

My Way or the Highway:

Addressing Parent Demands In and Out of ARD Meetings

**Taylor Montgomery,
Thompson & Horton LLP**



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2023

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MY WAY
OR THE HIGHWAY

Addressing Parent Demands In and Out of ARD Meetings

TCASE Interactive 2023
Taylor M. Montgomery
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First Things First...Who is a Parent?

- Biological or adoptive parent of the student
- Foster parent of the student who meets the requirements for a foster parent to act as a parent
- A guardian, but not the state itself, if the student is a ward of the state
- An individual acting in place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the student lives, or another individual who is legally responsible for the student's welfare
- An individual assigned to be a surrogate parent
- NOT the Department of Family and Protective Services/CPS

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The Parent(s) 

- Districts **must** invite parents to ARD meetings and **strongly encourage** them to attend
 - Courts will look at the reasonableness of the district's attempts
 - Contact parents by multiple means
 - Notify parents of meetings early enough to ensure that they have the opportunity to attend
 - Document all efforts to secure parental attendance
 - Ex: call logs, copies of letters sent home, emails, records of visits made to parents' home or place or employment
- May conduct ARD meeting without parent if district is unable to convince parent to attend



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The Parent(s)

- Must schedule meetings at a mutually agreed time and place. 34 CFR 300.322(a)(2).

True or False? The parent may dictate the time and location of the ARD meeting.


 

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Do the parents have a right to dictate the time and location of the ARD?

- **ARD meetings do not have to be convenient for the parent, they only need to be scheduled at a mutually agreed-on time and place.**
- Cannot demand that ARD meetings be scheduled after work hours and in the home
- Cannot "pocket veto" the development of an IEP by refusing to attend ARD meetings or refusing to conclude the process.
- Conduct the ARD without the parent but document that you made reasonable attempts to secure participation

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Parent's Right to Meaningful Participation

- School districts should consider parents' suggestions and, to the extent appropriate, incorporate them into the ARD
- Should also consider any information provided by the parents—including IEEs and information from outside services providers—and answer parent questions
- However, "considering" parent input does not mean "acquiesce" to parent demands
 - The IDEA does not require districts "simply to accede to parents' demands without considering any suitable alternatives." *Blackmon v. Springfield R-XII Sch. Dist.*, 31 IDELR 132 (8th Cir. 1999).
- School districts must be prepared to respond to unreasonable requests and should not "give in" if the request is unreasonable

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Let's Visualize Together



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Surviving Hard ARDs

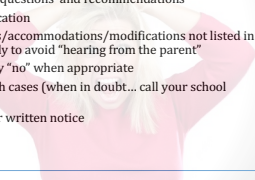


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Challenging Parents, Advocates, & Attorneys

- Maintain professional tone and direct communication with the parent
- Respond to reasonable questions and recommendations
- Do not avoid communication
- Do not provide services/accommodations/modifications not listed in a student's IEP specifically to avoid "hearing from the parent"
- Know how to legally say "no" when appropriate
- Ask for support in tough cases (when in doubt... call your school attorney!)
- Don't forget about prior written notice



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Preparing for a Hard ARD




- Staff and communicate!
- Ensure the ARD Committee knows and understands the specific concerns
- Review new evaluations/assessment/current progress and make sure everyone is up to date
- Develop a proposal/recommendation for ARD consideration
 - And have the data to support your proposal!
- Ensure all required members are prepared and able to participate/ contribute

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Plan Ahead



- Ensure that members of the ARD Committee provide data/work samples and other information to the student's case manager at least one week prior to the ARD meeting
- Proposed IEP goals and objectives should be drafted in advance of the ARD meeting
 - Provide parents copies of the drafts with enough time to review before the meeting
 - But remember these may change!
- Where appropriate, meet with the school district's members of the ARD Committee to review the IEP and prepare for the upcoming ARD meeting

