

>> All right, welcome, everyone. Those of you that are on the line you are here to talk about crisis recalibration. This is part one of the two part series. In part one we'll be focusing on rebuilding the IEP Team. My name is Lenore Knudtson, and I am half of Pingora Consulting and I'm going to allow, Stephanie, my partner, to introduce herself as well.

>> Thanks, Lenore, yeah, as Lenore said I'm the other half of Pingora Consulting, Stephanie Weaver, I am an education consultant. We have the pleasure of working with state agencies and local school districts across the country and just very excited to be with you here today at CADRE's Symposium to talk about Crisis Recalibration.

>> Thanks, Steph. I do have the privilege of knowing many of you from my work in the quarterly work groups on behalf of TASE and as I get to see your faces for just a second I'm recognizing many of them, so welcome to all old friends and new friends on the line. We have, I think, gone through one of our most interesting times in special education. And Stephanie and I devote our time in Pingora Consulting to improving outcomes for kids with disabilities. That may take the form of dispute resolution activities. It may take the form of professional development, rule writing, pretty much anything that helps to nudge the system and improve outcomes for students with disabilities. We're all in on it. Most of our work is spent working on behalf of SEAs or State Departments of Education, and we do that throughout the country so we bring to you somewhat of a national perspective as well. We're going to start out with what I call the other side because hopefully at this point we first started talking about COVID and the pandemic and how are we going to educate kids, and how are we going to educate and serve kids with disabilities, way back in March of 2020. Nobody thought we would still be talking about it at the very end of October in 2021, but here we are. Hopefully, though, we are on the other side and what I mean by that is that we were involved in a crisis. Not necessarily one that we had any control over but we were living through a crisis. We still are in many respects, and we're feeling the ramifications of that particularly in education when you look at return to school, when you look at state and district wide assessment results, when you look at dropout rates and everything else, we are still experiencing this crisis. And a crisis generally could include things like natural disasters or other catastrophic events. We do a lot of work with our partners down in the Virgin Islands and no one knows this better than them. They have experienced huge catastrophic hurricanes, natural disasters, that have really changed their infrastructure. So, whatever it might be, the steps that we're going to talk about, this rebuilding that we're going to talk about might apply in any type of crisis. Certainly it applies during the pandemic. So, regardless of the origins of the crisis, research supports a predictable response pattern. It's that response pattern that is so important to special education teams and that's really what we're going to talk through in the beginning of this session today so that we can get to the latter half of this session which is how to get past it, how to rebuild your team. And when I say the predictable response pattern this is what I'm talking about. This graphic right here depicts the predictable response pattern and you can see the ... on the left hand column we've got emotional lows up to emotional highs and then across the bottom we have time and really this 1-year anniversary period is critical. For us, that was March, April of 2021 and you can see, I think, as we talk through these steps that we really started into the reconstruction phase March, April of '21 so that we were gearing up for the school year. So, certainly as we look at these predictable response patterns and overlay it on the pandemic and the timeline of the pandemic, it plays out. History is playing out before our eyes here. We're going to go through each one of these steps but just overview here pre-disaster, impact, heroic, honeymoon, disillusionment, all of those occurred before the 1 year anniversary and now we are clearly after that anniversary, and we should be well into reconstruction. And I say that recognizing we do have a national audience here, and I appreciate that not all states are in the same place. As I mentioned earlier we work in lots of different places and some of our education colleagues are back in our offices on a full-time basis. Others are just starting to come back. We work in some pretty remote locations as well where school districts have not returned to business as usual, some are engaged in a hybrid model of learning. And so it really is important to keep a finger on the pulse of what's happening in your locality in view of the bigger picture of what's happening nationwide. So, again,

