

Date Issued: February 26, 1981 (AGO 81-17)

Requested by: State Board of Examiners of Audiology and Speech Pathology

- QUESTIONS PRESENTED -

I.

Whether persons who are not licensed can legally conduct hearing screening tests in public schools without supervision by a licensed audiologist.

II.

Whether a speech/language pathologist can provide services in a federally funded "Head Start" education program without possessing a speech pathology license from the State Board of Examiners of Audiology and Speech Pathology.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that unlicensed persons may not lawfully conduct hearing screening testing in public schools with or without the supervision of a licensed audiologist under chapter 43-37 of the North Dakota Century Code.

II.

It is my further opinion that speech pathologists employed by a Head Start Program must either hold a valid and current credential as a speech specialist, issued by the Department of Public Instruction, or they must have a state license as required under section 43-37-03 of the North Dakota Century Code.

- ANALYSIS -

I.

Section 43-37-03, N.D.C.C., states, in part: "No person shall practice or represent himself as an audiologist or speech pathologist in this state unless he is licensed in accordance with the current provisions of this chapter." This section then goes on to enumerate various exceptions to this licensing requirement. However, none of the exceptions relate to unlicensed persons who volunteer to administer hearing screening tests. Since such persons are not expressly exempted from the licensing requirement, they cannot practice "audiology" or represent themselves as "audiologists."

Audiologists and audiology are defined in sections 43-37-02(3) and (4), N.D.C.C., respectively as follows:

3. "Audiologist" means an individual who practices audiology and who presents himself to the public by any title or description of services incorporating the words audiologist, hearing clinician, hearing therapist, or any similar title or description of service. . . .
4. "Audiology" means the application of principles, methods, and procedures of measurement, testing, identifying, preventing, ameliorating, or modifying such disorders and conditions in individuals or groups of individuals.

Any person conducting hearing screening tests comes within these definitions and therefore must be licensed.

Furthermore, there is no provision in chapter 43-37, N.D.C.C., which would allow unlicensed persons to conduct hearing screening tests under the supervision of a licensed audiologist. However, state statutes are to be construed liberally under section 1-02-01, N.D.C.C. Therefore, in interpreting chapter 43-37, N.D.C.C., it would appear to be permissible to allow a lay person to assist a licensed audiologist. However, the licensed audiologist must have total supervision of the testing process including the administration of the hearing tests and the interpretation of the results of the hearing tests.

## II.

Under section 43-37-03(4), N.D.C.C., a speech pathologist practicing in the state must be licensed by the board of examiners of audiology and speech pathology unless such person holds a valid and current credential as a speech specialist, issued by the Department of Public instruction. The Head Start Program is a federal education program with grants awarded to various agencies, including community action agencies. However, the personnel are hired by the grantee and not by the federal government. Any teacher in the Head Start Program must hold a valid North Dakota teacher's certificate.

Since Head Start teachers are hired independently by the agencies that receive the federal grants for Head Start, and in some cases the teachers are even eligible for state teacher's retirement, it would therefore follow that the teachers are not considered to be federal government employees. A speech pathologist working in a Heat Start Program would not be termed a person employed as a speech pathologist by the Government of the United States and therefore would not fall under the exception from licensure of federal employees set forth in section 43-37-03(4), N.D.C.C.

If a speech pathologist employed in the Head Start Program does not have a valid and current credential from the Department of Public Instruction as a speech specialist, then that person must be licensed by the state board of examiners of audiology and speech pathology.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

ROBERT O. WEFALD  
Attorney General

Prepared by: DeNae H. M. Kautzmann  
Assistant Attorney General