

Florida Department of Education  
Bureau of Exceptional Education  
and Student Services

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# ESE Rules

## Content and Discussion

December 8, 2004 Plantation, FL  
December 9, 2004 – Tampa, FL  
January 7, 2005 – Jacksonville, FL  
January 10, 2005 – Chipley, FL

# Rules – Content and Discussion

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- Goals

- Review key changes to each rule

- Address questions and answers provided within the technical assistance briefs

- Discussion

- Note new inquiries regarding each rule

# Exceptional Student Education (ESE)

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- ❖ Individuals with Disabilities Education Act (IDEA)
- ❖ Florida Statutes (F.S.)
- ❖ State Board of Education (SBE) Rules, Chapter 6A-6, Florida Administrative Code (FAC.)

# ESE Rules

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- ❖ March 16, 2004 – Approved by the SBE
- ❖ March 26, 2004 – Petition to Challenge
- ❖ August, 2004 – Settlement Agreement
- ❖ September 20, 2004 – Ten rules effective
- ❖ October 17, 2004 – Two rules effective
- ❖ October 15, 2004 – Memorandum

# Technical Assistance

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- ❖ Rule Implementation Briefs and Power Point
- ❖ SP&P reflects compliance with IDEA and new and amended rules – early December
- ❖ Formula for coordinating school calendars and days of attendance

# Technical Assistance

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- ❖ Continued development of briefs, technical assistance papers and supporting materials
- ❖ Regional Meetings
- ❖ Procedural Safeguards side by side
- ❖ Procedural Safeguards each rule

# Technical Assistance

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- ❖ The rules are located on the following website:

<http://www.firn.edu/doe/rules/rules.htm>

# Settlement Agreement

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- How and when will DOE monitor the assurances in the settlement agreement?
- These assurances are included in the districts' SP&Ps, along with a number of additional assurances. At this time, monitoring activities do not specifically target each of these; however, districts are accountable for following all policies and procedures in their SP&Ps.

# Content...

Pgs. 1/5

Rule 6A-6.030191, FAC.

- ❖ Rule 6A-6.030191, FAC., *Development of Educational Plans (EP) for Exceptional Students Who Are Gifted*
  - ◆ Requires EP for students solely identified as gifted
  - ◆ Requires parent participation
  - ◆ EP participants include general education teacher, teacher of the gifted, LEA and interpreter of instructional implications
  - ◆ Identifies considerations addressed during development
  - ◆ Timelines for review – K-8 at least every 3 years and 9-12 at least every 4 years and during transitions from elementary to middle and middle to high, or if parent or district request a review

# Content...

Pgs. 7/9

Rule 6A-6.03020, FAC.

- ❖ Rule 6A-6.03020, FAC., *Specially Designed Instruction for Students Who Are Homebound or Hospitalized*
  - ◆ Requires annual medical statement from a licensed physician (or ARNP or PA) to include diagnosis and duration of condition, prognosis and treatment and medical implications
  - ◆ Physician must be licensed to practice in Florida
  - ◆ Clarifies medical and psychiatric conditions and no cost evaluations to parent

# Content...

Rule 6A-6.03020, FAC.

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- ◆ Telecommunication or computer devices, if determined to be needed by the IEP team, are provided at no cost to the parents, during the instructional period
- ◆ Identified settings and instructional modes to include safety of location
- ◆ Requires IEP Team to develop an IEP for durations of absence greater than 15 school days (or block equivalent)

## **Rule 6A-6.03020, FAC, *Specially Designed Instruction for Students Who are Homebound or Hospitalized***

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- How much information is needed under the H/H rule regarding “plan of treatment” and “recommendations regarding school re-entry?”
- This would be determined on an individual basis. Sufficient information must be provided to assist the team in determining whether or not the student meets the criteria for eligibility for the program, and if so, to assist in the development of an IEP that ensures placement in the least restrictive environment.

## **Rule 6A-6.03020, FAC, *Specially Designed Instruction for Students Who are Homebound or Hospitalized***

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- What is meant by “parental cooperation” as a component of the eligibility criteria (3)(c)?
  - The parent must indicate that he/she will cooperate with the district in implementing an IEP in the home setting. Without this cooperation, the district cannot come into the home to provide the service.

# Content...

Pgs. 13/23

Rule 6A-6.03028, FAC.

