



## The Legal Requirements for School Co-Location in New York City August 24, 2011

Advocates for Children of New York (AFC) prepared this worksheet on the legal requirements for school co-locations to answer the questions posed by schools and communities throughout New York City.

A co-location occurs when two or more schools share a single building. This includes a public school sharing a building or space with another public school or with a charter school.

New York Education Law and the New York City Department of Education's Chancellor's Regulations require that the DOE take a number of steps before they can obtain approval to co-locate two schools. These requirements are spelled out in New York State Education Law §2590-h (2-a) and Chancellor's Regulation A-190.<sup>1</sup>

### **What is the process before the DOE can co-locate two or more schools?**

New York law requires a specific process that the DOE must follow to give individuals affected by a co-location the opportunity to hear about the proposal and comment on the proposal. A co-location can't happen just because schools or school leadership teams came to an agreement between themselves. Instead, the DOE must follow the procedures described below.

1. At least six months before the first day of the next school year, the DOE must post any proposal for co-location on the website for the Panel for Educational Policy (PEP) located at <http://schools.nyc.gov/AboutUs/leadership/PEP>.
2. When the DOE puts out a proposal to co-locate schools, it must include an "Educational Impact Statement" (EIS) that has several key pieces of information. For example, the EIS must describe the effects that the co-location will have on the affected communities, including current and future students at the school. If the proposal is to co-locate a charter school in a public school building, the EIS must also include a building usage plan, which describes how classrooms and administrative spaces will be divided and shared in the building.
3. Between 30 and 45 days after an EIS is made publicly available on the PEP website, the DOE must hold a public hearing. You can find the schedule and location of hearings at the PEP website: <http://schools.nyc.gov/AboutUs/leadership/PEP/default.htm>.
4. All interested parties must be given the opportunity to voice their concerns about the proposal. Parents can also call or email their comments to the DOE. You can find the contact information in the EIS.

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<sup>1</sup> Chancellor's Regulation A-190 can be found at <http://docs.nycenet.edu/docushare/dsweb/Get/Document-341/A-190%20FINAL.pdf>

5. After receiving the comments, the DOE may revise the proposal. If DOE makes “substantial revisions” to the proposal, it must hold another hearing no sooner than 15 days after publishing the revised EIS.
6. After the DOE receives public comment, the PEP must vote on the proposed co-location. The PEP consists of 13 appointed members and the Chancellor (who is a non-voting member). Each borough president appoints one member and the mayor appoints the remaining eight. The schedule and location of the meetings and votes are available on the PEP website: <http://schools.nyc.gov/AboutUs/leadership/PEP/default.htm>.

### **How can I learn about a proposed co-location at my child’s school?**

The EIS and the notice of the proposal to co-locate is published on the PEP website at <http://schools.nyc.gov/AboutUs/leadership/PEP/default.htm>. If you cannot find the EIS or the notice, ask your school or Community Education Council (CEC) for a copy.

### **Who should receive notice about proposed co-locations?**

- Under New York Education Law, the DOE must give notice to as many people as it can, including parents and students who will be affected by the proposed co-location.
- The DOE must file copies of the EIS with any CEC, community board, and community superintendent that will be affected by the co-location as well as the school leadership team of the affected schools, the Citywide Council on English Language Learners, and the Citywide Council on Special Education.
- If the proposal affects a high school, the DOE must also file a copy with the Citywide Council on High Schools and email a copy to all community boards and CECs in the borough where the high school is located.
- If the proposal affects students enrolled in District 75 schools, the DOE must also file a copy with the District 75 Council.

### **My child has an IEP. Can the DOE move my child to another building or school to make room for the co-location?**

- The DOE cannot move classes to another building or school to make room for the co-location without first issuing an EIS explaining the impact that the move will have on the students and going through the notice, hearing and vote processes described above.
- Special education classrooms are NOT exempt from this process.
- Before the DOE can move your child, you have the right to visit any proposed special education placement. You can visit the school and talk with the teachers and administrators about how the school will meet your child’s needs.
- If you think that the co-location will interfere with your child getting the services he or she needs or make the current placement inappropriate, request a meeting of your IEP team to discuss your concerns. If your concerns are not resolved, you have the right to request an impartial hearing. For guidance on the hearing process, call Advocates for Children at 1-866-427-6033, or download a copy of our guidebook at <http://www.advocatesforchildren.org/Sp%20Ed%20Impartial%20Hearing%20Guide%208.2009.pdf>.

### **What can I do if I oppose the proposed co-location?**

*You can comment.*

- If you are opposed to the proposed co-location, you can submit comments about the proposal to the DOE. Comments can be submitted by calling or emailing them to the DOE, speaking at a public hearing or speaking at the PEP meeting. All of your comments should be submitted *before* the public hearing.
  - Keep in mind that if there are a large number of people who want to speak at the hearing or the PEP meeting, you may only have a few minutes to speak.
- Your comments should explain why you are opposed to the co-location and how the co-location will harm your child or your school community.

*You can appeal to the New York State Education Commissioner.*

- An appeal is what you can do after the PEP has voted.
- An appeal to the Commissioner must be filed within 30 days of the PEP vote to co-locate the school.
- A Commissioner’s appeal requires that you write a complaint (called a “petition”) along with any proof that the DOE failed to follow New York Education Law.
  - You will need to submit with your petition a “memorandum of law” that gives the legal reasons why the DOE did not follow the law.
  - The DOE then will respond with its legal and factual arguments.
  - If you want to respond to the DOE’s legal and factual arguments, you will need to submit any reply within two days of receiving the DOE’s response.
- The Commissioner will issue his decision within 10 days after the DOE submits its response to the petition.
- If you lose the appeal to the Commissioner, you can appeal his decision to state court.
- Although it is possible to file an appeal on your own, you may want to seek legal assistance.
- Additional information about the timing and procedures of a Commissioner’s appeal, and sample appeal papers are available on AFC’s website: <http://www.advocatesforchildren.org/guides.php>. In addition, you can go to the Commissioner’s website at <http://www.counsel.nysed.gov/rulesandregs/>.

*You can file an action in state court.*

- You can also file an action in state court asking the court to order the DOE to comply with the law.
- These types of actions are called “Article 78” proceedings and must be filed within 4 months of the action that you are complaining of.
- For this type of case, it is unclear whether you will first need to appeal to the Commissioner. A court recently dismissed an Article 78 co-location case because the parents did not first appeal the PEP’s decision to the Commissioner.
- If you are interested in pursuing this type of appeal, we advise that you speak with a lawyer first.

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