



Advocates for Children of New York
Protecting every child's right to learn

Appeals to the New York State Commissioner of Education

If you believe that an action taken by a school district is wrong and violates the law, one way to challenge the school district's act is to appeal to the New York State Commissioner of Education. This fact sheet explains how to file an appeal.

Who can appeal, and why?

A **parent or community member** harmed by a school district's action can appeal that action to the New York State Commissioner of Education. An **organization** can also file an appeal if the people the organization represents are harmed.

Appeal what?

Appeals to the New York State Commissioner of Education can challenge actions such as school closings and co-locations. Appeals can also challenge a school district's actions with respect to an individual student, such as suspensions, grade retention, and more.

Getting started...

The process for filing these appeals is described in Parts 275-277 of the Regulations of the Commissioner of Education (<http://www.counsel.nysed.gov/appeals/ed-law-regs>). Special rules apply when the appeal involves homeless youth (www.counsel.nysed.gov/appeals/homeless), or school co-locations (www.counsel.nysed.gov/rulesandregs/part276#a11).

Because these rules are complicated, we have outlined the requirements for **general** appeals to the Commissioner below.

For appeals of **co-location** decisions, please see AFC's fact sheet on co-location appeals at www.advocatesforchildren.org/sites/default/files/library/school_colocation_appeals.pdf.

ADDITIONAL RESOURCES:

- The Commissioner has posted a question and answer page on general appeals at www.counsel.nysed.gov/appeals/faqs.
- Sample forms can be found at www.counsel.nysed.gov/appeals/forms.

STEP I: WRITING THE PETITION

A petition to appeal must:

1. Be addressed “To the Commissioner of Education.”
2. Be filed within **30 calendar days** of the action you’re appealing.
3. Include a **caption** that appears on the top of the first page of the petition and all other forms. The caption must include:
 - Your name;
 - Your child’s name;
 - The school district whose action you are appealing; and
 - A sentence description of the action that you are appealing.

A sample caption can be found at www.counsel.nysed.gov/appeals/form6.

4. Include a **completed notice**. A sample notice is located here: www.counsel.nysed.gov/rulesandregs/part275#a11.
5. State all facts, in numbered and typed paragraphs, as to why the school district’s action violates the law, including any failure to follow procedures and why you are entitled to relief.
 - Make sure to clearly describe the action of the school district.
 - Show how you have been *directly injured* by the district’s action.
 - Show how the school district either:
 - (a) Violated a statute or regulation, OR
 - (b) Had no reasonable basis for its decision.

A sample petition is available at www.counsel.nysed.gov/appeals/form6.

6. Include all evidence in support of your appeal. You may attach sworn statements (called **affidavits**) from other people and documents that support your claim.
7. Be signed by you, the petitioner, and include your name, address, and phone number.
8. Be **verified**, meaning that all statements in the petition are true and accurate, which is sworn by the petitioner(s) and notarized. A sample verification can be found at www.counsel.nysed.gov/appeals/form2.

REQUESTING A STAY

A stay request asks the Commissioner to **temporarily stop the school district’s action** until your case is decided.

The request must:

1. Be included in the petition;
2. State the facts and legal reasons why you believe a stay should be granted, including why you will be harmed if the action is not stopped while the appeal is being decided; and

3. Include the following paragraph in the notice:

“Please take further notice that the within petition contains an application for a stay order. Affidavits in opposition to the application for a stay must be served on all other parties and filed with the Office of Counsel within three (3) business days after service of the petition.”

The school district will have 3 *calendar days* after serving the petition to oppose the stay request.

STEP 2: DELIVERING THE PETITION

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

1. In person;
 - If the petition is against the New York City Department of Education (NYC DOE) or any school within the NYC DOE, it should be served to NYC Law Department, 100 Church Street, New York, NY.
 - If the petition is not against the NYC DOE, it should be served to either the school district clerk, any member of trustee of the board of education, the superintendent of schools, or someone in the superintendent’s office who has been designated by the board to accept petitions.
2. Within 30 calendar days of the action being appealed; and
3. By someone 18 years or older who is NOT a party to the petition.

The ORIGINAL verified petition must:

1. Be mailed to: Office of Counsel, Education Building, Room 148 EB, Albany, NY 12234;
2. Within 5 calendar days of service of the copy of the petition detailed above; and
3. Include an **affidavit of service**, stating that the school district was served the copy of the papers. Sample forms for the affidavit of service can be found under Section 275.9 Filing & Fees, at www.counsel.nysed.gov/appeals/form3.

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 **20 calendar days** of serving the petition, the school district is required to give you its answer. You can respond to the school district’s answer:

1. With a signed and notarized reply;
2. Within 10 calendar days of receiving the answer;
3. Through service by someone other than yourself who is over 18 years old.

Your **original, signed copy** of the verified reply must be mailed to the Commissioner, with an affidavit of service within 5 days after you served the school district.

STEP 4: MEMORANDUM OF LAW

You also have the **OPTION** to serve a **memorandum of law** with legal arguments that support your petition. The memorandum:

1. Should include your arguments on why the school district's action violated the law or did not follow required procedures.
2. May include only the facts in the petition (and cannot mention new facts);
3. Be served to the school district by someone other than yourself who is over 18 years old; and
4. Be filed within 20 calendar days after service of the answer OR 10 calendar days after service of the reply (whichever comes later) with proof of service.

For more information on the memorandum of law, visit:

www.counsel.nysed.gov/rulesandregs/part276#a4.

STEP 5: THE RULING

Typically, the Commissioner will send you a copy of her decision eight to ten months after the petition was filed. If you disagree with the decision, you can appeal in two ways:

1. By petitioning the Commissioner within 30 calendar days of the decision. The decision is reopened only if there was a factual mistake or new evidence not available at the time of the original petition. You must serve the application to reopen the decision by mail or in person.
2. By filing an **Article 78 petition** in New York State Court. You do not need to ask the Commissioner to reopen the decision before this appeal. We suggest consulting with an attorney to help you with this process.

Advocates for Children of New York, Inc.

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