



# FIRE

Foundation for Individual  
Rights and Expression

August 30, 2022

**Sent Via Certified Mail and Email**

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RE: *Response to April 27, 2022, Cease and Desist Letter*

Dear Mr. Flammia:

The Foundation for Individual Rights and Expression (FIRE) represents NeuroClastic, Inc. FIRE is a nonpartisan, nonprofit, public-interest organization dedicated to defending and sustaining the individual rights of all Americans to free speech and free thought—the most essential qualities of liberty. NeuroClastic is a small, volunteer-led, nonprofit organization that publishes advocacy by autistic authors and aims “for a future that is more accepting, accommodating, and empowering for autistic people.”<sup>1</sup> NeuroClastic “platforms autistic voices, prioritizing those who are underrepresented in autistic self-advocacy, and [its] contributors create free, accessible resources for autistic people and non-autistic parents, educators, service providers, partners, and other people who interact with autistic people.”<sup>2</sup>

NeuroClastic recently engaged FIRE to respond to your letter, dated April 27, 2022, alleging that NeuroClastic “made false and defamatory statements” about your client, the Judge Rotenberg Educational Center, and its use of electric-shock devices on autistic people. Your letter also threatens that the Center will seek damages in a legal action if NeuroClastic does not “cease and desist from any further publication of” these statements and “immediately remove [them] from public view.” For the following reasons, the Center’s claims are without merit. NeuroClastic will not cave in to the Center’s attempts to censor its critics through baseless legal threats and bullying.

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<sup>1</sup> About NeuroClastic, Inc., <https://neuroclastic.com/about> (last visited Aug. 24, 2022).

<sup>2</sup> *Id.*

## **I. The Center Inflicts Painful Electric Shocks on Autistics and Other Residents.**

The Judge Rotenberg Center is an institution in Canton, Massachusetts, that houses autistic and other disabled residents as young as five. The Center’s use of electric-shock devices on residents, including autistics, is a substantial and longstanding public controversy, receiving widespread media attention.<sup>3</sup> The Center uses, openly and infamously, “graduated electronic decelerators”— devices that deliver remote-controlled electric shocks as a method of aversive training.<sup>4</sup> The Center “appears to be the only school in the United States that

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<sup>3</sup> See, e.g., Matthew Israel Interview by Jennifer Gonnerman, MOTHER JONES (Aug. 20, 2007); Jennifer Gonnerman, *Why Can’t Massachusetts Shut Matthew Israel Down?*, MOTHER JONES (Aug. 20, 2007); Jennifer Gonnerman, *The School of Shock*, MOTHER JONES (Aug. 20, 2007); Jennifer Gonnerman, *Experts on Self-Injurious Kids Challenge Dr. Israel’s Methods*, MOTHER JONES (Aug. 20, 2007); Jennifer Gonnerman, *Nagging? Zap. Swearing? Zap.*, MOTHER JONES (Aug. 20, 2007); Leslie Kaufman, *Parents Defend School’s Use of Shock Therapy*, N.Y. TIMES (Dec. 25, 2007); Patricia Wen, *Showdown over Shock Therapy*, BOSTON GLOBE (Jan. 17, 2008); Katie Hinman and Kimberly Brown, *UN Calls Shock Treatment at Mass. School ‘Torture’*, ABC NEWS (June 29, 2010), <https://abcnews.go.com/Nightline/shock-therapy-massachusetts-school/story?id=11047334>; Patricia Wen, *3 Injured in Brawl at Group Home*, BOSTON GLOBE (June 29, 2010); Laurie Ahern, *Disabled Children at Mass. School Are Tortured, Not Treated*, WASH. POST (Oct. 2, 2010); Donovan Slack, *School Lobbied to Stop Electric Shock Ban*, BOSTON GLOBE (Feb. 28, 2011); Ed Pilkington, *Shock Tactics: Treatment or Torture?*, GUARDIAN (Mar. 11, 2011); Jen Quraishi, *‘School of Shock’ Founder Forced to Resign*, MOTHER JONES (May 27, 2011); Patricia Wen and Brian McGrory, *Rotenberg Founder Set to Face Charges*, BOSTON GLOBE (May 25, 2011); WBUR, *Founder Forced to Leave Controversial Special Needs School*, WBUR (May 26, 2011), <https://www.wbur.org/news/2011/05/26/rotenberg>; Ed Pilkington, *Founder of Electric Shock Autism Treatment School Forced to Quit*, GUARDIAN (May 25, 2011); *Lawmakers Consider Proposals Banning the Use of Skin Shock Therapy*, WBUR (July 26, 2011), <https://www.wbur.org/news/2011/07/26/shock-therapy-2>; Colleen Curry, *Video Shows Shock Therapy on Patient*, ABC NEWS (Apr. 11, 2012), <https://abcnews.go.com/US/shock-therapy-mental-health-patient-shown-court-video/story?id=16116908>; *Mother Sues Judge Rotenberg Center over ‘Torture’ of Disabled Son*, CBS NEWS (Apr. 11, 2012), <https://www.cbsnews.com/boston/news/mother-sues-judge-rotenberg-center-over-torture-of-disabled-son/>; *Mass. School Called ‘House of Horrors’*, CNN (May 24, 2012), <https://www.cnn.com/videos/us/2012/05/24/ac-bts-massachusetts-school-shock-therapy-panel.cnn>.