the school should be well into the reconstruction or rebuilding stage and we have to look at that from this perspective of a crisis or a disaster because that will tell us with some predictability where we have come from and where we need to be. So, when we think about that graphic I showed you, the pre-disaster, pre-crisis, the early warning sides that start this groundswell of concern. In the beginning, we weren't thinking I'm going to as a parent demand my child's IEP be implemented. We didn't know what to say at that point. First of all, we didn't know how long it was going to last. We didn't know the magnitude of it. So, it became very important to understand that there was this somewhat of a honeymoon period that we were heading into. In these early stages it's not about one's personal beliefs, it's about the pandemic itself. And certainly think about where we were at in 2020 on the political stage so all of this kind of got merged in together and amalgamated. For education's purpose I think that's less important to keep in perspective, but in our history that we just wrote, it became clear that the pandemic also took on some political perspectives as well and that has also affected school systems. So, there's a lot going on here, and this is not about one's personal beliefs about the pandemic. This is about the natural process of an organization like an educational institution surviving a disaster or a crisis. It had a huge impact on our education systems. Something that we really in our recall or memory has been unprecedented. It may have happened on much smaller scales in certain states or in certain localities, but not on the national scale that we experienced. And there was a lot of worry and stress involved about what happens next as schools close completely. Keep in mind when we first learned about the pandemic, schools weren't closed yet. Schools were figuring out what to do about the pandemic before the closure occurred. Stephanie and I were working in another state when the governor closed that state and the educational institutions in that state. We even had a hard time getting home at that point because things were ramping up so quickly. After this pre-disaster, there's this impact, and the impact phase is when schools and communities closed, boom, right. We may not have known for how long at that point. We didn't know how bad it was going to be, but that impact hit us like a ton of bricks when schools and communities closed. And generally speaking the greater the disaster scope, the greater the psychosocial effects. Think about that in relation to kids with disabilities. It couldn't be more true. We're seeing that now in present levels of academic achievement and functional performance after the possibility of a year long gap in services or some services or in a few cases all services. The greater the scope of the disaster, the bigger the effect. A short-term closure would have had far fewer psychosocial effects and also effects on the IEP team and the student. This is when no one knows what to do because the crisis or the magnitude of it is truly unprecedented. What happens? The heroic phase quickly follows. I didn't know what to call it in the beginning and Stephanie and I have had many conversations about this because we engaged in dispute resolution practices really around the country and we didn't, again, necessarily know what to call it but it became clear that something happened, something changed because there was ... like somebody hit a pause button on filing state complaints. And as we talked to our colleagues across the nation and engaged in dispute resolution activities and training across the nation, we heard the same thing. It was like somebody hit a pause button. It was like people were so worried about either they didn't know what to do during a pandemic or they didn't want to jeopardize safety that they hit pause. And that was ... I now understand that that was part of the heroic phase. People said, okay, I'm going to tough it out while I figure it out. It doesn't last forever though. Keep that in mind. So, during this phase there's this sense of altruism. I'm going to take one for the team, I'm going to tough it out and figure out what

comes next. We don't want teachers or other students to get sick, right, This was an illness. It was a very contagious illness. We didn't know the long-term ramifications at that point. We had no vaccines to quell the spread of it at this point. So, there was so much uncertainty people were able to be altruistic at that point in time. We don't want our families to get sick, we'll figure all of this out after the crisis passes. That isn't how it played out though because we had no idea how long we would be in it. After this heroic phase comes the honeymoon phase. Still optimistic that everything is going to be okay. If we just wait it out we'll catch up, we'll get our services back, my child will be back in school, we'll figure out what to do. I heard over and over again school closures can't last forever. This country is built on an education system that welcomes children in. Brick-and-mortar schools and in addition to online schools all welcoming kids in. In-person instruction will come back because that's ... Our system is built on in-person instruction, right? I'll do my part to help out during this crisis, I'll be patient, I'll see what I can do to help stop the spread of this illness. We go through all of those things during the honeymoon stage. Go ahead, Steph.

>> And don't you think, Lenore, it also seemed like everybody was in the same place? Like, everybody was together and it was that larger kind of group think of we're going to stick together and we're going to get through this all during these last couple of phases as well. Everybody seemed like they were on the same side so to say.

