

The
University of the
Education  *State of New York*
Department

STATE OF NEW YORK
COMMISSIONER OF EDUCATION

In the Matter of the Resolution of
Unresolved Issues Regarding a
Receivership Agreement Pursuant to
Education Law §211-f(8)

-between-

DECISION AND ORDER

DR. KRINER CASH, SUPERINTENDENT RECEIVER,

-and-

BUFFALO TEACHERS FEDERATION

APPLICABLE LAW AND REGULATIONS

In April 2015, the Legislature enacted Subpart H of Part EE of Chapter 56 of the Laws of 2015, adding a new section 211-f of the Education Law pertaining to school receivership. Section 211-f designates current Priority Schools that have been in the most severe accountability status since the 2006-2007 school year as "Persistently Failing Schools" (referred to in §100.19[a][2] of the Commissioner's regulations and hereafter

referred to as "Persistently Struggling Schools") and vests the superintendent of the district with the powers of an independent receiver. The "superintendent receiver" is given an initial one-year period to use the enhanced authority of a receiver to make demonstrable improvement in student performance at the Persistently Struggling School or the Commissioner of Education ("Commissioner") will direct that the school board appoint an independent receiver and submit the appointment for approval by the Commissioner.¹ Independent receivers are appointed for up to three school years and serve under contract with the Commissioner.

Education Law §211-f provides persons or entities vested with the powers of a receiver new authority to, among other things, develop a school intervention plan; convert schools to community schools providing wrap-around services; reallocate funds in the school's budget; expand the school day or school year; establish professional development plans; order the conversion of the school to a charter school consistent with applicable state laws; remove staff and/or require staff to

¹ Although not at issue in this proceeding, which relates only to five Persistently Struggling Schools in the Buffalo City School District, I note that the statute also provides that Failing Schools (referred to in §100.19[a][1] of the Commissioner's regulations as "Struggling Schools"), schools that have been Priority Schools since the 2012-2013 school year, shall be given two years under a superintendent receiver to improve student performance. Should the school fail to make demonstrable improvement in two years, an independent receiver must be appointed.

reapply for their jobs in collaboration with a staffing committee; and to negotiate a receivership agreement, with any unresolved issues submitted to the Commissioner for resolution.

At issue in this matter is the superintendent receiver's authority to negotiate certain issues in a receivership agreement pursuant to Education Law §211-f(8). That section provides that, in order to maximize the rapid achievement of students at the applicable school, the receiver may request that the collective bargaining unit(s) representing teachers and administrators and the receiver, on behalf of the board of education, negotiate a receivership agreement (hereafter referred to as "receivership collective bargaining agreement") that modifies the applicable collective bargaining agreement(s) with respect to any struggling schools in receivership applicable during the period of receivership. The receivership collective bargaining agreement may address the following subjects:

- a. the length of the school day;
- b. the length of the school year;
- c. professional development for
teachers and administrators;
- d. class size; and

- e. changes to the programs,
assignments, and teaching
conditions in the school in
receivership.

Education Law §211-f(8)(a) and §100.19(g)(5)(ii) of the Commissioner's regulations (8 NYCRR §100.19[g][5][ii]) further state that the receivership collective bargaining agreement shall not provide for any reduction in compensation unless there shall also be a proportionate reduction in hours and shall provide for a proportionate increase in compensation where the length of the school day or school year is extended. The receivership collective bargaining agreement shall not alter the remaining terms of the existing/underlying collective bargaining agreement, which shall remain in effect (Education Law §211-f[8][a]; 8 NYCRR §100.19[g][5][ii]).

When a superintendent receiver requests that a collective bargaining unit representative negotiate a receivership collective bargaining 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 (Education Law §211-

f[8][b]; 8 NYCRR §100.19[g][5][iii])). The receivership collective bargaining agreement shall be subject to ratification by the bargaining unit members of the school within 10 business days after the receivership collective bargaining agreement is reached (Education Law §211-f[8][b]; 8 NYCRR §100.19[g][5][iii][c])).

