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EXAMINERS OF
PSYCHOLOGISTS

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February 18, 2011

RQ-0947-GA

The Honorable Greg Abbott
Attorney General of Texas
Attention: Opinions Committee
P. O. Box 12548
Austin, Texas 78711-2548

FILE # ML-46672-11
I.D. # 46672

Dear General Abbott:

The Texas Board of Examiners of Psychologists (Board) is seeking an Attorney General Opinion regarding the following issue:

Whether the use of the term "psychologist" in the context of Nationally Certified School Psychologist (NCSP), when used in conjunction with a license, "Licensed Specialist in School Psychology" (LSSP), is a violation of the Psychologists' Licensing Act.

The Issue

Use of the title "psychologist" is generally limited to those individuals who have obtained a doctorate degree in psychology or a closely related field and who have obtained a license from the Board, as provided in the Texas Occupations Code Chapter 501, the Psychologists' Licensing Act. See Tex. Occ. Code § 501.002 (5): "Psychologist" means a person who holds a license to engage in the practice of psychology issued under § 501.252. Section 501.251 provides that a person may not represent that they are engaged in the practice of psychology unless they are licensed as a psychologist or exempt from the Act. Section 501.253 provides that in order to be licensed as a psychologist, the person must have a doctorate degree and supervised experience.

The Act also allows the practice of psychology by Licensed Specialists in School Psychology and Psychological Associates. Tex. Occ. Code § 501.002(2), (4). Neither license requires a doctoral degree. Tex. Occ. Code §§ 501.259-501.260. Further, nothing in the Act allows the use of the title "psychologist" by a person other than one with a license issued under sec. 501.252, i.e., an individual with a doctoral degree meeting all other Board requirements.

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Hon. Greg Abbott
February 18, 2011
Page Two.

The NCSP is a certification administered by the National Association of School Psychologists (NASP). NASP issues numbered certificates to individuals who qualify for the NCSP. A federal education statute, 20 USC § 7245(e)(4), defines the term "school psychologist" to include individuals who have the NCSP, in addition to persons licensed by a State licensing board. Federal law recognizes NCSP as a professional certification that qualifies a person to use the title "school psychologist."

Recently, the Texas Association of School Psychologists and various individuals with certification from the National Association of School Psychologists asked the Board for the right to represent and advertise that they hold the NCSP certification in addition to the LSSP license. This would involve allowing these individuals to use the title "psychologist" in conjunction with their LSSP license and qualifications.

Given this, the Board asks for your opinion whether a rule which makes provision for the use of the professional descriptor "Nationally Certified School Psychologist" by a person who holds the LSSP license violates the Act's provision for use of the term "psychologist" under § 501.002(5)?

Additional Information

The Board has received numerous comments from licensed psychologists indicating a belief that the use of the professional descriptor "Nationally Certified School Psychologist" in conjunction with the license title "Licensed Specialist in School Psychology," as provided in a proposed rule before the Board, would be a violation of the Psychologists' Licensing Act because the word "psychologist" included therein could be used by a person who is not a licensed psychologist.

The Psychologists' Licensing Act is both a title act and a practice act. The titles and acronyms recognized by the Board are licensed psychologist (LP), provisionally licensed psychologist (PLP), licensed psychological associate (LPA), and licensed specialist in school psychology (LSSP).

Definitions provide references to sections of the act defining requirements for licensure in the four regulated categories of practice:

- 1) § 501.002 (2) "Licensed specialist in school psychology" means a person who holds a license to engage in the practice of psychology under § 501.260.
- 2) § 501.002 (3) "Provisional license holder" means a person who holds a license to engage in the practice of psychology under § 501.253.
- 3) § 501.002 (4) "Psychological associate" means a person who holds a license to engage in the practice of psychology issued under § 501.259.

Hon. Greg Abbott
February 18, 2011
Page Three.

- 4) § 501.002 (5) "Psychologist" means a person who holds a license to engage in the practice of psychology issued under § 501.252.

Use of a specialty title is regulated by Board rule 465.6(d), pertaining to listings, public statements and advertisements, solicitations, and specialty titles. The rule provides that licensed psychologists (LPs) may use specialty titles under certain conditions. No other category of licensee may use a specialty title under Board rules.

