

## **Lunch and Learn IDEA: You be the Judge**

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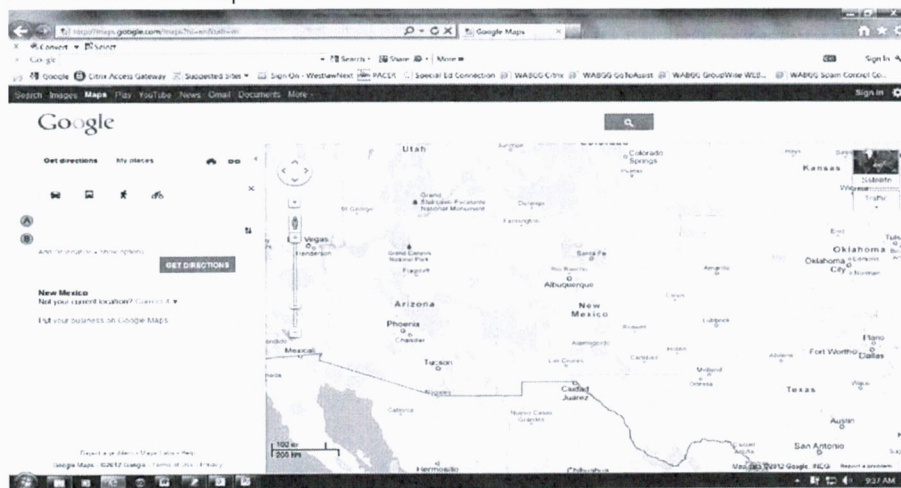
- Using your personal technology device
- Log in to SLIDO.COM
- Event Code: WGNE4
- Answer this:
  - How long have you been a practicing administrator?

## The IDEA Basics

- ❑ “All” means ALL.
- ❑ With a “zero reject” philosophy, the law requires us to expand our definition of what “education” means.
- ❑ Decisions must be individualized, based on the needs of the particular student.
- ❑ Decisions must be based on evaluation data.

## The Basics

- ❑ The IEP is a roadmap.



## **The Basics**

- Each student has an IEP Team.
- The IEP Team develops an Individualized Education Program for the student.
- There must be meaningful parental participation.

**What is your role in Special Education?**

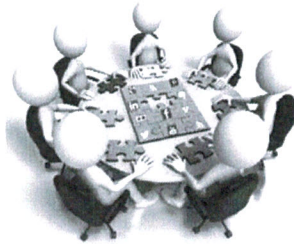
## Principal's Primary Responsibilities

- ❑ Responsible for the education of all students in the school, "ALL" means All.
- ❑ You are at least familiar with the concepts and practice of special education.
- ❑ Ensure your staff are aware of the process for identifying students with disabilities.
- ❑ You need to be prepared to lead meetings related to services for students with disabilities.
- ❑ Ensure your staff are implementing services appropriately.
- ❑ You need to know the procedures when discipline issues occur.

### Principal's Primary Responsibilities:

**You need to be Prepared to Lead Meetings Related to Services for Students with Disabilities**

**The IEP MEETING!!!!**





## Upside Down?

- ❑ Decisions in special education matters come from the bottom: the evaluation data concerning one student.
- ❑ They flow upwards to the IEP Team.
- ❑ The District is bound by the decisions of the IEP Team.
- ❑ Administrators and board members have less direct control—it is upside down.
- ❑ IDEA requires open mindedness- creative is the word

## SLIDO.COM

- ❑ Using your personal technology device
- ❑ Log in to SLIDO.COM
- ❑ Event Code: WGNE4
- ❑ Answer this:
  - Who are the required IEP Team Members?

## Who Are the Required IEP Team Members?

- Parent.
- Regular education teacher of the child (if the child is, or may be, participating in the regular education environment).
- Special education teacher of the child or special education provider of the child.
- District Representative.
- Individual who can interpret the instructional implications of evaluation results (who may be one of the other members of the team).
- Student, whenever appropriate.

34 CFR 300.321.

## Who Are the Required IEP Team Members?

AND

- At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including; related services personnel, as appropriate.

