



U.S. Department of Justice

Civil Rights Division

*Principal Deputy Assistant Attorney General
950 Pennsylvania Ave, NW - RFK
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July 15, 2015

The Honorable Nathan Deal
Office of the Governor
206 Washington Street
Suite 203, State Capitol
Atlanta, GA 30334

Mr. Sam Olens, Esq.
Attorney General of Georgia
40 Capitol Square SW
Atlanta, GA 30334

Re: United States' Investigation of the Georgia Network for Educational and
Therapeutic Support, D.J. No. 169-19-71

Dear Governor Deal and Attorney General Olens:

The Department of Justice (the "Department") has completed its investigation of the State of Georgia (the "State") with respect to the Georgia Network for Educational and Therapeutic Support (the "GNETS Program") and its compliance with Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131 *et seq.* ("Title II" or the "ADA"). We thank the Georgia state agencies that cooperated with our investigation, including the Georgia Department of Education ("GaDOE"), which were responsive to our questions and requests for documents and other data. In addition, instructional staff and administrators working for the GNETS Program and general education schools we visited were generally helpful and responsive.

This letter addresses systemic unnecessary reliance on the segregated GNETS Program across the State of Georgia, as a result of the State's administration, operation, and funding of the GNETS Program, including the GNETS Program's admissions, services, and facilities. The GNETS Program is a statewide program intended to deliver special education and therapeutic support services to children with behavior-related disabilities. *See* Ga. Comp. R. & Regs. § 160-4-7.15(1)(a). The Department has determined that the State, in its operation and administration of the GNETS Program, violates Title II of the ADA by unnecessarily segregating students with disabilities from their peers. In addition, the GNETS Program provides opportunities to its students that are unequal to those provided to students throughout the State who are not in the GNETS Program. This letter constitutes notice of the Department's findings, and of the minimum steps that the State and its agencies must take to bring policies, practices, and procedures into compliance with the ADA, and to remedy past violations under the law. *See* 28 C.F.R. Part 35, Subpart F.

I. INTRODUCTION

The State created the GNETS Program in 1970. The first GNETS Program location was a single educational center in Athens, Georgia that provided therapeutic and educational services for students with emotional or behavioral health needs (“behavior-related educational services”). In 1972, the State expanded the Program to become a network of “psycho-educational centers” (commonly known as “psycho-ed centers”) throughout the State. Today, the GNETS Program consists of a network of 24 regions operated by the State, which serve approximately 5,000 students at any given time, all of whom have behavior-related disabilities.¹ More than two-thirds of all students in the GNETS Program attend school in regional GNETS centers (the “GNETS Centers”), which are generally located in self-contained buildings that serve only students with disabilities from multiple school districts. Other students in the Program attend school in regional GNETS school-based classrooms (the “GNETS Classrooms”), which serve only children with disabilities and, although the classrooms are located within general education school buildings, they are often not the students’ zoned general education schools. The State, through GaDOE, funds and operates the GNETS Program. *See* Ga. Comp. R. & Regs. § 160-4-7-.15.

Our investigation found that the State unnecessarily relies on segregated settings to serve students with behavior-related disabilities in the GNETS Program, through which the State unnecessarily segregates thousands of students from their peers. The GNETS Centers severely restrict interactions between students with disabilities and their peers in general education, depriving them of the opportunity to benefit from the stimulation and range of interactions that occur there, including opportunities to learn, observe, and be influenced by their non-disabled peers. Even in GNETS Classrooms that are physically located in general education school buildings, many students placed in the Classrooms are unnecessarily segregated from their peers because the Classrooms are often located in separate wings or isolated parts of school buildings, some of which are locked and/or fenced off from spaces used for general education programs. Further, the State fails to ensure that admissions to the GNETS Program are limited to only those students for whom therapeutic and behavioral health services in a segregated setting may be necessary. In addition, the Department found that the vast majority of students in the GNETS Program could participate with additional aids, services, and supports in the variety and rigor of educational opportunities available in general education schools. Because of the State’s administration of the Program, these students are unnecessarily segregated from their peers.

Our investigation also found that the State’s administration of the GNETS Program results in inequality of educational opportunities for students in the Program. Students in the GNETS Program generally do not receive grade-level instruction that meets Georgia’s State Standards like their peers in general education classrooms. Rather, particularly at the high

¹ *See* Ga. Dept. of Ed., GNETS Operations Manual 1 (Jan. 2014) (the “GNETS Operations Manual”), available at <http://www.gadoe.org/Curriculum-Instruction-and-Assessment/Special-Education-Services/Documents/GNETS/FY14%20Operations%20Manual.pdf>. GaDOE established the following eligibility criteria for placement in GNETS: a child with an emotional and behavioral disorder “based upon documentation of the severity of the duration, frequency, and intensity of one or more of the characteristics of the disability category of emotional and behavioral disorders (EBD),” or “[o]ther eligible students with disabilities ... [where] the frequency, intensity, and duration of their behaviors is such that [GNETS] placement is deemed by those students’ IEP teams to be appropriate to meet the students’ needs.” *Id.*

school level, students in the GNETS Program often receive only computer-based instruction. By contrast, their peers in general education classrooms generally receive instruction from a teacher certified in the subject matter they are teaching, and in the case of students with disabilities, also from a teacher certified in special education. Students in the GNETS Program also often lack access to electives and extracurricular activities, such as after-school athletics or clubs. Moreover, many of the students in the GNETS Program attend school in inferior facilities in various states of disrepair that lack many of the features and amenities of general education schools, such as gymnasiums, cafeterias, libraries, science labs, music rooms, or playgrounds. Some GNETS Centers are located in poor-quality buildings that formerly served as schools for black students during *de jure* segregation, which have been repurposed to house the GNETS Program.

We conclude that the State's administration of the GNETS Program violates Title II. The State administers the GNETS Program in a manner that results in students with disabilities being unnecessarily segregated from their peers. *See* 28 C.F.R. § 35.130(d). In addition, the State discriminates against students with disabilities in the GNETS Program by failing to ensure the GNETS services are equal to those offered to other students not in the GNETS Program. *See* 28 C.F.R. § 35.130(b)(1)(ii).²

The State can reasonably modify its programs, policies, and services [policies, practices, or procedures] to remedy these Title II violations and avoid discrimination against students in or at risk of placement in the GNETS Program. *See* 28 C.F.R. § 35.130(b)(7). This can be accomplished by properly evaluating or reevaluating students' service needs and whether those needs can be met in general education classes or schools; applying entrance and exit standards for the Program that are appropriate, clearly identified, equitably applied, and shared with all students and families; redirecting the State's resources to offer effective behavioral and mental health and educational services for students with behavior-related disabilities in, or at risk of placement in, the GNETS Program in the most integrated setting appropriate for them; and ensuring that students in the GNETS Program with behavior-related disabilities are provided educational and extracurricular opportunities equal to those of their peers in general education. Our investigation revealed that some students in Georgia with behavior-related disabilities who have needs similar to those of students in the GNETS Program are being provided appropriate services and supports to succeed in general education schools. Thus, ensuring that other similarly situated students in the GNETS Program are served in more integrated settings with supports would not fundamentally alter the State's service system. *Id.*

II. INVESTIGATION

With the cooperation of the State, the Department, along with its experts in special education and in administration of education and mental health programs, investigated the GNETS Program. We visited a variety of settings in which the State provides educational services, including GNETS programs delivering services to elementary, middle, and high school students in urban, rural, and suburban areas across the State. We also visited Georgia general education schools serving students with and without disabilities in the same classrooms with

² The Department makes no findings regarding any other population of students with disabilities with respect to the educational programs or services provided to them in Georgia or any other state.

general education and special education co-teachers. During each visit, we interviewed general education teachers, special education teachers, administrators, counselors, and other staff. We also toured an extensive number of facilities and observed classroom instruction.