Use of the term "psychologist" is reserved to individuals who meet requirements of the Act at § 501.252 and are licensed. Under previously existing rules, only a licensed psychologist who obtains certification as a "Nationally Certified School Psychologist" (NCSP) could use this professional designation.

The LSSP license regulates providers of psychological services within Texas public schools. A person holding the LSSP license may not practice psychology independently outside of public schools. The practice of psychology in public schools is further regulated by state and federal laws including but not limited to the Texas Education Code, the Family Education Rights and Privacy Act, the Individuals with Disabilities Education Act, and Section 504 of the Rehabilitation Act of 1973. These laws are acknowledged to be controlling in the event of conflict with a Board rule.

It should be noted that there is disagreement as to whether Nationally Certified School Psychologist (NCSP) should be considered a credential or a title. The National Association of School Psychologists (NASP) is a professional association that has a program that awards the professional designation of "Nationally Certified School Psychologist" when the participant completes the program. Because of this confusion, we will refer to the NCSP as a "professional descriptor" in this request.

When the Legislature amended the Psychologists' Licensing Act in 1995, they added Section 26 which created the LSSP license. Additionally, they removed from Section 22 of the Act the then-existing exemption for the provision of psychological services in public schools. During the time that public schools were exempt under the Act, the Texas Education Agency awarded the titles of school psychologist and associate school psychologist to persons whom they qualified to provide psychological services in the public schools.

In 2010, the Texas Association of School Psychologists (TASP) petitioned the Agency on behalf of individuals licensed as LSSPs who hold the NCSP professional descriptor but are not licensed as psychologists.

TASP supported its petition with a citation to 20 USC § 7245(e)(4), a federal education statute that defines the term "school psychologist" to include individuals who have the NCSP, in addition to persons licensed by a State licensing board. The federal law recognizes the NCSP as

Hon. Greg Abbott
February 18, 2011
Page Four.

a qualification for legal use of the title "school psychologist."

The Texas Education Code at 21.003(b) echoes the federal designation: "a person may not be employed by a district as a school psychologist unless this person is licensed by the state agency that licenses that profession."

The Board convened a task force of its Rules Committee to review the request for a rule amendment. The task force considered options concerning allowing LSSPs who hold the NCSP certification to use that designation. The task force brought two possible rule changes to the Board for consideration. One suggestion was to allow the NCSP holder to use this professional descriptor along with the LSSP title. The other suggestion was to allow an LSSP (who is not also a licensed psychologist) who holds the NCSP to only use the phrase "certified by the National Association of School Psychologists," and therefore to avoid the use of the term psychologist. The Board voted to propose a rule allowing LSSPs who hold the NCSP to use that designation in combination with the license title of LSSP. The task force presented the proposed amendment to Board rule 465.38(2) pertaining to titles at the regular meeting of the Board, October 28, 2010. The Board then voted to propose the first suggested amendment, which was published in the Texas Register December 3, 2010. The proposed amendment, a copy of which is attached, would allow the use of the descriptor, "NCSP" by those who have received it.

At the February 10, 2011 Board meeting, the Board voted to table the vote to adopt the proposed rule while requesting the opinion of the Attorney General on the legality of using the term "psychologist" within the professional descriptor, Nationally Certified School Psychologist.

The Board meets again on April 14, 2011 and a vote to adopt the rule would still be timely then. While the Board understands that the Opinions Committee has many other matters to which it must attend, if at all possible, we would respectfully request that the opinion be expedited so that the matter may be voted on at the April Board meeting.

Thank you for your assistance in this matter. Should you need additional information, please contact Dianne L. Izzo, the Board's general counsel, at (512) 305-7705.

We look forward to your opinion.

Sincerely,



Tim F. Branaman, Ph.D.
Chair, TSBE

Hon. Greg Abbott
February 18, 2011
Page Five.

