



**TO:** The Professional Practice Committee  
**FROM:** Douglas E. Lentivech

**SUBJECT:** Proposed Amendment to Section 29.2 of the Rules of the Board of Regents and Sections 52.44, 52.45, 59.14 and Subparts 79-17 and 79-18 of the Regulations of the Commissioner of Education Relating to the Licensure of Behavior Analysts and Certification of Behavior Analyst Assistants

**DATE:** March 9, 2015

**AUTHORIZATION(S):**

#### **SUMMARY**

#### **Issue for Decision**

Should the Board of Regents amend section 29.2 of the Rules of the Board of Regents and section 59.14 of the Regulations of the Commissioner of Education, and add sections 52.44, 52.45 and Subparts 79-17 and 79-18 to the Regulations of the Commissioner of Education relating to the licensure of behavior analysts and certification of behavior analyst assistants?

#### **Reason for Consideration**

Required by State statute.

#### **Proposed Handling**

The proposed amendment will be presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as a permanent rule at the March 2015 meeting of the Board of Regents. A copy of the proposed rule is attached. Supporting materials are available upon request from the Secretary of the Board of Regents.

#### **Procedural History**

An informational item regarding the new profession of applied behavior analysis was discussed by the Professional Practice Committee at the October 2014 Regents

meeting. The proposed rule was adopted as an emergency rule at the December 2014 Regents meeting, effective December 16, 2014. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on December 31, 2014 for a 45-day public comment period. Because the December emergency rule will expire on March 15, 2015, a second emergency action was adopted at the February 2015 meeting, in order to ensure that the emergency rule remains continuously in effect until April 1, 2015, which is the effective date of the adoption of the permanent rule. An Assessment of Public Comment is attached. The Department received 17 separate comments and, as a result of its review of these comments, non-substantial revisions were made in sections 79-17.3(c) and 79-18.3(c) to replace the term “passing score” with the term “converted passing score” in order to clarify the text of the proposed rule.

### **Background Information**

Chapter 554 of the Laws of 2013 amended the Education Law by adding Article 167, which establishes and defines the practice of the profession of applied behavior analysis (ABA). Chapter 8 of the Laws of 2014 amended Chapter 554 to make changes necessary to the implementation of Chapter 554.

The purpose of Chapter 554 is to establish a new profession of applied behavior analysis and to establish licensure requirements for licensed behavior analysts and certified behavior analyst assistants to provide behavioral health treatment for persons with autism and autism spectrum disorders and related disorders. Chapter 554 defines the practice of a licensed behavior analyst as the design, implementation and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior, pursuant to a diagnosis and prescription or order from a person who is licensed or otherwise authorized to provide such diagnosis and prescription or order pursuant to Title VIII of the Education Law. Chapter 554 also defines the practice of applied behavior analysis by a certified behavior analyst assistant to mean the services and activities provided by a person who works under the supervision of a licensed behavior analyst.

Chapter 554 establishes the education, experience, examination, age, moral character and fee requirements for applicants seeking licensure as a licensed behavior analyst or certification as a certified behavior analyst assistant. It also provides a grandparenting licensure/certification pathway, which the Department is referring to as Pathway One, for individuals who are certified or registered by a national certifying body and submit an attestation of moral character and an application to the Department within two years of the January 10, 2014 effective date of this provision of the statute. Although Pathway One will expire on January 9, 2016, the licenses and certifications issued under it will not.

The proposed amendment to subdivisions (a) and (b) of section 29.2 of the Rules of the Board of Regents adds the profession of applied behavior analysis to the list of health care professions that are subject to its unprofessional conduct provisions.

The proposed amendment to section 52.44 of the Regulations of the Commissioner of Education establishes the program registration requirements for licensed behavior analyst education programs. These requirements include registration and curriculum requirements for programs offered in New York State that lead to licensure as a licensed behavior analyst. The proposed amendment requires licensed behavior analyst education programs to be a program in applied behavior analysis leading to a master's degree or higher degree, which must require at least one year of full-time study or the equivalent; or a program in applied behavior analysis leading to an advanced certificate which ensures that each student holds a master's or higher degree in subject areas, including, but not limited to, psychology, education or other subject areas that address learning and behavioral change as determined by the Department.

The proposed amendment to section 52.45 of the Regulations of the Commissioner of Education establishes the requirements for certified behavior analyst assistant education programs. These requirements include registration and curriculum requirements for programs offered in New York State that lead to certification as a certified behavior analyst assistant. The proposed amendment requires certified behavior analyst assistant education programs to be a program in applied behavior analysis leading to a bachelor's or higher degree; or a program in applied behavior analysis leading to a certificate which ensure that each student holds a bachelor's degree or a higher degree in subject areas, including, but not limited to, psychology, education or other subject areas that address learning and behavioral change as determined by the Department.

The proposed amendment to paragraph (1) of subdivision (a) of section 59.14 of the Regulations of the Commissioner of Education implements that portion of Chapter 554 of the Laws of 2013 which includes applied behavior analysis among the professions for which a waiver of certain corporate practice restrictions is available.

Additionally, the proposed addition of Subpart 79-17 of the Regulations of the Commissioner of Education establishes the requirements for licensure as a licensed behavior analyst, which include, but are not limited to, professional education, experience, examination and limited permit requirements and reiterates the exemptions to the practice of applied behavior analysis set forth in Education Law section 8807, as added by Chapter 554 of Laws of 2013 and Chapter 8 of the Laws of 2014.

The proposed addition of Subpart 79-18 of the Regulations of the Commissioner of Education establishes the requirements for certification as a certified behavior analyst assistant, which include, but are not limited to, professional education, experience, examination and limited permit requirements and reiterates the exemptions to the practice of applied behavior analysis set forth in Education Law section 8807, as added by Chapter 554 of Laws of 2013 and Chapter 8 of the Laws of 2014.

### **Recommendation**

It is recommended that the Board of Regents take the following action:

VOTED: That subdivisions (a) and (b) of section 29.2 of the Rules of the Board of Regents and paragraph (1) of subdivision (a) of section 59.14 of the Regulations of the

Commissioner of Education be amended and sections 52.44 and 52.45 and Subparts 79-17, and 79-18 of the Regulations of the Commissioner of Education be added, as submitted, effective April 1, 2015.

**Timetable for Implementation**

The proposed rule was adopted as an emergency rule at the December Regents meeting, effective December 16, 2014, and will expire on March 15, 2015. A second emergency action was adopted at the February 2015 meeting and will take effect on March 16, 2015. If adopted as a permanent rule at the March 16-17, 2015 Regents meeting, the proposed rule will take effect as a permanent rule on April 1, 2015.

## AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6503-a, 6504, 6507, 6509, 8800, 8801, 8802, 8803, 8804, 8805, 8806, 8807 and 8808 of the Education Law, Chapter 554 of the Laws of 2013 and Chapter 8 of the Laws of 2014.

1. Subdivision (a) of section 29.2 of the Rules of the Board of Regents is amended, effective April 1, 2015, to read as follows:

(a) Unprofessional conduct shall also include, in the professions of: acupuncture, athletic training, audiology, certified behavior analyst assistant, certified dental assisting, chiropractic, creative arts therapy, dental hygiene, dentistry, dietetics/nutrition, licensed behavior analyst, licensed practical nursing, marriage and family therapy, massage therapy, medicine, mental health counseling, midwifery, occupational therapy, occupational therapy assistant, ophthalmic dispensing, optometry, pharmacy, physical therapist assistant, physical therapy, physician assistant, podiatry, psychoanalysis, psychology, registered professional nursing, respiratory therapy, respiratory therapy technician, social work, specialist assistant, speech-language pathology (except for cases involving those professions licensed, certified or registered pursuant to the provisions of article 131 or 131-B of the Education Law in which a statement of charges of professional misconduct was not served on or before July 26, 1991, the effective date of chapter 606 of the Laws of 1991):

2. Subdivision (b) of section 29.2 of the Rules of the Board of Regents is amended, effective April 1, 2015, to read as follows:

(b) Unprofessional conduct shall also include, in those professions specified in section 18 of the Public Health Law and in the professions of acupuncture, certified behavior analyst assistant, creative arts therapy, licensed behavior analyst, marriage and family therapy, massage therapy, mental health counseling, and psychoanalysis,

failing to provide access by qualified persons to patient information in accordance with the standards set forth in section 18 of the Public Health Law. In the professions of acupuncture, certified behavior analyst assistant, creative arts therapy, licensed behavior analyst, marriage and family therapy, massage therapy, mental health counseling, and psychoanalysis, qualified persons may appeal the denial of access to patient information in the manner set forth in section 18 of the Public Health Law to a record access committee appointed by the executive secretary of the appropriate State Board. Such record access review committees shall consist of not less than three, nor more than five members of the appropriate State Board.

3. Section 52.44 of the Regulations of the Commissioner of Education is added, effective April 1, 2015, to read as follows:

§52.44 Behavior Analyst.

