

**Department of State Health Services  
Council Agenda Memo for State Health Services Council  
January 22, 2010**

**Agenda Item Title:** New rules concerning the licensing and regulation of dyslexia therapists and dyslexia practitioners

**Agenda Number:** 5d

**Recommended Council Action:**

For Discussion Only

For Discussion and Action by the Council

**Background:**

House Bill (HB) 461, 81<sup>st</sup> Legislature, Regular Session, 2009, created the Dyslexia Therapist and Practitioner Licensing Program, which is placed within the Professional Licensing and Certification Unit, Health Care Quality Section, Division for Regulatory Services. The new program issues licenses to persons who choose to use the titles “licensed dyslexia therapist” or “licensed dyslexia practitioner,” which ensures that consumers are receiving services from qualified individuals who use or advertise these titles. H.B. 461 became effective on September 1, 2009. The bill requires that rules be adopted by June 1, 2010, and that the initial licenses be issued by September 1, 2010. HB 461 also required the appointment of the Dyslexia Licensing Advisory Committee by November 1, 2009.

License holders are required to complete post-secondary education, either at the master’s level (if a licensed dyslexia therapist) or at the bachelor’s level (if a licensed dyslexia practitioner); advanced training and supervised clinical experience in dyslexia instruction and remediation; and a national examination. Effective September 1, 2010, the program will accept and investigate consumer complaints regarding services provided by license holders, and take appropriate disciplinary action if violations of the regulatory law or rules are substantiated.

It is estimated that 500 persons will apply for licenses as a dyslexia therapist and 2,500 persons will obtain a license as a dyslexia practitioner. Each fiscal year, the program is required to report the number of persons licensed, the number of consumer complaints received and resolved, and the number and type of disciplinary actions taken as a means to measure the program’s effectiveness.

The program is funded by general revenue and program costs are offset by licensing fees.

**Summary:**

The purpose of the new rules is to provide a mechanism for the public to be assured that persons who use the titles “licensed dyslexia therapist” or “licensed dyslexia practitioner” have met minimum educational, experience, and examination requirements. The overall purpose of the new rules is to comply with HB 461, which amended Occupations Code, Chapter 403, by implementing and administering a title-protection licensing program for dyslexia therapists and dyslexia practitioners.

The new rules cover all aspects of the new regulatory program, including requirements and procedures for license application and fees; the Dyslexia Licensing Advisory Committee; code of ethics; license renewal and continuing education; and complaints and enforcement.

Measurement of the anticipated outcomes will be accomplished through the statutory reporting mechanisms established for the regulatory program, including the number of new and renewal licenses issued in each licensure category, the total number of complaints received, the number of jurisdictional complaints resolved, the number and types of disciplinary actions taken, and monitoring of complaint and violation trends. The anticipated outcomes directly support the program's overall mission, which is to implement the legislative mandate that DSHS shall regulate the use of titles, "licensed dyslexia therapist" and "licensed dyslexia practitioner." The regulation is a means to protect and promote the public health, safety, and welfare.

**Summary of Input from Stakeholder Groups:**

The draft proposed rules were reviewed by leadership of the Academic Language Therapy Association (ALTA) and the DSHS Dyslexia Licensing Advisory Committee. Program staff met both in person and through conference call with ALTA representatives to receive input on the implementation of HB 461 and to perform a section-by-section review of the draft rules. Stakeholders provided suggestions for improvement and correction to the draft rules and that feedback was incorporated into the proposed rule packet.

The DSHS Dyslexia Licensing Advisory Committee met on October 16, 2009, to review the draft proposed rules. Feedback from the group was incorporated into the rule packet and a motion was passed unanimously to recommend that the rules be published in the *Texas Register* for public comment.

The draft proposed rules were posted on the program's website on October 22, 2009. Program staff is not aware of any unresolved issues relating to stakeholder feedback on the proposed rules.

**Proposed Motion:** Motion to recommend HHSC approval for publication of rules contained in agenda item #5d

**Approved by Assistant Commissioner/Director:** Kathryn C. Perkins, R.N., M.B.A. **Date:** 11/18/09

**Presenter:** Cindy Bourland **Program:** Manager, Professional **Phone No.:** 834-4525  
Licensing and Certification Unit

**Approved by CPCPI:** Carolyn Bivens **Date:** 11/18/09

Title 25. HEALTH SERVICES  
Part 1. DEPARTMENT OF STATE HEALTH SERVICES  
Chapter 140. Health Professions Regulation.  
New Subchapter K. Dyslexia Therapists and Dyslexia Practitioners.  
New §§140.575 - 140.595

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes new §§140.575 - 140.595 concerning the licensing and regulation of dyslexia therapists and dyslexia practitioners.

BACKGROUND AND PURPOSE

The new sections are necessary to comply with House Bill 461, 81st Legislature, Regular Session, 2009, codified as Occupations Code, Chapter 403, which requires the department to establish and administer a title-protection licensing and regulatory program for dyslexia therapists and dyslexia practitioners in Texas. The new subchapter and new sections cover all aspects of the new regulatory program, including application procedures, requirements, and fees; requirements for the Dyslexia Licensing Advisory Committee; code of ethics; license renewal and continuing education; and complaints and enforcement.

SECTION-BY-SECTION SUMMARY

New §140.575 serves as the introduction to the new subchapter on this topic. New §140.576 sets out definitions that are necessary to interpret and apply the new subchapter. New §140.577 establishes licensing fees in amounts reasonable and necessary to cover the costs of administering the licensing program. New §140.578 references the procedure for rulemaking petitions. New §140.579 sets out requirements and procedures for the Dyslexia Licensing Advisory Committee. New §140.580 establishes license application requirements and procedures. New §140.581 sets out timeframes for application processing by the department. New §§140.582 and 140.583 establish qualifications for licensure as a dyslexia therapist and a dyslexia practitioner. New §140.584 sets out requirements for training programs and qualified instructors. New §140.585 addresses the required examination for licensure.

New §140.586 establishes a code of ethics for license holders and sets out the duties and responsibilities of license holders. New §140.587 establishes procedures and requirements for the renewal of licenses. New §140.588 establishes requirements and procedures for changes of name or address. New §140.589 addresses continuing education requirements for license holders. New §140.590 sets out procedures for filing complaints against license holders and complaint investigations. New §140.591 addresses disciplinary action by the department. New §140.592 establishes procedures for informal disposition of complaint cases. New §140.593 addresses formal hearings and new §140.594 establishes the schedule of sanctions. New §140.595 establishes requirements and procedures for licensing of persons with criminal backgrounds.