Enclosures: Introductory Remarks Regarding Rule 465.38, Tim F. Branaman, Ph.D.
 Rule 465.38 Psychological Services for Public Schools for adoption
 Draft of text to accompany adopted rule with responses to comments

cc: Sherry Lee, Executive Director
 Joe Thrash, Assistant Attorney General

Introductory Remarks Regarding Rule 465.38

1. This Board has discussed the issue of use of the NCSP credential by LSSPs many times in recent years. This past year, the TSBEP convened a task force that discussed at a public meeting the issue of LSSPs use of this credential, which includes the term "psychologist." From that meeting, the task force brought two forms of a proposed modification for Rule 465.38, which would allow a non-doctoral LSSP who has received the NCSP credential to identify themselves as holding that credential. One form allowed for the reference to the certification with use of the term psychologist, while the other form allowed for the use of the name of the credential itself, i.e. "Nationally Certified School Psychologist." After consideration, these proposed rules were placed before the board for a vote. Passage of one precluded the other. The first voted on was that which would allow LSSPs holding the credential Nationally Certified School Psychologist to use that credential along with their title of LSSP. A majority of the TSBEP members accepted that proposed version for rule modification. The proposed modification was published in the Texas Registry.
2. Subsequent to the publication of the proposed rule change, the TSBEP received a request to schedule a public hearing to receive comments on the proposed rule change. Such a hearing took place on January 14, 2011. Fifteen individuals provided testimony.

Nine of those individuals indicated that they supported the rule change and represented views of the Texas Association of School Psychologists, National Association of School Psychologists, LSSPs in general, or themselves, personally. One of those identified herself as a parent and another as a volunteer for a group providing financial support for a pediatric neurological clinic. One person identified herself as a LP, LSSP, and NCSP affiliated with a university training program for LSSPs.

Five individuals testified in opposition to the proposed rule modification indicated that they represented the Texas Psychological Association, a local area psychological association, or the doctoral level practice of psychology

Additionally, the Board accepted written comments from the public. The TSBEP received five hundred sixteen (516) written comments by the deadline. Two hundred seventy seven supported the proposed change in 465.38, while 239 opposed the rule modification.

Those supporting the rule modification generally asserted the rule modification:

- Is consistent with the use of the NCSP certification as a credential rather than a title,
- Clarifies and distinguishes qualifications, thereby reducing confusion and assisting the public, as well as encourages a high standard of training for LSSPs,
- Is consistent with TSBEP having recognized the NCSP as sufficient to meet training standards for the LSSP license,
- Does not modify scope of practice or allow for use of the term psychologist as a title, and
- Is incorporated into the language of federal education acts, e.g., No Child Left Behind, as a standard for identifying "highly qualified" professionals in the public schools.

Those opposing the rule modification generally stated that the modification will:

- Allow non-doctoral school personnel to imply they are psychologists, thereby confusing the public,
- Misrepresent individual professionals and the profession in general by confusing certification credentials with a license title,
- Lead to any certification potentially being used in an undesirable manner,
- Confuse the public who has always understood the title Psychologist to be associated with doctoral level training and ability to practice independently, and
- Contradict the national standard for use of the title "Psychologist" to require doctoral level training.

With regard to the issue of a national standard, at least as represented by the American Psychological Association, there essentially is none. The 2010 revision of APA's model license act allows for the use of the term "School Psychologist" by non-doctoral professionals working in the public schools. However, they are required to include the word "school" with "psychologist," when identifying themselves. According to Dr. Lynn Bufka, PhD, assistant executive director for practice research and policy in APA's Practice Directorate, ".....we no longer explicitly endorse the use of the title 'school psychologist' by individuals who provide school psychological services....but we're not explicitly restricting it, either."

3. As one might expect, the comments of both those who oppose and those who support the rule modification contain very strong professional biases, as well as reasonable concerns. Members of each of those professions who work in the field of psychology have been appointed to serve on this Agency Board. While a substantial number of public comments have suggested that certain board members should recuse themselves from voting on this issue, I would observe that to do so would be inconsistent with the provision for professional diversity of the TSBEP provided for in the enabling legislation.

I would also observe that the primary mission of this agency is to develop, implement, and enforce licensing standards and regulatory rules that protect and benefit the public while enabling the delivery of a reasonable standard of quality of services by professionals licensed by this agency. To that end, it is necessary that each professional member of this Board bring their particular expertise to the Board to represent the standards of their profession while setting aside professional prejudices or biases to ensure the success of the mission of this Agency in serving the public. However, we must also keep in mind that how we carry out the agency's mission must be consistent with our enabling legislation.