In addition to meeting all the applicable provisions of this Part, to be registered as a program recognized as leading to licensure as a licensed behavior analyst, which meets the requirements of Subpart 79-17 of this Title, the program shall:

(a) either:

(1) be a program in applied behavior analysis leading to a master's or higher degree, which shall require at least one year of full-time study or the equivalent, which shall include seminars, tutorials, or other graduate level coursework in applied behavior analysis, as defined in section 8802 of the Education Law; or

(2) be a program in applied behavior analysis leading to an advanced certificate which ensures that each student holds a master's or higher degree in subject areas, including, but not limited to, psychology, education or other subject areas that address learning and behavioral change as determined by the department;

(b) include courses in each of the following subjects or their equivalent as determined by the department:

(1) autism, autism spectrum disorders and related disorders;

(2) concepts and principles of behavior;

(3) functional behavioral assessment, functional analysis, and direct observation;

(4) design and implementation of behavioral interventions, including, but not limited to:

(i) environmental modification plans based on behavioral stimuli and consequences; and

(ii) maintenance and generalization of behavior;

(5) understanding of assessment and measurement tools;

(6) research methodology, including, but not limited to, experimental design;

(7) scientific and professional ethics and standards of practice;

(8) maintenance of client records; and

(9) issues of cultural and ethnic diversity; and

(c) include a supervised practicum or internship of a minimum of 150 clock hours,

which is appropriate to the practice of applied behavior analysis, as such practice is defined in section 8802 of the Education Law.

4. Section 52.45 of the Regulations of the Commissioner of Education is added, effective April 1, 2015, to read as follows:

§52.45 Behavior Analyst Assistant.

In addition to meeting all the applicable provisions of this Part, to be registered as a program recognized as leading to certification as a certified behavior analyst assistant, which meets the requirements of Subpart 79-18 of this Title, the program shall:

(a) either:

(1) be a program in applied behavior analysis leading to a bachelor's or higher degree; or

(2) be a program in applied behavior analysis leading to a certificate which ensures that each student holds a bachelor's or higher degree in subject areas, including, but not limited to, psychology, education or other subject areas that address learning and behavioral change as determined by the department;

(b) course content including, but not limited to, each of the following subjects or their equivalent as determined by the department:

(1) autism, autism spectrum disorders and related disorders;

(2) concepts and principles of behavior;

(3) functional behavioral assessment, functional analysis and direct observation;

(4) design and implementation of behavioral interventions, including but not limited to:

(i) environmental modification plans based on behavioral stimuli and consequences; and

(ii) maintenance and generalization of behavior;

(5) understanding of assessment and measurement tools;

(6) research methodology, including, but not limited to, experimental design;

(7) scientific and professional ethics and standards of practice;

(8) maintenance of client records; and

(9) issues of cultural and ethnic diversity; and

(c) include practical supervised experience of a minimum of 100 clock hours, which is appropriate to the practice of applied behavior analysis, as such practice is defined in section 8802 of the Education Law,

5. Paragraph (1) of subdivision (a) of section 59.14 of the Regulations of the Commissioner of Education is amended, effective April 1, 2015, to read as follows:

(a) Applicability. Section 6503-a of the Education Law authorizes the department to issue a waiver for certain entities to provide the following services:

(1) services provided under article 154 [or], 163 or 167 of the Education Law for which licensure would be required; or

6. Subpart 79-17 of the Regulations of the Commissioner of Education is added, effective April 1, 2015, to read as follows:

#### SUBPART 79-17

#### LICENSED BEHAVIOR ANALYSTS

##### §79-17.1 Professional study for licensed behavior analysts.

(a) Applicability. For purposes of this section, applicants for licensure as a licensed behavior analyst prior to September 1, 2019, shall meet the professional education requirements for admission to the licensing examination set forth in either subdivision (b) or (c) of this section. Applicants for licensure as a licensed behavior analyst on or after September 1, 2019 shall meet the professional education requirements for admission to the licensing examination set forth in subdivision (b) of this section.

(b) General professional education requirements for applicants applying for licensure as a licensed behavior analyst.

(1) As used in this subdivision, acceptable accrediting agency shall mean an organization accepted by the department as a reliable authority for the purpose of accrediting applied behavior analysis programs, having accreditation standards that are substantially equivalent to the requirements for programs registered as leading to licensure as a licensed behavior analyst pursuant to section 52.44 of this Title, and

applying its criteria for granting accreditation of programs in a fair, consistent, and nondiscriminatory manner.

(2) To meet the professional education requirement for admission to the licensing examination, the applicant shall present satisfactory evidence of:

(i) holding a master's or higher degree awarded upon successful completion of a master's or higher degree program in applied behavior analysis registered as leading to licensure pursuant to section 52.44 of this Title; or

(ii) holding a master's or higher degree awarded upon successful completion of a master's or higher degree program in applied behavior analysis that is substantially equivalent to a program registered as leading to licensure pursuant to section 52.44 of this Title as determined by the department, which program must be accredited by an acceptable accrediting agency or recognized by the appropriate civil authorities of the jurisdiction in which the program is offered as a program that prepares the applicant for professional practice as a licensed behavior analyst, and must be designed and conducted by the degree-granting institution to prepare graduates to practice applied behavior analysis independently; or

(iii) both:

(a) holding a master's or higher degree awarded upon successful completion of a master's or higher degree program in a related field acceptable to the department and registered pursuant to Part 52 of this Title or its substantial equivalent as determined by the department; and

(b) completing a credit bearing graduate-level program in applied behavior analysis in addition to such master's or higher degree study that is registered as leading to licensure pursuant to section 52.44 of this Title or substantially equivalent to such a registered program as determined by the department. Such equivalent program must be

accredited by an acceptable accrediting agency or recognized by the appropriate civil authorities of the jurisdiction in which the program is offered as a program that prepares the applicant for professional practice as a licensed behavior analyst, and must be designed and conducted by the degree-granting institution to prepare graduates to practice professional applied behavior analysis independently.

(c) Time-limited professional education requirements for applicants applying for licensure as a licensed behavior analyst prior to September 1, 2019.

(1) As used in this subdivision, acceptable accrediting agency shall mean an organization accepted by the department as a reliable authority for the purpose of accrediting applied behavior analysis programs, as having reasonable accreditation standards, and as an organization that applies its criteria for granting accreditation of programs in a fair, consistent, and nondiscriminatory manner.

(2) To meet the professional education requirement for admission to the licensing examination, applicants for licensure prior to September 1, 2019 may, as an alternative to satisfying the requirements of subdivision (b) of this section, present satisfactory evidence of meeting the requirements of one of the following subparagraphs:

(i) holding a master's or higher degree awarded upon successful completion of a master's or higher degree program in applied behavior analysis or a related title which:

(a) prepares graduates for employment as a licensed behavior analyst, as defined in section 8802(1) of the Education Law;

(b) contains didactic and clinical education in the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between

environment and behavior, and which is designed and conducted to prepare graduates to practice professional applied behavior analysis; and

(c) is registered by the department for general educational purposes but need not be specifically registered for licensure purposes, or is accredited by an acceptable accrediting agency, or is recognized by the appropriate civil authorities of the jurisdiction in which the program is offered as a program that prepares the applicant for professional practice as an applied behavior analyst; or

(ii) both:

(a) holding a master's or higher degree awarded upon successful completion of a master's or higher degree program in a related field acceptable to the department and registered pursuant to Part 52 of this Title or its substantial equivalent as determined by the department; and

(b) completing graduate level, credit-bearing coursework which:

(1) prepares graduates for employment as a licensed behavior analyst, as defined in section 8802(1) of the Education Law;

(2) contains didactic and clinical education in the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior, and which is designed and conducted to prepare graduates to practice professional applied behavior analysis independently; and

(3) is registered by the department for general educational purposes but need not be specifically registered for licensure purposes, or is accredited by an acceptable accrediting agency, or is recognized by the appropriate civil authorities of the jurisdiction

in which the program is offered as a program that prepares the applicant for professional practice as a licensed behavior analyst.

§79-17.2 Experience requirement for licensed behavior analysts.

(a) For licensure, an applicant shall present evidence satisfactory to the State Board for Applied Behavior Analysis and the department of one year of full-time supervised experience, or the part-time equivalent thereof, such experience to consist of 1,500 clock hours, in accordance with the requirements of this section. Of such one-year of experience, at least 150 clock hours shall be gained during a master's or higher degree program's required supervised practicum or internship, and shall be required for admission to the licensure examination. The remaining supervised experience shall be gained as part of the master's degree program or following the completion of all master's or higher degree studies, including all mandated course content.

(b) Content.

(1) The experience shall consist of a planned programmed sequence of supervised experience in appropriate applied behavior analysis activities performed in accordance with the definition of the practice of applied behavior analysis as defined in section 8802 of the Education Law and satisfactory in quality, breadth, scope and nature.

(2) In addition to other forms of satisfactory experience, the department, in its discretion, may accept up to one year of the following experience as satisfying the experience requirement for licensure:

(i) a college or university-approved master's or higher degree level supervised practicum, internship, or field experience, any of which shall integrate applied behavior analysis knowledge and application; or

(ii) teaching the subject of applied behavior analysis as a faculty member for a minimum of six semester hours, provided that the teaching meets the requirements for acceptable experience imposed by this section.

(c) Setting. For a setting to be acceptable to the department, it shall meet the following requirements:

(1) The setting shall be a location which is legally authorized to provide services that constitute the practice of applied behavior analysis, as defined in section 8802 of the Education Law.

(2) The setting shall provide supervision by an authorized health care practitioner, who currently diagnoses, prescribes, or orders treatment involving applied behavior analysis in his or her professional practice for persons with autism, autism spectrum disorders and related disorders, or an individual qualified to provide applied behavior analysis services, as determined by the department. The supervisor shall be responsible for the design, coordination, integrity, and quality of the applicant's experience.

(3) The setting shall provide titles to the unlicensed individuals gaining experience for licensure which clearly indicate their training status as required by section 8807(4) of the Education Law.

(4) The setting in which the experience is gained shall be responsible for the services provided by individuals gaining experience for licensure.

(d) Duration.

(1) For purposes of meeting the experience requirement in paragraph (a) of this section, acceptable experience shall consist of a continuous experience within periods of at least four months, except that experience gained within an academic program shall consist of a continuous experience within a period of not less than one semester and, in

the case of teaching experience, shall consist of not less than six credit hours per semester. The four-month periods of experience or the semesters of experience shall not be required to be immediately successive.

