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NASW NEW YORK STATE CHAPTER
National Association of Social Workers

A1368 / Judge Rotenberg Educational Center

Status Report

Introduction

The New York State Chapter of the National Association of Social Workers ("NASW-NYS" or the "Chapter") supports the passing of A1368 and is requesting a companion bill be submitted and subsequently passed in the Senate. In the opinion of the Chapter, aversive interventions are cruel, inhumane, and run counter to social work values; as such, elimination of referrals to the Judge Rotenberg Educational Center (JRC) or any other facility engaging in aversive treatment, be it in- or out-of-state, is a high priority for resolution.

According to Assembly Member and bill Sponsor Jo Anne Simon (52nd A.D., Brooklyn), the primary purpose of Assembly bill A1368, is *"to prohibit public funding to facilities providing aversive interventions, including but not limited to electric shock therapy."*[1] This bill targets children 21 years old or younger with autism spectrum disorder who are attending public or private schools. Electric shock therapy is a component of the behavioral treatment programming at JRC, a day and educational center in Canton, MA serving a broad range of "emotionally disturbed students"[2] ages five through adult. JRC receives referrals from New York State, with anecdotal evidence indicating the bulk of those referrals come from the Bronx.

Section I

Judge Rotenberg Educational Center – An Overview

The Judge Rotenberg Center, founded in 1971 and located in Canton, Massachusetts, is a day and residential school that claims to provide *"…very effective education and treatment to both emotionally disturbed students with conduct, behavior, emotional, and/or psychiatric problems, as well as those with intellectual disabilities or on the autism spectrum."*[3] JRC is approved by the Massachusetts Department of Elementary and Secondary Education.

JRC is licensed to serve those from age five through adult, with most students being children and teenagers. They also have an Adult Services program, with their own classrooms, residences, and work activities center.[4]

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[1] The bill defines "aversive interventions" as including, but not being limited to: Contingent application of noxious, painful, intrusive stimuli or activities; Any form of noxious, painful, or intrusive taste, spray, or inhalant; Withholding sleep, shelter, bedding, bathroom facilities or clothing; Contingent food programs that include denial or delay of meals or intentionally altering staple food or drink in order to make it distasteful; Movement limitation used as a punishment, including but not limited to use of helmets and mechanical restraint devices; Electric shock therapy; and, Other similar stimuli, treatments, interventions, or actions.

[2] https://www.judgerc.org

[3] https://www.judgerc.org/index.html

[4] https://www.judgerc.org/admissions.html

JRC's programming is divided into two areas: *Behavioral Education Systems* and *Behavioral Treatment*. For purposes of this analysis comments will be limited to programmatic descriptions related to behavior modification techniques, of which aversive interventions of the kind mentioned in the text of A1368 can be considered a subset.

Behavioral Education Systems[5]

Behavior modification references in JRC's educational programming speak in terms of providing a "powerful reward system" and "a unique and unparalleled reward system for students and clients" which includes performance-based access to wellness programming, a movie theater, hair salon, internet café, a "Big Reward Store", internet lounge and café, fitness room, and other "rewards".

JRC also utilizes *Precision Teaching*, a measurement system that enables teachers to track what students are learning and how they are progressing. In addition to traditional academic measures such as reading, writing, and spelling, behavior-based measures that can be tracked include, but are not limited to, "appropriate or inappropriate behaviors", "daily living skills", and an unspecified "more".[6]

Applied Behavior Analysis (ABA)
(aka, "Behavioral Engineering"; previously known as "Behavior Modification")[7]

JRC staff utilize ABA-based treatment as the cornerstone of their behavioral education program, which they break down into 12 discrete steps.[8]

1. Identify behaviors to be changed
2. Record and chart the frequencies of the behaviors
3. Establish a powerful set of rewards that the student will want to earn
4. Money rewards systems
5. Using a system of behavioral contracts
6. Establish a "Loss-of-Privileges" (LOP) procedure
7. Teach self-management procedure
8. Minimize or eliminate the use of antipsychotic medication
9. Ensure that all counseling is behaviorally oriented (offered by Licensed Psychologists, Licensed Clinical Social Workers, Licensed Mental Health Counselors or Board-Certified Behavior Analysts)
10. Teach the student to cope successfully with events that have historically triggered problem behaviors ("Treatment Learning Opportunities")
11. Set up Procedures to Handle Aggressive Behaviors Safely
12. Changing the components of the treatment system until the charts show the desired changes in behaviors

[5] https://keyfeatures.judgercblog.org/education/#academic

[6] http://judgercblog.org/blog/2014/04/28/need-a-progress-monitoring-tool-precision-teaching-is-the-tool-for-you/

[7] https://en.wikipedia.org/wiki/Applied_behavior_analysis

[8] https://positiveprogramming.judgercblog.org

The first step, *identify behaviors to be changed*, attempts to identify problematic behaviors which are the subject of the *Behavioral Treatment* component of JRC's two-pronged programming. JRC has categorized these "problematic" behaviors into seven broad categories which can be added to or sub-divided by a clinician as they deem appropriate.[9]

1. Health Dangerous (includes self-abusive actions such as hitting self)
2. Aggression
3. Destruction
4. Noncompliance (such as refusing to follow a learned direction)
5. Major disruptive behaviors (such as screaming, stealing, touching others without permission)
6. Educationally and Socially-Interfering behaviors
7. Inappropriate Verbal Behaviors

Behavioral Treatment Program[10]

Briefly summarized below are components of JRC's "Unique, Consistent, and Powerful" behavioral treatment program.

