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SUNRISE REPORT

BOARD CERTIFIED BEHAVIOR ANALYSTS OF WEST VIRGINIA

AUDIT OVERVIEW

The Oversight of Behavior Analysts by the National Behavior Analyst Certification Board Provides Adequate Protection for Citizens of the State



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EXECUTIVE SUMMARY

The Board Certified Behavior Analysts of West Virginia submitted a Sunrise application to the Joint Standing Committee on Government Organization. Pursuant to *West Virginia Code §30-1A-3*, the Performance Evaluation and Research Division (PERD) is required to make a determination of whether relying solely on the national Behavior Analyst Certification Board (BACB) as an oversight agency provides adequate protection to the citizens of this state. The Legislative Auditor concludes that the BACB provides adequate and sufficient protection to the public. A detailed analysis of this recommendation is provided within the report.

Report Highlights:

Finding: The Oversight of Behavior Analysts by the National Behavior Analyst Certification Board Provides Adequate Protection for Citizens of the State.

- Of the 35 states that require insurance coverage for Autistic Spectrum Disorders (ASD), 21 states, including West Virginia, stipulate that coverage is contingent on treatment plans and applied behavioral analysis being developed and provided by a Board Certified Behavior Analyst certified by the BACB.
- The BACB's current qualification standards, exam requirements, continuing education requirements, complaint process, and professional standards provide adequate protection to the citizens of West Virginia.
- State oversight may provide additional protection but it could, at least initially, restrict the growth of the profession.

Recommendation

1. *The Legislative Auditor determines that the Legislature's recognition of the national certification of the Behavior Analyst Certification Board for behavior analysts provides adequate and sufficient protection to the public.*

FINDING 1

The Oversight of Behavior Analysts by the National Behavior Analyst Certification Board Provides Adequate Protection for Citizens of the State.

Summary

In accordance with West Virginia Code §30-1A-3, a Sunrise application was submitted by the Board Certified Behavior Analysts of West Virginia (Applicant) seeking the Legislature's acceptance of the national certification from the Behavior Analyst Certification Board (BACB) as adequate and sufficient regulatory oversight for the practice of behavior analysts. This application was submitted at the request of the Chairs of the Joint Standing Committee on Government Organization to determine whether recognition of the national certification of the BACB provides adequate protection to the public. The need for this determination was precipitated by passage of House Bill 2693 during the 2011 legislative session that mandated public and private insurance coverage for the treatment of Autism Spectrum Disorders (ASD). As a result of this legislation, West Virginia is one of 35 states that require insurance coverage for ASD. Children who are diagnosed with ASD are generally referred to a behavior analyst to provide applied behavioral analysis and treatment plans that begin as early as 18 months of age. Under House Bill 2693, insurance will cover applied behavioral analysis treatment only if it is performed by behavior analysts who are certified by the BACB, an independent national organization located in the state of Florida. **The Legislative Auditor concludes that the national certification provides adequate protection to the citizens of the state.** Providing state oversight of behavior analysts in addition to the national certification may provide more responsiveness to complaints than an out-of-state organization, but state oversight may have the initial drawback of restricting the profession's growth.

This application was submitted at the request of the Chairs of the Joint Standing Committee on Government Organization to determine whether recognition of the national certification of the BACB provides adequate protection to the public.

Under House Bill 2693, insurance will cover applied behavioral analysis treatment only if it is performed by behavior analysts who are certified by the BACB, an independent national organization located in the state of Florida.

A Growing Number of States Are Requiring Insurance Coverage for Autism Spectrum Disorders

Autism Spectrum Disorders encompass a group of developmental disorders including Autistic Disorder, Asperger's Syndrome, Rett Syndrome, Childhood Disintegrative Disorder, or Pervasive Development Disorder (for a description of each see Appendix B). The American Academy of Pediatrics (AAP) characterizes ASD as disorders causing a variety of behavioral problems including communication deficits, difficulties interacting with others, and usually, but not always, accompanied by an intellectual disability. The AAP also states that early and ongoing intervention can significantly improve the functioning of many children with autism.

