

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

The Georgia Advocacy Office, et al.,

Plaintiffs,

v.

Civil No.: 1:17-CV-3999-MLB

State of Georgia, et al.,

Defendants.

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR
MOTION FOR PARTIAL SUMMARY JUDGMENT**

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<i>Abbreviation</i>	<i>Full Name</i>
ADA	Americans with Disabilities Act
Campbell Report	Expert Report of Kimm R. Campbell, MSW, LCSW
DBHDD	Georgia Department of Behavioral Health and Developmental Disabilities
DCH	Georgia Department of Community Health
DOJ Case	<i>United States v. Georgia</i> , No. 1:16-CV-03088-ELR (N.D. Ga.)
Elliott Report	Expert Report of Judy Elliott, Ph.D.
GaDOE	Georgia Department of Education
GNETS	Georgia Network for Educational and Therapeutic Support
GNETS Rule	Georgia Administrative Code, Department 160, Chapter 160-4, Subject 160-4-7, Rule 160-4-7-.15, Georgia Network for Educational and Therapeutic Support (GNETS), GA. COMP. R. & REGS. § 160-4-7-.15
IEP	Individualized Education Program
LEA	Local Education Agency
Rogers Report	Expert Report of E. Sally Rogers, Ph.D.
SBOE	Georgia State Board of Education
Strategic Plan	GNETS Strategic Plan & Self-Assessment Rubric (GEORGIA00337488–337509)

INTRODUCTION

Each year, thousands of Georgia public school students with disabilities experience discrimination by unnecessary segregation into an unequal network of centers and classrooms known as the Georgia Network for Educational and Therapeutic Support (“GNETS”). More than two-thirds of GNETS students are placed in standalone GNETS centers, physically separated from zoned schools and their general education peers. The remaining GNETS students spend all or most of their day in separate GNETS classrooms housed in a separate wing of a zoned school. All GNETS students receive an inferior education, some with shortened school days and others with limited direct instruction, lack of basic resources such as textbooks, and limited or no access to cafeterias, gymnasiums, and media rooms. If provided with appropriate services and supports, the vast majority of GNETS students could remain in zoned schools and receive a far better education than they receive in GNETS.

Plaintiffs, who are advocacy organizations and students with disabilities either placed or at serious risk of placement into GNETS, brought this lawsuit to remedy these problems. Defendants violate Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12132, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the Fourteenth Amendment of the U.S.

Constitution by operating the segregated network of unequal and inferior centers and classrooms known as GNETS.

This Court twice concluded that Plaintiffs had adequately alleged that the State of Georgia (the “State”) and public officials in Georgia (together with the State, “Defendants”) administers GNETS. On March 19, 2020, the Court denied Defendants’ motion to dismiss. ECF No. 77. In so ruling, the Court determined that “Plaintiffs ha[d] alleged the State had a role in the management and direction of GNETS such that it ‘administers’ the program.” *Georgia Advocacy Office v. State*, 447 F. Supp. 3d 1311, 1322 (N.D. Ga. 2020). On March 9, 2021, the Court similarly denied Defendants’ motion for judgment on the pleadings. ECF No. 123.

Now that discovery is complete in this and a parallel case brought by the Department of Justice (the “DOJ Case”), the evidence “back[s] up [Plaintiffs’] allegations” that Defendants administer GNETS. *Georgia Advocacy Office*, 447 F. Supp. 3d at 1322.¹ Since there is no genuine issue of material fact whether Defendants administer GNETS, Plaintiffs thus respectfully submit that summary judgment should be entered in favor of Plaintiffs on this issue. Granting this motion will conserve judicial resources by narrowing the issues and permitting the

¹ In presenting this evidence, “Ex. ##” refers to Exhibits attached to this Motion. “<Name> Tr.” refers to the transcript of the deposition of the named witness, where some depositions were taken in the DOJ Case as indicated.

parties to focus on the refined legal claims and relevant issues of fact that need to proceed to trial.

STATEMENT OF FACTS

A. As Reflected In The GNETS Rule And Its Real-World Implementation, GNETS Students Are Separated From Their General Education Peers.

In 1970, the State Legislature created GNETS as a state-wide program for students ages three to twenty-one with behavioral needs due to disabilities.² Within the overall GNETS network, there are 24 regional programs located across Georgia, in which students are physically separated from and have little interaction with their general education peers.³ For example, during the 2021–22 school year, more than 3,000 students received GNETS services.⁴

GNETS is designed to and does separate students with disability-related behavior in physically segregated facilities. Defendants do not dispute this reality. In theory, GNETS provides “educational and therapeutic support services to students who might otherwise require residential or other more restrictive

² See Defendant State of Georgia’s Answer to Plaintiffs Class Action Complaint (“Answer”) (ECF No. 91) ¶77; Vickie Cleveland Tr. (“Cleveland Tr.”) (Ex. 1) 31:7–22; Deborah Franklin Gay Tr. (“Gay Tr.”) (Ex. 2) 12:1–8.

³ See FY 24 GNETS Directory (July 2023), <https://www.gadoe.org/Curriculum-Instruction-and-Assessment/Special-Education-Services/Documents/GNETS/FY24%20GNETS%20Directory%20Update%20July%202023.pdf> (last visited Dec. 8, 2023) (Ex. 3); Cleveland Tr. 58:11–12.

⁴ See GEORGIA00362823 (Ex. 4); GEORGIA03389412–GEORGIA03389423 (Ex. 5) at 4; Cleveland Tr. 141:1–2.

placements due to the severity, duration, frequency, and intensity of an emotional disorder or significant challenging behavior.”⁵ However, as the evidence reflects, it is not necessary to separate GNETS students in order for them to get the services they need and, disturbingly, when separated in GNETS facilities, students do not actually receive needed services or instruction. *See* Expert Report of Judy Elliott, Ph.D. (“Elliott Report”) (Ex. 7) at 1–2, 19–24.⁶

A State-promulgated and administered rule—known as the GNETS Rule—governs GNETS and confirms that segregation is the very essence of GNETS. GA. COMP. R. & REGS. § 160-4-7-.15. The GNETS Rule promulgated by the Georgia State Board of Education (“SBOE”) binds all 24 GNETS regional programs. GA. COMP. R. & REGS. § 160-4-7-.15(1)(c).⁷ The SBOE has the authority to promulgate the GNETS Rule under the Georgia Constitution, which requires that “any special schools shall be operated in conformity with regulations of the [SBOE] pursuant to provisions of law.” GA. CONST. art. VIII, § 5, ¶ VII(a). The SBOE also has statutory authority to create classification criteria “used to determine eligibility of

⁵ *See* GEORGIA00337488–337509 (the “Strategic Plan”) (Ex. 6) at 4.

⁶ Dr. Elliott has worked as a teacher, school psychologist, administrator, consultant, and court monitor in the field of the education of students with disabilities for over 40 years and was responsible for educating students with disabilities in some of the nation’s largest school districts. Elliott Report at 1.

⁷ *See also* GA. CONST. art. 8, § 1 (“[t]he provision of an adequate public education for the citizens shall be a primary obligation of the State of Georgia”); Cassandra Holifield DOJ Case Tr. (“Holifield DOJ Tr.”) (Ex. 8) 173:7–15.

students for state funded special education programs” such as GNETS. *Georgia Advocacy Office*, 447 F. Supp. 3d at 1318 (citing GA. CODE ANN. § 20-2-152(a)).

