

School Psychologists



October 14, 2005

STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES

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Bill Owens
Governor

October 14, 2005

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed its evaluation of the sunrise application for regulation of school psychologists and is pleased to submit this written report. The report is submitted pursuant to section 24-34-104.1, Colorado Revised Statutes, which provides that the Department of Regulatory Agencies shall conduct an analysis and evaluation of proposed regulation to determine whether the public needs, and would benefit from, the regulation.

The report discusses the question of whether there is a need for the regulation in order to protect the public from potential harm, whether regulation would serve to mitigate the potential harm, and whether the public can be adequately protected by other means in a more cost-effective manner.

Sincerely,

Tambor Williams
Executive Director

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The Sunrise Process

Background

Colorado law, section 24-34-104.1, Colorado Revised Statutes (C.R.S.), requires that individuals or groups proposing legislation to regulate any occupation or profession first submit information to the Department of Regulatory Agencies (DORA) for the purposes of a sunrise review. The intent of the law is to impose regulation on occupations and professions only when it is necessary to protect the public health, safety or welfare. DORA must prepare a report evaluating the justification for regulation based upon the criteria contained in the sunrise statute:

(I) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(II) Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence; and

(III) Whether the public can be adequately protected by other means in a more cost-effective manner.

Any professional or occupational group or organization, any individual, or any other interested party may submit an application for the regulation of an unregulated occupation or profession. Applications must be accompanied by supporting signatures and must include a description of the proposed regulation and justification for such regulation. Applications received by July 1 must have a review completed by DORA by October 15 of the year following the year of submission.

Methodology

DORA has completed its evaluation of the proposal for regulation of school psychologists. During the sunrise review process, DORA performed a literature search; interviewed representatives of the Colorado Society of School Psychologists, the Colorado Department of Education (CDE), other professional associations and consumer groups and reviewed licensure laws in Colorado and other states. In order to determine the number and types of complaints filed against school psychologists in Colorado, DORA contacted representatives of CDE and of the various mental health regulatory boards in DORA's Division of Registrations. To better understand the practice of school psychology, a representative of DORA visited an elementary school and observed a school psychologist's classroom presentation.

Proposal for Regulation

The Colorado Society of School Psychologists (Applicant) has submitted a sunrise application to the Department of Regulatory Agencies (DORA) for review in accordance with the provisions of section 24-34-104.1, Colorado Revised Statutes (C.R.S.). The application identifies state licensure of school psychologists as the appropriate level of regulation to protect the public.

It is important to note that school psychologists are currently regulated by the Colorado Department of Education (CDE) when working in the state's public schools. There is nothing, however, to prevent someone who does not hold a CDE license from practicing school psychology outside of the public school setting. This is the regulatory hole the Applicant seeks to fill.

In its application, the Applicant fails to outline in any specific terms what type of regulatory program it envisions as ideal to protect the public health, safety and welfare. Rather, the application merely states:

Since we are currently licensed through CDE if working in public school settings, licensure through DORA would be an efficient way of establishing a similar type of credentialing and monitoring for those school psychologists working outside of the public schools to ensure quality, cost-effective service provision for the general public.¹

Regardless, during the course of this sunrise review, the Applicant concluded that the contents of Senate Bill 00-179 (SB 179), "Concerning the Licensure of a Specialist in School Psychology," which was postponed indefinitely by the House Committee on Health, Environment, Welfare and Institutions on March 1, 2000, represented a satisfactory model upon which to build the current proposal. Importantly, the Applicant is not bound or restricted to the language contained in SB 179. Rather, it serves as a framework for discussion only.

Senate Bill 179 would have created a new school psychologist license, to be issued by the Director of DORA's Division of Registrations (Director). The Director would have possessed all policymaking, rulemaking, licensing and disciplinary authority. Grounds for discipline would have been identical to those for other mental health professionals regulated by the Division of Registrations (Division). Such grounds for discipline include, but are not limited to felony convictions, alcohol or drug abuse and failing to adhere to generally accepted standards of practice.

In order to obtain a DORA-issued license under SB 179, candidates would have been required to either hold a CDE-issued school psychologist license or possess all of the qualifications to obtain such a license.

¹ Sunrise Application, p. 2.

Thus, the Applicant indirectly proposes a director-model regulatory program with the Director possessing all rulemaking, disciplinary and licensing authority. Furthermore, the Applicant proposes establishing licensing criteria identical to those imposed by CDE for school psychologists who work in the state's public schools. CDE licensing criteria are discussed in greater detail beginning on page 7 of this report.

Profile of the Profession

School psychologists work with students, age birth through 21 years, in a variety of settings, including public and private schools, clinics and hospitals, private practice, early childhood centers, and university, community and state agencies and other institutions. According to the Applicant, they provide a variety of functions, including:

- Comprehensive diagnostic assessment of cognitive, mental health and health-related concerns that impact learning;
- Consultation services that assist educators and parents in dealing with problems in learning and behavior;
- Direct interventions, including counseling, social skills training, behavior management and crises response;
- Preventative services, including design of programs and school-wide initiatives, teaching and learning strategies;
- Research, planning and evaluation services that lead to educational reform and restructuring; and
- Health care provision leading to a comprehensive model of educationally related health services.

Furthermore, according to the Applicant, school psychology can be,

differentiated from the other specialties in professional psychology by its focus on the application of psychological knowledge and methods to resolve problems or improve processes and outcomes within educational institutions or with individuals involved in the learning process. Thus, school psychology is not defined simply by the setting where services are delivered but rather by the use of psychological theory and practice to improve educational outcomes for individuals and groups of learners across a variety of settings.²

² Email from Applicant, dated May 31, 2005.

In short, then, school psychologists specialize in identifying problems with learning and in developing and implementing programs to help rectify or mitigate such problems. These problems can range from behavioral problems to full-fledged learning disabilities. Regardless, the focus of the school psychologist is to provide the necessary tools to students so that they may maximize the benefits of learning.

To enable them to do this, those aspiring to become school psychologists pursue advanced degrees in the form of educational specialist degrees (Ed.S.) or doctorate degrees (Ph.D.).

To obtain the private credential of Nationally Certified School Psychologist (NCSP), candidates must hold an Ed.S. or Ph.D. degree from a program accredited by the National Society of School Psychologists (NASP), complete a 1,200-hour internship in school psychology and take and pass the School Psychologist Praxis II Examination (NCSP Examination).