According to the Centers for Disease Control and Prevention, the estimated prevalence of ASD has increased by 78 percent from 2002 to 2008. For West Virginia, the Department of Education's Office of Special Programs indicates that the number of children in kindergarten through 12th grade diagnosed with ASD has increased from 372 in the 2001-02 school year to 1,474 in 2011-12 (see Appendix C).

The costs associated with the various forms of ASD treatment are relatively expensive. In response to the dramatic increase in the rate of children diagnosed with ASD and the associated costs, states are mandating private and public insurance coverage for ASD. A total of 35 states, including West Virginia, and the District of Columbia have laws related to insurance coverage for ASD (see Table 1). The West Virginia Legislature passed House Bill 2693 on March 12, 2011 to require private and public insurance coverage for ASD beginning after January 1, 2012. Public insurers include the West Virginia Public Employee Insurance Agency (PEIA) and Children's Health Insurance Program (CHIP). In order for ASD to be covered in West Virginia, treatment must be prescribed by a licensed physician or psychologist and the treatment plan is provided by a behavior analyst certified by the Behavior Analyst Certification Board or from a similar nationally recognized organization. The certified behavior analyst designs, implements, or evaluates behavior modification intervention components of a treatment plan to produce improvements in behavior. Coverage in West Virginia shall not exceed \$30,000 per individual during the first three years, and then shall not exceed \$2,000 per month until the individual reaches 18 years of age.

The West Virginia Legislature passed House Bill 2693 on March 12, 2011 to require private and public insurance coverage for ASD beginning after January 1, 2012. Public insurers include the West Virginia Public Employee Insurance Agency (PEIA) and Children's Health Insurance Program (CHIP).

Table 1
States Requiring Insurance Coverage for Autism Spectrum Disorders

Number of States Requiring Insurance for ASD	Number of States That Require Behavioral Analysis Treatment <u>Only</u> by a BACB-Certified Behavior Analyst	Number of States That Cover Behavioral Analysis But Do Not Specify the Professionals Who May Conduct the Behavioral Analysis
35	21	14
<i>Sources: National Conference of State Legislatures and PERD's review of individual statutes.</i>		

Most States That Provide Insurance for ASD Require Treatment Plans to Be Developed Only by a BACB-certified Behavior Analyst

Of the 35 states that require insurance coverage for ASD, 21 states, including West Virginia, stipulate that coverage is contingent on treatment plans and applied behavioral analysis being developed and provided by a BACB-certified behavior analyst (see Table 1). Applied behavioral analysis is, by statutory definition, “the design, implementation, and evaluation of environmental modifications using behavioral stimuli and consequences, to produce socially significant improvement in human behavior” (WVC 5-16-7 (a)(8)(D)(i)). The remaining 14 states generally indicate that applied behavioral analysis is covered, but they do not specify the professionals who may perform the applied behavior analysis.

Of the 35 states that require insurance coverage for ASD, 21 states, including West Virginia, stipulate that coverage is contingent on treatment plans and applied behavioral analysis being developed and provided by a BACB-certified behavior analyst.

Most States Do Not Have State Oversight of Behavior Analysts

Table 2 shows that 27 of the 35 states that require insurance coverage for ASD do not have direct state oversight of certified behavior analysts. In other words, the 27 states, including West Virginia, do not require certified behavior analysts to be licensed by a state licensing agency. Generally, these states require insurers to verify that behavior analysts are certified by the BACB. The remaining eight states require behavior analysts to be licensed with a state agency. Three states (Arizona, Missouri and Nevada) have behavior analysts within a licensing agency for psychologists. Pennsylvania and Virginia have behavior analysts in their board of medicine. Oklahoma and Wisconsin oversee behavior analysts through state licensing agencies, and Kentucky has a separate licensing board for behavior analysts. Although these eight states require behavior analysts to be licensed by the State, seven of the eight states require the BACB certification as part of the state licensing process, and their insurance laws indicate that they must be certified by the BACB and licensed by the State. The state of Pennsylvania does not specify the BACB certification as part of its state licensing process.

