

## SUMMARY OF EFFORTS TO GAIN LICENSURE, INDEPENDENT PRACTICE FOR MASTERS LEVEL CERTIFIED SCHOOL PSYCHOLOGISTS

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### BACKGROUND

The issue of licensing for psychology has been formally explored in New York State since 1937 and possibly even earlier. Prior to 1936 the field of psychology in New York State had had a system of self certification.. In the period between 1946 and 1948 State Senator Desmond proposed two certification bills to the State Legislature, both being unsuccessful, having died in committee because of objections from the State Department of Education.

There were myriad organizations within the State, representing various divisions of psychology (general psychology, teaching, research, applied social psychology, personnel psychology, clinical and abnormal psychology). In 1947 they collaborated in writing a licensing bill which they submitted to the Division of Licensure of the State Department of Education. Their response was that it was “too soon for the psychologists to seek a licensing bill” and advised the committee to seek a certification bill instead. The following year (1948-49) a certification bill was presented to State Ed.; however, that department had changed its mind and stated that a certification bill would not adequately protect the public or make prosecution of questionable practitioners possible. They directed the psychologists to develop a licensing bill “with teeth in it”.

A bill presented late in the 1950 legislative session died in committee, largely because of the opposition of a number of psychology groups. The following year another bill was introduced but was vetoed by Governor Dewey, based on the perceived danger that the public (and even some of the practitioners) would not understand the distinction between psychologists and psychiatrists (and the opposition of a large number of physicians and psychiatrists ).

In 1953 a bill, backed by the American Medical Association, was introduced without prior knowledge of psychologists, limiting psychotherapy to the exclusive domain of medical practice. This bill also died in committee. It was not until 1956 that a psychology licensing bill was signed into law by Governor Harriman. By this time, following extensive negotiations , the American Psychiatric Association, supported the bill.

### CURRENT STATUS

This bill, known as Article 153 of Education Law, officially established the profession of psychology in New York State, and is still basically in effect. It addresses the use of the title "psychologist" and to the practice of psychology. Its basic provisions are:

Use of the title and practice in the field are limited to persons licensed or otherwise authorized under this article.

Practice was defined as including observation, description, evaluation, interpretation and modification of behavior, for the purpose of eliminating symptomatic or undesired behavior, enhancing personal adjustment, mental health, etc..Practice includes but is not limited to psychological testing and counseling, psychoanalysis, psychotherapy, diagnosis and treatment of mental, cognitive and behavioral disorders,, alcohol and substance abuse, psychological aspects of learning and the use of accepted classification systems.

"Diagnosis and treatment" were defined as the appropriate psychological diagnosis and the ordering or providing of treatment according to need, which included (but not limited to) counseling, psychotherapy, marital or family therapy, psychoanalysis and other psychological interventions, including verbal, behavioral, etc.

A state board of psychology was established to assist the board of regents with licensing and professional conduct issues.

Licensure requirements were established. These include a doctoral degree from a program registered with the NY State Education Department (or the substantial equivalent) and two years supervised employment in appropriate psychological activities or the substantial equivalent, in accordance with the commissioner's regulations. Additionally, applicants for licensure must pass an examination satisfactory to the board, must be at least 21 years of age, be of good moral character, as determined by the department and pay a fee for admission to the examination and for an initial license and an additional fee for each triennial registration period. There are no citizenship requirements .

Limited permits were available to persons licensed in other states or countries, which were valid for a year, after which, the applicant had to pass the NY state examination. These were also available to persons who had completed their doctoral degree requirements and were gaining the experience requirements.

Exemptions to all of the above requirements are outlined and include persons in the employ of a federal, state, county or municipal agency or other political subdivision, or a chartered elementary or secondary school or degree-granting educational institution, insofar as such activities and services are part of the duties of his salaried position.

Basically ,non-doctoral level certified school psychologists are restricted to practice only in their school or other exempt settings, and are prohibited from engaging in independent contracting, either with individuals or with schools, hospitals or agencies.

This restriction was not well understood – many school psychologists were not aware of these provisions of the education law. The same applied to school districts and agencies. Or they chose to ignore them. Some districts adopted the practice of contracting with school psychologists from other districts for help cleaning up backlogs of triennial re-evaluations, particularly during the summers. A number of school psychologists earned extra income by contracting with pre-school assessment or other agencies on a part time basis. A number of attempts to obtain clarification of the precise definition and interpretation of what constitutes “salaried employment” have failed to result in definitive information

In May, 1992, NYASP published a position paper on independent practice, prepared by the organization’s government relations committee and the legal firm of O’Connell and Aronowitz in Albany. Members of the committee who contributed to this paper were Debra Handel, Chairperson; Jack Kamins, NYASP president, Dirk Hightower, past president; Kevin Bacher, Kevin Coats, David Giannascoli, Robert Johnston, Paul Meller, Peggy Plumeau, Marcia Schaeffer and Cherie Tyler. Counsel members were Peter Danziger, Esq. (who was also NYASP’s lobbyist) and Robert E. Biggerstaff, Esq.

