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## Final Regulation Agency Background Document

<b>Agency name</b>	Board of Audiology & Speech-Language Pathology; Department of Health Professions
<b>Virginia Administrative Code (VAC) citation(s)</b>	18VAC30-20-10 et seq.
<b>Regulation title(s)</b>	Regulations Governing the Practice of Audiology & Speech-Language Pathology
<b>Action title</b>	Practice of assistant speech-language pathologists
<b>Date this document prepared</b>	3/3/16

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

Proposed regulations for supervision of unlicensed assistants include the responsibility of the licensed speech-language pathologist for the training and assignment of duties commensurate with training of the assistant, the qualifications for an assistant, the duties or tasks that may be performed by an assistant, the scope of practice for a speech-language pathologist that is not to be delegated to an assistant, and the level and limitation on supervision of assistants. Regulations specify that the licensee must provide the level of supervision necessary to ensure quality of care to include on-site observation of at least two client sessions for each assistant every 30 days and direct delivery of service to each client at least every 30 days.

### Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

SLP = speech-language pathologist

### Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On February 18, 2016, the Board of Audiology and Speech-Language Pathology amended Regulations Governing the Practice of Audiology and Speech-Language Pathology.

### Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

**18VAC30-20-10 et seq. Regulations Governing the Practice of Audiology & Speech-Language Pathology** are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board of Audiology & Speech-Language Pathology the authority to promulgate regulations to administer the regulatory system:

**§ 54.1-2400 -General powers and duties of health regulatory boards**  
*The general powers and duties of health regulatory boards shall be:*

...  
6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title. ...

Authority for the Board to adopt regulations for persons practicing as an assistant speech-language pathologist is found in the amendment to § 54.1-2600 in Chapter 661 of the 2014 Acts of the Assembly:

**§ 54.1-2605. Practice of assistant speech-language pathologists.**  
*A person who has met the qualifications prescribed by the Board may practice as an assistant speech-language pathologist and may perform duties not otherwise restricted to the practice of a speech-language pathologist under the supervision of a licensed speech-language pathologist.*

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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Chapter 661 (HB764) of the 2014 General Assembly authorizes a person “who has met the qualifications prescribed by the Board” to practice as an assistant speech-language pathologist under the supervision of a licensed speech-language pathologist. The purpose of the proposed regulatory action is to set out the qualifications for such a person, the scope of his practice, and the responsibilities of the licensed supervisor.

The practice of speech-language pathology includes “facilitating development and maintenance of human communication through programs of screening, identifying, assessing and interpreting, diagnosing, habilitating and rehabilitating speech-language disorders” (§ 54.1-2600). Unlicensed assistants may be utilized to extend but not replace the practice of a licensed SLP. The American Speech-Language-Hearing Association white paper on the scope of practice for assistants states: “The decision to shift responsibility for implementation of the more repetitive, mechanical, or routine clinical activities to SLPA’s should be made only by qualified professionals and only when the quality of care and level of professionalism will not be compromised.” The proposed regulatory action for the establishment of assistant competency and scope of practice is essential to ensure the quality and continuity of care under the legal and professional responsibility of a licensed SLP to protect the health and safety of clients receiving speech-language services.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.*

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Current regulations in section 240 specify that a licensed speech-language pathologist shall provide documented supervision to unlicensed assistants, shall be held fully responsible for their performance and activities, and shall ensure that they perform only those activities which do not constitute the practice of speech-language pathology and which are commensurate with their level of training. Further, regulations provide that the identity of the unlicensed assistant shall be disclosed to the client prior to treatment and shall be made a part of the client's file.

Amendments to that section set out the qualifications of an assistant speech-language pathologist, to include a bachelor’s or associate’s degree and specific training as necessary to be determined by the supervising SLP. Minimal competency in performance must be documented before the supervising SLP can assign tasks to the assistant. After demonstration of competency, the assistant may perform duties planned, designed and supervised by a licensed SLP. Regulations specify which duties are appropriate to the practice of an assistant and which would

constitute licensed practice of an SLP and are therefore not to be performed by an unlicensed assistant. Generally speaking, activities which require assessment and professional judgment in speech-language pathology are not appropriate for delegation to an assistant. Finally, regulations specify the supervisory responsibilities of the licensed SLP for the activities of the assistant, the number of assistants who may be supervised, the frequency with which there must be on-site supervision of assistants, and the frequency with which the licensed SLP must personally see and evaluate the client. Ultimate responsibility for the client and the outcomes of his care and treatment remains with the licensed SLP.

