



# Advocates for Children of New York

Protecting every child's right to learn

## Appeals to the Commissioner of Education Relating to School Co-Locations

Some New York City public schools are “co-located” with at least one other school in a shared building. When parents believe that a co-location will affect their child’s education, they can appeal the NYC DOE’s approval of the co-location to the New York State Commissioner of Education.

There are two sets of rules that explain the procedures for co-location appeals: the *general process of appeals to the Commissioner*, in NYCRR Part 275, and the *special rules for charter school co-location appeals* in NYCRR Part 276. You can find the rules at <http://www.counsel.nysed.gov/appeals/ed-law-regs>. Because these rules are complicated, we have outlined the requirements for charter school co-location appeals below.

### STEP 1: WRITING THE PETITION

A petition to appeal must:

1. Be addressed “To the Commissioner of Education”.
2. Be typed, double spaced, and white 8.5 by 11 inch paper.
3. State all facts, in numbered paragraphs, as to why the co-location violates the law, including any failure to:
  - (a) Follow procedures, or
  - (b) Tell the public about the effects of the co-location.

Make sure to say how you or your children will be affected by the co-location, such as that your child attends school in the building to be co-located, your child’s grade, and that your child will attend the school in the year that the co-location will begin. A sample petition is available at <http://www.counsel.nysed.gov/appeals/form6>.

4. Contain any documents and sworn and notarized statements (known as **affidavits**) that support your position.
5. Be **verified**—meaning sworn by the petitioner(s) (usually the parents of students attending the school) that all the statements in the petition are true and accurate and notarized. A blank form of the verification letter can be found under Section 275.6 on this page: <http://www.counsel.nysed.gov/appeals/form2>.

## ***If you are challenging a school's co-location with a charter school...***

You must file a special **Notice of Petition**, found at:

<http://www.counsel.nysed.gov/appeals/formnycch>, which:

- (a) Includes the NYC Department of Education *and* the charter school as Respondents, and
- (b) Names as a Respondent the charter school that is co-locating (*not* the parent network or managing entity of the school).

A summary of the requirements involving NYC charter school co-location appeals can be found at <http://www.counsel.nysed.gov/appeals/summarynycch>.

## **STEP 2: DELIVERING THE PETITION**

**A COPY of the petition must be delivered (or “served”):**

1. In person to the DOE’s attorneys at the New York City Law Department, at 100 Church Street, New York, NY;
2. Within **30 calendar days** of the DOE vote that approved the co-location;
3. By someone 18 years or older who is NOT a party to the petition; and
4. If appealing the co-location of a charter school with a public school, you must have a copy of the petition served in person to the charter school as well.

With the petition, you have the **OPTION** to deliver a **memorandum of law** that explains why the co-location violates the law, including any failure to follow procedures or tell the public about the effects of the co-location.

**The ORIGINAL petition (and memorandum of law, if you submitted one) must:**

1. Be sent to the Office of Counsel, New York State Education Department, State Education Building, Albany, NY 12234;
2. Include an **affidavit of service**, proving that the DOE and charter school were served copies (sample forms for the affidavit of service can be found under Section 275.9 Filing & Fees, at <http://www.counsel.nysed.gov/rulesandregs/part275#a9>); and
3. Be received by the Office of Counsel **within one business day** of delivery to the DOE’s attorneys and the charter school.

When filing, you will need to pay a **filing fee** of \$20. You can request a waiver of the fee by showing proof of your income and assets.

## **STEP 3: THE REPLY**

Within 10 business days of your serving the petition, the DOE and charter school are required to give you their answers to your petition.

- I. You can reply to these answers by serving the reply to the DOE and charter school:
  - (a) Within **two business days** of the answer being served on you,
  - (b) Through personal delivery, mail, or next day express mail, or
  - (c) If the DOE and charter school agree, you can serve them your reply through e-mail instead.
2. The **original** reply documents and an affidavit of service must be received by the Office of Counsel of the New York State Education Department **within one business day** of service upon the DOE and charter school.

## STEP 4: THE RULING

The Commissioner will issue her ruling within **10 days** of receiving the DOE's answers. You can appeal the decision by filing an **Article 78 petition** in New York state court. We suggest consulting an attorney to help you with this process.

### ADDITIONAL RESOURCES

- The Commissioner has posted a question and answer page on charter school co-location appeals at <http://www.counsel.nysed.gov/appeals/faqsnyccch>.
- Sample petitions and memoranda of law can be found on AFC's website at [http://www.advocatesforchildren.org/litigation/individuals/co\\_location\\_cases](http://www.advocatesforchildren.org/litigation/individuals/co_location_cases).

**Advocates for Children of New York, Inc.**  
151 West 30th Street, 5th Floor, New York, NY 10001  
Jill Chaifetz Education Helpline: 1-866-427-6033 (toll free)  
Monday through Thursday, 10am to 4pm  
[www.advocatesforchildren.org](http://www.advocatesforchildren.org)

*This fact sheet does not constitute legal services, legal advice, or any legal opinions of its authors. In many cases the worksheet may summarize existing policies or laws. The fact that information appears in this fact sheet does not necessarily suggest the authors' agreement with such policies or laws.*

Copyright © February 2017 by Advocates for Children of New York, Inc.