The GNETS Rule sets forth the purpose of GNETS, the characteristics that distinguish the program from other educational environments, and the eligibility criteria for placement in the program.⁸ The GNETS Rule recognizes that GNETS students are educated in a more restrictive setting and are physically segregated from their general education peers. Indeed, GNETS is designed to remove students from the general education environment:

The Georgia Network for Educational and Therapeutic Support (GNETS) is a service available within the continuum of supports for LEAs to consider when determining the least restrictive environment for students with disabilities, ages 5–21. ***GNETS services is an option in the continuum of supports that prevents children from requiring residential or more restrictive placement.*** Specifically, GNETS provides comprehensive educational and therapeutic support services to students who exhibit intense social, emotional and/or behavioral challenges with a severity, frequency or duration ***such that the provision of education and related services in the general education environment has not enabled him or her to benefit educationally based on the IEP.***

GA. COMP. R. & REGS. § 160-4-7-.15(2)(a) (emphasis added).

A student is referred to GNETS only if his or her Individualized Education Program (“IEP”) team recommends this based on several factors “which will be

⁸ Sara Lazari Tr. (“Lazari Tr.”) (Ex. 9) 110:8–23; Zephine Smith-Dixon Tr. (“Smith-Dixon Tr.”) (Ex. 10) 65:9–70:19, 72:11–21; Cleveland Tr. 46:20–48:24; Tiffany Taylor Tr. (“Taylor Tr.”) (Ex. 11) 89:7–16; Cassandra Holifield Tr. (“Holifield Tr.”) (Ex. 12) 21:5–22:13, 32:8–20.

documented in the student’s education record,” including that physical segregation is required:

Documentation that indicates evidence of annual IEP reviews, progress monitoring data aligned with IEP goals, documentation indicating ***prior services were delivered in a lesser restrictive environment and the student’s inability to receive FAPE in that environment.***

...

Removal from the general education setting will occur only when the nature or severity of students’ social, emotional and/or behavioral challenges are such that education in a general education setting with the use of supplementary services and intensive individualized interventions cannot be achieved.

GA. COMP. R. & REGS. § 160-4-7-.15(3)(c)(1), 4(a) (emphasis added). GNETS services are to be “implemented with greater intensity and frequency than what is typically delivered in a general education school environment.” GA. COMP. R. & REGS. § 160-4-7-.15(2)(c). Because GNETS placement necessarily results in greater segregation, the “[t]he IEP team will assess at least annually whether the student with disabilities is ready to transition to a less restrictive setting.” GA. COMP. R. & REGS. § 160-4-7-.15(2)(f).

Real-world data confirms that GNETS functions as intended. GNETS Rule Section 4(c) sets forth a continuum of five educational settings from most to least restrictive (*i.e.*, physically segregated) as compared to a standard classroom. Almost every GNETS student ends up in the two most restrictive settings. Approximately 62% are placed in the most segregated setting: a GNETS center,

which is a self-contained facility separate from a general education school that only students in GNETS attend. Approximately 38% are placed in the next most segregated setting: a GNETS school-based location, meaning one or more satellite GNETS classrooms in separate wings of the schools in the students' school district ("zoned school"). *See* Elliott Report at 20.⁹ The vast majority of GNETS students can be educated and provided appropriate educational and therapeutic services in the same schools attended by non-disabled students educational and therapeutic services. *Id.*

B. The State's Administration Of GNETS.

Having created GNETS as a system of segregation, the State "administers" it, as it admits outside this courtroom. The Governor's recent annual budget message states:

In addition to providing daily instruction, the [Georgia Department of Education ("GaDOE")] *administers a number of programs* for students in need of additional services, including a program for disabled preschool children, tuition for the multi-disability students, and funding for *the Georgia Network for Educational and Therapeutic Support (GNETS)* through grants totaling \$92.5 million.

Honorable Brian P. Kemp, THE GOVERNOR'S BUDGET REPORT: AMENDED FISCAL YEAR 2022 AND FISCAL YEAR 2023 (2022) at 182 (emphasis added); Honorable

⁹ *Accord*, Shaun Owen Tr. ("Owen Tr.") (Ex. 13) 78:6–18; Cleveland Tr. 58:20–24 (testifying to nature of these two types of facilities).

Brian P. Kemp, THE GOVERNOR’S BUDGET REPORT: AMENDED FISCAL YEAR 2023 AND FISCAL YEAR 2024 (2023) at 182.

The State “administers” GNETS through the personnel, instructions, and processes set forth below.

1. The State Oversees GNETS.

The State has full-time GaDOE employees—a GNETS Program Manager and a Program Specialist—who oversee GNETS.¹⁰ The State asserts that these employees’ only “provide technical assistance to GNETS directors and special education directors on the Board rule and the contents.”¹¹ In fact, these and other State employees have broader role. As numerous officials testified, they help the GaDOE administer GNETS.¹²

¹⁰ See GEORGIA02991899–2991900 (Ex. 14); GEORGIA00278702 (Ex. 15); GEORGIA00119327–119330 (Ex. 16); GEORGIA00354962–354963 (Ex. 17); Cleveland Tr. 12:15–19, 18:16–19:20; Lakesha Stevenson DOJ Case Tr. (“Stevenson DOJ Tr.”) (Ex. 18) 36:8–9; Wina Low Tr. (“Low Tr.”) (Ex. 19) 36:13–25, 80:1–21; Defendant State of Georgia, et al.’s Objections and Responses to Plaintiff’s First Set of Interrogatories dated Dec. 7, 2020 (“Def. Resp. to Interrogatories”) (Ex. 20) No. 4 at 14.

¹¹ See Def. Resp. to Interrogatories No. 4 at 15; see also Vickie Cleveland DOJ Case Tr. (“Cleveland DOJ Tr.”) 158:20–23.

¹² See Gay Tr. 17:13–14, 17:20–22, 18:14–17, 19:12–19, 26:10–18, 96:21–98:11, 99:2–14, 104:4–24; Taylor Tr. 30:8–18; Smith-Dixon Tr. 173:25–174:10; Low Tr. 14:24–15:3; Wina Low Tr., Second Deposition Day (“Low Tr. 2”) (Ex. 21) 34:12–22.

a) State employees created and enforce the mandatory GNETS Strategic Plan.

In late 2015 and 2016, the GNETS Program Manager and other State personnel created a “Project Management Plan” for improvements to GNETS in a wide range of areas including program administration, instruction, therapeutic services, facilities, and funding.¹³ In accordance with this plan, the GNETS Program Manager collaborated with a committee of regional GNETS directors and various State personnel (including from GaDOE and the Georgia Department of Behavioral Health and Developmental Disabilities) to a comprehensive Strategic Plan for GNETS.¹⁴ The Strategic Plan effectively replaced the prior strategic plans and various other performance monitoring tools the State required GNETS regional programs to use, including the GaDOE’s existing GNETS Operations Manual, which it had designed to ensure efficient, effective, and consistent operations across all GNETS regional programs.¹⁵

¹³ See GEORGIA00061192–61199 (Ex. 22); GEORGIA00198525–198538 (Ex. 23); Deborah Gay DOJ Case Tr. (“Gay DOJ Tr.”) (Ex. 24) 156:3–156:23; Clara Keith Brown DOJ Case Tr. (“Brown DOJ Tr.”) (Ex. 25) 96:20–97:5, 98:21–101:22, 169:1–170:25.

¹⁴ See Strategic Plan; Holifield Tr. 22:22–23:3; Gay Tr. 96:24–97:6, 98:3–11, 101:5–15; Def. Resp. to Interrogatories No. 4 at 14. Earlier, the State had developed and implemented a plan that set forth goals and expectations for GNETS and was updated over a four-year period. See GEORGIA00404402–404412 (Ex. 26).

