



TO: The Honorable the Members of the Board of Regents

FROM: Daniel Morton-Bentley 

SUBJECT: Proposed Amendment of Parts 275 and 276 and Section 277.1(b) of the Regulations of the Commissioner of Education Relating to Education Law §310 Appeals to the Commissioner of Education and the Initiation and Conduct of Proceedings for the Removal of School Officers

DATE: April 1, 2021

AUTHORIZATION(S): 

SUMMARY

Issue for Discussion

Should the Board of Regents adopt the proposed amendment Parts 275 and 276 and section 277.1(b) of the Regulations of the Commissioner of Education relating to Education Law §310 appeals to the Commissioner of Education and the initiation and conduct of proceedings for the removal of school officers?

Reason(s) for Consideration

Review of Policy.

Proposed Handling

The proposed amendment will be presented to the Full Board for discussion at the April 2021 meeting of the Board of Regents. A copy of the proposed rule is attached (Attachment A).

Procedural History

A Notice of Proposed Rule Making will be published in the State Register on April 28, 2021. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Education Law §310 authorizes the Commissioner of Education to decide appeals of persons considering themselves aggrieved by actions taken at a school district meeting or by school authorities. The appeal decisions of the Commissioner are quasi-judicial in nature and are officially reported and indexed in the Education Department Reports. These reports are now entirely digital and are posted on the Department's website. The Commissioner issues approximately 200 decisions a year on a wide range of subjects including student residency, student discipline, school district elections, transportation and personnel matters.

The regulations governing the practice to be followed in §310 appeals are found in Parts 275 and 276 of the Commissioner's Regulations. The proposed amendment makes technical changes to the service of memorandum of law to expedite the processing of administrative records; it also poses other clarifying amendments. Specifically, the Department proposes to:

- amend section 276.4 of the Commissioner's regulations to update the requirements for service and filing of memoranda of law such that a petitioner serve and file any memorandum of law with the petition; a respondent serve and file any memorandum of law with the answer; and a petitioner serve and file any reply memorandum of law with the reply;
- make a corresponding amendment to section 275.8(a) of the Commissioner's regulations to provide that a memorandum of law be served with the petition;
- make a corresponding amendment to section 275.13 of the Commissioner's regulations to provide that a memorandum of law be served with the answer;
- make a corresponding amendment to section 275.14 of the Commissioner's regulations to provide that a memorandum of law be served with the reply; and
- amend section 276.5(b) of the Commissioner's regulations to clarify that in an appeal regarding a homeless child's or youth's access to a free appropriate public education pursuant to section 100.2(x) of the Commissioner's regulations, the application must be served along with proposed affidavits, exhibits and other supporting papers, consistent with the requirements of subdivision (a) of such section. Additionally, subdivision (b) is amended to remove the reference to section 275.13(b) of the Commissioner's regulations in reference to service of such appeals.

In addition, the Department proposes to make a technical amendment to section 277.1(b) of the Commissioner's regulations relating to the initiation and conduct of proceedings for removal of school officers. The proposed amendment removes the title "SIR" from the required notice to be included in the petition for removal.

Related Regents Items

October 2008: [Proposed Amendment of Parts 275 and 276 and 100.2\(y\) of the Regulations of the Commissioner of Education Relating to Education Law 310 Appeals to the Commissioner of Education](https://www.regents.nysed.gov/meetings/2008Meetings/October2008/1008brd1.htm)

(<https://www.regents.nysed.gov/meetings/2008Meetings/October2008/1008brd1.htm>)

December 2010: [Technical Amendments to Parts 275 and 276 of the Regulations of the Commissioner, Relating to Appeals to the Commissioner Under Education Law §§310 and 2853](https://www.regents.nysed.gov/common/regents/files/documents/meetings/2010Meetings/December2010/1210bra4.pdf)

(<https://www.regents.nysed.gov/common/regents/files/documents/meetings/2010Meetings/December2010/1210bra4.pdf>)

Recommendation

Not applicable.

