

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PAM STEWART, AS COMMISSIONER OF  
EDUCATION,

Petitioner,

vs.

Case No. 15-1580PL

TRACEY NEWTON,

Respondent.

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RECOMMENDED ORDER

Administrative Law Judge Lisa Shearer Nelson of the Florida Division of Administrative Hearings conducted a disputed-fact hearing in this case on June 3 and August 26, 2015, in Ocala, Florida.

APPEARANCES

For Petitioner: Ron Weaver, Esquire  
Post Office Box 5675  
Douglasville, Georgia 30154-0012

For Respondent: Mark Herdman, Esquire  
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STATEMENT OF THE ISSUES

The issues to be determined are whether Respondent violated section 1012.795(1)(j), Florida Statutes (2013), and Florida Administrative Code Rule 6A-10.081(3)(a) and (3)(e) with respect

to her treatment of an autistic child in her classroom. If so, then the appropriate penalty for her conduct must be determined.

PRELIMINARY STATEMENT

On October 14, 2014, Petitioner, Pam Stewart as Commissioner of Education (Petitioner), filed an Administrative Complaint against Respondent, Tracey Newton, alleging that she violated section 1012.795(1)(j) and rule 6A-10.081(3)(a) and (3)(e) with respect to her treatment of an autistic child in her classroom. Respondent disputed the allegations in the Administrative Complaint on October 31, 2014, and on March 20, 2015, the case was referred to the Division of Administrative Hearings (Division) for assignment of an administrative law judge.

On April 1, 2015, a Notice of Hearing was issued scheduling the hearing for June 3, 2015. On May 22, 2015, a Joint Pre-Hearing Stipulation was filed in which the parties stipulated to Respondent's licensure and employment status at the time of the allegations in the Administrative Complaint. While the hearing began as scheduled on June 3, 2015, it was soon apparent that more time was required to complete the presentation of evidence. An additional day was noticed for August 26, 2015, and proceeded as scheduled.

At hearing, Petitioner presented the testimony of Adrienne Ellers, lead behavioral analyst for the Marion County School District (the District); Laura Burgess, principal of Maplewood

Elementary School (Maplewood); Claire Smith, an assistant principal at Maplewood; Doris Tucker, dean of students at Maplewood; Brian Greene, another assistant principal at Maplewood; and Rose Cohen, director of equity assurance for the District. Petitioner's Exhibits 1 through 9 were admitted into evidence.<sup>1/</sup> Respondent testified on her own behalf and presented the testimony of Susanne Quigley, the teacher assistant in Ms. Newton's classroom; Christine Spicoche and Barbara O'Brien, parents of former students; and Bobby James, a member of the Marion County School Board. Respondent's Exhibits 1 and 2 were admitted into evidence.

The three-volume Transcript of the proceedings was filed with the Division on June 22 and September 18, 2015. At the request of the parties, the time for filing post-hearing submissions was extended to October 15, 2015. Both parties timely filed Proposed Recommended Orders that have been carefully considered in the preparation of this Recommended Order. All references to the Florida Statutes are to the 2015 codification unless otherwise specified.

#### FINDINGS OF FACT

1. Respondent is a teacher in the State of Florida. She holds Florida Educator's Certificate 952211, covering the areas of elementary education, English for speakers of other languages

(ESOL), and exceptional student education. Respondent's certificate is valid through June 2016.

2. At all times relevant to the allegations in the Administrative Complaint, Respondent was employed as an autism spectrum disorder (ASD) teacher at Maplewood.

3. Ms. Newton has been involved in teaching in Marion County since 1999. She started as a teaching assistant, then substitute taught while putting herself through school, then obtained her bachelor's degree in varying exceptionalities and began teaching full time. She also received her master's degree in 2007 in the area of interdisciplinary studies in curriculum and instruction.

4. With the exception of an internship at Oak Crest Elementary, all of Ms. Newton's teaching experience was at Maplewood. Her performance evaluations from the 2004-2005 school year through the 2012-2013 school year all contain at least satisfactory ratings, with the majority of the recent evaluations rating her as highly effective or outstanding, depending on the evaluation tool used. The majority of her evaluations reference her excellent classroom management skills.