Colorado has three NASP-accredited programs:

- **University of Denver**
 - Ed.S. – 103 graduate quarter hours
 - Ph.D. – 140 graduate quarter hours
- **University of Colorado at Denver**
 - Ed.S. – 75 graduate semester hours
- **University of Northern Colorado**
 - Ed.S. – 79 graduate semester hours
 - Ph.D. – 125 graduate semester hours

Combined, these three Colorado institutions graduate approximately 35 school psychologists each year.

The curriculum for the University of Denver's Generalist Ed.S. degree is described here, by way of example. Numbers in parenthesis indicate the number of quarter hour credits earned upon completion of each course:

- **Psychological Foundation**
 - Learning Application and Analysis (3)
 - Child Development (3)
 - Adolescent Development (3)
 - Developmental Pathology (3)
 - Family Systems and Diversity (3)
- **Educational Research and Measurement**
 - Educational Research and Measurement (3)
 - Electives in Program Evaluation OR Statistics (3 – 5)

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- **Educational Curriculum, Foundations and Leadership**
 - Electives in Leadership, Management OR Community Systems (3)
 - **Special Education Theory and Methods**
 - Exceptional Children: Biomedical and Psychosocial (3)
 - Low Incidence Disabilities and Intervention (3)
 - Electives in Risk, Resiliency and Prevention; Introduction to Play Therapy; Crisis Intervention and Prevention; Sensorimotor and Medical Needs (6)
 - **Child, Family and School Psychological Services**
 - Professional Issues in School and Community (3)
 - Legal and Ethical Issues: School and Community (3)
 - Advanced Seminar in Child, Family and School Psychology (3)
 - **Psycho-educational Assessment**
 - Psycho-educational Assessment I and II (5 each)
 - Social-Emotional Assessment (5)
 - Assessment of Infants and Pre-Schoolers OR P-B Assessment (3 – 5)
 - **Child, Family and School Interventions and Consultation**
 - Family Assessment and Consultation OR Counseling Techniques (3 – 4)
 - Counseling Children and Adolescents (4)
 - Classroom Management and Consultation (4)
 - Academic Intervention (4)
 - Electives in Group Counseling OR Interventions (3)
 - **Supervised Clinical – Field Experience**
 - Psycho-educational Clinic (2 – 3)
 - Practicum in School Psychology (6)
 - Internship in School Psychology (3)

The 1,200-hour, NASP-required internship must include at least 600 hours in a school setting.

Once the education and experience requirements have been satisfied, candidates may then apply to NASP to sit for the NCSP Examination. The NCSP Examination is administered by the Educational Testing Service (ETS). ETS generally offers the NCSP Examination seven times per year at 16 locations in Colorado: Alamosa, Aurora, Boulder, Colorado Springs, Denver (3 locations), Durango, Evergreen, Fort Collins, Grand Junction, Greeley, Gunnison, Lone Tree, Longmont and Pueblo. Not all test sites offer the NCSP Examination during every administration of the examination.

The NCSP Examination consists of 120 multiple-choice questions that must be answered within two hours. Questions cover the topics of diagnosis and fact-finding, prevention and intervention, applied psychological foundations, applied educational foundations and ethical and legal considerations. The cost of the pencil and paper-based NCSP Examination is \$75.

NCSP credential holders must obtain 75 hours of continuing education every three years in order to retain this credential.

As of June 2005, 271 Coloradans held the NCSP credential.

Depending upon the setting in which an individual school psychologist seeks to work, the school psychologist may seek additional or alternative credentials.

To work as a school psychologist in Colorado's public schools, the individual must obtain a license from CDE. As of July 2005, CDE licensed 1,200 school psychologists.

Alternatively, a school psychologist who desires to practice school psychology outside of the state's public schools may seek licensure from one of DORA's various mental health licensing boards, such as the Board of Psychologist Examiners.

Although DORA does not require licensees to disclose whether they hold other licenses, such as those issued by CDE, a comparison of CDE and DORA licensing systems reveals that 216 CDE-licensed school psychologists also hold a DORA-issued mental health credential. It is not known, however, how many individuals practice school psychology under only a DORA-issued mental health credential.

Summary of Current Regulation

The Colorado Regulatory Environment

Depending upon the work setting, a particular school psychologist may fall within the jurisdiction of the Colorado Department of Education (CDE) or the Colorado Department of Regulatory Agencies (DORA). CDE licenses school psychologists when they work in the state's public schools.

However, if a school psychologist practices outside of the public school setting and such practice includes the practice of psychotherapy as defined in section 12-43-201(9), Colorado Revised Statutes (C.R.S.), the school psychologist must be licensed by one of DORA's mental health boards.

Section 12-43-201(9), C.R.S., defines "psychotherapy" as:

the treatment, diagnosis, testing, assessment, or counseling in a professional relationship to assist individuals or groups to alleviate mental disorders, understand unconscious or conscious motivation, resolve emotional, relationship, or attitudinal conflicts, or modify behaviors which interfere with effective emotional, social, or intellectual functioning. Psychotherapy follows a planned procedure of intervention which takes place on a regular basis, over a period of time, or in the cases of testing, assessment, and brief psychotherapy, it can be a single intervention. It is the intent of the general assembly that the definition of psychotherapy . . . be interpreted in its narrowest sense to regulate only those persons who clearly fall within the definition set forth in this subsection (9).

Any person engaging in the practice of psychotherapy, with certain exceptions, including CDE-licensed school psychologists working in the public schools, must obtain a license from one or more of the mental health boards located in DORA's) Division of Registrations (Division), such as the Board of Psychologist Examiners (Psychology Board), Board of Social Work Examiners, Board of Marriage and Family Therapist Examiners or the Board of Licensed Professional Counselors. Alternatively, such individuals could also be certified or licensed addictions counselors, falling under the jurisdiction of the Division's Director (Director), or be registered as unlicensed psychotherapists, falling under the jurisdiction of the State Grievance Board (SGB). Collectively, these DORA mental health boards may be referred to as "Mental Health Boards."

Many CDE-licensed school psychologists obtain licenses, certifications or registrations from the Mental Health Boards to enable them to legally practice outside of the public school setting. Still other school psychologists never seek CDE licensure, opting instead to become licensed, certified or registered under another moniker, but continuing to practice school psychology nevertheless. In other words, the practice of school psychology is not restricted to those holding CDE licenses.

