

>> All right. Welcome, everyone. This is part two, Crisis Recalibration. During the first part, we focused on rebuilding the IEP team and also the predictable phases of going through a crisis. And in this session, we're going to focus on restructuring the IEP. We have made the assumption that probably many of you or all of you participated in part one, and you have that information, and you're ready to head into part two. For those of you that may not have been here, though, my name is Lenore Knudtson, and I am the other half of Pingora Consulting. And I'll let Stephanie, my partner, introduce herself.

>> Good afternoon. Thank you for joining or rejoining us. I'm Stephanie Weaver. I am half of Pingora Consulting. I'm an education consultant based in Lander, Wyoming, and I'm happy to talk to you today about, now, kind of restructuring that IEP, and moving forward after we've talked about the phases that we go through after a crisis, so ...

>> Yeah. We welcome people to use the chat box if you have questions or comments throughout. An hour goes really quickly, but we will make every effort to get to those questions, if you have them. Stephanie mentioned that she's from Wyoming. Pingora is actually built in Wyoming, and it's housed there, but I'm coming to you from the state of Arizona, where I'm guessing it's a little bit warmer than in Wyoming today. All right. So just to kind of recap here, we spent the first hour talking about the importance of rebuilding the team, starting with the absolute need to communicate now more than ever, with greater frequency and greater intent, being very intentional about your communications. Reconvening the IEP team, returning to team decision-making is absolutely critical, making sure that you reconvene the full team, not just parts of teams, unless you have excused a team member, and then also that you openly discuss the student's now current functioning, any skill gaps and any needed IEP amendments, service delivery, and expectations. We are experiencing now some court cases that have looked closely at service gaps during the pandemic. And one of the things, the messaging from the court system, loud and clear, that it is the function of the IEP team. It's their purpose to discover, and to discuss, and plan for service delivery, even if it's done virtually, and how that might affect the student. So having these very candid discussions is critical to rebuilding the team and re-establishing that trust. One of the many guidance documents that has come out since the pandemic hit is this Return to School Road Map from September of 2021, and it has some important messages for us. It goes into some detail about the importance of reconvening the team, the whole team, making sure that you excuse team members if they can't be present. And this message that's on your screen now, "No matter what primary instructional delivery approach is used, SEAs and LEAs remain responsible for ensuring FAPE." There's just no way around that. FAPE is FAPE. We saw it in the first session, and we'll emphasize it here in part two. FAPE is FAPE. Now, could it look different? Could it have some different components? Yes. A student's needs may have changed. The general curriculum may have changed. The service delivery may have changed, all of those things, so it could look different, but FAPE is still FAPE. And teams have the same obligation to convene, discuss, and propose FAPE. After you've kind of taken the pulse of your team and make sure that it's in good working order, you've rebuilt your team, you've re-established trust, now it's time to restructure the IEP. If you go straight into restructuring without having spent any time working on verifying the health of your team and rebuilding that team, what happens is the distrust or the mistrust comes with you, and the likelihood of disagreement and dispute continues to be high. So you want to make sure that you've spent the time that you need to verify the health of the team before you move on to restructuring. So for our purposes, we're going to assume that you've done that. All right. The handout is in the chat now for people who may need that. But we're going to assume that you've verified the health of your team and that you're ready to move into restructuring. By restructure, we mean make it current. In order to do that, you have to take a really critical look at services that were provided, services that may have been missed, the now current educational needs of the student. You can't get away from that. So we have devised a structure, and we're going to provide you with the structure that you would go through for every student. First and foremost, reconvene the team, and then you're going to review the IEP and all educational needs of the student to make sure that it's current. Okay? We call these the four Rs. Here's two of them. There's the third R. You're going to restructure to align services with current educational needs. If you think that the pandemic did not affect the student's current educational needs, that discounts the importance of the services that you provide every day, so you want to make