5. At the beginning of the 2013-2014 school year, Maplewood received an entirely new administrative team. Laura Burgess was the new principal, Claire Smith and Brian Greene were newly-appointed assistant principals, and Doris Tucker was the new

dean. The new administration started at Maplewood in July, approximately a month before the beginning of the school year.

6. Ms. Newton had been teaching and continued to teach autistic students. At the beginning of the school year, she was assigned six students in her self-contained classroom, and had the assistance of one teacher's aide, Susanne Quigley.

7. Ms. Newton believed strongly in the value of a structured, disciplined classroom, especially when dealing with autistic students. She believed that establishing the rules and routine for the classroom created an environment where any child could be taught, but that without structure and adherence to routine, chaos would result and impair the learning process.

8. Her classroom management skills were well known and in past years, well respected. Both Ms. Newton and Ms. Quigley testified about the assistance she was asked to give to other teachers and students with respect to class management and discipline. Their testimony is credited.

9. After the start of the school year but before September 3, 2013, Laura Burgess, Maplewood's principal, was notified by the Social Services Education Team (SET team) for the District that Maplewood would be receiving a new student, B.L., who had moved to the area from North Carolina. She also received an Individualized Education Program (IEP) for B.L., which listed his disability as autism spectrum disorder. B.L.'s IEP also

indicated that he had problematic behaviors that could impede his learning, including oppositional defiance disorder, tantrums, attention deficit disorder, and extreme violence. The documentation provided to her did not include a behavioral intervention plan, and Ms. Burgess was concerned that B.L.'s placement at Maplewood did not match the needs identified in the IEP. However, she determined that Ms. Newton's class would be the best placement for B.L., because Ms. Newton had a reputation for having a structured and disciplined classroom, and perhaps B.L. would benefit from that kind of structure.

10. Ms. Burgess saw Ms. Newton that morning and told her that she would be receiving a new student. Ms. Burgess described the issues with the child, and said that if he ended up in Ms. Newton's class, she should document his behaviors in case he needed to be moved to a therapeutic unit for behaviors (TUB unit).

11. Ms. Newton understood from the conversation that Ms. Burgess believed B.L. should be in a TUB unit, which did not exist at Maplewood. However, later in the day Ms. Newton and her aide, Susanne Quigley, were supervising her students on the playground when she was approached by Claire Smith, one of the new assistant principals. Ms. Smith informed her that B.L. would indeed be placed in her class and gave her a copy of his IEP, with certain portions related to his behavior highlighted.

Ms. Newton expressed surprise at the placement, thinking that he would be going to the TUB unit. Ms. Smith had met with B.L. and his mother earlier in the day and felt that he could benefit from Ms. Newton's structured classroom. She also talked to Ms. Newton about documenting his behaviors should a change be necessary.

12. Ms. Newton was concerned about the addition to her classroom because she already had six autistic students and, with respect to B.L.'s identified behaviors, "we've never had a child like that at Maplewood." Nonetheless, B.L. was placed in her classroom on September 3, 2013.

13. Consistent with her usual practice, Ms. Newton began to teach B.L. the rules of her classroom. For the first two days, there were no major problems. There were instances where B.L. did not want to comply with the directions she gave him or follow the rules of the classroom, but with some coaxing, she was able to get him to comply. Ms. Newton did not see the need to call the front office for assistance on either of the first two days B.L. was in her classroom, but then, Ms. Newton had never called the front office for assistance with any child.

14. At the end of the first day, she had the opportunity to speak with B.L.'s mother briefly when she picked him up from school. After Ms. Newton introduced herself, B.L.'s mother basically confirmed the contents of the IEP. According to what B.L.'s mother told Ms. Newton, B.L. had lived previously with his

father and there had been issues both at school and at home with disruptive and violent behavior. Ms. Newton told her they were going to "wipe the slate clean" and asked if there was anything that B.L.'s mother wanted Ms. Newton to work on, and she identified B.L.'s behaviors as an area for improvement. Ms. Newton told B.L.'s mother that Maplewood was a great school, and "that would happen."