(2) Full-time experience shall consist of at least 20 hours per week.

(3) Part-time experience shall consist of at least 10 hours per week but not more than 19 hours per week, which shall be distributed over at least two days per week.

(e) Supervision. The experience shall be supervised in accordance with the requirements of this subdivision.

(1) Qualifications for supervisors of the required experience. The supervisor of the experience shall meet the following requirements:

(i) Experience obtained in New York State.

(a) the supervisor shall be a licensed behavior analyst; or

(b) an authorized health care practitioner who currently diagnoses, prescribes, or orders treatment involving applied behavior analysis in his or her professional practice;

(ii) Experience obtained in other jurisdictions. The supervisor shall be licensed in a profession authorized to provide applied behavior analysis services in the jurisdiction where the supervised experience occurs;

(iii) The supervisor shall be the owner of, be employed by, or be retained by the entity providing the experience opportunities to the applicant who is gaining experience for licensure; and

(iv) in order to prevent a potential conflict of interest, the supervisor shall not be a member of the applicant's family or an individual who has a close personal relationship with the applicant and/or his or her family.

(2) Supervision of the experience. Supervision shall occur weekly and shall include at least two hours per week of face-to-face individual supervision pertaining to

services rendered; face-to-face supervision may utilize technology acceptable to the State Board for Applied Behavior Analysis and the department, including video-conferencing.

(3) Up to three hours of supervision shall be considered part of the hours of acceptable experience weekly.

§79-17.3 Licensing examinations for licensed behavior analysts.

(a) Content. The licensing examination shall consist of an examination designed to test knowledge related to all areas of applied behavior analysis.

(b) The department may accept scores satisfactory to the State Board for Applied Behavior Analysis on an examination(s) acceptable to the State Board for Applied Behavior Analysis and the department, or an examination determined by the department to be comparable in content, as meeting the requirement for passing the licensing examination.

(c) Converted passing score. The applicant shall pass the examination with a converted score of at least 75, as determined by the State Board for Applied Behavior Analysis.

§79-17.4 Limited permits for licensed behavior analysts.

As authorized by section 8806 of the Education Law, the department may issue a limited permit to practice applied behavior analysis in accordance with the requirements of this section.

(a) An applicant for a limited permit to practice as a licensed behavior analyst shall:

(1) file an application with the department on a form provided by the department together with the statutory fee for the limited permit;

(2) meet all the requirements for licensure as a licensed behavior analyst, except the examination and/or experience requirements;

(3) be of good moral character as determined by the department; and

(4) be under the supervision of a supervisor acceptable to the department in accordance with the requirements of section 79-17.2 of this Subpart for applicants for licensure as a licensed behavior analyst.

(b) The limited permit in applied behavior analysis shall be issued for specific employment setting(s), acceptable to the department in accordance with the requirements of section 79-17.2 of this Subpart for applicants for licensure as a licensed behavior analyst.

(c) The limited permit in applied behavior analysis shall be valid for a period of not more than 12 months, provided that a limited permit may be extended for an additional 12 months at the discretion of the department for good cause as determined by the department. The time authorized by such limited permit and subsequent extension shall not exceed 24 months in total.

#### §79-17.5 Special provisions.

(a) Nothing contained in this Subpart shall be construed to limit the scopes of practice of any other profession licensed under Title VIII of the Education Law.

(b) Nothing in this Subpart shall be construed as prohibiting a person from performing the duties of a licensed behavior analyst or a certified behavior analyst assistant, in the course of such employment, if such person is employed:

(1) by a federal, state, county or municipal agency, or other political subdivision;

(2) by a chartered elementary or secondary school or degree-granting institution;

(3) as a certified teacher or teaching assistant, other than a pupil personnel services professional, in an approved program as defined in paragraph b of subdivision one of section forty-four hundred ten of the Education Law; or

(4) in a setting to the extent that the exemption in paragraph d of subdivision six of section forty-four hundred ten of the Education Law applies.

(c) Nothing in this Subpart shall be construed as prohibiting a certified teacher or teaching assistant, other than a pupil personnel services professional, from performing the duties of a licensed behavior analyst or certified behavior analyst assistant, in the course of such employment or contractual agreement, if such person is employed or contracted with an agency approved by the department of health to provide early intervention services or has an agreement with the department of health to provide early intervention services pursuant to title two-A of article twenty-five of the public health law.

(d) Nothing in this Subpart shall be construed as prohibiting the activities and services required of a student, intern, or resident in an educational program acceptable to the department pursuant to the commissioner's regulations, pursuing a course of study leading to a bachelor's or higher degree in an educational program acceptable to the department pursuant to the commissioner's regulations in an institution approved by the department, provided that such activities and services constitute a part of his or her supervised course of study in an educational program acceptable to the department pursuant to the commissioner's regulations. Such person shall be designated by title which clearly indicates his or her training status.

(e) Nothing in this Subpart shall be construed to affect or prevent a person without a license or other authorization pursuant to Title VIII of the Education Law from performing assessments, including collecting basic information, gathering demographic data, and making informal observations, for the purpose of determining need for

services unrelated to an ABA plan. Further, licensure or authorization pursuant to article one hundred sixty-seven of the Education Law shall not be required to create, develop or implement a service plan unrelated to an ABA plan. This Subpart shall not apply to behavioral health treatments other than ABA that may be provided to persons with autism spectrum disorder. A license under this Subpart shall not be required for persons to participate as a member of a multi-disciplinary team to implement an ABA plan; provided, however, that such team shall include one or more professionals licensed under articles one hundred thirty-one, one hundred fifty-three, one hundred fifty-four, one hundred sixty-three, or one hundred sixty-seven of the Education Law; and provided further that the activities performed by members of the team shall be consistent with the scope of practice for each team member licensed or authorized under Title VIII of the Education Law, and those who are not so authorized may not engage in the following restricted practices: creation, modification or termination of an ABA plan; diagnosis of mental, emotional, behavioral, addictive and developmental disorders and disabilities; patient assessment and evaluating; provision of psychotherapeutic treatment; provision of treatment other than psychotherapeutic treatment; and development and implementation of assessment-based treatment plans, as defined in section seventy-seven hundred one of the Education Law. Provided further, however, that nothing in this subdivision shall be construed as requiring a license or authorization for any particular activity or function based solely on the fact that the activity or function is not listed in this subdivision. Provided further, however, that nothing in this subdivision shall authorize the delegation of restricted activities to an individual who is not appropriately licensed or authorized under Title VIII of the Education Law.

(f) (1) Except as provided in paragraph (2) of this subdivision, nothing in this Subpart shall be construed as prohibiting an early intervention ABA aide, pursuant to regulations promulgated by the commissioner of health, and acting under the supervision and direction of a qualified supervisor who is licensed or otherwise authorized pursuant to Title VIII of the Education Law from:

(i) assisting the supervisor and qualified personnel with the implementation of individual ABA plans;

(ii) assisting in the recording and collection of data needed to monitor progress;

(iii) participating in required team meetings; and

(iv) completing any other activities as directed by his or her supervisor and as necessary to assist in the implementation of individual ABA plans.

(2) Nothing in this subdivision shall authorize the delegation of restricted activities to an individual who is not appropriately licensed or otherwise authorized under Title VIII of the Education Law; provided further however, that in regard to the early intervention program established pursuant to title two-A of article twenty-five of the public health law, an early intervention ABA aide under the supervision and direction of a qualified supervisor may complete activities necessary to assist in the implementation of an individual ABA plan, provided that such activities do not require professional skill or judgment.

(g) This Subpart shall not be construed to prohibit care delivered by any family member, household member or friend, or person employed primarily in a domestic capacity who does not hold himself or herself out, or accept employment, as a person licensed to practice applied behavior analysis under the provisions of Article 167 of the Education Law; provided that, if such person is remunerated, the person does not hold himself or herself out as one who accepts employment for performing such care.

(h) Nothing in this Subpart shall be construed as prohibiting programs certified by the office of alcoholism and substance abuse services from providing substance use disorder services for persons with autism and autism spectrum disorders and related disorders.

7. Subpart 79-18 of the Regulations of the Commissioner of Education is added, effective April 1, 2015, to read as follows:

#### SUBPART 79-18

##### CERTIFIED BEHAVIOR ANALYST ASSISTANTS

###### §79-18.1 Professional study for certified behavior analyst assistants.

(a) Applicability. For purposes of this section, applicants for certification as a certified behavior analyst assistant prior to September 1, 2019, shall meet the professional education requirements for admission to the licensing examination set forth in either subdivision (b) or (c) of this section. Applicants for certification as a certified behavior analyst assistant on or after September 1, 2019 shall meet the professional education requirements for admission to the licensing examination set forth in subdivision (b) of this section.

(b) General professional education requirements for certification as a certified behavior analyst assistant.

(1) As used in this subdivision, acceptable accrediting agency shall mean an organization accepted by the department as a reliable authority for the purpose of accrediting applied behavior analysis programs, having accreditation standards that are substantially equivalent to the requirements for programs registered as leading to certification as a certified behavior analyst assistant pursuant to section 52.45 of this Title, and applying its criteria for granting accreditation of programs in a fair, consistent, and nondiscriminatory manner.