¹⁵ See GEORGIA00776990–776998 (Ex. 27); Def. Resp. to Interrogatories No. 4 at 14; GEORGIA00403860–403871 (Ex. 28); GEORGIA00043445–43446 (Ex. 29); GEORGIA01286711–1286716 (Ex. 30); Patricia Wolf DOJ Case Tr. (“Wolf

The Strategic Plan binds each regional GNETS program and sets the standards that govern nearly every aspect of GNETS operations.¹⁶ It currently has six broad focus areas: (i) Program Leadership & Accountability; (ii) Behavioral Support & Therapeutic Services; (iii) Instructional/Academic Support; (iv) Program Funding & Fiscal Management; (v) Integration of Services & Capacity Building; and (vi) Facilities Management & Safety.¹⁷ Each area establishes an overarching goal for the regional GNETS programs.¹⁸ The Strategic Plan breaks that goal down into individual action items and specifies how regional programs must demonstrate to the State that they have implemented each action item. Using this structure, the Strategic Plan prescribes operating standards that range from the kinds of behavioral assessments regional GNETS programs must administer to the instructional standards they must meet and the steps they must take to solicit and spend State funds.¹⁹

In addition, the State requires that regional GNETS directors use a State-created rubric—a “self-assessment rating”—to evaluate their implementation of

DOJ. Tr.”) 241:8–243:7; Brown DOJ Tr. 55:12–56:1, 63:7–16; *see, e.g.*, GEORGIA03460794–3460843 (Ex. 31).

¹⁶ *See* Holifield Tr. 159:9–22; 203:7–10.

¹⁷ *See* Strategic Plan at 5; Lazari Tr. 92:5–11; Cleveland Tr. 88:8–22 (testifying on Instructional/Academic Support), 194:20–24.

¹⁸ *See* Strategic Plan; Cleveland Tr. 84:14–85:2, 88:8–22.

¹⁹ *See* Strategic Plan at 8, 13; Holifield Tr. 22:19–24:15; Cleveland Tr. 81:14–83:15, 114:25–115:18; Owen Tr. 93:10–23.

the Strategic Plan.²⁰ Also, twice annually, regional GNETS directors must gather “artifacts,” or evidence identified by the State that support their self-assessment.²¹

The State follows up to assess GNETS programs’ compliance.²² As the GNETS Program Manager stated, monitoring by GaDOE under the Strategic Plan is mandatory, “[i]t’s not optional.”²³ GaDOE staff visit regional GNETS programs, after they submit a self-assessment, to review supporting evidence, ask questions, and tour facilities.²⁴ These GaDOE follow-up visits, referred to as Strategic Plan reviews, are extensive, often lasting hours or a full day.²⁵ While the review process includes an initial self-assessment of implementation of the Strategic Plan, the State, through the GNETS Program Manager, reviews the evidence supporting that

²⁰ See Strategic Plan at 4; Lazari Tr. 89:16–24; Holifield Tr. 164:14–165:10; Elliott Report at 5.

²¹ See GEORGIA00046190–46202 (Ex. 32); GEORGIA00952085–952087 (Ex. 33); see generally Strategic Plan; Holifield DOJ Tr. 198:5–14; Def. Resp. to Interrogatories No. 4 at 15; Cleveland Tr. 97:14–98:5.

²² See Holifield Tr. 239:13–23.

²³ See Cleveland Tr. 114:23–24 (“It’s not optional. It’s the framework that they use, yes. It’s not optional.”); see also GEORGIA00349120 (Ex. 34).

²⁴ See GEORGIA00354962–354963; GEORGIA00952085–GEORGIA00952087; GEORGIA00325008–325010 (Ex. 35); GEORGIA00337024–337027 (Ex. 36); Lazari Tr. 90:5–91:17, 97:3–11; Holifield Tr. 162:12–164:8.

²⁵ See Holifield Tr. 182:23–183:1.

self-assessment, determines the programs' final ratings on each State standard, and provides feedback, including steps the programs should take in the future.²⁶

Although the State has recently modified aspects of its Strategic Plan reviews, it continues to mandate participation in the Strategic Plan's self-assessment and review process; GNETS programs cannot opt out.²⁷ As Dr. Zephine Smith-Dixon, the former State Director for Special Education at GaDOE, testified, ensuring compliance with the GNETS rule is "a shared responsibility. So of course [GaDOE] would support oversight of the [GNETS] rule as [it] can from the State level"²⁸

b) State employees provide direction to GNETS directors.

State employees also provide general and day-to-day direction to the persons implementing GNETS at the regional level. The GNETS Program Manager and Program Specialist regularly communicate with GNETS directors to ensure coordination and compliance across programs.²⁹ GNETS directors look to the State

²⁶ See GEORGIA00354962–354963; Strategic Plan; GEORGIA00016395 (Ex. 37); GEORGIA00952085–GEORGIA00952087; Def. Resp. to Interrogatories No. 4 at 15; Cleveland Tr. 18:16–19:6, 83:16–22, 100:6–17.

²⁷ See Strategic Plan; GEORGIA00364380–364384 (Ex. 38); GEORGIA00952085–GEORGIA00952087; Cleveland Tr. 114:2–24.

²⁸ See Smith-Dixon DOJ Tr. 227:3–11. Dr. Smith-Dixon was the State Director for Special Education at GaDOE from 2016 through 2021. *Id.* 29:16–24

²⁹ See GEORGIA00354962–GEORGIA00354963; Cleveland Tr. 78:6–79:9; see also GNETS Rule Sections (3)(a), (b) (noting that any IEP meeting considering

for direction on a host of day-to-day matters involving student eligibility and service delivery.³⁰

The regional programs understand they must comply with State directives. For example, the director of the Woodlands GNETS Center, LaChrista Thornton, documented that “Woodall GNETS . . . is required to abide by GADOE mandated operational standards,” and thus “Woodall GNETS is compelled by forced compliance with standards externally imposed and monitored by GADOE.” As a result, Woodall GNETS’ “enrollment has declined due to the implementation of the operational standards.”³¹

whether a student receives GNETS services “will include a GNETS director or his/her designee”).

³⁰ *See, e.g.*, GEORGIA00046914–46915 (Ex. 39) (Oconee GNETS Director seeking confirmation from GaDOE regarding student eligibility and the 2017 GNETS Rule); GEORGIA00781480–781481 (Ex. 40) (clarifying whether a student whose home school system is in the Oconee GNETS catchment area could be served by a different regional GNETS); GEORGIA01064168–1064174 (Ex. 41) (Coastal Academy GNETS Director notifying GaDOE about changes in the LEAs served by the GNETS regional program using a previously required form created by GaDOE); GEORGIA00339000–339001 (Ex. 42) (Elam Alexander Academy GNETS Director seeking guidance from GaDOE regarding the placement of students with certain disability); GEORGIA00226054 (Ex. 43) (Horizon Academy GNETS Director seeking clarification as to whether GNETS accepts students from charter schools); GEORGIA00784354–784355 (Ex. 44) (Horizon Academy GNETS Director seeking guidance as to whether an LEA could require a student transitioning out of GNETS to return to the LEA on a trial basis); Samuel Clemons Tr. DOJ Case (“Clemons DOJ Tr.”) (Ex. 45) 220:19–221:13; Brooke Cole DOJ Case Tr. (“Cole DOJ Tr.”) (Ex. 46) 108:21–111:11, 115:14–117:4, 120:11–121:19.