34 CFR 300.321.

## **You be the Judge?**

### **Can IEP team convene without the principal?**

A preschooler's IEP team met to develop a new IEP for the child. The school principal, who was the district representative at the meeting, had a scheduling conflict and could not attend. However, the principal designated the school guidance counselor to serve in her absence. The counselor did not have the power to commit the district's resources.

The Occupational Therapist who conducted the child's OT evaluation and recommended environmental modifications related to the child's ADHD, also could not attend. As a result, the team declined to consider the evaluation results. The child's special and general educators who were familiar with the child were present at the meeting.

The parent alleged that the IEP team was improperly comprised.

## **You be the Judge?**

### **Can IEP team convene without the principal?**

Was the IEP team properly constituted?

- A. **YES.** A district has discretion to choose who will serve as the district representative.
- B. **NO.** The evaluator was not present to interpret the evaluation results.
- C. **NO.** The counselor was not qualified to serve as the district representative.

## You be the Judge?

### Can IEP team convene without the principal?

NM ED pointed out that

- ❑ a district does have discretion when appointing the district representatives,
- ❑ representative must be an individual who is qualified to provide or supervise the provision of specially designed instruction, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of resources of the public agency (34 CFR 300.321(a)(4).
- ❑ Moreover, the district representative must be someone who has authority to commit agency resources and able to ensure that the services set out in the IEP are actually provided (*Letter to Cormany*, 34 IDELR 9 (OSEP 2000)). **A is incorrect**
- ❑ OT absence: OT is a discretionary member, and IDEA does not require the presence of the individual who conducted the assessment, so long as someone can interpret the instructional implications of the evaluation data. **B is incorrect**

## You be the Judge?

### Can IEP team convene without the principal?

**C. is the correct answer:** Because the person appointed as the district representative lacked authority to commit district resources, the team lacked a mandatory team member. *In re: Student with a Disability*, 111 LRP 39019 (SEA NM 04/11/110)

Because the guidance counselor lacked the authority, the team was not properly constituted.



## Administrator vs. District Representative

- Are you acting as an Administrator?
  - Enforcing the student code of conduct
  - Conducting investigations
  - Determining facts
  - Worrying about all students
  
- Are you acting as a District Representative?
  - The decider
  - Does not question investigations/outcomes (even your own)
  - Your decision is final for the IEP
  - Worrying about one student



## District Representative

- Qualifications:
    - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
    - Is knowledgeable about the general education curriculum; and
    - Is knowledgeable about the availability of resources of the District.
- 34 C.F.R. § 300.321(a)(4).
- Making sure the IEP meets the student's unique needs:
    - Does the student need additional services?
    - Is the student receiving too many services?
    - What is the goal for the student's post secondary education?
    - Are the parent's concerns/requests reasonably addressed?
    - Are we in compliance with the procedural requirements?



## Making Decisions- District Representative

- ❑ The District Representative is ultimately responsible for ensuring that a student is offered an appropriate program.
- ❑ If all team members, including the parent, do not agree, it is up to the District Representative to determine appropriate services and provide parents with prior written notice of the offer and of the parents' right to seek resolution of any disagreements by initialing an impartial due process hearing.
- ❑ It is not appropriate to make decisions based on a majority vote. Such a practice would almost always make the parent's voice moot.



## Making Decisions-Administrator

- ❑ Examples of Administrative Decisions:
  - Who the teacher will be
  - Who will provide the services
  - How to address truancy/tardiness, if not related to the disability
  - How to address parent's problems with staff
  - Whether a student violated the student code of conduct
- ❑ Make these decisions outside of the IEP Team meeting.



## **A Few Things Not to Say...**

- "We've never done that before."
- "We don't do that for any of our other students."
- "If we do that for your child, we will have to do it for 500 others."
- "We are a full inclusion district."

## **A Few More Things Not to Say...**

- "We can't afford it" (cost is not a defense if the "it" is required for the student to receive a FAPE).
- "We only provide that for our students with autism."
- "We don't have the equipment."
- "I don't care what the IEP says."
- "I don't think transportation will approve that."
- "I don't have the staff for that."
- "We have spent too much time reviewing these options."



