



U.S. Department of Justice

Civil Rights Division

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VIA ELECTRONIC MAIL AND FEDEX

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Re: Investigation Under Title II of the Americans with Disabilities Act with respect to Public School Children with Emotional and Behavioral Disabilities in the Foster Care System in Alabama, D.J. No. 169-1-127

Dear Mr. Schlenker and Mr. Swann:

We write to report the findings of the United States Department of Justice (the “Department”) based on our investigation of the State of Alabama, including the Alabama Department of Human Resources (“DHR”) and the Alabama State Department of Education (“ALSDE”) (collectively, the “State”), for alleged violations of Title II of the Americans with Disabilities Act of 1990 (“ADA”), as amended, 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation, 28 C.F.R. pt. 35.¹

¹ The United States is authorized to investigate the allegations in this matter and to file a civil action in federal court if the Attorney General finds a violation of the ADA has occurred. 42 U.S.C. § 12133; 28 C.F.R. pt. 35, subpart F.

Based on our investigation, we conclude that the State, through its statewide system for delivering educational and therapeutic services, discriminates against students with emotional and behavioral disabilities in the foster care system who have been enrolled in Specialized Treatment Centers (“STCs”) on the campuses of Alabama’s psychiatric residential treatment facilities (“PRTFs”). While some Alabama agencies refer to STCs as ‘on-site schools,’ they differ in numerous and substantial ways from a general education school, including in their physical attributes, the multi-grade composition of the classes, their heavy reliance on online programs in classrooms without certified staff, and an overall and profound lack of resources. Many STCs also lack grade-appropriate curricula; provide insufficient instructional services and supports, including through their use of shortened school days; and are often unable to provide students with access to facilities that are common in general education settings, such as libraries, gyms, and science labs, or opportunities to participate in sports and extracurricular activities. The vast majority of students enrolled in STCs while receiving residential care are unnecessarily segregated and could be served in general education schools given appropriate services and supports. In many cases, these students could be successful in general education settings even without additional services or supports other than transportation.

This Letter constitutes notice of our findings of fact and conclusions of law pertaining to the above violations of Title II of the ADA. We also describe the minimum steps the State must take to bring its programs, services, and activities into compliance with, and to remedy past violations of, Title II of the ADA, including by improving the State’s policies, practices, and procedures. *See* 28 C.F.R. pt. 35, subpart F. This Letter addresses only those steps necessary to comply with Title II of the ADA relating to (1) the inappropriate educational segregation of students with disabilities in foster care who could be appropriately served in general education settings and (2) the State’s failure to provide those students with equal educational opportunities compared to students in general education settings. It does not address or obviate the State’s obligation to comply with Title II of the ADA in all other respects or with any other federal statute.

We would like to acknowledge the assistance and cooperation of the State’s counsel and officials throughout our investigation. We hope to continue our collaborative and productive relationship as we resolve the violations described below.

I. FACTUAL BACKGROUND

“We’re given the same work even though we’re in different grades.”
“I had help in school before I was in facilities. I am not getting enough help now.”
“I know it ain’t real school.”

- Statements made by students in Alabama’s PRTFs
about their educational experiences at STCs²

Alabama is charged with providing care for children in Alabama’s foster care system. Ala. Admin. Code 660-5-28-.03. Alabama’s DHR divides the responsibilities for providing child welfare services among a number of Deputy Commissioners overseeing various components,

² Alabama Disabilities Advocacy Program July 2020 Report, app. 1, pp. 1, 5-6
(https://adap.ua.edu/uploads/5/7/8/9/57892141/sequel_attachments__a_b_and_c__r_.pdf).

such as Children and Family Services, Family Resources, and Quality/Resource Management, many of which touch upon care for children in foster care. DHR, through these entities and the field offices it oversees, authorizes every placement decision, making the State responsible for the choice to place into PRTFs certain children with disabilities in the foster care system. DHR also develops principles, regulations, and procedures regarding the minimum standards for residential care provided to children in foster care, including the children's care, treatment, and education, and is responsible for the licensing and oversight of these facilities.³ The State also requires that educational records be updated and transferred to foster care providers at the time of each placement of a child in foster care. *See* Ala. Admin. Code 660-5-28-.03, .07(2).

Although the number of facilities serving children in DHR's custody has varied, as of January 2022, DHR placed children into thirteen PRTFs, all of which have STCs. Between August 1, 2019 and July 31, 2020, DHR placed 909 unique children in foster care in PRTFs for at least part of the year. Alabama places students in congregate care settings that provide basic, moderate, and/or intensive residential care depending on the child's needs. *See* DHR Out of Home Care Policies and Procedures, Placement of Children, Rev. No. 19 at 28 (2014) ("DHR Out of Home Care Policies and Procedures"), https://dhr.alabama.gov/wp-content/uploads/2021/05/OHC-02-Placement-of-Children_8-9-21.pdf. The Department's investigation focused primarily on students placed in intensive PRTFs because nearly all of those students receive educational services at STCs rather than in general education settings. However, the findings and remedial measures in this letter extend to students in PRTFs at other levels of care to the extent that any of those students are also automatically enrolled in STCs with no consideration for their ability to be educated in more integrated settings.

The State, through ALSDE, is responsible for overseeing, regulating, and funding educational services for public school students, including students in foster care. ALSDE prescribes specific policies and procedures that local educational agencies ("LEAs") must follow when providing educational services to students in foster care. STCs are permitted to receive allocations from the State's Education Trust Fund to "provide[] treatment to students in grades K-12." *See* Ala. Admin. Code 290-8-8-.02(6).⁴ Before receiving funding from the Education Trust Fund, STCs serving Alabama students must receive an ALSDE Educational Endorsement of Operation, which confirms that the facility "has met requirements" necessary to receive the funds. Ala. Admin. Code 290-8-8-.01, -.02. STCs must annually certify their compliance with all State and Federal laws pertaining to special education students and ALSDE requirements regarding staff qualifications and curriculum. Ala. Admin. Code 290-8-8-.04.

³ <https://dhr.alabama.gov/wp-content/uploads/2020/09/REVISED-MINIMUM-STANDARDS-FOR-RESIDENTIAL-CHILD-CARE-FACILITIES-AUGUST-27-2019.pdf>. The State's Department of Mental Health and Department of Youth Services also play a role in licensing some facilities, but the focus of our investigation has been on the STCs located on the campuses of PRTFs into which DHR places children in foster care.

⁴ Except where otherwise noted, the citations to Ala. Admin. Code 290-8-8 in this Letter are to the version in effect throughout most of our Title II investigation. The regulation was amended in November 2021, and those changes took effect in January 2022. The revised code defines STCs as "state-endorsed centers [that] receive[] appropriations from the Education Trust Fund to provide educational services to students in grades P-12." Ala. Admin. Code 290-8-8-.02(6).

The State has been aware for some time of its failure to provide equal educational opportunities to students in STCs. During an ALSDE work session⁵ held on April 11, 2019, former Deputy State Superintendent of Education, Dr. Daniel Boyd, acknowledged that ALSDE has had no way of knowing whether STCs “are doing good work with these students,” or even whether STCs are providing “adequate materials” for the students. Dr. Boyd stated that the shortcomings needed to be “fixed,” specifically recognizing issues relating to (1) poor record-keeping and assessment procedures; (2) meeting students’ needs; (3) the STCs’ ability to properly identify each student’s disability; (4) the failure to conduct entry and exit assessments; (5) the failure to track students with unique identifiers to allow accurate educational records transfers; and (6) ALSDE’s lack of knowledge about whether teachers at these facilities have the proper credentials and certifications. In January 2022 the State enacted limited changes to the State regulations. The Department is aware of no other official actions taken by the State during our investigation to address these recognized shortcomings.

