

**DEPARTMENT OF EDUCATION
PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 **Del.C.** §§1203, 1205(b), & 1220)

FINAL

ORDER

1585 School Behavior Analyst

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed 14 **DE Admin. Code** 1585 School Behavior Analyst. The proposed regulation concerns the requirements for a School Behavior Analyst Standard Certificate in accordance with 14 **Del.C.** §1220. Proposed Section 1.0 provides who would be required to hold the School Behavior Analyst Standard Certificate; Section 2.0 provides definitions for the proposed regulation; Section 3.0 concerns the issuance of a School Behavior Analyst Standard Certificate; Section 4.0 provides the prescribed education, knowledge, and skill requirements for the issuance of a School Behavior Analyst Standard Certificate; Section 5.0 provides the application requirements; Section 6.0 concerns Secretary of Education review; Section 7.0 concerns the validity of a School Behavior Analyst Standard Certificate; Section 8.0 concerns the requirements to retain the School Behavior Analyst Standard Certificate; Section 9.0 concerns disciplinary actions; and Section 10.0 concerns applicants' and Educators' contact information with the Department and specifies how they can change their name or address.

Notice of the proposed regulation was published in the *Register of Regulations* on June 1, 2023. The Professional Standards Board received four written submittals concerning the proposed regulation. The Executive Board Members of the Delaware Association for Behavior Analysis ("DEABA") commented that the proposed regulation includes a \$100 fee to obtain a Standard Certificate and that it is not clear if the cost is accounted for in districts' budgets. DEABA further commented that the majority of states have licensure requirements in place that acknowledge BACB's BCBA and BCaBA as the preferred credential for behavior analysis. DEABA also commented that behavior-analytic service providers working in schools and their administrative support teams did not have sufficient awareness of the proposed regulation in order to provide meaningful consideration and feedback during the public comment period. Nicole Gouge commented that the fee should be reconsidered due to the "costly fees involved with obtaining and maintaining BCBA credentials coupled with the high turnover rates for BCBA and BCaBAs. Ms. Gouge further commented that BCBAs, BCaBAs, and school teams have not had the proper time to review the proposed regulations and provide eloquent feedback. Ms. Gouge also commented that behavior analytic service providers should be part of the process in creating the proposed regulations and that the language concerning Secretary of Education review should be reconsidered. Sarah D'Amico commented that she is against the proposed regulation. She commented that QBAs are not overseen, regulated, or certified by the BACB and DEABA has been working on a plan to pursue licensure for BCBAs in Delaware. Ms. D'Amico noted that the proposed regulation would assist districts in building capacity. Ms. D'Amico further commented that it is reasonable to expect behavior analysts will be reimbursed the \$100 fee. She also commented that behavior-analytic service providers who work in schools and their administrative support teams did not have sufficient awareness of the proposed regulation. Carol Percy commented about the proposed regulation being published during the summer when many of the people it would affect are not working.

II. FINDINGS OF FACTS

On August 3, 2023, the Professional Standards Board considered the written submittals. The Professional Standards Board found that the fee is for an Initial License, not a Standard Certificate. The Professional Standards Board further found that the Delaware Division of Professional Regulation does not license behavior analysts. The Professional Standards Board also found that its Executive Director met with special education directors regarding the proposed regulation in March, a draft of the proposed regulation was distributed to special education directors for feedback, the proposed regulation was published in the *Register of Regulations* from June 1, 2023 through July 3, 2023, and notice of the proposed regulation was included in the Department's newsletters to principals and human resources directors. The Professional Standards Board also found that it develops regulations throughout the year and the proposed regulation followed the same process that all of the regulations follow, including providing the opportunity for comment. The Professional Standards Board did not make any changes as a result of the written submittals and voted to propose 14 **DE Admin. Code** 1585 School Behavior Analyst, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed regulation is necessary to implement 14 **Del.C.** Ch. 12 and is designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department

finds that it is appropriate to adopt 14 **DE Admin. Code** 1585 School Behavior Analyst.

III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to adopt 14 **DE Admin. Code** 1585 School Behavior Analyst subject to the State Board of Education's approval. On August 10, 2023, the State Board of Education approved adopting 14 **DE Admin. Code** 1585 School Behavior Analyst. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, 14 **DE Admin. Code** 1585 School Behavior Analyst, attached hereto as Exhibit A, is hereby adopted.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1585 School Behavior Analyst adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1585 School Behavior Analyst in the *Administrative Code of Regulations* for the Department.

V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten days from the date this Order is published in the *Register of Regulations*.

IT IS SO ORDERED the 10th day of August, 2023.

Department of Education

Mark A. Holodick, Ed.D., Secretary of Education

Approved this 10th day of August, 2023.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Rev. Provey Powell, Jr.

/s/ Deborah Stevens, Vice President

/s/ Wali W. Rusdan, II

/s/ Candice Fifer

***Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

1585 School Behavior Analyst

1.0 Content

This regulation shall apply to the issuance of a School Behavior Analyst Standard Certificate pursuant to 14 **Del.C.** §1220(a). The School Behavior Analyst Standard Certificate is required for all behavior analysts who provide behavior analytic services in Delaware public schools. The School Behavior Analyst Standard Certificate is not required for educators who provide behavior analytic services in the course of their work and are licensed and certified to practice in other areas such as, but not limited to, teachers or school psychologists. Applied Behavior Analysis Technicians (ABATs), Board Certified Assistant Behavior Analyst (BCaBA), Qualified Autism Service Practitioner - Supervisors (QASP-Ss), and Registered Behavior Technicians (RBTs) are not eligible to hold the School Behavior Analyst Standard Certificate.