Unique reward systems

Areas within the JRC physical plant and programming that students can earn access to as rewards for improved behavior.

No use of time out or isolation rooms

Rather than punishing "problem behaviors", students who are too disruptive to continue engaging in an environment with other students are transferred, with a teacher or teacher's aide, to a small conference room where they can continue their work.

Minimizing or eliminating restraints and takedowns

JRC claims that they are committed to eliminating or minimizing potentially dangerous restrictive procedures including, but not limited to: manual restraint, mechanical restraint, isolation, physically imposed takedowns, etc.

Treatment of psychiatric and behavior problems "in-house"

JRC states that they do not, "…normally place a student in a psychiatric hospital simply because the student is showing extreme behavior problems." Rather, their goal is to manage treatment within their facility.

Treatment of delinquent behaviors without calling in the police

Aggressive or destructive acts, JRC claims, do not normally result in the police being called or other criminal or civil actions. These acts are viewed, rather, as inappropriate behaviors requiring treatment.

[9] https://positiveprogramming.judgercblog.org

[10] https://keyfeatures.judgercblog.org/behavioral-treatment/

Section II

Controversy on Specific Program Services

Electric skin shock as an aversive intervention came to national attention in a series of investigative reports about the Judge Rotenberg Educational Center in 2012. These reports came as a result of the hospitalization of JRC student Andre McCollins for trauma and serious skin burns resulting for prolonged use of shocking "therapy" at JRC in 2002.

Description of Treatment

Students at JRC wear a fanny pack with an electronic device connected to electrodes affixed directly to a student's skin at various points along the arms, legs, or torso. Former students at JRC have claimed to have up to five electrodes attached to their bodies at any one time. Staff are able to administer shocks via the GED (Graduated Electronic Decelerator) which typically last two seconds, with a remote control. About half the students at JRC are required to wear fanny packs.

JRC clinicians and a subset of parents of JRC students who defend the use of this type of intervention state that aversive conditioning is a treatment of last resort and has, in some cases, saved the lives of their children. An article in *The Guardian* similarly claimed that skin shocking can be useful in stopping socially destructive behaviors such as public masturbation or defecation, or physically self-destructive behaviors such as cutting, scratching or gouging.[11]

Criticism of Treatment

"I never signed up for him to be tortured, terrorized, and abused. I had no idea." These are the words of Cheryl McCollins, Andre's mother.

In 2002, Andre McCollins was shocked for refusing to take off his coat. He was then strapped to a table, rendering him immobile, and was shocked a total of 31 times over the next seven hours. This was explored in an 18-minute compilation video of multiple news reports and interviews about that fateful day in 2002. Andre's "treatment" for refusing to take off his coat led to serious trauma and skin burns for which Andre was hospitalized in a catatonic state for weeks.[12]

United Nations *Special Reporter on Torture* Manfred Nowak, after viewing video footage of Andre being strapped down and shocked, stated that there was no doubt in his mind that this was torture. "How more powerless can you be?", Nowak stated. This treatment, he confirmed, would not even be done to a convicted terrorist.

GED devices like the one used on Andre are capable of delivering a shock of 30 milli-amps, or about ten times the strength of a stun gun (3-4 milli-amps). Hospital photographs showed Andre McCollins had burns on his arms, and reports have stated there are times when they are used where you can smell flesh burning.

[11] https://www.theguardian.com/education/2018/jul/12/judge-rotenberg-educational-center-electric-shocks

[12] https://www.youtube.com/watch?v=Ko-ip3MImik

Greg Miller, a former Teacher's Assistant at JRC who himself had administered shocks in the course of his duties, reported to CNN that while the number of shocks utilized would vary depending on how high- or low-functioning someone on the autism spectrum would be, shocking was routine. But electric shocks are not only administered for behaviors such as head banging, self-mutilation, or other dangerous or potentially dangerous acts—they are done for a number of other behaviors that include, but are not limited to: getting out of your chair without permission ("Any reason they get out of their seat is considered aggression, they don't get asked questions about why they're out of their seat, you just shock them"); tearing up a paper cup after a child has finished their water ("The same as if they tore something off a wall"); standing up to raise your hand to ask to go to the bathroom; or even displaying a frightened reaction to someone else who has been shocked. A 2006 report by the New York State Education Department found children were shocked for "nagging, swearing, and failing to maintain a neat appearance".