A July 2020 monitoring report by the Alabama Protection and Advocacy (“P&A”) organization, Alabama Disabilities Advocacy Program (“ADAP”) (“the July 2020 ADAP Report”)⁶ about children with disabilities in four Alabama PRTFs operated by Sequel Youth & Family Services (“Sequel”) offers further context about the use of PRTFs and the educational services provided there. The July 2020 ADAP Report was published following an investigation that included site visits to the facilities and interviews with children residing in the facilities. Among other things, ADAP reported concerns about the quality of the educational services at the PRTFs, including student reports that “they receive limited direct instruction and are provided worksheets that are not on grade level” even apart from the “common occurrence” of there being no teacher available.⁷

In response to the July 2020 ADAP Report, DHR Commissioner Nancy Buckner indicated that an investigation was then taking place.⁸ Subsequent news reports citing DHR’s spokesperson and Sequel’s compliance director do not identify any changes with respect to the educational services offered at the facilities, and the State continues to place children who are in the foster care system into Sequel facilities.⁹ The Department’s interviews with ALSDE personnel revealed that the agency was unaware of any children being removed from the facilities or of educational endorsements being revoked as a result of these concerns.¹⁰

II. LEGAL BACKGROUND

Congress enacted the ADA in 1990 “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” 42 U.S.C.

⁵ The Alabama State Board of Education’s public meetings and work sessions are made available at <https://www.alabamaachieves.org/state-board-of-education/meeting-agendas/>. The archived agendas and videos of the sessions no longer include sessions from 2019.

⁶ <https://www.childrensrights.org/wp-content/uploads/2020/07/Sequel-Attachments-A-B-and-C.pdf>.

⁷ *Id.* at 8.

⁸ See <https://www.waff.com/2020/07/20/ala-dhr-responds-report-safety-issues-abuse-child-treatment-facility/>.

⁹ See <https://www.nbcnews.com/news/us-news/profitable-death-trap-sequel-youth-facilities-raked-millions-while-accused-n1251319>; <https://www.alabamaachieves.org/state-board-of-education/meeting-agendas/>.

¹⁰ See also 2021 National Disability Rights Network report titled “Desperation without Dignity: Conditions of Children Placed in For Profit Residential Facilities.”

§ 12101(b)(1). In so doing, Congress found that the forms of discrimination encountered by individuals with disabilities include “overprotective rules and policies” and “exclusionary qualification standards and criteria.” *Id.* § 12101(a)(5). Congress further determined that “discrimination against individuals with disabilities persists in such critical areas as . . . education.” *Id.* § 12101(a)(3). For these and other reasons, Congress enacted Title II of the ADA, which prohibits discrimination against individuals with disabilities by public entities:

[N]o 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.

Id. § 12132.

Title II’s prohibition against discrimination against people with disabilities in the provision of services by a public entity applies to the State of Alabama and its departments, agencies, or other instrumentalities. *See* 42 U.S.C. § 12131; 28 C.F.R. § 35.104. Pursuant to Congressional directive, 42 U.S.C. § 12134(a), the Department has issued a regulation for Title II of the ADA, which reflects the statute’s broad nondiscrimination mandate. *See* 28 C.F.R. § 35.130(a). The Title II regulation mandates that public entities “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).

The Supreme Court addressed Title II’s integration mandate in *Olmstead v. L.C.*, 527 U.S. 581 (1999). The Court held that a State discriminates against individuals with disabilities under Title II of the ADA when it fails to offer community-based services where (a) such services are appropriate; (b) the affected persons do not oppose community-based treatment; and (c) community-based services can be reasonably accommodated, taking into account the resources available to the entity and the needs of others who are receiving disability services from the entity. *Id.* at 607. In *Olmstead*, the Supreme Court recognized that unjustified segregation of persons with disabilities “perpetuate[d] unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life.” *Id.* at 600. The Court further held that such segregation “severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.” *Id.* at 601. The children with disabilities who are the focus of this investigation have been denied educational opportunities in an integrated setting on the basis of their disabilities, even though they could have been reasonably accommodated in, and did not oppose enrollment in, general education settings.

Like the plaintiffs in *Olmstead*, students with disabilities who have been inappropriately segregated from their peers without disabilities also face tremendous ongoing harms, like stigma and denial of essential opportunities to learn and to develop skills that enable them to effectively engage with their peers. Those skills in turn prepare them to participate in mainstream society as they mature into adulthood. The injuries from segregation are exacerbated when, as in the STCs, educational services are unequal to, and less effective than, the services provided to students without disabilities. In *J.S. v. Hous. Cnty. Bd. of Educ.*, 877 F.3d 979, 986 (11th Cir. 2017), the Eleventh Circuit acknowledged the applicability of *Olmstead* to unjustified segregation in public

education, even for part of the day. *See also K.M. v. Hyde Park Central Sch. Dist.*, 381 F. Supp. 2d 343, 360 (S.D.N.Y. 2005) (citing *Olmstead*, 527 U.S. at 600–01).¹¹

III. INVESTIGATION

In 2019, the Department opened this investigation in response to a complaint alleging that the State, among other things, was improperly assigning a large number of children in the State’s foster care system to STCs with substandard educational services and facilities, as a consequence of the children’s placement in institutional settings. We requested data and other information from ALSDE, DHR, and numerous residential facilities; gathered publicly available information; and sought information from other relevant stakeholders regarding the educational and therapeutic services provided to students placed in Alabama residential facilities. The Department retained experts who specialize in educational and/or therapeutic services for students with disabilities to assist with the review of the individual student records produced. After reviewing documents from providers across the state as well as a large volume from ALSDE and DHR, in the fall of 2021 we conducted site visits of several STCs located on the campuses of PRTFs which offered intensive levels of care, some of which also offered moderate levels of care.¹² The site visits included tours of the facilities, interviews with facility personnel, and interviews with students. We conducted additional interviews, including with personnel from DHR and ALSDE tasked with oversight of the educational placements of and services for students in foster care. Several teachers who we interviewed had prior experience teaching in Alabama general education schools. The Department and our consulting experts carefully reviewed and analyzed all of this information.

IV. FINDINGS

Our investigation revealed that, for students with emotional and behavioral disabilities in DHR’s custody who are enrolled in STCs (and students who are at risk of such assignment), the State fails to provide educational and therapeutic services in the most integrated setting appropriate to their needs.¹³ We further found that the segregated STCs provide unequal educational opportunities to students compared to the services provided in general education settings. In order to prevent and remedy discrimination against such students with disabilities in foster care, the State of Alabama must make reasonable modifications to its existing service

¹¹ Title II further prohibits public entities from aiding or perpetuating the discrimination of other entities by providing significant assistance to them, 28 C.F.R. § 35.130(b)(1)(v), and from utilizing criteria or methods of administration that have the effect of discriminating against students with disabilities (or that perpetuate the discrimination of another public entity, if both public entities are subject to common administrative control or are agencies of the same State). 28 C.F.R § 35.130(b)(3). In addition, such entities must make reasonable modifications to policies, practices, or procedures when necessary to avoid discrimination, unless the public entity can demonstrate that doing so would fundamentally alter the nature of the service, program, or activity. 28 C.F.R. § 35.130(b)(7).

