

**BEFORE THE  
TEACHER STANDARDS AND PRACTICES COMMISSION  
STATE OF OREGON**

IN THE MATTER OF: ) **FINAL ORDER**  
 )  
JESSICA M. FAUDSKAR-HOPKES ) OAH Case No. 2021-ABC-05089  
 )  
 )

This matter came before the Teacher Standards and Practices Commission (Commission) during its meeting of June 21, 2023, to consider the Proposed Order issued by Administrative Law Judge (ALJ) Samantha Fair on January 31, 2023. The Proposed Order allowed Ms. Faudskar the opportunity to file exceptions but the Commission did not receive any exceptions to the Proposed Order. After considering the record, the Commission adopts the ALJ's Findings of Fact, Conclusions of Law and recommended sanction. The Commission has modified the reasoning as explained below and otherwise adopts the following Final Order.

**HISTORY OF THE CASE**

On June 23, 2021, the Commission issued Jessica M. Faudskar-Hopkes a Notice of Opportunity for Hearing, proposing to discipline Ms. Faudskar based upon allegations of professional misconduct. On July 12, 2021, Ms. Faudskar requested a hearing.

On December 17, 2021, the Commission referred the matter to the Office of Administrative Hearings (OAH). The OAH assigned ALJ Jennifer Rackstraw to preside at hearing. On January 21, 2022, ALJ Rackstraw convened a prehearing conference. Attorney Jill Gibson appeared on Ms. Faudskar's behalf. Senior Assistant Attorney General Raul Ramirez appeared on the Commission's behalf. ALJ Rackstraw scheduled the hearing for September 20 through 23, 2022, and set deadlines for the submission of witness lists and exhibits.

On September 6, 2022, the OAH reassigned the matter to ALJ Samantha Fair.

ALJ Fair convened a hearing held on September 20 through 22, 2022, in Tualatin, Oregon. Ms. Faudskar appeared, testified, and was represented by Ms. Gibson. Mr. Ramirez represented the Commission. Kevin Cooley, a Commission legal liaison, also appeared on behalf of the Commission.

Testifying on behalf of the Commission were the following:

- Ms. Faudskar;
- Mr. Cooley;
- Jill Ingram, currently a Tillamook School District (TSD) high school principal, previously a TSD special education (SpEd) director;
- Rachel Williamson, a TSD principal assigned to Liberty Elementary School (Liberty);

- Julie Schneidecker, currently a TSD SpEd director and MANDT trainer for TSD, previously a SpEd teacher;
- Kim Bartlett, currently a TSD preschool teacher and previously a SpEd teacher at Liberty;
- Debi Hartford, currently a TSD general education assistant (EA)<sup>1</sup> and previously a SpEd EA at Liberty; and
- Stephanie Van De Hey, currently a TSD SpEd teacher and previously a SpEd EA at Liberty.

Testifying on behalf of Ms. Faudskar were the following:

- Ms. Faudskar;
- Jennifer Guarcello, a TSD communication grant foundation director and prior Liberty principal;
- Suzie Morey, a TSD SpEd EA at Liberty;
- Sabrina Hamerl, a previous TSD SpEd EA, now a NW Regional ESD EA;
- Reyna Siguardson, a NW Regional ESD autism consultant;
- Alicia Walker, a previous TSD SpEd EA, currently a TSD SPED records manager;
- Traci Martin, a previous TSD SpEd EA;
- Krystine Valle, parent of child previously at Liberty;
- Savannah Zuidema, parent of a child previously at Liberty;
- John Pickering, a NW Regional ESD speech language pathologist; and
- Maddison Oleman, a TSD SpEd EA.

ALJ Fair left the record open until December 2, 2022, for the submission of written closing arguments. On November 10, 2022, the parties requested an extension of the deadlines for the filing of written closing arguments. On November 14, 2022, ALJ Fair granted the request and extended the filing deadlines.

On November 23, 2022, the Commission filed a Closing Argument. On December 7, 2022, Ms. Faudskar filed her Closing Argument. On December 14, 2022, the Commission filed a Rebuttal to Ms. Faudskar's Closing Argument. The record closed on December 14, 2022, after receipt of the Rebuttal.

## ISSUES

1. Whether Ms. Faudskar engaged in conduct that constituted gross neglect of duty by utilizing unnecessary physical force and engaging in aggressive manners with students. ORS 342.175(1)(b) (2017);<sup>2</sup> OAR chapter 584 division 20.

---

<sup>1</sup> EAs were classified staff that provided assistance to the SpEd children under Ms. Faudskar's supervision. (Test. of Faudskar and Van De Hey.)

<sup>2</sup> The version of the statute cited herein was in effect at the time of the Commission's allegations regarding Ms. Faudskar's conduct. The statute was most recently amended with an effective date of January 1, 2022. The amendment made no changes to the statute that would change the outcome of this

2. If so, what discipline the Commission should assess against Ms. Faudskar. ORS 342.177(3) (2015).<sup>3</sup>

## EVIDENTIARY RULINGS

Exhibits A1 through A13 and A15 through A18, offered by the Commission, were admitted into the record without objection. Upon the admission of Exhibit A18, Ms. Faudskar's objection to Exhibit A14 was overruled and it was admitted into the record.<sup>4</sup> Exhibits R1 through R4 and R6, offered by Ms. Faudskar, were admitted into the record without objection. The Commission's objection to Exhibit R5 was overruled, and the exhibit was admitted into the record.

## FINDINGS OF FACT

### Ms. Faudskar's Licensing and Initial Employment with TSD

1. On November 20, 2015, the Commission issued Ms. Faudskar a preliminary teaching license with a SpEd endorsement. Ms. Faudskar renewed her license through November 26, 2021. (Ex. A12 at 1-2.) Ms. Faudskar did not renew her license for the period after November 26, 2021, and it remains expired. (Test. of Faudskar and Cooley.)

2. In October 2015, Ms. Faudskar accepted a teaching position with the Tillamook School District. The written position description, signed as reviewed by Ms. Faudskar on October 16, 2015, included the requirement to follow TSD policies and procedures and to follow the Commission's practice standards for competent and ethical educators. (Ex. A1 at 1.) TSD renewed her teaching contract each year through the 2019/2020 school year. (Exs. A4 - A6.)