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Plan Ahead 


- Ensure that members of the ARD Committee have reviewed recent data/work samples/progress and are aware of the student's current level of performance in their areas
- Members of the ARD Committee should be aware of the accommodations that the student is receiving and have documentation to support the provision of those accommodations prior to ARD meeting
- Plan accordingly to reschedule ARD meeting or seek consent for excusal if it is known in advance that a member of the ARD Committee cannot attend at the scheduled time

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Set Ground Rules

- Stay focused on the agenda, and redirect conversation back to the agenda when appropriate
- Be polite and courteous, even during disagreement!
- Don't engage in side-bar conversations
- Keep cameras on and District employees attentive
- Don't allow members to come and go during meetings
- **Keep the focus on the student!**



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Set Ground Rules

"In order to facilitate a collaborative environment, participants will conduct themselves in a courteous manner. This expectation must be followed in order to work together to develop an appropriate educational plan for the student. All participants will conduct themselves professionally at all times during this ARD meeting. Unnecessary outbursts, rude or unprofessional behavior will result in the administrator requesting the removal of the party from the committee meeting. This action could result in a recess of the meeting and rescheduling for another date and time."

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Bonus Tip!




- It is a good idea not to have all ARD Committee members besides the parent gathered together in the room before the parents arrive
- May give the idea that it is "us" vs. "them"
- Best to have only a couple of district team members in the room until the parents arrive and have the remaining members come in after
- If possible, try to offer parent the "best seat in the house"

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Set an Agenda


- Provides a specific order in which information is presented and discussed during the ARD meeting
- Helps to show that student's placement and services are determined by the student's needs
- Use ARD Agenda and ARD Script provided by the District



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Presentation of Drafts



- Districts may meet, discuss, and prepare draft IEPs before ARD meetings
 - But must be clear in the meeting that it is only a draft and can be changed
- Make it clear that the ARD Committee is open to consider revisions to the IEP and placement - want to avoid any appearance of predetermination
- Do not decide what services or placement will be provided prior to hearing parent input at ARD meeting
- Consider presenting parent with copy of draft prior to the ARD meeting (but not required)

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Presentation of Drafts

- Avoid liability for predetermination by documenting parents' input and noting the changes to the final IEP
- *A.P. and S.P. v. New York City Dep't of Educ.*, 66 IDELR 13 (S.D.N.Y. 2015): Meeting minutes and IEP itself discussed the father's belief that integrated co-teaching classes would not provide adequate support. Those statements, along with substantial differences between the draft and final IEPs, showed that the district team members came to the meeting with an open mind.

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Communication is Key




- Encourage all members of the ARD Committee to communicate effectively during ARD meetings
- But ongoing conversations between key members of the ARD Committee (not just in ARD meetings) is critical
- Where necessary, provide training to members of the ARD Committee on effective and appropriate communication with parents
- Make sure that all decisions made in the ARD meeting are sufficiently explained to the parent
- Speak positively of student but do not avoid telling the "full story" (think: compliment sandwich)

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Deliberations



- Fully document parents' opportunity to provide input, all discussions relating to parents' concerns, and the ARD committee's decisions relating to parent requests in the deliberations



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Deliberations

- **True or False?** This is sufficient documentation of the discussion:

The ARD committee reviewed and discussed the student's placement in the Functional Living Skills classroom.

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Deliberations

- **False!** This is a summary of the agenda - not a summary of the ARD committee's decisions.
- **Better example:** *The ARD committee reviewed and discussed the student's placement in the Functional Living Skills classroom. The parent requested that the student receive some of her instruction in the general education classroom. The student's teachers reviewed classroom data and the diagnostician reviewed the FIE to support the District's position that the student's least restrictive environment is the FLS classroom. The student learns best through individual instruction and requires significantly modified curriculum. The ARD committee agreed to continue reviewing data from the next grading period and convene another ARD meeting if the data supports a change to the less restrictive environment requested by the parent.*

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Remember the Child

- Remember that everyone in the ARD meeting wants what is best for **the child.**
- The main focus of everyone in the ARD meeting: **what can we, as an ARD Committee, do to help this child succeed?**
- Remain committed to helping the student receive a free appropriate public education in their least restrictive environment



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Responding to Parent Requests



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Is this an appropriate request?