15. B.L.'s third day at Maplewood did not go well. At the very beginning of the day, B.L. would not follow directions to stand with the rest of his classmates at their designated spot after getting off the bus. Instead, he plopped down in the middle of the walkway, in the midst of the area where children were trying to walk to their classes. He had to be coaxed all along the way to get to class, and once there, refused to unpack and sit down. He refused to follow any direction the first time it was given, instead responding with shuffling feet, shrugging shoulders, talking back, calling names, and wanting to lay his head down on his desk instead of participate in class.

16. When it was time for the students in the class to go to art, Ms. Quigley normally took them while Ms. Newton attended to other responsibilities. According to Ms. Quigley, B.L. did not want to go to art class, and had to be coaxed to walk with the others to the art room. Once he got there, he did not follow



directions, did not want to participate, and did not want to move from the back of the room.

17. Normally, Ms. Quigley might have let him stand and watch if he remained quiet, but he was not being quiet: he was touching things and grumbling and getting angry. Ms. Quigley knew from prior experience that students with autism tend to mimic the bad behavior exhibited by others, and one child's actions could cause a chain reaction of bad behaviors. She felt that if she did not remove him from the art room, the other children would also start to misbehave, and she did not want them to follow B.L.'s example.

18. Ms. Quigley took B.L. out of the art classroom and went back to the classroom in search of Ms. Newton. Ms. Newton was not in the classroom, as she was attending to other responsibilities. Ms. Quigley then took B.L. to the office, but again, found no one there to assist her. B.L. was not happy during any of these travels, and again had to be coaxed all along the way. Once she got back to the art class, Ms. Quigley had B.L. stand in the back of the classroom. She was trying to watch him and also attend to the other students, but one of the other students knocked everything off the art table, so Ms. Quigley added clean-up to her responsibilities. At that point, Ms. Newton came into the art room. Ms. Newton took both B.L. and the other misbehaving child back to the classroom while

Ms. Quigley stayed with the remaining students for the rest of the art period.

19. What remained of the afternoon became a battle of wills between Ms. Newton and B.L.: Ms. Newton was trying to establish the ground rules for behavior in her classroom with B.L., and B.L. was determined not to follow those rules. The result was Ms. Newton spending the bulk of the afternoon with B.L. and Ms. Quigley attending to the needs of the other students in the class. For at least part of this time, Ms. Newton placed B.L. in time-out, with directions that he was to stand still with his hands to his sides. For Ms. Newton, the purpose of time-out is for a student to gather his or her thoughts, to get himself or herself together, and to remind the student of the rules of the classroom. She wants a student to have time to think about his or her actions, and wants to discuss with the student the nature of the problem presented by his or her behavior and how the problem should be resolved. If a child stops behaving, time-out may begin again. Ms. Newton put B.L. in time-out because he was not following her directions to him. She talked to B.L. about the rules of the classroom and where they are posted in the room, and told him what he needed to do.

20. B.L. is very verbal and able to talk about his issues. Ms. Quigley described him as very high-functioning and not on the same level as other children in the classroom. Instead of

responding appropriately, B.L. was calling names, talking out, and using curse words; flailing his arms and legs, wrapping himself in his sweatshirt so that his arms were in the body of the sweatshirt as opposed to in the armholes, and covering his face so that he could not see obstacles in his environment; wandering around instead of staying still; kicking things in the classroom, including a box and a door; throwing objects on the floor, rolling around on the floor and spitting; and generally resisting any instruction.

21. During the course of the afternoon, Ms. Newton attempted to show B.L. what she wanted from him. For example, she demonstrated how she wanted him to stand in time-out by holding his arms in the area close to his wrists to demonstrate standing still with his hands down. B.L. repeatedly resisted this direction and tried to break away from Ms. Newton.

