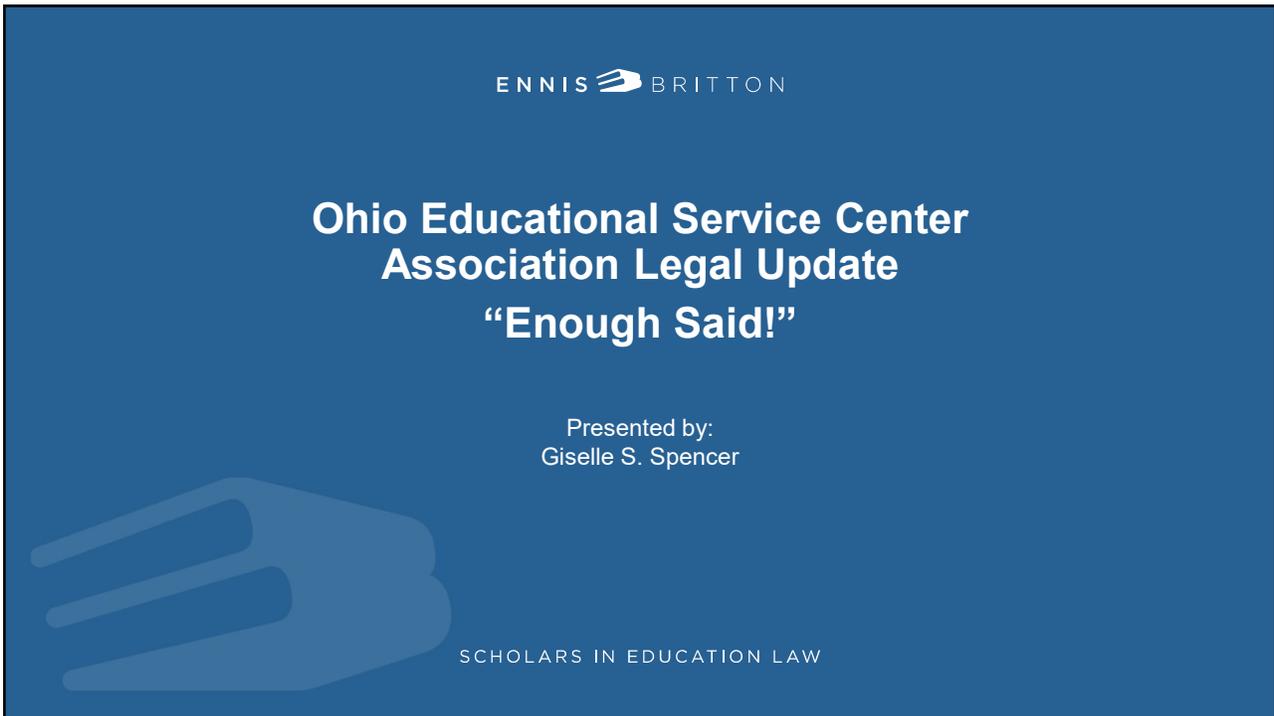


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**JEOPARDY! – THE ESC EDITION**

Virtual meetings	Collective bargaining	Transgender students	Everyone is watching	Is COVID still a thing?
Staff retention	Staff shortages	New holidays	Records retention	Transportation
Resuming school trips	Preschool rules	Student discipline	Bullying / harassment	General survival

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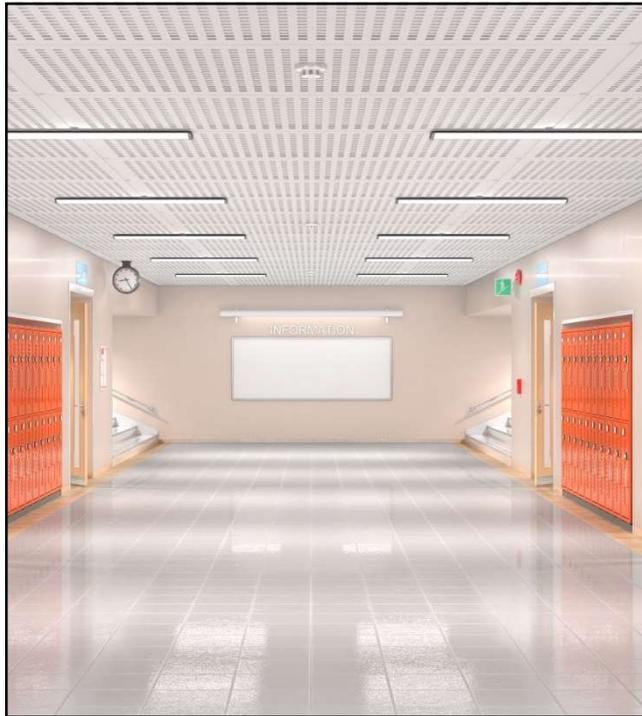
3

