

(iii) Two years of supervised experience by a licensed psychologist; and

(iv) Passage of an oral examination.

(6) [(5)] Renewal of License Issued to Military Service Members, Veterans, and Spouses [Spouse]. A license issued pursuant to this rule [to a military spouse under paragraph (1)(A) and (B) of this subsection] shall remain active until the last day of the licensee's birth month, [the licensee's birthdate] following a period of one year from the date of issuance of the license, at which time it will be subject to all renewal requirements.

(b) Applicants with Military Experience.

(1) A military service member or military veteran, as defined by Chapter 55, Occupations Code, shall receive credit toward the following licensing requirements for verified military service, training, or education:

(A) Licensed Specialist in School Psychology. A military service member or military veteran who was engaged in or who has been engaged in the delivery of psychological services within the military, for at least one year, is considered to have met the following requirements for this type of license: three reference letters. All other requirements for licensure are still required.

(B) Licensed Psychological Associate. A military service member or military veteran who was engaged in or who has been engaged in the delivery of psychological services within the military, for at least one year, is considered to have met the following requirements for this type of license: three reference letters, 450 hours of supervised experience. All other requirements for licensure are still required.

(C) Provisionally Licensed Psychologist. A military service member or military veteran who was engaged in or who has been engaged in the delivery of psychological services within the military, for at least one year, is considered to have met the following requirements for this type of license: three reference letters. All other requirements for licensure are still required.

(D) Licensed Psychologist. A military service member or military veteran who was engaged in or who has been engaged in the delivery of psychological services within the military, for at least one year following conferral of a doctoral degree, is considered to have met the following requirements for this type of license: one year of post-doctoral supervised experience. All other requirements for licensure are still required.

(2) An applicant with an honorable discharge from the United States military either during the application process or within the three year period preceding the date the application is received by the Board, is considered to have met the requirement for one of the three reference letters.

(3) A military service member or military veteran may not receive credit toward licensing requirements due to military service, training, or education if they hold a license issued by another jurisdiction that has been restricted, or they have an unacceptable criminal history.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Darrel D. Spinks
Executive Director

Texas State Board of Examiners of Psychologists
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CHAPTER 465. RULES OF PRACTICE

22 TAC §465.1

The Texas State Board of Examiners of Psychologists proposes amendments to §465.1, Definitions. The proposed amendments will define "supervision" as that term is used in Board rules, and provide greater clarity and guidance to licensees. The proposed amendment also includes the definition of "child custody evaluation" and "adoption evaluation" as those terms are defined by Tex. H.B. 1449, 84th Leg., R.S. (2015).

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no adverse effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701 within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701 or via email to brenda@tsbep.texas.gov.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists 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.

No other code, articles or statutes are affected by this section.

§465.1. *Definitions.*

The following terms have the following meanings:

(1) "Client" has the same meaning as "patient."

(2) "Dual Relationship" means a situation where a licensee and another individual have both a professional relationship and a non-professional relationship. Dual relationships include, but are not limited to, personal friendships, business or financial interactions, mutual club or social group activities, family or marital ties, or sexual relationships.

(3) "Forensic psychology" is the provision of psychological services involving courts, legal claims, or the legal system. The provision of forensic psychological services includes any and all preliminary and exploratory services, testing, assessments, evaluations, interviews, examinations, depositions, oral or written reports, live or recorded testimony, or any psychological service provided by a licensee concerning a current or potential legal case at the request of a party or potential party, an attorney for a party, or a court, or any other individual or entity, regardless of whether the licensee ultimately provides a report or testimony that is utilized in a legal proceeding. A

person who is the subject of forensic evaluation is not considered to be a patient under these rules. "Forensic evaluation" is an evaluation conducted, not for the purpose of providing mental health treatment, but rather at the request of a court, an attorney, or an administrative body including federal and private disability benefits providers to assist in addressing a forensic referral question. Additionally, forensic services would include fitness for duty evaluations, psychological evaluations conducted after an employment offer has been made in high risk professions, and risk assessment evaluations of employees as a result of their aggressive or threatening behavior.

(4) "Informed Consent" means the written documented consent of the patient, client and other recipients of psychological services only after the patient, client or other recipient has been made aware of the purpose and nature of the services to be provided, including but not limited to: the specific goals of the services; the procedures to be utilized to deliver the services; possible side effects of the services, if applicable; alternate choices to the services, if applicable; the possible duration of the services; the confidentiality of and relevant limits thereto; all financial policies, including the cost and methods of payment; and any provisions for cancellation of and payments for missed appointments; and right of access of the patient, client or other recipient to the records of the services.

(5) "Licensee" means a licensed psychologist, provisionally licensed psychologist, licensed psychological associate, licensed specialist in school psychology, applicants to the Board, and any other individual whom the Board has the authority to discipline under these Rules.

