

**SETTLEMENT AGREEMENT
BETWEEN
THE UNITED STATES
AND
THE STATE OF ALABAMA**

I. INTRODUCTION

- A. The State of Alabama (specifically, the Alabama Department of Human Resources (ADHR) and the Alabama State Department of Education (ALSDE)) and the United States Department of Justice (United States) (collectively, the Parties) enter into this settlement agreement (Agreement) to resolve the United States' investigation into complaints involving Alabama's policies and practices related to the alleged separate and unequal education provided to students with disabilities in the Alabama foster care system who have been placed by the ADHR into Alabama's psychiatric residential treatment facilities (PRTFs). The United States conducted its investigation under Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.* (ADA) and 28 C.F.R. Part 35, which collectively prohibit discrimination on the basis of disability by public entities.
- B. This Agreement is intended to bring the State into compliance with Title II of the ADA by requiring that students with disabilities in foster care (that is, who are in the legal custody of the ADHR) who are placed at PRTFs attend school in the most integrated setting appropriate to their needs, and that equal educational opportunities are provided at Specialized Treatment Centers (STCs) on the campuses of PRTFs.¹
- C. Consistent with Title II of the ADA, the Parties acknowledge the following principles:
1. All students in Alabama are entitled to an equal opportunity to learn in an educational environment that is the most integrated setting appropriate to their needs.
 2. The overall goals of this Agreement are to ensure that students with disabilities in foster care who are placed at PRTFs receive equal educational opportunities in the most integrated educational setting appropriate to their needs, as required by Title II of the ADA.
 3. The ALSDE and ADHR will make reasonable modifications to policies and procedures as required by the ADA, maintaining compliance with coexisting federal and State obligations, to accomplish the goals of this Agreement.

¹ The Parties acknowledge ADHR and ALSDE have different but often interrelated responsibilities related to the care and education of students in foster care. Nothing in this Agreement should be construed as an admission of wrongdoing by the State of Alabama, including by the ADHR and the ALSDE, or by any of their officials, staff, or employees.

- D. The investigation that culminated in this Agreement was brought under Title II of the ADA. The Parties intend that the provisions in this Agreement regarding students with disabilities will complement the Individualized Education Program (IEP) process under the Individuals with Disabilities Education Act (IDEA) and will not impede Alabama's or any LEA's ability to implement the IDEA or its regulations. Nothing in this Agreement is intended to limit, infringe upon, or conflict with Alabama's duties and responsibilities under other federal and state laws protecting students with disabilities, including but not limited to the IDEA and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.
- E. The Parties anticipate that compliance with the provisions in this Agreement will not impact coverage by Medicaid of treatment for students in PRTFs. In the event that the Parties' compliance with this Agreement appears imminently likely to result in the loss of Medicaid coverage for treatment for students in PRTFs, upon notification by the State of Alabama to the United States of this issue, the Parties will renegotiate the Agreement, as needed, to comply with Medicaid requirements.

II. DEFINITIONS

- A. **Alabama Department of Human Resources (ADHR):** The ADHR is the state agency tasked with providing appropriate care for children who are declared dependent under Alabama law. It also encompasses, for purposes of this Agreement, each of the county departments of human resources.
- B. **ADHR Individual Service Plan (ISP):** The Alabama Department of Human Resources (ADHR) case plan that is created in partnership with the members of the child and family planning team (i.e., the ADHR ISP Team). It includes identification of the child(ren) and family's strengths and needs; goals the child(ren) and family work toward to reach the desired case outcome; and steps to be taken by individual child and family planning team members to authorize and deliver services, and to measure progress toward goals. *See* Ala. Admin. Code r. 660-5-47-.02(16).
- C. **Alabama State Department of Education (ALSDE):** The ALSDE is the Alabama state agency that oversees, pursuant to state law, the provision of public education for children between kindergarten and twelfth grades by local education agencies.
- D. **Certificate of Need:** A Certificate of Need has the same meaning as set forth in 42 C.F.R. § 441.152, which requires, among other things, a certification that the proper treatment of the beneficiary's psychiatric condition requires services on an inpatient basis under the direction of a physician.
- E. **Child Find:** Procedures that ensure that all children, from birth to age twenty-one, regardless of the severity of their disability, and who need special education and

related services are identified, located, and evaluated. Ala. Admin. Code r. 290-8-9-.01(1).

- F. **Day:** Calendar day unless otherwise indicated as a business day or school day. See 34 C.F.R. § 300.11.
- G. **Educational Endorsement of Operation (“Educational Endorsement”):** A confirmation by the ALSDE that an entity operating in the State of Alabama and licensed or certified by another state or federal agency has met requirements, including applicable education-related requirements. *See* Ala. Admin. Code r. 290-8-8-.02, .04.
- H. **Educational Placement:** The term shall have the same meaning as in the IDEA, 20 U.S.C. § 1411 *et seq.*, and 34 C.F.R. § 300.116.
- I. **Educational Surrogate (also known as a “Surrogate Parent” or “Education Decision Maker”):** An individual assigned to represent the educational interests of a specific student, who is appointed under Ala. Admin. Code r. 290-8-9.08(1). Among other duties, Educational Surrogates represent students with disabilities in all matters related to the identification, evaluation, educational placement, and the provision of a Free Appropriate Public Education (FAPE) to the student. *See* Ala. Admin. Code r. 290-8-9-.08(1)(e). The Educational Surrogate will not be an employee of the ALSDE or ADHR, an LEA, a PRTF, an STC or any other agency that is involved in the education or care of the student and will not have a personal or professional interest that conflicts with the interest of the student. *See* Ala. Admin. Code r. 290-8-9-.08(1)(b)(1).
- J. **Individualized Education Program (IEP):** A written statement developed by an IEP Team for each student with a disability that is developed, reviewed, and revised in accordance with 20 U.S.C. § 1414(d);
- K. **Individualized Educational Assessment:** A review by an appropriately qualified educator, as determined by the ALSDE as described below, of a student’s educational records and placement records intended to determine whether there is a particular reason the student is not able to receive educational services at a local public school, assuming the student is provided necessary educational and therapeutic services and supports.
- L. **Individualized Education Program (IEP) meeting:** The meeting which takes place at least annually at which each student with a disability’s IEP is developed, reviewed, and revised in accordance with 20 U.S.C. § 1414(d).
- M. **Local Education Agency (LEA):** A local board of education agency (e.g., public school district). *See* Ala. Admin. Code r. 290-8-8-.02.

