



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

*Final Order*

TOM GALLAGHER, as  
Commissioner of Education,

Petitioner,

vs.

MARILYN GWINN,

Respondent.

**FILE**

OCT 15 1999

EPC CASE NO. 99-124-RT  
EPC INDEX NO. 99-260-AS

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Respondent, MARILYN GWINN, holds Florida educator's certificate no. 446522.

Petitioner has filed an Administrative Complaint seeking suspension, revocation, permanent revocation or other disciplinary action against the license.

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 September 24, 1999, 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 Respondent shall comply with its terms and conditions. This Order takes effect upon filing.

Final Order  
Marilyn Gwinn  
Page Two

This Order may be appealed by filing notices of appeal and a filing fee, as set out in Section 120-68(2), F.S., and Florida Rule of Appellate Procedure 9.110(b) and (c), within thirty days of the date of filing.

DONE AND ORDERED, this 7<sup>th</sup> day of October, 1999.

COPIES FURNISHED TO:

Jerry Whitmore, Program Director  
Professional Practices Services

Peggy Wolfe  
Peggy Wolfe, Presiding Officer

Florida Admin. Law Reports

Bureau of Teacher Certification

Dr. David Sawyer, Supt.  
Brevard County Schools  
2700 St. Johns St.  
Melbourne, FL 32940-6800

I HEREBY CERTIFY that a copy of the foregoing Order in the matter of Gallagher vs. Marilyn Gwinn, was mailed to Francisco Negron, Jr., FEA United, 118 N. Monroe St., Tallahassee, FL 32399-1700, this 15 day of October 1999, by U.S. Mail.

Leroy Berry, Asst. Supt.  
Human Resources  
Brevard County Schools

Kathleen M. Richards  
KATHLEEN M. RICHARDS, Clerk

Carl Zahner  
Attorney at Law  
1701 The Capitol  
Tallahassee, FL 32399

Recovery Network Program  
for Educators  
325 W. Gaines St., Suite 224-D  
Tallahassee, FL 32399  
(850) 922-9733

**STATE OF FLORIDA  
EDUCATION PRACTICES COMMISSION**

**TOM GALLAGHER, as Commissioner  
of Education,**

**Petitioner,**

**vs.**

**CASE NO. 978-2879-M**

**MARILYN GWINN,**

**Respondent.**

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**SETTLEMENT AGREEMENT**

**COME NOW** the Petitioner and the Respondent, who hereby stipulate and agree as follows:

1. The Respondent holds Florida teaching certificate 446522 issued by the Florida Department of Education covering the areas of psychology which is valid through June 30, 1999.
2. At all times pertinent hereto, the Respondent was employed as a varying exceptionalities teacher at Southwest Junior High School, in the Brevard County School District.
3. The Respondent neither admits nor denies, but elects not to contest the allegations set forth in the Petitioner's Administrative Complaint, which are incorporated herein by reference.
4. The Respondent agrees to accept a letter of reprimand, a copy of which shall be placed in her certification file with the Department of Education, and a copy of which shall be placed in her personnel file with the employing school district.
5. The Respondent agrees, prior to employment or certification as an educator in Florida, or within thirty days of the issuance of the Final Order accepting this settlement agreement, whichever occurs later, to submit to an evaluation by a substance abuse counselor approved by the Recovery Network Program and undergo all recommended courses of treatment. Respondent shall submit

*Last alleged incident was 12/97*

written verification of successful completion of treatment. Or in the alternative, Respondent may submit proof of a prior evaluation, to the EPC, if approved by the Recovery Network Program and since the December 1997 incident. All costs are to be borne by Respondent.

*ing  
BPC*

6. The Respondent agrees that she shall be placed on probation for a period of 1 year, commencing upon the issuance of the Final Order by the Education Practices Commission [EPC] accepting this settlement agreement if the Respondent is currently employed as an educator in Florida. If the Respondent is not currently employed as an educator in Florida, the probationary period shall commence upon her reemployment as an educator in Florida. In the event that the Respondent's employment in the teaching profession is interrupted for any reason prior to the expiration of the probationary period, the probationary period shall be tolled until such time as the Respondent resumes employment as an educator in Florida. As conditions of probation, the Respondent shall:

(a) immediately contact the EPC upon any reemployment in the teaching profession within Florida [or if employed as an educator in Florida, shall contact the EPC within 10 days of the issuance of the Final Order accepting this Settlement Agreement], indicating the name and address of the school, as well as the name, address and telephone number of her immediate supervisor;

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

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

(d) within the first year, successfully complete a three credit hour college level course in the area of Ethics;

(e) submit to random blood and/or urine testing at the direction of the Education Practices Commission, the director of the Recovery Network Program, or the employing school district;

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

(g) satisfactorily perform her assigned duties in a competent, professional manner.