22. B.L. was not only resisting her, but at times appeared to be butting his head against her and kicking her. He was at other times rubbing his hands against his face. Ms. Newton told B.L. he needed to stop rubbing his hands over his face, or she would remove his glasses so that he did not hurt himself with them. When B.L. continued his resistant behaviors, she removed his glasses and eventually put them in his backpack. B.L. continued to lightly slap his face with both hands. Ms. Newton did not physically intervene, but testified that she gave B.L.

consistent verbal direction to stop hitting himself. Although he clearly continued to slap his face for some time, Ms. Newton testified that the movement was more like a pat than a slap, and she did not believe that he was hurting himself. Her testimony is credible, and is accepted.

23. Ms. Newton also told B.L. to quit flailing his arms and putting his jacket over his head. She was concerned that he could hurt himself given that he was standing (not still, as directed) near the corner of a table. Ms. Newton told him if he did not stop she would take his jacket from him. He did not and she removed his jacket and placed it on a table in the classroom. She did not give B.L. the jacket back when he wanted it, because she wanted B.L. to understand that there are consequences to not following directions.

24. With approximately 30 minutes left to the school day, Ms. Newton asked Ms. Quigley to call the front office for assistance. Ms. Tucker, the dean at Maplewood, came to her classroom. Before Ms. Tucker's arrival, Ms. Newton was trying to get B.L. to stand in the back of the room. He was not following directions and had gone over to sit in a chair near the center of the room. The chair was near a free-standing easel with teaching implements attached to it, and it is reasonable to assume, given B.L.'s behavior, that Ms. Newton did not want him near the easel

because of the potential for harm. Each time he went to the seat, Ms. Newton directed him away from it.

25. When Ms. Tucker arrived, he once again sat in the chair he had been directed not to use. Ms. Newton removed him from the chair and told him again he was not to sit in it. B.L. immediately went to another chair in the same vicinity and sat down. Ms. Newton, took him by the arm and away from the chair, and took him out of the room. From Dean Tucker's perspective, B.L. was just trying to sit in a chair. From Ms. Newton's perspective, this was just one more instance in a litany of instances where B.L. was refusing to follow her directions.

26. Dean Tucker was outside the room with B.L. when the door closed. B.L. starting kicking and beating on the door, screaming that he wanted in, and opened the door. Ms. Newton placed her arm on his chest and pushed against him to keep him from entering the room, and asked Ms. Tucker to lock the door from the outside, which she did. B.L. continued to kick and beat at the door, and Dean Tucker called assistant principal Greene to assist her.

27. When Mr. Greene arrived, B.L. was still kicking at the door. He kept saying that he wanted in the classroom but would not say why. Eventually Mr. Greene was able to calm B.L. enough to find out that he wanted his backpack. Because it was close to the end of the day, Mr. Greene took B.L. to the office but

instructed Ms. Tucker to retrieve his backpack from Ms. Newton's classroom.

28. Ms. Tucker returned to Ms. Newton's classroom to retrieve the backpack. Ms. Newton expressed frustration at the decision to return the backpack to B.L., saying that meant "he won." From Ms. Tucker's and Mr. Greene's perspectives, returning the backpack to him made sense, in part because they were not aware of the exchange related to the backpack earlier, and in part because it was close to the end of the day and B.L. would not be returning to the classroom that day. From Ms. Newton's perspective, the backpack had been taken from B.L. because she had told him she would take it if he did not comply with her directives, and he did not do so. She felt that returning the backpack to him at that point was ensuring that B.L. had no consequences for his bad behavior.

29. After completing their end-of-day responsibilities, Mr. Greene and Ms. Tucker returned to the classroom to speak to Ms. Newton about B.L. Ms. Newton told them that he had been out of control all day, kicking boxes, pushing chairs, and a danger to himself and others. She stated that it was only B.L.'s third day in the classroom and it would take some time to live up to expectations, but that he knew the rules and knew how to follow them. Mr. Greene felt that Ms. Newton was clearly upset with both him and Ms. Tucker with respect to how B.L. was handled.

