



SPECIAL NEEDS TRUSTS AND PLANNING FOR CHILDREN WITH DISABILITIES

Hot Topics and Recent Developments

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LEAVING A LOVING LEGACY

Hot Topics and Recent Developments

- ◆ Basics of benefits and SNTs
- ◆ Child Support and SNTs
- ◆ Inherited IRAs in SNTs (post-SECURE Act)
- ◆ Estate Tax Opportunities and Pitfalls
- ◆ ABLE Accounts
- ◆ Post-Death Modifications



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PUBLIC BENEFITS

- ◆ Federal Programs
- ◆ Administered by States
 - ◆ Federal and state law
 - ◆ Administrative law
 - ◆ POMS



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PUBLIC BENEFITS

- ◆ SSI: Supplemental Security Income
 - ◆ \$914/month for food and shelter
- ◆ Medicaid: Health care
- ◆ Requirements:
 - ◆ Disabled
 - ◆ Low income/limited resources



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PUBLIC BENEFITS

- ◇ Monthly income:
 - ◇ < \$2K
 - ◇ Income = food and shelter, cash, assets that can be converted to food and shelter
- ◇ Deeming—parents' income deemed income of child under 18



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PUBLIC BENEFITS

- ◇ Unearned income reduces SSI dollar for dollar
- ◇ Earned income reduces SSI by 50¢ per dollar
- ◇ If receive 0 in SSI, not eligible for Medicaid



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PUBLIC BENEFITS

- ◇ In-kind support and maintenance
- ◇ If someone provides food and shelter, reduces SSI check by 1/3 of maximum
- ◇ $\$914 - \$305 = \$609$



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PUBLIC BENEFITS

- ◇ To avoid 1/3 reduction:
 - ◇ Child pays rent
 - ◇ Child pays pro rata share
 - ◇ Run through ABLE account



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PUBLIC BENEFITS

- ◇ Resources, assets:
 - ◇ < \$2,000 countable resources
 - ◇ Not countable: home, car, personal items
 - ◇ UTMA is resource at 21
 - ◇ 529 account not resource



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PUBLIC BENEFITS

- ◇ Special Rules:
 - ◇ \$1 of SSI = Medicaid eligibility in Texas
 - ◇ Income in month received
 - ◇ Becomes a resource if retained next month
 - ◇ Transfer penalty < FMV



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PUBLIC BENEFITS

- ◇ Change in benefits:
- ◇ Parent receives SS retirement, SSDI or dies
- ◇ Disabled Adult Child benefits if disability began prior to age 22
- ◇ After 2 years, get Medicare
- ◇ Dual-eligible



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PUBLIC BENEFITS

- ◇ Medicaid Waiver Programs
 - ◇ CLASS, MDCP, HCS, STAR+ Waiver
- ◇ Provide services in the home or community so that nursing home not required
- ◇ Parents' income not deemed
- ◇ Wait lists up to 15 years long



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PUBLIC BENEFITS

- ◆ Services:
- ◆ In-home nursing, attendant care, respite
- ◆ Supplies, equipment
- ◆ Home modification
- ◆ Therapies, day programs, job training
- ◆ Housing



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PUBLIC BENEFITS

- ◆ 40 Medicaid programs in Texas
- ◆ Different eligibility requirements
- ◆ Provide different services
- ◆ Rules more complex



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PUBLIC BENEFITS

- ◆ Need Government Benefits?
 - ◆ Services only through Medicaid
 - ◆ What programs/services available years from now?
 - ◆ Medical insurance
 - ◆ Leverage assets/Keep options open



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SPECIAL NEEDS TRUSTS



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SPECIAL NEEDS TRUSTS

- ◇ SNT not countable resource
 - ◇ Properly drafted
- ◇ Distributions not income
 - ◇ if made properly



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SPECIAL NEEDS TRUSTS

- ◇ Parents can leave unlimited amount to SNT
- ◇ Supplements government benefits
- ◇ Leverage assets
- ◇ Better quality of life
- ◇ For anyone who may need public benefits



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SPECIAL NEEDS TRUSTS

- ◇ SNT not just benefits planning
 - ◇ Financial plan to pay for child's care
 - ◇ Support team in place
 - ◇ Instructions for care
 - ◇ Advocacy and protection



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SPECIAL NEEDS TRUSTS

- ◇ Need SNT?
 - ◇ Child will not be able to provide for own lifetime care
 - ◇ Child may not be able to advocate for self



