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Telemental Health Guidance V.2

FREQUENTLY ASKED QUESTIONS



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Introduction

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 is 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 [COVID-19 FAQ resource](#) webpages.

Table of Contents

Introduction	2
Table of Contents	2
Equity Concerns Related to the Provision of Telehealth.....	3
The Provision of a Free Appropriate Public Education (FAPE)	4
Types of Mental Health Services and Supports	4
The Provision of Telehealth	6
Specially Designed Instruction	7
Additional Special Education Considerations	8
Privacy Concerns and Virtual Platforms	8
Confidentiality and Informed Consent	9
Tele-mental Health Records and Medicaid Billing.....	10
Future Updates.....	11
Resources for Implementation of Telehealth.....	12
Oregon Department of Education Contacts	12

Equity Concerns Related to the Provision of Telehealth

- I worry about how equity comes into play here as we assess candidacy. Will we be finding those more advantaged families as candidates more often than those that are less advantaged?
- I am concerned that telehealth services will offer our already advantaged families a higher level of support than those students from nondominant culture, historically disadvantaged families, and those with lower economic resources.
- I am finding it very difficult to actually connect with all 60+ of my students. A number of barriers exist within the 2020-21 instructional models that did not exist previously (e.g., lack of student presence on campus, access to the internet/technology, availability of adult support) and may disproportionately impact some of my students. I am worried that distance learning is widening the gap between our students with more advantages and those who were already behind.

The [Ensuring Equity and Access: Companion Guidance to Ready Schools, Safe Learners and Comprehensive Distance Learning](#) was drafted to help school districts and staff consider how to recognize and meet the strengths and challenges experienced by learners who have been historically marginalized by educational systems. Within these groups are emergent bilingual students, students of migrant and farmworker families, students who are LGBTQ2SIA+ (Lesbian, Gay, Bisexual, Transgender, Questioning/Queer, 2 Spirited, Intersex, Asexual, Plus other non-heterosexual orientations or non-binary genders), students experiencing disability(ies), students in foster care, students who have an incarcerated loved one, and students experiencing houselessness.

If not acknowledged and addressed as part of the planning process, these intersectionalities of race, socioeconomic status, disability, and gender have the potential to further impact opportunities and compound discrimination and oppression. As multiple educators and health service providers have indicated, the current educational paradigm may be compounding these issues, or at the very least, making the provision of services more complex.

The school closure in March of 2020 was an emergency response. As we move and plan forward, and school districts draft plans for the 2020-21 school year, we will need to seek innovative ways to serve students. Telehealth is one such innovation. It allows students to access health services that they may have difficulty accessing otherwise. In addition, telehealth provides students with an opportunity to engage with their education and connect in real time. Working with district staff, students and families to support the provision of services via telehealth is an important way to ensure access to required health services.

The Provision of a Free Appropriate Public Education (FAPE)

Have any FAPE requirements been waived?

No. 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 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 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)). However, the Department understands there may be exceptional circumstances that could affect how a particular service is provided.

School districts and/or school programs must make every effort to provide special education and related 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.

Please see [Ensuring Equity and Access: Companion Guidance to Ready Schools, Safe Learners and Comprehensive Distance Learning](#) for additional information about service provision across instructional models.

Types of Mental Health Services and Supports

The ODE recognizes that there are many staff within a school setting who support the mental health and wellbeing of students. Staff providing mental health services to students in a school setting must be qualified mental health professionals licensed by the Teachers Standards and Practices Commission (TSPC) 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).

It is important to distinguish between licensed community 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 Services and Supports 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/or supports to students. Staff who are providing mental health supports to students in a school setting may be licensed by the Teachers Standards and Practices Commission (TSPC) and are not required to be licensed in a mental health-related discipline. It is important to note:
 - 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.

