

School Receivership for 2018-19 to 2020-21: Frequently Asked Questions

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A. Commissioner's Regulation §100.19

A.1. When did these regulations become effective?

A: Commissioner's Regulation §100.19 was adopted by the Board of Regents at their June 2015 meeting as an emergency action. The regulations took effect on June 23, 2015. On September 21, 2015, the Board adopted §100.19 as a permanent regulation after conducting an assessment of public comments. Districts with schools identified as Persistently Struggling and/or Struggling were required to implement the provisions of Commissioner's Regulation §100.19 beginning on July 15, 2015, the date the Commissioner formally identified schools as Persistently Struggling or Struggling. The first cohort of Receivership Schools were identified on July 15, 2015. The second cohort of Receivership Schools (only Struggling Schools) were identified on January 17, 2019.

A.2. How are schools identified as Receivership schools?

Prior to 2018-19 schools were placed in Receivership status as a result of repeat designation as Priority Schools under the state's ESEA Waiver accountability system. Beginning with the 2018-19 school year the placement of a school under superintendent Receivership is a consequence of it being identified for Comprehensive Support and Improvement (CSI) based on the state's new accountability system under the Every Student Succeeds Act (ESSA) plan.

A school was identified for Receivership in 2018-19 if it was in Priority School status for the 2017-18 school year and was designated as CSI for the 2018-19 school year.

A.3. What is the difference between Cohort 1 and Cohort 2 schools?

Cohort 1 schools are those that were in Receivership status during the 2017-18 school year and were re-identified for Receivership in the 2018-19 school year based on the 2017-18 school year results. Cohort 2 schools are those that were newly identified as Receivership schools in the 2018-19 school year. Both Cohort 1 and Cohort 2 schools have been designated as Struggling Schools beginning with the 2018-19 school year. Newly identified Receivership schools (Cohort 2) must make Demonstrable Improvement (DI) beginning in 2020-21, and annually thereafter, or they will be placed in Independent Receivership. Re-identified Receivership schools (Cohort 1) must continue to annually make DI to avoid being placed in Independent Receivership.

A.4. How many schools are in Receivership?

A total of 40 schools were identified for Receivership in 2018-19, including fourteen Cohort 1 schools and 26 Cohort 2 schools. A list of the Receivership schools is available on the Department's webpage at: <http://www.p12.nysed.gov/accountability/de/SchoolReceivership.html>.

A.5 When does School Receivership begin?

A: The question of when the School Receivership begins is addressed in §100.19(d)(3), which states:

“(3) Upon the department’s approval of a model or plan, the superintendent shall be vested with all the powers granted to an independent receiver pursuant to subdivision (g) of this section for a period of one school year for a persistently struggling school and for a period of two school years for a struggling school, provided that the superintendent shall not be allowed to supersede any decision of the board of education with respect to his or her employment status, except that the school district superintendent receiver shall not be required to create and implement a school intervention plan or to convert a struggling or persistently struggling school to a community school, further provided that any board of education decision with respect to the superintendent’s employment status shall be consistent with applicable laws and regulations and his or her employment contract and shall not be taken in retaliation for acts taken as a school receiver consistent with Education Law section 211-f and the provisions of this section. ”

Once schools have been identified, the district is responsible for the following:

- Forming a Community Engagement Team for each identified school.
- Providing written notification to parents of students who attend each identified school.
- Conducting public hearings in each identified school.

The Community Engagement Template and evidence; the Public Notification and Hearing Requirements Template and evidence; and the Demonstrable Improvement Template must be submitted annually within 30 days of the first day of school for all identified schools, regardless of the type of school improvement plan submitted to the Department.

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B. Receivership Powers and Responsibilities

B.1. What is required of the Superintendent Receiver, and by when must these requirements be completed?

A: The Superintendent Receiver is responsible for the following:

- form a Community Engagement Team for each identified school as soon as practicable but no later than 20 business days following designation of a school as struggling.
- The district must annually provide notification to parents of students who attend each identified school as specified in Commissioner's Regulation §100.19(c).
- The district must conduct public hearings in each identified school within 30 days of the first day of school, unless the district has applied for and received an extension.
- The district must submit the Community Engagement Plan, the Public Notification and Hearing Template and the Demonstrable Improvement Template for each school.
- Within 60 days of the Department's provisional approval of the school's plan or by September 30th, whichever is later, in order to continue to be vested with the power of a receiver, the superintendent must submit a revised School Comprehensive Education Plan (SCEP) or School Improvement Grants (SIG) plan that has been reviewed by the Community Engagement Team and incorporates the recommendations of the Community Engagement Team (CET) or provides a rationale as to why the recommendations were not incorporated.

After the Department has approved the final plan, the Receiver is also responsible for:

- Submitting quarterly reports to the local board of education regarding the progress made in implementing the approved SCEP or SIG plan. These reports must also be made public (for example, by posting them on the district's website), and submitted to the Department.
- Participating in bi-annual meetings with the Department to discuss the progress made in implementing the approved plan, as well as the data collected regarding improvements in school culture, student achievement, and teacher professional development and practices.
- Working collaboratively with the Community Engagement Team to review the progress of implementation at the school and determine any necessary next steps or revisions to the plan.

B.2 What are the powers that a Receiver can exercise after Department approval of the SCEP, or SIG plan?

