



National Council on Disability

An independent federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families.

July 18, 2011

Elin Howe, Commissioner
Department of Developmental Services
500 Harrison Avenue
Boston, Massachusetts 02118

COMMENTS OF THE NATIONAL COUNCIL ON DISABILITY IN SUPPORT OF PROPOSED AMENDMENTS TO REGULATIONS ON BEHAVIOR MODIFICATION AT 115 CMR 5.14ⁱ

The National Council on Disability (NCD) is an independent federal agency charged with advising the President, Congress, and other Federal agencies regarding laws, policies, practices, and procedures affecting people with disabilities. NCD strongly opposes the use of aversive treatments and accordingly submits these comments.

NCD has a longstanding history of opposing aversive treatments.ⁱⁱ As stated in NCD's 1995 Report **Improving the Implementation of the Individuals with Disabilities Education Act: Making Schools Work for All of America's Children**,

While it is possible to understand the desperation of these parents, to share their exasperation with ineffective programs and treatments, and to sympathize with them in their frustration to locate appropriate programs, there are limits to what society can permit in the name of treatment. There are those in our society who would advocate for severe physical punishment or even the mutilation of prisoners convicted of what everyone would agree are heinous crimes. Yet these prisoners are afforded protection under the law from this treatment, even though there are those who would claim that such treatment would "teach them a lesson." Students with severe behavioral disabilities are not criminals, and yet present law allows them to be subjected to procedures which cannot be used on the most hardened criminals, or, in some cases, even on animals.ⁱⁱⁱ

NCD applauds the Massachusetts Department of Developmental Services (DDS) for taking steps toward drastically restricting use of aversive punishment, and we urge complete elimination of such methods. The use of electric shock is not a legitimate method of treatment for any person. Such measures – whose use against non-disabled individuals is already recognized as illegal and immoral – are contrary to the letter and the spirit of the Americans with Disabilities Act and the Developmental Disabilities Assistance and Bill of Rights Act. We urge the Department of Developmental Services to protect both future students and current ones from the use of contingent electric shock and all other such aversive techniques.

In light of the effect on children and youth and with disabilities nationwide, NCD is gravely concerned by the use of aversive treatments at the Judge Rotenberg Center (JRC), in Canton, Massachusetts -- the only known school in the United States to provide such treatment. We are aware that students from an estimated 17 other states and the District of Columbia attend JRC and are therefore potential recipients of such aversive treatments.^{iv} As such, NCD views this as a significant issue of national importance.

The treatment being provided at JRC is contrary to federal policy and the findings of mental health research. The 2003 **President's New Freedom Commission on Mental Health** stated that restraint will be used only as safety interventions of last resort, not as treatment interventions.^v Similarly, the US Department of Health and Human Services Substance Abuse (HHS) and Mental Health Administration (SAMHSA) has found that seclusion and restraints are detrimental to the recovery of persons with mental illnesses.^{vi}

The practices of JRC are equally contrary to the **Developmental Disabilities Assistance and Bill of Rights Act (DD Act)** which states in part:

“...The Federal Government and the States both have an obligation to ensure that public funds are provided only to institutional programs, residential programs, and other community programs, including educational programs in which individuals with developmental disabilities participate, that... meet minimum standards relating to— provision of care that is free of abuse, neglect, sexual and financial exploitation, and violations of legal and human rights and that subjects individuals with developmental disabilities to ***no greater risk of harm than others in the general population***... and prohibition of the use of such restraint and seclusion as a punishment or as a substitute for a habilitation program...” (emphasis added).^{vii}

The objectionable practices at JRC have not only attracted national attention but have also been scrutinized internationally. According to the **United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**, “. . . the term torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted . . . for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with consent or acquiescence of a public official or other person acting in an official capacity.”^{viii}

In April 2010, Disability Rights International (formerly Mental Disability Rights International) issued an urgent appeal to the United Nations Special Rapporteur on Torture concerning the practices at JRC.^{ix} Subsequently, in June 2010, the United Nations Special Rapporteur on Torture stated that the practices of the Judge Rotenberg Center in Canton, Massachusetts equate to torture and urged the US government to appeal.^x The US Department of Justice (DOJ) is now investigating these, and other, allegations.^{xi}

The regulations proposed by the Department of Developmental Services (DDS) send a strong message that aversive treatment should not be readily provided, but they must go further. It is critical that the DDS address the concerns identified here and supplement its regulations accordingly.

Thank you for considering our comments and recommendations. NCD stands ready to assist you in ways that our collaboration can best benefit students with disabilities and their families while promoting safe learning environments for all students across America. We are available to discuss these matters at your earliest convenience. Please contact me through NCD's offices at (202) 272-2004.

Respectfully,



Ari Ne'eman
Policy and Program Evaluation Committee Chair
National Council on Disability

ⁱ With thanks to NCD Council Member Marylyn Howe and NCD Staff Robyn Powell for their invaluable support and assistance in research and drafting.

ⁱⁱ National Council on Disability, *From Privileges to Rights: People Labeled with Psychiatric Disabilities Speak for Themselves* (2002), available at <http://www.ncd.gov/publications/2000/Jan202000>; National Council on Disability, *Improving the Implementation of the Individuals with Disabilities Education Act: Making Schools Work for All of America's Children* (1995), available at <http://www.ncd.gov/publications/1995/09051995>.

ⁱⁱⁱ *Id.*

^{iv} CNN, *New York Education Officials Ban Shock Therapy* (2006), available at http://articles.cnn.com/2006-06-21/politics/shock.therapy.school_1_shock-therapy-electric-shock-geds?_s=PM:EDUCATION.

^v Mental Disability Rights International, *Torture Not Treatment: Electric Shock and Long-Term Restraint in the United States on Children and Adults with Disabilities at the Judge Rotenberg Center* (2010), 12, available at <http://www.disabilityrightsintl.org/wordpress/wp-content/uploads/USReportandUrgentAppeal.pdf>.

^{vi} *Id.*

^{vii} 42 U.S.C. § 15009(a)(3)(B)(i-iii) (2000).

^{viii} UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1(1)*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at <http://www.unhcr.org/refworld/docid/3ae6b3a94.html>.

^{ix} Mental Disability Rights International, *Torture Not Treatment: Electric Shock and Long-Term Restraint in the United States on Children and Adults with Disabilities at the Judge Rotenberg Center* (2010), 12, available at <http://www.disabilityrightsintl.org/wordpress/wp-content/uploads/USReportandUrgentAppeal.pdf>.

^x ABC News/Nightline, *UN Calls Treatment at Mass. School 'Torture'* (2010), available at <http://abcnews.go.com/Nightline/shock-therapy-massachusetts-school/story?id=11047334>.

^{xi} US Department of Justice, Assistant Attorney General for the Civil Rights Division Thomas E. Perez Speaks at the National Council on Independent Living Annual Conference (2010), available at <http://www.justice.gov/crt/opa/pr/speeches/2010/crt-speech-100719.html>.