7. In the event the Respondent fails to comply with each condition of probation set forth herein, the Respondent agrees that the Petitioner shall be authorized to file an Administrative Complaint for sanctions up to and including the revocation of her teaching certificate based upon the violation of the terms of this agreement.

8. The parties acknowledge and the Respondent agrees that any costs associated with the fulfillment of the terms of this agreement and the terms of the Respondent's probation, including the statutory \$150.00 per year EPC monitoring fee, shall be the sole responsibility of the Respondent. It is provided that the probation monitoring fee shall be held in abeyance if the Respondent is not employed as an educator pursuant to the terms of probation above.

9. This agreement shall be void and shall have no force or effect unless signed by all parties and accepted by the EPC.

10. This agreement constitutes an offer of settlement of disputed issues of material fact until accepted and executed by all parties. If this agreement is not accepted and executed by all parties, the terms hereof shall be inadmissible in any subsequent formal or informal administrative hearing or in any other legal action between the parties.

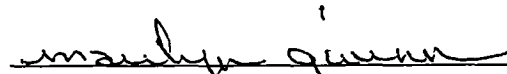
11. The Respondent understands the provisions of this agreement, their legal effect and her rights under Florida law to a formal hearing before a hearing officer at the Division of Administrative Hearings or an informal hearing before the EPC. The Respondent specifically waives her right to both a formal and informal hearing, except she may appear before the EPC in order to urge the adoption of this agreement. The Respondent further acknowledges that she is under no duress, coercion or undue influence in signing this agreement, and that she has had the opportunity to receive the advice of legal counsel prior to signing this agreement.

12. The agreement shall be submitted to the EPC with the joint request by the parties that the EPC accept and adopt the terms of this agreement as the basis for its Final Order in this proceeding. The parties understand that the EPC has the discretion to reject this 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.

13. The Respondent waives all statutory and regulatory provisions concerning notice of hearing and agrees that this agreement may be presented to the EPC for consideration at its next regularly scheduled meeting, provided that the Respondent is given reasonable advance notice of the time, place and date of said meeting.

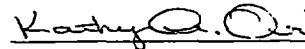
IN WITNESS WHEREOF, the parties have executed this agreement on this

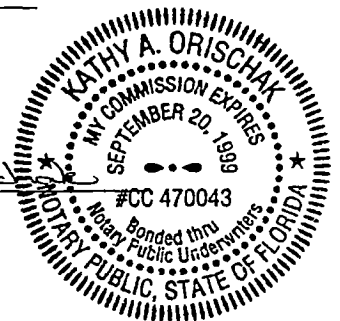
1<sup>ST</sup> day of June, 1999.

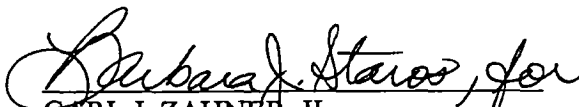
  
MARILYN GWINN  
RESPONDENT

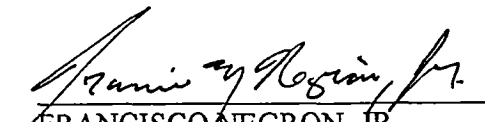
STATE OF FLORIDA  
COUNTY OF Brevard

The foregoing instrument was acknowledged before me this 1<sup>ST</sup> day of June, 1999, by Marilyn Gwinn, who is  personally known or produced \_\_\_\_\_ as identification [type of identification produced].

  
NOTARY PUBLIC  
My commission expires.  
Sept. 29 1999



  
CARL J. ZAHNER, II  
Department of Education  
Suite 1701, The Capitol  
Tallahassee, Florida 32399-0400  
(850) 922-7095  
ATTORNEY FOR PETITIONER

  
FRANCISCO NEGRON, JR.  
FEA United  
118 North Monroe Street  
Tallahassee, Florida 32399-1700  
(850) 224-7818  
ATTORNEY FOR RESPONDENT



KATHLEEN M. RICHARDS  
Executive Director

**EDUCATION PRACTICES COMMISSION  
STATE OF FLORIDA**

RIVERS BUFORD, JR.  
Counsel

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September 24, 1999

Marilyn Gwinn  
499 Stendal Road Northwest  
Palm Bay, Florida 32907

RE: Tom Gallagher vs. Marilyn Gwinn  
EPC File No.: 99-124-RT, Social Security #: [REDACTED]

Dear Ms. Gwinn:

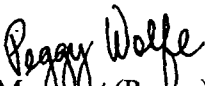
The teacher panel of the Education Practices Commission, as you know, reviewed the matter pending against you on September 24, 1999. Based upon the panel's consideration of this matter and upon the panel's acceptance of your Settlement Agreement, you are hereby reprimanded.

