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.