



**New York State Board of Elections  
PROPOSED RESOLUTION 21-02**

**Resolution to Adopt Emergency Amendments and to Propose Amendments to 9 NYCRR Subtitle V Part 6210, by adding 6210.21, Related to Providing Voters the Opportunity to Cure Certain Absentee Ballot Deficiencies, Pursuant to State Administrative Procedures Act (SAPA) § 202**

**WHEREAS**, on August 21, 2020, the Governor signed into law Chapter 141 of the Laws of 2020, which provides voters an opportunity to cure certain deficiencies regarding absentee ballots; and

**WHEREAS**, section 2 of Chapter 141 of the Laws of 2020 provides that: "(t)he state board of elections shall promulgate rules and regulations to implement this act"; and

**WHEREAS**, it is necessary to amend part 6210 of Title 9 of the NYCRR in order to implement the absentee ballot cure process as provided for in statute; and

**WHEREAS**, several elections will occur soon, including the February 2, 2021 Special Election in the County of Queens for Member of the City Council, District 24; the February 23, 2021 Special Election in the County of Queens for Member of the City Council, District 31; and the June 22, 2021 primary election; and

**WHEREAS**, time is of the essence, as it would be impossible to adopt these regulations in time for the above cited special elections if these amendments were to be adopted in the normal course of business; and

**WHEREAS**, based upon the foregoing, it is necessary for the general welfare of the public that Part 6210 of Title 9 of the NYCRR be amended on an Emergency Basis, in accordance with SAPA § 202;

**NOW THEREFORE BE IT RESOLVED:** that the New York State Board of Elections does hereby adopt the amended Part 6210 of the NYCRR, by adding 6210.21, and the Office of Counsel is hereby authorized and directed to take steps necessary

pursuant to SAPA § 202 to effectuate this ninety-day emergency adoption of the amendment to 9 NYCRR Subtitle V Part 6211; and

**BE IT FURTHER RESOLVED:** that the Office of Counsel is hereby authorized and directed to take steps necessary pursuant to SAPA § 202 to provide for the publication of proposed rule making related to the permanent amendment to 9 NYCRR Subtitle V Part 6210 and to provide notice of the public comment period of sixty days thereafter.

Part 6210 of 9 NYCRR is amended to add thereto subdivisions 6210.21 as follows:

**6210.21 Absentee Ballot Envelope Cures**

**(a) Curable Absentee Ballot Envelope Defects.**

The following are curable defects related to an absentee ballot affirmation envelope:

- (1) the affirmation envelope is unsigned; or
- (2) an affirmation ballot envelope signature does not correspond to the registration signature and thus does not appear to verify the voter; or
- (3) the affirmation envelope does not have the required witness to a mark; or
- (4) the ballot is returned without an affirmation envelope in the return envelope; or
- (5) the affirmation envelope is signed by the person that has provided assistance to the voter but is not signed or marked by the voter him/herself; or
- (6) the voter has failed to sign the affirmation envelope and someone else has signed the affirmation (i.e. POA).

**(b) Notice to the Voter.**

Upon a bipartisan determination of the board of elections that any of the curable conditions in subdivision (a) have occurred, within one day of making such determination, the board of elections shall mail the voter a notice explaining the reason for such rejection and the procedure to cure the rejection.

The notice shall be sent to the absentee voter's address indicated in the registration records and, if different, the mailing address indicated on the absentee ballot application.

The board of elections shall also attempt to contact the voter by electronic mail and telephone, if such information is available to the board in the voter's registration information or absentee application, to notify the voter of the deficiency and the opportunity and the process to cure the deficiency. If more than one email address is available to the board, send the notice to all email addresses in the voter's file. Any notification attempted by email shall include a copy of the notice and cure affirmation. If more than one phone number is available to the board, contact each phone number in the voter's file.

To the extent practicable, the board shall make at least three attempts, over at least two days, at different times of the day to contact the voter by telephone.

If upon reaching the actual voter and confirming the voter's identity by asking their name, date of birth, and voter registration address, the absentee voter then provides an email address to which such cure affirmation may be emailed, the board shall send the cure affirmation to the voter via email.

**(c) Form of Cure Affirmation.**

The voter may cure the aforesaid defects by filing a duly signed affirmation attesting to the same information required by the affirmation envelope and attesting that the signer of the affirmation is the same person who submitted such absentee ballot. The board shall include the form of such affirmation with the notice to the voter. The affirmation shall be substantially in the form promulgated by the New York State Board of Elections.

**(d) Deadlines for Cure.**

Pre-election

The cure affirmation shall be filed (postmarked if by mail) with the Board of Elections on or before either the last day to apply for an absentee ballot or seven business days after notification by mail, whichever is later.