Table 2 shows that 27 of the 35 states that require insurance coverage for ASD do not have direct state oversight of certified behavior analysts. In other words, the 27 states, including West Virginia, do not require certified behavior analysts to be licensed by a state licensing agency.

Table 2
States That Require Insurers to Provide Coverage for the Treatment of
Autism Spectrum Disorders

State	Year Enacted	State Oversight	Is Behavioral Analysis Required to Be Conducted <u>Only</u> by a BACB-Certified Analyst?	State Oversight Agency
Arizona	2007	Yes	Yes	Board of Psychology
Kentucky	2010	Yes	Yes	Applied Behavior Analyst Board
Missouri	2010	Yes	Yes	State Committee of Psychologists
Nevada	2009	Yes	Yes	Board of Psychology
Oklahoma	2010	Yes	Yes	Department of Human Services
Wisconsin	2009	Yes	Yes	Dept. of Safety and Professional Services
Pennsylvania	2008	Yes	No*	Board of Medicine
Virginia	2012	Yes	Yes	Board of Medicine
Arkansas	2011	No	Yes	N/A
Alaska	2102	No	No	N/A
California	2011	No	Yes	N/A
Colorado	2009	No	Yes	N/A
Connecticut	2008	No	Yes	N/A
Florida	2007	No	Yes	N/A
Georgia	2001	No	No	N/A
Illinois	2007	No	No	N/A
Indiana	2001	No	No	N/A
Iowa	2010	No	Yes	N/A
Kansas	2010	No	No	N/A
Louisiana	2007	No	Yes	N/A
Maine	2010	No	Yes	N/A
Maryland	2002	No	No	N/A
Massachusetts	2008	No	Yes	N/A
Montana	2009	No	Yes	N/A
New Hampshire	2010	No	Yes	N/A
New Jersey	2009	No	No	N/A

Table 2
States That Require Insurers to Provide Coverage for the Treatment of
Autism Spectrum Disorders

State	Year Enacted	State Oversight	Is Behavioral Analysis Required to Be Conducted <u>Only</u> by a BACB-Certified Analyst?	State Oversight Agency
New Mexico	2009	No	No	N/A
New York	2011	No	No	N/A
Oregon	2007	No	No	N/A
Rhode Island	2011	No	Yes	N/A
South Carolina	2007	No	No	N/A
Tennessee	2006	No	No	N/A
Texas	2007	No	No	N/A
Vermont	2010	No	Yes	N/A
West Virginia	2011	No	Yes	N/A

Sources: Behavior Analyst Certification Board, National Conference of State Legislatures, and PERD's review of individual state statutes.
** North Dakota and Pennsylvania do not specify the BACB certification in their licensing process.*

Regulatory Oversight by the BACB Provides Adequate Protection to the Public

In order to qualify for the BACB certification, a person must have a Master's of Science degree from an accredited university in behavior analysis or other natural science, education, human services, engineering, medicine or a field related to behavior analysis and approved by the BACB. An individual must also have at least 225 classroom hours of graduate coursework that is behavior analytic in nature, complete at least 1,500 hours of supervised field work in behavior analysis, and pass the BACB exam. According to the Sunrise application, there are 27 BACB certified behavior analysts in West Virginia. PERD confirmed through the BACB that there are 29 certified individuals in West Virginia as of May 2012.

The BACB program was accredited by the National Commission for Certifying Agencies (NCCA) in August 2007. The NCCA is the accreditation body of the National Organization for Competency Assurance, considered the premier organization which defines and

According to the Sunrise application, there are 27 BACB certified behavior analysts in West Virginia. PERD confirmed through the BACB that there are 29 certified individuals in West Virginia as of May 2012.

enforces the highest standards in its certifying groups. As mentioned previously, applicants must meet degree, work and experience requirements prior to being allowed to take the national exam. Once certified, 36 hours of continuing education must be met every three years to maintain certification.

