

READY-SET-GO! :

**PROVIDING
FAPE THIS FALL**

Presented by:
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INTRODUCTION

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SPRING 2020: CAUGHT BY SURPRISE COMPASSION OVER COMPLIANCE

*“Do what you can, with what you have,
where you are.”*

Theodore Roosevelt



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FALL 2020: DELIVERING FAPE IN A NEW REALITY

Once school resumes, the LEA must make every effort to **provide special education and related services** to the child **in accordance with the child's individualized education program (IEP)** or, for students entitled to FAPE under Section 504, consistent with a plan developed to meet the requirements of Section 504.

-OSEP Q&A March 2020



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THE CHALLENGE IS...

We don't know exactly what that new reality will look like for the entire school year.



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THE CHALLENGE IS...

"I hesitate to make broad-based statement about whether it is 'safe' for kids to come back to school."

"We often talk about the possibility of a second wave, or of an outbreak when you reopen. We don't have to accept that as an inevitability, particularly when people start thinking about the fall, I want people to really appreciate that it could happen, but it is not inevitable."

-Dr. Anthony Fauci



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THE CHALLENGE IS...

“Our intent is to resume in-person instruction and to do so in a way that is safe, but also to make sure that as we get back to school, as we return to learn, that we have very clear guidance to what the minimum expectations are....Some schools will be able to do things, even in more aggressive ways, others will need some help, just to get to the minimum expectations.”

-Governor Gretchen Whitmer



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THE CHALLENGE IS...

“...without budgets even being introduced in Lansing to provide schools with the resources necessary to reopen safely, we're getting closer and closer to the point where we will be left asking whether reopening schools in the fall is even possible.”

-Ken Gutman, Superintendent, Walled Lake Schools, and Vice President, Tri-County Alliance for Public Education



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THE CHALLENGE IS...

“Every expert NPR spoke with predicted that the need for remote learning would continue because of staggered schedules, schools prepared to close again for future waves of infection, and many students needing remediation.”

-National Public Radio



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THE CHALLENGE IS...

“Since we cannot predict what September will look like, we can---and must---be prepared for a range of possibilities.”

-Richard Carranza, Chancellor, New York City Schools



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BUT IDEA §300.323 STILL REQUIRES...

At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in §300.320.



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AGENDA FOR TODAY: ADDRESSING UNCERTAINTIES

- Executive Order 2020-142
- Contingency Learning Plans
- Foregone Learning and Recovery Services

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IMPLICATIONS OF **EXECUTIVE ORDER 2020-142**

Requires school district to create preparedness plans and also addresses specific special education issues:

- When schools are closed to in-person instruction
- Compensatory services
- Penalties



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EO 2020-142 BEGS PRACTICAL QUESTIONS AROUND **IEP DEVELOPMENT**

Should we develop a new IEP for every IDEA-eligible student?

How should we be thinking about crucial components such as

- PLAAFP?
- Contingency Learning Plans?
- Compensatory Services?
- Recovery Services?
- Notice?



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CONTINGENCY LEARNING PLANS |

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FALL 2020: DELIVERING FAPE IN A NEW REALITY

...during a school closure, the school must ensure that students with disabilities also have **equal access** to the same opportunities, **including the provision of FAPE**...schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP developed under IDEA, or a plan developed under Section 504.

-OSEP Q&A March 2020



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FALL 2020: DELIVERING FAPE IN A NEW REALITY

IEP teams may, but are not required to, **include distance learning plans in a child's IEP** that could be triggered and implemented during a selective closure due to a COVID-19 outbreak. Such **contingent provisions** may include the provision of special education and related services at an alternate location or the provision of online or virtual instruction, instructional telephone calls, and other curriculum-based instructional activities, and may identify which special education and related services, if any, could be provided at the child's home.

-OSEP Q&A March 2020



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FALL 2020: DELIVERING FAPE IN A NEW REALITY

Creating a **contingency plan** before a COVID-19 outbreak occurs gives the child's service providers and the child's parents an opportunity to reach agreement as to **what circumstances would trigger the use of the child's distance learning plan** and the **services that would be provided** during the dismissal.

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OUR NEW REALITY REQUIRES NEW THINKING

For the 2020-21 school year, districts must develop plans for different phases of the public health situation. (See MI Safe Schools Roadmap, June 30, 2020.)

