


*CADRE's 8<sup>th</sup> National  
Symposium  
October 2021*

# **CRISIS RECALIBRATION PART 1**

Rebuilding the IEP Team



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# **CRISIS RECALIBRATION PART 1**

Rebuilding the IEP Team

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Improving outcomes for students with disabilities.

**01**

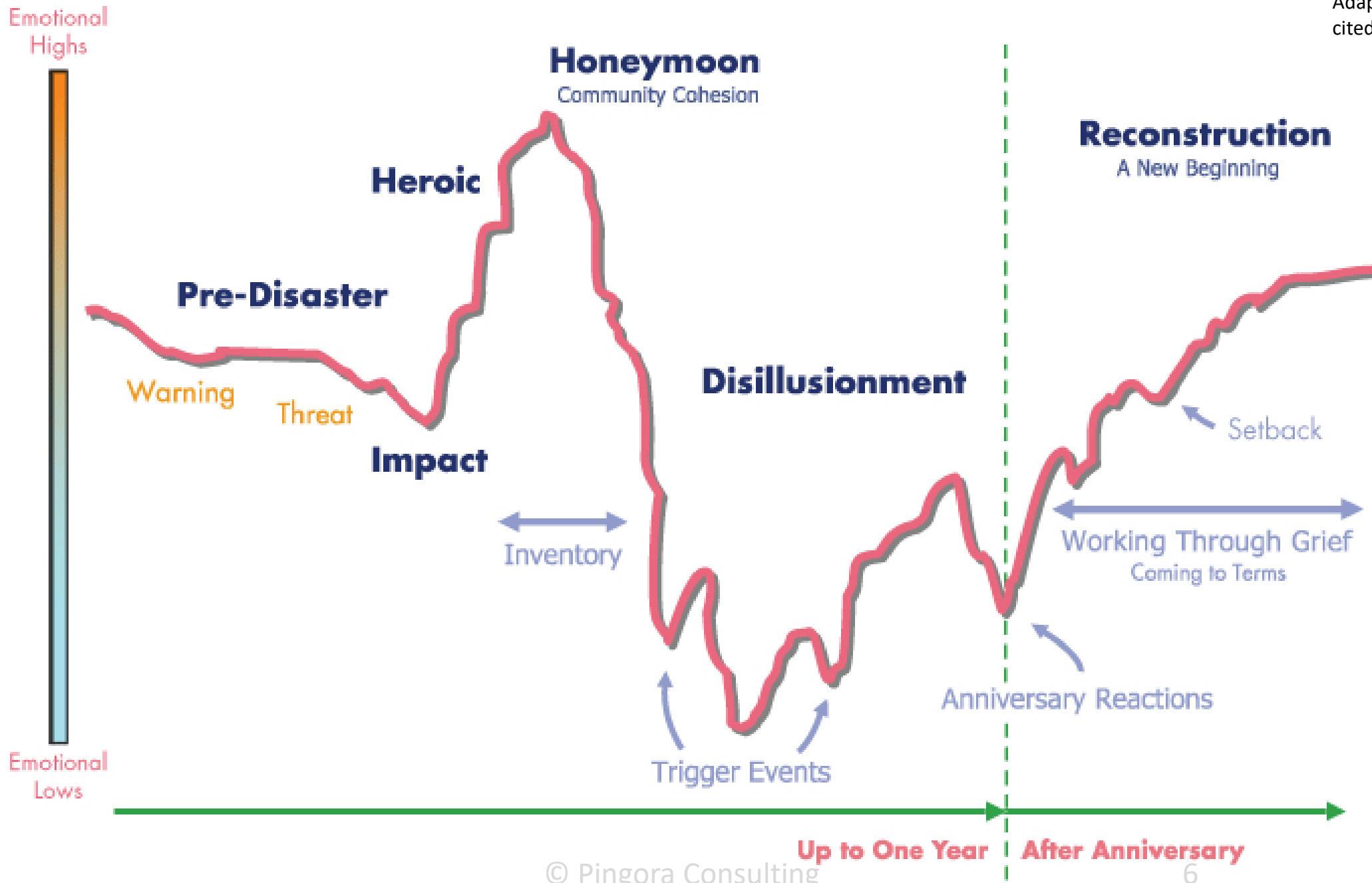
## The Other Side

# The Crisis

We are living through one.

- Crisis may include natural disasters or other catastrophic events.
- Regardless of the origins, research supports a predictable response pattern that also applies to special education and IEP teams.





# The Crisis

- Schools should be well into the "Reconstruction" or REBUILDING stage. What does that mean?
- Understand from the perspective of the other stages.

Think of the pandemic as a crisis or disaster.

- Early warning signs started the ground-swell of concern. This stage is the “Pre-Disaster” phase.
  - This early stage is not about one’s personal beliefs about the pandemic,
  - It is about the HUGE impact on our country’s education system.
  - It is about the worry and stress of what happens next if school closes?





