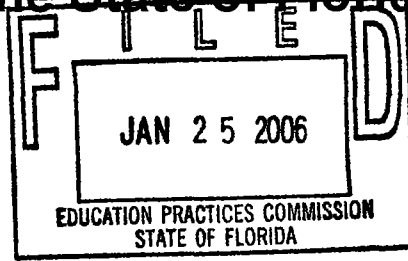




Before the Education Practices Commission of the State of Florida



IN RE The Denial of the Application for Teacher's Certificate of:

CASE N^o 05-0352-D
EPC INDEX N^o 06-023-AS
CERTIFICATE: 653182

MARK NEWBERRY.

_____ /

Final Order

Applicant, MARK NEWBERRY, applied for a Florida educator's certificate and that application was denied. The Commissioner of Education filed a Notice of Reasons stating the reasons for denial of the certificate.

Applicant and the Commissioner of Education have entered into a Settlement Agreement for resolution of this cause. The Settlement Agreement and the Notice of Reasons are attached to and made a part of this Final Order.

A Teacher Panel of the Education Practices Commission met on January 20, 2006, in Tampa, 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 Applicant shall comply with its terms and conditions.

This Order takes effect upon filing.

DONE AND ORDERED, this 20 day of January, 2006.

Lucile Casey
LUCILE CASEY, Presiding Officer

COPIES FURNISHED TO:

Bureau of Professional Practices

Bureau of Teacher Certification

Florida Administrative Law Reports

DOE Counsel for PPS

Daniel R. Biggins – EPC Legal Counsel
Assistant Attorney General

Probation Office

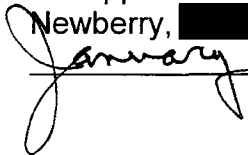
Recovery Network Program

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

Human Resources
Brevard County Schools
2700 Judge Fran Jamieson Way
Viera, Fl. 32940-6699

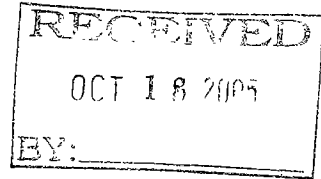
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Order in the matter of The Denial of the Application for Educator's Certificate of MARK NEWBERRY was furnished to Mark Newberry, [REDACTED] Indianalantic, Florida 32903-2833 this 25 day of January 2006, by Certified U.S. Mail.



DON SHIELDS
Education Practices Commission

STATE OF FLORIDA
EDUCATION PRACTICES COMMISSION



In re: The Denial of the
Application for Teacher's
Certificate of:

CASE NO. 034-0692-M

MARK LEE NEWBERRY,
_____ /

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EDUCATION PRACTICES
COMMISSION

SETTLEMENT AGREEMENT

Petitioner, MARK LEE NEWBERRY, and Respondent, the Commissioner of Education, hereby stipulate and agree as follows:

1. **Application.** Petitioner applied for a Florida educator's certificate, which Respondent denied by Notice of Reasons previously filed herein.
2. **Allegations.** Petitioner neither admits nor denies, but elects not to contest the allegations set forth in Respondent's Notice of Reasons, which are incorporated herein by reference.
3. **Denial and Bar.** Respondent denies Petitioner's present application and Petitioner agrees to accept a one (1) year bar from application or re-application for a Florida educator's certificate, retroactively commencing February 1, 2004 and lasting through January 31, 2005. After the bar from application/re-application and upon application or re-application by Petitioner, Respondent agrees to issue a Temporary Florida educator's certificate or a Florida educator's certificate, whichever is applicable, to the Petitioner, provided that he:
 1. is qualified;
 2. has not violated any law;
 3. has fully complied with all district school board regulation, school rules, and State Board of Education Rule 6B-1006; and
 4. has personally taken and passed the CLAST or its successor exam; i.e., no alternate means of demonstrating competency will be permitted.