(2) To meet the professional education requirement for admission to the licensing examination, the applicant shall present satisfactory evidence of:

(i) holding a bachelor's or higher degree awarded upon successful completion of a bachelor's or higher degree program in applied behavior analysis registered as leading to certification pursuant to section 52.45 of this Title; or

(ii) holding a bachelor's or higher degree awarded upon successful completion of a bachelor's or higher degree program in applied behavior analysis that is substantially equivalent to a program registered as leading to certification pursuant to section 52.45 of this Title, as determined by the department, which program must be accredited by an acceptable accrediting agency or recognized by the appropriate civil authorities of the jurisdiction in which the program is offered as a program that prepares an applicant for professional practice as a certified behavior analyst assistant, and must be designed and conducted by the degree-granting institution to prepare graduates to practice as a certified behavior analyst assistant; or

(iii) both:

(a) holding a bachelor's or higher degree awarded upon successful completion of a bachelor's or higher degree program in a related field acceptable to the department and registered pursuant to Part 52 of this Title or its substantial equivalent as determined by the department; and

(b) completing a credit bearing certificate program in applied behavior analysis in addition to such bachelor's or higher degree study that is registered as leading to certification pursuant to section 52.45 of this Title or substantially equivalent to such a registered program as determined by the department. Such equivalent program must be accredited by an acceptable accrediting agency or recognized by the appropriate civil authorities of the jurisdiction in which the program is offered as a program that prepares

the applicant for professional practice as a certified behavior analyst assistant, and must be designed and conducted by the degree-granting institution to prepare graduates to practice as an applied behavior analyst assistant.

(c) Time-limited professional education requirements for applicants for certification as a certified behavior analyst assistants prior to September 1, 2019.

(1) As used in this subdivision, acceptable accrediting agency shall mean an organization accepted by the department as a reliable authority for the purpose of accrediting applied behavior analysis programs, as having reasonable accreditation standards, and as an organization that applies its criteria for granting accreditation of programs in a fair, consistent, and nondiscriminatory manner.

(2) To meet the professional education requirement for admission to the licensing examination, applicants for licensure prior to September 1, 2019 may, as an alternative to satisfying the requirements of subdivision (b) of this section, present satisfactory evidence of meeting the requirements of one of the following subparagraphs:

(i) holding a bachelor's or higher degree awarded upon successful completion of a bachelor's or higher degree program in applied behavior analysis or a related title which:

(a) prepares graduates for employment as certified behavior analyst assistants, as defined in section 8802(2) of the Education Law;

(b) contains didactic and clinical education in the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between

environment and behavior, and which is designed and conducted to prepare graduates to practice as certified behavior analyst assistants; and

(c) is registered by the department for general educational purposes but need not be specifically registered for licensure purposes, or is accredited by an acceptable accrediting agency, or is recognized by the appropriate civil authorities of the jurisdiction in which the program is offered as a program that prepares the applicant for professional practice as a certified behavior analyst assistant; or

(ii) both:

(a) holding a bachelor's or higher degree awarded upon successful completion of a bachelor's or higher degree program in a related field acceptable to the department and registered pursuant to Part 52 of this Title or its substantial equivalent as determined by the department; and

(b) completing credit-bearing coursework which:

(1) prepares graduates for employment as certified behavior analyst assistants, as defined in section 8802(2) of the Education Law;

(2) contains didactic and clinical education in the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior, and which is designed and conducted to prepare graduates to practice as certified behavior analyst assistants; and

(3) is registered by the department for general educational purposes but need not be specifically registered for licensure purposes, or is accredited by an acceptable accrediting agency, or is recognized by the appropriate civil authorities of the jurisdiction in which the program is offered as a program that prepares the applicant for

professional practice as a certified behavior analyst assistant.

§79-18.2 Experience requirement for certified behavior analyst assistants.

(a) For licensure, an applicant shall present evidence satisfactory to the State Board for Applied Behavior Analysis and the department of one year of full-time supervised experience, or the part-time equivalent thereof, such experience to consist of 1,000 clock hours, in accordance with the requirements of this section. Of such one-year of experience, at least 100 clock hours shall be gained during a bachelor's or higher degree program's required practical experience, and shall be required for admission to the licensure examination. The remaining supervised experience shall be gained as part of the bachelor's or higher degree program or following the completion of all bachelor's or higher degree studies, including all mandated course content.

(b) Content.

(1) The experience shall consist of a planned programmed sequence of supervised experience in appropriate applied behavior analysis activities performed in accordance with the definition of the practice of applied behavior analysis as defined in section 8802 of the Education Law and satisfactory in quality, breadth, scope and nature.

(2) In addition to other forms of satisfactory experience, the department, in its discretion, may accept up to 600 clock hours of the following experience as satisfying the experience requirement for licensure:

(i) a college or university-approved bachelor's or higher degree supervised practicum, internship, or field experience, any of which shall integrate applied behavior analysis knowledge and application; or

(ii) a college or university approved master's or higher degree level supervised practicum, internship or field experience, any of which shall integrate applied behavior analysis knowledge and application.

(c) Setting. For a setting to be acceptable to the department, it shall meet the following requirements:

(1) The setting shall be a location which is legally authorized to provide services that constitute the practice of applied behavior analysis, as defined in section 8802 of the Education Law.

(2) The setting shall provide supervision by an individual qualified to provide applied behavior analysis services, as determined by the department, who is responsible for the design, coordination, integrity, and quality of the applicant's experience.

(3) The setting shall provide titles to the unlicensed individuals gaining experience for certification which clearly indicate their training status as required by section 8807(4) of the Education Law.

(4) The setting in which the experience is gained shall be responsible for the services provided by individuals gaining experience for certification.

(d) Duration.

(1) For purposes of meeting the experience requirements in paragraph (a) of this section, acceptable experience shall consist of a continuous experience within periods of at least four months, except that experience gained within an academic program shall consist of a minimum of 25 hours within a period of not less than one semester. The four-month periods of experience or the semester(s) of experience shall not be required to be immediately successive.

(2) Full-time experience shall consist of at least 10 hours per week.

(3) Part-time experience shall consist of at least 5 hours per week but not more than 9 hours per week.

(e) Supervision. The experience shall be supervised in accordance with the requirements of this subdivision.

(1) Qualifications for supervisors of the required experience. The supervisor of the experience shall meet the following requirements:

(i) the supervisor shall be a licensed behavior analyst or licensed in a profession authorized to provide applied behavior analysis services in the jurisdiction where the supervised experience occurs;

(ii) the supervisor shall be the owner of, be employed by, or be retained by the entity providing the experience opportunities to the applicant who is gaining experience for certification; and

(iii) in order to prevent a potential conflict of interest, the supervisor shall not be a member of the applicant's family or an individual who has a close personal relationship with the applicant and/or his or her family.

(2) Supervision of the experience. Supervision shall occur weekly and shall include at least one hour per week of face-to-face individual supervision pertaining to services rendered; face-to-face supervision may utilize technology acceptable to the State Board for Applied Behavior Analysis and the department, including video-conferencing.

(3) Up to two hours of supervision shall be considered part of the hours of acceptable experience weekly.

§79-18.3 Licensing examination for certified behavior analyst assistants.

(a) Content. The licensing examination shall consist of an examination designed to test knowledge related to all areas of applied behavior analysis.

(b) The department may accept scores satisfactory to the State Board for Applied Behavior Analysis on an examination(s) acceptable to the State Board for Applied Behavior Analysis and the department, or an examination determined by the department to be comparable in content, as meeting the requirement for passing the licensing examination.

(c) Converted passing score. The applicant shall pass the examination with a converted score of at least 75, as determined by the State Board for Applied Behavior Analysis.

§79-18.4 Limited permits for certified behavior analyst assistants.

As authorized by section 8806 of the Education Law, the department may issue a limited permit to practice applied behavior analysis in accordance with the requirements of this section.

(a) An applicant for a limited permit to practice as a certified behavior analyst assistant shall:

(1) file an application with the department on a form provided by the department together with the statutory fee for the limited permit.

(2) meet all the requirements for certification as a certified behavior analyst assistant, except the examination and/or experience requirements;

(3) be of good moral character as determined by the department; and

(4) be under the supervision of a supervisor acceptable to the department in accordance with the requirements of section 79-18.2 of this Subpart for applicants for certification as a certified behavior analyst assistant.

(b) The limited permit in applied behavior analysis shall be issued for specific employment setting(s), acceptable to the department in accordance with the

requirements of section 79-18.2 of this Subpart for applicants for certification as a certified behavior analyst assistant.

(c) The limited permit in applied behavior analysis shall be valid for a period of not more than 12 months, provided that a limited permit may be extended for an additional 12 months at the discretion of the department for good cause as determined by the department. The time authorized by such limited permit and subsequent extension shall not exceed 24 months in total.

§79-18.5 Special provisions.

(a) Nothing contained in this Subpart shall be construed to limit the scopes of practice of any other profession licensed under Title VIII of the Education Law.

(b) Nothing in this Subpart shall be construed as prohibiting a person from performing the duties of a licensed behavior analyst or a certified behavior analyst assistant, in the course of such employment, if such person is employed:

(1) by a federal, state, county or municipal agency, or other political subdivision;

(2) by a chartered elementary or secondary school or degree-granting institution;

(3) as a certified teacher or teaching assistant, other than a pupil personnel services professional, in an approved program as defined in paragraph b of subdivision one of section forty-four hundred ten of the Education Law; or

(4) in a setting to the extent that the exemption in paragraph d of subdivision six of section forty-four hundred ten of the Education Law applies.

(c) Nothing in this Subpart shall be construed as prohibiting a certified teacher or teaching assistant, other than a pupil personnel services professional, from performing the duties of a licensed behavior analyst or certified behavior analyst assistant, in the course of such employment or contractual agreement, if such person is employed or contracted with an agency approved by the department of health to provide early

intervention services or has an agreement with the department of health to provide early intervention services pursuant to title two-A of article twenty-five of the public health law.