# Next is the “Impact” phase.

This is when schools & communities closed.

- The greater the disaster’s scope, the greater the psychosocial effects.
- A short-term closure would have had fewer psychosocial effects.
- This is when no one knows what to do because the impact of this crisis is “unprecedented.”

# The “Heroic” phase quickly follows.

During this phase,  
there is a sense of  
altruism.

- We don't want teachers or other students to get sick.
- We don't want our families to get sick.
- We will figure this out after the crisis passes.

# The “Honeymoon” phase.

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Optimism exists that everything will be OK.

- The school closure can't last forever.
- In-person instruction will resume soon.
- I'll do my part to help out during the crisis.



Optimism turns to discouragement.

- Stress took its toll, and negative reactions began to surface.
- “Wait a minute, my child just lost three months of education.”
- “I can’t let this continue.”
- “How are you going to make up for this?”



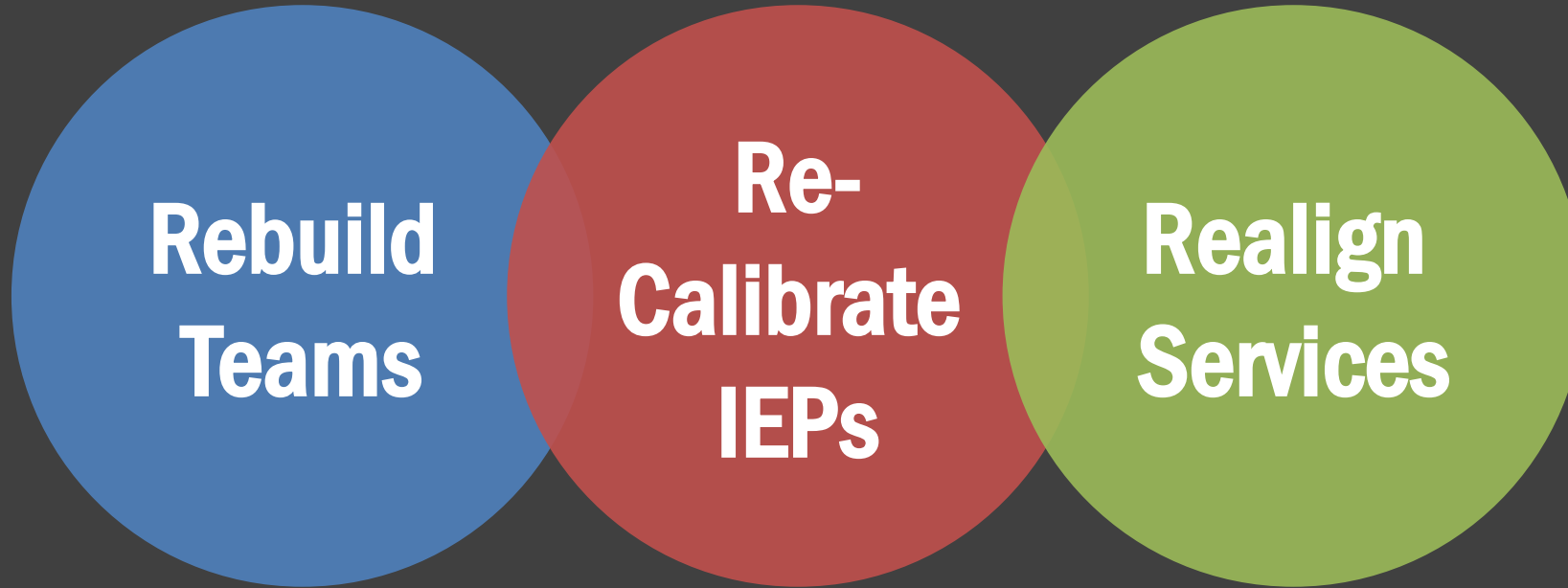
Now comes the  
“Disillusionment”  
phase.

Finally, the  
“Reconstruction”  
phase.

Schools resume and are adjusting to a new normal.

- The focus turns to how to provide FAPE when instruction looks different.
- The discussion includes how to make up for time already lost.
- There is a sense of urgency, and sometimes anger, that the reconstruction isn't going fast enough.

# Reconstruction Goals



02

Rebuild Teams



## Rebuild the Team

### **Communicate!**

- Now is the time for more frequent communication.
- Convene IEP team meetings telephonically, virtually, or in person.
- Measure and report progress more frequently.
- Openly discuss the effects of different service delivery models.



If you haven't included the parents in decision-making, the more likely they are to dispute your decision.

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# Parent Participation

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It has NEVER been more important than NOW to communicate with parents.

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Special education has experienced unprecedented times.

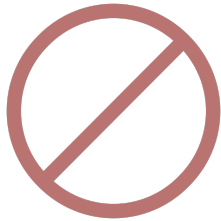
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Lack of communication builds mistrust.

