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UPDATE

BOARD OF EXAMINERS OF SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

AUDIT OVERVIEW

The West Virginia Department of Education Has Made Adequate Improvements to Its Continuing Education Requirements for Speech Professionals

The Legislature Should Consider Amending Code to Clearly Identify DOE Certified Speech Professionals as Being Exempt From Board Licensure to Eliminate Any Confusion of Its Legislative Intent



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EXECUTIVE SUMMARY

In accordance with *West Virginia Code §30-32-23*, the Performance Evaluation and Research Division is required to update the Sunrise Report of January 2013 regarding the requirements of speech-language pathologists, audiologists and assistants to practice in public schools. It is also required that the update be presented to the Joint Committee on Government Organization with recommendations.

Report Highlights

Issue 1: The West Virginia Department of Education Has Made Adequate Improvements to Its Continuing Education Requirements for Speech Professionals.

- The DOE is in full compliance with all of the recommendations from the 2013 Sunrise report.
- The DOE has taken appropriate steps to improve its continuing education requirements of DOE employed speech professionals as recommended
- As a result of the improved continuing education requirements, each DOE certified speech professional will now be required to obtain 24 hours of continuing education within the field of study every 2 years.

Issue 2: House Bill 2531 Does Not Require DOE Certified Speech Professionals to Be Licensed By the Board of Examiners for Speech-Language Pathology and Audiology.

- The Legislative Services Division (Legislative Services) within the Office of the Legislative Manager stated through a legal opinion that House Bill 2531 suggests that speech professionals employed by the DOE are exempt from board licensure.
- The Legislative Services stated within the legal opinion that while House Bill 2531 suggests legislative intent for the exemption of DOE speech professionals to board licensure, it may be beneficial for the Legislature to clarify the issue. Therefore, to avoid any misinterpretation of language, the Legislature should consider amending *West Virginia Code §30-32-2(1)* to expressly identify speech-language pathologists, audiologists and assistants as being exempt from board licensure.

PERD's Evaluation of the Agency's Written Response

The Office of the Legislative Auditor's Performance Evaluation and Research Division received a written response from the West Virginia Board of Examiners for Speech-Language Pathology and Audiology on August 14, 2014. The agency response can be seen in Appendix F.

The Applicant contends that although the DOE has taken actions to correct its shortcoming regarding continuing education requirements of speech professionals, it has not corrected the deficiency within two years. PERD's recommendation was provided to the Joint Committee on Government Organization, and the Joint Committee on Government Operations during the January 2013 Interim. On August 13, 2014 the DOE approved the changes to Policy 2419. Therefore, the DOE has made official changes to improve its continuing education requirements one year and seven months after PERD's January 2013 Sunrise Report.

The Applicant still disagrees with PERD's recommendation that speech professionals employed by the DOE should remain exempt from being licensed by the Board. In addition, the Applicant states that it appears inconsistent for PERD to recommend DOE speech professionals be exempt from board licensure while recommending that the DOE telepractice be regulated by the Board. PERD contends that the recommendations are not inconsistent because they are based on what is the most expedient. While PERD saw merit of universal licensure as argued in the Sunrise application, PERD determined that the least disruptive solution to the issue was to have the DOE improve the continuing education requirements of DOE certified speech professionals. However, with respect to telepractice, PERD again sees the merit of universal licensure by the Board in this case because it would not be disruptive since it is relatively new and it would apply to only one DOE-certified speech professional. Therefore, the simplest solution to the issue of telepractice was to recommend that the Legislature consider board licensure for anyone conducting telepractice within the state.

The Applicant does not agree with the update of recommendation 5 because the current language allows for applicants to obtain an audiology license within the state and transfer that license via reciprocity to another state. PERD obtained a legal opinion from Legislative Services regarding the Board's Sunrise application requiring a doctoral level degree for incoming audiologists. The legal opinion indicated that the proposed language did not provide a clear grandfather clause that would allow current audiologists who hold a master degree in audiology to continue to practice as audiologists. Therefore, PERD utilized the least disruptive and simplest solution in making recommendation 5 from the 2013 Sunrise Review. Also, the Applicant's reference to its concern that individuals would utilize West Virginia as a "*license mill*" and use reciprocity is misinformed. In general, the state will only allow reciprocity when the individual presents proof of current licensure in another state with equivalent standards.

The Applicant does not agree with the update of recommendation 6 and the DOE's policy of not supervising individuals who are enrolled in a graduate school program. With respect to the Applicant, PERD was provided with additional information from the DOE after the initial draft was submitted, that should answer the questions regarding the speech assistant supervision of those enrolled in the graduate program. The DOE reported that once individuals enroll in a master level program and submit the appropriate DOE required paperwork, they are provided a First Class/Full Time Permit. Individuals who are provided a First Class Permit are not required to be supervised. However, the University of Cincinnati's master's program provides at least two hours of supervision per week per student. This supervision is conducted by the same staff that would have supervised them if they were not enrolled in the graduate program. The DOE also hired two

retired speech-language pathologists to assist in the supervision of students enrolled in the graduate program.

Recommendations

1. *The Legislative Auditor recommends that speech professionals employed by the DOE continue to be certified and regulated by the DOE.*
2. *The Legislative Auditor recommends that the Legislature should consider modifying the statutory language within West Virginia Code §30-32-2(1) to expressly identify speech-language pathologists, audiologists and assistants as being exempt from licensure by the Board of Examiners for Speech-Language Pathology and Audiology when working as a public school employee.*

ISSUE 1

Updated of 2013 Sunrise Report

The West Virginia Department of Education Has Made Adequate Improvements to Its Continuing Education Requirements for Speech Professionals.