Timetable for Implementation

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption at the September 2021 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required by the State Administrative Procedure Act. If adopted at the September 2021 meeting, the proposed rule will take effect on September 29, 2021.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 310, 311, and 2853.

1. Subdivision (a) of section 275.8 of the Regulations of the Commissioner of Education is amended to read as follows:

(a) *Petition.* A copy of the petition, together with all of petitioner's affidavits, exhibits, and other supporting papers, [except] including a memorandum of law [(unless the appeal is a charter school location/co-location appeal pursuant to section 276.11 of this Title, in which case the memorandum of law shall be served with the petition) or] but excluding an affidavit in support of a reply, shall be personally served upon each named respondent, or, if a named respondent cannot be found upon diligent search, by delivering and leaving the same at the respondent's residence with some person of suitable age and discretion, between six o'clock in the morning and nine o'clock in the evening, or as otherwise directed by the commissioner. If a school district is named as a party respondent, service upon such school district shall be made personally by delivering a copy of the petition to the district clerk, to any trustee or any member of the board of education of such school district, to the superintendent of schools, or to a person in the office of the superintendent who has been designated by the board of education to accept service. If a board of cooperative educational services is named as a party respondent, service upon such board shall be made personally by delivering a copy of the petition to the district superintendent, to a person in the office of the district superintendent who has been designated by the board to accept service, or to any member of the board of cooperative educational services. Pleadings may be served by any person not a party to the appeal over the age of 18 years. If the last day for service of the petition falls on a Saturday or Sunday, service may be made on the following Monday; and if the last day

for such service falls on a legal holiday, service may be made on the following business day.

2. Section 275.13 of the Regulations of the Commissioner of the Education is amended to read as follows:

Section 275.13. Service of answer and supporting papers

(a) Except in the case of a charter school location/co-location appeal pursuant to section 276.11 of this Title, each respondent upon whom a copy of the petition has been served shall, within 20 days from the time of such service, answer the same, either by concurring in a statement of facts with the petitioner or by service in the manner set forth in section 275.8(b) of this Part of an answer, together with all of respondent's affidavits, exhibits and other supporting papers, including a memorandum of law. The date upon which personal service was made upon respondent shall be excluded in the computation of the 20-day period. The time to answer in a charter school location/co-location appeal pursuant to section 276.11 of this Title shall be governed by Education Law section 2853(3)(a-5) and such section 276.11 of this Title.

(b) ...

(c) Alternative service of answer and supporting papers in an appeal regarding a homeless child's or youth's access to a free, appropriate public education pursuant to section 100.2(x) of this Title. If petitioner so elects, respondent shall serve the answer upon the local educational agency liaison for homeless children and youth, together with all of respondent's affidavits, exhibits and other supporting papers[, except a memorandum of law] including a memorandum of law. In such case, the local educational agency liaison for homeless children and youth shall notify the petitioner of his/her receipt of the answer, together with all of respondent's affidavits, exhibits and other supporting

papers by serving these documents upon petitioner at petitioner's last known address in the manner set forth in section 275.8(b) of this Part or, upon petitioner's request, by making copies of these documents available to petitioner without cost.

3. Section 275.14 of the Regulations of the Commissioner of Education is amended to read as follows:

(a) *The petitioner shall reply to each affirmative defense contained in an answer.* The reply, together with any reply memorandum of law and any affidavits which shall be limited to support of such reply, shall be served within 10 days after service of the answer to which it responds in the manner set forth in section 275.8(b) of this Part, except that a reply in a charter school location/co-location appeal pursuant to section 276.11 of this Title shall be served within the time prescribed by such section 276.11 of this Title. If an answer has been served by mail upon petitioner or petitioner's counsel, the date of mailing and the four days subsequent thereto shall be excluded in computing the 10-day period.

(b) *Reply in an appeal regarding a homeless child's or youth's access to a free, appropriate public education pursuant to section 100.2(x) of this Title.* The petitioner shall reply to each affirmative defense contained in an answer. The reply, together with any reply memorandum of law and affidavits which shall be limited to support of such reply, shall be served in the manner set forth in [either] section 275.8(b) or (e) of this Part.