Pursuant to CDE Rule 2260.5-R11.06, to become a CDE-licensed school psychologist, a candidate must

1. Hold a valid license issued by the Psychology Board plus additional, school psychology coursework;
2. Hold a valid Nationally Certified School Psychologist (NCSP) credential; or
3. Satisfy the following CDE criteria:
 - Complete an approved sixth year specialist program with a minimum of 60 graduate semester hours, or a doctoral program for the preparation of school psychologists;
 - Pass the School Psychologist Praxis II Examination (NCSP Examination);
 - Complete a 500-hour practicum;
 - Complete a 1,200-hour internship, at least 600 hours of which must take place in a school setting; and
 - Complete coursework covering the following subjects:
 - Effective instruction and support of academic achievement;
 - Assessment for evidence-based decision making and accountability;
 - Socialization and development of life skills;
 - Individual differences in development, learning and behavior;
 - School climate, systems organization and policy development;
 - Mental health promotion, prevention and crisis intervention;
 - Consultation, communication and collaboration; and
 - Professional development and ethical practice.

CDE also requires its licensees to obtain six credit hours of continuing education every five years.

Like CDE, the various Mental Health Boards, with the exception of the SGB, require some combination of education, experience and the passage of an examination to become licensed. The SGB merely requires applicants to declare a specialty and their qualifications to be included on the mental health Database of Unlicensed Psychotherapists.

CDE's disciplinary authority is somewhat limited. Pursuant to section 22-60.5-107(2)(b), C.R.S., a CDE license to practice school psychology may be denied, annulled, suspended or revoked if the licensee or applicant has been convicted of or pleads guilty or *nolo contendere* to:

- Misdemeanor sexual assault;
- Misdemeanor unlawful sexual conduct;
- Misdemeanor sexual assault on a client by a psychotherapist;
- Misdemeanor child abuse;
- Misdemeanor sexual exploitation of children;
- Misdemeanor involving domestic violence; or
- Contributing to the delinquency of a minor.

Thus, CDE cannot take disciplinary action for anything amounting to incompetence.

Unlike CDE, however, pursuant to section 12-43-222, C.R.S., the Mental Health Boards are able to take disciplinary action based on, among other things:

- Conviction of a felony related to the practice of psychotherapy;
- Violation of section 12-43-101, *et seq.*, C.R.S., or any rule promulgated thereunder;
- Usage of misleading or deceptive advertising;
- Abuse of drugs or alcohol;
- Failure to adhere to generally accepted standards of practice;
- Performance of services outside the individual's training, experience or competence;
- Maintenance of dual relationships with clients;
- Failure to refer a client to another practitioner when appropriate;

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- Failure to present clients with mandatory disclosure forms;
 - Engaging in sexual relations with a client or a former client within two years of the termination of the professional relationship; and
 - Commission of insurance fraud.

Regulation in Other States

While most states regulate school psychologists who work in their public school systems, at least 10 directly regulate them as such when they work outside of the public school system: California, Florida, Massachusetts, New Mexico, Ohio, South Carolina, Virginia, West Virginia, Wisconsin and Wyoming.

Table 1 illustrates, for each state, the name of the additional license issued, as well as a brief summary of the requirements to obtain such a credential.

Table 1**Non-Department of Education Regulation of School Psychology in Other States**

	Licensing Authority	Credential Issued	Licensing Requirements
California	State Board of Behavioral Sciences	Educational Psychologist	Three years experience as credentialed school psychologist in public schools.
Florida	Board of Psychology	School Psychologist	Master's degree in school psychology or Ed.S., three years experience as school psychologist in public schools and passage of the NCSP Examination.
Massachusetts	Allied Mental Health Professional Board of Registration	Educational Psychologist	Master's degree in school psychology, 1,200-hour practicum and passage of the NCSP Examination.
New Mexico	Board of Psychology	Psychologist Associate	Master's degree in psychology, 1 year supervised experience and passage of the EPPP.
Ohio	Board of Psychology	School Psychologist	Master's degree in school psychology, 1-year internship, 3 years supervised experience, passage of NCSP Examination and passage of state examination.
South Carolina	Board of Psychology	Psycho-Educational Specialist	Master's degree in school psychology, Ed.S. or Ph.D., 2 years experience as certified school psychologist in public schools, passage of NCSP Examination. Alternatively, possession of NCSP credential.
Virginia	Board of Psychology	School Psychologist	Master's degree in school psychology, 1-year internship, 1,500 hours supervised experience, passage of EPPP and passage of state jurisprudence examination.
West Virginia	Board of Psychology	Level II School Psychologist	Ed.S., 5 years experience in public schools, passage of NCSP Examination and passage of state oral examination.
Wisconsin	Board of Psychology	Private Practice School Psychologist	Master's degree in school psychology, 1 year experience in public schools, written recommendation, passage of NCSP Examination, state oral examination and state jurisprudence examination.
Wyoming	Board of Psychology	Specialist in School Psychology	Master's degree in school psychology plus 30 semester hours or Ed.S., 1,200-hour internship and passage of NCSP Examination. Alternatively, possession of NCSP credential or School Psychologist license issued by Department of Education.

NCSP = Nationally Certified School Psychologist
NCSP Examination = PRAXIS Series II Examination
EPPP = Examination for Professional Practice in Psychology

It is important to note that the licenses described in Table 1 permit school psychologists to engage in independent practice outside of the public schools. In all cases, these states have separate licensing requirements for practice within their public school systems. Thus, any requirements for experience in the public schools implies that candidates for the licenses indicated in Table 1 must also already possess a license to practice school psychology issued by the state's department of education.

Note also that in all 10 states, the license to practice outside of the public schools is issued by the state's board of psychology or, in the cases of California and New Mexico, by the state's omnibus mental health board. The idea of the Colorado Board of Psychologist Examiners regulating school psychologists was expressly rejected in the 2002 Sunset Review of the Colorado Mental Health Boards, and that rejection was essentially ratified by the General Assembly by its refusal to include school psychologists in the ensuing legislation.

In summary, all 10 states require some combination of education, experience and passage of an examination before allowing school psychologists to engage in independent practice outside of the public schools. In most cases, the experience requirement is over and above whatever the state's department of education requires for licensure as a school psychologist.

Analysis and Recommendations

Public Harm

The first sunrise criterion asks:

Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public, and whether the potential for harm is easily recognizable and not remote or dependent on tenuous argument.

When discussing whether the unregulated practice of school psychology results in harm to the public, it is first important to identify what constitutes harm. Misdiagnosis of a learning disability can lead to behavioral problems, depression, suicide, stigma and unnecessary financial expenditures. Ultimately, a misdiagnosis can also lead to a societal loss when a child fails to reach full potential.

More tenuously, it can also be argued that a misdiagnosis can result in a child not receiving required services. As a result, that child may land in prison, thereby requiring taxpayers to pay for incarceration.