In the event that any issues remain unresolved regarding the receivership collective bargaining agreement as a result of the bargaining process, or if such agreement is not ratified within 10 business days by the bargaining unit members of the school, any remaining issues shall be submitted to the Commissioner as a request for resolution (Education Law §211-f[8][b]; 8 NYCRR §100.19[g][5][iii][d][1])).² The Commissioner must then resolve any unresolved issues within five calendar days in accordance with standard collective bargaining principles (Education Law §211-f[8][b]; 8 NYCRR §100.19[g][5][iii][d][1])).

The request for resolution must be filed with the Commissioner and specifically describe the unresolved issues and

² The Commissioner's regulations also include procedures for the parties' joint submission of a request for resolution to the Commissioner (see e.g. 8 NYCRR §100.19[g][5][iii][d][2])). However, because the parties in this matter did not utilize such joint submission, those regulatory provisions are not relevant.

the position of the submitting party on each unresolved issue, including the specific contract language recommended by the party for the receivership collective bargaining agreement (8 NYCRR §100.19[g][5][iii][d][2]). The submitting party must 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) (8 NYCRR §100.19[g][5][iii][d][2]). The submitting party may submit a memorandum of law and supporting affidavits or declarations with its submission (8 NYCRR §100.19[g][5][iii][d][2][v]).

The other party (the respondent) may file responding papers within five days after service upon the respondent of the submission for resolution (8 NYCRR §100.19[g][5][iii][d][5][i]).³ 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 collective bargaining agreement, and must explain the rationale for the proposed contract language, including an explanation of how adoption of

³ 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 (8 NYCRR §100.19[g][5][iii][d][5][i]).

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 (8 NYCRR §100.19[g][5][iii][d][5][ii]). The respondent may submit a memorandum of law with its submission (8 NYCRR §100.19[g][5][iii][d][5][iv]).

The submitting party may submit reply papers within two calendar days of its receipt of the responding papers (8 NYCRR §100.19[g][5][iii][d][6][i]).⁴ 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 (8 NYCRR §100.19[g][5][iii][d][6][ii]). No additional papers shall be permitted except upon the direction of the Commissioner (8 NYCRR §100.19[g][5][iii][d][7]).

The Commissioner must resolve the issues within five days after the parties have fully submitted the request for resolution; the parties' submission is not complete until filing

⁴ 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 (8 NYCRR §100.19[g][5][iii][d][6][i]).

of the reply papers (8 NYCRR §100.19[g][5][iii][d][1]). The five-day period commences upon such filing.

STATEMENT OF FACTS

By letter dated July 15, 2015, I notified the City School District of the City of Buffalo ("district") that the following schools had been designated as Persistently Struggling Schools pursuant to Education Law §211-f(1)(b) and 8 NYCRR §100.19(b): West Hertel Elementary School; South Park High School; Marva J. Daniel Futures Prep School; Burgard Vocational High School; and Buffalo Elementary School of Technology ("BEST") (hereafter collectively referred to as "the schools"). A copy of this letter is attached hereto as Appendix A.

I take administrative notice of the official records on file with the State Education Department ("Department") indicating that the Department preliminarily approved the federal School Improvement Grant ("SIG") 2015-2016 continuation plans for four of the district's Persistently Struggling Schools by letters dated July 3, 2015 (i.e., West Hertel Elementary School; Marva J. Daniel Futures Prep School; Burgard Vocational High School; and BEST). Copies of the July 3, 2015 letters are attached hereto as Appendix B. Accordingly, those four schools

were deemed to have a provisionally approved intervention plan in place as of the date of their official designation on July 15, 2015 (see Appendix A). I take administrative notice of the Department's official records indicating that the Department provisionally approved South Park High School's school comprehensive education plan by letter dated September 15, 2015. A copy of this letter is attached hereto as Appendix C. Thus, by July 3 (West Hertel Elementary School; Marva J. Daniel Futures Prep School; Burgard Vocational High School; and BEST) and September 15 (South Park High School), all five of the district's Persistently Struggling Schools were eligible for the exercise of the powers of a superintendent receiver pursuant to Education Law §211-f(1)(c)(i) (see 8 NYCRR §100.19[d][1], [3] and [7]).

