

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of dyslexia practitioners and therapists; imposing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle G, Title 3, Occupations Code, is amended by adding Chapter 403 to read as follows:

CHAPTER 403. BASIC DYSLEXIA PRACTITIONERS AND ADVANCED DYSLEXIA THERAPISTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 403.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health Services.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "License holder" means a person who holds a license issued under this chapter.

(5) "Multisensory structured language education" means a program for the treatment of individuals with dyslexia and related disorders that:

(A) includes instruction in:

(i) phonology and phonological awareness;

(ii) sound and symbol association;

1 (iii) syllables;

2 (iv) morphology;

3 (v) syntax; and

4 (vi) semantics; and

5 (B) is taught with the principles of:

6 (i) simultaneous multisensory instruction,
7 including visual-auditory-kinesthetic-tactile instruction;

8 (ii) systematic and cumulative
9 instruction;

10 (iii) explicit instruction;

11 (iv) diagnostic teaching to automaticity;
12 and

13 (v) synthetic and analytic instruction.

14 Sec. 403.002. ADMINISTRATION BY DEPARTMENT OF STATE HEALTH
15 SERVICES. The department shall administer this chapter.

16 Sec. 403.003. APPLICABILITY. This chapter does not:

17 (1) require a school district to employ a person
18 licensed under this chapter; or

19 (2) authorize a person who is not licensed under
20 Chapter 401 to practice audiology or speech-language pathology.

21 [Sections 403.004-403.050 reserved for expansion]

22 SUBCHAPTER B. POWERS AND DUTIES

23 Sec. 403.051. ADVISORY COMMITTEE. The department shall
24 appoint an advisory committee to advise the department in
25 administering this chapter.

26 Sec. 403.052. RULES. The executive commissioner shall
27 adopt rules necessary to administer and enforce this chapter,

1 including rules that establish standards of ethical practice.

2 [Sections 403.053-403.100 reserved for expansion]

3 SUBCHAPTER C. LICENSE REQUIREMENTS

4 Sec. 403.101. LICENSE REQUIRED. A person may not use the
5 title "basic dyslexia practitioner" or "advanced dyslexia
6 therapist" in this state unless the person holds the appropriate
7 license under this chapter.

8 Sec. 403.102. ISSUANCE OF LICENSE. The department shall
9 issue a basic dyslexia practitioner or advanced dyslexia therapist
10 license to an applicant who meets the requirements of this chapter.

11 Sec. 403.103. LICENSE APPLICATION. (a) A license
12 applicant must apply to the department on a form and in the manner
13 the department prescribes.

14 (b) The application must be accompanied by a nonrefundable
15 application fee.

16 Sec. 403.104. ELIGIBILITY FOR BASIC DYSLEXIA PRACTITIONER
17 LICENSE. (a) To be eligible for a basic dyslexia practitioner
18 license, an applicant must have:

19 (1) earned a bachelor's degree from an accredited
20 public or private institution of higher education;

21 (2) successfully completed at least 45 hours of course
22 work in multisensory structured language education from a training
23 program that meets the requirements of Section 403.106;

24 (3) completed at least 90 hours of practice of
25 supervised clinical experience in multisensory structured language
26 education; and

27 (4) completed at least five observations of the

1 practice of multisensory structured language education, each
2 followed by a conference and a written report and observed by an
3 instructor from a training program that meets the requirements of
4 Section 403.106.

5 (b) Clinical experience required under Subsection (a)(3)
6 must be obtained under:

7 (1) the supervision of a training program that meets
8 the requirements of Section 403.106; and

9 (2) guidelines approved by the department.

10 Sec. 403.105. ELIGIBILITY FOR ADVANCED DYSLEXIA THERAPIST
11 LICENSE. (a) To be eligible for an advanced dyslexia therapist
12 license, an applicant must have:

13 (1) earned at least a master's degree from an
14 accredited public or private institution of higher education;

15 (2) successfully completed at least 200 hours of
16 course work in multisensory structured language education from a
17 training program that meets the requirements of Section 403.106;

18 (3) completed at least 700 hours of practice of
19 supervised clinical experience in multisensory structured language
20 education; and

21 (4) completed at least 10 observations of the practice
22 of multisensory structured language education, each followed by a
23 conference and a written report and observed by an instructor from a
24 training program that meets the requirements of Section 403.106.