3. Donna Minard, Ms. Faudskar's original TSD SpEd Director, completed annual performance evaluations for Ms. Faudskar from 2016 through 2018 that showed steady improvement in Ms. Faudskar's teaching skills. (Ex. R2 at 5-19.) On February 4, 2016, Ms. Minard observed Ms. Faudskar's classroom. (*Id.* at 14.) She noted the following:

Jessica creates an environment of respect and rapport. Interactions between Jessica and the students and among students were polite and respectful, reflecting general warmth and caring, and were appropriate to

---

proceeding. All subsequent citations to the statute in this Proposed Order are to the 2017 version of the statute.

<sup>3</sup> The version of the statute cited herein was in effect at the time of the Commission's allegations regarding Ms. Faudskar's conduct. The statute was most recently amended with an effective date of January 1, 2020. The amendment made no changes to the cited portions of the statute. All subsequent citations to the statute in this Proposed Order are to the 2015 version of the statute.

<sup>4</sup> Exhibit A18 was the recording of the Commission investigator's interview of Ms. Faudskar. Exhibit A14 was a legal secretary's transcript of that interview. Exhibit A18 will control for any discrepancies between the exhibits.

the development differences among the students.

\* \* \* \* \*

Jessica sets the standards of conduct and makes it clear to the students. She uses picture, body language and verbal communication to help the students perform the desired behaviors. Jessica is aware of behaviors and corrects it immediately. She requires students to have eye contact with her when she is correcting them. Her response to misbehavior is appropriate, respectful and effective.

(*Id.* at 15-16.)

4. In 2017, Ms. Minard, while noting many positives about Ms. Faudskar's performance such as complying with school and district policies and working well with her EAs, noted as follows:

I would like to have [NW Regional ESD] observe the classroom and provide the team some suggestions for working with the students so the staff is using physical assist in a positive manner and not as a reaction to inappropriate behaviors.

\* \* \* \* \*

At times Jessica's voice may sound harsh, this is something that Jessica will want to monitor as the redirect can be given with a firm voice without sounding harsh.

\* \* \* \* \*

I would like to see Jessica be more open to feedback from her supervisor.

I would like Jessica to be more responsive to emails and returning phone calls to staff.

(Ex. R2 at 8-9.) Ms. Minard did not note these areas as concerns in her subsequent evaluations of Ms. Faudskar. (*Id.* at 2-7.)

5. In 2018, Ms. Minard noted the following:

Jessica does a great job with the use of visual prompts and visual schedules for students. \* \* \*.

\* \* \* \* \*

Jessica does a nice job of modeling for the students and adults as to how

to respond in a polite and respectful manner. Procedures for classroom activities are well organized. Specific positives are given to students. The classroom is safe and accessible. Jessica has high expectations for students' behaviors and follows through.

\* \* \* \* \*

Jessica is explicit in her directions, using few words so she does not confuse students who have limited processing skills. She also makes good use of body language, visuals and gestures to help students understand.

(Ex. R2 at 6-7.)

6. On January 21, 2019, Ms. Minard completed a performance evaluation for Ms. Faudskar. In the evaluation, Ms. Minard rated Ms. Faudskar as proficient in most teaching skills, distinguished in a couple of skills including communicating with students, and basic in the one skill of using questioning and discussion techniques. Ms. Faudskar received no unsatisfactory marks in the evaluation. (Ex. R2 at 2-3.) Ms. Minard also noted the following:

Jessica has a good understanding of teaching students communication skills, following routines, use of picture schedules and showing respect. She has a good understanding of students' individual skills and learning levels.

\* \* \* \* \*

Expectations for learning, directions and procedures, and explanations of content are clear to students. Jessica's oral and nonverbal communication is clear and expressive, appropriate to students' levels of development, and anticipates possible student misconceptions.

(*Id.* at 3.)

7. Many educators and parents observed Ms. Faudskar's interactions with students during her years as a Liberty SpEd teacher. These individuals found that Ms. Faudskar was responsive to the students' needs, spoke in an animated and forthright manner with a loud voice, was kind but disciplined, was quick to praise appropriate student behavior, and provided a consistent and organized classroom for her students. They found her to be a competent teacher that used research-based strategies with the students and was effective in teaching SpEd students to transition into general education classrooms. Several individuals noted that the children were responsive to and liked Ms. Faudskar. (Test. of Valle, Guarcello, Morey, Martin, Zuidema, Oleman, Siguardson, Pickering, Walker, and Hamerl.)

TSD Student Restraint Policy

8. TSD published a policy titled “Use of Restraint or Seclusion” (Restraint Policy). The Restraint Policy provides the following definition:

“Restraint” means the restriction of a student’s actions or movements by holding the student or using pressure or other means.

“Restraint” does not include:

- a. Holding a student’s hand or arm to escort the student safely and without the use of force from one area to another;
- b. Assisting a student to complete a task if the student does not resist the physical contact; or
- c. Providing reasonable intervention with the minimal exertion of force necessary if the intervention does not include a restraint prohibited under Oregon Revised Statute (ORS) 339.288 and the intervention is necessary to:

- (1) Break up a physical fight;
- (2) Interrupt a student’s impulsive behavior that threatens the student’s immediate safety, including running in front of a vehicle or climbing on unsafe structures or objects; or
- (3) Effectively protect oneself or another from an assault, injury or sexual contact with the minimum physical contact necessary for protection.

(Ex. A13 at 2.)

9. The Restraint Policy lists specific forms of restraint as prohibited, such as chemical or mechanical restraint. Lifting a child off the floor is not included in the prohibited list. (Ex. A13 at 1.)

The Restraint Policy provides, in part:

Restraint may be imposed on a student in the district only under the following circumstances:

- 1. The student’s behavior imposes a reasonable risk of imminent and substantial physical or bodily injury to the student or others; and
- 2. Less restrictive interventions would not be effective.