(6) "Multiple Relationship" means any relationship between a licensee and another individual involving a professional relationship and a more than one non-professional relationship.

(7) "Patient" means a person who consults or is interviewed by a licensee for a diagnosis, evaluation, or treatment of any mental or emotional condition or disorder of that person regardless of whether the patient or some other individual or entity paid for the consultation or interview except as identified in paragraph (3) of this section, where the subject of forensic evaluation is not considered to be a patient.

(8) "Professional relationship" is any relationship between a licensee and another individual, group or organization in which the licensee delivers psychological services to the individual, group, or organization.

(9) "Professional standards" are determined by the Board through its rules, regulations, policies and any other sources adopted by the Board.

(10) "Provision of psychological services" means any use by a licensee of his or her education or training in psychology in the context of a professional relationship. Psychological services include, but are not limited to, therapy, diagnosis, testing, assessments, evaluation, treatment, counseling, supervision, consultation, providing forensic opinions, rendering a professional opinion, performing research, or teaching to an individual, group, or organization.

(11) "Recognized member of the clergy," as used in §501.004(a)(4) [Section 501.004(a)(4)] of the Act, means a member in good standing of and accountable to a denomination, church, sect or religious organization legally recognized under the Internal Revenue Code, §501(c)(3) [Section 501(c)(3)].

(12) "Records" are any information, regardless of the format in which it is maintained, that can be used to document the delivery, progress or results of any psychological services including, but not limited to, data identifying a recipient of services, dates of services, types of services, informed consents, fees and fee schedules, assessments,

treatment plans, consultations, session notes, test results, reports, release forms obtained from a client or patient or any other individual or entity, and records concerning a patient or client obtained by the licensee from other sources.

(13) "Report" includes any written or oral assessment, recommendation, psychological diagnostic or evaluative statement containing the professional judgment or opinion of a licensee.

(14) "Test data" refers to testing materials, test booklets, test forms, test protocols and answer sheets used in psychological testing to generate test results and test reports.

(15) "Supervision" refers to direct, systematic professional oversight of individuals who provide psychological services under the authority of a supervising licensee, whereby the supervisor has the responsibility and ability to monitor and control the psychological services provided to ensure the patient's or client's best interests are met and that the public is protected. In the context of psychological training and education, "supervision" also refers to the formal provision of systematic education and training for purposes of licensure or competency that serves to assist individuals with gaining experience and developing the skills necessary for licensure or competent practice in a particular practice area. However, the term "supervision" does not apply to the supervision of purely administrative or employment matters.

(16) "Child custody evaluation" has the same meaning as assigned by Tex. Fam. Code Ann. §107.101.

(17) "Adoption evaluation" has the same meaning as assigned by Tex. Fam. Code Ann. §107.151.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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22 TAC §465.2

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Examiners of Psychologists or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas State Board of Examiners of Psychologists proposes the repeal of §465.2, Supervision. The proposed repeal is necessary due to the extensive changes proposed for this rule.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed repeal will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to

comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed repeal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701 within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701 or via email to brenda@tsbep.texas.gov.

The repeal is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists 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.

No other code, articles or statutes are affected by this section.

§465.2. Supervision.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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22 TAC §465.2

The Texas State Board of Examiners of Psychologists proposes new rule §465.2, Supervision. The proposed new rule reflects a collaborative effort by the Board and its stakeholders to align the rules governing supervision with generally acknowledged practice standards, and to consolidate the rules governing supervision into a more intuitive format.

The proposed new rule also serves to provide greater protection to the public by establishing clarity and guidance in areas such as documentation of supervision, amounts of direct supervision, and the permissible number of supervisees.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed new rule will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no adverse effect on small businesses or local economies.

Comments on the proposed new rule may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701 within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701 or via email to brenda@tsbep.texas.gov.

The new rule is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists 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.

No other code, articles or statutes are affected by this section.

§465.2. Supervision.

(a) Supervision in General. The following rules apply to all supervisory relationships.

(1) A licensee is responsible for the supervision of all individuals that the licensee employs or utilizes to provide psychological services of any kind.

(2) Licensees ensure that their supervisees have legal authority to provide psychological services.

(3) Licensees delegate only those responsibilities that supervisees may legally and competently perform.

(4) All individuals who receive psychological services requiring informed consent from an individual under supervision must be informed in writing of the supervisory status of the individual and how the patient or client may contact the supervising licensee directly.

(5) All materials relating to the practice of psychology, upon which the supervisee's name or signature appears, must indicate the supervisory status of the supervisee. Supervisory status must be indicated by one of the following:

(A) Supervised by (name of supervising licensee);

(B) Under the supervision of (name of supervising licensee);

(C) The following persons are under the supervision of (name of supervising licensee); or

(D) Supervisee of (name of supervising licensee).