However “harm” is defined, the sunrise criterion requires the Department of Regulatory Agencies (DORA) to determine whether there is any actual harm occurring in Colorado as a direct result of the unregulated practice of school psychology. Toward this aim, the Colorado Society of School Psychologists (Applicant) has submitted 13 cases as examples of harm. Due to privacy concerns for the victims involved in these cases, DORA did not independently verify the various assertions made therein. Following each case is the Applicant’s analysis, as well as DORA’s analysis. DORA’s analysis appears in italicized text.

Case #1

A school psychologist in a public school's preschool program conducted an initial staffing³ on a child before that child entered kindergarten in the Denver-metro area. The school psychologist did not do any cognitive testing. The school psychologist wrote "no concerns" on the section of the child's report discussing cognitive functioning. The school psychologist's remark was interpreted to mean that the child had average cognitive abilities. However, the child made minimal progress during the first year in school, prompting a full evaluation by a team (a second school psychologist, social worker, special education teacher, nurse and speech pathologist) at the child's new school. The child's intelligence quotient (IQ) was below 70⁴ (mild retardation), rendering the child eligible for special education services as a child with a cognitive disability.

Applicant: Due to the first school psychologist's misdiagnosis, the child essentially lost a full year of school because the child did not receive the special education services that would have allowed this child to perform in school.

DORA: This appears to be a legitimate case of harm inflicted by a CDE-licensed school psychologist. However, no formal complaints were lodged against this school psychologist, either to CDE or to the school psychologist's employing school district. This is crucial because if no reports were made, it is reasonable to conclude that this school psychologist would not have been reported to DORA under the Applicant's proposed regulation. This calls into question the value of additional regulation.

Case #2

At the same preschool as in Case #1, the same school psychologist performed an initial staffing on a child before the child entered kindergarten. The initial staffing did not include a cognitive testing, but the school psychologist, nevertheless, informed the child's parents that the child was gifted and that the child was in the 98th percentile (generally, an IQ above 130). However, the child's first year of school was frustrating, resulting in behavioral problems. The child's parent demanded gifted programming for the child, claiming that the behavioral problems were a result of boredom and the child not being sufficiently challenged. The child's teacher, however, grew frustrated by the fact that the child did not respond to more in-depth work. A second school psychologist performed a complete evaluation on the child, including cognitive testing, and found that the child's IQ was 110 (high average), placing the child in the 75th percentile.

³ An initial staffing is a meeting held to present the results of comprehensive testing and to determine a student's diagnosis and possible eligibility for federal- or state-funded special education services. A "staffing" is generally referred to as "initial" (first testing) or "triennial" (reevaluations that are conducted every three years for children that require special education services).

⁴ In very general terms, a person with an IQ of between 50 and 70 is considered mildly retarded, an IQ of between 35 and 50 is considered moderately retarded, an IQ of between 20 and 40 is considered severely retarded and an IQ below 20 is considered profoundly retarded.

Applicant: Due to the first school psychologist's misdiagnosis, the child essentially lost a year of school because the child was presented with inappropriate curriculum and the child's parent suffered unnecessary emotional distress.

DORA: According to the Applicant, IQ testing has a built-in margin of error of +/- 20, meaning that the first school psychologist's IQ determination of 130 was within this margin of error. Regardless, the first school psychologist did not perform the requisite cognitive test to determine the child's IQ. However, no formal complaints were lodged against this school psychologist, either with CDE or the school psychologist's employing school district. It is reasonable to conclude, therefore, that this school psychologist would not have been reported to DORA if the Applicant's proposed regulation had been in place at the time. This calls into question the value of additional regulation.

Case #3

A school psychologist who worked in a Denver area school cut and pasted a social emotional history that had been drafted by a second school psychologist for another child, into a report for a different child being prepared by the first school psychologist. In this report, the first school psychologist claimed to have completed an interview with the child's parent. The first school psychologist also reported home and community functioning on a child that was untrue.

Applicant: The second school psychologist, who is also the individual who reported this incident, thinks the child may have been harmed because decisions about the child's education were based on inaccurate information. Additionally, plagiarizing the work of others is a violation of school psychologists' various codes of ethics.

DORA: If the first school psychologist based recommendations regarding this child's education on plagiarized and falsified information, this is truly disturbing. However, there is no evidence to suggest that this actually harmed the child. Additionally, there is no indication that the first school psychologist was reported to CDE or the employing school district. It is reasonable to conclude, therefore, that this school psychologist would not have been reported to DORA under the Applicant's proposed regulation. This calls into question the value of additional regulation.

Case #4

A dually licensed school psychologist⁵ (School Psychologist A) treated, in private practice and under a court appointment, a second grade child who resided with maternal grandparents because the parents had recently died in an automobile accident. The parental grandparents had visitation rights. The child was in special education due to a traumatic brain injury. The school psychologist who reported this case (School Psychologist B) attended graduate school for school psychology with School Psychologist A and claims to know the qualifications of School Psychologist A.

Case #4a

School Psychologist A provided grief therapy to the child, which included the use of videotapes of the child's deceased parents. The maternal grandparents noticed the child regressing and demanded that the school psychologist cease using the videotapes.

Applicant: School Psychologist A lacked the training to provide grief therapy to the child and the use of the videotapes is questionable for a child who is mildly retarded.

DORA: Although a school psychologist may lack the training to provide grief training, School Psychologist A is also a licensed psychologist who would have the proper training. Additionally, when the maternal grandparents reported the child's regression and requested that School Psychologist A cease using the videotapes, School Psychologist A stopped using the videotapes. No actual harm is alleged.

Case #4b

School Psychologist A sent a letter to School Psychologist B, the school psychologist at the child's school, in which School Psychologist A indicated that it was inappropriate for School Psychologist B to provide the child with psychological services. This letter also demanded that School Psychologist B cease any intervention with the child since the non-custodial paternal grandparents had not consented.

Applicant: The school does not need the consent of private therapists or non-custodial parents (or grandparents) to provide services required under federal law. The private therapist has no legal rights with respect to the services provided in the school.

⁵ School Psychologist A holds a CDE school psychology license and a Board of Psychologist Examiners clinical psychology license.

DORA: No harm is alleged. Additionally, a school psychologist has an ethical obligation to advocate for the child, particularly if the school psychologist believes that the in-school therapy was inappropriate.

Case #4c

School Psychologist A requested School Psychologist B to release the child's record of testing and services to School Psychologist A.

Applicant: School Psychologist A, in the role of private therapist, had no legal right to the records, particularly since there was no authorization to release the records.

DORA: No harm is alleged. Additionally, without having the specific details of School Psychologist A's court appointment, it is not possible to determine whether such authorization existed.

