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Senate Committee on Government Operations  
Jeanette White, Chair  
Vermont State House  
115 State Street  
Montpelier, Vermont 05633-5301

February 4, 2016

Dear Senator White and Committee Members:

Thank you for allowing the Office of Professional Regulation (OPR) to continue to testify before you Wednesday concerning S. 271, an Act relating to the State's organization of professional regulation.

Last week, the Committee requested that witnesses supply copies of the "educator endorsements" promulgated by the Vermont Standards Board for Professional Educators (VSBPE) corresponding to professions already licensed by the OPR pursuant to the provisions of Title 26. Those "endorsements" are attached.

The VSBPE has promulgated administrative rules, titled *Licensing of Educators and the Preparation of Educational Professionals*, found in the administrative code at CVR 22-000-010. Rule 5440 provides that, "In order to be valid, each professional educator's license shall have one or more endorsements." The endorsements themselves, however, are not found in administrative rule.

Endorsements are promulgated by the VSBPE outside of the APA rulemaking process and compiled in a document labeled *Rule 5440-Licensing Endorsements, Supplement A*.<sup>1</sup> AOE publishes a bound paper compilation titled *Rules Governing the Licensing of Educators and the Preparation of Educational Professionals* and known as "the pink book." It consists of a copy of the duly-adopted administrative rules appended to a copy of the licensing endorsements, which appear to have been created by vote of the VSBPE establishing each endorsement as a policy or procedure.

It is well established and self-evident that "when an agency adopts policy or procedures, it should not do so to supplant or avoid the adoption of rules." See 3 V.S.A. § 800(4).

The absence of rulemaking in respect to redundant endorsements can be particularly troublesome, because the so-called "endorsements" effectively evade legislative efforts to protect school districts and taxpayers from undue regulatory burdens.

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<sup>1</sup> The most recent published compilation of endorsements is found online at [http://education.vermont.gov/documents/EDU-Rule-5440\\_Supplement\\_A\\_Licensing\\_Endorsements.pdf](http://education.vermont.gov/documents/EDU-Rule-5440_Supplement_A_Licensing_Endorsements.pdf).

The Title 3 statutes governing rulemaking require that:

*If a rule affects or provides for the regulation of public education and public schools, the agency proposing the rule shall evaluate the cost implications to local school districts and school taxpayers, clearly state the associated costs, and report them in a local school cost impact statement to be filed with the economic impact statement on the rule required by subsection 838(c) of this title. An agency proposing a rule affecting school districts shall also consider and include in the local school cost impact statement an evaluation of alternatives to the rule, including no rule on the subject which would reduce or ameliorate costs to local school districts while achieving the objectives or purposes of the proposed rule. The legislative committee on administrative rules may object to any proposed rule if a local school cost impact statement is not filed with the proposed rule, or the committee finds the statement to be inadequate, in the same manner in which the committee may object to an economic impact statement under section 842 of this title.*

--3 V.S.A. § 832(b).

As we can plainly see from redundant jurisdiction over already-licensed professionals, VSBPE endorsements can impose substantial costs upon local school districts and school taxpayers by imposing duplicative fees, duplicative administration, inappropriate testing, wasted staff time, and artificial constraints upon licensees in fields with significant, existing labor shortages. But because the endorsements imposing these costs are developed outside the APA rulemaking process, the mandatory evaluation of cost implications specifically required by § 832(b) is not undertaken or reported to the Legislative Committee on Administrative Rules. Members of the public, affected professionals, boards of school directors, and perhaps most importantly, the Legislators who set the original public policy and granted the agency rulemaking authority, are afforded little or no opportunity to be heard on the wisdom of these policies.

SLPs are in short supply in Vermont. When arbitrary standards and bureaucratic requirements make professional service to the schools less attractive, professionals defect to health care settings. School districts are then left with two bad choices: pay an inflated wage to attract candidates meeting the criteria and willing to endure the administrative hassle, or use a system of provisional and emergency licensing to fill empty professional slots with persons unqualified to hold the true endorsement or professional license, or both. The fiscal costs of this waste are passed on to school districts and taxpayers. The qualitative costs are passed on to school children.

Of the VSBPE licensing endorsements, five relate to professional licenses currently issued by OPR or its subsidiary boards:

- Educational Speech Language Pathologist, Endorsement # 84
- School Nurse, Endorsement # 65
- Associate School Nurse, Endorsement # 65A
- School Psychologist, Endorsement # 66
- School Social Worker, Endorsement # 54

As you will see from the attached, each “endorsement” is separated into three sections: (1) “knowledge standards,” (2) “performance standards,” and (3) “additional requirements.”