As described above, included in the powers of the receiver is the authority to negotiate a receivership collective bargaining agreement in order to maximize the rapid achievement of students at the receivership school(s) (Education Law §211-f[8][a]). Under the statute, the receiver may request that the collective bargaining unit(s) representing teachers and administrators and the receiver, on behalf of the board of education, negotiate a receivership collective bargaining agreement that modifies the applicable collective bargaining

agreement(s) with respect to any Struggling or Persistently Struggling Schools in receivership applicable during the period of receivership (Education Law §211-f[8][a]).

By letter dated August 27, 2015, Dr. Cash requested that Philip Rumore, President of the Buffalo Teachers Federation ("BTF"), commence negotiation of a receivership collective bargaining agreement pursuant to Education Law §211-f(8).

In a September 1, 2015 memorandum, the BTF requested additional information from Dr. Cash, including a list of the schools for which a receivership collective bargaining agreement was sought; verification of the Department's provisional approval of plans for the district's Struggling and Persistently Struggling Schools; information regarding the community engagement team for each of the schools; and "[d]irection to that portion of the plan for each school delineating the need for any modification of our collective bargaining agreement, and the reasons therefor."

In response, by letter dated September 8, 2015, Dr. Cash reiterated his request that bargaining commence, noting that "[n]either the law or the underlying regulations require that this information be provided to you in order for negotiations to

commence." In a letter to the BTF also dated September 8, the district's Executive Director of Labor Relations ("director") noted that, to date, he had not heard from the BTF regarding dates and times upon which negotiations could commence and requested that the BTF contact him as soon as possible.

By letter to the BTF dated September 25, Dr. Cash (hereafter "superintendent receiver") noted that the "deadline for completing negotiations is quickly approaching" and reiterated his request to commence negotiations as soon as possible. The superintendent receiver also provided the BTF with his proposals for a receivership collective bargaining agreement and informed the BTF that he was providing until October 1, 2015 "to accept the proposals or to meet with my team to discuss and respond to these proposals."

In a letter to the BTF dated October 6, the district's director proposed that the parties meet on October 13 and 14 to discuss the superintendent receiver's proposals.⁵ The record indicates that negotiation sessions between the parties occurred on October 13, 14, 19 and 22, 2015. The record contains several documents that appear to reflect the parties' negotiations,

⁵ The director's letter references correspondence from the BTF dated September 28 and 30; however, neither party submitted copies of such correspondence in this proceeding.

including memoranda between the parties reflecting various iterations of proposals, questions and clarifications thereto.

By letter dated October 27, 2015, the BTF memorialized the negotiating sessions held and the dates of correspondences (including requests for information and clarification, proposals and counterproposals) sent by the BTF in this matter. The BTF also requested that the district agree to an extension of time to continue negotiations and reach agreement.

On October 28, 2015, the superintendent receiver commenced this proceeding, in which he requests that I resolve the outstanding issues between the superintendent receiver and the BTF. According to the superintendent receiver's request for resolution in this matter, the parties did not agree to an extension of time and were unable to reach agreement on any of the issues proposed by the superintendent receiver.

On October 30, 2015, the BTF served and filed response papers in this matter. In addition to the BTF's responses to the superintendent receiver's proposals, the BTF argues that I lack the authority to "nullify" the parties' existing collective bargaining agreement ("CBA") under the Constitution and the Taylor Law; that the superintendent receiver's submission does

not meet the requirements of §100.19(g)(5)(iii)(d)(2)(ii) of the Commissioner's regulations; and that the district failed to negotiate in good faith. In addition, the BTF claims that negotiations "were proceeding and making progress" and that it was the district, not the BTF, that failed to agree to an extension of time to negotiate. The BTF also requests that I "accept" the proposals the BTF made in an October 23, 2015 memorandum to the superintendent receiver.