A: In order to implement a school intervention plan or a Department-approved intervention model or comprehensive education plan, as applicable, a School Receiver may take the following actions consistent with the provisions of Education Law section 211-f and, with respect to issues related to such actions for which collective bargaining is required, consistent with any applicable collective bargaining agreement(s) and provisions of Article 14 of the Civil Service Law:

- Review and if necessary; expand, alter or replace the curriculum and program offerings of the school, including the implementation of research-based early literacy programs, early interventions for struggling readers and the teaching of advanced placement courses or other rigorous nationally or internationally recognized courses, if the school does not already have such programs or courses.
- Replace teachers and administrators, including school leadership who are not appropriately certified or licensed.
- Increase salaries of current or prospective teachers and administrators to attract and retain high-performing teachers and administrators.
- Establish steps to improve hiring, induction, teacher evaluation, professional development, teacher advancement, school culture and organizational structure (e.g., instructional coaches or research-based instructional plans).
- Reallocate the uses of the existing budget of the school.

- Expand the school day or school year or both, which may include establishing partnerships with community-based organizations and youth development programs that offer appropriate programs and services in expanded learning time settings.
- For a school that offers first grade, add pre-kindergarten and full-day kindergarten classes, if the school does not already have such classes.
- Include a provision of a job-embedded professional development for teachers at the school, with an emphasis on strategies that involve teacher input and feedback.
- Establish a plan for professional development for administrators at the school, with an emphasis on strategies that develop leadership skills and use the principles of distributive leadership.
- Order the conversion of a school in Receivership that has been designated as Struggling or Persistently Struggling pursuant to this section into a charter school; provided that such conversion shall be subject to Article 56 of the Education Law (including the requirement of a vote by parents of students attending the school) and that such conversion charter school shall operate pursuant to such article, and shall operate consistent with a Community Schools Model, and shall be subject to the provisions of subdivisions (3), (4), (5), (6), (9), (10), (11), (12) and (13) of Education Law section 211-f.

The Receiver also has additional powers and responsibilities as they relate to abolishment of staff positions at the identified school, and supersession of local board of education decisions related to employment of the staff and administration at the identified school and the school budget. For a complete description of the processes related to abolishment of staff positions and supersession of local board of education decisions, please review Commissioner's Regulation 100.19(g) which can be found at:

<http://www.regents.nysed.gov/common/regents/files/meetings//Revised%20Receivership%20100.19.pdf>

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C. Public Hearing and Notification Requirements

C.1. What are the public hearing and notification requirements for districts with Persistently Struggling and Struggling Schools?

A: No later than 30 calendar days after a school has been identified as a Persistently Struggling or Struggling School, the school district is required to notify parents or guardians, of students attending the identified schools, regarding the designation of the school(s). The notification must be made in writing and must provide an explanation for why it was designated Persistently Struggling or Struggling. The notices must be provided in English and translated, to the extent practicable, into the recipient's native language or mode of communication. Parents who enroll students in identified schools must be provided with this notification at the time of enrollment. Each year that the school remains identified, the notification must be provided to parents or guardians no later than June 30th.

The district must hold an initial public meeting to discuss the performance of the designated school and the concept of Receivership no later than 30 calendar days after a school has been identified, unless the district has been approved for an extension by the Department.

There are additional public notification and hearing requirements that must be met by the district. The Department has created a template for districts to use in providing information regarding how the required public notification requirements have been met. The Public Notification and Hearing Template must be submitted as an addendum to the school's yearly SCEP or SIG plan.

C.2. In districts where there is more than one Persistently Struggling or Struggling School, can the district hold one central meeting to fulfill the public hearing requirements?

A: No. A separate public hearing must be held for each identified school. Further, the regulation specifies that in order to maximize opportunities for the participation of the public and parents of, or persons in parental relation to, students attending the school, the public meeting or hearing shall be held at the school building in the evening hours or on Saturday, to the extent practicable.

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D. Community Engagement Team and Plan

D.1. What are the requirements for establishment of a Community Engagement Team and creation of a Community Engagement Plan?

A: No later than 20 business days following the identification of a school as Persistently Struggling or Struggling, the school district is required to establish a Community Engagement Team (CET). The

CET must be composed of community stakeholders with direct ties to the school including, but not limited to, the school principal, parents of (or persons in parental relation to) students attending the school, teachers and other school staff assigned to the school, and students attending the school. The administrator, teacher and parent members of the CET must be selected through the process established in Commissioner's Regulation §100.11(b). The membership of the CET may be modified at any time as long as the team at all times includes the school principal; parents of (or persons in parental relation to) students attending the school; teachers and other school staff assigned to the school; and students attending the school, as required based upon the school's grade configuration.

The Superintendent Receiver must develop a Community Engagement Plan describing how the district will establish the CET and the process by which the CET will be consulted. The Community Engagement Plan must be submitted as an addendum to the school's School Comprehensive Education Plan (SCEP) or intervention model plan (i.e., a 1003(g) School Improvement Grant. The Department has created a template for submission of the Community Engagement Plan, which is posted on the SED website at: <http://p12.nysed.gov/accountability/de/SchoolReceivership.html>.

The Community Engagement Team is charged with developing recommendations for improvement of the school and for soliciting input regarding their recommendations through public engagement. This public engagement may include, but is not be limited to, public hearings or meetings and surveys. The CET will work with the Superintendent Receiver to review the SCEP plan or the 1003(g) School Improvement Grant (SIG) plan submitted to the Department for the school year and determine whether revisions are necessary. After the plan receives Department approval, the Community Engagement Team will work to assess the degree to which the school's Comprehensive Education Plan or Department-approved intervention plan is being successfully implemented and provide on-going recommendations at least twice annually to school leadership. All such recommendations and the efforts made to incorporate them, including a description of which recommendations were incorporated and how they were incorporated and which recommendations were not incorporated and why they were not incorporated, must be included as an attachment to the Department-approved SCEP or SIG plan.

