

Advanced Section 504 Training



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Advanced Section 504



- Brief Overview of Section 504
- Advanced Training Scenarios
- Q & A

Overview of Section 504

- Section 504 of the Rehabilitation Act of 1973 states
"No otherwise qualified individual with a disability . . . , shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance"

Overview of Section 504

- Congress' directive to schools to eliminate disability-based discrimination from all aspects of school operations
- Requires schools to provide eligible disabled students with equal access (both physical and academic) to services, programs, and activities



Overview of Section 504



- Section 504 is a civil rights law not a special education law

Overview of Section 504



- The Individuals with Disabilities Improvement Act of 2004 (IDEA) is a special education law
- Both the IDEA and Section 504 require school districts to provide eligible students with disabilities a free appropriate public education (FAPE)

Review of Section 504

■ Two Main Purposes of Section 504

- ☐ Non-Discrimination Duty
- ☐ Duty to Provide a FAPE



Remember - Non-Discrimination Duty

- Protects students from discrimination
- Assures access to educational services and the learning process that is equal to that given to students who do not have disabilities
- Who is covered? All students are protected from discrimination under Section 504 who:
 - ☐ have a physical or mental impairment which limits substantially one or more major life activities,
 - ☐ have a record of such an impairment, or
 - ☐ are regarded as having such an impairment



also FAPE

Remember - Non-Discrimination Duty

- Local education agencies (LEAs) are prohibited from
 - ☐ Excluding a student with a disability from participation in any district program or activity
 - ☐ Denying a student with a disability the benefits of any district program or activity and
 - ☐ Subjecting a student with a disability to discrimination solely by reason of her disability



Non-Discrimination Duty

Example: Non-educational Programs

- Includes programs such as before-and-after school day care and summer recreation programs, extracurricular and non-academic activities
- Issue is meaningful access and equal opportunity, as opposed to FAPE



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Non-Discrimination Duty

Example: Non-educational Programs

- LEAs must provide access to students in non-educational programs (e.g., medical services, aide support, modifications to district policies, practices or procedures)
 - Unless it will cause the LEA an undue burden or fundamentally alter the nature of the LEA's program
- LEAs cannot mandate or condition student participation in a program on parents providing services



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Duty to Provide a FAPE



- Applies to students who actually have a physical or mental impairment that substantially limits one or more major life activities, and
- Attend public elementary and secondary education programs, or who are entitled to a FAPE under the IDEA and state law

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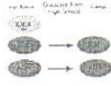
Duty to Provide a FAPE

■ Section 504 FAPE

□ The provision of regular or special education and related aids and services that are designed to meet the needs of individuals with disabilities as adequately as the needs of individuals without disabilities are met.

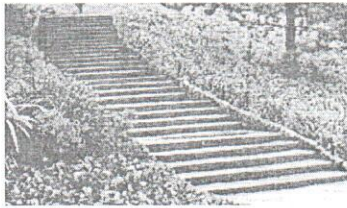
□ The focus is not whether the program meets a student's individualized needs (IDEA)

■ It's whether the LEA can meet the student's needs as adequately as the needs of student's without disabilities



a school should can access
Sp Ed Serv

Section 504 Steps



Section 504 Steps: Step 1



Step 1: Child Find



1. LEA must find the disabled
2. Do not wait for a parent to request an evaluation
3. When an evaluation is requested, respond and provide procedural safeguards

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Step 1: Child Find



- Remember
 - Child find is an LEA obligation
 - Must respond to a parent request
 - Procedural Safeguards
 - SSTs often "find" students for purpose of evaluation
 - FIND = EVALUATION (not eligibility)

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Step 1: Child Find

- Finding Requirement
 - LEA must conduct an evaluation of any person who, because of handicap, needs, or is believed to need, special education or related services before taking any action with respect to the initial placement of the person in regular or special education

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Step 1: Child Find



■ Finding Requirement

- A recipient that operates a public elementary or secondary education program or activity shall annually
 - a. Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education, and
 - b. Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart

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Step 2: Evaluation



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Step 2: Evaluation



- LEAs must promptly evaluate when there is a reason to suspect the student might qualify for Section 504
 - When you find, you evaluate within reasonable time of the "finding"
- Evaluation gathers all relevant data for eligibility determination
- Evaluation must address all suspected areas of disability

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Appropriate Evaluation



- ☐ Tests and other evaluation materials must include those tailored to evaluate the specific areas of educational need and not merely those designed to provide a single intelligence quotient
- ☐ Tests and other evaluation materials must be validated for the specific purpose for which they are used, and
- ☐ Appropriately administered by trained personnel

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Step 2: Evaluation



- Gathering the Information for Evaluation
 - ☐ Utilize a variety of sources so that the possibility of error is minimized
 - ☐ Document the information collected and all significant factors related to the student's learning process must be considered

U.S. Department of Education, Frequently Asked Questions
About Section 504 and the Education of Students with Disabilities

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Step 3: Eligibility Determinations



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Step 3: Eligibility Determinations

- In January 2009, revisions to the ADA Amendments Act (ADAA) of 2008 went into effect and changed how we determine eligibility under Section 504



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Step 3: Eligibility Determinations

- The amended ADA states
"The definition of disability shall be construed in favor of broad coverage of individuals . . . to the maximum extent permitted by the terms of this Act."
(42 U.S.C. 12102(4)(B))



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Step 3: Eligibility Determinations

- "It is the intent of Congress that the primary object of attention . . . should be whether entities covered under the ADA have complied with their obligations, and The question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis."

(122 Stat. 3553 § (2)(b)(5))



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Step 3: Eligibility Determinations

- The team analyzes if the student has
 - Impairment that
 - Substantially limits
 - One or more major life activities



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Step 3: Eligibility Determinations

- Therefore, to be entitled to a 504 FAPE, i.e. development of a Section 504 Plan, a student must have a
 - Physical or mental impairment that substantially limits one or more major life activities
- Section 504 team must meet to review the evaluation results to make an eligibility determination



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Step 3: Eligibility Determinations

ADA Amendments 2008

- Impairments include those that are episodic or in remission
 - Cancer in remission
- "Substantially limits" to be broadly construed
- Do not consider mitigation measures when determining whether an impairment substantially limits a major life activity

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only allowed to consider glare/contact lens

Step 3: Eligibility Determinations

■ Team Reviews

- ☐ All existing data
 - LEA generated
 - Parent generated
- ☐ Take in and consider parent input
- ☐ Get releases of information to speak with persons having important information (i.e., the doctor who wrote a note)



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Step 3: Eligibility Determinations

■ The Team

- ☐ Persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options (34 CFR Section 104.35(c)(3))
- ☐ Parents
- ☐ Student, if appropriate



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Step 3: Eligibility Determinations

■ Physical or Mental Impairment

- ☐ Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss; or any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities

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Step 3: Eligibility Determinations

- Major Life Activity

- ☐ Learning is one of many major life activities
- ☐ Think about more than learning as a major life activity



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Step 3: Eligibility Determinations

- Make your eligibility determination

- ☐ Eligible
- ☐ Ineligible



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Step 3: Eligibility Determinations

- If student is ineligible, give parent

- ☐ Complete Section 504 Service Plan
 - Document that the student is not eligible
- ☐ Provide parent with written documentation regarding eligibility determination
 - Section 504 Service Plan
 - Section 504 Prior Written Notice
- ☐ Notice of parent rights under Section 504 – Procedural Safeguards
 - Opportunity to review records
 - Impartial hearing with opportunity for parent to participate and be represented by counsel

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Step 3: Eligibility Determinations

- If student is eligible,
 - Develop Section 504 Service Plan
 - Document the student is eligible
 - Include in the Section 504 Service Plan the student's placement in LRE, including
 - Specific accommodations or services
 - Schedule for review
 - Notice that review may occur sooner upon request by parent/staff



