**${RequestID}**

**U.S. Department of Justice – ${Topic}**

**${Date}**

The Honorable **${Requester}**

**${RequesterAddress}**

Ms. Dana J. Boente, Esq.

Acting Attorney General U.S. Department of Justice

950 Pennsylvania Avenue, NW

Washington, DC 20530-0001

Re: **${Topic}**

Dear **${Requester}**:

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. 2

**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.

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*.

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 3 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

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.

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 4 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.

*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).

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.

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

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 5 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.

*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.”

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.

**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).

**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.

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

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,

**${User}**

Principal Deputy Assistant Attorney General