## **H.B. v Las Virgenes Unified Sch. Dist., 52 IDELR 163 (C.D. Cal. 2008)**

- ❑ 5<sup>th</sup> grade student with Autism in a private placement at district expense through a settlement agreement.
- ❑ Before the IEP meeting began, the Assistant Superintendent walked into the meeting and stated "We are here to discuss the student's transition back to public school."
- ❑ This case turned on that statement.
- ❑ The Court found that the District had predetermined the student's placement before the meeting and did not discuss any other alternatives.
- ❑ The Court stated, "One of the requirements of a procedurally valid IEP meeting is meaningful participation by the parents."

## **R.L. v Miami-Dade County Sch. Bd., 63 IDELR 182 (11 Cir. Ct. App. 2014)**

- ❑ High school student with severe autism-related sensory issues.
- ❑ During the IEP meeting, parent did have opportunity to speak and provide input.
- ❑ However, the District Representative cut short the discussion about alternative placements.
- ❑ Trying to avoid funding the student's homebased program.
- ❑ Court held for the Parents:
  - " . . . parent participation in the IEP process means more than having an opportunity to speak. Instead, the district must show that it came to the meeting with an open mind and was "receptive and responsive" to the parents' position at all stages. "

## What Can We Say?

- ❑ Your answers should incorporate reference to:
  - ❑ Evaluation Data;
  - ❑ The IEP Team;
  - ❑ The concept of need; and
  - ❑ The requirement to provide a FAPE
    - District followed IDEA Procedures; and
    - IEP is calculated to enable the child to make appropriate progress in light of their unique circumstances.

## What Can We Say? Can You Give Us an Example?

- ❑ Hypothetical: Parent asks for something and the teacher responds, "NO WAY! We can't afford that!"
- ❑ District Representative: "Well, it may be an expensive item, but we are not going to rule it out on that basis. What we are going to do is review your child's EVALUATION DATA to determine if your child NEEDS that device in order to receive a FAPE. If we need more EVALUATION DATA to make this determination, we will conduct further EVALUATION. If the IEP Team determines that your child NEEDS it, then we will figure out a way to make it happen."

### **You be the Judge?**

#### **Does District's explanation for refusing Aqua Therapy hold water?**

A kindergartener had mobility and joint impairments- the result of a congenital medical condition- that restricted her participation at school. She received land-based PT as a related service. As a result, her endurance and ability to stand increased, as did her level of school participation.

The child's parent asked the Connecticut district to add Aqua Therapy to her IEP. The parent and a therapist pointed out that water therapy would enhance the child's treatment by allowing her to move more easily during therapy without the joint pain she experienced walking or standing on land. Also, Aqua Therapy would enable her to achieve her IEP goals more quickly, they claimed. The goals of aqua therapy, like those of land-based therapy, would have been to allow the student to walk independently, take care of her needs, and participate in her educational program

### **You be the Judge?**

#### **Does District's explanation for refusing Aqua Therapy hold water?**

The District refused to include aqua therapy in the IEP, explaining that Aqua Therapy is not required as a related service under IDEA and that the student was already making good progress.

The parent claimed the District's refusal to include Aqua Therapy violated IDEA.

**You be the Judge?**

**Does District's explanation for refusing Aqua Therapy hold water?**

Does denying water-based therapy deprive kindergartner of FAPE?

- A. **YES.** Aqua therapy would have enabled the child to make faster progress and achieve her IEP goals more quickly.
- B. **NO.** Aqua therapy is not a related service under IDEA.
- C. **NO.** The kindergartner is making progress without it.