## FISCAL NOTE

Cindy Bourland, Manager, Professional Licensing and Certification Unit, has determined that for each year of the first five years the sections are in effect, there will be fiscal implications to the state as a result of enforcing or administering the sections as proposed. The effect on state government will be an increase in cost to the state of \$152,283 the first year, \$172,572 the second year, \$172,542 the third year, \$172,462 the fourth year, and \$172,287 the fifth year, due to the requirement to establish and administer a new licensing program. These costs are offset by an increase in revenue to the state of \$337,500 the first calendar year and \$225,000 each year for years two through five due to the new licensing fees. It is estimated that 500 individuals will obtain a license as a dyslexia therapist and 2,500 individuals will obtain a license as a dyslexia practitioner, resulting in the revenue increase. Implementation of the proposed sections will not result in any fiscal implications for local governments.

## SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Bourland has also determined that there will be no adverse effect on small businesses or micro-businesses as those businesses are not required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices, as the licensing of dyslexia therapists and dyslexia practitioners is of a voluntary, title-protection nature. Occupations Code, Chapter 403, provides for the licensing of individuals and not businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed, as the licensing of dyslexia therapists and dyslexia practitioners is of a voluntary, title-protection nature. Persons who choose to obtain a license so they may use the titles “licensed dyslexia therapist” or “licensed dyslexia practitioner” will be required to pay licensing and renewal fees as described in the proposed rules. There is no anticipated negative impact on local employment.

Government Code, §2006.002, requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses. Occupations Code, Chapter 403, provides for the licensing of individuals and not businesses. Only individuals may choose to hold a dyslexia therapist or dyslexia practitioner license and be required to pay license and renewal fees. Because Occupations Code, Chapter 403, does not require licensing of businesses or require businesses to pay fees, the proposed sections will have no mandated adverse economic impact on small businesses.

## PUBLIC BENEFIT

In addition, Ms. Bourland has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to provide a mechanism for the public to be assured that persons who use the titles “licensed dyslexia therapist” or “licensed dyslexia practitioner” have met minimum educational, experience, and examination requirements.

## REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed new rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Stephen Mills, Professional Licensing and Certification Unit, Department of State Health Services, Mail Code 1982, P. O. Box 149347, Austin, Texas 78714-9347, (512) 834-6628 or by email to Stephen.Mills@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### STATUTORY AUTHORITY

The new sections are authorized by Occupations Code Chapter 403; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new sections affect Occupations Code, Chapter 403; Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

Legend: (Proposed New Rule(s))  
Regular Print = Proposed new language

§140.575. Introduction.

(a) This subchapter implements the provisions of Occupations Code, Chapter 403, concerning the regulation and licensing of dyslexia therapists and dyslexia practitioners.

(b) This subchapter covers definitions; fees; petition for rulemaking; dyslexia licensing advisory committee; application requirements and procedures; application processing; qualifications for licensure as a dyslexia therapist; qualifications for licensure as a dyslexia practitioner; requirements for training programs and qualified instructors; examination for licensure; code of ethics and duties and responsibilities of license holders; renewal of license; changes of name or address; continuing education requirements; filing complaints and complaint investigations; grounds for disciplinary action; informal disposition; formal hearings; schedule of sanctions; and licensing of persons with criminal backgrounds.

§140.576. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act-- Occupations Code, Chapter 403.

(2) Administrator--The department employee designated as the administrator of the regulatory activities authorized by the Act.

(3) Advertising--The direct solicitation for business utilizing the titles “licensed dyslexia therapist” or “licensed dyslexia practitioner.”

(4) Applicant--A person who applies for a license to use the title “licensed dyslexia therapist” or “licensed dyslexia practitioner.”

(5) Client--A person who is receiving dyslexia services from a license holder.

(6) Commissioner--The commissioner of the Department of State Health Services.

(7) Committee--The Dyslexia Licensing Advisory Committee.

(8) Department--The Department of State Health Services.

(9) License--A license issued under the Act authorizing a person to use the title “licensed dyslexia therapist” or “licensed dyslexia practitioner.”

(10) License holder--A person who has been granted a license to use the title “licensed dyslexia therapist” or “licensed dyslexia practitioner” in accordance with the Act.

(11) Multisensory structured language education--A program described by the International Multisensory Structured Language Education Council for the treatment of individuals with dyslexia and related disorders that provides instruction in the skills of reading, writing, and spelling:

(A) through program content that includes:

- (i) phonology and phonological awareness;
- (ii) sound and symbol association;
- (iii) syllables;
- (iv) morphology;
- (v) syntax; and
- (vi) semantics; and

(B) following principles of instruction that include:

- (i) simultaneous multisensory instruction, including visual-auditory-kinesthetic-tactile instruction;
- (ii) systematic and cumulative instruction;
- (iii) explicit instruction;
- (iv) diagnostic teaching to automaticity; and
- (v) synthetic and analytic instruction.

(12) Qualified instructor means a person described by §140.584(d) of this title (relating to Requirements for Training Programs and Qualified Instructors).

§140.577. Fees.

(a) For applications postmarked prior to September 1, 2010, the initial licensing fees are as follows:

(1) application and initial license to use the title “licensed dyslexia therapist” or “licensed dyslexia practitioner” --\$75 for a license issued to be effective on September 1, 2010 and to expire on August 31, 2011; and

(2) application and initial license to use the title “licensed dyslexia therapist” or “licensed dyslexia practitioner” --\$150 for a license issued to be effective on September 1, 2010 and to expire on August 31, 2012.

(b) For applications and renewal applications postmarked on and after September 1, 2010, the licensing fees are as follows:

(1) application and initial license to use the title “licensed dyslexia therapist” or “licensed dyslexia practitioner” --\$150 for a license issued for a two-year period;

(2) renewal of a license to use the title “licensed dyslexia therapist” or “licensed dyslexia practitioner” --\$150 for a renewal license issued for a two-year period;

(3) late renewal of a license to use the title “licensed dyslexia therapist” or “licensed dyslexia practitioner:”

(A) \$210 when renewal is requested 1-90 days after expiration; or

(B) \$280 when renewal is requested 91-365 days after expiration.

(c) Other licensing fees are as follows:

(1) duplicate license or identification card--\$20;

(2) student loan default reinstatement fee--\$50; and

(3) criminal history evaluation fee--\$50.

(d) For all application and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(e) Fees shall be made payable to the Department of State Health Services and may be in the form of a personal check, money order, or cashier’s check.

