

**Prudence Hutton: *How Apology Can Promote Exemplary Practices for Reducing Special Education Disputes*
Breakout Session Transcript**

PRUDENCE HUTTON: Good afternoon. I'd like to welcome everyone to the last session of the day on apology. And I want to offer the first apology. I get the view of the river in the fall. You get me and the slides. The name of the program is How Apology Can Promote Exemplary Practices for Reducing Special Education Disputes. And the word can is a very operative verb there because the premise of my presentation today is it can, it should, but it doesn't always. And there's an opportunity for so, so, so much more in the CADRE community with across the board for using a lot, a lot more apologies. And this is for school districts and this is for parents and students alike. I come here today as part of a journey, and I want to share some of my story so there will be an understanding of why I am so interested and compelled and passionate about apologies. I am an attorney by training. Before law school, I had two very rewarding years working in a very prominent civil rights practice. After law school, I did labor negotiations, and there I was very, very committed to labor negotiations going away from strike for a strike meant failure. I then practiced in Las Vegas in a small practice where providing government services for the clients was extremely important, and the senior partner now is the majority speaker in the U.S. Senate. So I come with that type of background before I started doing mass torts. And I worked in various litigations involving mainly women's issues involving their health, a lot of disfigurement, and a lot of illness, and counseled probably over 2,000 women about problems that were leading up to a minimal settlement. But at the end of the day, what was really, really wanted and the driving force of all the anxiety and angst and anger was wanting an apology. At the same time, I, like any other person, like most people in the world of special ed, I am a parent of a child and got to go to IEP meetings and fight those battles. And I started off this whole process before there was Internet and it was very, very hard to get information. And you have the best doctors in the world, which is great, but they don't want to deal with school districts. And there was so little information out there before the explosion of the Internet, which I very, very much appreciate. But as a parent and after my son graduated from Cal Berkeley, I decided that I would follow my passion and become a legal aid staff attorney in the Central Valley of California. This area is probably the poorest of the poor, competing with Appalachia and the Katrina, according to Brookings Institute studies. And I had all the special needs families, low income, in an eight-county area. And I very quickly had to figure out how to resolve issues, how to work towards systemic reforms, because these school districts hadn't seen a special ed attorney. And do it quickly and keep it -- keep the contention out of the equation. And I had very, very challenging school districts, and I had very, very challenging parents that were not very sophisticated or accepting of their place in life. And I got more and more frustrated because I saw the need for mediation and to learn how to negotiate, and to put all this in the proper context so you could resolve issues and not go to a due process hearing. And I started googling all my issues: special education, dispute resolution, mediation. And the google gods gave me five letters, and it was CADRE. And I was off to Washington D.C. in 2004 at the Swimming Upstream

conference, where Margaret Spellings was at the White House and signed the amendments to IDEIA, and then came directly down Connecticut Avenue to the CADRE lunch and addressed the group. And that was my son's birthday and I thought the stars have lined up. But in the last eight to ten years, I can really appreciate the value of an organization that brings this kind of thought process to bear. One of the -- everyone has somebody that was inspirational in their life. And I am competing and dating myself to show you my inspiration, which is Hubert Humphrey. I had an opportunity to know him when I was in college in my young years before I started law school. And he was going back and forth from Minneapolis, so he'd returned to the Senate. And nothing was more important to that man than getting legislation through so his granddaughter Vicky, who had Down syndrome, could actually go to a school. He would cry tears because she did not have a place to go to school. And he put a lot of fire in my belly, but little did I know that at some point that the baton would end up in my hand. And as all of the concerns I've had about coming up with a formula, and something easy and quick that's very practical, which is apology, came kind of through -- was kind of thrown in my lap. I realized kind of at the last minute that I wanted to put together the materials for this presentation. I probably have over-researched and I probably have way too many for today's purposes, but I do hope that the information and the outlines in the slides will be available for other training, for other people to pick up, whether it's school districts, whether it's parents, whether it's mediators. It'll be in my packet and I will be updating my outline. If you have any ideas or suggestions, please let me know. I hope that the discussion will be continued. Now my agenda today is to talk about how to maximize apologies in special ed disputes, look at where apologies are prevalent, and look at the lessons learned in the medical errors arena. And I've pulled out some apology basics from a lot of the medical errors material that's out there and put them in a format that it would be usable for people working in the special ed world. And after being what I take pride in saying that I'm a special ed parent veteran from the trenches, doing legal aid work and then representing other families for another five years, there are certain issues that are on my radar screen that would be so easy to make an apology so quickly in the system. Because this whole world of educating special needs children is very complicated, very hard to understand for quick decision making, but it can be tweaked so easily when there are issues that people don't understand, that they need clarifying. And you know, stuff happens. Stuff gets screwed up. Immediately nip things in the bud. I'm very committed to early dispute resolution. I have been very frustrated. I know it's the law, but I have not seen much of it in my area. And anytime I mentioned it, I kind of got eyes rolled. And I was wanting to know if you all have good luck with early dispute resolution with your districts. Or if you're a district, if you provide it. I do think that there's a lot of opportunities to really be looking at apologies and understanding apologies so much more. So I'll go on and talk more about the whole world of apologies because I hope this will become a new world for apologies in special ed dispute resolution. It seems like we're living in a culture of apologies. It's like a mania, an explosion, a phenomena, a craze, a rage. And when Marshall Peter was talking yesterday about the apocalyptic, I came to mind that there's almost like an