The Department also collected and analyzed data and information relating to the GNETS Program. We reviewed tens of thousands of pages of records, as well as annual GNETS Program reviews conducted by the regional programs and by the State. Our review included information related to the GNETS Program structure and design, practices and procedures (including admission and exit criteria), and student outcomes. In addition, we reviewed the 2010 audit of the Program by the Georgia Department of Audits and Accounts, Performance Audit Operations Division, and met with the State's auditors. The Department also reviewed the strategic plans for the GNETS Program developed by GaDOE. The Department interviewed a range of stakeholders, including parents, students with disabilities in the GNETS Program, students with disabilities not in the GNETS Program, individuals who previously received services through the GNETS Program, community members, and mental and behavioral health service providers in multiple locations across Georgia.

III. FACTUAL BACKGROUND

In 1976, the State General Assembly reorganized the Georgia Psychoeducational Network into 24 regions run by the State. The State renamed the Program the "Georgia Network for Educational and Therapeutic Support" in 2007. The Program currently serves all of the State's 181 school districts, with some regions individually serving over a dozen school districts.³ Accordingly, regions vary in size: some serve as few as 60 students, while others serve nearly 500 students. Each region operates a different combination of GNETS Centers and GNETS Classrooms, the locations of which may change from year to year.⁴

For over 40 years, the State has been operating, regulating, and funding the GNETS Program.⁵ The Rules and Regulations of the State of Georgia define the authority and responsibilities of GaDOE in the operation of the GNETS Program, including receiving appropriations from the legislature for the funding and operation of the Program. *See* Ga. Comp. R. & Regs. § 160-4-7-.15(3)(a). For fiscal year 2014-2015, the State allocated over \$70 million in State and federal dollars to the GNETS Program through a line item in the State budget

³ *See* Georgia Department of Audits and Accounts Performance Audit Operations, Georgia Network for Educational and Therapeutic Support (GNETS), Exhibit 3 (Oct. 2010) ("Georgia Audit") available at <http://www.gahsc.org/nm/2010/educational%20and%20therapeutic%20support%20-%20gnets%5B1%5D.pdf> (depicting a map of "GNETS Catchment Areas" with the locations of and counties served by each of the 24 GNETS programs).

⁴ For example, the Oak Tree Program, one of the 24 regional GNETS programs, serves students from eight school districts in southwest Georgia. At the time of our investigation, students in GNETS from Baker, Dougherty, Lee, Terrell, and Worth Counties attended school at a GNETS Center located in Dougherty County. Students from Early and Miller Counties attended school at a GNETS Center located in Early County. Students from Calhoun County attended school in a GNETS Classroom located in an elementary school in Calhoun County.

⁵ *See* Ga. Comp. R. & Regs. § 160-4-7-.15; GNETS Operations Manual.

separate from the State’s funding of public schools.⁶ By statute, each of the 24 GNETS regions has a separate fiscal agent: a Regional Educational Service Agency (“RESA”) or a local educational agency (“LEA”) (the “Fiscal Agents”). *See* Ga. Code Ann. § 20-2-270.1.⁷ The Fiscal Agents submit annual GNETS Program applications, including annual budgets, to GaDOE for review and approval. GNETS Operations Manual at 17. GaDOE then provides funding to the Fiscal Agents, which then distribute allocated “grants” to each GNETS region for the ongoing operation of the programs. *See id.* The State uses its discretion and authority to prescribe the terms of each grant, each year, and to require each GNETS region to comply with GaDOE requirements, including the GNETS entrance and exit policies and procedures. GaDOE reviews every grant each year and may change the terms of the grant for programmatic or administrative reasons in its sole discretion.

As part of its oversight responsibility, GaDOE is required to develop regulations and procedures pertaining to the operation of GNETS regions, subject to review by the State Board of Education; review proposals for funding and make recommendations to the State Board of Education; award funding to the Fiscal Agents for the GNETS regions; and “ensure that all GNETS regions have an on-going system for documenting effectiveness and program improvement based on GaDOE requirements and guidance from stakeholders.” *Id.*⁸ The State retains authority to limit or terminate funding for any GNETS region that does not meet State review standards or that fails to report adequately on the management of the GNETS Program. The State, through GaDOE regulations and the terms of the Operations Manual, is responsible for the GNETS Program’s fiscal integrity, the quality and nature of services being delivered in GNETS regions, oversight of staffing and class locations, and fidelity of implementation of an education program for students in GNETS regions. As dictated by the Operations Manual, GNETS administrators and other personnel participate in student placement decisions and are involved with making the initial recommendation that a student in GNETS be considered for transition back to the general education program.

⁶ *See* HB 744 FY 2014-15 Appropriations Bill, §23.19, *available at* https://opb.georgia.gov/sites/opb.georgia.gov/files/related_files/site_page/HB%20744%20-%20FY%202015%20Appropriations%20Bill.pdf. More than \$8 million of the appropriation for the GNETS Program comes from federal funds. *Id.*

⁷ The Fiscal Agents for the GNETS Program are instrumentalities of the State for purposes of Title II of the ADA. In some cases, the GNETS Program Fiscal Agents also provide technical assistance, teacher training, enhancement programs, and other forms of State-funded enrichment and guidance for GNETS programs in their region. The Fiscal Agents primarily handle administrative and funding matters, but they provide direct interactions between the State and GNETS programs on a regular basis.

⁸ The Georgia Audit (at 10) describes in detail the monitoring process: “Currently, GaDOE monitors [GNETS] Program performance through Focused Monitoring site visits to two Programs each year, based on the Georgia Continuous Improvement Monitoring Process (GCIMP). Programs are selected based on their relative ranked performance as reported on the GNETS Annual Report. Review teams, composed of GaDOE Special Education employees, a GNETS director and a county special education director examine the program’s facilities, policies and procedures, instructional programs, student achievement, and behavioral concerns as they pertain to IDEA regulations. At the conclusion of the review, a Corrective Action Plan is developed if needed. GaDOE personnel also recently conducted Safety Assessments of some GNETS program facilities and made recommendations for repairs.”

