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# School Telemental Health V.3



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## Introduction

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The Oregon Department of Education (ODE) is providing this FAQ in response to questions from school districts and community mental health providers related to the delivery of mental and behavioral health services and supports via Telehealth. Telehealth is an umbrella term to describe the use of digital information and communication technology, such as instant chat, voice and video conferencing, to provide health services remotely. Telehealth is a modality for delivery of service, not a service in and of itself. Telehealth (or Tele-mental health services and supports) must be provided in alignment with a mental health provider's licensing board rules and regulations. The scope of practice for those providing mental health services and supports are defined by each profession's respective licensing board requirements, codes of conduct, standards and ethics of practice, and established district policies and procedures.

Nothing in this document should be interpreted as guidance that licensed providers 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 [Ready Schools and Safe Learners](#) and webpages.

### **The Provision of a Free Appropriate Public Education (FAPE)**

Each school district/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 a free appropriate public education (FAPE) (34 CFR §§ 104.4, 104.33 (Section 504) and 28 CFR § 35.130 (Title II of the ADA)). State Education Agencies, Local Education Agencies, schools, and Early Childhood Special Education programs must ensure that, to the greatest extent possible, each student who experiences a disability be provided the special education and related services identified in the student's Individualized Education Program (IEP)/Individualized Family Service Plan (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)).

School districts and/or school programs must make every effort to provide special education and related services, which may include mental and/or behavioral health services, to students in accordance with the student's IEP, IFSP, or, for students entitled to FAPE under Section 504, consistent with a plan developed to meet the requirements of Section 504. The services in a student's IEP, IFSP, or 504 Plan must be delivered, and teams should work with students and families to determine the methodology for delivering the services. The provision of health services via Telehealth is one methodology that may be utilized to ensure a FAPE.

Please see [Considering Reasonable Accommodation of Face Covering Requirements \(2021-22 School Year\)](#) and [Planning for Individualized COVID-19 Recovery Services](#) for additional information about the provision of FAPE during the pandemic.

## Types of Mental Health Services and Supports

ODE recognizes that there are many staff within a school setting who support the mental health and well-being of students. Staff providing mental health services and supports to students in a school setting may include staff who are qualified mental health professionals (QMHP), licensed by the Teachers Standards and Practices Commission (TSPC), and/or by a mental health-related state licensing board (i.e. Oregon Board of Licensed Professional Counselors and Therapists, Oregon Board of Licensed Social Workers, Oregon Board of Psychology, etc.) in accordance with the scope of practice of their licensure, education, and training.

It is important to distinguish between board licensed mental health services, and mental health services and supports unique to the school setting. In relation to this document and for clarity, the ODE defines the provision of mental health services and supports as follows:

### Mental Health Providers Unique to the School Setting

ODE recognizes that a number of school professionals have received formal education and/or explicit training in mental health-related topics that enables them to provide mental health services and supports to students. Staff who are providing mental health service and supports to students in a school setting may be licensed by the Teachers Standards and Practices Commission (TSPC) and may not be required to be licensed in a mental health-related discipline. In addition, mental health services and supports may also be provided by other staff and volunteers who have completed formal education and/or explicit training in mental health-related topics that enables them to provide mental health services and supports to students.

1. **School Counselors:** [OAR 584-005-0005](#) (43) "School Counselor:" A [TSPC] licensed employee of the district assigned to assist students to: develop decision-making skills, obtain information about themselves, understand opportunities and alternatives available in educational programs, set tentative career and educational goals, accept increasing responsibilities for their own actions, develop skills in interpersonal relations, and utilize school and community resources.
2. **School Psychologists:** [OAR 584-005-0005](#) (46) "School Psychologist:" A [TSPC] licensed employee of the district assigned to: assessment of students mental aptitude, emotional development, motor skills, or educational progress; designing educational programs for students and conferring with licensed personnel regarding such programs; and consulting with parents/guardians and students regarding interpretation of assessments and the design of educational programs. See: [584-070- 0205](#) (Scope of School Psychology)
3. **School Social Workers:** [OAR 584-070-0401](#) "Scope of School Social Worker Licensure:" A [TSPC] licensed School Social Worker can perform the following duties: (1) Assess home, school, personal, and community factors that may affect a student's learning; (2) Identify and provide intervention strategies for children and their families, including counseling and crisis intervention; (3) Consult with teachers, administrators and other

school staff regarding social and emotional needs of students; and, (4) Coordinate family, school and community resources on behalf of students.

School mental health services and supports may include educational evaluations and assessments, student check-ins and/or advising, facilitating skill building groups, counseling, psychological counseling, classroom social-emotional instruction, building crisis response, and referral to crisis response and mental health services.