On November 2, 2015, the superintendent receiver served a reply on the BTF, in which he disputes the BTF's allegation that the district did not negotiate in good faith. The superintendent receiver also argues that his October 28, 2015 request for resolution meets the regulatory requirements. He explains that, in developing his proposals, he relied upon his experience in leading urban educational systems, feedback from the leadership teams at the district's Persistently Struggling Schools and a December 2014 study of the district's existing CBA conducted by The New Teacher Project ("TNTP").⁶

⁶ Pursuant to 8 NYCRR §100.19(g)(5)(iii)(d)(6)(ii), the reply papers shall be limited to a response to the position of the responding party, the responding party's proposed contract language and any legal arguments made by the responding party. In his reply papers, the superintendent receiver does not explain why the TNTP study could not have been submitted with his October 28, 2015 request for resolution. I also note that the regulations do not permit the submission of additional papers after the reply except upon direction of the Commissioner, and the BTF has therefore not had the opportunity to respond thereto (see 8 NYCRR §100.19[g][5][iii][d][7]). Therefore, while I have reviewed the reply, I have not considered the TNTP study submitted

PROCEDURAL ISSUES AND ARGUMENTS

Before turning to the merits of the superintendent receiver's proposals, I must first address several procedural issues and arguments.

Although not raised by the parties, I note that the record contains no indication as to the exact date upon which Dr. Cash began serving as superintendent, and was thus vested with the powers of the superintendent receiver with respect to the five schools at issue in this proceeding and the authority to request negotiation of a receivership collective bargaining agreement. I take administrative notice of the minutes from the board of education's ("board") August 18, 2015 meeting, which are posted on the district's official website⁷ and which indicate that Dr. Cash was appointed by the board as superintendent of schools on August 18, 2015, contingent upon issuance of appropriate certification by the Department. The official records of the Department, of which I take administrative notice, indicate that Dr. Cash was issued a superintendent's certificate on August 25, 2015 for service as superintendent of schools in the Buffalo City School District, which is presumably the date upon which

therewith (see e.g., Appeal of Caswell, 48 Ed Dept Rep 472, Decision No. 15,920 [a reply is not meant to buttress allegations in the petition or to belatedly add assertions that should have been in the petition])).

⁷ <http://www.buffaloschools.org/district.cfm?subpage=98466>

his term of appointment commenced based on the August 18 board resolution. In any case, the minutes from the board's September 9, 2015 meeting (which are posted on the district's official website⁸ and of which I take administrative notice), indicate that Dr. Cash took his oath of office on September 9, 2015, so it is clear that he had taken office by that date.⁹ Even if that were the date his term of office commenced, I find that Dr. Cash's September 25 letter, described above, constituted a proper request from the superintendent receiver to commence negotiations with respect to the district's five Persistently Struggling Schools and, calculated from September 25, the 30 calendar days in which negotiations were to have been completed had elapsed by the time the instant request for resolution was initiated on October 28, 2015 (Education Law §211-f[8][b]; 8 NYCRR §100.19[g][5][iii][b]).¹⁰ Accordingly, the request for resolution is properly before me.

⁸ <http://www.buffaloschools.org/district.cfm?subpage=98466>

⁹ I note that Public Officers Law §30(1)(h) requires that a public officer execute and file his or her oath of office within 30 days after commencement of the term of office to which he or she has been appointed or elected.

¹⁰ Although not raised by the parties, I note that a school comprehensive education plan for South Park High School was not provisionally approved until September 15, 2015 (see Appendix C). Accordingly, Dr. Cash's August 27, 2015 request for negotiation of a receivership collective bargaining agreement was premature with respect to that school. However, as noted above, his September 25 request constituted a proper request from the superintendent receiver for negotiations with respect to the district's five Persistently Struggling Schools, including South Park High School.