IV. STATUTORY AND REGULATORY BACKGROUND

Title II is part of the ADA’s “clear and comprehensive national mandate” to end discrimination against and ensure equality of opportunity for persons with disabilities. 42 U.S.C. § 12101(b)(1), (7). At the time of the ADA’s enactment, Congress found that such discrimination persisted in virtually all aspects of American life, including in “education ... and access to public services.” *See id.* § 12101(a)(3). Congress further found that the isolation and segregation of individuals with disabilities “continue[d] to be a serious and pervasive social problem.” *Id.* § 12101(a)(2). The directives of Title II, its regulations and guidance, in addition to relevant jurisprudence, demonstrate that Title II of the ADA prohibits discrimination against and unnecessary segregation of students with disabilities in educational settings.

Title II of the ADA prohibits state and local government entities from discriminating on the basis of disability. The State and its agencies are public entities under the ADA and thus subject to the statute’s nondiscrimination mandate. *See* 42 U.S.C. § 12131; 28 C.F.R. § 35.104. Specifically, Title II mandates that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. *See* 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a). Pursuant to Congressional directive, 42 U.S.C. § 12134, the Department has issued regulations implementing Title II of the ADA. *See* 28 C.F.R. pt. 35.⁹ A public entity thus discriminates on the basis of disability when it, among other actions, (1) denies a qualified individual with a disability the opportunity to participate in or benefit from a benefit or service; (2) affords a qualified individual with a disability an opportunity to participate in or benefit from a benefit or service that is not equal to that afforded others; (3) provides a qualified individual with a disability with a benefit or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others; or (4) otherwise limits a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the benefit or service. 28 C.F.R. § 35.130(b)(1)(i), (ii), (iii), (vii). Additionally, a public entity may not utilize criteria or methods of administration that have the effect of discriminating against students with disabilities. *Id.* at § 35.130(b)(3).

Title II further requires public entities to provide services in the most integrated setting appropriate to the needs of individuals with disabilities. *See* 28 C.F.R. § 35.130(d). Integrated settings are those that provide individuals with disabilities opportunities to live, work, and receive services in the greater community, like individuals without disabilities.¹⁰ Segregated

⁹ As the Supreme Court recognized, “[b]ecause the Department [of Justice] is the agency directed by Congress to issue regulations implementing Title II . . . its views warrant respect.” *Olmstead v. L.C.*, 527 U.S. 581, 597-98 (1999). The Court emphasized that “the well-reasoned views of the agencies implementing a statute constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance.” *Id.* (citing *Bragdon v. Abbott*, 524 U.S. 624, 642 (1998)).

¹⁰ *See* “Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*,” Question 1 (June 22, 2011), *available at* http://www.ada.gov/olmstead/q&a_olmstead.htm; *see also Lane v. Kitzhaber*, 841 F. Supp. 2d 1199, 1206 (D. Or. 2013) (holding that there exists “no statutory or regulatory basis for concluding that the integration mandate to provide services in the most integrated setting appropriate applies only where the plaintiff faces a risk of institutionalization in a residential setting.”).

settings, by contrast, are those populated exclusively or primarily with individuals with disabilities. In the education context, a segregated setting is one that fails to provide a student with opportunities to interact with his or her peers without disabilities to the fullest extent appropriate to the needs of the student. *See* 28 C.F.R. pt. 35, App. B, at 685.

The Supreme Court addressed Title II's integration mandate in *Olmstead v. L.C.*, 527 U.S. 581 (1999). The Court held that a State discriminates against individuals with disabilities under Title II of the ADA when it fails to offer community-based services where (a) such services are appropriate; (b) the affected persons do not oppose community-based treatment; and (c) community-based services can be reasonably accommodated, taking into account the resources available to the entity and the needs of others who are receiving disability services from the entity. *Id.* at 587. In *Olmstead*, the Supreme Court recognized that unjustified segregation of persons with disabilities "perpetuate[d] unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life." *Id.* The Court further held that such segregation "severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment." *Id.* at 601, 607-08.

Just as the plaintiffs in *Olmstead* faced the day-to-day injury of segregation in an institutional residential setting, students with disabilities who have been inappropriately segregated from their peers without disabilities also face tremendous ongoing harms: they may become victims of unwarranted stigma and may be deprived of essential opportunities to learn and to develop skills enabling them to effectively engage with their peers in ways that teach them to participate in mainstream society as they mature into adulthood.¹¹ These injuries are exacerbated when, as in the GNETS Program, educational settings are unequal to, and less effective than, the settings provided to students without disabilities.

Title II requires that a public entity make reasonable modifications to its policies, practices, or procedures when necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that doing so would fundamentally alter the nature of the service, program, or activity. *Id.* § 35.130(b)(7). The State must, therefore, make reasonable modifications to its programs to ensure that students with disabilities are not denied equal educational opportunities, and receive services in the most integrated setting appropriate to their needs unless doing so would fundamentally alter the State's service system, taking into account the State's resources and responsibilities to other students with disabilities throughout the State. *See Olmstead*, 527 U.S. at 597.

¹¹ One court has stated that a school's decision to isolate a student with disabilities during the school lunch period alone may violate *Olmstead*: "the comments of the *Olmstead* Court about the effects of needlessly relinquishing participation in community life apply [to schools]. Eating lunch with other students could be considered an integral part of the public school experience" in which children with disabilities, with reasonable accommodations, are entitled to participate. *K.M. v. Hyde Park Central Sch. Dist.*, 381 F. Supp. 2d 343, 360 (S.D.N.Y. 2005) (citing *Olmstead*, 527 U.S. at 581). The inappropriate segregation of students in the GNETS Program excludes those students, not just from "an integral part of the public school experience," but often from the *entire* public school experience enjoyed by their peers. *See id.*

V. FINDINGS

We conclude that the State violates the ADA and discriminates against children with disabilities by unnecessarily relying on, and creating incentives for school districts to choose, a segregated GNETS program to provide behavioral and mental health services, and by providing students in the GNETS Program opportunities to participate in services that are unequal to the services offered to students outside the GNETS Program. *See* 28 C.F.R. §35.130(d); (b)(1)(ii) and (iii). The State of Georgia has unnecessarily and unjustifiably relied on segregated GNETS programs to the exclusion of integrated alternatives. In addition, this unnecessary segregation results in unequal opportunities for students in the GNETS Program. *See* 28 C.F.R. § 35.130(b)(1)(i), (ii), (iii), (vii). Our investigation found that the majority of the students in the GNETS Program could receive services in more integrated educational settings—*i.e.*, settings enabling them to learn and interact with their peers without disabilities to the fullest extent possible—and would not oppose more integrated services. As a result, these students have been denied access to educational programs, benefits, and services enjoyed by other students with and without disabilities who are not in the GNETS Program. To remedy these harms, the State can make reasonable modifications to its service system to ensure that students in or at risk of entering the GNETS Program are educated in more integrated settings and that those students are provided educational and extracurricular programs, services, and facilities equal to those provided to students in general education programs. *See* 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(7). Our specific findings are set forth below. The State must promptly take action to remedy these violations.

