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## Before the Education Practices Commission of the State of Florida

JOHN L. WINN as the  
Commissioner of Education,

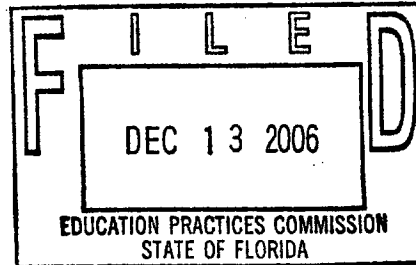
Petitioner,

vs.

BENJAMIN GARY,

Respondent.

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CASE N<sup>o</sup>: 06-0256-RT  
EPC Index N<sup>o</sup> 06-407-AS

### Final Order

Respondent, Benjamin Gary, holds Florida educator's certificate no. 834460. Petitioner has filed an Administrative Complaint seeking suspension, revocation, permanent revocation or other disciplinary action against the certificate.

Petitioner and Respondent have entered into a Settlement Agreement for resolution of this cause. The Settlement Agreement and the Administrative Complaint are attached to and made a part of this Final Order.

A Teacher Panel of the Education Practices Commission met on December 8, 2006, in Tallahassee, Florida. The Commission accepts the Settlement Agreement as the appropriate resolution of this cause.

It is therefore ORDERED that the Settlement Agreement is hereby ACCEPTED and Respondent shall comply with its terms and conditions.

This Order becomes effective upon filing.

DONE AND ORDERED, this 8<sup>th</sup> day of December, 2006.

  
DEBORAH SHEPARD, Presiding Officer

COPIES FURNISHED TO:

Bureau of Professional Practices

Bureau of Teacher Certification

*Florida Administrative Law Reports*

Superintendent  
Brevard County Schools  
2700 Judge Fran Jamieson Way  
Viera, FL 32940-6699

Assistant Superintendent  
Human Resources  
Brevard County Schools  
2700 Judge Fran Jamieson Way  
Viera, FL 32940-6699

Probation Office

Recovery Network Program

Ronald G. Stowers  
DOE counsel for PPS

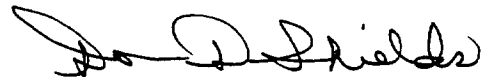
Daniel Biggins  
Assistant Attorney General

**NOTICE OF RIGHT TO JUDICIAL REVIEW**

UNLESS WAIVED, A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE EDUCATION PRACTICES COMMISSION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THIS ORDER.

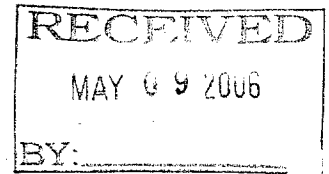
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Order was mailed to Benjamin Gary, [REDACTED]  
[REDACTED] Hartford Connecticut, 06106; and Mark S. Levine, Esquire, 245 E.  
Virginia Street, Tallahassee, Florida 32301 this 13<sup>TH</sup> day of DECEMBER, 2006 by  
Certified U.S. Mail.



DON D. SHIELDS  
Education Practices Commission

RECEIVED  
EDUCATION PRACTICES  
COMMISSION  
STATE OF FLORIDA  
EDUCATION PRACTICES COMMISSION



JOHN L. WINN, as Commissioner  
of Education,

Petitioner,

vs.

CASE NO. 023-2175-M

BENJAMIN LEON GARY,

Respondent.

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**SETTLEMENT AGREEMENT**

Petitioner and Respondent hereby stipulate and agree as follows:

1. **Certification.** Respondent holds Florida Educator's Certificate Number 834460 issued by the Department of Education covering the area of Music, which is valid through June 30, 2006.
2. **Employment.** At all times pertinent hereto, Respondent was employed as a Band Teacher at Madison Middle School in the Brevard County School District.
3. **Allegations.** Respondent neither admits nor denies, but elects not to contest the allegations set forth in Petitioner's Administrative Complaint, which are incorporated herein by reference.
4. **Revocation.** Respondent agrees to accept a 5 (five) year revocation of his Florida educator's certificate, commencing as of October 14, 2003. (Revocation means that Respondent's Educator's Certificate is null and void commencing upon issuance of the Final Order entered by the EPC accepting this Settlement Agreement, and that Respondent may not apply for a new Florida educator's certificate during the period of revocation. Respondent is hereby put on notice that if he does apply for a Florida educator's certificate after the period of revocation, he will be required to fulfill all testing, application and certification requirements as if applying for the first time, as well as all conditions contained in this Settlement Agreement).
5. **Recovery Network Program.**
  - a. **Evaluation.** Respondent agrees to:
    - 1) submit to an evaluation relating to the issues cited in the

