

Mental and Behavioral Health Services in Schools

Introduction

The Oregon Department of Education (ODE) is providing this FAQ in response to questions from school districts and community mental and behavioral health providers related to the delivery of mental and behavioral health services and supports. The scope of practice for those providing mental and behavioral 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 source of information in combination with other guidance and resources distributed by ODE.

The Provision of a Free Appropriate Public Education (FAPE)

School districts provide a wide variety of services and supports. Services may be required as part of a student's Individualized Education Program (IEP) or Section 504 Plan to ensure they have access to a Free Appropriate Public Education (FAPE). Each school district/program must ensure that students who experience disabilities have equal access to the same opportunities available to all students in 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]) in the least restrictive environment. 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 is 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 provide special education and related services, which may include mental and 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.

Types of Mental and Behavioral Health Services and Supports

ODE recognizes that there are many staff within a school setting who support the mental and behavioral health and well-being of students. Staff providing mental and behavioral health services and supports to students in a school setting may include staff who are qualified mental health professionals (QMHP), individuals licensed by the Teachers Standards and Practices Commission (TSPC), and/or individuals licensed by a mental and behavioral health related state licensing board (e.g., 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.

Mental and Behavioral Health Providers Unique to the School Setting

It is important to distinguish between board-licensed mental and behavioral health services, and mental and behavioral 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 and behavioral health-related topics that enables them to provide mental and behavioral health services and supports to students. Staff who are providing mental and behavioral health services 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 and behavioral health-related discipline. Examples of school mental and behavioral health providers include but are not limited to:

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.
4. **Other Qualified School Personnel:** Mental and behavioral health services required under the IDEA or Section 504 must be provided by appropriately qualified individuals; however, neither the IDEA nor Section 504 limits those individuals to school counselors, school psychologists, or school social workers. Emotional supports may be provided to students by other staff who have completed formal education and/or explicit training in mental and behavioral health-related topics. School districts are responsible for ensuring that all school personnel providing mental and behavioral health services or supports are sufficiently trained, credentialed, and skilled to provide these services.

School mental and behavioral health services and supports may include, depending upon qualifications and training, educational evaluations and assessments (such as functional behavioral assessment and behavior intervention plans), student check-ins and/or advising, facilitating mental health-related skill-building for individual students or in groups, counseling, psychological counseling, classroom social-emotional instruction, building crisis response, and referral to crisis response and mental and behavioral health services.

Board-Licensed Mental and Behavioral Health Providers

Mental health and behavioral services are provided by board-licensed providers 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 to QMHP qualifications and requirements see [OAR 309-019- 0125](#). Mental and behavioral health providers may include a board-licensed clinical social worker, marriage and family therapist, professional counselor, and psychologist. In addition, a behavioral health provider may be licensed by the Behavior Analysis Regulatory Board as behavior analysts, assistants, or interventionists.

Student Privacy, FERPA/HIPAA

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. Please also be aware that sole-possession notes (i.e., your own notations about students) 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 your status as a mandatory reporter, 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.

Medicaid Billing

A school district may bill Medicaid for physical, mental, and behavioral 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
- The student must be an actively enrolled Medicaid recipient
- Services to be billed must be identified on the student's IEP/IFSP
- The school district must obtain informed written consent to access students 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 aligned with licensing board requirements.
 - Services provided by TSPC-only licensed practitioners are not eligible for Medicaid reimbursement

Resources Related to Student Privacy

- [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

- [Oregon Health Authority](#)
- [Oregon Board of Licensed Professional Counselors and Therapists](#)
- [Oregon Board of Licensed Social Workers](#)
- [Oregon Board of Psychology](#)
- [Oregon Behavior Analysis Regulatory Board](#)
- [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](#)

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