

ogy program accredited by a national accrediting organization acceptable to the department; or

(b) successful completion of a bachelor's degree program in a natural science or a laboratory science and a minimum number of credit hours acceptable to the department, and appropriate clinical education in a histotechnologist program accredited by a national accrediting organization acceptable to the department or a program registered by the department or determined by the department to be the substantial equivalent; or

(c) current histotechnologist certification by a national certification organization acceptable to the department; or

(d) histotechnologist licensure in a jurisdiction acceptable to the department; or

(e) a bachelor's degree in a natural science or in a clinical laboratory science and coursework acceptable to the department and:

(1) two years' experience in a clinical laboratory while licensed as a histotechnician in New York or another jurisdiction acceptable to the department; or

(2) two years' experience in a clinical laboratory while certified as a histotechnician by a national certification organization, acceptable to the department.

#### 79-21.2 Licensing examination

To meet the examination requirement for licensure as a histotechnologist, the candidate shall pass a general examination for histotechnologists that is determined by the department to measure the applicant's knowledge, judgment, and skills concerning practice as a histotechnologist, as defined in section 8601(2)(c) of the Education Law, and to be offered by an organization that has satisfactory administrative and psychometric procedures in place to offer the examination.

#### 79-21.3 Limited permits

(a) As authorized by section 8608 of the Education Law, upon recommendation of the State Board for Clinical Laboratory Technology, the department may issue a limited permit to practice as a histotechnologist to an applicant for licensure who meets the requirements of this section.

(b) The applicant for a limited permit to practice as a histotechnologist shall:

(1) file an application for a histotechnologist license and a limited permit with the department and pay the initial licensure and registration fee, as prescribed in section 8606-b(7) of the Education Law, and a limited permit fee as prescribed in section 8608(1) of the Education Law;

(2) have met all requirements for licensure as a histotechnologist, except the examination requirement; and,

(3) submit adequate documentation that the applicant will be under the general supervision of the director of a clinical laboratory in accordance with section 571 of the Public Health Law, and in accordance with the requirements of this paragraph.

(i) Such documentation shall identify the director of the clinical laboratory who has responsibility for providing general supervision of the applicant's work while under the limited permit and include a signed statement by the director of the clinical laboratory certifying that they will provide general supervision of the applicant's experience. If a director cannot carry out their duties, or is replaced by a new or interim director, the limited permit holder shall submit to the department on a form prescribed by the department the name of the new director who has assumed supervisory responsibility of the permit holder.

(ii) For purposes of this section, under the general supervision of the director of a clinical laboratory shall mean that the permit holder shall be supervised by a director of a clinical laboratory;

(a) serve the laboratory full-time, or on a regular part-time basis;

(b) ensure the supervision of the technical performance of the permit holder, and be readily available for consultation with the permit holder, as needed; and,

(c) be responsible for the performance of laboratory procedures and related services carried out by the limited permit holder, either by directly overseeing such testing, or by delegating this responsibility to authorized qualified supervisors who are on site within the laboratory.

(c) The limited permit issued pursuant to this section shall be valid for a period of not more than twenty-four months from the date of issuance and shall not be renewable.

**Final rule as compared with last published rule:** Nonsubstantial changes were made in section 79-21.3.

**Text of rule and any required statements and analyses may be obtained from:** Kirti Goswami, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112 EB, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

#### Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on January 24, 2024, Department staff discovered that, due to a clerical error, the proposed amendment inadvertently contained incorrect

citations in section 79-21.3 of the Commissioner's regulations. The filed text of the regulation cited section 8605(1) of the Education Law instead of section 8606-b(7) of the Education Law and cited section 8609(1) of the Education Law rather than section 8608(1) of the Education Law. Therefore, the Department has made non-substantial revisions to the proposed amendment to resolve these errors.

The above non-substantial revision does not require any changes to the previously published Regulatory Impact Statement.

#### Revised Regulatory Flexibility Analysis

Since the publication of the Notice of Proposed Rule Making in the State Register on January 24, 2024, a non-substantial revision was made to the proposed regulation as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above non-substantial revision does not require any changes to the previously published Statement in Lieu of Regulatory Flexibility Analysis for Small Businesses and Local Governments as the non-substantial revisions do not impose any new reporting, recordkeeping, or other compliance requirements, or have any adverse economic impact on small businesses or local governments. Because it is evident from the nature of the proposed rule that it will not adversely affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act, and one has not been prepared.

