



The University of the State of New York

The State Education Department

State Review Officer

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THIRTEENTH REVISED GENERAL ORDER REGARDING CORONAVIRUS DISEASE 2019 AND RECOMMENCEMENT OF TIMELINES UNDER 8 NYCRR PART 279

WHEREAS, the Centers for Disease Control ("CDC") has advised people to take precautions considering the Coronavirus Disease 2019 ("COVID-19") outbreak and noted that the best way to prevent illness is to avoid being exposed to this virus;

WHEREAS, on March 7, 2020, the Governor of the State of New York declared a disaster emergency in the State of New York in response to COVID-19;

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency in response to COVID-19;

WHEREAS, on March 16, 2020, the Governor of the State of New York declared under Executive Order 202.4 that all schools statewide must be closed by March 18, 2020 and that the 180-day instructional requirement for students may be suspended;

WHEREAS, on March 19, 2020, the Governor of the State of New York declared under Executive Order 202.7 that there may be prescribed modifications to the procedures for any notarial act;

WHEREAS, on March 20, 2020, the Governor of the State of New York declared under Executive Order 202.8 that there must be a 100 percent closure of non-essential businesses statewide and tolled the commencement, filing, or service of a legal proceeding until April 19, 2020;

WHEREAS, on April 16, 2020, the Governor of the State of New York declared under Executive Order 202.18 that the provisions of Executive Orders 202.4, 202.7 and 202.8 were continued through May 15, 2020;

WHEREAS, on May 8, 2020, the Governor of the State of New York declared under Executive Order 202.29 that the provisions of Executive Order 202.18 (incorporating Executive Orders 202.4, 202.7 and 202.8) were continued through June 7, 2020;

WHEREAS, on May 29, 2020, the Governor of the State of New York declared under Executive Orders 202.34 and 202.35 that the provisions of Executive Orders 202.4, 202.7 and 202.8) were continued through June 28, 2020;

WHEREAS, on June 26, 2020, the Governor of the State of New York declared under Executive Orders 202.41 and 202.45 that the provisions of Executive Orders 202.4, 202.7 and 202.8) were continued through July 26, 2020;

WHEREAS, on July 6, 2020, the Governor of the State of New York declared under Executive Order 202.48 that the provisions of Executive Orders 202.4, 202.7 and 202.8 were continued through August 5, 2020;

WHEREAS, on July 21, 2020, the Governor of the State of New York declared under Executive Order 202.53 that the provisions of Executive Orders 202.4, 202.7 and 202.8 were continued through August 20, 2020;

WHEREAS, on August 20, 2020, the Governor of the State of New York declared under Executive Order 202.57 that the provisions of Executive Order 202.53 (incorporating prior Executive Orders which in turn extended the provisions Executive Orders 202.4, 202.7 and 202.8) were continued through September 19, 2020;

WHEREAS, on September 18, 2020, the Governor of the State of New York declared under Executive Order 202.64 that the provisions of Executive Orders 202.53 and 202.57 (incorporating prior Executive Orders which in turn extended the provisions Executive Orders 202.4, 202.7 and 202.8) were continued through October 18, 2020;

WHEREAS, on October 14, 2020, the Governor of the State of New York declared under Executive Order 202.69 that the provisions of Executive Orders 202.53 and 202.57 (incorporating prior Executive Orders which in turn extended the provisions Executive Orders 202.4, 202.7 and 202.8) were continued through November 14, 2020;

WHEREAS, on November 13, 2020, the Governor of the State of New York declared under Executive Order 202.75 that the provisions of Executive Orders 202.53, 202.57, and 202.69 (incorporating prior Executive Orders which in turn extended the provisions Executive Orders 202.4, 202.7 and 202.8) were continued through December 13, 2020;

WHEREAS, on December 11, 2020, the Governor of the State of New York declared under Executive Order 202.81 that the provisions of Executive Orders 202.53, 202.57, 202.69 and 202.75 (incorporating prior Executive Orders which in turn extended the provisions Executive Orders 202.4, 202.7 and 202.8) were continued through January 10, 2021;

WHEREAS, on December 30, 2020, the undersigned received notice via a copy of the New York State Register published on December 2, 2020 that Governor of the State of New York had previously declared under Executive Order 202.72 that the tolling provisions of Executive Order No. 202.8 as superseded in subsequent executive orders that

any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding as prescribed by the procedural laws of the state, including but not limited to the family court act, the civil practice law and rules, the court of claims act, the surrogate's court procedure act, and the uniform court acts, or by any statute, local law, ordinance, order, rule, or regulation, or part thereof, is hereby no longer in effect as of November 4, 2020 (emphasis added);