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SPECIAL NEEDS TRUSTS

- ◇ Need SNT?
 - ◇ Gov't benefits be a tool to assist child?
 - ◇ Could beneficiary manage assets without assistance?
 - ◇ Flexibility for changed circumstances



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SPECIAL NEEDS TRUSTS--TYPES

- ◇ First-party (self-settled) (d4a):
 - ◇ Money that belongs to beneficiary
 - ◇ Bank account, child support, inheritance, gift, PI settlement
 - ◇ Irrevocable, sole benefit, under 65
 - ◇ Medicaid payback



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SPECIAL NEEDS TRUSTS--TYPES

- ◇ First-party (self-settled):
 - ◇ In past created by parent, grandparent, guardian or court
 - ◇ New: beneficiary can create own SNT if mentally competent
- ◇ No transfer penalty if made prior to age 65
- ◇ Sole benefit



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SPECIAL NEEDS TRUSTS--TYPES

- ◇ First-party trust killers:
- ◇ Beneficiary has power to:
 - ◇ Direct distributions
 - ◇ Revoke
 - ◇ Serve as trustee or hire/fire trustee
 - ◇ General power of appointment



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SPECIAL NEEDS TRUSTS--TYPES

- ◇ Third-party SNT:
 - ◇ Someone else's money
 - ◇ Gift, will, life insurance, retirement benefits
 - ◇ No Medicaid payback
 - ◇ Not subject to d(4)(a)



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SPECIAL NEEDS TRUSTS--TYPES

- ◇ Third-Party exempt if:
 - ◇ Beneficiary has no authority to revoke trust
 - ◇ No authority to direct use of trust for own support
 - ◇ Can't sell beneficial interest



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SPECIAL NEEDS TRUSTS--TYPES

- ◇ Third-Party SNT language:
 - ◇ Draft with SSA in mind
 - ◇ Spendthrift-labeled
 - ◇ Beneficiary no authority to revoke or direct
 - ◇ Beneficiary cannot be/hire/fire trustee
 - ◇ Early termination-with care



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SPECIAL NEEDS TRUSTS--TYPES

- ◇ Third Party SNT Revocable:
 - ◇ Flexibility for changed abilities or rules
 - ◇ Grantor trust
- ◇ 3rd Party SNT Irrevocable:
 - ◇ Serve as beneficiary of ILIT or other tax-planning trusts
 - ◇ Can draft as IDGT



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SPECIAL NEEDS TRUSTS--TYPES

◆ Spousal SNTs

- ◆ Must be in will, not RLТ
- ◆ If fully funded RLТ, pour back into will for testamentary SNT



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SPECIAL NEEDS TRUSTS--TYPES

◆ Court-created Trusts

- ◆ § 142 Management Trust
- ◆ § 1301 Management Trust
 - ◆ Self-settled with Medicaid payback
 - ◆ Corporate trustee



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SPECIAL NEEDS TRUSTS--TYPES

- ◇ Court-created Trusts
 - ◇ SNT must be signed AFTER the court order
 - ◇ POMS says not exempt trust if signed before—court can't ratify pre-existing trust



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SPECIAL NEEDS TRUSTS--TYPES

- ◇ Arc of Texas Pooled Trust
 - ◇ First or third party
 - ◇ Arc is trustee
 - ◇ Payback can go to Arc instead of Medicaid
 - ◇ www.thearcoftexas.org/trust



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SPECIAL NEEDS TRUSTS

- ◇ Distribution standard
 - ◇ Strict SNT standard
 - ◇ Fully discretionary w/precatory language (Texas)
 - ◇ Supplement, not supplant benefits
 - ◇ Authorize in-kind distribution if better serves



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SPECIAL NEEDS TRUSTS

- ◇ Trust Protector or Advisor
- ◇ Trust advisory committee
- ◇ Power to amend and/or decant



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SPECIAL NEEDS TRUSTS

- ◆ Trust Advisory Committee:
 - ◆ Safety net team
 - ◆ Advises Trustee re distributions
 - ◆ Amend trust or replace trustee
 - ◆ Care manager



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SPECIAL NEEDS TRUSTS

- ◆ SNT Distributions:
 - ◆ Everything parents would pay for
 - ◆ No cash/debit cards/gift cards
 - ◆ True Link Card
 - ◆ www.truelinkfinancial.com



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CHILD SUPPORT



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CHILD SUPPORT

- ◇ Child under 18 or under 21 and attending school: 2/3 of child support is income
- ◇ Adult child: 100% of child support is income
- ◇ Regardless of name on check or how funds used



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CHILD SUPPORT

- ◇ Example:
- ◇ Child receives SSI (\$914) and Medicaid and waiver programs
- ◇ Child support of \$915
- ◇ Loses SSI and Medicaid and waivers