(6) Licensees provide an adequate level of supervision to all individuals under their supervision according to accepted professional standards given the experience, skill and training of the supervisee, the availability of other qualified licensees for consultation, and the type of psychological services being provided.

(7) Licensees utilize methods of supervision that enable the licensee to monitor all delegated services for legal, competent, and ethical performance. Methods of supervision may include remote or electronic means if:

(A) adequate supervision can be provided through remote or electronic means;

(B) the difficulties in providing full-time in-person supervision place an unreasonable burden on the delivery of psychological services; and

(C) no more than fifty percent of the supervision takes place through remote or electronic means.

(8) Licensees must be competent to perform any psychological services being provided under their supervision.

(9) Licensees shall document their supervision activities in writing, including any remote or electronic supervision provided. Documentation shall include the dates, times, and length of supervision.

(10) Licensees may only supervise the number of supervisees for which they can provide adequate supervision.

(b) Supervision of Students, Interns, Residents, Fellows, and Trainees. The following rules apply to all supervisory relationships involving students, interns, residents, fellows, and trainees.

(1) Unlicensed individuals providing psychological services pursuant to §§501.004(a)(2), 501.252(b)(2), or 501.260(b)(3) of the Act must be under the supervision of a qualified supervising licensee at all times.

(2) Supervision must be provided by a qualified supervising licensee before it will be accepted for licensure purposes.

(3) A licensee practicing under a restricted status license is not qualified to, and shall not provide supervision for a person seeking to fulfill internship or practicum requirements, or a person seeking licensure under the Psychologists' Licensing Act, regardless of the setting in which the supervision takes place, unless authorized to do so by the Board. A licensee shall inform all supervisees of any Board order restricting their license and assist the supervisees with finding appropriate alternate supervision.

(4) A supervisor must document in writing their supervisee's performance during a practicum, internship, or period of supervised experience required for licensure. The supervisor must provide this documentation to the supervisee.

(5) An individual subject to this subsection may, as part of a required practicum, internship, or period of supervised experience required for licensure with this Board, supervise others in the delivery of psychological services.

(6) For provisional trainees, a supervisor must provide at least one hour of individual supervision per week and may reduce the amount of weekly supervision on a proportional basis for provisional trainees working less than full-time.

(7) Licensees may not supervise an individual to whom they are related within the second degree of affinity or consanguinity.

(c) Supervision of Provisionally Licensed Psychologists and Licensed Psychological Associates. The following rules apply to all supervisory relationships involving Provisionally Licensed Psychologists and Licensed Psychological Associates.

(1) Provisionally Licensed Psychologists and Licensed Psychological Associates must be under the supervision of a Licensed Psychologist and may not engage in independent practice.

(2) A Provisionally Licensed Psychologist who is licensed in another state to independently practice psychology and is in good standing in that state, and who has applied for licensure as a psychologist may during the time that the Board is processing the applicant's application for licensure as a psychologist, practice psychology without supervision. However, upon notification from the Board that an applicant has not met the qualifications for licensure as a psychologist, the provisionally licensed psychologists must obtain supervision within 30 days in order to continue to practice.

(3) A provisionally licensed psychologist may, as part of a period of supervised experience required for full licensure with this Board, supervise others in the delivery of psychological services.

(4) A supervisor must provide at least one hour of individual supervision per week. A supervisor may reduce the amount of weekly supervision on a proportional basis for supervisees working less than full-time.

(d) Supervision of Licensed Specialists in School Psychology interns and trainees. The following rules apply to all supervisory relationships involving Licensed Specialists in School Psychology, as well

as all interns and trainees working toward licensure as a specialist in school psychology.

(1) A supervisor must provide an LSSP trainee with at least one hour of supervision per week, with no more than half being group supervision. A supervisor may reduce the amount of weekly supervision on a proportional basis for trainees working less than full-time.

(2) Supervision within the public schools may only be provided by a Licensed Specialist in School Psychology, who has a minimum of three years of experience providing psychological services within the public school system without supervision. To qualify, a licensee must be able to show proof of their license, credential, or authority to provide unsupervised school psychological services in the jurisdiction where those services were provided, along with documentation from the public school(s) evidencing delivery of those services.

(3) Supervisors must sign all educational documents completed for students by the supervisee, including student progress reports, student evaluation reports, or similar professional reports to consumers, other professionals, or other audiences. It is not a violation of this rule if supervisors do not sign documents completed by a committee reflecting the deliberations of an educational meeting for an individual student which the supervisee attended and participated in as part of the legal proceedings required by federal and state education laws, unless the supervisor also attended and participated in such meeting.