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.
- Other mental health supports can be provided by staff licensed by the Teachers Standards and Practices Commission (TSPC), as well as other staff and volunteers who have completed district and school-level trainings oriented around fostering student mental health and wellbeing.
 - **Community Mental Health Services.** Mental Health Services are those provided by a Mental Health Professional within the scope and 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](#):
 - (10) QMHPs shall demonstrate the ability to conduct an assessment including identifying precipitating events, to include health and safety risks to self or others; gathering histories of mental and physical health, substance use, past mental health services, and criminal justice contacts; assessing family, cultural,

social, and work relationships; conducting a mental status examination; completing a DSM diagnosis; developing a safety plan; writing and supervising the implementation of a service plan; and providing individual, family, or group therapy within the scope of their training. In addition, QMHPs shall meet the following minimum qualifications:

- (a) Bachelor's degree in nursing and licensed by the State of Oregon. Nurses are accountable to abide by the Oregon Nurse Practice Act to determine if job descriptions are compliant with the competencies listed above;
- (b) Bachelor's degree in occupational therapy and licensed by the State of Oregon;
- (c) Graduate degree in psychology;
- (d) Graduate degree in social work;
- (e) Graduate degree in recreational, art, or music therapy;
- (f) Graduate degree in a behavioral science field; or
- (g) A qualified Mental Health Intern, as defined in 309-019-0105.

The Provision of Telehealth

Can tele-mental health services be provided by a school district?

Yes, a licensed mental health professional and/or a QMHP may provide mental health services via telehealth. Licensed providers must meet requirements set forth by their licensing boards. See additional information below:

The Oregon Health Authority [Website](#)

- Requirements related to Telemedicine for Behavioral Health can be found in [OAR 410-172-0850](#) - Telemedicine for Behavioral Health.

Oregon Board of Licensed Professional Counselors and Therapists [Website](#)

- See statement on [Statement on Distance Counseling](#).
- [American Counseling Association \(ACA\) 2014 Code of Ethics](#) (See Section H, Distance Counseling, pg. 17-18).
- [Telemental Health Coverage Information](#), Oregon Counseling Association.

Oregon Board of Licensed Social Workers [Website](#)

- See statement on [Telehealth Practice In Oregon](#).
- See [Standards for Technology in Social Work](#).

Oregon Board of Psychology [Website](#)

- The Board issued an article on “Telepsychology” in its [Summer 2015 Edition Newsletter](#) (pages 2-4).
- The Board adopted [Social Media Guidelines](#) on September 14, 2018.
- The Association of State and Provincial Psychology Boards (ASPPB) has developed [Guidelines for the Practice of Telepsychology](#).
- The [American Telemedicine Association](#) site contains helpful resources.
- The Association of Psychology Postdoctoral and Internship Centers has developed [Guidelines for the Practice of Telepsychology](#).

Can mental health services and supports unique to a school setting be provided by a school district via tele-communication, tele-education platforms, or tele-health platforms?

Yes. School mental health services and supports are provided to students/families/guardians by TSPC-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 distance learning services. However, school districts, professional organizations, and best practices may require or suggest additional consent for these services.

Follow your school/district policies for using online platforms, virtual supports, activities, and accessing student information. See [Student Privacy Considerations and Distance Learning for All](#) for additional guidance.

- National Association of School Psychologists resource on [Virtual Service Delivery in Response to COVID-19 Disruptions](#)

Specially Designed Instruction

When evaluating the Specially Designed Instruction (SDI) for a student in the current educational context, school teams should focus on the goals of the student, the unique learning situation created by [Comprehensive Distance Learning](#) and On-Site/Hybrid instructional models, and the home environment of the student and family. The Service Summary Page, which lists the service, minutes, anticipated location, and provider, will be a key place to start. The service type and minutes are critical for review during all models of instruction.

Teams must consider and plan for SDI using the full school day. Additional information on instructional time is provided in [Ready Schools, Safe Learners](#) and [Comprehensive Distance Learning](#). Teacher-Facilitated Learning will be bolstered by other learning opportunities (e.g., Learning and Supplemental Activities, Meeting Nutrition and Wellness) throughout the day.

Please see [Ensuring Equity and Access: Companion Guidance to Ready Schools, Safe Learners and Comprehensive Distance Learning](#) for additional information about service provision across instructional models.

Additional Special Education Considerations

How should mental health services and supports be documented?

Documentation for formal mental health therapy must align with the provider's applicable licensing board rules and requirements. In the case that that mental health services and supports are being provided TSPC licensed school staff, the ODE recommends that documentation align with professional best practice standards.

