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December 28, 2020

# School Speech- Language Pathology and Telehealth V.3

## FREQUENTLY ASKED QUESTIONS



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## Introduction

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The Oregon Department of Education (ODE), in coordination with the Oregon Board of Examiners for Speech-Language Pathology and Audiology (BSPA), is providing this FAQ in response to questions from school districts related to SLP service provision via telehealth. The scope of practice for Speech-Language Pathologists is defined by the Board of Examiners for Speech-Language Pathology and Audiology. Nothing in this document should be interpreted as guidance that SLPs 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.

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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 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 SLPs (and others) 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, SLPs 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 ODE, in collaboration with the OHA, recently released guidance for [limited in-person instruction](#). While this is helpful, and addresses some of the concerns related to equity and receipt of services, it is not a one-size-fits-all solution. Some students may not be able to access

services in-person due to a variety of factors (e.g., being immune-compromised, parent choice, etc.). This makes telehealth an important method for service delivery as part of a suite of services that school districts can provide to try to reach and serve all learners. While telehealth has been utilized for years, it has not been at the forefront of service delivery in Oregon schools. This may seem daunting but if we work together to implement systems and supports, it can be viewed as an opportunity to help level the playing field.

## **The Provision of 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 Speech Language Pathologists provide Telehealth (or telepractice) services in a school setting?**

Yes. The Oregon Board of Examiners for Speech-Language Pathology and Audiology allows for telepractice delivery of services. The Board defines telepractice as:

“The application of telecommunications technology to delivery of professional services at a distance for assessment, intervention, and/or consultation. “Telepractice” means, but is not limited to, telehealth, telespeech, teleSLP, telehear, telerehab, teletherapy, teleswallow, teleaudiology when used separately or together.” [\(OAR 335-005-0010\)](#)

In addition, Telehealth services provided by a licensed Speech Language Pathologist (SLP), Speech Language Pathologist Assistant (SLPA) or Audiologist must follow requirements outlined in [OAR 335-005-0016](#). They include requirements that:

- Services delivered via telehealth are equivalent to the quality of services delivered face-to-face.
- The Telepractitioner assesses the client’s candidacy for telepractice.
- Telepractice services must conform to professional standards including, but not limited to, ethical practice, scope of practice, professional policy documents, and other relevant federal, state, and institutional policies and requirements.
- Telepractitioners have the knowledge and skills to competently deliver services via telecommunication technology by virtue of education, training, and/or experience.
- Audio and video quality shall be sufficient to deliver services that are equivalent to in-person service delivery.
- Prior to the initiation of telehealth services, a Licensee shall obtain the patient/client and if applicable, their parent or guardian’s consent to receive the services via telepractice.
- Telepractitioners shall comply with all laws, rules, and regulations governing the maintenance of client records, including but not limited to, HIPAA and FERPA are maintained.
- Telepractice services may not be provided by correspondence only—e.g., mail, e-mail, fax—although these may be used in connection with telepractice.
- When providing services via telepractice, the Licensee shall have procedures in place to address remote medical or clinical emergencies at the patient/client’s location

**Can a Speech-Language Pathology Assistant (SLPA) provide services via telepractice?**

Yes, as long as the SLP of record for the student/patient/client is the official supervisor of the SLPA, and has determined that the specific student/patient/client is suitable for telepractice services by that SLPA. That professional determination must be documented in the individual’s record. All other requirements for SLPA supervision must be met. The OARs for SLPAs can be reviewed on the [Secretary of State](#) website.

Please also see the website for the [Oregon Board of Examiners for Speech-Language Pathology and Audiology](#) for additional information.

**Can a clinical fellow holding the Oregon Conditional Speech-Language Pathology license provide services via telepractice? In addition, can their supervising SLP provide that supervision via telepractice?**

Clinical fellowships must meet standards of the American Speech-Language-Hearing Association (ASHA), which require clinical fellows to provide services on-site. They also require the SLP supervisor to supervise/rate the CF while physically on-site. However, due to COVID-19, ASHA is

providing a temporary allowance in some of the standards related to telepractice and telesupervision from March 16 through December 31, 2020. Additional details can be found [on their website](#). Please note that all other Oregon Board rules for supervising clinical fellows still apply. These rules [can be found online](#).

