

#142-10

OAL DKT. NO. EDU 6385-09
AGENCY DKT. NO. 155-7/09

COLLEEN K. COVERT, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 BOROUGH OF RUMSON, :
 MONMOUTH COUNTY, :
 :
 RESPONDENT. :
 _____ :

The record of this matter, the parties’ proposed Settlement Agreement, and the Initial Decision issued by the Office of Administrative Law, pursuant to *N.J.A.C. 1:1-19.1*, have been reviewed.

Upon review, the Commissioner determines that he cannot approve the parties’ proposed settlement as currently configured. Specifically, term number 5 of this agreement – in pertinent part – specifies “In the event of a breach of this Agreement by one of the parties hereto, the breaching party shall pay a penalty to the non-breaching party to be established in the discretion of the Commissioner for a willful violation of any term of this Agreement. In the event that either party is required to commence an action in law or equity to enforce its rights under Agreement and it prevails, the party against whom the action is brought shall be required to pay the prevailing party reasonable attorneys fees and costs in addition to any damages which may be recoverable.” It must be emphasized that awarding of penalties, damages or attorney fees as a consequence of one of the parties’ breach of this agreement is outside the jurisdictional

purview of the Commissioner of Education and must, rather, be sought from the Superior Court of New Jersey. Consequently, in order for the Commissioner to consider approving the parties' proposed agreement, term number 5 must be eliminated or reconfigured.

Accordingly, this matter is hereby remanded to the OAL for revision of the Settlement Agreement consistent with the concerns set forth above.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

Date of Decision: May 17, 2010

Date of Mailing: May 17, 2010