(f) Fees submitted to the department are not refundable.

§140.578. Petition for Rulemaking. Procedures for the submission, consideration, and disposition of a petition to adopt a rule are set out in Title 1, Texas Administrative Code, §351.2 (relating to Petition for the Adoption of a Rule).

§140.579. Dyslexia Licensing Advisory Committee.

(a) The Dyslexia Licensing Advisory Committee shall be appointed under and governed by the Act and this section. The committee is established under the authority of Occupations Code, §403.051.

(b) Applicable law. The committee is subject to Government Code, Chapter 2110, concerning state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the department regarding the administration of the Act.

(d) Tasks. The committee shall advise the department regarding rules relating to the licensure and regulation of dyslexia therapists and dyslexia practitioners, continuing education requirements, the approved examination for licensure, and the review of training programs. The committee shall also carry out any other tasks assigned by the commissioner.

(e) Review and duration. By September 1, 2013, the department will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of five members appointed by the commissioner of the department. The composition of the committee shall include:

(1) two dyslexia therapists licensed under the Act;

(2) one dyslexia practitioner licensed under the Act; and

(3) two consumer or public members, one of whom must be a person with dyslexia or the parent of a person with dyslexia.

(g) Initial appointments. The initial appointees to the committee are not required to be licensed under the Act, but must attest that they meet the requirements for licensure. If a person who is appointed under subsection (f)(1) or (f)(2) of this section does not hold the required license by September 1, 2010, the appointment shall be voided and the commissioner shall reappoint a licensed person to fill the vacancy.

(h) Terms of office. The term of office of each member shall be six years. Members shall serve after expiration of their term until a replacement is appointed.

(1) Members shall be appointed for staggered terms so that the terms of a substantially equivalent number of members will expire on December 31st of each odd-numbered year.

(2) If a vacancy occurs, a person shall be appointed by the commissioner to serve the unexpired portion of that term.

(i) Officers. The committee shall elect from among its members a presiding officer and an assistant presiding officer to serve two-year terms to expire on December 31 of each odd-numbered year.

(1) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the department. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(2) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will complete the unexpired portion of the term of the office of presiding officer.

(3) If the office of presiding officer or assistant presiding officer becomes vacant, it shall be filled by vote of the committee at the committee's next regularly scheduled or specially called meeting.

(4) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(5) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(j) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of department staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) The committee is not a "governmental body" as defined in the Open Meetings Act, Government Code, Chapter 551. However, in order to promote public participation, each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, with the exception that the provisions allowing executive sessions shall not apply.

(4) Each member of the committee shall be informed in writing of a committee meeting at least ten working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(k) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff in advance if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(l) Staff. Staff support for the committee shall be provided by the department.

(m) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once a quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff. After approval by the committee, the minutes shall be signed by the presiding officer.

(n) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(o) Statements by members.

(1) The department or the committee shall not be bound in any way by any statement or action on the part of any committee member, except when a statement or action is pursuant to specific instructions from the department or the committee.

(2) The committee and its members may not participate in legislative activity in the name of the department or the committee except with department approval. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) A committee member should not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(4) A committee member should not disclose confidential information acquired through his or her committee membership.

(5) A committee member should not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.

(6) A committee member who has a personal or private interest in a matter pending before the committee shall publicly disclose the fact in a committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the committee member has a direct pecuniary interest in the matter but does not include the committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

#### §140.580. Application Requirements and Procedures.

(a) An applicant for a license must submit all required information on official application forms prescribed by the department and submit the required application and initial license fee.

(b) The application form shall contain the following information:

(1) specific information regarding personal data, including full legal name of individual; date of birth; social security number; information regarding other licenses, registrations, permits, and certifications held by applicant; and information regarding misdemeanor and felony convictions of the applicant;

(2) specific information regarding the person's eligibility for licensure, as described in §140.582 of this title (relating to Qualifications for Licensure as a Dyslexia Therapist), §140.583 of this title (relating to Qualifications for Licensure as a Dyslexia Practitioner), and §140.585 of this title (relating to Examination for Licensure);

(3) a statement that the applicant has read and agrees to comply with the Act and this subchapter;

(4) a statement that the applicant, if issued a license, shall return the license to the department upon revocation or suspension of the license or upon lawful demand;

(5) a statement that the applicant understands that fees and materials submitted in the application process are nonrefundable and nonreturnable;

(6) a statement that the applicant agrees to comply with all state and federal laws and regulations regarding the delivery of dyslexia services;

(7) a statement that the applicant meets the qualifications prescribed by the Act and this subchapter for a license;

(8) a statement that the information contained in the application is truthful and complete; and

(9) the dated signature of the applicant.

§140.581. Application Processing. The department shall comply with the following procedures in processing applications for licenses and applications for license renewal.

(1) Effective September 1, 2010, the following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. The license may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(A) letter of acceptance of application for a license or notice of deficient application--10 working days;

(B) issuance of license renewal after receipt of all required documentation--10 working days; and

(C) letter of denial of license--15 working days.

(2) In the event an application is not processed in the time periods stated in paragraph (1) of this section, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the

administrator. If the administrator does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request for reimbursement will be denied.

(3) Good cause for exceeding the time period is considered to exist if the number of applications for licenses and renewals exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the department in the application process caused the delay; or any other condition exists giving the department good cause for exceeding the time period.

(4) If a request for reimbursement under paragraph (2) of this section is denied by the administrator, the applicant may appeal to the commissioner for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the commissioner that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The administrator shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(5) Contested cases. The time periods for contested cases related to the denial of licenses or renewals are not included within the time periods stated in paragraph (1) of this section. The time period for conducting a contested case hearing starts from the date the department receives a written request for a hearing and ends when the decision of the department is final and can be appealed.

#### §140.582. Qualifications for Licensure as a Dyslexia Therapist.

(a) To be eligible for a licensed dyslexia therapist license, an applicant must have:

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

(2) successfully completed at least 200 hours of course work in multisensory structured language education from a training program that meets the requirements of §140.584 of this title (relating to Requirements for Training Programs and Qualified Instructors);

(3) completed at least 700 hours of supervised clinical experience in multisensory structured language education;

(4) completed at least 10 demonstration lessons of the practice of multisensory structured language education, each observed by an instructor from a training program that meets the requirements of §140.584 of this title and followed by a conference with and a written report by the instructor; and

(5) successfully completed a national multisensory structured language education competency examination approved by the department and administered by the Academic Language Therapy Association.