The record also indicates that, following the parties' last negotiation session on October 22, 2015, the BTF advanced three additional proposals to the superintendent receiver by memorandum dated October 23, 2015. The BTF's additional proposals included limitations on class sizes; the provision of additional time during the school day for teachers to complete forms, paperwork and conferences; and a requirement that the district conduct an annual survey of teachers regarding improvements to student learning and teaching conditions. As noted above, in its October 30 response papers in this matter, the BTF asks that I "accept" these proposals. Initially, I note that, while Education Law §211-f(8)(a) authorizes me to consider "class size" as a permissible subject of a receivership collective bargaining agreement, the record before me does not clearly indicate that the BTF's remaining two proposals fall under such authority. In any event, before any issues can be presented to me for resolution, Education Law §211-f(8)(a) requires the superintendent receiver to request negotiation of such issues and, in this case, the superintendent receiver did not request negotiation on any of the three issues raised by the BTF on October 23. Moreover, the record indicates that, while negotiations occurred, the parties did not negotiate on these issues. At the time the superintendent receiver submitted the request for resolution, which did not include the issues raised

by the BTF on October 23, the 30-day period had lapsed and he was entitled to do so (Education Law §211-f[8][b]). Therefore, under these circumstances, the BTF's October 23, 2015 proposals are not properly before me in this matter and have not been considered.

Turning to the parties' procedural arguments, the BTF contends that the superintendent receiver's request for resolution in this matter must be denied because the district has not negotiated in good faith and has not provided information requested by the BTF. The superintendent receiver denies this and counters that, because the BTF was "dragging its feet" in order to "avoid its obligation to" negotiate a receivership collective bargaining agreement, the district did not consider the BTF's October 27, 2015 request to extend the timelines for negotiation to be in good faith.

To the extent the parties attempt to raise improper practice claims, however, I note that the Public Employment Relations Board ("PERB") is the entity with jurisdiction over such claims. While Civil Service Law §209-a(1)(d) and (2)(b) and Education Law §211-f(8)(b) require that the parties negotiate in good faith, I lack jurisdiction to hear allegations regarding a party's failure to do so (see Education Law §211-

f[8][b]; Civil Service Law §209-a). Accordingly, I will not, as the BTF requests, deny the superintendent receiver's request for resolution on this basis, which may be pursued through PERB and the applicable provisions of Civil Service Law and 4 NYCRR Part 204.

The BTF also contends that I cannot "nullify" the parties' existing CBA pursuant to the Constitution and the Taylor Law by imposing modifications through a receivership collective bargaining agreement. I disagree. Education Law §211-f(8)(a) provides the superintendent receiver with the authority to request that a receivership collective bargaining agreement be negotiated, thereby "reopening" the existing CBA with respect to the specific areas enumerated in Education Law §211-f(8)(a) with respect to schools in receivership status. Neither the negotiation of a receivership collective bargaining agreement, nor the resolution of an impasse in negotiations with respect thereto pursuant to Education Law §211-f(8)(b), serves to "nullify" the existing CBA. Rather, the effect of such negotiation or resolution is to modify the existing CBA and enter into a successor CBA with respect to the specific limited subjects delineated in Education Law §211-f(8)(a) for schools in receivership status.

The BTF asserts that, since the parties' collective bargaining agreement addresses many of the issues upon which the superintendent receiver seeks to negotiate, the terms and conditions associated with that collective bargaining agreement are protected by the Constitution as well as the Taylor Law and that they remain in effect, and cannot be constitutionally impaired even by the Legislature. While the Court of Appeals recognizes the "policy of the State to support collective bargaining under the Taylor Law (Civil Service Law, art 14)," it has also recognized that "the general rule that any matter in controversy between a board of education and its teachers may be the subject of collective bargaining is limited 'by plain and clear . . . prohibitions in the statute or decisional law' . . . as well as in some instances by '[p]ublic policy, whether derived from, and whether explicit or implicit in statute or decisional law, or in neither" (Cohoes City School Dist. v. Cohoes Teachers Assn., 40 NY2d 774, 778). In fact, the Court of Appeals stated in Matter of Board of Educ. of the City School Dist. of the City of New York v. New York State Public Employment Relations Board (75 NY2d 660, 668 [1990]) that "[t]he Legislature, if it chooses, can of course explicitly prohibit collective bargaining" and it follows that the Legislature can explicitly authorize the Commissioner to resolve specified collective bargaining issues in a receivership collective

bargaining agreement as it explicitly did in Education Law §211-f(8).