apologetic. This whole -- it's become a whole national trend for apologies. It's to the extent that apologies are ritualized. There are books about them and even airlines have corporate officers called apology officers. Let me go through some of the history. Of course, Plato had written about apologies a long, long time ago. There's been a lot of focus on Abraham Lincoln since 2008, and historians are looking at his second inaugural address, where he was trying to bring together the country after a civil war, not casting blame, but unifying the country when he said, "Malice towards none and charity for all." And these words are engraved in the Lincoln Memorial. There's been a lot of increase in apologies since World War II. World War II, there were 50 million died. And at some point, everyone said, "No more wars," and started doing more reflections on apologies not being an admission of fault, but acknowledging that there is a real need to not have conditions in human behavior that creates wars that kill 50 million people. In the year 2000 for the millennium, Pope John Paul requested penitence for the sins of all the members of the Roman Catholic Church for the last 2,000 years and the jubilee. As disenfranchised groups gained more power, and including women, who were much better at apologizing, there has been an increase of apologies. And it's been necessary as the population has increased and we are now living in a global village. And technology is so prevalent. There's a television camera everywhere. Talk show hosts, this is kind of the national forum for apologies. I don't know what Oprah would have done without apologies. I know there have been some great replacements. And even Seinfeld. In episode 909, George was attempting to get an apology from his former friend, Jason, who was trying to make his formal amends for his AA program. And if you want to look at apologies, that's a pretty interesting one. Then the whole world of apologies and medical errors came to fruition mainly because of the high, high cost of medical malpractice awards. And the AMA and the medical industry and the doctors and the physician groups and the hospitals all came together and did some problem solving, and came up with a way for doctors to be skilled and tooled in acknowledging errors, and making apologies that look at some fault assessment in working with families and acknowledging errors. And there is a very well used, very popular in the medical world, organization called Sorry Works, www.sorryworks.com. And this organization provides training for physicians in medical school, video seminars you can go to. Online, you can learn how to apologize. But it's a very interesting issue. Really watch and study it. And this has been very, very vetted. It is almost a script, if not exactly a script that doctors can vary and medical professionals can vary. And there hasn't been complaints like we see with teachers being so concerned about scripted reading. But there was a very close analogy for me there. So what I have done for the materials today is done a thorough, as much as I can, literature search. I also have gone through the Sorry Works. And what I have come up with is there has been very, very, very little apology in the world of special education. Everybody else is apologizing and has written literature. There's been some research. It's not real data rich. But what is happening in the world of mediation and mediation training is it's -- dispute resolution is expanding. Neuroscience is becoming part of mediation training and there's a program tomorrow on neuroscience. Social psychologists are talking about dispute resolution, evolutionary biologists, behavioral

economics. And forgiveness from the medical world is giving a whole other type of skill sets for mediators, so I hope everyone is open and ready to launch on some more discussion. I had mentioned that apologies are used in many, many, many areas. Celebrities apologize all the time. They're public, they're prolific, they're polished, and they pop. This is the cover of a book. Now, government officials apologize, and I had to probably have a bad example of an apology with former President Clinton, who had a series of apologies regarding the Lewinsky affair. And he talked about how he regretted what was going on, versus that he did it and he was sorry, to make a public apology. And this went on and on and on. It really fell short of the public's expectation and really questioned his sincerity. It was almost like he was apologizing by default. One of the places where there is an opportunity for apologies is in diplomatic apologies. And I've gotten a lot of information from a brand new book on diplomacy and international peace called *Elusive Peace* by Douglas Noll. I'm from the Fresno area, where there is a local Mennonite university who -- and I have been very fortunate to have a lot of mediation and dispute resolution training there. Doug Noll is a -- was a plaintiff's trial attorney, very successful, and turned his entire career around in a life-changing way and became a professional peacemaker. Went through this program and now does international mediation. And wrote this book that has been very well received. But in going through his discussion of international events and critiquing what best practices were and could have been and lessons learned, I was able to take some of his lessons and come back home, where all politics is local, and there's nothing more local than that IEP table, and translate some of the lessons that I'm going to go through. But he did say that peace mediation provides an opportunity to learn how to talk to your enemy. And I think that's very important, and I'll be bringing that up more and I'll be mentioning this more. But there is a real need for looking at apologies in all arenas. And I use this book as Dr. LeBaron used alchemy in her presentation this morning. Corporate apologies I've defined as oil spill apologies. Is anyone here from Alaska? Well, of course there's no apology that wasn't an apology than the Exxon Valdez in 1988. And not that I know of any apologies were given except in the book that commemorated the 20th anniversary of the event. The captain did make an apology. But the book, in credit to the captain, who is now a consultant for oil companies and oil security, the book was sponsored by the trust that was set up for the cleanup, so it did some good fundraising. And I had more time to read the [inaudible]. Right after the Exxon Valdez in 1988, there was a San Diego oil spill that didn't get as much publicity because it wasn't quite as catastrophic. But BP was involved and they were -- went on record as their officials saying, "Our lawyers tell us it's not our fault, but it sure feels like it's our fault and we'll do everything we can to fix it." That was right after the Exxon Valdez. Now fast forward to April 2010 and the apologies for the BP Gulf spill were, to be nice, were delayed and they were inadequate. The BP executive, Terry Hayward, was concerned, if not preoccupied, about the impact on his career a week after he was quoted in his London office, "What the hell did we do to deserve this?" And he had a lot of PR coaching, and he a month later told reporters he wanted his life back. Well, that doesn't quite cut it in the world of civility and economic disaster. The Harvard Business Review picked up this situation and used it as an example of