"I WOULD LIKE TO SEE EVERY SINGLE THING YOU DO IN CLASS AHEAD OF TIME, TO DETERMINE IF IT IS APPROPRIATE."

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Key for Parent Requests





- Determine whether the request is appropriate for the ARD committee
- Focus on FAPE - meaningful, not maximum, educational progress
- Look at the child's evaluations and data
- Does the child need that service to receive FAPE
- Communicate with and prepare staff to respond
- Keep it individualized

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Example of Unreasonable Requests

- A parent does not have the right to decide the specific school the child will attend
- See *Luo v. Baldwin Union Free Sch. Dist.*, 69 IDELR 88 (2d Cir. 2017) - A New York district did not violate the IDEA when it denied a father's request to place a student with autism in an out-of-state private school that used "natural methods" to education children with developmental delays.





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Scenario

During an ARD meeting, parents bring up their concerns about their student attending their zoned district school and suggested a local private school designed for students with learning disabilities as a viable placement option for their child. The district representative responds that, for administrative reasons, the student cannot be placed at the private school and that the school is "not an option that's on the table as far as the ARD Committee is concerned. What our option is, is that he go to his home school." The parents again tried to bring it up later in the ARD meeting, and the District representative said, "That has already been discussed. We need to move on."


**Is this an appropriate response to this parent request?
Why or Why not?**



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Scenario

- No. See *R.L. v. Miami-Dade Cty. Sch. Bd.*, 63 IDELR 182 (11th Cir. 2014).
- The court held that this statement weighed strongly in favor of finding predetermination
- It was clear that there was no way that anything the parents said, or any data they produced, could have changed the ARD Committee's determination of appropriate placement.
- Had the ARD Committee at least allowed discussion to continue, it might evidence some responsiveness to, and thoughtful consideration of, the parents' desire to enroll their student in the private school.
- While the ARD Committee was not required to grant the request, the discussion could have led both sides to come up with another solution that pleased both the parents and the district.



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Turn & Talk

Johnny is a seventh grader with autism in an ALE program. He receives behavior support from the District's BCBA and has a Behavior Intervention Plan (BIP) to target his problem behaviors. Since the BCBA began working with Johnny in August, he has demonstrated a decreased frequency in behaviors and has continued to make progress towards his behavior goals. He has also shown improvement with the use of a token economy. After a recent isolated incident where Johnny pushed another student—one of the target behaviors in his BIP—his parents are demanding that the ARD Committee put in his ARD that Johnny requires daily ABA therapy provided by their private ABA therapist on the District's campus. The ARD Committee does not believe that this is necessary but is worried the parent may file a request for a due process hearing if they do not grant it.

What do you do?

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Examples of Unreasonable Requests

- Other examples of requests that may be "unreasonable":
 - Parents disagree with district professionals' recommendations and demand that the ARD Committee implement recommendations by outside service providers instead
 - Parents demand specific services that aren't necessary for FAPE
 - Parents demand services by specific employees
 - Parents want accommodations or modifications that are not appropriate or necessary

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Examples of Unreasonable Requests

- **A parent may not demand that a school district use a particular educational methodology for a student as long as the methodology the district uses provides FAPE.**
 - However, the district should still maintain an open discussion with parents regarding the use of various educational methodologies.
- *See A.S. v. New York City Dep't of Educ.*, 63 IDELR 246 (2d Cir. 2014) – While the parents preferred for their child to attend an ABA-based program, the student could also receive an educational benefit from the district's TEACCH methodology.

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Responding to Unreasonable Requests 


- Keep the focus on the student and student progress
- Strive to remove emotions from the meeting and express empathy
- Be prepared to explain your reasoning **and have documentation to back it up.**
- Make it known that you understand their concerns and have taken their input into consideration

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Weak Response

"I know you mentioned wanting ABA therapy, but we just don't do that here at our district. Plus, I don't even think he needs it."