This panel, composed of your peers, believes that as a teacher you are required to exercise a measure of leadership beyond reproach. By your actions, you have lessened the reputation of all who practice our profession. Your actions cannot be condoned by the profession nor by the public who employ us.

The Education Practices Commission sincerely hopes it is your intention to never allow this situation to occur again or indeed, to violate any professional obligation in fulfilling your responsibility as an educator. To violate the standards of the profession will surely result in further action being taken against you.

This letter of reprimand is being placed in your state certification file and a copy sent to the Brevard County School Board for placement in your personnel file.

Sincerely,

  
Margaret (Peggy) Wolfe,  
Presiding Officer

MW/le

**STATE OF FLORIDA  
EDUCATION PRACTICES COMMISSION**

**TOM GALLAGHER, as  
Commissioner of Education,**

**Petitioner,**

**vs.**

**CASE NO. 978-2879-M**

**MARILYN GWINN,**

**Respondent.**

\_\_\_\_\_ /

**ADMINISTRATIVE COMPLAINT**

Petitioner, TOM GALLAGHER, as Commissioner of Education, files this Administrative Complaint against Marilyn Gwinn. The Petitioner seeks the appropriate disciplinary sanction of the Respondent's educator's certificate pursuant to Sections 231.262 and 231.28, 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 231.262(6) and 231.28(1), Florida Statutes.

The Petitioner alleges:

**JURISDICTION**

1. The Respondent holds Florida Educator's Certificate 446522, covering the area of Psychology, which is valid through June 30, 1999.
2. At all times pertinent hereto, the Respondent was employed as a Varying Exceptionalities teacher at Southwest Junior High School, in the Brevard County School District.

**MATERIAL ALLEGATIONS**

3. On or about January 26, 1998, Respondent operated her vehicle while she was intoxicated. Respondent was arrested and charged with Driving Under the Influence. On or about April 13, 1998, Respondent pled Nolo Contendere to the lesser charge of Reckless Driving. The court adjudicated her guilty of the Reckless Driving charge and sentenced her to 6 months probation, DUI school, victims awareness program, 50 hours of community service and court fines.



4. On or about March 8, 1998, Respondent stole an item from a grocery store. Respondent was arrested and charged with Petit Theft. On or about August 12, 1998, the case was dropped by the court after Respondent entered into a Pre-Trial Diversion program. Respondent was sentenced to 6 months Pre-Trial Diversion program, 32 hours of community service and court Costs.

5. On or about December 7, 1998, Respondent submitted an altered or fraudulent prescription in an attempt to obtain a controlled substance from a pharmacy. Respondent was arrested and charged with Attempting to Obtain a Controlled Substance by Fraud. On or about April 16, 1998, Respondent entered into a Pre-Trial Intervention program for 12 months, which required that Respondent enter a substance abuse program, be randomly tested for substance abuse and pay court costs.

### **STATUTORY VIOLATIONS**

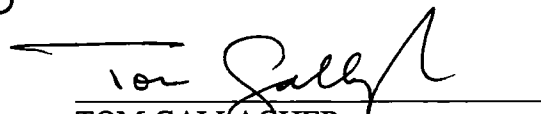
**COUNT 1:** The allegations of misconduct set forth herein are in violation of Section 231.28(1)(c), Florida Statutes, in that Respondent has been guilty of gross immorality or an act involving moral turpitude.

**COUNT 2:** The allegations of misconduct set forth herein are in violation of Section 231.28(1)(e), Florida Statutes, in that Respondent has been convicted of a misdemeanor, felony, or other criminal charge, other than a minor traffic violation.

**COUNT 3:** Section 231.28(2), Florida Statutes, provides that the plea of guilty in any court or a decision of guilty by any court is prima facie proof of grounds for the revocation of the certificate.

**WHEREFORE,** the Petitioner recommends that the Education Practices Commission impose an appropriate penalty pursuant to the authority provided in Sections 231.262(6) and 231.28(1), Florida Statutes, which penalty may include a reprimand, probation, restriction of the authorized scope of practice, administrative fine, suspension of the teaching certificate not to exceed three years, permanent revocation of the teaching certificate, or combination thereof, for the reasons set forth herein, and in accordance with the Explanation and Election of Rights forms which are attached hereto and made a part hereof by reference.

**EXECUTED** on this 23<sup>RD</sup> day of February, 1999.

  
\_\_\_\_\_  
TOM GALLAGHER, as  
Commissioner of Education,  
State of Florida