4. Section 276.4 of the Regulations of the Commissioner of Education is amended to read as follows:

(a) Memoranda of law, consisting of the parties' arguments of law may be submitted by any party to an appeal, and may be requested by the commissioner's

counsel or by the commissioner. [The petitioner shall serve a copy of any memorandum of law upon every other party to the appeal in the manner provided by section 275.8(b) of this Title and except in the case of a charter school location/co-location appeal pursuant to section 276.11 of this Part shall file such memorandum of law, with proof of service thereof in accordance with section 275.9 of this Title, within 20 days after service of the answer or 10 days after service of the reply, whichever is later. Each respondent shall serve a copy of any memorandum of law, upon every other party in the manner provided by section 275.8(b) of this Title and, except in the case of a charter school location/co-location appeal pursuant to section 276.11 of this Part, shall file such memorandum of law with proof of service thereof in accordance with section 275.9 of this Title, within 30 days after service of the answer or 20 days after service of the reply, whichever is later. Where the answer is served upon petitioner or petitioner's counsel by mail, the date of mailing and the four days subsequent thereto shall be excluded in the computation of the 20-day period in which petitioner's memorandum of law must be served and filed. Except in the case of a charter school location/co-location appeal pursuant to section 276.11 of this Part, reply memoranda will be accepted only with the prior approval of the commissioner.] The petitioner shall serve and file any memorandum of law with the petition in accordance with section 275.8(a) of this section, and respondent shall serve and file any memorandum of law with the answer in accordance with section 275.13 of this Title. The petitioner shall serve and file any reply memorandum of law with the reply in accordance with section 275.14 of this Title. The commissioner, in his/her sole discretion, may permit the late filing of memoranda of law upon written application by a party, setting forth good cause for the delay and demonstrating the necessity of such memoranda to a determination of the appeal, together with proof of service of a copy of

such application upon all other parties to the appeal. In a charter school location/co-location appeal pursuant to section 276.11 of this Part, memoranda of law shall be served and filed in the manner prescribed in such section 276.11 of this Part.

(b) Notwithstanding the provisions of subdivision (a) of this section, in an appeal regarding a homeless child's or youth's access to a free, appropriate public education pursuant to section 100.2(x) of this Title, the parent or guardian of a homeless child or youth or unaccompanied youth as defined in section 100.2(x) of this Title may serve a [memoranda] memorandum of law [may be served] in the manner provided by [either] section 275.8 [(b)] (a) or (e) of this Title.

5. Subdivision (b) of section 276.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(b) Notwithstanding the provisions of subdivision (a) of this section, in an appeal regarding a homeless child's or youth's access to a free, appropriate public education pursuant to section 100.2(x) of this Title, the application and proposed affidavits, exhibits and other supporting papers may be served in accordance with [either] section 275.8(b) or (e) [or section 275.13(b)] of this Title.

6. Subdivision (b) of section 277.1 of the Regulations of the Commissioner of Education is amended to read as follows:

(b) the petition must include a notice to the officer in substantially the following form:

[SIR:]

Take notice that the petition and affidavits, copies of which are herewith served upon you, will be presented to the Commissioner of Education at Albany, and application thereon made for your removal from the office of..... of School District of the Town of,

..... County, and that you are required to transmit your answer to such application, duly verified, with an affidavit of service of a copy thereof upon petitioner, to the Office of Counsel, New York State Education Department, State Education Building, Albany, N.Y. 12234, or the charges contained in such petition and affidavit will be deemed to be admitted by you.

Please take further notice that your answer must conform with the provisions of the regulations of the Commissioner of Education relating to appeals before the Commissioner, copies of which are available from the Office of Counsel, New York State Education Department, State Education Building, Albany, N.Y. 12234. Such regulations require that an answer to the petition must be served upon petitioner, or if he be represented by counsel, upon his counsel, within 20 days after the service of the petition, and that a copy of such answer must, within five days after such service, be filed with the Office of Counsel, New York State Education Department, State Education Building, Albany, N.Y. 12234.

(Signature)

P.O. Address