people's ability to zoom in and to zoom out. And there's been a book written on zooming. But the -- what I took away from looking at that book is anyone involved in dispute resolutions and problems needs to be able to look at the situation in a micro way and in a macro way. It's obvious that the CEO, Hayward, could only look at it as it applied to his little world, but you need to have the flexibility no matter where you sit. There are civil law apologies, and there's a body of research. And I tried to find the research where I could from the Harvard Law -- Negotiation Law Review, saying that when potential defendants apologize, victims look more favorably on settlement. In the criminal law arena, there is the whole world of restorative justice, where defendants will learn how to apologize to their victims. And that takes a lot of training and a lot of counseling on behalf of those restorative justice mediators and facilitators. But what is the most important thing is to be sincere and show that you're truly vulnerable for the restorative justice to work. Now in the employment law arena, commentators and people working in that area and mediating are saying that apologies, if you can get apologies right away, that they can make up for miscommunication and that they can get the plaintiffs, employee, to see things more reasonably. And we're so very direct in an American Bar Association book to say that apologies can be substituted for dollars. So there is a monetary value of apologizing. And there's apology in cyberspace. For \$300 a year, you can subscribe to perfectapology.com, and you can have the apology of the day or the apologies of the day, which is -- I don't want to spend that money, but it was nice for me to find that out. Then there's Post An Apology and a One-minute Apologist. So this is something that has hit the cyberspace. Now looking at this whole world of apologies for medical errors, the medical community in some areas, in some hospitals are really encouraging this. There is legislation in over 35-plus states for apology legislation so the person, the physician or the healthcare provider admitting fault. This wouldn't be held against them civilly, in civil court. And it's a professional activity with the AMA and the Joint Commission that certifies hospitals. I've talked about Sorry Works. They have really investigated this, and a lot of money and attention has been put on this. Now where I got most of my information was -- and really piqued my interest to see how this medical world applies to the special ed world was the dispute resolution of the American Bar Association section met a year and a half ago and had an entire pre-session on dispute resolution for medical errors. And I attended and this was right after the death of my mother. And we had had a nine-year-old brother that was involved in what ended up being a medical malpractice. And this woman lived for 50 years, never had an apology, and it had profound effects on her health. So I went the next month after her death to this seminar for therapy reasons. And I was so taken about the apology, the need for apology in my world that I see all the time with parents that are so frustrated, mothers that will look at me after a six-week due process hearing and say, "Why didn't they just apologize when my child was in kindergarten?" But on the other side, I see very, very frustrated school administrators that want civility, they want some respect. They've worked hard for their professional training and they're doing the best they can. What was very interesting about this particular seminar and gave me a lot of insight into the importance of how to structure and to do apologies right, because I could see from the literature

that sorryworks.com had provided everyone attending, and that was almost a territory grab for them, was the keynote speaker in the main activity, the big draw, was the actor James Woods from *Shark*. Does everyone remember *Shark*? His brother, Michael, was in the emergency room in a Providence, Rhode Island hospital, and didn't leave the hospital. And there was medical error. And the case went to trial and was very, very, very contentious. And James Woods was the family patriarchy and taking care of his nephews. And the momentum was building up during this trial, and all trials are hideous. And a hospital administrator, someone in the budget office, probably the CFO position, was wondering when she was having to sit through the trial if anyone had apologized to James Woods. Now this is -- and family. And this was outside the Sorry Works structure. So she kind of sent an envoy and the two of them met in a bar, and a restaurant in Providence. And she explained that she, on behalf of the hospital, was sorry about what had happened. And he accepted her apology and they set up a settlement that was appropriate, and the family would be able to put money aside for a special project to ensure patient safety. Now what Coletta's comments were that she thought her apology was sincere without qualifiers and came naturally to her without any hesitation. She said that the families want to hear the unvarnished truth that you really care. Now Woods said that he felt as though the apology was genuine, not a ploy, and the best apologies are straightforward and honest, saying that you did something you should not have done. Well, that's pretty good language coming from an actor that could probably see through somebody that was staging an apology. And it seemed like that all was well with the Coletta apology to Woods. However, they were supposed to be billed together on the stage and this was going to be a media event. Well, for some reason, James Woods did not travel to San Francisco. He was in his attorney's office, watching this all on videotape. And when Coletta, Sandra Coletta was telling -- sharing the story, she was pretty perky and she did some eye rolling. And I thought, "Oh dear." I mean, my antenna was up, but I could really empathize with James Woods and family. Well, it was James Woods' time and they had a video screen that was as large as this wall, so it was like seeing *Shark* times 200. Well, he caught the eye rolling and laid into her, said that was the end of the settlement, that she was not sincere. And their banter went back and forth. I still get goose bumps when I think about how compelling his arguments were because of his delivery ability. And this, you know, poor woman, I mean, she's done all right with her career, you know, after this, but a diligent hospital administrator was taking it from the best of the best, an Academy Award appearance if the tapes had been rolling. And all's well that ended well, but the lesson learned, and the lesson learned for either parents accepting apologies or giving apologies, or school districts apologizing, these last forever. And if there's any hint of insincerity forever, then that can -- the validity can fray away. And to use that as a real warning sign to -- I mean, if you have to, you get frustrated. Don't be insincere about that apology. It could come back and ruin the relationship. As far as the benefits, looking at the liability, apologies in potential medical liabilities reduce law suits, decrease time when closing claims. They result in lower dollar value for settlement and they increase patient satisfaction. So this all makes sense. It also -- oh, okay. Now one of the things that apology does is restores trust. And