4. **Recovery Network Program.**

a. **Substance Abuse Evaluation:** Petitioner agrees to:

1) submit to an evaluation relating to the issues cited in the Notice of Reasons as determined by the Recovery Network Program (RNP) and conducted by a Florida substance abuse 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 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;

b. **Prior Evaluation.** If Petitioner 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.

c. **Employment.** If Petitioner 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, Petitioner agrees to submit to follow-up evaluation(s) as determined by the RNP within sixty (60) days of being employed in such a position.

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

5. **Probation.** Petitioner agrees that he shall be placed on probation for a period of two (2) employment years. If Petitioner is currently employed in a position requiring a Florida educator's certificate, probation shall begin upon the issuance of the Final Order by the Education Practices Commission (EPC) provided the EPC has accepted this Settlement Agreement. If Petitioner is not currently employed in a position requiring a Florida educator's

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MARK LEE NEWBERRY
Settlement Agreement
Page 3 of 5

certificate, probation shall begin upon his re-employment in such a position. In the event Petitioner's employment is interrupted for any reason prior to the expiration of probation, the probation shall be tolled until Petitioner resumes employment in a position requiring a Florida educator's certificate. As conditions of probation, Petitioner:

a. shall immediately contact the Bureau of Educator Standards (BES) upon employment in Florida in a position requiring a Florida educator's certificate or upon termination from such a position. If currently employed in such a position, Petitioner shall contact the BES within ten (10) days of the issuance of the Final Order accepting this Settlement Agreement and Petitioner shall provide the BES with the name and address of his work site as well as the name, address and telephone number of his immediate supervisor.

b. shall make arrangements for his immediate supervisor to provide the EPC with a true and accurate copy of each written annual performance evaluation or assessment prepared by his supervisor within ten (10) days of it preparation;

c. shall pay to the EPC \$150.00 within the first six (6) months of each probation year to defray the costs of monitoring probation;

d. shall have the scope of his employment restricted to: not transporting students in or on any motor vehicle;

e. shall violate no law and fully comply with all district school board regulations, school rules, and State Board of Education Rule 6B-1.006; and

f. shall satisfactorily perform his duties in a competent, professional manner.

6. **Fine.** Petitioner agrees to pay a fine in the amount of \$100.00 to the EPC within the first year of probation.

7. **Violation.** In the event Petitioner fails to comply with each condition set forth herein, he agrees that Respondent 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.

8. **Costs and Fees.** Petitioner 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 Petitioner is

not employed as an educator pursuant to the terms of the Probation.

9. **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.

10. **Notice of "Three Strikes" Provision.** Petitioner 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.

11. **Waiver of Rights.** Petitioner 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. Petitioner 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. Petitioner 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.

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

13. **Notice.** Petitioner 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 Petitioner is given reasonable advanced notice of time, place and date of said meeting.

(SIGNATURES AND NOTARIZATION ON FOLLOWING PAGE)

67:7 Ho 18:00 50
NOTARIZATION
SERVICES

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement on this 11th day of October, 2005.

Mark Lee Newberry
MARK LEE NEWBERRY

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 11 day of October, 2005, by Mark Lee Newberry, who is personally known or produced PASSPORT as identification [type of identification produced].

Laura P. Jacobs
NOTARY PUBLIC
My commission expires: 09-06-09



Laura P. Jacobs
Commission # DD468391
Expires September 6, 2009
Bonded Troy Fain Insurance Inc 800-385-7019

Ronald G. Stowers

RONALD G. STOWERS
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 RESPONDENT

ATTORNEY FOR PETITIONER

05 OCT 20, PM 1:49

NOTARY PUBLIC
STATE OF FLORIDA

**PARTS OF THIS ADMINISTRATIVE COMPLAINT
ARE CONFIDENTIAL**

Contents of this file are confidential and exempt from public record. Confidential records may include such materials as:

- ❖ Victim of sexual assault
- ❖ Medical or mental health records
- ❖ Sealed or expunged records
- ❖ Minor names or information that identifies the minor

As provided in Chapter 1012, Florida Statutes, Florida public school districts are provided access to the information associated with the disciplinary action.