\* \* \* \* \*

If restraint or seclusion is used on a student, \* \* \*, it will be used only for as long as the student’s behavior poses a reasonable risk of imminent and substantial physical or bodily injury to the student or other and less

restrictive interventions would not be effective. \* \* \*.

\* \* \* \* \*

The district shall utilize the MANDT training program of restraint or seclusion for use in the district. \* \* \*.

(*Id.* at 2-3.) The 2019/2020 school year was the first year that TSD used the MANDT System. (Test. of Schneidecker.)

### The MANDT System

10. The MANDT System “is a comprehensive, integrated approach to preventing, de-escalating, and if necessary, intervening when the behavior of an individual poses a threat of harm to themselves and/or others.” (Ex. A2 at 7.) The MANDT System details a number of mechanisms for communication, including verbal, tone, physical appearance, eye contact, and touch. The MANDT System provides for restrictive physical interactions, or restraints, that are only “used for the purpose of protection and should not be used for the purpose of changing behavior in situations in which no protective need is present” and “should be terminated as soon as the need for protection is over.” (*Id.* at 293.) The MANDT System demonstrates several forms of restraints, such as the one-person or two-person side hug. It does not demonstrate a form of restraint that bodily lifts a person off the ground. (*Id.* at 300-318.)

11. The MANDT System includes a section, titled “Touch as communication,” and provides, in part:

Touch is part of what it means to be human. \* \* \*. When using touch to communicate with others, remember that many people have been touched without permission.

\* \* \* and they are touched without permission. It is a violation of someone’s personal space. Caregivers should always ask permission.

Touch only when necessary. When people are “touchy-feely” in their communication, it often produces negative feelings in others. Only touch when necessary to say “please” and “thank you” in your communication with others.

When touching for the purpose of communication, only use fingers, not the whole hand. When the fingers are on someone’s arm or shoulder, they receive a very different message from when the hand is on a more vulnerable area of their body. Using only fingers takes away any perception that the caregiver is trying to control the person.

When touching for communication, fingers will be either between the elbow and shoulder, or on the top of the shoulder, away from the neck.

Movements should be slow, smooth, and small when touching the person, and hands should be open and relaxed. An open hand conveys warmth and openness, while a closed hand, even if it is not a fist but the fingers are touching each other, is seen as a slapping hand.

When touching for the purpose of saying please and thank you, make sure to touch for only a few seconds. When hands are on the person longer than 2-4 seconds, the person may begin to question the purpose of the touch.

Many of the individuals served may want a hug. Hugging is something people often do when greeting each other if they know each other well. \* \* \*.

The MANDT System recommendation is to use side-to-side hugs because they are much less open to misinterpretation by the individual receiving the hug and by others.

(Ex. A2 at 51.)

12. When an individual is in crisis, the MANDT System recommends the following:

Protect using the least amount of interaction necessary for safety.

- Stay calm \* \* \*. Stay out of reach.
- If there is no threat of injury to the person or others, re-evaluate.
- Get some assistance \* \* \*.
- The safety of all individuals is the most important thing. Only the least restrictive interaction needed to adequately protect the person or others should be used.
- Physical interactions/interventions should only be used for the purpose of protection, and should not be used for the purpose of changing behavior in situations where no protective need is present.

\* \* \* \* \*

\* \* \*. Adjust your actions accordingly so you do not use more physical interaction than absolutely necessary to protect from harm. \* \* \*. Don't attempt to manipulate or control the person physically \* \* \*.



\* \* \* \* \*

The use of restrictive physical interaction/interventions must be individualized. All physical interaction should be terminated as soon as the need for protection is over, and all use of physical interactions must be documented. \* \* \*. Always treat the person as an individual with fairness, consistency, dignity, and respect.

(Ex. A2 at 83.)

13. The MANDT System stresses the importance of the use of verbal and nonverbal skills and treating individuals with dignity and respect before the employment of restrictive physical interactions. (Test. of Schneidecker.) The MANDT System allows for physical interactions “done in ways that use the minimum amount of physical interaction to maintain the safety of all people.” (Ex. A2 at 190.) Prohibited practices for physical interaction include the following:

- Potential risk of hyper-extension of any part of the body beyond normal limits. Positions where limbs are almost hyperextended can result in hyperextension if the person struggles.

\* \* \* \* \*

- Pressure or weight on chest, lungs, sternum, diaphragm, back, or upper abdomen

\* \* \* \* \*

- Any technique that involves substantial risk of injury  
If a practice is not on this list, and you believe it could result in harm or injury, don't do it!

\* \* \* \* \*

- Any technique that puts or keeps the person off balance, i.e., shoving, tripping, pushing on the backs of the knees  
When people are off balance, they do not feel safe and they will escalate.  
We strive to always keep people balanced.

\* \* \* \* \*

- Any lifting or carrying of a person who is actively combative unless an extreme hazard or emergency exists \* \* \*  
Only an extreme hazard or emergency would meet the criteria to authorize the use of lifting and/or carrying someone who is actively combative.

(*Id.* at 192-193.) Carrying a student a short distance would be allowable if a student is exposed to immediate danger and does not move voluntarily from danger. Preferred escort actions would be walking with a student to guide them away from danger; using hands on the child’s hip and arm to escort; or other less restrictive physical interventions. The physical escort of an escalated child to a quiet room would be allowable if the quiet room was a short distance away. An alternative to the physical escort of an escalated child would be to remove the other children from the area.<sup>5</sup> (Test. of Schneidecker.)

14. The MANDT System allows for physical and non-physical assisting. The MANDT System defines “assisting,” as follows:

Assisting is giving non-physical and/or physical help, guidance, support, and protection from harm to a person who may be disoriented, \* \* \*, or who, for any reason, is having trouble with directions, information, a specific task, \* \* \*.

(Ex. A2 at 194.) The MANDT System further describes physical assisting as forms of physical touch needed to steady an individual while sitting, standing or walking. (*Id.* at 195.)

