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December 28, 2020

# School Occupational Therapy and Telehealth V.3

## FREQUENTLY ASKED QUESTIONS



## Introduction

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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. The Board has verified the accuracy of the statements included herein as it pertains to Board rules. 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 [Ready Schools, Safe Learners](#) and [COVID-19 FAQ and resource page](#).

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## School Occupational Therapy Telehealth FAQs

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### 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'm 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. As an integral part of IEP process, management, and related service provision, OTs will be at the forefront of planning and service delivery. 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.

## **The Provision of Telehealth**

### **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 at [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 therapy practitioner 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 therapy practitioners 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.
- Prior to initiation of occupational therapy services, an occupational therapy practitioner shall obtain informed consent of the delivery of service via telehealth from the patient/client. The consent may be verbal, written, or recorded and must be documented in the patient or client's permanent health or education record.
- Occupational therapy practitioners 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.

**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.

**Can an OT in another state provide services via telehealth to a student in Oregon?**

An occupational therapy practitioner can only treat a patient or student in Oregon if they are licensed in Oregon ([OAR 339-010-0006](#)).

**Can an OT with Oregon licensure provide services via telehealth to an Oregon-enrolled student who is temporarily located in another state? For example, a student is at a grandparent's house in WA during the day while their parents are at work.**

No. Current rule does not allow an Oregon-licensed OT to provide services via telehealth to an Oregon-enrolled student who is temporarily located in another state unless they are licensed in the state the patient or student is physically located in.

**How do you address the needs of a child who you determine would not be appropriate for telehealth service but consultation alone to family is not meeting the needs for that child?**

If a student is not able to access OT therapy or there is a significant change in type of therapy, the OT should document the reasons why therapy has changed or is not appropriate to be delivered via telepractice and consult with the IEP/IFSP team and follow district procedures to address change via a written amendment or through an IEP meeting if parents are not in agreement.

See [Ensuring Equity and Access: Companion Guidance to Ready Schools, Safe Learners and Comprehensive Distance Learning](#) for additional information.

## **Consent Related to Telehealth/Telepractice**

Prior to initiation of occupational therapy services, an occupational therapy practitioner shall obtain informed consent of the delivery of service via telehealth from the patient/client. The consent may be verbal, written, or recorded and must be documented in the patient or client's permanent health or education record ([OAR 339-010-0006](#)).

**If two OTs are providing services via telehealth to the same student, do they both need to obtain consent?**

Yes. Consent is specific to each licensee.

**If we can't get a response to our consent to telepractice, can OTs still provide materials for parents to work on with their child?**

Consent is required prior to the initiation of the provision of services via telehealth. This does not prohibit an OT from providing resources to parents outside of direct therapy.

**If an OT is uploading learning materials on an online platform, but not meeting with the student or family members (via phone, video conferencing, etc.) is consent required?**

Same as above. Consent is required prior to the initiation of the provision of services via telehealth. This does not prohibit an OT from providing resources to parents outside of direct therapy.

**What is considered consult in relation to telehealth and would necessitate consent?**

As noted previously, the Board definition of Telehealth includes consultation ([OAR 339-010-0006\(1\)](#)). For practitioners working in the school setting, consultation is defined by the Board at [OAR 339-010-0050\(2\)\(b\)\(B\)](#): Consultation is collaborative problem solving with parents, teachers, and other professionals involved in a child's program. Direct intervention is defined at [OAR 339-010-0050\(2\)\(b\)\(A\)](#): Direct Intervention is the therapeutic use of occupations and activities with the child present, individually or in groups.

The Licensee should obtain consent if any of the services that are being provided meet the Board definitions of consultation and/or direct intervention. For further inquiries in regards to what activities may or may not be considered consultation, please contact the Board (contact info provided at the end of the document).

**When would a new telehealth consent need to be obtained?**

Board rules are not specific in regards to this. School districts may choose to adopt policies to support proper and efficient documentation. Please note, school districts and EI/ECSE programs that bill Medicaid have additional telehealth consent requirements as per [OAR 410-133-0080\(13\)\(b\)](#): Consent must be obtained and documented annually or with change in services on the child/students plan of care.

