



**LOUISIANA STATE BOARD
OF EXAMINERS OF
PSYCHOLOGISTS**

4334 S. Sherwood Forest Boulevard, #C-150
Baton Rouge, Louisiana 70816

Voice: (225)295-8410
Fax: (225)295-8412
Email: admin.lsbep@la.gov
Website: lsbep.org

January 9, 2023

MEMORANDUM

**IN RESPONSE TO COMMENTS RECEIVED BY THE LSBEP
DURING A PUBLIC RULES HEARING HELD ON FRIDAY, DECEMBER 16, 2022**

RE: Louisiana Register Volume 48 No. 11, November 20, 2022.

- a. NOTICE OF INTENT: Training, Credentials and Scope of Practice for Neuropsychology Specialty Designation and Provisional Licensure; other technical corrections (LAC 46:LXIII. 100, 102, 103, 108, 201, 303, 305, 307, 701, 702, 705, 709, 1002, 1201, 1205, 1213, 1401, 1403, 1405, 1407, 1409, 1701, 1702, 1705, 1903, 1905 and amend Sections 3402 and 3403)
- b. NOTICE OF INTENT: Registration of Assistant to a Psychologist (LAC 46:LXIII. 601, 1100, 1101, 1103, 1105, 1107, and 1109)
- c. NOTICE OF INTENT: Continuing Education, Exemptions and Fees (LAC 46:LXIII. 601, 603, 803, 805, 806, 811, 905 and 4001)
- d. NOTICE OF INTENT: Code of Ethics for Licensed Specialists in School Psychology (LAC 46: LXIII. Sections 4201, 4203, 4205, 4207, 4209, 4211)

The LSBEP conducted a formal hearing on the rules on December 16, 2022, one individual from the public attended and was requested by LSBEP to comment with information on the process of registering assistants, based on her knowledge and experience with the process as director of the Louisiana Behavior Analyst Board. Written comments received prior to the hearing were read into the record and discussed by the Board of Directors.

Roster of Attendees (In-person and Virtual):

Board Members Present: Dr. Greg Gormanous, Dr. Michelle Moore, Dr. Shannae Harness, Dr. T. Shavaun Sam and Dr. Matthew Holcomb; Board Members Absent: Mr. Chance McNeely; Staff Present: Executive Director, Jaime T. Monic

Guests Present: Rhonda Boe, Jonathon Wagner

Zoom Attendees: LSBEP Staff Jalyne Brown, Richard Niolon, Ph.D., Kim VanGeffen, Ph.D., Dr. Chelsey Mahler, Beth Arrendondo, Chloe Brubaker, Stevie Faust, Lacey Moffatt, Julie Nelson, Clifton Mixon, Dr. Myers, Paula Zeanah

Oral and written comments were received related to rule changes involving the registration of assistants; telesupervision; continuing professional development, doctoral program in psychology and clinical neuropsychology.

Comments were both in support and opposition of the rule changes. However, the majority of comments received were questions and suggestions for improving rules and/or roll out procedures. This response focuses on providing a summary of questions, concerns, and suggestions offered by individuals who commented

All written comments were read into the record and are attached to this document. The written comments were from many people who were attending virtually, including Kim VanGeffen, Ph.D., Dr. Chelsey Mahler, Dr. Beth Arrendondo, Dr. Julie Nelson, Dr. Clifton Mixon, Dr. Tina Myers, and Dr. Paula Zeanah.

LSBEP also requested oral comments from a member of the public who attended in person. Immediately following the hearing, the Board of Directors, being sensitive to public attendees, next devoted time and discussed most of the comments. Those deliberations resulted in several important non-substantive tweaks.