sure that you have the critical conversations regarding what's been missed, how it affected the student, and then starting to re-strategize to align services with now current educational needs. Okay? And then finally, you get to revising the IEP. If you go straight to revising the IEP without having these conversations, then you will have a document that's much more likely to end up in dispute. You'll have a document that will be much more vulnerable to a claim of denial of FAPE. Starting with reconvening, when we talk about reconvening the IEP team, it means get that team talking. Get them working together. Whether it's virtually, telephonically, or at the same table, reconvene the team. This may need to happen with greater frequency now more than ever. You may need to be particularly flexible, because a parent may have a family member that has a particular health vulnerability, which means that they're not ready to meet at the same table yet, or conversely, you may have a parent who struggles with technology. Maybe they can't afford Internet service in their home. Maybe they can't afford ... They don't have a cell phone. So you want to make sure that you don't cut off the opportunity for them to participate in the process by insisting that a team meet virtually as well. You have to be responsive to the parents' needs here. They are critical members of this team, and you must invite them. If you want to make sure that that team is healthy and rebuilt, this is a critical step. You can't miss it. Okay? The purpose of reconvening is eliciting and gathering current information. How do you do that? Well, first of all, you have a candid discussion about it, but you may need to ask what additional information is needed to fully understand current educational needs. Do you need to go back to comprehensive evaluation in order to get now current assessment data on the student's educational needs? As a team, you develop a plan to gather the information or conduct assessments. All right? So hopefully, in this rebuilding phase that we're all in, when it comes to rebuilding education after a pandemic, you've already done this. If you haven't already engaged in this reconvening process, you need to do it quickly and, really, with greater frequency. So find out what you need to know about the student in order to get the team's pulse on current educational needs. Once you have reconvened and started that process, you're going to be reviewing a plethora of data. You're going to be getting a clear understanding of current educational needs after a break in service. I think it's fair to say that all kids experienced some break. It may have been a short break while the state tooled up to virtual instruction. It could have been a longer break. Even after instruction recommenced, was this student able to participate in that instruction and receive benefit? So there are many, many reasons that a break in service may have occurred. When you have a break in service, you need to go back to the beginning and find out current educational needs, as a team. So you ask tons of questions, right? You get very curious. Was the student able to benefit in the way that the team anticipated through virtual instruction? Were they able to benefit without the assistance of a paraprofessional that may have been in the IEP? Were they able to benefit from a more passive service delivery model, like virtual instruction? You question, question, question. What assessment data do you have? What curriculum-based measures do you have to support? What did the student get during this pandemic, and what did they miss during the pandemic, because both are equally important. You collect all of this data on current educational needs, and that becomes your launching point for an amended IEP. All right? Go back to our robust discussion on present levels. If you're following the case law that's trickling out post-pandemic here, you'll see courts talking about, there's no discussion about how the lack of services impacted the student. There's no discussion about how a break in services has changed the student's present levels. When you assume that the student's present levels are the same as before the pandemic, then you have a problem,

because you haven't verified that yet, and it is likely different. So if you anticipated X amount of progress based on the student's starting point, when in actuality they started at a lower level because of a break in service, you're very unlikely to get the same amount of anticipated benefit. The bottom line is, IEPs must be based on the student's present levels of academic achievement and functional performance. And you've got to review and question, question, question to find out what that is.

>> Lenore, I think that some of the, not just breaks in services, but we know, across the country, most states didn't participate in some of the accountability assessments and different assessments that are normally given throughout the year for all students, which is always rich data to use as part of that present levels and talking about that. So for one point in our kind of education system, thinking about that, we weren't as data-rich as we have been, and so now more than ever, it may be necessary to do some sort of informal or formal assessments in order to really gauge that, because we missed out on all of those opportunities that normally happen in classrooms and in schools across our country.