- Phases 1-3: Buildings closed to in-person instruction
- Phases 4-6: Buildings may be open for in-person instruction
 - Some closures still possible in Phase 4
 - Districts determine the service delivery model for all students when open.

Districts may move from one phase to another over the course of the 2020-21 school year.



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OUR NEW REALITY REQUIRES NEW THINKING

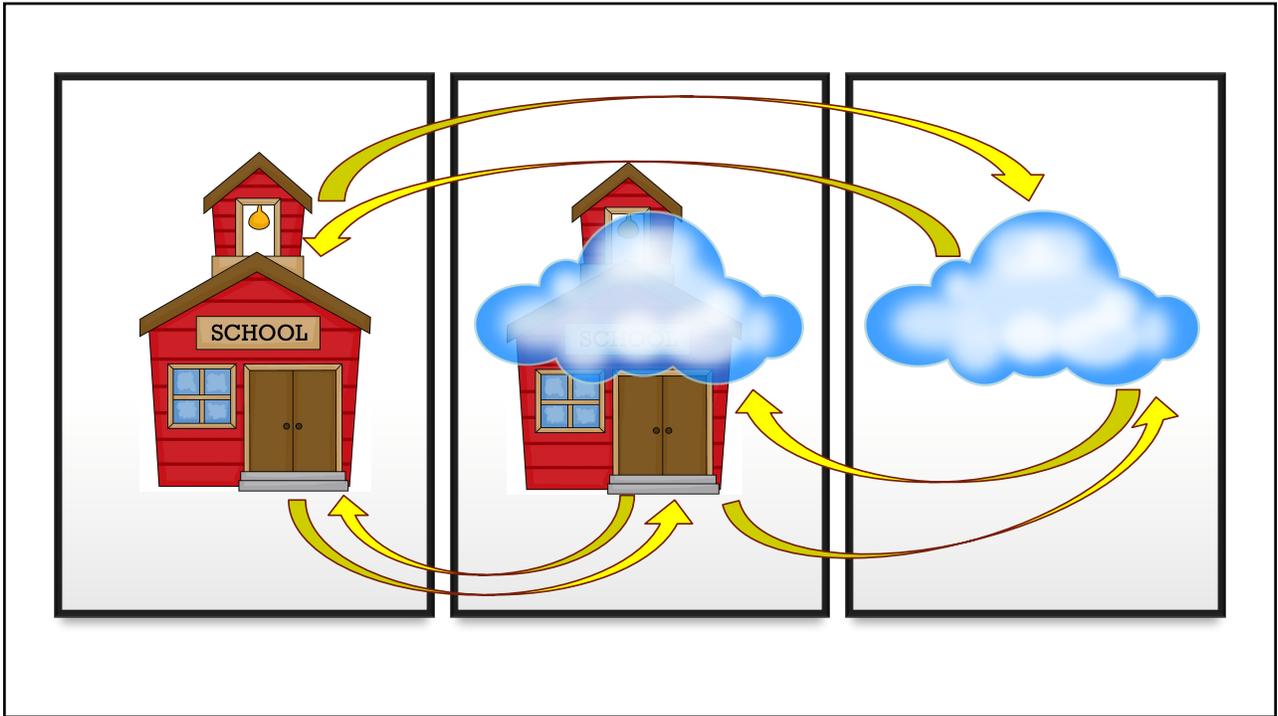
Is it realistic to think we could revise/amend every IEP every time we move from one phase to another?



