



January 15, 2016

Tom Torlakson
State Superintendent of
Public Instruction
Office of the State Superintendent
California Department of Education
1430 N Street, Suite 5602
Sacramento, CA 95814-5901

Chris Drouin
Interim Director
Special Education Division
California Department of Education
1430 N Street, Suite 2401
Sacramento, CA 95814-5901

RE: Call for Immediate Action to Protect Children with Disabilities from
Abuse in California Schools

To Superintendent Torlakson and Interim Director Drouin:

We are non-profit agencies – Disability Rights California, Disability Rights Education and Defense Fund (DREDF), and the American Civil Liberties Union (ACLU) – that seek to protect the human and civil rights of children with disabilities through litigation, advocacy, and public education.

Last week, video emerged from Tobinworld II, a publicly funded special education school in Antioch, California, showing a nine-year-old child with disabilities being restrained and hit in the face by adult staff.¹ The publication of this assault is only the latest example of physical abuse occurring in a Tobinworld school and in similarly segregated classrooms and schools for students with disabilities.

We call upon the California Department of Education (CDE) to take immediate steps to protect children with disabilities in segregated school sites like Tobinworld. Under state and federal law, CDE is charged with ensuring that children with disabilities in California receive a free appropriate education, including the right to be free from physical and emotional abuse. Yet, CDE has repeatedly failed to meet these basic obligations.

Despite formal complaints, media reports, and multiple lawsuits – costing our public schools millions of dollars – the California Department of Education has no proper

¹ See <http://abc7news.com/education/teachers-aide-at-antioch-school-accused-of-child-abuse/1149208/>; and <http://kron4.com/2016/01/06/antioch-school-employees-suspended-after-viral-video-shows-physical-altercation-with-boy/>.

system to monitor the treatment of students with disabilities, investigate and resolve complaints, or provide meaningful technical assistance – all steps that are mandated by federal and state law.

For example, in August of 2014, DREDF filed a complaint with the Department of Education on behalf of two second-grade students with disabilities who had been repeatedly pinned to the ground at the Sunrise Elementary School, a segregated school of 45 students in the Mt. Diablo Unified School District. The state’s investigation of Sunrise revealed more than 300 instances of physical restraint in 2013-2014 alone. One student was restrained 57 times, including an incident where four staff members held him facedown on the floor for an hour. (Such prone restraints have resulted in the deaths of children, and are contrary to all principles of the U.S. Department of Education.²) Another student was restrained 44 times and a third student 32 times. While the State Department of Education found the school out of compliance with some technical requirements, it did not order the corrective actions needed to end these abusive practices.

In April 2015, *EdSource* published an extensive investigative report that documented the lack of state oversight of restraint and seclusion practices.³ The report described “a shadow discipline system in many special education classrooms, where minimally trained classroom aides have significant leeway in using emergency interventions to manage disruptive students.” These “emergency interventions” typically involve the use of physical force against a child.⁴ The data show these incidents climbed from 9,921 in the 2005-06 school year to 22,043 by 2011-12, the last year data was required to be reported. It also indicates that the heaviest use of restraint and seclusion occurred at “private,” segregated special education schools like Tobinworld that operate under publicly funded contracts with districts.⁵

When asked by *EdSource* to comment on the increasing numbers of emergency interventions, Fred Balcom, then director of special education for CDE, replied: “I wouldn’t speculate on it – whether the number is appropriate or too much or too little. It is what it is.” Despite the state’s obligation to monitor under federal and state law, he

² U.S. Gov’t Accountability Office, GAO-09-719T, *Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers* (2009), at <http://www.gao.gov/assets/130/122526.pdf>; U.S. Dep’t of Educ., *Restraint and Seclusion: A Resource Document* (2012), at <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>.

³ Jane Meredith Adams and John C. Osborn, “Little oversight of restraint practices in special education,” *EdSource* (Apr. 19, 2015), at http://edsources.org/2015/little-oversight-of-restraint-practices-in-specialeducation/78040#.VT_ShJOUKDK.

⁴ While state law allows physical restraint to respond to true emergencies, i.e., situations that pose a direct threat of significant bodily harm to the child or to someone else, these harmful practices are used routinely for punishment and behavioral control.

⁵ Adams and Osborn, *supra*.

opined that the state has no obligation to take affirmative steps about the use of physical force unless a parent or other agency makes a specific complaint.⁶ This response ignores that many incidents of restraint and seclusion are behind closed doors and often perpetuated on children who are unable to communicate or whose reports are questioned.

California parents have filed numerous lawsuits against school districts and publicly funded private schools for physical and emotional injury to their children as a result of abuse by school staff.⁷ Many of these cases have settled, with amounts from \$800,000 to \$1,250,000 per child, but without the systemic changes needed to prevent further abuse.