Here, Education Law §211-f(8)(a) expressly authorizes Dr. Cash, as the superintendent receiver, to request that a receivership collective bargaining agreement be negotiated to specifically address certain delineated subjects, including the length of the school day; the length of the school year; professional development for teachers and administrators; class sizes; and changes to the programs, assignments and teaching conditions in any school in receivership for the important public purpose of intervening in schools that have demonstrated chronically poor student performance over an extended period in order to improve student performance in those schools as rapidly as possible. The statute further provides that if the parties are unable to reach an agreement within 30 days or if the agreement is not ratified within 10 business days, the parties shall submit any unresolved issues to the Commissioner for resolution (Education Law §211-f[8][b]). The mandates of the receivership law are clear that time is of the essence and that changes to certain areas of a collective bargaining agreement in the first few months of the school year may be needed to make swift demonstrable improvements in these schools. Therefore, where the parties cannot reach agreement on the subjects

delineated in the statute through collective bargaining within the 30-day period prescribed in the statute, the statute provides the Commissioner with the authority to expeditiously resolve the remaining issues for the benefit of the students in the receivership school(s) and impose modifications to certain limited provisions in the existing collective bargaining agreement with respect to those schools.

Contrary to the BTF's arguments, I do not agree that in so doing Education Law §211-f(8) results in an unconstitutional impairment of contract. By limiting the scope of the subjects on which modifications to a collective bargaining agreement may be requested by the receiver and, absent agreement by the parties, may be imposed by the Commissioner, to subjects that are linked to student performance and limiting the changes to schools with a demonstrated history of poor student performance, the Legislature has authorized changes to existing collective bargaining agreements that are reasonable and necessary to serve an important public purpose. Under the constitutional standard articulated in United States Trust Co. of New York v. New Jersey, 431 US 1 (1977), and interpreted by the Second Circuit Court of Appeals in Buffalo Teachers Federation, et al. v. Tobe, et al., 464 F3d 362 (2d Cir. 2006), the Legislature may constitutionally authorize impairment of contracts where the

impairment is reasonable and necessary to serve an important public purpose.

Finally, I disagree with the BTF's contention that the superintendent receiver's request for resolution does not meet the requirements set forth in §100.19(g)(5)(iii)(d)(2)(ii) of the Commissioner's regulations and must therefore be denied in its entirety. Although there are instances among the superintendent receiver's proposals in which I find that additional and/or modified language is necessary to provide clarity to the parties, I find that the superintendent receiver generally describes the unresolved issues and provides the specific contract language recommended and an explanation of the rationale therefor (8 NYCRR §100.19[g][5][iii][d][2][ii]). While the superintendent receiver's submission does not specifically address how adoption of the proposed language would be consistent with collective bargaining principles, such as any applicable factors listed in Civil Service Law §209(4)(c)(v), I find that the factors listed in §209(4)(c)(v)(a) and (c) are not applicable in the instant context and that factors (b) and (d) are addressed by the superintendent receiver's reference to the interests and welfare of public school students in the receivership schools and to the parties' existing CBA, which has been in effect since July 1, 1999.

THE SUPERINTENDENT RECEIVER'S PROPOSALS

I will now address each of the superintendent receiver's proposals - and the parties' positions and submissions with respect thereto - in turn. In this matter, the superintendent receiver makes the following proposals for modification to the existing CBA between the district and the BTF:

1. In order to ensure that each after school, recreational or part time vacancy at the persistently struggling schools are filled with the most qualified teacher, I proposed the following modification to Article XII(G) of the CBA: "In filling vacancies at any summer school, after school, recreational or part time program at any of the persistently struggling schools, the Receiver or his/her designee shall have the discretion and ability to fill the vacancy with the teacher that is most qualified to fill the vacancy,

regardless of seniority. In filling vacancies with the most qualified candidate, there will be a committee formed to interview all candidates for the position. The committee will be comprised of those whom the Receiver deems necessary, but the BTF shall have the ability to appoint one (1) member to each committee. For each position, the struggling school will work with the Department of Human Resources to develop an appropriate rubric for the position."