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CHILD SUPPORT

- ◇ Solutions:
 - ◇ Instead of support pay for food, shelter or medical directly (1/3 reduction)
 - ◇ Fund lump sum into third party SNT instead of monthly support
 - ◇ Have support paid into first party SNT



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CHILD SUPPORT

◇ SNT Solution:

- ◇ Not income if paid into self-settled SNT
- ◇ Court order must irrevocably require payment to SNT
- ◇ We draft SNT and decree language
- ◇ SNT can't be signed until after court order



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CHILD SUPPORT

◇ SNT Solution:

- ◇ Payment through OAG
- ◇ Statute says OAG can't pay to trust
- ◇ Have payment issued to trustee's name
- ◇ Deposited into SNT bank account



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CHILD SUPPORT

◇ SNT Solution:

- ◇ Educate trustee/parent on how to set up account and how to make distributions
- ◇ Trust used up each month



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SNTs AND IRAs



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SNTs AND IRAs

- ◇ Inherited IRA/401(k)s
- ◇ How is it treated by SSI/Medicaid
 - ◇ Resource or income?
 - ◇ Payout status so RMDs are income to child for SSI/Medicaid



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SNTs AND IRAs

- ◇ SECURE Act effective January 1, 2020
- ◇ Carves out exception to 10-year rule for beneficiaries who are disabled
- ◇ Disabled or chronically ill person is Eligible Designated Beneficiary
 - ◇ Definition similar to SSA
 - ◇ No requirement to receive SSI/SSDI



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SNTs AND IRAs

- ◇ Lifetime stretch for EDB
- ◇ Tax-deferred growth for lifetime
- ◇ Distributions based on beneficiary life expectancy
- ◇ Often results in larger payout



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SNTs AND IRAs

- ◇ Trusts as beneficiaries of IRAs:
- ◇ See-through Trusts—treated as designated beneficiary
- ◇ Conduit trusts: IRA distributions paid out to beneficiaries (not used for SNTs)
- ◇ Accumulations trusts: immediate payout not required (SNTs)



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SNTs AND IRAs

- ◇ 3rd Party SNTs:
- ◇ Name as beneficiary of IRA
- ◇ Accumulation trust for disabled beneficiary counts as EDB
- ◇ Gets stretch of lifetime growth
- ◇ Distributions retained or used as needed
- ◇ Doesn't disqualify from SSI/Medicaid



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SNTs AND IRAs

- ◇ SNT
- ◇ RMDs not paid out in cash but to separate account, used by trustee
- ◇ RMDs are not income for SSI purposes
- ◇ New: can name charity as remainder beneficiary of SNT



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SNTs AND IRAs

- ◇ Roth IRA:
- ◇ Name SNT as beneficiary
- ◇ Growth and distributions not taxed to beneficiary
- ◇ Income tax already paid by plan participant
- ◇ Consider Roth conversions



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SNTs AND IRAs

- ◇ Planning opportunity:
- ◇ Other children subject to 10-year rule, higher bracket
- ◇ Special needs child gets lifetime stretch, lower tax bracket



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ESTATE TAX OPPORTUNITIES AND PITFALLS



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ESTATE TAX OPPORTUNITIES AND PITFALLS

- ◇ More clients with kids with disabilities may need estate tax planning when exemption lowers in 2026
- ◇ Techniques to reduce estate tax could harm disabled beneficiaries' government benefits
- ◇ How to use estate tax planning in connection with SNTs



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ESTATE TAX OPPORTUNITIES AND PITFALLS

- ◇ Lifetime Gifting
- ◇ Outright gift could disqualify from benefits
- ◇ Gift to ABLE Account \$17,000 per year
- ◇ Gift to Trust—must have Crummey withdrawal power to make a completed gift



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ESTATE TAX OPPORTUNITIES AND PITFALLS

- ◇ Problems with Crummey Powers
 - ◇ Amount subject to withdraw is income/resource for SSI/Medicaid
 - ◇ Failure to exercise power could be uncompensated transfer—penalty
 - ◇ Failure to withdraw or comingling may convert 3rd party SNT to 1st party SNT



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ESTATE TAX OPPORTUNITIES AND PITFALLS

- ◇ Possible Solutions to Crummey Powers
 - ◇ Cristofani—give withdrawal powers to someone other than beneficiary (remainders)
 - ◇ Limit withdrawals to 28 days?
 - ◇ Don't include withdrawal rights—just use gift/estate tax exemption for this child



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ESTATE TAX OPPORTUNITIES AND PITFALLS

- ◇ Disclaimers—resource, even if unexercised
- ◇ ILIT, GRAT, CLT—pour into an irrevocable SNT
- ◇ CRT for benefit of disabled person
- ◇ Qualified Personal Residence Trust
- ◇ Health and Education Exclusion Trust—use as SNT?