➤ **Summary of questions, concerns and suggestions received related to proposed rules regarding the Registration of Assistants.**

- **General concerns included statements that the changes were financially driven along with suggestions to alternately increase the renewal fee for licensed psychologists;**
- **Concerns that the language under 1101.A. “Upon employment of an ATAP...” would create a hardship on the business, the psychologist, the assistant, or all of above if employment is required prior to the approval of an ATAP’s registration;**
- **Concerns that the minimum education was set at a high-school diploma;**
- **Conflicting concerns were raised regarding requirements for in-person supervision:**
 - a. *“I know that many of my colleagues who currently utilize ATAPs would request that a psychologist be able to supervise off-site. While low-risk cases are likely to not present a challenge, even low-risk cases can turn into high-risk cases between sessions. I encourage LSBEP to maintain that the supervising licensed psychologist (LP) or assigned alternate LP competent in the area of service be on site when the ATAP is interacting with patients.”*

b. *“The requirement to require an on-site supervisor whenever services are being offered also notes that “exceptions to this provision” may be approved with no details provided as to what would qualify. As noted in discussion on the LPA listerv, this is a burdensome requirement on small practices that does not seem clinically necessary to protect patients (e.g., if the supervising psychologist is virtually available or available by phone).”*

c. *“... the requirement to be present in person limits expansion of access to services via telepsychology. Provision of psychological services no longer has to be done in person, and the supervisory requirements should match the acknowledgement of the expansion of access to the supervising psychologist. CMS recognized this change by including Behavioral Health Services in “Incident to” supervision to expand access to and coordination of mental health services in rural/underserved areas where masters’-level practitioners represent a substantial segment of the*

mental health providers. Consider language clarifying in person in the context of telepsychology and tele-supervision. “

- **Conflicting statements regarding Grandfathering were raised:**
 - a. *“I know that many of my colleagues who currently utilize ATAPs would request existing ATAPs be grandfathered in. I request that the board require currently employed ATAPs to register and meet the minimum criteria, have a background check (may be done prior to the new rule), and pay the registering fee. My rationale is that the purpose of this fee bill is both to protect patients and develop a source of income for the board. Grandfathering will diminish the board’s ability to accomplish both of these goals.”*
 - b. *“I” invite the board to please consider a grandfather clause for individuals currently working as ATAPs. Without this clause, there will be a disruption of current psychological work that would harm the practice and potentially harm the public as many ongoing services would need to be rescheduled and delayed in a time of mental health crisis and provider shortages. I would recommend 1 year for all current ATAPs to become registered following implementation of the new rule.”*
- **Questions about applicability: Who will be required to register as assistants? Will a Licensed Professional Counselor (LPC) be required to register as an assistant, are Medical Psychologists exempt? Will this only apply to psychometrists? Please consider adding “psychometrists” to the list of allowable terms under § 1101.F.**

LSBEP’s Response to Comments, Questions, Concerns regarding the Registration of Assistants:

In 2021, the LSBEP and Louisiana Psychological Association (LPA) testified before the legislature on a fee bill that was a compromise to previously proposed statutory changes that were being sought to clarify the legislature’s expectations in LSBEP’s charge to regulate the profession of psychology. The result was Act No. 238 of the 2021 Regular Legislative Session. During testimony presented by then Chairperson, Amy Henke, legislators raised concerns that LSBEP did not already require the registration of assistants and criminal background check, noting persons could not work in other occupations without having completed background checks.

LSBEP will generate fees in the course of registering assistants to psychologists. Fees are intended to support staff and technology required to carry out LSBEP’s the mission of public protection charged by the Louisiana Legislature.

LSBEP is required to regulate assistants pursuant to Psychology Practice Act (*La. R.S. 37:2351-2378, et al*). Currently regulations exist related to the how an assistant may be utilized. The proposed rules address this charge and the need for change arose from a growing concerns brought about from issues involving ATAP’s conducting assessments.

Some comments received during the current rulemaking process seemed to support concerns that individuals either lacked awareness or understanding of the current regulations. Another comment that it would be a problem for psychologists in hospital-based and other institutional settings to change job descriptions to require that the supervising psychologist "be vested with functional authority" over the ATAP. Note this is a **current** requirement of supervising psychologists.

Regarding the concerns that the language under 1101.A. “Upon employment of an ATAP...”would create a hardship on the business, the psychologist, the assistant, or all of above if employment is required prior to the approval of an ATAP’s registration, it is the intention of the proposed rule that as a *condition for an ATAP to assist in the provision of psychological services*, the licensed psychologist must register their ATAP. **The Board of Directors found these comments to be valid.** In response, the LSBEP will request

a non-substantive change, to added clarifying language under §1101.A. so that the proposed rule reads, “Upon, or pending, employment of an ATAP...”