25 (b) Clinical experience required under Subsection (a)(3)
26 must be obtained under:

27 (1) the supervision of a person holding an advanced

1 dyslexia therapist license; and

2 (2) guidelines approved by the department.

3 Sec. 403.106. REQUIREMENTS FOR TRAINING PROGRAMS. (a) For
4 purposes of determining whether an applicant satisfies the training
5 requirements for a license under this chapter, a multisensory
6 structured language education training program completed by the
7 applicant must:

8 (1) be accredited by a nationally recognized
9 accrediting organization;

10 (2) provide instruction in each element of
11 multisensory structured language education;

12 (3) provide instruction based on the Texas Education
13 Agency publication The Dyslexia Handbook: Procedures Concerning
14 Dyslexia and Related Disorders (2001);

15 (4) be committed to self-study;

16 (5) have been reviewed by dyslexia education
17 professionals who are not affiliated with the training program; and

18 (6) develop and follow procedures to maintain and
19 improve the quality of training provided by the program.

20 (b) The department, in consultation with the advisory
21 committee, shall determine whether a training program meets the
22 requirements of Subsection (a).

23 Sec. 403.107. EXAMINATION; RULES. (a) To obtain a
24 license, an applicant must:

25 (1) pass an examination approved by the department;

26 and

27 (2) pay fees set by the executive commissioner.

1 (b) The department shall, in consultation with the advisory
2 committee:

3 (1) administer an examination at least twice each
4 year;

5 (2) determine standards for acceptable performance on
6 the examination; and

7 (3) maintain a record of all examination scores for at
8 least two years after the date of examination.

9 (c) In consultation with the advisory committee, the
10 executive commissioner by rule may:

11 (1) establish procedures for the administration of the
12 examination; and

13 (2) require a written examination.

14 Sec. 403.108. REEXAMINATION. (a) A person who fails the
15 examination may take a later examination on payment of a
16 nonrefundable fee for the examination.

17 (b) An applicant who fails two examinations may not be
18 reexamined until the person:

19 (1) submits a new application accompanied by a
20 nonrefundable application fee; and

21 (2) presents evidence acceptable to the department of
22 additional study in the area for which a license is sought.

23 Sec. 403.109. WAIVER OF EXAMINATION REQUIREMENT. The
24 department, in consultation with the advisory committee, may waive
25 the examination requirement and issue a license to an applicant who
26 holds an appropriate certificate or other accreditation from a
27 national organization recognized by the department.

1 Sec. 403.110. PROVISIONAL LICENSE. (a) The department, in
2 consultation with the advisory committee, may issue a provisional
3 license to an applicant currently licensed in another jurisdiction
4 who seeks a license in this state and who:

5 (1) has been licensed in good standing as a basic
6 dyslexia practitioner or an advanced dyslexia therapist for at
7 least two years in another jurisdiction, including a foreign
8 country, that has licensing requirements substantially equivalent
9 to the requirements of this chapter;

10 (2) has passed a national or other examination
11 recognized by the department relating to the practice of
12 multisensory structured language education; and

13 (3) is sponsored by a person licensed by the
14 department under this chapter with whom the provisional license
15 holder will practice during the time the person holds a provisional
16 license.

17 (b) The department may waive the requirement of Subsection
18 (a)(3) for an applicant if the department determines that
19 compliance with that subsection would be a hardship to the
20 applicant.

21 (c) A provisional license is valid until the date the
22 department approves or denies the provisional license holder's
23 application for a license.