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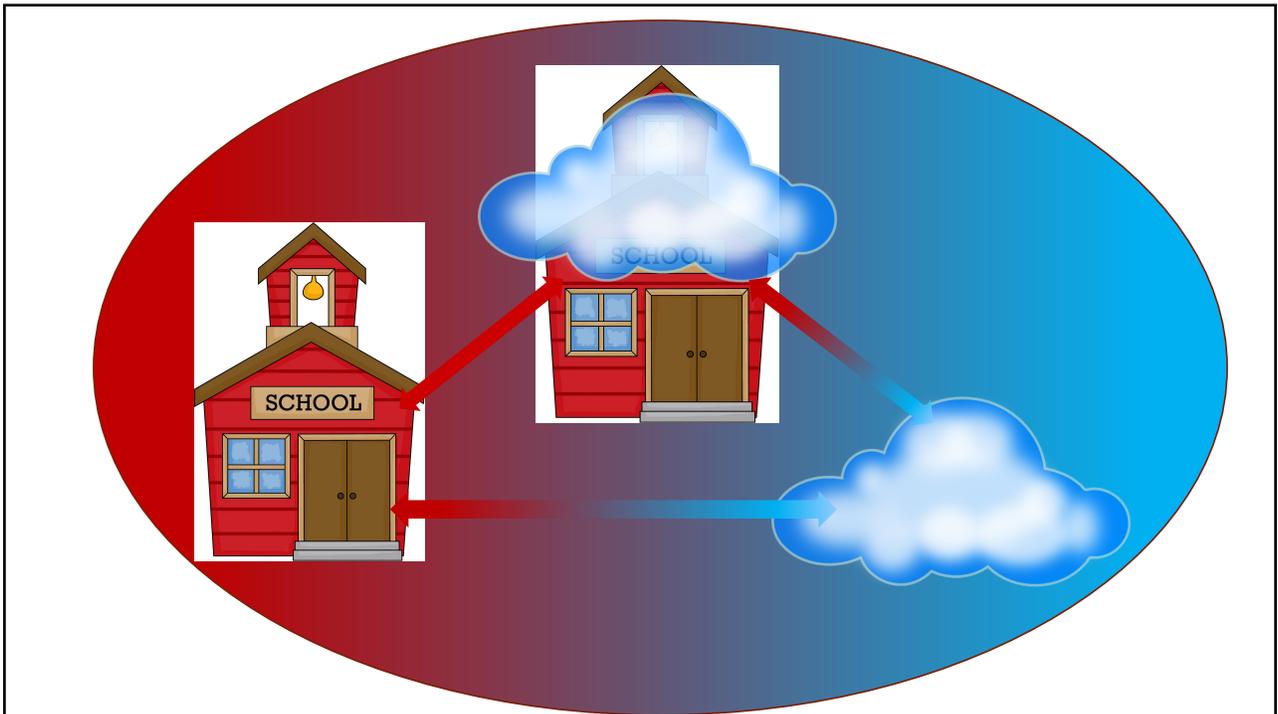
OUR NEW REALITY REQUIRES NEW THINKING

We must think differently about IEP development in order to respond to changes in the public health situation:

- Student-Centered
- Effective
- Nimble
- Compliant



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CONSIDERATIONS FOR IEP DEVELOPMENT: **CONTINGENCY LEARNING PLANS v2.0**

Spring 2020: Contingency Learning Plans were reactive to the emergency school closure (and a little bit optional.)

Fall 2020: Expect that Contingency Learning Plans will be developed proactively in anticipation of school closures.



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CONSIDERATIONS FOR IEP DEVELOPMENT: INCORPORATE A CONTINGENCY LEARNING PLAN INTO THE IEP FOR EACH STUDENT

“Incorporate”

- By reference
- By attachment

Similar to the manner in which we currently “incorporate” a PBSP or Health Care Plan into the IEP.

Developed by the IEP Team (which includes the parent)

Wrapped up with procedural safeguards/prior written notice

Anticipate MDE/OSE guidance on this topic, perhaps in August, but in the meantime...



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CONSIDERATIONS FOR IEP DEVELOPMENT: PLAAFP

Existing PLAAFP likely assumes in-person instruction; however...

We have new information/insights as a result of spring 2020.

- How did the student’s disability impact access to distance learning?
- What types of technology were necessary to ensure meaningful access to distance learning?
- What other accommodations were needed during distance learning?
- How were we able (or not) to tap student strengths when buildings were closed?
- How did the school closure experience impact the student’s social emotional status and behavior?
- What academic gains was the student able to make during distance learning?
- How did the student progress toward annual goals when buildings were closed?



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CONSIDERATIONS FOR IEP DEVELOPMENT: **PLAAFP**

The PLAAFP tells the student's story and creates the foundation for decision-making later in the IEP.

When we have new insights, we revise the PLAAFP.

What do we need to add to this student's current story to make it complete?