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BENJAMIN LEON GARY  
Settlement Agreement  
Page 2 of 5

Administrative Complaint as determined by the Recovery Network Program (RNP) and conducted by a Florida licensed psychologist, psychiatrist or mental health counselor approved by the RNP;

2) provide the RNP written verification from the treatment provider(s) of successful completion of the evaluation within sixty (60) days of issuance of the Final Order accepting this Settlement Agreement **OR** within sixty (60) days of the initial date of employment in a position requiring a Florida educator's certificate, whichever occurs later, and authorize the RNP to release evidence of satisfaction of this requirement directly to any employing school district or private or charter school;

3) undergo any counseling or treatment as may be prescribed by said professional;

4) provide the RNP and the employing school district or private or charter school with written verification from the treatment provider(s), of completion of all recommended treatments within sixty (60) days of completion; and

b. **Written Verification.** Respondent agrees to:

1) provide the RNP and the employing school district or private or charter school with written verification from the treatment provider(s), to the degree that the treatment provider(s) may ethically predict, that Respondent poses no risk of threat or harm to the safety or well-being of students within sixty (60) days of issuance of the Final Order accepting this Settlement Agreement **OR** within sixty (60) days of the initial date of employment in a position requiring a Florida educator's certificate, whichever occurs later; and

2) provide the RNP and the employing school district or private or charter school with written verification from the treatment provider (s) that Respondent is capable of performing his responsibilities as an educator within sixty (60) days of issuance of the Final Order accepting this Settlement Agreement **OR** within sixty (60) days of the initial date of employment in a position requiring a Florida educator's certificate, whichever occurs later.

c. **Prior Evaluation.** If Respondent has undergone evaluation(s) and treatment and/or counseling after the incident(s) alleged in the Administrative Complaint, the evaluation(s) and treatment and/or counseling may be used in lieu of the evaluation(s) and treatment and/or counseling agreed to herein, if acceptable to the RNP.

d. **Employment.** If Respondent is not employed in a position requiring a Florida educator's certificate on the date, or within one (1) year of the date, the initial RNP evaluation(s) required herein are performed, Respondent agrees to submit to follow-up

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evaluation(s) as determined by the RNP within sixty (60) days of being employed in such a position.

e. **Costs.** Respondent shall bear responsibility for all costs associated with the evaluation, treatment and counseling.

6. **Violation.** In the event Respondent fails to comply with each condition set forth herein, he agrees that the Petitioner shall be authorized to file an Administrative Complaint or a Notice of Violation with the EPC seeking sanctions against his Florida educator's certificate up to and including permanent revocation of his Florida educator's certificate and a permanent bar from re-application for a Florida educator's certificate, based upon the violation of the terms of this Settlement Agreement.

7. **Costs and Fees.** Respondent agrees that any costs associated with the fulfillment of the terms of this Settlement Agreement shall be his sole responsibility. These costs include, but are not limited to, those associated with the Recovery Network Program (RNP) and Probation, if applicable. The probation monitoring fee shall be held in abeyance if Respondent is not employed as an educator pursuant to the terms of the Probation.

8. **Force and Effect.** This Settlement Agreement constitutes an offer of settlement of disputed issues of material fact until accepted and executed by all parties. The Settlement Agreement is void and has no force or effect unless executed by all parties and accepted by the EPC. If the Settlement Agreement is not accepted and executed by all parties, the terms herein shall be inadmissible in any subsequent formal or informal administrative hearing or in any other legal action between the parties.