The California Department of Education has long been on notice of the problems at Tobinworld. In 2014, the mother of a disabled student sued Tobinworld and the Antioch Unified School District, asserting staffers twice pinned her 7-year-old son to the ground, bloodying his nose and bruising him. And last year CDE temporarily suspended the certifications of two Tobinworld schools, but did not take the necessary steps to ensure meaningful change.

By failing to monitor, by issuing incomplete relief to address legitimate complaints of violence, and by continuing to certify and fund schools engaged in these practices, CDE is contributing to the continuance, rather than the elimination, of this abuse.

Demand for Action.

The video from Tobinworld II is a wake-up call. The Department has been unwilling to

⁶ *Id.* (“The California Department of Education is not required to look for trends in the aggregate number of behavioral reports filed, nor has it done so,” said Fred Balcom, director of special education for the department. . . . ‘Should we receive an allegation that children are being restrained or secluded in violation (of the Education Code), we do have the ability to make unannounced visits, and we do so. We would only do so in response to a specific complaint.’”).

⁷ Matthias Gafni and Paul Burgarino, “Antioch school district settles student abuse case for \$8 million,” *Contra Costa Times* (Dec. 18, 2013), at http://www.contracostatimes.com/contracosta-times/ci_24754579/antioch-school-district-settles-student-abuse-case-8 (parents claimed special education teacher slapped, pinched and verbally abused her students, and that district administrators failed to respond to reports of abuse); Matthias Gafni and Rowena Coetsee, “Brentwood: District to pay \$8 million to settle special education child abuse lawsuit,” *Contra Costa Times* (Jan. 23, 2014), at http://www.contracostatimes.com/east-county-times/ci_24980739/brentwood-district-pay-8-million-settle-special-education?source=pkg (describing settlement paid to the families of eight special needs children who reportedly were physically and verbally abused by the same teacher at Loma Vista and Krey elementary schools); Cathy Locke, Loretta Kalb, and Denny Walsh, “Two families reach settlement with Rocklin district over alleged abuse,” *Sacramento Bee* (Sept. 3, 2015), at <http://www.sacbee.com/news/local/education/article33860628.html> (two families settled lawsuit for \$1.25 million each relating to allegations that a special education teacher taped a child’s hands to the desk, forcefully removed and locked a child out of the classroom, and pushed a student).

fulfill its obligations to protect children. If the Department cannot do this work, someone else must. An independent monitor should be appointed to implement remedies necessary to curtail the use of force and isolation on students with disabilities in the following two ways:

- (A) Immediate independent oversight to protect students at Tobinworld and all other segregated school sites for children with disabilities; and
- (B) Immediate review and remediation of the policies, procedures, and practices of all California school districts to eliminate the improper use of force on children with disabilities.

A. Immediate Steps to Protect Students With Disabilities Currently at Tobinworld and At Other Segregated School Sites.

Abuse such as that witnessed in the Tobinworld II video does not arise in isolation, but is an indication of a culture of violence and discrimination. Such an environment is traumatic to students and prevents them from learning. The independent monitor must:

- Conduct a prompt and rigorous investigation of all schools owned or operated by the Tobinworld parent company, including unannounced onsite visits and parent questionnaires.
- Determine whether Tobinworld's certification should be suspended or revoked.
- Require that all school districts placing students in Tobinworld II hold an emergency Individualized Education Plan (IEP) meeting for each student to determine whether remaining at Tobinworld II is safe and appropriate.
- Contact all families with children at Tobinworld Schools to inform them of their rights and how to file grievances and provide them with the contact information for agencies where they can receive free legal advocacy.
- Collect and analyze data from all other segregated school sites, and conduct unannounced site visits to monitor the use of force and isolation.

B. Immediate Review and Remediation of the Policies, Procedures, and Practices of All California School Districts to Eliminate the Improper Use of Force on Children with Disabilities.

Meaningful change requires that school districts implement rigorous standards to eliminate the improper use of force on children with disabilities. The independent monitor must:

- Develop effective policies, procedures, and practices for school districts so that they may eliminate the improper use of force on children with disabilities.
- Ensure that school districts immediately implement these policies, procedures, and practices.
- Ensure that school districts are provided with the training and technical assistance to create the least restrictive environment for children with disabilities and to promote positive behavioral support.
- Create an ombudsman program with a toll-free number to ensure that parents and students are informed of their rights regarding the use of force and isolation in schools.

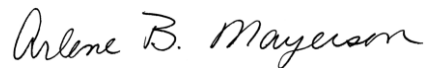
The physical safety and mental health of young children is at stake. We ask that you respond to this letter promptly with a commitment to take quick and decisive action. If we do not receive such a commitment within ten days, we will pursue further action.

If you would like to meet with us, please contact any of the signators below. We look forward to hearing from you shortly.

Sincerely,



Maggie Roberts
Disability Rights California



Arlene Mayerson
Disability Rights Education
and Defense Fund



Susan Mizner
Disability Rights Program
American Civil Liberties Union