Case #4d

School Psychologist A performed cognitive tests on the child in Spanish. The child speaks very little Spanish.

Applicant: School Psychologist A lacked the training to administer such a test. Additionally, School Psychologist A's Spanish-language skills are less than fluent.

DORA: No harm is alleged.

Case #4e

School Psychologist A billed both sets of grandparents and billed them for the time it took him to write letters to the school.

Applicant: Since many of the letters written to the school involved issues raised by the non-custodial paternal grandparents, the custodial maternal grandparents should not have been billed. This caused discord between the sets of grandparents.

DORA: No harm is alleged. Furthermore, billing issues are typically excluded from practice acts because they have nothing to do with the ability of a practitioner to practice safely and competently.

Case #4f

The custodial, maternal grandparents had to involve their personal attorney, as well as the attorney for the child's school, before they could successfully terminate School Psychologist A.

Applicant: This caused emotional distress and monetary loss. This situation could have been avoided had the grandparents had a regulator who understood school psychology to whom to complain.

DORA: No harm is alleged. Additionally, since School Psychologist A was appointed by the court, it is only logical that the family's attorney would become involved in petitioning the court to alter the appointment.

DORA: With respect to Case #4, generally, the Applicant notes that a regulator familiar with school psychology issues would have been able to intervene, but there is no indication that this school psychologist was ever reported to the Board of Psychologist Examiners, a regulatory agency that had jurisdiction over the school psychologist when working outside of a public school. Therefore, it is reasonable to conclude that School Psychologist A would not have been reported to DORA under the regulation proposed by the Applicant. This calls into question the value of additional regulation.

It is entirely unclear as to what harm this school psychologist inflicted. Harm is implied, but never expressly spelled out. The only harm actually alleged pertained the use of the videotapes, which practice was halted when the custodial grandparents requested the practice to cease. No long-term harm is alleged or demonstrated in this Case #4.

Case #5

A child in third grade was cognitively tested by a non-school psychologist and the results of this test indicated that the child was retarded. The school accepted the results of this test without retesting or checking the scoring of the test and placed the child in a self-contained classroom for cognitively disabled students. At a triennial staffing when the child was in the sixth grade, the child was retested and tested 10 points higher than three years earlier.

Applicant: In this case, those 10 points meant the difference between the self-contained classroom and a general education classroom. The child was harmed by inappropriately being placed in a classroom where lower expectations were the norm. Additionally, this child was erroneously led to believe that the child was incapable of many things. The adjustment from the special education classroom to the general education classroom proved traumatic for the child and the child's family.

DORA: The school and the school's school psychologist seem to bear some responsibility in this case for never even checking the outside therapist's report and scoring methods. However, a 10-point difference in scoring is well within the 20-point margin of error for such tests, so it is difficult to see how the outside therapist caused the harm that this child and family undoubtedly suffered. Additionally, there is no indication that a complaint was ever filed against the outside therapist with the appropriate mental health board in DORA. This calls into question the value of additional regulation.

Case #6

An initial staffing was performed on a first grade child, who was found to have an average or above average IQ, but who had a learning disability that required speech-language services. The child was retested during the triennial staffing that occurred when the child was in fourth grade. This retesting indicated an IQ below 70 (mild retardation) and that the child was very low functioning in day-to-day activities. The parents then indicated that they had suspected their child had a low IQ. Upon questioning, the school psychologist who had performed the initial staffing allegedly told the school psychologist who did the triennial staffing that retardation had been suspected but the confirmatory testing had not been performed because the initial school psychologist had not had the heart to tell the parents.

Applicant: This child was harmed by being placed in an inappropriate classroom setting because the initial school psychologist had not performed the required confirmatory testing.

DORA: Although the parents should have sought a second opinion if they doubted the findings of the first school psychologist, this is a valid example of harm inflicted by a school psychologist. The initial school psychologist should have performed the confirmatory testing and did not out of a personal fear of having to inform parents of bad news. This type of action could be subject to disciplinary action under the Applicant's proposal.

Case #7

An award winning school psychologist in northern Colorado practiced for many years by taking a "model" report of a testing case and altering it slightly for each new child. When presenting a new report for a new child, the school psychologist would adjust one score up, one down, in a random pattern. When finally confronted about this practice, the school psychologist moved to another part of the state to practice.

Applicant: Hundreds of children were misdiagnosed over the many years that this school psychologist engaged in this practice. The employing school district terminated the school psychologist's employment, but without DORA regulation, this school psychologist was free to practice somewhere else.

DORA: While no specific harm is alleged, widespread harm is certainly implied. This is a legitimate example of how the Applicant's proposal could work to sanction this school psychologist for such conduct as well as prevent future harm.

Case #8

A school psychologist in the Denver area was found to be using incorrect processes and procedures to score and interpret tests. Despite repeated training and counseling by supervisory personnel, the practices continued. When finally forced to present evidence that the tests had been performed according to proper procedure, the school psychologist presented a box of charred tests, claiming there had been a fire at the school psychologist's home.

Applicant: Countless children were misdiagnosed.

DORA: No specific harm is alleged.

Case #9

A child in the Denver area was presented to a school psychology intern for evaluation for special education services. Testing for cognitive ability had been performed by a private practitioner who was a clinical psychologist at the parents' request. The school psychology intern became suspicious of the results of the testing because they did not correlate to the observations of the child's teacher or of the school psychology intern. A review of the testing revealed that the outside therapist had used old scoring methods for a new cognitive test. The new cognitive test required new scoring methods and classes were widely available to familiarize practitioners with the new scoring methods.

Applicant: The consequences of this scoring error could have negatively impacted the child's academic career.

DORA: Although actual harm was averted, this is clearly a case of potential harm. Had the school psychology intern not questioned the test results and further analyzed them, this child could have suffered harm. Notably, this case exemplifies how the current system can prevent harm. Additionally, the clinical psychologist in this case was not reported to the Board of Psychologist Examiners, so even existing regulatory mechanisms were not employed. This calls into question the value of additional regulation.

Case #10

An adolescent student reported to a school employee that the student's out-of-school therapist, who was also a school psychologist, was discussing a divorce option with the student's parents and divulging information from the student's therapy. This school psychologist is holding himself/herself out as a marriage and family therapist, but has no training or license in this area.

Applicant: The student was disconcerted by the therapist divulging what the student thought was privileged information.

DORA: While a breach of confidence is always troubling in a mental health setting, the limitations of privilege are blurred when dealing with minor children, so it is not clear from the evidence that the therapist did anything improper. More importantly, however, since the therapist was working outside of the school, claimed to be a marriage and family therapist and was not, apparently, providing school psychology services, this therapist was not working under the therapist's school psychology license at the time. Additionally, this school psychologist was not reported any of the mental health boards in DORA, so even existing regulatory mechanisms were not employed. This calls into question the value of additional regulation.

