

GEORGIA ADVOCACY OFFICE, ET AL V. STATE OF GEORGIA ET AL
WHAT YOU NEED TO KNOW

WHAT: Class action lawsuit filed against the State of Georgia for discriminating against thousands of public school students with disabilities by providing them with a separate and unequal education via the State’s Georgia Network for Educational and Therapeutic Supports (GNETS) Program.

WHERE: United States District Court for the Northern District of Georgia (Atlanta Division)

WHEN: Filed on October 11, 2017

WHO: The **plaintiffs** are parents of children with disabilities in or at risk of entering GNETS and a class of similar students, the Georgia Advocacy Office, and The Arc. The **defendants** are the State of Georgia and Governor Brian Kemp, the Georgia Board of Education, the Georgia Department of Education and Superintendent Richard Woods, the Georgia Department of Behavioral Health and Developmental Disabilities and Commissioner Judy Fitzgerald, and the Georgia Department of Community Health and Commissioner Frank Berry. The **attorneys** who filed the lawsuit come from the [Georgia Advocacy Office](#), the [Center for Public Representation](#), the [Judge David L. Bazelon Center for Mental Health Law](#), [The Arc](#), the [Goodmark Law Firm](#), and [DLA Piper LLP](#).

WHY: Because separate is not equal. The segregation, exclusion and low-expectations for students with disabilities must be replaced with supports to help provide all students with disabilities equal educational opportunities alongside their non-disabled peers.

STATUS: In March 2020, the court denied defendants’ Motion to Dismiss, allowing the lawsuit to move forward. The parties are now engaging in discovery.

OVERVIEW OF THE LAWSUIT

What is the GNETS system?

The State of Georgia is unique in operating a statewide segregated educational program—GNETS—only for students with disability-related behavioral needs for more than 40 years, including students with mental health needs and intellectual and/or developmental disabilities (such as autism). Approximately 4,000 students with disabilities, the majority of whom are students of color, have been sent to the GNETS system. The majority of GNETS are housed in completely separate schools (including some that were formerly schools for African-American students in the Jim Crow era). Other GNETS locations are inside regular schools but housed in locked wings or have separate entrances.

Students in GNETS are not only segregated from their non-disabled peers but also receive an inferior education. Many students in GNETS are not taught by certified teachers and instead are primarily taught through computers. They cannot access the basic credits they need to earn a diploma, resulting in an abysmally low high school graduation rate. Many GNETS centers do not

provide access to basic school experiences like gyms, playgrounds, eating in a lunch room, libraries, or science labs. In addition, students in GNETS are denied co-curricular opportunities that other students enjoy, such as playing sports or participating in the school play. Parents and students have described the GNETS system as similar to a prison, with no way out.

What is this lawsuit about?

By maintaining and funding GNETS separate and apart from local school districts, the State has created a system in which a GNETS referral is the most convenient, and, in many school districts, the only option for students with disability-related behavioral needs. The State separately funds GNETS and does not make necessary funding available to local school districts to provide needed disability-related behavioral services in zoned schools. As a result, local school districts have little incentive and few resources to provide services necessary to educate children with disability-related behavioral needs in their zoned schools. This lawsuit contends that the State is discriminating against thousands of public school students with disability-related behavioral needs by providing them with a separate and unequal education via GNETS in violation of two federal statutes and the United States Constitution:

- **Americans with Disabilities Act (ADA):** This law provides a clear and comprehensive mandate for the elimination of discrimination against people with disabilities. Title II of the ADA specifically prohibits state and local government entities from discriminating on the basis of disability and applies to all services, programs, and activities of such entities, including the provision of education. The U.S. Supreme Court has held that Title II prohibits the needless isolation or segregation of people with disabilities. Title II also requires that state or local governments provide equal opportunities—here, equal educational opportunities—to people with disabilities.
- **Section 504 of the Rehabilitation Act of 1973 (Section 504):** This law prohibits entities that are receiving federal financial assistance from discriminating against people with disabilities in their programs and activities. It has similar legal requirements to the ADA.
- **Fourteenth Amendment to the U.S. Constitution:** The Equal Protection Clause of the Fourteenth Amendment requires each state to provide equal protection under the law to all people within its jurisdiction. The U.S. Supreme Court has held that “separate educational facilities are inherently unequal” and students subject to segregation are “deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.”

Who brought this lawsuit?