(4) Supervisors shall document all supervision sessions. This documentation must include information about the duration of sessions, as well as the focus of discussion or training. The documentation must also include information regarding:

(A) any contracts or service agreements between the public school district and university school psychology training program;

(B) any contracts or service agreements between the public school district and the supervisee;

(C) the supervisee's professional liability insurance coverage, if any;

(D) any training logs required by the school psychology training program; and

(E) the supervisee's trainee or licensure status.

(5) Supervisors must ensure that each individual completing any portion of the internship required by Board rule §463.9, is provided with a written agreement that includes a clear statement of the expectations, duties, and responsibilities of each party, including the total hours to be performed by the intern, benefits and support to be provided by the supervisor, and the process by which the intern will be supervised and evaluated.

(6) Supervisors must ensure that supervisees have access to a process for addressing serious concerns regarding a supervisee's performance. The process must protect the rights of clients to receive quality services, assure adequate feedback and opportunities for improvement to the supervisee, and ensure due process protection in cases of possible termination of the supervisory relationship.

(e) The various parts of this rule should be construed, if possible, so that effect is given to each part. However, where a general provision conflicts with a more specific provision, the specific provision shall control.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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22 TAC §465.3

The Texas State Board of Examiners of Psychologists proposes an amendment to §465.3, Providers of Psychological Services. The proposed amendment will prevent duplicate provisions, and assist with the consolidation and clarification of rules related to supervision under Board rule §465.2.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no adverse effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701 within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701 or via email to brenda@tsbep.texas.gov.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists 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.

No other code, articles or statutes are affected by this section.

§465.3. *Providers of Psychological Services.*

(a) Psychologists shall employ or utilize an individual to provide psychological services, in any setting not specifically exempt under §501.004(a)(1) of the Psychologists' Licensing Act (the Act), only if:

- (1) The individual is licensed by this Board; or
- (2) The individual is specifically exempted from licensure requirements by §501.004(a)(2) of the Act, relating to provision of services as part of a supervised course of study by students, residents or interns pursuing a course of study in a recognized training institution or facility; or,
- (3) The individual is engaged in post-doctoral supervision for purposes of satisfying §501.252(b)(2) of the Act; or
- (4) The individual is completing supervised experience for purposes of satisfying §501.260(b)(3) of the Act, relating to Licensed Specialist in School Psychology; or

(5) The individual is completing supervised experience for purposes of satisfying the requirements to become a licensed professional listed in §501.004(b) of the Act.

~~[(b) Unlicensed individuals providing psychological services pursuant to §§501.004(a)(2), 501.252(b)(2), or 501.260(b)(3) of the Act must be under the direct supervision of an authorized supervising licensee at all times. All patients or clients who receive psychological services from an unlicensed individual under such supervision must be clearly informed of the supervisory status of the individual and how the patient or client may contact the supervising licensee directly.]~~

~~(b) [(e)] Licensees who contract to provide psychological services in settings where the Act does not apply pursuant to §501.004 of the Act ("exempt" settings) are not themselves exempt from the Act. In some cases, a licensee may have to follow state or federal guidelines or laws that conflict with Board rules. In those cases, Board rule §461.14 of this title (relating to Conflict between Laws and Board Rules) applies.~~

~~(c) [(d)] Licensees who contract with a third party who contracts to provide psychological services in settings where the Act does not apply pursuant to §501.004 of the Act ("exempt" settings) are not themselves exempt from the Act. In some cases, a licensee may have to follow state or federal guidelines or laws that conflict with Board rules. In those cases, Board rule §461.14 of this title applies.~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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22 TAC §465.18

The Texas State Board of Examiners of Psychologists proposes amendments to §465.18, Forensic Services. The proposed amendments are necessary to incorporate the statutory changes enacted with the passage of Tex. H.B. 1449, 84th Leg., R.S. (2015).

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendments will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no significant economic costs to persons required to comply with this rule, other than completing the required family violence dynamics training. There will be no adverse effect on small businesses or local economies.

Comments on the proposed amendments may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701 within 30 days of publication of this proposal in the *Texas Register*. Comments

may also be submitted via fax to (512) 305-7701 or via email to brenda@tsbep.texas.gov.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists 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.

No other code, articles or statutes are affected by this section.

§465.18. Forensic Services.

(a) In General.

(1) A licensee who provides services concerning a matter which the licensee knows or should know will be utilized in a legal proceeding, such as a divorce, child custody determination, fitness for duty evaluation for high risk personnel, disability claim, or risk assessment evaluations of employees, must comply with all applicable Board rules concerning forensic services regardless of whether the licensee is acting as a factual witness or an expert.

(2) Licensees who engage in forensic services must have demonstrated appropriate knowledge of and competence in all underlying areas of psychology about which they provide such services.

(3) All forensic opinions, reports, assessments, and recommendations rendered by a licensee must be based on information and techniques sufficient to provide appropriate substantiation for each finding.