Case #11

A school psychologist in private practice told a child's parents that the child needed to be in a self-contained classroom for emotionally disturbed children because the school psychologist diagnosed the child with bipolar disorder.

Applicant: The private school psychologist did not contact the child's school to learn that the child was functioning fine in general education classrooms with counseling support from the school.

DORA: This is a case of potential harm. Since the child's parents took the advice of the school-based school psychologist and did not insist that the school place the child in a self-contained special education classroom, harm was averted. Notably, this case exemplifies how the current system can prevent harm.

Case #12

A school psychologist working in private practice told a child's parents that the child did not need medication, special education services, or education modifications. Rather, the school psychologist recommended, herbs, oils and positive feedback. The school psychologist never requested testing reports, observed the child to determine needs or discussed the child with anyone at the child's school.

Applicant: The child is doing well with medication, a clear behavior plan and academic assistance in the classroom. The child could have potentially been harmed by the loss of educational benefit if the parents had ceased medications or insisted that the child could go without special services.

DORA: This is a case of potential harm. Not enough information is provided to determine the context under which the school psychologist treated the child. Additionally, there is no evidence to indicate that a complaint was ever filed against the school psychologist with one of the mental health boards. It is reasonable to conclude, therefore, that this school psychologist would not have been reported to a school psychologist-specific regulatory body. This calls into question the value of additional regulation.

Case #13

A school psychologist in private practice evaluated a high school student who was having significant difficulties learning, to determine whether the child was gifted or whether the child had a learning disability. The private school psychologist, however, used the adult version of the IQ test, claiming that the ceiling on the children's version was too low to determine whether the child was gifted.

Applicant: This child may have been harmed because the adult version of the IQ test is not normed for a 15-year old. Since the child's parents had spent so much time and money in having their child tested by the private school psychologist, they refused further testing.

DORA: No harm is alleged. Potential harm is alleged, but there is no indication as to what that harm may be. Additionally, there is no indication that the private therapist was reported to an existing DORA mental health board. It is reasonable to conclude, therefore, that this private school psychologist would not have been reported to a school psychologist-specific regulatory body. This calls into question the value of additional regulation.

In addition to these 13 cases presented by the Applicant, during the course of this sunrise review, a representative of DORA spoke with numerous school psychologists and parents, some of whom related additional examples of harm inflicted by school psychologists. School psychologists reported the incidents reported in the following two cases.

Case #14

A student in the Denver area had always been an “A” or “B” student, had participated in sports and was well liked. In the child’s junior year in high school, the child began failing two classes. The child’s parents took the child to a licensed clinical psychologist who diagnosed the child with depression and recommended anti-depressants. The psychologist also instructed the parents not to inform the school or the school’s school psychologist because they would not understand. Eventually, the child was forced to cease participating in sports and forced to stay home alone after school. The school’s school psychologist eventually learned of the problems and discovered that the child was not depressed, but was rather exhibiting early signs of becoming psychotic. The child was harmed by the psychologist who did not understand the psychology of children, when things develop and how to address them.

DORA: Although the harm here is clear, there is nothing to indicate that the licensed psychologist involved ever held himself/herself out as a school psychologist or that the parent of the child sought school psychology services. Rather, this has more to do with who is more or less qualified to address the mental health needs of children, something the Applicant’s proposal does not address. Additionally, there is nothing to indicate whether a complaint was ever filed against the licensed clinical psychologist with the Board of Psychologist Examiners, so even existing regulatory mechanisms were not employed. This calls into question the value of additional regulation.

Case #15

A licensed clinical psychologist who later became a school psychologist worked as a clinical psychologist in a community mental health clinic. The psychologist performed an assessment on a young child and saw early signs of childhood schizophrenia – the child was highly intelligent, but the child’s speech was bizarre and did not always make sense. As a school psychologist, this individual now wonders whether the child really had a language processing disorder. This individual now maintains that the individual lacked the background and training as a clinical psychologist to have even considered this new possibility. This individual wonders whether harm was inflicted upon this child.

DORA: As a dually licensed individual, this case presents an excellent opportunity to determine the differences in qualifications between clinical and school psychologists. However, since the outcome of this case is unknown, this case represents only potential harm.

Parents of children who receive school psychology services related the following two incidents to a representative of DORA.

Case #16

A child was enrolled in behavioral day treatment at a community health center. The school psychologist assigned to the child argued about every diagnosis made by the child's psychiatrist and refused to provide the recommended treatment. The child experienced serious setbacks. It was not necessarily wrong or improper for the school psychologist to question the diagnoses, but the manner in which the matter was handled was unprofessional and the parent of the child had nowhere to turn.

DORA: While it appears as though the school psychologist may have acted unprofessionally, it remains only a possibility that the refusal to administer the treatment prescribed by the psychiatrist caused the setbacks experienced by the child. Regardless, had the Applicant's proposal been law at the time, the parents would have at least had someone to whom to complain.

Case #17

A child was diagnosed with school anxiety by a private school psychologist. The school's school psychologist refused to provide treatment. The child missed so much school that the child was ultimately declared to have a truancy problem.

DORA: Since it is unknown why the school's school psychologist refused treatment, it is difficult to determine the cause of the truancy problems. Regardless, this is an example of the type of harm that can arise when private and school-based school psychologists refuse to collaborate in a professional manner.

Although a few of these 17 cases indicate the infliction of some type of harm, in most, the source of that harm is not always clear. Many appear to be a matter of interpretation of test scores or differences in professional judgment. These are issues that regulation would not necessarily address.

Additionally, since many of these cases involve private school psychologists, it is telling that complaints were never filed against them with the various mental health boards in DORA. If the various parties involved did not file complaints with existing regulatory authorities, it is reasonable to conclude that no complaints would be filed with the regulatory authority proposed by the Applicant. Additional regulation would not provide additional public protection.

That is not to say, however, that no complaints have been filed against school psychologists who are also licensed by one of DORA's mental health boards. Through the cooperation of the Colorado Department of Education (CDE) and DORA's Division of Registrations (Division), the administrative home of DORA's mental health boards, it was determined that eight complaints have been filed with DORA's mental health boards against school psychologists with active CDE licenses as of July 2005. Two complaints were filed against licensed professional counselors, one against a marriage and family therapist and five against clinical psychologists.