>> That's a good point. We rely on the data that is collected on a regular basis, and it would have looked different this last year. So what other sources of information do you need to review, and what other data do you need to collect in order to have a crystal clear understanding of the student's present levels of academic achievement and functional performance? Because only through that process do you get to now current educational needs. So we could very well start with or restart with a comprehensive evaluation. In the world of special education, I, when we're talking about going back into re-evaluation, in my mind and in my review of the regulations and all the case law, there is only one type of evaluation, and it's a comprehensive evaluation. This is not about the curriculum-based measures or classroom-based assessments that happen on an ongoing basis. That may be data that you review. But when you decide as a team that you have to go back into comprehensive evaluation to collect new data that's individualized and based on the student, that's when you're in comprehensive evaluation. It serves two purposes under the IDEA. First is identifying students who need special ed. So this is the initial evaluation, right, initial comprehensive evaluation. And then, also, helping teams identify the special ed and related services needs. So if you're at the point of re-evaluation, now you're at the student's continuing eligibility. And also, still, the second bullet, you have to use this process to identify the special education and related service needs that the student has. So you're always going to evaluate for two purposes. After the initial evaluation, the emphasis is placed on the second bullet, keeping your fingers on the pulse of the now current educational needs of the student. After a break in services, it's entirely feasible and possible that you're back at the stage of comprehensive evaluation. We think it looks like this. And in order to do a good job at comprehensive evaluation, you must be a curious soul. You have to be a curious team member. You're going to look at the whole child across environments. Okay? You're not going to take a linear approach to this and say, "Well, they missed math, so I'm only going to look at testing their math." You're going to look at the whole child, because we don't know how breaks in services may spill over into other areas. I have been fascinated by the research that's coming out on the mental health needs of students since the isolation of the pandemic hit, not seeing peers, not seeing family members, extended family members, all sorts of things that may have affected social and emotional skills that we didn't even plan on. So you have to be curious here and probe, probe, probe, looking at the whole child. Go back to, what do we know about this student across environments? What do we need to know in order to be able to provide FAPE? And from that, you distill down, what are the now current educational needs of the student? So comprehensive evaluation, remember the two purposes. It equals IDEA disability or in the event of a re-evaluation, continued eligibility in a disability category, and also, and it's an and, the educational needs of the student. That means both. When the regulations connect provisions by an and, that means that both must be present. So when you think about comprehensive evaluation, even if you've done hundreds of them over the course of your career, you are still looking at the whole child, and you are still looking at IDEA disability and the educational needs of the student. Remember, we said all of this information is necessary in order to have accurate, and robust, and descriptive present levels. So if you refer back to the provision and the regulations that specifically addresses present levels, it will give you some clues about the granular nature of the information that you need to put in there. First of all, how the child's disability affects the child's involvement and progress, those are connected by an and, so you must do both, involvement and progress in the general curriculum. All right? Keep in mind that this is the same curriculum as for nondisabled children. So if the curriculum changed, even for a brief period of time

during the pandemic, make sure you understand, what is the general curriculum today? For instance, many primary schools, like K-3 schools, focused only on literacy and math for a period of time. That was the general curriculum that was delivered. So you'd have to question, how does this child's disability affect the child's involvement and progress in the general curriculum that's being delivered, and then for preschool children, how it affects the child's participation in appropriate preschool-level activities. This is across environments, and it's more than just test scores. So Stephanie made the excellent point earlier about many of the test scores that we rely on to give us an understanding of a student's current functioning, those weren't available to us this year. That means you need other information. And you would need to be very descriptive about the skills that the student currently has, so you explain present levels of academic achievement and functional performance in terms of what skills does the student currently have. And we're talking about skills across environments. So a student may have the capacity and attentional skills to work in small groups, but when they're in big groups, maybe in a gym class, or in hallways, or whatever, they don't have the capacity to be independent. It's your job to explore all of the current skills across environments. And then you cannot leave out the link to the general curriculum. How does the student's disability affect his or her involvement and progress in the general curriculum? I was recently doing some work with the state. Stephanie and I both were. And there was some confusion about the emphasis that has been placed on the general curriculum, because we kept referring to it. We kept going back to grounding our language in the regulations. And the general curriculum is aligned in the regulations in many different places, where a FAPE aligns with the general curriculum, present levels are in relation to the general curriculum, progress, all of those kinds of things. Make no mistake. If you go back to the regulations, a close read will link special education to the general curriculum over and over and over again. And again, the general curriculum, you want to look and test us, look in 300.320(a), it will tell you it's the same curriculum as for nondisabled children. That's what we're talking about here. Now, for some students that may need a downward extension, you're going to thoroughly explore that in the present levels as well. But it still relates back to the general curriculum. What are we expecting of other students this age? So present levels start with this thorough understanding of the student across environments and how the student's skills are affecting the student's involvement in and progress in the general curriculum. Showed you this briefly earlier, but now we want to dig in just a little bit more on this, the present levels of academic achievement and functional performance. These statements, the description that you offer, compare the child to the general curriculum. It's only at the next step, which is when you identify skill gaps, that you compare to standards. Earlier, I said, "What do we expect of other students of this age?" That's the skill gap that we're measuring through comprehensive evaluation and through ongoing review of existing data. That skill gap is compared to what we expect students to know at this age. And then, from there, you develop IEP goals to target those skill gaps. Those IEP goals are unique for every student. Right? So that's where the I comes in, in the individualization process. We see it reflected in IEPs in terms of measurable goals that are unique for every student, and those measurable goals, you could pull a thread, and it would lead you right back to the robust present levels of academic achievement and functional performance. And if you kept pulling that thread, it would lead you right back to comprehensive evaluation. So you cannot get to one without going through the steps of another. Again, if it's a matter of reviewing existing data to update, that's fine, and it's perfectly permissible outside of the evaluation requirements, 3-year re-evaluations, or

