

September 2016

Trainings & Events
(Central Standard Time)

ADA Legal Webinar Series

Criminal Justice and the ADA

September 21st, 2016 1-2:30 PM CT.

Unfortunately, there are many people with disabilities in the criminal justice system. Back in 1998, the Supreme Court made clear in a case called *Yeskey* that the ADA applies to state prisons. This webinar will review how the ADA has been applied to law enforcement and the criminal justice system, including a discussion of recent litigation involving the segregation of people with mental illness in prisons. Illinois CLE certificate will be provided.

Speakers:

Barry Taylor, Director of Legal Services, Equip for Equality
Rachel M. Weisberg, Staff Attorney, Equip for Equality

For more information visit [ADA Audio Conference site](http://www.ada-legal.org) at www.ada-legal.org call (877) 232-1990.

ADA Audio Conference Series

Rights of Air Travelers with Disabilities and the Air Carriers Access Act

September 27th, 2016 1-2:30 PM CT.

The Air Carrier Access Act of 1986 (ACAA) prohibits discrimination on the basis of disability in air travel and requires air carriers to accommodate the needs of passengers with disabilities. Join us as representatives of the U.S. Department of Transportation (DOT) discuss the requirements of the ACAA as it applies to air carriers web sites and kiosks, service animals, animal relief areas, mobility device stowage, and more. Following the presentation participants will have an opportunity to ask the presenters questions about the ACAA requirements.

Speakers:

Liv Vaughn Chapman, Jr., Chief, Aviation Civil Rights Compliance, Branch Office of the General Counsel, U.S. Department of Transportation
Anne Hammond, Transportation Industry Consultant, U.S. Department of Transportation

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AccessibilityOnline Webinar Series

Accessible Signage (A refresher)

October 6th, 2016 1:30-3:00 PM CT.

This session will provide a refresher on requirements in the ADA and ABA Accessibility Standards for signs. Presenters will review provisions that address visual access, tactile signs, required access symbols and other pictograms.

Speakers:

Paul Beatty, Accessibility Specialist, Office of Technical and Information Services, US Access Board
Dave Yanchulis, Coordinator of Public Affairs, US Access Board, Office of Technical and Information Services

For more information visit [AccessibilityOnline](http://www.accessibilityonline.org) at <http://www.accessibilityonline.org> call (877) 232-1990

AccessibilityOnline Webinar Series

Accessible Residential Facilities - Advanced

November 3rd, 2016 1:30-3:00 PM CT.

This session will focus on untangling the web of laws that address access to housing, including the Architectural Barriers Act, the Americans with

Volume 12 Issue 1

News from the Federal Agencies

U.S. Access Board

Access Board Approves Rules on ICT Refresh and Medical Diagnostic Equipment

The Access Board approved updated requirements for information and communication technology (ICT) and new standards for medical diagnostic equipment at its meeting on September 14. The Board will proceed to submit both final rules to the Office of Management and Budget (OMB) for review and clearance.

<Read More at= <https://www.access-board.gov/news/1824-access-board-approves-rules-on-ict-refresh-and-medical-diagnostic-equipment%3e%3c>>

U.S. Department of Education

Department of Education Issues Guidance on attention-deficit/hyperactivity disorder

The U.S. Department of Education's Office for Civil Rights (OCR) issued guidance clarifying the obligation of schools to provide students with attention-deficit/hyperactivity disorder (ADHD) with equal educational opportunity under Section 504 of the Rehabilitation Act of 1973. Over the last five years, OCR has received more than 16,000 complaints that allege discrimination on the basis of disability in elementary and secondary education programs, and more than 10 percent involve allegations of discrimination against students with ADHD. The most common complaint concerns academic and behavioral difficulties students with ADHD experience at school when they are not timely and properly evaluated for a disability, or when they do not receive necessary special education or related aids and services.