D.2. How many parents can the CET have? The regulations specify the process by which the representatives will be elected, but not the number of representatives.

A: The number of parents or any stakeholder group on the CET is determined by the receiver. However, the number could be influenced by how the district's Part 100.11 plan requires that representatives be selected. For example, if the Part 100.11 plan specifies that each family with a child at the school shall have one vote in selecting parent representatives and the top three vote getters shall serve on the Part 100.11 team, then the families shall appoint their representative(s) in this manner, but the superintendent could decide to have more or fewer than three parents on the CET. However, if the Part 100.11 plan states that two persons selected by the members of the Parent Organization and two persons selected by the Special Education Parent Teacher Association shall serve on the Part 100.11 team, then the receiver must provide for at least one member selected by the members of these organizations to serve on the CET.

D.3. In the case that the public notice process for the CET creation as well as the Receivership hearing (where parents are informed that the school has been placed in Receivership and for what reason) is not followed, what recourse do parents have? Can they appeal to the Commissioner in the regular appeals process?

A: Yes. An aggrieved party can appeal to the Commissioner pursuant to Education Law §310 from a district's failure to comply with the notice and hearing requirements of Commissioner's Regulation §100.19.

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E. Staffing

E.1. What is the process or format for conducting the required needs assessment for re-staffing?

A: The School Receiver may abolish the positions of any or all members of the teaching and administrative and supervisory staff assigned to the Persistently Struggling or Struggling School and require the staff members to re-apply for their positions at the school, provided that the receiver has conducted a comprehensive school needs assessment. This assessment must include, but is not limited to the following:

- An analysis of the professional development provided for the staff during the preceding two school years:

- An analysis of how the planned abolition will result in improved student performance; and
- A complete and thorough analysis of the results of the school needs assessment.

90 days prior to the planned abolition, the Receiver must notify - in writing - school staff and their collective bargaining representatives, the Superintendent (if the Superintendent is not acting as the receiver), and the local school board of the planned abolition. The written notification must include the specific positions to be abolished and the timeline for the abolition and rehiring process; the results and analysis of the needs assessment; and the expected impact of the abolishment of positions on the educational program of the school and of other schools in the district; and a description of the efforts that will be made to minimize disruption to the educational program of the school or of other schools in the district, if any.

E.2. Do school administrators who are not re-staffed but are subsequently rehired by a school district retain their seniority and tenure? The law says this applies to teachers but is silent regarding administrators.

A: Yes. Education Law §211-f(7)(c) does not affirmatively alter the tenure or probationary status of a school administrator or a probationary school administrator's probationary period. The tenure statutes continue to apply to them, and in light of the strong public policy underlying the tenure statutes that have been recognized by the Courts, we interpret the term "teachers" in this provision of the statute broadly to include members of both the teaching staff and the supervisory staff.

E.3. If a teacher is assigned to more than one school in a district and is not re-staffed, does the shared teacher lose his or her job and go the Preferred Eligibility List (PEL), do they continue in their other position part-time, or is the district required to find a full-time position for the person?

A: In this situation, the shared teacher continues to be employed by the district and should retain whatever tenure or seniority or other rights they may have in such continued employment, other than the right to be assigned to work in the struggling or persistently struggling school. However, to determine what those rights may be, a district in this situation should consult with its school attorney and review the provisions of its relevant collective bargaining agreement and the terms of employment of the shared teacher.

E.4. The language regarding the replacement of a principal under Receivership speaks of the Receiver's ability to "terminate the employment" of the principal. Does this mean the principal is fired altogether, or does it mean the principal is terminated from that particular school?

A: Education Law §211-f (7)(a)(viii) refers to the receiver's authority to "terminate the employment of any building principal assigned to such a school," in addition to the authority to abolish the positions of members of the administrative and supervisory staff. Since principals are employed by the board of education and not the school, the plain language of the statute indicates that the principal may be terminated from employment by the school district.

E.5. If a staff person is deemed not qualified to work in a school, could the district be required to rehire that person from the PEL if a vacancy subsequently occurs in that school?

A. Yes. If a staff member's position is abolished and he or she is not rehired, Education Law §211-f(7)(c) requires that they be placed on a PEL in accordance with the applicable provisions of Education Law §§ 2510, 2585, 2588 or 3013. Each of those tenure statutes create a right to reinstatement to fill a vacancy in the tenure area of the position that was abolished based on the individual's seniority, provided that the individual's record is one of faithful, competent service. Therefore, if a future vacancy occurs, a teacher who was not rehired by the Receiver will have a right to the position if he or she is the most senior teacher on the PEL in the tenure area and is determined to have provided faithful, competent service. In this regard, Education Law §211-f(7)(b), provides that a teacher who has received two Ineffective ratings on the APPR shall be deemed not to have rendered faithful, competent service.

E.6. If re-staffing occurs, can the Receiver abolish only some positions or must all positions be abolished?