(d) Nothing in this Subpart shall be construed as prohibiting the activities and services required of a student, intern, or resident in an educational program acceptable to the department pursuant to the commissioner's regulations, pursuing a course of study leading to a bachelor's or higher degree in an educational program acceptable to the department pursuant to the commissioner's regulations in an institution approved by the department, provided that such activities and services constitute a part of his or her supervised course of study in an educational program acceptable to the department pursuant to the commissioner's regulations. Such person shall be designated by title which clearly indicates his or her training status.

(e) Nothing in this Subpart shall be construed to affect or prevent a person without a license or other authorization pursuant to Title VIII of the Education Law from performing assessments, including collecting basic information, gathering demographic data, and making informal observations, for the purpose of determining need for services unrelated to an ABA plan. Further, licensure or authorization pursuant to article one hundred sixty-seven of the Education Law shall not be required to create, develop or implement a service plan unrelated to an ABA plan. This Subpart shall not apply to behavioral health treatments other than ABA that may be provided to persons with autism spectrum disorder. A license under this Subpart shall not be required for persons to participate as a member of a multi-disciplinary team to implement an ABA plan; provided, however, that such team shall include one or more professionals licensed under articles one hundred thirty-one, one hundred fifty-three, one hundred fifty-four, one hundred sixty-three, or one hundred sixty-seven of the Education Law; and provided further that the activities performed by members of the team shall be

consistent with the scope of practice for each team member licensed or authorized under Title VIII of the Education Law, and those who are not so authorized may not engage in the following restricted practices: creation, modification or termination of an ABA plan; diagnosis of mental, emotional, behavioral, addictive and developmental disorders and disabilities; patient assessment and evaluating; provision of psychotherapeutic treatment; provision of treatment other than psychotherapeutic treatment; and development and implementation of assessment-based treatment plans, as defined in section seventy-seven hundred one of the Education Law. Provided further, however, that nothing in this subdivision shall be construed as requiring a license or authorization for any particular activity or function based solely on the fact that the activity or function is not listed in this subdivision. Provided further, however, that nothing in this subdivision shall authorize the delegation of restricted activities to an individual who is not appropriately licensed or authorized under Title VIII of the Education Law.

(f) (1) Except as provided in paragraph (2) of this subdivision, nothing in this Subpart shall be construed as prohibiting an early intervention ABA aide, pursuant to regulations promulgated by the commissioner of health, and acting under the supervision and direction of a qualified supervisor who is licensed or otherwise authorized pursuant to Title VIII of the Education Law from:

(i) assisting the supervisor and qualified personnel with the implementation of individual ABA plans;

(ii) assisting in the recording and collection of data needed to monitor progress;

(iii) participating in required team meetings; and

(iv) completing any other activities as directed by his or her supervisor and as necessary to assist in the implementation of individual ABA plans.

(2) Nothing in this subdivision shall authorize the delegation of restricted activities to an individual who is not appropriately licensed or otherwise authorized under Title VIII of the Education Law; provided further however, that in regard to the early intervention program established pursuant to title two-A of article twenty-five of the public health law, an early intervention ABA aide under the supervision and direction of a qualified supervisor may complete activities necessary to assist in the implementation of an individual ABA plan, provided that such activities do not require professional skill or judgment.

(g) This Subpart shall not be construed to prohibit care delivered by any family member, household member or friend, or person employed primarily in a domestic capacity who does not hold himself or herself out, or accept employment, as a person licensed to practice applied behavior analysis under the provisions of Article 167 of the Education Law; provided that, if such person is remunerated, the person does not hold himself or herself out as one who accepts employment for performing such care.

(h) Nothing in this Subpart shall be construed as prohibiting programs certified by the office of alcoholism and substance abuse services from providing substance use disorder services for persons with autism and autism spectrum disorders and related disorders.

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the December 31, 2014 State Register, the State Education Department received the following comments:

1. COMMENT:

An autism and related disorders organization commended the Department's efforts to ensure New Yorkers with autism diagnoses receive quality autism treatment based on the principles and procedures of applied behavior analysis (ABA).

This commenter, as well as a higher education institution commenter, expressed concerns that the proposed rule's experience requirements might create an unnecessary barrier for individuals who obtained their experience outside of New York, in jurisdictions that do not offer ABA licensure, to both the licensure of such individuals and New York's efforts to ensure access to autism treatment for all New Yorkers who need it. The autism and related disorders organization commenter requested that these provisions be amended to recognize the experience of Board Certified Behavior Analysts (BCBAs) and Board Certified Assistant Behavior Analysts (BCaBAs) obtained under the supervision of those "certified by a national entity whose certification is accredited by the National Commission for Certifying Agencies."

The higher education institution commenter maintained that a more effective way of handling out of state experience would be to allow "equivalent" experiences from jurisdictions that do not offer ABA licensure. This commenter further asserts that experiences that were completed before licensed practitioners were available to supervise applicants for licensure should still be valid and suggests that amending the

proposed rule to permit the use of “equivalent” experiences that were appropriately completed and supervised at the time they occurred would make the regulation more effective.

DEPARTMENT RESPONSE:

While the Department appreciates the supportive comment as it works to both protect the public and provide greater access to ABA services to New Yorkers with autism, autism spectrum disorders and related disorders, it disagrees with the commenters’ position that the proposed rule’s experience provisions might create a barrier to licensure for individuals who obtained their experience in jurisdictions that do not offer ABA licensure.

The commenters’ concerns are addressed by Education Law §8805 and 8 NYCRR §§79-17.2(e)(1)(ii) and 79-18.2(e)(1)(i). Education Law §8805 provides a grandparenting licensure/ certification pathway, which the Department is referring to as Pathway One, for individuals who are certified or registered by a national certifying body and submit an attestation of moral character and an application to the Department by January 9, 2016.

Additionally, 8 NYCRR §§79-17.2(e)(1)(ii) and 79-18.2(e)(1)(i) provide that, for experience obtained in other jurisdictions, the supervisor must be licensed in a profession authorized to provide ABA services in the jurisdiction where the supervised experience occurs. Thus, individuals, who gained their experience in states without ABA licensure, can use such experience towards licensure in New York if their supervisor was licensed in a profession, such as psychology, that is authorized to provide ABA services within the scope of its practice in that state. These provisions are also applicable to jurisdictions that offer ABA licensure.

Thus, individuals, who obtained their experience in states without ABA licensure, can avail themselves of one the aforementioned options to obtain licensure as a licensed behavior analyst (LBA) or certification as a certified behavior analyst assistant (CBAA). Additionally, it should be noted that each applicant's licensure/certification experience is individually reviewed and determinations are based on the documentation submitted by the applicant. It is the Department's position that the proposed rule's experience provisions strike the proper balance between the interests of providing greater access to ABA services for New Yorkers with autism, autism spectrum disorders and related disorders and ensuring the protection of the public. Therefore, no changes are necessary.

2. COMMENT:

A New York affiliate (NY affiliate) of a nonprofit membership organization (non-profit organization) whose mission is to promote and advance the science and practice of ABA and a Western New York higher education institution (WNY higher ed institution) commended the Department for establishing the ABA Board (Board) for the new profession of LBAs so quickly and further acknowledged the significant effort the Department and the Board have put forth in developing the proposed regulations so promptly. The NY affiliate commenter also states that, although the proposed regulations are well thought out and designed to be consistent with the letter and spirit of Chapter 554 of the Laws of 2013 (as well its Chapter amendment, Chapter 8 of the Laws of 2014), due to the statutory authority of the Board and the Department here and the history of the current system under which this profession has been operating nationally, certain revisions should be made to the proposed regulations.

The commenters expressed several concerns regarding the proposed rule. All three commenters encourage the Department to revise the proposed rule to make

BACB (Behavior Analyst Certification Board) certification, which is currently being used to license LBAs and certify CBAs pursuant to the grandparenting licensure/certification pathway (Pathway One) provided by Education Law §8805, the main/permanent requirement for licensure and certification. The three commenters maintain that doing so will be the best, most efficient and financially sound way to implement the statute in a way that both protects the public and increases access to quality ABA services. The commenters assert that licensure and certification requirements in Pathway One are grounded in BACB's sound research and rigorous and well-defined standards for credentialing qualified ABA practitioners. The WNY higher ed institution states that if the State decides not to adopt the BACB requirements, it advocates that the State at least match the BACB standards in order to ensure that behavior analysts in New York will be able to provide equivalent treatment to individuals with autism as those living in other states and countries.

A higher education institution is critical of the fact that the proposed rule limits licensure as a LBA or certification as a CBAA to individuals who will provide behavioral health treatment to individuals with autism, autism spectrum disorders and related disorders and states that ABA services are also beneficial to individuals outside the scope of an autism diagnosis. The commenter further expressed concern that if other licensed professionals, who are not subject to the proposed rule, are allowed to provide ABA services, that this will put their clients at risk because these professionals have not been formally trained in ABA. The commenter maintains that, due to the discrepancies between BACB rules and the proposed rule, which does not require supervisors to be designated as a BCBA or LBA, consumers are at risk of receiving ABA services from individual without proper training in the field of ABA.

A higher education institution also asserted that BACB, through a subject matter expert panel, determined that the knowledge and skills required to provide ABA services to individuals with autism was not sufficiently different from providing such services to other populations to warrant separate certification. This commenter further maintains that limiting licensure to the provision of ABA services to individuals with autism, autism spectrum disorders and related disorders would force New Yorkers, who need ABA services but do not have one of the aforementioned disorders, to seek these services from other professionals, who do not have the required training and experience needed to provide competent ABA services.

