

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

RICHARD CORCORAN, AS COMMISSIONER  
OF EDUCATION,

Petitioner,

Case No. 19-5153PL

vs.

ELIZABETH FELIX,

Respondent.

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RECOMMENDED ORDER

On January 23 and 24, 2020, the final hearing was held in this case in Altamonte Springs, Florida, before Brian A. Newman, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

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STATEMENT OF THE ISSUES

The issues in this case are whether Respondent committed the acts alleged and violations charged in the Administrative Complaint; and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On July 31, 2019, Richard Corcoran, as Commissioner of Education (Petitioner), issued an Administrative Complaint alleging that Elizabeth Felix (Respondent) violated section 1012.795(1)(j), Florida Statutes (2017),<sup>1</sup> and Florida Administrative Code Rule 6A-10.081(2)(a)1.

Respondent timely requested a hearing involving disputed issues of material fact to contest the charges against her. The case was forwarded to the Division of Administrative Hearings and a final hearing was set for November 27, 2019.

After one continuance at Respondent's request, the final hearing was rescheduled for January 23 and 24, 2020. On January 6, 2020, this case was transferred to the undersigned who conducted the hearing as rescheduled.

Prior to the final hearing, the parties filed a Joint Pre-hearing Stipulation, in which they stipulated to certain facts. To the extent relevant, the parties' stipulated facts have been incorporated in the findings below.

At the hearing, Petitioner presented the testimony of Acacia Vierbicky, Kimberly Ann Smith, Natalie Hatch, Anna Gonzalez, Cory Baker, Juan Colon, Chanda Nguyen, and Michelle Hartley. Petitioner's Exhibits 1 through 16 were admitted in evidence. Respondent testified on her own behalf and presented the testimony of Isaac Bowen, Traci Dice, Claudia Tyler, and Deborah Zuk. Respondent's Exhibits 1 through 13 were admitted in evidence.

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<sup>1</sup> The Administrative Complaint is based on events that occurred in October 2017. Accordingly, although the Administrative Complaint does not identify the version of the statutes or rules on which charges are predicated, the charges must be based on the law in effect at the time of the acts claimed to be violations. *Childers v. Dep't of Envtl. Prot.*, 696 So. 2d 962, 964 (Fla. 1st DCA 1997). Therefore, unless otherwise indicated, references herein to statutes are to the Florida Statutes (2017).

The two-volume Transcript of the final hearing was filed on February 26, 2020. The parties timely filed Proposed Recommended Orders, which have been considered in preparing this Recommended Order.

#### FINDINGS OF FACT

1. Petitioner, on behalf of the Education Practices Commission, is charged with the responsibility of certifying and regulating public school teachers in Florida.

2. Respondent is a teacher. At the time of the allegations in the Administrative Complaint, Respondent held Florida Educator's Certificate 1266409, covering the area Exceptional Student Education (ESE).

#### Respondent's Background

3. Respondent earned a bachelor's degree in special education from New York University and a master's degree in early childhood special education. From 1998 to 2015 she taught ESE in self-contained classrooms (classrooms dedicated to ESE students) in New York.

4. Respondent moved to Florida and began working for Orange County Public Schools, where she was employed in February 2015 as an ESE teacher at Ocoee Elementary School (Ocoee Elementary). For reasons unrelated to this case, Respondent was moved to the position of behavioral specialist (a non-classroom position), but returned to ESE classroom teaching in the fall of 2017.

5. Crisis Prevention Intervention (CPI) is a "best practice" crisis de-escalation protocol used district-wide in Orange County Public Schools. Respondent is CPI trained and certified.

6. In June 2017, Respondent injured her shoulder and ankle at work while she was attempting to pick a student up from the floor. She returned to work after a few weeks of physical therapy. She continues to have pain in her shoulder and ankle. Respondent also suffers from asthma and recurrent nerve pain.

7. By all accounts, Respondent was a dedicated and effective ESE teacher at Ocoee Elementary. She used her own funds to purchase supplies for her ESE students, including exercise balls for autistic students to prevent them from rocking in standard-issue chairs. Her evaluations from Ocoee Elementary were all "effective" or "highly effective." All of the witnesses who had occasion to observe Respondent in the classroom gave her high marks. There is no evidence that Respondent ever acted in anger or frustration with a student. She is accused of having done so in the incident at issue here.