9. **Notice of "Three Strikes" Provision.** Respondent is hereby put on notice that Section 1012.795(6)(b), Florida Statutes (2004), provides for permanent revocation of an educator's certificate under certain circumstances when the educator's certificate has been sanctioned by the Education Practices Commission on two (2) previous occasions.

10. **Waiver of Rights.** Respondent understands provisions of this Settlement Agreement, their legal effect, and his rights under Florida law to a formal hearing before a duly designated administrative law judge of the Division of Administrative Hearings (DOAH) or an informal hearing before the EPC. Respondent specifically waives his right to both a formal and an informal hearing, except he may appear before the EPC in order to urge the adoption of this Settlement Agreement. Respondent further acknowledges that he is under no duress, coercion or undue influence to execute this Settlement Agreement and that he has had the opportunity to receive the advice of legal counsel prior to signing this Settlement Agreement.

11. **Approval.** When fully executed, this Settlement Agreement shall be submitted to the EPC with the joint request by the parties that the EPC accept and adopt the terms of this Settlement Agreement as the basis for its Final Order in this proceeding. The parties understand

EDUCATION PRACTICES  
COMMISSION

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BENJAMIN LEON GARY  
Settlement Agreement  
Page 4 of 5

that the EPC has the discretion to reject this Settlement Agreement and order a full evidentiary hearing on the allegations of the Administrative Complaint if, in the exercise of its discretion, it deems such action to be appropriate.

12. **Notice.** Respondent waives all statutory and regulatory provisions concerning notice of hearing and agrees that this Settlement Agreement may be presented to the EPC for consideration at its next available scheduled meeting, provided that Respondent is given reasonable advanced notice of time, place and date of said meeting.

(SIGNATURES AND NOTARIZATION ON FOLLOWING PAGE)

NOTARIAL PRACTICES  
COMMISSION

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BENJAMIN LEON GARY  
Settlement Agreement  
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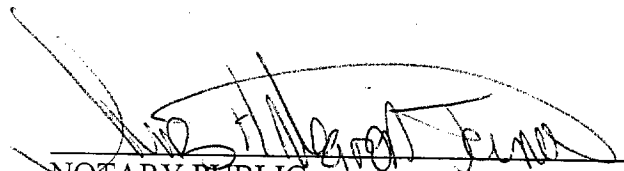
IN WITNESS WHEREOF, the parties have executed this Settlement Agreement on this  
3 day of May, 2006.

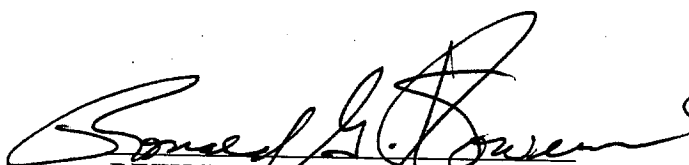
  
BENJAMIN LEON GARY

STATE OF ~~FLORIDA~~ Connecticut  
COUNTY OF Hartford

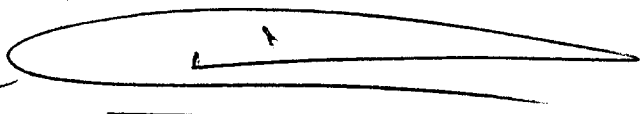
The foregoing instrument was acknowledged before me this 3 day of  
May, 2006, by Bank of America  
who is SLK FL personally known or produced  
as identification [type of identification produced].



  
NOTARY PUBLIC  
My commission expires:

  
BETH ELLEN SULLIVAN  
Assistant General Counsel  
Suite 1244, Turlington Building  
325 West Gaines Street  
Tallahassee, Florida 32399-0400  
Telephone (850) 245-0443  
Facsimile (850) 245-9425

ATTORNEY FOR PETITIONER

  
MARK LEVINE, ESQUIRE  
Levine & Stivers, LLC  
245 E. Virginia Street  
Tallahassee, Florida 32301  
Telephone (850) 222-6580  
Facsimile (850) 224-6270

ATTORNEY FOR RESPONDENT



ELECTION OF RIGHTS

RECEIVED  
MAR 6 2006

Petitioner,  
John L. Winn, Commissioner of Education,

vs.