¹² The Department largely participated virtually, but a Department representative was physically present for two of the facility visits.

¹³ Alabama public schools offer school-based mental health services, and such services, which are frequently included in students’ Individualized Educational Programs, would be sufficient to meet the needs of a number of students enrolled in STCs.

delivery systems, which will not require any fundamental alterations to the State’s programs or result in any undue burden or expense for the State. *See Olmstead*, 527 U.S. at 606 & n.16.

A. The State Fails to Serve Students with Disabilities in the Foster Care System Enrolled in STCs in the Most Integrated Setting Appropriate to their Needs.

For many students with disabilities who are in its care, the State fails to adequately consider educational assignments to the most integrated settings appropriate to their needs, defaulting instead to assignments to highly segregated STCs often for extended periods of time.¹⁴ The Department’s experts concluded that many of the students in STCs could receive educational and therapeutic services in general education schools with the appropriate services and supports. Moreover, even for those students who may need to receive educational services in STCs for a brief period of time, the State denies those students opportunities to receive appropriate, evidence-based educational services. In some instances, these students are also subjected to inappropriate and potentially dangerous restraints and seclusions, which can contribute to the inequality of the students’ educational experiences.

1. The students served in the STCs on the campuses of PRTFs are students with disabilities.

To be admitted to the State’s PRTFs and, by extension, the PRTFs’ on-site schools, all students must have a disability diagnosis. In addition, the intensive PRTFs we examined had explicit eligibility provisions requiring that children meet certain diagnostic criteria in order to be placed in the facility. *See, e.g.*, Ala. Admin. Code 560-X-41-.01, -.02, -.09, -.13; 42 C.F.R. § 482.62. We reviewed facility policies and interviewed facility personnel who confirmed that children at those facilities must have a diagnosed disability as a criterion for admission, with certain other factors serving as bases for exclusion (e.g., active suicidal ideation or certain cognitive impairments). Because STCs are the on-site schools for students in these PRTF placements, the eligibility criteria to attend the STCs are the same.

In addition, many of the children who were observed and interviewed by our experts have likely experienced physiological effects from trauma that manifest as impairments under the ADA. The ADA defines a person with a disability to include someone who has, is regarded as having, or has a record of having a “physical or mental impairment that substantially limits one or more major life activities.” 42 U.S.C. § 12102(1). Federal courts have acknowledged that the physiological effects resulting from exposure to complex trauma could constitute a physical impairment cognizable as a disability under the ADA or Section 504. *See, e.g., Peter P. v. Compton Unified Sch. Dist.*, 135 F. Supp. 3d 1098, 1109-11 (C.D. Cal. 2015); *Stephen C. v. Bureau of Indian Educ.*, No. CV-17-08004-PCT-SPL, 2018 WL 1871457, at *3-*4 (D. Ariz. Mar. 29, 2018). Here, our experts note that these children have all been made wards of the State and placed in the child welfare system, which likely stemmed from a traumatic experience (e.g., abuse, neglect). Further, many of these children have encountered additional traumatic

¹⁴ These placements reflect State action, as referrals for placements into the PRTFs must receive prior approval from DHR. Ala. Admin. Code 660-5-52-.02 (also noting that DHR will adopt policies and licensure standards relating to referral to, admission to, and discharge from placements in institutions serving children in foster care).

experiences after being placed in foster care, including multiple moves and placement disruptions and the loss of connection with their families, schools, and communities.¹⁵ Exposure to these types of adverse childhood experiences can lead to complex trauma, which unaddressed, impairs the child’s ability to process stimuli (e.g., impairing thinking, behavior, and social skills) and could constitute a disability under the ADA.

2. Most students in STCs are not being served in the most integrated setting appropriate to their needs.

We found that most students with disabilities in DHR’s custody who are served in segregated on-site schools could be served in more integrated educational settings. These students often remain in these segregated educational environments for extended periods of time, despite ample research showing improved academic outcomes and social benefits for students with disabilities who are educated in inclusive settings.¹⁶ Better outcomes for students with disabilities in integrated settings have been consistently found regardless of race, socioeconomic background, gender, and type of disability.¹⁷ Moreover, enrolling students in segregated STCs unnecessarily severs children’s ties to their home schools (including staff connected to their academic lives), social activities, and peers. The severing of all of these connections makes it more difficult for students to successfully transition back to community-based and general education settings. Nevertheless, we found the State lacks an adequate educational assessment to determine whether students with disabilities placed in these STCs could be appropriately served in more integrated educational settings.

In addition, the services provided to students in STCs do not effectively meet the complex educational needs of the children enrolled there. The Department’s experts concluded that several policies and practices of the STCs actually hinder students’ success in reaching individual goals to exit the program and transition back to general education settings. These include zero tolerance policies (implemented through disciplinary systems that wipe out the benefits earned through prior good behavior based on a single lapse) and token economy systems.¹⁸ In some institutions, there is mandatory manual labor as a substitute for classes like vocational education or physical education. The practices that we observed in the facilities create obstacles to trauma resolution and normal childhood development; indeed, they often further traumatize the children subjected to them.

¹⁵ DHR’s policies acknowledge that placement in foster care can be traumatic for a child (“Any separation of a child from his natural family is a traumatic experience.”). DHR Out of Home Care Policies and Procedures at 1.

¹⁶ Thomas Hehir et al., Instituto Alana, A Summary of the Evidence on Inclusive Education 13 (2016), available at https://alana.org.br/wp-content/uploads/2016/12/A_Summary_of_the_evidence_on_inclusive_education.pdf.

¹⁷ See Thomas Hehir & Lauren I. Katzman, *Effective Inclusive Schools: Designing Successful Schoolwide Programs* xviii (2012).

¹⁸ In many cases, our experts found that these children were being held to unrealistically high behavior standards that require them to entirely avoid typical, age-appropriate behaviors, and when they are unable to comply with PRTF rules, they remain placed in the facilities—and at STCs—for even longer periods of time. For instance, what was reported as a student displaying “intense aggression” was revealed in supporting documentation to be a student unplugging a television after having been told not to do so.

a. *Assignment to Segregated STC settings*

Students with disabilities in DHR’s custody who have been enrolled in STCs are receiving educational services separate from their non-disabled peers in general education settings.¹⁹ Students enrolled in the STCs typically spend the entire school day with other students with disabilities in the facility and are unable to attend classes off site. Consequently, they are deprived of opportunities to interact with non-disabled peers outside of the STC.