<sup>4</sup> See, e.g., Jacey Fortin, *F.D.A. Bans School Electric Shock Devices*, N.Y. TIMES (Mar. 6, 2020), <https://www.nytimes.com/2020/03/06/us/electric-shock-fda-ban.html>.

uses painful electric shocks to discipline students[.]”<sup>5</sup> The Center’s use of the shock devices is so notorious that opponents, like NeuroClastic, “have fought against it for decades through legislation, lawsuits, petitions and reports that described the shocks as torture.”<sup>6</sup> The United Nations Special Rapporteur on Torture—tasked with monitoring compliance with the Torture Convention, including in the United States—designates the Center’s use of graduated electronic decelerators as torture under international law.<sup>7</sup>

As you know, the Center has spent hundreds of thousands of dollars lobbying state and federal governments in support of its use of electric-shock devices. After the Food and Drug Administration banned the devices, the Center successfully sued to enjoin the regulation on the ground that the FDA lacks authority to ban medical devices for a particular use.<sup>8</sup>

## **II. The Center Threatens a Defamation Suit Against NeuroClastic over Its Criticism of the Electric-Shock Devices.**

In using the electric-shock devices, the Center claims to apply principles of Applied Behavior Analysis (ABA). To evaluate the views of ABA professionals, NeuroClastic surveyed specialists in this field on their views of the Center’s use of the devices. NeuroClastic published its findings on its website in an article titled “900 ABA Professionals Have Weighed in on the Use of Electroshock at Judge Rotenberg Center.”

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Juan E. Méndez (Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment), *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez: Addendum: Observations on Communications Transmitted to Governments and Replies Received*, at 85, U.N. Doc. A/HRC/22/53/Add.4 (Mar. 12, 2013), [https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add4\\_EFS.pdf#page=85](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add4_EFS.pdf#page=85) (“the rights of the students of the [Center] . . . have been violated under the UN Convention against Torture and other international standards”).

<sup>8</sup> *Judge Rotenberg Educ. Ctr. v. U.S. Food and Drug Admin.*, 3 F.4th 390, 400 (D.C. Cir. 2021).