Behavior analysts are also required to provide services in an ethical manner in accordance with the BACB's Professional and Ethical standards. Formal complaints may be submitted to the BACB. The BACB's Review Committee reviews cases and renders decisions. If its decision is appealed, an in-person hearing is conducted by the Appeals Committee. Once a decision is rendered by the Appeals Committee, it is deemed final. According to the BACB's website, since its inception, four individuals have had their certification revoked and two have had it suspended. It is the Legislative Auditor's opinion that the BACB's qualifications, standards, exam requirement, continuing education, and complaint process, provides adequate supervision of certified behavior analysts. **Therefore, in regards to the Sunrise application and House Bill 2693, the current regulation and recognition of the national certification of the BACB provides adequate protection to the citizens of West Virginia.**

State Oversight May Provide Additional Protection but Restrict Growth of the Profession

In general, states that impose state oversight of behavior analysts simply require them to confirm and maintain their national certification. These states do not require anything in addition to what the BACB requires in terms of qualifications, standards, testing, or continuing education. Therefore, state oversight generally does not add value to the national credential of behavior analysts. The potential added value of state oversight may be more responsiveness to complaints against behavior analysts. If behavior analysts are placed in a licensing board governed by Chapter 30, Article 1 of the West Virginia Code, the board would be authorized to suspend or revoke the license prior to a hearing if the person's continuing practice constitutes immediate danger to the public (WVC §30-1-8 (e)(1)). Furthermore, in cases where a hearing is necessary, it would be more accessible to the public, allow for a more intimate understanding of the issues, and possibly conducted more expeditiously than an out-of-state complaint resolution process. Also, although the national BACB can revoke an individual's certification, without state licensure practitioners could continue practicing even though their services would not be eligible for insurance coverage. With state licensure if a practitioner's license is revoked, this would prevent continued practice under any circumstance. However, a possible disadvantage of state oversight, at least initially, could be a restriction on the growth of the profession in the state. Behavior analysts in bordering

Behavior analysts are also required to provide services in an ethical manner in accordance with the BACB's Professional and Ethical standards. Formal complaints may be submitted to the BACB. The BACB's Review Committee reviews cases and renders decisions.

It is the Legislative Auditor's opinion that the BACB's qualifications, standards, exam requirement, continuing education, and complaint process, provides adequate supervision of certified behavior analysts.

However, a possible disadvantage of state oversight, at least initially, could be a restriction on the growth of the profession in the state. Behavior analysts in bordering states may be reluctant to practice in West Virginia if they are required to obtain an additional license.

states may be reluctant to practice in West Virginia if they are required to obtain an additional license.

The Legislative Auditor contacted a few medical professionals in the state for their perspective on regulating behavior analysts through the national BACB as opposed to state oversight. Listed below are statements from those contacted by the Legislative Auditor, as well as the Applicant's viewpoint on state licensure.

*Board Certified Behavior Analysts of West Virginia
Sunrise Application, December 14, 2011*

In the future as numbers of practicing BCBAs [Board Certified Behavior Analysts] increase, we would like to reassess the need for establishing a state-wide regulatory entity. However, at this time, the national Behavior Analyst Certification Board offers adequate oversight, regulation, and protection to the consumers of West Virginia.

*Dr. Jeffrey Harlow, Executive Director
West Virginia Board of Examiners of Psychologists*

I believe behavior analysts need to be licensed by the State because of the vulnerability of the population they serve, and because there would be more control over disciplinary issues. It does not matter what state entity oversees them as long as they are regulated at the state level.