### Issues

*Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

- 1) The primary advantage to the public is minimal qualifications for unlicensed assistants who are providing direct services to clients and clearer specifications about the appropriate role of an assistant and responsibility of a supervisor. There are no disadvantages as persons receiving services are better protected by proposed regulations.
- 2) There are no real advantages and disadvantages to the agency or the Commonwealth, except greater clarity and specification in regulation to reduce ambiguity for licensees.
- 3) There are no other pertinent matters of interest to the regulated community, government officials, and the public.

### Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There are no applicable federal requirements.

### Localities particularly affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

There are no localities particularly affected.

### Family impact

*Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

There is no impact on the family.

### Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. \*Please put an asterisk next to any substantive changes.*

There were no changes to the text of the proposed regulation.

### Public comment

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.*

On December 11, 2015, there was a public hearing conducted on proposed regulations for assistant speech-language pathologists. Cheris Fraley spoke on behalf of the American Speech Language Hearing Association (ASHA) and recommended that the Board institute licensure for speech-language pathology assistants (SLPA's). Licensure would make them accountable to the Board rather than placing the responsibility of their supervisor to ensure their competency. *Board response: Without statutory authority to do so, the Board cannot license a profession by regulation.*

The following was received by email:

- 29 persons sent the identical comment:

Asked the Board to regulate and license SLPA's. Lack of licensure or regulation puts the public at risk for harm and inconsistent quality of care. The burden of training and supervision should not be placed on the licensed SLP, particularly in the school environment where they are already over-burdened with high caseloads and workplace demands. *Board response: Same as above.*

- Suzanne Lennon (Albemarle Public Schools) – Does not agree that SLPA should be allowed to program assistive devices; does agree that an assistant should not engage in procedures that require professional acumen and technical skill. *Board response: The*

*regulation states that the assistant may assist with programming and may assist the client in the repetitive use. The Board believes the professional judgment and skill necessary still resides with the licensed speech-language pathologist who supervises the assistant.*

- Katelyn Carpenter (Ghent School) – Requests that the Board not move forward with the proposal because her bachelor’s degree in the field did not give her the training and experience to address the speech and language disorders. Children should have the services of a master’s prepared SLP. *Board response: While the Board appreciates the comment, it has a mandate to adopt regulations. Since assistants are commonly used in school settings, adoption of some qualification and appropriate scope of practice is preferable to no standard at all.*
- Traci Owens – Does not favor SLP assistants unless there is a very specific standard such as there is for OTA’s and PTA’s. *Board response: Same as above. In occupational therapy and physical therapy, there are specific educational programs and a national examination to test competency at the assistant level. Those do not exist in speech-language pathology.*

On the Regulatory Town Hall, the following comment was received:

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Lora Nalberczinski	Supports more regulation for assistants and Board’s adoption of ASHA recommendations for use of assistants. Would still support licensure.	The Board concurs with the comment about the proposed regulation; does not have the statutory authority to license.
Elena Torre	Scope of practice is too broad for an assistant; do not have capability to design or modify therapy; should not sign forms or attend IEP meetings without the SLP. Opposed to any autonomy for assistants.	The Board believes the provisions of subsections C and D which specify what is and is not allowed for an assistant are consistent with the comment.
Kay Alley Roanoke City Schools	Supports restriction for SLP to only supervise 2 assistants. Should require licensure of assistants and should require a bachelor or associate’s degree.	The Board is not aware of any associate degree program in speech disorders; requiring a bachelor’s degree would be reasonable if the profession were to be licensed but not as an unlicensed assistant.
Sue Sargeant	Should be licensed and regulated per ASHA recommendations. Currently, there is no limitation of the duties of assistants and uncertainty about who is supervising so the public may be misled.	The Board believes the regulations will provide more direction for supervision and a scope of practice for assistants.
A Hamrick	Should require licensure of assistants and should require a bachelor degree in the field. On the job training with a degree in an unrelated field is insufficient and the public is potentially receiving subpar services. There is no accountability for actions of the assistant.	Same responses as above. Regulations clearly state that the licensed SLP retains full legal and ethical responsibility for the client, so adequate supervision of an assistant is his/her responsibility.
Alesia Good	Should require licensure of	Same response as above.

Livesay	assistants and should require a bachelor degree in the field.	
Jacquelyn Ragland	Minimal degree should be bachelor's specific to communicative sciences and disorders. Should follow requirements for ASHA.	Same responses as above.
Susan Rose Gloucester Co. Schools	Qualifications for assistant too broad; should hold a bachelor's degree in an ASHA-accredited program. Burden of determining competency should not be on the supervisor. Does support restrictions of the assistant scope of practice.	Same response about education and determination of competency in lack of national examination.
Susan Gano Winchester Schools	Supports the previous comment	Same response as above.
Liza Sanders Central Va. Training Center	Supports the alternative qualification for assistant who has had employment in a US jurisdiction with the last 5 years.	The Board concurs with the comment about qualifications. The Board considered the comment about participating in formal conferences without the SLP present. Would like to allow assistants to participate if no clinical information is provided. The Board felt there was too much opportunity for misinterpretation and unintended consequences and chose to retain the regulation as proposed.