Further magnifying the harm, students enrolled in STCs are segregated from their non-disabled peers, teachers, and friends from their home schools for extended periods of time. For instance, at PRTF Brewer-Porch,²⁰ 65% of students stayed at the facility for over a year, and other facilities’ records reflected, consistent with student reports, average lengths of stay from eight months to well over a year. Several facilities reported students who had been discharged after stays of longer than two to four years, while one facility’s records indicate that a student has not yet been discharged after having already been in placement there for over five years. These students were typically enrolled in the STCs throughout their placement at the PRTFs. The harm of these long-term enrollments in STCs is compounded by the frequency with which children are moved directly from one facility with an STC to another without any educational evaluation.

b. *Failure to assess appropriate school enrollment*

Our investigation revealed that the State fails to conduct an adequate educational assessment to determine whether students in STCs could be appropriately served in local general education schools. For example, when asked whether there is a state policy or procedure requiring consideration of whether to send a child placed in a PRTF to a general education school, the Deputy Director for Family Services at the DHR said “no.” Similarly, the State Superintendent stated that allowing students placed at a PRTF for treatment purposes to attend a nearby general education school would be considered a “best practice.” Yet the Superintendent was unable to identify a policy or communication announcing to PRTFs or LEAs that such enrollment would be a best practice, or even permissible, and personnel at the STCs themselves were unaware of any process for assessing the appropriate school placement. The State does not require residential treatment facilities to administer an assessment to students at the time of placement in the PRTF to determine whether they could receive educational services in a more integrated setting for some or all of the school day. Our investigation similarly did not reveal any State-level process for considering whether students at STCs could attend a general education school for even part of the school day (such as for courses not offered at the STC) or for extracurricular activities.

¹⁹ This is particularly problematic for children served in intensive PRTFs. Our record review, observations, and interviews revealed that the vast majority of students, and in many cases all of the students, at intensive PRTFs received educational services in STCs.

²⁰ Brewer-Porch Children’s Center in Tuscaloosa is one of the PRTFs reviewed in our investigation. The others named in this letter include: Safety Net in Montgomery; Sequel Montgomery (run by the organization also operating the other Sequel facilities covered in ADAP’s July 2020 Report); Pathway, Inc. in New Brockton; and Mountain View Hospital in Gadsden.

In practice, most students placed at intensive PRTFs are automatically enrolled in STCs. In fact, the Memoranda of Agreement and funding formulas are premised on an assumption that all children placed in intensive PRTFs will be enrolled in the STCs (as the education funds are based on the bed count), and record reviews and interviews revealed that students placed in intensive PRTFs were never or almost never enrolled in off-site schools.²¹ To the extent that no statewide policy regarding a placement assessment exists, students in these facilities also are at risk of enrollment in STCs when they could be served in more integrated educational settings.

c. Ability to be served in general education schools

Our investigation, including the review of student records provided by PRTFs, revealed that the vast majority of students in DHR custody receiving educational services at STCs could be served in more integrated settings. For example, one student at PRTF Pathway was on grade level, always earned As and Bs in public school, and had never been held back. This student's record reflected that despite being on grade level in the 8th grade in the general education school, at the STC the student was given 5th grade work and forced to sit through already-mastered lessons. Many students reported during interviews they were doing well behaviorally at their general education schools prior to being assigned to an STC.²²

The students' placements at STCs also may not be explained solely on the basis of their diagnoses or medication needs. Most students have diagnoses or prescribed medications that do not require around-the-clock monitoring by facility staff. Many have no history of restraint, seclusion, or time-outs that might suggest that they need to remain on the facility grounds to receive educational services. In fact, some student records provided by the PRTFs explicitly state that the students could be placed in the general education setting. Even for these students and for others who did not exhibit any disruptive behaviors during the school day, there had been no individualized consideration of whether they could be served in a general education setting.²³

We interviewed STC personnel who believed their students, if given the opportunity and the appropriate services and supports, could be effectively served in a general education classroom. For example, during one interview, an STC teacher began listing several students on her classroom roster who she felt could successfully attend a general education school with the appropriate services and supports while placed at the PRTF. Another teacher acknowledged that

²¹ In rare instances, we found intensive PRTFs that, based on their own initiative and discretion, developed and implemented a process to allow some students to attend off-site schools. Brewer-Porch's process for determining whether some students can attend public school is based on their academic and behavioral progress at the facility. That process, however, is facilitated directly by the facility and the LEA; there is no uniform, mandatory statewide assessment and assignment process established by the State.

²² In fact, all but one of the many students we interviewed (about half of whom were selected by the experts and about half selected by facility personnel) indicated that they did not oppose attending a general education school, and several students expressed a keen desire to go back to general education classes and activities with their peers. The one student who expressed reservations was concerned about being bullied.

²³ Even when State personnel recognized that the placement decision should be individualized, their understanding of why this did not happen seemed to be related to exaggerated ideas about the kinds of supports that would be necessary for students at PRTFs to attend general education schools, with administrators referring to 24-hour one-on-one nursing support or four-to-one paraprofessional assistance.

the success of a placement in a general education school while at the PRTF may vary by student but, at a minimum, such placement could help them with their social skills.

3. Most students in the STCs are not receiving educational services appropriate to their needs.

In addition to finding that nearly all of the students in the segregated STCs could have been served in general education settings, we found that students in STCs are not receiving services appropriate to their needs. Our investigation revealed that students' educational records are often not aligned or are inconsistent across agencies and departments and that the STCs lack a structure for ensuring all appropriate staff have access to necessary educational and therapeutic records. We also concluded that students in STCs are not receiving necessary services and supports based on their educational and therapeutic needs. Moreover, in some instances, students are subject to the unnecessary use of restraint and seclusion.

a. *Lack of coordination regarding student records*

We concluded that the State lacks an adequate system for ensuring that students' educational records are properly distributed to relevant entities (e.g., PRTF, STC, LEA, DHR) responsible for student progress throughout the educational system and that STC staff have access to necessary information about students to meet their needs. The STC typically does not coordinate with the local or home school that has control of the student's records when creating student behavior plans or performing functional behavioral assessments that are key to discipline and effective student behavior management. As a result, information about a student may get reported inaccurately or inconsistently as it is being transferred between the PRTF, DHR, STC, and local/home school. For instance, one student with a diagnosed learning disability in one set of student records was coded as having a different disability in other facility documents, and there was no evidence that the student received any services in support of the learning disability. One child's initial education plan created by PRTF Sequel Montgomery indicated both that the child was a "victim of child abuse" and a "child victim of physical abuse" but then checked off that the child had no PTSD or trauma concerns. When school staff lack knowledge of a child's trauma history—or are provided inaccurate information about a child's trauma history—they are less able to communicate effectively with the child in certain situations, to teach with appropriate methods, and to understand the potentially re-traumatizing impacts of practices like seclusion or restraint. Several student records also reflected a mismatch between the child's identified disability and their special education goals, e.g., not including behavioral goals for children with emotional and behavioral disabilities.

We also found that many of the relevant facility staff lacked access to—or did not have a structure in place to review and use—the information necessary to meet the educational and therapeutic needs of the students in their care. At PRTF Pathway, a staff member recalled that facility personnel had become upset with a student with a hearing impairment because the staff member thought the student was not listening; it turned out the staff member did not know the student had a hearing impairment. At PRTF Sequel Montgomery, a paraprofessional who works in the classroom as a teacher aide stated that she did not know any of the students' disability diagnoses or medications because she is not able to see clinical information. Many of the STC teachers who were interviewed could not identify the academic or behavior goals their students

were working on or what accommodations or modifications should be made. In addition, STC teachers generally reported that there was no structure in place for checking students' educational records. A majority of the therapists interviewed acknowledged that most of the youth at the facilities were students with special education needs, but they could not identify who those students were, and they were not aware of specific goals in their special education plans, nor were they aware of their academic progress or goals. Even many of the older students themselves who we interviewed acknowledged that they did not know what goals, objectives, accommodations, and modifications were listed in those plans.

b. Lack of specialized or evidence-based educational and therapeutic supports and services

Our investigation also concluded that, even if short-term enrollments in STCs were necessary in limited circumstances (e.g., when a student is being treated at a PRTF for an acute emotional or behavioral crisis), the STCs failed to provide students access to specialized educational and therapeutic services provided by qualified professionals. The STCs lack an adequate system to evaluate educational progress or meet individual needs for educational support. One facility's documents reflected the fact that the special education plans created by the last school a student attended would sometimes be revised at the STC to include only the services already available on site, without independently considering the student's needs. Witnesses confirmed that the special education plans in place at the STCs did not require the services that the students needed and that had been included in their previous public school plans. For example, in one STC with 36 students, the only special education services provided were through a contract with the County for 12 hours of service per week from a County special education coordinator (for an average of 20 minutes per week per student). This underlying failure to provide access to appropriate services deprives these students of the ability to access the educational services that are available to students who are in general education settings.