N. **Local Public School:** A public school, either in the LEA where the PRTF is geographically located, or in another LEA within a reasonable distance (e.g., not more than 30 miles), where the student is placed at public expense based on their individual needs. The default Local Public School is where the student is zoned to attend based upon the student's residence at a PRTF, but this agreement affords some flexibility on the part of LEAs to, by separate agreement, enroll a student at another LEA within a reasonable distance.

O. **Parent:** The term "parent" means:

1. a biological or adoptive parent of a child;
2. a foster parent, unless Alabama law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
3. a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State [in the "legal custody" of a state agency]);
4. an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an adult individual who is legally responsible for the child's welfare; or
5. a surrogate parent who has been appointed in accordance with the Alabama Administrative Code.

See Ala. Admin. Code r. 290-8-9-.00.

P. **Placement Reconsideration Form:** A form created by the ALSDE and provided to all PRTF and STC staff that includes: 1. Space for a staff member to list the reason(s) they believe a student's educational placement at an STC is inappropriate, and 2. An assurance that no staff member will be retaliated against for submitting the form.

Q. **Physical Restraint:** Direct physical contact from an adult that prevents or significantly restricts a student's freedom of movement. Additionally, physical restraint does not include providing limited physical contact and/or redirection (blocking) (without application of pressure or force) to promote student safety or prevent self-injurious behavior, providing physical guidance or prompting (without application of pressure or force or restricting the student's freedom of movement) when teaching a skill, redirecting attention, providing guidance to a location, or providing comfort. *See Ala. Admin. Code r. 290-3-1-.02.* This Agreement's provisions relating to physical restraint apply only to situations when a student is receiving educational services or is located in a school environment, or when the physical restraint occurs during school hours but outside of designated therapeutic services required by the student's IEP. This definition does not apply to restraints used at PRTFs in a non-educational context.

R. **Psychiatric Residential Treatment Facility (PRTF):** A facility that provides inpatient psychiatric services for individuals under age 21 under 42 C.F.R. § 440.160. This is distinct from an STC, which provides educational services to students, including public school students, in accordance with Alabama regulations.

- S. **Seclusion:** A procedure that isolates and involuntarily confines a student in a room or area. Seclusion does not include time-out, in-school suspension, detention, or a student-requested break in a different location in the room or in a separate room. Use of seclusion is prohibited in Alabama public schools and educational programs. *See* Ala. Admin. Code r. 290-3-1-.02. The Agreement's provisions relating to seclusion apply to situations in which a student is receiving educational services or located in a school environment, or the seclusion occurs during school hours.
- T. **Specialized Treatment Center (STC):** A state-endorsed center receiving appropriations from the Education Trust Fund that provides educational services to students in a non-traditional educational setting. *See* Ala. Admin. Code r. 290-8-8-.02. This Agreement applies to those STCs that are on the site of a PRTF.
- U. **Student:** For the purposes of this Agreement, a student is a child in the legal custody of the ADHR who is placed at a PRTF.
- V. **Student Education Team (SET):** A team of individuals charged with making recommendations about the most integrated educational setting appropriate to a student's needs, as provided in Sections IV(D), (H).

III. General Prohibitions Against Discrimination

The ADHR and ALSDE will comply with Title II of the ADA, 42 U.S.C. §§ 12132-12134, and its implementing regulation, 28 C.F.R. Part 35.

IV. Remedying Unnecessary Educational Segregation

The ADHR and ALSDE agree that students in the custody of the ADHR who are placed in a PRTF by the ADHR will attend a local public school as their default educational placement and receive necessary educational and therapeutic services and supports in the local public school, unless the student's IEP Team determines, based on an Individualized Educational Assessment, that such an educational placement is not the most integrated educational setting appropriate to the student's needs.

- A. ALDSE will ensure the STC meets the following requirements:
 - 1. The ALSDE may permit up to 10 days for the IEP Team to meet and make an initial determination.
 - 2. Individualized Educational Assessments will be conducted by individuals who hold the credentials that have been approved by the ALSDE. Appropriate credentials will include active licensure in social work, behavior analysis, psychology, or psychiatry, as appropriate.
 - 3. A student's educational placement at an STC may not be based only on that student's placement at a PRTF for residential and treatment purposes. Student placement at a PRTF is not in itself sufficient for determining that student

should be educationally placed at the STC. However, the student may remain at the STC on an interim basis until such time as the initial determination by the IEP Team is conducted.

- B. The initial decision to place a student into a PRTF for medical treatment (as indicated by the physician's signature on the Certificate of Need) will trigger a meeting of the student's IEP Team to determine the most appropriate educational placement for the student (e.g., continuing at the student's current school, transfer into the local public school closest to the PRTF, transfer into a special program appropriate to the student's needs that is offered by the LEA in which the PRTF sits, transfer into a private school at public expense, educational placement in the STC on the site of the PRTF, or another option paid for by the student's parent or guardian, etc.).
1. If the student is not already identified as a student with special education needs, the ADHR and LEA where the PRTF is located will initiate proceedings consistent with the obligations under Child Find in Ala. Admin. Code r. 290-8-9-.01(1) as to LEA and Ala. Admin. Code r. 290-8-9-.01(6) as to ADHR.
 2. The IEP Team or Child Find referral team meeting will take place within 10 school days of the student's placement at a PRTF.
 3. The IEP Team will include those members listed in 34 C.F.R. § 300.321 as well as an Educational Surrogate, where applicable, and the ADHR representative assigned to the student, where practicable. In circumstances in which an Educational Surrogate or ADHR representative cannot be physically present, virtual attendance and/or submission of written notes for consideration by the IEP Team is a permitted alternative.
 4. The pertinent IEP Team members will be selected both from the LEA of origin where the student most recently attended school and the LEA where the PRTF is geographically located, allowing for remote participation as appropriate.
 5. The LEA where the PRTF is geographically located will ensure that, whenever appropriate, students attending STCs on the campuses of PRTFs participate on their IEP Team and in other meetings where decisions about their education are made.
 6. The IEP Team or those conducting the evaluation under Child Find obligations will have access to all necessary student education records, including school records from any necessary school, special education

records, medical records, and mental health or psychological records that led to the issuance of the Certificate of Need.