there's -- in the medical arena, the patient-doctor relationship involves a lot of trust. You're trusting your doctor to give you the right diagnosis to do the right thing. And when this error is violated, there's a break in the trust. And when you can't find out what happened, that really compounds the injury. There is some research with the malpractice apology specialist attorney has done. And I think that there's some lessons in the special ed world. Because when you have a seriously cognitively delayed child that you're entrusting in the school system, and something happens that breaks the trust, that's even the more need for apologies. And as we're looking at some of the bullying situations that go on, I think it's very important to remember how much parents trust the school district with their valuable child, but their valuable and many times cognitively impaired child. So I think that there's some real parallels. Traditionally, lawyers controlled the messaging, and now in 35 there's kind of a trend towards apology statutes. Now the number one -- the number one author on the world of apology in the medical world is a psychiatrist who is the former -- who just stepped down as former dean of the University of Massachusetts Medical School, Dr. Aaron Lazare. And he has written a book called *On Apology* that is the seminal, pioneer work that Sorry Works refers to. He's written all the time in the -- he writes a lot, he's prolific. He writes a lot of columns in the Washington Post and the New York Times and Psychology Today. And he says that when doctors are allowed to apologize for their mistakes, it turns out better for the healthcare organization and that there's some theories that people sue when they're angry, and they get angrier when they think their doctors are not being honest. Now the issue of apology versus money. Yesterday, Bernie Mayer talked about that monetization issue. And I thought over and over and over people didn't care near as much about the money for a settlement for a personal injury product liability situation. And so many times I've had, with the same gut reaction, have parents tell me all they want is just an apology. And I think that this situation with the Dalkon Shield, and I'll provide the cite later, there's a very compelling op-ed piece in the New York Times in 1999. And this goes back to the movie *Civil Actions*. So that's one thing that you need to be thinking about as far as people -- apology is worth more than money. In the world of -- I've made a real quick chart comparing medicine and education. It's of course apples and oranges. There's no education malpractice in education. You don't go to court. There's not huge, huge, huge money damages. And if you look at research, if you're trying to -- and one of my big issues is fidelity with the curriculum. Well, that's very hard to track. It's very hard to prove. But compare that to a doctor's chart where they're counting the pills. It's much easier. In the world of looking -- looking in the world of the eyes of a cartoonist, apology has been called the superglue of life. It can repair anything. Now, apology in special ed, I've seen it in so many other worlds. But when it comes to special ed, I had very little luck finding too much information about apologies. There was information in the -- CADRE has some good publications that talk about apology. There are three states that include mentioning apology in training materials, in their training materials. So to find apologies, I had google alerts. I had a very good source for access to the Library of Congress. I looked at every database I could find. The best one actually was the CADRE. The states where apology is actually used in their training

materials are, and this should be no surprise, Pennsylvania, Wisconsin, and Iowa. And Iowa has a publication that is on the CADRE website from a four-day training program for parents and administrators on how to do IEPs and get along. And there is a role play for apologies. So if you're looking for some sources, and I hope there will be more in the future, look at the CADRE website. OCR actually had a ruling where an apology was ordered for a high school student who was disabled who was not allowed to be in ROTC or in science class in Washoe County, Nevada. Now there is one textbook that discusses apologies from England. And there is a special tribunal set up in England where it's recommended that the mediator consider apologies, and it's advised that the mediator either take the idea if he or she is looking at apologies becoming an issue, and either putting it in a parking lot in dealing with after the mediation, hoping that everyone will be satisfied with the mediation, or actually be a diplomat and do wordsmithing and crafting a decision. There's some great language, very British, about the apology. Mum said that she would accept the apology and hoped that the order was complied with, but the hearing officer ruled that he would -- there would be an apology -- there would be an apology and that the period of respite that the school district had documented as to why the child wasn't able to participate was a sham, and that the school actually was not providing service for this autistic child. And a formal apology with the language was ordered. Now there are two very interesting situations with school districts doing apologies last year on both coasts, one being in the area of inclusion in San Francisco Unified, the other in D.C. public schools. And I don't know if anyone's from those areas, and if you are, you probably know more than I. In the case of San Francisco Unified, there virtually is no inclusion. A lot of this is because of the traffic patterns and the flow where children are placed in schools because of desegregation plans and most children not going to their home schools so that there hasn't been a lot of scrutiny until very lately. And a consulting group was hired and they have come up with an audit that was launched a year ago in September. And I attended the audit, and the equity and access administrator defined the situation to the public in launching this audit as wanting the evening to be a celebration of Festivus from the *Seinfeld* airing all your grievances. Well, I didn't know how the audience was going to respond in San Francisco. And I looked around for the exit. Everyone was very polite and they nodded, and no one said too much. It was, you know, a polite clap, a clap. The consultants kept assuring the audience that they can provide all the services and the backup and the support for implementing an inclusion plan for all the school districts. As I was putting together these materials, I did have a time to sit down with a school board member in San Francisco who was very active in the disability community and continues to work on those issues with her autistic daughter. And asked her, you know, really mom to mom what was going on with this audit. And she said that they had, you know, a good, new special ed director from the outside and that there was a real focus on working with the public interest law firms and public interest non-profit groups in the city, so it showed a lot of community engagement. However, recently as school was starting, parents discovered that they were shutting down the behavioral intervention school where a lot of the ED children had been placed, and at the last minute people were scrambling for programs. And the school