WHEREAS, none of the parties appearing in any case before the Office of State Review has to date indicated any actual knowledge of the November 4, 2020 expiration of the tolling provisions of Executive Order 202 as of date of this Order;

WHEREAS, all such unserved Requests for Review affected by Executive order 202 that were due to be served under Part 279 between November 4, 2020 and November 20, 2020 would likely be dismissed as untimely under the application of 8 NYCRR 279.4(a);

WHEREAS, there have been over 957,000 cases of COVID-19 in the State of New York. Although for many this disease appears to cause only flulike symptoms, for others it can pose a serious risk, and over 29,900 people have died in the State of New York;

IT IS HEREBY ORDERED that given the significant number of identified cases and the continuing concern over a resurgence of COVID-19 in the State of New York and the severity of risk posed to the families, school district personnel and the public, and given the above public health recommendations from public health authorities, effective with the General Order issued by the undersigned on March 20, 2020 and continuing as further revised herein:

- 1) the disaster emergency is deemed good cause to continue the **suspension of the requirement of personal service** of a Notice of Intention to Seek Review or Notice of Intention to Cross-Appeal pursuant to 8 NYCRR 279.2(a), (d) and a Request for Review as contemplated by 8 NYCRR 279.4(a), and **alternate service of said documents upon all parties is hereby GRANTED THROUGH February 28, 2020** pursuant to 8 NYCRR 279.4(c)(2) in accordance with the following conditions—the petitioner shall send the Request for Review and any supporting papers to the respondent's last known address by Certified Mail, Return Receipt Requested. The petitioner shall then file an affidavit of service reflecting completion of the alternate service granted herein;
- 2) said alternate service methods in this Order may be waived provided the parties shall agree in writing to an alternate method of service (e.g. e-mail, facsimile);

- 3) to avoid substantial injustice from a sudden, retroactive application of the November 4, 2020 expiration of the tolling provisions of Executive Order 202, from **March 20, 2020 through January 11, 2021**, the continuing disaster emergency stemming from the COVID-19 pandemic is deemed good cause to serve a late Notice of Intention to Seek Review of an impartial hearing officer (IHO) decision dated on or after February 10, 2020 through December 14, 2020 and case information statement pursuant to 8 NYCRR 279.2(a)-(c), and (e); provided however that **THIS LATE SERVICE PROVISION SHALL EXPIRE AFTER January 11, 2021**;
- 4) a Notice of Intention to Cross-Appeal the decision of an IHO dated between February 10, 2020 through December 14, 2020 pursuant to 8 NYCRR 279.2(d)-(e) must be served either five days after service of the Notice of Intention to Seek Review as described above or on January 18, 2021, whichever is earlier;
- 5) to avoid substantial injustice from a sudden, retroactive application of the November 4, 2020 expiration of the tolling provisions of Executive Order 202, from **March 20, 2020 through January 29, 2021**, the continuing disaster emergency stemming from the COVID-19 pandemic is deemed good cause to serve a late Request for Review of an IHO decision dated on or after February 10, 2020 through December 14, 2020 pursuant to 8 NYCRR 279.4(a); provided however that **THIS LATE SERVICE PROVISION SHALL EXPIRE AFTER January 29, 2021**;
- 6) the timelines for serving and filing a Notice of Intention to Seek Review, a Notice of Intention to Cross-Appeal, and a Request for Review of an IHO decision dated December 15, 2020 or later shall be adjudicated in accordance with the express terms of 8 NYCRR Part 279.
- 7) nothing in this order shall preclude a party from initiating a State-level appeal from a decision of an IHO by serving and filing a Request for Review pursuant to Part 279 of State regulation or the provisions of this order;
- 8) in a Request for Review not encompassed by this Order, nothing in this Order shall preclude a party from setting forth the specific reasons that constitute good cause for untimely service of a late Request for Review in accordance with Part 279;
- 9) a respondent shall not be precluded from seeking an extension of the due date of a State Review Officer's decision in order to accommodate an extension of the timeline for serving a responsive pleading under Part 279 of State regulation;

IT IS FURTHER ORDERED that unless otherwise ordered by the undersigned, apart from the alternate service provisions that are effective through February 28, 2020, the remainder of this Order shall be effective until January 29, 2021. The undersigned reserves the right to amend, modify, terminate, or extend this Order at any time as the circumstances involving the COVID-19

pandemic evolve. This Order shall be subject to and superseded by further action under law pursuant to the amendment of any applicable statute or regulation, Executive Order of the Governor of the State of New York, or order by a court of competent jurisdiction.

Dated: Albany, New York
December 31, 2020



JUSTYN P. BATES
CHIEF STATE REVIEW OFFICER