15. The MANDT System allows for physical touching with certain principles such as the following:

Ask permission to touch whenever possible;

Touch may be necessary when talking to young children or others who need messages to be reinforced by other senses in order to receive the communication;

People who are hyperactive or easily distracted may need the caregiver to touch their hand or shoulder and maintain eye contact while giving them verbal instructions. Make sure the touch is relaxed and nonthreatening;

Keep hands open and relaxed.

(Ex. A2 at 242-243.)

### 2019/2020 School Year at Liberty

16. Liberty Elementary School (Liberty) is a small, single-story school for kindergarten and first grade students. Ms. Faudskar’s SpEd classroom was in a detached building, located a short distance from the main school building, that opened to a foyer area shared with an adjacent reading room. (Ex. A17 at 1; test. of Faudskar.) There was a quiet area with padded walls adjacent to the SpEd classroom that escalated children could use to allow them time to

---

<sup>5</sup> Known as a “room clear.” (Test. of Faudskar.)

deescalate. There was no door between the quiet area and the SpEd room although educators would sometimes hold gym mats across the opening of the quiet area to prevent a child from escaping the quiet area. (Exs. A14 at 7; A18 at 4:45; test. of Faudskar.)

17. For the 2019/2020 school year, Ms. Faudskar's classroom included approximately seven children with autism and behavioral issues. (Exs. A14 at 2, 6; A18 at 3:14.) She had three SpEd educational assistants for her classroom. (Test. of Faudskar.) Specialists from NW Regional EDS would visit her classroom on a weekly basis. (Test. of Sigurdson and Pickering.) During the 2019/2020 school year, Liberty assigned the SpEd EAs other duties, such as monitoring lunches and recess periods and attending reading groups, that required them to leave the SpEd classroom. (Test. of Faudskar.) Ms. Faudskar was never alone with the students in the SpEd classroom. (Test. of Faudskar and Guarcello.)

18. Ms. Faudskar completed a two-day, TSD-assigned MANDT training on August 19, 2019, that was required for teachers with behavioral students. (Ex. A15 at 1; test. of Faudskar and Schneidecker.) As part of the MANDT training, Ms. Faudskar successfully completed the tests for the different chapters of the MANDT course. (Test. of Schneidecker.)

19. Based upon the MANDT training, Ms. Faudskar understood that restraints and holds would be used in the following occasions: preventing a child from self-abusing, preventing a child from harming others, and preventing a child from engaging in physically dangerous activities. (Exs. A14 at 2; A18 at 5:51.) Ms. Faudskar focused on avoiding these occasions by providing students schedules, predictability, consistency and praise. (Exs. A14 at 3; A18 at 6:36.) When needed to contain or redirect a child, Ms. Faudskar employed body blocks to create a barrier rather laying hands on a child. Ms. Faudskar employed touch with children, touching their arms or shoulders, using side-hugs, moving them by the shoulder, touching a child's chin or cheek to make eye contact and for visual and verbal prompts. She primarily relied on communication with expectations and rewards to direct student behavior and prevent student escalations. (Exs. A14 at 3; A18 at 9:06 and 1:23 and 6:48.)

20. Ms. Faudskar, or an aide, employed MANDT assistance techniques to get recalcitrant children to stand and move. The technique would involve moving behind the child, putting their hands on the child's forearms to tuck in the child's arms, and, while keeping the child's body stable, stand up and walk with the child. These moves would only occur when needed, such as fire alarms, and when visual or verbal prompts or waiting for the child to initiate compliance were unsuccessful. (Exs. A14 at 9; A18 at 4:21 and 7:02.) In prior school years, Ms. Faudskar employed this hold with students on two occasions and filed TSD-required restraint reports after each incident. (Test. of Faudskar.)

#### October 22, 2019 Incident

21. On October 22, 2019, an incident involving the physical restraint of an unidentified<sup>6</sup> six-year-old student KM occurred in Ms. Faudskar's classroom. (Ex. A7 at 2.) KM attended the

---

<sup>6</sup> At the time of this incident, KM had not been identified as a SpEd student. KM spent time in the SpEd classroom because he would disassociate and be nonresponsive. KM was also in the stage of the staff gathering data to determine if he should be identified. (Test. of Faudskar, Bartlett and Martin.)

reading group in the reading room adjacent to Ms. Faudskar's SpEd classroom. SpEd Teacher Wendall Alverson, SpEd EA Ms. Martin and a general EA were in the reading room. During reading group, KM used a wooden stick toy to poke other students, which was a safety concern for the students. Mr. Alverson and Ms. Martin repeatedly instructed KM to put the toy away. KM refused. Mr. Alverson told Ms. Martin to remove the toy from KM. Immediately after Ms. Martin removed the toy, KM began screaming and reached for some nearby art scissors. Ms. Martin initiated a hold of KM's upper body and KM flailed his legs and knocked things off a table. Ms. Martin yelled, "Room clear," but Mr. Alverson took no action to clear the room or assist her. (*Id.* at 2, 4; test. of Martin.)

22. Ms. Martin backed away with KM to move him from the other students. The general EA moved chairs from out of Ms. Martin's way. Because Mr. Alverson was not assisting and KM had wrapped his legs around some furniture, Ms. Martin called out to Ms. Faudskar in the neighboring room. Ms. Faudskar arrived, grabbed KM's legs, and she and Ms. Martin carried KM to the adjacent quiet area. Immediately upon arriving at the quiet area, they released KM, who curled into a fetal position and continued to scream. Ms. Martin remained in the doorway of the quiet area to prevent KM from leaving or other children from entering. (Ex. A7 at 2, 4; test. of Martin and Faudskar.)