24 (d) The department shall issue a license under this chapter
25 to the provisional license holder if:

26 (1) the provisional license holder passes the part of
27 the examination under Section 403.107 that relates to the

1 applicant's knowledge and understanding of the laws and rules
2 relating to the practice of multisensory structured language
3 education in this state;

4 (2) the department verifies that the provisional
5 license holder meets the academic and experience requirements for a
6 license under this chapter; and

7 (3) the provisional license holder satisfies any other
8 licensing requirements under this chapter.

9 (e) The department must approve or deny a provisional
10 license holder's application for a license not later than the 180th
11 day after the date the provisional license is issued. The
12 department may extend the 180-day period if the results of an
13 examination have not been received by the department before the end
14 of that period.

15 Sec. 403.111. TEMPORARY LICENSE; RULES. The executive
16 commissioner by rule may provide for the issuance of a temporary
17 license.

18 Sec. 403.112. INACTIVE STATUS; RULES. (a) The executive
19 commissioner by rule may provide for a license holder to be placed
20 on inactive status.

21 (b) Rules adopted under this section must include a time
22 limit for a license holder to remain on inactive status.

23 [Sections 403.113-403.150 reserved for expansion]

24 SUBCHAPTER D. PRACTICE BY LICENSE HOLDER

25 Sec. 403.151. PRACTICE SETTING. (a) A basic dyslexia
26 practitioner may practice only in a supervised educational setting,
27 including a school, learning center, or clinic.

1 (b) An advanced dyslexia therapist may practice in a school,
2 clinic, or private practice setting.

3 Sec. 403.152. CONTINUING EDUCATION. (a) A license holder
4 may not renew the person's license unless the person meets the
5 continuing education requirements established by the executive
6 commissioner.

7 (b) The executive commissioner, in consultation with the
8 advisory committee, shall establish the continuing education
9 requirements in a manner that allows a license holder to comply
10 without an extended absence from the license holder's county of
11 residence.

12 (c) The department shall:

13 (1) provide to a license applicant, with the
14 application form on which the person is to apply for a license,
15 information describing the continuing education requirements; and

16 (2) notify each license holder of any change in the
17 continuing education requirements at least one year before the date
18 the change takes effect.

19 [Sections 403.153-403.200 reserved for expansion]

20 SUBCHAPTER E. LICENSE DENIAL; COMPLAINT AND DISCIPLINARY

21 PROCEDURES

22 Sec. 403.201. COMPLAINTS. Any person may file a complaint
23 with the department alleging a violation of this chapter or a rule
24 adopted under this chapter.

25 Sec. 403.202. PROHIBITED ACTIONS. A license holder may
26 not:

27 (1) obtain a license by means of fraud,

1 misrepresentation, or concealment of a material fact;

2 (2) sell, barter, or offer to sell or barter a license;

3 or

4 (3) engage in unprofessional conduct that endangers or
5 is likely to endanger the health, welfare, or safety of the public
6 as defined by executive commissioner rule.

7 Sec. 403.203. GROUNDS FOR DISCIPLINARY ACTION. If a
8 license holder violates this chapter or a rule or code of ethics
9 adopted by the executive commissioner, the department shall:

10 (1) revoke or suspend the license;

11 (2) place on probation the person if the person's
12 license has been suspended;

13 (3) reprimand the license holder; or

14 (4) refuse to renew the license.

15 Sec. 403.204. LICENSE DENIAL, REVOCATION, OR SUSPENSION FOR
16 CRIMINAL CONVICTION. (a) The department may deny a license or may
17 suspend or revoke a license if the applicant or license holder has
18 been convicted of a misdemeanor involving moral turpitude or a
19 felony. The department may take action authorized by this section
20 when:

21 (1) the time for appeal of the person's conviction has
22 elapsed;

23 (2) the judgment or conviction has been affirmed on
24 appeal; or

25 (3) an order granting probation is made suspending the
26 imposition of the person's sentence, without regard to whether a
27 subsequent order:

- 1 (A) allows withdrawal of a plea of guilty;
- 2 (B) sets aside a verdict of guilty; or
- 3 (C) dismisses an information or indictment.