Special education plans also contained boilerplate educational goals and progress notes. Educational and behavioral plans were not based on psychological evaluations (which some social workers mentioned but which were not present in the student files). Instead, the goals listed in these plans largely addressed compliance with rules in the STC and larger facility. We also found that when students are transferred elsewhere, there is no transition plan: the discharge recommendation to DHR is often for the child to return to the community with coordinated, comprehensive services, but the recommendation often lacks clear guidance regarding the students' educational placement and the services and supports that the child should be provided in their next school.

Finally, we determined that the therapeutic supports and services that were being provided at the STCs are not evidence-based or implemented in a manner likely to address the students' needs. At each facility reviewed, there was a lack of staff credentialed to properly implement trauma-informed, evidence-based interventions. Although some facilities referenced Cognitive Behavioral Therapy and Dialectical Behavioral Therapy, none of the staff appeared to be credentialed in the practices and neither the student files nor the staff interviews reflect training on or implementation of these supports and services.

When children with trauma histories need services and are not provided appropriate evidence-based supports to help recover from the traumatic injuries, they are more likely to continue to engage in externalized behaviors that set them up for failure later. When PRTFs, geared toward treating students with serious mental health and behavioral needs, fail to provide necessary individualized therapeutic services, they set up the most vulnerable children to fail.

c. Inappropriate use of restraint and seclusion

We also found that some STCs inappropriately use restraint and seclusion as methods for controlling student behavior in school settings rather than providing more appropriate therapeutic support. The Department learned that STCs have a practice of assigning personnel to remove students from the classroom when they exhibit undesirable behaviors. Based on interviews with students and staff and the documentation produced by facilities, we found that the use of restraint and seclusion is often a default response to basic behavior in some facilities—which can result in students being removed and excluded from necessary educational services.

Too often, externalized behaviors are not met with de-escalation strategies or individualized behavior responses, and are instead greeted with physical restraints and seclusion. Children interviewed across the facilities reported witnessing or experiencing restraints, and some went so far as to say that staff intentionally antagonize or trigger children so they can be restrained. Further, the staff responsible for administering restraints and seclusions do not seem to be fully aware of or have access to the behavior plans in place for the children they restrain and seclude. Records reflect that even children with histories of severe sexual and physical abuse have been physically restrained. These responses can traumatize and retraumatize students in a way that can harm their ability to trust their environment and allow them to feel safe enough to learn at school or benefit from therapy. In the process, the facilities fail to teach children how to effectively manage their behaviors without extreme intervention, which sets them up for failure in community-based and general education settings.

Despite the practices uncovered, there seems to be little oversight by the State regarding restraint and seclusion. The Program Manager for the Office of Foster Care and Education Liaison at DHR admitted that she does not know whether DHR personnel review a PRTF's restraint and seclusion policies and practices before placing a child at a facility.

B. The Segregated STCs Provide Unequal Educational Opportunities to Students.

Our investigation found significant, systematic deficiencies in educational services in STCs compared to what is required and available in Alabama's public, general education schools.²⁴ Some of these educational deficiencies are facially apparent in light of the lower standards for STCs. In particular, ALSDE has failed to ensure through its policies and procedures—and through its monitoring and oversight of existing policies and procedures—that STCs are complying with requirements for educational services and supports comparable to those applicable to general education schools. We identified additional deficiencies through other means, including through interviews with teachers at STCs with experience teaching in

²⁴ This finding reflects an independent violation of the ADA since, as noted above, students enrolled in STCs are by definition students with disabilities. See Section A.1.

general education schools. The deficiencies in the instruction offered at STCs include the lack of appropriate staffing and curricula, shortened school days, the failure of the STC to differentiate instruction according to a given student's needs, poor tracking of attendance, and other missing or inadequate services. We also noted that there is almost no transition planning to increase the chances of a student being able to successfully return to a general education school setting.

1. The quality and quantity of instruction in the STCs is not equal to that provided in general education schools.

The STC classes consist largely of mixed-age students attending class in a shorter day than their general education school peers and receiving little in the way of live, direct instruction. In some cases, courses required to stay on track for high school graduation are not available, or are only offered through an online portal for self-directed study.

We interviewed a former STC employee, who had ten years of prior experience as a general and special education teacher in Alabama general education schools. This teacher confirmed that the education provided in STCs was deficient in many respects relative to what is being provided, as required, in general education schools. Specifically, she reported that, unlike in general education schools, the STC where she worked only provided two or three hours of class; STC students were not given differentiated instruction; most of the students' time was spent completing worksheets; there were no formative or summative assessments; there was no interactive instruction or 'hands-on' work; and the STC did not offer electives, lab courses, library, or field trips. She also confirmed that students' math and literacy deficits were left unaddressed.

a. *Quality of instruction in STCs*

The Department's experts found the curriculum and instruction delivered to students at STCs to be severely lacking, both in comparison to what the State of Alabama requires in its general education settings and with respect to the needs of students with disabilities. In particular, the experts' review of student records and classroom roster information revealed that students were not receiving grade-appropriate services. Certain basic educational services (e.g., grade-appropriate curricula, related academic programming) are mandated by law in Alabama's public schools.²⁵ Yet, we saw several instances of students being grouped by age ranges, gender, or housing units rather than by grade level—and not for programmatic reasons or based on the educational needs of individual students. For instance, at one facility, students are generally grouped in grade *ranges* (4-6, 7-8, 9-10, 11-12), but the facility states that students may be moved up or down a range based on "social dynamics" to accommodate class capacity. At another facility, due to enrollment numbers, five 12th grade students were grouped with six 9th grade students for all classes so that one teacher could serve them within one classroom. In still another facility, these inappropriate groupings were not even stable over time: classroom assignments were based on a student's residential placement, with all children in one "bay" attending class together, though "bay" assignments were frequently changed due to interpersonal conflicts.

²⁵ The State of Alabama has differentiated mandatory curricula with requirements for supervision for Math, Social Studies, and other academic programs with detailed curricula mandated by law. *See* Ala. Code § 16-35-4 (1975).

Students at each of the facilities we visited reported that their classwork was too easy and involved material that they had already learned. *See also* July 2020 ADAP Report, app. 1, pp. 5-6 (Resident 2 stated, “We’re given the same work even though we’re in different grades.”; Resident 9 stated, “Everyone works on the same exact worksheet. We get the same lessons every year.”; Resident 15 stated, “There are 6-7 grades in one class.”).