In regards to education documentation requirements related to an IEP/IFSP, OAR 581-015-2200(1)(c) requires "a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided". See [Ensuring Equity and Access: Companion Guidance to Ready Schools, Safe Learners and Comprehensive Distance Learning](#) for additional information about goals and progress monitoring across instructional models.

See also Oregon School Psychologist Association Resource: [Guidance for Special Education Evaluation During COVID-19](#).

How do mental health providers address the fact that sessions for telepractice are scheduled and students are not showing up?

This situation should be handled in the same way as you would if a student missed an in-person service. It is important to follow district policy, document your efforts, communicate with the student and family, and consult with the IEP/IFSP team if needed.

Privacy Concerns and Virtual Platforms

What platforms are HIPAA and FERPA compliant? What are our professional protections if a parent concern comes up?

The ODE issued guidance entitled [Student Privacy Considerations and Distance Learning for All](#) to address concerns such as these. FERPA is silent on the use of virtual platforms. Further information about HIPAA compliance is provided below. Ultimately, the choice of a platform is a district level decision.

Can I use Skype, Zoom, or Google to provide PT 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 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.

Confidentiality and Informed Consent

Are there any other limits to confidentiality that I should be aware of when providing tele-mental health services or supports?

Emails, case notes, recordings, photographs, spreadsheets, notes in student cumulative files, and notes in student electronic data systems are Educational Records and 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 virtually post limitations to confidentiality 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](#).

Ensure procedures are in place for non-emergency and emergency situations.

Do I need to obtain informed consent for tele-mental health services and supports?

For TSPC-only licensed school counselors, school social workers, and school psychologists. Informed consent is typically not required for check-ins and 1:1 short-term or solution-focused advising. However, professional ethical standards and best practice may support obtaining consent when providing these services.

Community licensed mental health providers must align consent practice to licensing board requirements. For TSPC licensed staff and unlicensed staff, there are no additional consent requirements to provide tele-mental health supports per FERPA. Mental health support professionals, including but not limited to school counselors, social workers or school

psychologists, should follow the informed consent procedures outlined in district policy as well as their respective ethical guidelines 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.

For additional information see:

- [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 Psychologists](#)

Is a discussion with the student/parent/guardian about informed consent for phone and video sessions sufficient if it is documented in the progress notes?

It depends. Board licensed mental health providers must align consent practice with licensing board rules. In general, verbal consent, documented in the provider's service log is adequate. A school district may require additional consent requirements for services provided via telehealth.

Mental health support professionals should follow the informed consent procedures outlined in district policy as well as their respective ethical guidelines.

During this time, several ways that districts are documenting consent may include:

- Emailing/ mailing informed consent letter for parent/student/guardian to sign and send back
- Making a note in student electronic data systems of verbal informed consent from student/parent/guardian
- Making a note on an informed consent letter of verbal approval by student/parent/guardian
- Making a note in a spreadsheet of verbal informed consent by student/parent/guardian

Tele-mental Health Records and Medicaid Billing

Are records created by any school employee (including contracted and volunteer staff) providing mental health supports to students under considered education records and subject to FERPA privacy protections? Is this any different with telehealth?

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. Telehealth is a modality for delivery of service, not a service in and of

itself. However, because telehealth services are transmitted via virtual platforms, there are HIPAA security implications.

Resource:

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

Can I bill Medicaid for mental health services 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 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 students benefits
- Health service must be provided by a **board-licensed provider** and delivery must be aligned with Licensing Board requirements.
 - TSPC-only licensed practitioners are unable to bill Medicaid

Documentation of attendance is a critical component of service provision and is required for Medicaid billing. Please see [Ready Schools, Safe Learners Section 2b](#) for current information about attendance requirements and documentation. In order to align with Medicaid documentation requirements and to mitigate audit risk, when documenting service provision, licensed 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](#)

Future Updates

This document will continue to be updated based on:

- The continuing impacts of COVID-19 and the state’s evolving mitigation efforts as directed by Governor Brown and the Oregon Health Authority.
- Input from educators, students, families and community partners.
- An ongoing review of equity impacts.

- Learnings from efforts being rolled out in other states and countries.

Please see the curated information at the [Ready Schools, Safe Learners](#) and [Special Education COVID-19 Resources](#) pages for additional tools, links, and related documents.

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](#)

Oregon Department of Education Contacts

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