4 (b) A plea or verdict of guilty or a conviction following a
5 plea of nolo contendere is a conviction for purposes of this
6 section.

7 Sec. 403.205. HEARING. (a) If the department proposes to
8 revoke, suspend, or refuse to renew a person's license, the person
9 is entitled to a hearing before a hearings officer appointed by the
10 State Office of Administrative Hearings.

11 (b) The executive commissioner shall prescribe procedures
12 for appealing to the commissioner a decision to revoke, suspend, or
13 refuse to renew a license.

14 Sec. 403.206. ADMINISTRATIVE PROCEDURE. A proceeding under
15 this subchapter to suspend, revoke, or refuse to renew a license is
16 governed by Chapter 2001, Government Code.

17 Sec. 403.207. SANCTIONS. (a) The executive commissioner
18 by rule shall adopt a broad schedule of sanctions for a violation of
19 this chapter.

20 (b) The State Office of Administrative Hearings shall use
21 the schedule of sanctions for a sanction imposed as the result of a
22 hearing conducted by that office.

23 Sec. 403.208. PROBATION. The department may require a
24 person whose license suspension is probated to:

25 (1) report regularly to the department on matters that
26 are the basis of the probation;

27 (2) limit practice to areas prescribed by the

1 department; or

2 (3) continue the person's professional education until
3 the license holder attains a degree of skill satisfactory to the
4 department in those areas that are the basis of the probation.

5 Sec. 403.209. MONITORING OF LICENSE HOLDER. (a) The
6 executive commissioner by rule shall develop a system for
7 monitoring a license holder's compliance with the requirements of
8 this chapter.

9 (b) Rules adopted under this section must include
10 procedures to:

11 (1) monitor for compliance a license holder who is
12 ordered by the department to perform certain acts; and

13 (2) identify and monitor license holders who represent
14 a risk to the public.

15 Sec. 403.210. INFORMAL PROCEDURES. (a) The executive
16 commissioner by rule shall adopt procedures governing:

17 (1) informal disposition of a contested case under
18 Section 2001.056, Government Code; and

19 (2) an informal proceeding held in compliance with
20 Section 2001.054, Government Code.

21 (b) Rules adopted under Subsection (a) must:

22 (1) provide the complainant and the license holder an
23 opportunity to be heard; and

24 (2) require the presence of a representative of the
25 attorney general or the department's legal counsel to advise the
26 department or the department's employees.

27 Sec. 403.211. REFUND. (a) Subject to Subsection (b), the

1 department may order a license holder to pay a refund to a consumer
2 as provided in an agreement resulting from an informal settlement
3 conference instead of or in addition to imposing an administrative
4 penalty under this chapter.

5 (b) The amount of a refund ordered as provided in an
6 agreement resulting from an informal settlement conference may not
7 exceed the amount the consumer paid to the license holder for a
8 service regulated by this chapter. The department may not require
9 payment of other damages or estimate harm in a refund order.

10 Sec. 403.212. REINSTATEMENT. (a) A person may apply for
11 reinstatement of a revoked license on or after the first
12 anniversary of the date of revocation.

13 (b) The department may:

14 (1) accept or reject the application; and

15 (2) require an examination as a condition for
16 reinstatement of the license.

17 Sec. 403.213. REPRIMAND; CONTINUING EDUCATION. (a) In
18 addition to other disciplinary action authorized by this
19 subchapter, the department may:

20 (1) issue a written reprimand to a license holder who
21 violates this chapter; or

22 (2) require that a license holder who violates this
23 chapter attend continuing education programs.

24 (b) The department, in consultation with the advisory
25 committee, may specify the number of hours of continuing education
26 that must be completed by a license holder to fulfill the
27 requirement of Subsection (a)(2).

1 Sec. 403.214. EMERGENCY SUSPENSION. (a) The department
2 shall temporarily suspend the license of a license holder if the
3 department determines from the evidence or information presented to
4 it that continued practice by the license holder would constitute a
5 continuing and imminent threat to the public welfare.