#### Revised Rural Area Flexibility Analysis

Since the publication of a Notice of Proposed Rule Making in the State Register on January 24, 2024, a non-substantial revision was made to the proposed regulation as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above non-substantial revision does not require any changes to the previously published Rural Area Flexibility Analysis.

#### Revised Job Impact Statement

##### Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2029, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

##### Assessment of Public Comment

The agency received no public comment.

## NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Education publishes a new notice of proposed rule making in the NYS Register.

### Special Education Due Process Hearings

I.D. No.	Proposed	Expiration Date
EDU-09-23-00031-RP	March 1, 2023	May 1, 2024

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Social Work and Mental Health Practitioner Supervision Requirements, Acceptable Accrediting Bodies for Social Work Education Programs, and the Social Work Psychotherapy Privilege

I.D. No. EDU-21-24-00015-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** Amendment of sections 74.1, 74.6, 79-9.3, 79-10.3, 79-11.3 and 79-12.3; repeal of section 74.5 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207, 6504, 6507, 7701, 7704, 8402, 8403, 8404 and 8405; L. 2022, ch. 818

**Subject:** Social work and mental health practitioner supervision requirements, acceptable accrediting bodies for social work education programs, and the social work psychotherapy privilege.

**Purpose:** Amends the supervision requirements for social work and mental health professions To allow the use of secure technology for social work and mental health professions; update the provision regarding acceptable

accrediting bodies for social work education programs; and repeals the requirements for the psychotherapy privilege consistent with Chapter 81 of the Laws of 2022.

**Text of proposed rule:** 1. Subparagraph (v) of paragraph (1) of subdivision (c) of section 74.6 of the Regulations of the Commissioner of Education is amended to read as follows:

(v) the supervisor provides at least one hundred hours of [in-person] *face-to-face* individual or group clinical supervision, distributed appropriately over the period of the supervised experience. [The Department, in its discretion, may accept alternative means to meet the in-person supervision requirements of this subparagraph that cannot be successfully completed due to the State of Emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.] *Face-to-face supervision may utilize technology acceptable to the Department, including secure video conferencing to protect confidentiality.*

2. Subparagraph (v) of paragraph (1) of subdivision (d) of section 74.6 of the Regulations of the Commissioner of Education is amended to read as follows:

(v) the supervisor provides at least two hours per month of [in-person] *face-to-face* individual or group clinical supervision. [The Department, in its discretion, may accept alternative means to meet the in-person supervision requirements of this subparagraph that cannot be successfully completed due to the State of Emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.] *Face-to-face supervision may utilize technology acceptable to the Department, including secure video conferencing to protect confidentiality.*

3. Paragraphs (1) and (3) of subdivision (c) of section 79-9.3 of the Regulations of the Commissioner of Education are amended to read as follows:

(1) An applicant shall obtain experience under this section while under the general supervision of a qualified supervisor. General supervision shall mean that a qualified supervisor shall be available for consultation, assessment and evaluation when professional services are being rendered by an applicant and the supervisor shall exercise the degree of supervision appropriate to the circumstances. The supervisor shall provide an average of one hour per week or two hours every other week of [in-person] *face-to-face* individual or group supervision wherein the supervisor of such experience shall:

- (i) ...
- (ii) ...

(3) [The Department, in its discretion, may accept alternative means to meet the in-person supervision requirements of paragraph (1) of this subdivision that cannot be successfully completed due to the State of Emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.] *Face-to-face supervision may utilize technology acceptable to the Department, including secure video conferencing to protect confidentiality.*

4. Paragraphs (1) and (3) of subdivision (d) of section 79-10.3 of the Regulations of the Commissioner of Education are amended to read as follows:

(1) An applicant shall obtain experience under this section while under the general supervision of a qualified supervisor. General supervision shall mean that a qualified supervisor shall be available for consultation, assessment and evaluation when professional services are being rendered by an applicant and the supervisor shall exercise the degree of supervision appropriate to the circumstances. The supervisor shall provide an average of one hour per week or two hours every other week of [in-person] *face-to-face* individual or group supervision wherein the supervisor shall:

- (i) ...
- (ii) ...