(b) A person who holds current certification as an academic language therapist issued by the Academic Language Therapy Association may be licensed as a dyslexia therapist and is not required to provide documentation to the department that the person meets the requirements of subsection (a)(2)-(5) of this section, unless the person is applying for licensure under subsection (d) of this section. A person who holds current certification as an academic language therapist issued by the Academic Language Therapy Association is required to provide documentation to the department that the person meets the requirements of subsection (a)(1) of this section.

(c) Clinical experience required under subsection (a)(3) of this section must be obtained under the supervision of a qualified instructor or an instructor from an accredited training program that meets the requirements of §140.584 of this title.

(d) A person who meets the requirements of subsection (a)(2)-(5) of this section may be licensed as a dyslexia therapist if the person applies for a license, including the submission of required documents and fees, under this subsection no later than December 31, 2012, and if the person meets the requirements of subsection (a)(2)-(5) of this section no later than November 30, 2012.

#### §140.583. Qualifications for Licensure as a Dyslexia Practitioner.

(a) To be eligible for a licensed dyslexia practitioner license, an applicant must have:

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

(2) successfully completed at least 45 hours of course work in multisensory structured language education from a training program that meets the requirements of §140.584 of this title (relating to Requirements for Training Programs and Qualified Instructors);

(3) completed at least 60 hours of supervised clinical experience in multisensory structured language education;

(4) completed at least five demonstration lessons of the practice of multisensory structured language education, each observed by an instructor from a training program that meets the requirements of §140.584 of this title and followed by a conference with and a written report by the instructor; and

(5) successfully completed a national multisensory structured language education competency examination approved by the department and administered by the Academic Language Therapy Association.

(b) A person who holds current certification as an academic language teacher or academic language practitioner issued by the Academic Language Therapy Association may be licensed as a dyslexia practitioner and is not required to provide documentation to the department that the person meets the requirements of subsection (a)(2)-(5) of this section. A person who holds current certification as an academic language teacher or academic language practitioner issued by the Academic Language Therapy Association is required to provide documentation to the department that the person meets the requirements of subsection (a)(1) of this section.

(c) Clinical experience required under subsection (a)(3) of this section must be obtained under the supervision of a qualified instructor or an instructor from an accredited training program that meets the requirements of §140.584 of this title.

#### §140.584. Requirements for Training Programs and Qualified Instructors.

(a) For purposes of determining whether an applicant satisfies the training requirements for a license under this subchapter, a multisensory structured language education training program completed by the applicant must:

- (1) be accredited by a nationally recognized accrediting organization;
- (2) have in writing defined goals and objectives, areas of authority, and policies and procedures;
- (3) have the appropriate financial and management resources to operate the training program, including a knowledgeable administrative director and standard accounting and reporting procedures;
- (4) have a physical site, equipment, materials, supplies, and environment suitable for the training program;
- (5) have a sufficient number of instructional personnel who have completed the requirements for certification in multisensory structured language education;
- (6) have been reviewed by multisensory structured language education professionals who are not affiliated with the training program;
- (7) have developed and followed procedures to maintain and improve the quality of training provided by the program;
- (8) have provided direct instruction in the principles and in each element of multisensory structured language education for a minimum of:
  - (A) 200 contact hours of course work for training program participants who seek a licensed dyslexia therapist license; and

(B) 45 contact hours of course work for training program participants who seek a licensed dyslexia practitioner license.

(9) have required training program participants to complete a program of supervised clinical experience in which the participants provided multisensory structured language education to students or adults, either individually or in small groups for a minimum of:

(A) 700 hours for training program participants who seek a licensed dyslexia therapist license; and

(B) 60 hours for training program participants who seek a licensed dyslexia practitioner license.

(10) have required training program participants to demonstrate the application of multisensory structured language education principles of instruction by completing demonstration lessons observed by an instructor and followed by a conference with and a written report by the instructor; and

(11) have provided instruction based on the Texas Education Agency publication "The Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders (2007)," or a revised version of that publication approved by the department.

(b) A training program must require a training program participant who seeks a licensed dyslexia practitioner license to have completed at least five demonstration lessons described by subsection (a)(10) of this section and a participant who seeks a licensed dyslexia therapist license to have completed at least 10 demonstration lessons described by subsection (a)(10) of this section.

(c) Training programs accredited by the International Multisensory Structured Language Education Council (IMSLEC) meet the requirements of this section. A training program that is not accredited by IMSLEC will be reviewed by the department, in consultation with the advisory committee, to determine whether the training program meets the requirements of this section.

(d) To be considered a qualified instructor as referenced in §140.582(c) of this title (relating to Qualifications for Licensure as a Dyslexia Therapist) and §140.583(c) of this title (relating to Qualifications for Licensure as a Dyslexia Practitioner), a person must:

(1) be licensed as a dyslexia therapist under the Act;

(2) have at least 1,400 hours of clinical teaching experience in addition to the hours required to obtain dyslexia therapist licensure; and

(3) have completed a two-year course of study dedicated to the administration and supervision of multisensory structured language education programs taught by a nationally accredited training program that meets the requirements of this section.

§140.585. Examination for Licensure.

(a) The examination designated and approved by the department for licensure as a dyslexia practitioner is the Alliance National Registration Examination for Multisensory Structured Language Education Associate/Teaching Level administered by the Academic Language Therapy Association.

(b) The examination designated and approved by the department for licensure as a dyslexia therapist is the Alliance National Registration Examination for Multisensory Structured Language Education Therapist Level administered by the Academic Language Therapy Association.

(c) In accordance with the Act, the licensure examination requirement is waived for a person who holds current certification as an academic language teacher, academic language practitioner, or an academic language therapist issued by the Academic Language Therapy Association.

§140.586. Code of Ethics; Duties and Responsibilities of License Holders. A license holder shall comply with the following requirements in the provision of professional services.

(1) A license holder shall only provide professional services that are within the scope of the license holder's competence considering level of education, training, and experience.

(2) A license holder shall ensure a safe therapy or teaching environment for clients.

(3) A license holder shall not jeopardize a client's safety or well-being by abusive or inattentive behavior.

(4) A license holder shall maintain objectivity in all matters concerning the welfare of the client.

(5) A license holder shall terminate a professional relationship when it is reasonably clear that the client is not benefitting from the services being provided or when it is reasonably clear that the client no longer needs the services.

(6) A license holder shall seek to identify competent, dependable referral sources for clients and shall refer when requested or appropriate.

(7) A license holder shall provide accurate information to clients and the public about the nature and management of dyslexia and about the services rendered.