A: Education Law §211-f(7)(c) says that the Receiver "may abolish all positions" but it doesn't say he/she "must abolish all positions." We interpret the statute to authorize the Receiver to abolish some or all positions in the school. Accordingly, §100.19(g)(4)(ii)(a) says that before the abolition, the receiver has to provide notice of "the specific positions to be abolished."

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F. Supersession

F.1. What process must the School Receiver follow to supersede the decisions, policies, or local school district regulations of the Superintendent (if an Independent Receiver is in place); the school board, or the school principal?

A: Not fewer than ten business days prior to the effective date of the supersession action the School Receiver must notify the Superintendent (if an Independent Receiver is in place), the school board, or the school principal, of the specific decision, policy or regulation that the Receiver plans to supersede. The Receiver must also include in the notification the reasons for supersession; the specific decision, policy or regulation that will replace the one being superseded; and the time period during which the supersession will remain in effect.

The notified parties have at least five business days from the receipt of notice of supersession to respond in writing to the notice. The Receiver must consider these responses before implementing the supersession.

At any point prior to the supersession of a decision, policy or regulation, the Superintendent (if an Independent Receiver is in place) or the board of education can request in writing that the School Receiver terminate the supersession. Within 15 business days of the request, the School Receiver must respond in writing with the School Receiver's decision and rationale for either accepting or rejecting the request.

F.2. What process must the Superintendent follow to supersede the school board regarding employment decisions?

A: No later than 10 business days after a school board has acted upon an employment decision pertaining to staff assigned to a Persistently Struggling or Struggling School, the school board must notify the School Receiver of the action taken. This action will not go into effect until it has been reviewed by the School Receiver.

The School Receiver has no more than ten business days from the date of notification to inform the school board, Superintendent (if there is an Independent Receiver in place), impacted staff and their collective bargaining unit of any changes to the employment decision that the school board must make in order to receive approval from the School Receiver. Within this notification, the School Receiver

must identify the specific changes that must be made; the rationale for the changes; an explanation of the way(s) in which the impact of the changes are limited only to the school(s) designated as Persistently Struggling or Struggling; and a description of how the changes will not unduly impact other schools in the district.

Once the school board is in receipt of the School Receiver's proposed changes, the school board can adopt the changes at the next scheduled board meeting or return the changes within ten days to the School Receiver for reconsideration (with the reason for reconsideration specified in writing).

Upon receipt of the request for reconsideration, the School Receiver can withdraw the proposed change; revise the proposed change; or resubmit the original change to the school board.

The School Receiver must notify the school board, Superintendent (if there is an Independent Receiver in place), impacted staff and their collective bargaining unit in writing of the decision within ten business days of receipt of the request for reconsideration. This decision must be approved by the school board at its next regularly scheduled meeting.

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G. School Receiver Review of School Budgets

G.1. How can the School Receiver review and modify budget decisions made by the local school board?

A: The local school board must provide a copy of the proposed district budget no later than 30 business days prior to the presentation to the district voters of a school budget at the budget hearing, or by no later than 5 business days prior to the date that the superintendent in a city school district in a city having a population of one hundred twenty-five thousand inhabitants (or more) submits the budget to the school board. The school board shall provide the School Receiver with a copy of the proposed district budget, including any school-based budget, that shall include a specific delineation of all funds and resources that the School Receiver shall have available to manage and operate the school and the services and resources that the school district shall provide to the school.

No later than five business days after receiving the proposed budget, the School Receiver shall inform the school board and superintendent or chief school officer of any modification to the proposed budget

that the school board must make in order for the receiver to implement the approved school intervention plan or intervention model or comprehensive education plan, provided that such modification(s) shall not require the school board seek voter approval of a budget that exceeds the tax levy limit pursuant to Education Law section 2023-a. The School Receiver shall identify the specific modifications that must be made, the rationale for the modifications, an explanation of the way(s) in which the modifications are limited in scope and effect to the school(s) designated as struggling or persistently struggling and/or under receivership, and a description of how such modifications will not unduly impact other schools in the district.

Upon receipt of the School Receiver's proposed budget modifications, the school board shall incorporate the modifications into the proposed budget and present it to the public or return the modifications within 5 business days to the school receiver for reconsideration with the reasons for reconsideration specified in writing.

Upon receipt of a request for reconsideration, the School Receiver shall withdraw the direction to modify the budget; revise the budget modification; or resubmit the original budget modification.

The School Receiver shall notify the school board in writing of the decision within five business days of receipt of the request for reconsideration and the determination of the School Receiver shall be incorporated into the budget. Upon approval of the school district budget, any changes to budgets that would adversely impact the ability of the School Receiver to implement the approved school intervention plan or intervention model or comprehensive education plan must be approved by the School Receiver.

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IH. Alignment with 1003(g) School Improvement Grants (SIG)

H.1. How do the goals and activities of the SIG align or support the activities and requirements under receivership?

A: Persistently Struggling or Struggling Schools that have approved SIGs have already begun the process of dramatic school improvement. In order to receive a SIG award, districts were required to

conduct needs assessments at the identified schools, and to implement certain activities, based upon the intervention model chosen and the results of the needs assessment. Additionally, the district was required to describe how it would engage parents and the local community in the development and implementation of the plan. Prior to the beginning of each school year, the district is required to provide the Department with an update on the progress of SIG plan implementation, and to propose any modifications to the plan for approval by SED.