Due to confidentiality considerations, it is not possible to determine whether any of these cases involve the school psychologists discussed in the cases provided by the Applicant. However, the disciplinary statistics of the disciplined mental health professionals are telling. In five of the cases, the school psychologist received a letter of admonition and in three of the cases, all of which involved clinical psychologists, stipulations were entered into.

Three of these cases involved failure to adhere to generally accepted standards of practice, one involved providing biased information, one involved a breach of confidence, two involved inappropriate relationships with clients and one involved insurance fraud.

Importantly, none of these cases involved the relevant practitioner's practice of school psychology. All cases involved other areas of practice.

Additionally, recall that 11 states currently regulate school psychologists as such when they work outside of the public schools. During the course of this sunrise review, a representative of DORA contacted the regulators in these states to determine, among other things, the number and nature of any complaints those regulators have received concerning their licensees and any resulting disciplinary actions. Of these 11 states, the regulators in seven reported receiving no complaints against school psychologists. One state, Florida, reported receiving six complaints, but all were dismissed. The regulator in Texas reported receiving between 10 and 12 complaints per year against school psychologists, but this regulator also reported that disciplinary action is rarely, if ever, taken. West Virginia received two complaints over a span of 13 years, and of the six complaints received in Wisconsin, five were based on the practitioners' failure to obtain the requisite number of continuing education credits.

This demonstrates that even in states where school psychologists are regulated when they practice outside of the public school setting, little harm is caused.

Need for Regulation

The second sunrise criterion asks:

Whether the public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional or occupational competence.

With respect to school psychologists, this sunrise criterion is a bit unusual because school psychologists are already regulated to some degree. The real question becomes whether the public can be expected to benefit from additional regulation.

Recall, that school psychologists must hold a CDE-issued license when working in the public schools, and CDE has issued approximately 1,200 such licenses. However, the thrust of the Applicant's argument for additional regulation is based on the proposition that increasing numbers of school psychologists are engaging in private work, thus falling outside of CDE's jurisdiction, and that increasing numbers of other mental health professionals are offering school psychology services without the proper qualifications.

As of July 2005, CDE had issued approximately 1,200 licenses, but there were only approximately 700 school psychology positions in Colorado's public schools during the 2004-05 school year. This means that approximately 400 CDE-licensed school psychologists are not working in the public schools as school psychologists. However, it would be erroneous to assume that all of these are working as school psychologists in private practice. Indeed, it is erroneous to assume that they are even working as school psychologists. Many could be working as school administrators, retired or engaged in endeavors completely unrelated to school psychology.

As with any professional license, once obtained, the practitioner has an incentive to maintain the license, even after ceasing active practice. The cessation of practice can be attributed to several factors, including retirement, relocating out of state or even relocating within the state but to a location where there are no openings for a school psychologist, and accepting administrative posts. Indeed, the Applicant asserts that many school administrators hold school psychology credentials.

As a result, using this data to determine what CDE-licensed school psychologists are doing if they are not working in the public schools would lead to an erroneous conclusion. Other data must be examined.

Over the summer 2005, the Applicant conducted an informal, on-line survey of its members. One of the questions asked on this survey asked respondents to report the setting in which they work. Two hundred thirty-eight school psychologists participated in the survey, which represents a response rate of approximately 22 percent. Such a high response rate can be considered to give reliable results.

When asked where they work, 88.2 percent of respondents indicated that they work in the public schools, 9.2 percent work in private practice, 6.3 percent work for universities, 2.9 percent work in preschools, 1.7 percent work in private schools, 1.7 percent work for CDE directly, 0.8 percent work for mental health agencies, 0.4 percent work in forensics and 3.4 percent work in some other setting. In short, the vast majority of school psychologists already work in the public schools and are, therefore, subject to the jurisdiction of CDE.

The second issue that merits discussion with respect to whether additional regulation is necessary pertains to the number of non-CDE-licensed school psychologists who engage in the practice of school psychology. A critical question here is whether such school psychologists engage in the practice of psychotherapy. Section 12-43-201(9), C.R.S., defines “psychotherapy” as:

The treatment, diagnosis, testing, assessment, or counseling in a professional relationship to assist individuals or groups to alleviate mental disorders, understand unconscious or conscious motivation, resolve emotional, relationship, or attitudinal conflicts, or modify behaviors which interfere with effective emotional, social or intellectual functioning. Psychotherapy follows a planned procedure of intervention which takes place on a regular basis, over a period of time, or in the cases of testing, assessment and brief psychotherapy, it can be a single intervention.

Any person who engages in the practice of psychotherapy must be licensed by one of DORA’s mental health boards or must be registered with the mental health database for unlicensed psychotherapists. School psychologists working in the public schools represent one of the few statutory exceptions to this requirement.

When asked whether school psychologists engage in the practice of psychotherapy, the Applicant responded affirmatively. Indeed the statutory exemption for school psychologists working in the public schools creates a presumption that school psychologists practice psychotherapy.

Therefore, anyone engaging in the practice of school psychology outside of the public schools falls within the jurisdiction of DORA’s mental health boards and is regulated.

The cases of harm indicated in the preceding section of this sunrise report recited some examples of such individuals. In most cases, no complaints were filed with existing regulatory authorities at DORA’s various mental health boards. Considering that all mental health professionals that work under the jurisdiction of DORA’s mental health boards must provide clients with mandatory disclosure forms, a defining feature of which includes a statement that DORA regulates mental health professionals and provides an address to which complaints may be made, it is reasonable to conclude that additional regulation will not result in additional public protection.

Alternatives to Regulation

The third sunrise criterion asks:

Whether the public can be adequately protected by other means in a more cost-effective manner.

This is a difficult question to answer with respect to school psychologists because they are already regulated. It is reasonable, therefore, to focus a discussion on alternatives to regulation to the extent to which school psychologists have availed themselves of the regulatory programs already available to them.

Although DORA's mental health boards do not require licensees, certificants or registrants to disclose whether they hold additional licenses, by comparing the list of CDE licensees with the Division's licensing system, it is possible to determine the number of CDE-licensed school psychologists who also hold one or more credentials issued by DORA's mental health boards and from which mental health board such credentials have been issued. Table 2 illustrates the number CDE licensees who also hold the indicated credential from one of DORA's mental health boards, the number of lapsed credentials and the number of applications pending as of July 2005.