BENJAMIN LEON GARY  
Respondent

File No.: 023-2173-M PROFESSIONAL PRACTICES SERVICES

Signify your election by checking the appropriate option:

- 1.  **FORMAL HEARING OPTION** I dispute the allegations of the Administrative Complaint and I request a Formal Hearing before a Hearing Officer of the Division of Administrative Hearings.  
The allegations I dispute are:  
a. Allegations of misconduct  
b. Allegations of misconduct  
c. Attach additional sheet(s) if needed.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 2.  **INFORMAL HEARING OPTION** I do not dispute the allegations of the Administrative Complaint and request an Informal Hearing before the Education Practices Commission.
- 3.  **SURRENDER OPTION** I voluntarily surrender my certificate(s) for permanent revocation.
- 4.  **SETTLEMENT OPTION** I request a forty-five (45) day period of time to try to negotiate a settlement with the Office of Professional Practices Services at (850) 245-0438. If an agreement is not reached within the forty-five (45) day period, the case will be scheduled for an  Informal or  Formal Hearing (if Formal Hearing is checked, please list the disputed allegations in 1a, b, and c). If neither Informal nor Formal is checked above, the action will be scheduled for an Informal Hearing.

I understand that I will be given notice of any date set for a Formal or Informal Hearing. I have read the Explanation of Rights, fully understand and/or have been advised of my legal rights. (If you do not understand your options, contact the Office of Professional Practices Services at (850) 245-0438.)

(EXECUTION BEFORE A NOTARY PUBLIC NOT REQUIRED IF CHOOSING OPTION 1)

[Signature]  
Signature of Respondent Counsel to Respondent

STATE OF FLORIDA  
COUNTY OF Leon  
The foregoing instrument was acknowledged before me this 2nd day of March, 2006.

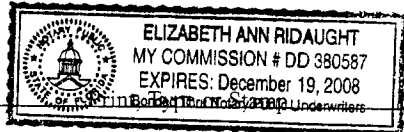
Street Address [Redacted]

City Tallahassee, Fla. 32301

Telephone No. [Redacted]

by MARK S. LEVINE  
(Print Respondent's Name)

[Signature]  
Signature of Notary Public



Personally Known \_\_\_ or Produced Identification Type of Identification Produced  
Commissioned Name of Notary Public \_\_\_\_\_

**STATE OF FLORIDA  
EDUCATION PRACTICES COMMISSION**

**JOHN L. WINN, as  
Commissioner of Education,**

**Petitioner,**

vs.

**CASE NO. 023-2175-M**

**BENJAMIN LEON GARY,**

**Respondent.**

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**ADMINISTRATIVE COMPLAINT**

Petitioner, John L. Winn, as Commissioner of Education, files this Administrative Complaint against BENJAMIN LEON GARY. The Petitioner seeks the appropriate disciplinary sanction of the Respondent's educator's certificate pursuant to Sections 1012.795 and 1012.796, Florida Statutes, and pursuant to Rule 6B-1.006, Florida Administrative Code, Principles of Professional Conduct for the Education Profession in Florida, said sanctions specifically set forth in Sections 1012.795(1) and 1012.796(7), Florida Statutes.

The Petitioner alleges:

**JURISDICTION**

1. The Respondent holds Florida Educator's Certificate 834460, covering the area of Music, which is valid through June 30, 2006.
2. At all times pertinent hereto, the Respondent was employed as a Band Teacher at Madison Middle School in the Brevard County School District.

**MATERIAL ALLEGATIONS**

3. During the 2002-2003 school year, Respondent engaged in inappropriate conduct with students, including, but not limited to:
  - a. touching at least two 12-year-old female students around the waist, under their shirts, on their thighs, and hugging them and/or pulling them into his lap, making the girls uncomfortable;
  - b. telling a female student she was pretty, smelled good, and had sexy lips, or words to

- that effect;
- c. telling a female student it was a good thing she was pretty, because her brains would never get her anywhere;
  - d. searching the pockets of students for gum or candy with his hands, making the students feel very uncomfortable;
  - e. telling a female student he could not wait until she was 21 so he could be all over her, or words to that effect;
  - f. betting a male student to eat a dead bug, and then later betting the same student to eat chewed-up food off of Respondent's lunch tray;
  - g. mock-choking a female student because he did not like the way she was playing her instrument; and
  - h. failing to report to administration incidents of sexual misconduct between students.