<Read More at= <http://www.ed.gov/news/press-releases/us-department-education-releases-guidance-civil-rights-students-adhd>>

U.S. Equal Employment Opportunity Commission (EEOC)

EEOC Issues Final Enforcement Guidance on Retaliation and Related Issues Process

The U.S. Equal Employment Opportunity Commission (EEOC) issued its final Enforcement Guidance on Retaliation and Related Issues, to replace its 1998 Compliance Manual section on retaliation. The guidance also addresses the separate "interference" provision under the Americans with Disabilities Act (ADA), which prohibits coercion, threats, or other acts that interfere with the exercise of ADA rights. The Commission has also issued two short user-friendly resource documents to accompany the new guidance: a **question-and-answer publication** that summarizes the guidance document, and a short **Small Business Fact Sheet** that condenses the major points in the guidance in non-legal language.

<Read More at= <https://www.eeoc.gov/laws/guidance/retaliation-guidance.cfm>>

Disabilities Act, the Fair Housing Act, and Section 504 of the Rehabilitation Act. Presenters will engage in a more "advanced" level discussion of how the design requirements of these laws apply and review requirements in the ADA and ABA Accessibility Guidelines for residential dwelling units. Participants interested in this session are encouraged to review archived sessions on this topic for a review of the basic provisions.

Speakers:

[Marsha Mazz](#), Director, Office of Technical and Information Services, US Access Board

[Rex Pace](#), Senior Accessibility Specialist and Technical Assistance Coordinator, US Access Board

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Accessible Technology Webinar Series

Accessible IT - A status report on legal milestones

November 17th, 2016 1-2:30 PM CT.

This presentation will survey the status of accessible tech in governmental and public accommodation websites, voting, higher education, ebooks and employment.

Speakers:

[Dan Goldstein](#), Founding partner, Brown Goldstein & Le

For more information visit [ADA Accessible Technology site](#) at <http://dev.accessibilityonline.org/ada-techor> call (877) 232-1990.

AccessibilityOnline Webinar Series

Transient Lodging Q & A

December 1st, 2016 1:30-3:00 PM CT.

If you are familiar with the basic requirements in the ADA and ADA Accessibility Standards for transient lodging facilities and are ready for a more "advanced" discussion of these provisions, this is the session for you! The Access Board will partner with the American Hotel and Lodging Association to provide an overview of the scoping and technical requirements for transient lodging facilities and to respond to your burning questions. Session participants are encouraged to submit your questions in advance regarding transient lodging facilities to include amenities, such as swimming pools, fitness facilities, spas, restaurants, and conference rooms offered by the facility.

Speakers:

[Douglas Anderson](#), CASp, R.A.S., Partner, LCM Architects

[Marsha Mazz](#), Director, Office of Technical and Information Services, US Access Board

[Minh Vu](#), Partner and ADA Title III Team Leader, Seyfarth Shaw LLP

For more information visit [AccessibilityOnline](#) at <http://www.accessibilityonline.org> or call (877) 232-1990

Wynn Las Vegas Sued By EEOC For Disability Discrimination

Wynn Las Vegas, LLC violated federal law when it discriminated against a disabled employee, a U.S. Army veteran who was diagnosed with post-traumatic stress disorder (PTSD), the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit it filed. According to the EEOC lawsuit, in 2010 Wynn began requiring its security guards to work mandatory overtime. One of the unarmed security bike officers requested an accommodation for his disability, and Wynn not only refused, but required the employee to submit burdensome doctor's notes. This denial exacerbated the employee's PTSD, and when the employee filed a complaint with EEOC, Wynn retaliated against him by suspending him pending an investigation, EEOC said.

<Read More at= <https://www.eeoc.gov/eeoc/newsroom/release/9-16-16.cfm>>

EEOC Sues Owners of Happy Jack's Casino For Disability Discrimination

M.G. Oil Company, which operates Happy Jack's Casino in Sioux Falls, South Dakota, violated federal law by refusing to hire an applicant when her drug test showed that she was taking legal prescription drugs for her disability, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit it filed.