(3) [The Department, in its discretion, may accept alternative means to meet the in-person supervision requirements of paragraph (1) of this subdivision that cannot be successfully completed due to the State of Emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.] *Face-to-face supervision may utilize technology acceptable to the Department, including secure video conferencing to protect confidentiality.*

5. Paragraphs (1) and (3) of subdivision (c) of section 79-11.3 of the Regulations of the Commissioner of Education are amended to read as follows:

(1) An applicant shall obtain experience under this section while under the general supervision of a qualified supervisor. General supervision shall mean that a qualified supervisor shall be available for consultation, assessment and evaluation when professional services are being rendered by an applicant and the supervisor shall exercise that degree of supervision appropriate to the circumstances. The supervisor shall provide at least one hour per week or four hours per month of [in-person] *face-to-face* individual or group supervision wherein the supervisor shall:

- (i) ...

- (ii) ...

(3) [The Department, in its discretion, may accept alternative means to meet the in-person supervision requirements of this paragraph (1) of this subdivision that cannot be successfully completed due to the State of Emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.] *Face-to-face supervision may utilize technology acceptable to the Department, including secure video conferencing to protect confidentiality.*

6. Paragraphs (1) and (3) of subdivision (c) of section 79-12.3 of the Regulations of the Commissioner of Education are amended to read as follows:

(1) An applicant shall obtain experience under this section while under the general supervision of a qualified supervisor. General supervision shall mean that a qualified supervisor shall be available for consultation, assessment and evaluation when professional services are being rendered by an applicant and the supervisor shall exercise the degree of supervision appropriate to the circumstances. The supervisor shall provide an average of one hour per week or two hours every other week of [in-person] *face-to-face* individual or group supervision wherein the supervisor shall:

- (i) ...
- (ii) ...

(3) [The Department, in its discretion, may accept alternative means to meet the in-person supervision requirements of paragraph (1) of this subdivision that cannot be successfully completed due to the State of Emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.] *Face-to-face supervision may utilize technology acceptable to the Department, including secure video conferencing to protect confidentiality.*

7. Paragraph (a) of section 74.1 of the Commissioner's Regulations is amended to read as follows:

(a) As used in this section, acceptable accrediting agency shall mean an organization accepted by the department as a reliable authority for the purpose of accreditation at the postsecondary level, applying its criteria for granting accreditation of social work programs in a fair, consistent, and nondiscriminatory manner[, such as the Council on Social Work Education, its successors, or an equivalent agency].

8. Section 74.5 of the Commissioner's Regulations is REPEALED.

**Text of proposed rule and any required statements and analyses may be obtained from:** Kirti Goswami, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112EB, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

**Data, views or arguments may be submitted to:** David H. Hamilton, Deputy Commissioner, NYS Education Department, Office of the Professions, 89 Washington Avenue, SEB 2nd Floor, Albany, NY 12234, (518) 474-3817, email: REGCOMMENTS@nysed.gov

**Public comment will be received until:** 60 days after publication of this notice.

**This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.**

**Regulatory Impact Statement**

**1. STATUTORY AUTHORITY:**

Section 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and the practice of the professions.

Subdivisions (1) and (2) of section 7701 of the Education Law defines the scope of practice of licensed master social workers and licensed clinical social workers, respectively.

Subdivisions (1) and (2) of section 7704 of the Education Law establishes the licensure requirements for licensed master social workers and licensed clinical social workers, respectively.

Subdivision (1) of section 8402 of the Education Law defines the scope of practice of mental health counseling and subdivision (3) of section of the Education Law establishes the licensure requirements for licensed mental health counselors.

Subdivision (1) of section 8403 of the Education Law defines the scope of practice of marriage and family therapy and subdivision (3) of the Education Law establishes the licensure requirements for licensed marriage and family therapists.

Subdivision (1) of section 8404 of the Education Law defines the scope of practice of creative arts therapy and subdivision (3) of section 8404 of the Education Law establishes the licensure requirements for licensed creative arts therapists.

Subdivision (1) of section 8405 of the Education Law defines the scope

of practice of psychoanalysis and subdivision (3) of section 8405 of the Education Law establishes the licensure requirements for licensed psychoanalysts.

Chapter 818 of the Laws of 2022 eliminated the psychotherapy privilege established under the Insurance Law for certain licensed clinical social workers, effective January 1, 2023.

#### 2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above statutory authority and is necessary to: (1) address the increased demand for mental health services provided by licensed professionals, including social workers and mental health practitioners, by amending the supervision requirements to allow the use of secure technology and allow applicants in these professions to receive face-to-face supervision through secure, real-time technology acceptable to the Department, such as videoconferencing; (2) amend section 74.1(a) and (b) of the Commissioner's regulations to remove the reference to Council on Social Work Education (CSWE) because the standards of private organizations such as CSWE may change and become inconsistent with New York standards and other professions do not typically name specific organizations in their regulations; and (3) repeal section 74.5 of the Commissioner's regulations because, effective January 1, 2023, Chapter 818 of the Laws of 2022 eliminated the psychotherapy privilege established under the Insurance Law for certain LCSWs, which established the requirements met by LCSWs seeking this privilege.