#### Respondent's Classroom

8. For the fall of 2017, Respondent taught ESE students in a self-contained classroom at Ocoee Elementary. The grade level of her students spanned three grades, from second to fourth grade. The class size was approximately 12 students. The students were autistic and/or intellectually disabled.

9. Paraprofessionals were assigned to assist Respondent in the classroom, including Cory Baker, Chanda Nguyen, and Michelle Hartley.

10. The classroom had a designated "safe space," a small open area approximately three to four feet wide located between a large portable closet on wheels, a file cabinet on one side, and a wall on the other side. The safe space floor was covered with a soft mat and pillows. Posters on the safe space wall showed students how to breathe, relax, and decompress.

11. A bathroom was located inside the classroom. The door opened out to the classroom. The door could be locked from the inside. Respondent and the paraprofessionals assigned to the classroom had access to an Allen key to unlock the bathroom door, but a disc had to be "popped" off of the lock to use it.

12. Ocoee Elementary had a "crisis team" that could be called to assist when a student was in crisis, including removing the student if necessary. The crisis team included Juan Colon, who was the school's behavior

specialist, and Isaac Bowen, a behavior trainer. The crisis team typically responded to a call for assistance within one to two minutes.

#### The Incident with Student E.T.

13. E.T. was assigned to Respondent's ESE classroom for the fall of 2017. He was 12 years old at that time. The other students ranged from seven to nine years of age. At approximately 5'6", E.T. was not only the largest student in the class, but he was also larger, and about four inches taller, than Respondent.

14. E.T. was considered to be intellectually disabled. He was learning on a first or second grade level and his IQ was below 70. Some of the other students in the classroom were autistic, but E.T. was not.

15. A Behavior Intervention Plan (BIP) is a written plan that identifies problematic behaviors of a particular ESE student and strategies staff should use to address them. E.T. had a BIP that listed three problematic behaviors: (1) noncompliance (that is, refusing to perform tasks, by saying words like "no," "this is stupid," making faces or squeaking noises, or simply walking away); (2) physical aggression (including aggressive posturing towards his peers and throwing small objects like pencils, erasers, and papers); and (3) elopement (defined as walking away from staff).

16. On the morning of October 12, 2017, E.T. began engaging in disruptive behavior that ultimately required his removal from the classroom. The disruptive behavior began when E.T. crawled under the desk of one or more other students and grabbed crayons and pencils that were not his. Respondent attempted to de-escalate and redirect E.T. with oral instructions, but her attempts failed.

17. Ultimately, Respondent called the crisis team for help with E.T. Mr. Bowen arrived at Respondent's classroom within a short time with two other behavior trainers. The rest of the class was taken to the playground. Respondent and Mr. Bowen sat with E.T. at a table to work on compliance tasks, and E.T.'s behavior and mood improved. Respondent and Mr. Bowen

walked with E.T. to the playground to retrieve the rest of the class.

Respondent, E.T., and the rest of the class went back to the classroom.

Mr. Bowen and the other behavior trainers left to respond to another call. On the way back to Respondent's classroom, E.T. refused to walk in line with the other students. One of the paraprofessionals walked with E.T. and redirected him back to the line.

18. Back in the classroom, E.T.'s disruptive behavior resumed. He grabbed pencils and crayons that were not his and crawled under the desks of other students. He also blew mucus out of his nose, spit saliva onto his hands, and wiped his mucus and saliva all over his body. Respondent attempted to redirect E.T., initially by ignoring his behavior. When that failed, she attempted to redirect him with instructions and incentives. This strategy also failed. Finally, Respondent asked two of the paraprofessionals, Ms. Nguyen and Ms. Hartley, to take the other students to the sensory room, an activity room located outside of Respondent's classroom. The class was removed in the hope that E.T.'s behavior would improve once he was denied an audience of his peers. Respondent asked Ms. Baker to remain in the classroom with her to assist with E.T. When E.T.'s behavior did not improve, Respondent and Ms. Baker called the crisis team again, but this time they were unable to reach Mr. Colon or Mr. Bowen because they were either responding to other calls for help or in a radio "dead zone."