attorney made the comment that that was done because of the budget. And following the press release, an hour later everybody was confused and this whole issue kind of went away. So that is on the radar screen as to watch for public apologies, and I certainly hope that and would invite CADRE to have an update on this and maybe a whole presentation next time, next seminar. In the D.C. public schools, just about the same time, there was a public apology for their resegregation plan. D.C. public schools are notorious for issues. And a lot of the parents had excellent placement in private schools for a lot of ED, but children with learning disabilities, where they're getting very targeted, great programs. The D.C. public schools hired an outside consultant that participated in the child's IEP as an observer and shortly thereafter reassigned -- and children were going back to their private placement. Quickly soon after the IEPs, before school started, these private placements went away and everybody was up in arms. The school district said that they were reassessing. Parents were very concerned that the programs that their children were used to were not going to be replicated and the standard would not be there so that there was a lot of angst going back and forth. And finally the school district ended up reconsidering, so that is another example of a public apology. A lot of this decision making is being driven by outside contractors, so that's another interesting area to watch. And there in the general ed, there's a lot of apology and work done with peer mediation and school-based mediation. Now as far as apology in special ed, it takes away a lot of -- it's kind of my motto. Let's take the adversarialness out of special ed and let's replace it with some apologies. Now the best time to apologize if you look at the literature is early, early, early. And to follow the continuum that CADRE has set out that pretty much follows the statute, the best time would be with early dispute resolution with student study teams, IEPs, and other type of pre-mediation activity. I highly suggest that people learn how to apologize and value apology so that it starts at the school site level. It starts with the janitors, it starts with the cafeteria workers, it starts with the bus drivers to change the climate, to make it acceptable to say to a parent or to a student, "You know, I'm sorry." But likewise, let the students learn how to express regret and apology. Now to get into the nuts of how to apologize. I do think that this whole world apology needs to be in the active tense and it needs to be part of the special ed toolkit. Apology should be the first inquiry when you're trying to resolve a dispute. You first should ask, is there any reason to apologize? Now I like to use a root cause analysis because I've done plant fungicide contamination, and plants are dear to me. And the root cause analysis works to look at what caused the problem and ask, is it possible that an apology can work? Now when it comes to apologies in special ed, I think we need to remember that this is an issue of access and equity. Oftentimes there are administrators that have this new title of access and equity specialist. And if so, they should be playing part of the role and taking some of the burden and sharing it with the special ed administrator. Now the reason why to apologize. These are interest-based reasons. The number one is the importance of the school-student relationship. There is probably nothing more important than the whole system working with parents getting along with the school, and the school getting along with the parents. Parents need -- this is particularly important when -- particularly with special needs children. They

need to be supported in their home environment, paralleling what's going on in the classroom. And you cannot have the tension without having an apology if it's due. And it's really, really reflected in the legislation. Somehow Congress gets how important parent-school relationships are. And a new book came out this year from a social psychologist, David Brooks. And he had one line in the book that the most important thing in the relationship between the teacher is the relationship between a teacher and the student, that students learn best from someone they love. Now in his -- David Brooks interviews to the Commonwealth Club in San Francisco and different podcasts. He has studied school reform as a reporter for the New York Times for years and years, going on 20 years. And he was so compelled in his oral presentations to talk about the guts of the teaching and school reform taking place with this dynamic relationship between a student and a teacher really based on what he called love. He said you can't go to Congress and testify or they'll roll their eyes and think that they're on the *Oprah* show. But to take this concept of love and look at how the lack of apology and strained relations with the school system really can impact what the student relationship is with the parent. Now another book that is hot on the school districts' internal training is this book, Stephen Covey book called *The Speed of Trust*. And a lot of school districts are using this for their internal training recently. Look at behavior number four. Behavior number four is to right wrongs, make sure that the right you're doing -- that you right what you're doing is wrong. And you apologize quickly, you make restitution where possible, and you demonstrate personal humility, and you try not to get pride get in the way of doing the right things. So if you find that you're in a school district that is using *Speed of Trust* as an internal training opportunity for teachers and staff, that might reinforce this whole emphasis on looking at apology and hitting home. Also, I think Dr. LeBaron was very clear about communication plans as being a good tool. Cost cutting is extremely important, and ways to cut costs. I have been involved in two very, very protracted mediations. I'm gagged about talking about the cost. It is significant. That was before budget crisis. I now coming back and looking at this whole inability and almost refusal to entertain apology, and looking at the need for school districts to be looking at their litigation cost. And making that public record available to risk managers and to policymakers, being school board members, to know exactly how much money is being spent in litigation costs so that there could be consideration as to whether the dispute resolution program in place was efficient or effective and needs to be changed. But as we're looking at data-driven school decisions being made across the country, and it's just not in my school district in California, but I think it's now time for this community to be asking the hard questions that those fancy little data dashboards they put up to show all kinds of results and indicators. And as they're crunching numbers, that that information be available to school district policymakers, trustees, and the public about how much money is being spent in litigation costs because our budgets are too close -- it's a budget crisis. And I'm coming from California. There's just no money. And every other state is in the same position. And every cent counts and there cannot be extra money spent on needless litigation unless someone is crunching those numbers and that is included in data decision making. Thank you. There is -- humans don't always behave. It's a two-way street