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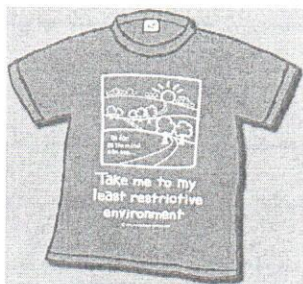
Step 3: Eligibility Determinations

- Provide parent with written documentation regarding eligibility determination
 - Section 504 Service Plan
 - Section 504 Prior Written Notice
- Provide parent with notice of parent rights under Section 504 – Procedural Safeguards



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Step 4: Placement



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Step 4: Placement



What is FAPE under Section 504?

- FAPE is not limited to accommodations
(San Dieguito Union Sch. Dist. (OCR 2009))
 - The provision of regular or special education and related aids and services
 - Designed to meet the needs of individuals with disabilities as adequately as the needs of individuals without disabilities are met

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Step 4: Placement



What is FAPE under Section 504?

- Section 504 emphasizes "design" of educational plans to assure needs of non-disabled being adequately met and to provide "meaningful access"
 - Leveling the Playing Field
- Contrast with IDEA FAPE which focuses on "meaningful benefit"

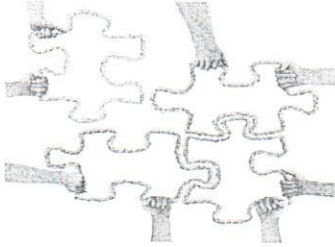
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Step 4: Placement

- Remember, qualifying students
 - Have a right to placement in the least restrictive environment (34 CFR § 104.34)
 - Must be served in the same setting as nondisabled students "to the maximum extent appropriate to the needs of the handicapped person"
 - Cannot be given less than their nondisabled counter parts

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Step 5: Implementation



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Step 5: Implementation



- Section 504 plan documents FAPE
 - The plan must be implemented in order for the student to receive a FAPE under Section 504
- Make sure all who need to know have and implement a student's 504 plan
 - Teachers, principal, other administrators responsible for discipline, service providers, etc.

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Step 5: Implementation

- Periodic review
- Record keeping
- Assign responsibility for plan compliance



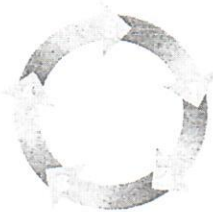
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Step 5: Implementation

- Section 504 Service Plan must be implemented with fidelity
- Failure to implement the plan can land the LEA in hot water with OCR
- If a teacher intentionally does not implement a Section 504 Service Plan or IEP, then money damages could be awarded under Section 504
 - The standard parents must prove is the LEA intentionally or with deliberate indifference failed to provide meaningful access or reasonable accommodation to the student

Recap: Section 504 Steps

- Step 1 - Child Find
- Step 2 - Evaluation
- Step 3 - Eligibility
- Step 4 - Placement
- Step 5 - Implementation



Important Considerations



Important Considerations: Reconsidering Eligibility

504 Team who found student ineligible in 2008 was to reconsider under expanded eligibility under the amended ADA.



Zachary M. v. Evanston Township High Sch. Dist. (N.D. Ill. 2009) 53 IDELR 21.

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Important Considerations: Reconsidering Eligibility

- In 2008, the district found the Zachary ineligible for a 504 Plan, explaining that his ADHD did not impair his learning.
- A due process hearing officer agreed.
- In 2009, the parents appealed by filing a lawsuit in federal court.

Zachary M. v. Evanston Township High Sch. Dist. (N.D. Ill. 2009) 53 IDELR 21.

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Important Considerations: Reconsidering Eligibility



- The court noted that the ADA Amendment Act expanded eligibility as of January 1, 2009, to include students whose impairments substantially limit their reading, thinking, or concentration.
- The district claimed it planned to reconsider the student's eligibility in light of the amended ADA, however, the court rejected the district's request to dismiss the parents' lawsuit because the meeting to reconsider Zachary's 504 eligibility had not yet occurred.