- C. Each student whose parents or guardians do not retain education decision-making rights will be assigned an informed Educational Surrogate, under the existing mechanism consistent with Ala. Admin. Code r. 290-8-9-.08(1) by the responsible LEA knowledgeable about the benefits of educating students with disabilities in an integrated setting and the student's options for education as well as possible treatment.
 - 1. The Educational Surrogate will participate at all points where educational determinations are made, including meetings to decide whether the student will be educationally placed in an STC or whether to continue the educational placement of a student in an STC.
 - 2. Students whose parents or guardians lose their education decision-making rights after the student's placement in a PRTF or who have a parent who has expressed a refusal to participate in their child's education decisions, will be assigned an Educational Surrogate within 30 days of their parent or guardian losing or relinquishing education decision-making rights.
 - 3. If an IEP Team meeting at which a school placement decision is made occurs prior to the appointment of an Educational Surrogate and with no other parent/guardian present, once the Educational Surrogate is appointed, a Student Education Team (*see* Sections II(R) and IV(D) of this Agreement) or IEP Team meeting will be held within 30 days to determine whether the newly constituted team agrees with the initial placement decision.
- D. The ALSDE will establish requirements for responsible LEAs and STCs to use to develop "Student Education Teams" that are charged with promptly making (and appropriately revisiting) recommendations, for each student covered by the terms of this Agreement, about whether the student can be served in a more integrated setting appropriate to their needs (e.g., a local public school) with the necessary educational and therapeutic services and supports. The responsibilities of the Student Education Team will complement the responsibilities of the IEP Team and should not conflict with the State's obligations to comply with the IDEA or other relevant federal and state laws.
 - 1. The Student Education Team is a group of individuals who meet to make recommendations about a student's educational needs. The Student Education Team may request that an IEP Team meeting be held if they believe it is in the best interest of the student. The members of the Student Education Team may overlap or be identical to the IEP Team.
 - 2. Consistent with the definition in Section II.U., this team will be comprised of: the student's parent(s) or Educational Surrogate; regular education

teacher(s), if the student participates in the regular education environment; special education teacher(s), if the student participates in the special education environment; a representative from the student's LEA of origin who is familiar with the student (unless the student attends school at the LEA in which the PRTF is geographically located, in which case a representative from the student's current LEA will participate in the Student Education Team); an individual who can interpret the instructional implications of the Student's evaluations; at the discretion of the parent or Educational Surrogate, other individuals who have knowledge or expertise about the student; and, whenever appropriate, the student. As noted, when not practicable for all members to physically attend, SET members may attend SET meetings virtually.

3. To the extent practicable, students attending STCs on the campuses of PRTFs will participate on their Student Education Team.
 4. Student Education Teams will be responsible for assessing students at regular intervals and under specified circumstances to determine if it should request an IEP Team meeting to reconsider the student's Educational Placement (as described in Section IV(H) of this Agreement) and may be called upon to make an assessment about whether the student can be served in a more integrated setting appropriate to their needs (e.g., a local public school) with the necessary educational and therapeutic services and supports.
 5. Student Education Teams will maintain records of each meeting, consistent with Section IV.D. of this Agreement, reflecting (a) student information, including name, date of birth, educational placement, and grade, (b) the date and attendees, by name and role; (c) the reason for the meeting; (d) the matters discussed; (e) any conclusions or recommendations reached by the SET; and (f) for meetings at which no parent or Educational Surrogate attended, documents reflecting the invitations to attend and the reasons given for non-attendance.
- E. If the Child Find process results in a determination that the student is in need of an IEP, the IEP will be developed in accordance with the requirements set forth in the IDEA and its implementing regulations.
- F. If a student is determined by their IEP Team to be unable to attend school in a local public school, the reasons for this determination will be in writing, and the student will be monitored and periodically re-evaluated or re-assessed by their Student Education Team as set forth in Section IV(H) of this Agreement.
- G. If the IEP Team determines that a student should attend school in a local public school, that student should begin attending their assigned school as soon as possible and within six school days of the educational placement decision unless additional

time is required to provide the necessary educational and therapeutic services and supports for the student as determined by the IEP Team or SET. If the student is not attending their assigned school within six school days, the student will be entitled to compensatory education for each day the student is not yet attending the assigned school, which will be provided when practicable, but no later than the end of the following semester.

- a. ADHR will coordinate with the ALSDE employees or contractors to provide the information and data it maintains and the access to children necessary for the ALSDE to oversee the provision of compensatory education, upon request of the ALSDE.

H. Each student who is initially placed by their IEP Team at an STC on the campus of a PRTF will be reassessed by their IEP Team or Student Education Team both at regular intervals and under specified circumstances to determine if they can be served in a more integrated educational setting appropriate to their needs (e.g., a local public school).

1. Regular intervals. Absent any student-specific triggers, the IEP Team or Student Education Team will reconvene at the end of each school quarter, not to exceed every nine (9) weeks, to determine whether to request an IEP meeting to reconsider the student's most integrated educational setting. If an IEP meeting is already being held at such intervals, the Student Education Team need not additionally meet.
2. Student-specific Triggers.
 - a. A review, including by the Student Education Team, should be scheduled within 10 school days of any student-specific triggers.
 - b. Student-specific triggers include but are not limited to the following:
 - i. When one of the student's teachers or therapists states in writing via a Placement Reconsideration Form to the Student Education Team that they believe there are demonstrable reasons that the student can succeed in a local public school.
 - ii. When the student expresses to a school official (or medical professional) an interest in attending a more integrated educational setting, including interest in participating in extracurricular activities not offered by the STC, and the student's IEP Team or Student Education Team was not convened for this purpose in the previous 30 days.