(8) A license holder shall be knowledgeable of all available diagnostic data and other relevant information regarding each client.

(9) A license holder shall not guarantee, directly or by implication, the results of any therapeutic or teaching services, except that a reasonable statement of prognosis may be made. A license holder shall not mislead clients to expect results that cannot be predicted from reliable evidence.

(10) A license holder shall accurately represent and describe any product created or recommended by the license holder.

(11) A license holder shall not require the exclusive use or purchase of any product created or produced by the license holder as a condition of providing services.

(12) A license holder shall not use his or her professional relationship with a client to promote any product for personal gain or profit unless the license holder has disclosed to the client the nature of the license holder's personal gain or profit.

(13) A license holder shall not misrepresent his or her education, training, credentials, or competence.

(14) A license holder shall fully inform clients of the nature and possible outcomes of services rendered.

(15) A license holder shall obtain written consent from a client or a minor client's parent or legal guardian in order to use the client's data or information for research or teaching activities.

(16) A licensed dyslexia practitioner may practice only in an educational setting, including a school, learning center, or clinic. A licensed dyslexia therapist may practice in a school, learning center, clinic, or private practice setting.

(17) Prior to the commencement of professional services, a license holder in private practice shall provide a client or a minor client's parent or legal guardian with a written agreement for services. The agreement shall contain, at a minimum, a description of the services to be provided, goals, techniques, materials, the cost for services, payment arrangements and policies, hours, cancellation and refund policies, contact information for both parties, and the dated signatures of both parties. Any subsequent modifications to the agreement shall be signed and dated by both parties.

(18) A license holder in private practice shall maintain legible and accurate records of professional services rendered. A license holder practicing in an educational setting, including a school, learning center, or clinic, shall comply with the recordkeeping requirements of the educational setting.

(19) A license holder shall not falsify records.

(20) A license holder in private practice shall maintain records for a minimum of five years following the termination of services. A license holder practicing in an educational

setting, including a school, learning center, or clinic, shall comply with the records retention requirements of the educational setting.

(21) Records are the responsibility and property of the entity or individual who owns the practice or the practice setting.

(22) A license holder shall bill a client or third party only for the services actually rendered in the manner agreed to by the license holder and the client or the minor client's parent or legal guardian.

(23) A license holder shall not provide professional services solely by written, telephone, or electronic/video correspondence or communication.

(24) A license holder shall not provide professional services to a client who is receiving services from another license holder, except with the prior knowledge and consent of the other license holder.

(25) A license holder shall not reveal, without authorization, any professional or personal information about a client unless required by law or compelled by a court to do so, or unless doing so is necessary to protect the welfare of the client or of the community. If a license holder reveals professional or personal information about a client without authorization, the information disclosed, the person or entity to whom it was disclosed, and the justification for disclosure shall be documented by the license holder in the client's record.

(26) A license holder shall provide, in plain language, a written explanation of the charges for professional services previously made on a bill or statement upon the written request of a client or the minor client's parent or legal guardian.

(27) A license holder shall not engage in the medical diagnosis or treatment of clients.

(28) A license holder in private practice shall not delegate any service requiring professional competence to a person not competent to provide the service. A license holder in private practice is responsible for the services provided by unlicensed persons employed or contracted by the license holder.

(29) A license holder in private practice shall notify each client or the minor client's parent or legal guardian of the name, address, and telephone number of the department for the purpose of directing complaints to the department by providing notification on a sign prominently placed in the primary place of business or on a written document, such as an agreement or contract for services or an informational brochure provided by a license holder to a client or the minor client's parent or legal guardian.

(30) A license holder in private practice shall display the license certificate with a current renewal card in the primary location of practice, but shall not display a license certificate or renewal card which has been photographically or otherwise reproduced.

(31) A license holder shall report, in accordance with Family Code, §261.101(b), if there is cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect by any person. A license holder shall make the report not later than the 48th hour after the hour that the license holder first suspects that the child has been or may be abused or neglected. A license holder shall not delegate to, or rely on, another person to make the report.

(32) A license holder shall not engage in sexual contact, including intercourse or kissing, sexual exploitation, or therapeutic deception, with a client. Sexual contact and sexual intercourse mean the activities and behaviors described in Penal Code, §21.01. Sexual exploitation means a pattern, practice, or scheme of conduct, which may include sexual contact, which can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. Therapeutic deception means a representation by a license holder that sexual contact with, or sexual exploitation by, the license holder is consistent with, or part of, the professional services being provided to the client.

(33) A license holder shall not use alcohol, or drugs not legally prescribed for the license holder, when the use adversely affects or could adversely affect the provision of professional services.

(34) A license holder shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting clients or patronage.

(35) A license holder shall comply with all provisions of the Act and this subchapter, as well as any other state or federal law or rule that relates to the provision of professional services by, or the regulation of, the license holder.

(36) A license holder shall notify the department of changes of name, address, and telephone number and shall provide documentation of name changes as directed by the department. Notification shall be made to the department within 30 days of such changes, in accordance with §140.588 of this title (relating to Changes of Name or Address).

(37) A license holder shall not obtain a license by means of fraud, misrepresentation, or concealment of a material fact.

(38) A license holder shall not sell, barter, or offer to sell or barter a license.

(39) A license holder shall inform the department of any violations of this subchapter or the Act.

(40) A license holder shall comply with any order issued by the department that relates to the license holder.

(41) A license holder shall not interfere with a department investigation or disciplinary proceeding by willful misrepresentation or omission of facts to the department or by the use of threats or harassment against any person.

(42) A license holder shall cooperate with the department by promptly furnishing required documents and by promptly responding to a request for information from the department.

(43) A license holder shall provide professional services without discrimination based on race, creed, sex, religion, or national origin.

(44) Information used by a license holder in any advertisement or announcement shall not contain information which is false, inaccurate, misleading, incomplete, out of context, deceptive or not readily verifiable. Advertising includes, but is not limited to, any announcement of services, letterhead, business cards, commercial products, and billing statements. False, misleading, or deceptive advertising or advertising not readily subject to verification includes advertising that:

(A) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(B) makes a representation likely to create an unjustified expectation about the results of a professional service;

(C) compares a professional's services with another professional's services unless the comparison can be factually substantiated;

(D) causes confusion or misunderstanding as to the credentials, education, or licensing of a professional;

(E) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of client; or

(F) represents in the use of a professional name, a title or professional identification that is expressly or commonly reserved to or used by another profession or professional, unless the license holder is licensed or otherwise authorized to use the title or professional identification.