23. KM's screaming visibly upset and scared the other approximately seven children in the SpEd classroom. (Ex. A7 at 1; test. of Faudskar.) Escalated behavior from several of these other children could include pacing, running in circles, screaming, swearing and hiding. Because KM was an unidentified child, Ms. Faudskar was not comfortable leaving him with one adult supervisor. Ms. Faudskar did not perform a room clear because she needed three adults to complete the room clear. (Test. of Faudskar.) Because of the concern for the children, another EA called Principal Williamson about KM's escalation. After the call, the EA informed Ms. Faudskar and Ms. Martin that Principal Williamson instructed them to bring KM to a small room near her office in the center of the main school building. (Test. of Martin and Faudskar.) KM refused to walk and would kick his legs so they were not able to do an escort or assist to move him. Ms. Martin and Ms. Faudskar picked KM off the floor and carried him to the main building and through the halls to the small room. Ms. Faudskar held KM's torso in front of her with her arms under his arms and her hands holding his forearms against his torso. Ms. Martin carried KM's legs so that the child's body was parallel to the ground. (Test. of Faudskar, Williamson, and Martin.) While being transported, KM was thrashing and screaming, which could be heard in the neighboring classrooms. (Test. of Bartlett, Williamson and Martin.) Once they arrived at the designated room, Ms. Faudskar and Ms. Martin placed KM down and returned to the SpEd classroom, leaving KM with Ms. Bartlett and Principal Williamson. (Test. of Martin.)

24. Later in the afternoon of October 22, 2019, Principal Williamson held a debrief meeting with Ms. Faudskar, Ms. Martin and Mr. Alverson regarding the KM incident. Principal Williamson completed the TSD-required restraint report and attempted to contact KM's parents regarding the incident. Principal Williamson did not discipline any of the educators, did not advise them of any errors in their actions, and did not add to any alternative actions than those completed by the educators (escort to quiet area and removal of toy). (Ex. A7; test. of Martin and Faudskar.)

Cessation of Ms. Faudskar's Employment with TSD

25. On November 18, 2019, Principal Williamson and Director Ingram discussed the potential hiring of Jackie Rosbach as a permanent SpEd teacher for Room 26.<sup>7</sup> When Ms. Faudskar asked what to do if the needs of her students were not being met in Ms. Rosbach's classroom, she was informed to advise Principal Williamson of her concerns. (Ex. R3 at 1.)

26. On November 19, 2019, Ms. Faudskar began rearranging the furniture in Room 26 in Ms. Rosbach's absence. When Ms. Rosbach returned, she reported Ms. Faudskar's actions to Principal Williamson. Principal Williamson met with Ms. Faudskar and Ms. Rosbach to discuss Ms. Rosbach's concerns. Principal Williamson informed Ms. Faudskar that Ms. Rosbach makes all decision about Room 26's physical arrangement. When Ms. Faudskar explained her actions, Ms. Rosbach interrupted her and asked Ms. Faudskar to explain her concerns about Room 26. In response, Ms. Faudskar raised her voice, pointed a finger at Ms. Rosbach, and instructed Ms. Rosbach to not interrupt her. Following the discussion, Ms. Rosbach informed Principal Williamson that she was not certain she wanted the permanent teaching position. Later that day, Ms. Rosbach withdrew her application for the teaching position and indicated that disrespectful and unsupportive treatment factored into her decision. (Ex. R3 at 1.)

27. On November 22, 2019, Ms. Faudskar attended a disciplinary meeting with Principal Williamson and Director Ingram. During the meeting, Ms. Faudskar indicated she understood from Director Ingram's comments on November 18, 2019, that she was in charge of her students' needs in Room 26. Principal Williamson and Director Ingram disputed her representations of the November 18, 2019 meeting. In response to Principal Williamson's concerns regarding her conduct with Ms. Rosbach during the November 19, 2019 meeting, Ms. Faudskar indicated her actions were justified because Ms. Rosbach had interrupted her. (Ex. R3 at 2.)

28. On November 27, 2019, Director Ingram issued Ms. Faudskar a Letter of Reprimand. In the letter, Director Ingram reprimanded Ms. Faudskar for her lack of professionalism in her interactions with Ms. Rosbach and warned her that further incidents could result in termination. (Ex. R3 at 2.)

29. On November 27, 2019, Ms. Faudskar submitted her letter of resignation at the time that Director Ingram issued the Letter of Reprimand. In her resignation letter, Ms. Faudskar indicated that she would not be "a scapegoat for two administrators who are either unable or unwilling to lead with decisiveness and clear direction, advocate for and support staff members' basic professional needs, and provide safe and functional learning environments for students and staff." (Ex. R6 at 1.) She noted Director Ingram and Principal Williamson's accusation that she was the reason for Ms. Rosbach rejecting the teaching position even though Ms. Rosbach had previously mentioned concerns about the teaching position to other staff. Ms. Faudskar also suggested that their prior delay and subsequent cancellation of Ms. Rosbach's employment interview may have contributed to Ms. Rosbach's decision to withdraw her application. (*Id.*)

30. Sometime after Ms. Faudskar's resignation, the Commission notified TSD that the

---

<sup>7</sup> Ms. Rosbach was currently performing SpEd duties as a substitute teacher. (Ex. R3 at 1.)

Department of Human Services had reported a complaint made against Ms. Faudskar. On or about December 18, 2019, TSD provided the Commission a copy of findings made by Director Ingram and Principal Williamson regarding Ms. Faudskar. (Ex. A11 at 1-2.) Director Ingram and Principal Williamson had interviewed 10 Liberty educators. They began each interview by asking the witness if the witness had seen “any excessive aggressive or physical contact initiated by [Ms. Faudskar] directed towards students.”<sup>8</sup> (*Id.* at 2.) Five of the interviewed witnesses responded “no” to the question and no other findings were made regarding their observations of Ms. Faudskar. (*Id.* at 3-4.) Once they responded in the negative, Principal Williamson and Director Ingram concluded their interviews. When the remaining five witnesses responded in the affirmative, Principal Williamson and Director Ingram asked the witnesses for every concern they had regarding Ms. Faudskar’s interactions with the children. Principal Williamson and Director Ingram concluded their interviews of the ten witnesses in one to two hours. (Test. of Ingram and Williamson.)

31. Ms. Faudskar never acknowledged any errors in her interactions with her students, including the incident with KM. (Exs. A7, A14 and A18; test. of Faudskar.)

### CONCLUSIONS OF LAW

1. Ms. Faudskar engaged in conduct that constituted gross neglect of duty by utilizing unnecessary physical force in one interaction with a student.
2. The Commission should discipline Ms. Faudskar.