2. In order to ensure that each teaching vacancy at the persistently struggling schools is filled with the most qualified teacher, I proposed the following modification to Article XIV of the CBA: "In filling vacancies through the transfer process at the persistently struggling schools, the Receiver shall have the right to fill such vacancies with the teacher that is

most qualified to fill the position, regardless of seniority. In filling vacancies with the most qualified candidate, there will be a committee formed to interview all candidates for the position. The committee will be comprised of those whom the Receiver deems necessary, but the BTF shall have the ability to appoint one (1) member to each committee. For each position, the struggling school will work with the Department of Human Resources to develop an appropriate rubric for the position."

3. In order to ensure that effective and highly effective teachers at the persistently struggling schools continue to teach at those schools, I proposed the following modification to Article XIV of the CBA: "A teacher at any of the persistently struggling schools may request a transfer to another school by submitting a written

request directly to the Receiver or his/her designee. Such application shall be made by March 23. The Receiver or his/her designee shall have the discretion and ability to deny the request on or before July 1. In the event that a teacher wishes to appeal the refusal based on extenuating circumstances, he/she may request a meeting with the Receiver."

4. In order to ensure that the administration at the persistently struggling schools have ample opportunity to communicate with the faculty as a whole, I proposed the following modification to Article XXI of the CBA: "The Receiver shall have the right to mandate that faculty meetings be held twice per month at the persistently struggling schools. Faculty meetings may be held either before or after school hours at these schools. The faculty meetings will be

no more than sixty (60) minutes, and attending teachers will receive the hourly rate of pay in accordance with the Contract."

5. In an effort to ensure that the persistently struggling schools are staffed with the most qualified teachers to meet the needs of the students in those buildings, I proposed the following modification to Article XIV of the CBA: "The Receiver shall have the discretion and ability at any time and for any reason to involuntarily transfer teachers at the persistently struggling schools regardless of seniority or status as the building union delegate. If the Principal requests an involuntary transfer, a meeting will be held with the teacher and the Receiver or his/her designee with the final decision resting with the Receiver. Teachers involuntarily transferred will be

placed in a similar position in another school selected by the Receiver. A similar position means the same subject area the teacher taught at the building he/she is being transferred [sic] and for which he/she is certified. It shall also be a position of the same FTE allotment."

6. In an effort to increase student exposure to enriched curriculum, provide additional opportunities to increase student achievement, and to increase targeted professional development opportunities for teachers, I proposed the following modification to Article VIII of the CBA: "The Receiver shall have the right to extend the school day and/or school year at any of the persistently struggling schools. If the Receiver decides to lengthen the school day and/or school year at any of the persistently struggling schools in receivership, the

teachers at the school where the school day and/or school year is lengthened will receive a proportionate increase in compensation. For example, if a teacher's day is increased 10% of the time for instruction of students, then the salary will also increase by 10%."

7. In an effort to ensure that the starting and ending times of the school day are at times that contribute to increased student achievement, I proposed the following modification to Article XIII [sic]¹¹ of the CBA: "Prior to the commencement of the school year, the Receiver shall have the discretion and ability to change the starting and ending times of the school day from the previous year. The District will be responsible for notifying teachers by March 1 of the change."

¹¹ This is an apparent typographical error. Article VIII is the provision of the CBA that relates to Teaching Schedules and would be modified by the superintendent receiver's proposed language. Article XIII relates to Teacher Evaluation and would not be affected.

8. In an effort to ensure that the teachers at the persistently struggling schools are using all of the technological tools available that will contribute to student achievement, I proposed the following modification to Article XI of the CBA: "The Receiver shall have the discretion and ability to require teachers at the persistently struggling schools to use all technological tools necessary and appropriate to more effectively communicate with students and parents. The District will be required to provide training for the use of the technological tools for which they have not been previously trained."

9. In order to ensure that teachers and administrators have maximum flexibility for common planning time, I proposed the following modification to Articles VIII and X of the CBA: "The

Receiver shall have the discretion and ability to modify the schedule at any time at the persistently struggling schools for the purpose of adding more common planning time."