>> Absolutely, that's so true, and I will also put out there that I think had we known how long this was going to last, the patience would have ended much sooner. We would have all been in a different place. The honeymoon phase would have been very very brief indeed. But, you think about it ... this is a couple months into it. The school year at this point is over, nobody anticipated that we wouldn't be through this, and geared up again for a regular fall. Had, I think, the public known that it was a long haul crisis it would have, I think, affected people differently, their willingness to be patient. Because of the long-term nature of this pandemic and also just the predictable steps that people go through in a crisis, the heroic stage and the optimism quickly turns to discouragement and that's in the disillusionment phase when things start dragging on, when it's not returning back to normal, when there's no talk of school resuming normal operations. You think about the guidance that was put out by the United States Department of Education in the beginning and this is April ... March, April of 2020 and even into the summer up to the fall. OSEP kept referring to the resumption of normal operations, for schools resuming normal operations and schools were going to figure it out at that point and working with many different colleagues across the country. Us professionals talked like that too. That we were going to figure out what recovery services were going to be needed after the resumption of normal school operations. Some states and localities didn't even amend IEPs at that point because they had no idea how long it was going to last. So, as it drags on we start seeing that this optimism turns to discouragement. This, in the dispute resolution community, is when we started seeing it an uptick in the number of disputes being filed, state complaints, due process hearings. And in the beginning primarily state complaints about my child isn't getting the services on their IEP, my child isn't receiving FAPE. As soon as we entered this disillusionment phase we started seeing this uptick in disputes. [Indistinct] did some interesting research on this and by far and away the most frequent COVID complaint was failure to implement the IEP. So, I think, again, that didn't happen until this stage on a large scale. The stress here took its toll and these negative reactions began to bubble up. Wait a minute, my child just missed months of service, months of education, how are we going to get that back? And that's when the negativity started. That's when people started feeling like, and parents in particular, we can't let this continue. Schools also felt this stress as well because they didn't know how they were going to serve children. If you think back to the beginning of this some states were quick to start up an online learning platform and start serving all students through digital learning opportunities and then trying to figure out how that applied to students with disabilities. Other states started out with no service for any students and yet again there was this kind of hybrid in the beginning. We saw a lot of states using pencil and paper packets that would be sent home with kids to at least keep them somewhat engaged in learning in a very old-fashioned scale, but, again, we didn't know what we were dealing with. At this point though when the disillusionment phase hits people have run out of patience and the question becomes, how are you going to make up for this? Finally, finally, that year mark we start hitting the reconstruction or rebuilding phase. And, again, if you look backwards it is just exactly ... almost exactly to a year when we hit that phase in terms of we cannot go through another school year like the one we just finished. The focus now turns to how to provide FAPE when instruction looks different. The discussion includes how to make up for time already lost. This is one area too where I think there was some initial confusion in terms of the guidance that was put out. Again, using and relying on the language that recovery services could be discussed by the IEP team, or compensatory services, whatever you want to call it. I prefer recovery services for many reasons. That was going to be

figured out after school resumed normal operation and then teams were going to sit down and figure out, okay, this is where the student currently is, this is what they lost, and this is what they need to recover from that. Unfortunately, time went on for such an extended period where services looked and really were experienced differently, learning was different, that the conversation was delayed for many students for quite some time. There's this sense of urgency now in rebuilding and reconstruction and there's also at times a flash of anger because it's just not going quickly enough. Enter school year '21, '22. So, reconstruction goals as many states started off the '21, '22 school year first and foremost should be to rebuild those teams. People got stressed and angry and there was so much unknown. There were questions about can we even reconvene teams face-to-face or how do we do it if the parent doesn't have a cell phone or technology. I mean all of these things had to be figured out on the fly and then you get into recalibrating IEPs and then realigning services. When we talk tomorrow about recalibrating and realigning IEPs you'll get a sense of how this continued on for an extended period of time. Today we're going to focus on rebuilding those IEP teams. First and foremost, teams had to figure out how to communicate. Right? It may not be a face-to-face meeting. It may not be ... Put it in this perspective, I know that for Stephanie and I this is incredibly true. When the pandemic hit one of the first things that we did as ... because we were in-person service providers as the majority of our business model. We worked, we traveled to different states, we worked around the country with SEA teams and district level teams, we presented at conferences, all of that was a face-to-face model. We quickly realized in a short period of time that we had to rethink our business model and schools had to do that same thing. So one of the things that we committed to early on was getting good at Zoom. We recognized that whatever platform has to be used and since different states use different platforms we have dabbled in all of them at this point because we knew we had to have a different way of doing business if we were going to survive this. So, although that's in a business perspective the same thing was happening in education. Teachers had written their lesson plans and had practiced some for years, decades even, on delivering face-to-face instruction and all of a sudden they had to get good at virtual instruction on a platform they may not have been familiar with at all. And now you extend that to building IEP teams, rebuilding that team. Maybe there has never been virtual meetings before in that school system, but now almost all meetings went virtual. Hopefully we have returned to normal somewhat but we work in states where the primary mode of meeting, IEP teams meeting is still virtual. That brings its own challenges with it in terms of using the technology, understanding the technology, needing to be good at the technology, importing the technology into the parents' home if they don't already have it. All of those things had never before been done on this scale. And in terms of frequency of communication, even though it may be more difficult, more cumbersome, less authentic if you will because it's no longer face-to-face, it became critical to have more frequent communication, not less because, again, we were doing business differently and people didn't know what to expect. So, this mistrust kind of started taking over and one of the ways to quell that mistrust is frequent communication. So, convening those teams telephonically, virtually, or in person became even more important. Measuring and reporting progress more frequently, not less, became more important. Even if the amount of progress wasn't what you expected that was important to communicate as well because we had to rebuild trust that had eroded during that disillusionment phase. Openly discussing the effects of different service delivery models became critical. This could not be a one-size-fits-all approach. Now, you mix in the complication of many states dealing with executive orders typically from their governor or some