³¹ GEORGIA00053695 (Ex. 47).

2. The State funds GNETS and controls the allocation of funding.

Each year, after consultation with the Governor, the General Assembly appropriates funds for GNETS along with any federal funds the State decides (in its discretion) to add.³² These funds are solely for the operation of GNETS; they are separate from the general education funds provided by the State to local school districts.³³

The State also controls how the funds provided to GNETS are allocated within that network. *See* Honorable Brian P. Kemp, THE GOVERNOR’S BUDGET REPORT: AMENDED FISCAL YEAR 2022 AND FISCAL YEAR 2023 (2022) at 182; Honorable Brian P. Kemp, THE GOVERNOR’S BUDGET REPORT: AMENDED FISCAL YEAR 2023 AND FISCAL YEAR 2024 (2023) at 182; Honorable Brian P. Kemp, THE GOVERNOR’S BUDGET REPORT: AMENDED FISCAL YEAR 2022 AND FISCAL YEAR 2023 (2022) at 182.³⁴

To allocate the funds among GNETS programs, the State requires GNETS regional programs to apply annually for funding, setting forth information on how they implement the requirements in the GNETS Rule *See* GA. COMP. R. & REGS. §

³² *See* GA. CONST. art. 3, § 9, ¶¶ II(a)–(b); The Budget Process, Governor’s Office of Planning & Budget, <https://opb.georgia.gov/budget-information/budget-process> (last visited Dec. 8, 2023) (Ex. 48); *see, e.g.*, H.B. 19, 157th Gen. Assemb., Reg. Sess. (p. 105 at 151.100) (Ga. 2023); Low Tr. 32:5–33:4, 82:4–21.

³³ *See* Gay Tr. 55:2–20, 56:22–59:11.

³⁴ *See also* Smith-Dixon DOJ Tr. 64:11–13 (The State’s “responsibility becomes to make decisions how the budget would be used and to administer the funds.”).

160-4-7-.15(5)(a)(1) (“Each GNETS is required to submit the grant application.”).³⁵ The State determines the information required to complete the application, operates the system for submitting applications and related materials, and reviews the applications.³⁶ The regional programs must supply the Georgia Department of Education (“GaDOE”) with a wide variety of data and narrative responses covering, among other things, staffing, available behavioral and therapeutic supports, trainings, instruction, progress monitoring, program procedures, service delivery, and proposed budgeting.³⁷ They also must provide GaDOE with assurances signed by the fiscal agent, the regional program, and each participating school district’s superintendent and special education director.³⁸ These assurances require that the assuring entity take, or refrain from taking, specific action related to GNETS program operations, such as “ensuring facilities will be provided and maintained.”³⁹

The State then provides each GNETS regional program an annual allocation of State funds based on a funding formula that the State created specifically for

³⁵ *See also* Gay Tr. 55:2–10, 56:22–59:11, 105:16–25, 106:16–19.

³⁶ *See* Owen Tr. 93:6–23; Gay Tr. 105:16–25, 106:16–19.

³⁷ *See* Cleveland Tr. 81:14–82:8, 108:11–111:7; Taylor Tr. 60:2–7.

³⁸ *See* GEORGIA00053780–53786 (Ex. 49); GEORGIA00321658–321665 (Ex. 50); Owen Tr. 93:6–23, 200:7–23, 207:15–21; Lazari Tr. 105:24–106:17; Low Tr. 2 43:9–44:11; Low Tr. 94:8–21.

³⁹ GEORGIA00053780–53786 ¶ 5; *see* Smith-Dixon Tr. 107:19–108:5; Holifield Tr. 135:1–136:10, 230:6–15.

GNETS distinct from the funding formula for Local Educational Agencies.⁴⁰ The State also provides each GNETS regional program an annual allocation of federal funds based on that program's student count.⁴¹ GaDOE calculates the individual allocations for each GNETS regional program and presents those allocations to the SBOE for approval.⁴² GaDOE then notifies GNETS regional programs and their fiscal agents of their grant awards for the upcoming school year.⁴³

The above describes funding that is specifically allocated to GNETS. There is other funding that can be used to support students with disability-related behaviors in their zoned school, but state officials have failed to ensure that it is used for that purpose. The GaDOE is part of a legislatively mandated "system of care" for children with emotional disturbance,⁴⁴ along with two other State agencies—the Georgia Department of Behavioral Health and Developmental

⁴⁰ Local Education Agencies or "LEAs" are the individual school districts or the local School system. Gay Tr. 42:17–43:9; Low Tr. 153:16–155:9; Geronald Bell Tr. ("Bell Tr.") (Ex. 51) 18:2–15; GA. COMP. R. & REGS. § 160-4-7-.15(1)(d).

⁴¹ GEORGIA00053780–GEORGIA00053786; Holifield DOJ Tr. 267:3–20; Cleveland Tr. 72:8–73:7

⁴² Cleveland Tr. 12:20–13:23, 15:2–9, 17:7–11.

⁴³ See GEORGIA00406441–406444 (Ex. 52); GEORGIA01075824–1075828 (Ex. 53); Owen Tr. 219:17–220:7; Def. Resp. to Interrogatories at 19.

⁴⁴ Gay Tr. 17:13–14, 17:20–22, 18:14–17, 19:12–19, 26:10–18, 96:21–98:11, 99:2–14, 104:4–24; Taylor Tr. 30:8–18; Smith-Dixon Tr. 173:25–174:10; Low Tr. 14:24–15:3; Low Tr. 2 34:12–22.

Disabilities (“DBHDD”)⁴⁵ and the Georgia Department of Community Health (“DCH”)⁴⁶—are tasked with the State’s publicly funded behavioral health service delivery system.⁴⁷ These two agencies, GaDOE, and other State agencies are charged with developing “a coordinated system of care so that children and adolescents with a severe emotional disturbance and their families will receive appropriate educational, nonresidential and residential mental health services.”⁴⁸ provided in GNETS.⁴⁹ However, the state’s “system of care” and the mental health

⁴⁵ DBHDD oversees and administers policies, programs, and services for people with mental illness, substance use disorders, and developmental disabilities, including (through the Office for Children, Young Adults and Families) children with behavior-related disabilities. GA. CODE ANN. § 37-1-20; *see also* GA. CODE ANN. § 37-1-21; Frank Berry DOJ Case Tr. (“Berry DOJ Tr.”) (Ex. 54) 165:11–166:13, 184:21–25; Judith Fitzgerald DOJ Case Tr. (“Fitzgerald DOJ Tr.”) (Ex. 55) 52:21–53:19; Taylor Tr. 164:4–21; GEORGIA03459979–3459981 (Ex. 56).

⁴⁶ DCH administers the State’s Medicaid and PeachCare for Kids insurance programs. They reimburse providers for many mental health and therapeutic educational services and supports, including as provided in GNETS. *See* GA. CODE ANN. §§ 31-2-1, 31-2-4; Answer ¶83; GEORGIA00396843–397015(Ex. 57); *see generally* PeachCare for Kids website, <https://dch.georgia.gov/peachcare-kids>; Berry DOJ Tr. 164:18–166:13.

⁴⁷ *See generally* GA. CODE ANN. § 49-5-220(a)(6); Expert Report of Kimm R. Campbell, MSW, LCSW (“Campbell Report”) (Ex. 58) at 7. Kimm Campbell is a licensed clinical social worker who has spent over twenty-five years delivering and administering health and human services, including children’s mental health services, and has worked with schools, child welfare programs, and children’s mental health service agencies to support hundreds of children with mental health disabilities. Campbell Report at 1–2.