As further evidence of the lack of individualized instruction, our experts noted a heavy reliance on digital courseware in the instruction offered in STCs, consisting of students working through self-paced computer curricula in a classroom facilitated by a paraprofessional or a teacher who is not required to be appropriately certified.²⁶ Even though general education schools offer online instruction in some circumstances, it is unlikely that self-directed learning through computer programs could meet the needs of all students with disabilities at STCs in the absence of instructional facilitation by a teacher certified in the content area.²⁷ We saw no evidence to suggest that STCs are satisfying State requirements to ensure that students’ special education needs are being met through online instruction.²⁸

Some instructional offerings in general education schools, including those required for graduation, are not available in STCs except through an online portal, which, according to our expert, is not an appropriate substitute for instruction provided by a certified teacher. *See* [http://media.al.com/news_impact/other/AHSG%20requirements%20clarified%20-Mar%2029%202016%20\(002\).pdf](http://media.al.com/news_impact/other/AHSG%20requirements%20clarified%20-Mar%2029%202016%20(002).pdf); Ala. Admin. Code 290-3-1-.02(8)(a) (requirements to graduate from Alabama schools). Most of the STCs we visited also do not offer career or vocational/technical education, and one facility that claims that it provides vocational training in fact simply assigned the students to perform manual labor without any curriculum or possibility of earning a vocational certificate. No STC claimed to offer a Gifted and Talented Program or Language Education Services. At the high school level, many students are placed on a GED track instead of a diploma track.

b. Number of instructional hours in STCs

Alabama law requires that LEAs establish a school year with a minimum of 1,080 hours of instruction, or six hours for each of 180 days. Ala. Code § 16-13-231(b)(1)c.1. The school schedules provided by STCs during the investigation reflect a range of instruction time from two

²⁶ Cf. Alabama Connecting Classrooms, Educators, & Students Statewide (“ACCESS”) Virtual Learning, *Policy manual for teachers* (2016), <https://accessdl.state.al.us/sites/default/files/documents/POLICY-TEACHERS-2016.pdf>. The State’s Policy Manual for Teachers using the ACCESS virtual learning system reflects a number of requirements for the educationally sound administration of online learning including teacher certification in and experience teaching the relevant content area; teacher and facilitator professional development relating to online course delivery; and appropriate supervision of a classroom facilitator.

²⁷ Our expert emphasized that using in-person instruction optimizes time on task, provides more content coverage, gives students opportunities to learn in varied groupings, and allows them to experience higher levels of success than only working independently online. *See also* July 2020 ADAP Report, app. 1, p. 6 (Resident 12 stated, “There are no computers for us to use because kids keep going on porn sites and downloading music;” Resident 8 stated, “We’re not allowed to use computers now because kids were watching porn.”).

²⁸ The ACCESS Manual sets forth a number of requirements that must be satisfied in order to ensure that online instruction could meet the needs of students with disabilities, starting with “a review of the educational needs of the student” taking into account the special needs identified in student files. *Id.* at 8.

and a half to six hours per school day, but the number of instructional hours was routinely less than that listed on the schedule.²⁹ The Program Manager for the Office of Foster Care and Education Liaison at DHR admitted that she did not know whether STCs provide the same number of school hours as general education schools. The Deputy Commissioner of Quality and Interim Director of Resource Management at DHR admitted during her interview that they had “all assumed” that students at STCs were receiving a full school day and they were “floored” to learn through this investigation that this was not the case.

Even within the hours scheduled as part of a school day, much of what was held out as educational services is not properly considered educational in nature. At least one facility claimed that having students perform manual labor with no corresponding instruction, such as helping with grounds maintenance or cleaning the kitchen, qualified as a vocational program that was credited as educational time. Based on school schedules, it also became apparent that some facilities count group therapy sessions as school time, even if they are facility mandated and not pursuant to a child’s Individualized Education Program (“IEP”). Another facility offered no instruction on Fridays, when the school day consisted of an opportunity to make up missed work or pursue ‘electives’ online. When asked about what qualifies as educational time, the Deputy Commissioner of Quality and Interim Director of Resource Management at DHR acknowledged that there are no specific DHR guidelines setting forth what constitutes educational time at STCs.

2. Many STC teachers lack the educational certifications and other qualifications required of teachers in general education settings.

Alabama law, even following the January 2022 enactment of regulatory amendments, explicitly exempts STCs from requirements that their teachers have the same certifications as teachers in general education settings. *See* Ala. Admin. Code 290-8-9-.10(6) (children with disabilities in foster care assigned to STCs “must be provided an education that meets the standards that apply to [general] education ... *except provisions related to highly qualified and personnel qualifications*” (emphasis added)). As Former Deputy Superintendent Boyd explained at an ALSDE work session held on April 11, 2019, “[e]mployees of the STC are not employees of the [State Board of Education], they are employed by the STC so they may not have credentials to be teachers. Because they are not employees of the [State Board of Education], they do not participate in the Professional Development offered by the state, either.” Some STCs note that they have “degreed teachers and facilitators,” but STC staff are not necessarily certified teachers, let alone certified in the content areas they are tasked with teaching, and some instructional time consists of students doing online work in a classroom supervised only by a paraprofessional. Throughout our record reviews and site visits, we observed a significant number of teachers and other instructional staff who did not hold a teaching certificate or other necessary qualifications, and many of those who were certified were identified as instructors in

²⁹ One facility in fact provided as little as one hour of instruction for each student per day. There were also reports of missed instructional time when teachers were unavailable. Moreover, among a population that is already missing out educationally because of relocation and trauma, students are further losing instructional time due to barriers created by the STCs, and some educational time may be lost due to administrative delays. Calculating the number of hours of instruction received by individual students is complicated by the fact that STC attendance records appear to contain systemic inaccuracies, with some facility records reflecting perfect attendance by all students or reflecting attendance when other records indicated attendance was not possible.

subjects other than those for which they held certificates. Further, reports filed with the Department of Education indicate that even within school districts that report having fully certified teaching staffs, STCs employ uncertified personnel as teachers,³⁰ as is permitted under Alabama law.

3. The State is not appropriately monitoring STCs.

As discussed in previous sections, we concluded that STCs are not providing appropriate special education and therapeutic educational services. *See* Section IV(A)(3). Our investigation uncovered that the STCs' failure to provide appropriate services has gone largely unnoticed by the State due to the State's lack of appropriate oversight and monitoring of STCs. Specifically, our investigation uncovered that the State fails to ensure that appropriate screenings and assessments are performed and that special education supports and services, including behavioral and therapeutic services, are provided.

a. Inconsistent use of screenings and assessments

The Department's experts could not identify whether an evaluation process existed at some facilities because the educational records at many of the facilities were incomplete (including some student records lacking eligibility determinations for special education services). One facility's intake/admission form does not even have a place to indicate whether a student has special education needs, and in at least one case, a teacher or caretaker would not even discover that an IEP was in place until page 26 of the student file. In addition, the former general education and STC teacher said that students at the facility where she worked were never evaluated, as required by federal law, even though there were a number of students who she believed—based on her training and years of experience as a special education teacher—would likely have been eligible for special education services. Those students were not provided any special education services in the STC.

b. Lack of oversight regarding individualized services

As discussed above, *see* Section IV(A)(3)(b), even for those students whose special education needs were identified, staff at the facilities confirmed that there was little, if any, differentiation of instruction despite that state requirement for general education schools. STC teachers were often not even aware of students' disabilities and were unfamiliar with their academic, therapeutic, and behavioral goals. Due to lack of oversight, students who were entitled to assessments, and likely entitled to accommodations and modifications, never got them.