orders from the head of their education departments that school buildings were not open for public use anymore, that things had to be done differently in order to continue at that level of communication. It was very hard to reconcile school buildings are not open for public use and a student who may need one to one instruction, right? There was this incredible mismatch that breeds further mistrust and dispute. Teams, the only way you could get through that was to start communicating. And I will say this is true on any day, but even more true during the pandemic, if you haven't included parents in the decision making the more likely they are to dispute the decision. So, again, go back to the beginning, there were executive orders that said school buildings are closed. There were executive orders that said education is going to be delivered in a virtual format. There were orders from departments of education that were very similar. Parents didn't get a say in that and I'm not suggesting they should have at that stage, but what had to happen is some communication with the parent to say, "Okay, given the fact that our school buildings are closed, what is education going to look like for your child?" Leaning into that discussion with them, not assuming that it's a foregone conclusion. So, it's really never been more important than now to communicate with parents during these unprecedented times and even during this rebuilding stage because lack of communication still builds mistrust, and mistrust in our world builds disagreement, it breeds disagreement, it breeds, some states are experiencing unprecedented in high numbers in state complaints due to the pandemic. This agreement ... and think about this, if you follow case law, which I know many of you do, we have had more class action lawsuits regarding special education students and their right to receive an education than I think at any other points in our history. Almost all states have been touched by that in some form or fashion so we've seen this unprecedented level of disagreement, formal disagreement as well. Parent participation during this rebuilding phase is critically important and I would say although it's important every day it's even more important now. So, do not exclude parents from the decision making process, do not make unilateral changes to IEP services. Some states learned that the hard way. They did not amend the IEPs to match the service delivery model and ask the critical question what does FAPE look like for this child in a virtual environment because, again, we have the competing interests of executive orders saying this is not available and the individualized needs of a child. Also, just the magnitude of large scale amendments to IEPs was daunting, and in the beginning everybody thought this was short-term so they were willing to say we're going to figure it out after school resumes. We'll provide recovery services if we have to, but we're going to figure it out after school resumes. The problem is school didn't resume right away in many jurisdictions. I'm going to provide you with just a couple cases for reference and for the purpose of our discussion and one of them talks about prior written notice. If that IEP wasn't amended, through the amendment process and artfully drafted prior written notice issued to the parent, the basis for recovery services is that last IEP, right? Because that's what is in place until it's amended or rewritten. So, the importance of prior written notice in my mind and I emphasize this across the country, prior written notice is one of the most underutilized tools in the toolbox more so now than ever during the pandemic. It became clear, not right away, but it became clear along about, I would say April, May, of 2020, that FAPE was FAPE. What was less clear is how do you do that in a virtual environment? How do you do that when you're not seeing kids on a regular basis? How do you do that for a student who may need a paraprofessional? How do you do that for a student can't see a computer screen. All of it was how do you do it, not whether the child was entitled to it because when then Secretary of Education, Betsy

