

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

1. Subdivision (c) of section 275.3 of the Regulations of the Commissioner of Education is amended to read as follows:

(c) Form of pleadings. Documents that do not comply with the requirements of this section may be rejected in the sole discretion of the Commissioner. All pleadings and affidavits [shall be submitted in typewritten form, double spaced, on white paper 8 1/2 by 11 inches in size, and] shall set forth the allegations of the parties in numbered paragraphs. Such pleadings shall be addressed "To the Commissioner of Education," and shall be filed in accordance with the provisions of section 275.9 of this Part. All pleadings and affidavits, unless an exception is granted by the Commissioner, shall be submitted in the following form:

(1) typewritten in black ink, on single-sided pages, and text double-spaced (block quotations and footnotes may be single-spaced), on white paper 8 1/2 by 11 inches in size;

(2) all text, except page numbers, shall appear on pages containing margins of at least one inch. Text shall appear as minimum 12-point type in a legible font (serif preferred). Footnotes may appear as 10-point or 12-point type;

(3) pages consecutively numbered; and

(4) the petition, stay opposition, answer, or reply shall not exceed 15 pages in length; a memorandum of law shall not exceed 30 pages in length. Parties seeking to exceed these limitations may submit a written request in the manner described in Section 275.3 (b).

2. Subdivision (a) of section 275.9 of the Regulations of the Commissioner of Education is amended to read as follows:

(a) Within five days after the service of any pleading or paper or, in the case of a charter school location/co-location appeal pursuant to section 276.11 of this Title, within the period specified in such section 276.11 of this Title, a complete electronic copy of the original, together with the affidavit of verification and an affidavit proving the service of a copy thereof, shall be transmitted to the Office of Counsel as an email attachment, in a secure digital format that cannot be edited, at the following email address: legal@nysed.gov. Provided, however, that if electronic filing cannot be accomplished, the original pleading or paper, together with the affidavit of verification and an affidavit proving the service of a copy of the pleading or paper, shall be transmitted to the Office of Counsel, New York State Education Department, State Education Building, Albany, NY 12234. The affidavit of service shall be in substantially the form set forth below and shall indicate the name and, if applicable, official title of the person upon whom service was made.

3. Section 276.2 of the Regulations of the Commissioner of Education is REPEALED and a new section 276.2 is added to read as follows:

276.2 Confidential Resolution Conference.

(a) The Commissioner may schedule and direct the parties to participate in a confidential resolution conference with the counsel or the counsel's designee. Such conferences shall be for the purposes of considering settlement, simplifying the issues, resolving procedural issues, and/or discussing any matters which may aid in the expeditious disposition of the appeal.

(b) The resolution conference may be held in-person, by telephone, or by digital conferencing software and may be continued, as necessary.

(c) The counsel or designee may require an authorized school district representative familiar with the facts of the appeal to attend.

(d) The confidential resolution conference shall not be recorded, no evidence may be introduced or received, and any statements made therein shall not be admissible in the appeal under review, or in any other legal proceeding.

4. Subdivision (a) of 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 within 40 days after service of the petition. 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 within 50 days after service of the petition. Reply memoranda will be accepted only with the prior approval of the commissioner. All memoranda of law shall be filed with proof of service thereof in accordance with section 275.9 of this Title. The commissioner, in [his/her] his or her sole discretion, may permit the late service and 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. The commissioner may also

permit an extension of time to serve and file memoranda of law upon good cause shown and upon such terms and conditions as the commissioner may specify. A party seeking an extension shall make such request to the Office of Counsel prior to the expiration of the time to serve such answer or reply. The procedures set forth in this subdivision shall not apply to charter school location/co-location appeals, which shall be governed by section 276.11 of this Part.

5. Subdivision (a) of section 276.8 of the Regulations of the Commissioner of Education is amended to read as follows:

(a) Any party to an appeal may, within 30 days after the date of a decision thereon, apply by petition to the commissioner for a reopening of said decision. Applications for reopening are addressed solely to the discretion of the commissioner, and will not be granted in the absence of a showing that the decision which is the subject of such application was rendered under a misapprehension as to the facts or that there is new and material evidence which was not available at the time the original decision was made. [No oral argument shall be had in connection with an application for reopening unless the commissioner directs that such argument be had.]

6. Section 275.17 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 275.17. Amicus curiae

The commissioner may, in his/her sole discretion and upon written application submitted [at or before oral argument], permit interested persons or organizations to submit memoranda of law amicus curiae in connection with a pending appeal. Those permitted to submit memoranda amicus curiae shall not be considered parties to the

appeal before the commissioner and shall not be entitled to receive copies of pleadings and papers pertaining thereto or to participate in [oral argument] a confidential resolution conference pursuant to section 276.2 of this Chapter.