A parent of a child with autism, who works as a special education advocate and parent coordinator and formerly served as a consumer representative to the BACB Board of Directors, also made the following comments: (1) she is a strong supporter of BACB as the nationally and internationally recognized certification standard, to protect our most vulnerable population and to let consumers know an individual has the minimal competencies necessary; (2) as a consumer representative, she witnessed firsthand the rigorous peer reviewed development and evolution of the BACB standards and requirements; (3) she and her family have experienced the irreparable harm that can be caused by individuals that practice ABA without BACB qualifications; (4) anything less than this certification process including supervision, continuing education and the exam required by the BACB is not appropriate and will harm individuals with autism; (5) if she recalls, when Governor Cuomo signed the autism insurance bill into law, the bill included reference to the BACB; and (6) she ask the Behavior Analyst Licensing Board and Board of Regents to implement this law as intended and to not offer a NYS licensing of professionals that is anything less than the BACB standards.

## DEPARTMENT RESPONSE:

While the Department appreciates the supportive comments as it works to both protect the public and provide greater access to ABA services to New Yorkers with autism, autism spectrum disorders and related disorders, it disagrees with the comment that it is not implementing Article 167 of the Education Law (Article 167), which established the profession of ABA, as intended. Education Law §§8802(1) and (2) limit the licensure of LBAs and certification of CBBAs to individuals who provide ABA services to individuals with autism, autism spectrum disorders and related disorders and the proposed rule cannot expand the scope of practice beyond the definition set forth in statute. Thus, absent a statutory change, the proposed rule cannot be amended to expand the scope of practice of ABA to include the provision of ABA services to individuals who have a diagnosis outside the scope of autism, autism spectrum disorders and related disorders.

Education Law §8805 recognizes certification from a national certifying body, like BACB, for licensure purposes for a limited time. Article 167 does not recognize BACB certification for any other purpose. Moreover, the time limited grandparenting licensure/certification pathway (Pathway One) was intended to allow for appropriate access to ABA services during the time period when persons who are offering these services may not have been appropriately licensed to do so in order to ensure that individuals were not denied access to such services. Article 167 was enacted to ensure that those who provide ABA services to individuals with autism, autism spectrum disorders or related disorders will have met a minimal standard of competence to perform these services.

Additionally, Article 167 gives the Board of Regents and the Department the authority to establish the licensure requirements for LBAs and CBAAs, which include, among other things, education, experience, supervision, examination, and moral

character requirements for applicants for licensure as LBAs or certification as CBAAAs. The proposed rule's licensure requirements are consistent with the legislative intent.

The Department also disagrees with the concerns that if other licensed professionals, who are not subject to the proposed rule, are allowed to provide ABA services, their clients will be at risk because these professionals will have not been formally trained in ABA. Pursuant to 8 NYCRR §§29.1(b)(9) and 29.2(a)(5), it is considered unprofessional conduct for a licensed professional to, inter alia, accept and perform professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform. Thus, if a licensed professional is found not to be competent to provide ABA services, he or she could be subject to professional misconduct.

It should also be noted that Education Law §8807 establishes several exemptions to the licensure requirements and states that nothing in Article 167 shall be construed to limit the scope of practice of any profession licensed under Title VIII of the Education Law. Thus, if the provision of ABA services is within the scope of practice of such a profession, the licensed professional can provide those services without ABA licensure or the Behavior Analyst Certification Board's (BACB) certification.

3. COMMENT:

A higher education institution expressed concerns that the proposed rule is inconsistent with BACB's standards and rules, which might interfere with its graduates' ability to apply for both the BACB designation and licensure in New York.

DEPARTMENT RESPONSE:

The proposed rule's educational requirements differ from BACB's educational requirements because licensure as a LBA and certification as a CBAA are limited to individuals who provide ABA services to individuals with autism, autism spectrum

disorders and related disorders. Thus, the proposed rule, unlike BACB, requires coursework in the aforementioned disorders in order to ensure that LBAs and CBAAAs are properly education and trained to provide ABA services to this particular vulnerable population. BACB educational and training requirements focus on the general application of ABA, not on the provision of ABA services to individuals with autism, autism spectrum disorders and related disorders.

Higher education institutions seeking to offer educational programs that lead to licensure as a LBA or certification as a CBAA will have to be registered, pursuant to the requirements of sections 52.44 and 52.45. However, nothing would preclude higher education institutions from seeking to have their coursework accepted by BACB, just as many other licensure-qualifying programs for other professions already do for various specialty certifications that their students may seek. Therefore, nothing in the proposed rule would impair an applicant's ability to apply for both the BACB designation and licensure in New York.

Additionally, the proposed rule was adopted as an emergency action by the Board of Regents on December 16, 2014 and, earlier this year, the Department provided all higher education institutions with programs in ABA with the proposed rule's education requirements. Thus, such institutions have the information that they need to develop programs that comply with the aforementioned program registration.

#### 4. COMMENT:

The WNY higher ed institution expressed concern that if the proposed narrow scope of practice of ABA, which limits licensure/certification to individuals who treat persons with autism spectrum disorders, and proposed narrow training requirements are allowed to take effect in New York, fewer students will come to New York for their training and this will limit the ability of institutions to recruit nationally and internationally.

This commenter further maintains that, since the majority of students trained in New York remain in New York to practice, this will only exacerbate the shortage of these professionals and significantly undermine New York's capacity to deliver quality ABA services to its citizens.

**DEPARTMENT RESPONSE:**

As explained above, Education Law §§8802(1) and (2) limit the licensure of LBAs and certification of CBBAs to individuals who provide ABA services to individuals with autism, autism spectrum disorders and related disorders and the proposed rule cannot expand the scope of practice beyond the definition set forth in statute. Thus, absent a statutory change, the proposed rule cannot be amended to expand the scope of practice of ABA to include the provision of ABA services to individuals who have a diagnosis outside the scope of autism, autism spectrum disorders and related disorders.

Additionally, the Department disagrees with the comment that the ABA scope of practice that limits licensure/certification to individuals who provide ABA services to persons with autism, autism spectrum disorders and related disorders will exacerbate the shortage of professionals in the state because fewer students will come to New York for training and less New York educated students will remain in New York to practice. In its review of colleges and universities that offer programs in ABA, the Department found that approximately 50 programs provide degrees, certificates and course content in ABA and the Department expects that these programs would be eligible to be registered as licensure-qualifying. Other than this commenter, such programs have not raised a concern that their graduates may leave New York to practice elsewhere. Moreover, the curricular content for programs to be registered as licensure-qualifying, includes the content that is required by BACB, in credit hours, not clock hours. In addition, unlike BACB, the proposed rule's licensure-qualifying program curriculum

requires coursework in autism, autism spectrum disorders and related disorders, as well as issues of diversity.

5. COMMENT:

A non-profit human services agency stated that the proposed rule narrowly defines ABA as a practice for the “treatment of persons with autism and autism spectrum disorders,” but makes no reference to the other settings in which ABA may be practiced. This commenter expressed concern that there will be confusion among practitioners and consumers, if an acknowledgement is not made of behavior analysts working with a more representative sample of the population.

DEPARTMENT RESPONSE:

LBAAs and CBAAs may provide ABA services to individuals with autism, autism spectrum disorders and related disorders in any setting that provides services to such individuals.

However, as explained above, Education Law §§8802(1) and (2) limit the licensure of LBAAs and certification of CBAAs to individuals who provide ABA services to individuals with autism, autism spectrum disorders and related disorders and the proposed rule cannot expand the scope of practice beyond the definition set forth in statute. Thus, absent a statutory change, the proposed rule cannot be amended to expand the scope of practice of ABA to include the provision of ABA services to individuals who have a diagnosis outside the scope of autism, autism spectrum disorders and related disorders. The Department may issue guidance if this needs to be clarified in the future.

6. COMMENT:

A higher education institution expressed support for the proposed rule’s 1,500 hours of supervised experience requirement for LBA applicants by stating that this requirement is both consistent with professional training in the field and absolutely

necessary for potential licensees to have adequate opportunities to develop the necessary clinical skills to successfully practice ABA.

DEPARTMENT RESPONSE:

The Department appreciates the supportive comment as it works to both protect the public and provide greater access to ABA services to New Yorkers with autism, autism spectrum disorders and related disorders.

7. COMMENT:

Seven individuals associated with the same New York ARC Chapter, one licensed mental health counselor, and another individual expressed concerns that the proposed rule's two hours of weekly individual supervision requirement would create a barrier to licensure. One or more of these commenters stated that the requirement is in excess of the amount of supervision recommended by BACB and requirements for other similarly credentialed professionals, and recommend that the Department accept the current BACB requirements for supervision. In addition, one or more of the commenters stated that it will be difficult for agencies to fulfill the supervision requirement while providing quality ABA services and supervision for their practitioners, which might preclude them from supporting the credentialing of their providers decreasing the availability of quality services and number of applicants for licensure. The commenters also noted that the two hour weekly individual supervision requirement will increase the workload of supervisors, may impact the supervisors' ability to perform their regular duties, and may make it difficult to find a supervisor. Also noted was that for individuals already in the process of obtaining the supervised experience recommended by BACB, increasing the level of individual supervision to two hours a week may make it difficult, both in terms of time and financial commitments (especially for supervisees, who have to pay for supervision) to complete the required experience

for licensure. Finally, it was suggested that if this proposed individual supervision requirement is not changed, the Department should consider permitting a grandparenting period for individuals, who are already in the process of obtaining their supervised experience for BACB certification and/or New York licensure, and allow such individuals to complete their supervised experience requirement hours under the current BACB requirements.