19. Respondent thought E.T. might respond better if he was allowed to talk with his mother, so she called E.T.'s mother and allowed him to talk to her on the class telephone. At that time, E.T. was under a table in the classroom pretending to be a turtle. E.T. feigned illness (fake coughing) and told his mother he wanted to go home. He also asked for potato chips to eat. The call terminated and E.T. refused to come out from under the table. After repeated unsuccessful attempts to coax E.T. out from under the table without laying hands on him, Respondent carefully pulled E.T. from under the table,

making sure he did not hit his head. E.T. was not injured in any way in the process.

20. Respondent then took E.T. to the classroom safe space. Once in the safe space, E.T. started to crawl under the portable wheeled closet. Respondent was concerned E.T. would injure himself in the process—legitimately so—and lifted him up and held him against the wall. E.T. made himself go limp to become "dead weight" and slumped down to the floor mat. Respondent lifted him back to his feet again and E.T. slumped back down to the floor. This process was repeated several times until E.T. reached on top of the closet and grabbed a basket of toys, causing the basket contents to fall to the safe space floor. The basket included toy train cars made of die cast metal. E.T. grabbed one of the train cars off the floor and threw it over the head of Ms. Baker, who was standing in the middle of the classroom. He threw another train car at Respondent, striking her in the head.

21. Respondent stepped on one of the train cars and fell hard against the wall, pinning E.T. between her and the wall. E.T. said, "My chest hurts, my heart hurts," and "I think I am going to die." Respondent's shoulder hurt and she was short of breath. Having reached her physical limits, Respondent decided to remove E.T. from the safe space because she was concerned he would be able to reach other items on top of the closet, including a heavy paper slicer with a sharp cutting arm. Respondent's plan was to transport E.T. out of the classroom to the "calm-down" room, an empty classroom used to allow students in crisis to decompress. The calm-down room is located about 20 to 30 yards from Respondent's classroom.

22. Respondent guided E.T. out of the safe space and toward the classroom door, with his arm under her armpit. This would be an approved CPI transport hold but for the fact that CPI transport requires two adults to transport a student in crisis in this manner, with each of the student's arms under the armpits of an adult on each side of the student. Ms. Baker—who was also CPI-trained—did not offer to serve as the second adult or provide

any other assistance to Respondent while she was struggling to transport E.T. out of the safe space.

23. E.T.—apparently unfazed by falling with Respondent against the safe space wall moments earlier—started to laugh and grabbed crayons off the desk of another student as he was being guided toward the classroom door. E.T. pulled away from Respondent and started walking quickly ahead of her. Respondent tried to maintain a hold on E.T., but was unable to do so without help from anyone (such as Ms. Baker, who continued as a spectator to Respondent's struggles). E.T. announced he was going to the bathroom and headed for the bathroom door. Respondent rushed to stop him, but tripped and landed hard against the bathroom door with E.T. Respondent was concerned—legitimately so—that E.T. could lock himself in the bathroom and create a mess or injure himself before the key to the bathroom could be accessed. Respondent applied all of her weight to the bathroom door, while E.T. held onto the doorknob, to prevent him from accessing the bathroom. Respondent held E.T. against the bathroom door, using her forearm against his chest. Respondent then struggled to lead E.T. away from the bathroom door and toward the classroom exit door, sliding with him against the wall.

24. Natalie Hatch, a staffing specialist at Ocoee Elementary, and Mr. Colon entered the classroom door when Respondent was struggling to keep E.T. out of the bathroom. Mr. Colon immediately assisted Respondent to escort E.T. to the calm-down room using the dual-hold CPI transport position.

25. On the way to the calm-down room, E.T. was crying and upset and he continued to wipe mucus and saliva on his body. In the calm-down room, E.T. tore paper and threw it on the floor. After about 15 minutes, he calmed down and Mr. Colon talked to him about the importance of following instructions. Ms. Colon asked E.T. to pick the paper off the floor and E.T. complied. Mr. Bowen also arrived and walked with E.T. and Mr. Colon back to Respondent's classroom. There were no further incidents involving E.T. that day. E.T. was not injured, physically or otherwise.