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Strong Response  


"I understand that you are concerned about Johnny pushing another student and believe private ABA therapy may help with this. In my professional judgment, private ABA therapy is not necessary or required for Johnny to make educational progress at this time. I believe that the behavior support that Johnny is receiving through the District's BCBA and his current IEP are sufficient to provide him an appropriate education and to make progress. Looking at the data, this is the first time Johnny has pushed another student in 8 weeks. This shows tremendous progress! If, for some reason, Johnny doesn't keep showing improvement in this area, the ARD Committee is certainly willing to revisit this option and determine whether it may be appropriate at that time."

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Strong Follow-Up & Documentation

- Document the response to the request—including the reason for declining the request—in the deliberations/ARD minutes, or in another written way if it is not addressed through an ARD meeting
- Give parents information regarding the grievance process




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Responding to Unreasonable Requests

- If necessary, "put it in the parking lot."
- Agree to discuss non-ARD committee decisions at a parent/teacher conference at a later date



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Turn & Talk

The ARD Committee cannot agree on the appropriate communication device to provide the student. Although the FIE conducted by the district and all data collected by the student's assistive technology team/district professionals indicates that the student will learn best with Communication App A, the student's parent insists that Communication App B is better. She even provides a private evaluation that she obtained, as well as documentation from the student's private speech therapist, indicating that Communication App B would be better. However, the district's team members feel strongly that Communication App A is more appropriate and have the documentation to back it up.

What happens now?

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Turn & Talk

Same fact scenario as before with the communication device. However, the parent states, "If you do not allow my student to use Communication App B, I will file a due process complaint against the District. You are violating my rights." Trying to please the parent and avoid the stress and cost of litigation, the ARD Committee agrees to provide the Communication App B. They indicate in the minutes that, while the district professionals believe Communication App A is more appropriate, they have agreed to try Communication App B "in the spirit of cooperation."

**Was this the appropriate response?
What might a hearing officer say about this?**

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Addressing Parent Requests in ARDs

• Phrases we often hear in litigation:

- *We were just trying to please the parent.*
- *We didn't necessarily agree with the decision, but we wanted to keep the peace.*
- *We were trying to avoid having the parent file for due process. She can be so difficult.*
- *We figured the parents knew better. It is their kid.*
- *We felt bullied by the advocate into doing it.*
- *The advocate told us that is what was required by law.*

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Words Make All the Difference!

WORDS/PHRASES TO LOSE:


• Budget	• We've always done it that way
• Money	• We don't have...
• Funds	• That's the way we do it
• Can't	• We can't afford that
• Won't	• We can't do that
• Maximize	• This is what we have to offer
• Full or highest potential	• Let's wait and see...
• Maximize	• What do you want?
• Minimum	• What we do for your child, we must be able to do for the rest of the class.
• Let's vote	

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Or my personal favorite...

We probably could have agreed to give him a 1-on-1 before the pandemic and the teacher shortages. But with the teacher shortages right now, there's just no way we can do that. I'm so sorry!



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Words Make All the Difference!

WORDS/PHRASES TO USE


- Appropriate
- Individual
- Progress
- Consider
- Meaningful
- Educational need
- We feel that what we are proposing is appropriate.
- We feel that this IEP meets your child's individual educational needs.
- We will consider that request.
- Could you help us understand what you are proposing?
- Do you have anything (such as documentation, a doctor's report, evaluation results, data) to share with us to support your request?
- Would you explain how this would benefit your child's education?
- What concerns you most about...

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ARD or Administrative Request?

- Not every request a parent makes is decided by an ARD Committee
- Some requests are to be referred to the administration
- Depends on whether the request is necessary for FAPE
- Depends if it effect other services/needs for the IEP
- However, all requests/concerns should be addressed
 - Parent/teacher conference might be more appropriate




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Things That May or May Not Be ARD Decisions

- Attendance issues/excuses
- Teacher selection
- Selection of classroom/campus (but not placement)
- Teacher not following IEP
- Materials/curriculum to be used
- Involvement in an extracurricular activity
- Religious/culture needs
- Complaints about a teacher
- Requesting a male v. female assistance
- Hospitalization
- Failure to meet 90% rule/attendance committee
- Damage to parent-provided device
- Need for eyeglasses



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When the Parent Disagrees



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Mutual Agreement

- ARD Committee should make every effort to ensure that mutual agreement regarding the IEP can be reached
- Do not attempt to reach decisions based upon a majority vote
- But there are times when the district and the parent simply will not be able to agree...