### OPINION

The Commission proposes to discipline Ms. Faudskar, based on allegations that she engaged in gross neglect of duty and violated Commission rules. As the proponent of the allegations, the Commission has the burden to establish, by a preponderance of the evidence, that the allegations are correct and that it is entitled to impose the discipline. ORS 183.450(2) (“The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position”); *Reguero v. Teachers Standards and Practices Commission*, 312 Or 402, 418 (1991) (burden is on Commission in disciplinary action); *Dixon v. Board of Nursing*, 291 Or App 207, 213 (2018) (in administrative actions, burden of proof is by a preponderance of the evidence). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely than not true. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 402 (1987).

#### Gross Neglect of Duty

ORS 342.175 provides:

- (1) The Teacher Standards and Practices Commission may suspend or revoke the license or registration of a teacher or administrator, discipline

---

<sup>8</sup> ORS 342.961 authorizes school districts to conduct investigations into employee misconduct at any time.

a teacher or administrator, or suspend or revoke the right of any person to apply for a license or registration, if the licensee, registrant or applicant has held a license or registration at any time within five years prior to issuance of the notice of charges under ORS 342.176 based on the following:

\* \* \* \* \*

(b) Gross neglect of duty;

\* \* \* \* \*

(6) Violation of rules adopted by the commission relating to competent and ethical performance of professional duties shall be admissible as evidence of gross neglect of duty or gross unfitness.

OAR 584-020-0040(4) (July 1, 2017)<sup>9</sup> provided, in part:

Gross neglect of duty is any serious and material inattention to or breach of professional responsibilities. The following may be admissible as evidence of gross neglect of duty. Consideration may include but is not limited to:

\* \* \* \* \*

(d) Unreasonable physical force against students, fellow employees, or visitors to the school, except as permitted under ORS 339.250;

\* \* \* \* \*

(n) Substantial deviation from professional standards of competency set forth in OAR 584-020-0010 through 584-020-0030[.]

In OAR chapter 584, division 20, the Commission promulgated administrative rules to define standards for the competent and ethical performance of the professional duties of Oregon educators. OAR 584-020-0010 titled “The Competent Educator” provides, in part:

The educator demonstrates a commitment to:

(1) Recognize the worth and dignity of all persons and respect for each individual;

---

<sup>9</sup> The version of the rule cited herein was in effect at the time of the Commission’s allegations regarding Ms. Faudskar’s conduct. The rule was amended with an effective date of November 9, 2021. The amendment made no changes to the cited portion of the rule. All subsequent citations to the rule in this Proposed Order are to the 2017 version of the rule.

\* \* \* \* \*

(5) Use professional judgment[.]

OAR 584-020-0020(2), titled “Supervision and Evaluation,” provides, in part:

The competent teacher demonstrates:

\* \* \* \* \*

(d) Skill in the supervision of students[.]

OAR 584-020-0025(2), titled “Management Skills,” provides, in part:

The competent teacher demonstrates skills in:

\* \* \* \* \*

(e) Using district lawful and reasonable rules and regulations.

OAR 584-020-0030, titled “Human Relations and Communications,” provides, in part:

(2) The competent teacher demonstrates:

\* \* \* \* \*

(b) Skill in communicating with administrators, students, staff, parents, and other patrons.

In its Notice, the Commission alleges that Ms. Faudskar violated the above-listed statute and rules by engaging in the following conduct:

- By aggressively carrying an escalated student by the arms and legs to a nearby room;
- By giving students “wedgies” on multiple occasions by pulling the back of students’ pants upward and directing the students to move;
- By grabbing students by the arm, pinching the students and causing discomfort;
- By providing guidance to an instructional assistant to grab a student’s chin if a student talks back to the assistant; and
- By being excessively verbally aggressive with students.

Notice at 1.

In reviewing the evidence as a whole the record did not establish that Ms. Faudskar gave students wedgies, painfully grabbed and pinched students’ arms, advised an IA to grab students’ chins, or was verbally aggressive with students. Ms. Faudskar, during her initial interview by the Commission and during the hearing, consistently denied engaging in such aggressive conduct



with the students. Exhibits A14 and A18; Testimony of Faudskar.<sup>10</sup>

In her testimony as the Commission's witness, Ms. Bartlett testified that Ms. Faudskar engaged in a "level of aggression that made [Ms. Bartlett] uncomfortable" both verbally and physically with the students. Testimony of Bartlett. However, she could not remember any specific instances other than general observations of Ms. Faudskar grabbing the upper arm of unidentified students with an unknown level of force to assist reluctant students to move. Although Ms. Bartlett testified that she did not move students who did not wish to move, she did acknowledge holding students arms to guide them. Thus, the significant difference between guiding a student and Ms. Faudskar's actions would be the level of force, but, as acknowledged by Ms. Bartlett, she had no idea of the level of force Ms. Faudskar employed.<sup>11</sup> *Id.*

In Principal Williamson's notes from the investigatory interview, Principal Williamson noted that Ms. Van De Hey claimed that Ms. Faudskar grabbed the students' faces. Exhibit A11 at 3. However, during her testimony, Ms. Van De Hey stated that Ms. Faudskar "gently placed" her hand on students' cheeks to turn their heads so that she could make eye contact with the students when they did not pay attention.<sup>12</sup> Testimony of Van De Hey. Ms. Van De Hey testified that Ms. Faudskar on a daily basis would pull students up by their arms when they refused to move and forcibly move them. *Id.* However, I found her representations of such daily happenings to be too anomalous to other witnesses' observations for her testimony to be given much weight, regarding either the frequency or degree of her observations of Ms. Faudskar's conduct.

In her testimony as the Commission's witness, Ms. Hartford noted only one real concern during her time as Ms. Faudskar's EA.<sup>13</sup> She testified that on one occasion Ms. Faudskar made a statement to the effect of "turn your head" or "you might not want to see this." Testimony of Hartford. Ms. Hartford turned away and then heard a contact noise, such as a flicking or thumping sound, and heard a child say "Ah!" *Id.* As with Ms. Bartlett, Ms. Hartford could not recall any specifics of this single incident. She was unable to identify when it occurred, who was present, what child was involved, or the circumstances that led to the encounter. Finally, she had

---

<sup>10</sup> This paragraph was modified to reflect the Commission's reasoning on the evidence.