- iii. When the student's parent, guardian, or Educational Surrogate formally or informally requests that the student be educated in a more integrated setting, regardless of whether the parent or guardian retains formal educational decision-making rights.
 - iv. When the Certificate of Need is no longer in place. The PRTF will continue to adhere to the requirements for evaluations needed for a Certificate of Need under 42 C.F.R. § 441.152; Ala. Admin. Code ch. 560-X-41.
 - 3. When determining the appropriate educational placement for the student, the student may not be deemed ineligible to attend a local public school solely due to the student's performance within a PRTF's behavior management or "token economy" system (e.g., their "points" or "level" status at the PRTF), or their failure to progress at a PRTF.
- I. The ALSDE Special Education Services Division will review the IEPs of current students and any new students who are placed at PRTFs through the end of this Agreement. If the ALSDE determines that a student could be placed in a more integrated educational setting, it will promptly request an IEP Team, or SET, meeting for that student. The ALSDE may designate an outside person(s) or entity to meet the obligations in this section and its subsections.
 - 1. The individual(s) employed or designated by the ALSDE Special Education Services Division who will conduct IEP reviews will have a bachelor's level degree or higher in special education. The ALSDE will provide the United States with the name and qualifications of the person(s) or entity it intends to assign to this role within 30 days of the Effective Date of this Agreement for the United States' review and approval. If the United States does not approve of the proposed person(s) or entity, it will provide comments to guide the State's assignment or designation process. ALSDE and the United States will work cooperatively to determine an appropriate person(s) or entity for this position. This position should be agreed upon by the parties no later than 60 days after the Effective Date of this Agreement, although the effective date of employment or the related contract may be later. The ALSDE may change or update the individual(s) or entity it employs or designates pursuant to this section at its discretion, subject to the above approval process.
 - 2. For each student who is currently placed at an STC at a PRTF, the ALSDE Special Education Services Division, or its designee, will conduct an educational placement review within 120 days of the Effective Date of this

Agreement. The review will include, but not be limited to, a review of students' educational files. Where applicable, this will include students' IEP(s), Functional Behavioral Assessment(s) (FBAs), Behavior Intervention Plans (BIPs), results of educational assessments, report cards, and any other pertinent educational records. Upon completing the review, the ALSDE Special Education Services Division will provide the United States with a student-by-student narrative summary of the results of the review.

3. For each student who is placed at an STC at a PRTF after this Agreement's Effective Date, but while the Agreement is in place, the ALSDE Special Education Services Division, or its designee, will conduct an IEP review within 30 days of the student's placement.
4. For each IEP review conducted, the ALSDE Special Education Services Division, or its designee, will document the result of their assessment, including noting whether the student might not be placed at their most integrated educational environment appropriate and whether the IEP Team appropriately listed the reasons why the student could or could not attend a local public school. If the ALSDE Special Education Services Division, or its designee, concludes the student's placement might not be the most integrated educational setting appropriate, the assessment from that office will be provided with a prompt request for an IEP meeting.
5. At least every six months, the ALSDE Special Education Services Division, or its designee, will assess whether the STC is the most integrated educational placement appropriate for each student who remains in an STC.
6. The ALSDE Special Education Services Division will report additional findings under this Section as required by Section X of this Agreement.
- J. The ALSDE will provide guidance for STCs regarding Ala. Admin. Code 290-3-1-.02's prohibition of the use of seclusion and limitation on the use of physical restraint in public schools and educational programs. The ALSDE will provide the proposed guidance to the United States within 120 days of the Effective Date of this Agreement, for its review and approval. The United States will provide its feedback or approval within 60 days of its receipt of the proposed language. The ALSDE will promulgate this guidance within eight months of receiving the United States' approval of the language.

V. Remedying Unequal Educational Opportunities

- A. The ALSDE will update its Educational Endorsement and funding conditions with private providers, in addition to any other necessary steps, to require that STCs provide access to the following:

1. Grade-appropriate curricula that follow the Alabama Course of Study Standards.
2. At a minimum, all courses that are graduation requirements for an Alabama High School Diploma under Ala. Admin. Code R. 290-3-1-.02.
3. Honors and Advanced Placement courses.
4. Career and technical education courses.
5. The textbooks, books, and other necessary instructional supplies used by the LEA where the PRTF is geographically located for use in their educational program.
6. If offered, computer-based learning that adheres to Alabama's policies regarding computer-based learning, including but not limited to the policies in the ACCESS Virtual Learning Policy Manual.
7. Differentiated instruction based on grade level and ability level.
8. A minimum of 180 full instructional days, or the hourly equivalent of no less than 1080 instructional hours, during the core academic school year, as required for public schools by Ala. Code § 16-13-231, subject to the exceptions described therein.
9. "Six (6) hours of actual teaching exclusive of lunch and recess" per day, as required for public schools by Ala. Admin. Code r. 290-3-1-.02, also subject to the exceptions provided for by Ala. Code § 16-13-231.
10. At the conclusion of every core academic year, an individual evaluation of each student to determine whether they require summer school or credit recovery in order to maintain or achieve their age-appropriate grade level.
11. Summer school and/or credit recovery for each student who requires it to maintain or work toward their age-appropriate grade level, during what is identified as summer recess (i.e., not the core academic school year). If an STC chooses to provide year-round school, students will still be evaluated once per year to determine whether they need credit recovery to maintain or work toward their age-appropriate grade level.
12. Summer school, credit recovery, and/or enrichment opportunities for students not identified in Section V(A)(12) of this Agreement as requiring summer school or credit recovery, but who are interested in participating, during what is identified as summer recess (i.e., not the core academic school year).
13. Extracurricular activities, including opportunities to participate in extracurricular activities at local public schools and at the STCs.