Under the Alabama Code, both before and after the January 2022 enactment of regulatory amendments, school districts have been responsible for ensuring special education services for their students who attend STCs. Ala. Admin. Code 290-8-8-.09(1). In accordance with this requirement, school districts are required to designate personnel to collaborate with a representative from the STC to develop a Memorandum of Agreement, "which shall include, but

³⁰ *See, e.g.*, <https://ocrdata.ed.gov/search/district> (reflecting, with respect to the numbers of teachers who met all state licensing and certification requirements, far lower percentages in the STC in PRTF Pathway than in Coffee County, in which it is located).

not be limited to, specific processes for shared services, ... [and] the oversight of educational offerings.” Ala. Admin. Code 290-8-8.09(2). Yet, according to an ALSDE Assistant State Superintendent, ALSDE only reviews the initial Memoranda of Agreement for completion and does no further monitoring to determine whether the Memoranda of Agreement are actually followed. The Deputy Commissioner of Children and Family Services at DHR acknowledged that while her job duties include approving placements at residential facilities, she does not know whether DHR checks to make sure facilities can actually provide required services. The Program Manager for the Office of Foster Care and Education Liaison at DHR explained without elaboration that it is the job of the county social worker to make sure the children under their care are getting an appropriate education at STCs and that these individuals are supposed to advocate for their students. When asked whether these county social workers receive any training about educational requirements, the DHR Deputy Commissioner and Program Manager both acknowledged that they do not.

Although DHR’s own policy specifies that “[e]ach institution type is bound contractually to provide needed services as identified” in their service plans and that “[t]he selection of the appropriate institution ... must be based on the needs of the child in relation to the program offered by the various institutions,”³¹ interviews with State staff confirmed that these requirements either are not followed or are unmonitored. The Division Director for Children and Family Services at DHR explained that the DHR placement process only looks at whether a certain level of care is appropriate for a child, not whether an individual facility can meet the child’s educational needs. The Deputy Commissioner of Quality and Interim Director of Resource Management at DHR, who is charged with heading the division that tracks how many beds are available in different settings, confirmed this by acknowledging that they do not track what services are even offered at each specific facility.³²

Also concerning was the lack of oversight by ALSDE, given its responsibility for providing Educational Endorsements of Operation to STCs, which are required before an STC can receive State funding and which serve as a confirmation that the STC has met all of its requirements. *See* Ala. Admin. Code 290-8-8-.01, -.02(3). In fact, there is not even a mechanism in place for ALSDE staff to visit or monitor STCs. While all public schools in Alabama are on a rotating schedule for ALSDE on-site monitoring, STCs are not routinely a part of that monitoring process. ALSDE’s Superintendent confirmed during his interview that he does not believe there has been any instructional monitoring of STCs by ALSDE.³³

³¹ DHR Out of Home Care Policies and Procedures at 39-40.

³² State staff did, however, acknowledge that while there is little oversight, they recognize there are problems with regard to the behavioral programs in these facilities. The Deputy Director for Family Services at DHR acknowledged that the goals for the behavioral programs at some PRTFs are very unrealistic and that some of the facilities have “no tolerance” programs that cause students to remain in facilities longer than intended. This is despite DHR policy explicitly stating that placements at residential facilities “should be viewed as a temporary plan with a foreseeable termination since the shared goal of DHR and most institutions and group homes is for every child to return to family life in the community. Indefinite plans or prolonged periods of institutional care ... resulting from lack of adequate planning or lack of casework with parents, are not considered acceptable practice.” DHR Out of Home Care Policies and Procedures at 40.

³³ *See also* Center on Online Learning and Students with Disabilities, *Equity Matters 2016, Digital & Online Learning for Students with Disabilities*, at 112 (reporting that State did not challenge finding that Alabama does not “have monitoring procedures in order to ensure that online schools and programs are in alignment with IDEA”).

As a result, neither the State agency that places students in PRTFs with on-site schools nor the State agency that provides the educational endorsements to the on-site schools conducts any routine oversight of the educational services provided to students at STCs.

4. The educational opportunities offered to students attending STCs are unequal in other ways to those offered to students attending general education schools.

The STCs provide unequal educational opportunities in other ways. The facilities usually do not have science labs, gyms or playing fields, or even libraries stocked with a variety of age-appropriate reading materials. A few facilities had computer labs, necessitated by the high percentage of on-line instruction, but they did not report having computer classes or clubs. Several facilities had a basketball hoop or other limited space for outdoor activity. A few facilities had a limited lending library set up by one of the teachers. Some facilities do not even have cafeterias for the students to eat together at lunch, an important social experience. ADAP's monitoring report identified additional concerns about the inferior physical conditions of certain STCs. For example, at PRTF Courtland Sequel, ADAP observed that all of the students attended an on-site school "in a small and mostly inaccessible building" and that the "recreation spaces are unsafe and not adequately maintained." July 2020 ADAP Report, at 6-7.

Students at STCs also do not have the opportunity to participate in age-appropriate activities like education-related field trips; while a few facilities mentioned occasional outings pre-pandemic, they were not of an educational nature. They do not have access to pre-professional academic activities such as working on a school newspaper or competing with a debate team. They cannot play school sports or join a band or pep squad. With limited exceptions, they cannot join school clubs, such as an art club, Future Farmers of America, or chess club—or their participation in such activities is contingent on earning the ability to participate based on their compliance with unreasonable facility rules.³⁴ The students also do not usually have the opportunity to attend school dances or other events that would promote social skills. Age-appropriate socialization is often impossible; at one facility, a student told the experts that boys and girls were not even allowed to talk to each other.

* * *

In conclusion, we found that the educational opportunities provided to students at STCs were unequal to those provided to students in Alabama general education schools due to the STCs' lack of appropriately certified educators, shortened school days, heavy reliance on digital courseware rather than live instruction, lack of opportunities to interact with non-disabled peers, and lack of appropriate special education and transition services to keep them on-track to graduate, among a host of other deficiencies.

³⁴ One facility posted a schedule for club meetings in the hallway. One student, who was interested in fashion and hoped to join the sewing club, told us in an interview that the student was not on a "level" that was permitted to join the club.

C. Alabama Can Make Reasonable Modifications to Prevent Ongoing Discrimination Against Students with Emotional and Behavioral Disabilities in Foster Care.

Under Title II, states must reasonably modify their service systems to avoid discrimination on the basis of disability. 28 C.F.R. § 35.130(b)(7)(i); *Olmstead*, 527 U.S. at 603, 607. The State could reasonably modify its existing statewide system for delivering educational and therapeutic services to students with emotional and behavioral disabilities in foster care who are attending STCs, without fundamentally altering its current system, to rectify its violations of the ADA. We have provided a list of proposed modifications below, *see* Section V, and have also highlighted a few examples here to show that these proposals can reasonably modify the State's existing framework.