<sup>11</sup> There were some witnesses who insisted that an educator could never touch a child; however, such statements were obvious exaggerations and contracted by TSD policy. Touch was clearly allowed. It was the nature of the touch and the degree of force exerted that determined whether it was appropriate or inappropriate.

<sup>12</sup> Principal Williamson's investigatory notes regarding complaints of Ms. Faudskar's conduct were rarely consistent with the testimony of the witnesses at the time of hearing. Exhibit A11 at 3-4; Testimonies of Bartlett, Van De Hey, Hartford.

<sup>13</sup> Ms. Hartford noted a second concern when Ms. Faudskar demonstrated the hold in which the teacher/aide puts their arms under a child's arms and grabs the child's wrists from behind and then raises and walks the child with this hold (the child's feet remain on the floor and the child walks with this hold). At that time, the hold did not alarm Ms. Hartford but Ms. Faudskar's comment that this hold would leave no marks on the child did alarm her. Testimony of Hartford. However, Ms. Faudskar's statement was accurate and, of course, Ms. Faudskar (or any other teacher) would not demonstrate a hold that would leave marks, as such a hold would be physically injurious to the child.

no information about the actual physical contact, if any, or verbal encounter between Ms. Faudskar and the student. Her evidence was not supportive of a conclusion that Ms. Faudskar was physically or verbally aggressive with students.

The Commission used statements from Principal Williamson and Director Ingram's investigation of Ms. Faudskar conducted after her resignation as part of its Notice. The district did not conduct a full investigation because Ms. Faudskar was no longer an employee by the time Principal Williamson and Director Ingram's interviewed witnesses. To the extent witnesses provided statements to Principal Williamson and Director Ingram as part of their cursory investigation, the witness statements at hearing diverged from what Principal Williamson's notes reflected.<sup>14</sup>

In sum, the evidence did not establish that Ms. Faudskar engaged in gross neglect of duty by giving students wedgies, painfully grabbing and pinching students' arms, advising an EA to grab students' chins, or being verbally aggressive with students.<sup>15</sup>

As to the final behavior alleged in the Notice, there was no dispute that on October 22, 2019, Ms. Faudskar and Ms. Martin physically lifted a minor child from the ground and carried him from the SpEd room to a room located in the main school building. During the course of this move, Ms. Faudskar had the child's back against her chest and her arms around the child with her hands securing the child's forearms, and Ms. Martin held the child's legs. As they carried the child, the child screamed and thrashed around. Although the TSD Restraint Policy does not specifically prohibit the carrying of students, Ms. Faudskar and Ms. Martin's physical action of lifting and carrying KM violated TSD policy. Their hold on KM was a restraint, which, according to TSD policy, could only be employed if KM's behavior imposed a "reasonable risk of *imminent and substantial* physical or bodily injury to the student or others." Exhibit A13 at 2 (emphasis added.). Ms. Faudskar and Ms. Martin asserted that KM's behavior was a risk to himself and the other children. However, KM was secure in a padded area whose doorway could be blocked with a padded gym mat. KM was not at risk of any harm. Although KM's screams disturbed nearby children, the children were not at risk of *imminent and substantial* physical injury at the moment that Ms. Faudskar and Ms. Martin picked up KM.

Additionally, Ms. Faudskar and Ms. Martin's physical removal of KM violated the protocols of the MANDT system, a further violation of TSD's Restraint Policy. The MANDT system acknowledges the occasional necessary need of carrying of a child. However, similar to the Restraint Policy, MANDT only authorizes such action when there is an extreme hazard or emergency and that such action must be terminated at the earliest opportunity. As noted above, at the time Ms. Faudskar and Ms. Martin carried KM to the main building, there was no extreme hazard or emergency, and they carried KM a considerable distance from the SpEd classroom, through the foyer, out of the building, through the breezeway, into the main school building and through the halls until arriving at a small room in the middle of the school building. Also, Ms. Faudskar's actions in physically lifting an escalated child who was struggling and screaming created a risk of injury to KM because of the potential for hyperextension of KM's limbs and the

---

<sup>14</sup> The Commission modified this paragraph to clarify the Commission's reasoning on the nature of the district investigation.

<sup>15</sup> This paragraph was modified to reflect the Commission's reasoning on the evidence.

possibility that he could be dropped during transit. In sum, Ms. Faudskar's act of physically lifting KM off the floor and carrying him from the SpEd classroom to the small room in the main school building violated TSD policies, both its Restraint Policy and its adoption of the MANDT system.

Finally, both the Restraint Policy and the MANDT system require the use of least restrictive actions. The lifting of a child from the floor and the physical carrying of that child a significant distance is an extremely restrictive action. Ms. Faudskar testified that she needed three individuals to conduct a room clear and that she believed it inappropriate to leave Ms. Martin as the sole supervisor for KM, an unidentified student. However, the Commission does not find that two educated adults, Ms. Faudskar and the remaining EA, were incapable of safely removing approximately seven students from the SpEd room to the neighboring reading room. The Commission also finds that, when KM was safely ensconced in a padded room that could be secured with a gym mat across the entrance, Ms. Martin could have safely managed KM until he eventually deescalated from his escalated state. Ms. Martin would have been able to call out to the adults in the reading room if she needed aid, as she had done when she originally called out to Ms. Faudskar. If additional assistance was needed, then Ms. Faudskar had the option of calling Principal Williamson, explaining the situation and requesting additional assistance. Therefore, at the time Ms. Faudskar physically lifted KM from the floor and carried him to the main school building, she failed to employ other possible least restrictive actions.<sup>16</sup>

By failing to follow TSD's lawful regulations, Ms. Faudskar violated OAR 584-020-0025(2). Because an educator should adhere to the policies and procedures of the school district, Ms. Faudskar's failure to follow TSD's lawful regulations demonstrated her failure to use professional judgment in violation of OAR 584-020-0010(5). By using unreasonable physical force against KM that deviated from the professional standards of educator competence, Ms. Faudskar engaged in gross neglect of duty in violation of OAR 584-020-0040(4)(d) and (n).