A. The State Fails to Provide Services to Students in the GNETS Program in the Most Integrated Setting Appropriate to their Needs

We find that the State’s administration of behavior-related educational services through the GNETS Program causes students with behavior-related disabilities to be unnecessarily segregated from their peers and fails to provide these students services in the most integrated educational settings appropriate to their needs. 28 C.F.R. § 35.130(d). Based on our investigation, including the findings of our experts, nearly all students in the GNETS Program could receive services in more integrated settings, but do not have the opportunity to do so.

1. A Majority of Students in the GNETS Program Receive Services in Segregated Settings

Most students in the GNETS Program spend their entire school day, including meals, exclusively with other students with disabilities in the Program. Most of the GNETS Centers across the State are physically separated from general education schools. Two-thirds, or about 3,100 GNETS Program students, attended school in a segregated GNETS Center during the 2012-13 school year, where they had little to no opportunity to interact with peers outside the GNETS Program. Similarly, we found that many GNETS Classrooms, even though located in or adjacent to general education schools, do not enable students to interact with their peers who are

not in the GNETS Program.¹² Many GNETS Classrooms are isolated in the basements or wholly-segregated wings of general education schools, with separate entrances exclusively for use by students in the GNETS Program. Other GNETS Classrooms are in separate buildings or trailers on the campuses of general education schools. These Classrooms function more like GNETS Centers, where students have no opportunities to interact with peers outside the Program or to participate in many of the activities and services offered in the general education environment.

For example, we visited the Flint Area GNETS Program, where over 40 students are placed in GNETS Classrooms in a segregated wing of a general education high school. Students in the GNETS Program have separate restrooms located within their wing. Although students in the GNETS Program eat lunch in the high school cafeteria, they have a separate lunch period, during which time no general education students are present. The GNETS Program wing has its own building entrance with a metal detector that GNETS Program students must pass through before entering the school building. By contrast, the general education students enter the school through the front door of the same large building, where there are no metal detectors. GNETS Program staff reported that none of the GNETS Program students have any interaction with their general education peers during the school day, even though they attend school in the same building. Similarly, our investigation found that a GNETS Classroom in the Northwest Georgia GNETS Program is located in the basement of a general education school with its own separate entrance. The students in this GNETS Classroom reportedly never leave the basement or interact with any other students during the school day. There is a large sign hanging at the front of this GNETS Classroom that says “DETENTION,” because the Classroom is also used for detention outside regular school hours.

The negative effects of inappropriate segregation faced by students in the GNETS Program are readily apparent. One student in the GNETS Program stated, “school is like prison where I am in the weird class.” He attributes this in large part to isolation and distance from other students in the general education community, as he does not have the opportunity to interact with these students during the school day. According to a number of other students we spoke with, the GNETS Program denies them some of the most basic elements of a typical childhood school experience. One student reported feeling frustrated and “like an outcast” in the GNETS Program, and was upset about not having a school locker like “normal” high school students. Another parent remarked that her daughter, who attends the GNETS Program, desperately wishes to have her picture taken and included in a yearbook, as all her friends in general education schools do, as this would give her a sense of belonging and community that she craves. We learned that students in the GNETS Program also face substantial stigma, with one parent stating, “once you are in GNETS you are considered a ‘bad kid.’ It’s a warehouse for kids the school system doesn’t want or know how to deal with.” Several parents and students with whom we spoke compared the GNETS Program to prisons, because the students were unable to interact with their non-disabled peers and they felt trapped in the GNETS Program.

¹² Some GNETS Classrooms that we visited did allow for students in the GNETS Program to interact with their peers in general education to the extent appropriate to their needs. For example, Grayson High School, a general education high school in Gwinnett County that we visited, had one GNETS Classroom, where students in the GNETS Program were served for one or more periods per school day, but each student was also integrated with their peers in the general education classrooms for at least one period per day.

2. The State Unnecessarily Relies on Segregated Placements Within the GNETS Program to Serve Students with Behavior-Related Disabilities

The State unnecessarily relies on, and has created significant incentives for school districts to choose, segregated educational environments to provide behavior-related educational services to thousands of students through the GNETS Program, rather than providing or paying for these services and supports in integrated educational settings. Rather than ensuring that students with behavior-related disabilities have access to necessary therapeutic and educational supports in integrated settings, the State administers the GNETS Program in a manner that undermines the availability of these services in more integrated settings.¹³ This causes thousands of students with disabilities to be unnecessarily segregated from their peers and receive fewer opportunities for quality services. While the Department observed a few instances of students with behavior-related disabilities being appropriately served in integrated settings, as discussed below, overall, we found that the State makes certain support services, such as staff specially trained in behavior interventions and functional behavior assessments (“FBAs”), available only in the segregated GNETS Program. Multiple general education school administrators reported that “therapeutic services are not available in regular schools; they’re only available in GNETS.” We found that the State did not provide services to many of the general education schools that we visited to support the range of program options and modifications necessary to serve the diverse needs of students with behavior-related disabilities in integrated settings.

In addition, the State does not provide teachers in general education schools with the training to enable them to effectively support students with behavior-related disabilities in an integrated setting. General education teachers with whom we spoke report receiving very little, if any, training on how to serve students with behavior-related disabilities. Special education teachers outside the GNETS Program also report they need more training on how to serve students with behavior-related disabilities. Indeed, we spoke with multiple special education teachers who had never had training on how to draft a behavior intervention plan, which is a core component of the provision of education services to a student with a behavior-related disability.

The State’s unnecessary reliance on the segregated GNETS Program is also reflected in the difficulty that students experience when trying to transition out of the GNETS Program into more integrated education environments. The State requires that, when a student enters the GNETS Program, exit criteria are developed “based upon the behaviors that necessitated GNETS services and the data that supported the placement.” In practice, we found not only that the exit criteria developed for most students were vague or boilerplate, but also that exit criteria often contained higher standards of behavior than would be expected of students in general education schools, effectively rendering students with behavior-related disabilities “stuck” in segregated GNETS programs. Our investigation revealed that the exit criteria for numerous students stated that the student must maintain physical self control 100 percent of the time. Such a standard may be difficult for a student whose behavior issues are directly related to his or her disabilities and is a higher standard of behavior than would be expected of a student without disabilities in the

¹³ Our investigation determined that the therapeutic services allegedly available in GNETS regions are often not readily available. Many GNETS Program staff reported that their budgets do not allow for extensive therapeutic staff or interventions, and no GNETS regions that we visited were able to offer a wide array of therapeutic services to all of their students.

general education environment. Indeed, our review of data and interviews with individuals knowledgeable about the GNETS Program indicated that students often spend many years continuously placed in GNETS Program settings, and some families we spoke with commented that the GNETS Program placements feel “permanent.” Moreover, the Georgia Audit showed that the average length of stay for a student in the GNETS Program is approximately four years.