⁴⁸ GA. CODE ANN. § 49-5-220(a)(6).

⁴⁹ *See* GA. CODE ANN. §§ 31-2-1, 31-2-4; Answer ¶83; GEORGIA00396843–397015; *see generally* PeachCare for Kids website, <https://dch.georgia.gov/peachcare-kids> (last visited Dec. 8, 2023); Berry DOJ Tr. 164:18–166:13.

and developmental disabilities services provided through DBHDD and DCH have not been deployed to support students with disability-related behaviors in their zoned schools. This “administration” by state officials of Georgia’s mental health and developmental disabilities service system contributes to students being segregated in GNETS.⁵⁰

3. The State governs GNETS through the GNETS Rule.

The State guides GNETS other than through the Strategic Plan. The GNETS Rule is front and center. As Dr. Smith-Dixon acknowledged, the GNETS Rule “provides direct guidance from the State perspective” about the provision of supports and services to “students receiving GNETS services through the program.”⁵¹ It does so by assigning roles, duties, and reporting obligations within the GNETS program.

Under the GNETS Rule, the GaDOE collaborates with SBOE to “[m]onitor GNETS to ensure compliance with Federal and state policies, procedures, rules, and the delivery of appropriate instructional and therapeutic services.” GA. COMP. R. & REGS. § 160-4-7-.15(5)(a)(2)(iii). The GNETS Rule requires both Local Education Agencies (“LEAs”),⁵² to report to, collaborate with, and submit to

⁵⁰ Campbell Report at 6–8.

⁵¹ See Smith-Dixon DOJ Tr. 220:10–17; see also Handville Tr. 29:3–12.

⁵² LEAs are local school systems. See GA. COMP. R. & REGS. § 160-4-7-.15(1)(d).

supervision by the State in a variety of ways. For example, GNETS programs must: “Collaborat[e] with GaDOE to implement activities outlined in the GNETS strategic plan to improve GNETS practices and student services,” “Complete the annual needs assessment embedded in the GNETS strategic plan,” and “Submit student and program data as requested by the GaDOE.” *Id.* at (5)(c)(2), (3), (7).⁵³ Likewise, LEAs must submit “student schedules to the GaDOE with the GNETS code.” GA. COMP. R. & REGS. § 160-4-7-.15(5)(b)(14).

To implement the GNETS Rule, regional programs use “Consideration of Services Forms” to assess student eligibility for GNETS services.⁵⁴ GaDOE oversaw the development of these forms.⁵⁵ The GNETS Program Manager

⁵³ *See also* Cleveland Tr. 193:6–17.

⁵⁴ *See* GEORGIA00133691–133692 (Ex. 59); GEORGIA03408466–3408467 (Ex. 59); GEORGIA00963245–963248 (Ex. 60); GEORGIA00941017 (Ex. 61); GEORGIA00012187–12199 (Ex. 62); GEORGIA00939419–939422 (Ex. 63); GEORGIA00133698–133699 (Ex. 64); GEORGIA003268175–3268176 (Ex. 65); GEORGIA00794234–794244 (Ex. 66); GEORGIA00132041–132042 (Ex. 67); GEORGIA00007396–7407 (Ex. 68); GEORGIA00328404–328405 (Ex. 69); GEORGIA00353430–353431 (Ex. 70); GEORGIA00008514–8517 (Ex. 71); GEORGIA01068288 (Ex. 72); GEORGIA01054885–1054886 (Ex. 73); GEORGIA00939416–939417 (Ex. 74); GEORGIA00332031–332032 (Ex. 75); Lazari Tr. 45:6–14; Cleveland Tr. 144:11–145:10.

⁵⁵ *See* GEORGIA00963245–963248 (Ex. 76); GEORGIA00793079–793087 (Ex. 77); GEORGIA00794196–794206 (Ex. 78); GEORGIA01941422–1941433 (Ex. 79); GEORGIA00008479–8484 (Ex. 80); GEORGIA00327317–327326 (Ex. 81); GEORGIA00327483 (Ex. 82); *see also* GEORGIA00794234–794244; GEORGIA00132042; GEORGIA00007396–7407; GEORGIA00328404–328405; Derrick Gilchrist DOJ Case Tr. (“Gilchrist DOJ Tr.”) (Ex. 83) 228:5–233:6.

assembled a committee to prepare drafts, reviewed and approved the forms, and dictated when and how the form would be rolled out to the regional programs.⁵⁶

Also, to implement the GNETS Rule, the State, primarily through GaDOE, requires regional GNETS programs to provide a wide variety of data, as needed, including program level and student-specific information related to student enrollment (*i.e.*, entry and exit from the GNETS program), the use of physical restraint, available interventions and mental health services, and other related topics.⁵⁷

The State also has been involved in improving the physical facilities in which GNETS is conducted. The GNETS Strategic Plan, described above, has a “Facilities Management & Safety” component. Before implementing that component, the State engaged an architectural firm to conduct a Facility

⁵⁶ See GEORGIA00793079–793087; GEORGIA00794196–794206; GEORGIA00008480–8481; GEORGIA00327317–GEORGIA00327326; GEORGIA00327483; GEORGIA00794234–794244; GEORGIA00132042; GEORGIA00328404–328405; Patricia Wolf DOJ Case Tr. (“Wolf DOJ Tr.”) (Ex. 84) 185:4–189:18.

⁵⁷ See GEORGIA00354962–354963; GEORGIA00338084–338086 (Ex. 85); GEORGIA00363579–363584 (Ex. 86); GEORGIA00045619–45620 (Ex. 87); GEORGIA00327533 (Ex. 88); GEORGIA00347434–347437 (Ex. 89); GEORGIA00347113–347114 (Ex. 90); Nicholas Handville Tr. (“Handville Tr.”) (Ex. 91) 99:12–22; Nicholas Handville Tr., Second Deposition Day (“Handville Tr. 2”) (Ex. 92) 129:1–5, 150:12–151:1, 165:1–167:20; Cleveland Tr. 81:14–82:8, 101:19–102:16.

Conditions Assessment of GNETS regional program facilities.⁵⁸ The State offered regional programs that needed better facilities the options of (1) submitting a proposal to relocate to a new facility contingent on the approval of the new site by the Georgia Department of Education, or (2) applying for State funding to cover the costs of repairs, which came with State-imposed conditions.⁵⁹

4. The State executes and operates State-level contracts to provide GNETS services.

The State also “administers” GNETS by contracting with outside vendors to provide services at the GNETS regional programs.⁶⁰ These contracts cover a significant portion of the purported therapeutic services provided by regional programs.⁶¹ For example, in Fiscal Year 2019, the State contracted for \$1.3 million behavioral and therapeutic services provided at certain GNETS regional programs through State-approved providers.⁶² The State also contracts facilitating regional

⁵⁸ See GEORGIA00044397-44401 (Ex. 93); GEORGIA01486091-1486093 (Ex. 94); GEORGIA00043199-43211 (Ex. 95).

⁵⁹ See GEORGIA00197246-197248 (Ex. 96); GEORGIA00062056-62058 (Ex. 97); GEORGIA00780046-780049 (Ex. 98). The conditions were outlined in a required Letter of Assurance.

⁶⁰ Campbell Report at 9; Low Tr. 2 43:9-44:11; Low Tr. 94:8-21; Taylor Tr. 115:13-16.