## **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.

### **Can asynchronous support and resources that are provided by a licensed OT be considered SDI?**

It depends on the context of the instruction being delivered. Teams should plan for mostly teacher-facilitated instruction that can be synchronous or asynchronous. When considering asynchronous methods, the instruction must be specific to the student skill and concerns. Similar to in-person instruction, minutes should be calculated in relation to the time spent learning. It is important to note that all occupational therapy must be provided in alignment with board licensure.

Please note: If a student is not able to access occupational therapy or there is a significant change in type of therapy, the OT should document the reasons why therapy has changed or is not appropriate to be delivered via telepractice and consult with the IEP/IFSP team. 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.

**How do we take into consideration the time that a child should be receiving in therapy given that their academic hours have been condensed? Does our therapy time need to fall into those allotted hours for academics? What does ODE say about district guidance that OTs can provide a percentage of service rather than the full number of minutes listed on the IEP during this time? Or in addition to?**

See above. It is important to consult district policy in relation to how therapy may be adjusted. Changes to a student's services must be individualized based on student need and circumstances. For additional information about instructional time and SDI, see [Learning Day](#)

[Overview](#) in [Comprehensive Distance Learning](#) and [Ensuring Equity and Access: Companion Guidance to Ready Schools, Safe Learners and Comprehensive Distance Learning](#).

## **Additional Special Education Considerations**

**If a child is evaluated by our EI/ECSE program/school district and is found eligible for services in general, but an OT is not on the evaluation team, does the OT who will be the service provider need to complete an evaluation prior to offering services?**

The answer is YES, the evaluation team cannot recommend OT services IF an OT is NOT part of the evaluation. As a licensed Occupational Therapy practitioner in the state of Oregon, you are required to complete an evaluation prior to treating a patient, per [OAR 339-010-0050](#). An OT must evaluate the child to make a determination if OT services are needed. However, an evaluation DOES NOT have to involve **formal** assessment: the OT could choose to do a file review of prior evaluations/assessments given, conduct a brief observation of the child, or request permission to conduct a formal assessment depending on whether or not there is sufficient data available to determine the need for OT services. The type of "evaluation" for OT services is at the discretion of the OT, not the evaluation team or the administrator.

**How are OTs expected to document each goal and student progress? Are there forms available to use for documentation?**

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". OTs need to document progress towards meeting the annual goals in a manner consistent with requirements specified in the IEP.

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.

OT documentation requirements can be found at [OAR 339-010-0050\(4\)](#). The board does not provide forms for documentation or recordkeeping.

**How do OTs 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 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 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.

## School Medicaid Billing

**Can school districts 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's 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.

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, OTs should document their location, the location of the student, the **therapy provided**, and the service delivery method (in-person or via telehealth). In the event that a Certified Occupational Therapy Assistant is providing the service, documentation of supervision by the supervisor and their location must be maintained as well.

Please note: Current Board rules do not require documentation of the location of the Occupational Therapist/Certified Occupational Therapy Assistant and student, though it may be best practice.

## 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 Telehealth Implementation

- [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](#)

## 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 Occupational Therapy Association \(AOTA\)](#)
- [AOTA Back to School Resources During COVID-19](#)
- [Oregon Occupational Therapy Licensing Board Administrative Rules](#)
- [National Board for Certification of Occupational Therapy](#)

## Contact Information

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### Oregon Occupational Therapy Licensing Board

- Nancy Schuberg, Executive Director, [nancy.schuberg@state.or.us](mailto:nancy.schuberg@state.or.us)

### Oregon Department of Education

- Ely Sanders, Education Specialist, [ely.sanders@state.or.us](mailto:ely.sanders@state.or.us)
- Jennifer Dundon (Ross), Operations & Policy Analyst, [jennifer.dundon@state.or.us](mailto:jennifer.dundon@state.or.us)