#### DEPARTMENT RESPONSE:

Based on the Department's review of BACB's experience requirements, it appears that, with the exception of individuals who obtain experience hours as part of a practicum in a program or in an intense practicum, 1,500 hours of experience is required for most BCBA certificates. The supervision requirements for a BACB board certified behavior analyst (BCBA) are based on the percentage of the number of hours of experience. Thus, in order to count experience hours within a given supervisory period, supervisees must be supervised at least once during that period for no less than 5% of the total hours spent in supervised experience – i.e., 40 hours of experience would require at least two supervisory hour. This is consistent with the proposed rule's requirement of two hours of supervision for those who complete a full-time experience consisting of 40 hours of experience.

Additionally, the licenses for ABA professions were established to provide services to persons with autism, autism spectrum disorders and related disorders, and those trained to provide such treatment should benefit from more intensive supervised experience in order to enable them to provide the best possible ABA services to this vulnerable population.

8 NYCRR §79-17.2 also provides applicants with the option of completing their supervised experience requirements, with the exception of 150 hours that must be

gained during a master's or higher degree program's required supervised practicum or internship, as either part of a master's degree program or advanced certificate program. In addition, Education Law §8805 provides a grandparenting licensure/ certification pathway, Pathway One, for individuals who are certified or registered by a national certifying body, like BACB, and submit an attestation of moral character (pursuant to Education Law §8804) and an application to the Department by January 9, 2016. Thus, individuals, who are in the process of completing BACB's supervised experience requirements and obtain their BCBA certification, prior to the expiration of this grandparenting period, can use such certification to apply for licensure.

However, if, after the expiration of Pathway One, the Department determines that there may be a barrier to licensure for the individuals, who are already in the process of completing their supervised experience requirement hours under the current BACB requirements, the Department may consider the experience obtained by such individuals for their BCBA certification as satisfying the experience requirements for licensure/certification. The Department also individually reviews each applicant's experience based on the documentation he or she submits.

Therefore, for all the reasons stated above, no changes are necessary to the individual supervision provisions.

8. COMMENT:

A non-profit human services agency expressed concern about proposed 8 NYCRR §79-17.2(e)(1)(i)(b), which permits an authorized health care practitioner who currently diagnoses, prescribes, or orders treatment involving ABA in his or her professional practice to supervise applicants for licensure. This commenter feels that the "authorized health care practitioner" language permits far too broad a scope of practitioners to provide supervision. This commenter further asserts that there are

many practitioners in New York, who claim to practice ABA, but have not mastered even the most basic and fundamental principles of the field. This commenter maintains that allowing such individuals to be supervisors will foster a new generation of LBAs whose standards are similarly lacking.

A non-profit organization, its NY affiliate and a WNY higher ed institution expressed similar concerns about the “authorized health care practitioner” language and recommended that the Department adopt BACB’s supervised experience requirements. The non-profit organization commenter recommends that these BACB requirements be adopted because they require experiential training supervised by professionals with demonstrated training and experience in designing and providing ABA services, which the non-profit organization asserts is very different than diagnosing disorders and prescribing treatment. The NY affiliate commenter emphasizes that the statute gives the Board and the Department wide discretion to define education, experience, and exam requirements and it recommends that this discretion be used to revise the experience requirement in the proposed rule to state that supervision can only be provided by a LBA or another licensed professional whose professional scope of practice and individual training and competence include designing, delivering and overseeing the delivery of ABA services, not just prescribing or ordering such services. Both of these commenters also recommend the adoption of BACB’s supervised experience requirements so that those who are licensed/certified both before and after January 9, 2016 are subject to the same requirements. The WNY higher ed institution commenter asserts that persons trained in other disciplines are unlikely to have the expertise and breadth of knowledge in the field of ABA to be able to provide appropriate oversight and effective training to individuals seeking licensure/certification as a LBA or CBAA.

The non-profit human services agency also expressed concern that confusion may arise if the new regulations do not make reference to the BACB and specify its relationship to New York and its governing practices. Although the commenter acknowledges that the proposed regulations are separate from BACB's standards and practices, it asserts that the majority of current practitioners calling themselves "behavior analysts" today have received some sort of certification through the BACB and that BACB's standards and practices continue to inform the development of behavior analytic services on a national level. This commenter states that a clarification of how it relates to the proposed rule may help to smooth the implementation of New York licensure of behavior analysts.

DEPARTMENT RESPONSE:

Education Law §8807 establishes several exemptions to the licensure requirements and states that nothing in Article 167 shall be construed to limit the scope of practice of any other profession licensed under Title VIII of the Education Law. Thus, if the provision of ABA services is within the scope of practice of a particular profession, an individual licensed in such a profession can both provide ABA services and supervise applicants for licensure as LBAs or certification as CBAs without being a LBA or BACB certified. The proposed supervisor qualification provisions of 8 NYCRR §79-17.2(e)(1) are consistent with this statute.

Additionally, pursuant to 8 NYCRR §§29.1(b)(9) and 29.2(a)(5), it is considered unprofessional conduct for a licensed professional to, inter alia, accept and perform professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform, and fail to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensed professional. Thus, if a licensed professional is knows or has reason to know that he or

she is not competent to perform ABA services and/or supervise applicants for licensure as a LBA or certification as a CBAA, he or she could be subject to professional misconduct.

If the Department determines that there is confusion in the field and/or among consumers regarding requirements for licensure as a LBA or certification as a CBAA, compared with BACB standards, practices and certification requirements, the Department may consider issuing guidance to address any such confusion. However, based on the foregoing, no changes to the proposed rule are necessary.

9. COMMENT:

The non-profit organization commenter stresses that, presently, BACB is the only entity that is accredited by the National Commission for Certifying Agencies (NCCA) of the Institute for Credentialing Excellence, to credential professional practitioners of ABA and that BACB's certifications are widely respected and recognized in many jurisdictions as objective evidence of qualification to practice ABA. This commenter further states that individuals who are licensed or certified under Pathway One will have met the long established education and training standards, and will have passed the national professional examination in behavioral analysis. This commenter also asserts that, unlike Pathway One requirements, the rules for determining eligibility for licensure/certification that are proposed to go into effect after January 9, 2016, "Pathway Two" which is the permanent pathway for licensure/certification, and the sources from which they were derived are ambiguous and appear to refer to eligibility to take exams that do not exist. The commenter maintains that the proposed rule's education and supervised experience requirements are inconsistent with the requirements derived from BACB's job analysis studies and it is unclear whether comparable research was conducted to identify them.

For example, the commenter asserts that the proposed rule does not specify the number of hours of instruction required in particular areas of behavior analysis, and includes courses in autism and related disorders which are not required for BACB certification because its certificants are trained to practice behavior analysis generally.

This commenter states that the proposed rule strongly implies that the Department and the licensing board will decide which Pathway Two applicants will be allowed to take the licensing/certification exams, which it understands is a common practice. But, according to this commenter, BACB does not offer its exams independent of the other components of its credentialing programs, that is, only BACB can determine who is eligible to take its exams. This commenter further maintains that, to its knowledge, there are no other psychometrically and legally validated exams in the practice of behavioral analysis, which, based on how the proposed rule as written, appears to imply that the Department and the licensing board will have to develop or adopt alternative licensing/certification exams. This commenter maintains that, even if alternative licensing/certification exams can be developed in a timely fashion, the result will be two classes of professionals credentialed by the State to practice ABA: one that has met the well-established international standards of the profession – those licensed/certified under Pathway One – and another that does not. This commenter states that this will confuse and mislead the public, who will have no means of differentiating between the two. This commenter strongly recommends that those provisions of the proposed rule be stricken and that the proposed rule be revised to adopt the BACB examination for all applicants for licensure/certification and make Pathway One the licensure/certification pathway for all applicants. This commenter asserts that making these revisions will save taxpayers the expense of developing and managing alternative examinations, save time and money for the licensing board

because BACB will have certified each applicant's degree, coursework and supervised experience and each applicant will have passed BACB's national behavior analysis examination. This commenter further asserts that BACB has efficient procedures in place for working with state licensing boards to verify applicants' status on disciplinary matters.

#### DEPARTMENT RESPONSE:

With respect to the comments regarding the Department's use of the BACB examination, the Department is currently in the process of reviewing and researching its examination options and will issue a Request for Proposals for the examination, which will require that a proper job analysis be conducted and that the examination be properly validated before use of any proposed examination.

By enacting Article 167, the Legislature gave the Board of Regents and the Department the responsibility to ensure applicants for licensure/certification meet appropriate education, experience and examination standards. This responsibility also includes ensuring that applicants for licensure/certification have coursework and experience relating to the provision of ABA services to individuals with autism, autism spectrum disorders and related disorders. This responsibility further includes requiring applicants to take an examination that tests whether they are competent to perform ABA services on this vulnerable population. It is the Department's understanding the BACB examination does not assess a candidate's performance on this population. Therefore, at this time, the Department does not believe the BACB test, in its current form, tests all the competencies needed for licensure in New York State. Moreover, to the extent that the commenter believes that Department should use the BACB examination because it has procedures in place to work with state licensing boards to verify applicants' status on disciplinary matters, the Department has a similar process in place to ensure that it is

notified if a licensee is involved in either an in-state and/or out-of-state disciplinary matter. Therefore, the Department does not believe that any changes to the proposed rule are necessary.

10. COMMENT:

A commenter expressed concerns about the proposed rule's establishment of a passing score for the licensure/certification examinations. Although this commenter states that it supports more study of this requirement, it believes that including a passing score is unnecessary and may restrict the Board and the Department as they investigate options for examinations. This commenter strongly recommends further study to develop procedures and criteria for identifying an "acceptable" licensing examination and suggests that it may be helpful for the Board to have a discussion with BACB regarding the procedures it followed to develop its ABA professional licensing examinations.