#### §140.587. Renewal of License.

(a) The purpose of this section is to set out the rules governing license renewal.

(b) A license holder must renew the license biennially. The renewal date of a license shall be determined by the department.

(c) At least 30 days prior to the expiration date of a license, the department shall send notice of renewal to the license holder's address in the department's records. The notice shall inform the license holder of the impending expiration and of the procedures for renewal.

(d) The renewal process shall require the license holder to provide the preferred mailing address and to disclose misdemeanor or felony convictions during the preceding two-year period. The license holder shall also be required to attest that the continuing education requirements for renewal have been met and shall provide documentation if requested or if audited by the department.

(e) A license holder has applied for renewal of the license when the license holder has mailed the fully completed renewal form and the required renewal fee to the department prior to the expiration date of the license. The postmark date shall be considered the date of mailing. If renewing electronically, the license holder has applied for renewal of the license upon successful completion of the online renewal process.

(f) After review of the renewal application, the department shall issue a renewed license to a license holder who has met all requirements for renewal.

(g) Each license holder is responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification from the department prior to the expiration date of the license shall not excuse failure to file for timely renewal.

(h) A person whose license has expired may not use the title "licensed dyslexia therapist" or "licensed dyslexia practitioner."

(i) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to one and one-half times the normally required renewal fee.

(j) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(k) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

(l) A license holder whose check for a licensing fee is not honored by the financial institution shall remit to the department a money order or cashier's check within 30 days of the date of the license holder's receipt of the department's notice. If proper payment is not received, the license shall not be renewed. If a renewed license has already been issued, it shall be ineffective.

(m) If a license holder fails to timely renew his or her license because the license holder is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the license holder may renew the license pursuant to this subsection.

(1) Renewal of the license may be requested by the license holder, the license holder's spouse, or an individual having power of attorney from the license holder. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) Renewal may be requested before or after expiration of the license. License holders who renew in accordance with this subsection shall be excused from paying late fees and penalties.

(3) A copy of the official orders or other official military documentation showing that the license holder is or was on active duty serving outside the State of Texas shall be filed with the department along with the renewal form.

(4) A copy of the power of attorney from the license holder shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.

(n) The department shall not renew a license if renewal is prohibited by the Education Code, §57.491 (relating to Loan Default Ground for Nonrenewal of Professional or Occupational License).

(o) The department shall not renew a license if renewal is prohibited by a court order or attorney general's order issued pursuant to the Family Code, Chapter 232 (relating to Suspension of License), for failure to pay child support or for failure to comply with a court order providing for the possession of or access to a child.

#### §140.588. Changes of Name or Address.

(a) The purpose of this section is to set out the responsibilities and procedures for name and address changes by a license holder.

(b) The license holder shall notify the department of changes in name or preferred mailing address within 30 days of such change(s).

(c) Notification of address changes shall be made in writing or by telephone. Notification of name changes shall be in writing. Notification of name changes shall include the former and present name, license number, former and present mailing address, and a copy of the legal name change document, such as a marriage license, court order or divorce decree.

(d) Before a replacement license will be issued by the department, the license holder shall return any previously issued document(s).

(e) It is the responsibility of the license holder to comply with the provisions of this section. Notice of complaints, violations, disciplinary action, or other correspondence sent to the address in the department's records are deemed received by the license holder.

(f) A new license certificate and identification card shall not be issued until the license holder has submitted the duplicate license fee as set out in §140.577(c)(1) of this title (relating to Fees).

#### §140.589. Continuing Education Requirements.

(a) The purpose of this section is to establish the continuing education requirements a license holder shall meet to maintain licensure. The requirements are intended to maintain and improve the quality of services provided to the public by licensed dyslexia therapists and licensed dyslexia practitioners. Continuing education experiences are programs beyond the basic education required to obtain licensure which are designed to promote and enrich knowledge, improve skills, and develop attitudes for the enhancement of the practices of licensed dyslexia therapists and licensed dyslexia practitioners, thus improving dyslexia services provided to the public.

(b) Hours required for continuing education. A license holder must complete 20 clock-hours of continuing education during each two-year licensure period.

(c) Continuing education credit undertaken by a license holder for renewal shall be acceptable if the experience falls in one or more of the following categories and meets the requirements of subsection (d) of this section:

(1) academic courses at a regionally accredited college or university;

(2) in-service educational programs, training programs, institutes, seminars, workshops and conferences;

(3) instructing or presenting education programs or activities at an academic course, in-service educational programs, training programs, institutes, seminars, workshops and conferences not to exceed five clock-hours each continuing education period;

(4) publishing a book or an article in a peer review journal not to exceed five clock-hours each continuing education period;

(5) successful completion of a self-study program, not to exceed ten clock-hours each continuing education period.

(d) Continuing education credit undertaken by a license holder shall be in one or more of the following content areas:

(1) basic language and/or learning disorders;

- (2) applied multisensory practice and methodology;
- (3) curricula in academic language therapy;
- (4) related research in medicine, psychology, education, or linguistics; or
- (5) professional practice, including relevant laws, rules, and ethics of practice.

(e) Continuing education experience shall be credited as follows.

(1) Completion of course work at or through an accredited college or university shall be credited for each semester hour on the basis of ten clock-hours of credit for each semester hour successfully completed for credit or audit as evidenced by a certificate of successful completion or official transcript.

(2) Parts of programs which meet the criteria of subsection (c)(2) or (3) of this section shall be credited on a one-for-one basis with one clock-hour of credit for each clock-hour spent in the continuing education experience.

(3) A clock-hour shall be 50 minutes of attendance and participation in an acceptable continuing education experience.

(4) Continuing education programs as described in subsection (c)(2) and (3) of this section must be offered or approved by the Academic Language Therapy Association.

(5) Successful completion of continuing education experiences as described in subsection (c)(2) and (3) of this section is evidenced by a certificate of completion or attendance that is issued by the approved sponsoring organization of the course.

(6) Successful completion of continuing education experiences as described in subsection (c)(4) of this section is evidenced by a submission of a copy of the publication.

(7) Successful completion of continuing education experiences described in subsection (c)(5) of this section is evidenced by a certificate of completion presented by the sponsoring organization of the self-study program.

(f) The department shall employ an audit system for continuing education reporting. The license holder shall be responsible for maintaining a record of his or her continuing education experiences. The certificates, diplomas, or other documentation verifying earning of continuing education hours are not to be forwarded to the department at the time of renewal unless the license holder has been selected for audit.

(g) The audit process shall be as follows.