**All changes made in this regulatory action**

*Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation*

<b>Current section number</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>
240	Sets out the supervisory responsibility for an audiologist or speech-language pathologist who is supervising an unlicensed assistant	<p>Subsection A specifies the responsibility of a licensee for an unlicensed assistant.</p> <p>Currently, regulations provide that an audiologist and speech-language pathologist shall provide documented supervision to unlicensed assistants shall be held fully responsible for their performance and activities, and shall ensure that they perform only those activities which do not constitute the practice of audiology and which are commensurate with their level of training.</p> <p>The amendment will separate supervision by an audiologist and a SLP and include a requirement to document such supervision for both license types.</p> <p>Additionally, consistent with Chapter 661 of the 2014 Acts of the Assembly, the specific supervisory responsibilities of an SLP are listed, including:                      a. A speech-language pathologist shall not supervise an assistant without the</p>

	<p><u>speech-language pathologist's knowledge and consent by the assistant and the licensee documented prior to assumption of supervisory responsibilities.</u>  <i>A consistent comment on the NOIRA and by members of the Ad Hoc Committee was concern that a licensee would be assigned an assistant without his knowledge or permission and then be held responsible for his competency and practice. While the Board does not regulate employers, such as school systems, this regulation should ensure that licensed SLP's do not agree to such an assignment.</i></p> <p>b. <u>The frequency in which the speech-language pathologist personally delivers treatment or services to a client who is receiving some services from an assistant shall be up to the professional judgment of the speech-language pathologist and shall be determined by the treatment needs of the client, the type of services being provided, and the setting in which the client is being served, but shall occur at least every 30 days.</u>  <i>There was much discussion about the frequency with which a client should receive treatment or services by the supervising SLP. Given the variety of assistants, treatment settings and needs of clients, the Board determined that the frequency would vary but that a minimal number was appropriate to ensure that the licensee is personally seeing the client during the treatment period. Once every 30 days is consistent with CMS requirements, so that was the time period agreed upon.</i></p> <p>3. The identity of the unlicensed assistant shall be disclosed to the client prior to treatment and shall be made a part of the client's file.  <i>This is a current requirement in subsection B of section 240.</i></p> <p><u>Subsection B sets out the qualifications of a speech-language pathologist assistant to include: a) A bachelor's or associate's degree and documented training by a licensed speech-language pathologist in topics related to the client population to be served; or b) Employment as a speech-language pathologist assistant in a U. S. jurisdiction within the last five years preceding (the effective date of the regulations).</u>  <i>Almost all of the commenters on the NOIRA advocated for a minimum educational level of a bachelor's degree, with many specifying the subject of the degree to be speech-language pathology or communication disorders. While there are bachelor's program available in Virginia, the Board did not choose to impose that degree as an entry-level qualification. The Board did believe it was necessary to have some minimal level of post-secondary education with the specialized training to be assured by the supervising SLP relating to the client population to be served. To ensure that those who are currently working or have recently worked as assistants (especially in school systems) could continue employment, the regulation would allow those without the college degree to continue as assistants.</i></p> <p><u>To ensure competency to practice, a speech-language pathologist supervising an assistant shall be responsible for: determining that the knowledge, skills and clinical experience of the assistant are sufficient to ensure competency to perform any tasks to which the assistant is assigned. The speech-language pathologist shall document competency after training and direct observation of the assistant's performance of such tasks, and a record of skills and competencies shall be maintained.</u>  <i>Since speech-language assistants are not going to be registered or regulated by the Board, it is the responsibility of the supervising SLP to ensure minimal competency. The supervisor must not assign any task unless he has</i></p>
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		<p><i>determined that the assistant has the knowledge, skills and clinical experience to perform that task. A record of skills and competencies should be documented and maintained. The Board will likely develop a checklist that may be used for such documentation. However, not every assistant would be proficient in every task, and the SLP must only assign tasks based on his professional judgment.</i></p> <p>Subsection C sets out the scope of practice for a speech-language pathologist assistant.</p> <p><u>After demonstration and documentation of competency for the duties to be assigned, an assistant shall only engage in those duties planned, designed, and supervised by a licensed speech-language pathologist to include the following:</u></p> <ol style="list-style-type: none"> <li><u>1. Assist with speech, language and hearing screenings without clinical interpretation of results.