(4) A licensee who provides forensic services must comply with all other applicable Board rules and state and federal law relating to the underlying areas of psychology relating to those services.

(5) When appointed or designated in writing by a court to provide psychological services, a licensee shall obtain and keep a copy of the court order.

(6) When providing forensic psychological services to a minor who is the subject of a court order or the ward of guardianship, a licensee shall obtain and keep a copy of the relevant portions of any court order, divorce decree, or letters of guardianship authorizing the individual to provide substitute consent on behalf of the minor or ward.

(b) Limitation on Services.

(1) A licensee who is asked to provide an opinion concerning an area or matter about which the licensee does not have the appropriate knowledge and competency to render a professional opinion shall decline to render that opinion.

(2) A licensee who is asked to provide an opinion concerning a specific matter for which the licensee lacks sufficient information to render a professional opinion shall decline to render that opinion unless the required information is provided.

(3) A licensee shall not render a written or oral opinion about the psychological characteristics of an individual without conducting an examination of the individual unless the opinion contains a statement that the licensee did not conduct an examination of the individual.

(4) A written or oral opinion about the psychological characteristics of an individual rendered by a licensee who did not conduct an examination of that individual must contain clarification of the extent to which this limits the reliability and validity of the opinion and the conclusions and recommendations of the licensee.

(5) When seeking or receiving court appointment or designation as an expert for a forensic evaluation a licensee specifically

avoids accepting appointment or engagement for both evaluation and therapeutic intervention for the same case. A licensee provides services in one but not both capacities in the same case.

(c) Describing the Nature of Services. A licensee must document in writing that subject(s) of forensic evaluations or their parents or legal representative have been informed of the following:

(1) The nature of the anticipated services (procedures);

(2) The specific purpose and scope of the evaluation;

(3) The identity of the party who requested the psychologist's services;

(4) The identity of the party who will pay the psychologist's fees and if any portion of the fees is to be paid by the subject, the estimated amount of the fees;

(5) The type of information sought and the uses for information gathered;

(6) The people or entities to whom psychological records will be distributed;

(7) The approximate length of time required to produce any reports or written results;

(8) Applicable limits on confidentiality and access to psychological records;

(9) Whether the psychologist has been or may be engaged to provide testimony based on the report or written results of forensic psychological services in a legal proceeding; and

(10) The licensee's name as it appears in their professional file with the Board prior to initiating services.

(d) Certain Testimony Prohibited.

(1) A licensee may not offer an expert opinion or recommendation relating to the conservatorship of or possession of or access to a child unless the licensee has conducted a child custody evaluation.

(2) In a contested suit, a licensee may provide other relevant information and opinions, other than those prohibited by paragraph (1) of this subsection, relating to any party that the licensee has personally evaluated or treated.

(3) This subsection does not apply to a suit in which the Department of Family and Protective Services is a party.

(e) Child Custody Evaluations.

(1) The role of the child custody evaluator is one of professional expert. A licensee serving as a child custody evaluator shall not function as an advocate, but must remain impartial and objective. Licensees conducting child custody evaluations, including those licensees appointed by a court, are subject to the Board's jurisdiction and must follow all applicable Board rules.

(2) The term "supervision" as used in this subsection shall have the meaning assigned by Tex. Fam. Code Ann. §107.101. However, the term shall not encompass the restrictions and requirements set forth in Board rule §465.2 of this title (relating to Supervision) nor shall a licensee providing supervision under this subsection have supervisory responsibility under Board rule §465.2 of this title.

(3) Minimum Qualifications of Child Custody Evaluator.

(A) A licensee must be qualified to conduct a child custody evaluation pursuant to Tex. Fam. Code Ann. §107.104 before the licensee may conduct an evaluation. Licensees qualified to conduct

evaluations under Tex. Fam. Code Ann. §107.104(b)(2) must conduct evaluations under supervision in accordance with that section.

(B) Notwithstanding any other grounds for qualification, the Board has determined that a licensed psychologist is qualified to conduct child custody evaluations if the licensee:

(i) has obtained a minimum of 8 professional development hours directly related to the performance of child custody evaluations since becoming a licensed psychologist, and is board certified in forensic psychology by the American Board of Professional Psychology (ABPP); or

(ii) has obtained a minimum of 40 professional development hours directly related to the performance of child custody evaluations since becoming a licensed psychologist, and has conducted at least three child custody evaluations under the supervision of a qualified licensee.

(C) A licensee who does not meet the minimum qualification requirements set forth in Tex. Fam. Code Ann. §107.104, may nevertheless conduct a child custody evaluation if:

(i) appointed to do so pursuant to Tex. Fam. Code Ann. §107.106. A licensee appointed under Tex. Fam. Code Ann. §107.106 must comply with the provisions of Subchapter D of the Texas Family Code and this rule;

(ii) the individual is licensed as a psychologist, and has completed at least ten social studies or other child custody evaluations ordered by a court in suits affecting the parent-child relationship prior to September 1, 2015; or

(iii) the licensee was qualified to conduct a social study evaluation under former Tex. Fam. Code Ann. §107.0511(g). This subpart shall expire on August 31, 2017, at which time it shall have no further force and effect.