The word *standards* is a misnomer in this context, because the knowledge and performance sections are purely descriptive and aspirational, more closely resembling job descriptions than licensing standards. Determinate criteria—the only kind useful for licensing purposes—are found exclusively in the “additional requirements” section of each endorsement. VSBPE requirements for each endorsement are discussed below, by field, in italic type.

#### *Educational Speech Language Pathologists*

*In respect to Educational Speech Language Pathologists, the VSBPE endorsement requirements for initial licensure are (1) licensure by OPR, and (2) having completed the practicum required of all OPR licensees in an educational setting.*

#### *School Nurses and Associate School Nurses*

*In respect to School Nurses, the VSBPE endorsement requirements for initial licensure are (1) RN licensure by the Vermont Board of Nursing, administered by OPR, (2) at least a bachelor’s degree in nursing, (3) CPR/AED/first-aid certification, and (4) completion of an orientation program related to Vermont’s School Quality Standards and Standards of Practice: School Health Services, and (5) “[f]our years of clinical nursing experience beyond nursing education.”*

*In respect to Associate School Nurses, the VSBPE endorsement requirements are (1) RN licensure by the Vermont Board of Nursing, administered by OPR, (2) at least an associate’s degree in nursing, (3) CPR/AED/first-aid certification, and (4) completion of an orientation program related to Vermont’s School Quality Standards and Standards of Practice: School Health Services, and (5) “[f]our years of clinical nursing experience that must include community health and pediatric nursing.”*

#### *School Psychologists*

*In respect to School Psychologists, VSBPE will issue school-psychologist endorsements to individuals who are not licensed by the Board of Psychological Examiners and who do not meet criteria for licensure.*

*The VSBPE requirements for this endorsement are (1) a NASP-accredited “Specialist Level or Doctoral degree or an American Psychological Association accredited Doctoral degree in School psychology, or the equivalent” and (2) a 600-hour supervised internship, where the supervisor has three-year practice experience. Nationally Certified School Psychologists are excused from meeting these requirements and issued school-psychologist endorsements on the basis of the national certification.*

*This practice is deeply confusing to the public and invites VSBPE licensees to violate the Psychology Practice Act, 26 V.S.A. §3001, et seq. “A person who is not licensed” by the Board of Psychological Examiners “shall not use the word ‘psychologist’ or any title which contains that word.” 26 V.S.A. § 3002(b).*

*Obviously, where a misleading professional title is conferred by another branch of the State, enforcement against individuals is inappropriate. Consequently, the Board can but watch as its*

*standards and regulatory authority are undermined. This is particularly concerning because the parents of children receiving psychological services in the schools are led to believe the Board is responsible for the credentialing and oversight of individuals it does not credential or oversee.*

*This problem could be resolved either by (a) amending the Psychology Practice Act to specifically exempt educators endorsed as school psychologists by the VSBPE, or (b) authorizing the Board of Psychological Examiners to issue a “school psychologist” license to school practitioners who do not meet existing criteria for psychologist licensure, but who do meet accepted standards for school psychology practice.*

### School Social Workers

*In respect to School Psychologists, VSBPE will issue school-psychologist endorsements to individuals who are not licensed by OPR and who do not meet criteria for licensure as licensed master’s social workers or licensed independent clinical social workers. The substantive requirements for this endorsement are (1) “[a] Master’s degree, in social work or the equivalent”<sup>2</sup> and (2) a 600-hour supervised internship, sub-parts of which must occur in pk-6 and 7-12 school social work.*

Physical therapists, occupational therapists, applied behavior analysts, and many other professionals work throughout Vermont’s schools without need of a VSBPE license or endorsement. This is difficult to reconcile.

Frankly, after two years of working with the Agency of Education, we still do not understand the legal authority or rationale supporting their licensing programs, nor can we see how their approach advances public protection. The Secretary of State’s Office remains committed to eliminating unnecessary duplication of efforts by state agencies and enacting meaningful professional regulatory programs focused on actual risk of harm, quantifiable requirements for licensure, and public protection.

Sincerely,

Christopher D. Winters

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<sup>2</sup> This requirement is curious in that the degree-granting institution need not be accredited or approved in any particular way, and the “equivalent” to a master’s degree is undefined.