<Read More at= <https://www.eeoc.gov/eeoc/newsroom/release/9-15-16.cfm>>

EEOC Sues MedStar Harbor Hospital For Disability Discrimination

Harbor Hospital, Inc., doing business as MedStar Harbor Hospital, violated federal law when it refused to provide a reasonable accommodation to and instead fired a respiratory therapist because of his disability, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit it announced. According to EEOC's suit, nine years before starting working as a respiratory therapist at MedStar, Jerome Alston received a kidney transplant due to renal failure. As a result, he is required to take medication which compromises his immune system and increases his risk of infection. Due to his weakened immune system, MedStar gave Alston a "work-around" which excused him from working in negative pressure rooms, which are isolation rooms with a mechanical ventilation system designed to trap infectious airborne materials. MedStar also gave pregnant employees similar work-arounds. In November 2013, however, when Alston requested such a work-around, MedStar refused and abruptly terminated him because of his disability, EEOC charged.

<Read More at= <https://www.eeoc.gov/eeoc/newsroom/release/9-13-16.cfm>>

New Mexico Orthopaedics Associates to Pay \$165,000 to Settle EEOC Discrimination Charge

New Mexico Orthopaedics Associates, P.C. (NMOA), which owns and operates a medical facility in Albuquerque, will pay \$165,000 to settle a lawsuit for associational disability discrimination filed by the U.S. Equal Employment Opportunity Commission (EEOC), the agency announced. According to EEOC's suit, NMOA violated the Americans with Disabilities Act (ADA) by firing Melissa Yalch Valencia, a temporary staffing agency employee, and failing to hire her for a full-time position because of her relationship with her then three-year old daughter, who had disabilities or was regarded as disabled.

<Read More at= <https://www.eeoc.gov/eeoc/newsroom/release/9-1-16b.cfm>>

For more information please call 800-949-4232 (Voice/TTY) or Online via [Contact Us form](#).

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Apria Healthcare Group to Pay \$100,000 To Settle EEOC Disability Discrimination Suit

Apria Healthcare Inc., a home medical provider that offers medical equipment and services in Albuquerque, will pay \$100,000 to settle a lawsuit for disability discrimination filed by the U.S. Equal Employment Opportunity Commission (EEOC), the agency announced. According to EEOC's suit, Apria violated the Americans with Disabilities Act (ADA) by firing Hilda Padilla approximately one week after she returned from medical leave to remove a 23-pound tumor. Although the company alleged the termination was due to a reduction-in-force, Padilla was not given notice of the impending layoff, and another warehouse clerk's position was not considered for elimination, according to EEOC's suit. The company initiated its decision to lay off Padilla only two days after she provided notice of her medical restrictions.

<Read More at= <https://www.eeoc.gov/eeoc/newsroom/release/9-1-16a.cfm> >

New Image Building Services Sued By EEOC for Disability Discrimination

New Image Building Services, Inc., a Troy, Mich.-based cleaning company, has been sued by the U.S. Equal Employment Opportunity Commission (EEOC) for discharging an employee because of his medical condition, the federal agency announced. According to the lawsuit, New Image unlawfully discharged the employee because of his scoliosis.

<Read More at= <https://www.eeoc.gov/eeoc/newsroom/release/9-1-16.cfm> >

Scottsdale Car Dealership Sued by EEOC for Disability Discrimination

A Scottsdale, Ariz., car dealership company violated federal law by rescinding a job offer after a pre-employment drug test revealed a prescription drug used to treat a disability, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit it filed.

<Read More at= <https://www.eeoc.gov/eeoc/newsroom/release/8-26-16.cfm> >

Regis Corporation to Pay \$60,000 to Settle EEOC Disability Discrimination Suit

Minnesota-based Regis Corporation, doing business as SmartStyle, will pay \$60,000 in damages and back pay to former hair stylist Nora Jacquez to settle a federal disability discrimination suit, the U.S. Equal Employment Opportunity Commission (EEOC) announced. According to EEOC, Regis denied Jacquez an accommodation for her claustrophobia and then fired her.