(D) If requested by a court, a licensee selected to conduct or who is conducting a child custody evaluation must demonstrate appropriate knowledge and competence in child custody evaluation services consistent with professional models, standards, and guidelines.

(E) In addition to the minimum qualifications set forth by this rule, an individual must complete at least eight hours of family violence dynamics training provided by a family violence service provider to be qualified to conduct child custody evaluations.

(4) Disclosure of Conflicts and Bias.

(A) Licensees shall comply with all disclosure requirements set forth in Tex. Fam. Code Ann. §107.107.

(B) Following any disclosure required by Tex. Fam. Code Ann. §107.107(c), a licensee must resign as child custody evaluator, unless:

(i) the court finds that no conflict of interest exists and that any previous knowledge of a party or child who is the subject of the suit is not relevant; or

(ii) the parties and any attorney for a child who is the subject of the suit agree in writing to the licensee's continued appointment as the child custody evaluator.

(C) Except as authorized by Tex. Fam. Code Ann. §107.107(f), licensees may not accept appointment as a child custody evaluator if they have worked in a professional capacity with a party, a child who is the subject of the suit, or a member of the party's or child's family. The term "family" as used in this subpart has the meaning assigned by Tex. Fam. Code Ann. §71.003.

(5) Elements of Child Custody Evaluation.

(A) Licensees shall comply with Tex. Fam. Code Ann. §§107.108, 107.109, and 107.1101 when conducting child custody evaluations.

(B) Licensees may conduct psychometric testing as part of a child custody evaluation in accordance with Tex. Fam. Code Ann. §107.110.

(6) Communications and Recordkeeping of Child Custody Evaluator.

(A) Licensees shall comply with the requirements of Tex. Fam. Code Ann. §107.112 regarding:

(i) the disclosure of communications between evaluation participants;

(ii) the creation and retention of records relevant to the evaluation; and

(iii) access to evaluation records.

(B) Licensees conducting child custody evaluations shall maintain the confidentiality of records obtained from the Department of Family and Protective Services pursuant to Tex. Fam. Code Ann. §107.111. Licensees may not disclose any information obtained from the records except as required or allowed by law. Failure to maintain confidentiality as required by Tex. Fam. Code Ann. §107.111 will result in disciplinary action against a licensee.

(7) Evaluation Report.

(A) A licensee who conducts a child custody evaluation shall prepare and file a report in accordance with Tex. Fam. Code Ann. §107.113.

(B) A licensee shall provide a copy of any report filed with the Court in accordance with Tex. Fam. Code Ann. §107.114.

(f) Adoption Evaluations.

(1) The role of the adoption evaluator is one of professional expert. A licensee serving as an adoption evaluator shall not function as an advocate, but must remain impartial and objective. Licensees conducting adoption evaluations, including those licensees appointed by a court, are subject to the Board's jurisdiction and must follow all applicable Board rules.

(2) Minimum Qualifications of Adoption Evaluator.

(A) A licensee must be qualified to conduct an adoption evaluation pursuant to Tex. Fam. Code Ann. §107.154 before the licensee may conduct an evaluation.

(B) Licensees qualified to conduct a child custody evaluations are also qualified to conduct adoption evaluations.

(C) A licensee who does not meet the minimum qualification requirements set forth in Tex. Fam. Code Ann. §107.154, may nevertheless conduct an adoption evaluation if:

(i) appointed to do so pursuant to Tex. Fam. Code Ann. §107.155. A licensee appointed under Tex. Fam. Code Ann. §107.155 must comply with the provisions of Subchapter E of the Texas Family Code and this rule; or

(ii) the individual is licensed as a psychologist, and has completed at least ten social studies or other child custody evaluations ordered by a court in suits affecting the parent-child relationship prior to September 1, 2015.

(3) Disclosure of Conflicts and Bias.

(A) Licensees shall comply with all disclosure requirements set forth in Tex. Fam. Code Ann. §107.156.

(B) Following any disclosure required by Tex. Fam. Code Ann. §107.156(c), a licensee must resign as adoption evaluator, unless:

(i) the court finds that no conflict of interest exists and that any previous knowledge of a party or child who is the subject of the suit is not relevant; or

(ii) the parties and any attorney for a child who is the subject of the suit agree in writing to the licensee's continued appointment as the adoption evaluator.