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Mistrust breeds disagreement.

# Parent Participation



**DON'T**

DON'T exclude parents from the decision-making process.



**DON'T**

DON'T make unilateral changes to IEP services.



**DON'T**

DON'T underestimate the importance of PWN.



# FAPE is still FAPE

- Neither Congress or the USDE have authorized a departure from the long-established FAPE standards during the pandemic.
- IEP teams must go through the same steps to propose an IEP based on a student's unique educational needs.




# Secretary of Education Report to Congress

## April 27, 2020

The Department is not requesting waiver authority for any of the core tenets of **IDEA** or Section 504, **most notably FAPE in the LRE.**

**OSERS made clear that, for the 2020-2021 school year, no IDEA requirements were waived.**

Letter to Special Education and Early Intervention Partners, August 24, 2021.



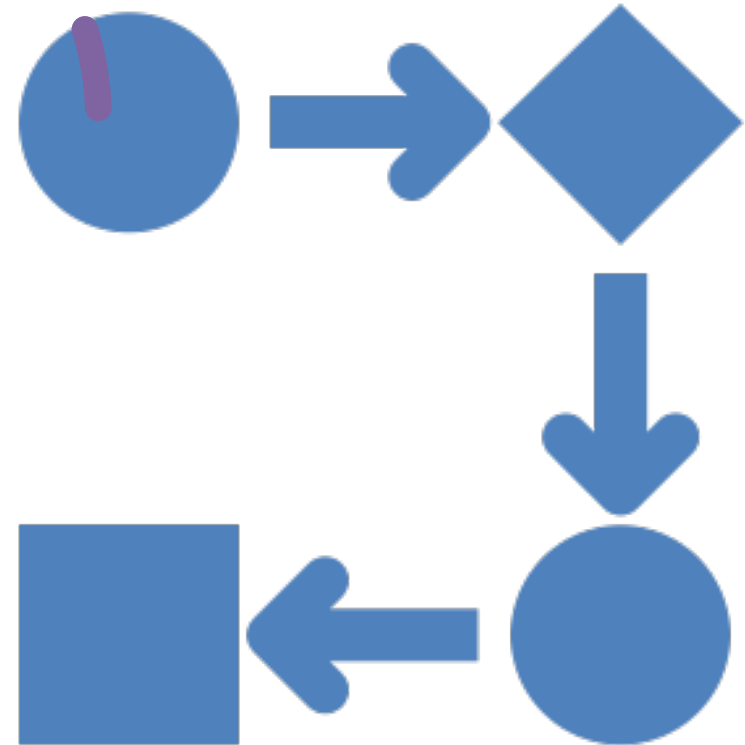
## Letter to Special Education and Early Intervention Partners, August 24, 2021

OSERS further clarified that, no matter what primary instructional delivery approach was chosen for that year, SEAs and LEAs remained responsible for ensuring that FAPE was available to all children with disabilities.

# Rebuild the Team

Return to team decision-making asap!

- Whether team meetings are in person or virtual should be determined on a case-by-case basis.
- The take away: **MAKE DECISIONS AS A TEAM!**





# Team Decision- making

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If face-to-face meetings are not feasible or practicable, the Department encourages the use of the flexibility included in 34 C.F.R. § 300.328 which allows LEAs to conduct initial and annual IEP Team meetings through alternate means.

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Such alternate means could include a telephone or video conference call (if feasible and consistent with privacy standards) if acceptable to the parents and other IEP Team meeting participants.

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*COVID-19 Questions & Answers: Implementation of IDEA Part B Provision of Services, Q6 (OSEP 2020).*

# Team Decision-making

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No matter the format of the meeting, all required participants AND the parents should be present or appropriately excused from the meeting.

*34 C.F.R. §300.321.*



# The Focus: The Student



The health of the team improves when focused on a student's educational needs and the good faith efforts to meet those needs.



Work through and come out on the other side of conversations about missed service, lack of progress, virtual service, etc.