When Ms. Faudskar physically carried KM from the SpEd classroom, the child was stretched horizontally between her and Ms. Martin, was suspended off the floor, and was screaming and thrashing. Instead of taking an action to deescalate KM, she took an action that aggravated his escalated state, demonstrating her lack of skill in her supervision of KM, in violation of OAR 584-020-0020(2)(d) and OAR 584-020-0030(2)(b). By raising the child off the floor and extending him between her and Ms. Martin while he struggled and when other students could hear him, she failed to demonstrate any respect for KM's dignity and worth in violation of OAR 584-020-0010(1).

As shown above, Ms. Faudskar's conduct of lifting and carrying an escalated child on October 22, 2019, was gross neglect of duty and a violation of several of the rules adopted by the Commission that relate to the competent and ethical performance of an educators' duties. Therefore, Ms. Faudskar also violated ORS 342.175(1)(b) and (6).<sup>17</sup>

---

<sup>16</sup> This paragraph has been modified to change from the ALJ's perspective to that of the Commission.

<sup>17</sup> Ms. Faudskar also asserted that her conduct was appropriate as it was at the direction of Principal Williamson. However, Principal Williamson only suggested that KM be brought to the main building. She did not order Ms. Faudskar to pick up and carry KM to the main building. Additionally, even if there

Discipline of Licensee

ORS 342.175 provides, in part:

(1) The Teacher Standards and Practices Commission may suspend or revoke the license or registration of a teacher or administrator, discipline a teacher or administrator, or suspend or revoke the right of any person to apply for a license or registration, if the licensee, registrant or applicant has held a license or registration at any time within five years prior to issuance of the notice of charges under ORS 342.176 based on the following:

\* \* \* \* \*

(b) Gross neglect of duty;

(4) \* \* \* .

\* \* \* \* \*

(c) The commission may require an applicant for reinstatement to furnish evidence satisfactory to the commission of good moral character, mental and physical health and such other evidence as the commission may consider necessary to establish the applicant' s fitness. The commission may impose a probationary period and such conditions as the commission considers necessary upon approving an application for reinstatement[.]

ORS 342.177(3) provides:

The commission shall render its decision at its next regular meeting following the hearing. If the decision of the commission is that the charge described in ORS 342.175 (1) has been proven, the commission may take any or all of the following disciplinary action against the person charged:

(a) Issue a public reprimand.

(b) Place the person on probation for a period not to exceed four years and subject to such conditions as the commission considers necessary.

(c) Suspend the license or registration of the teacher or administrator for a period not to exceed one year.

---

was evidence of the issuance of such a directive, TSD policy, the MANDT training, and the Commission rules forbid any educator from following such a directive.

(d) Revoke the license or registration of the teacher or administrator.

(e) Revoke the right to apply for a license or registration.

Based upon Ms. Faudskar's conduct that constituted gross neglect of duty, the Commission has the authority under ORS 342.175(1) and ORS 342.177(3) to take disciplinary action against her. In its Closing Argument, the Commission proposed a three-month suspension of Ms. Faudskar's license, two years of probation, and her completion of training on the use of restraints and discipline in SpEd classrooms.

After reviewing the evidence, the Commission finds that a public reprimand and completion of a Commission-approved training on the use of restraints in a SpEd classroom is an appropriate sanction for the established conduct.<sup>18</sup>

As found above, the evidence established that Ms. Faudskar engaged in gross neglect of duty by physically carrying an escalated student. Her conduct was unjustified, inappropriate, potentially injurious to a small child, and was a form of demeaning treatment of KM. Her inappropriate behavior was aggravated by her instruction to Ms. Martin, an EA over whom she had authority, to assist her in the inappropriate treatment of KM and her lack of acknowledgment or understanding of her inappropriate behavior. Therefore, because of the egregious nature of her conduct during the KM incident, the Commission shall issue Ms. Faudskar a public reprimand as provided by ORS 342.177(3)(a). Further, as provided in ORS 342.175(4)(c), Ms. Faudskar shall complete a Commission-approved training on the use of restraints and discipline in SpEd classrooms as a requirement for any reinstatement of her license.

### FINAL ORDER

Jessica Faudskar-Hopkes engaged in gross neglect of duty in violation of ORS 342.175(1)(b) and (6) and violated the following Commission rules: OAR 584-020-0040(4)(d) and (n); OAR 584-020-0010(1) and (5); OAR 584-020-0020(2)(d); OAR 584-020-0025(2)(e); and OAR 584-020-0030(2)(b).

The Teacher Standards and Practices Commission shall issue Jessica Faudskar-Hopkes a public reprimand for these violations.

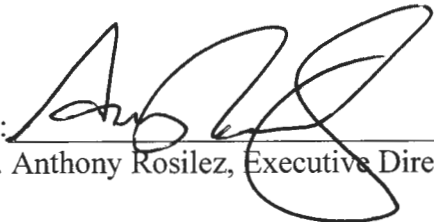
As a condition precedent of any application for reinstatement of her license, Jessica Faudskar-Hopkes must establish her fitness for licensure by completing a Commission-approved training on the use of restraints and discipline in SpEd classrooms.

It is so Ordered this 21 day of June, 2023.

TEACHER STANDARDS AND PRACTICES COMMISSION

---

<sup>18</sup> This paragraph was modified to reflect the Commission's reasoning on the proper sanction to be imposed.

By:   
Dr. Anthony Rosilez, Executive Director

NOTICE OF APPEAL RIGHTS

YOU ARE ENTITLED TO JUDICIAL REVIEW OF THIS ORDER. JUDICIAL REVIEW MAY BE OBTAINED BY FILING A PETITION FOR REVIEW WITHIN 60 DAYS FROM THE SERVICE OF THIS ORDER. JUDICIAL REVIEW IS PURSUANT TO THE PROVISIONS OF ORS 183.482 TO THE OREGON COURT OF APPEALS