DeVos, issued the report to Congress she said in black and white we are requesting no waivers of any of the FAPE requirements. So, we knew then that FAPE was FAPE. The only exception to that is if that if a school closed, a school system or school district closed, and no students were receiving education then special education students would not receive FAPE during that time period either because when schools closed during the pandemic that applied to all kids. The minute they started offering some educational services to the general student population FAPE was back on the table. And IEP teams ... because there were no waivers of any of the requirements, IEP teams had to go through the same steps to propose an IEP, to amend an IEP, to convene an IEP team, to monitor progress, to conduct evaluations, all of those things remain the same.

>> Lenore, don't you think we're focusing a little bit on how important the parent participation in this process was. But, I also think that there was an increased emphasis on the participation of the general education teach on the IEP team because I think that's where a lot of the so-called changes, like the general curriculum changed in some ways, all of the different models that were used to try to accommodate the fact that kids weren't in school buildings for a full day often time and all of those different things. I just think engaging those general education partners as a mandatory IEP team member became increasingly important as well in that whole communication.



>> Yeah, that is a great reminder and as we look back on what actually took place in many jurisdictions, in many states, many school systems the general curriculum contracted. As Stephanie said it looked different because they weren't in school 6 hours a day anymore. Some virtual instruction, especially in the beginning, was a couple hours a day. That's what all kids were getting. And, so, the IEP is tied directly to the opportunity to participate and make progress in the general curriculum. If the general curriculum contracts and you think about a lot of K-3 buildings only focused on literacy and math in the beginning. That was it for virtual instruction because young children have a really hard time paying attention in a passive kind of environment for long periods of time. And, so, if the general curriculum becomes literacy and math only, it stands to reason that the IEP would also change as a result of that because you're linking IEP services to the opportunity to progress in the general curriculum. When that didn't happen though, when teams didn't focus on what's happening now in a general classroom environment because LRE is also based on the general classroom, then how do we individualize this for students with disabilities? Without a clear understanding of the general curriculum today, what is it? The net link became broken. So it's incredibly important to loop in regular education. It is always important but it was even more important during this uncertain time. So, then Secretary DeVos, again, requested no waiver authority of any of the core tenants of IDEA, 504, and most notably FAPE in the LRE. So, FAPE is FAPE. We knew that really in April of 2020, the end of April. So, by the end of last school year we were sound on that, that FAPE had to be delivered. We just didn't know how to do it, and that's where rebuilding the team and recalibrating that IEP becomes so important. Then you fast forward to the 2021 school year, no IDEA requirements were waived. This is also true for the '21, '22 school year. There's an August letter to Special Education Early Intervention Partners from OSERS, the Office of Special Education Rehabilitative Services, that further clarified that no matter what primary instructional delivery approach, SEAs and LEAs, remain responsible for ensuring FAPE. We couldn't have it more clear over and over again that FAPE was FAPE. Unfortunately, the how to provide that FAPE became the biggest question. And, also, the, kind of the difficulty with reconvening that team in a meaningful way that served as the barrier to saying how do we provide FAPE at this point in time? So, teams needed to return ... or schools needed to return to team decision making as soon as possible. If a school district has not done that at this stage they need to do it immediately. Return to team decision making. And at the commencement of the 2021-22 school year, one of the things ... Actually, no, it would have been ... yeah, so it would have been fall of last year and even before that one of the cautions that I offered over and over again was if you are holding basketball games, soccer games, sporting events, extracurricular activities, or clubs, or things like that it would be really hard to say it's unsafe to hold an IEP team meeting in person. And if you look at the roadmap that just came out and there's a series of them, but the most recent roadmap that came out in September of '21 it talks about you could still have virtual meetings if the parent chose that. If the parent also elected to participate virtually, but if the parent says I need a face-to-face meeting, I need to be able to talk with everyone and I just can't do it on Zoom it doesn't work, whatever the platform might be I think a school would have a very difficult time refusing a parent a face-to-face meeting if they're holding other kinds of meetings and events face-to-face. Regardless of whether it's in person or virtual, make sure that the team is talking and that they're making decisions as a team. The notion of team decision making is so much a part of IDEA that it's one of the procedural errors that will rise to a substantive denial to FAPE. If you deny a parent meaningful participation in the IEP process,