3. Most Students in the GNETS Program Could be Served in More Integrated Settings and Would Not Oppose More Integrated Services

The State discriminates against students with behavior-related disabilities by providing behavior-related educational services in segregated settings rather than offering those services in more integrated settings appropriate to their needs. According to our experts, students with behavior-related disabilities who are placed in segregated settings in the GNETS Program would benefit from the general education setting because teachers there often have higher expectations of their students, and students are exposed to grade level standards and could be grouped according to their strengths with their peers not in the GNETS Program. They would also learn appropriate behaviors modeled by their peers outside of the GNETS Program and receive the opportunity to practice those behaviors in a natural environment. Students with behavior-related disabilities currently in the GNETS Program can be successfully educated in more integrated settings in general education schools, if provided with appropriate services and supports in those settings. Students with behavior-related disabilities may need individualized behavior intervention plans, crisis plans, mentoring, and other individualized supports, but all of those services can and should be provided by the State in general education schools.

Despite the State’s discriminatory policies and practices that often result in the inappropriate segregation of students into GNETS programs, our investigation revealed instances where Georgia students with disabilities similar to students in the GNETS Program are successfully receiving educational services in integrated classrooms with supplemental special education services and other individualized community mental health and behavioral support services. For example, Black’s Mill Elementary School in Dawson County School District has a program that provides supports and services to students with disabilities, most of whom have behavior-related disabilities, in an integrated general education setting where they spend some time in a small therapeutic classroom and attend classes with their peers for other parts of the day. The principal and teachers work hard to ensure these students are a full part of the school community. Some schools and school districts have a disproportionately low number of students in the GNETS Program, precisely because they offer resources that provide supports and services that offer alternatives to segregated classrooms and can prevent such placements. For example, Luella High School in Henry County School District has few students in the GNETS Program, but has a large number of students with disabilities, including behavior-related disabilities, placed in integrated environments. These students, many of whom might be placed in segregated settings within the GNETS Program if they attended other school districts, participate actively in all aspects of the high school experience, including honors and advanced placement classes, band, sports, and other extracurricular activities.

Some students with behavior-related disabilities who have returned from or avoided placement in the GNETS Program have been successful in general education classrooms. We met parents who were able to convince school administrators to allow their children with

behavior-related disabilities to enroll in a general education school building with supports, when the child's initial recommended placement was in the GNETS Program. These parents reported that their children are thriving in their integrated environments in school, some even taking honors courses, and socializing regularly with peers. These students get extra support from their teachers, who are aware of their needs and potential triggers, and how to respond to them. In these situations, special education teachers consult regularly with the general education teachers and the students' parents to ensure continuity and appropriateness of services and supports.

In fact, we found that many students' placements in the GNETS Program are not based upon a determination of individualized need for any service offered by the Program. Rather, factors such as geography and the availability of alternative services influence placement decisions. For example, the Alpine GNETS Center serves fifteen school districts in a region of northeast Georgia. Alpine's GNETS Center is located south of Blood Mountain, and travel time over the mountain is lengthy. Alpine GNETS Program staff reported that students north of Blood Mountain in Rabun, Towns, and Union Counties are served in GNETS Classrooms, while students who reside on the south side of the mountain in 12 other different school districts are all served in GNETS Centers. In 2012-2013, six GNETS regions (Cedarwood Program, Coastal Academy, Harrell Learning Center, Horizon Academy, Pathways Educational Program, and Rutland Academy) only operated GNETS Centers and did not have GNETS Classrooms, so students in those regions were only placed in GNETS Centers. The Flint Area Learning Program only operated GNETS Classrooms, so students in the eight school districts served by the Flint Area Learning Program were not placed in GNETS Centers.

4. The State Administers its GNETS Services in a Way That Unnecessarily Segregates Students with Behavior-Related Disabilities and Puts Other Such Students at Serious Risk of Unnecessary Segregation

Through its administration of the GNETS Program, the State unnecessarily segregates students with behavior-related disabilities. The State's establishment of the GNETS Program, its control over the structure of the Program, and its mandates governing the admission of students into and exit out of the Program, have resulted in thousands of students with disabilities being unnecessarily segregated from their peers in school, often for years on end.

We recognize that individual school districts usually have primary responsibility for providing special education and related services to students with disabilities under the Individuals with Disabilities Education Act ("IDEA"). States also have responsibilities under the IDEA.¹⁴ Additionally, the Americans with Disabilities Act imposes responsibilities on both states and school districts. Generally, the substantive requirements of the ADA regarding most integrated setting will be met through proper implementation of the relevant IDEA requirements.¹⁵ However, through its administration of the GNETS Program, including

¹⁴ The Department of Education, and not the Department of Justice, administers the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400 *et seq.*, and promulgates, interprets, and enforces the regulation implementing that statute. 34 C.F.R. Part 300. This Letter of Findings is not based upon the IDEA and does not affect Georgia's obligations to comply with the IDEA or federal regulations thereunder.

¹⁵ *But see R.K. v. Bd. of Educ. of Scott Cnty.*, No. 5: 09-CV-344-JMH, 2014 WL 4277482, at *6-7 (E.D. Ky. Aug. 28, 2014) (noting that Title II's requirements are broader than the requirements of the IDEA).

establishing, funding, creating and implementing program standards, and conducting evaluation and monitoring, the State has largely taken over the provision of mental health and behavior-related educational services for thousands of students with disabilities in Georgia and has offered those services only in segregated settings. The way the State has implemented the Program has both violated its own obligations under the ADA and undermined LEAs' implementation of their IDEA responsibilities.

Georgia law required GaDOE to develop regulations and procedures pertaining to the operation of the GNETS Program. Ga. Comp. R. & Regs. § 160-4-7-.15(3)(a). Pursuant to that requirement, GaDOE has issued regulations regarding the eligibility of students for GNETS services, requirements for the transition of students out of GNETS programs, and various documentation and data collection requirements for GNETS programs.

Through our investigation, we found that placement in the GNETS Programs generally starts with a referral for GNETS services from the student's school. A GNETS Program administrator reviews the referral to determine whether the GNETS Program is an appropriate placement. When the GNETS Program administrator determines that a student needs the behavior-related educational services provided in the GNETS Program, an IEP meeting is convened where the school personnel and GNETS Program personnel tell the student's family that they wish to place the student in the GNETS Program.¹⁶ School officials inform parents that the services and supports their children need are only available in the GNETS Program. A number of parents reported, and our review of records indicated, that their children were often immediately referred to the GNETS Program after one incident or several interrelated incidents associated with a single event or problem, such as using inappropriate language with a teacher on more than one occasion. Many parents also reported that, after their child was referred to the GNETS Program, they attended a meeting where they felt "pushed" or "forced" by GNETS Program staff and LEA staff into agreeing to a segregated placement in the GNETS Program.