2.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning:

"Department" means the Delaware Department of Education.

"Educator" means a person licensed and certified by the State under 14 **Del.C.** Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.

"Employing Authority" means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.

"Immorality" means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of the educator's unfitness or otherwise.

"License" means a credential which authorizes the holder to engage in the practice for which the license is issued.

"Regionally Accredited" means educational accreditation by a regional accrediting agency that is recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of education offered by the institutions of higher education it accredits, including Middle States Commission on Higher Education.

"Standard Certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.

"Standards Board" means the Professional Standards Board established pursuant to 14 **Del.C.** §1201.

"Valid and Current License or Certificate" means a current full or permanent certificate or license as an educator issued by another state or jurisdiction. This means the applicant is fully credentialed by having met all of the requirements for full licensure or certification as an educator in another state or jurisdiction and is in good standing in that state or jurisdiction. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state or jurisdiction.

3.0 Issuance of a Standard Certificate

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a School Behavior Analyst Standard Certificate to an applicant who:
 - 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003 and meets the requirements set forth in Section 4.0 of this regulation;
 - 3.1.2 Has met the requirements for an educator's license in Delaware and presents proof of a Valid and Current License or Certificate as a school behavior analyst issued by another state or jurisdiction.
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a School Behavior Analyst Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation's resolution.

4.0 Prescribed Education, Knowledge, and Skill Requirements

- 4.1 An applicant for a School Behavior Analyst Standard Certificate shall have satisfied the requirement in subsection 4.1.1.
 - 4.1.1 The applicant shall hold 1 of the certifications in subsections 4.1.1.1 through 4.1.1.2.
 - 4.1.1.1 The applicant holds a Board Certified Behavior Analyst (BCBA) certification issued by the Behavior Analyst Certification Board.
 - 4.1.1.2 The applicant holds a Qualified Behavior Analyst (QBA) issued by the Qualified Applied Behavior Analysis Credentialing Board.

5.0 Application Requirements

- 5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for the Initial License, and the applicant shall also provide all required documentation for the License.
- 5.2 If the applicant is also applying for the issuance or renewal of an educator's license or paraeducator's permit, the applicant must disclose the applicant's criminal conviction history upon application. Failure to disclose a criminal conviction history is grounds for denial of the license or permit application as specified in 14 **Del.C.** §1219 and it could delay the processing or result in the denial of the application for a School Behavior Analyst Standard Certificate.
- 5.3 For applicants who are applying for the School Behavior Analyst Standard Certificate under subsection 3.1.1, the following documentation is required:
 - 5.3.1 Proof the applicant holds 1 of the certificates listed in subsection 4.1.1; and
 - 5.3.2 Additional documentation as required by the Department.
- 5.4 For applicants who are applying for the School Behavior Analyst Standard Certificate under subsection 3.1.2, the following documentation is required:
 - 5.4.1 An official copy of the Valid and Current License or Certificate; and
 - 5.4.2 Additional documentation as required by the Department.

6.0 Secretary of Education Review

- 6.1 The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a School Behavior Analyst Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a School Behavior Analyst Standard Certificate but whose effectiveness is documented by the local school district or charter school.
 - 6.1.1 For school districts, requests shall be approved by the superintendent of the school district.

- 6.1.2 For charter schools, requests concerning the head of school of the charter school shall be approved by the charter school's board of directors and requests concerning all other applicants shall be approved by the charter school's head of school.

7.0 Validity of a Standard Certificate

- 7.1 A School Behavior Analyst Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 7.2 A School Behavior Analyst Standard Certificate is not subject to renewal.

8.0 Requirements Related to Retention of the School Behavior Analyst Standard Certificate

- 8.1 In order to retain a School Behavior Analyst Standard Certificate, the Educator shall:
- 8.1.1 Hold an Initial, Continuing, or Advanced License and meet any requirements related to retention of the license.
- 8.1.2 Maintain the Educator's certification issued by the Behavior Analyst Certification Board or the Qualified Applied Behavior Analysis Credentialing Board.
- 8.2 If an Educator fails to meet any of the requirements related to retaining a School Behavior Analyst Standard Certificate, the Educator shall immediately notify the Department in writing.
- 8.3 The requirements set forth in subsection 8.1 apply to all Educators regardless of the date the School Behavior Analyst Standard Certificate was issued.

9.0 Disciplinary Action

- 9.1 An Educator's School Behavior Analyst Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 **DE Admin. Code** 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits or for the Educator's failure to comply with the requirements related to the retention of the School Behavior Analyst Standard Certificate as provided in Section 8.0.
- 9.2 An Educator's School Behavior Analyst Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 **Del.C.** §1222.
- 9.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.

10.0 Contact Information and Change of Name or Address

- 10.1 All applicants and Educators are required to update their contact information in DEEDS if their contact information changes.
- 10.2 An Educator who legally changes the Educator's name and wishes to change the name on the School Behavior Analyst Standard Certificate shall provide a notarized copy of evidence of the name change such as a marriage license or court action.
- 10.3 An applicant or Educator whose mailing address, email address, or phone number changes shall provide the Department with the new mailing address, email address, or phone number within 14 calendar days of the change.