4. Therefore, I believe it is important to focus on the issues of public interests and the elements required by the law. Let me be clear that I believe that the independent practice of psychology at the very least requires doctoral level training. However, I do not believe that the proposed rule modification is about scope of practice or masters level LSSPs practicing as psychologists in the community, or for that matter as psychologists in the schools.

The primary point of contention in this matter is the use of the word "psychologist" and that alone. The Texas Psychological Association has acknowledged the reasonableness of LSSPs desire to inform the public of their level of training through use of their credential without using the word "psychologist." Their title, LSSP, does not change and rule modification does not allow for the use of the "title" "school psychologist" by itself, only the use of the credential in the context of the license title, LSSP. The problem is only that the credential contains the word "psychologist." The Texas Psychological Association has suggested that is a violation of the "Practice Act."

While I believe whether the proposed rule change constitutes such a violation is arguable, I would suggest this Board may wish to consider tabling action on the proposed rule at this time in order to obtain a formal opinion from the office of the Attorney General concerning whether this rule change would constitute a violation of the Practice Act. Additionally, Representative Gutierrez has filed House Bill 899 that, if passed, would make our discussion here a moot issue in that the Bill provides for a legislative exception for the use of the title, "Nationally Certified School Psychologist." The fact that Representative Gutierrez introduced such a Bill might suggest that the legislature, or at least one legislator, believes that not to provide an exception would be a violation of the Practice Act.

So your task, is to decide whether to vote this proposal up or down, or table it in order to obtain an opinion from the Attorney General's Office regarding the legality of such a rule change, or to see whether legislation will be passed that will resolve the concern with violation of the Practice Act. The floor is open for discussion regarding the issues, as well as a motion to table the proposed modification until having obtained additional necessary information to provide the basis for a fully informed decision.

Rule: 465.38. Psychological Services for Public Schools.

Action: Adopted Amendment.

Comment: The adopted amendment would allow an LSSP to use the title Nationally Certified School Psychologist (NCSP) if the LSSP holds this certification.

465.38. Psychological Services for Public Schools. This rule acknowledges the unique difference in the delivery of school psychological services in the public schools from psychological services in the private sector. The Board recognizes the purview of the State Board of Education and the Texas Education Agency in safeguarding the rights of public school children in Texas. The mandated multidisciplinary team decision making, hierarchy of supervision, regulatory provisions, and past traditions of school psychological service delivery both nationally and in Texas, among other factors, allow for rules of practice in the public schools which reflect these occupational distinctions from the private practice of psychology.

(1) Definition.

- (A) The specialist in school psychology license permits the licensee to provide school psychological services in Texas public schools.
- (B) A licensed specialist in school psychology (LSSP) means a person who is trained to address psychological and behavioral problems manifested in and associated with educational systems by utilizing psychological concepts and methods in programs or actions which attempt to improve the learning, adjustment and behavior of students. Such activities include, but are not limited to, addressing special education eligibility, conducting manifestation determinations, and assisting with the development and implementation of individual educational programs.

- (C) The assessment of emotional or behavioral disturbance, for educational purposes, using psychological techniques and procedures is considered the practice of psychology.
- (2) Titles. The correct title for persons holding this license is Licensed Specialist in School Psychology or LSSP. Only individuals who meet the requirements of §465.6 of this title (relating to Listings, Public Statements and Advertisements, Solicitation, and Specialty Titles) may refer to themselves as School Psychologists. No individual may use the title Licensed School Psychologist. An LSSP who has achieved certification as a Nationally Certified School Psychologist (NCSP) may use this credential along with the license title of LSSP.
- (3) Providers of School Psychological Services. School psychological services may be provided in Texas public schools only by individuals authorized by this Board to provide such services. Individuals who may provide such school psychological services include LSSPs and interns or trainees as defined in §463.9 of this title (relating to Licensed Specialist in School Psychology). Nothing in this rule prohibits public schools from contracting with licensed psychologists and licensed psychological associates who are not LSSPs to provide psychological services, other than school psychology, in their areas of competency. School districts may contract for specific types of psychological services, such as clinical psychology, counseling psychology, neuropsychology, and family therapy, which are not readily available from the licensed specialist in school psychology employed by the school district. Such contracting must be on a short term or part time basis and cannot involve the broad range of school psychological services listed in paragraph (1)(B) of this section. An LSSP who contracts with a school district to provide school psychological services may not permit an individual who does not hold a valid LSSP license to perform any of the contracted school psychological services.

