

To Whom It May Concern:

The Community Alliance for the Ethical Treatment of Youth (CAFETY) is a membership organization made up of survivors of residential treatment programs for youth, their families, mental health professionals and other supporters of humane, effective methods of treatment for youth in residential and community settings. In developing our positions and advocating in support of legal and social change consistent with them, CAFETY draws upon the opinions and research of qualified mental health professionals, the findings from state and federal government investigations, and the first-hand experience of countless youth placed in residential programs and their families.

CAFETY strongly supports DDS's proposal to amend 115 CMR 5.14 to prohibit the use of Level III aversive behavioral interventions ("Level III aversives"), including corporal punishment, contingent electric shock and long-term seclusion, in all programs operated, licensed or funded by DDS. Numerous investigations and reports have revealed that the Level III aversives are not only ineffective in addressing behavioral problems, but are unsafe and can result in severe psychological trauma, physical injury and even death.<sup>1</sup> Furthermore, these investigations and reports have repeatedly shown that the way in which Level III aversives are used is frequently excessive and abusive.<sup>2</sup> One such report, authored by the human rights advocacy organization Mental Disability Rights International and focusing on the practices of the Massachusetts-based Judge Rotenberg Educational Center (JRC), has resulted in the United Nations declaring that the use of contingent electric shock constitutes torture.<sup>3</sup> Meanwhile, research and best practices in

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<sup>1</sup> See generally, e.g. NAT'L DISABILITY RIGHTS NETWORK, SCHOOL IS NOT SUPPOSED TO HURT: INVESTIGATIVE REPORT ON ABUSIVE RESTRAINT AND SECLUSION IN SCHOOLS 5 (2009) (describing deaths, physical injury and psychological trauma resulting from the use and misuse of restraints and seclusion in schools); *Seclusions and Restraints, Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers: Testimony Before the Comm. on Educ. and Labor, H.R.*, 111th Cong. (statement of Gregory D. Kutz, Managing Director of Forensic Audits and Special Investigations, Gov't Accountability Office) [hereinafter "Seclusions and Restraints Testimony"] (showing the harm caused by a lack of federal legislation restricting the use of restraint and seclusion in schools and private facilities); N.Y. STATE EDUC. DEP'T, OBSERVATIONS AND FINDINGS OF OUT-OF-STATE PROGRAM VISITATION: JUDGE ROTENBERG EDUCATIONAL CENTER (2006), (revealing extensive harmful and excessive use of aversives, including Level III aversives, at the Judge Rotenberg Educational Center [JRC] in Canton, Massachusetts).

<sup>2</sup> See generally *Seclusions and Restraints Testimony*, *supra* note 1 (providing examples of abuses of the use of restraint and seclusion in public schools and private facilities); COMM. OF MASS. DEP'T OF EARLY EDUCATION AND CARE, INVESTIGATION REPORT ON JRC – 66 KEVIN CLANCY WAY (2007) (finding evidence of abuse and neglect at JRC in incident where one student received 77 consecutive applications of contingent electric shock and another student received 29, both at the behest of a prank caller); N.Y. EDUC. DEP'T, *supra* note 1 (describing practices at the JRC including subjecting students to contingent electric shock for behaviors including "nagging, swearing and failing to maintain a neat appearance" and the use of "behavioral rehearsal lessons" in which students are restrained without provocation, forced to misbehave by staff and then punished with contingent electric shock for doing so); MENTAL DISABILITY RIGHTS INT'L, 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) [hereinafter MDRI] (presenting evidence that JRC's use of Level III and other aversives violates international human rights law prohibiting torture).