**You be the Judge?**

**Does District's explanation for refusing Aqua Therapy hold water?**

CT ED pointed out that,

- IDEA does not entitle parents to challenge an IEP because it calls for a methodology that is not the best or most desirable for the child. **A is incorrect**
- "There is not doubt that Aqua Therapy can be a related service that should be provided under the IDEA." **B is incorrect**



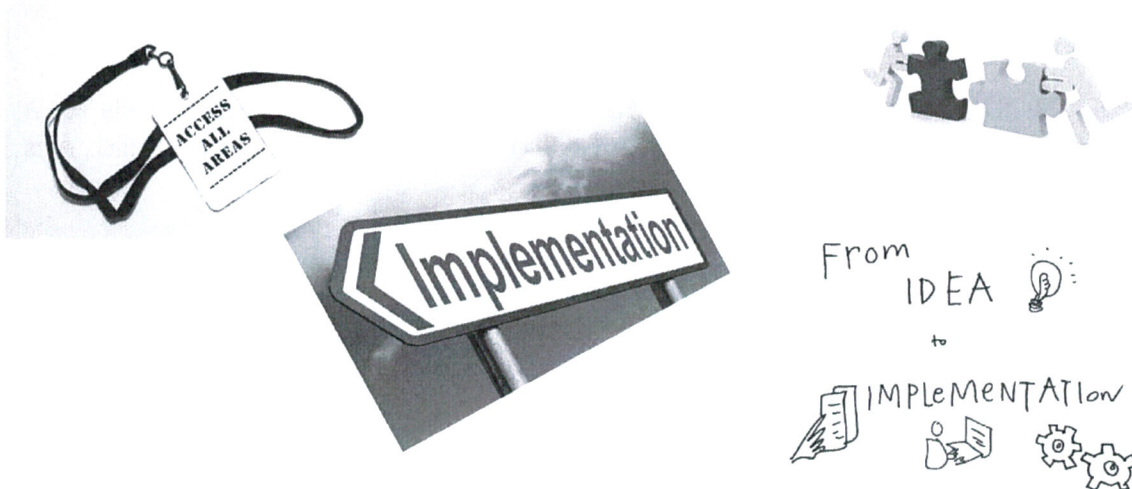
## You be the Judge? Can IEP team convene without the principal?

C. is the correct answer: The student's improvement showed that she did not require the particular method of PT to benefit for her special education. (*Westport Bd. of Educ.*, 8 ECLRP 71 (SEA CT 2010)).

Remember what we say....

"Well, it may be an expensive item, but we are not going to rule it out on that basis. What we are going to do is review your child's EVALUATION DATA to determine if your child NEEDS that methodology in order to receive a FAPE. If we need more EVALUATION DATA to make this determination, we will conduct further EVALUATION. If the IEP Team determines that your child NEEDS it, then we will figure out a way to make it happen."

## Principal's Primary Responsibilities: Ensure your Staff are Implementing Services Appropriately



## Role of the General Education Teacher

- General Education teacher:
  - Full participation the IEP Process
  - Provides input about skill areas that impact all areas:
    - Accommodations for all general education classes
    - Behavior
    - Social Skills
    - Language, including English acquisition
    - Attention, focus, organization
    - Effectiveness of the BIP
  - Is an important voice in a Manifestation Determination
  - Should not be routinely excused

## TEACHER'S ACCESS TO IEP: Ensure your Staff are Implementing Services Appropriately

- "Accessibility of child's IEP to teachers and others. Each public agency must ensure that—
  - (1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and..."

34 C.F.R. §300.323(d)(1).

## **TEACHER'S ACCESS TO IEP: Ensure your Staff are Implementing Services Appropriately**

- ❑ "Accessibility of child's IEP to teachers and others. Each public agency must ensure that—
  - (2) Each teacher and provider described in paragraph (d)(1) of this section is informed of—
    - (i) His or her specific responsibilities related to implementing the child's IEP; and
    - (ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP."

34 C.F.R. §300.323(d)(2).

## **Teacher refuses to Implement Accommodations**

- ❑ High School student with a Learning Disability.
- ❑ One of the accommodations in the IEP was to allow oral testing.
- ❑ All teachers provided the oral testing but one, the history teacher.
- ❑ Even after multiple directives from the special education director, the teacher refused.
- ❑ The Principal and the Superintendent knew of the failure to implement the accommodation but failed to require compliance.
- ❑ The student failed 9 assessments rendering him ineligible for extra curricular activities and failed the class.

*D.D. v. Michael Withers, et al.*, 20 IDELR 422 ( W.V. Cir. Ct. 1993).