sooner, if needed, but making sure that you have a clear understanding of the student's current educational needs. So goals get linked to skill gaps. One of the things that happened when we evolved our level of sophistication to having online IEP models, model forms, and things like that, we saw states struggling with pull-down menus of goals. And courts have taken a very dim view of menus of goals that you select. Okay, if a student has a reading goal, here's your choices and you pull from one of these. Because goals must be individualized and link back to present levels. So when you're setting out as a team to develop annual measurable goals, it's based on the student's unique needs and designed to help the student be successful in the general curriculum. Remember these two words: rigorous but reasonable. Rigorous, meaning that it's challenging for this student. You're closing that skill gap, right? You're always working on closing the skill gap, but it's reasonable to attain within a year. You don't want to overshoot it or undershoot it. Because you have a thorough understanding of the student's current educational needs, you don't need to do that. You're going to reasonably discuss and propose as a team what the student can attain in a year. Now, this isn't widgets. These are kids we're talking about, and so if it doesn't play out in the way that the team expected, if the amount of progress stagnates and you don't get that amount of progress, or if there's unexpected progress, more than you thought you'd have, you have to go back into the figuring-out stage. But as a team, you must start from the vantage point of what's rigorous but reasonable for this student, based on their skill gap, based on their present levels. Right? The measurable goals are directly aligned to the general curriculum. Again, here in the regulations, meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum. You couldn't have a clearer link than that. I didn't mention this at the beginning, but I typically do. I started my career as a school psychologist, and I became a special education attorney after some years. I have spent my entire adult life in special education in some form or fashion, and also had a child that had an IEP, so my vantage point is from all different perspectives. And the ... Back in the day, when I was a school psychologist, we called IDEA Public Law 94-142, so that will give you some time reference. If you've been in the business a long time, you know what I'm talking about. And we did not necessarily link special education to the general curriculum. We viewed special education, back then, as a place where we brought kids to help them along, to help them be successful on whatever level we could manage. And what that meant is that many times, kids in special education back then were educated in a parallel universe. The standards were different for them. The expectations were different for them. We have evolved over the years, and we now know that the legal standard that you will be held to is that the child be involved in and make progress in the general education curriculum. But for a very small percentage of students, we should be planning and proposing the opportunity to be involved in and make progress in the general curriculum. And if that's not possible, then it needs to be a carefully planned downward extension of the general curriculum. But special education isn't a parallel universe anymore. The second bullet here, meet each of the child's other educational needs that result from the disability, again, back in the day, when I was a school psychologist, you got what you got, and that was it. So you were, for instance, LD in math calculation. All you got help with was math calculation. Or if you were LD in reading decoding, all you got was reading decoding. We know that that doesn't make sense now. We know what the legal standard is because it's in black and white in the regulations, but we also know more about education and children, educating children with special needs, than we did back then, and what we know is that if a student has a reading disability, it's very likely to affect