that may start out as a procedural error but the denial of participation in the process quickly rises to a substantive denial of FAPE meaning that there would be student level remedies for that kind of denial, not just an edict or hearing officer's decision, or SEA decision about doing that. It will result in remedies for the child because it's a substantive denial of FAPE. So, you want to make sure if face-to-face meetings are not feasible or practical that you still get that team making decisions. If a parent says I need for the meeting to be virtual because we have a vulnerable person in our household from a health perspective, work with them, make it virtual. If they say, "It's so hard for me to be able to pay attention on Zoom and hear everyone," you better be working on them with a face-to-face meeting. If they say, "Look, I don't have Internet at home so I can't participate via Zoom," you better be working with them on a face-to-face meeting. The bottom line is it has to be team decision making so you need to make that happen on some practical level. Alternate means could include video, telephone, things like that but only if it's acceptable to the parents. And this is from the OSEP Q and A from 2020. No matter what the format, if it's a team meeting all required participants and the parents should be present or appropriately excused. It doesn't matter that it's difficult to convene a team or it doesn't matter that someone doesn't have the capability, you've got to make it happen. So, even if it's a Zoom meeting all the required participants need to be present. The focus is still on the student and more so at this point in time than any other time. When the team focuses on the student the health of the team improves almost immediately. And then people on the team can see the good faith efforts to meet the students needs. Probably all of us that work in special education and in particular dispute resolution, we are cognizant of the fact that there is no perfect IEP, there is no guaranteed amount of progress, there is no guaranteed amount of benefit. But, what courts and SEAs need to see in the event of a challenge is good faith efforts to come back and review and revise if the expected amount of progress doesn't result or if progress is stagnated or if there's been unanticipated progress. And that's the good faith that I'm talking about here is that even though you're delivering services maybe in unprecedented times in a way that you've never done it before, you may not hit a home run the first time out, but you absolutely need to continue the team's work in order to say, okay, what needs to change next? What isn't working? What is working? What are the current present levels of academic achievement and functional performance after a break in services? That question is critical. So, those good faith efforts are what need to be performed and documented in a student's file. Work through and come out on the other side of difficult conversations about missed service, lack of progress, virtual services. And if a team doesn't do this, they will not regain health, and they will not rebuild trust. You've got to have these very difficult conversations, get them out there, and move past them. So, when we think of good faith efforts we think of words like affirmative, right? Affirmative steps, diligent, meaning you keep trying, and demonstrable meaning that you have demonstrated results and also you have a good record that you've kept of the efforts. So, diligent, working diligently to achieve compliance. Demonstrable, well documented and clear actions. Affirmative, meaning actively working versus passively allowing circumstances to control. Efforts, if you want to define, if you will, or describe good faith efforts think about this. Efforts that demonstrate one or more of the following, thorough exploration of all options considered for the provision of FAPE. And now that we've gotten court cases that have rolled out about pandemic services, services during the pandemic. This is what we see courts focusing on. What was considered? What was discussed about the students ability to receive benefit in a virtual environment? And then implementation of interim procedures to