**Awaiting the Coming of the Endemic:**

**We're Done with Masks, Right??**

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## Ohio Department of Health Eases COVID Reporting Requirements

March 14, 2022

Schools are no longer required to:

- Maintain a COVID-19 reporting system for parents to report positive cases.
- Have a designated COVID-19 coordinator;
- Notify parents of positive cases among staff, students, or coaches;
- Report positive test cases to the local health department
  - EXCEPTION: Where the school tests a student, and the result is positive.

Quarantine and isolation measures remain in effect as outlined in “mask to stay” policies. This allows a student who has been exposed to COVID-19 but is not symptomatic or positive to remain in school if they wear a mask.

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## Mask Requests from Families

A Virginia Court recently ruled that the parents of 12 unrelated students with medical conditions will be able to seek universal indoor masking as an accommodation to allow their children to attend school safely during the COVID-19 pandemic.

The U.S. District Court, Western District of Virginia barred state officials from enforcing a newly enacted parental opt-out provision against the students' districts while the parents' Section 504 and ADA claims were pending.

The court did authorize the 10 involved school districts to “adopt universal indoor masking for one or more of the students in this case if doing so would be a reasonable modification of state law.”

The school districts' communications with the parents indicated that they declined to adopt mask mandates because state law prevented them from doing so. With that barrier gone, the districts can make fact-specific inquiries for each student to determine whether universal masking would be a reasonable modification.

*Seaman v. Commonwealth of Virginia, (W.D. Va. 03/23/22).*

**LESSON LEARNED:** This could become a 504 matter for school districts and ESCs.

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- Some Questions Should We Be Asking...

**WHAT** are the specific needs of the student?

**HOW** is this request handled in the student / family's every day life?

**WHAT** is the scope of the request?

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**Twitter Bites:  
Laws by the Minute**

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## Juneteenth Declared a Holiday ... Again

- SB 11 was recently signed into law and goes into effect on June 8, 2022.
- Previously applied to 9- & 10-month employees, but not 11- and 12-month employees, oddly enough.
- Correction to the law now requires schools to grant June 19th as a paid holiday for all regular nonteaching school employees who are employed on an 11- and 12-month basis.
- As a result of these changes, nonteaching employees employed on an 11- or 12-month basis now receive Juneteenth Day as a paid holiday along with New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.
- The statute, ORC Section 3319.087 does not apply to administrative employees – however, you should check your contracts and/or handbooks for these employees.

**What does this mean for Bargaining??**

"Juneteenth Statue / Former State Rep. Al Edwards" by o7iq7is licensed under CC BY-SA 2.0

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## Legislation to Watch

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HB 322 – it would prohibit teaching that an individual is inherently racist, sexist, oppressive. Would require educators to teach that slavery and racism aren't "anything other than deviations" of the founding principles of the U.S.

HB 327 – would require teachers to present a nonpartisan discussion about controversial aspects of history and "the historical oppression" of people based on race, color, religion, sex or national origin. Has had 12 versions.

HB 616 – combines the concepts of HB 327 with aspects of Florida's named "don't say gay" law. Would prohibit schools from teaching, using or providing any curriculum or instructional materials on sexual orientation or gender identify.

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**Legislation to Watch**

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HB 240 – would require venereal disease and teen pregnancy prevention education to teach risk avoidance and unhealthy behaviors, including alcohol, drugs, dating violence, bullying, gambling, pornography and human trafficking

HB 529 – would require public schools (and private schools that take vouchers) to post curricula and instructional materials online for each classroom course by July 1 each year.

HB 497 – would eliminate the requirement that 3<sup>rd</sup> graders repeat the grade based on their ELA assessment score. Still would be required to offer remediation for K-3 for students who are behind.

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**Legislation to Watch**

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**Changes to License Requirements for Substitute Teachers**

HB 583 – Would require an applicant to hold at least a bachelor's degree, as opposed to a postsecondary degree as provided by current law.