many other areas of their education as well, because how do they get the science content? How do they get the math content? All of those things. So now, we serve educational needs that result from the child's disability. We don't have silos anymore. All of this is taking place after a break in services or a change in service delivery resulting from the pandemic, so now you're up to the point of re-strategizing. This is the third R. Reconvene, review, re-strategize. This third R is where you start really looking at aligning the student's skill gaps with what they need in the general curriculum, so you've got to probe, probe, probe here. What services and supports does the student need to meet those IEP goals? You want to be specific. This is not some 30,000-foot view. This is digging in with respect to this particular child. To be involved in and make progress in the general curriculum and attain the goals in the IEP, what does the student need? That's a team discussion. It needs to be well documented as well. We think it looks something like this, and we use this regularly as sort of a guide to the discussion. All right? So if you think about the center of the circle, that represents the general curriculum. We know. We've shown you multiple places in the regulations that aligns special education with the general curriculum, opportunity to be involved in and make progress in the general curriculum. When we look at special education supports and the definition in 300.39 of special education, it'll tell us it's specially designed instruction that is provided in order to help the student participate in and make progress in the general curriculum. Okay? So special education wraps around the general curriculum and provides that link so that students with disabilities can benefit from the specially designed instruction. And then you wrap around related services, and you're questioning, the team is questioning over and over again that, "What does the student need in order to be able to make progress and also be involved in and make progress in the general curriculum, IEP goals and general curriculum?" And then you wrap around related services. Related services, by definition, are services and supports to help the student to benefit from their specially designed instruction. That definition is one of the reasons that students are not eligible under the IDEA if they don't need specially designed instruction, even if they have a disability. So a student may have ... and we see court cases about this all the time .. excuse me. The student may have a disability, but unless they need specially designed instruction, they're not eligible under the IDEA. And then, at the bottom here, we have supplementary aids and services are provided to enable a child with disabilities to be educated with nondisabled children to the maximum extent appropriate. So supplementary aids and services overlay this whole process here, to be able to maximize the amount of time that students are with nondisabled children. Excuse me. Supplementary aids and services also get identified in the IEP. As you're re-strategizing, you also must re-strategize LRE, okay? Not just measurable goals, services and supports, but also LRE. Now, we got a ton of questions, a plethora of questions about LRE in the world of a pandemic, or LRE in the world of virtual instruction. And some of those questions were challenging. All right. My throat is dry, so I had to grab a drink. Re-strategizing LRE means that you go back to asking questions. What is the least restrictive environment where the student can be successful. In order to have this conversation, you have to be a leader in understanding the difference between placement and location. Placement is the bundle of services delivered in the least restrictive environment appropriate to meet the needs of a particular student. So you've already devised a bundle of services, this LRE discussion comes way down the road, here. It's much later in proximity when you think about the sequence of an IEP. You're going to ask questions about this bundle of services that you said the student needs that's based on their present levels and the skill gaps you've identified and the measurable goals that are



unique for the student and the services and supports that you're offering to help to the student meet their goals and be successful in the general curriculum. What is the least restrictive environment? That whole bundle represents placement. And I put my arms out in front of me every time. I can't hardly talk about LRE without making a big circle with my arms because this is the bundle of services. Location, so let me back up. For instance, let's say the bundle of services delivered in the least restrictive environment that's appropriate to meeting the needs of the this student, is a self-contained classroom. That's the placement. Location might be the self-contained classroom in School A or School B. Location is typically left up to the educators. Placement is the team decision, and there's a lot of, sometimes, mistrust that bubbles up around this distinction between placement and location. If you don't have a clear understanding of it, if you don't have a way to describe it, the team ... The mistrust builds again and the likelihood of disagreement goes up. So it's really important, as you're realigning services, to have a candid conversation about LRE and whatever situation you're dealing with, whether it's a virtual environment ... Remember that question? Oh, that was a poll question from the earlier session, if you participated. Roughly 60 percent of schools are offering some choice of virtual instruction versus face-to-face instruction. You got to have an LRE conversation about what's LRE in a virtual model. You have to have the words and the skills to do that, okay? So it looks something like this. To the maximum extent appropriate, children with disabilities are educated in regular classrooms. I had to check myself on something, because I've been involved in this really rich LRE discussion with the state and trying to think about things differently and really kind of testing my knowledge. An I understanding in a service delivery model? And I was reminded of how important it is to make sure that we use the regular classroom language when we're having this LRE conversation and Re-strategizing LRE because that's what's in the regulations. And if you read the comments to the LRE sections, the 114 through 118 sections, it will talk about intentionally using regular classroom as the standard there. That is the least of the least restrictive environment. Where it gets individualized is that, that's not appropriate. That's not an appropriate stopping point for all students, but it is the starting point of the discussion. It may not be the stopping point, but it's the starting point. And only if regular classes with Supplementary aids and services cannot be satisfactorily achieved, do you get to special classes. And those special classes may be in Building A or Building C or Teacher Weaver or Teacher Knutson's classroom, but the placement is the bundle of services delivered in special classes, right? And only if no lesser restrictive option would you ever talk about separate schools. And only if no lesser restrictive option would work, would you get to residential settings. And only if education with no peers is the only option, would you get to hospital or homebound. Keep in mind that a parent opting to have their child participate in a virtual environment is not the same things as placement, that's location, right? So, as you let that sink in, make sure that you have a comfortable and clear understanding of the difference between placement and location, because we have seen many, many, many IEPs that change the placement to homebound because the child was educating ... Being educated from their dining room table at home. That is not the placement, that's the location where they're accessing the general curriculum because of a pandemic. So be very clear in your understanding of the difference between placement and location. There are three times, again, that the word maximum is used in the regulations, and they're all regarding LRE. So, three maximums, and keep in mind, all of the case law ... We could give you cases as long as your arm that's says the child isn't entitled to the best. They're not entitled to the maximum benefit. They're not entitled to the maximum amount of progress. We

