clinical social worker within this state pursuant to article one hundred fifty-four of this title, or by any person licensed or otherwise authorized to practice nursing as a registered professional nurse within this state pursuant to article one hundred thirty-nine of this title, or by any person licensed or otherwise authorized to practice mental health counseling, marriage and family therapy, creative arts therapy, or psychoanalysis within the state, or by any person licensed or otherwise authorized to practice applied behavior analysis within the state pursuant to this article; provided,

however, that no physician, physician's assistant, registered professional nurse, psychologist, licensed clinical social worker, licensed mental health counselor, licensed marriage and family therapist, licensed creative arts therapist, licensed psychoanalyst or licensed applied behavior analyst may use the title unless licensed under this article;

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

3. prohibit or limit the practice of a profession licensed pursuant to this article by a student, intern or resident in, and as a part of, a supervised educational program in an institution approved by the department;

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

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

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

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

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

(a) If such person does not meet the requirements for a license established within this article, such person may meet alternative criteria determined by the department to be the substantial equivalent of such criteria.

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

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

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

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

3. Any person licensed pursuant to this article may use accepted codes and classifications of signs, symptoms, dysfunctions and disorders, as

approved in accordance with regulations promulgated by the department, in the practice of such licensed profession.

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

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

a. Establish standards for preprofessional and professional education, experience and licensing examinations as required to implement the article for each profession. Notwithstanding any other provision of law, the commissioner shall establish standards requiring that all persons applying, on or after January first, nineteen hundred ninety-one, initially, or for the renewal of, a license, registration or limited permit to be a physician, chiropractor, dentist, registered nurse, podiatrist, optometrist, psychiatrist, psychologist, licensed school psychologist, licensed master social worker, licensed clinical social worker, licensed creative arts therapist, licensed marriage and family therapist, licensed mental health counselor, licensed psychoanalyst, dental hygienist, licensed behavior analyst, or certified behavior analyst assistant shall, in addition to all the other licensure, certification or permit requirements, have completed two hours of coursework or training regarding the identification and reporting of child abuse and maltreatment. The coursework or training shall be obtained from an institution or provider which has been approved by the department to provide such coursework or training. The coursework or training shall include information regarding the physical and behavioral indicators of child abuse and maltreatment and the statutory reporting requirements set out in sections four hundred thirteen through four hundred twenty of the social services law, including but not limited to, when and how a report must be made, what other actions the reporter is mandated or authorized to take, the legal protections afforded reporters, and the consequences for failing to report. Such coursework or training may also include information regarding the physical and behavioral indicators of the abuse of individuals with [~~mental retardation and other~~] developmental disabilities and voluntary reporting of abused or neglected adults to the office for people with developmental disabilities or the local adult protective services unit. Each applicant shall provide the department with documentation showing that he or she has completed the required training. The department shall provide an exemption from the child abuse and maltreatment training requirements to any applicant who requests such an exemption and who shows, to the department's satisfaction, that there would be no need because of the nature of his or her practice for him or her to complete such training;

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

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

the board of regents upon the recommendation of the commissioner and shall be a psychologist, licensed in this state.

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

(a) The following persons and officials are required to report or cause a report to be made in accordance with this title when they have reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child, or when they have reasonable cause to suspect that a child is an abused or maltreated child where the parent, guardian, custodian or other person legally responsible for such child comes before them in their professional or official capacity and states from personal knowledge facts, conditions or circumstances which, if correct, would render the child an abused or maltreated child: any physician; registered physician assistant; surgeon; medical examiner; coroner; dentist; dental hygienist; osteopath; optometrist; chiropractor; podiatrist; resident; intern; psychologist; **licensed school psychologist;** registered nurse; social worker; emergency medical technician; licensed creative arts therapist; licensed marriage and family therapist; licensed mental health counselor; licensed psychoanalyst; licensed behavior analyst; certified behavior analyst assistant; hospital personnel engaged in the admission, examination, care or treatment of persons; a Christian Science practitioner; school official, which includes but is not limited to school teacher, school guidance counselor, school psychologist, school social worker, school nurse, school administrator or other school personnel required to hold a teaching or administrative license or certificate; full or part-time compensated school employee required to hold a temporary coaching license or professional coaching certificate; social services worker; employee of a publicly-funded emergency shelter for families with children; director of a children's overnight camp, summer day camp or traveling summer day camp, as such camps are defined in section thirteen hundred ninety-two of the public health law; day care center worker; school-age child care worker; provider of family or group family day care; employee or volunteer in a residential care facility for children that is licensed, certified or operated by the office of children and family services; or any other child care or foster care worker; mental health professional; substance abuse counselor; alcoholism counselor; all persons credentialed by the office of [~~alcoholism and substance abuse~~] **addiction** services **and supports**; employees, who are expected to have regular and substantial contact with children, of a health home or health home care management agency contracting with a health home as designated by the department of health and authorized under section three hundred sixty-five-l of this chapter or such employees who provide home and community based services under a demonstration program pursuant to section eleven hundred fifteen of the federal social security act who are expected to have regular and substantial contact with children; peace officer; police officer; district attorney or assistant district attorney; investigator employed in the office of a district attorney; or other law enforcement official.

§ 6. The education department, the office of children and family services, and the office of mental health are hereby directed to establish a multi-tiered system of support (MTSS) model of prevention and intervention utilizing tiered levels of universal support services and secondary and tertiary intervention services to address the social and emotional needs of students, that have been intensified by the COVID-19

pandemic, and to pilot such model in communities determined to be mental health professional shortage areas for children under the age of twenty-five in New York state. Such model shall be designed with the meaningful participation of mental and behavioral health practitioners whose training focuses on the needs of children under the age of twenty-five including, but not limited to, school psychologists, such practitioners being uniquely qualified to implement the model to the fullest extent possible. Such pilot shall be designed for implementation by September 1, 2022.

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

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

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

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