Table 2
Number of CDE-Licensed School Psychologists
Holding Another Mental Health Credential

	Active Credentials	Lapsed/Cancelled Credentials	Application Pending
Psychologists	147	13	7
Social Workers	13	3	0
Marriage and Family Therapists	7	0	1
Licensed Professional Counselors	33	5	2
Addictions Counselors	5	0	0
Unlicensed Psychotherapists	11	85	1
TOTAL	216	106	11

Thus, 216 (18 percent) CDE-licensed school psychologists possess a credential issued by one of DORA's mental health boards that enables them to practice school psychology outside of the public schools. This figure does not even consider the number of lapsed or cancelled licenses, which, if all were reinstated, would bring the total to 322 (26.8 percent), or the number of pending applications, which, if all were granted, would bring the grand total to 333 (27.75 percent). It is reasonable to conclude from these figures that a substantial number of CDE-licensed school psychologists have already availed themselves of the ability to obtain non-CDE credentials to practice school psychology outside of the public schools.

When this data is combined with the fact that during the 2003-04 school year, Colorado's public schools employed approximately 700 of 1,100 CDE-licensed school psychologists, it is reasonable to question how many school psychologists would avail themselves of yet another licensing option.

Additionally, since much of the harm alluded to or established by the Applicant was inflicted by school psychologists working in public schools under CDE licenses, it is reasonable to consider whether CDE should be granted additional disciplinary authority over the school psychologists it licenses. Recall that CDE lacks the statutory authority to discipline a school psychology licensee absent some kind of criminal wrongdoing. CDE has no authority to discipline a licensee for competency or practice-related issues.

Although it is unclear as to the number of such disciplinary actions that would be warranted if CDE had authority to discipline school psychologist licensees for competency-related issues, it is reasonable to conclude that, based on the examples of harm presented in this sunrise report, that CDE would have some cases to investigate.

Conclusion

There is little doubt that the services offered by school psychologists are invaluable. School psychologists focus on learning and education, as well as socialization issues. Perhaps more than any other mental health profession, school psychologists impact Colorado's future, because they work with our children.

This fact by itself causes an almost automatic inclination to regulate school psychologists. When discussing public harm, few populations are more vulnerable and more needing of protection than children.

However, it must be remembered that school psychologists are regulated, regardless of the setting in which they work. When they work in Colorado's public schools, they fall within the jurisdiction of CDE. When they work outside of Colorado's public schools, they fall within the jurisdiction of DORA's mental health boards.

What the Applicant truly seeks, then, is to be regulated in a manner different from the current system where work setting determines the license that must be held. While this is certainly understandable from a professional perspective, the sunrise criteria must be addressed.

There is ample evidence that school psychologists can and do inflict harm, both within the public schools and outside of them. The true test in this case, however, is not whether the unregulated practice of school psychology harms the public, but whether the current system of regulation harms the public. DORA concludes that it does not.

When school psychologists work within the public schools, supervisory channels exist to ensure that practicing school psychologists practice competently. When they do not, it is incumbent upon school administrators to take appropriate action.

When school psychologists work outside of the public schools, DORA's mental health boards stand ready to receive and act upon complaints. When school psychologists practice outside of the public schools they must provide mandatory disclosure forms to the parents of the children with whom they work. These disclosure forms must provide their qualifications, thus permitting parents to determine whether to retain the services of the particular school psychologist, as well as information pertaining to DORA's regulation of mental health professionals and DORA's mailing address and phone number so that a complaint can be filed if necessary.

It is entirely unclear what additional regulation would accomplish that the current system does not provide. Many school psychologists complain that in order to obtain licensure as a psychologist, licensed professional counselor, social worker or marriage and family therapist, they must often take additional coursework or perform internships that fall outside the scope of school psychology and their professional interests. Nevertheless, at least 205 school psychologists have done this, showing it is not only possible, but also feasible.

Furthermore, if a school psychologist determines, based on individual circumstances, that this is not feasible, then that individual may apply for listing in the Database of Unlicensed Psychotherapists. There are no educational, experience or internship requirements to be listed as an unlicensed psychotherapist, so such objections are not valid. Regardless, school psychologists complain that they are not unlicensed psychotherapists, they are highly educated professionals.

However, candidates for licensure as licensed professional counselors and marriage and family therapists must register with the database during their required periods of internships, which often take several years to complete. To assume that "unlicensed" equates to "non-professional" or "unqualified" is simply erroneous. Indeed, many of the individuals listed in the database hold doctorate degrees and have, for whatever reason, opted not to pursue licensure by one of DORA's mental health boards.

The Applicant's final argument in favor of licensure pertains to unqualified individuals offering services as school psychologists. These individuals, the Applicant argues, cause harm more often and with greater severity than properly educated and licensed school psychologists. Again, however, the evidence does not support this proposition.

Even if the Applicant's proposal were adopted, school psychology could still be practiced by any other mental health professional. Importantly, even those listed in the Database of Unlicensed Psychotherapists are prohibited from engaging in practice that is beyond the scope of their training and competence. This essentially addresses the Applicant's argument, and the Applicant's proposal would do nothing to alter this.

In the end, therefore, the Applicant's proposal should be rejected, not because regulation is unnecessary, but because additional regulation of the type envisioned by the Applicant is unjustified.

If anything, CDE should be authorized and directed to discipline CDE-licensed school psychologists for failing to adhere to generally accepted standards of practice. Current law prevents CDE from disciplining a school psychology license unless the licensee commits an enumerated criminal offense.

This essentially leaves it within the discretion of the employing school, school district, or both as to what, if anything is done to a school psychologist who is incompetent. Even then, however, if a school district terminates a school psychologist on such grounds, there is nothing to prevent that same school psychologist from being hired by another school district. Unless the second school district contacts the first, and unless the first school district discloses the grounds for termination, which is by no means guaranteed, the school psychologist could be put in a position to inflict additional harm.

While it is not the role of the state to act as a clearinghouse of information regarding professionals, the state does bear some responsibility for ensuring the continued competency of those to whom it issues licenses. In this respect, CDE is currently barred from making such assurances because CDE lacks the authority to discipline its licensees for incompetency.

School psychologists and their school and school district employers are already accustomed to working with CDE, so the system would be relatively easy to implement. Additionally, since CDE already licenses school psychologists, granting CDE disciplinary authority would also represent a more efficient program than creating an entirely new regulatory program in DORA. CDE also possesses the technical expertise to determine whether an individual school psychologist is incompetent or has failed to adhere to generally accepted standards of practice.

However, the evidence of harm explored during the course of this sunrise review does not rise to the level of justifying such a recommendation from DORA. If legislation is pursued, though, this alternative should be given serious consideration.

The Applicant has failed to provide evidence of harm sufficient to justify additional regulation of school psychologists. The General Assembly should not enact any new legislation regarding school psychologists.

Recommendation – Do not impose any additional regulation on school psychologists.