# Rebuilding

Through Good Faith Efforts



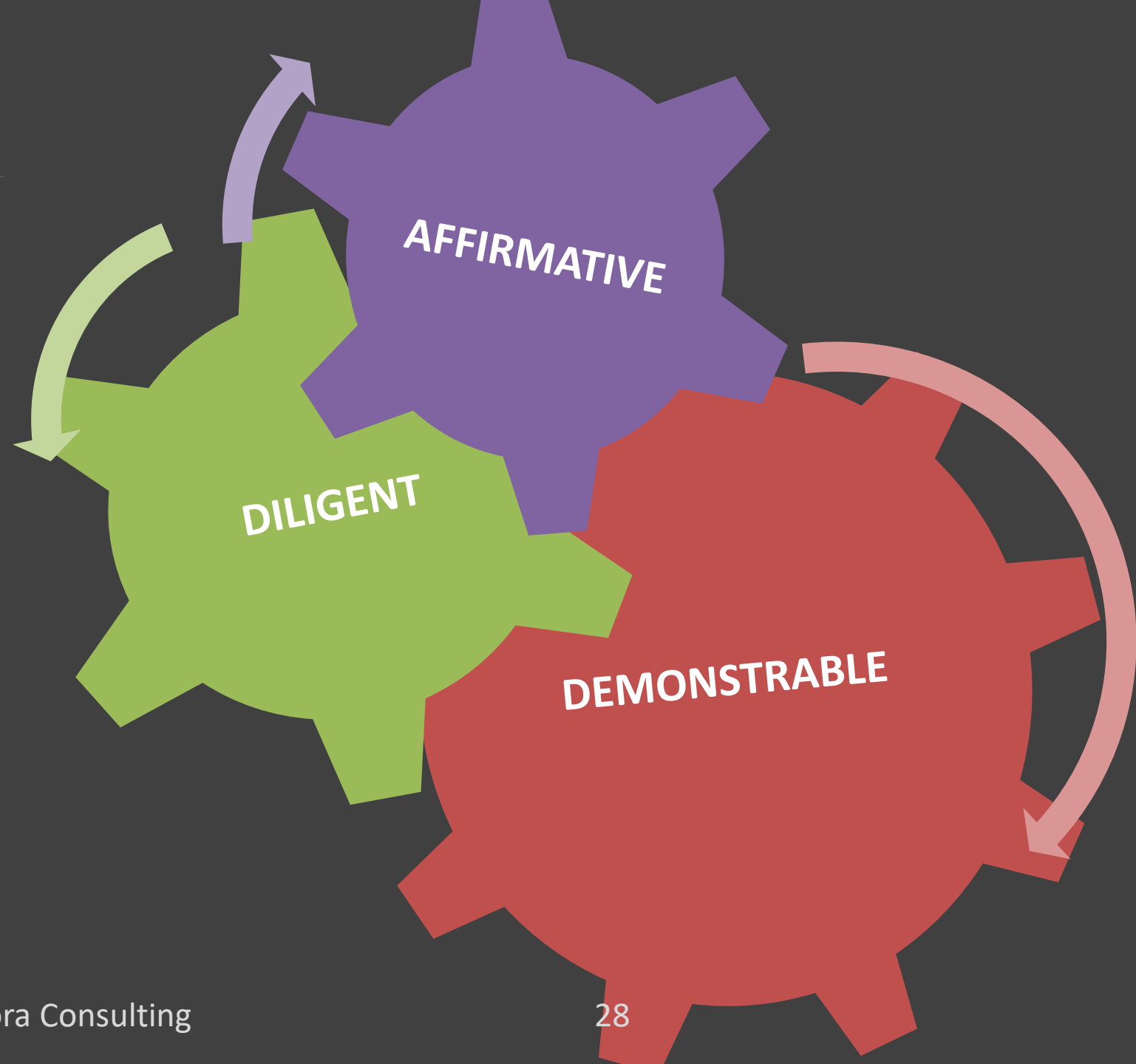
Diligent – Working diligently to achieve compliance.



Demonstrable – Well documented clear actions.



Affirmative – Actively working vs. passively allowing circumstances to control.



# GOOD FAITH EFFORTS

- Efforts that demonstrate one or more of the following:
  - Thorough exploration all options considered for the provision of FAPE.
  - Implementation of interim procedures to minimize service gaps.

# GOOD FAITH EFFORTS

Communication with parents to reschedule meetings, services, or assessments, etc.

Consideration of a *recovery services* plan if needed.

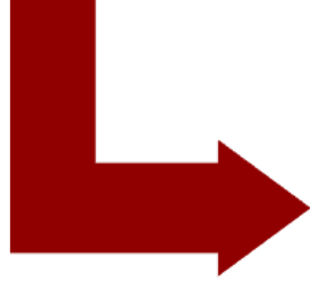
*Adapted from OSHA Memo Discretion in Enforcement When Considering an Employer's Good Faith Efforts During the COVID-19 Pandemic (April 16, 2020).*

# Critical Stage:

- The goal: A clear understanding of the student's current functioning post crisis.
  - This translates to descriptive present levels that take into account breaks in service or alternate service delivery.
  - That information must be used to re-define skill gaps as a team.
  - Skill gaps translate to measurable goals developed by the team.