See [Oregon Board of Examiners for Speech-Language Pathology and Audiology](#) for additional information.

### **Can a SLP in another state provide services via telehealth to a student in Oregon?**

[Current rule](#) only allows an SLP in another state to provide services via telehealth in Oregon if they hold Oregon licensure.

### **Can a SLP provide telehealth services to an Oregon student temporarily out-of-state.**

**Examples: a student is at grandparent's house in WA/ID/CA during the day while parents are at work, a student is staying in AZ for a month**

Yes, it is allowable for an SLP to provide services via telehealth to a student that typically lives in Oregon but is temporarily out-of-state. An SLP providing services to an Oregon student, regardless of location of therapist and student, must hold valid Oregon licensure. However, if the student is temporarily located in another state, it is the responsibility of the licensee to check with the laws of that state.

### **Can BSPA provide a clear list of what IS and what IS NOT considered telepractice, plus an accompanying list of when consent is required?**

See Board definition of Telepractice listed above. Telepractice is further defined by [OAR 335-005-0016](#) (Professional and ethical standards for Telepractice). If proposed services will meet the definition of Telepractice, consent is required prior to the initiation of the services.

ASHA has a resource page dedicated to [Telepractice](#).

### **Is a virtual speech/language evaluation considered teletherapy?**

Yes. The BSPA defines "telepractice" to include assessment, intervention, and/or consultation. (See [OAR 335-005-0010](#))

In addition, depending on school district policy, and provided health metrics and requirements are met, there may be an option to conduct an in-person evaluation or assessment. See [Guidance for Limited In-Person Instruction](#) for additional information.

### **If telepractice is only interaction with the student via phone or video conference, what is an example of asynchronous telepractice?**

Telepractice is not asynchronous: [OAR 335-005-0010\(3\)\(b\)](#) "Telepractice service" means the application of telecommunication technology to deliver audiology and/or speech-language pathology services at a distance for assessment, intervention and/or consultation. Assessment, intervention (treatment) and consultation are two-way synchronous communications. SLPs also

might post videos for students to watch which would be asynchronous but not “telepractice services.”

**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 SLP therapy or there is a significant change in type of therapy, the SLP 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.

**How are we being protected or covered for the huge number of students not accessing their services via telepractice?**

A licensed SLP is responsible to follow and align their practice with the requirements of the BSPA and that of the school district. If a student is not able to access SLP therapy, the situation should be handled in the same way as it would if a student missed an in-person service. It is important to follow district policy, document your efforts and communication with student and/or family, and consult with the IEP/IFSP team if needed.

**There are some SLPs and SLPAs who do not feel comfortable or confident with implementing and providing teletherapy. How can those professionals be protected by ODE, BSPA, and their unions within their current positions if they choose not to provide this type of service?**

A licensed SLP is responsible to follow and align their practice with the requirements of the BSPA and that of the school district. Concerns related to caseloads, training, and familiarity with telehealth technology is a district responsibility and should be addressed at the local district level.

**Consent Related to Telehealth/Telepractice**

Prior to the initiation of telehealth services, a Licensee shall obtain the patient/client and if applicable, their parent or guardian’s consent to receive the services via telepractice. The consent may be verbal, written, or recorded and must be documented in the patient/client’s permanent record. The notification will include, but not be limited to, the right to refuse telepractice services, options for service delivery to the extent compliant with applicable Federal laws and regulations, and instructions on filing and resolving complaints ([OAR 335-005-0016](#)).

**If you are co-teaching a class with a special education teacher to provide SDI, do you need to get specific verbal and/or written consent to provide telehealth? What if a special education**

**teacher or general education teacher is leading the class and you are attending, but not necessarily co-teaching?**

Consent is required prior to the initiation of telehealth services. If an SLP is not providing therapy and is simply attending, co-facilitating, or supporting the teacher in another way, they would not need additional consent. There may be other requirements or expectations per district policy.