Would regulate how long a substitute can teach under the license:

- For **an unlimited number of school days** if the license holder has at least a bachelor's degree in either education or a subject area directly related to the subject of the class the license holder will teach.
- For **one full semester**, subject to the approval of the employing board, if the license holder has at least a bachelor's degree, but in a subject area that is not directly related to the subject of the class that the license holder will teach.
- A substitute career-technical teaching license holder can teach outside the license holder's certified career field for up to one semester, subject to the approval of the employing superintendent.

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**Legislation  
to Watch**

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**Changes to License Requirements  
for Substitute Teachers**

HB 583 would extend the One Year Temporary Non-Bachelor's Substitute Teaching License to June 30, 2024.

It would continue to allow a board to employ an individual who does not hold at least a bachelor's degree as a substitute teacher, provided the individual meets the following requirements:

1. Meets the district's or school's own set of educational requirements;
2. Is deemed to be of good moral character;
3. Successfully completes a criminal records check.

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**Board Meetings: Now You  
See Me, Now You Don't**

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## RULES EXTENDED FOR VIRTUAL MEETINGS BY PUBLIC BODIES

### HB 51 SIGNED BY GOVERNOR AND WENT INTO EFFECT FEBRUARY 18<sup>TH</sup>

Meetings and hearings may be held and attended by means of:

- Teleconference,
- Video conference, or
- Any other similar electronic technology

Public officials who attend virtually will count towards the quorum and be permitted to vote.

Members will be considered “present” and “in person” if attending through such technology. Such attendance complies with the Ohio Open Meetings Act.

Any resolution, rule, or formal action of any kind taken via such participation has the same effect as if it occurred during a traditional open meeting or hearing of the public body.

This exception is temporary ~ it will expire July 1, 2022.

## PUBLIC ACCESS DURING VIRTUAL MEETINGS

- There still must be **public access** to a meeting or hearing held through such technology that the public would otherwise be entitled to attend.
- This includes notice at least 24 hours in advance of a meeting.
- This also includes ensuring the public can **observe and hear** deliberations of all the members, whether they are attending in-person or virtually.



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**Preschool  
Regulation  
Changes  
OAC 3301-51-11 is  
UPDATED**

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## PRESCHOOL RULE UPDATES

### BIG IDEAS

Framing for the new Preschool rules

- ❖ Inclusion of Preschool Students with disabilities into Community Programs
- ❖ Integrated class (50/50 model) is a more restrictive environment
- ❖ OSEP letter:  
<https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/preschool-lre-dcl-1-10-17.pdf>
- ❖ ODE alignment of school age rules to preschool rules
- ❖ Parent Choice



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# PRESCHOOL RULE UPDATES

## BIG IDEAS

### LRE: Least Restrictive Environment

- Keeping children where they are found (childcare)
- Utilizing community settings for district placement
- Publishing a list of community settings to be considered for placement
- District placing children into community settings for services
- District pays for tuition for the community setting
- Location of the community settings can not be limited by district boundaries

# PRESCHOOL RULE UPDATES

## BIG IDEAS

### No Universal Preschool

- Lack of access to preschool children versus school age.
- Limits flow between programs.

### Staff Licensing

- Integrated Class teacher will have to have to be dual licensed teach in that program (Early Childhood Education and EC Intervention Specialist).
- Grandfather option available this program year.

# Gender and the Law: The Basics

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## The Genderbread Person v3.3 by its pronounced METROsexual.com

Gender is one of those things everyone thinks they understand, but most people don't. Like *Inception*, Gender isn't binary. It's not either/or. In many cases it's both/and. A bit of this, a dash of that. This tasty little guide is meant to be an appetizer for gender understanding. It's okay if you're hungry for more. In fact, that's the idea.

Plot a point on both continua in each category to represent your identity; combine all ingredients to form your Genderbread. 4 (of infinite) possible plots and labels combos.

*(Indicates a lack of what's on the right.)*

**Gender Identity**  
 Woman-ness  
 Man-ness  
 How you, in your head, define your gender, based on how much you align (or don't align) with what you understand to be the options for gender.

**Gender Expression**  
 Feminine  
 Masculine  
 The ways you present gender, through your actions, dress, and demeanor, and how those presentations are interpreted based on gender norms.