#### 3. NEEDS AND BENEFITS

##### Supervision Requirements:

Applicants for licensure as a Licensed Clinical Social Worker (LCSW), mental health counselor, marriage and family therapist, creative arts therapist, or psychoanalyst must complete supervised experience under a qualified supervisor in an authorized setting. While this supervision must occur in-person, the Department temporarily authorized remote supervision during the state of emergency declared during the COVID-19 pandemic.

There is increased demand for mental health services provided by licensed professionals, including social workers and mental health practitioners. These services may be provided in-person or using technology. However, other than the COVID-19 exception mentioned above, qualified supervisors of applicants completing experience for licensure are required to conduct supervision in-person.

The proposed rule is consistent with the above statutory authority and is necessary to address the increased demand for mental health services provided by licensed professionals, including social workers and mental health practitioners by amending the supervision requirements for social workers and mental health practitioners in sections 74.6, 79-9.3, 79-10.3, 79-11.3, and 79-12.3 of the Commissioner's regulations to allow the use of secure technology for these five mental health professions.

The proposed rule is consistent with regulations for the supervision of psychologists and mental health practitioners earning the diagnostic privilege, adopted by the Board of Regents in March 2022 and June 2022 respectively, that allow an applicant in those professions to receive face-to-face supervision through secure, real-time technology acceptable to the Department, such as videoconferencing.

##### Acceptable Accrediting Agencies:

Section 74.1(a) and (b) of the Commissioner's regulations require an applicant for licensure as a LMSW or LCSW to complete a master's degree of at least 60 semester hours with specified content or, in the determination of the Department, an equivalent program. Subdivision (a) allows the Department to accept coursework from a program accredited by an acceptable accrediting agency. The regulation names the Council on Social Work Education (CSWE). However, the standards of private organizations such as CSWE may change and become inconsistent with New York standards. Additionally, regulations concerning the professions do not typically name specific organizations. Therefore, the proposed rule amends this provision to remove the reference to CSWE.

##### Psychotherapy Privilege:

Effective January 1, 2023, Chapter 818 of the Laws of 2022 eliminated the psychotherapy privilege established under the Insurance Law for certain LCSWs, effective January 1, 2023. Therefore, the proposed rule repeals section 74.5 of the Commissioner's regulations, which established the requirements met by LCSWs seeking this privilege.

#### 4. COSTS:

(a) Costs to State government: There are no additional costs to state government.

(b) Costs to local government: There are no additional costs to local government.

(c) Cost to private regulated parties: There are no mandatory costs to private regulated parties.

(d) Cost to the regulatory agency: There are no additional costs to the Department.

#### 5. LOCAL GOVERNMENT MANDATES:

The proposed rule does not impose any program service, duty, responsibility, or other mandate on local governments.

#### 6. PAPERWORK:

The proposed rule does not impose any reporting, paperwork or recordkeeping requirements.

#### 7. DUPLICATION:

There are no other state or federal requirements on the subject matter of the proposed rule. Therefore, the amendment does not duplicate other existing state or federal requirements.

#### 8. ALTERNATIVES:

The proposed rule is necessary to: (1) address the increased demand for mental health services provided by licensed professionals, including social workers and mental health practitioners, by amending the supervision requirements to allow the use of secure technology and allow applicants in these professions to receive face-to-face supervision through secure, real-time technology acceptable to the Department, such as videoconferencing; (2) amend section 74.1(a) and (b) of the Commissioner's regulations to remove the reference to CSWE because the standards of private organizations such as CSWE may change and become inconsistent with New York standards and other professions do not typically name specific organizations in their regulations; and (3) repeal section 74.5 of the Commissioner's regulations because, effective January 1, 2023, Chapter 818 of the Laws of 2022 eliminated the psychotherapy privilege established under the Insurance Law for certain LCSWs, which established the requirements met by LCSWs seeking this privilege. There are no significant alternatives to the proposed rule, and none were considered.

#### 9. FEDERAL STANDARDS:

Since there are no applicable federal standards, the proposed rule does not exceed any minimum federal standards for the same or similar subject areas.

#### 10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at the September 2024 Regents meeting, after publication in the State Register and the expiration of the 60-day public comment period required under the State Administrative Procedures Act. If adopted at the September meeting, the proposed rule will become effective as a permanent rule on September 25, 2024. The proposed amendment does not impose any compliance schedules on regulated parties.

