

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 305, 306, 310, and 311 of the Education Law.

1. Section 275.2 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 275.2. Class appeals

[(a)] When allowed, an appeal may be maintained by one or more individuals on their own behalf and as representatives of a class of named or unnamed individuals only where the class is so numerous that joinder of all members is impracticable and where all questions of fact and law are common to all members of the class. Minor variations of fact shall not preclude the maintenance of a class appeal when such variations are irrelevant for purposes of the decision.

[(b) *Protective orders.* The commissioner may at any stage of the appeal issue such orders as may be necessary to fairly and adequately protect the interests of the persons on whose behalf the appeal is brought.]

2. Subdivision (a) of section 275.7 of the Regulations of the Commissioner of Education is amended to read as follows:

275.7 Oaths Before Notary Publics

(a) [All oaths required by these rules may be taken before any person authorized to administer oaths within the State of New York. The statement of an attorney admitted to practice in the courts of this State and appearing in an appeal as attorney of record or of counsel to the attorney of record, when subscribed and affirmed by him/her to be true under the penalty of perjury, may be served or filed in the appeal in lieu of and with the same force and effect as an affidavit] The verification required by subdivision (a) of

section 275.5 of this part shall be notarized by any person so authorized within the State of New York. An attorney affirmation sworn to under the penalty of perjury need not be notarized.

3. Subdivision (c) of section 275.9 of the Regulations of the Commissioner of Education is REPEALED.

4. The title of section 275.9 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 275.9. Filing [and fee]

5. Section 275.11 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 275.11. Notice [with] of petition

(a) Each petition must contain the following [notice] language, except that in the case of a charter school location/co-location appeal pursuant to section 276.11 of this Title, the petition must contain the notice prescribed in such section 276.11 of this Title:
Notice:

You are hereby required to appear in this appeal and to answer the allegations contained in the petition. Your answer must conform with the provisions of the regulations of the Commissioner of Education relating to appeals before the Commissioner of Education, copies of which are available at www.counsel.nysed.gov or from the Office of Counsel, New York State Education Department, State Education Building, Albany, NY 12234.

If an answer is not served and filed in accordance with the provisions of such rules, the statements contained in the petition will be deemed to be true statements, and a decision will be rendered thereon by the commissioner.

Please take notice that such rules require that an answer to the petition must be served upon the petitioner, or if the petitioner be represented by counsel, upon the counsel, within 20 days after the service of the appeal, 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, NY 12234.

A petition shall not be dismissed for failure to include such language, but the lack thereof may excuse the submission of a late answer.

(b) ...

(c) ...

6. Section 276.9 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 276.9. Dismissal of appeal

The commissioner may, in his/her discretion, and at any stage of the proceedings, dismiss an appeal if it appears to the commissioner's satisfaction that the appeal is untimely, pursuant to section 275.16 of this Title; that the petition does not set forth a clear and concise statement of the petitioner's claim[.]; that the commissioner lacks jurisdiction over the subject matter of the appeal; or that the appeal has become moot. The provisions of this section shall not apply to appeals before a State review officer of the State Education Department brought pursuant to section 4404 of the Education Law.

7. Section 277.1 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 277.1. Initiation and conduct of proceeding

The provisions of this section shall apply to a proceeding for the removal of a school officer pursuant to section 306 of the Education Law, and shall not apply to an appeal brought to challenge the results of a school district election. An application seeking the removal of a school officer must be made in accordance with Parts 275 and 276 of this Chapter, as far as possible, [including the payment of the required filing fee,] except:

(a) the petition must distinctly state the willful violation of law, neglect of duty, or willful disobedience of a decision, order or regulation of the commissioner charged against the officer and the facts by which it is established; such facts must be set forth with such certainty as to time, place and all other pertinent details, as to furnish the officer with precise information as to what he or she is expected to meet; if the charge is willful disobedience of a decision or order of the commissioner, a copy thereof must be attached to the petition.

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

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

(c) ...

8. Section 277.2 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 277.2. Initiation by commissioner

Such proceeding may be instituted by the commissioner [upon his own motion] by the service of an order to show cause [and thereafter]. Thereafter, the procedure as outlined in Parts 275 and 276 of this Chapter shall be followed so far as applicable.