



U.S. Department of Justice

Civil Rights Division

Washington, D.C. 20530

VIA ELECTRONIC MAIL

AUG 15 2016

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:

As you know, the United States notified the State of Georgia on July 15, 2015 of our conclusion that the State was violating Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12131 *et seq.* We found that the State, through the Georgia Network for Educational and Therapeutic Support ("GNETS") Program, unnecessarily segregates students with behavior-related disabilities from their non-disabled peers and places other students with such disabilities at serious risk of segregation. Moreover, we found that the State, through the GNETS Program, provides students with disabilities in GNETS with opportunities and benefits that are unequal to those available to non-disabled students in general education classrooms.

Since the issuance of the Letter of Findings, we have been engaged with the State in approximately eight months of negotiations in an attempt to achieve voluntary compliance with the ADA. These efforts included six days of negotiations with counsel and State officials, including four in-person meetings in Georgia and two substantive negotiations by teleconference, and several informal conference calls, multiple settlement proposals, and counter-proposals.

We have appreciated the professionalism and courtesy that counsel for Governor Deal, Attorney General Olens, and the Georgia Department of Education ("GaDOE"), along with staff of the State, have extended to the United States during the negotiations and the good faith that was demonstrated during the negotiation process. However, in light of the continuing substantive

differences between the United States and the State of Georgia on issues that reflect vital elements of an acceptable agreement under the ADA and *Olmstead*, it does not appear that further negotiations are likely to be efficacious. We are acutely aware that students across Georgia with behavior-related disabilities who are in or at risk of placement in the GNETS Program, and who have been deprived of access to equal educational opportunities, have begun, or will imminently begin, the 2016-2017 school year. Although we remain open to resolution of this matter through voluntary means, we have determined that we must pursue the United States' claims in federal court to vindicate the rights of the thousands of affected students with behavior-related disabilities across Georgia.

On July 21, 2016, we received a letter from Josh Belinfante, legal counsel for Governor Deal and GaDOE, in which he asserts that the State will review the Individualized Education Program ("IEP") of each student in the GNETS Program and is working, in a variety of ways, to improve the GNETS facilities and the quality of educational services in the Program. As you are aware, under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400 *et seq.*, the State is already required to review the IEPs of every student in GNETS each year. Moreover, neither Mr. Belinfante's letter nor our numerous negotiations with the State offered us any indication that Georgia is working to shift from providing mental health and therapeutic educational services to students with behavior-related disabilities primarily in segregated settings to making those services available in the most integrated settings appropriate. To the contrary, the State is investing additional time, energy, and significant resources to improve GNETS facilities, through planned structural improvements and otherwise. These efforts suggest the State intends to continue to fund, operate, and administer a separate, segregated, and unequal statewide service system for students in need of mental health and therapeutic educational services rather than provide these services in integrated settings that would allow GNETS students meaningful interaction with their nondisabled peers and reduce the serious risk of unnecessary segregation.

While GaDOE may well be working "to enhance the educational experience" of students in the GNETS Program, we are not convinced that those efforts, provided in segregated settings, are designed to achieve equality of educational opportunity. As such, our attempts to reach agreement on remedial measures to ensure the provision of equal educational opportunities for these students in the most integrated setting appropriate to their needs have been unsuccessful.

As we have determined that we are unable to secure compliance by voluntary means to remedy the violations outlined in our July 15, 2015 Letter of Findings, I have authorized a lawsuit against the State of Georgia for failing to meet its obligations under Title II of the ADA. As a result, the United States will be filing the above-mentioned litigation.

We remain willing to engage in substantive discussions toward a comprehensive consent decree to resolve these claims and ensure integrated and equal educational opportunities for students with disabilities in Georgia.

Sincerely,

A handwritten signature in black ink, appearing to read "Vanita Gupta", with a long horizontal flourish extending to the right.

Vanita Gupta
Principal Deputy Assistant Attorney General
Civil Rights Division

cc: Victoria Lill, Trial Attorney, U.S. Department of Justice (by email)
Andrea Hamilton, Trial Attorney, U.S. Department of Justice (by email)
Aileen Bell-Hughes, United States Attorneys' Office, Northern District of Georgia (by email)