#### *Regulatory Flexibility Analysis*

Applicants for licensure as a Licensed Clinical Social Worker (LCSW), mental health counselor, marriage and family therapist, creative arts therapist, or psychoanalyst must complete supervised experience under a qualified supervisor in an authorized setting. While this supervision must occur in-person, the Department temporarily authorized remote supervision during the state of emergency declared during the COVID-19 pandemic.

There is increased demand for mental health services provided by licensed professionals, including social workers and mental health practitioners. These services may be provided in-person or using technology. However, other than the COVID-19 exception mentioned above, qualified supervisors of applicants completing experience for licensure are required to conduct supervision in-person.

The proposed rule addresses the increased demand for mental health services provided by licensed professionals, including social workers and mental health practitioners, by amending the supervision requirements to allow the use of secure technology for these five mental health professions. The proposed rule is consistent with regulations for the supervision of psychologists and mental health practitioners earning the diagnostic privilege, adopted by the Board of Regents in March 2022 and June 2022 respectively, that allow an applicant in those professions to receive face-to-face supervision through secure, real-time technology acceptable to the Department, such as videoconferencing.

Additionally, the proposed rule amends section 74.1 of the Commissioner's regulations to remove the reference to Council on Social Work Education (CSWE) because the standards of private organizations such as CSWE may change and become inconsistent with New York standards and other professions do not typically name specific organizations in their regulations. Finally, the proposed rule repeals section 74.5 of the Commissioner's regulations because, effective January 1, 2023, Chapter 818 of the Laws of 2022 eliminated the psychotherapy privilege established under the Insurance Law for certain LCSWs, which established the requirements met by LCSWs seeking this privilege.

The proposed rule will not impose any reporting, recordkeeping or other compliance requirements or costs or have any adverse economic impact on small businesses or local governments. Because it is evident from the proposed rule that it will not adversely affect small businesses or local governments, no affirmative steps were needed to ascertain that fact, and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required pursuant to section 202-b(3) of the State Administrative Procedure Act, and one has not been prepared.

**Rural Area Flexibility Analysis**

**1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:**

The proposed rule will apply to all individuals licensed or seeking licensure as, clinical social workers, master social workers, psychoanalysts, mental health counselors, marriage and family therapists, and creative arts therapists in New York State, including those located in the 44 counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square miles or less.

Of the approximately 33,976 licensed clinical social workers who are registered to practice in New York State, approximately 3,578 report that their permanent address is in a rural county of New York State.

Additionally, of the approximately 34,180 licensed master social workers who are registered to practice in New York State, approximately 3,749 report that their permanent address is in a rural county of New York State.

Of the approximately 777 licensed psychoanalysts who are registered to practice in New York State, approximately 27 report that their permanent address is in a rural county of New York State.

Also, of the approximately 12,035 licensed mental health counselors who are registered to practice in New York State, approximately 1,828 report that their permanent address is in a rural county of New York State.

Of the approximately 1,800 registered marriage and family therapists who are registered to practice in New York State, approximately 185 report that their permanent address is in a rural county of New York State.

Finally, of the approximately 2,182 creative arts therapists who are registered to practice in New York State, approximately 182 report that their permanent address is in a rural county of New York State.

**2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:**

The proposed rule is necessary to: (1) address the increased demand for mental health services provided by licensed professionals, including social workers and mental health practitioners, by amending the supervision requirements to allow the use of secure technology and allow applicants in these professions to receive face-to-face supervision through secure, real-time technology acceptable to the Department, such as videoconferencing; (2) amend section 74.1(a) and (b) of the Commissioner's regulations to remove the reference to Council on Social Work Education (CSWE) because the standards of private organizations such as CSWE may change and become inconsistent with New York standards and other professions do not typically name specific organizations in their regulations; and (3) repeal section 74.5 of the Commissioner's regulations because, effective January 1, 2023, Chapter 818 of the Laws of 2022 eliminated the psychotherapy privilege established under the Insurance Law for certain LCSWs, which established the requirements met by LCSWs seeking this privilege.

Additionally, the proposed rule amends section 74.1 of the Commissioner's regulations to remove the reference to Council on Social Work Education (CSWE) because the standards of private organizations such as CSWE may change and become inconsistent with New York standards and other professions do not typically name specific organizations in their regulations. Finally, the proposed rule repeals section 74.5 of the Commissioner's regulations because, effective January 1, 2023, Chapter 818 of the Laws of 2022 eliminated the psychotherapy privilege established under the Insurance Law for certain LCSWs, which established the requirements met by LCSWs seeking this privilege.