The State's support and development of GNETS has effectively created one placement option for many students with behavior-related disabilities to the exclusion of all others. This structure limits the State-funded resources available to meet the needs of children with disabilities for mental health and behavior-related educational services.¹⁷ For example, one family reported that, at the first meeting following their child's initial referral for special education services, they were told that the child must immediately transfer to a segregated placement within the GNETS Program and there were no other services, supports, or alternatives that might have enabled the child to remain in a general education setting for even a small portion of the day. Another family reported that, after he was being verbally disruptive and refusing to complete his class work, their child was suspended for ten days and sent to a segregated placement within the GNETS Program. The child had only been in his current placement—a self-contained special education classroom in a general education facility—for fourteen days, and the GNETS Program offered him no alternative services besides placement in a segregated setting. Another parent reported that, with appropriate services and supports, her

¹⁶ Georgia regulations require a GNETS Program administrator to attend IEP meetings when a student is placed in the GNETS Program or referred for placement to the GNETS Program. *See* GNETS Operations Manual at 14; Ga. Comp. R. & Regs. § 160-4-7-.06(5).

¹⁷ 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.115.

child had been fully and successfully integrated into a general education classroom in another state. When she came to Georgia, the parent asked that her child be placed in a general education school and for the school to provide the same level of integration and services that her child received in the other state, but instead her child was placed, against her wishes, in a segregated GNETS Program on a full-time basis. Likewise, another family reported that their child had been very successful academically in another state attending a charter school where she was in integrated general education classes with services and supports, but when they arrived in Georgia, they were told that the child had no choice but to attend a segregated placement in a GNETS Center.¹⁸ Although all these children may have been in need of therapeutic and behavioral services and supports in connection with their behavior-related disabilities, the State is responsible for ensuring that these services and supports are delivered in the most integrated setting appropriate to the needs of these individuals. Further, the State must ensure that any students who remain in the GNETS Program receive effective and equal benefits. While providing services in a more segregated educational setting may be permissible for some students for whom such a program is necessary and provides equal and effective benefits, this is true only when the student's participation in the segregated program is based upon meaningful information and parental input in the placement decision.

The State's support, development, and control over the management of the GNETS Program results in the unnecessary segregation of students with disabilities from their peers. Further, the State's administration of the GNETS Program places students with behavior-related disabilities currently in integrated educational settings at an ongoing risk of unnecessary segregation in the GNETS Program. The ADA's protections extend to individuals who are at serious risk of inappropriate segregation due to public entities' policies, practices, and procedures. *See Pashby v. Delia*, 709 F.3d 307, 322 (4th Cir. 2013); *M.R. v. Dreyfus*, 697 F.3d 706, 734 (9th Cir. 2012) ("An ADA plaintiff need not show that institutionalization is 'inevitable' or that she has 'no choice' but to submit to institutional care in order to state a violation of the integration mandate[;] [r]ather, a plaintiff need only show that the challenged state action creates a serious risk of institutionalization."); *Fisher v. Okla. Health Care Auth.*, 335 F.3d 1175, 1181 (10th Cir. 2003) ("[P]rotections [of the ADA's integration mandate] would be meaningless if plaintiffs were required to segregate themselves by entering an institution before they could challenge an allegedly discriminatory law or policy that threatens to force them into segregated isolation."). The State fails to ensure that students with behavior-related disabilities receive services and supports, including effective and coordinated mental health services, which could enable them to remain in, or be returned to, integrated educational placements appropriate to their needs.

¹⁸ In addition, we found that, once students are assigned to GNETS programs, families have a significant lack of choice about their children's education, contributing to the inappropriate nature of the segregation in GNETS programs. Families generally cannot choose whether their children are placed in GNETS Centers or Classrooms, or the particular GNETS Center or Classroom to which their child will be assigned. By contrast, Georgia offers students not in the GNETS Program opportunities for open enrollment (*see* Ga. Code Ann. §§ 20-14-41; 20-2-294; 20-2-293; Ga. Comp. R. & Regs § 160-5-4-.09), allowing for a choice of public schools, with some exceptions. General education students also have choices to enroll in magnet schools and other programs of specialized instruction that are not offered to students in the GNETS Program. According to our experts, providing choices in educational placements and opportunities is an important motivator for students to be successful in school and a lack of choice (or the lack of any opportunity for choice) in classes, schools, or programs, takes away a desire for educational progress.

B. The Segregated GNETS Program Provides Unequal Educational Opportunities to Students

Our investigation found that students with disabilities who receive services in the GNETS Program are not provided equal educational opportunities and benefits to those enjoyed by those students who are not in the GNETS Program. We found that the elective courses and extra-curricular opportunities offered in the GNETS Program are unequal to those provided outside of the Program, leaving students in the GNETS Program with few or no opportunities to participate in rigorous academic courses or other activities that enrich traditional core academic subjects. *See* 28 C.F.R. § 35.130(b)(1)(i), (ii). We also found that many of the students in the GNETS Program attend school in facilities that are inferior to those that students who are not in the GNETS Program attend, impairing the educational opportunity of students in the GNETS Program to access equal educational services and benefits. *See* 28 C.F.R. § 35.130(b)(1)(ii), (vii). These deficiencies also impair students' opportunities to seek the same educational benefits and achievements as those enjoyed by students outside of the GNETS Program. *See* 28 C.F.R. § 35.130(b)(1)(iii).

1. The State Does Not Offer Students in the GNETS Program Equal Opportunities to Participate in Elective Courses or Extracurricular Activities

Compared to students outside the GNETS Program, students in the GNETS Program are not provided equal opportunities to participate in, and some are entirely denied access to, electives and extracurricular activities. *See* 28 C.F.R. § 35.130(b)(1)(i), (ii). At many GNETS Program locations (particularly GNETS Centers) students receive instruction only in core academic subjects and do not have any opportunity to participate in art, music, foreign language, vocational courses, gifted, advanced placement, honors courses, or other electives. To the extent that GNETS programs offer elective courses, they are generally limited exclusively to computer-based courses. Computer-based courses fail to provide the student–teacher, student–peer interactions and learning opportunities that students in the GNETS Program would receive if they could take the courses in a general education school. Moreover, we found that GNETS programs offer very few formal art or music programs, and that some GNETS Centers do not offer physical education at all. By comparison, we found that students receiving services outside the GNETS Program typically enjoy ample opportunities to participate in these activities. Our experts found no reason why students placed in the GNETS Program could not participate in and benefit from these educational opportunities. Many parents reported that their children excelled in art, music, physical education, or other subjects (some covered only in elective courses) and believed that, if given the opportunity to participate in such classes, would benefit greatly from that experience. For example, we spoke with the parent of a gifted student placed at a GNETS Center. This student had an IEP that stated that he was to receive schoolwork from his gifted teacher while in the GNETS Center; however, the student never received schoolwork from the gifted program. He was eventually told that he could not participate in the gifted program while in the GNETS Program.

