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Oregon's Extended School Closure Special Education Guidance

FREQUENTLY ASKED QUESTIONS:
REGARDING SCHOOL OCCUPATIONAL
THERAPY AND TELEHEALTH



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Introduction

The Oregon Department of Education is providing this FAQ in response to questions from school districts related to Occupational Therapy service provision via telehealth. The scope of practice for Occupational Therapists (OTs) is defined by the Oregon Occupational Therapy Licensing Board. Nothing in this document should be interpreted as guidance that OTs are permitted to operate outside of their appropriate scope of practice. This document is meant to be a resource in combination with other guidance and resources on ODE’s [COVID-19 FAQ and resource page](#).

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School Occupational Therapy Telehealth FAQs

1. Is a district and/or school program required to provide FAPE to students who experience disabilities as part of “Distance Learning for All”?

As of April 13, 2020, all Oregon school districts will begin offering Distance Learning for All to students. As such, the school program must ensure that students who experience disabilities have equal access to the same opportunities available to the general student population, including the provision of FAPE. (34 CFR §§ 104.4, 104.33 (Section 504) and 28 CFR § 35.130 (Title II of the ADA)). SEAs, LEAs, schools, and ECSE programs must ensure that, to the greatest extent possible, each student who experiences a disability can be provided the special education and related services identified in the student’s IEP/IFSP developed under IDEA, or a plan developed under Section 504. (34 CFR §§ 300.101 and 300.201 (IDEA), and 34 CFR § 104.33 (Section 504)).” However, the Department understands there may be exceptional circumstances that could affect how a particular service is provided.

Once districts are providing Distance Learning for All, school districts and/or school programs must make every effort to provide special education and related services to the student in accordance with the student’s Individualized Education Program (IEP), Individualized Family Service Plan (IFSP) or, for students entitled to FAPE under Section 504, consistent with a plan developed to meet the requirements of Section 504. While the services in a student’s IEP, IFSP, or 504 Plan must be delivered, these plans do not dictate the methodology for delivering the services.

The Department also notes that general education for all students -- including those who experience disability -- has fundamentally changed with the shift to Distance Learning for All. Therefore, IEPs will need to be reviewed in light of the district’s Distance Learning for All plan to determine how services can be provided to ensure FAPE for each student. Districts will then need to provide those services to the extent possible; these services will look different in this new context of distance learning. Services will not look the same as they do when students attend school. Teams should consider the definition of specially designed instruction and related services, in the context of the district’s Extended School Closure Guidance plan.

“Specially Designed Instruction” (SDI) means adapting, as appropriate to the needs of each student, the content, methodology or delivery of instruction for the following purposes:

- (1) To address the unique needs of the student that result from the student’s disability; and
- (2) To ensure access of any student experiencing a disability to the general curriculum in this instance, the district’s Extended School Closure Guidance plan, so that the student can meet the educational standards within the jurisdiction of the agency that apply to all children.

Related services should be considered in the context of what specially designed instruction (special education services) means within the district's Distance Learning for All Plan. Related services are developmental, corrective, and supportive services required to assist a child, who has been identified as a child experiencing a disability, to benefit from special education services.

Supplementary aids and services, program modifications, and supports for school personnel should be considered in the context of "to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate" (in this instance to participate in the district's Continuous Learning Plan with their nondisabled peers).

If a student's specially designed instruction looks different due to the shift to Distance Learning for All, logic dictates that the related services that allow a student to benefit from that SDI may also look different. These decisions are inherently individualized. Therefore, once the regular school session resumes, IEP/IFSP Teams and, as appropriate to an individual student who experiences a disability, the personnel responsible for ensuring FAPE to a student for the purposes of Section 504, should plan to make individualized determinations as to whether compensatory services are needed to make up for any skills that may have been lost because of an extended school closure.

For further detail refer to:

- [Frequently Asked Questions Regarding Special Education in Light of the Coronavirus \(COVID-19\) Outbreak](#)
- [Distance Learning For All: Ensuring Care, Connection and Continuity Of Learning For Students Who Experience Disability](#)

2. Can Occupational Therapists provide Telehealth (or telemedicine) services as part of a child's education?

Yes. The Oregon Occupational Therapy Licensing Board allows for telehealth delivery of services. The Board defines telehealth [OAR 339-010-0006](#):

1. "Telehealth" is defined as the use of interactive audio and video, in real time telecommunication technology or store-and-forward technology, to deliver health care services when the occupational therapist and patient/client are not at the same physical location. Its uses include diagnosis, consultation, treatment, prevention, transfer of health or medical data, and continuing education.
2. Telehealth is considered the same as Telepractice for Occupational Therapists working in education settings; and Teletherapy and Telerehab in other settings.