<Read More at= <https://www.eeoc.gov/eeoc/newsroom/release/8-25-16a.cfm> >

EEOC Sues Legendary Baking For Disability Discrimination

American Blue Ribbons Holding, LLC, dba Legendary Baking, violated federal law by refusing to accommodate an employee with a disability and then firing her and failing to rehire her, the U.S. Equal Employment Opportunity Commission charged in a lawsuit it filed.

<Read More at= <https://www.eeoc.gov/eeoc/newsroom/release/8-23-16a.cfm> >

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EEOC Sues Wayne Farms for Disability Discrimination

Wayne Farms, LLC, one of the nation's largest poultry producers, illegally discriminated against a class of employees because of their disabilities, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit it filed on August 18, 2016. In its suit, EEOC charged that Wayne Farms violated the rights of a class of workers with disabilities by maintaining an inflexible attendance policy. The policy capped the number of allowable employee absences in a manner that made little to no allowance for disability-related absences.

<Read More at= <https://www.eeoc.gov/eeoc/newsroom/release/8-22-16.cfm> >

U.S. Department of Justice (DOJ)

A final rule revising the Justice Department's Americans with Disabilities Act (ADA) Title II and Title III regulations to implement the requirements of the ADA Amendments Act of 2008 (ADAAA) was published on August 11, 2016. The final rule will take effect on Monday, October 10, 2016, 60 days from publication in the Federal Register

In response to several Supreme Court decisions that narrowly interpreted the ADA's definition of "disability," Congress passed the ADAAA to ensure that the ADA definition of "disability" would be broadly construed. The ADAAA made a number of significant changes to the meaning and interpretation of the ADA definition of "disability" to ensure that the term would be applied without extensive analysis, so that all individuals with disabilities could receive the law's protections. The final rule ensures that the Department's regulations are consistent with the changes Congress made to the ADA.

<Read More at= <https://www.ada.gov/regs2016/adaaa.html> >

Wells Fargo Settlement with the Justice Department

Wells Fargo has paid a total of almost \$15.2 million to 925 people who experienced discrimination in banking in violation of the Americans with Disabilities Act (ADA). This is the largest payment under an ADA settlement with the department. The agreement resolved numerous ADA complaints alleging that individuals with disabilities were not able to fully access Wells Fargo's facilities and services. Along with the settlement payment to eligible claimants, Wells Fargo removed physical barriers; provided auxiliary aids and services; hired an ADA coordinator; and adopted an effective communication policy to provide equal access to its retail banking and financial services.

<Read More at= https://www.ada.gov/wells_fargo/1 >

Justice Department Reaches Settlement Agreement with YMCA

The Justice Department reached a settlement agreement today with the YMCA of the Triangle in Raleigh, North Carolina, to resolve allegations that it violated title III of the Americans with Disabilities Act (ADA) by refusing to assist a child with diabetes-related tasks, including administration of the emergency medication Glucagon, so that the child could participate in a YMCA after-school program.

<Read More at= https://www.ada.gov/ymca_triangle_sa.html >

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Justice Department Announces Consent Decree with Humboldt County, CA

The Justice Department announced that it filed a complaint and consent decree resolving claims that the county violated Title II of the Americans with Disabilities Act (ADA) after failing to comply with the ADA under a Project Civic Access (PCA) Settlement Agreement. Under the consent decree, the county will, among other things, bring all county facilities, programs, services and activities into compliance with the ADA within three and a half years; ensure that the county website conforms with the Website Content Accessibility Guidelines 2.0AA; provide curb ramps at all county intersections; ensure that emergency management procedures, policies and shelters are accessible to individuals with disabilities; hire an ADA coordinator, independent licensed architect, web accessibility coordinator and website accessibility consultant; and pay \$275,000 to compensate individuals with disabilities who faced barriers to facilities, programs, services or activities. The agreement has a term of three and a half years.