A School Receiver can build upon SIG plan activities and goals when implementing Receivership. The School Receiver does not have to create an entirely new intervention plan for each Persistently Struggling or Struggling School. In fact, in order to continue to receive SIG funds, the school must implement the Department-approved SIG plan. School Receivers may propose amendments to the plan based on Receivership, but they are not required to do so. The powers of the School Receiver can assist the School Receiver with implementing the activities described in the SIG plan, especially as they relate to any necessary changes to the collective bargaining agreement or school program structure. Finally, the requirements to create a Community Engagement Plan and establish a Community Engagement Team should be aligned with the description within the grant of how the district will engage with parents and the local community.

In all cases there is the ability to make amendments to these plans, but not the requirement to do so based on the new receivership regulations.

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I. Collaboration with School Board, Unions, Parents, and Local Stakeholders and Resolution of Disputes

I.1. In a case where the relationship between the superintendent and the school board is not at all cooperative or good, what recourse does the school board have if they are misinformed or completely left in the dark?

A. Superintendents and school boards are expected to work together to implement the provisions of School Receivership. At a minimum, superintendents are required to provide quarterly written reports to the board of education, the commissioner and the Board of Regents no later than October 30, January 31, April 30, and July 31 of each year, but school boards may require more frequent reports from the superintendent.

I.2. If a receiver requests the collective bargaining representatives of teachers or administrators to negotiate a receivership agreement that modifies the applicable collective bargaining agreements with respect to persistently struggling schools and/or struggling schools in receivership, are both parties required to negotiate and, if so, is there a deadline by which negotiations must be completed?

A. Education Law §211-f(8)(b) and (c) and §100.19(g)(5)(iii) of the Commissioner's regulations each require that when a superintendent receiver or an independent receiver requests that a collective bargaining representative negotiate a receivership agreement that modifies a collective bargaining agreement both parties must negotiate in good faith and collective bargaining negotiations must be completed within 30 days of the collective bargaining unit's receipt of the written request for collective bargaining. In addition, an agreement reached within the 30-day period must be ratified by bargaining unit members within 10 business days.

I.3. What happens if the collective negotiations are not completed within 30 days or an agreement is not ratified by bargaining unit members within 10 business days?

Under Education Law §211-f(8)(b), the parties submit any remaining unresolved issues to the Commissioner for resolution. The Commissioner must then resolve any unresolved issues within 5 days in accordance with standard collective bargaining principles. In the case of a struggling school where Education Law §211-f(8)(c) applies, the parties must first submit any remaining unresolved issues to the American Arbitration Association (AAA) for appointment of a conciliator. The parties have 3 business days to select a conciliator from a list of 3 conciliators provided by AAA and if they cannot do so, AAA must select a conciliator within 1 business day. The conciliator must resolve the outstanding issues within 5 days. *If after such 5-day period, any outstanding issues remain unresolved, the parties submit those remaining unresolved issues to the Commissioner, who must then resolve them within 5 days in accordance with standard collective bargaining principles.*

Please Note: Further guidance on the AAA conciliation process will be provided after consultation with AAA.

I.4. Can the parties agree to extend the 30-day period for completion of negotiations?

Yes, the Department interprets the provisions of Education Law §211-f(8) as establishing a new form of impasse procedure intended to empower a receiver to achieve prompt resolution of collective bargaining

issues consistent with standard collective bargaining principles. The parties may mutually agree that the 30-day period should be extended to allow them to complete negotiations — the goal of the process is to secure agreement, not to impose terms when the parties are close to agreement. Alternatively, the receiver could at any time withdraw the request for negotiations and then make a new request for negotiations, which would trigger a new 30-day period. If the parties mutually agree to extend the 30 day period or if the receiver withdraws a request for negotiations, they must send notice to the Commissioner by electronic mail to OISR@nysed.gov.

I.5. May the receiver request collective negotiations on any subject?

No. Education Law §211-f(8)(a) specifies the subjects that the negotiated agreement may address for schools in receivership. They are the length of the school day, the length of the school year, professional development for teachers and administrators, class size and changes to the programs, assignments and teaching conditions in the school in receivership.

I.6. Once the 30-day period for completion of negotiations or the 10 business day period for ratification has passed, when must the parties submit any unresolved issues to the Commissioner or to the American Arbitration Association for appointment of a conciliator?

The statute does not specify a deadline for submission of unresolved issues to the Commissioner or for submission to the AAA for appointment of a conciliator. The Department encourages the submission of unresolved issues as soon as possible following completion of the negotiation or ratification period.

I.7. After the 30-day period for completion or the 10 business day period for ratification has passed, may either party submit the unresolved issues to the Commissioner for resolution?

Yes. With respect to a persistently struggling school, if a party fails to negotiate during the 30-day period or declines to submit or has not yet submitted unresolved issues to the Commissioner, either party may initiate the resolution process by submitting its unresolved issues for resolution. The other party must be provided notice and an opportunity to respond, as described below.

In a struggling school, after the 30-day period for completion or the 10-business day period for ratification, either party may submit the unresolved issues to the American Arbitration Association (AAA) for appointment of a conciliator. After the 5-day period for the conciliator to resolve any outstanding issues, either party may initiate the resolution process by submitting its unresolved issues to the

Commissioner. The other party must be provided notice and an opportunity to respond, as described below.

Ideally, the parties will agree on what issues are unresolved and jointly submit requests for resolution.

I.7.A. What procedures must be followed to submit a request for resolution of collective bargaining issues through conciliation/arbitration by AAA for a struggling school?