Recommendation 1 (2013)

The Legislative Auditor recommends to the Legislature that the West Virginia Department of Education be given two years to improve the continuing education requirements for certified speech professionals employed through DOE.

Level of Compliance: In Compliance

During calendar year 2012, the Board of Examiners of Speech-Language Pathology and Audiology (Board) submitted a Sunrise application in accordance with *West Virginia Code §30-1A*. The application proposed legislation that would impose license requirements on “*All Speech-Language Pathologists and Audiologists in all practice settings, including anyone employed or contracted to the WV Board of Education, a county board of education or a Regional Education Service Agency.*” Currently and at the time of the January 2013 report, the Board’s enabling statute does not require speech-language pathologists and audiologists or assistants who are employed by the West Virginia Department of Education (DOE) to be licensed by the Board (WVC §30-32-5).

The Performance Evaluation and Research Division (PERD) noted that both the Board and the DOE have similar requirements except in regards to continuing education. The Board requires 20 hours of continuing education every two years within the professional’s field of study, while the DOE requires 18 hours annually. However, under the DOE’s continuing education requirements, it is possible that all 18 hours can be in areas unrelated to the professional’s field of study. Therefore, PERD reported in the January 2013 Sunrise review that the current continuing education requirements for speech professionals employed through the DOE were deficient. PERD recommended that the DOE be given two years to improve its continuing education of the speech professionals employed.

PERD reported in the January 2013 Sunrise review that the current continuing education requirements for speech professionals employed through the DOE were deficient. PERD recommended that the DOE be given two years to improve its continuing education of the speech professionals employed.

PERD and DOE representatives met on May 1, 2014 to discuss if any improvements to the continuing education requirements for speech professionals had been made. The DOE provided PERD with its proposed change to Policy 2419 of *West Virginia CSR §126-16-9(3.A.1)* which would require all West Virginia education personnel to complete 18 hours of professional development annually and for speech professionals to complete 12 of the 18 hours in settings which directly relate to their professional growth and development. Each district is accountable for documenting the speech professional's participation and the districts are to submit the documentation to the DOE for review.

On May 19, 20th, and 22nd, 2014 public hearings were held in Beckley, South Charleston, and Morgantown to address the proposed policy change regarding speech language professionals' continuing education requirements. The public could provide written comments to the DOE until July 14, 2014. The DOE met for final review of the proposed policy change on August 13, 2014. The DOE is exempt from legislative approval through the rule-making process. Therefore, the DOE voted to pass the policy change. The proposed policy change will become effective for the 2014-15 school-year. Therefore, PERD concludes that the DOE is in compliance with recommendation 1.

The DOE provided PERD with its proposed change to Policy 2419 of West Virginia CSR §126-16-9(3.A.1) which would require all West Virginia education personnel to complete 18 hours of professional development annually and for speech professionals to complete 12 of the 18 hours in settings which directly relate to their professional growth and development.

Recommendation 2 (2013)

The Legislative Auditor recommends that this report be updated at the appropriate time to determine if the DOE has complied appropriately with the recommendations of this report.

The DOE voted to pass the policy change. The proposed policy change will become effective for the 2015-16 school-year.

Level of Compliance: In Compliance

House Bill 2531 which passed on April 13, 2013 required the Legislative Auditor to present a report to the Joint Standing Committee on Government Organization on the requirements for Speech-Language Pathologists Audiologists and Assistants practicing in public schools on or before December 1, 2014. PERD has complied with this recommendation by updating the Sunrise report prior to December 1, 2014.

Recommendation 3 (2013)

If the DOE chooses not to make adequate improvements to its continuing education requirements for speech professionals, then the Legislative Auditor recommends that the Legislature consider amending

West Virginia Code §30-32 to require speech-language pathologists within DOE be licensed by the Board.

Level of Compliance: In Compliance

Due to the DOE making the necessary improvements to its continuing education requirements for speech professionals, it is in compliance to recommendation 3 of the January 2013 PERD report. Therefore, there is no need for the Legislature to consider amending *West Virginia Code* to require speech-language pathologists within the DOE to be licensed by the Board.

There is no need for the Legislature to consider amending West Virginia Code to require speech-language pathologists within the DOE to be licensed by the Board.

Recommendation 4 (2013)

The Legislature should consider amending West Virginia Code §30-32-14 to include the proposed language within the Sunrise application that requires board licensure for speech-language pathologists and audiologists who provide services within this state by Telepractice.

Level of Compliance: In Compliance

The American Speech and Hearing Association (ASHA) defines telepractice as “*The application of telecommunications technology to delivery of professional services at a distance by linking clinician to client, or clinician to clinician, for assessment, intervention, and/or consultation.*” During the 2012-2013 school year according to the DOE there was one individual who conducted telepractice within the school system. While any individual who works as an educator within the school system must be DOE certified, the DOE has no rules or regulations regarding telepractice. Therefore, to further protect the public, PERD recommended the Legislature consider amending state code to require Board licensure for those who provide telepractice services within the state.