(1) The department shall select for audit a random sample of license holders for each renewal month. License holders will be notified of the continuing education audit when they receive their renewal documentation.

(2) All license holders selected for audit will furnish documentation such as official transcripts, certificates, diplomas, an affidavit identifying the continuing education experience satisfactory to the department, or any other documentation requested by the department to verify having earned the required continuing education hours. The documentation must be provided to the department with the renewal form and payment.

(3) Failure to timely furnish this information or knowingly providing false information during the audit process or the renewal process are grounds for disciplinary action against the license holder.

(h) A license holder who has failed to complete the requirements for continuing education may be granted a 180-day extension to the continuing education period.

(1) The request for an extension of the continuing education period must be made in writing.

(2) The subsequent continuing education period shall end two years from the date the previous continuing education period expired or upon the expiration of the license, not the date of the end of the extension period.

(3) Credit earned during the extension period may only be applied to the previous continuing education period.

(4) A license may be renewed upon completion of the required continuing education within the given extension period, submission of the license renewal form, and payment of the applicable late renewal fee.

(i) A person who fails to complete continuing education requirements for renewal and fails to request an extension to the continuing education period may not renew the license. The person may obtain a new license by complying with the current requirements and procedures for obtaining a license.

(j) The department may not grant continuing education credit to any license holder for:

(1) education incidental to the regular professional activities of a license holder such as learning occurring from experience or research;

(2) professional organization activity such as serving on committees or councils or as an officer;

(3) any continuing education activity completed before or after the period of time described in subsection (b) or (h) of this section; or

(4) performance of duties that are routine job duties or requirements.

§140.590. Filing Complaints and Complaint Investigations.

(a) Complaints alleging that a person has violated the Act or this subchapter may be filed with the department on a department complaint form or in writing by regular mail, facsimile, or electronic mail.

(b) Upon receipt of a written complaint, the department shall send the complainant an acknowledgment letter.

(c) The department shall notify the license holder that a complaint has been filed and shall request the license holder's response to the allegations, unless the department determines that notification to the license holder could jeopardize the investigation of the complaint.

(d) The department shall periodically notify the complainant and the license holder of the status of the complaint until its final disposition.

(e) Anonymous complaints may be investigated by the department if there is a sufficient basis and documentation to proceed.

(f) The department may investigate the complaint and may recommend that the license be revoked, suspended, placed on probation, reprimanded or that other appropriate action as authorized by law be taken.

(g) If the department determines that the complaint is not within the department's jurisdiction, the complainant will be notified. The complaint may be referred to another governmental agency for review.

(h) If the department determines that there are insufficient grounds to support the complaint, the complaint shall be dismissed. Written notice of the dismissal will be provided to the license holder and the complainant.

§140.591. Disciplinary Action.

(a) The department may deny a license application; refuse to renew a license; suspend or revoke a license; place a license holder on probation; or issue a reprimand for a violation of the Act or this subchapter.

(b) Prior to institution of formal proceedings to deny an application, refuse to renew a license, revoke or suspend, place on probation, or issue a reprimand, the department shall give written notice to the license holder by certified mail, return receipt requested, of the facts or conduct alleged to warrant the proposed action, and the license holder shall be given an opportunity, as described in the notice, to show compliance with all requirements of the Act and this subchapter.

(c) If disciplinary action of a license holder is proposed, the department shall give written notice by certified mail, return receipt requested, that the license holder must request, in writing, a formal hearing within 10 calendar days of receipt of the notice, or the right to a hearing shall be waived and the action shall be taken.

(d) The department may request the attorney general to bring an action for an injunction to prohibit a person from violating the Act or this subchapter.

(e) A person who violates the Act or this subchapter is liable for a civil penalty not to exceed \$500 for each occurrence. The department may request the attorney general to bring an action to recover a civil penalty authorized under the Act.

(f) If it appears to the department that a person who is not licensed under the Act is violating the Act or this subchapter, the department may, after notice and an opportunity for a hearing, issue a cease and desist order prohibiting the person from engaging in the activity. A violation of an order constitutes grounds for imposing a civil penalty as authorized by the Act.

(g) In addition to other disciplinary action authorized by the Act, the department may require that a license holder who violates this subchapter attend continuing education programs.

(h) Monitoring of license holder. A license holder who is placed on probated suspension may be required to complete additional continuing education, to be monitored or supervised for a period of time by another license holder, or other requirements appropriate to the circumstances of the violation. Department staff shall monitor a license holder's compliance with probationary requirements. A license holder may be required to report periodically to the department regarding the license holder's progress during the probationary period.

(i) A person may apply for reinstatement of a revoked license on or after the first anniversary of the date of revocation. The department may accept or reject the application and may require an examination as a condition for reinstatement of the license.

#### §140.592. Informal Disposition.

(a) Informal disposition of any complaint or contested case involving a license holder or an applicant for a license may be made through an informal conference held to determine whether an agreed settlement order may be secured.

(b) An informal conference shall be voluntary.

(c) A conference shall be informal and shall not follow the procedures for contested cases and formal hearings.

(d) The license holder, the license holder's attorney, and department staff may question witnesses, make relevant statements, present statements of persons not in attendance, and present

such other evidence as may be appropriate. The department's legal counsel shall attend the informal conference.

(e) The complainant shall not be considered a party in the informal conference, but shall be given an opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the informal conference.

(f) At the conclusion of the informal conference, department staff may:

- (1) recommend informal disposition of the complaint or contested case;
- (2) recommend any disciplinary action authorized by the Act;
- (3) conclude that the department lacks jurisdiction;
- (4) conclude that a violation of the Act or this subchapter has not been established;
- (5) order that the investigation be closed; or
- (6) refer the matter for further investigation.

§140.593. Formal Hearings. A formal hearing shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

§140.594. Schedule of Sanctions.

(a) When the department determines that sanctions are appropriate, proposals for imposition of sanctions and disciplinary actions shall be made in accordance with the Act.

(b) This schedule of sanctions is intended to be utilized by the department as a guide in assessing sanctions for violations of the Act or this subchapter. The schedule is also intended to serve as a guide to administrative law judges, and as a written statement of applicable rules or policies of the department pursuant to Government Code, §2001.058(c). The failure of an administrative law judge to follow the schedule may serve as a basis to vacate or modify an order pursuant to Government Code, §2001.058(e). This schedule is not intended as a substitute for thoughtful consideration of each individual disciplinary matter. Instead, it should be used as a tool in that effort.

(c) Sanctions shall be determined by the following:

- (1) the seriousness of the violation(s);
- (2) previous compliance history;
- (3) the severity level necessary to deter future violations;

(4) efforts to correct the violation; and

(5) any other extenuating circumstances.