- B. The ALSDE will update its Educational Endorsement and funding conditions with private providers, in addition to any other necessary steps, to require that STC faculty will:
1. Follow Alabama Core Teaching Standards described in Ala. Admin. Code r. 290-4-3-.03.
 2. Be provided, within two weeks of a student's educational placement at the STC and in their class, at a minimum: the student's IEP, if applicable; academic records; behavior intervention plan, if applicable; a list of the special education services being provided by the LEA, if applicable; and other pertinent education records.
 3. Be properly certified as described in Ala. Admin. Code r. 290-3-2-.02(2).
- C. The ADHR will require that PRTFs screen students for mental health needs that directly impact educational services and provide therapeutic services and supports within 10 days of a student being placed at a PRTF. The ADHR agrees to require PRTFs which operate an STC on their campus to provide the ADHR with service logs for students as part of their monitoring requirements. Copies of service logs will be provided to the United States under the reporting requirements of this Agreement.
- D. The ALSDE will require that STCs on the campuses of a PRTF document every student's educational exit criteria from the STC and transition planning.
1. Exit criteria:
 - a. Exit criteria from the STC will be developed for each student at an STC on the campus of PRTFs at the time of placement.
 - b. For students currently placed at STCs on the campuses of PRTFs, individualized exit criteria will be developed within 60 days of the Effective Date of this Agreement.
 - c. The exit criteria from the STC should be tailored to the individual needs of each student.
 - d. Exit criteria from the STC will not be tied to a student's performance within a PRTF's behavior management or "token economy" system (e.g., their "points" or "level" status at the PRTF) or their failure to progress at a PRTF. Nothing in this subparagraph is intended to restrict the IEP Team's ability to consider a student's underlying behaviors in determining a student's appropriate educational placement.

2. Transition planning:

- a. A transition plan is a document setting forth the steps that will be taken by the STC, receiving LEA, and other relevant entities when a student placed at an STC is moved to a different school setting. Each student educationally placed at an STC will have a transition plan on record that can be referred to and followed once the decision is made to educationally place the student in a new educational setting.
 - i. Transition plans will be created for each student educationally placed at an STC within 30 days of a student being educationally placed at an STC, unless they do not remain at the STC for 30 days.
 - ii. Transition plans will be created for all students currently educationally placed in STCs within 60 days of the Effective Date of this Agreement.
 - b. At the time a student is educationally placed at a school other than an STC, a transition meeting will occur with the responsible LEA; the receiving LEA (if different); the LEA of origin (if applicable); STC teacher(s); and a point person tasked with facilitating the transfer. This transition meeting will serve as a time to discuss the student's needs, transition goals, availability of educational and therapeutic services and supports (e.g., multi-tiered system of supports, Positive Behavioral Interventions and Supports, wraparound services, one-to-one paraprofessional support), and transition concerns, if applicable. This meeting will take place within 30 days of a student's educational placement in a school other than an STC.
 - c. As part of the transition plan process, the ALSDE, LEAs, and STC will coordinate with each other to ensure that necessary educational services and supports are available and provided to the student, consistent with the student's IEP and transition plan.
 - d. As part of the transition plan process, ADHR will coordinate with the ALSDE, LEAs, and STC, to ensure that necessary non-educational services, and therapeutic services and supports, are available and provided to the student, consistent with the student's ISP, transition plan, and behavioral needs.
- E. Starting no later than the 2026-2027 school year, the ALSDE will make every reasonable effort to ensure that all STCs on the campuses of PRTFs meet ALSDE's educational guidelines if those STCs accept public school students. If an STC is not compliant with applicable educational regulations and guidelines after a 90-day corrective action plan following a deficiency notice from the ALSDE, then students will be removed from the STC until it achieves compliance. If a student must be reassigned to another PRTF in order to attend an STC that is compliant with

applicable regulations and guidelines, ADHR and the Local LEA will make the necessary arrangements expeditiously.

VI. Training Requirements

- A. The ADHR and ALSDE will provide the United States with the materials for each of the trainings required by this Section, for the United States' review and approval, at least four weeks prior to the date of the training. The State will make any necessary changes to resolve identified problems prior to holding the training. The State will further provide the United States the opportunity to attend any of these required trainings and the United States may or may not elect to do so.
- B. The ADHR and ALSDE will submit to the United States for its review and approval their proposed training schedules. The ADHR and ALSDE will submit their first training schedules to the United States, which will cover trainings for the remainder of the 2025-2026 school year, within 60 days of the Effective Date of this Agreement. The initial training schedule will include the following information for each training:
 - 1. The date and time it will be provided;
 - 2. The topics it will cover;
 - 3. The format of the training (e.g., in-person, virtual live training, hybrid training);
 - 4. The required audience for each training; and
 - 5. How the training will be provided to new staff who are hired after a mandatory training date has passed.
- C. The ADHR and ALSDE will submit all subsequent proposed training schedules on or before July 15th of each year this Agreement is in effect, which will cover the proposed trainings pertaining to the implementation of this Agreement for the upcoming school year (i.e., on or before July 15, 2026, the ADHR and ALSDE will provide the United States with its proposed training schedule for 2026-2027 school year) and each of the details specified in this Section of this Agreement. Any changes to the proposed training schedule will be submitted to the United States, with the reason for the change, for the United States' review and approval, within one week of the decision to reschedule a training.
- D. The ALSDE will, or will contract, pursuant to Alabama law, with an organization or provider approved by the United States to, develop and administer an annual series of trainings related to the implementation of this Agreement that are mandatory for STC staff, a designated representative(s) from the LEAs that contract with STCs, and Educational Surrogates or parents/guardians, and offered to agency and regional office staff, on topics pertaining to the implementation of this Agreement and, more broadly, the delivery of educational and therapeutic services

in the STCs. Those training topics will include: academic requirements, submitting a Placement Reconsideration Form, the new complaint process created by Section VII of this Agreement, the terms of this Agreement, pedagogical and therapeutic best practices, reading remediation, student and adolescent development and behaviors, requirements to earn and maintain an Educational Endorsement, and serving students with disabilities (including the proper development and use of functional behavior assessments and behavior intervention plans). ADHR will assist ALSDE, as requested, with training.