⁶¹ See GEORGIA01075824-1075828; GEORGIA00197228-197232 (Ex. 99); GEORGIA00792421 (Ex. 100); GEORGIA00346155-346158 (Ex. 101); GEORGIA00008871-8873 (Ex. 102); GEORGIA00097413 (Ex. 103); GEORGIA03251782-3251785 (Ex. 104); GEORGIA00008706 (Ex. 105); GEORGIA00284709-284710 (Ex. 106).

⁶² See GEORGIA01075824-1075828; GEORGIA00197228-197232; GEORGIA00792421; GEORGIA00346155-346158; GEORGIA00008871-8873;

programs' access to State-mandated academic and behavioral assessments.⁶³ The State provides GNETS regional programs with direction as to when and how they should implement these contracts.⁶⁴ The State also decides when to cancel the contracts.⁶⁵

5. State mandated IEP file reviews.

On occasion, the State has required GNETS regional programs to review IEP files and assess compliance with State-imposed operating standards.⁶⁶ As part of this mandatory process, GNETS directors must review student files and produce detailed and wide-ranging information for every student receiving GNETS

GEORGIA00097413; GEORGIA03251782–3251785; GEORGIA00008706; GEORGIA00284709–284710; GEORGIA00198913–198914 (Ex. 107); GEORGIA00326160–326162 (Ex. 108); GEORGIA00329502–329506 (Ex. 109); Wolf DOJ Tr. 141:6–144:12, 144:19–145:19, 147:13–149:2; Cole DOJ Tr. 278:7–280:15.

⁶³ See GEORGIA00053780–53786 (various GaDOE supports and services provided via contract); GEORGIA00065412–065425 (Ex. 110) (contract for GNETS access to i-Ready); GEORGIA00065402–65409 (Ex. 111) (contract for GNETS program access to the BASC-3); Low Tr. 2 41:15–42:15; Holifield Tr. 218:13–25; Lazari Tr. 53:4–13; Def. Resp. to Interrogatories No. 4 at 16.

⁶⁴ GEORGIA00481464–4814648 (Ex. 112); GEORGIA00130969–130973 (Ex. 113); GEORGIA00321220–321224 (Ex. 114); GEORGIA00062579–62580 (Ex. 115); GEORGIA00326259–326271 (Ex. 116); GEORGIA00361821 (Ex. 117); Clemons Tr. 230:11–235:1.

⁶⁵ Cleveland DOJ Tr. 242:16–243:18.

⁶⁶ GEORGIA00363579–363584; GEORGIA00364572 (Ex. 118); GEORGIA00363754–363755 (Ex. 119); GEORGIA00054284–54286 (Ex. 120); Gay Tr. 61:24–63:6; Def. Resp. to Interrogatories No. 4.

services.⁶⁷ This process helps the State review whether IEPs are in compliance with law and State-mandated operating standards.⁶⁸

Recently, such a review led to “disproportionality concern[s]” about certain disability category areas. State employees observed that some GNETS programs served a disproportionate number of students with autism and decided to “examine and review” whether there were “appropriate procedures in place” and to ““examine appropriateness of . . . students receiving those services.”⁶⁹ As Dr. Smith-Dixon described, “if you see there is a student who, for example, has other health impairment[s] and you see a program has an alarming number of students identified solely in that disability category . . . you would want to make sure the appropriate resources are in place”⁷⁰

LEGAL STANDARD

Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact and that the moving

⁶⁷ GEORGIA00363754–363755; GEORGIA03261773–3261774 (Ex. 121); Cole DOJ Tr. 368:20–369:23.

⁶⁸ Cleveland DOJ Tr. 192:17–193:5, 194:13–196:8, 198:16–202:23; Stevenson DOJ Tr. 212:5–214:5; Cole DOJ Tr. 365:18–366:4, 368:20–369:23.

⁶⁹ Zelfine Smith-Dixon DOJ Case Tr. (“Smith-Dixon DOJ Tr.”) (Ex. 122) 240:14–16, 241:7–20, 242:22–23, 268:8–269:13.

⁷⁰ *Id.* at 241:9–20.

party is entitled to a judgment as a matter of law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986) (citing Fed. R. Civ. P. 56(c)). “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Id.* at 248; *see also Hickson Corp. v. Northern Crossarm Co.*, 357 F.3d 1256, 1259-60 (11th Cir. 2004) (citations omitted).

ARGUMENT

In this case, “[t]o prevail against the State under Title II of the ADA, Plaintiffs must show that they were qualified individuals who, as a result of their disabilities, were either excluded from participation in or denied the benefits of a program or activity offered by the State or subjected to discrimination by the State.” *Georgia Advocacy Office*, 447 F. Supp. 3d at 1317. The regulations that govern and implement Title II require that “a public entity shall *administer* services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d) (emphasis added).

The issue in this motion is whether the State “administers” GNETS. The Oxford Dictionary of English defines “administer” as to “manage and be responsible for the running of” and Black’s Law Dictionary defines it, in the public

law context, as “practical management and direction.”⁷¹ This Court has identified some key legal “principles to determine whether an entity ‘administered’ a government program. First, and most directly, the Court looks to whether the public entity made decisions that led to segregation. Second, funding a program alone is not administration. Third, a state’s statutory structure informs whether the state administers the program. Fourth, the state need not have made the direct decisions that led to the discrimination, as using criteria that leads to discrimination sufficiently forms a causal connection. Last, the level of control the public entity has informs whether a plaintiff has shown a causal connection.” *Georgia Advocacy Office*, 447 F. Supp. 3d at 1321; *see also Bacon v. City of Richmond*, 475 F.3d 633 (4th Cir. 2007); *Day v. District of Columbia*, 894 F. Supp. 2d 1 (D.D.C. 2012); *Disability Advocates, Inc. v. Paterson*, 653 F. Supp. 2d 184 (E.D.N.Y. 2009), *vacated sub nom. Disability Advocates, Inc. v. N.Y. Coal. For Quality Assisted Living, Inc.*, 675 F.3d 149 (2d Cir. 2012).

Under these definitions, regulations, and legal principles, the State administers GNETS. There is a clear causal connection between the State’s actions (and inactions) and the segregation of students at GNETS. To be liable, the State

⁷¹ *See Administration*, Oxford Dictionary of the English Language (3d Ed. 2010); *Administration*, Black’s Law Dictionary (7th ed. 1999); *see also Defendants’ Memorandum of Law in Support of their Motion to Dismiss at 7–8 (ECF 46-1)*.

need not be the sole “administrator” of GNETS; it is enough that its conduct is a primary cause for the segregation of students at GNETS. *Id.*

Plaintiffs respectfully suggest that as the Court considers whether the State “administers” GNETS, it also consider a corollary question: *if the State does not administer GNETS, then who does?* LEAs, regional GNETS programs, and IEP teams have their roles, but it is the State that created, maintains, sets the rules and expectations for, and oversees GNETS.

A. The State Made And Continues To Make Decisions That Lead To Unnecessary Segregation.

The State made the decisions that led to the unnecessary segregation that Plaintiffs challenge. The State’s starting, crucial decision was to create and implement, and then maintain GNETS in the first place. As reflected in its governing document—the GNETS Rule—GNETS’ purpose and mission are to educate students with disability-related behaviors in a network of physically separate locations where they have little to no interaction with their non-disabled peers. GA. COMP. R. & REGS. § 160-4-7-.15(2)(a).

The manner in which the State funds GNETS—beyond the fact that it funds GNETS—further reflects decisions on its part that have produced unnecessary segregation. The State reserves and provides funds to GNETS separate from the

education funds it provides to local school districts.⁷² This allows, indeed compels, that there be a network of segregated facilities separate from zoned schools and local school district control.