between the school staff and parents and students. And if errors are made, you need to really -- if bad errors are made, there needs to be a full apology. And bad behavior can happen on both sides, both student personnel, and parents. There is an opportunity for change, and change starts at the top. And I am very concerned when school districts are telling their special ed directors that they do not need to talk to parents, that they can hire any lawyer they want as mean and nasty, and they can spend as much money as they want fighting parents. There's to be no discourse, no discussion, let alone apology or dispute resolution. Now a lot of things will improve once there has been an apology. Communication improves. There's an opportunity for solutions. Problem solving happens. It builds confidence in the system. And this gives a lot of opportunity to what Bernie Mayer was talking about yesterday as far as conflict engagement, where once you can get an apology and leveling the playing field, then there can be long-term strategic planning for the entire education of the child versus just trying to nip one little situation in the bud. Now the advantages of early dispute resolution are communication, relationships, building trust and confidence, not disrupting a child's education, keeping children in school, reducing truancy. And all of these are interest-based. And as we're looking at interest-based negotiations, they're all the more important to frame it in that framework of a real interest. Now one place where there's a lot of contention is in the area of reading. And parents will say -- they will be very, very upset that they want it their way, but they want a specific reading program. Let's say the child needs a multi-sensory or Gillingham-based reading program. So they know about the let's say the Wilson program and they will go to an IEP and they will say, "I want the Wilson program for my child." And the school district says, "Whoa, we do methodology, stop." And end of discussion. They have no idea what they're talking about. They call me, I say, "Oh, that's an interest. You need to reframe that. You're concerned that your child needs a multi-sensory approach to reading instruction. Let's reframe it, go back to the IEP table, reframe that." So I think it's very important to keep in mind what the interests are. And in the case of special ed and in the case of where things go awry and there could be a reason for apology, look very closely at interest-based. As far as apologies, just do it, keep it simple. Colin Powell said, "Bad news isn't wine. It doesn't improve with age." So get apologies, if possible, done as quickly as possible. Now I'm going to go from early dispute resolution to look at apologies in mediation. There are basically four kinds of apologies that law professors say go on in mediation. The one that probably applies closest to what we're looking at for special education needs are a happy ending, where there's responsibility accepted and remorse expressed. Now as far as apologies in litigation -- in mediation, the traditional rules have been that there are no apologies. Liability means never having to say you're sorry. The developing trend is using confidentiality agreements to gag the parties. You can tell I've been gagged. And this new legislation, which mainly applies to the medical, but there is an emerging trend in trying to keep apologies flowing. Now we need to remember special education is unique. It is not a reasonable man standard that most attorneys are used to using. It's the child as you find them. Mediators need to be prepared on the issues and the background of special ed, and qualified as far as having an understanding of the framework of the IDEA, understanding

child development, and behavior and disabilities. There's a lot of ways to tie ineffective mediations and frustrated parents. And mediation should be flexible. It takes a lot of time to ferret out in a mediation if the root cause is an apology or if parties want apologies. One of the things about an apology in mediation is emotions. And most skilled mediators know that emotions are probably what it's all about, and that people cannot respond rationally while they're emotional. Emotions need to be confronted. And this is an opportunity in assessing emotions and getting emotions out in private caucus, where a skilled mediator can sense, take clues as to whether people want an apology and how much an apology could reduce all of this as they're working down their emotions so that there can be some creative discussions and ultimate solutions. Mediation is a place where people don't necessarily know how to apologize. They don't know how to necessarily work with people they don't like. And I certainly saw this and see this in my practice. A lot of people don't know how not to be adversarial. They don't know how to not say, "Well, I want it my way." And likewise, school districts have an automatic default, where they're saying, "This is the way we do it. This is the way we do it." And at some point, there is an opportunity to learn how not to be adversarial. Some of it's body language; some of it is what you say; some of it is your attitude. And a lot of people don't have the skills in getting along in working with people they don't like. In some people that is very, very alien to. They haven't necessarily been out in the public where they're trying to please people. They need learning how to zoom in and out and shift gears. And this is something that a mediator can help teach as they're looking at apologies. Now one example that has been given with doing skill training with mediators is to understand that forgiveness -- and apologies might be instant, but forgiveness takes a long time. And there have been nurses that have been involved in mediations that have been extremely wanting forgiveness, but understanding that it's going to take a lot of time. And they will write a note and ask that the family read it later when they're ready to accept an apology. And this might be a good idea also in mediation practice. Again I listed the interest-based issues. Now I'm going to move on to how to apologize. Probably one of the -- when you look at the disability community, one of the best I guess I'll call coups for the disability community was when Rahm Emanuel, in the summer of '09, made a comment in an internal staff meeting using the R-word. And this happened in the summer. This got to the media in January and exploded and took on a viral proportion. And Tim Shriver, who's now the administrator for Special Olympics, invited him, Emanuel, when he was chief of staff, to become involved in the Spread the Word to End the Word campaign. And the disability community got more and more agitated, mainly Arc. Former Governor Palin was demanding Emanuel's resignation and the talk show host had a lot of hay with this. What ended up happening was Emanuel opened -- had an open door meeting in the inner sanctums of the White House with six members of the disability community. One wasn't really overly impressed and wanted a public apology, but this was an example of using apologies for making a little lemonade for the disability community, considering that they could have access and work on this to -- work on this Spread the Word to End the Word. And in my slides that I'll post later, I'll post all the cites for this, including the Saturday Night Live spoof on this.