- E. The ALSDE will, or will contract with an organization or provider approved by the United States to, develop and administer mandatory annual trainings, specifically for all STC teaching and educational support staff, covering topics related to the implementation of this Agreement, including:
 - 1. The proper and necessary use of classroom modifications and accommodations for students with disabilities.
 - 2. Intra-facility communication, federal and state special education requirements, how to work with LEAs to ensure the provision of special education services, and how and when to report questions or concerns to the ALSDE.
 - 3. Completing the Placement Reconsideration Form.
- F. The ALSDE will, or will contract with an organization or provider approved by the United States to, create a mandatory, annual training related to the implementation of this Agreement for personnel from LEAs that have Memoranda of Agreements (“MOAs”) with STCs, which will cover best practices for providing services within a PRTF, expectations for providing services within a PRTF, and how to communicate with a PRTF.
- G. The ADHR will, or will contract with an organization or provider approved by the United States to, provide mandatory annual training(s) related to the implementation of this Agreement for all the ADHR case workers who are required or expected to attend IEP meetings, which will cover: the role of IEPs, functional behavioral assessments, and behavior intervention plans; the required timelines for IEPs and evaluations; graduation requirements; how to read academic records and transcripts; and the effects of institutionalization on student development.
- H. Each training required by this Section will include an opportunity for participants to ask the presenter questions in real time during the initial training.
- I. If an individual who is subject to mandatory training requirements is hired after the date on which the training has been provided, they will be provided with a recorded version of the training and the contact information of a person who will answer questions related to the training within 60 days of the start of their employment.

- J. The training that covers the terms of this Agreement will be provided within 60 days of the Effective Date of this Agreement. All other trainings will occur within the first 12 months of the Effective Date of this Agreement.
- K. The ALSDE and ADHR agree to provide reports of trainings conducted to the United States under the provisions of Section X of this Agreement.

VII. Complaint Process Requirements

- A. The ADHR and ALSDE will collaborate to develop and publicize a complaint process that provides parents/legal guardians, Educational Surrogates, service providers, STC staff, and students in PRTFs a mechanism to communicate a complaint about any STC. The ALSDE will provide a copy of all such policies to the United States for review and approval, with the goal of implementing the complaint process within 60 days of the Effective Date of this Agreement. The United States will provide its feedback or approval within 30 days of the receipt of the proposed language. The parties will cooperate to come to an agreement on the policies. If no agreement can be reached, the parties may use procedures described in Section XI of this Agreement. The complaint process will:
 - 1. Include the processes through which complaints will be transmitted to the ALSDE, including all complaints received by ADHR (which shall be transmitted to ALSDE), and be made available to the Protection and Advocacy Agency upon request;
 - 2. Explain the ALSDE's investigation and resolution process, including a mechanism to consult with ADHR where appropriate;
 - 3. Provide options to submit a complaint orally, via email, and via mail, and specify that the complainant will choose the means through which they lodge their complaint;
 - 4. Describe what procedures will be followed to memorialize and submit a complaint if a complainant makes an oral complaint;
 - 5. Allow for the opportunity to submit anonymous complaints; and
 - 6. Be publicly posted on the ALSDE's website, provided at admission to the PRTF by ADHR, and at each STC.
- B. The ALSDE and ADHR agree to provide reports of complaints received to the United States under the provisions of Section VIII of this Agreement.

VIII. STC Monitoring Requirements

- A. The ALSDE and ADHR will each designate a staff person within 30 days of the Effective Date of this Agreement who will serve as the Agreement coordinator for their respective agencies. These individuals will respond to questions and concerns

that LEAs, PRTFs, STCs, and other entities may have in implementing the terms of this Agreement. They will coordinate with each other as necessary to ensure consistency.

- B. The ALSDE and ADHR will provide a draft Placement Reconsideration Form to the United States within 60 days of the Effective Date of this Agreement for review and approval. The United States will provide feedback or approval within 30 days of receipt of the proposed form. The form will be in place within 30 days of the United States' approval.
- C. The ALSDE will establish a monitoring and reporting process through which the ALSDE monitors both the STCs it funds and the LEAs that have entered into agreements (e.g., MOAs) with STCs, in order to ensure compliance with the terms of this Agreement as well as pertinent laws and regulations. Specifically, the ALSDE will:
 - 1. Review MOAs in place between LEAs and the STCs, under Ala. Admin. Code r. 290-8-8-.09, for approval on an annual basis, which will include ensuring that: each item required by Ala. Admin. Code r. 290-8-8-.09(2) is present in the MOA; the services described are sufficient to meet the needs of students placed at STCs; and the previous year's MOA was fully executed. If the ALSDE does not approve an MOA, it will provide comments to guide the LEA and STC's revisions. If necessary, the LEA, STC, and State will work cooperatively to produce a final MOA that the State approves.
 - 2. Require that each STC annually, and starting no later than 60 days after the Effective Date of this Agreement:
 - a. Provide a written assurance that the therapeutic supports provided solely by the PRTF (i.e., not by the STC or LEA) will not count toward the school's instructional hours requirement under Section V(A)(8) of this Agreement.
 - b. Provide a written assurance that any career, technical, or physical education provided that does not comply with Ala. Admin. Code r. 290-6-1-.04 will not count toward the instructional hours under Section V(A)(8) of this Agreement.
 - c. Provide a list of the certifications and qualifications (including any experience and training required for teachers of online curricula) of STC staff and their teaching or classroom assignment.
 - d. Provide the ALSDE with its academic calendar and class schedule, including the dates of the core academic school year (i.e., which days count toward the 180 instructional day or 1080 hour requirement).

- e. Provide a written assurance that all requirements under Section V of this Agreement are being followed.
- D. The ALSDE agrees that STCs will comply with the ALSDE's updated requirements and monitoring mechanism in order to receive or continue to receive an Educational Endorsement and/or allocations from the Education Trust Fund.
- E. At each of its meetings, the ADHR ISP Team will review students' academic performance and behaviors at the STC, along with the PRTF, and will determine whether to submit a Placement Reconsideration Form to the Student Education Team or IEP Team. If the ADHR ISP Team determines that a student needs additional educational services in their current educational placement, the ADHR and ALSDE will work with the LEA and/or STC to determine how to provide those services.