Ms. Newton asked whether B.L.'s parent had been called, and felt that his parent should have been contacted as part of addressing B.L.'s behavior.

30. After speaking to Ms. Newton, Mr. Greene and Ms. Tucker pulled the videotape for the afternoon in Ms. Newton's classroom. After scanning through the tape, Mr. Greene went to Ms. Burgess and asked her to view it because the tape's contents concerned him. Once she did so, Ms. Burgess called Lisa Krysalika, the head of human resources for the District, and after discussion with her, called both the Department of Children and Families and the local sheriff's office. She also spoke to Ms. Newton and told her she was to report to the District office the following day, and called B.L.'s parent.

31. Rose Cohen investigated the matter for the District, which included speaking to Ms. Burgess, Mr. Greene, Ms. Newton, Suzanne Quigley, and a Ms. Ballencourt, and watching the video. Adrienne Ellers, the lead behavior analyst for the District, was asked to watch the video and to identify any deviations from the TEACH program for student management accepted by the District. Ms. Cohen recommended to the superintendent that Ms. Newton's employment be terminated, and the superintendent presented that recommendation to the School Board. Ms. Newton appealed the recommendation and a hearing was held before the School Board, which included a viewing of the video of her classroom. The

School Board rejected the superintendent's recommendation for termination by a 3-2 vote. However, Ms. Newton did not return to Maplewood.

32. No evidence was presented to indicate that the Department of Children and Families determined that there was any basis for a finding of child abuse or neglect. Likewise, no evidence was presented indicating that law enforcement took any action against Ms. Newton. There was also no evidence to indicate that B.L. was harmed.

33. The focus of much of the evidence in this case dealt with the video from Ms. Newton's classroom. The video, Petitioner's Exhibit 1, is approximately two hours long. It is from a fixed position in the classroom and it shows some, but not all, of Ms. Newton's classroom. It has no sound. There are parts of the video where, due to lighting deficiencies and similar skin color tones, it is difficult to tell exactly what is transpiring. There are also times when either Ms. Newton or B.L., or both, are not fully within the view of the camera, and sometimes they are not visible at all.

34. With those parameters in mind, the video does show some of the interaction between Ms. Newton and B.L. What is clear from the video is that Ms. Newton spends a great deal of time talking to B.L., and that she remains calm throughout the day. B.L. does appear to comply with direction for short periods in



the video, but never for very long. The video shows Ms. Newton holding B.L. by the arms; pulling him up both by the torso and by his arms; removing (but not "snatching") his eyeglasses; removing his jacket with some resistance from him; blocking his access to his jacket; and kicking his backpack away from his reach. It also shows B.L. kicking items in the room, including a large box near where he is standing; rolling around on the floor; flailing his arms and legs around when he is clearly being directed to be still; and generally resisting any attempt at correction. The video also shows that during the time Ms. Newton is focused on B.L., the other students are engaged in learning, and Ms. Quigley is able to work with them without assistance.

35. The Administrative Complaint alleges that "Respondent and B.L. engaged in a tussle which resulted in B.L. falling to the ground." A more accurate description would be that B.L. resisted Ms. Newton's attempts to show him how she wanted him to stand, and in his struggling, he went to the ground. It appeared to the undersigned that Ms. Newton was attempting to prevent his going down, but was unable to do so safely.

36. The Administrative Complaint also alleges that Respondent "grabbed B.L. by the back of the neck and gripped B.L.'s neck for approximately 10 seconds." A more accurate description would be that Respondent placed her hand at the back of B.L.'s neck and guided him with her hand at the base of his

neck for approximately 10 seconds. She did not grab him by the neck or hold him that way; it appeared that she was protecting him from falling backwards, as he pulled away from her.

37. Respondent did not, as alleged in the Administrative Complaint, drag B.L. across the floor. She did attempt to get B.L. to stand one of the many times that he flopped on the floor, and he resisted her attempt. In that process, the two of them did move across the floor a short distance, which appeared to be due to B.L.'s pulling away from her, but she was not dragging him across the floor.