Addressing the minimum standard of requiring a high school diploma as a requirement for registration: The LSBEP did consider level of education when developing these standards and determined that there may be instances where a high school diploma is sufficient for supervised services. Higher levels of education may be required for more complex services, and Licensed Psychologist should consult best practices/test administration standards to ensure that an ATAP’s qualifications are commensurate with the services to be performed (see also §1101.A.5.). For example, in the provision of services for autism related disorders by Behavior Analysts who are licensed under the Louisiana Behavior Analyst Board, a high school diploma is the minimum standard for the registration of a Line Technician. Such services are also within the scope of practice of a Licensed Psychologist who may utilize an ATAP in the same capacity. Raising the educational requirements could result in unintended restrictions to practice.

Addressing concerns of In-person Supervision of ATAP’s, it is indeed the intention that Continuous Professional Supervision of an unlicensed ATAP occur in-person. This is actually a requirement under the current regulation. As one commenter stated, “*While low-risk cases are likely to not present a challenge, even low-risk cases can turn into high-risk cases between sessions. I encourage LSBEP to maintain that the supervising licensed psychologist (LP) or assigned alternate LP competent in the area of service be on site when the ATAP is interacting with patients.*” The Board agrees and will move forward with the current language noting that there is currently and will continue to be an option for the supervisor to request an exception from this standard. This exception must have prior approval by the Board.

Addressing comments and concerns regarding grandfathering: The proposed rules take into consideration a recent performance audit concluded on June 1, 2022 by the Louisiana Legislative Auditor (LLA). In the LLA’s report, the auditor recommended to the legislature that LSBEP strengthen its regulation of the profession of psychology, and that background checks be conducted on all applicants...”. LLA cited regulatory practices of other Louisiana and regional boards and cited issues in relying on licensees to self-disclose violations during the renewal process. LLA noted that, “The Rap Back service allows LSBEP to receive ongoing status notifications of any criminal activity on licensees with a completed criminal background check, thus eliminating the need for repeated background checks on the same licensee.” Therefore, the board intends to require registration and a background check for all currently employed and future ATAP’s. However, the Board is developing rollout procedures and education to avoid any disruption to psychological services by currently employed ATAP’s. Additionally, while the registration of current ATAP’s will be given deference, should an issue arise through the registration process that is unable to be resolved through education, the Board will act according to the procedures outlined in the proposed §1107 in the interest of the public.

To address the questions of applicability, the proposed rule defines ATAP’s as “a non-licensed individual who aids a Licensed Psychologist in the provision of psychological services to patients and clients.” This would include anyone engaged in the Practice of Psychology as defined under LA R.S. 37:2352. A front desk person, receptionist, billing department etc. solely engaged in administrative/clerical duties would not be required to register. There are exemptions in the proposed rule under **§1109.Exceptions to the Registration of an Assistant to a Psychologist** that clearly outline exceptions and exemptions, including “A medical psychologist utilizing assistants under the provisions of RS 37:1360.61 under the jurisdiction of the Louisiana State Board of Medical

Examiners; and “Members of other professions who are working in association or collaboration with a Licensed Psychologist, and who are licensed or certified under the laws of this state to independently render and bill for services that are consistent with their scope of practice under the jurisdiction of their respective license or certification.”

➤ **Summary of questions, concerns and suggestions received related to proposed rules regarding Continuing Professional Development.**

- Concerns that the continuing professional development changes change some of the previous standards and automatic approvals.
- Does the board now have to approve what was previously approved based on the rules alone?
- Does the term "specifically offer" mean something more than offer?
- Concerns were raised that §805. part E. restricts sponsors of continuing education that meet criteria for approval under part B from using language saying that they meet requirements for licensure.

