

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW**

In re:)	
)	
SPEECH-LANGUAGE)	DECISION OF DISAPPROVAL
PATHOLOGY AND AUDIOLOGY)	IN PART OF REGULATORY
BOARD)	ACTION
)	
REGULATORY ACTION:)	Government Code section 11349.3
)	
Title 16, California Code of Regulations)	OAL File No. 01-0228-01 S
)	
Adopt sections)	
1399.170, 1399.170.1, 1399.170.2,)	
1399.170.3, 1399.170.4, 1399.170.5,)	
1399.170.6, 1399.170.7, 1399.170.8,)	
1399.170.9, 1399.170.10, 1399.170.11,)	
1399.170.12, 1399.170.13, 1399.170.14,)	
1399.170.15, 1399.170.16, 1399.170.17,)	
1399.170.18, 1399.170.19.)	
)	
Amend sections 1399.151.1)	
_____)	

SUMMARY OF REGULATORY ACTION

This regulatory action establishes the qualifications for registration as a speech-language pathology assistant, the requirements for supervision of the assistant, the assistant's scope of responsibility, and the procedure for a speech-language pathology aid to make application to become an assistant. On April 10, 2001, the Speech-Language Pathology and Audiology Board withdrew subsections (g) through (n) of section 1399.170.19 because these subsections were partially inconsistent with section 11522 of the Government Code. On April 10, 2001, the Office of Administrative Law approved the remaining regulation sections submitted except for section 1399.170.12 (Grandfathering of Speech-Language Pathology Aides) and the corresponding Part 9 of the "Application for Speech-Language Pathology Assistant" (Form 77A-60) which are inconsistent with subsection (b) of Business and Professions Code section 2538.3.

DISCUSSION

Regulations adopted by Speech-Language Pathology and Audiology Board (“SLPAB”) concerning Speech-Language Pathology Assistants must be adopted pursuant to the Administrative Procedure Act (“APA”). Any regulatory act adopted by a state agency through the exercise of quasi-legislative power delegated to the agency by statute is subject to the APA unless the act is expressly exempted or excluded by statute from APA coverage. (Gov. Code section 11346.) No exemption or exclusion applies to the regulatory action here under review. Thus before the instant regulatory action can become effective, it is subject to a review by the Office of Administrative Law (“OAL”) for compliance with procedural requirements of the APA and for compliance with certain substantive standards. (Gov. Code section 11349.1(a).) This review by OAL serves as a check on the exercise of quasi-legislative powers by agencies in the executive branch of California State Government.

Subsection (a) of Government Code section 11349.1 specifies the six substantive standards that regulations adopted pursuant to the APA must comply with. Subsection (a)(4) of Government Code section 11349.1 includes “consistency” as one of those standards. Subsection (d) of Government Code section 11349 defines “consistency” as “. . .being in harmony with, and not in conflict with a contradictory to, existing statutes, court decisions, or other provisions of law.”

Section 1399.170.12 of title 16 of the California Code of Regulations (CCR) as adopted by SLPAB in this rulemaking on January 17, 2001 and submitted to OAL for review on February 28, 2001 provides:

“(a) **To be eligible for registration pursuant to Section 2538.3(b)**, an applicant must have completed of a minimum of twelve (12) months of full time work experience as a speech-language pathology aide within the previous three (3) years, performing functions equivalent to the competencies defined in Section 1399.170.11(b) and (c). Full time is defined as a minimum of thirty (30) hours per week. The Board shall evaluate and determine whether the applicant has sufficient job training and experience to satisfy the minimum qualifications for registration pursuant to this article. The applicant shall submit the following documentation for approval:

- (1) An application and fee for registration as a speech-language pathology assistant pursuant to Section 1399.170.13(a) and (b);
- (2) Documentation evidencing the level of training of the applicant and the duties performed by the applicant in the capacity of a speech-language pathology aide. The document shall be signed by the applicant, the supervisor, and the employer;

- (3) The aide duty statement and proposed plan of training provided to the applicant at the commencement of employment.
- (4) A written assessment by the supervisor indicating the skills and job performance of the aide during the period in which the aide was employed.” (Emphasis added.)

Section 2538.3 of the Business and Professions Code provides:

“(a) A person applying for approval as a speech-language pathology assistant shall have graduated from a speech-language pathology assistant associate of arts degree program, or equivalent course of study, approved by the board. A person who has successfully graduated from a board approved bachelor’s degree program in speech-language pathology or communication disorders shall be deemed to have satisfied an equivalent course of study.

(b) **On or before January 1, 2001**, a speech-language pathology aide who has worked as a speech-language pathology aide for a period of at least 12 months, may make application for registration as a speech-language pathology assistant based upon the board’s recognition of that aide’s job training and experience and the performance of functions and tasks similar to the speech-language pathology assistant category.” (Emphasis added.)

Subsection (a) of Business and Professions Code section 2538.3 requires that applicants for approval as a speech-language pathology assistant meet certain specified educational requirements. However, subsection (b) of Business and Professions Code section 2538.3 provided a mechanism whereby a speech-language pathology aide may apply to the Board “on or before January 1, 2001” for registration as a speech-pathology assistant based upon job training and experience. Section 1399.170.12 of title 16 of the CCR as submitted to OAL for review on February 28, 2001 specifies what work experience the Board will require of an applicant “to be eligible for registration pursuant to section 2538.3(b). . .” and specifies what documents an applicant will have to submit. Since section 1399.170.12 of the regulations if approved would allow a speech-language pathology aide to apply for registration as a speech-language pathology assistant based upon work experience pursuant to Business and Professions Code section 2538.3(b) **after January 1, 2001** it is inconsistent with Business and Professions Code section 2538.3(b).

CONCLUSION

For the reasons set forth above, OAL has disapproved the proposed adoption of section 1399.170.12 of title 16 of the CCR and the corresponding Part 9 of the “Application for Speech-Language Pathology Assistant (Form 77A-60).”

If you have any questions, please contact me at (916) 323-6808.

DATE: April 11, 2001

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