**Biological Sex**  
 Female-ness  
 Male-ness  
 The physical sex characteristics you're born with and develop, including genitalia, body shape, voice pitch, body hair, hormones, chromosomes, etc.

**Sexually Attracted to**  
 (Women/Females/Femininity)  
 (Men/Males/Masculinity)

**Romantically Attracted to**  
 (Women/Females/Femininity)  
 (Men/Males/Masculinity)

*In each grouping, circle all that apply to you and plot a point, depicting the aspects of gender toward which you experience attraction.*

For a bigger bite, read more at <http://bit.ly/genderbread>

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"Transgender Rally" by vpickering is marked with CC BY-NC-ND 2.0.

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## TERMINOLOGY

**Intersex** – (OCR Terminology) generally describes people with variations in physical sex characteristics. These variations may involve anatomy, hormones, chromosomes, and other traits that differ from expectations generally associated with male and female bodies.

**Cisgender** – a person who identifies with the gender they are assigned at birth.

**Transgender** – a person whose gender identity does not conform to social or conventional norms associated with male or female gender; gender association does not match the assigned sex. **This is independent of sexual orientation (internal experience).**

**Gender nonconforming** – a person who does not follow other people's ideas or stereotypes about how they should look or act based on the female or male gender assigned at birth.

**Non-binary** – a person who does not subscribe to conventional gender distinctions but identifies with neither, both, or a combination of genders.

**Gender dysphoria** – a formal diagnosis by a medical professional of a person whose emotional and psychological identity is the opposite of his/her biological sex.

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## WHERE IS THE STUDENT IN TRANSITION?

**Transition** – the process through which a person's gender identity becomes known to others, or becomes established through legal documentation, and/or through medical interventions.

- ❖ **Social transition** – coming out and creating a personal environment in which a person's gender identity is known and, ideally, respected by others.
- ❖ **Medical transition** – using hormonal and/or surgical interventions to more closely align one's body with one's gender identity.
- ❖ **Legal transition** – changing identity documents to have a name and/or gender marker that reflects one's current identity.

Many transgender people never transition for a variety of reasons.

- ✓ They do not desire a physical change.
- ✓ They are content to have the world see them in a way that differs from how they identify internally.
- ✓ They cannot transition due to work, school, family, health, or financial reasons.
- ✓ Some simply ease into a more neutral or gender non-conforming presentation without undergoing a full transition.

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**SIGNIFICANT COURT CASES**

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The Supreme Court has not ruled on how Title IX applies to LGBTQ+ students, but many federal appellate courts have addressed the rights of LGBTQ+ students:

*G.G. ex rel. Grimm v. Gloucester County School Board*, 972 F.3d 566 (4<sup>th</sup> Cir, 2020).

*Dodds v. U.S. Department of Education*, 845 F.3d 217 (6<sup>th</sup> Cir. 2016)

*Whitaker v. Kenosha Unified School District*, 858 F.3d 1034 (7<sup>th</sup> Cir. 2017)

*Doe v. Boyertown Area School District*, 897 F.3d 518 (3<sup>d</sup> Cir. 2018)

*Parents for Privacy v. Barr*, 949 F.3d 1210 (9<sup>th</sup> Cir. 2020)

*Adams v. Sch. Bd. of St. Johns County*, No. 18-13592, 2021 WL 2944396 (11<sup>th</sup> Cir. July 14, 2021)

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**SIGNIFICANT COURT CASES**

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- *Meriwether v. Hartop* U.S. Court of Appeals 6<sup>th</sup> Circuit. (March 2021)
- *Kluge v. Brownsburg Community School Corporation* District Court, S.D. Indiana (July, 2021)
- *Ricard v. USD 475 Geary Couty, KS School Board* U.S. District Court, Kansas (Pending)

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## How Should You Respond?



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### PRIVACY ISSUES

Students may have a privacy interest in their sexual orientation or gender identity, even if the information is known in some situations and not others.

- *Nguon v. Wolf*, 517 F.Supp.2d 1177 (C.D. Cal 2007)

Does a student have a privacy interest in his/her sexual orientation or gender identity, so much so that s/he can refuse to allow the district to inform the student's parents?

Is the information that would reveal a student's gender identity necessary to carry out the administrator's responsibilities?

Are there ways to safeguard against future/unintended disclosures?