LSBEP’s Response to Comments, Questions, Concerns regarding Continuing Professional Development:

The proposed rules related to Continuing Professional Development (CPD) do change some of the previous standards and automatic approvals. The following information was presented to LPA regarding these changes, specifically that the proposed CPD changes:

- Remove obsolete transitional language from 2014 and 2015 CPD rollout.
- Add a requirement that (2) of the 40 hours that are currently required must be within the area of multiculturalism or diversity.
- Remove the categorical requirement in consideration of least restrictive requirements for license renewal.
- Define activities that are "automatically approved" by the Board as Workshops, Conference Workshops/Training Activities that that have Board approved sponsors.
- Create an *optional* procedure for an individual or entity that is not "automatically approved" to apply for a one-time approval of an offering or activity, with an option to submit an application for renewal of the approval. This procedure broadens the options for the licensee and increases competition for continuing education providers.
- Create an *optional* procedure for a licensee to request "preapproval" of a course or activity that is not defined as "automatically approved".
- Redefine those categories within which a licensee *may request* "preapproval". This procedure broadens the options for the licensee and increases competition for continuing education providers.
- Create a deadline for the licensee to request "preapproval" of not later than June 30th of their reporting year.
- Create an *optional* retired status for eligible licensees: "Psychologist Emerit: Retired".
- Create definitions, criteria and a procedure for requesting Emerit status.
- Create a procedure for Emerit to return to practice.
- Provide that "Psychologist Emerit: Retired" are exempt from Continuing Education requirements.

The changes are necessary to alleviate issues surrounding improper reporting by psychologists in hopes that it will reduce or alleviate reporting issues, encourage appropriate activities and reduce the work

involved in audits. These issues arose out of an amendment promulgated in 2013 which created 3 categories (9 sub-categories) of CPD and a requirement that CPD be obtained in at least 2 of the 9 categories. Since this change, the Board has noted issues in individuals not understanding the regulations and misclassifying their CPD causing improper reporting by psychologists. The LSBEP annually conducts continuing education audits of 10% of the reporting population, approximately 40 individuals (a minimum of 40 hours each report, but usually more) of CE. In these audits, the LSBEP reviews the sponsorship and activities to ensure that they meet the continuing professional development requirements under Chapter 8. It is common that activities are rejected and additional CE is required at the expense of the licensee in order to meet the established requirements. Licensees attempt to claim a single professional consultation which does not meet the requirement for CPD. In these instances, that individual is flagged for future reports and the amount of time that the licensee has to obtain CE for the next reporting period is reduced, and in some cases delays the license renewal/reinstatement. This also makes more work for the LSBEP in correspondence, requires the LSBEP grant extensions and track those extensions until the requirements have been fulfilled.

The proposed rule simplifies the process by minimizing those activities that are pre-approved to approved sponsored workshops or conferences, while also leaving the option to seek pre-approval for non-traditional activities that have proved to be problematic when left to the judgement and discretion of individual licensees.

The proposed rules do not require a licensee to seek preapproval for CPD that meets the standards for sponsorship, objectives and activity.

Regarding the question related to the language, “specifically offer.” In this instance, “specifically offer” is referring to “Acceptable sponsors of continuing education” and means that the organization *expressly offers* or approves continuing education at a graduate or post-doctoral level to psychologists.

Regarding the comments related to the proposed §805.E. This section states that “Sponsors of CPD approved under Part “B” of this section may not advertise a CPD as **board-approved or endorsed or purport that the CPD satisfies the licensure requirements set forth in §803.**” To clarify, §805.E. refers to those activities that do not require pre-approval by the board. In such cases, these *activities* will not have undergone any review by the Board to satisfy the content criteria under §801 or §803. In other words, unless the Board has reviewed and approved a specific CPD, it would be false to purport that the activity or offering is approved by the board, endorsed by the board, or that the CPD activity satisfies the licensure requirements established by the Board (see also §805.A).

Note this does not prohibit a licensee from making such determinations in selecting CPD activities or offerings based on the rules, as is currently the case. Nor does it prohibit an organization from sponsoring an activity.

➤ **Summary of questions, concerns and suggestions received related to proposed rules regarding Emeritus Status.**

- Consider that the term Emeritus is the masculine form.

LSBEP’s Response to Comments, Questions, Concerns regarding Emeritus Status.:

The Board of Directors found this comment to be correct. In response, the LSBEP made a non-substantive change to use “Emerit” throughout the rules.