On April 27, 2022, the Center sent NeuroClastic a cease-and-desist letter identifying several statements in the article that it alleges are false and defamatory. Specifically, the Center identifies the following seven statements:

1. A quote from Brian Middleton, an applied behavior analysis specialist and autistic, that the shock the Center uses is “at least 10 times more powerful than a stun [ ] gun” and that the Center uses the devices on people for “not answering a question in 3 seconds or saying no”;
2. The Center shocks clients while they are “strapped down to a board on the floor”;
3. “The majority of the individuals [receiving shocks] are Black or Brown”;
4. The Center uses the device to treat “completely innocuous behaviors like hand play and pressurizing the ears”;
5. “[B]uilt [into] JRC’s structure is the systematic stripping of consent to ensure the resident being admitted cannot say no,” and “[a]ll of JRC’s residents are all capable of consent, even in the absence of having access to using words as communication”;
6. The electric shock the Center uses is “much more painful” and “many times stronger” than a “cattle prod”; and
7. A quote from Mason Weiser, an applied behavior analysis specialist and autistic, that the Center’s use of skin shock is “torture” and that the Center has “murdered [autistic people] by electrocution there before.”

On May 10, 2022, NeuroClastic issued a press release titled, “Judge Rotenberg Center Threatens NeuroClastic with Defamation Suit.” The following day, NeuroClastic posted an update to its August 26, 2021, article to revise Middleton’s quote, at his request. The May 11 update strikes through the original Middleton quote and revises it to claim that the electric-shock device is, at a minimum, six (not ten) times as powerful as a stun gun. Additionally, Middleton notes that if the Center “were to use their most powerful device at 90 [milliamperes] per shock, that would be 18 times the power of a stun gun.”

### **III. The Center’s Threatened Defamation Suit Is Meritless.**

The First Amendment to the U.S. Constitution requires that a public figure suing for defamation must prove, by clear and convincing evidence, that

the defendant knew the allegedly defamatory statements were false or acted with reckless disregard for the truth.<sup>9</sup> Additionally, defamation only applies to statements of fact. Opinions, which are not capable of being proved true or false, are not actionable in a defamation suit.<sup>10</sup> In determining whether statements are facts or opinions, courts must examine the totality of the statement in context—i.e., “[t]he court must consider all the words used, not merely a particular phrase or sentence.”<sup>11</sup>

**A. *The Center Cannot Prove Constitutional Malice.***

The Center is a public figure. As discussed above, its use of electric-shock devices has stirred a global controversy about the practice that many, including the United Nations Special Rapporteur on Torture, consider torturous and cruel. The Center has spared no expense defending itself in state and federal legislatures, before regulatory bodies, and in courts of law and the court of public opinion. It is therefore a public figure with respect to the use of the electric-shock device.<sup>12</sup>

The Center cannot prove by clear and convincing evidence that NeuroClastic knew its statements were false or acted with reckless disregard for the truth. All of NeuroClastic’s statements are true or substantially true, and NeuroClastic believes them to be true based on publicly available sources that it cited at the time of publication.

For example, the statement that residents were shocked while tied down to a floor is based on a video of a resident strapped to a restraint board and

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<sup>9</sup> See *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).

<sup>10</sup> See, e.g., *Cole v. Westinghouse Broad. Co., Inc.*, 435 N.E.2d 1021, 1024–25 (Mass. 1982).

<sup>11</sup> *Id.* at 1025 (quoting *Gertz*, 418 U.S. at 1025).

<sup>12</sup> See, e.g., *Gertz*, 418 U.S. at 351 (describing a limited-purpose public figure as one who “voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues.”).

shocked 31 times.<sup>13</sup> CBS Evening News broadcast footage of the video nationally.<sup>14</sup>

NeuroClastic based the statement that the majority of residents receiving shocks are Black or Brown on *US News and World* statistics that indicate 82.6 percent minority enrollment at the Center.<sup>15</sup> Former residents have testified that the Center uses shocks to deter “completely innocuous behaviors like hand play and pressurizing the ears” rather than solely in situations presenting serious risks of bodily harm. NeuroClastic’s statements regarding the power output of the electric-shock devices in comparison to stun guns and cattle prods are supported both by the devices’ own specifications and by NeuroClastic’s consultations with electrical engineers. Additionally, NeuroClastic is aware that another nonprofit organization raised funds and attempted to commission an engineer to recreate the devices, but they all flatly refused to design a similarly specified device because of the risk of serious harm, up to and including death, that the devices pose.