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ESTATE TAX OPPORTUNITIES AND PITFALLS

- ◆ Qualified Personal Residence Trust
 - ◆ At end of period ownership transferred to SNT
 - ◆ Use for 2nd home intended for disabled child



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ABLE ACCOUNTS



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ABLE ACCOUNTS

- ◆ ABLE Account
 - ◆ Up to \$100,000 not resource
 - ◆ Contributions up to \$17,000 per year
 - ◆ Medicaid payback
 - ◆ 26 U.S.C. 529A



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ABLE ACCOUNTS

- ◆ Person disabled prior to age 26
 - ◆ Age 46 in 2026
- ◆ Tax benefits of 529 education account
- ◆ Distributions for Qualified Disability Expenses not income for SSI
- ◆ Can distribute for food/shelter



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ABLE ACCOUNTS

- ◆ Useful for:
- ◆ Paying for food/shelter without 1/3 reduction
- ◆ Use for overpayment of benefits
- ◆ Allow person to save earnings
- ◆ Small gifts/inheritance



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ABLE ACCOUNTS

- ◆ [Texasable.org](https://texasable.org)
- ◆ Other states allow non-residents to open
- ◆ Example: Ohio (with debit card)
 - ◆ [Stableaccount.com](https://stableaccount.com)



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POST-DEATH MODIFICATIONS



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POST-DEATH MODIFICATIONS

- ◆ Will or trust does not contain SNT
- ◆ Beneficiary with disabilities may lose SSI/Medicaid
- ◆ Create self-settled SNT w/Medicaid payback



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POST-DEATH MODIFICATIONS

- ◆ Will modification or reformation in order to qualify distributee for government benefits
 - ◆ Tex. Estates Code 255.451
 - ◆ Changes will to create 3rd Party SNT
 - ◆ Personal representative is applicant
 - ◆ Filed within 4 years of admission to probate



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POST-DEATH MODIFICATIONS

- ◆ Will modification or reformation in order to qualify distributee for government benefits
 - ◆ May be retroactive to date of death
 - ◆ Avoids need for Medicaid payback SNT



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POST-DEATH MODIFICATIONS

- ◇ Trust modification or reformation in order to qualify distributee for government benefits
 - ◇ Tex. Prop. Code 112.054
 - ◇ Prior law allowed if not anticipated by settlor
 - ◇ Trustee or beneficiary is applicant
 - ◇ Order may be retroactive



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POST-DEATH MODIFICATIONS

- ◇ Trust modification or reformation in order to qualify distributee for government benefits
 - ◇ Self-settled SNT may be able to be modified or reformed in the event of law changes



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POST-DEATH MODIFICATIONS

- ◇ Decanting
 - ◇ Move property from one trust to another
 - ◇ Pour into new SNT
 - ◇ If provided in trust
- ◇ Statutory Decanting
 - ◇ If not prohibited, pour into new SNT



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POST-DEATH MODIFICATIONS

- ◇ How will SSA interpret transfer?
 - ◇ If original trust third party, will second trust be self-settled?
 - ◇ Transfer resulting in penalty? Not if spendthrift
 - ◇ Prefer court modification



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POST-DEATH MODIFICATIONS

- ◇ Beneficiary designation modification
 - ◇ No statutory remedy for beneficiary of life insurance or IRA without trust
 - ◇ Disclaiming is a disqualifying resource
 - ◇ Inherited IRA distributions treated as income



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POST-DEATH MODIFICATIONS

- ◇ Beneficiary designation options
 - ◇ Create self-settled SNT w/Medicaid payback (if under 65)
 - ◇ Cash out, pay tax, spend down in month of receipt on non-countable resources
 - ◇ Put in ABLE account



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POST-DEATH MODIFICATIONS

- ◇ If modification/reformation/decanting is not an option:
 - ◇ Spend down on non-countable resources
 - ◇ Pay off debt
 - ◇ Pre-pay services
 - ◇ ABLE account
 - ◇ Arc Pooled Trust



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HOW CAN WE HELP YOU?

- ◆ We are a resource to you—contact us with questions
- ◆ We can do entire estate plan and SNT or just the SNT piece



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LEARN MORE

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- ◆ Special Needs Trust Conference



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