In addition, Telehealth services provided by a licensed Occupational Therapist or Occupational Therapist Assistant must follow requirements outlined in [OAR 339-010-0006](#). They include requirements that:

- Exercise the same standard of care when providing occupational therapy services via telehealth as with any other mode of delivery of occupational therapy services;
- Provide services consistent with the AOTA Code of Ethics and Ethical Standards of Practice; and comply with provisions of the Occupational Therapy Practice Act and its regulations.
- Occupational therapists shall obtain informed consent of the delivery of service via telehealth from the patient/client prior to initiation of occupational therapy services via telehealth and maintain documentation in the patient's or client's health record.
- Occupational therapists shall secure and maintain the confidentiality of medical information of the patient/client as required by HIPAA and state and federal law.
- In making the determination whether an in-person evaluation or intervention are necessary, an occupational therapist shall consider at a minimum:
 - The complexity of the patient's/client's condition;
 - His or her own knowledge skills and abilities;
 - The patient's/client's context and environment;
 - The nature and complexity of the intervention;
 - The pragmatic requirements of the practice setting; and
 - The capacity and quality of the technological interface.

Please also see Oregon Occupation Licensing Board guides on [Telehealth and FAQ](#) and [Occupational Therapy in Schools](#) for additional information.

3. Can a Certified Occupational Therapy Assistant (COTA) provide services via telehealth?

Yes, provided they follow rules listed in [OAR 339-010-0006](#). See question #2.

4. Can I use Skype, Zoom, or Google to provide OT telehealth services?

It depends. There are multiple factors to consider when using telehealth technology. The Office for Civil Rights (OCR) at the Department of Health and Human Services (HHS) is responsible for enforcing certain regulations issued under the Health Insurance Portability and Accountability Act (HIPAA). Telehealth services are subject to HIPAA requirements for security, transmission, and confidentiality. Compliance with HIPAA requires that covered entities have appropriate administrative, physical, and technical safeguards in place and that they have reasonably implemented those safeguards. See the [HIPAA Security Series 101](#) for more information.

However, during the COVID-19 national emergency, which also constitutes a nationwide public health emergency, OCR will exercise its enforcement discretion and will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered health care providers in connection with the good faith provision of telehealth during the COVID-19 nationwide public health emergency. Covered entities seeking to use audio or video communication tech to reach patients where they live can use

any non-public facing remote communication product that is available to communicate with patients.

To that end, OCR will temporarily allow providers to use applications such as Apple FaceTime, Facebook Messenger video chat, Google Hangouts video or Skype. The agency also specified that Facebook Live, Twitch, TikTok, and other public-facing video communication **should not** be used in the provision of telehealth.

Despite this temporary relaxation of rules, OCR does note that healthcare providers should notify parents that such third-party apps may pose privacy risk. In addition, providers should enable all available encryption and privacy modes when using such applications.

See [Notification of Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency](#) for the complete release. OCR has also published an [FAQ](#) related to this change. This change is expected to be temporary.

5. Can I bill Medicaid for school health services (SLP, OT, RN, PT) provided through telehealth?

Yes. A school district may bill Medicaid for health services provided to a student pursuant to their IEP or IFSP delivered in person or via telehealth when these conditions are met:

- a. A school district must be enrolled as a School Medical provider
- b. Student must be an actively enrolled Medicaid recipient
- c. Service must be identified on the student's IEP/IFSP
- d. Must obtain informed written consent to access student benefits
- e. Health service delivery must be aligned with Licensing Board requirements, including documentation.
 - i. Documentation must include the fact the service was provided via telehealth.

6. Will the ODE or the Oregon Health Authority (OHA) provide additional guidance related to school telehealth services.

Yes. The ODE is working with the OHA, Oregon Medical Licensing Boards, and telehealth stakeholder groups to develop comprehensive guidance related school telehealth services. The OHA is also developing telehealth rules specific to School Based Health Services (School Medicaid).

7. What resources are available to support implementation of telehealth in my district?

- [Northwest Regional Telehealth Resource Center](#)
- [Roadmap for Action Advancing the Adoption of Telehealth in Child Care Centers and Schools to Promote Children's Health and Well-Being](#)
- [The National Consortium of Telehealth Resource Centers](#)

8. Additional Resources:

- [Joint Guidance on the Application of the Family Educational Rights and Privacy Act \(FERPA\) and the Health Insurance Portability Act of 1996 \(HIPAA\) To Student Records \(December 2019 Update\)](#)
- [American Physical Therapy Association - Telehealth](#)
- [The Federation of State Boards of Physical Therapy](#)
- [Oregon Physical Therapist Licensing Board Administrative Rules](#)

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