IX. Compensatory Education Requirements

- A. The ALSDE will create a compensatory education plan to provide services for students under the age of 21 who have not yet graduated high school, who are identified as having received abbreviated instructional hours (i.e., shortened school days) while educationally placed at an STC on the campus of a PRTF, and who were in the legal custody of the ADHR at any time since May 20, 2019. Specifically, the ALSDE will:
 - 1. Create a plan to determine how many compensatory education hours are owed to each student, including how the ALSDE plans to identify each student who is owed compensatory education.
 - 2. Offer parents/guardians, students, or the Educational Surrogates, whichever is/are appropriate, the opportunity to select among the following types of compensatory education that will be provided at the State's expense:
 - a. Instructional/remedial tutoring outside of school hours, provided by a private provider or the LEA;
 - b. Summer school or other education programs outside of school hours for which the student would not have otherwise qualified or been allowed to attend, provided by a private provider or the LEA;
 - c. Extracurricular programming outside of school hours (e.g., art classes, piano classes), provided by a private provider;
 - d. Vocational training outside of school hours, provided by a private provider; and
 - e. Any other forms of compensatory education proposed in the ALSDE's plan and approved by the United States.

- B. The ALSDE will develop a plan to communicate the availability of compensatory education to eligible students, parents/guardians, and/or Educational Surrogates, whichever appropriate.
- C. The ALSDE will provide its compensatory education and communications plan to the United States within 60 days of the Effective Date of this Agreement, for review and approval. If the United States does not approve of the proposed plans, it will provide comments to guide the State's revisions. The Parties will work cooperatively to produce a final compensatory education and communications plan that the United States timely approves. ALSDE will implement the approved compensatory education plan within 60 days of receiving approval from the United States.

X. State Reporting Requirements

- A. Within 90 days of the Effective Date of this Agreement, the ALSDE will provide an interim report to the United States that includes all information below regarding the current school year:
 - 1. A list of all students who have been educationally placed at STCs on the campuses of PRTFs rather than a local public school for any length of time since the start of the 2025-26 school year. This list will include the student's name, date of birth, current grade level, length and dates of educational placement at the STC, location, disability classification, amounts and types of services required by their IEP, and IEP dates. The ALSDE will also maintain records (e.g., service logs) of the amounts and types of services actually provided to these students to be made available for inspection by the United States upon request for the duration of this Agreement.
 - 2. A list of all STCs that have current Educational Endorsements under Ala. Admin. Code r. 290-8-8, and any STCs that have had their Educational Endorsements revoked during the last 12 months. If any STC has had their Educational Endorsement revoked during this time period, ALSDE will provide the United States with the reason(s) it was revoked.
 - 3. A copy of every current MOA between STCs on the campuses of PRTFs and their LEA regarding the provision of education services to students in STCs under Ala. Admin. Code 290-8-8-.09.
 - 4. A copy of each transition plan, as described in Section V.D.2.
- B. On or before July 15 of each year this Agreement is in effect, the ALSDE will provide a status report to the United States that includes all information below regarding the previous 12 months:
 - 1. A list of all students who have been educationally placed at STCs on the campuses of PRTFs rather than a local public school for any length of time since the previous report. This list will include the student's name, date of

birth, current grade level, length and dates of educational placement at the STC, location, disability classification, amounts and types of services required by their IEP, and IEP dates. The ALSDE will also maintain records (e.g., service logs) of the amounts and types of services actually provided to these students to be made available for inspection by the United States upon request for the duration of this Agreement.

2. A list of all STCs that have current Educational Endorsements under Ala. Admin. Code r. 290-8-8, and any STCs that have had their Educational Endorsements revoked. If any STC has had their Educational Endorsement revoked during the applicable 12-month reporting period, ALSDE will provide the United States with the reason(s) it was revoked.
3. A copy of every current MOA between STCs on the campuses of PRTFs and their LEA regarding the provision of education services to students in STCs under Ala. Admin. Code 290-8-8-.09.
4. A list of every MOA between an STC on the campus of a PRTF and its LEA that the State did not approve during the previous 12 months.
5. A copy of the written assurances provided by each STC on the campus of a PRTF as required by Ala. Admin Code r. 290-8-8-.04 and Section VIII of this Agreement.
6. A copy of the final training materials used by the ALSDE during the previous 12 months.
7. A list that shows, for each STC employee, the trainings they have completed from the ADHR, ALSDE, LEAs, and STCs, and those that they have not yet completed.
8. A copy of each complaint received through the complaint process under Section VII of this Agreement.
9. A report regarding the findings of the STC compliance monitoring required under Section VIII of this Agreement.
10. Training and qualification documentation (e.g., licensure, certifications and classes taught, crisis or de-escalation training or certification) for each STC staff person, including but not limited to those who provide instruction and/or therapeutic services.
11. SET Meeting records as required in Section IV.D.5(a)-(d).
12. Documentation of all IEP Team meetings related to placement determinations reflecting (a) student information, including name, date of birth, educational placement, and grade, (b) the attendees, by name and role

(c) the date of the meeting, and (d) whether a change in placement resulted from the meeting.

13. A list of all students for whom, upon review by the ALSDE Special Education Services Division under Section IV of this Agreement, a Student Education Team or IEP Team meeting to reconsider the student's most integrated educational setting was requested. Please also provide the outcome of the Student Education Team or IEP Team meeting, including whether the student's educational placement was changed.
 14. A list of every student who has received or is scheduled to receive compensatory education, under Section IX of this Agreement, the type of compensatory education elected, and the way in which the compensatory education was or is to be provided (e.g., by LEA-provided tutor, through participation in an external vocational-technical program).
 15. Every completed Placement Reconsideration Form that was submitted on behalf of a student attending an STC located at a PRTF.
 16. A detailed explanation for every instance in which a timeline required in Section IV of this Agreement was not met and the timeline on which the required event or meeting actually took place.
- B. On or before July 15 of each year this Agreement is in effect, the ADHR will provide a status report to the United States that includes all information below regarding the previous 12 months:
1. A list of each employee who has received trainings under Section VI of this agreement.
 2. Service logs for all therapeutic services provided to students at STCs on the campuses of PRTFs during school hours.
 3. A copy of the final training materials used by the ADHR during the previous 12 months.
 4. A copy of each complaint received through the complaint process under Section VII of this Agreement.
 5. A report regarding the findings of the STC compliance monitoring required under Section VIII of this Agreement.