Moreover, as this Court has recognized, the State “provides funding for services within GNETS that it does not provide to local school districts so that such districts could provide the same or similar services in zoned schools.” ECF No. 123 at 25.

The funding process for GNETS regional programs demonstrates the control the State has over GNETS. The State allocate funding among its regional programs using criteria it created and enforces. A regional program cannot obtain funding unless it submits, and the State approves a program budget that detail how the programs intend to spend any allocated funds. In short, the State provide GNETS funds with substantial strings attached. The process of allocating funds to GNETS programs constitutes a powerful means of control by the State agency over GNETS.

The State may argue that it does not administer GNETS for purposes of the ADA because it is not involved in the decisions whether to place particular

⁷² See GA. CONST. art. 3, § 9, ¶¶ II(a)–(b); The Budget Process, Governor’s Office of Planning & Budget, <https://opb.georgia.gov/budget-information/budget-process> (last visited Nov. 1, 2023); see, e.g., H.B. 19, 157th Gen. Assemb., Reg. Sess. (p. 105 at 151.100) (Ga. 2023); Low Tr. 32:5–33:4, 82:4–21; see also Gay Tr. 55:2–20; 56:22–59:11.

students into the program. It will claim those decisions are made on an individualized basis by the IEP team assigned to each potential GNETS student and that the State does not have any representative on IEP teams nor power to overrule IEP teams' decisions.

The evidence, however, shows that the State cannot disassociate itself from IEP decisions to place students into GNETS. Mandatory IEP reviews are imposed on GNETS directors to assess compliance with State-imposed operating standards.⁷³ The State's collection of this information (along with other GNETS data) enables it to oversee broad aspects of regional GNETS program operations, including student placement and transition (*i.e.*, entry and exit), staffing, available behavioral and therapeutic supports, trainings, instruction, progress monitoring, program procedures, service delivery, and use of restraints, among others.

IEP teams are constrained by the choices available to them. These limits are imposed by the State. Instead of providing local districts and zoned schools with the resources necessary to appropriately serve these students, Georgia allocates tens of millions of dollars annually to fund the separate network of 24 GNETS programs around the State. *See* Campbell Report at 14. Before a student in a zoned

⁷³ GEORGIA00363579–363584; GEORGIA00364572; GEORGIA00363754–363755; GEORGIA00054284–54286; Gay Tr. 61:24–63:6; Def. Resp. to Interrogatories No. 4; Cleveland DOJ Tr. 44:13–22; Smith-Dixon DOJ Tr. 240:14–16, 241:7–20, 242:22–23, 268:8–269:13.

school is placed in GNETS, the family, student, and others on the IEP team are led to believe that those services will be available once the student is placed in GNETS. *See* Elliott Report at 23. The students must meet the criteria set forth by the State for admission to GNETS.⁷⁴ Then, as required by the State, it is the GNETS that decides whether the criteria have been met. In other words, it is the GNETS (implementing State standards), not IEP teams, that decides which students are actually admitted to GNETS.

Moreover, even if State officials do not participate in individual IEP teams, it does not follow that the State does not make decisions that influence those teams' decisions. The State created and continues to offer to local school districts and IEP teams a segregated education option that purports to serve the needs of students with emotional or behavioral disabilities: GNETS. This gives local school districts and IEP teams an easy alternative to avoid making what the ADA requires: a serious effort to provide the services that disabled students need in non-segregated settings within zoned schools. Rather, the very existence of GNETS incentivizes zoned schools and school districts to refrain from providing appropriate services in integrated settings to students with disability-related

⁷⁴ Cleveland DOJ Tr. 192:17–193:5, 194:13–196:8, 198:16–202:23; Stevenson DOJ Tr. 212:5–214:5; Cole DOJ Tr. 365:18–366:4, 368:20–369:23; *see also The Georgia Advocacy Office*, 447 F. Supp. 3d at 1318 (citing GA. CODE ANN. § 20-2-152(a)).

behaviors and instead to segregate them in GNETS. *See* Elliott Report at 23; Campbell Report at 15.

B. The State Controls GNETS In A Myriad Of Ways.

Through many mechanisms, the State acts and exerts control to ensure that GNETS operates as designed. This again starts with the GNETS Rule. In denying Defendants’ motion for judgment on the pleadings, this Court acknowledged found significant Plaintiffs’ allegation that “[t]he State, however, has some control over GNETS through its duty to create regulations and fund the program. For instance, the [GaDOE] passes regulations on GNETS’ operation.” ECF No. 123 at 10 (quoting GNETS Rule).

The evidence proves this allegation. The GNETS Rule binds each of the 24 regional GNETS programs and demonstrates the State’s substantial authority over GNETS as a whole. Among other things, the GNETS Rule sets the eligibility criteria for GNETS programs and prescribes duties for the regional programs and local school districts.⁷⁵

The State’s control over GNETS extends beyond the GNETS Rule. The State employs a GNETS Program Manager and a Program Specialist oversee GNETS. They and other State employees were integral to the creation and

⁷⁵ Lazari Tr. 110:8–23; Smith-Dixon Tr. 65:9–70:19; 72:11–21; Cleveland Tr. 46:20–48:24; Taylor Tr. 89:7–16; Holifield Tr. 21:5–22:13, 32:8–20.

implementation of the Strategic Plan, which governs nearly every aspect of GNETS' day-to-day operations and is mandatory for the regional programs.⁷⁶ State employees also provide general and day-to-day direction to the persons implementing GNETS.⁷⁷

In addition, the State enters into contracts to provide GNETS services.⁷⁸ Thus, as to significant portion of the therapeutic work that is supposed to be provided in the GNETS regional programs, the State—not the regional programs or local school districts—decides who is to perform that work and the terms on which it will be performed or no longer performed (as the State also has the authority to cancel the contracts).⁷⁹

All of these factors are hallmarks of State control beyond the fact of funding. GNETS is not a bottoms-up program created, structured, and managed by GNETS regional programs and local school districts at the expense of the State. GNETS is

⁷⁶ See GEORGIA00337488–337509; Holifield Tr. 22:22–23:3; Gay Tr. 96:24–97:6, 98:3–11, 101:5–15; Def. Resp. to Interrogatories No. 4 at 14.

⁷⁷ See, e.g., GEORGIA00046914–46915; GEORGIA00781480–781481; GEORGIA01064168–GEORGIA01064174; GEORGIA00339000–339001; GEORGIA00226054; GEORGIA00784354–784355; Clemons DOJ Tr. 220:19–221:13; Cole DOJ Tr. 108:21–111:11, 115:14–117:4, 120:11–121:19; Cleveland Tr. 81:14–82:8, 108:11–111:7; Taylor Tr. 60:2–7.

⁷⁸ See GEORGIA01075824–1075828; GEORGIA00197228–197232; GEORGIA00792421; GEORGIA00346155–346158; GEORGIA00008871–8873; GEORGIA00097413; GEORGIA03251782–3251785; GEORGIA00008706; GEORGIA00284709–284710; Low Tr. 89:23–90:13, 92:21–24, 95:15–96:12, 98:24–99:4, 187:6–12; Smith-Dixon Tr. 210:21–211:6.

⁷⁹ *Id.*; see also Cleveland DOJ Tr. 242:16–243:18.

a tops-down program created, structured, and managed by the State. Thus, as one GNETS director wrote, GaDOE and the State’s criteria “required,” “mandated,” “compelled,” “forced,” and “imposed” the operation of GNETS. *See* GEORGIA00053695.