*Dr. Barbara Becker-Cottrill, Executive Director
West Virginia Autism Training Center at Marshall University, Huntington,
West Virginia*

At the present time I think that the BCBA is fine because of the rigorous nature of obtaining that certification and because there are currently not very many behavior analysts practicing in the state. State licensure may be needed in the future, but I am concerned that if state licensure is imposed now it will restrict the growth of the profession.

*Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine*

The national certification process is quite

demanding and attains high standards of expertise to qualify and maintain. That being said state licensure would add little if anything to this process.¹

Conclusion

According to the Centers for Disease Control and Prevention, autism is now nearly twice as common as it was five years ago and may affect up to 1 million United States children and teens. The medical definition of the disorder has gradually expanded to include a group of milder, related conditions, including Asperger's syndrome. The American Academy of Pediatrics indicates that early intervention for those diagnosed with ASD is recognized as important for achieving significant behavioral improvements. In response to these circumstances, many states have mandated insurance coverage for ASD. West Virginia's insurance law for ASD relies on the national BACB to oversee behavior analysts. Currently, this is a common practice among states that require insurance coverage for ASD; however, recently nine states have mandated state oversight of behavior analysts. **The Legislative Auditor concludes that relying on the national BACB to oversee behavior analysts is adequate protection for the state.** Although public safety is adequate at the present time, there is some sentiment that state oversight may be something to consider at some point. The Applicant of the Sunrise application indicated the desire for state licensure as the profession grows. However, the Legislative Auditor determines that the number of behavior analysts would have to grow considerably to be sufficient for an independent licensing board. Therefore, if the Legislature considers state oversight to provide additional public safety, it will likely have to place behavior analysts under an existing licensing board. Since the practice of applied behavior analysis is related to psychology, and psychologists by law have to prescribe ASD treatment for insurance coverage, the Board of Examiners of Psychologists should be considered as the regulatory agency if the Legislature decides to impose state oversight of this profession.

According to the Centers for Disease Control and Prevention, autism is now nearly twice as common as it was five years ago and may affect up to 1 million United States children and teens.

The Legislative Auditor concludes that relying on the national BACB to oversee behavior analysts is adequate protection for the state.

Recommendation

1. *The Legislative Auditor determines that the Legislature's recognition of the national certification of the Behavior Analyst Certification Board for behavior analysts provides adequate and sufficient protection to the public.*

¹ Mr. Knittle's remarks represent his perspective as Executive Director for the Board of Medicine and this inquiry was not formally placed before the Board to gain its position.

Appendix A: Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

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John Sylvia
Director

June 15, 2012

Susannah G. Poe Ph.D., BCBA
West Virginia University School of Medicine
P.O. Box 9214
1 Medical Center Drive
Department of Pediatrics
Morgantown, WV 26506

Dear Dr. Poe:

This is to transmit a draft copy of the Sunrise Report of the Behavior Analyst Sunrise application submitted December 14, 2011. This report is scheduled to be presented during the June 2012 interim meeting of the Joint Committee on Government Operations, and the Joint Committee on Government Organizations on Tuesday, June 26, 2012 between 11 a.m.-1 p.m. in the House Chambers. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committees may have.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us by Tuesday, June 19, 2012. If you would like to include a written response to this report we would need it by noon on Thursday, June 21, 2012 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, June 21, 2012 to make arrangements.

We request that you not disclose the draft report to anyone not affiliated with your Sunrise application. Thank you for your cooperation.

Sincerely,

A handwritten signature in blue ink that reads "John Sylvia".
John Sylvia

Joint Committee on Government and Finance

Appendix B: Autism Spectrum Disorders

Appendix C: West Virginia Number of Identified Students With Autism 2001-2011

Autism Spectrum Disorders

Autistic Disorder: Autistic disorder (also called autism; more recently described as “mindblindness”) is a neurological and developmental disorder that usually appears during the first three years of life. A child with autism appears to live in their own world, showing little interest in others and a lack of social awareness.