(4) Supervision.

(A) Direct, systematic, face-to-face supervision must be provided to:

(i) Interns as defined in §463.9 of this title.

(ii) Individuals who meet the training requirements of §463.9 of this title and who have passed the National School Psychology Examination at the Texas cutoff score or above and who have been notified in writing of this status by the Board. These individuals may practice under supervision in a Texas public school district for no more than one calendar year. They must be designated as trainees.

(iii) LSSPs for a period of one academic year following licensure unless the individual also holds licensure as a psychologist in Texas. This supervision may be waived for individuals who legally provided full-time, unsupervised school psychological services in another state for a minimum of three academic years immediately preceding application for licensure in Texas as documented by the public schools where services were provided and who graduated from a training program approved by NASP or accredited in school psychology by APA or who hold NCSP certification.

(iv) LSSPs when the individual is providing psychological services outside his or her area of training and supervised experience.

(B) Nothing in this rule applies to administrative supervision of psychology personnel within Texas public schools, performed by non-psychologists, in job

functions involving, but not limited to, attendance, time management, completion of assignments, or adherence to school policies and procedures.

- (5) Supervisor Qualifications. Supervision may only be provided by a LSSP, who has a minimum of three years of experience providing psychological services in the public schools of this or another state. To meet supervisor qualifications, a licensee must be able to document the required experience by providing documentation from the authority that regulates the provision of psychological services in the public schools of that state and proof that the licensee provided such services, documented by the public schools in the state in which the services were provided. Any licensed specialist in school psychology may count one full year as an intern or trainee as one of the three years of experience required to perform supervision.
- (6) Conflict Between Laws and Board Rules. In the event of a conflict between state or federal statutes and Board rules, state or federal statutes control.
- (7) Compliance with Applicable Education Laws. LSSPs shall comply with all applicable state and federal laws affecting the practice of school psychology, including, but not limited to:
 - (A) Texas Education Code;
 - (B) Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232q;
 - (C) Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq;
 - (D) Texas Public Information Act ("Open Records Act"), Texas Government Code, Chapter 552;
 - (E) Section 504 of the Rehabilitation Act of 1973.

Texas Occupations Code
Title 3 Health Professions
Subtitle I, Regulation of Psychology and Counseling
Chapter 501. Psychologists

DRAFT

Texas Administrative Code
Title 22 Examining Boards
Part 21. Texas State Board of Examiners of Psychologists
Chapter 465. Rules of Practice

22 TAC § 465.38 Psychological Services in the Schools

The Texas State Board of Examiners of Psychologists (Agency) adopts amendments to §465.38 to permit a Licensed Specialist in School Psychology (LSSP) who has obtained certification at the national level to add Nationally Certified School Psychologist (NCSP) to the title of LSSP. The amended section is adopted as proposed and published in the December 3, 2010 issue of the Texas Register (35 TexReg 10582-10583).

The amended section is adopted to allow highly qualified and nationally certified providers of psychological services in the schools to be readily identified by parents, teachers, special education directors, and others who participate in the psychological services provided by LSSPs in Texas public schools.

Amended 22 TAC § 465.38 (2) amends use of titles.

BACKGROUND AND PURPOSE

The Texas Occupations Code, Title 3, Chapter 501, popularly known as the Psychologists' Licensing Act, is both a title act and a practice act. Definitions provide references to sections of the act defining requirements for licensure in four regulated categories of practice:

- 1) § 501.002 (2) "Licensed specialist in school psychology" means a person who holds a license to engage in the practice of psychology under § 501.260.
- 2) § 501.002 (3) "Provisional license holder" means a person who holds a license to engage in the practice of psychology under § 501.253.
- 3) § 501.002 (4) "Psychological associate" means a person who holds a license to engage in the practice of psychology issued under § 501.259.
- 4) § 501.002 (5) "Psychologist" means a person who holds a license to engage in the practice of psychology issued under § 501.252.