In the case of a struggling school where Education Law §211-f(8)(c) applies, the submitting party must first submit a request for conciliation/arbitration to the American Arbitration Association (AAA) using the attached form. The form must be submitted to the other party and to AAA by mail to the following address:

Lauren Wilson, Labor Supervisor

American Arbitration Association

120 Broadway, 21st Floor

New York, NY 10271

[Request for AAA Conciliation/Arbitration Pursuant to Education Law §211-f\(8\)\(c\)](#)

I.7.B. What will happen after a request for resolution is submitted to AAA?

Upon receipt of a completed request for conciliation/arbitration form, AAA will provide the parties with a list of 3 conciliators/arbitrators with professional experience in elementary and secondary education. The list of conciliators/arbitrators will include a resume/curriculum vita and hourly rate for each individual listed. The parties then have 3 business days to select a conciliator/arbitrator from AAA's list and, if they cannot do so, AAA must select and appoint a conciliator/arbitrator within 1 business day. The conciliator/arbitrator must resolve the outstanding issues within 5 days and will contact the parties to arrange a conference at which the outstanding issues will be presented and discussed.

The fee for AAA's case management services is \$275 per party. AAA bills parties equally for all costs unless the parties agree otherwise.

AAA Customer Service can be reached at 800.778.7879.

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I.8. What needs to be submitted with the request for resolution of unresolved issues by the Commissioner?

There is no specific form for a request for resolution. The request must be filed with the Commissioner and specifically describe the unresolved issues and the position of the submitting party on each unresolved issue, including the specific contract language recommended by the party for the receivership agreement. The submitting party should also explain the rationale for the proposed contract language, including an explanation of how adoption of the proposed language would be consistent with collective bargaining principles, such as any applicable factors set forth in Civil Service Law §209(4)(c)(v). The submitting party may submit a memorandum of law and supporting affidavits or declarations with its submission. Where the parties agree on what the unresolved issues are but not on how they should be resolved, they may jointly submit a request for resolution describing their respective positions, with each party presenting its own recommended contract language with an explanation of its rationale and any memorandum of law and supporting affidavits or declarations.

The submitting party must submit proof that a copy of its request for resolution and all supporting documentation have been personally served on the other party in the same manner as a petition in a section 310 appeal under 8 NYCRR §275.8(a), or that that the other party admits that service has been made. Where personal service is made, the submitting party must submit an affidavit of service in substantially the form prescribed in 8 NYCRR §275.9(a). In the event a party is unable after making two attempts to effect personal service within 24 hours during regular business hours at the main office of the other party, the submitting party may serve the request for resolution and supporting documentation by substituted service, in the same manner as a petition in a section 310 appeal pursuant to 8 NYCRR §275.8(a). The request for resolution must also include an e-mail address at which responding papers may be served by the other party.

I.9. Where should the submission for resolution by the Commissioner and supporting documentation be filed.

An electronic copy of the submission for resolution must be filed with the Commissioner at Legal@nysed.gov. The original of the submission for resolution by the Commissioner must be filed

through express mail, next day delivery or the equivalent with the Office of Counsel, New York State Education Department, State Education Building, 89 Washington Avenue, Albany, N.Y. 12234. Filing is complete upon the Commissioner's receipt of the original submission and the electronic copy.

I.10. What is the process by which the other party may respond to a submission by the submitting party?

The other party (the respondent) may file responding papers within five days after service upon the respondent of the submission for resolution. If the five-day period ends on a weekend or holiday, the time to file responding papers is extended to the next business day pursuant to General Construction Law §25-a. The responding papers must specifically describe the unresolved issues and the position of the respondent on the unresolved issue(s), including the specific contract language recommended by the respondent for the receivership agreement. The responding papers should also explain the rationale for the proposed contract language, including an explanation of how adoption of the proposed language would be consistent with collective bargaining principles, such as any applicable factors set forth in Civil Service Law §209(4)(c)(v), and if applicable why the submitting party's proposed language is not consistent with collective bargaining principles. The respondent may submit a memorandum of law with its submission. If the parties jointly submit requests for resolution, each party may submit responding papers within five days of service of the submission. Such responding papers must be limited to a response to the position of the other party. Each party must submit proof, in affidavit or declaration form, that a copy of the responding papers have been served on the other party by electronic mail. The responding papers must also include an e-mail address at which service of reply papers may be made by each party.

I.11. Once the respondent has served the responding papers, can the submitting party reply?

Yes. The submitting party may submit reply papers within two days of its receipt of the responding papers. If the two-day period ends on a weekend or holiday, the time to file reply papers is extended to the next business day pursuant to General Construction Law §25-a. The reply papers shall be limited to a response to the position of the respondent, its proposed contract language and any legal arguments made by the respondent. If the parties jointly submit their requests for resolution, no reply papers may be submitted; however, responding papers may be submitted as described in Q9.

I.12. Can a party submit additional papers beyond the responding papers or reply papers?

No. Additional documentation may not be submitted to the Commissioner except upon direction of the Commissioner.

I.13. How are responding papers and reply papers filed with the Commissioner?

The originals of the responding papers and reply papers must be submitted to the Commissioner by express mail delivery or equivalent means, with next day delivery.

An electronic copy must be filed with the Commissioner at Legal@nysed.gov.

Filing with the Commissioner is complete upon the Commissioner's receipt of the responding papers or reply papers and the electronic copy or copies.

I.14. When must the Commissioner resolve the unresolved issues?