DEPARTMENT RESPONSE:

Based on this comment, there appears to be a misunderstanding as to the purpose of 8 NYCRR §§79-17.3(c) and 79-18.3(c). These provisions do not establish a passing score for the licensure/certification examination for LBAs or CBAAs. Instead, these provisions establish a converted score of at least 75, as determined by the State Board for Applied Behavior Analysis. The converted score will be set by the State Board after the passing score is established for the examination. To address this misunderstanding and to prevent any further confusion regarding this matter, the Department made the following non-substantial revision to these provisions:

In sections 79-17.3(c) and 79-18.3(c), the term "passing score" was replaced with the term "converted passing score" in order to clarify the text of the proposed rule.

11. COMMENT:

A WNY higher ed institution commenter expressed concerns about the discrepancy between the proposed regulations and BACB standards for practice requirements. This commenter asserts that the proposed regulations require, at least, 150 of supervised experience through a practicum/internship and after completion of only 150 hours and completion of degree requirements, the supervisee is eligible to sit for the licensing exam, which the commenter contends is in direct conflict with BACB's requirement that all supervision hours (up to 1,500) be completed prior to sitting for the exam. This commenter further asserts that, under BACB requirements, passing the national examination is the last step in the BACB certification process. This commenter maintains that this will create a situation in which persons are practicing in New York with a training level that differs from the national standards, allowing for a significant treatment disparity.

DEPARTMENT RESPONSE:

As noted in several of the responses above, pursuant to the statute, the scope of practice of LBAs and CBAAs is distinct from BACB's practice requirements because licensure of LBAs and certification of CBAAs is limited to individuals providing ABA services to persons with autism, autism spectrum disorders and related disorders.

Additionally, the statute provides the Board of Regents and the Department with the discretion to permit applicants for licensure/certification to sit for the licensure/certification examination prior to completing all of the supervised experience requirements and these provisions of the proposed rule are consistent with the examination eligibility requirements in several other professions, including, but not limited to psychology and the four mental health practitioners professions. Moreover, the Department does not believe that there are any issues with applicants for New York

State licenses taking the examination prior to completing all of their required supervised experience requirements.

12. COMMENT:

The WNY higher ed institution also expressed concerns about proposed 8 NYCRR §79-17.4 limited permit provisions, which permit an applicant to practice while gaining experience under the supervision of a supervisor acceptable to the Department. This commenter maintains that these provisions are in direct conflict with the international standard of practice in which persons who have not passed the BACB exam cannot use the title Board Certified Behavior Analyst or Board Certified Assistant Behavior Analyst. This commenter contends that these provisions will create an environment wherein individuals in New York will be subjected to services and care that do not meet the practice standards of the field.

DEPARTMENT RESPONSE:

Proposed 8 NYCRR §79-17.4 provides applicants, who meet all the requirements for licensure as a LBA, except the examination and/or experience requirements, a limited permit to practice as a LBA, if he or she is of good moral character as determined by the Department, and will be under the supervision of a supervisor acceptable to the department in accordance with the requirements of 79-17.2. as authorized by Education Law §8806. Additionally, proposed 8 NYCRR §79-17.2(c)(3) provides that the setting in which the experience is obtained must provide titles to unlicensed individuals gaining experience for licensure which clearly indicate their training status as required by Education Law §8807(4). Thus, applicants with limited permits will not be using the title LBA or CBAA while they are gaining experience for licensure/certification. These proposed provisions are similar to the limited permit provisions in the profession of psychology and several other professions and they strike

the right balance between protecting the public while providing applicants with the opportunities they need to gain experience for licensure/certification.

13. COMMENT:

Both the NY affiliate and WNY higher ed institution recommend revisions to proposed 8 NYCRR §52.44 and 52.45, which establish the college and university program registration requirements for programs that will lead to licensure as a LBA and/or certification as a CBAA. Both commenters maintain that minor changes to 8 NYCRR §52.44(a)(1) and (2) and 52.45(a)(1) and (2) are warranted to make them consistent and clear that the program subject areas would include, but not be limited to, education and psychology. Both commenters recommend that these subdivisions be revised as follows:

§52.44 Behavior Analyst (§52.45 Behavior Analyst Assistant)

In addition to meeting all the applicable provisions of this Part, to be registered as a program recognized as leading to licensure as a licensed behavior analyst, which meets the requirements of Subpart 79-17 (Subpart 79-18) of this Title, the program shall:

(a) either:

(1) be a program in applied behavior analysis leading to a master's or higher degree, which shall require at least one year of full-time study or the equivalent, which shall include seminars, tutorials, or other graduate level coursework in applied behavior analysis, as defined in section 8802 of the Education Law, which may include subject areas that include education, and psychology; or

(2) be a program in applied behavior analysis leading to an advance certificate which ensures that each student holds a master's or higher degree in subject areas, including, [but not limited to, psychology, education or other subject areas that address

learning and behavioral change] psychology, education and behavior analysis [as determined by the Department;].

DEPARTMENT RESPONSE:

It is the Department's position that the suggested changes are not warranted because proposed 8 NYCRR §§52.44(a)(1) and 52.45(a)(1) are intended to establish the curriculum requirements for the registration of a licensure qualifying program in ABA and proposed 8 NYCRR §§52.44(a)(2) and 52.45(a)(2) refer to the curriculum requirements for the registration of programs that enable those with a master's or higher degree in areas such as psychology, education or a related area to obtain coursework needed for an advance certificate to meet the education requirements for licensure. These provisions do not contain the education requirements for licensure/certification, they are the program registration standards.

In addition, pursuant to 8 NYCRR §§79-17.1(b)(2) and 79-18.1(b)(2), individuals who complete registered programs in the professions of psychology or education could seek licensure/certification in the profession of ABA and meet the education requirements for such licensure/certification. If there is any confusion regarding these provisions, the Department may consider issuing guidance to address it.

14. COMMENT:

The NY affiliate and the WNY higher ed institution commenters recommend that the time for colleges and universities to register programs be extended one additional year, from September 1, 2019 to September 1, 2020, given the notification to the field and the potential delay in submitting program modifications to the Department and the lengthy approval time frames. Both commenters maintain that this will allow colleges and universities sufficient time to develop the program requirements and allow for

Department approval so as not to hinder any student studying in a program pending approval by the Department.

The NY affiliate commenter also recommends that the Department consider grandfathering those programs at New York colleges and universities containing course sequences that have already been approved by BACB and, in states that do not have licensure of LBAs or CBAAAs, recognize a college or university program already approved by BACB. This commenter further suggests that the Department and Board could allow those programs containing course sequences currently approved by BACB to be considered automatically registered by the Department. The commenter further suggests that proposed regulation be revised to include a provision that allows “those programs in New York that are approved, on or before September 1, 2020, by a national certification body having certification and registration standards that are recognized by the Department as meeting the special provisions for immediate licensure pursuant to Section 8805 of the New York State Education Law.”

The NY affiliate commenter maintains that the proposed regulations seem to permit education requirements to be met by colleges and universities in other states, only if the programs lead to licensure but currently only 19 states provide for licensure of behavior analysts. The commenter asserts in states without ABA licensure, some of the colleges and universities in such states offer programs that lead to BACB certification, instead of licensure. Thus, according to this commenter, such programs in such states should be recognized for purposes of satisfying the education requirement for licensure in New York. This comment also suggests changes to 8 NYCRR §79-17.1 to implement all of its aforementioned suggestions.

## DEPARTMENT RESPONSE:

With respect to the commenters' recommendation that the program registration deadline be extended to September 1, 2020, the Department's Office of Comparative Education and Office of Professional Education Program Review staff, as well as several universities, have been consulted regarding this matter and they have advised that the current September 1, 2019 deadline is achievable. However, the Department may consider the possibility of extending this deadline if it determines it is necessary.

The NY affiliate's comment that the proposed regulations appear to permit education requirements to be met by colleges and universities in other states, only if the programs lead to licensure in those states is not accurate. Under the proposed rule, applicants who have completed a master's degree or advanced certificate programs in ABA in all jurisdictions that include curricular content required for licensure/certification in New York may have this education accepted to meet the education requirements for licensure. Applicants who have not met every curricular requirement in their program would be able to remedy this deficiency. Since Education Law §§8802(1) and (2) limit licensure of LBAs and certification of CBAs to individuals who provide ABA services to individuals with autism, autism spectrum disorders and related disorders, it may be necessary for such applicants to take coursework in autism, autism spectrum disorders and related disorders because these courses are not required for BCBA certification.

Moreover, Education Law §8805's time limited grandparenting licensure/certification pathway (Pathway One) was intended to allow for appropriate access to services during the time period when persons who are offering these services may not have been appropriately licensed to do so in order to ensure that individuals were not denied access to such services. Article 167 was enacted to ensure that those who provide ABA services to individuals with autism, autism spectrum disorders or related

disorders will have met a minimal standard of competence, which includes coursework in the aforementioned disorders.

15. COMMENT:

The WNY higher ed institution commenter recommends that the Department support a legislative extension of the Pathway One licensure/ certification pathway to September 1, 2020.

DEPARTMENT RESPONSE:

It is the Department's position that a legislative extension of Pathway One is not necessary because Pathway One was only intended to allow for appropriate access to ABA services during the time period when persons who are offering these services may not have been appropriately licensed to do so in order to ensure that individuals were not denied access to such services. To date, the Department has licensed 686 LBAs. Thus, by the time Pathway One expires, there should be a sufficient number of LBAs to provide ABA services to individuals with autism, autism spectrum disorders and related disorders.