- ❖ Rule 6A-6.03028, FAC., *Development of Individual Educational Plans for Students with Disabilities*
  - ◆ Strengthens language on role/expectation of parents
  - ◆ Specifies role of general education teacher with regards to positive behavior interventions and strategies for the student
  - ◆ Clarifies requirements of extended school year
  - ◆ Requires parental consent for instructional accommodations not allowed on state assessment
  - ◆ Requires consideration of training or information in area of self-determination

# Content...

## Rule 6A-6.03028, FAC.

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- ❖ Rule 6A-6.03028, FAC., *Development of Individual Educational Plans for Students with Disabilities*
  - ◆ Requires statement on the IEP if a transition service is not required and the identification of district staff responsible for transition services follow-up
  - ◆ Requires district participation in transition planning for infants and toddlers with disabilities
  - ◆ Specifies district responsibility of IEP team to respond to parent request for IEP revisions or invoke due process

# Content...

## Rule 6A-6.03028, FAC.

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- ❖ Rule 6A-6.03028, FAC., *Development of Individual Educational Plans for Students with Disabilities*
  - ◆ Identifies that a student placed in a private school by the district has all the rights of a child served in the district
  - ◆ Ensures students referred by the district to private schools or facilities receive special education and related services
  - ◆ Clarifies school, district, teacher or others may not be held accountable if student does not achieve growth projected in annual goals
  - ◆ Effective October 17, 2004

## Rule 6A-6.03028, FAC, *Development of Individual Educational Plans for Students with Disabilities*

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- Does the requirement to include a statement of remediation needed to pass the FCAT mean that FCAT performance is the only way to measure progress?
- No. The intent of this requirement is to ensure that IEP teams clearly address the student's participation in the general curriculum, including focusing on the specific deficit skill areas that prevent the student from passing the FCAT. This does not mean that FCAT scores are the only, or the best, measure of student progress. It does mean, however, that students must be provided access to the general curriculum to the extent appropriate, and that instruction should be targeted to address specific areas of need.

## Rule 6A-6.03028, FAC, *Development of Individual Educational Plans for Students with Disabilities*

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- If the disability is not impacting achievement or if we are addressing these needs on an AIP, why is it necessary to include a statement of needed remediation?
- For the majority of students with disabilities, the difficulties they experience in attempting to earn a passing score on the FCAT are related to the disability, and rightfully should be addressed on the IEP. For some students, however, such as some students eligible solely as speech impaired, the IEP team may determine that the disability is not related to difficulties with the FCAT, and would indicate this on the IEP.

## Rule 6A-6.03028, FAC, *Development of Individual Educational Plans for Students with Disabilities*

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- Why doesn't this rule include the requirement that the parent provide informed written consent prior to the provision of services?
- This requirement was included in Rule 6A-6.03311(3)(c), FAC, Procedural Safeguards for Students with Disabilities.
- The definition of "specially-designed instruction" references "methodology." Does this mean that the IEP must include the specific methodology to be used?
- No. This language is unchanged from the language in the federal regulations. There is no change in the interpretation of this section.

## Rule 6A-6.03028, FAC, *Development of Individual Educational Plans for Students with Disabilities*

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- Notifying 14 year olds of the FCAT waiver gives them permission to stop trying. Doesn't this send the wrong message? What if the waiver is done away with?
- Students with disabilities must be provided with information about all of the diploma options available, and the FCAT waiver provision is one avenue to obtain a standard diploma. However, it is imperative that IEP teams ensure that the message conveyed regarding this option is an accurate one. Students and their families must be informed that the waiver is not an automatic provision; it is only granted if the student meets specific criteria related to credits and GPA **and** the IEP team determines that the student has mastered the Sunshine State Standards for 10th grade.

## **Rule 6A-6.03028, FAC, *Development of Individual Educational Plans for Students with Disabilities***

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- Notifying 14 year olds of the FCAT waiver gives them permission to stop trying. Doesn't this send the wrong message? What if the waiver is done away with?
- Many students become discouraged by their inability to perform adequately on the FCAT despite being successful in their school work, and are tempted to drop out. The FCAT waiver provides another option for these students to obtain a standard diploma.

# Content...

Pgs. 27/33

Rule 6A-6.030281, FAC.