**PLAAFP**

Compared to the general curriculum



**Skill Gaps**

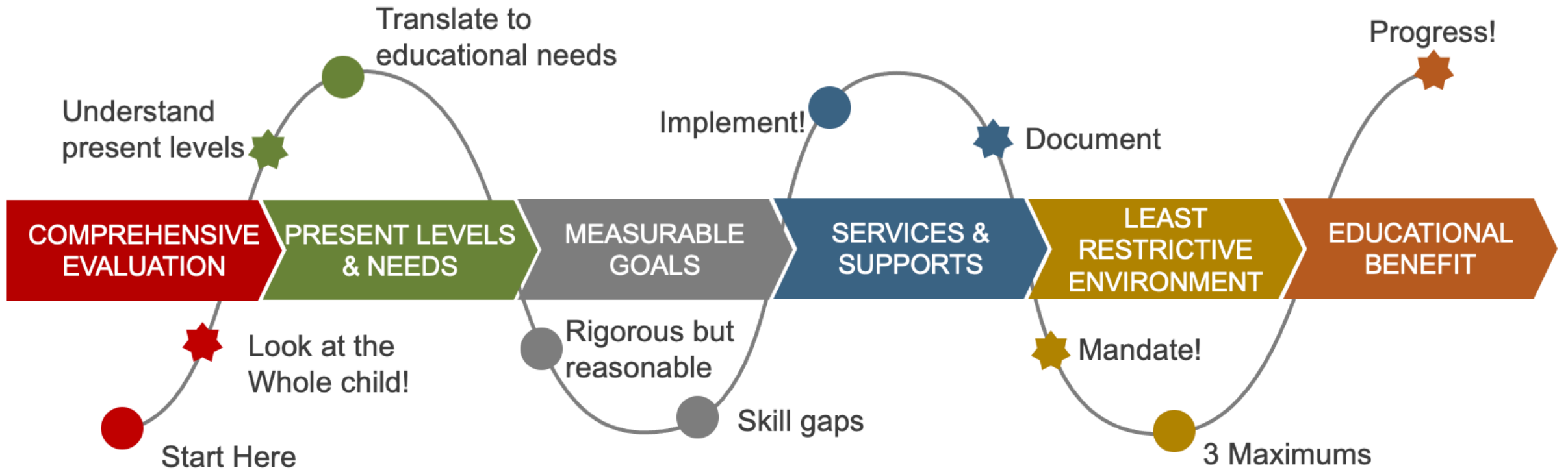
Compared to standards



**IEP Goals**

Unique for every student





# The Starting Point: FAPE Continuum

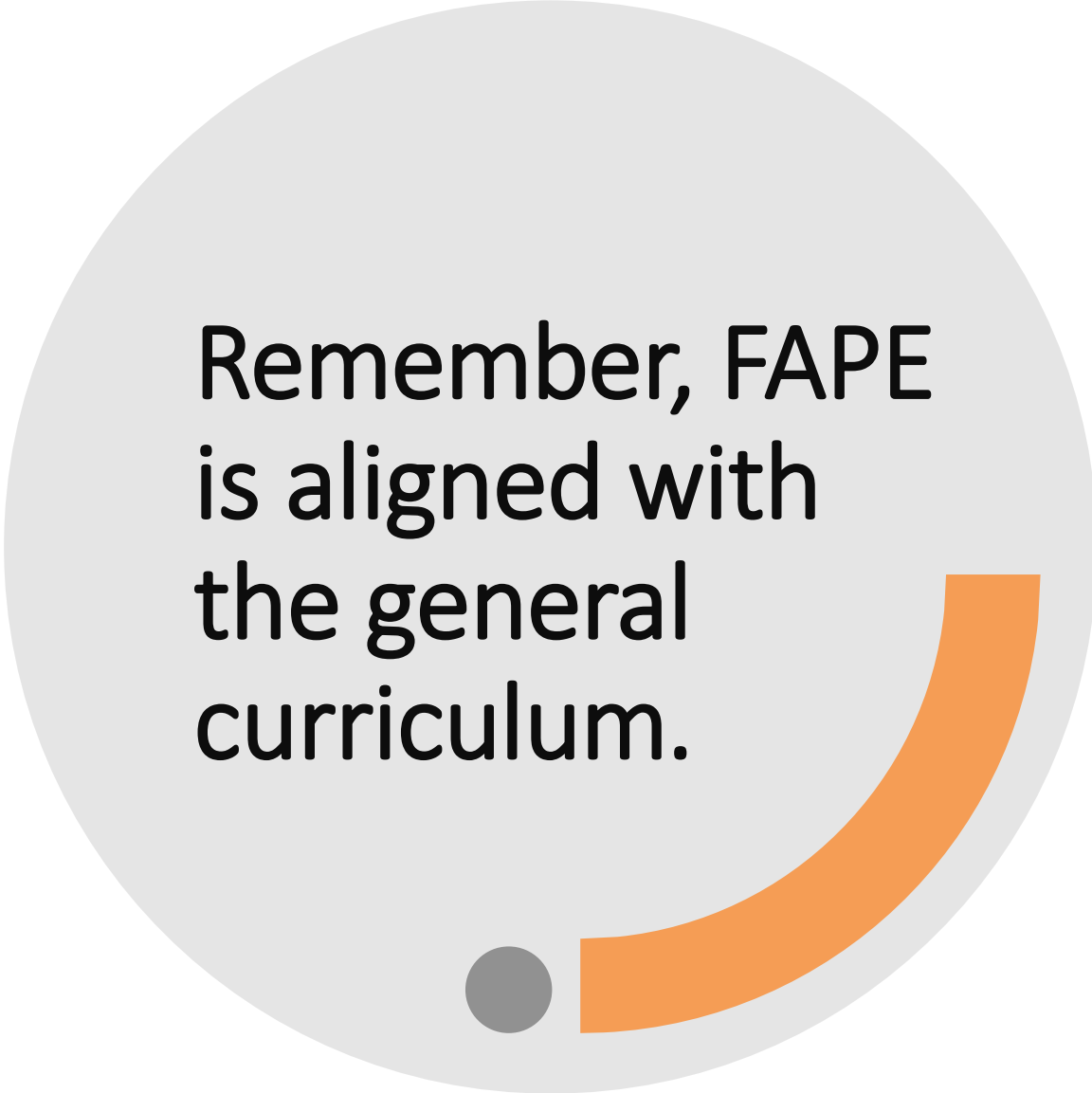
# The FAPE Standard

- A district must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child's unique circumstances.
- The goals in the IEP must be sufficiently ambitious in light of his/her circumstance.
- The IDEA does not guarantee any particular level of education and does not promise any particular educational outcome.

*Andrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (2017).

*34 C.F.R. §300.39(b)(3)*

- Specially designed instruction means adapting as appropriate to the needs of an eligible child the content, methodology, or delivery of instruction –
- To address the unique needs of a child that result from the disability, and
- **To ensure access of the child to the general curriculum**, so that the child can meet the educational standards that apply to all children.



Remember, FAPE  
is aligned with  
the general  
curriculum.