26. The Findings of Fact regarding the incident with E.T. are based almost entirely on Respondent's testimony, which the undersigned found to be highly credible. The findings are also consistent with the credible testimony of Mr. Colon, who found nothing wrong with Respondent's attempt to keep E.T. from going into the bathroom by holding him against the bathroom door, nor did he find anything wrong with anything else he witnessed after entering Respondent's classroom.

27. Ms. Baker stood in the middle of the classroom while Respondent struggled with E.T. Ms. Baker could not see all of the safe room interactions between Respondent and E.T., because her field of view was blocked by the closet and cabinet that formed the boundary of the safe space. Ms. Baker made repeated calls to the crisis team, but otherwise failed to offer any assistance to Respondent. Ms. Baker did not voice any objection to the manner in which Respondent physically interacted with E.T.

28. The following day, Ms. Baker complained to administration that Respondent physically mistreated E.T. This led to an investigation of the incident and ultimately to Respondent's termination.

#### Rejection of Corey Baker's Testimony

29. Petitioner relies chiefly on the testimony of Ms. Baker to prove its case. For the reasons that follow, Ms. Baker's testimony was not credible and has not been accorded any weight.

30. Ms. Baker's account of the incident differed from Respondent's in that she contends Respondent "manhandled" E.T. out of frustration, including: "snatching" him out from under the table when he was pretending to be a turtle; and repeatedly slamming E.T. hard against the wall of the safe room; and later the bathroom door. Essentially, Ms. Baker accuses Respondent of physically mistreating E.T. out of frustration with his conduct that day.

31. Ms. Baker's testimony is rejected where it conflicts with the testimony of Respondent and Mr. Colon for several reasons. First, Ms. Baker's field of view of the safe space was obstructed. No credit has been given to her

testimony about what occurred when E.T. and Respondent were in the safe space together, because she could not see all of what happened there. That she would offer testimony describing events she could not have seen casts doubt on her overall veracity.

32. Ms. Baker's credibility also suffers from her admitted failure to intercede in any way to aid a student she now claims to have been physically mistreated for a prolonged period of time. If, as Ms. Baker contends, Respondent "manhandled" E.T. while the three were alone in the classroom, then Ms. Baker should have attempted to separate the two or at least warn Respondent that she was being too rough; she did neither. Here is Ms. Baker's explanation for why she stood idle when Respondent and E.T. struggled:

Q. So why didn't you jump into that space and help her lift him up? Why didn't you do something?

A. Because, like I said, I do not feel comfortable with it being a blind corner [referring to the safe space] and already seeing stuff done that shouldn't have been done. If somebody came in, it would have literally looked like we were both just trying to take this kid out.

In other words, Ms. Baker claims she did nothing to protect E.T. because she might also get into trouble. This explanation is rejected. It is inconceivable that Ms. Baker would sit back and do nothing if she believed Respondent was mistreating E.T. The rational explanation for why Ms. Baker did nothing to intercede to stop Respondent is that Respondent's actions were appropriate under the circumstances.

33. Finally, Ms. Baker's credibility suffers from her embellishment of the incident, including the trauma she claims to have suffered after-the-fact. Ms. Baker testified that the incident was so traumatic that she had nightmares for a week or two afterwards. She went so far as to blame the

stress of witnessing the incident for ending her relationship with her boyfriend. There was no evidence that E.T. was injured in the slightest. Indeed, as Ms. Baker admitted, E.T. laughed and continued to grab crayons that were not his after he left the safe space with Respondent. Ms. Baker grossly distorted the resulting trauma she claims to have suffered.

34. For all of these reasons—and the undersigned's observation of the demeanor of the witnesses who testified live at the final hearing—Ms. Baker's account of the incident with E.T. is found to be grossly exaggerated and unreliable, and is given no weight.<sup>2</sup>

#### The OCPS Investigation

35. Petitioner also offered the testimony of Acacia Vierbicky, an investigator for Orange County Public Schools (OCPS). Ms. Vierbicky was charged with investigating the incident involving E.T. after Ms. Baker complained to administration.

36. Ms. Vierbicky testified that during the investigation, Respondent admitted to her that she "snatched" E.T.'s arm from underneath the table when he was pretending to be a turtle, and pinned him against the wall—face first—in the safe space.