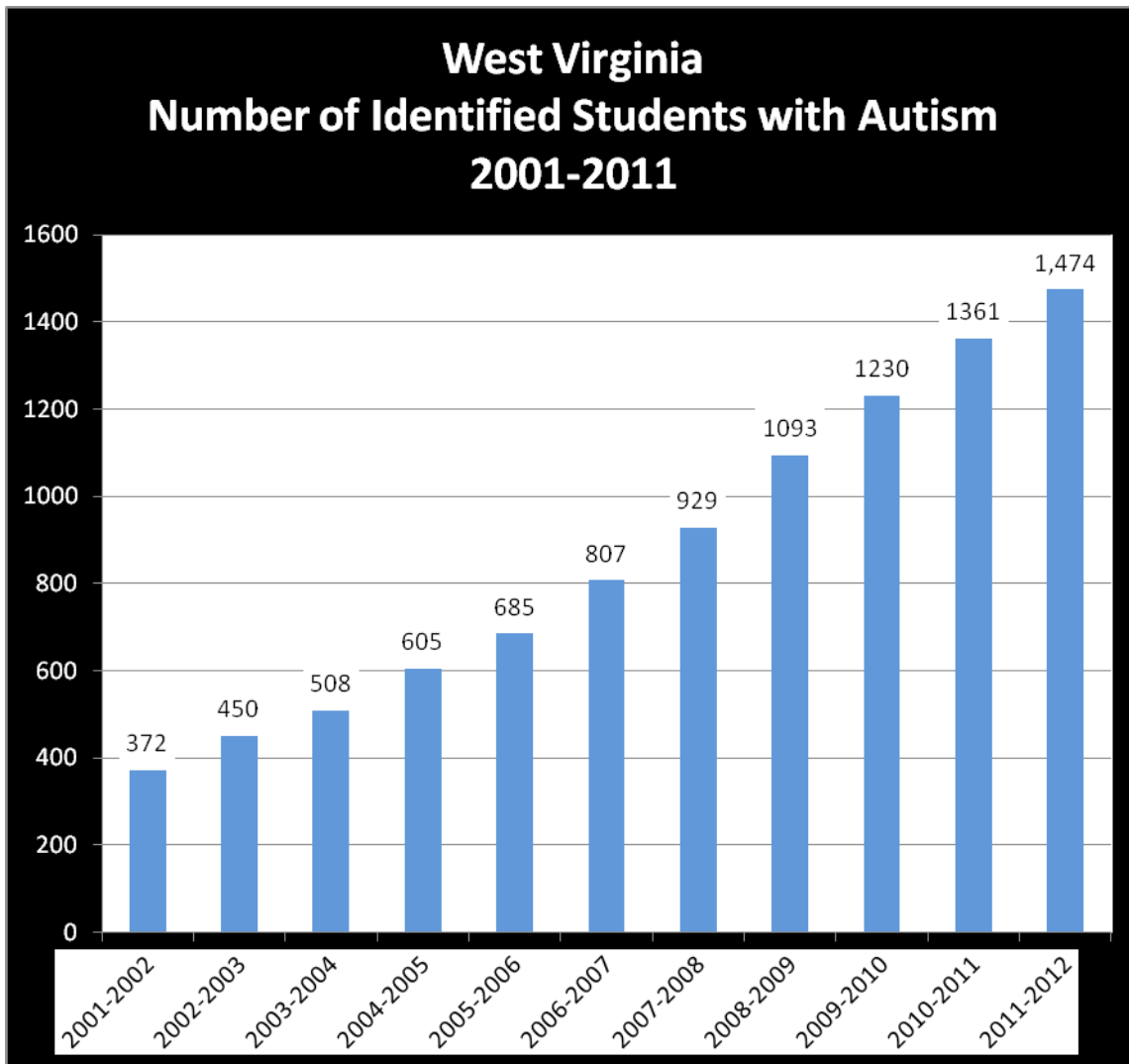
Asperger’s Syndrome: This disorder is named after Hans Asperger, a Viennese pediatrician who, in 1944, first described a set of behavior patterns apparent in some of his patients, mostly males. Asperger noticed that although these boys had normal intelligence and language development, they had severely impaired social skills, were unable to communicate effectively with others, and had poor coordination. Asperger’s Syndrome is characterized by poor social interactions, obsessions, odd speech patterns, and other peculiar mannerisms.