(d) Relevant Factors. When a license holder has violated the Act or this subchapter, three general factors combine to determine the appropriate sanction, which include: the culpability of the license holder; the harm caused or posed; and the requisite deterrence. It is the responsibility of the license holder to bring exonerating factors to the attention of the department or the administrative law judge. Specific factors to be considered are set forth as follows.

(1) Seriousness of Violation. The following factors are identified:

(A) the nature of the harm caused, or the risk posed, to the health, safety and welfare of the public, such as emotional, physical, or financial;

(B) the extent of the harm caused, or the risk posed, to the health, safety and welfare of the public, such as whether the harm is low, moderate or severe, and the number of persons harmed or exposed to risk; and

(C) the frequency and time-periods covered by the violations, such as whether there were multiple violations, or a single violation, and the period of time over which the violations occurred.

(2) Nature of the violation. The following factors are identified:

(A) the vulnerability of the person harmed, or exposed to harm;

(B) the moral culpability of the license holder, such as whether the violation was intentional or premeditated; due to blatant disregard or gross neglect; or resulted from simple error or inadvertence; and

(C) the extent to which the violation evidences lack of character or honesty.

(3) Personal Accountability. The following factors are identified:

(A) admission of wrong or error, and acceptance of responsibility;

(B) degree of remorse or concern;

(C) efforts to ameliorate the harm or make restitution;

(D) efforts to ensure future violations do not occur; and

(E) cooperation with any investigation or request for information.

(4) Deterrence. The following factors are identified:

(A) the sanction required to deter future similar violations by the license holder;

(B) sanctions necessary to ensure compliance by the license holder of other provisions of the Act or this subchapter; and

(C) sanctions necessary to deter other license holders from such violations.

(5) Miscellaneous Factors. The following factors are identified:

(A) age and experience at time of violation;

(B) presence or absence of prior or subsequent violations;

(C) conduct and work activity prior to and following the violation;

(D) character references; and

(E) any other factors justice may require.

(e) Violations are categorized by one of the following severity levels:

(1) severity level I--violations that have had or may have an adverse impact on the health or safety of a client to include serious harm or permanent injury to a client and may result in revocation of the license or license suspension;

(2) severity level II--violations that have had or may have an adverse impact on the health and safety of a client but less serious than level I and may result in suspension or probated suspension of the license;

(3) severity level III--violations that have had or may have a minor health or safety significance, or flagrant or repeated violations of the Act and/or this subchapter and may result in probated suspension of the license or reprimand;

(4) severity level IV--violations that have had or may have less than minor significance, but if left uncorrected, could lead to more serious circumstances and may result in reprimand; and

(5) severity level V--violations that are minor infractions and may result in a reprimand or a formal advisory letter.

(f) Other Actions. The department may also resolve pending complaints by issuance of formal advisory letters informing license holders of their duties under the Act or this subchapter,

and whether the conduct or omission complained of appears to violate such duties. Such advisory letters may be introduced as evidence in any subsequent disciplinary action involving acts or omissions after receipt of the advisory letters. The department may also issue informal reminders to license holders regarding compliance with minor licensing matters. The license holder is not entitled to a hearing on the matters set forth in formal advisory letters or informal reminders, but may submit a written response to be included with such letters in the department's licensing records.

§140.595. Licensing of Persons with Criminal Backgrounds.

(a) The provisions of Occupations Code, Chapter 53 (relating to Consequences of Criminal Conviction) and Occupations Code, §403.204, govern the licensing of persons with criminal backgrounds.

(b) The department may deny a license application or a license renewal application, or revoke, suspend, or place on probation an existing license if an applicant or license holder has been convicted of:

(1) an offense (felony or misdemeanor) that directly relates to the duties and responsibilities of a licensed dyslexia therapist or licensed dyslexia practitioner;

(2) an offense (felony or misdemeanor) that does not directly relate to the duties and responsibilities of a licensed dyslexia therapist or licensed dyslexia practitioner and that was committed less than five years before the date the person applies for the license or for license renewal;

(3) an offense listed in Code of Criminal Procedure, Article 42.12, Section 3g; or

(4) a sexually violent offense, as defined by Code of Criminal Procedure, Article 62.001.

(c) The factors and evidence listed in Occupations Code, Chapter 53, Subchapter B (relating to Ineligibility for License) shall be considered in determining eligibility for an original or renewal license.

(d) In considering whether a criminal conviction directly relates to the profession of licensed dyslexia therapist or licensed dyslexia practitioner, the department shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to use the title "licensed dyslexia therapist" or "licensed dyslexia practitioner";

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a license holder.

(e) The department may consider a person to have been convicted of an offense regardless of whether the proceedings were dismissed and the person was discharged as described by Occupations Code, §53.021(c), if, after consideration of the factors described by Occupations Code, §§53.022 and 53.023(a), the department determines that:

(1) the person may pose a continued threat to public safety; or

(2) employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.

(f) The following felonies and misdemeanors directly relate to the duties and responsibilities of a license holder because they indicate an unwillingness or a tendency to be unable to perform the duties and discharge the responsibilities of a licensed dyslexia therapist or a licensed dyslexia practitioner:

(1) an offense involving moral turpitude;

(2) the misdemeanor of failing to report child abuse or neglect;

(3) a misdemeanor involving deceptive business practices;

(4) the offense of assault or sexual assault; or

(5) a misdemeanor and/or a felony offense under various titles of the Penal Code:

(A) concerning Title 5 offenses against the person;

(B) concerning Title 7 offenses against property;

(C) concerning Title 8 offenses against public administration;

(D) concerning Title 9 offenses against public order and decency; or

(E) concerning Title 10 offenses against public health, safety, and morals.

(g) In accordance with Occupations Code, §53.102, a person may request the department to issue a criminal history evaluation letter regarding the person's eligibility for a license if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license; and

(2) has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(h) A person making a request for issuance of a criminal history evaluation letter shall complete and submit the request on a form prescribed by the department, accompanied by the criminal history evaluation fee.

(i) If the department determines that a ground for ineligibility does not exist, the department shall notify the requestor in writing of the determination. The letter shall be issued not later than the 90th day after the date the department received the request.

(j) If the department determines that the requestor is ineligible for a license, the department shall issue a letter setting out each basis for potential ineligibility and the department's determination as to eligibility. The letter shall be issued not later than the 90th day after the date the department received the request. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the department at the time the letter is issued, the department's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.