The State could reasonably modify its policies and procedures that are resulting in the unnecessary segregation of these students to instead explicitly require that all children placed at PRTFs attend public school except when there is an individualized assessment that demonstrates convincingly based upon best practices that the child cannot succeed in that school. Also, as noted, to remain eligible for funding, STCs must annually certify their compliance with all State and Federal laws pertaining to special education students and ALSDE requirements regarding staff qualifications. Ala. Admin. Code 290-8-8-.04. The proposed modification would simply hold STCs to this preexisting requirement, because enrolling all students at PRTFs in STCs without individual evaluations runs afoul of State and Federal laws pertaining to special education. In addition, the Memorandum of Agreement with the LEA superintendent is intended to ensure that the provision of educational services on-site complies with federal law. The State licenses the facilities, negotiates terms governing the placement of children in the facilities, and oversees placement decisions with respect to children in foster care. It is therefore clear that the State has authority to modify the conditions under which it places children in facilities and the terms that must be met with respect to required educational services. *See* Ala. Admin. Code 290-8-9-.10(4).

Further, the State should and could improve coordination and oversight among State agencies responsible for providing educational and therapeutic services to this population of students in STCs. The State has itself acknowledged that the lack of interagency coordination has contributed to its inability to address many of the issues plaguing STCs. The State has failed to create and implement policies and procedures that clearly delineate every state and local agency's responsibilities with regard to determining an appropriate educational assignment for a child in a PRTF³⁵ and, for the STCs themselves, the applicable hours and curriculum requirements, teacher certification requirements, expectations about live versus online instruction, and documentation of the provision of special education and therapeutic services. In addition, the State needs to develop and implement a plan for training STC teachers and

³⁵ The STCs are not overseen by any local educational agency, including the one in which a facility is physically located. Previously, children receiving educational services in the STCs remained enrolled in the LEA of their school of origin, which was frequently at some distance from the facility. A change to the Alabama regulations approved during the investigation now places responsibility for the educational services of children attending STCs with the LEA for the geographic area in which the facility is located.

administrators and oversight of STCs by State and LEA personnel to ensure compliance with generally applicable educational standards and regulations.³⁶

Finally, ALSDE personnel have reported that the State is already making improvements in its data system which will allow student records to be more easily transferrable to schools or STCs using certain software programs. As a result, improvements in data sharing and coordination between agencies and facilities would not require a significant investment in terms of infrastructure; it is imperative that this new system also be used to ensure that when students are placed in PRTFs for medically necessary reasons, appropriate educational services are provided to them, whether they receive their educational services through a placement at a general education school or at an on-site STC.

* * *

The Department has determined that the State of Alabama has violated and continues to violate Title II of the ADA by unnecessarily segregating certain students with emotional and behavioral disabilities who are in foster care by assigning them to STCs, separate from their peers in general education. In addition, the State provides unequal opportunities to these students compared to students throughout the State who are not in such schools. Specifically, the Department concludes that the State's provision of educational services to children with disabilities in foster care in STCs denies many of those students an equal right to attend, and fully participate in, general education schools. The State's policies, practices, and procedures cause, aid, and perpetuate discrimination against students with emotional and behavioral disabilities in the foster care system and deny them equal educational opportunities.

V. PROPOSED REMEDIAL MEASURES

To remedy the violations discussed above and to protect the civil rights of students with emotional and behavioral disabilities in the foster care system in Alabama, the following minimal steps must be taken, which will be outlined in the forthcoming proposed settlement agreement. The State must:

- Revise regulations or promulgate guidance to specify that children in DHR's custody placed by the State, or by a regional representative, in a PRTF should be enrolled in a public school in the LEA in which the PRTF is geographically located except when there is an individualized assessment that demonstrates convincingly based upon best practices that the child cannot succeed in that school;
- Create mechanisms to ensure that its applicable agencies and regional offices develop child-specific education plans that (1) identify the most integrated educational setting for the child, which – as noted above – is presumptively a public school, and (2) are aligned with the treatment plans created by the PRTF at which the child is placed;

³⁶ As an illustration, during our Pathway site visit in Fall 2021, we identified several issues that we immediately shared with DHR personnel out of concern for the safety and well-being of the students involved. Many of the issues we observed stemmed from the lack of clear Statewide policies and procedures and the lack of oversight and coordination among State agencies. We appreciate DHR's responsiveness to the concerns that were raised, and we highlight this situation to emphasize the importance of the State developing a plan to address these issues on a Statewide level.

- Update its licensure or funding conditions with private providers to require that STCs be held to the same curricula, daily and yearly instructional hours, teacher and staff qualifications, and other standards required for public schools under Alabama law;
- Promulgate guidance for STCs regarding requirements to prohibit the use of seclusion and limit physical restraint to when a student is an immediate danger to himself or others and the student is not responsive to less intensive behavioral interventions, as is required for all public schools and educational programs under Ala. Admin. Code 290-3-1-.02, and report violations and take steps to remedy violations of Conditions of Participation;
- Require, through licensing requirements and child-specific placement contracts, that PRTFs screen children for mental health needs that directly impact educational services and provide evidence-based therapeutic services and supports;
- Require, through licensing conditions and child-specific placement contracts, that every child's education plan includes exit criteria and that the State implement effective, child-centered transition planning for every child entering or currently in a STC;
- Train STC staff, LEAs that contract with STCs, impartial advocates, parents/guardians, and agency and regional office staff, on topics pertaining to educational and therapeutic services delivered in the STCs, including academic requirements, the role of the State, pedagogical and therapeutic best practices, and serving students with disabilities (including the proper development and use of functional behavior assessments and behavior intervention plans);
- Develop a complaint process that provides parents/legal guardians, impartial advocates, providers, STC staff, and students in PRTFs a mechanism to communicate a complaint about a STC to the State. The complaint system must include the process through which complaints will be transmitted to the State and available to the P&A upon request, and explain the State's investigation and resolution process;
- Establish a monitoring and reporting process through which the State monitors both the STCs it funds and the LEAs that have entered into agreements (e.g., Memoranda of Agreement) with STCs, in order to assure compliance with the terms of the agreement; and
- Create a compensatory education plan to provide services for students, who are still of school age and have not yet graduated, who are identified as having received abbreviated instructional hours while enrolled at an STC.

VI. CONCLUSION

We are confident that you will give this letter careful consideration and that it will assist in swiftly addressing the violations of law caused by the unnecessary assignment of students to inferior on-site STCs within Alabama PRTFs. In the event that we are unable to reach a resolution regarding our concerns, the Department may take any appropriate action, including initiating a lawsuit under the ADA, 42 U.S.C. § 12133, to correct violations of the kind identified in this letter. We would prefer, however, to resolve this matter by working cooperatively with the State to negotiate a court-enforceable agreement that brings the State into compliance with the ADA and assures that the above-cited violations will not recur. To this end, attorneys for the

United States assigned to this investigation will be contacting the State's attorneys to discuss this matter in further detail.

Please note that this letter is a public document, and we will share a copy of this letter with all complainants, as required by 28 C.F.R. pt. 35, subpart F. At any time, complainants may file a private suit pursuant to Section 203 of the ADA, 42 U.S.C. § 12133, regardless of the contents of this letter and the Department's findings in this matter.

If you have any questions regarding this letter, please contact Shaheena A. Simons, Chief of the Civil Rights Division's Educational Opportunities Section, at Shaheena.Simons@usdoj.gov, or Renee Wohlenhaus, Deputy Chief, at Renee.Wohlenhaus@usdoj.gov.

Sincerely,



Kristen Clarke
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