Major arguments put forth included:

1. Independent practice would enable school psychologists to provide services under their professional title, to school age children and families after the school day and the school year, enhancing the availability of services and the profession of school psychology.
2. Based on their education and training, the current law allows school psychologists to provide services outside the school system under a different title, such as “therapist”, “counselor”, or “educational consultant”.. This is misleading to the public and a disservice to the profession..
3. School psychologists have extensive education, training , experience and understanding of the school as a social system, and family structure which shapes a child’s educational and emotional development. We are uniquely qualified to deal directly and effectively with school-age children’s learning disabilities, emotional and developmental difficulties.
4. A child in need of psychological services during the day is most likely to have that need after the school day. While the family may hire a teacher to tutor a student after school hours, it cannot seek additional counseling from a school psychologist.
5. Unlike the Masters level speech therapists, social workers, occupational therapists, etc., school psychologists are the only professionals to be prohibited from using their earned title privately.
6. School psychologists are under-utilized in New York State and there is a severe shortage of school psychologists throughout the state. Independent practice would enhance both the availability of services and the attractiveness of the profession.

The following month (June, 1992) a bill was introduced in the state Senate by Senator Stafford, to amend the education law in regard to school psychologists. Listed as TITLE BILL FOR SCHOOL PSYCHOLOGISTS (S. 8633, A. 12282) the bill proposed amending section 7605 of the education law by adding a new subdivision 5 to read as follows: "The activities, services, and use of the title school psychologist on the part of a person who has a permanent certificate as a school psychologist issued pursuant to the regulations of the commissioner." Section 7605 deals with exempt persons, beginning with the statement: "Nothing in this article shall be construed to affect or prevent", then has eight sections covering different categories of exempt persons. School psychologists as salaried employees of public schools, municipalities, etc., are cited in subdivision 1 of section 7605. The original subdivision 5 states: "The conduct, activities or services of the clergy or Christian Science practitioner, in the provision of pastoral counseling services within the context of his or her ministerial charge or obligation". The bill proposes to add the above statement to cover certified school psychologists practicing outside of our exempt settings.

With passage of the title legislation, permanently certified New York State school psychologists would be able to use the title and to practice as school psychologists outside of school hours. This bill reached the Higher Education Committees of the Senate and Assembly but remained there at the end of the legislative session, and was not brought to a vote by the entire bodies. There was a concerted effort by the APA state affiliate, NYSPA, to block the bill from being acted upon.

As the 21<sup>st</sup> century began, APA/NYSPA, which primarily represents licensed psychologists, attempted to impose restrictions which would narrowly define the practice of psychology to doctoral level persons. A number of other professional groups (social workers, marriage and family therapists, creative art therapists, psychoanalysts.) developed their own initiatives to define and implement scope of practice in their professions. State Ed responded by stating its unwillingness to work with that number of disparate groups and instructed them to collaborate on an omnibus bill which would cover all of them. School psychology was not represented in the discussions. APA (and its NY affiliate, NYSPA), have always maintained that the entry level for practice in any of the sub-disciplines of psychology is the doctorate. Discussion, commentary and debate ensued for several years, at length resulting in the passage of the omnibus bill in 2002. It restricted the practice of psychology, set requirements for Master Social Worker, Licensed Clinical Social Worker, Marriage and Family Therapist, Creative Arts Therapist and Licensed Psychoanalyst, along with establishing the new profession of Licensed Mental Health Counselor..

NYASP had attempted to gain our own scope of practice regulation along with licensure through a bill introduced into the NY legislature in May, 1999.. This bill was drafted by Peter Mannella of CARR Public Affairs, NYASP's legislative consultant and lobbyist, with Lynne Thies and Tom Kulaga providing advisement.. Senator Dale Volker sponsored the bill in the Senate and Representative Steve Sanders in the Assembly. (S. 8391 / A.5747) .The bill provided a statutory definition of "school psychology" and "school psychologist" and prescribed the requirements for individuals

to become licensed as school psychologists. These were: (1) filing an application with the State Education Department, (2) having a master's degree and/or a certificate of advanced studies or the substantial equivalent thereof, (3) two years supervised employment as a certified school psychologist or engagement in appropriate school psychology activities satisfactory to the state committee for school psychologists and in accordance with the commissioner's regulations, (4) pass an examination satisfactory to the state committee (described above) (5) be at least 21 years of age (6) meet no requirements as to United States Citizenship, (7) be of good moral character as determined by the department (8) Pay a fee of \$115 to the department for admission to a department conducted examination, and a fee of \$155 for license renewal after each triennial registration period, (9) continuing professional education: as a condition of renewal of licensure, complete not less than 20 hours of continuing competency activities annually during each registration period.

Once again, NYASP's bill was referred to the Higher Education Committees, but was not acted upon before the end of the legislative session. It was reintroduced in subsequent legislative sessions, again remaining in the higher education committees at the close of each year's session. In 2007 George Lattimer came on as the major sponsor of our bill in the Assembly. In the elections of 2009 Democrats won control of the New York State Senate and Senator Volker was no longer in a position to be the primary sponsor of our bill. He announced his retirement from public office in May, 2010. The current sponsor of the bill in the Senate is John Flanagan (R, Suffolk County), while George Lattimer (D, Westchester Co.) remains the sponsor in the Assembly. The bill was most recently reintroduced in January, 2012, where it is in the Higher Education Committees, awaiting further action.