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### STUDENT RECORDS AND REFERENCES

- FERPA and Ohio Law
- Parent knowledge of sexual orientation or gender identity

□ A district may not disclose PII from educational records unless a FERPA exception applies

- Records that relate to gender identity contain PII

□ FERPA allows parents and eligible students to review their educational records and change inaccurate or misleading information

- Does not prevent or compel school districts to change student records with no “inaccuracy,” but leaves the decision for the local school district

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**Official Records:** Do we need to/can we change our official records for a student?

- Gender marker
  - Ohio law now permits a change on birth certificate.
  - Federally – medical documentation can be submitted to U.S. State Department for a change in gender marker on passport.

❖ If we have a change in the gender marker on a **passport** but not on a **birth certificate**, should we change the EMIS gender marker?

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## NAMES

- Do we treat the preferred name similar to the way we would treat a nickname for any other student?  
Nickname = derivative of given name.
- **Remember:** The official/legal name is changed only when a **court order** legally changes the student's name.

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## CASUAL REFERENCE:

There is a distinction between official records and day-to-day references to the student.

Consider if/when/how you'll do the following:

- Allow students to choose their name and preferred pronoun based on their consistently asserted gender identity.**
- Remember:** There is no requirement for a court-ordered name and/or gender change in order to be referred by the name and pronouns they have chosen.
- Allow students to be issued an ID card with the name that reflects their gender identity.**
- Remember:** The name and pronouns reflecting the gender identity that is consistently asserted at school might not be the ones that are used at home.

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**Diplomas** are official records and generally bear the legal name of the student.

- Does your district permit nicknames on diplomas? Then consider if the district will need to allow all students, including transgender students, to select the name on the diploma.

What about alumni who now come back years after graduation seeking an amended diploma because they are transgender and want a diploma to reflect their now legal name?

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**RESTROOMS/LOCKER ROOMS**

**Considerations:** Because the use of facilities incorporates the recognition of a student's identity as well as privacy, comfort, and safety, this issue requires schools to consider numerous factors:

- Transgender student's preference
- Protecting student privacy
- Maximizing social integration of the transgender student
- Minimizing stigmatization of the student
- Ensuring equal opportunity to participate
- The student's age
- Protecting the safety of the students involved

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### ALTERNATIVE ARRANGEMENTS

A transgender student may express a need or desire for reasonable alternative arrangements regarding bathroom and locker use.

**Alternative arrangements may include:**

- Private area
- Separate changing schedule
- Single-stall restroom or unisex restroom

Any alternative arrangement should be provided in a way that protects the confidentiality of the student's transgender status.

**Remember: Students who are forced into a specific alternative arrangements may experience feelings of alienation, isolation, humiliation, and depression.**

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### ATTIRE

Students may request to dress in accordance with the gender identity that is regularly asserted at school.

- ESCs should enforce the dress codes consistently and fairly across the entire student body.
- Does your dress code require students to choose between male and female clothing?

### BULLYING AND HARASSMENT

Title IX implications:

- Transgender students may be at a higher risk for being bullied and harassment.
- Your current policies should cover these students under the prohibitions against discrimination on the basis of sex.

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**Ensure students, parents, administrators, board members, teachers, and staff are trained about what gender identity is, and what it means to be a transgender student.**

- Consider the reaction your service community and other parents will have.

**Provide culturally competent support to all students.**  
(OCR's *Questions and Answers on Title IX and Sexual Violence*, April 2014)

- Keep open lines of communication. Often the counselors or nurses have more private dialogue with students. These are often your first communicators.

**With each student, assess the level of parent knowledge/consent/involvement early on.**

## PROACTIVE MEASURES

- **Listen to what the parents have to say**
- **Listen to what the student has to say**
- **Work as a team to develop a plan for the student**
- **Document this meeting and the resulting plan. Revisit the plan yearly – it will morph over time.**

**HAVE A PLAN!**

### Schedule a Meeting to Discuss the Student's Needs

❖ *Carefully consider the participants*

- **Discuss:**

- **Accommodations** – Restrooms, locker rooms, changing areas, school-related activities.
- **EMIS records** – Where will unchanged EMIS records impact a student throughout the year/day? Testing booklets, report cards, progress reports, IEPs, etc.
- **Process** – To deal with changes in the plan set up with the student (and parent?).
- **Concerns** – Of **all** participants involved.
  - Student: privacy, confidentiality, safety

**RECOMMENDED  
BEST PRACTICES**

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**THANK YOU, OESCA!**

May 2, 2022

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