- ❖ Rule 6A-6.030281, FAC., *Development of Services Plans for Students with Disabilities Enrolled in Private Schools by their Parents and Provided with Specially Designed Instruction and Related Services by the Local School Board*
  - ◆ Specifies requirements for services plans for students parentally placed in private schools who are designated to receive specially designed instruction and related services
  - ◆ Service plans must include: parental participation, timelines and other considerations
  - ◆ Ensures right to procedural safeguards

***Rule 6A-6.030281, FAC, Development of Services Plans for Students with Disabilities Enrolled in Private Schools by their Parents and Provided with Specially Designed Instruction and Related Services by the District***

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- Would a student receiving assistive technology equipment and training for parents and/or staff require a services plan?
- Yes. In this instance, the equipment and training are specifically targeted at an individual student's needs. In contrast, if equipment is provided to a private school for use with many students, there would not be a services plan.

# Content...

Pgs. 35/39

Rule 6A-6.03029, FAC.

- ❖ Rule 6A-6.03029, FAC., *Development of Family Support Plans for Children with Disabilities Ages Birth Through Five Years*
  - ◆ Clarifies content of individualized family support plans (IFSP) for children with disabilities ages birth through five
  - ◆ Ages three through five may have IFSP in lieu of an IEP
  - ◆ Identifies required participants for the initial development of IFSP to include two professionals from different disciplines directly involved in conducting the evaluations and assessments
  - ◆ Requires statement of “natural environments” for intervention services

# Content...

Pgs. 41/43

Rule 6A-6.03032, FAC.

- ❖ Rule 6A-6.03032, FAC, - *Procedural Safeguards for Children with Disabilities Ages Birth Through Two Years*
  - ◆ Provision of prior parental notice, including content and method
  - ◆ Clarifies parental consent
  - ◆ Adds provision for access to educational records and mediation
  - ◆ Districts may not initiate due process to challenge parent decision regarding placement
  - ◆ Requires the district to identify when procedural safeguards will be provided

# Content...

Pgs. 45/51

Rule 6A-6.0331, FAC.

- ❖ Rule 6A-6.0331, FAC., *Identification and Determination of Eligibility of Exceptional Students for Specially Designed Instruction*
  - ◆ Includes parents as participants in eligibility meetings
  - ◆ Requires all activities prior to referral be consistent for all eligibility determinations to include 2 conferences, behavioral observations, review of all data in educational records, review of attendance, screenings for speech, language, vision and hearing, and 2 general education interventions to include academic improvement plan and remedial instruction; pre-kindergarten children do not require these activities

# Content...

## Rule 6A-6.0331, FAC.

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- ❖ Rule 6A-6.0331, FAC., *Identification and Determination of Eligibility of Exceptional Students for Specially Designed Instruction*
  - ◆ Timeline of 60 school days of which the student is in attendance for completion of evaluation; 1<sup>st</sup> day begins upon receipt of parent consent, referral for evaluation and completion of require activities; last day is date of administration of last assessment
  - ◆ Requires parental input of child's adaptive behavior for evaluations of students suspected of mental handicaps

# Content...

## Rule 6A-6.0331, FAC.

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- ❖ Rule 6A-6.0331, FAC., *Identification and Determination of Eligibility of Exceptional Students for Specially Designed Instruction*
  - ◆ Requires completion of evaluations for students suspected of being gifted within a reasonable time
  - ◆ Clarifies student may not be denied eligibility for gifted for limited English proficiency

## **Rule 6A-6.0331, FAC, *Identification and Determination of Eligibility of Exceptional Students for Specially Designed Instruction***

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- May the general education interventions discussed during the parent conferences required prior to referring a student for evaluation be the same general education interventions that are required under (2)(f)?
- Yes. It is expected that there be communication with parents regarding the planning, implementation, and evaluation of the general education interventions to the extent possible.

## **Rule 6A-6.0331, FAC, *Identification and Determination of Eligibility of Exceptional Students for Specially Designed Instruction***

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- In our district, we document the date of the referral for a social history and the date of referral for a psychological evaluation, and they are not always the same day. In this case, which date would be considered the “receipt of referral” date?
- The reference to “receipt of referral” in this rule does not signify referral for a specific assessment; rather, it refers to the general referral of the student for evaluation for possible eligibility for an ESE program. Districts will be required to define this date in their SP&P. Any individual assessment administered for the purpose of determining whether a particular student is eligible for and in need of special education and related services is considered part of the evaluation.

## **Rule 6A-6.0331, FAC, *Identification and Determination of Eligibility of Exceptional Students for Specially Designed Instruction***

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- When the district is conducting the evaluation concurrently with the general education interventions, what if the assessment results indicate the student meets the criteria for a program under state board rule, but the general education interventions are found to be effective?
- In accordance with 34 CFR 300.7, a student with a disability under the IDEA must be: (1) evaluated and found to have a disability, and (2) by reason thereof, be in need of special education and related services. If the student has a disability but does **not need** special education, the student is not eligible under the IDEA.