Use of the term "psychologist" is reserved to individuals who meet requirements of the Act at § 501.252 and are licensed. Under previously existing rules, only a licensed psychologist who holds the credential as a Nationally Certified School Psychologist (NCSP) could use this title.

The LSSP license regulates providers of psychological services within Texas public schools. A person holding the LSSP license may not practice psychology independently outside of public schools. The practice of psychology in public schools is further regulated by state and federal laws including but not limited to the Texas Education Code, the Family Education Rights and Privacy Act, the Individuals with Disabilities Education Act, and Section 504 of the Rehabilitation Act of 1973. These laws are acknowledged to be controlling in the event of conflict with a Board rule.

In 2010, the Texas Association of School Psychologists (TASP) petitioned the Agency on behalf of individuals licensed as LSSPs who hold the NCSP credential but are not licensed as psychologists. The NCSP is a certification administered by the National Association of School Psychologists (NASP). NASP issues numbered certificates to individuals who qualify for the NCSP. These individuals pressed for the right to advertise truthfully that they hold the NCSP credential in addition to the LSSP license.

TASP supported its petition with a citation to 20 USC § 7245(e)(4), a federal education statute that defines the term "school psychologist" to include individuals who have the NCSP, in addition to persons licensed by a State licensing board. The federal law recognizes the NCSP as a qualification for legal use of the title "school psychologist."

The Texas Education Code at 21.003(b) echoes the federal designation: "a person may not be employed by a district as a school psychologist unless this person is licensed by the state agency that licenses that profession."

The Agency convened a task force of its Rules Committee to review the request for a rule amendment. The task force voted to propose a rule allowing LSSPs who hold the NCSP credential to use that designation in combination with the title of LSSP. The task force presented the proposed amendment to Board rule 465.38(2) pertaining to titles at the regular meeting of the Board, October 28, 2010. The Board then voted to propose the amendment, which was published in the Texas Register December 3, 2010.

The Agency received numerous comments, both for and against the proposed amendment. Comments were received in writing, by email, and through testimony at a public hearing held on January 14, 2011. The Agency's response to all comments received is included herein.

REASONED RESPONSE TO PUBLIC COMMENT.

Public comments were accepted through 5:00 p.m. on January 14, 2011.

Comments were received from individuals, parents, licensees, and representatives of the Texas Psychological Association (TPA) and the Texas Association of School Psychologists (TASP).

A summary of the comments and the Agency's responses to comments are set out as follows:

Comments: In favor of the proposed amendment.

Approximately 277 comments were received favoring the amendment.

In addition to licensees, approximately 12 comments were received from parents. Two attorneys, representing the National Association of School Psychologists and the Texas Association of School Psychologists, presented comments.

- Use of the NCSP credential clarifies and distinguishes the qualifications of an LSSP and therefore reduces confusion to the public.
- Use of the NCSP credential encourages a high standard of training.
- The Agency recognizes the NCSP as sufficient to meet the training standards required to obtain the LSSP license.
- The LSSP license does not allow a licensee to engage in private practice, or to use the title "Psychologist" or "Doctor."
- The use of the NCSP has no implications for scope of practice by an LSSP.
- NCSPs are often recruited as meeting the "highly qualified" educator criterion as provided in the federal No Child Left Behind Act.
- NCSP is a credential, not a specialty title.

Response:

The Agency generally agrees with the comments.

Comments: Against the proposed amendment.

Approximately 240 comments were received against the amendment.

In addition to licensees, comments were received from an attorney on behalf of the Texas Psychological Association.

- The proposed rule change would allow non-doctoral individuals to identify themselves in a manner that implies that they are psychologists, albeit, "school psychologists" thus violating current statute and confusing the public, parents and children within the school setting and beyond.
- Allowing someone to use a "certification title" that references or further modifies a "license title" misrepresents the profession and the individual.
- Allowing use of the NCSP opens the door to a multitude of self-serving and undesirable possibilities as there are certification programs in almost every dimension of specialty practice.
- The public has always understood that individuals with the title Psychologist are trained at the doctoral level.
- LSSPs who have obtained NCSP certification do not practice independently.
- The NCSP does not equate to credentials needed to be a doctoral trained psychologist.
- The national standard for use of the title "Psychologist" requires training at the doctoral level.