Zachary M. v. Evanston Township High Sch. Dist. (N.D. Ill. 2009) 53 IDELR 21.

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Important Considerations: Discipline

- Manifestation Determination
 - Must be conducted before a disciplinary change of placement is contemplated
 - Section 504 does not provide the standard to consider
 - IDEA standard
 1. Was the conduct in question caused by, or was there a direct and substantial relationship to the child's disability, or
 2. Was the conduct in question the direct result of the district's failure to implement the Section 504 plan

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Important Considerations: Discipline

- Manifestation Determination
 - A student may not be disciplined if the conduct was caused by his/her disability



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Important Considerations: Parent Complaints



Complaint Venues

- Uniform Complaint Procedure ("UCP")
 - Parent files complaint
 - LEA investigates
 - Appeal to CDE
- Office of Civil Rights ("OCR")
 - Parent files complaint
 - OCR investigates
 - OCR issues a decision

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Update 504
policy / procedure
See A/S
process

Hypothetical 1-Accelerated Programs

- Adam, a high school student with ADD, participates in the general education program with accommodations and modifications through a Section 504 plan. Adam meets with his counselor and requests to take advanced placement classes the following year. The counselor tells Adam that he can only take advanced placement classes if he "gives up" the accommodations and modifications in his Section 504 plan. Result?

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Hypothetical 1-Accelerated Programs

- CANNOT deny access to accelerated programs based on disability
- CAN have appropriate eligibility requirements
- CANNOT require forfeiting special education or services or aids
- 28 C.F.R. 35.130
- [Letter to Anonymous/Dear Colleague Letter](#) (OCR 2007) 108 LRP 16376
- [Southfield \(MI\) Public Schools](#) (OCR 2012) 112 LRP 28804

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Hypothetical 2-Report Cards



- Susan is a middle school student with a learning disability who participates in the general education classroom. Her Section 504 plan includes accommodations and modifications, including reducing the amount of math problems that Susan is required to do for homework and allowing Susan to use a calculator on tests. Susan's math teacher refuses to provide grading information for Susan since "she did not do the same things as everyone else." Result?

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Hypothetical 2 Report Cards



- Must provide report cards or some type of progress update
- Must be as informative and effective as report cards provided to nondisabled students
- Any method or format is acceptable
- Dear Colleague Letter (OCR 2008)
- Orcas Island (WA) Sch. Dist. No. 137 (OCR 1999) 31 IDELR 12

Read

Hypothetical 2a-Report Cards

- When told she has to provide grading information, Susan's math teacher wants to know whether she can include language on the report card to show that Susan received accommodations in her instruction. Result?



Hypothetical 2a Report Cards

- Yes, notations to show modifications to curriculum
- Yes, notations to show accommodations received
- Caution, different standards for transcripts

Hypothetical 3-Transportation

- Francis is an elementary school student with cerebral palsy who participates in the general education classroom with accommodations and modifications. Francis is transported by the special education school bus every day. Francis uses a wheelchair and it takes the bus extra time to use the wheelchair technology to load Francis on and off the bus. Plus the special education bus picks up students on a different schedule to avoid traffic. Because of this, Francis arrives 25 minutes late and leaves class 15 minutes early every day. Francis' Section 504 plan does not call for a shortened day. Result?



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Hypothetical 3-Transportation

- Cannot shorten instructional day due to transportation issues
- Can shorten instructional day based on individual determination
- 34 C.F.R. 104.33
- Lincoln County (NC) School District (1991 OCR) 17 IDELR 1052
- Duchesne County (UT) School District (1990 OCR) 17 IDELR 240
- Blount County (TN) School District (2004 OCR) 42 IDELR 65



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Read

Hypothetical 4-Field Trips

- Kelly is a kindergarten student with diabetes who requires insulin shots and blood testing daily. Kelly is not old enough to give herself her own insulin shots. Kelly's science class is taking an overnight field trip to San Francisco. Kelly's teachers are concerned that Kelly's diabetes is going to interfere with the trip. Kelly's teacher tells Kelly's mother that the long duration of the trip, combined with the fast pace of activities will prevent any staff member from being able to give Kelly her insulin shots and test her blood. Kelly's teacher states that the potential safety concern means that Kelly cannot go on the trip. Result?