There are a number of books that have been written. The three that I recommend are *Effective Apologies*, *Mending Fences and Building Bridges*, and *Restoring Trust*. This is written from a business perspective. *The Art of Apologizing and How to Apologize Effectively to Everyone*. The second book was written by an attorney that has good language on when to refer to an attorney. And *The One Minute Apology*, the thin little book, is a great walkthrough on hot items on how to apologize that if you were doing a training or wanting to participate more engaged, is a quick read and a good exercise book for people. Now coming back to the apology basics, you have to make a valid acknowledgement, explain why, express remorse, shame, and make some kind of reparation. And this all comes from Dr. Lazare. A bad apology is worse than no apology at all, so you have to be very, very careful because that can blow up. Now apologies should take responsibility, not just offer sympathy. You shouldn't say, "I'm so sorry for my mistake and I apologize for the pain and suffering it caused your family," is the way you should be apologizing, versus saying, "I'm sorry you had to endure this pain." So it needs to be specific. You need to have the right person apologize. And you don't use consultants apologizing. I've been so desperate to get apologies for parents, I have used consultants, but it isn't best practice. And administrators should consider the importance of apology, apologize early, and show how the situation will be fixed and prevented in the future. And this is a big issue for parents, and it creates a win-win situation. Women apologize more than men. Women apologize better than men. Women apologize probably too much, but you have to be careful in the case of a woman that has -- or a family that has been abused because they can really overly apologize because of their background and probably their wiring. And women are more concerned about restoring relationships, and men are more concerned about winning and losing. And this is all following Tamen and all the called the gender gurus. Apologies also fail because there is an inadequate acknowledgment of the offense. "I'm sorry for whatever I did. Mistakes were made. What I did was trivial; I'm sorry for it." And ineffective explanations, "Someone made me do it. I wanted to get even." Apologies fail because there was ineffective explanation of remorse. "I'm sorry," when you really are sorry that you got caught. Inadequate reparations, "I'm really sorry that you're upset." You're not taking blame. Another reason why apologies fail is arrogance is expressed, not humility. And even people make -- even the best people make mistakes. And apologies that avoid responsibility use the passive voice, so do not use the passive voice to apologize. Apologies fail where there's vague language and not specifying the offense. "I apologize for whatever happened." This is like Nixon's resignation speech. "He deeply regrets any injuries that may have been done." And being in Oregon, I needed to throw out a [inaudible] apology. His apology for sexually abusing females, some of them I knew, were he referred to them as alleged offenses. And this insulted the intelligence of audiences, if not the entire state of Oregon. Now the last but most significant is apologies fail for lack of sincerity, and there's no buts. No ands, ifs, or buts. And I think every good mother told you that. An example of a bad apology was Senator Kerry making the comment that if you don't get an education, you'll get stuck in Iraq. He said, "I sincerely regret those words were misinterpreted to wrongly imply anything negative about those in uniform. I personally apologize to any

service member, family member, or American who was offended.” Another bad apology was that same year in 2006 by Senator George Allen, who was running for Senate -- for reelection to the senate in Virginia. And he was at a press release in Charlottesville and there was a young man that he referred to as macaca, “In the yellow shirt, whatever your name is. He’s here with my opponent, he’s following us around. That’s just great. Give a welcome to macaca here. Welcome to America and make a real world -- and the real world of Virginia.” And then he started talking about the war on terror. Well, this macaca was a fellow engineering student at the University of Virginia with my daughter. His response was, “I would never want to demean him as an individual. I do apologize if he is offended by that. That was no way the point.” He was not elected and Jim Webb is in the United States Senate. Now an example of a good apology is Guillermo Mota. Does anyone know who that is? It’s a baseball player. He made a very, very full apology. He was a player for the New York Mets, and he went on the team and was found to have used enhancing drugs. And he had a very, very full apology. You can read it here. It was clear. He acknowledged his transgressions. He seeks apology and he offered whatever he could to make it right, and that he was not to do it again to his public. And you can contrast these, and Mota, when he wasn’t playing, his contract price when he was on suspension went up \$7 million. He went on to play for the San Francisco Giants last year, and in the second game of the World Series pitched the 9-0 game against the Rangers. So he did much better with his karma, with his karma through his apology than certainly Senator Kerry or Senator Allen. Here is an example of Mota’s apology. Now when you’re looking at apologies, the whole issue comes to also in this world. And as we’re looking at mediation, training for apologies, forgiveness, and reconciliation is the whole concept of forgiveness. Forgiveness does not happen without apologies. Apologies have to be open to the heart. And the opposite of forgiveness is revenge. And revenge brings anger. So this is why it’s even more important to have the first step in apologizing. Here is our cartoon about apologies being so difficult to write. The super teddy was thrown off the bus, given school discipline. For apologies be sincere, look at the person in the eye, don’t let the person know you’re hurt -- let the person know that you know that they’re hurt and that they didn’t do anything. Allow the person that you’ve harmed to share their feelings in discomfort. Make an effort to right the wrong and promise that you won’t repeat it again. Here’s the policy, you don’t just say you’re sorry. You don’t make excuses. You’re not afraid to let the other person know how badly you feel that you’ve done something wrong. And you expect others to -- don’t expect anyone to forgive right away. It takes time. Don’t let others apologize for your misdeed, and don’t think it’s ever too late to apologize. You can’t delegate apologies. Now I’m going to go through a series of issues that I have pulled for my apology radar, where apologies could be so simple and sometimes the world is so complex. And probably the number one area for litigation is autism. I have attended a LRP program that was put on by the special ed director in California, Calabasas school district. And how to build and maintain a comprehensive autism program. And now this has been turned into a book. When she was setting up the autism program in Calabasas, which is right outside of Malibu, so it’s an extremely wealthy community, no Title I, she said that it was