The Commissioner must resolve the issues within 5 days after the parties have fully submitted the request for resolution. The parties' submission is not complete until filing of the reply papers, or the responding papers in the case of a joint submission. The 5-day period commences upon such filing.

I.15. After the Commissioner has resolved the unresolved issues submitted to her/him, must the agreement be submitted to the members of the collective bargaining members for ratification?

Unless the Commissioner has resolved all the issues involved in the proposed receivership agreement, the receivership agreement must be submitted to the collective bargaining unit members for ratification within 10 business days. If the members of the bargaining unit do not ratify the remainder of the receivership agreement that has not been resolved by the Commissioner, the parties must again submit the unresolved issues to the Commissioner for resolution.

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J. Determination of Demonstrable Improvement (DI)

J.1. How did the Commissioner make the 2018-19 determination regarding Demonstrable Improvement?

A: For the 2018-19 school year, the Commissioner used the Demonstrable Improvement Index (DII) to make DI determinations for Cohort 1 schools only. A Cohort 1 school that achieved a DII of at least 67% made Demonstrable Improvement. A Cohort 1 school that achieved a DII of less than 40% did not make Demonstrable Improvement, unless the district provided evidence that extenuating or extraordinary circumstances prevented the school from achieving a higher DII. For the 2018-19 school year, all Cohort 1 schools achieved a DII greater than 40%. If a Cohort 1 school achieved a DII of at least 40% but less than 67%, the Commissioner reviewed the entirety of the school's performance, including the degree to which the plan for the school has been implemented with fidelity, and made a determination that the DI has been achieved.

J.2. How was Demonstrable Improvement calculated? Who calculated it – the district or New York State Education Department?

A: Demonstrable Improvement was calculated by the Department using the DII for Cohort 1 schools only.

J.3. Why were DI determinations made for Cohort 1 schools and not for Cohort 2 schools?

In 2018-19, the Department developed a new system to determine DI for schools in Receivership. Cohort 2 Schools were identified for Receivership in January 2019, when the Department released the accountability determinations based on the state's new accountability plan under the ESSA. Prior to the identification of the new Receivership schools, the Department revised the DI indicators to align them to the new ESSA accountability indicators. After the new ESSA-aligned system was finalized, the Department worked with all receivership schools to select their school-specific indicators and targets. These new sets of DI indicators and targets were finalized in June 2019. The 2018-19 school year DI results are provided for informational purposes only for Cohort 2 schools because these schools did not select their indicators and targets until June 2019, and therefore were not able to implement systems and processes to improve outcomes on these measures. The DI Index based upon 2018-19 data was provided to Cohort schools for informational purposes to inform their improvement efforts for the 2019-20 school year. DI determinations will first be made for Cohort 2 schools beginning with the 2020-21 school year results. Cohort 2 schools are encouraged to meet with their Community Engagement Teams (CETs) to review their 2018-19 DI results to plan for the 2019-20 school year.

DI Determinations were made for Cohort 1 schools based on the old methodology and indicators that were in place beginning with the 2015-16 school year, using the 2018-19 school year results. Cohort 2 schools also received DI indices based on the new ESSA-aligned indicators, for informational purposes only. The DI determinations for Cohort 1 schools could be positively impacted but were not negatively impacted by the Index using the new indicators.

J.4. What is the process for making final DI determinations?

The Department provided preliminary DI determinations to Cohort 1 schools in early October 2019. Preliminary DI determinations for Cohort 1 schools were also shared with schools, their school board, the Community Engagement Teams (CETs), and the presidents of the district Board of Education. Superintendents, principals, representatives of the school staff, and the chairpersons of CETs had the opportunity to submit a Demonstrable Improvement Determination Consultation and Collaboration Form either agreeing or disagreeing with the Interim Commissioner regarding the DI determinations. Districts with Cohort 1 schools that received a DI Index of less than 67% for the old indicators were directed to review the performance of their schools and identify reasons that these schools were not able to achieve the targets for at least two-thirds of their measures. The districts were also instructed to take additional steps to intensively monitor and support these schools during the 2019-20 school year. Superintendents, Board Presidents, and CETs were provided final DI determinations in early November when the final determinations were released publicly.

J.5. What is the difference between the old and new indicators?

The DI Indices for the old system are based upon the indicators that Cohort 1 schools selected in 2015-16 when these schools were first placed under superintendent Receivership. This Index will sunset following the DI determinations for Cohort 1 schools using the 2018-19 school year results. This year, for informational purposes only, Cohort 1 and Cohort 2 schools received a DI Index based upon a new ESSA-aligned system. Beginning with the 2019-20 school year, the DI Index for all receivership schools will be calculated using the new ESSA-aligned indicators.

J.6. How does the new methodology differ from the old methodology?

The original DI methodology was based on minimal annual target increments that only considered the school's performance on indicators for the baseline year (2013-14). The revised methodology takes into account school performance for the most recent baseline year (2017-18) as well as the gap in the

school's performance relative to the state median outcome. The Department set the annual Progress Targets based upon district feedback and incorporated flexibility to balance the rigor and attainability of the targets by applying maximum increment limits. Similar to the original methodology that was in place since 2015-16, schools had the opportunity to select half of their indicators from a list of available indicators. Schools were also encouraged to propose local indicators, which take into account the school's local context and strategic goals.