In short, the Center will not be able to meet its high burden to prove constitutional malice, and any suit for defamation will necessarily fail.

***B. Other NeuroClastic Statements Are Protected Opinion.***

The other statements you identify are plainly matters of protected opinion. Whether residents provide meaningful consent to receive electric shocks and whether the Probate Court process strips residents of the ability to consent is a matter of opinion. Similarly, opinions as to whether the use of the electric-shock devices is “torture” and whether the Center has “murdered” autistic people are protected speech.<sup>16</sup> These statements are based on publicly

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<sup>13</sup> See, e.g., Jennifer Gonnerman, *31 Shocks Later*, N.Y. MAGAZINE (Aug. 21, 2012).

<sup>14</sup> CBS Evening News, *Shocking People with Autism, Behavioral Disorders Stirs Controversy*, YOUTUBE (Aug. 5, 2014), <https://www.youtube.com/watch?v=XV5D2ZLOicM>.

<sup>15</sup> Press Release, NeuroClastic, Judge Rotenberg Center Threatens NeuroClastic with Defamation Suit (May 10, 2022), <https://neuroclastic.com/press-release-judge-rotenberg-center-threatens-neuroclastic-with-defamation-suit>.

<sup>16</sup> See, e.g., *Brown v. Hearst Corp.*, 862 F. Supp. 622, 629 (D. Mass. 1994) (“None of the statements [that defamation plaintiff was involved in the disappearance of his wife] can be interpreted as implying that there are additional facts known to the speaker to cause him or her to be suspicious as to [plaintiff’s] involvement. To the contrary, they are on their face expressions of opinion based on conjecture and

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disclosed facts about the way the Center uses electric-shock and other devices as punishment. According to *Mother Jones*, six children have died while under the Center's care, and "New York state investigators filed a blistering report that made [the Center] sound like a high school version of Abu Ghraib."<sup>17</sup>

Although the Center cherry-picks specific statements from NeuroClastic's article, a court will take into account the broader context of the publication. The overall gist or "sting" of the statements is that delivering painful electric shocks to autistic residents to suppress behaviors is cruel and torturous and causes significant psychological and bodily harms. This is protected speech. NeuroClastic rejects your statement that "No [Center] client has been harmed as a result of [its] behavioral treatment program or, in particular, its use of skin shock." NeuroClastic believes that statement to be false and the Center will not bully it into silence.

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You are on notice that the Center is to preserve all records, including, without limitation, audio and visual recordings of its use of electric shocks on autistic residents, demographic data of residents, and behavior plans and application logs detailing the behaviors for which residents were administered shocks. This material is obviously relevant to NeuroClastic's truth defense and discoverable, should the Center proceed to litigation.

FIRE demands that the Center drop its threat of litigation against NeuroClastic. Without waiving any claims or defenses that NeuroClastic may have, should the Center wish to respond further, an apology and retraction of its baseless threat of a defamation suit would be merited. You are instructed that NeuroClastic is represented by counsel and not to be contacted further by you. Any further communications may be directed to me at [gabe.walters@thefire.org](mailto:gabe.walters@thefire.org).

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speculation, as opposed to implicit factual assertion or foundation."), *aff'd*, 54 F.3d 21 (1st Cir. 1995); *Kevorkian v. Am. Medical Ass'n*, 602 N.W.2d 233, 239–40 (Mich. Ct. App. 1999) (holding that calling a public figure a "murderer" was either nonactionable hyperbole or "must be accorded the special solicitude reserved for protected opinion."), *appeal denied*, 613 N.W.2d 720 (Mich. 2000), *cert. denied*, 532 U.S. 995 (2001).

<sup>17</sup> Jennifer Gonnerman, *The School of Shock*, MOTHER JONES (Aug. 27, 2007).

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Sincerely,



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