Rotenberg officials claim that use of electric shocks is scientifically proven to be effective with the behaviors for which it was used. The consensus in the medical community, however, is that this aversive treatment modality is overwhelmingly negative and dangerous and that once this treatment is over, the "concerning" behaviors come back and the underlying causes are not resolved.

JRC also claims that the efficacy of this practice was peer reviewed, and any side effects were mostly positive. Upon investigation Kevin Pelphrey, Director of the Child Neuroscience Laboratory at Yale, revealed that no peer-reviewed studies about this practice could be found, and, if it were peer-reviewed, why is JRC the only facility in the country that uses electric skin shock as a treatment modality?

Since Cheryl McCollins sued JRC in 2012, eventually coming to a settlement, legal challenges to JRC's use of skin electric shock therapy continue. MA State Senator Brian Joyce, who described JRC as a "House of Horrors", tried for years to shut JRC down, without success. And while the Massachusetts Senate passed a bill banning the use of electric skin shock as a form of behavioral treatment[13], an 11/6/2018 initiative that would have made it illegal to continue this form of therapy never made it on the ballot.[14]

In 2006, Rebecca Cort of NYSED, in a memo to the *Board of Regents, EMSC-VESID Committee*, explored the question, *"Should the Regents adopt a new policy that prohibits or limits the use of certain behavioral approaches, including the use of certain aversive or noxious stimuli to reduce or eliminate maladaptive behaviors of students?"*[15] This was in response to a number of concerns, the most germane among them being *"…recent news events around the use of aversive interventions such as shock treatment in an out-of-State school approved for the placement of New York State students."* In acknowledging the need for a behavioral intervention policy, the memo went so far as to suggest the following language: "*Schools may be removed from the approved list five business days after written notice by the commissioner indicating that there is a clear and present danger to the health or safety of students attending the school."* Preliminary research indicates that no regulatory remedy was adopted, eventually giving rise to the advancing of legislation by then-Senator Golden in 2012.

[13] https://www.change.org/p/pass-amendment-548-and-ban-torture-of-disabled-people

[14] https://ballotpedia.org/Massachusetts_Ban_on_Aversive_Therapy_Initiative_(2018)

[15] http://www.regents.nysed.gov/common/regents/files/documents/meetings/2006Meetings/March2006/0306emscvesidd6.htm

Fast-forwarding to the present, a January 9, 2020, report by Mike Beaudet, a WCVB reporter, states that, “A deadline for a federal agency to ban devices that deliver electric shocks to disabled students in Massachusetts has come and gone.”[16] The FDA first proposed banning the devices in 2016 and last year the FDA Commissioner committed to moving ahead with the ban by the end of 2019.

"The United Nations already declared that this shock treatment is torture. The FDA has already declared that this shock treatment is both dangerous and harmful to the public health," said Attorney Karen Zahka, who was part of the legal team that represented former JRC student Andre McCollins.

“The FDA said in a statement: "Before issuing a final rule, the agency must carefully review comments submitted to the public docket in connection with the proposed ban on electrical stimulation devices, including lengthy comments on scientific and legal issues. FDA has been working to issue the final rule as closely as possible to the plan announced in the Fall 2019 Unified Agenda. Issuing this final rule remains a priority for FDA."

Records show the Rotenberg Center disclosed spending nearly a quarter of a million dollars so far since the FDA proposed the ban, lobbying everyone from the FDA to Congress, even the White House.

Section III

Current Status of Legislation

Key Provisions of A1368

- No public funding will be used to support placement of a child in any program or school that engages in use of aversive interventions (i.e., an intervention intended to cause pain or discomfort in order to eliminate or reduce maladaptive behavior(s)
- Any program or school doing so will be removed from any registry of approved schools or programs

Timeline of Bill Activity

A1368 was first introduced by then-Assembly Member Millman in 2012 as A9084, with Senate companion bill S6294 introduced simultaneously by then-Senator Golden. The bill was slow to move in the next four legislative terms, with no Senate companion bill in either the 2013-14, or 2015-16 terms. The bill returned in the 2017-18 term as A1073, once again with a companion bill in the Senate, S3655. In our current 2019-20 term the bill, now A1368, was referred to the *Children and Families Committee* on 1/15/2019 and continued in committee on 1/8/2020 without a Senate *“Same As”*.

[16] https://www.wcvb.com/article/fda-misses-self-imposed-deadline-to-ban-shock-devices-used-at-judge-rotenberg-center/30461040

Bill Status Update

Comments by JoAnn Van Slyke, Legislative Director for Assembly Member/Sponsor Jo Anne Simon – Wednesday, 2/19/2020

- Assembly Member's Simon's office has tried to get this bill out of *Children and Families* without success, though they claim to not have received much opposition to this bill
- Her office will now restart efforts to get a Senate sponsor and as well as start pushing for passage of the bill this session

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