know from the Rowley case, going back to 1982, that it's appropriate standard of education, right, reasonably calculated. Endrew F didn't change that. But there are three times the regulations hold us to a maximizing standard, and they're right here. First one, to the maximum extent appropriate, students with disabilities are educated with nondisabled children. Second one, to the maximum extent appropriate, ensure that students participate with nondisabled children in extracurricular activities, again, to the maximum extent appropriate. And the third one is providing supplementary aids and services to educate students with nondisabled peers to the maximum extent appropriate. That is an absolute right on behalf of the student, and you're not free to change that standard, by the way. So even in a virtual environment, you've got to, maybe, change your dialogue a little bit, change your vocabulary. But the LRE analysis remains the same. Don't get tripped up on the difference between placement and location, okay? Here they are again, just a restatement of these to give you a really clear understanding that these are nonnegotiable. And this is the Endrew F. Standard, the United States Supreme Court decision from 2017. Every student in any environment, whether it's virtual, whether it's brick and mortar, whether it's a regular class, every student with a disability, the educational program must be appropriately ambitious in light of the student's unique circumstances. So don't lose sight of this if you're moving to a virtual environment. Don't say or be satisfied with the notion that the student isn't really going to have the capacity to sit still and pay attention in a passive virtual environment without other supports. And allow that to be the IEP because the parent has opted for a virtual setting. You can't do it. This child, even though the parent has opted, if your state is offering the option between virtual and brick and mortar, face-to-face instruction, FAPE is still FAPE. There's no waiver of any of the requirements, okay? So if you're going to place a student in a virtual environment, you have work to do. If you're going to educate a student who the parent has selected a virtual environment, you still have work to do. Deciding whether and how to provide a child special ed services remotely during the pandemic, you should address the service delivery model and whether that would enable this child to receive FAPE. You might have to conduct assistive technology evaluations and considering whether this child can benefit from a screen, from education delivered on a screen. This particular case that I'm telling you about right now, is that the student with autism was going to receive his ABA therapy from a tablet. The problem is, is that IEP never addressed whether the child was reasonably calculated to receive benefit from a tablet when ABA therapy is typically is very hands-on, one-to-one kind of approach. So in this case, the District Court reasoned that the district failed to explain, failed to explain how delivering the child's ABA therapy and other services via a tablet would provide him FAPE. This should give you an indication that your IEP teams must be discussing how this child can receive benefit from virtual instruction or therapy and give them memorializing, in terms of an artfully drafted prior written notice all of the things that you considered in providing this child ABA therapy in a virtual environment. So you've got to discuss it and memorialize it. Anything less than that will not hold up to legal scrutiny in the event of a challenge.

>> So, before, Lenora, we leave this idea of placement in virtual and brick and mortar and all of those different pieces, we have a poll question that we'd like everyone to participate in. So if we could put that up now. The question is, if a student participates in virtual instruction from home, either as a parent choice or due to school building closures, is that considered a change in placement on the IEP? Yes or no?

>> We're neck and neck again.

>> Ripe for discussion. Give it just another minute.