House Bill 2531, which became effect from passage on April 13, 2013, includes the amended *West Virginia Code §30-32-16*, which states, “*Licensed speech-language pathologists and audiologists may provide services in this state by Telepractice.*” The Legislature made changes as PERD recommended.

Recommendation 5 (2013)

The Legislature should consider maintaining current statutory language contained in West Virginia Code §30-32-12 as a means to requiring applicants seeking an audiologist license to possess a doctorate degree, and to provide for those who currently hold only a master degree in audiology to be licensed as audiologists.

Level of Compliance: In Compliance

The Sunrise application submitted by the Board proposed a doctorate degree requirement for future audiology licensees. The Board reported that the proposed change within the Sunrise application was needed because master degree programs in audiology were no longer offered. After review of various colleges and national certification agencies, PERD confirmed this to be true. However, the proposed legislation within the Sunrise application did not provide a clear grandfather clause that allowed current audiologists who only hold a Master degree in audiology to continue practicing as licensed audiologists.

The licensure requirement for audiologists at the time of the January 2013 report was at least a Master degree in audiology. PERD concluded that the statutory language was adequate and if an individual has a doctorate or master degree in audiology they both would fit into this category. Therefore, PERD recommended the Legislature consider maintaining the current statutory language. House Bill 2531 maintained the qualification language in *West Virginia Code §30-32-10(3)*, which states that to be eligible for licensure by the Board the audiologist must “Possess at least a master’s degree or equivalent in audiology from an educational institution approved by the board which consists of coursework approved by the board and delineated in the rules.” The Legislature did not make changes as PERD recommended.

The proposed legislation within the Sunrise application did not provide a clear grandfather clause that allowed current audiologists who only hold a Master degree in audiology to continue practicing as licensed audiologists... Therefore, PERD recommended the Legislature consider maintaining the current statutory language.

Recommendation 6 (2013)

If the DOE must continue to use speech assistants in place of speech-language pathologists, then it should continue to follow its guidelines with respect to proper supervision.

Level of Compliance: In Compliance.

According to the results of a 2011 DOE survey sent to all West Virginia County Special Education Directors, there is a shortage of

speech-language pathologists working in West Virginia schools. Due to this shortage, if county directors do not have certified speech-language pathologists to fill open positions, they can use alternative qualified personnel such as speech assistants, contracted agencies or even retired speech-language pathologists. During the 2011-2012 school-year there were 16 counties that were forced to use speech assistants and retired speech-language pathologists, and 24 counties that used contracted speech-language pathologists. While theoretically the DOE would prefer not to use a speech assistant in the role of a speech pathologist, at times it is an unavoidable option. According to DOE guidelines, a supervising speech-language pathologist is to provide direct on-site supervision for a minimum of 20 percent weekly during the assistant's first 90 workdays. After the 90-day work period, the amount of supervision may be adjusted, but the minimum recommended is no less than 10 percent of direct supervision weekly. PERD recommended within the last report that if the DOE must continue to use speech assistants in place of speech-language pathologist, then it should follow its guidelines with respect to proper supervision.

Speech assistants must hold a minimum of a bachelor's degree in speech pathology or communication disorders from an accredited institution. Speech assistants may conduct speech-language screenings, schedule activities, prepare charts, perform checks and maintenance of equipment and assist the speech-language pathologists during the assessment of students. During the 2013-2014 school-year, the DOE employed 29 speech assistants. Twenty (20) of the 29 speech assistants employed by the DOE are taking online speech-language pathology graduate classes through the University of Cincinnati. According to DOE policies, once an individual is enrolled in the University of Cincinnati's master level program, he or she does not need to be supervised by the DOE. However, the University of Cincinnati's masters program provides two hours of supervision per week per student. PERD reviewed the supervision reports of the nine individuals who are not in the graduate school program, in order to confirm if they were supervised according to DOE guidelines. All nine have exceeded the minimum percentage of work supervision. Therefore, the DOE is in compliance with this recommendation.

Conclusion

The DOE is in full compliance with all of the recommendations from the 2013 Sunrise report. The Legislature has also implemented the 2013 recommendations. As a result of the improved continuing education requirements, DOE certified speech professionals will now be required

Twenty (20) of the 29 speech assistants employed by the DOE are taking online speech-language pathology graduate classes through the University of Cincinnati.

According to DOE policies, once an individual is enrolled in the University of Cincinnati's master level program, he or she does not need to be supervised by the DOE. However, the University of Cincinnati's masters program provides two hours of supervision per week per student.

to obtain 24 hours of continuing education within their field of study every two years. By comparison, for biennial recertification, the Board requires licensees to complete 20 hours of continuing education within their field of study. Therefore, due to the DOE making recommended improvements to its continuing education requirements, the Legislative Auditor recommends that speech professionals employed by the DOE continue to be certified and regulated by the DOE.

Recommendation

1. *The Legislative Auditor recommends that speech professionals employed by the DOE continue to be certified and regulated by the DOE.*

PERD reviewed the supervision reports of the nine individuals who are not in the graduate school program, in order to confirm if they were supervised according to DOE guidelines. All nine have exceeded the minimum percentage of work supervision.

As a result of the improved continuing education requirements, DOE certified speech professionals will now be required to obtain 24 hours of continuing education within their field of study every two years.

ISSUE 2

The Legislature Should Consider Amending Code to Clearly Identify DOE Certified Speech Professionals as Being Exempt From Board Licensure to Eliminate Any Confusion of Its Legislative Intent.

Issue Summary

During the 2013 legislative session, the Legislature passed House Bill 2531, which became effective on April 13, 2013. This bill removed language that clearly exempted public school speech-language pathologists, audiologists and assistants from being required to be licensed by the Board of Examiners of Speech-Language Pathology and Audiology but replaced it with general exemption language that is not as clear as the original language. Consequently, there is a difference in interpretation of the new language between the Board and the DOE. The Board interprets the new language as requiring DOE speech pathologists and audiologists to be licensed by the Board, while the DOE interprets the language as maintaining the exemption of DOE staff from being licensed by the Board. A legal opinion drafted by Legislative Services concludes that while the new language in *West Virginia Code §30-32-2(1)* is vague, it still exempts public school speech professionals from board licensure. Therefore, in order to eliminate any misunderstanding, the Legislative Auditor recommends the Legislature consider amending *West Virginia §30-32-2(1)* to expressly identify speech-language pathologists, audiologists and assistants as being exempt from board licensure when working as a public school employee.

During the 2013 legislative session, the Legislature passed House Bill 2531, which became effective on April 13, 2013. This bill removed language that clearly exempted public school speech-language pathologists, audiologists and assistants from being required to be licensed by the Board of Examiners of Speech-Language Pathology and Audiology but replaced it with general exemption language that is not as clear as the original language.

The New Statutory Language of West Virginia Code §30-32-2(1) Has Caused a Difference of Interpretation Between the DOE and the Board.

Prior to the Enrolled Committee Substitute for House Bill 2531, the statutory language making DOE certified speech professionals exempt from board licensure was evident within *West Virginia Code §30-32-5(d)*, which stated, “*Nothing in this article shall be constructed as preventing or restricting a person employed or contracted with the West Virginia Board of Education, a county board of education, or a Regional Education Service Agency.*” As of April 13, 2013, the day House Bill 2531 was passed, The Enrolled Committee Substitute for House Bill 2531 removed the language which exempted DOE speech professionals and replaced it with *West Virginia Code §30-32-2(1)* which states “*Nothing in this article*

prevents or restricts (1) Any person licensed or registered under any other law of this state from practicing the profession and performing services for which he or she is licensed or registered.”

The removal of the exemption language for individuals employed by the DOE may have led to a November 18, 2013 memo (see Appendix C) from the Board to West Virginia county school superintendents and special education directors which reported that the exception for “a person employed or contracted within the West Virginia Board of Education, a county board of education or a Regional Education Service Agency was removed from Code.” The memo requested the county superintendents submit to the Board, no later than December 15, 2013, a list of all speech-language pathologists and audiologists, employed by or contracted by the county. According to the memo, “All Speech-Language Pathologists and Audiologists providing services in the public school setting and who meet the license qualifications must be licensed by December 31, 2013.” The memo was brought to the attention of the West Virginia Board of Education’s General Counsel, who in turn, drafted a return letter (see Appendix D) on November 26, 2013 to the President of the Board. The DOE’s General Counsel acknowledged that the Board’s memo sent to county superintendents had been brought to the DOE’s attention and stated “This causes me great concern in that I do not believe that there is statutory support for your conclusion.” The DOE General Counsel then requested that the Board retract the memo immediately. Since November 26, 2013, the Board discontinued its appeal to county superintendents for a list of all speech-language pathologists and audiologists.

Clarification Is Needed for the Statutory Language of West Virginia Code §30-32-2(1)

On May 29, 2014, Legislative Services responded to a legal opinion request by PERD which requested, based on the new statutory language, whether speech professionals were still exempt from board licensure. The legal opinion (see Appendix E) from Legislative Services reported the amendments to House Bill 2531 convey “...legislative intent to exclude public school speech-language pathologists, audiologists and assistants from the requirements of §30-32-1et seq.” Also, Legislative Services stated West Virginia Code §30-32-2(1) is sufficiently broad enough “. . . to provide an exception for speech-language pathologists, audiologists and assistants who are licensed by the Board of Education/ State Superintendent of Schools. . . .”

The removal of the exemption language for individuals employed by the DOE may have led to a November 18, 2013 memo (see Appendix C) from the Board to West Virginia county school superintendents and special education directors which reported that the exception for “a person employed or contracted within the West Virginia Board of Education, a county board of education or a Regional Education Service Agency was removed from Code.”

The legal opinion from Legislative Services reported the amendments to House Bill 2531 convey “...legislative intent to exclude public school speech-language pathologists, audiologists and assistants from the requirements of §30-32-1et seq.” Also, Legislative Services stated West Virginia Code §30-32-2(1) is sufficiently broad enough “. . . to provide an exception for speech-language pathologists, audiologists and assistants who are licensed by the Board of Education/ State Superintendent of Schools. . . .”

While the intent of *West Virginia Code §30-32-2(1)* may be to exclude the speech professionals from Board licensure, it does not clearly identify speech-language pathologists, audiologists and assistants as being exempt from Board licensure thus leading to a legal disagreement between the DOE and the Board. **Therefore, the Legislative Auditor recommends that the Legislature consider amending *West Virginia Code §30-32-2(1)* to expressly identify speech-language pathologists, audiologists and assistants as being exempt from licensure by the Board of Examiners for Speech-Language Pathology and Audiology when working as a public school employee.**

Conclusion

Statutory language within House Bill 2531, which passed in 2013, that amended *West Virginia Code §30-32-2(1)* has lead to confusion between DOE and the Board as to whether the speech professionals employed by the DOE are exempt from the Board's licensure. A legal opinion from Legislative Services reported that the language within *West Virginia Code §30-32-2(1)* is sufficient to allow for an exemption of board licensure for those speech professionals employed by the DOE. However, to avoid any misinterpretation, the Legislature should consider amending language within *West Virginia Code §30-32-2(1)* to expressly exempt speech professionals from the licensing requirements of the board when working as a public school employee.

To avoid any misinterpretation, the Legislature should consider amending language within West Virginia Code §30-32-2(1) to expressly exempt speech professionals from the licensing requirements of the board when working as a public school employee.

Recommendation

- The Legislative Auditor recommends that the Legislature should consider modifying the statutory language within West Virginia Code §30-32-2(1) to expressly identify speech-language pathologists, audiologists and assistants as being exempt from licensure by the Board of Examiners for Speech-Language Pathology and Audiology when working as a public school employee.*

Appendix A Transmittal Letters

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

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1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



John Sylvia
Director

August 11, 2014

Chuck Heinlein, Superintendent of Schools
West Virginia Department of Education
1900 Kanawha Blvd., East, Building 6, Room 360
Charleston, WV 25305

Dear Mr. Heinlein:

This is to transmit a draft copy of the Update of the January 2013 Sunrise Report. This report is scheduled to be presented during the August 27, 2014 interim meeting of the Joint Committee on Government Operations, and the Joint Committee on Government Organization. The meeting is to take place at the Bridgeport Conference Center, 300 Conference Center Way, Bridgeport, West Virginia, Ballroom A, from 12:00-1:00 pm. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committees may have.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us between August 12 and August 13, 2014. We need your written response by noon on Friday, August 15, 2014, in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, August 21, 2014 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,


Brian Armentrout
Research Manager

Joint Committee on Government and Finance

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

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John Sylvia
Director

August 11, 2014

Patty Nesbitt, Administrative Services Manager
West Virginia Board of Examiners of Speech-Language Pathology and Audiology
99 Edmiston Way
Box 11, Suite 214
Buckhannon, WV 26201

Dear Mrs. Nesbitt:

This is to transmit a draft copy of the Update of the January 2013 Sunrise Report. This report is scheduled to be presented during the August 27, 2014 interim meeting of the Joint Committee on Government Operations, and the Joint Committee on Government Organization. The meeting is to take place at the Bridgeport Conference Center, 300 Conference Center Way, Bridgeport, West Virginia, Ballroom A, from 12:00-1:00 pm. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committees may have.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us between August 12 and August 13, 2014. We need your written response by noon on Friday, August 15, 2014, in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, August 21, 2014 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

A handwritten signature in blue ink that reads "Brian Armentrout".

Brian Armentrout
Research Manager

Joint Committee on Government and Finance

Appendix B

Objectives, Scope and Methodology

The Performance Evaluation and Research Division (PERD) within the Office of the Legislative Auditor is required to update the 2013 Sunrise Report as requested and authorized by *West Virginia Code §30-32-23* on the requirements of speech-language pathologists, audiologists and assistants to practice in public schools. It is also required that the update be presented to the Joint Committee on Government Organization with recommendations.

Objectives

The objectives of this update are to evaluate the requirements of speech-language pathologists, audiologists and assistants to practice in public schools, and to document the levels of compliance of the West Virginia Department of Education (DOE) to the recommendations to the January 2013 Sunrise Report.

Scope

The scope of this review consisted of a review of the compliance levels to the six recommendations from the January 2013 Sunrise Report and evaluate the requirements of speech-language pathologists, audiologists and assistants to practice in public schools as a result of statutory changes made by HB 2531 during the 2013 regular session.

Methodology

PERD gathered and analyzed several sources of information and conducted audit procedures to assess the sufficiency and appropriateness of the information used as audit evidence. The information gathered and audit procedures are described below.

Testimonial evidence was gathered through interviews with the DOE's staff to gain an understanding of the changes made in its continuing education. The testimonial evidence was confirmed by written statements and in some cases by corroborating evidence. PERD and the DOE representatives met on May 1, 2014 to discuss the improvements made to the continuing education requirements for DOE certified speech professionals. The DOE provided PERD with sufficient documentary evidence in the form of the proposed change to Policy 2419 of *West Virginia CSR §126-16-9(3.A.1)*. The policy change presented to PERD would require all West Virginia education personnel to complete 18 hours of professional development annually and for speech professionals to complete 12 of the 18 hours in settings which directly relate to their professional growth and development. The West Virginia Board of Education passed the policy change on August 13, 2014. PERD verified this by review of the Board of Education's meeting minutes. PERD also utilized DOE verification reports as documentary evidence of speech assistants who were supervised during the 2013-2014 school year. Verification reports were sufficiently reviewed in order to verify if speech assistants were being supervised a minimum of 20 percent weekly during their first 90 days and at least 10 percent after.

A legal opinion from West Virginia Legislative Services regarding its interpretation of the amendments to House Bill 2531 was requested by PERD. In accordance with *West Virginia Code §30-32-23*, the legal opinion was requested in order to address the requirements of speech-language pathologists, audiologists

and assistants to practice in public schools. The legal opinion served to confirm that while the new language in *West Virginia Code §30-32-2(1)* is vague, it still exempts public school speech professionals from board licensure. After review of the information from Legislative Services, PERD determined the evidence was sufficient and appropriate.

In order to determine the level of compliance of the DOE to the recommendations from the January 2013 Sunrise Report, PERD used the following table:

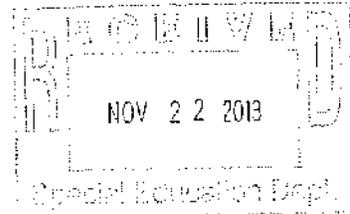
Levels of Compliance	
In Compliance	The agency has corrected the problems identified in the previous audit report.
Partial Compliance	The agency has partially corrected the problems identified in the previous audit report.
Planned Compliance	The agency has not corrected the problem, but it has provided sufficient and appropriate evidence that it is in the planning stages of resolving the problem.
In Dispute	The agency does not agree with either the problem identified or the proposed solution.
Non-Compliance	The agency has not corrected the problem identified in the previous audit report.
Requires Legislative Action	The recommendation was directed to the Legislature for statutory amendment.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix C Licensure Requirement

West Virginia Board of Examiners for Speech-Language Pathology and Audiology

Board Members
Michael J. Zagarella, Au.D., CCC-A, President
Vickie Pullins, M.A., CCC-SLP, Secretary
Vernon N. Mullins, Au.D., CCC-A
Erin Browning Ball, M.A., CCC-SLP
Joe E. Richards, M.A., Citizen Member



November 18, 2013

TO: COUNTY SUPERINTENDENTS & SPECIAL EDUCATION DIRECTORS
FROM: WV BOARD OF SPEECH-LANGUAGE PATHOLOGY & AUDIOLOGY
RE: LICENSURE REQUIREMENT

The WV Code 30-32, WV Board of Speech-Language Pathology and Audiology, was amended and reenacted during the 2013 Regular Session of the WV Legislature. The exemption for “a person employed or contracted with the West Virginia Board of Education, a county board of education or a Regional Education Service Agency” was removed from Code.

All Speech-Language Pathologists and Audiologists providing services in the public school setting and who meet the license qualifications must be licensed by December 31, 2013. The qualifications for licensure are:

- Possess at least a master’s degree or equivalent in the professional field for which they seek licensure
- Pass the national examination (Praxis) in the professional field for which they seek licensure

The Board shall waive the national examination requirements for an applicant who either:

- Presents proof of current licensure in a state that has standards that are substantially equivalent to those of this state; OR
- Holds a certificate of clinical competence (CCC) in speech-language pathology or audiology from the American Speech and Hearing Assn.

The fee(s) are as follows:

- Application fee (waived)
- Initial License Fee - \$100 (License valid through December 31, 2014)

A copy of the Application for Licensure is enclosed for distribution. The application can also be downloaded from our website at www.wvspeechandaudiology.com under the “Forms” link.

99 Edmiston Way, Box 11 – Suite 214, Buckhannon, WV 26201

Email: wvheslpa@wv.gov

Web Site: www.wvspeechandaudiology.org

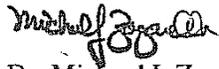
Phone: 304-473-4289 Fax: 304-473-4291 In-state toll free number: 877-462-5460

~Patricia Nesbit – Administrative Services Manager~

Please submit to our office, no later than December 15th, a list of all Speech-Language Pathologists and Audiologists, employed by or contracted to your county, who are providing services in the public school system. The list may be submitted to wvbeslpa@wv.gov via email, to #304-473-4291 via fax or by mail to:

WV Board of Examiners for Speech-Language Pathology & Audiology
99 Edmiston Way
Box 11 – Suite 214
Buckhannon, WV 26201

Sincerely,



Dr. Michael J. Zagarella
Board President

Enclosure

99 Edmiston Way, Box 11 – Suite 214, Buckhannon, WV 26201

Email: wvbeslpa@wv.gov

Web Site: www.wvspeechandaudiology.com

Phone: 304-473-4289 Fax: 304-473-4291 In-state toll free number: 877-462-5460

~Patricia Nesbitt – Administrative Services Manager~

Appendix D

Letter to Dr. Michael J. Zagarella From WV Department of Education



*James B. Phares, Ed.D., State Superintendent of Schools
1906 Kanawha Boulevard East, Building 6
Charleston, WV 25305*

<http://wvde.state.wv.us>

November 26, 2013

Dr. Michael J. Zagarella, Au.D CCC-A
President, West Virginia Board of Examiners for
Speech-Language Pathology & Audiology
99 Edmiston Way
Box 11, Suite 214
Buckhannon, WV 26201

Dear Dr. Zagarella:

It has come to my attention that the West Virginia Board of Examiners for Speech-Language Pathology and Audiology has sent a memo to all county superintendents of schools and special education directors in West Virginia, dated November 18, 2013. The memo advises that individuals employed as speech-language pathologists working for public schools and/or Regional Education Service Agencies are now required to be licensed by your Board in addition to being licensed by the State Superintendent of Schools. This causes me great concern in that I do not believe that there is statutory support for your conclusion.

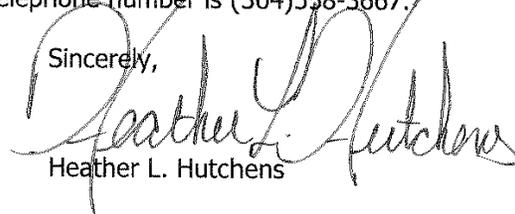
While it is true that the exemption for "a person employed or contracted with the West Virginia Board of Education, a county board of education or a Regional Education Service Agency" was removed from W. Va. Code §30-32-2, other changes were incorporated into Article 32 that support our position. First, language in the introduced version of HB 2531(2013) which would have required a person employed or contracted with the West Virginia Board of Education, a county board of education or a Regional Education Service Agency to be licensed by your Board was removed from the bill before its passage upon the recommendation of the Legislative Auditor. Current language in §30-32-2 clarifies that nothing in Article 32 prevents or restricts "Any person licensed or registered under any other law of this state from practicing the profession and performing services for which he or she is licensed or registered." This would encompass speech-language pathologists licensed by the State Superintendent of Schools. Second, the Legislative Auditor's recommendations were included in the final version of HB 2531(2013) at §30-32-23, which states that "On or before December 1, 2014, the Legislative Auditor shall update the Sunrise Report of January 2013 on the requirements for speech-language pathologists, audiologists and assistant to practice in public schools, and present the report to the Joint Standing committee on Government Organization, with recommendations." If the requirement for speech-language pathologists in public schools had been changed during the 2013 Legislative session, there would be no need for an update to the Sunrise Report in 2014. Finally, your Board attempted to pass an emergency legislative rule requiring speech-language pathologists working in public schools to be licensed by your Board, however, the Secretary of State rejected the rule because the rule exceeded your Board's statutory authority.



Dr. Michael J. Zagarella, Au.D CCC-A
November 26, 2013
Page 2

As I've outlined, I see no basis for your memo of November 18, 2013 and ask that you retract it immediately. I would be happy to work with counsel for your Board in determining how this situation may be addressed in the December 2014 update to the Sunrise Report. Please do not hesitate to contact me if you wish to discuss this issue further. My email address is hdeskins@access.k12.wv.us and my telephone number is (304)558-3667.

Sincerely,



Heather L. Hutchens

HLH/mp

Appendix E

WV Legislative Legal Opinion

WEST VIRGINIA LEGISLATURE

Legislative Services Division

Building 1, Room E-140
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610
(304) 347-4800
(304) 347-4819 FAX



John R. Homburg
Director

TO: Brian Armentrout, PERD

FROM: George Freeman, Attorney, Legislative Services

DATE: May 29, 2014

RE: Speech-language pathologists and audiologists practicing in public schools

This in response to your request for an opinion as to whether speech-language pathologists, audiologists and assistants are exempt from the provisions of W. Va. Code §30-32-1 et seq. under §30-32-2 (1), which reads as follows:

"Nothing in this article prevents or restricts:

(1) Any person licensed or registered under any other law of this state from practicing the profession and performing services for which he or she is licensed or registered;"

In reviewing this issue I looked at the pre-2013 language in §30-32-1 et seq., which expressly exempted public school speech-language pathologists, audiologists and assistants from licensing requirements under this article; the introduced version of H.B. 2531 (2013 Regular Session) rewriting Article 32, which expressly included public school speech-language pathologists, audiologists and assistants in the licensing requirements

Joint Committee on Government and Finance

set forth in §30-32-1 et seq.; and the Enrolled Committee Substitute for H.B. 2531 (2013 Regular Session), which removed the language that had included public school speech-language pathologists, audiologists and assistants in the licensing requirements set forth in §30-32-1 et seq., and which also added §30-32-23, which requires the Legislative Auditor to provide an update to the Joint Committee on Government and Finance, with recommendations, on the requirements for speech-language pathologists, audiologists and assistants practicing in public schools by December 1, 2014. I would also note that the exemption in §30-32-2 (1) was in both the introduced version of H.B. 2531 and the Enrolled Committee Substitute for H.B. 2531 that ultimately passed.

It appears to me that these amendments to H.B. 2531 in the Enrolled Committee Substitute for H.B. 2531 evidence legislative intent to exclude public school speech-language pathologists, audiologists and assistants from the requirements of §30-32-1 et seq. As the West Virginia Board of Education noted in its November 26, 2013, letter that you had included, if the final legislation had still intended to include public school speech-language pathologists, audiologists and assistants within the purview of §30-32-1 et seq., there would be no need for the subsequent update from the Legislative Auditor on or before December 1, 2014. Also, as the Board of Education letter indicated, the West Virginia Board of Examiners for Speech-Language Pathology and Audiology (WVBESLP) filed an emergency rule in September 2013 which attempted to bring licensing of public school speech-language pathologists, audiologists and assistants under its authority, but the emergency rule filing was rejected by the Secretary of State. Further, in the 2014 Regular Session H.B. 4482 was introduced which would have provided for licensing of public school speech-language pathologists, audiologists and assistants by the WVBESLP,

but that legislation died in the House Education Committee. And finally, the WVBE SLP promulgated a new licensing rule which was approved by the Legislature in the 2014 Regular Session and will take effect on July 1, 2014. These new licensing rules apparently make no reference to licensing of public school speech-language pathologists, audiologists and assistants.