6 (b) A license may be suspended under this section without
7 notice or hearing on the complaint if:

8 (1) action is taken to initiate proceedings for a
9 hearing before the State Office of Administrative Hearings
10 simultaneously with the temporary suspension; and

11 (2) a hearing is held as soon as practicable under this
12 chapter and Chapter 2001, Government Code.

13 (c) The State Office of Administrative Hearings shall hold a
14 preliminary hearing not later than the 14th day after the date of
15 the temporary suspension to determine if there is probable cause to
16 believe that a continuing and imminent threat to the public welfare
17 still exists. A final hearing on the matter shall be held not later
18 than the 61st day after the date of the temporary suspension.

19 [Sections 403.215-403.250 reserved for expansion]

20 SUBCHAPTER F. ADMINISTRATIVE PENALTY

21 Sec. 403.251. IMPOSITION OF ADMINISTRATIVE PENALTY. The
22 department may impose an administrative penalty on a person
23 licensed under this chapter who violates this chapter or a rule or
24 order adopted under this chapter.

25 Sec. 403.252. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The
26 amount of the administrative penalty may not be more than \$5,000 for
27 each violation. Each day a violation continues or occurs is a

1 separate violation for the purpose of imposing a penalty.

2 (b) The amount shall be based on:

3 (1) the seriousness of the violation, including the
4 nature, circumstances, extent, and gravity of the violation;

5 (2) the economic harm caused by the violation;

6 (3) the history of previous violations;

7 (4) the amount necessary to deter a future violation;

8 (5) efforts to correct the violation; and

9 (6) any other matter that justice may require.

10 (c) The executive commissioner by rule shall adopt an
11 administrative penalty schedule based on the criteria listed in
12 Subsection (b) for violations of this chapter or applicable rules
13 to ensure that the amounts of penalties imposed are appropriate to
14 the violation. The executive commissioner shall provide the
15 administrative penalty schedule to the public on request.

16 Sec. 403.253. REPORT AND NOTICE OF VIOLATION AND PENALTY.

17 (a) If the commissioner or the commissioner's designee determines
18 that a violation occurred, the commissioner or the designee may
19 issue to the department a report stating:

20 (1) the facts on which the determination is based; and

21 (2) the commissioner's or the designee's
22 recommendation on the imposition of an administrative penalty,
23 including a recommendation on the amount of the penalty.

24 (b) Within 14 days after the date the report is issued, the
25 commissioner or the commissioner's designee shall give written
26 notice of the report to the person. The notice must:

27 (1) include a brief summary of the alleged violation;

1 (2) state the amount of the recommended administrative
2 penalty; and

3 (3) inform the person of the person's right to a
4 hearing on the occurrence of the violation, the amount of the
5 penalty, or both.

6 Sec. 403.254. PENALTY TO BE PAID OR HEARING REQUESTED.

7 (a) Within 10 days after the date the person receives the notice,
8 the person in writing may:

9 (1) accept the determination and recommended
10 administrative penalty of the commissioner or the commissioner's
11 designee; or

12 (2) make a request for a hearing on the occurrence of
13 the violation, the amount of the penalty, or both.

14 (b) If the person accepts the determination and recommended
15 penalty of the commissioner or the commissioner's designee, the
16 commissioner by order shall approve the determination and impose
17 the recommended penalty.

18 Sec. 403.255. HEARING. (a) If the person requests a
19 hearing or fails to respond in a timely manner to the notice, the
20 commissioner or the commissioner's designee shall set a hearing and
21 give written notice of the hearing to the person.

22 (b) An administrative law judge of the State Office of
23 Administrative Hearings shall hold the hearing.

24 (c) The administrative law judge shall make findings of fact
25 and conclusions of law and promptly issue to the commissioner a
26 proposal for a decision about the occurrence of the violation and
27 the amount of a proposed administrative penalty.

1 Sec. 403.256. DECISION BY COMMISSIONER. (a) Based on the
2 findings of fact, conclusions of law, and proposal for decision,
3 the commissioner by order may determine that:

4 (1) a violation occurred and impose an administrative
5 penalty; or

6 (2) a violation did not occur.