**If we cannot get a response to our consent to telepractice, can SLPs still send home anything for parents to work on with their child (e.g. homework for speech sounds, read alouds, activities posted to online resources)?**

Consent is required prior to the initiation of the provision of services via telehealth. This does not prohibit an SLP from providing resources to parents outside of direct therapy ([OAR 335-005-0016](#)).

**If an SLP 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?**

Consent is required prior to the initiation of the provision of services via telehealth. This does not prohibit an SLP from providing resources to parents outside of direct therapy ([OAR 335-005-0016](#)).

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

As noted previously, the Board definition of Telehealth includes consultation ([OAR 335-005-0016](#)). Without explicit definition in rule, it is up to the professional discretion of the licensee to determine the nature of the services provided. For further inquiries in regards to which 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.

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

Yes. Consent is specific to each licensee.

### **Can BSPA provide an example consent form for SLPs and districts to access?**

No. The ODE and BSPA do not have a sample consent form. Consent may be obtained in multiple formats, including verbally with documentation of consent in licensee service log notes. There may be other requirements or expectations per district policy. We recommend review of the rules and the creation of procedures for obtaining consent that are in alignment with both licensing board rules and school district policy.

### **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 SLP 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 SLP therapy must be provided in alignment with board licensure.

Please note: If a student is not able to access SLP therapy or there is a significant change in type of therapy, the SLP 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 SLPs 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**

**How are SLPs 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”. SLPs 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.

BSPA documentation requirements can be found at [OAR 335-010-0050 through 335-010-0080](#). Each employer has different software and filing systems, the board does not provide forms for recordkeeping.

**Can you report standard scores for assessments if administered via telehealth?**

Evaluations must be given in a fashion consistent with the testing protocols established for the specific evaluation being used, within the rules and scope and practice of the licensed provider. An SLP may report the results of evaluations and assessments. However, an SLP should note limitations related to the assessment or evaluation itself. Please see the ASHA website for updated information related to [virtual assessments](#). In addition, depending on school district policy, and provided health metrics and requirements are met, there may be an option to conduct an [in-person evaluation or assessment](#).

## **How do SLPs 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 SLP 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.

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.

**Being in a speech-language session immediately identifies a student as receiving special education services. How do districts and SLPs address this issue? What are the protections for students, families, and service providers?**

[Student Privacy Considerations and Distance Learning for All](#) addresses this question. As long as Personally-Identifiable Information (PII) is not being specifically discussed in this context, there is nothing in FERPA that prevents this type of activity. While we acknowledge the significant challenges that now make educators guests in student and family homes, it remains best practice that non-students should be discouraged from viewing virtual classroom or service delivery in the event that PII is inadvertently discussed. Schools may wish to have specific instructions for students participating in virtual classrooms or services to not discuss PII or record these activities. Schools may also obtain prior written permission to share PII from educational records.

**How protected are we if we do group sessions, with consent, and that session is recorded and shared?**

This is something that should be discussed with school district legal counsel. There is nothing in FERPA that prevents the provision of special education in an online group setting. While we acknowledge the significant challenges that now make educators guests in student and family homes, it remains best practice that non-students should be discouraged from viewing virtual classroom or service delivery in the event that PII is inadvertently discussed. Schools may wish to have specific instructions for students participating in virtual classrooms or services to not discuss PII or record these activities. Schools may also obtain prior written permission to share PII from educational records. See [Student Privacy Considerations and Distance Learning for all](#) for additional information.

## **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 an 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 students 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, SLPs 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 an SLPA is providing the service, documentation of supervision by the supervisor and their location must be maintained as well.

Please note: While current Board rules do not require documentation of the location of the SLP/SLPA and student, it is considered 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 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](#)

## **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 Speech-Language-Hearing Association \(ASHA\) Resources on Telehealth](#)
- [Chapter 335 of the Oregon Administrative Rules - Board of Examiners for Speech-Language Pathology and Audiology](#)

## **Contact Information**

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### **Board of Examiners for Speech-Language Pathology and Audiology**

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