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September 26, 2017

TO: Chief School Administrators
Charter School and Renaissance School Project Leads

ROUTE TO: Directors of Special Education

FROM: John Worthington, Director
Office of Special Education Policy and Procedure

SUBJECT: Related Services and Home Instruction Provided via Telepractice

The Office of Special Education Policy and Procedure (OSEPP) is providing guidance to address numerous inquiries regarding related services and home instruction provided via the Internet.

On July 21, 2017, legislation (P.L. 2017, c.117) was signed into law, which permits healthcare providers to engage in “telemedicine” and affects how services are provided by approved clinics and agencies via the Internet. The law requires organizations, such as approved clinics and agencies, to register with the New Jersey Department of Health (NJDOH) and submit an annual report to the NJDOH in a manner to be determined by the commissioner. Schools and school districts may use their employees to provide services via the Internet as described below, but are not required to register with the NJDOH or provide an annual report.

What is telepractice¹ and what services are permitted via telepractice?

In concert with P.L. 2017, c.117, OSEPP defines telepractice as the delivery of services using electronic communications, information technology, or other electronic or technological means to bridge the gap between a service provider who is located at a remote site and a student who is located at an originating site. OSEPP has determined that speech-language services, occupational therapy, counseling and home instruction may be provided via telepractice under the conditions specified below.

¹ The practice of providing services via the Internet is known by various names, including, but not limited to, telehealth, telemedicine, teletherapy, telepractice, or distance learning. For the purpose of this memorandum, OSEPP has adopted the term “telepractice” to encompass services provided in this manner, and offers the following guidance to local education agencies (LEAs) contemplating the feasibility of providing related services and home instruction, as required by a student’s individualized education program (IEP), via telepractice.

As per *N.J.A.C. 6A:14-5.1(c)1v*, a district or Approved Private School for Students with Disabilities (APSSD) may contract with approved clinics and agencies to provide speech-language services only when it is unable to hire sufficient staff to provide the service. Similarly, a district or APSSD may contract with approved clinics and agencies to provide speech-language services via telepractice only when it is unable to hire sufficient staff to provide the service in-person.

OSEPP has determined that providing occupational therapy (OT) via telepractice would require the assistance of a licensed occupational therapy assistant. According to *N.J.S.A. 45:9-37.53*, “[o]ccupational therapy assistant’ means a person licensed pursuant to the provisions of this act to assist in the practice of occupational therapy under the supervision of, or in collaboration with, an occupational therapist on a regularly scheduled basis for the purpose of the planning, review or evaluation of occupational therapy services.” Therefore, OT may be provided via telepractice, but only when an OT assistant, who possesses an active New Jersey license, accompanies and supports the student during the session in accordance with *N.J.S.A. 45:9-37.53*.

With respect to providing physical therapy (PT) via telepractice, current state law prohibits the use of telepractice as a means of providing PT. According to *N.J.S.A. 45:9-37.20b*, “[a] licensed physical therapist assistant may initiate patient physical therapy treatment consistent with the role of a physical therapist assistant, as defined by the board or otherwise provided in P.L.1983, c.296, (C.45:9-37.11 *et seq.*) or P.L.2003, c.18 (C.45:9-37.34b *et seq.*), only at the discretion of, and under the **direct supervision** of, a licensed physical therapist” (emphasis added). According to *N.J.S.A. 45:9-37.13*, “[d]irect supervision means **the presence of the supervising physical therapist on site**, available to respond to any consequence occurring during any treatment procedure” (emphasis added). Therefore, pursuant to current state law a physical therapist needs to be present at the originating site.

How are students selected for telepractice and how is telepractice identified in the Individualized Education Plan (IEP) or Service Plan?

The IEP team, which includes the parent, determines whether it is appropriate for a student to receive speech-language services, OT, counseling or home instruction via telepractice. The decision must be made on an individual basis according to the student’s needs and ability to benefit from telepractice. The student’s IEP or Service Plan must state that the service will be provided via telepractice and must specify the location, frequency and duration of the service, and whether the service will be provided individually or in a group.

The IEP team must determine whether an aide is needed to accompany the student to the session and whether the aide is needed to assist the student during the session. The IEP team should consider the age and level of maturity of each student and the need for guidance during the session. In addition, in accordance with *N.J.A.C. 6A:14-5.1(c)*, districts may contract with approved clinics and agencies to provide counseling and home instruction via telepractice.

When an LEA is considering the evaluation or reevaluation of a student via telepractice for the approved services noted above, the parent must be fully informed that the evaluation or reevaluation will be conducted via telepractice. The LEA must consider whether the student can be evaluated appropriately via telepractice and must verify that the assessment(s) utilized for evaluation are approved for online use.

What credentials must the clinic/agency service providers possess?

All speech-language specialists providing speech-language services in person or via telepractice must possess a standard speech-language specialist certification issued by the New Jersey Department of

Education (NJDOE). All school counselors or school psychologists providing counseling services must possess a standard school counselor or school psychologist certificate issued by the NJDOE. All teachers providing home instruction must possess a standard certification for the subject or level of the home instruction. In addition, all of these professionals must obtain a Criminal History Review **approval** issued by the NJDOE. New Jersey credentials are required, even if the professionals are located in other states. The Criminal History Review approval for a clinic/agency service provider must show the clinic/agency's name and vendor number.

What functions can a therapy assistant or aide perform during the telepractice session?

As noted above, when OT services are provided via telepractice, a licensed OT assistant, under the supervision of the certified/licensed occupational therapist, must assist and support the student during the telepractice session.

In the case of speech-language therapy services, there is no license or NJDOE certification for speech-language therapy assistant. When an aide is needed to accompany and support the student or small group of students receiving speech-language therapy via telepractice, the aide needs to be trained to provide the assistance needed. At a minimum, this includes, but is not limited to, utilizing appropriate behavior management techniques and assisting the student(s) with materials and manipulatives.

In addition, the OT assistant and the aide must be trained to operate the technology features of the web-based platform and to trouble-shoot the equipment to ensure the connection is functioning.

What standards must a clinic/agency meet to be approved for telepractice?

Through the NJDOE application and approval process, the clinic/agency will describe the following features of telepractice:

- The required hardware and software for optimal audio and visual reception;
- The security features of the web-based platform;
- The technology features that ensure accessibility to meet a variety of learning needs (e.g., ability to enlarge text and pictures, talk to text, etc.);
- The procedures to ensure the connectivity of the session and back-up procedures should the connection fail;
- If the agency will conduct initial evaluations and/or reevaluations of students, and how the evaluations will be conducted. Further, the clinic/agency must verify that assessment(s) utilized for evaluation are approved for online use;
- The circumstances/conditions when an onsite/in-person assessment would be necessary;
- The circumstances under which onsite/in-person assistance is needed to support and/or supervise the student(s) during the session; and
- All procedures related to any recording, viewing and storing therapy sessions and how these comply with New Jersey student records requirements, and all other applicable state and federal laws pertaining to online data collection and online privacy of children.

And, as noted on the first page, organizations such as approved clinics and agencies need to register with the New Jersey Department of Health (NJDOH) and submit an annual report to the NJDOH in a manner to be determined by the commissioner.

For more information regarding services via telepractice provided by an approved clinic/agency, contact Carol Kaufman or Jean Kelly at (609) 292-7602.

JW/KE/ck

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