
June 15th, 2020

Oregon's Extended School Closure Telemental Health Guidance

**FREQUENTLY ASKED QUESTIONS:
TELEMENTAL HEALTH SERVICES AND
SUPPORTS**



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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 [COVID 19 FAQ and resource pages](#).

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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.

Providing Tele-mental Health Services and Supports

- 1. Is a district and/or school program required to provide free and public education (FAPE) and mental health services and supports to students who experience disabilities as part of “Distance Learning for All”?**

As of April 13, 2020, all Oregon school districts 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 Oregon Department of Education understands there may be exceptional circumstances that could affect how a service is provided.

During 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 don't 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:

- To address the unique needs of the student that result from the student's disability; and
- 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 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 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 Distance Learning for All plan with their nondisabled peers).

If a student's specially designed instruction looks different due to the shift to Distance Learning for All, 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](#)

Online Platforms for Tele-mental Health Service and Support Delivery

2. 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](#).

3. 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](#)

4. Can I use Skype, Zoom, or Google to provide tele-mental health 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.

If you choose to use a non-compliant platform, you should inform your district/supervisor and students/parents/guardians of such, include that you are using a non-HIPAA/FERPA-compliant platform in the informed consent document, and make use of as many privacy controls as the non-compliant system will allow. Also be aware that the requirement and enforcement of HIPAA compliant platforms will presumably be reinstated after the national emergency has passed, and if you are using a non-compliant platform at that time, you will likely need to upgrade it.

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

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

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.

Confidentiality and Informed Consent

5. 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.

6. 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](#)

7. 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 Billing

- 8. 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 \(December 2019 Update\)](#)

- 9. 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 a 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

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](#)

Other Resources

10. 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](#)

Oregon Department of Education Contacts

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