The structure and administration of the GNETS Program also prevents students in the Program from having equal opportunities to participate in extracurricular activities offered at

their general education schools. Students that we interviewed also expressed disappointment that their GNETS Centers did not generally offer opportunities to attend school dances, football games, or other social events—extracurricular activities that are available to their peers outside the GNETS Program that contribute significantly to social, emotional, and educational development. Staff at the H.A.V.E.N. GNETS program at Hawthorne School in Cobb County stated that students in the GNETS program are not permitted to participate in extra-curricular activities offered at their home schools. While some staff at GNETS Centers reported that students in the GNETS Program are permitted to participate in extracurricular activities at their home schools while attending a GNETS Center, they also state that few, if any, do so because of the difficulty of scheduling transportation and other logistics between two separate buildings. Indeed, at the time of our investigation, we learned that no student in the Woodall GNETS Program, which serves nine school districts in Western Georgia, had ever participated in any extracurricular activities.

2. The GNETS Program’s Facilities and Learning Environments are Unequal to Those of Other Settings

We also found that the facilities in which many students in the GNETS Program receive services—both GNETS Centers and GNETS Classrooms—do not provide equal educational opportunities and are typically inferior to general education facilities in Georgia. *See* 28 C.F.R. § 35.130(b)(1)(i), (ii), (vii). Most GNETS Centers that we visited are located in old school buildings that previously accommodated general education students, but the general education programs have since moved to newer, more modern buildings. As noted above, some GNETS Centers are located in buildings that formerly served as schools for black students during *de jure* segregation. Our investigation found that many of the GNETS Centers have poor lighting, poorly maintained interiors, or a lack of central air conditioning or sufficient window air conditioning units. Many GNETS Centers lack gymnasiums, cafeterias, playgrounds, appropriate (or any) libraries or media centers, science labs, or suitable and specific classrooms for electives such as art, music, and physical education. The absence of, or lack of access to, these facilities greatly impair the educational opportunities of students in the GNETS Program. By contrast, our investigation determined that most of the general education schools in the State have newer buildings with far more features, including gymnasiums, expansive libraries and media centers, cafeterias, classrooms for electives, and outdoor playgrounds (elementary level), and science labs, sports facilities, and vocational classrooms (high school level).

For example, the Woodall GNETS program in Columbus, Georgia serves nine LEAs, and all students in the GNETS program attend school in a single center located in a very old building. We observed that the window air conditioners work only sporadically, and the interior of the building was dirty. There was no gymnasium for physical education. A general education high school located just a few miles away is a brand new facility with spaces for sports, arts, and vocational education. The Heartland Academy GNETS Program operates a main site located in a separate building on the campus of a general education elementary school. The GNETS Program facility is in the back of the property and is very old, with no playground, no gym, and an uneven, unpaved parking lot. Students have to walk through dirt and mud to get to the school door. Only steps away, Montgomery Elementary School, a general education facility, appears to be a new building, with a large gym and a variety of new, colorful playground equipment.

According to GNETS Program staff, students in the GNETS Program are only occasionally allowed to use the school playground, and only when the general education students are not using it. In many instances, we found updated and well-maintained school facilities that offer educational opportunities, privileges, and advantages that students in the GNETS Program do not enjoy. Most of the facilities used for the GNETS Program are inferior, limiting the ability of students in the GNETS Program to enjoy the privileges and advantages associated with newer and more well-maintained general education schools.

3. The State Does Not Provide Students in the GNETS Program Equal Opportunities to Participate in the Instructional Services and Curriculum Received by Non-GNETS Students

Our experts found significant evidence that, although the majority of students in the GNETS Program could participate in the variety and rigor of curricular and co-curricular instruction available in general education classrooms with appropriate services and supports, they instead receive inferior educational services in comparison to students not in the GNETS Program. *See* 28 C.F.R. § 35.130(b)(1) (ii), (iii). One parent told us, “GNETS is not an educational facility – it’s where kids are sent to be babysat.” While our experts observed quality grade-level instruction aligned with Georgia State Standards in general education classrooms (serving students with and without disabilities), they found few examples of classroom instruction meeting the grade-level Georgia State standards in the GNETS Program. Our review demonstrated that the structure of the GNETS Program presents significant barriers to the delivery of effective grade-level instruction. For example, we found that many classrooms in the GNETS Program include students of different ages, disabilities, and grade levels, and from different home schools. Based upon our interviews with GNETS Program staff, academic instruction, particularly at the middle and high school level and in rural areas of the State, is often computer-based. According to our experts, many of the computer-based instructional programs used in GNETS programs are “credit recovery programs,” designed to serve the limited purpose of allowing students to make up course credits after missing classes during a term. We visited two GNETS Centers where the students received all of their academic instruction by computer using credit recovery programs. Students in the GNETS Program are capable of benefitting from the academic material available to students outside the GNETS Program, but the structure of the GNETS Program denies them this opportunity.

Our experts found that students in the GNETS Program are denied equal opportunities to access educational benefits and services that enrich the learning experience as compared to their peers in general education schools, including a lack of rigorous science classes, no science laboratories in most GNETS Centers, no research projects or project-based learning, and very few opportunities for student collaboration. Moreover, most high school GNETS Program teachers that we interviewed were certified only in Special Education, and not trained to teach the specific subjects that they taught. We found that many students who are not in the GNETS Program have access to classrooms that follow a co-teaching model, where a general education teacher with subject-matter certification and a special education teacher work together to teach students with and without disabilities. Students in the GNETS Program do not have equal opportunity to access these classroom and educational enrichment services available to students not in the GNETS Program.

Based upon data provided by the State, academically, most students in the GNETS Program are currently performing multiple grade levels behind their peers in the general education schools. Students in the GNETS Program have significantly lower test scores than other students with disabilities across Georgia. In fact, in the 2012-2013 school year, students with disabilities, as a general category in reported results in Georgia, were nearly twice as likely to pass the Criterion-Referenced Competency Tests (“CRCT”) as students in the GNETS Program. Indeed, the State’s audit of the GNETS Program confirmed that “there was also a significant gap between GNETS student performance and the rates for the Students with Disabilities (SWD) population.” Georgia Audit at 13. In addition, students in the GNETS Program are more likely than their peers to fail to graduate with regular high school diplomas. Almost two-thirds of students in the GNETS Program who graduate from high school receive “special education diplomas” instead of regular diplomas.¹⁹ Further, based upon State data, twice as many students in the GNETS Program drop out as those who graduate from high school in a given year. The Department found that, with appropriate instruction and supports, the majority of students in the GNETS Program have the ability to achieve test scores and earn diplomas commensurate with students in general education who have similar disability profiles.

C. Georgia Can Make Reasonable Modifications to Avoid Discrimination Against Students with Behavior-Related Disabilities

Through the GNETS Program, the State purports to provide educational and therapeutic services to students in segregated educational environments. Georgia can redirect existing services, resources, training, and financial and human capital to appropriately integrate students with disabilities in the GNETS Program into general education schools and offer them full and equal opportunities to participate in the electives, extracurricular activities, coursework, and other educational benefits and services enjoyed by their peers. The evidence indicates that doing so would not constitute a fundamental alteration under Title II.²⁰

Currently, the State spends nearly \$70 million per year to serve nearly 5,000 students in GNETS programs that unnecessarily segregate students. The independent State audit of the GNETS Program determined that “there is no assurance that GNETS is a cost-effective placement for providing these services.” The auditors estimated that, in 2009, “the state would have expended a minimum of \$42 million to serve these students in local schools rather than GNETS (compared to \$58 million in state funds for GNETS [that year]).” The auditors further indicated that the State could get a better return on its investment with better coordinated services. *See* Georgia Audit at 13, 21.