37. The Administrative Complaint does not allege facts regarding the manner in which Respondent removed E.T. from under the table as a predicate for any charges. Regardless, Respondent denied that she "snatched" E.T. from under the table and explained why she removed him from underneath the table. Respondent's testimony was credible and is accepted over Ms. Vierbicky's recollection of what she was told during her investigation.

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<sup>2</sup> Additional evidence was offered to impeach Ms. Baker's credibility. First, to suggest bias, Respondent and Ms. Baker were close friends at one time, but that relationship soured the summer before this incident occurred. Second, another teacher testified that Ms. Baker came forward with false allegations against her in an attempt to get her fired. Finally, another witness testified that Ms. Baker is prone to exaggerate events involving students in general. While all of this testimony may be true, it is unnecessary to rely upon it to reach the conclusion that Ms. Baker's testimony is unreliable.

38. The characterization of whether Respondent "pinned" or "held" E.T. against the wall of the safe space with the weight of her body is not an important distinction here. What is important is that Respondent did so to prevent E.T. from crawling under the wheeled closet or grabbing dangerous items from the top of the closet. Holding E.T. against the wall under these circumstances—whether an approved CPI hold or not—was entirely reasonable to prevent E.T. from hurting himself or others. Ms. Vierbicky's testimony as to her recollection of Respondent's admissions is rejected where it differs from Respondent's live testimony.<sup>3</sup>

#### Crisis Prevention Intervention

39. CPI is not the law; it has not been adopted by statute or rule.

40. Petitioner offered the testimony of Kimberly Ann Smith, an expert in CPI and behavior analysis. Ms. Smith testified credibly that pinning or holding a student against a wall or holding a student with his arm behind his back is not an approved CPI hold. But, as Ms. Smith repeatedly acknowledged, CPI is a "best practice" protocol. As such, restraining a student with a non-CPI approved hold can be reasonable under certain circumstances even if it is not the "best practice."

41. Ms. Smith testified that it is acceptable to physically restrain a student when the student may hurt himself or others. Ms. Smith also agreed that E.T. could have injured himself crawling under the wheeled closet and that throwing the metal trains presented a legitimate safety concern. The CPI training materials offer examples of approved holds that one teacher can apply to restrain a student, but these holds are not appropriate for a student

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<sup>3</sup> Ms. Vierbicky's investigative summary of the incident involving E.T. was admitted as an exhibit in this proceeding, as were the witness statements she collected during her investigation. Although admitted, these exhibits have not been relied upon here because they are largely hearsay. *See* § 120.57(1)(c), Fla. Stat. It is also noteworthy that there are obvious material omissions from Ms. Vierbicky's investigative summary, including the failure to mention that E.T. grabbed and threw metal trains while in the safe space and the failure to mention the fact that E.T. was not injured. Thus, even if not hearsay, or predicated on hearsay, the investigative summary represents an incomplete assessment of the incident with E.T., and is unreliable for this reason alone.

who is taller than the teacher. In fact, these holds should only be used on a student who is at least a head shorter than the teacher. E.T. is significantly taller than Respondent. Petitioner offered no evidence of a CPI-approved hold that would have been appropriate for Respondent to use under the circumstances she confronted with E.T.

42. Petitioner also offered testimony from Ms. Hatch to show that Respondent did not use a CPI-approved restraint when E.T. was attempting to enter the bathroom. Ms. Hatch testified that when she entered the classroom, she saw Respondent holding E.T. with his face against the wall with his hand behind his back. This differs from Mr. Colon's testimony, which was that Respondent was holding E.T. with his back against the bathroom door with her forearm on his chest. Although Mr. Colon's and Ms. Hatch's recollection of the positioning of Respondent and E.T. differ, the distinction is not material. Respondent had a legitimate concern to keep E.T. from entering the bathroom under the circumstances, and her attempts to do so—although not a CPI-approved hold—were reasonable under the circumstances.

43. For all of these reasons, Respondent's admitted failure to use CPI-approved holds to restrain E.T. is not evidence that she failed to make reasonable effort to protect E.T. from any potentially harmful conditions, or that she exposed him to a risk of mental or physical harm.