## Teacher refuses to Implement Accommodations

- ❑ Because the parents had claims individually against the teacher, and other district staff, there was a jury trial.
- ❑ Parents sued and the court held for the parents.
- ❑ Jury awarded \$5,000 in compensatory damages and \$10,000 in punitive damages.

## Court Affirms Teacher Understood her Responsibilities

- ❑ "Pingel simply followed the directives set out in the IEP, which is precisely what the law demanded of her, even though she may have thought it was unnecessary... Pingel can only do as the law provides: call or wait for another IEP to reevaluate C.D., and then express her belief that he no longer needs to have special education services. 20 U.S.C § 1414(a)(2)(A)(i). No matter how deeply held her belief that it was unnecessary, Pingel could not unilaterally stop performing any services mandated under the IEP"

*Marshall Joint School District No. 2 v. C.D., 54 IDELR 307 (7th Cir. 2010).*

## Principal's Primary Responsibilities: Know Procedures for Discipline



## Short-Term Disciplinary Removal (Not a Change of Placement): Two Types

- The first 10 days.
- After the first 10 days but not a pattern.

## The First 10 Days

- ❑ "A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed."

34 C.F.R. §300.530(d)(3).

- ❑ These are cumulative days.
- ❑ Once they are used up, you do not get them back until the next school year.
- ❑ "FAPE FREE ZONE"

## When is a Short-Term Disciplinary Removal a Change of Placement?

- ❑ "The child has been subjected to a series of removals that constitute a pattern—
  - i. Because the series of removals total more than 10 school days in a school year;
  - ii. Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
  - iii. Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another."

34 C.F.R. §300.536.

## What Days do we Count?

- Out-of-school suspension
- ISS unless the three criteria are met for non-exclusionary ISS
- Removals from bus when part of IEP unless an alternative is provided at no cost to parent
- Portions of a school day

## In-School Suspension (ISS)

- The regulations specifically refer to days of removal to “another setting” as days that count.

*See 34 C.F.R. § 300.530(b)(1).*

- Therefore, you must count days in ISS as days of removal unless you meet the three criteria for non-exclusionary ISS.



## Non-Exclusionary In-School Suspension (ISS)

- It has been the Department's long term policy that an in-school suspension would not be considered a part of the days of suspension addressed in § 300.530 as long as the child:
  - 1) Is afforded the opportunity to continue to appropriately participate in the general curriculum;
  - 2) Continues to receive the services specified on the child's IEP; and
  - 3) Continues to participate with non-disabled children to the extent they would have in their current placement. This continues to be our policy.

*See 71 Fed. Reg. 46715 (August 14, 2006).*

### You be the Judge?

#### Does Giving student ISS of use of profanity violate the BIP,IDEA?

A Nevada student with OHI entered a class, spiked his backpack , and yelled an expletives followed by "Touchdown!" The student later explained that he was glad he had arrived to class on time.

In accordance with its discipline policy, the school placed the student in ISS the following day for using profanity. It was the student's first suspension of the school year. The school provided all students in ISS with their assignments but no services.

The student had a BIP that addressed his verbal aggression, which it described as raising his voice in anger to direct a negative comment at another person.

The parents filed a due process compliant, claiming the district violated IDEA by not following the BIP instead of suspending him and failing to provide him his IEP services in ISS.

## You be the Judge?

### Does Giving student ISS of use of profanity violate the BIP,IDEA?

After a child has been removed from his placement for 10 school days in the same school year, the district, during subsequent removal days, must provide services to enable the student to continue to participate in general education curriculum and progress towards his IEP goals. (34 CFR 300.530(b)(2)).

Is placing student with OHI in ISS without services an IDEA violation?

- A. **NO.** The student's colorful entrance didn't trigger the behavior support plan and no other students were receiving services in ISS.
- B. **NO.** Districts never have to provide the services to students in ISS unless the student is suspended for more than 10 consecutive school days or the district provides services to nondisabled students in ISS.
- C. **YES.** The district was required to provide the student with all of his services in the ISS regardless of what is provided to nondisabled students.