As noted above, our investigation found that there are a few locations in the State where students with disabilities similar to those in the GNETS Program are being served in general education environments through coordination of educational and mental health services. The

¹⁹ That designation indicates that the graduate only completed the goals of the IEP; they did not meet the high school graduation requirements or achieve a passing score on the Georgia High School Graduation Test. Our investigation found that students with this type of diploma have had difficulties getting a job or joining the military due to the “special education” designation.

²⁰ This Letter of Findings should not be read to imply that fundamental alteration is a viable defense under the IDEA or the U.S. Department of Education’s Free and Appropriate Public Education (“FAPE”) provisions in the regulations implementing Section 504.

State can reasonably modify its programs, redeploy human capital, and use available funds to similarly provide and coordinate services for students currently in the GNETS Program to enable them to be appropriately educated and served in their home general education schools. In 1990, the State passed a law requiring the development of “a coordinated system of care so that children and adolescents with emotional disturbance and their families will receive appropriate educational, nonresidential and residential mental health services.” Ga. Code Ann. § 49-5-220(a)(6). Georgia’s Department of Behavioral Health and Developmental Disabilities (“DBHDD”) is responsible for “planning, developing, and implementing the coordinated system of care for [children with severe emotional disabilities].” Ga. Code Ann. § 49-5-220(b). State law requires GaDOE to work with DBHDD to provide appropriate education for youth with severe emotional disturbances. *Id.* The State can appropriately address the needs of students in the GNETS Program in more integrated settings through reasonable modifications to the State’s existing services and supports, including enhanced teacher training, appropriate behavior assessments and intervention plans, instruction tailored to meet individual students’ needs (“differentiated instruction”), and the development of appropriate accommodations and modifications for students with disabilities.

Further, the State can expand coordination and partnerships with community-based mental and behavioral health service providers. The State’s education system is already capable of providing such services, and does provide them in a few locations in general education schools and classrooms. In addition, DBHDD is already capable of funding such services and does so in a few locations. State and federal data suggest that over 3,800 students in the GNETS Program (83 percent of all students in the GNETS Program) were enrolled in Medicaid in November 2013. Medicaid provides federal funding for a portion of the cost of some of these services for eligible children under the age of 21, including community-based mental and behavioral health services. Medicaid funding is available to provide appropriate services to eligible students and may be used, consistent with 34 C.F.R. § 300.154(d) of the IDEA regulations, for behavioral health services and supports. By co-locating Medicaid-reimbursed service providers at or near schools, most current GNETS students, as well as most students at risk of entering segregated GNETS placements, can be provided many of the behavioral and mental health services that they need in general education schools or classrooms. With these services and supports, students currently in the GNETS Program could participate in the elective courses, extracurricular activities, and rigorous academic instruction available in general education programs, as well as benefit from the superior educational facilities of the general education schools.

VI. RECOMMENDED REMEDIAL MEASURES

The State should promptly implement a number of measures to remedy the deficiencies discussed above and protect the civil rights of students with disabilities who receive educational services in the State.

First, the State must develop and implement a comprehensive plan to remedy the State’s violation of students’ ADA Title II rights by delivering mental health and behavior-related educational services in ways that do not discriminate on the basis of disability. The State must ensure that students in or at risk of placement in the GNETS Program are educated in the most integrated setting appropriate to their needs, and amend policies, including admission and exit

criteria, that lead to unnecessary placement and improper retention of students in separate or segregated school classrooms. The State must ensure that students with disabilities who have been placed in the GNETS Program are comprehensively evaluated or reevaluated to determine the educational and behavioral services, including any additional aids, services, and supports, that they would need to participate in a general education school, rather than in segregated settings. The State must make available such services to enable the students to be educated in general education schools with a priority on placement in general education classrooms and/or other general education activities, unless the State can demonstrate that doing so would cause a fundamental alteration. The State must ensure that students with behavior-related disabilities at serious risk of inappropriate placement in segregated educational settings in the GNETS Program are evaluated or reevaluated and offered needed educational and behavioral services to support them to remain in general education schools.

Second, the State must identify and provide services, systems, and supports that students in the GNETS Program will need for successful integration into general education schools. Among other measures, the State must work with LEAs and RESAs to conduct needs assessments with respect to the systems and services available in general education schools and communities to adequately serve GNETS Program students. The State must provide guidance and support to LEAs and RESAs before, during, and after the process of transitioning GNETS Program students into general education schools to ensure that students in GNETS programs are being promptly placed in the most integrated setting appropriate to their needs. The State must provide support and oversight to assist general education schools to provide appropriate school and community-based supports for the students to be re-integrated into general education. The State also must provide enhanced and ongoing training and professional development to teachers, administrators, and other school personnel regarding how to meet the needs of these students in the general education setting.

Third, the State must conduct ongoing outreach to families and general education schools of GNETS Program students to inform them of the services and supports that will be available to these students in general education schools. Students and parents must be provided with alternatives to segregated services and placement decisions must be based upon meaningful information and parental input.

Finally, the State is not obligated to operate a segregated program such as GNETS under any circumstances, but if the State continues to do so, the State must ensure that the GNETS Program provides opportunities for integration with students without disabilities to the maximum extent appropriate. In addition, all GNETS programs must offer the opportunity for therapeutic and behavioral services and supports to meet the students' needs as well as equal educational and extracurricular opportunities, including comparable academic rigor, teacher qualifications, course offerings, facilities, and extracurricular activities.

VII. CONCLUSION

We hope to continue working with Georgia in an amicable and cooperative fashion to resolve our outstanding concerns with respect to the State's GNETS Program. We hope that you will give this information careful consideration and that it will assist in advancing productive discussions that have already been initiated with the State's counsel and the GaDOE.

We are obligated to advise you that, in the event that we are unable to reach a resolution regarding our concerns, the Attorney General may initiate a lawsuit pursuant to the ADA if we determine that we cannot secure compliance voluntarily to correct the deficiencies identified in this letter. *See* 42 U.S.C. §§ 12133-34; 42 U.S.C. § 2000d-1. We would prefer, however, to resolve this matter by working cooperatively with you.²¹

Please contact Trial Attorney Torey Cummings at (202) 305-4204 within ten days to inform the Department whether the State is interested in working cooperatively to resolve this matter. We know that you will give this letter careful consideration and review, and we look forward to speaking with you in the very near future.

Sincerely,



Vanita Gupta
Principal Deputy Assistant Attorney General

²¹ Please note that this Letter of Findings is a public document and will be posted on the Civil Rights Division's website.