## Rule 6A-6.0331, FAC, *Identification and Determination of Eligibility of Exceptional Students for Specially Designed Instruction*

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- Regarding parental request for an initial evaluation, in *Attachment 1: Analysis of Comments and Changes of 34 CFR Part 300* of the regulations, OSEP's comments relating to section 300.531 clarify that if a parent requests an initial evaluation, the district must either conduct the evaluation or provide the parent with a written notice of its refusal to do so that conforms with the requirements of 34 CFR 300.503.

# Procedural Safeguards

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- What are the similarities and differences among the four procedural safeguards rules?
- A table comparing the components of each of the four procedural safeguards rules will be disseminated by the Bureau within the next 10 days. The procedural safeguards brochures are still in process.

# Content...

Pgs. 59/71

Rule 6A-6.03311, FAC.

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- ❖ Rule 6A-6.03311, FAC., *Procedural Safeguards for Students with Disabilities*
  - ◆ Identifies prior notice requirements
  - ◆ Mandates access to educational records by parents
  - ◆ Clarifies graduation with standard diploma is a change of placement
  - ◆ Provision of procedural safeguards, notice and content
  - ◆ Establishes requirement for parental consent
  - ◆ Addresses transfer of rights at age 18

# Content...

## Rule 6A-6.03311, FAC.

- ❖ Rule 6A-6.03311, FAC., *Procedural Safeguards for Students with Disabilities*
  - ◆ Incorporates mediation, complaint, and due process hearing and appeal procedures
  - ◆ Districts or parent may request administrative hearings regarding identification, evaluation, placement or provision of FAPE
  - ◆ Requires exhaustion of procedures under impartial hearing or appeal before filing civil action
  - ◆ Clarifies parent right to an independent educational evaluation at public expense under certain circumstances

# Content...

Pgs. 75/83

Rule 6A-6.03312, FAC.

- ❖ Rule 6A-6.03312, FAC., *Discipline Procedures for Students with Disabilities*
  - ◆ Defines under what conditions a student with disabilities may be removed for disciplinary reasons
  - ◆ Incorporates change of placement related to discipline procedures
  - ◆ Provides for manifestation determination to include functional behavioral assessment (FBA) and positive behavioral intervention plan (PBIP) requirements prior to long term removal
  - ◆ Requires use of “positive” language when describing behavioral supports
  - ◆ Includes suspension and expulsion issues

## Rule 6A-6.03312, FAC, *Discipline Procedures for Students with Disabilities*

- Must a FBA be conducted prior to the 11th day of suspension?
- An assessment plan to conduct an FBA must be developed either prior to, or no later than, 10 business days after the student has been removed for 10 days in a school year. Depending on the number of days of suspension the student has received, those 10 business days may or may not include days of suspension or days of school attendance. The important point is that within 10 business days of receiving the 10th day of suspension, the IEP team must meet to develop an assessment plan. The FBA must be conducted and a PBIP developed as soon as is practicable.

# Content...

Pgs. 87/93

Rule 6A-6.03313, FAC.

- ❖ Rule 6A-6.03313, FAC., *Procedural Safeguards for Exceptional Students Who are Gifted*
  - ◆ Identifies when procedural safeguards must be provided
  - ◆ Establishes prior notice requirements and content
  - ◆ Requires parental consent
  - ◆ Addresses access to educational records
  - ◆ States that independent evaluations are at public expense only if ordered by administrative law judge
  - ◆ Provides for complaint, mediation, due process hearing and appeal procedures

# Content...

Pgs. 95/99

Rule 6A-6.03314, FAC.

- ❖ Rule 6A-6.03314, FAC., *Procedural Safeguards for Students with Disabilities Enrolled in Private Schools by Their Parents*
  - ◆ Addresses lack of entitlement to specially designed instruction and related services
  - ◆ Clarifies prior notice and content
  - ◆ Identifies when parental consent is required
  - ◆ Access to educational records
  - ◆ Clarifies parent right to an independent educational evaluation at public expense under certain circumstances
  - ◆ Establishes procedures for complaint, mediation, due process hearings; specifies limitations

# Content...

Pgs. 103/109

Rule 6A-6.03411, FAC.