</u></li> <li><u>2. Assist during assessment of a client exclusive of administration or interpretation.</u></li> <li><u>3. Perform activities for each session that are routine and do not require professional judgment, in accordance with a plan developed and directed by the speech-language pathologist who retains the professional responsibility for the client.</u></li> <li><u>4. Document a client's performance and report information to the supervising speech-language pathologist.</u></li> <li><u>5. Assist with programming augmentative and alternative communication devices and assist the client in repetitive use of such devices.</u></li> <li><u>6. Sign or initial informal treatment notes and, upon request, co-sign formal documents with the supervising speech-language pathologist.</u></li> <li><u>7. Engage in the following activities:</u> <ol style="list-style-type: none"> <li><u>a. Preparing materials;</u></li> <li><u>b. Scheduling of appointments and activities;</u></li> <li><u>c. Preparing charts, records, graphs and other clerical duties;</u></li> <li><u>d. Performing checks and maintenance of equipment; and</u></li> <li><u>e. Assisting a client with transitioning to and from therapy sessions.</u></li> </ol> </li> <li><u>8. Perform duties not otherwise restricted to the practice of speech-language pathology.</u></li> </ol> <p><i>Consistent with the requests of comments and the advice of practitioners who served on the Ad Hoc Committee, regulations specifically delineate the tasks or duties that may be assigned to an assistant, consistent with his knowledge and skills and the professional judgment of the licensed SLP. The duties are assistive, routine, documenting and administrative; they do not include interpretation, diagnosis or development of treatment plans for a client.</i></p> <p>Subsection D sets out those duties that would constitute the practice of speech-language pathology and are therefore not permissible to assign to an assistant, including the following:</p> <ol style="list-style-type: none"> <li><u>1. Represent himself as a speech-language pathologist.</u></li> <li><u>2. Perform standardized or non-standardized diagnostic tests or any formal or informal evaluations.</u></li> <li><u>3. Perform procedures that require a professional level of clinical acumen and technical skill.</u></li> <li><u>4. Tabulate or interpret results and observations of feeding and swallowing evaluations or screenings performed by a speech-language pathologist.</u></li> </ol>
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		<p><u>5. Participate in formal conferences or meetings without the presence of the supervising speech-language pathologist.</u></p> <p><u>6. Provide interpretative information to the client, the family of the client or others regarding the client’s status or service.</u></p> <p><u>7. Write, develop, or modify a client’s treatment plan.</u></p> <p><u>8. Assist in or provide services as specified in subsection C unless directed by the supervising speech-language pathologist.</u></p> <p><u>9. Sign any formal documents in lieu of the supervising speech-language pathologist.</u></p> <p><u>10. Select a client for service or discharge a client from service.</u></p> <p><u>11. Make a decision on the need for additional services or make referrals for service.</u></p> <p><u>12. Disclose clinical or confidential information either orally or in writing to anyone other than the supervising speech-language pathologist, unless mandated by law or authorized by the supervising speech-language pathologist.</u></p> <p><u>13. Develop or determine the swallowing or feeding strategies or precautions for a client or provide feeding or swallowing treatment.</u></p> <p><i>The acts that may not be delegated or assigned include those that would require professional judgment and clinical knowledge or could compromise the condition of a medically compromised client.</i></p> <p>Subsection E specifies the requirements for supervision of an assistant in speech-language pathology.</p> <p><u>1. The practice of an assistant shall only be supervised by a speech-language pathologist who retains full legal and ethical responsibility for the client. A speech-language pathologist shall only supervise the equivalent of two full-time assistants.</u></p> <p><u>2. The speech-language pathologist shall provide the level of supervision to the speech-language pathologist assistant necessary to ensure quality of care to include on-site supervision of at least two client sessions for each assistant being supervised every 30 days to directly observe and evaluate the performance of the assistant. The speech-language pathologist shall document such on-site observation and evaluation in the client record for each session.</u></p> <p><i>At the request of speech-language pathologists and upon recommendation from VDOE, the Board establishes a limit on the number of assistants that could be supervised. The equivalency of two full-time assistants will allow for utilization of part-time persons who are often employed in public schools. The regulation again states that the legal and ethical responsibility for the client remains with the supervising SLP.</i></p> <p><i>While several comments requested a specified percentage of time for direct on-site supervision, the Board determined that the requirement for two client sessions for each assistant being supervised every 30 days was less confusing and more practical. The requirement to “directly observe and evaluate the performance” and then to document in the client record will offer some assurance of compliance and a record upon which the Board can rely in the event there is a complaint about the activities of an assistant.</i></p>
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