The proposed amendment does not impose any reporting, recordkeeping, or other requirements on social workers or mental health practitioners.

The proposed rule will not impose any additional professional service requirements on entities in rural areas.

**3. COSTS:**

The proposed rule will not impose any costs on any social worker, mental health practitioner or other party.

**4. MINIMIZING ADVERSE IMPACT:**

The proposed rule amends the supervision requirements for social work and mental health professions to allow the use of secure technology, updates the provisions regarding acceptable accrediting bodies for social work education programs, and repeals the requirements for the psychotherapy privilege consistent with Chapter 81 of the Laws of 2022. It is evident that the proposed rule will not have any adverse impact on regulated parties located in rural areas, therefore differing approaches as prescribed in SAPA § 202-bb(2) for rural areas were not considered.

**5. RURAL AREAS PARTICIPATION:**

Comments on the proposed rule were solicited from statewide organizations representing parties having an interest in the practice of social work and mental health practitioners. These organizations included the State Boards for Social Work, and Mental Health Practitioners and professional associations representing social workers, and mental health practitioners. These groups have members who live or work in rural areas.

**Job Impact Statement**

Applicants for licensure as a Licensed Clinical Social Worker (LCSW), mental health counselor, marriage and family therapist, creative arts

therapist, or psychoanalyst must complete supervised experience under a qualified supervisor in an authorized setting. While this supervision must occur in-person, the Department temporarily authorized remote supervision during the state of emergency declared during the COVID-19 pandemic.

There is increased demand for mental health services provided by licensed professionals, including social workers and mental health practitioners. These services may be provided in-person or using technology. However, other than the COVID-19 exception mentioned above, qualified supervisors of applicants completing experience for licensure are required to conduct supervision in-person.

The proposed rule addresses the increased demand for mental health services provided by licensed professionals, including social workers and mental health practitioners, by amending the supervision requirements to allow the use of secure technology for these five mental health professions.

The proposed rule is consistent with regulations for the supervision of psychologists and mental health practitioners earning the diagnostic privilege, adopted by the Board of Regents in March 2022 and June 2022 respectively, that allow an applicant in those professions to receive face-to-face supervision through secure, real-time technology acceptable to the Department, such as videoconferencing.

Additionally, the proposed rule amends section 74.1 of the Commissioner's regulations to remove the reference to Council on Social Work Education (CSWE) because the standards of private organizations such as CSWE may change and become inconsistent with New York standards and other professions do not typically name specific organizations in their regulations. Finally, the proposed rule repeals section 74.5 of the Commissioner's regulations because, effective January 1, 2023, Chapter 818 of the Laws of 2022 eliminated the psychotherapy privilege established under the Insurance Law for certain LCSWs, which established the requirements met by LCSWs seeking this privilege.

The proposed rule will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the proposed rule, which implements specific statutory requirements and directives, that the proposed rule will have no impact on jobs or employment opportunities attributable to its adoption or only a positive impact, no further steps were needed to ascertain that fact, and none were taken. Accordingly, a job impact statement is not required pursuant to section 210-a(2)(a) of the State Administrative Procedure Act, and one was not prepared.

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED**

**Special Education Due Process Hearings**

**I.D. No.** EDU-21-24-00016-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** Amendment of section 200.5 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101, 207, 305, 3602-c, 4404 and 4410

**Subject:** Special education due process hearings.

**Purpose:** To clarify that parents of students who are parentally-placed in nonpublic schools do not have the right under Education Law section 3602-c to file a due process complaint regarding the implementation of services recommended on an IESP.

**Text of proposed rule:** 1. Paragraph (1) of subdivision (i) of section 200.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(1) A parent or school district may file a due process complaint with respect to any matter relating to the identification, evaluation or educational placement of a student with a disability, or a student suspected of having a disability, or the provision of a free appropriate public education to such student. *This does not include disputes over the implementation of services in an individualized education services plan, such as the payment of services by a school district that were obtained by the parents of a student with a disability.* The party presenting the complaint, or the attorney representing such party, shall provide a written due process complaint notice to the party, which shall include:

- (i) ...
- (ii) ...
- (iii) ...
- (iv) ...
- (v) ...

**Text of proposed rule and any required statements and analyses may be obtained from:** Kirti Goswami, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112EB, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov