

# Comments of the Independent Regulatory Review Commission



## State Board of Examiners in Speech-Language and Hearing Regulation #16A-6806 (IRRC #3001)

### Termination of Grandfather Provisions

June 12, 2013

We submit for your consideration the following comments on the proposed rulemaking published in the April 13, 2013 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Board of Examiners in Speech-Language and Hearing (Board) to respond to all comments received from us or any other source.

#### **Section 45.21. Waivers. - Statutory authority; Legislative intent; Comments of the House Professional Licensure Committee; Reasonableness; Economic impact.**

##### *Statutory authority*

The Board cites the Speech-Language and Hearing Law at 63 P.S. § 1705(2) as its statutory authority for this regulation. That provision states, in part, that the Board shall have the power and its duties shall be:

- (2) To adopt and revise rules and regulations consistent with the law as may be necessary to implement the provisions of this act . . . .

The Speech-Language and Hearing Law also states, in part:

- (c) Requirements for current practitioners.--The board shall waive the examination and educational requirements for any applicant who, on the effective date of this act:
  - (1) has at least a bachelor's degree with a major in speech-language pathology, audiology or teaching the hearing impaired from an accredited college or university, and who has been employed as a speech-language pathologist, audiologist or teacher of the hearing impaired for at least nine consecutive months within three years prior to the effective date of this act; and
  - (2) files an application with the board providing bona fide proof of the degree and employment together with the application fee prescribed in section 8.

## 63 P.S. § 1707(c)

This regulation would delete existing Paragraph (a)(4), which implements 63 P.S. § 1707(c), and would also add Subsection (b) which states:

The Board will not grant a license under section 7(c) of the act (63 P. S. § 1707(c)) to an applicant who applies after \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.).

The amended regulation would essentially state the Board will no longer follow 63 P.S. § 1707(c) of the Speech-Language and Hearing Law. If the Board wants to eliminate this course for licensure, the Board should seek an amendment to the Speech-Language and Hearing Law. Absent such an amendment, the Board should provide an explanation of its authority for this regulation under the existing Speech-Language and Hearing Law, particularly in regard to 63 P.S. §§ 1705(2) and 1707(c).

### *Legislative intent*

In the Preamble, the Board explains that

. . . the General Assembly must have intended that existing practitioners apply within a reasonable time after enactment of the act. It has now been 27 years since the act was enacted. Clearly, 27 years is much longer than a reasonable period of time in which to apply for licensure under the more relaxed standards for "existing practitioners." Accordingly, the Board proposes to eliminate the process by which those individuals that qualified as "existing practitioners" in 1985 apply for licensure under the waiver provision . . . .

How did the Board determine the General Assembly's intent? The Board should explain why it believes the General Assembly intended for existing practitioners to apply within a reasonable time, but did not express that intent in the language of 63 P.S. § 1707(c)(2) or elsewhere in the Speech-Language and Hearing Law.

### *Comments of the House Professional Licensure Committee (Committee)*

In a letter dated May 24, 2013, Representative Julie Harhart, Majority Chair, and Representative Harry Readshaw, Minority Chair of the Committee, submitted a comment on behalf of the Committee requesting "information pertaining to the recent history of applications, pursuant to this waiver." We will review the Board's response as part of our determination of whether the final regulation is in the public interest.

### *Reasonableness and economic impact*

Regulatory Analysis Form Question 16 asks the Board to "[L]ist the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply." The Board's response is as follows:

All individuals who qualify for the waiver available to "existing practitioners" in 1985 would be required to comply with the rulemaking. Because section 6(b)(2) of the act (63 P.S. § 1706(b)(2)) exempts from the licensure requirement persons credentialed by the Department of Education in speech or hearing and employed by a primary or secondary school, the vast majority of applicants who may qualify for this waiver are certified by the Department of Education and have been working in the schools (without a license issued by the Board) under the exemption. Should they leave employment in the schools, they would need to obtain a license in order to continue to provide speech-language services and may not qualify for a license under the current education, experience and examination standards. **The Board has no way of knowing how many of these individuals may still be working in the schools.** (Emphasis added.)

The impact of this regulation needs to be explored and explained further before we can make a determination of whether the regulation is in the public interest, particularly in regard to the number of individuals working in the schools. The Board should provide an explanation of why it is in the public interest to foreclose this avenue of licensure for persons who could otherwise lawfully qualify for licensure, and therefore seek employment, in this profession under the Speech-Language and Hearing Law.