## You be the Judge?

### Does Giving student ISS of use of profanity violate the BIP,IDEA?

NV ED pointed out that –

- The student entered class, he wasn't upset or aggressive. Nor was he addressing any particular person.
- The District wasn't required to provide the student any services in the ISS beyond what is provided to nondisabled students- given the student hadn't reached his 11<sup>th</sup> day of suspension. **C is incorrect**
- B is incorrect:** The removals do not have to be consecutive, as long as they all occur in the same school year.

## **You be the Judge?**

### **Does Giving student ISS of use of profanity violate the BIP,IDEA?**

A is the correct answer: The student did not engage in verbal aggression as defined by the BIP, and therefore, the district was entitled to apply the same disciplinary measures to the student with OHI as it applied to nondisabled students. Furthermore, the student hadn't reached his 11<sup>th</sup> day so the district provided the student with his assignments, as provided to student without disabilities.

*(Lyon County Sch. Dist., 115 LRP 3779 (SEA NV 11/07/14)).*

## **Bus Suspension**

- ❑ "Whether a bus suspension would count as a day of suspension would depend on whether the bus transportation is a part of the child's IEP. If the bus transportation were a part of the child's IEP, a bus suspension would be treated as a suspension under § 300.530 unless the public agency provides the bus service in some other way, because that transportation is necessary for the child to obtain access to the location where services will be delivered. If the bus transportation is not a part of the child's IEP, a bus suspension is not a suspension under § 300.530."

71 Fed. Reg. 46715 (August 14, 2006).



## Time-Out vs. Portions of a School Day

- ❑ "Portions of a school day [in which] a child has been suspended may be considered as a removal in regard to determining whether there is a pattern of removals as defined in § 300.536."  
71 Fed. Reg. 46715 (August 14, 2006).
- ❑ OSEP will examine any short-term exclusionary disciplinary measures under the 3 criteria for ISS. This would include an administratively shortened school day to address problem behavior at the child's school.  
*Letter to Mason, 72 IDELR 192 (OSEP 2018).*
- ❑ "Such procedures [that are not considered a change of placement] may include the use of study carrels, **time-outs**, detention, or the restriction of privileges."  
*Honig v. Doe, 559 IDELR 231 (1988).*

## Time-Out vs. Portions of a School Day (continued)

- ❑ *Horizon Science Academy of Cleveland, 110 LRP 65947 (Ohio SEA 2009).*

Hearing officer acknowledged a time-out would not be considered a "removal" for purposes of determining disciplinary change of placement, whereas a removal for a portion of the school day would be considered a "removal." Sending student to the hallway or office constituted time-out because student returned to class during the class period/lesson.

## Services During Removals That Are Not A Change of Placement

- ❑ Beginning on the 11th day, the child must be provided services to “enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP.”

34 C.F.R. § 300.530(d)(1)(i).

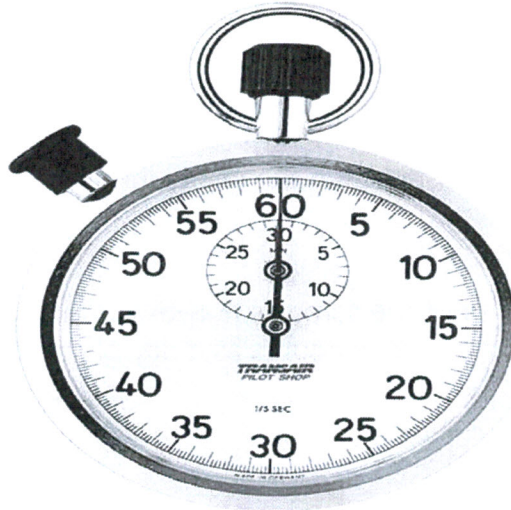
- ❑ Note that this is not the same as non-exclusionary ISS. It is exclusionary; therefore, it counts as a day of removal.

## Who Decides what the Services will look like for Removals that are not a Change of Placement?

- ❑ “School personnel, in consultation with at least one of the child’s teachers, [must] determine the extent to which services are needed, as provided in § 300.101(a)[guarantee of a FAPE], so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP.”

34 C.F.R. § 300.530(d)(4).

**AND TIME!!!!**



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