7 (b) The notice of the commissioner's order given to the
8 person must include a statement of the right of the person to
9 judicial review of the order.

10 Sec. 403.257. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

11 (a) Within 30 days after the date the commissioner's order becomes
12 final, the person shall:

13 (1) pay the administrative penalty; or

14 (2) file a petition for judicial review contesting the
15 occurrence of the violation, the amount of the penalty, or both.

16 (b) Within the 30-day period prescribed by Subsection (a), a
17 person who files a petition for judicial review may:

18 (1) stay enforcement of the penalty by:

19 (A) paying the penalty to the court for placement
20 in an escrow account; or

21 (B) giving the court a supersedeas bond approved
22 by the court that:

23 (i) is for the amount of the penalty; and

24 (ii) is effective until all judicial review
25 of the commissioner's order is final; or

26 (2) request the court to stay enforcement of the
27 penalty by:

1 (A) filing with the court a sworn affidavit of
2 the person stating that the person is financially unable to pay the
3 penalty and is financially unable to give the supersedeas bond; and

4 (B) giving a copy of the affidavit to the
5 commissioner or the commissioner's designee by certified mail.

6 (c) If the commissioner or the commissioner's designee
7 receives a copy of an affidavit under Subsection (b)(2), the
8 commissioner or the designee may file with the court, within five
9 days after the date the copy is received, a contest to the
10 affidavit.

11 (d) The court shall hold a hearing on the facts alleged in
12 the affidavit as soon as practicable and shall stay the enforcement
13 of the penalty on finding that the alleged facts are true. The
14 person who files an affidavit has the burden of proving that the
15 person is financially unable to pay the penalty and to give a
16 supersedeas bond.

17 Sec. 403.258. COLLECTION OF PENALTY. (a) If the person
18 does not pay the administrative penalty and the enforcement of the
19 penalty is not stayed, the penalty may be collected.

20 (b) The attorney general may sue to collect the penalty.

21 Sec. 403.259. DETERMINATION BY COURT. (a) If the court
22 sustains the determination that a violation occurred, the court may
23 uphold or reduce the amount of the administrative penalty and order
24 the person to pay the full or reduced amount of the penalty.

25 (b) If the court does not sustain the finding that a
26 violation occurred, the court shall order that a penalty is not
27 owed.

1 Sec. 403.260. REMITTANCE OF PENALTY AND INTEREST. (a) If
2 the person paid the administrative penalty and if the amount of the
3 penalty is reduced or the penalty is not upheld by the court, the
4 court shall order, when the court's judgment becomes final, that
5 the appropriate amount plus accrued interest be remitted to the
6 person.

7 (b) The interest accrues at the rate charged on loans to
8 depository institutions by the New York Federal Reserve Bank.

9 (c) The interest shall be paid for the period beginning on
10 the date the penalty is paid and ending on the date the penalty is
11 remitted.

12 (d) If the person gave a supersedeas bond and the penalty is
13 not upheld by the court, the court shall order, when the court's
14 judgment becomes final, the release of the bond.

15 (e) If the person gave a supersedeas bond and the amount of
16 the penalty is reduced, the court shall order the release of the
17 bond after the person pays the reduced amount.

18 Sec. 403.261. ADMINISTRATIVE PROCEDURE. A proceeding under
19 this subchapter is a contested case under Chapter 2001, Government
20 Code.

21 [Sections 403.262-403.300 reserved for expansion]

22 SUBCHAPTER G. PENALTIES AND OTHER ENFORCEMENT PROCEDURES

23 Sec. 403.301. DECEPTIVE TRADE PRACTICE. A violation of
24 Section 403.101 is a deceptive trade practice.

25 Sec. 403.302. INJUNCTION. (a) The department may request
26 the attorney general or the appropriate county or district attorney
27 to commence an action to enjoin a violation of this chapter.

S.B. No. 703

1 403, Occupations Code, as added by this Act, take effect February 1,
2 2008.