C. The Statutory Structure Vests The State With Authority Over GNETS.

At the pleading stage, the Court recognized that “the regulations allow the State some oversight, including to ensure compliance with federal and state law.” *Georgia Advocacy Office*, 447 F. Supp. 3d at 1319.

Again, the evidence bears out this point. The Georgia Constitution and a Georgia statute authorized the State Board of Education to adopt the GNETS Rule. *See* GA. CONST. art. VIII, § 5, ¶ VII(a), GA. CODE ANN. § 20-2-152(a). The GaDOE oversees public education throughout the State, ensuring that laws and regulations pertaining to education, including special education, are followed and that State and federal money is properly allocated and disbursed. *See* GA. CONST. art. 8, § 1.

The GNETS Rule, as adopted pursuant to this authority, vests the SBOE with broad authority to administer GNETS and ensure that GNETS regional programs and participating local school districts comply with its measures and the law. The GNETS Rule explicitly assigns to the SBOE and GaDOE the responsibility of monitoring compliance with the law. *See* GA. COMP. R. & REGS. § 160-4-7-.15(5)(a)(2)(iii). The GNETS Rule confers on SBOE the power to receive

and disburse GNETS funds and to administer the program by developing rules and procedures. GA. COMP. R. & REGS. § 160-4-7-.15(5)(a)(1), (2). The GNETS Rule dictates the overarching structure of GNETS program and reaches all aspects of GNETS operations, including student eligibility criteria, service delivery, staffing, facilities, financing, and accountability. GA. COMP. R. & REGS. § 160-4-7-.15(5)(a)(1), (2). In so doing, the GNETS Rule imposes responsibilities on GNETS regional programs and local school districts, including to provide student schedules. GA. COMP. R. & REGS. § 160-4-7-.15 (5)(c)(2), (3), (7). The State’s statutory and regulatory framework confirms its administration of GNETS. *See Paterson*, 653 F. Supp. 2d at 192 (“Defendants, as required by New York law, *administer* the State’s system of mental health care . . .”) (emphasis added).

D. Plaintiffs Have Demonstrated A Causal Connection.

The evidence shows a causal connection between the State’s administration of the GNETS program and the discrimination experienced by Plaintiffs.

This Court recognized that “the State need not have made the direct decisions that led to the discrimination.” *Georgia Advocacy Office*, 447 F. Supp. 3d at 1321. Rather, Plaintiffs could show that “the State had a role in the management and direction of GNETS such that it ‘administers’ the program.” *Id.* at 1322. The Court noted that Plaintiffs’ “allegations suggest the State made

decisions that would constitute administering GNETS” and if proven show the “causal connection’ required in *Day*.” *Id.* at 1321.

The evidence shows that the State made and continues to “decisions that would constitute administering GNETS.” *Id.* The statutory structure vests the State with authority over GNETS and the State manages and directs the program (including the GNETS regional programs) through a variety of means. *See* GA. COMP. R. & REGS. § 160-4-7-.15(5). The State sets the criteria for inclusion in GNETS: those students with mentally disabilities that allegedly would benefit from a segregated education.⁸⁰ GNETS directors answer to the State on admissions, staffing, programming, and operations, and look to State officials for direction on a host of day-to-day matters involving student eligibility, service delivery, and placement.⁸¹

While IEP teams refer students to GNETS at the local school district level, that option is available to them only because the State created and maintains the GNETS. The availability of GNETS as a separate, organized, segregated option for students with disabilities incentivizes local decision-makers to forego

⁸⁰ Lazari Tr. 110:8–23; Smith-Dixon Tr. 65:9–70:19; 72:11–21; Cleveland Tr. 46:20–48:24; Taylor Tr. 89:7–16; Holifield Tr. 21:5–22:13, 32:8–20.

⁸¹ *See, e.g.*, GEORGIA00046914–46915; GEORGIA00781480–781481; GEORGIA01064168–GEORGIA01064174; GEORGIA00339000–339001; GEORGIA00226054; GEORGIA00784354–784355; Clemons DOJ Tr. 220:19–221:13; Cole DOJ Tr. 108:21–111:11, 115:14–117:4, 120:11–121:19; Cleveland Tr. 81:14–82:8, 108:11–111:7; Taylor Tr. 60:2–7.

consideration of less restrictive options. *See* GA. COMP. R. & REGS. § 160-4-7-.15; *see also* GA. CONST. art. VIII, § 5, ¶ VII(a). As a result, GNETS students are unnecessarily segregated from their non-disabled peers. *See* Elliott Report at 20, 24; Campbell Report at. 1, 21.

CONCLUSION

Because Plaintiffs have demonstrated that there is no genuine issue of material fact concerning whether the State “administers” GNETS. In so doing, the State “has utilized criteria or methods of administration that have ‘caused [Plaintiffs] ... to be confined unnecessarily in [GNETS].’” *Day*, 894 F. Supp. 2d at 22; *see also Georgia Advocacy Office*, 447 F. Supp. 3d at 1320. Without the State’s active role in the maintenance, oversight, and regulation of GNETS, the program could not be sustained. There is a causal connection between the State’s conduct and Plaintiffs’ injuries. The State’s activities, described above, amount to “administration” under the ADA. Accordingly, Plaintiffs respectfully request that the Court grant partial summary judgment in its favor and find that the State administers the GNETS program.

Dated: December 15, 2023

Respectfully submitted,

/s/ Jessica C. Wilson

DLA PIPER LLP (US)

Jessica C. Wilson (GA #231406)

33 Arch Street, 26th Floor

Boston, MA 02110-1447

Tel. 617-406-6000

Fax 617-406-6100

jessica.wilson@us.dlapiper.com

Christopher G. Campbell (GA #789533)

One Atlantic Center

1201 West Peachtree Street, Suite 2800

Atlanta, Georgia 30309-3450

Tel. 404-736-7800

christopher.campbell@usdlapiper.com

**CENTER FOR PUBLIC
REPRESENTATION**

Mark J. Murphy (*Pro Hac Vice*)

22 Green Street

Northampton, MA 01060

Tel. 202-670-1008

mmurphy@cpr-us.org

**BAZELON CENTER FOR
MENTAL HEALTH LAW**

Ira A. Burnim (*Pro Hac Vice*)

1101 15th Street, N.W., Suite 1212

Washington, D.C. 20005

Tel. 202-467-5730

irabster@gmail.com

GEORGIA ADVOCACY OFFICE

Devon Orland (GA #554301)

1 West Court Square

Decatur, GA 30030

GOODMARK LAW FIRM

Craig Goodmark (GA #301428)
1425 A Dutch Valley Place
Atlanta, GA 30324
404-719-4848
cgoodmark@gmail.com

THE ARC OF THE UNITED STATES

Shira Wakschlag (*Pro Hac Vice*)
1825 K Street, N.W., Suite 1200
Washington, D.C. 20006
202-534-3708
wakschlag@thearc.org

Counsel for Plaintiffs

L.R. 7.1(D) CERTIFICATION

I certify that *Plaintiffs Memorandum in support of their Motion for Partial Summary Judgment* has been prepared with one of the fonts and point selections approved by the Court in Local Rule 5.1(C). Specifically, this document has been prepared using 14-pt Times New Roman Font on this 15th day of December 2023.

/s/ Jessica C. Wilson
Jessica C. Wilson

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing *Plaintiffs Memorandum in support of their Motion for Partial Summary Judgment* with the Clerk of Court using the CM/ECF system on this 15th day of December 2023.

/s/ Jessica C. Wilson
Jessica C. Wilson