➤ **Summary of questions, concerns and suggestions received related to proposed rules regarding Licensed Specialists in School Psychology.**

- The ethics for the school specialist appear to contain political objectives, in contrast to purely scientific or professional objectives.

LSBEP’s Response to Comments, Questions, Concerns regarding Licensed Specialists in School Psychology:

There is no political objective or influence for this revision. In June 2017 LSBEP promulgated the Code of Ethics for Licensed Psychologists based on advice from legal counsel that the board’s ethics code should be promulgated into regulation. This process avails itself to the rulemaking process for directly affected Louisiana licensees should these standards change. The Board is addressing consistency in its regulation of licensed specialists in school psychology. These proposed rules are modeled from the current version of National Association of School Psychologists (NASP) *Principles for Professional Ethics*.

➤ **Summary of questions, concerns and suggestions received related to proposed rules regarding Telepsychology/Telesupervision.**

- Concerns were raised regarding the specific language proposed in §1403. & §1409. E.4. **Telesupervision and Telepsychology** that has been interpreted to require only video and audio transmissions simultaneously; in other words, concerns that audio-only is not allowed in either the provision of psychological services or in providing supervision.

LSBEP’s Response to Comments, Questions, Concerns regarding Telepsychology/Telesupervision:

The Board of Directors found this comment correct and helpful. It was not the intent of the proposed regulations to prohibit audio only. In fact, under the currently proposed §1403.C. “Telesupervision” is defined as “a method of providing supervision to psychology trainees via two- way video and audio transmissions simultaneously **or other telecommunication technologies**.

[Emphasis added]” Further, §1403.D. defines Telecommunication as “...the preparation, transmission, communication, or related processing of information by electrical, electromagnetic, electromechanical, electro-optical, or electronic means (Committee on National Security Systems, 2010).”

In response, the LSBEP will clarify not to exclude audio only and made a non-substantive change to revise §1403.A. and §1409.E.4, to add language to clarify that audio only communication is allowable.

➤ **Summary of questions, concerns and suggestions received related to proposed rules regarding Training and Credentials:**

- **Doctoral Program in Psychology** There appears to be a typographical error in Section A graduate **whose [should this be who is?]** of a doctoral program, at the time of graduation, that is either accredited by the American Psychological Association...”

- **Clinical Neuropsychology** There does not appear to be a provision for the grandfathering of those psychologists who currently have a declared specialty in neuropsychology.

LSBEP’s Response to Comments, Questions, Concerns | Basis and Rationale regarding Clinical Neuropsychology:

The Board of Directors found this comment to be helpful regarding the grammar correction and made a non-substantive change to correct the sentence. Regarding grandfathering under the proposed rules pertaining to Clinical Neuropsychology, the proposed revisions only clarify the current requirements. Psychologists who currently have a declared specialty in neuropsychology will not be impacted.

In summary, overall the majority of commenters supported the requirement for a criminal background check. Most of the questions were related to roll out and procedures for registering assistants to psychologists (e.g., the timeline for registering current and new hires; application process/forms; administrative vs. board approval; turnaround for approval; who is responsible for the application fees; background check requirements and procedures; procedures for sharing ATAP’s; termination procedures).

These questions, concerns and suggestions will be addressed through training and education.

Sincerely,

GREGORY KELLY GORMANOUS, Ph.D.

GREGORY KELLY GORMANOUS, PhD (Jan 9, 2023 14:21 CST)

Gregory Gormanous, Ph.D.
Chairperson

NOTICE: LA R.S. 42:14.D. Public comments – In accordance with LA R.S. 42:14.D., the LSBEP shall allow public comments at any point during a meeting of the LSBEP prior to action on an agenda item upon which a vote is to be taken. Individuals who wish to comment on a matter must sign in and state their intent to comment on a matter.

La. R.S. 44:33.1 - In compliance with La. R.S. 44:33.1, the LSBEP hereby gives notice that information submitted to the LSBEP may become public record pursuant to the provisions of Louisiana Public Records Law, La. R.S. 44:1, *et seq.*







LSBEP Response to Comments received regarding Registration of Assistants GG-MM 2022-1-9

Final Audit Report

2023-01-09

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