The targets for Cohort 1 schools (schools in receivership in 2017-18 and 2018-19) were set using more rigorous gap closing criteria compared to the targets for Cohort 2 schools. The targets for Cohort 1 schools are more rigorous relative to the targets for Cohort 2 schools because the Department expects these schools to have systems and strategies in place to improve performance. The same maximum increment limits were applied to both Cohorts to ensure that Progress Targets remain attainable for all schools.

J.7. How were the indicators assigned or selected?

Some indicators (referred to as Level 1 indicators) were assigned by the Department based upon the performance of all students in the school. Level 1 indicators are mostly performance-based (e.g., ELA/Math Performance Indices, student growth, and graduation rate). They are also based upon the All Students group (not subgroups) and are assigned if the school's performance for the baseline year is below the state baseline. Schools are assigned a minimum of 5 Level 1 indicators (7 for schools serving Middle and High School grades).

Other indicators (referred to as Level 2 indicators) were selected by schools in consultation and collaboration with their Community Engagement Team from a list of indicators provided by the Department. Level 2 indicators are mostly based on results for accountability subgroups (e.g., Students with Disabilities, English Language Learners, Economically Disadvantaged, and racial/ethnic groups). They are available for selection if the school's baseline performance is below the state baseline. Schools must select a minimum of 5 Level 2 indicators (7 for schools serving Middle and High School grades), up to a maximum of 10 Level 2 indicators.

Additionally, schools can propose Local indicators as Level 1 or Level 2 indicators that are unique to their local context and strategic goals.

J.8. Our DI Index is less than 67%. Why were we notified that we made DI?

Based upon the currently available data and prior performance, the Commissioner determined that the Cohort 1 school made Demonstrable Improvement after considering additional evidence of school performance. The Department has directed districts with Cohort 1 receivership schools that have Indices below 67% to review the performance of these schools and identify reasons that they were not able to achieve the targets for at least two-thirds of their measures. Additionally, districts have been directed to intensively monitor and support these schools during the 2019-20 school year.

J.9. How are schools performing on the new system?

The 2018-19 results based on the new ESSA-aligned indicators are provided for informational purposes only. For Cohort 1 schools, these results on the new indicators are generally lower than their performance on the old indicators because the indicators are new, and Cohort 1 schools did not have targeted supports in place for the duration of the 2018-19 school year to focus improvement efforts on these indicators. Additionally, the Cohort 1 and Cohort 2 schools met the 2018-19 Progress Targets on Level 1 indicators (assigned by the Department) and Level 2 indicators (selected by schools) at similar rates and have achieved similar DI Indices.

J.10 What factors are used by the Commissioner to determine Demonstrable Improvement when a school makes between 40 to 67% on their progress calculation? What are considered "extraordinary or extenuating circumstances?"

A: The Commissioner used the performance of the school on all indicators for which data is available, the results of any department visits conducted to the school while under Receivership, the degree to which the school has implemented its plan with fidelity, and any additional information provided by the district about the school that the district wishes the Commissioner to consider. Extenuating or extraordinary circumstances are ones where it can be demonstrated that the results on a particular accountability measure were adversely affected by circumstances beyond the control of the school. For example, if a natural disaster caused the school to be closed for weeks and/or for students to be temporarily disbursed to other schools for an extended period that could be the basis for an appeal.

J.11. How were the Level 1 indicators for each school chosen?

A: If a school performed below the 2017-18 goal for an indicator, SED assigned that indicator to the school. If a school had fewer than five indicators on which it was below the 2017-18 goal (or seven indicators if the school served both grades 9-12 and grade 8 or below), then the district was allowed

to select for the school sufficient “Associated Level 2” indicators so that the minimum Level 1 indicator number is met. An Associated Level 2 indicator is a Level 1 indicator that is applied to an accountability subgroup rather than to the all students group. For example, 3-8 ELA All Students Core Subject Performance Index is a Level 1 indicator. Associated Level 2 indicators are the Core Subject Performance Indices for English language learners, the low-income students, the students with disabilities groups or a racial/ethnic group.

J.12 How should a district choose the Level 2 indicators for each of its schools?

A: The district should choose indicators in consultation with the school leader and the Community Engagement Team. In general Level 2 indicators should be those on which the school is focused upon making improvement as reflected in the school’s Department approved-intervention plan or School Comprehensive Education Plan.

J.13. How does a district go about proposing and receiving approval to use locally determined metrics for Level 2 indicators?

A: The district must use the template provided by the Department to submit a locally determined indicator. In order for the indicator to be approved, the district must demonstrate that:

- There is a clear and unambiguous definition of the locally determined indicator as well as a clear and precise methodology and business rules for its calculation.
- There is a compelling educational rationale for the use of the indicator.
- There is a logical rationale for the progress targets and/or goals established for the school on the indicator and the school is currently performing below the goal.
- The indicator can be computed and the results provided to the department in the prescribed timeframe.
- The district currently reports results on the indicator or will pledge to do so, including all aggregate numbers necessary to calculate performance on the indicator.
- There is a means by which the Department can audit the application of the methodology and the business rules to determine if they have been applied correctly.

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K. Additional Technical Assistance and Resources for School Communities

K.1. Where can districts find resources and technical assistance for implementing receivership?

A. The Department will continue to post resources on its School Receivership webpage:

<http://www.p12.nysed.gov/accountability/de/SchoolReceivership.html> and

<http://www.p12.nysed.gov/oisr/>. Questions regarding School Receivership should be sent to

OISR@nysed.gov. As questions that are relevant to multiple districts are received, the answers will be added to this FAQ.

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