Rett Syndrome: Rett Syndrome is a neurodevelopmental disorder of the grey matter of the brain that almost exclusively affects females. The clinical features include small hands and feet and a deceleration of the rate of head growth. Repetitive hand movements, such as wringing and/or repeatedly putting hands into the mouth, are also noted. People with Rett syndrome are prone to gastrointestinal disorders and up to 80% experience seizures.

Childhood Disintegrative Disorder: Childhood disintegrative disorder, also known as Heller Syndrome, manifests as a loss of previously acquired language and social skills and results in a persistent delay in these areas. For example, a child previously able to speak in 2- or 3-word phrases gradually or abruptly loses the ability to communicate using words or uses only fragments.

Pervasive Development Disorder: The term “pervasive development disorders,” also called PDDs, refers to a group of conditions that involve delays in the development of many basic skills, most notably the ability to socialize with others, to communicate, and to use imagination. Children with these conditions often are confused in their thinking and generally have problems understanding the world around them.

Source: National Institute of Child and Health Development.

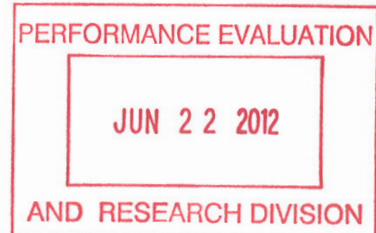


Source: West Virginia Department of Education, Office of Special Programs

Appendix D: Agency Response



June 21, 2012
John Sylvia, director
WV Legislature
Performance Evaluation and Research Division
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610



Dear Mr. Sylvia,

We would like to thank you and the Performance Evaluation and Research Division for the well-researched and thoughtful conclusion reached regarding the Oversight of Behavior Analysts by the National Behavior Analyst Certification Board. We are pleased that the Division's recommendation agrees with our application proposal: that national certification provides adequate protection for citizens of West Virginia. In the future, as our numbers increase, we would be glad to reassess the need for establishing a state-wide regulatory entity.

In response to a specific comment of the committee report (pages 7-8) that states:

Since the practice of applied behavior analysis is related to psychology, and psychologists by law have to prescribe ASD treatment coverage, the Board of Examiners of Psychologists should be considered as the regulatory agency if the Legislature decided to impose state oversight of this profession.

If state oversight is considered in the future, we would ask that the Department consider the contentious relationship initiated by the current members of the Board of Examiners against WV BCBA professionals. This current Board of Examiners filed an unprecedented and unnecessary emergency order that immediately restricted our professionals from engaging in the work they had performed (without complaint or any interest in oversight from the Board of Examiners) for more than a decade. This action was taken without the knowledge or involvement of WV BCBA professionals, and occurred immediately following the passage of autism insurance bill, which allowed reimbursement for these services for the first time. In short, WV BCBA's had practiced without any involvement or interest from the Board of Examiners of Psychologists until there was a financial incentive. Citing Danger to children, the Board's emergency ruling would have required our specifically-trained professionals to work under the paid supervision of a psychologist who did not have the same training or expertise. The Emergency rule was later withdrawn as a result of public outcry and the threat of legal action.

In the future, under a different Board of Examiners, we would welcome an opportunity to work as a peer organization within the Board of Examiners of Psychologists framework, but would resist any requirement that our professionals, specifically trained and certified in this evidence-based treatment, be required to work under the supervision of any professional who lacked the specialized certification or training that makes our members qualified.

Again, we thank you for the well-considered decision and appreciate your interest and recommendations.

Susannah G. Poe, Ed.D., BCBA-D
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