#### Ultimate Findings

44. It is determined, as a matter of ultimate fact, that Respondent, in fact, made reasonable effort to protect E.T. from conditions harmful to learning and/or to his mental or physical health and/or to his safety.

#### CONCLUSIONS OF LAW

45. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2019).

46. In this proceeding, Petitioner seeks to discipline Respondent's educator's certificate. Petitioner bears the burden of proving the allegations in the Administrative Complaint by clear and convincing evidence. *Dep't of Banking & Fin. v. Osborne Stern & Co.*, 670 So. 2d 932, 935 (Fla. 1996); *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987). 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 explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such 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 Henson*, 913 So. 2d 579, 590 (Fla. 2005) (quoting *Slomowitz v. Walker*, 492 So. 2d 797, 800 (Fla. 4th DCA 1983)). *Accord Westinghouse Electric Corp., Inc. v. Shuler Bros., Inc.*, 590 So. 2d 986, 988 (Fla. 1st DCA 1991) ("Although this standard of proof may be met where the evidence is in conflict, ... it seems to preclude evidence that is ambiguous.").

47. The Administrative Complaint charges Respondent with violating section 1012.795(1)(j). Section 1012.795 provides, in pertinent part:

(1) The Education Practices Commission may suspend the educator certificate of any person as defined in s. 1012.01(2) or (3) for up to 5 years, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for that period of time, after which the holder may return to teaching as provided in subsection (4); may revoke the educator certificate of any person, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for

up to 10 years, with reinstatement subject to the provisions of subsection (4); may revoke permanently the educator certificate of any person thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students; may suspend the educator certificate, upon an order of the court or notice by the Department of Revenue relating to the payment of child support; or may impose any other penalty provided by law, if the person:

\* \* \*

(j) Has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules.

Section 1012.795(1)(j) requires proof of a violation of the Principles of Professional Conduct for the Education Profession prescribed by rule of the State Board of Education. Thus, this charge is linked to and predicated on the charged rule violation, which is rule 6A-10.081(2)(a)1.:

(a) Obligation to the student requires that the individual:

1. Shall make reasonable effort to protect the student from conditions harmful to learning and/or to the student's mental and/or physical health and/or safety.

48. The Administrative Complaint alleges that Respondent violated this rule by restraining E.T. in a non-CPI approved hold, by holding his arms behind his back and forcibly pushing him against a wall multiple times.

49. As found above, Respondent did not fail to make reasonable effort to protect E.T. from conditions harmful to his learning and/or to his mental or physical health and/or to his safety. Although Respondent restrained E.T. using admittedly non-CPI-approved methods, she had no other reasonable choice under the circumstances (and none was shown to exist), because E.T.'s

conduct presented a risk of harm to himself and others if she failed to act. Respondent did the best she could under difficult conditions given her physical limitations and her paraprofessional's failure to offer physical assistance. There is no evidence that E.T. was injured in any way and he returned to the classroom without further incident that day after he decompressed in the calm-down room.

50. The CPI protocols have not been adopted by rule. As such, the failure to follow unadopted CPI protocols alone cannot be the basis for disciplinary action against Respondent. *See* § 120.57(1)(e)1. ("An agency or an administrative law judge may not base agency action that determines the substantial interests of a party on an unadopted rule...."). While it is possible that using a non-CPI-approved restraint could be part of a factual scenario that could give rise to discipline, the violation of the predicate rule would have to be proven (i.e. that the teacher failed to make reasonable effort to protect the student from the requisite harmful conditions). If, for example, Respondent repeatedly slammed E.T. against the wall and otherwise "manhandled" him out of anger—as Ms. Baker accused—then disciplinary action would have been warranted for using non-CPI-approved holds in that manner.

51. But that factual scenario was not proven here. Instead, the credible evidence established that Respondent's conduct was reasonable in all respects and that she restrained E.T. to protect him, not to harm him. Petitioner failed to establish that Respondent violated rule 6A-10.081(2)(a)1., and therefore failed to establish a violation of section 1012.795(1)(j).

#### RECOMMENDATION

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



DONE AND ENTERED this 27th day of March, 2020, in Tallahassee, Leon  
County, Florida.



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BRIAN A. NEWMAN  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th day of March, 2020.

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.