minimize service gaps. We saw a lot of this in the beginning trying to figure out how to provide services while you're building a system at the same time. Good faith efforts might also look like communication, frequent communication with parents to reschedule meetings, services, or assessments. Across the country we've been involved in a lot of technical assistance and also state complaints about evaluations that were just put on hold. Stop that process until we can be face-to-face again. And keep in mind that no tenants of IDEA were waived. FAPE is still FAPE. And putting things on hold like assessments or services would not be consistent with FAPE. And really the difficult consideration of a recovery services plan if needed, that should have happened in every single IEP team, excuse me, because nearly every student out there missed services on some level. All right, so now we reach a critical stage and the goal of this critical stage is a clear understanding of the student's current functioning post crisis. Again, service gap, depending on what happened in your jurisdiction it may have been a longer gap. And then when services resumed they could have looked very differently whether they were virtual, whether they were delivered at the same intensity, whether the paraprofessional was provided, the types of services, all of those things have an effect on now current functioning of a student. So getting a clear understanding of the student's current functioning post crisis is critical. If you do this it translates to descriptive present levels that will take into account breaks in service and alternative service delivery models. To say that present levels didn't change I think is to underestimate and discount the importance of the services that you provide because to say that present levels would be the same post crisis would mean that those services weren't really having an impact anyhow and none of us are willing to say that. None of us are willing to go there. We're in the business of helping children so it's realistic to assume that if there was a break in that service or if there was a change in a service delivery model that that may affect the student, maybe not in every single area, but it would affect the student. Have the candid conversation about the students now current functioning post crisis. That information must be used to redefine skill gaps. Every single IEP identifies skill gaps and if there are no skill gaps you have no business having an IEP so every single IEP identifies skill gaps and then measurable goals are developed to help close that skill gap and then services are provided to help the student meet or make progress on those goals. It stands to reason that if there was a break in the services that were going to help close that skill gap you got to get a handle on what's the skill gap now? What does it look like today? This is also how you build trust with the parent again because you're not discounting the fact that services may have been different or missed or there was a gap and you're saying we are going to learn about your child's current level of functioning and plan a program that goes from there, just like at any other time but now you're doing it because of a pandemic. Right? Skill gaps translate to measurable goals so there's a strong possibility that you may have needed to go back and revised those goals because the skill gaps now look different.

>> Well, not just different but also they could be different skills that they lost. It could be skills that as a result of how they experienced the pandemic they've acquired all of those different types of experiences influence where they need supports and services as a result of their disability.

>> Absolutely. So, the skill gaps may change in magnitude and they may change in skill areas as well. There may need new needs that result, and in fact one of the interesting court cases we're going to talk about is a case where the court said you couldn't know how to serve the child in a virtual setting unless you did an assisted technology evaluation because the student ... there may have been another skill gap there with respect to the student's ability to manipulate technology so this is critical, and so you have to go back to what are the present levels of the student? And in order to get that you may need to go back all the way to the points of comprehensive evaluation to assess some of these areas again, but you want to get to those present levels, now current present levels in order to identify the now current skill gaps in order to get to IEP goals. This should have happened for every student post crisis because this is how you rebuild a team. And when we think of how to build this and learn about current present levels, Stephanie and I both refer to the FAPE Continuum and in this FAPE Continuum it starts with comprehensive evaluation. Now if it's a reevaluation it may be a very thorough review of existing data and post pandemic it may be a very thorough review of existing data, but it could be you need new assessments like an assisted technology evaluation to help you figure out if this child can even benefit from that tablet you sent home with them. So, FAPE Continuum starts with getting that comprehensive view of the student's skills, understanding that that translates to the present levels of academic achievement and functional performance, the educational needs of the student which then is the launching point for measurable annual goals. Those goals should be rigorous but reasonable at all times. Rigorous meaning unique and targeted. Reasonable meaning achievable in a year. That counsel make clear understanding of skill gaps and then you look at what support and services are needed in order to be able to help close those skill gaps and achieve those measurable goals. All of that gets bundled up and that bundle of services takes place. It's delivered in the least restrictive environment. We had so many questions about LRE during the pandemic, but it didn't change. The mandate did not change, and in fact, then Secretary DeVos said especially and specifically FAPE and the LRE didn't change. And at the end of all of this process there should be educational benefit, measurable, demonstrable educational benefit. And if you don't get that you've got to puzzle backwards through this whole process to find out what's missing, what's broken, what link is broken here? So, this is the FAPE standard. All of you are familiar with it I'm sure. Understand that this did not change. So even during the pandemic a student was entitled to an IEP that was reasonably calculated to enable that child to make progress appropriate in light of the child's unique circumstances. It may have been more difficult to figure out how to do that, but this standard never changed. The goals in the IEP have to be sufficiently ambitious recognizing though that the IDEA does not guarantee any particular level of education or outcome or benefit.

>> Lenore, we have a question in the chat. Just if you could briefly talk about the graphic, and we talked about to the maximum extent appropriate, but we also label it that there are three maximums really in LRE. Can you just briefly walk through that piece?

