



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.

April 12, 2012

Allison Nichol, Chief
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Civil Rights Division
Disability Rights Section - NYA
Washington, D.C. 20530

RE: Judge Rotenberg Center Investigation, DJ 202-36-233

Dear Chief Nichol:

The National Council on Disability (NCD) writes in regard to the Department of Justice (DOJ) investigation of the Judge Rotenberg Center (JRC) in Canton, Massachusetts. DOJ's investigation commenced over two years ago, thus we strongly urge you to expedite your investigation and quickly move forward with your findings.

NCD has a longstanding history of opposing aversive treatments, which JRC subjects its students to.ⁱ 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.ⁱⁱ

NCD applauds the Massachusetts Department of Developmental Services (DDS) for recently adopting regulations that greatly restrict the intentional use of pain as a form of treatment – including the use of electric shock, seclusion, and restraints on young children and adults with disabilities. 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.

In light of the effect on children and youth and with disabilities nationwide, NCD is gravely concerned by the use of aversive treatments at JRC – the only known school in the United States to provide such treatment. We are aware that students from an estimated 18 other states and the District of Columbia attend JRC and are therefore potential recipients of such aversive treatments.ⁱⁱⁱ As such, NCD views this as a significant issue of national importance and DOJ's actions will have a national impact.

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.^{iv} 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.^v

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).^{vi}

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.”^{vii} 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.^{viii} 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.^{ix}

DOJ must take immediate action and protect children and adults with disabilities across the nation by reporting its findings and expediting its actions to ensure the closure of JRC. While the Massachusetts regulations are laudable, JRC is still permitted to subject students that were previously admitted to aversive treatment. Further, there is nothing stopping JRC from moving their facility to a different state to avoid the new Massachusetts regulations. In fact, JRC has already moved twice since its inception: first from California to Rhode Island, following a student's death and subsequent investigation by the state of California, and then from Rhode Island to Massachusetts, where it is located today.^x

Thank you for your anticipated attention to this critical issue. 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,



Jonathan Young, Ph.D., J.D.
Chairman

ⁱ 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>.

ⁱⁱ *Id.*

ⁱⁱⁱ 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.

^{iv} 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>.

^v *Id.*

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

^{vii} 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>.

^{viii} 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>.

^{ix} 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>.

^x 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), 6, available at <http://www.disabilityrightsintl.org/wordpress/wp-content/uploads/USReportandUrgentAppeal.pdf>.