The plaintiffs include three parents with children who have been, or are at risk of being, placed in GNETS and two disability advocacy organizations, the Georgia Advocacy Office (GAO) and The Arc. GAO is the statewide protection and advocacy system (“P&A”) for Georgia, serving individuals in Georgia with disabilities. The Arc is a national non-profit organization that seeks to promote and protect the human rights of people with intellectual and developmental disabilities throughout the State via its Georgia state office.

The individual plaintiffs are not alone. Their experiences in GNETS are similar to thousands of students who also have disability-related behavioral needs, including students with mental health needs and intellectual and/or developmental disabilities (such as autism). Because of this, the plaintiffs are bringing this lawsuit on their own behalf and on behalf of a class of all students. The proposed class is defined as students who are now or in the future will be in GNETS or at serious risk of being placed in GNETS. The purpose of a class action lawsuit is to allow the claims of a large group of people to be resolved in one lawsuit through the efforts of the representative plaintiffs and their lawyers.

What are the plaintiffs asking the court to do?

The plaintiffs are asking the court to:

- (1) Rule that the State's operation of GNETS violates the ADA, Section 504, and the Fourteenth Amendment;
- (2) Order the State to desegregate GNETS by ensuring that students in or at serious risk of placement in GNETS have access to the services they need to receive equal educational opportunities in their zoned schools in classrooms with their non-disabled peers; and
- (3) Certify the lawsuit as a class action so that the needs of the entire class of students can be addressed.

Recent developments and next steps

Judge Michael Brown presides over the plaintiffs' case. In January 2018, the defendants sought to dismiss the lawsuit, arguing that the State cannot be held liable for GNETS because it does not administer the program and that plaintiffs had failed to allege discrimination under the ADA, Section 504, and the Equal Protection Clause. After a hearing and additional briefing in 2019, Judge Brown rejected the defendants' arguments, allowing the case to move forward. Specifically, the court held that the plaintiffs:

- Sufficiently alleged that the State had a role in the management and direction of GNETS such that it administers the program.
- Sufficiently alleged discrimination under the ADA, Section 504, and the Equal Protection Clause.
- Did not have to exhaust administrative remedies by first filing for due process hearings under the Individuals with Disabilities Education Act (IDEA) on behalf of individual students before bringing the class action lawsuit.

Following this decision, the parties have begun the discovery (exchange of information) process. This means that, over the course of several months, the plaintiffs will be gathering facts and having discussions with stakeholders.

U.S. Department of Justice investigation and the Georgia Coalition for Equity in Education

In 2015, the U.S. Department of Justice (DOJ) investigated GNETS and [found](#) that it violates Title II of the Americans with Disabilities Act by unnecessarily segregating students with disabilities from their peers and providing opportunities to students in GNETS that are unequal to those provided to other students.

Following the investigation, a group of advocacy organizations formed the Georgia Coalition for Equity in Education (GCEE) to urge the State to work with stakeholders in the disability community in responding to DOJ's findings and recommendations. After one year of failed negotiations and the State's complete lack of engagement with the GCEE or any other stakeholders in the disability community, DOJ filed a [lawsuit against the State](#) in federal court in 2016. Judge Eleanor Ross presides over DOJ's case. The State filed a Motion to Dismiss the DOJ case and, in May 2020, Judge Ross rejected the defendants' arguments, allowing the lawsuit to move forward. The next steps outlined for the plaintiffs above are similar in the DOJ case.

Given the similarity of the cases, in July 2020, Plaintiffs filed a motion to consolidate their case with the DOJ case. If granted, this would mean that both cases would proceed before one judge instead of in two separate courtrooms.

Select News Coverage

- [Atlanta Journal Constitution: Georgia Psychoeducational Students Segregated by Disability, Race \(Series\)](#)
- [The New Yorker: The Forgotten Ones - Georgia's Separate and Unequal Special Education System](#)
- [The Atlantic: The Separate, Unequal Education of Students With Special Needs](#)

What Can I Do?

- (1) Contact GAO (404-885-1234; 1-800-537-2329; info@thegao.org) if you or someone you know is affected by the GNETS system;
- (2) Spread the word about the lawsuit to interested stakeholders and [join the Georgia Coalition for Equity in Education email list](#); and
- (3) Follow our [case page](#) (https://centerforpublicrep.org/court_case/gao-v-georgia/) for updates on the lawsuit and what you can do to help.