>> So it's pretty close. It looks like the numbers stopped changing here. It is, at this point, 55 percent, no, it's not a change in placement, to 45 percent, yes, it is. You have to ... First of all, let's approach these one at a time. If you have closed school and you're providing service to no students, general education or otherwise, then that does not necessarily represent a change in placement because there is no right to FAPE when schools are closed completely. That means no education being provided to any student, any member of the student body. When schools resume, providing any educational services, FAPE immediately comes back on the table. In order to be able to answer this question though, you need to have a clear understanding of the difference between location and placement. So if the student receives all of their specially designed instruction in a virtual environment, and they receive supports consistent with their IEP and accommodations consistent with their IEP, but they're accessing the general curriculum from their dining room table, that may not represent a change in placement. Again, the bundle of services delivered in the LRE is the placement, and if you're going to change the bundle or services or anything in that bundle or the LRE, then you must amend the IEP. That is a change of placement. If the student is, again, exposed to nondisabled peers, even virtually, because other students may be exposed virtually as well, if the delivery model is virtual, but again, all of the same services, the bundle is there and the student is exposed to the same nondisabled peers in a virtual environment, that's likely not a change in placement. If, however, you have change anything in that bundle, any of the services, the amount, the type, the frequency or if you change the LRE that the student doesn't spend the same amount of time with nondisabled peers, even virtual peers, then that would be a change in placement. So thanks for participating in that poll, and if you have any questions about it, you can put them in the chat box. We'll make sure we work them into the discussion. What is ... Let me back up because I think I may have missed something here. Thought provoking questions, is there a right to an in-person education during a national health crisis? This came to you from the state of New Mexico. There was a large lawsuit there regarding the notion that there was a right to an in-person education because their schools had closed. They had gone to virtual instruction, only after a period of total closure, they returned to a virtual environment only. And there was a lawsuit about a student's right to an in-person education and whether remote service is the same as missed service, okay? So what do you think the court said here? What the court was saying is that providing children with disabilities access to the same remote instruction that children without disabilities receive, that is the regular education environment, right? That's what all kids are getting, the regular classroom environment had moved to virtual, so there would be no right to an in-person education under the Constitution. That was when all students were being educated virtually. It had to be determined on a case-by-case basis, based on the student's educational needs, but there was no way during the pandemic, if the state had an executive order from their Governor saying, "School buildings are closed." there was no right to an in-person education under the Constitution, according to the Federal District Court in New Mexico. So once you have this clear picture of the student's current educational needs, then you need to have a clear plan for how to meet those needs. Only now is the time to revise the IEP. If you've done it without the first of the three R's, you're missing critical steps, you're likely to have an IEP that's not going to last long, not result in the educational benefit because it won't be based on the student's now current educational needs. So you reconvene, whether it's face-to-face, over the phone, discussions, whatever it might be, you reconvene and get that team talking. You review everything to know, what are the student's current educational needs? So you're going to look at

services missed, services provided, progress up to this point, all of those things. And you come up with re-strategizing, and only after you have planned how to re-strategize, how to meet the now current educational needs, do you actually revise the IEP. So we're up to that point, revising the IEP. You're going to do that by recalibrating. How do you recalibrate the IEP? And by the way, this may be, if it's time for the annual IEP, you're going to recalibrate and draft a new IEP. If it's after the annual IEP, you may recalibrate and draft a new IEP by amending the existing IEP, right? That is permissible under the regulations, but only after an annual IEP. You cannot amend in place of that annual IEP cycle. How do you know if it's working? You artfully drafted this re-calibrated IEP. You amended it. You've issued and artfully drafted prior written notice, and this has been the work of the team, whether it's face-to-face or a series of conversations or meetings. You have the parent's agreement to amend the IEP. How do you know if it's working? Well, first of all, data. You're going to collect and share data at a high frequency because this is different. It changed. Something happened that has never happened before, so you want to make sure that you understand and keep your fingers on the pulse of current educational needs. You do that through data collection. You monitor progress toward IEP goals and progress in the general curriculum. Both of those things, you monitor. You stay vigilant and communicate with parent over and over again. Lack of communication has this relationship with disagreement. So the less you communicate ... It's an inverse relationship. The less you communicate, the more disagreement. The less you communicate, the more distrust which leads to disagreement. How do you deal with a lack of progress? Despite your best efforts in engaging in the four R's: reconvening, reviewing, re-strategizing and revising, you have a lack of progress. It could be stagnant. It could be not the amount of progress that you anticipated. You go right back into the four R's. That is your only option as a team, because the lack of progress is an indication to you that something needs to be changed. You have to go back and get team input and team decision making and review as a team and re-strategized and revise. This is not a single person doing this. When does it need to be done? A reasonable amount of time when the lack of progress is noted. So, again, that frequent data collection, you're on it. You are going to know, in very short order, whether the re-strategizing and revising in the IEP is having the anticipated benefit. So only a reasonable amount of time. Courts will routinely hold that months is too long, and in some cases, weeks can be too long. But the best thing you can do is talk about that as a team. When are we going to check in on whether these changes are working, okay? If the IEP is not re-calibrated at this point, it will result in a denial of FAPE. It doesn't matter that it's a result of the pandemic because FAPE is still FAPE. What, conversely, if you have unexpected progress, meaning that the child makes more progress than the team anticipated? So you've dialed in those services. You hit a home run as a team, and the progress just takes off. What do you think your obligation is? I'll tell you, it's exactly the same thing. You have to engage in the four R's: reconvene, review, re-strategize and revise. Because if you rest on unexpected progress, you won't be working on closing that skill gap, and that is always your paramount function as an IEP team. You're closing those skill gaps. You're providing services. You have a clear understanding of the student's needs, a clear understanding of the skill gap, measurable goals, services and supports, and if you close that skill gap quicker than you anticipate, you got to go right back here. Who does this? Not a single teacher, but the team. It doesn't necessarily have to be in a face-to-face meeting, but it must be a conversation that takes place. When a reasonable amount of time, you cannot rest on unanticipated progress either. And if you have any doubt about this, take a look at the regulations. It addresses unanticipated progress and your obligation, okay? Why, again?