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Mutual Agreement

- When it looks like mutual agreement will not be reached:
 - Continue to act professionally towards a parent exercising their right to disagree with decisions of the ARD Committee
 - Be respectful, be empathetic, and remember the child
 - Remove emotions – this is not a personal attack on the school district
 - Ask questions to try to understand why the parents disagree
 - Document all of the District's responses to each one of the parent's disagreements in the ARD deliberations and the rationale for the decisions
 - Offer to collect additional data, if appropriate
 - Consider offering to reevaluate, if appropriate

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Mutual Agreement

- If mutual agreement **cannot** be reached during ARD meeting:
 - Offer the parent a single opportunity to recess for up to 10 school days or another mutually agreeable time;
 - Document all recommendations by the ARD Committee in which the parent disagrees, as well as the parent's position of disagreement, in the ARD minutes;
 - Provide the parent a copy of their procedural safeguards and explain the process for resolving the disagreement, should the ARD Committee be unable to reach mutual agreement after recess; and
 - Notify the parent that the IEP will be implemented in 5 school days from receipt of the Prior Written Notice.

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Notice of Procedural Safeguards & ARD Guide

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Prior to the Reconvene

- If the parent and school district mutually agree to reconvene after 10 school days have passed, obtain a written statement from the parent agreeing to the delay
- During the period between the initial ARD meeting and the reconvene:
 - Consider alternatives;
 - Gather data;
 - Prepare further documentation;
 - Obtain additional resources to enable to ARD Committee to reach mutual agreement;
 - Determine if a staffing should be held to discuss alternative options/proposals and review additional information


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TEA IEP Facilitators


- If it looks like mutual agreement may not be possible even following the recess, consider utilizing an IEP facilitator provided through TEA
- TEA IEP facilitation—an alternative dispute resolution method—may be used at the request for the parent and the District when an ARD ends in disagreement
- If the campus determines that an IEP facilitator would be helpful, contact the parent to seek consent for the request
 - Must complete and submit the required form within 5 days of the ARD meeting that ended in disagreement

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During the Reconvene



- Continuation of previous ARD - ~~not~~ new ARD
- Upon request, allow parents to outline concerns in writing
- **Please, please, PLEASE... record the date and time of the reconvened ARD in the deliberations section**

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Agree to Disagree and Provide FAPE

- And when all else fails, agree to disagree...
 - Do not be so afraid to end in disagreement that you implement requests that the ARD Committee does not agree are in the student's best interests
 - Complete the IEP progress without unnecessary or unreasonable delay
 - Complete the Prior Written Notice detailing the decisions, refusals, and rationale for all of the decisions and refusals
 - Implement the services in the ARD 5 school days after PWN
- The IDEA provides parents and the school district a right to alternative dispute resolution processes, mediation, formal state complaints, and special education due process hearings for disagreements

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One Final Scenario

At the end of the ARD meeting, the father's advocate says that the father would like more time to consider whether he will agree with the IEP. They say they'll "get back to you" by the end of the week.

What do you do?

1. Remain professional & indicate that you understand
2. Explain that the District will treat the parent's request as a disagreement (as the parent is not agreeing at this time)
3. Proceed to offer the 10-day recess ARD meeting

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Main Takeaways

- ✓ Keep the focus on the student and what the student needs to receive FAPE
- ✓ Always remain professional
- ✓ Agree to disagree and be okay saying "no" – as long as there is documentation to support the denial
- ✓ Document, document, document – includes parent requests, considerations of/discussions regarding requests, District's decision, and District's reasoning
- ✓ Breathe

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Main Takeaways


✓ And most importantly... take a deep breath (or several)!

- TO DO:
- DEEP BREATH
- DEEP BREATH

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Questions?



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