<sup>3</sup> See generally MDRI, *supra* note 2; Office of Senator Brian A. Joyce, U.N. find shock treatments at Judge Rotenberg Center in Canton to be torture, <http://brianajoyce.com/pressreleases/un-finds-shock-treatments-judge-rotenberg-center-canton-be-torture> (last visited July 11, 2011). The JRC is also currently under investigation by the U.S. Department of Justice for violations of the Americans with Disabilities Act for its use of Level III and other aversives. See Letter from Renee Wohlenhaus, Deputy Chief, Disability Rights Section, U.S. Department of Justice

the field of mental health and education indicate that non-coercive treatment and positive behavioral approaches are far more effective than aversive interventions in addressing behavioral problems.<sup>4</sup> Finally, advocates and self-advocates in the developmental disability community, who are among the people who have been and will be most affected by the laws and regulations regarding aversives, have consistently supported banning or at least limiting their use.<sup>5</sup> For all of these reasons, CAFETY urges that the DDS adopt the language of proposed regulation 115 CMR 5.14(4)(b)(3) forbidding the use of Level III aversives.

However, CAFETY requests that DDS strengthen its proposed regulations still further in order to protect those individuals whose treatment plans currently include the use of Level III aversives. If it is the belief of DDS, as it is ours, that the infliction of pain and the use of coercion violate the basic human rights of, and thus have no place in the treatment of, youth and people with disabilities, then DDS's regulations must not allow their use on anyone. At very least, the new regulations should require that all DDS-operated, licensed and funded programs phase out the use of Level III aversives entirely, for all program participants, within no more than three years of the new regulations taking effect. Even this solution does not adequately protect against the possibility that programs that use Level III aversives may respond to these regulations by quickly adding the use of Level III aversives that would be unnecessary even by the program's standards to treatment plans and then seeking and obtaining approval for their use as a precautionary measure. This is especially worrying in light of the fact that at least two separate recertification reports on the use of Level III aversives at the JRC in the recent past have revealed that the procedural safeguards against unnecessary and harmful aversives are inadequate or have not been observed at all.<sup>6</sup> Because of these concerns, and in the general interests of the human rights of those whose treatment plans currently or may in the near future include the use of aversives, CAFETY would urge the DDS to remove the language of proposed regulation 115 CMR 5.14(4)(b)(4), creating an exception to the general ban on Level III aversives for program participants whose treatment plans that call for their use as of September 1, 2011, and all associated language entirely.

Thank you very much for your time and concern. Please feel free to contact CAFETY if you have any questions or would like any clarification on our position.

Sincerely,

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Civil Rights Division, to Nancy Weiss, Professor, University of Delaware (February 18, 2010), *available at* <http://leftbrainrightbrain.co.uk/wp-content/uploads/2010/02/US-Dept.-of-Justice-JRC-Investigation-Feb.10.pdf>.

<sup>4</sup> See Nat'l Disability Rights Network, *supra* note 1, at 35-37 (best practices recommend the use of positive behavioral support programs as opposed to the use of restraint and seclusion in special educational settings).

<sup>5</sup> See, e.g., The Autistic Self Advocacy Network, Preventing Abuse, Neglect, and Bullying, <http://www.autisticadvocacy.org/modules/smartsection/category.php?categoryid=77> (last visited July 11, 2011);

TASH, TASH Resolution Opposing the Use of Aversive and Restrictive Procedures (2001), *available at* <http://66.147.244.209/~tashorg/wp-content/uploads/2011/01/TASHResolutionOpposingAversiveRestrictiveProcedures.pdf>.

<sup>6</sup> See MDRI, *supra* note 2, at 39-40 (2009 recertification report revealed JRC's Human Rights Committee did not meet or review Level III aversive treatment plans as required by state regulations); CURTIS PROUT, M.D., ET AL., REPORT OF THE CERTIFICATION TEAM ON THE APPLICATION OF THE JUDGE ROTENBERG EDUCATIONAL CENTER FOR LEVEL III BEHAVIORAL MODIFICATION CERTIFICATION 15-18 (2003) (recertification team found professionals' involvement with and review processes of mandatory Peer Review and Human Rights Committees to be insufficient for purposes of providing independent oversight of use of Level III aversives).

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