38. All of Ms. Newton's actions were taken in an effort to either instill the rules of the classroom in order to create for B.L. an atmosphere for learning, or to prevent harm to either herself, B.L., or property in the classroom.

39. Ms. Quigley, who was present in the classroom during most of the interchange depicted on the video, was more focused on the other students in the class than she was on B.L. She has seen a portion of the video since the incident. Ms. Quigley recalls hearing parts of the conversation between B.L. and Ms. Newton, and testified that Ms. Newton never lost control with B.L., and understood from what she heard that Ms. Newton was trying to get B.L. to follow the rules. Nothing Ms. Quigley saw or heard caused her any concern.

40. Barbara O'Brien and Christine Spicoche are both parents of former students who testified on Ms. Newton's behalf. Both acknowledged that they had not seen the interaction between Ms. Newton and B.L.,<sup>2/</sup> but both have been in her classroom on numerous occasions during the years that their children spent with Ms. Newton: Ms. O'Brien's son was in Ms. Newton's class for six years, while Ms. Spicoche's son was there for three years. Both expressed a great deal of gratitude for the positive effect Ms. Newton and her teaching methods have had on their sons' lives. With respect to both children, the mothers testified that their sons went from children who were out-of-control to children who were able to function appropriately both in the classroom and in other places. As stated by Ms. Spicoche, "It would be best for him to be at a strong hand of a loving teacher who cares, who wants the best for him than being at the fist of the legal system later."

41. At all times, Ms. Newton's focus was to establish the rules of the classroom so that B.L., like the other students in her classroom, would be able to learn. B.L. was different from the other students in her classroom, and she admitted he was a challenge. However, Ms. Newton's actions in this case are consistent with her general philosophy for teaching: to be firm, fair, and consistent at all times. Ms. Newton believes that if you do not follow these principles, you have chaos in the

classroom, and where there is chaos, no one is learning. With a disciplined, structured environment, Ms. Newton believes every child can learn, and the atmosphere observed in her classroom is consistent with her philosophy.

42. Ms. Burgess chose Ms. Newton's classroom for B.L. precisely because of her reputation as having a disciplined structured classroom. However, in her view, Ms. Newton should have just given B.L. his backpack when he wanted it; should have given him his glasses; should have let him just walk around the room when he wanted to; and should have just let him kick the door, rather than ever putting a hand on him. Ms. Burgess did not explain (nor was she asked) how many children in the classroom should be allowed to do what B.L. was doing, and whether learning could still take place should each of the children be allowed to wander, kick, and be disruptive.

#### CONCLUSIONS OF LAW

43. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action in accordance with sections 120.569 and 120.57(1), Florida Statutes (2015).

44. The Florida Education Practices Commission is the state agency charged with the certification and regulation of Florida educators pursuant to chapter 1012, Florida Statutes.

45. This is a proceeding in which Petitioner seeks to suspend Respondent's educator certification. Because disciplinary proceedings are considered to be penal in nature, Petitioner is required to prove the allegations in the Administrative Complaint by clear and convincing evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

46. Clear and convincing evidence "requires more proof than a 'preponderance of the evidence' but less than 'beyond and to the exclusion of a reasonable doubt.'" In re Graziano, 696 So. 2d 744, 753 (Fla. 1997). As stated by the Florida Supreme Court:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and lacking in confusion as to the facts in issue. The evidence must be of such a weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting, with approval, Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)); see also In re Henson, 913 So. 2d 579, 590 (Fla. 2005).

"Although this standard of proof may be met where the evidence is in conflict, it seems to preclude evidence that is ambiguous." Westinghouse Elect. Corp. v. Shuler Bros., 590 So. 2d 986, 989

(Fla. 1st DCA 1991). Moreover, the allegations against Respondent must be measured against the law in effect at the time of the commission of the acts alleged to warrant discipline. McCloskey v. Dep't of Fin. Servs., 115 So. 3d 441 (Fla. 5th DCA 2013).