- ❖ Rule 6A-6.03411, FAC., *Policies and Procedures for the Provision of Specially Designed Instruction and Related Services for Exceptional Students*
  - ◆ Includes definitions, provision of specially designed instruction and related services, general procedures, and assurances
  - ◆ Clarifies dismissal to include “after the completion of reevaluations”
  - ◆ Includes regular class placement in the continuum of placements
  - ◆ Requires procedures to address participation in statewide assessments

# Content...

## Rule 6A-6.03411, FAC.

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- ❖ Rule 6A-6.03411, FAC., *Policies and Procedures for the Provision of Specially Designed Instruction and Related Services for Exceptional Students*
  - ◆ Districts must submit its written statement of procedures for review and approval to the Bureau of Exceptional Education and Student Services
  - ◆ Rule reflects definitions and the general procedures required as content of the SP&P
  - ◆ Effective October 17, 2004

# Speech and Language as a Related Service

- Why doesn't Florida follow the IDEA and make speech/language a related service only?
- The federal regulations implementing the IDEA includes students who have a speech impairment or a language impairment in the list of students with disabilities who are eligible to receive services (34 CFR 300.7). Florida's program for students who are speech or language impaired meets this requirement.
- Related services are defined at 34 CFR 300.24 as "...such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology..." Florida's plan to include speech or language pathology services will meet this requirement.

# Speech and Language as a Related Service

- How will IEP teams determine if a student needs speech or language pathology services as a related service? For reporting purposes, how will we differentiate students who receive services through a program vs. as a related service?
- Technical assistance to address these and related issues will be forthcoming from the Bureau. At this time, continue to report students who meet eligibility criteria (whether through traditional scores or through the alternative criteria recently established for selected disabilities) as you have always done.

# Counseling as a Related Service

- What is the difference between “counseling” and “psychological counseling?” Who can provide psychological counseling?
- Psychologists can provide psychological counseling. IEPs should reflect educationally relevant counseling as a related service for students who need it to benefit from special education, whether provided by a psychologist, guidance counselor, social worker, or other service provider. Technical assistance to more thoroughly address these and related issues will be forthcoming from the Bureau.

# ESE Rules - Memorandum

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- ❖ DPS Memorandum 05-0501 (March 15, 2004)
  - ◆ Available to all school district employees and parents of exceptional education students
  - ◆ Outlines issues
  - ◆ Promotes informed family involvement
  - ◆ Provides for dissemination of rules and technical assistance

# Settlement Agreement

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- ❖ Distribution of the DPS memorandum
  - ◆ district school superintendents, copies to ESE directors
  - ◆ paperless communication system
  - ◆ Florida Department of Education (FDOE) website
  - ◆ training sessions for administrative law judges (ALJ's)
  - ◆ federal and state general revenue discretionary projects

# Settlement Agreement

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- ❖ Regarding Rule 6A-6.03028, FAC., *Development of Individual Educational Plans for Students with Disabilities*
  - ◆ provide parents information regarding:
    - placement of students with disabilities in the least restrictive environment
    - diploma options
    - transition services
  - ◆ technical changes
  - ◆ assurance in SP&P

# Settlement Agreement

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- ❖ Regarding Rule 6A-6.0331, FAC.,  
*Identification and Determination of Eligibility of Exceptional Students for Specially Designed Instruction*
  - ◆ school board policies define “days in attendance”
  - ◆ parent may request evaluation
  - ◆ not unreasonably delay determination of eligibility
  - ◆ assurance in SP&P- district will make specific information available regarding the identification and determination of eligibility of exceptional students

# Settlement Agreement

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- ❖ Regarding Rule 6A-6.03411, FAC., *Policies and Procedures for the Provision of Specially Designed Instruction and Related Services for Exceptional Students*
  - ◆ Per DOE's prior response to OSEP regarding speech and language services:
    - "speech and language services" to be in the statutory definition of the term "related services"
  - ◆ Technical change

# Settlement Agreement

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- ❖ Assurances in the SP&P
  - ◆ least restrictive environment (LRE)
  - ◆ diploma options including the waiver
  - ◆ requirements related to transition services
  - ◆ process of identification and determination of eligibility of exceptional students
- ❖ Family Involvement – School districts are encouraged to provide a list of contact organizations.

# Settlement Agreement

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- ❖ Districts are not expected to create new materials; all information is currently available through the Clearinghouse
- ❖ Affirmative measures to ensure parents have information for decision making

# Ongoing Assistance

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## Address Questions

Thank you!

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