Because if the IEP is not re-calibrated, a denial of FAPE will result. What is a reasonable amount of progress? Courts kind of know it when they see it, but from our perspective, a reasonable amount of progress ... Remember the two words I asked you to remember? Rigorous but reasonable. That's where you're charting your measurable goals, rigorous but reasonable goals. Rigorous, meaning targeted for this student, challenging for this student, unique for this student. Reasonable, meaning that it would result in a reasonable amount of growth over a reasonable period of time, and that it's demonstrable. Again, if educational needs change, it's time to go back and realign the IEP. So it's entirely possible, it is entirely possible that a student with a disability will cause the team to go back, more than once, into the four R's, okay? So you're going to realign the IEP any time you become aware that you've got more than anticipated progress, stagnant progress or changing educational needs. During an unprecedented time, like this, it is entirely possible that you would have to go back over and over again, into the four R's. But once you land on IEP, you absolutely must provide services in conformity with the IEP. Any departure will be a violation. Now, whether the departure is significant enough to result in a denial of FAPE, that will be up to the SEA or a hearing officer or judge, okay? But we know services must be provided in conformity with the IEP. That's why, if you don't get the expected result, you got to go back and change it. Because if you just change it without going back through the amendment process or drafting a new IEP, you got a problem. That's a unilateral change, and courts will not tolerate it. States will not tolerate it if it comes in a she talked about complaint. I want to spend just a few minutes talking about resilient teams. Resilient teams operate in good faith, meaning that they work together to identify the needs of the student, that they're student focused, that they're forward facing. Resilient teams can survive a pandemic and still work together. Resilient teams are going to have difficult conversations about missed services. You absolutely must do this. I'm sorry, I went too quickly, there. I'm going to back up. It is nearly impossible to move forward until the team addresses those missed services. So you want to make sure that you talk about recover services. I do not like the term compensatory education when we're talking about recovery services, services missed due to the pandemic. Compensatory education is a legal term of art that results from a violation of finding of a violation, and you're not there yet. You're a team that is working to have a thorough understanding of the impact of the pandemic on the student. So you're talking about what services does this student need to recover from that break, from that gap? So choose your words carefully. Some things to think about: Compensatory services, again, a term of art that represents a violation of some kind. Recovery services, on the other hand, is a term used to describe services missed due to the pandemic. Completely different. FAPE must be provided to meet the educational needs of the student and recovery services are provided in addition to FAPE. So always think about that when you're talking about how much recover service. Keep in mind, it's in addition to the full bundle of services delivered in the least restrictive environment, which means that you could be extending a student's day or week. Make sure that you have a meaningful, heartfelt discussion about recovery services because they are in-addition to, or piled on to a student's normal school day. And there's some information in the guidance that came out from OSEP and OSERS and OCR in the very beginning, that talks about if the delay was inevitable, teams could make individualized determinations. So help the team determine what services, if any, are needed to recover from service gaps, and stay in the world of recovery services versus comp ed. Recovery services get provided in addition to the regular school day, and in addition to all the services that represent FAPE. Keep in mind, this is only achieved through good faith efforts of the

team. Good faith, meaning you work diligently together to achieve compliance and that you demonstrate these actions, well documented and clear actions to achieve compliance and to provide the student with meaningful educational benefit. And that you affirmatively work, not passively allow circumstances, like a pandemic, to control this process. So I think we have used all of our time, and maybe we have one minute left, if anybody has any questions. But they're going to cut us off. So if you don't have questions, I want to take this opportunity to thank you of attending this session today. Thank you, everyone.

>> Thank you.