47. Section 1012.796 describes the disciplinary process for educators, and provides in pertinent part:

(6) Upon the finding of probable cause, the commissioner shall file a formal complaint and prosecute the complaint pursuant to the provisions of chapter 120. An administrative law judge shall be assigned by the Division of Administrative Hearings of the Department of Management Services to hear the complaint if there are disputed issues of material fact. The administrative law judge shall make recommendations in accordance with the provisions of subsection (7) to the appropriate Education Practices Commission panel which shall conduct a formal review of such recommendations and other pertinent information and issue a final order. The commission shall consult with its legal counsel prior to issuance of a final order.

(7) A panel of the commission shall enter a final order either dismissing the complaint or imposing one or more of the following penalties:

(a) Denial of an application for a teaching certificate or for an administrative or supervisory endorsement on a teaching certificate. The denial may provide that the applicant may not reapply for certification, and that the department may refuse to consider that applicant's application, for a specified period of time or permanently.

(b) Revocation or suspension of a certificate.

(c) Imposition of an administrative fine not to exceed \$2,000 for each count or separate offense.

(d) Placement of the teacher, administrator, or supervisor on probation for a period of time and subject to such conditions as the commission may specify, including requiring the certified teacher, administrator, or supervisor to complete additional appropriate college courses or work with another certified educator, with the administrative costs of monitoring the probation assessed to the educator placed on probation. An educator who has been placed on probation shall, at a minimum:

1. Immediately notify the investigative office in the Department of Education upon employment or termination of employment in the state in any public or private position requiring a Florida educator's certificate.
2. Have his or her immediate supervisor submit annual performance reports to the investigative office in the Department of Education.
3. Pay to the commission within the first 6 months of each probation year the administrative costs of monitoring probation assessed to the educator.
4. Violate no law and shall fully comply with all district school board policies, school rules, and State Board of Education rules.
5. Satisfactorily perform his or her assigned duties in a competent, professional manner.
6. Bear all costs of complying with the terms of a final order entered by the commission.

(e) Restriction of the authorized scope of practice of the teacher, administrator, or supervisor.

(f) Reprimand of the teacher, administrator, or supervisor in writing, with a copy to be placed in the certification file of such person.

(g) Imposition of an administrative sanction, upon a person whose teaching

certificate has expired, for an act or acts committed while that person possessed a teaching certificate or an expired certificate subject to late renewal, which sanction bars that person from applying for a new certificate for a period of 10 years or less, or permanently.

(h) Refer the teacher, administrator, or supervisor to the recovery network program provided in s. 1012.798 under such terms and conditions as the commission may specify.

48. Charges in a disciplinary proceeding must be strictly construed, with any ambiguity construed in favor of the licensee. Elmariah v. Dep't of Prof'l Reg., 574 So. 2d 164, 165 (Fla. 1st DCA 1990); Taylor v. Dep't of Prof'l Reg., 534 So. 2d 782, 784 (Fla. 1st DCA 1988). Disciplinary statutes must be construed in terms of their literal meaning, and words used by the Legislature may not be expanded to broaden their application. Beckett v. Dep't of Fin. Servs., 982 So. 2d 94, 99-100 (Fla. 1st DCA 2008); Dyer v. Dep't of Ins. & Treas., 585 So. 2d 1009, 1013 (Fla. 1st DCA 1991). Finally, a licensee may only be disciplined for those matters specifically alleged in the Administrative Complaint. Trevisani v. Dep't of Health, 908 So. 2d 1108 (Fla. 1st DCA 2005); Ghani v. Dep't of Health, 714 So. 2d 1113 (Fla. 1st DCA 1998); and Willner v. Dep't of Prof'l Reg., 563 So. 2d 805 (Fla. 1st DCA 1990).