(C) Except as authorized by Tex. Fam. Code Ann. §107.156(e), licensees may not accept appointment as an adoption evaluator if they have worked in a professional capacity with a party, a child who is the subject of the suit, or a member of the party's or child's family. The term "family" as used in this subpart has the meaning assigned by Tex. Fam. Code Ann. §71.003.

(4) A licensee shall report to the Department of Family and Protective Services any adoptive placement that appears to have been made by someone other than a licensed child-placing agency or a child's parent or managing conservator.

(5) Licensees shall comply with Tex. Fam. Code Ann. §§107.158, 107.159, and 107.160 when conducting adoption evaluations.

(6) Licensees conducting adoption evaluations shall maintain the confidentiality of records obtained from the Department of Family and Protective Services pursuant to Tex. Fam. Code Ann. §107.163. Licensees may not disclose any information obtained from the records except as required or allowed by law. Failure to maintain confidentiality as required by Tex. Fam. Code Ann. §107.163 will result in disciplinary action against a licensee.

(g) Duty to Report Complaints. Licensees must report any complaint filed against them with this Board that alleges facts tending to show a violation of this rule in connection with a child custody or adoption evaluation. The report must be made to the court that ordered the evaluation within 30 days of receiving notice of the complaint from the Board. Only those complaints for which a licensee receives notice from the Board need to be reported.

~~[(d) Child Custody Evaluations.]~~

~~[(1) The primary consideration in a child custody evaluation is to assess the individual and family factors that affect the best psychological interests of the child. Other factors or specific factors may also be addressed given a specific forensic services engagement.]~~

~~[(2) Child custody evaluations generally involve an assessment of the adults' capacity for parenting, an assessment of the psychological functioning, developmental needs, and wishes of the child, and the functional ability of each parent to meet such needs. Other socioeconomic factors, family, collateral and community resources may also be taken into secondary consideration.]~~

~~[(3) The role of the psychologist in a child custody forensic engagement is one of a professional expert. The psychologist cannot function as an advocate and must retain impartiality and objectivity, regardless of whether retained by the court or a party to the divorce. The psychologist must not perform an evaluation where there has been a prior therapeutic relationship with the child or the child's immediate family members, unless required to do so by court order.]~~

~~[(4) The scope of the evaluation is determined by the psychologist based on the referral question(s). Licensees must comprehensively perform the evaluation based on the scope of the referral, but not exceed the scope of the referral.~~

~~[(e) Child Visitation. Forensic opinions as to child visitation and parenting arrangements must be supported by forensic evaluations.]~~

~~[(1) Licensees may provide treatment or evaluation, but not both in the same case.]~~

~~[(2) A treating psychologist may express an opinion as to the progress of treatment, but shall refrain from rendering an opinion about child visitation or parenting arrangements, unless required to do so by court order.]~~

~~[(3) Basis of forensic opinions as to child visitation and parenting access.]~~

~~[(A) The evaluation must be specific to the issue of visitation or parenting access. A general evaluation of an affected party's psychological condition is insufficient.]~~

~~[(B) The evaluation must be court ordered, or the psychologist-expert retained specifically to offer such opinion.]~~

~~[(C) Any evaluation to address the issue of visitation or parenting access must include an evaluation of all affected parties to the proceeding, or identify why a child or affected party was not evaluated, and include a statement as to the limitations on validity imposed thereby.]~~

~~(h) [(f)] Parenting Facilitators.~~

~~(1) The title "parenting facilitator" is defined in the Texas Family Code, Title 5, Subtitle B, Chapter 153, Subchapter K, Parenting Plan, Parenting Coordinator, and Parenting Facilitator.~~

~~(2) The Board's jurisdiction over licensees who also accept engagements as parenting facilitators is limited to its enforcement of Board rules. The Family Code sets forth procedures for the qualifications, duties, appointment and removal, reporting, record retention, and compensation of parenting facilitators. The Family Code also provides procedures for disclosure of conflicts of interest by parenting facilitators. In the event of conflict between the Family Code and Board rules, the Family Code controls, pursuant to Board rule §461.14 of this title (relating to Conflict between Laws and Board Rules).~~

~~(3) A parenting facilitator who is also a licensed psychologist in Texas is a provider of forensic psychological services and must comply with all other applicable Board rules and state and federal laws relating to the underlying areas of psychology relating to those services.~~

~~(4) Participants in parenting facilitation are not patients as defined in these rules and in Texas Health and Safety Code §611.001. Records created during parenting facilitation are not confidential.~~

~~(5) Parenting facilitators must comply with the Texas Family Code at §153.6061 as to duties and §153.6101 as to qualifications, and with the "Guidelines for Parenting Coordination" developed by the Association of Family and Conciliation Courts Task Force on Parenting Coordination, dated May 2005.~~

~~(6) The following psychologist-parenting facilitator practice standards are set forth consistent with Texas Family Code §153.6101.~~

~~(A) Parenting facilitators licensed by the Board shall comply with the standard of care applicable to the license to practice psychology in Texas.~~

~~(B) Psychologist-parenting facilitators meet all requirements of Texas Family Code §153.6101, including active licensure to~~

practice as a psychologist in Texas; completion of 8 hours of family violence dynamics training provided by a family violence service provider; 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution organization approved by the court; 24 classroom hours of training in the fields of family dynamics, child development, and family law; and 16 hours of training in the laws governing parenting coordination and parenting facilitation and the multiple styles and procedures used in different models of service.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 16, 2015.