## LINKED CONCEPTS.

Evaluation

Present Levels & Needs

Measurable Goals

Services and Supports

Least Restrictive Environment

Educational Benefit

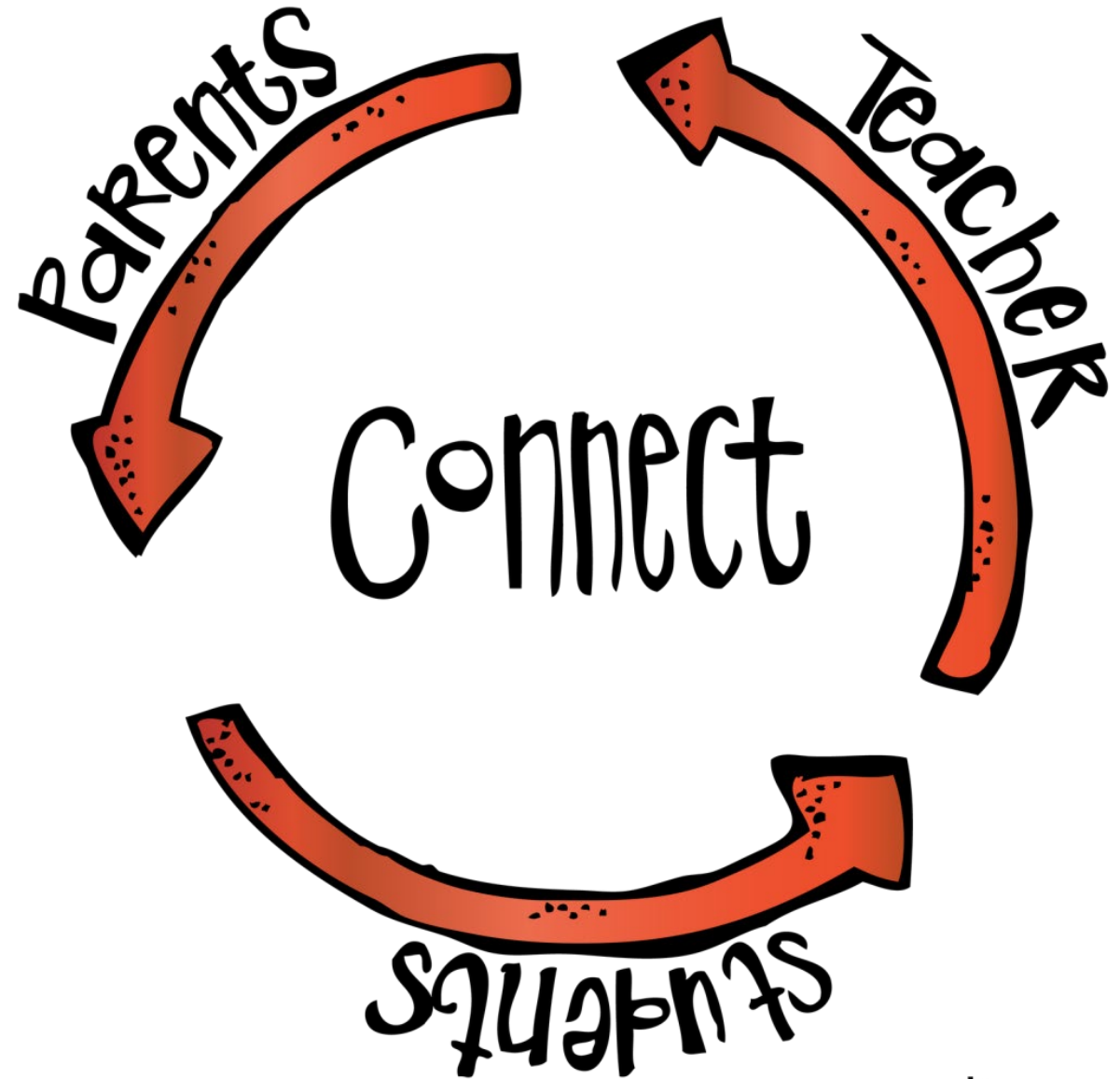
**A BREAK IN ANY LINK IS CRITICAL.**

**NO EDUCATIONAL BENEFIT = A BROKEN LINK.**

**GO FIND IT!**

Parents are  
equal  
participants in  
this process.

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- IEP teams are NOT required to meet in person while schools are closed, BUT THEY ARE REQUIRED TO MEET.
- Because district must take steps to ensure that parents can participate (34 C.F.R. §300.322), if meeting virtually, make sure that the parent has the technology needed to participate.
- Caution is advised: If schools are holding other in person events, like sporting events, then it is likely not reasonable to deny a parent's in person meeting request.

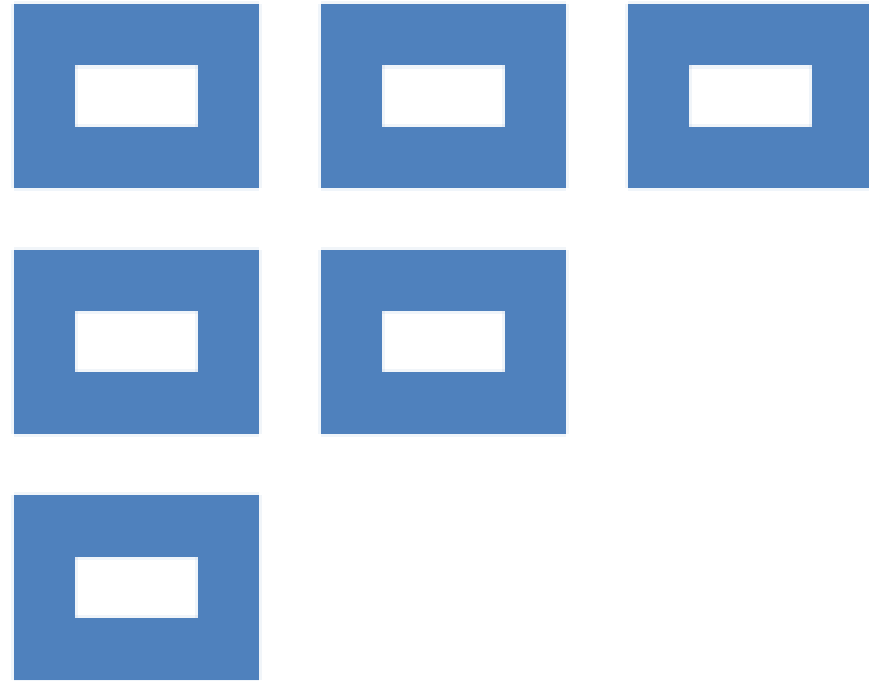


# Virtual Meetings

Which team members must participate in this discussion?

The full IEP team per 34 C.F.R. §300.321(a).

*COVID-19 Questions & Answers:  
Implementation of IDEA Part B Provision of  
Services, 77 IDELR 138 (OSEP 2020).*



IEP Teams should discuss and identify how the special education and related services included in a child's IEP will be provided and should consider a variety of instructional methods and settings.

*COVID-19 Questions & Answers: Implementation of IDEA Part B Provision of Services, 77 IDELR 138 (OSEP 2020).*





Don't forget the  
importance of PWN.

Use PWN to thoroughly explain and  
memorialize the team's discussion.  
It's mandatory per 34 C.F.R. §300.503.

# What about parent requests?

- Teams must openly consider any request made by a parent for services, evaluations, placements, etc.
- Documentation is critical for this conversation.
- PWN must be provided in response to a parent's request regarding the identification, evaluation, educational placement, or the provision of FAPE. *34 C.F.R. §300.503.*

# Challenges to Rebuilding



For example, what if a parent requests a paraprofessional in the home to supervise remote instruction because the parent works outside of the home?



The district must openly consider whether the student needs a paraprofessional in the home in order to receive FAPE.



It is challenging to untangle the need for supervision in the student's home vs. an educational need for 1:1 assistance in order to make progress.