4. Respondent's inappropriate behavior resulted in his arrest for several counts of Sexual Battery and Lewd and Lascivious Molestation, as well as several newspaper articles throughout the local community and the state. The school district terminated Respondent.

#### **STATUTE VIOLATIONS**

**COUNT 1:** The Respondent is in violation of Section 1012.795(1)(c), Florida Statutes, in that Respondent has been guilty of gross immorality or an act involving moral turpitude.

**COUNT 2:** The Respondent is in violation of Section 1012.795(1)(f), Florida Statutes, in that Respondent has been found guilty of personal conduct which seriously reduces his effectiveness as an employee of the school board.

**COUNT 3:** The Respondent is in violation of Section 1012.795(1)(i), Florida Statutes, in that Respondent has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules.

**COUNT 4:** The Respondent is in violation of Section 1012.795(2), Florida Statutes, which provides that the plea of guilty in any court or the decision of guilty by any court is prima facie proof of grounds for the revocation of the certificate.

**COUNT 5:** The Respondent is in violation of Section 1012.799, Florida Statutes, in that Respondent failed to report student-on-student sexual battery.

#### **RULE VIOLATIONS**

**COUNT 6:** The allegations of misconduct set forth herein are in violation of Rule 6B-1.006(3)(a), Florida Administrative Code, in that Respondent has failed to make reasonable effort

to protect the student from conditions harmful to learning and/or to the student's mental health and/or physical health and/or safety.

**COUNT 7 :** The allegations of misconduct set forth herein are in violation of Rule 6B-1.006(3)(e), Florida Administrative Code, in that Respondent has intentionally exposed a student to unnecessary embarrassment or disparagement.

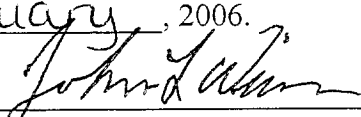
**COUNT 8 :** The allegations of misconduct set forth herein are in violation of Rule 6B-1.006(3)(f), Florida Administrative Code, in that Respondent has intentionally violated or denied a student's legal rights.

**COUNT 9 :** The allegations of misconduct set forth herein are in violation of Rule 6B-1.006(3)(g), Florida Administrative Code, in that Respondent has harassed or discriminated against a student on the basis of race, color, religion, sex, age, national or ethnic origin, political beliefs, marital status, handicapping condition, sexual orientation, or social and family background and shall make reasonable effort to assure that each student is protected from harassment or discrimination.

**COUNT 10 :** The allegations of misconduct set forth herein are in violation of Rule 6B-1.006(3)(h), Florida Administrative Code, in that Respondent has exploited a relationship with a student for personal gain or advantage.

**WHEREFORE**, based on the reasons set forth herein and in accordance with the Explanation of Rights and Election of Rights forms attached to and made a part of this Administrative Complaint, Petitioner respectfully recommends that the Education Practices Commission impose an appropriate sanction against the Respondent's educator's certificate pursuant to the authority provided in Sections 1012.795(1) and 1012.796(7), Florida Statutes. The sanctions imposed by the Education Practices Commission may include, but are not limited to, any one or a combination of the following: issuing the Respondent a written reprimand; placing the Respondent on probation for any period of time; restricting the Respondent's authorized scope of practice; assessing the Respondent an administrative fine; directing the Respondent to enroll in the Recovery Network Program; suspending the Respondent's educator's certificate for a period of time not to exceed five years; revoking the Respondent's educator's certificate for a period of time up to 10 years or permanently; or barring the Respondent from reapplying for an educator's certificate for a period of time up to 10 years or permanently.

**EXECUTED** on this 13<sup>th</sup> day of February, 2006.

  
\_\_\_\_\_  
JOHN L. WINN, as  
Commissioner of Education  
State of Florida