>> Happy to. So, good question and we will dig in more in part two on the nuts and bolts of this, but when we say mandate it's an absolute mandate that students be educated in the least restrictive environment appropriate to meet their needs. And in order to understand what the LRE is for a particular student to meet their needs you have to view it in light of the three maximums, and that is straight out of the regulations, and in fact we spend so much time talking about appropriate, what's appropriate for a student, what's an appropriate amount of progress, that we some times lose track of the fact that there are maximums written into the regulations. So, to the maximum extent possible children with disabilities are educated with non-disabled peers to the maximum extent appropriate for that student they participate in non-academic and extracurricular activities and that supplementary aids and services are delivered to maximize the amount of time that the student spends with non-disabled peers in a general classroom environment. Paraphrasing there but those are the three maximums.

>> Thanks.

>> Mm-hmm. Okay, remember too that FAPE aligns with the general curriculum. Don't ever lose track of this because, again, if the general curriculum changes, if it contracts, if it's only focusing on literacy and math during a pandemic you have to ensure that your IEP aligns with access to and participation in the general curriculum. The opportunity to make progress in the general curriculum. This is, again, that FAPE continuum looked at a little differently. The message here is that these are all linked together and any break in any link is critical. So if you get to no educational benefit you puzzle backwards. All the way back to evaluation if needed to find the broken link. Remembering that parents are an equal participant in this process and this is just a cautionary slide here. If schools are holding other in person events you better make sure you have the opportunity for in person IEP meetings with a parent that requests it. Keep in mind also that there is no opportunity to have an abbreviated participant list. You have the full mandatory participants, and in fact the most recent road map spends a bit of time on this, the September 2021 road map, saying that you have to use the excusal provisions in the same way you would for a face-to-face meeting even if your meeting is virtual because all mandatory participants must be there. And IEP teams at these meetings should discuss and identify how the special education related service and the child's IEP will be provided and consider a variety of instructional methods. So, the IEP still drives this process. If schools have not amended the IEP to look at different types of service delivery or different amounts of service you absolutely want to make sure that you're doing that because in the event of a challenge the last IEP will be the one against which recovery services or compensatory services are based. I've offered this caution already. Do not forget the importance of prior written notice. This is how you memorialize the teams good work. Should be evident in every file. And then parent requests, is there where the poll comes in, Steph?

>> Yes, it is.

>> Okay, you want to ...

>> We want to go ahead and put that poll up, and we're asking for your participation, but the poll is, is your school or district offering a hybrid model of in-person and virtual instruction allowing a parent who could choose virtual instruction due to the pandemic, yes or no?

>> Yeah, so parents, are they allowed a choice, brick-and-mortar, virtual. Look at we're neck and neck here. Just about exactly. Yeses are starting to win out.

>> Still pretty close.

>> Yeah. Closer than I thought it would be honestly.

>> About 60/40 really. Yes. Sixty percent say yes.

>> That does surprise me a little bit.

>> Yup.

>> So, it leads to the next slide about what about parent requests. What if you have a student who really needs face-to-face instruction in order to be able to make progress and yet the parent has opted for virtual instruction? You have to work through those challenges. For instance, paraprofessional time. So here's a couple cases, and we're going to run out of time here. It's going to end promptly, but this one was parent work schedules did not dictate FAPE in terms of whether they would be home in order to allow staff people to come in and the student was not safe returning to school because of the level of service that he needed with eating and toileting and everything else. So, the court was sympathetic to the parents need to go back to work; however, the balance of hardships did not tip in favor of the parent there. It's a very interesting case. Here's another one. I mentioned it earlier here. The district here failed to explain in the student's IEP how delivering ABA therapy via a tablet would provide FAPE. The schools have to talk about it, and you must memorialize it in the prior written notice. Here's another one, the district violated ... and this is out of Kansas. They did not provide all of the accommodations in the student's IEP and didn't amend the IEP an issue prior written notice. Therefore, the student was entitled to every accommodation in his last IEP because it had never been amended. Here's another one out of the district court in New Mexico and the school failed to ensure that the student received appropriate instruction, and the student did not make adequate progress. All right.

>> Lenore, we are out of time.

>> All right, and look at that. We're at our last slide. I want to thank everyone for your participation and hopefully we'll come back for part two to flesh this out a little bit more. Thank you everyone.