XI. Enforcement

- A. Upon reasonable notice to the ADHR and ALSDE, the United States may request and promptly receive additional documents or data; tour any STC on the campus of a PRTF; monitor trainings for quality and substance; and conduct any other

compliance activities that the United States determines are necessary to monitor the ADHR and ALSDE implementation of this Agreement.

- B. The ADHR and ALSDE agree, to the extent practicable, to submit all reports and records to the United States in a searchable and usable electronic format. Specifically, for any request for a collated list of data, the ADHR and ALSDE will provide the information using a spreadsheet (e.g., Microsoft Excel), with the delineated data separated by appropriate columns and rows, along with a corresponding data dictionary/key. For any requests for copies of documents, such as policies or reports, the ADHR and ALSDE will provide the information as a searchable Adobe Acrobat file. If the requested data or documents do not exist in the requested format (e.g., Microsoft Excel spreadsheet or searchable Adobe Acrobat file), a reasonable period of time will be afforded to the State to convert the data or documents into the requested format. To the extent any information is available online, the ADHR and ALSDE will provide the URL address(es) of where the information is located.
- C. The United States will monitor the ADHR and ALSDE compliance with the terms of this Agreement and, more broadly, Title II. If the United States determines that the ADHR or ALSDE have failed to comply with the substantive terms of this Agreement, including reporting requirements, it will so notify the ADHR and ALSDE in writing. If the Parties are unable to reach a satisfactory resolution of the issue(s) within 30 calendar days of the United States providing notice to the State, the United States may initiate civil proceedings in federal court to enforce the Agreement and/or the State's underlying obligations under Title II.
- D. This Agreement will remain in effect until October 15, 2028, by which time the State will provide a status report to the United States that covers the period since the July 15, 2028, status report required by Section X(B)-(C) of this Agreement. Once it receives the report, the United States will have 90 calendar days to raise any remaining concerns regarding the State's compliance with the Agreement.
 - 1. If the United States does not raise any concerns regarding the State's compliance, the Agreement will terminate.
 - 2. If the United States does raise any concerns regarding the State's compliance, the Parties will attempt to resolve those concerns cooperatively. If the Parties are unable to reach a negotiated resolution, the enforcement mechanism in Section XI(C) of this Agreement will apply.

XII. Other Provisions

- A. The Effective Date of this Agreement is the date of the last signature below.
- B. In consideration for entering this Agreement, the United States will refrain from undertaking further enforcement action relating to this investigation or from filing

a civil action alleging discrimination based on the findings of the United States' investigation, except as provided in Section XI of this Agreement.

- C. If any part of this Agreement is held to be unlawful, or otherwise unenforceable for any reason by a court of competent jurisdiction, such decision will not affect the validity of any other part of this Agreement.
- D. Failure by the United States to enforce any provision in this Agreement is not a waiver of its right to enforce any provision of this Agreement.
- E. For purposes of construing this Agreement, this Agreement will be deemed to have been drafted by all Parties to this Agreement and will not, therefore, be construed against any Party for that reason in any subsequent dispute.
- F. This Agreement seeks to resolve only the violations of Title II of the ADA described in the United States' Letter of Findings, which was provided to the ADHR and ALSDE on October 12, 2022. It does not address or seek to resolve any other possible violations of Title II, nor should anything be construed that this Agreement is an admission of any violations by the ADHR or ALSDE.
- G. This Agreement is applicable to and binding on the ADHR and ALSDE, including its officers, agents, employees, successors, and assigns.
- H. References to laws (including regulations) in this document reflect their wording and codification as of the Effective Date of this Agreement. To the extent that any referenced law or regulation is amended following the execution of this agreement, all references will be to such laws as amended. Any material change to pertinent federal laws (including regulations) that result in irreconcilable conflict(s) with the terms of this Agreement will allow the parties to negotiate and amend the affected provisions of this Agreement by mutual agreement. Notwithstanding any such potential conflict, the remainder of the terms of the Agreement shall remain in force.
- I. This Agreement will be enforceable only by the Parties, and nothing in this Agreement will be construed to give rise to an action by a third party to enforce its terms.
- J. Both Parties commit to operating in good faith in performing their respective functions and obligations as set forth in this Agreement. Both Parties reserve the right to assert any claims or defenses to which they are otherwise entitled under applicable state and/or federal law.
- K. The undersigned representatives of the Parties certify that they are authorized to enter into and consent to the terms and conditions of this Agreement and to execute and legally bind the Parties to it.
- L. This Agreement constitutes the entire agreement by the Parties, and no other statement, promise, or agreement, whether written or oral, made by any party or

agents of any party, that is not contained in this written Agreement will be enforceable regarding the matters raised in this Agreement.

FOR THE UNITED STATES:



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Assistant Attorney General
Civil Rights Division

PETER FEAMAN
Senior Counsel
Civil Rights Division


JEFFREY MORRISON
Acting Chief and Senior Counsel
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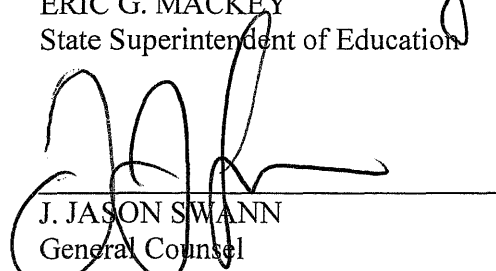


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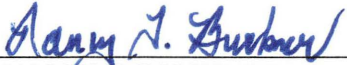
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Dated: 2/2/2020

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