<Read More at= https://www.ada.gov/humboldt_pca/humboldt_ca_cd.html >

Justice Department Files Statement of Interest in Olmsted Case

On August 22, 2016, the United States filed a Statement of Interest in the case of Ball v. Kasich. In Ball, individuals on a wait list for home-and community-based services allege that Ohio's ongoing denial of services has placed them at serious risk of institutionalization. The Statement of Interest clarifies that non-institutionalized individuals with disabilities who are not currently receiving state-funded home-and community-based services may bring a claim that a public entity has placed them at serious risk of institutionalization or segregation in violation of Title II's "integration mandate." The Statement of Interest also makes clear that a serious risk of institutionalization need not be imminent to state a valid Olmstead claim.

<Read More at= https://www.ada.gov/olmstead/documents/ball_kasich_soi.pdf >

Great Lakes In Focus

Campaign for Disability Employment (CDE)

The Campaign for Disability Employment is a collaborative effort among several disability and business organizations that seeks to promote positive employment outcomes for people with disabilities by encouraging employers and others to recognize the value and talent they bring to the workplace as well as the dividend to be realized by fully including people with disabilities at work. People with disabilities can and do make important contributions to America's businesses every day. By implementing good workplace practices, like maintaining a flexible and inclusive work environment, businesses can capitalize on the talents of qualified people with disabilities, benefiting everyone.

<Read More at= <https://www.whatcanyoudocampaign.org/blog/index.php/about/> >

CDE Public Service Announcement

We all have many diverse factors who make us who we are. The Campaign for Disability Employment's "Who I Am" PSA features nine talented people with

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disabilities - some obvious and some not - sharing the many sides to themselves, including their jobs. It was produced by the Campaign for Disability Employment, which is funded by the U.S. Department of Labor's Office of Disability Employment Policy. Check it out today! <http://bit.ly/1byzCaz>

The Docket

< **Brown v. Smith, No. 15-1114 (7th Cir., 2016)**

,= <http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2016/D06-28/C:15-1114:J:Williams:aut:T:fnOp:N:1782107:S:0>

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Seventh Circuit Affirms Jury Decision in an ADA Lawsuit

The 7th Circuit Court of Appeals affirmed judgment for an employee who claimed the city of Anderson, IN did not accommodate his disability when it fired him for not having a commercial driver's license. The employee was no longer able to get the license because of his diabetes.

Jack Brown worked for the Anderson Transit System for 28 years in a number of positions. He was a street supervisor when he was fired in 2012 after a new mayor came into office. The City terminated him because he did not have a commercial driver's license (CDL) in a position with a job description that listed the license as a job requirement. The city under a previous mayor was aware of this when he was promoted to the position. The Court of Appeals affirmed the jury's decision that having a CDL was not an essential function of the position because supervisors were rarely required to drive.

From the ADA Expert

Question:

I am a public library director. We have a patron who comes in daily for long periods of time with a service dog. She has revealed that she herself does not have a disability, but that the dog "trains other dogs" to be service animals. Her dog has completed training, but she says it must accompany her at all times to maintain its training. I'm wondering if this is a reasonable request. There is no question that we would welcome a service animal accompanying a patron with a disability, but does this obligation extend to trained service animals accompanying people without disabilities?

Answer:

A service animal is defined under the Americans with Disabilities Act as:

Any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling wheelchair, or fetching dropped items.

A service animal in training would not meet this definition contained in the ADA regulations. In addition, an individual with a disability using a service animal is the

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one protected by the ADA from discrimination on the basis of disability. The service animal not being used by an individual with a disability has no protection status under the ADA.