49. The Administrative Complaint in this case is based upon the following factual allegations:



3. On or about September 5, 2013, Respondent engaged in the following inappropriate conduct with 10-year-old student, B.L., who is diagnosed with autism spectrum disorder:

- a) Respondent left B.L. in timeout unsupervised for an extended period of time;
- b) Respondent grabbed B.L. by both wrists and gripped his wrists intermittently for approximately six minutes. Respondent and B.L. then engaged in a tussle which resulted in B.L. falling to the ground;
- c) Respondent snatched a pair of glasses off of B.L.'s face and then continued to grab B.L.'s wrists;
- d) Respondent pulled B.L. off of the floor on several occasions. On some occasions, Respondent pulled B.L. off the floor by grabbing B.L.'s wrists;
- e) Respondent sat at a student's desk and watched B.L. rub his eyes and slap himself in the face numerous times. Respondent provided no physical intervention during these episodes;
- f) Respondent removed B.L.'s jacket without his permission;
- g) Respondent grabbed B.L. by the neck and gripped B.L.'s neck for approximately 10 seconds;
- h) Respondent dragged B.L. across the floor;
- i) Respondent dropped B.L.'s backpack on the floor and twice kicked it while B.L. watched. Respondent then kicked the backpack harder, causing the back[pack] to go airborne; and
- j) as B.L. tried to take possession of his backpack, Respondent kept the backpack beyond B.L.'s reach.

4. There was no excuse or justification for Respondent's conduct as described herein.

50. Based upon these factual allegations, Petitioner charged Respondent with failing to make reasonable effort to

protect a student from conditions harmful to learning and/or to the student's mental health, in violation of rule 6A-10.081(3) (a), and intentionally exposing a student to unnecessary embarrassment or disparagement, in violation of rule 6A-10.081(3) (e). Should Respondent be found guilty of either of these rule provisions, she would also be guilty of violating section 1012.795(1) (j), by violating the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules.

51. Respondent cannot be found guilty of violations for which she was not charged. Here, she is not charged with violating TEACH protocols adopted by the District; with use of unreasonable force; or inappropriate use of restraint (which does not appear to be defined in any rule or statute); or failure to document the use of restraint.

52. Count 2 asserts that Respondent's actions demonstrate that she has failed to protect a student from conditions harmful to learning and/or to the student's mental health and/or physical health and/or safety. The evidence shows, however, a teacher trying to get a student to learn to operate within the rules established for the classroom, so as to create an environment where he can learn. There are times that Ms. Newton placed her hands on B.L. and times where he resisted her. There was no evidence that B.L. was injured or harmed. The more consistent,

credible evidence, taken as a whole, does not provide clear and convincing evidence that Respondent violated rule 6A-10.081(3) (a).

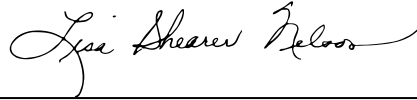
53. Count 3 asserts that Respondent intentionally exposed a student to unnecessary embarrassment or disparagement, in violation of rule 6A-10.081(3) (e). This count is also not supported by clear and convincing evidence. Neither B.L. nor his parent testified in these proceedings. There is no evidence that he was embarrassed at all. Moreover, when other children were in the room, they were involved in their own learning activities. When they looked at B.L., it appeared that they were watching his misbehavior, as opposed to watching Ms. Newton. The evidence taken as a whole simply does not support the violation charged in Count 3.

54. Given the conclusions reached with respect to Counts 2 and 3, Count 1 is also not supported by clear and convincing evidence.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Education Practices Commission enter a Final Order dismissing the Administrative Complaint.

DONE AND ENTERED this 25th day of November, 2015, in  
Tallahassee, Leon County, Florida.



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LISA SHEARER NELSON  
Administrative Law Judge  
Division of Administrative Hearings  
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1230 Apalachee Parkway  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 25th day of November, 2015.

ENDNOTES

<sup>1/</sup> Petitioner's Exhibit 1 is the video tape from Ms. Newton's classroom the day of the incident giving rise to these proceedings.

<sup>2/</sup> Clearly, neither parent could speak to the allegations in the Administrative Complaint and their testimony is not relied upon for the purpose of determining whether Respondent committed the allegations in the Administrative Complaint. Their testimony is included to demonstrate Ms. Newton's reputation in the community with respect to teaching.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.