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CONSIDERATIONS FOR IEP DEVELOPMENT: **SUPPLEMENTARY AIDS/SERVICES**

Current IEP likely addresses SAS that are needed when buildings are open for in-person instruction.

If the district has adopted (or the parent has chosen) a hybrid model for the fall of 2020, the IEP will need to identify SAS that are needed for distance learning as well as in-person instruction.

How might we write SAS that transcend settings?

If the district adopts a full in-person model for fall 2020 but then has to revert to Phase 3, are additional/different SAS needed if/when buildings are closed?

Incorporate those new/different SAS into a Contingency Learning Plan.



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CONSIDERATIONS FOR IEP DEVELOPMENT: ANNUAL GOALS/STO

Current AG/STOs probably were written with in-person instruction in mind.

What difficulties did we encounter when we tried to teach/progress monitor AG/STOs during the spring 2020 school closure?

How might we write AGs/STOs that transcend settings?

- Consider how we write the conditions under which a student will demonstrate the skill.
- Consider the tools we use to monitor/measure progress.

If AG/STOs cannot be written to transcend settings, how might they need to be modified when buildings are closed?

Incorporate those modifications into the Contingency Learning Plan.



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CONSIDERATIONS FOR IEP DEVELOPMENT: TRANSITION ACTIVITIES/SERVICES

May need to be delivered differently when buildings are closed and/or community-based sites are unavailable due to public health concerns.

Consider:

- How might we write transition activities/services to transcend settings?
- What are the skills that we're trying to address?
- How could the activities be modified to address the same need in a safe/practicable manner?

Use the Contingency Learning Plan to document how transition services/activities will be modified if necessary due to changes in the public health situation.



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CONSIDERATIONS FOR IEP DEVELOPMENT: PROGRAMS/SERVICES

An IEP is typically aligned to the overall instructional model adopted by the district (or chosen by the parent.)

We write an IEP to support the student in accessing the general curriculum under that model, considering:

- Equal access to opportunities provided to all students, including nonacademic and extracurricular activities.
- Involvement with other students with and without disabilities.
- Involvement and progress in the general curriculum.
- Progress toward IEP goals/objectives, including progress monitoring and reporting.



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CONSIDERATIONS FOR IEP DEVELOPMENT: PROGRAMS/SERVICES

If the district adopts (or the parent chooses) a full in-person or hybrid model for 2020-21, the IEP would be developed with that model in mind.

Programs/services are likely to change when buildings must be closed.

Use a Contingency Learning Plan to document the type, frequency/duration, and location of programs and services that will be delivered if buildings are closed.



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CONSIDERATIONS FOR IEP DEVELOPMENT: PROGRAMS/SERVICES

If the district adopts (or the parent chooses) an all-virtual model for 2020-21, the IEP would be developed with that model in mind.

Programs/services are likely to change if buildings reopen within the year.

Use the Contingency Learning Plan to document the type, frequency/duration, and location of programs and services that will be delivered if buildings reopen.



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CONSIDERATIONS FOR IEP DEVELOPMENT: PROGRAMS/SERVICES

If we open in Phase 3, we should already be following our (not yet developed) Contingency Learning Plans!

This will require quick action to develop Contingency Learning Plans to address how FAPE will be delivered when schools are closed.



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CONSIDERATIONS FOR IEP DEVELOPMENT: **INCORPORATE A CONTINGENCY LEARNING PLAN INTO THE IEP FOR EACH STUDENT**

Developed by the IEP Team (which includes the parent)

Anticipates changes in the delivery model and plans for that possibility

Incorporated into the IEP by reference or by attachment

Wrapped up with procedural safeguards/prior written notice

Allows for smooth transitions between open/closed (or vice versa) without requiring an IEP for every change

Plans should be incorporated into IEPs before a school closure is imminent.



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QUESTIONS/COMMENTS ABOUT CONTINGENCY LEARNING PLANS



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FOREGONE LEARNING AND RECOVERY SERVICES |

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| FALL 2020: DELIVERING FAPE IN THE NEW REALITY

In addition, an IEP Team and, as appropriate to an individual student with a disability, the personnel responsible for ensuring FAPE to a student for the purposes of Section 504, would be required to **make an individualized determination as to whether compensatory services** are needed under applicable standards and requirements.