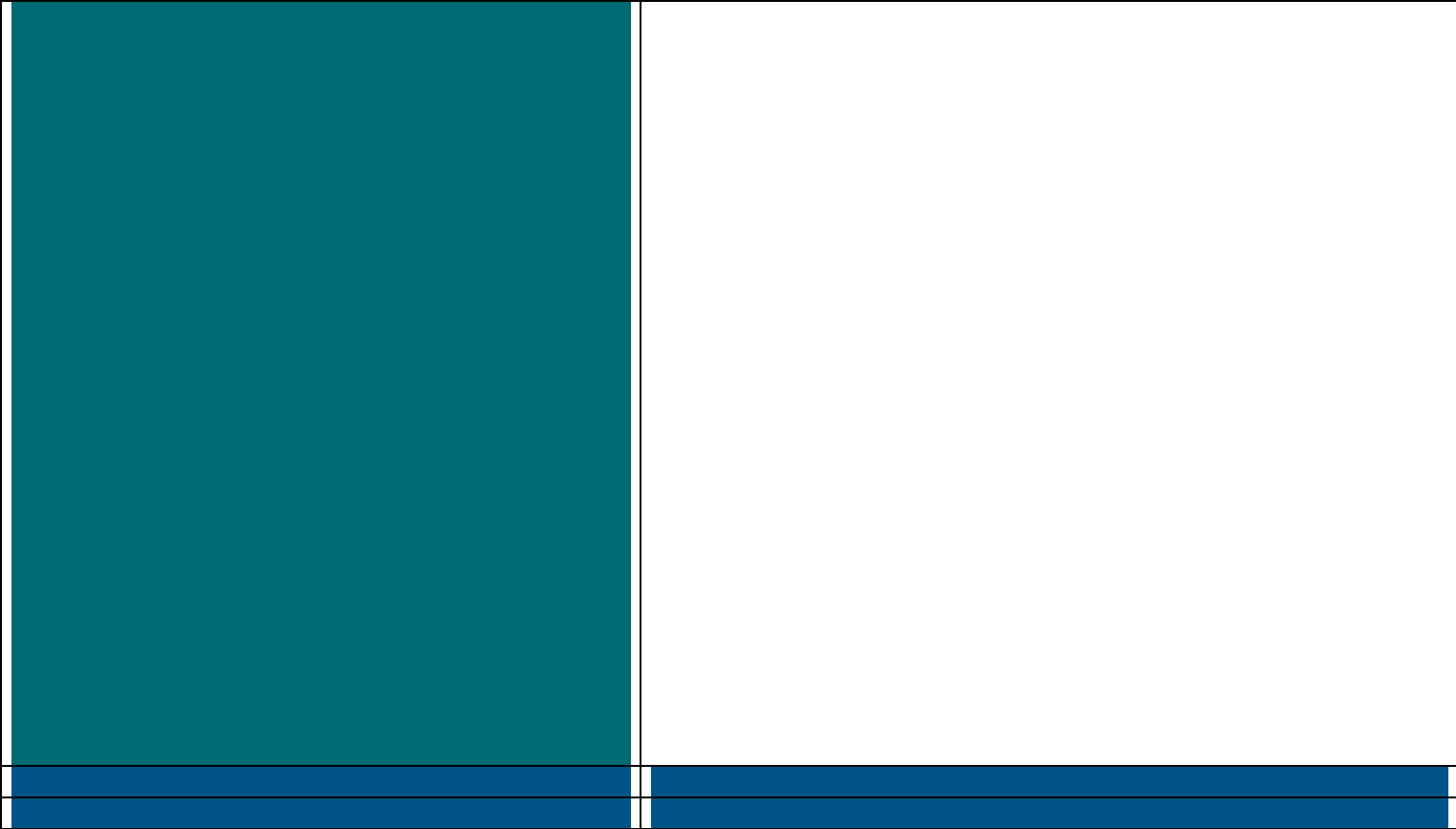
If a trainer is accompanied by a trained service animal there is nothing in the ADA that would require that the service animal be allowed into a covered entities facility. To summarize, a service animal in training does not meet the definition of a service animal under the ADA and a service animal meeting the definition under the ADA only must be allowed into covered facilities when with an individual with a disability.

Some states do require public facilities to allow a trainer to bring an animal in training into a public facility. Individuals should check with a state attorney general's office to get information about a particular state's requirements.

For additional information on the ADA contact the Great Lakes ADA Center by calling (800) 949-4232 (V/TTY) or by completing the Center's online contact form. <http://www.adagreatlakes.org/WebForms/ContactUs/>

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