Response:

The Agency does not agree that the rule amendment permitting an LSSP who holds the NCSP credential to add "NCSP" to a signature block conveys the right to use the title "Psychologist." The Agency agrees that the title "Psychologist" is reserved to individuals who are educated at the doctoral level and maintains that the rule amendment will have no impact on the use of the title "Psychologist."

The NCSP is not a certificate in a specialty program. The NCSP is a description of education and training obtained in furtherance of the LSSP license, as recognized in Agency licensing standards.

The LSSP license is required for the practice of psychology within public schools in the state of Texas. No independent practice outside public schools is contemplated or allowed for an LSSP whether or not the LSSP has the NCSP credential. The rule amendment does not allow an LSSP to use the titles "Psychologist" or "Doctor," which apply exclusively to individuals who hold a doctorate degree.

The rule amendment reduces confusion by providing that a highly qualified LSSP may be identified by the NCSP credential. The practice of psychology in public schools is highly regulated at the federal level. Federal law deems the NCSP to be the equivalent of a license. Federal law requires schools to identify, recruit and hire highly qualified education professionals. Under these circumstances, allowing a qualified individual to be identified as an "LSSP, NCSP" is in the public interest.

The mental health field is peopled by a variety of service providers, from psychometrists to psychiatrists. These individuals are educated at every academic level of proficiency. Each service provider has a duty to clearly and honestly represent their training, education, credentials and titles to avoid confusion in the public sector. The Agency has tailored a narrow rule amendment strictly to allow the truthful representation by a highly qualified LSSP that they hold the NSCP and nothing more.

The Board approved the final order adopting the amendment on February 20, 2011. The amendment is adopted pursuant to the authority of the Texas Occupations Code, Title 3, Subtitle I, Chapter 501, Psychologists' Licensing Act (Act), which provides the Agency with the authority to make all rules not inconsistent with the Constitution and laws of this State which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

[465.38 as amended here (if any changes are made to the rule as proposed in the December 3, 2010 issue of the Texas Register, 35 TexReg 10582-10583).]

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on _____, 2011.

20 USC § 7245

TITLE 20 Education, CH. 70, Subchapter V, Part D, subpart 2, § 7245 (e)(4)—

§ 7245. Elementary and secondary school counseling programs

(e) Definitions

For the purpose of this section—

(1) the term “child and adolescent psychiatrist” means an individual who—

(A) possesses State medical licensure; and

(B) has completed residency training programs in both general psychiatry and child and adolescent psychiatry;

(2) the term “other qualified psychologist” means an individual who has demonstrated competence in counseling children in a school setting and who—

(A) is licensed in psychology by the State in which the individual works; and

(B) practices in the scope of the individual's education, training, and experience with children in school settings;

(3) the term “school counselor” means an individual who has documented competence in counseling children and adolescents in a school setting and who—

(A) is licensed by the State or certified by an independent professional regulatory authority;

(B) in the absence of such State licensure or certification, possesses national certification in school counseling or a specialty of counseling granted by an independent professional organization; or

(C) holds a minimum of a master's degree in school counseling from a program accredited by the Council for Accreditation of Counseling and Related Educational Programs or the equivalent;

(4) the term “school psychologist” means an individual who—

(A) has completed a minimum of 60 graduate semester hours in school psychology from an institution of higher education and has completed 1,200 clock hours in a supervised school psychology internship, of which 600 hours are in the school setting;

(B) is licensed or certified in school psychology by the State in which the individual works; or

(C) in the absence of such State licensure or certification, possesses national certification by the National School Psychology Certification Board; and

(5) the term “school social worker” means an individual who—

(A) holds a master's degree in social work from a program accredited by the Council on Social Work Education; and

(i) is licensed or certified by the State in which services are provided; or

(ii) in the absence of such State licensure or certification, possesses a national credential or certification as a school social work specialist granted by an independent professional organization.