As to the application of the exemption in §30-32-2 (1), I believe its primary general intent is probably to clarify that this article doesn't prevent licensed practitioners of other professions from engaging in their scope of practice where there may be overlap with the practice of licensed speech-language pathologists, audiologists and assistants. As I indicated earlier, the same language in §30-32-2 (1) was in both the introduced version of H. B. 2531 and the amended enrolled version of H.B. 2531. I also found similar "exemption" language in other Chapter 30 licensing board statutes, such as §30-22-22 (Landscape Architects) and §30-37-11 (Massage Therapists), that more clearly references its application to "other professions." But while the general intent of §30-32-2 (1) may be primarily directed towards other licensed professionals, it appears to me that a literal reading of §30-32-2 (1) would encompass public school speech-language pathologists, audiologists and assistants that are licensed by the Board of Education / State Superintendent of Schools under 126CSR136 [Minimum Requirements for the Licensure of Professional/Paraprofessional Personnel and Advanced Salary Classifications (5202)]. Thus, in my opinion, §30-32-2 (1) is probably sufficiently broad to provide an exception for speech-language pathologists, audiologists and assistants who are licensed by the Board of Education / State Superintendent of Schools (although it might be beneficial for the Legislature to clarify this issue after the Legislative Auditor makes its recommendations in

December and a final course of action as been determined).

If you have any questions regarding this matter, please contact John Homburg. As you may have heard (or soon will hear) I am retiring at the end of this month. It was a pleasure knowing you over the years.

Appendix F Agency Response

West Virginia Board of Examiners for Speech-Language Pathology and Audiology

Board Members

Dr. Michael J. Zagarella, Au.D., CCC-A, President
Vickie Pullins, M.A., CCC-SLP, Secretary
Dr. Vernon N. Mullins, Au.D., CCC-A
Erin Browning Ball, M.A., CCC-SLP
Joe E. Richards, M.A., Citizen Member



August 13, 2014

Board response to Updated Issue 1 of 2013 Sunrise Report

Recommendation 1 (2013) In Compliance

“PERD recommended that the DOE be given two years to improve its continuing education of the speech professionals employed.”

“...if passed, the proposed rule will not become effective until the 2015-16 school year.”

How this qualifies for “in compliance” is rather mysterious to me. The DOE was given 2 years to improve. After 18 months they took some action that *may* correct the deficiency “*if passed*” – but will not take effect for another 2 years. That appears to be 4 years – if passed.

Recommendation 4 (2013)

One of the major reasons that the Licensing Board supports the concept of Universal Licensure is to eliminate some of the confusion that currently exists. Under the present system, if a SLP works in the private sector s/he must have a state license. If a SLP works in the public schools (which does **not** include Birth to Three or Head Start) s/he must have DOE certification and does not need a state license. If the SLP works in the public schools and also outside the schools, s/he must have both a state license and a DOE certificate. This proposal recommends that people in the public schools who do certain types of work must also have a state license.

The concluding sentence: “*Due to the inclusion of new language requiring Board licensure to provide Telepractice services in this state, it is PERD’s opinion that recommendation 4 of the January 2013 report has been complied with.*” I can only assume from this statement that PERD means even people who work in the public schools must be licensed to provide Telepractice services. I fail to understand why they would not need to be licensed to provide other types of services under the same law.

With Universal Licensure none of this mumbo-jumbo confusion would be necessary. I cannot understand why PERD would persist in suggesting that two different state agencies regulate the same professionals depending on where they work, and now adding what types of work they might do in those settings.

Recommendation 5 (2013)

Current statutory language states that an audiologist must have at least a Masters Degree to be licensed. PERD has confirmed that a Masters Degree in audiology is no longer offered *in this country*. Anyone who is currently licensed as an audiologist can continue to renew his or her license. This insures that an audiologist with a Masters Degree can continue to be licensed as long as they continue working. The reason that we wish to change the language is that other countries do offer a Masters Degree in Audiology. To date the WVBESLPA has received requests from applicants in the Philippines and from India for a WV license. Neither of these applicants had any intention of practicing in this state, they wished to obtain a license in an “easy state” and then transfer that license via reciprocity to another state. Changing the language to require a Doctoral level degree for all *new licensees* will prevent us from becoming a “license mill” for the country.

Recommendation 6 (2013)

“According to DOE policies, once an individual is in a master’s level program, he or she does not need to be supervised.”

This is stating that – according to DOE policy - a graduate student can be employed as a full professional without need of supervision. I cannot imagine any graduate program that would allow their students to work without supervision. Would PERD suggest the schools hire grad students to work as psychologists if they can’t find a “real psychologist”? ...or perhaps nursing students if there is a shortage of nurses?

One of the primary reasons that the WVBESLPA decided to take on the task of introducing Universal Licensure is because of the number of complaints that we receive every year from public school based SLPs (usually licensed SLPs) who are disturbed by the DOE’s willingness to “bend the rules” to suit their needs. I think that this is a perfect example of that exercise. If the DOE is not able to find qualified individuals, they can just lower their standards – as long as they are the only ones who get to decide what those standards are. When this approach is taken, who suffers? It is the role of the WVBESLPA to protect the consumers of services of SLPs and Audiologists – in this case the children in the public schools. Shortages are not our concern. Having qualified people doing the jobs that they are hired to do is our concern.

Respectfully submitted,



Dr. Michael J. Zagarella, AuD
President, WVBESLPA



WEST VIRGINIA LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314, State Capitol Complex, Charleston, West Virginia 25305

telephone: 1-304-347-4890 | www.legis.state.wv.us/Joint/PERD/perd.cfm | fax: 1-304-347-4939