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Hypothetical 4-Field Trip

- Must provide the same opportunity for participation in nonacademic and extracurricular activities
- Cannot exclude student based on disability alone
- IEP or Section 504 team should make determination on limitations on field trips
- Lewis Palmer (CO) School District #38 (OCR 2006) 47 IDELR 111
- Nyack (NY) Unified School District (OCR 2004) 43 IDELR 169

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Hypothetical 4a-Field Trips

- Kelly's teacher backs down and says that Kelly can attend the overnight field trip if one of her parents attends as well. Result?



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Hypothetical 4a-Field Trips



- No, cannot condition participation in field trip on parent attendance
- Unless district policy requiring parent attendance applies to all students, disabled and nondisabled
- Calcasieu Parish (LA) School Board (OCR 2005) 44 IDELR 49
- Marion County (FL) School District (OCR 1998) 28 IDELR 1091

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Hypothetical 5-Allergies



- Peter is a high school student who suffers from environmental allergies. He is allergic to all commercially used cleaning agents. Because his classes are all in different classrooms, there is no way for the school to be sure that he will not come into contact with the cleaning agents used by the janitorial staff. Peter's parents demand that the school stop using all commercial cleaning products so that Peter can safely attend school. Result?

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Hypothetical 5-Allergies



- District must work to accommodate the disabilities of a student with environmental allergies
- South Windsor (CT) Public School (OCR 2002) 37 IDELR 133
- Walpole Public Schools (SEA MA 1997) 26 IDELR 976

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Read

Parents must provide necessary information

Hypothetical 6-ADD and ADHD

- Shanea and David are all students at ABC Elementary School who have been diagnosed with ADD or ADHD
- Shanea is an A and B student with no discipline problems. The school is aware that she has been diagnosed with ADD and receives medication. Should the District conduct an evaluation of Shanea?



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Hypothetical 6-ADD and ADHD

- David often earns Cs, Ds, and Fs. He has spent a lot of time in the principal's office. David has been referred to a student study team. David's teacher has suggested to his parents that he be tested for ADHD due to his distractibility. Should the District conduct an evaluation of David?



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Hypothetical 6-ADD and ADHD



- If the District is aware that a student has ADD or ADHD or exhibits behaviors that make this a plausible explanation, the District should consider evaluating the student
- 34 CFR 104.35
- Oak Harbor (WA) School District No. 201 (OCR 2004) 45 IDELR 228
- Triton (MA) Regional Union 68 School District (OCR 1994) 21 IDELR 1077
- Marysville (WA) School Dist. No. 25 (OCR 1996) 25 IDELR 992

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Hypothetical 7-Comparable Facility

- ABC Middle School has recently experienced a lot of growth in student numbers. As a result, they purchase 3 portable buildings that are placed on the edge of the playing field. At the beginning of the school year, one of these portables houses a 7th grade math class. The other two portables house special day classes of special education students. Is it okay to house the special education class in a portable?

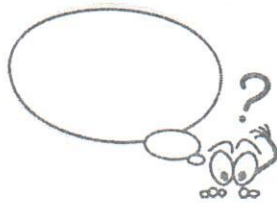


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Hypothetical 7-Comparable Facility

- Must have a valid purpose for the use of portables
- Must be a comparable facility to that provided to nondisabled students
- 34 CFR 104.34
- Red Oak (IA) Community School District (OCR 1991) 18 IDELR 224
- Sumner County (TN) School District (OCR 1991) 17 IDELR 1038

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Questions and Answers

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Thank you for coming!

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