Such cures may be filed with the boards of elections by email, facsimile, in person or by mail; provided, however, if the voter's *application* for the absentee ballot did not contain a "wet" signature the cure affirmation must be filed with the board by mail or personal delivery.

Post-election

The cure affirmation shall be filed in the same method as pre-election cures, however, they shall be filed within seven business days after notification by mail.

(e) **Determination of Cure.**

Provided the board determines that such affirmation remedies the curable defect, the rejected ballot shall be reinstated and duly canvassed at the time of canvass. If the board of elections is split as to the sufficiency of the cure affirmation, such envelope shall be set aside for three days and then canvassed unless the board is directed otherwise by court order.

(f) **Notice of Any Rejection.**

When the board of elections invalidates an absentee ballot envelope for any reason that is not otherwise curable, and this determination is made prior to election day, the voter shall be notified by mail, and email where available, of the rejection of their ballot. The rejection notification shall be sent within one business day of such rejection. To the extent practicable, this notice shall inform the voter of options still available to them to vote.

When the board of elections invalidates an absentee ballot envelope for any reason that is not otherwise curable, and this determination is made after election day, the voter shall be notified by mail, or email where available, of the rejection of their ballot. No rejection notification shall be required when an absentee ballot is deemed invalid because the voter has voted in person on election day or during early voting.

Whenever a cure affirmation is submitted prior to the day of election and is found to be insufficient, to the extent practicable the board of elections shall forthwith inform the voter of such finding and shall advise the voter of all then existing options for voting.

(g) **Special Provision Related to Unsealed Envelope.**

If an absentee ballot affirmation envelope is received by the board of elections prior to the election and is found to be unsealed and thus invalid, the board shall

forthwith notify the voter of such defect and notify the voter of other options for voting, and, if time permits, provide the voter with a new absentee ballot.

Notwithstanding the foregoing paragraph, if the unsealed affirmation envelope is received in a fully sealed, but not taped (unless required for envelope construction) outer mailing envelope, such ballot envelope shall be treated as a ballot filed without an affirmation envelope and shall be curable by the filing of the cure affirmation. The affirmation envelope shall be immediately sealed by the board of elections without examining the ballot therein.

**(h) Signature Comparison Standards, Procedure and Training.**

Prior to any staff person being assigned to do signature reviews, they shall be trained and prepared for such task in accordance with guidance developed by the State Board of Elections.

When a bipartisan staff team makes a preliminary ruling that the signature on the absentee affirmation does not match the voter registration signature on file, the decision shall be elevated to a manager. The bipartisan team of managers has full authority to overrule the initial determination of invalidity. If the managerial team, after reviewing the affirmation signature and all signature exemplars that the board has on file, affirms the initial finding of a signature mismatch, the cure procedures outline above shall be followed. If the initial signature comparison is conducted by the commissioners of the board of elections, managerial review of their initial determination of a mismatch shall not be required and the cure procedures outlined above shall be followed.

When verifying signatures, the bipartisan team shall keep in mind that everyone writes differently, and no one signs his or her name exactly the same way twice. Some variation in signatures is to be expected. There are many factors that can lead to signature variance, including but not limited to age, disability, underlying health conditions, writing implement/surface and level of concentration.. The bipartisan team shall presume that the documents were signed by the same person. If any differences observed can be reasonably explained, the signature should be accepted.

**(i) Additional Instructions For Absentee Ballot Envelopes As To Circumstances Not Requiring Cure.**

Absentee ballot envelopes are not invalid and do not require a cure under these circumstances:

(1) Undated or Wrongly Dated Voter Signature. An absentee ballot affirmation envelope that is undated or clearly has the wrong date (i.e. the wrong year or month) by the voter is not invalid, provided it is postmarked on or prior to Election Day and or is otherwise received timely by the board of elections.

(2) Misplacement of Signature or Mark. A voter who signs or marks the ballot affirmation envelope at a place on the envelope other than the designated signature line shall not be invalidated for this reason. The signature or mark need only appear on the same envelope as the affirmation.

(3) Use of Ink or Pencil. A voter may use any combination of ink (of any color) or pencil to complete the ballot envelope.

(4) Extrinsic Materials Exception. Any papers found in the affirmation envelope with the ballot shall not void the ballot if the papers are materials from the board of elections, such as instructions or an application sent by the board of elections.

(5) Envelope Irregularities. Any extrinsic marks or tears on the ballot envelope that appear to be there as a result of the ordinary course of mailing and/or transmittal, shall not invalidate the ballot.