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Darrel D. Spinks
Executive Director

Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: November 1, 2015
For further information, please call: (512) 305-7700



22 TAC §465.38

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Examiners of Psychologists or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas State Board of Examiners of Psychologists proposes the repeal of §465.38, Psychological Services for Public Schools. The proposed repeal is necessary due to the extensive changes proposed for this rule.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed repeal will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed repeal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701 within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701 or via email to brenda@tsbep.texas.gov.

The repeal is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists 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.

No other code, articles or statutes are affected by this section.

§465.38. *Psychological Services for Public Schools.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 16, 2015.

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Darrel D. Spinks
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Texas State Board of Examiners of Psychologists
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22 TAC §465.38

The Texas State Board of Examiners of Psychologists proposes new rule §465.38, Psychological Services for Public Schools. The proposed new rule is intended to replace the current version of the rule and reflects a collaborative effort by the Board and its stakeholders to consolidate the rules governing licensure and supervision into a more intuitive format. The proposed new rule also reflects a more singular focus toward the practice standards applicable to LSSPs, rather than co-mingling those standards with licensing and supervision requirements.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed new rule will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed new rule may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701 within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701 or via email to brenda@tsbep.texas.gov.

The new rule is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists 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.

No other code, articles or statutes are affected by this section.

§465.38. *Psychological Services for Public Schools.*

(a) 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.

(b) Scope of Practice.

(1) 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.

(2) The assessment of emotional or behavioral disturbance, for educational purposes, using psychological techniques and procedures is considered the practice of psychology.

(c) The specialist in school psychology license permits the licensee to provide school psychological services only in Texas public schools, including charter schools. A person utilizing this license may not provide psychological services in any context or capacity outside of their employment or contract with public schools.

(d) The correct title for an individual holding a specialist in school psychology license is Licensed Specialist in School Psychology or LSSP. Only individuals who meet the requirements of Board rule §465.6 of this title (relating to Listings, Public Statements and Advertisements, Solicitations, 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.

(e) Providers of Psychological Services Within the Public Schools.

(1) 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:

(A) LSSPs;

(B) Those individuals listed in Board rule §463.9(g) of this title (relating to Licensed Specialist in School Psychology); and

(C) Individuals seeking to fulfill the licensing requirements of Board rule §463.8 of this title (relating to Licensed Psychological Associate), Board rule §463.10 of this title (relating to Provisionally Licensed Psychologists), or Board rule §463.11 of this title (relating to Licensed Psychologist).

(2) Licensees who do not hold the specialist in school psychology license may contract for specific types of psychological services, such as clinical psychology, counseling psychology, neuropsychology, and family therapy. Such contracting must be on a short term or part-time basis, and shall not involve the broad range of school psychological services listed in subsection (b)(1) of this rule.

(3) An LSSP who contracts with a school district to provide school psychological services may not subcontract those services which they have been contracted to provide.

(f) 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:

(1) Texas Education Code;

(2) Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g;

(3) Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq;

(4) Texas Public Information Act ("Open Records Act"), Texas Government Code, Chapter 552;

(5) Section 504 of the Rehabilitation Act of 1973.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Executive Director

Texas State Board of Examiners of Psychologists

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CHAPTER 469. COMPLAINTS AND ENFORCEMENT

22 TAC §469.13

The Texas State Board of Examiners of Psychologists proposes an amendment to §469.13, Non-Compliance with Professional Development Requirements. The proposed amendment is necessary to reflect a change in terminology by the Board from "continuing education" to "professional development."

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic cost to persons required to comply with this rule. There will be no adverse effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701 within 30 days of publication of this proposal in the *Texas Register*. Comments may also be submitted via fax to (512) 305-7701 or via email to brenda@tsbep.texas.gov.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle 1, Chapter 501, which provides the Texas State Board of Examiners of Psychologists 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.

No other code, articles or statutes are affected by this section.

§469.13. Non-Compliance with Professional Development [Continuing Education] Requirements.

(a) The license of any licensee who fails to comply with the Board's mandatory professional development requirements pursuant to Board rule §461.11 of this title (relating to Professional Development), is on delinquent status as of the renewal date of the license.

(b) If professional development compliance is not proved within 45 days after the license renewal date, the licensee shall be