# Killoran v. Westhampton Beach Sch. Dist.,

*77 IDELR 96 (E.D.N.Y. 2020).*

- The judge acknowledged that the parents' work schedules prevented them from staying home with the student on school days, and that they did not want to allow instructors in their home during the pandemic.
- However, the judge explained that she had to consider the district's need to protect student and staff safety. The judge noted that the student's difficulties with eating, toileting, and sanitation created "particular challenges" for school employees attempting to enforce social distancing and other safety protocols in an already-crowded building.

Killoran v.  
Westhampton  
Beach Sch.  
Dist.,  
*77 IDELR 96 (E.D.N.Y. 2020).*

- "The Court is sympathetic to [the parent's] concerns, as well as the struggles of every working family trying to balance childcare needs during these times," the judge wrote.
- "However, the balance of hardships does not tip in [the parent's] favor."

# *L.V. v. New York City Dep't. of Educ.,*

77 IDELR 13 (S.D.N.Y. 2020).

- In deciding whether and how to provide a child's special education services remotely during the pandemic, a district should address whether the method of delivering instruction will enable the child to receive FAPE.
- This may require conducting an assistive technology evaluation and considering whether the child's disability-related characteristics will make the proposed method of providing remote instruction unfeasible.
- The District Court reasoned that the district **failed to explain** how delivering the child's Applied Behavior Analysis therapy and other services via a tablet would provide him FAPE.

# *In re: Student with a Disability,*

77 IDELR 25 (Kansas SEA 2020).

- A district violated the IDEA not only by failing to ensure a seventh-grader with an intellectual disability received modified assignments when her school closed due to the COVID-19 pandemic, **but also by failing to include the parent in the development of the student's individualized continuous learning plan.**
- A district's shift to remote learning does not relieve it of its obligation to provide the accommodations and modifications a student with a disability needs to access the general education curriculum.
- Unless the district gives the parent prior written notice, it must continue providing any modifications required by the student's IEP.

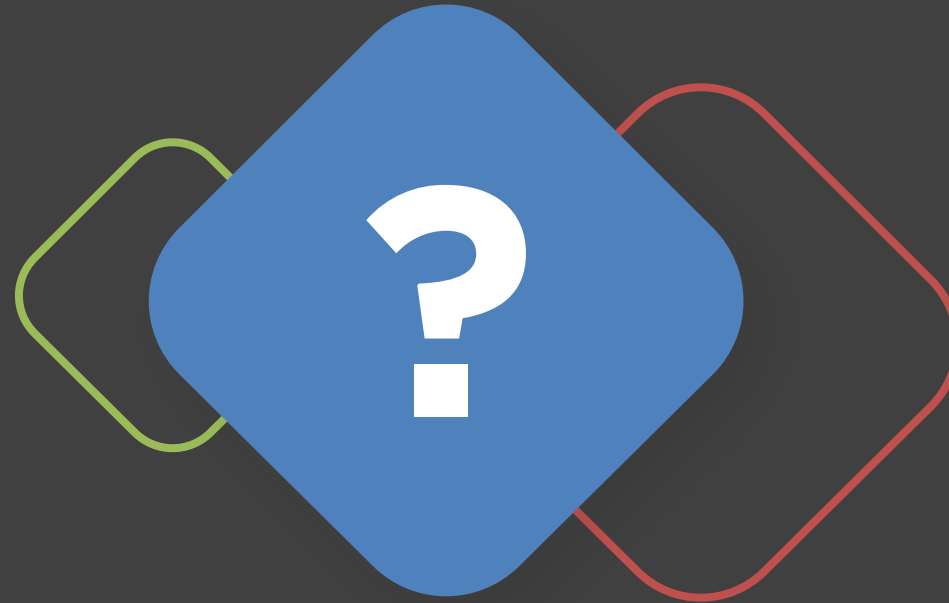
*Preciado v. Bd. of Educ. of Clovis Mun. Schs.*,  
76 IDELR 67 (D.N.M. 2020).

- A New Mexico district denied FAPE to an elementary school student with a specific learning disability not only by developing inadequate IEPs, but also by failing to ensure she received appropriate instruction in reading and writing.
- If an IEP team has information suggesting that a student with a disability is not progressing as anticipated, it should consider the need for different or additional services.



*Preciado v. Bd. of Educ. of Clovis Mun. Schs.*,  
76 IDELR 67 (D.N.M. 2020).

- A district that continues a student's current level of services despite her lack of progress may very well find itself defending a FAPE claim. Although the student in this case repeatedly failed to meet her reading and writing goals, her IEP team offered substantially the same program for three years in a row.
- Not only did the student's third-, fourth-, and fifth-grade IEPs have "extremely similar goals and recommendations," but the evidence showed that she did not receive adequate instruction in reading and writing.

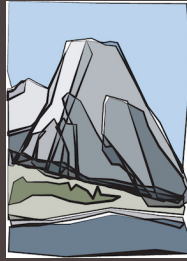


Questions?



Comments?

**THANK  
YOU**



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