-OSEP Q&A March 2020



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MDE GUIDANCE: FOREGONE LEARNING AND RECOVERY SERVICES

Foregone learning is defined as learning that was not available between March 13, 2020 (EO 2020-5) and April 30, 2020 (EO 2020-65).

Recovery services are not mandatory.

Recovery services, if provided, should be based on atypical regression for a particular student.



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MDE GUIDANCE: FOREGONE LEARNING AND RECOVERY SERVICES

Recovery services, if provided, should:

- Supplement, not supplant, IEP services
- Support one or more annual goals
- Be provided during the regular school day

Even though recovery services are not mandatory, MDE suggests they be included in an IEP for the sake of transparency.

MDE says that, because recovery services are optional; there will be no penalty if you don't provide them.

- Note, if recovery services are described in an IEP they are enforceable through a state complaint or due process.



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FOREGONE LEARNING V. ESY

A student's right to ESY may be based on a variety of factors, the most important of which is regression and a failure to recoup that impacts reasonable progress toward goals and objectives.

MDE points out ESY is predictive whereas as foregone learning is compensation for a lost learning opportunity.



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FOREGONE LEARNING V. COMP ED

Compensatory education is a remedy available under IDEA when a court, ALJ, or MDE determines the school district has committed a FAPE violation that caused a student to lose education services. An award of compensatory education replaces the lost services, though not necessarily on an hour-by-hour basis.

Recovery services are not based on a determination of a FAPE violation.



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BACK IN THE SPRING WE SAID...

Compassion Anticipates Conversations about **Compensatory Education**

Not as a punishment to be feared

Rather, as a safety net that we will consider after the crisis because we care about our kids

Compensatory ed is a conversation we can prepare for by documenting:

- Contacts with parents and students
- Services provided (type, frequency, duration, results)
- Student progress before, during, and after the closure



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CONSIDERATIONS FOR IEP DEVELOPMENT:

We know that Comp Ed has its own definition (consequence for wrongdoing)...

And MDE/OSE is proposing "Recovery Services" (as a preemptive, supportive strategy that might minimize formal complaints), but...

Maybe this is all just about responsible IEP development practices!



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CONSIDERATIONS FOR IEP DEVELOPMENT: **PLAAFP**

We should have new information/insights.

- Observations/data regarding student performance during the spring 2020 closure.
- Assessments (formal or informal) of student's status upon return in the fall.
- Data: to what extent has the student experienced learning loss?
- Can that loss be recouped with reteaching? (Reteach, progress monitor, analyze data)
- After a reasonable period of time, is the ship back on an even keel or does something still need shoring up?

As always, once we are aware of a change in the student's present level of performance/needs or if there is a lack of progress, it's incumbent upon the IEP team to review/revise the IEP.



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CONSIDERATIONS FOR IEP DEVELOPMENT: **PROGRAMS/SERVICES**

What support(s) does this student need to “right the ship”?

- Universal supports being provided to all students as part of the regular instructional program? (Tier 1)
- Targeted supports being provided via general ed resources? (Tier 2)
- Individualized supplementary aids, special ed programs, and/or related services via an IEP? (Tier 3)
 - All year or just for a portion of the year?
 - Note frequency/duration or conditions that apply.



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CONSIDERATIONS FOR IEP DEVELOPMENT: DOCUMENTATION/PRIOR WRITTEN NOTICE

Document, document, document!

- How were the parent/IEP team involved in decision making?
- Clear and cogent explanations in the IEP
 - Likely a more detailed, explicit PLAAFP narrative than ever before
- What will be provided, when, and by whom?
- Detailed Prior Written Notice of Offer of FAPE
 - Why did we change services from the previous IEP?
 - What supports did we consider but not include and why?
 - Why did we determine that no additional supports are needed?
 - Any other relevant factors that we want to be part of the record...

The student's full story needs to be clearly communicated!



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QUESTIONS/COMMENTS ABOUT RECOVERY SERVICES/COMP ED



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FALL 2020: DELIVERING FAPE IN A NEW REALITY

Uncertain...

Different...

A bit anxiety-producing at times...

But mostly it's about responsible practices around IEP development.

You've got this!

(and we're here to help if you need us---)



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QUESTIONS/SUPPORT?

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