Requirements for licensure have become more specific than in the original bill, with the added stipulation that education must include a minimum of 60 graduate hours. The course of study must cover the areas of (1) biological, social and cultural bases of development, (2) psychopathology and exceptionality in learning and behavior, (3) assessment and appraisal of learners in home and school contexts, (4) consultation and collaboration in family, school and community systems, (5) effective instruction and development of cognitive and academic skills, (6) prevention and treatment of behavioral and emotional disorders and deficits, (7) school organization, curriculum, policy and law, (8) research and program evaluation (9) professional and ethical practice of psychology in schools, (10) completion of a 1200 hour supervised internship in school psychology, with no less than 600 hours completed within a school setting.

Experience requirements are specified in the current bill as completion of a minimum of 2400 hours of post-master's supervised experience relevant to the practice of school psychology satisfactory to the board and in accordance with the commissioner's regulations, such supervised experience which may include 1200 hours completed as part of a program in school psychology. Current fees are \$240 for the examination and initial license, along with \$85 for each reexamination.

The current bill spells out boundaries of professional competency. Outside of these boundaries are the provision of services for serious mental illnesses on a continuous basis without a medical evaluation of the illness by, and consultation with a physician. "Serious mental illness" is defined as schizophrenia, schizoaffective disorder, bipolar disorder, major depressive disorder, panic disorder and obsessive-compulsive disorder.

Persons licensed under provisions of this bill are also prohibited from (a) prescribing or administering drugs, (b) using invasive procedures, or (c) being granted hospital privileges.

The exemption under which certified, non-licensed school psychologists are permitted to work remains essentially the same as in the original Article 153 of Education Law, enacted in 1956.

Increasing importance and urgency for certified school psychologists to gain licensure was APA's proposal in 2007 of a Model Act for State Licensure of Psychologists. This included removal of the exemption from licensure regulations for school psychologists (which the APA governance had actually adopted in 1977). Two periods of public commentary were held during which both NYASP and NASP were key players. Ultimately, APA dropped the part of the proposal that would have eliminated the exemption. An update of the Model Licensure Act was again proposed in 2010, this time not including the removal of the exemption.

(I'll explore the issue of the MLA and the details of our response in a separate section of the History.)

An additional rationale for licensure for certified school psychologists involves the changes to regulations for Medicaid reimbursement to schools for services performed by school psychologists.. The Medicaid and Medicare programs came into being in 1965 as Title XIX of the Social Security Act. and have undergone numerous revisions in the ensuing years. In 1988, as part of the Medicaid provisions, Congress allowed Local Education Agencies (LEAs) to claim reimbursement for covered related services authorized in an IEP, which included the assessment and mental health intervention services performed by school psychologists.

States have discretion in determining which groups their Medicaid programs will cover and the financial criteria for Medicaid eligibility. In the Fall of 2008 NASP conducted an informal survey regarding the impact of recent changes in Medicaid reimbursement of school psychological services. Several states do not bill Medicaid for psychological services in the schools. In New York State, all non-doctoral and non-licensed school psychologists were no longer eligible for reimbursement of their services to Medicaid-eligible students. causing local districts to lose one to one and a half million dollars of potential Medicaid reimbursement. If certified school psychologists are able to gain licensure, these funds would once again become available to districts.

This was a major component of the rationale for passage of our current licensure bills which were discussed with key members of the New York State Senate and Assembly by a delegation of NYASP Board members on Lobby Day, May 7, 2012 in Albany. Participants were Kelly Caci, Beth Rizzi, Britton Schnurr, Lisa Kalinowski-Press, Andrew Shannock, Kyle Sutton, John Kelly and Pam Madieros (NYASP's lobbyist).. Additional significant talking points included:

Without licensure, school psychologists are getting squeezed and their scope of practice is being limited.

In some cases, school psychologist positions have been cut because the districts are unable to obtain the reimbursement.

Many educational professionals, who at the specialist/masters level, have less training than school psychologists, but can be licensed (i.e. social workers).

School psychologists have broad training in both education and psychology, Which is of the case with other service providers in the schools who are Eligible for licensure.

School Psychologists are leaders in the schools and often the main go-to persons to deal with school crises and work with teachers to implement\ various interventions,.

Outside of NYC, there are few licensed psychologists. (In some counties there are fewer than five and in some, none at all.)

Poverty levels, under the ACA, will be lowered, thus, more children will be Medicaid-eligible. It is in the schools where most children are served.

It would allow more school psychologists to get out of their offices and into the Classrooms to do more than just what is mandated by law.

A summary of the discussions on Lobby day, provided by Andrew Shannock, concluded that the responses on the part of the legislators were mostly supportive. NYASP urges our members to continue contacting their state senators and assemblypersons, enlightening them on the vital work which school psychologists do, and enlist their support for licensure status.