### **Board Licensed Mental Health Providers**

Mental health services are provided by a licensed mental health provider within the scope of practice of their professional licensing board. These include but are not limited to psychiatrists, psychologists, clinical social workers, professional counselors, marriage and family therapists, and registered nurses. In addition, a qualified mental health professional (QMHP), as defined by the Oregon Health Authority under [OAR 309-039-0510](#), may provide mental health services. For additional information related QMHP qualifications and requirements see [OAR 309-019- 0125](#).

### **The Provision of Telehealth**

A board licensed mental health professional and/or a QMHP may provide mental health services via Telehealth. Board licensed mental health providers must meet all requirements set forth by their respective licensing boards.

### **TSPC-Only Licensed and Unlicensed Staff**

School mental health services and supports may be provided to students/families/guardians by TSPC-only licensed personnel and other staff who have been trained in mental health supports. There are no additional federal or state requirements beyond what districts have to do for general online learning services. However, school districts, professional organizations, and/or best practices may require or suggest additional requirements, such as consent for mental health services and supports provided by TSPC-only licensed mental health personnel and other staff who have been trained in mental health supports.

Follow your school/district policies for using online platforms, virtual supports, activities, and accessing student information. See [Student Privacy Considerations and Remote/Online Education Platforms](#) and the National Association of School Psychologists resource on [Virtual Service Delivery in Response to COVID-19 Disruptions](#) for additional guidance.

### **Consent for Tele-mental Health Services and Supports**

In order to provide services via Telehealth, board licensed mental health providers must align Telehealth consent practice with licensing board rules and regulations. A school district may adopt policies that add to the consent process.

For TSPC-only licensed school counselors, school social workers, and school psychologists, consent is not required per FERPA. However, professional ethical standards and best practice may support obtaining consent when providing mental health services and supports virtually. School professionals, including but not limited to, school counselors, school social workers, or school psychologists, should follow consent procedures outlined in district policy as well as their respective professional ethical standards and best practices.

If your school/district already has a policy or process for obtaining consent for mental health services and supports, determine how it may be used virtually or if it needs to be adapted.

## **Student Privacy, FERPA/HIPAA, and Virtual Platforms**

**All** records created during the provision of school health services and supports, whether provided in-person or through Telehealth, **are considered education records** as defined by FERPA at 34 CFR § 99.2. As such, emails, case notes, recordings, photographs, spreadsheets, notes in student cumulative files, and notes in student electronic data systems are education records, fall under FERPA, and can be subpoenaed. Also, consider that there are limitations to sole-possession notes/your own notations about students, as these are considered part of a student's education record as well.

Make sure you post limitations to confidentiality virtually just as you would in your office (e.g., harm to self, harm to others, harm is being done to them). If a student begins to discuss these topics with you, remind them of the limitations, and follow your school/district response protocols and [ODE guidance on Mental Health and Social Supports](#). It is also important to ensure procedures are in place for non-emergency and emergency situations per licensing board rules and district policies and procedures.

The ODE issued guidance entitled [Student Privacy Considerations and Remote/Online Education Platforms](#) to address concerns related to privacy and virtual platforms. FERPA is silent on requirements for the selection of virtual platforms. However, there are HIPAA security implications that come into play when delivering services via Telehealth (see below).

### **Use of Skype, Zoom, or Google to provide Telehealth**

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 technology 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.

## **Tele-Mental Health and Medicaid Billing**

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 school district must be enrolled as a School Medical provider
- Student must be an actively enrolled Medicaid recipient
- Service must be identified on the student's IEP/IFSP
- Must obtain informed written consent to access student's benefits per (34 CFR 300.154(d)92)(v). This consent is an education requirement and separate from the consent requirements related to service provision via Telehealth.
- A board-licensed provider must provide health service and delivery must be aligned with licensing board requirements.
  - Services provided by TSPC-only licensed practitioners are not eligible for Medicaid billing

Documentation of attendance is a critical component of service provision and is required for Medicaid billing. In order to align with Medicaid documentation requirements and to mitigate audit risk, when documenting service provision, mental health providers should document their location, the location of the student, the therapy provided, and the service delivery method (in-person or via Telehealth).

For additional information see: [Telemedicine/ Telehealth Coverage during the COVID-19 Emergency: Guidance for Public Education Providers Billing Oregon Medicaid for School-Based Health Services, effective 4/9/2020](#)

## Resources for Implementation of Telehealth

- [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](#)
- [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 \(December 2019 Update\)](#)

## Additional Resources

- **The Oregon Health Authority** [Website](#)
- **Oregon Board of Licensed Professional Counselors and Therapists** [Website](#)
- **Oregon Board of Licensed Social Workers** [Website](#)
- **Oregon Board of Psychology** [Website](#)
- **School Psychology**
  - [American School Counselor Association’s Ethical Standards](#) for confidentiality, group counseling, student records, and virtual/distance school counseling. ASCA also offers a webinar on Ethical Consideration: School Counseling in a Virtual Setting ([Part 1](#)) ([Part 2](#)).
  - [National Association of School Psychologist](#)

## Oregon Department of Education Contacts

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