important to have an early warning system to predict problems, intervene by reviewing, and monitoring data. And it's important to have strategies, proactive intervention, and communication with parents. Give parent trainings, have decision flowcharts and rubrics for making decisions. And the SELPA has a one-to-one aide decision tree so parents can understand how decisions are made. And data collection, parents need to understand data collection. And after spending 12 weeks of my life in two due process hearings, this sounds like it's pretty good advice. But it shows in that world of autism how things can so quickly go wrong. It's a day-by-day looking at the data, having the communication plan, and making sure that if anything goes astray, that everyone is on an even keel because apologies have been given. I also think that a lot of misunderstandings and needs for apologies many times are because of a lack of understanding about poverty. In my area, there's been a lot of training in the school districts by Ruby Payne about the hidden rules of the middle class that govern schools, generational poverty, and the importance of relationships as motivators. The kids are successful coming out of school from very impoverished backgrounds if they have had someone significant that they have latched onto that's given them support, like a teacher or a counselor. And it's very important for those relationships, and that's why apology is all the more important. And I did think about that really seriously when I got here and was reading about the latest football problem at the University of Oregon with Cliff Harris, who went to high school with my daughter. And she was in a magnet program and there are certainly generational poverty in a particular profile, and there needs to be a lot of assimilation concerns and, you know, a lot of things that could have happened early in his career and decision making. One of the things that was very difficult for me to do a lot of advocacy work at that particular high school and in his group of students was they were always laughing when they were getting in trouble when I was trying to lecture them and when the school was. And this is a cultural thing that when they're being disciplined, these kids laugh. And this needs to be changed, but it's the way it is. In very impoverished families, mothers are extremely important, and it's unforgivable to insult a mother. All the reason for another apology. There was a great discussion today by Dr. LeBaron about cultural issues, acknowledging differences in cultural competency. In my work with the Hmong community, and I know there are two people here from Alaska and there are Hmong students in the Anchorage -- I don't know what other parts. It's extremely important to collaborate and work with community experts, including church, social service, and academic experts. We used to have in the Fresno area a Southeast Asian cultural education symposium. And the Hmong come from eight different clans, and the head general would come and he would lecture the parents on how to be good parents, how to work with the school district, and the importance of brushing their teeth and the families getting along with their parents. That was very, very beneficial. It's not done anymore and General Vang died last year. One of the cultural issues also with Southeast Asians is a lack of acceptance in their culture of a disabled child. And we had a challenging situation where I, as the legal aid attorney, and the school district was trying to figure out how many children this particular Hmong family had. And there were two children that had the same name that were born very close to each other, and

one was being hidden and they had the same name. And the school was very concerned about their Child Find obligations, as I was. And everyone collaborated and we solved the problem and got services, but it's always something to be on the lookout for. The number one issue, parents will fall on their swords and will fund litigation is lack of reading when their children cannot read. It's very important to have the early screening. I cannot come to the University of Oregon area and not mention how important DIBELS is and having all parents understand DIBELS and not be embarrassed to ask questions. If there are apologies around DIBELS, apologize. Just keep it going. RTI is very confusing. I've had a lot of parents so concerned that their children are going to flunk out of school because they have these graphs and they have no idea what to do with these graphs except it just is going down. And there needs to be, particularly in Title I programs that are very well funded, a lot of parent education explaining what RTI is and the data. Bullying is a real problem. I have had clients that have been bullied and have come up with a mediated agreement where they got to hear from me and the school administrators for three hours talking about bullying prevention. And I got an apology. Bullying -- that was before all the legislation. It needs to be monitored. Suicide prevention is critical. And teen date violence is an issue that is real to parents and to students, and it's a Title IX issue and a lot of people aren't getting it, so keep that on your radar as a possible place for the need for an apology. There is a lot of discrepancy and confusion in districts across the country on whether a child is on an IEP or a 504. Some school districts are great when it comes to an IEP. Some are great when they're a 504. You have to know your school district and look at the -- and learn to work with your school district, but to be giving them the data on the new ADA major life activities that are affected. Another area that comes into a lot of problems where parents have been very successful in working in an apology format with the district is to provide source materials from medical support organizations that have sample IEPs for the American Diabetic Association. And bipolar and Tourette's and ADHD are areas that I've had parents working on not formal apologies, but putting everyone in apology mode to be providing these materials. Also for other health impaired, it's very important to get your student, your school nurse. And school nurses can help facilitate a lot of apologies in misunderstandings at some point. Other areas are -- I'll just quickly mention that where apologies can crop up are speech and language problems. And the ASHA professional association has a great website and a focus on literacy. Transient families, families moving all over, these records don't get there. We do not have electronic school records like we do or we're working on towards medical records. And that's a room for a lot of apologies, and scrutiny particularly with children that have emotional disturbance and you're showing up at a manifestation hearing and no one knows that the child is ED eligible. The McKinney-Vento resources are great. There's a lot of things that can happen and a lot of opportunities for apologies there. The rare diseases when they crop up, look at the NIH database. There are a lot of site-based management problems that are ripe for apologies and principles. And the one thing about having a child coming in and out of really high placed medical communities is you're doctoring with the best of the best. Those nurses and those doctors, they honor mothers. You go back to the

school district and you're not quite so honored, so there is a real need for honoring all parents. And there are a lot of grandparents raising children and they don't understand the new world of education, and there's a lot of confusion and opportunities for apologies there. Now my question is, in conclusion, is can apology be -- here's my other errors. Can apology be the new normal? I hope that all this will contribute to the discussion and that this will continue on. There really needs to be looking at the economic terms and data research and how much money is funding school dispute litigation and put it into services for children. I do think that part of a superintendent's performance review and principal's needs to be looking at dispute resolution and, you know, hopefully everyone will be understanding the use of apologies. And I certainly hope that some of the criteria for Race to the Top will also be looking at these factors, how school districts are educating all students, including the special ed -- children on IEPs and 504s and special ed students. And I am so glad that the organization CADRE exists because I can buy into my philosophy, and I hope to hear a lot more about apologies. And thank you all for coming.