10. In an effort to ensure that teachers attend and receive appropriate professional development, I proposed the following modification to Article[s] VIII and X of the CBA: "The Receiver shall have the right to require that the teachers at the persistently struggling schools attend professional development activities the Receiver deems necessary. The professional development opportunities will be based on the needs of the school and will be school specific. Teachers will be notified of these opportunities at least thirty (30) days in advance and the professional development offering will be offered more than once if it is after the

school day or regular school year. For professional development opportunities that are after the regular school day and/or year, teachers shall be compensated at the hourly rate of pay. If the professional development opportunity is after the regular school year and is longer than four hours, teachers shall be compensated at 1/200th.

Together with his submission, the superintendent receiver included a copy of the existing CBA between the district and the BTF, which was effective from July 1, 1999 through June 30, 2004. In this proceeding, the parties do not dispute that this CBA remains in effect, and it is this CBA upon which the parties rely for purposes of this proceeding.

I have considered the parties' respective positions. Pursuant to Education Law §211-f(8) and 8 NYCRR §100.19(g)(5), and based on all the evidence presented and upon consideration of all relevant factors, including collective bargaining principles, the parties' existing CBA, and the best interests of the students in the impacted schools as well as the students in

the district as a whole, I impose the receivership collective bargaining agreement outlined in this decision upon the parties. I note that, as required by law, the receivership collective bargaining agreement modifies the parties' existing CBA only with respect to the specific subjects contained herein in the district's five Persistently Struggling Schools. All provisions of the parties' existing CBA remain in effect as they relate to all of the remaining schools in the district.

Proposal 1: Filling Vacancies in Summer School, After School, Recreational or Part Time Programs

The superintendent receiver proposes to modify Article XII(G) of the CBA to provide for a process to fill vacancies in such programs with teachers who are most qualified to fill the vacancies, regardless of seniority. Pursuant to Education Law §211-f(8)(a), this constitutes a modification to the "programs, assignments,¹² and teaching conditions in the school in receivership," and is therefore the proper subject of a receivership collective bargaining agreement.

¹² I note that Article XIV of the CBA, entitled "Teacher Transfers," applies to transfers and changes in assignments and I interpret the statutory reference to "changes to ... assignments" in receivership schools in Education Law §211-f(8)(a) to encompass contractual provisions that impact a teacher's assignment, including but not limited to procedures for transfers. In any event, I note that the BTF has not objected to the superintendent receiver's proposal on this ground.

Article XIII(G) of the existing CBA provides, in pertinent part, as follows:

(1) Priority in summer employment shall be based upon previous number of years of summer employment and present employment in the [district].

(2) Present satisfactory teachers in evening school, recreational and part-time programs who teach in the [district] regularly shall continue to be hired as long as they desire the position, if the vacancy exists.

(3) Vacancies

(a) For filling vacancies, priority in employment shall be given to qualified teachers in accordance with the above and in the following order:

- 1) Contract
- 2) Probationary
- 3) Temporary
- 4) Others

(b) For new vacancies in a summer program mutually agreed to have been developed for [students] enrolled in a particular school, priority in employment for new vacancies shall be given to qualified teachers in the school where the program is held in the order described in Section G, (3), (a) of this Article.

(c) Priority in employment in after-school programs for regular day school [students] shall be given [sic] qualified teachers employed in the school where the vacancy occurs and then advertised district-wide. The order of priority shall be contract teachers, probationary teachers, and temporary teachers. To be considered, a candidate must be able to be present at the scheduled starting time for the program.

The superintendent receiver's proposal would allow the filling of vacancies in such programs with "the teacher that is

most qualified to fill the vacancy, regardless of seniority." To fill vacancies, the superintendent receiver would establish a committee to interview all candidates and the BTF would be able to appoint one member to each such committee. For each position, the school would work with the district's human resources department to develop an appropriate rubric for the position.

The BTF argues that Proposal 1 sets forth an "arduous process" that is unnecessary as teachers are given additional assignments in their tenure area based upon years of experience. The BTF raises several claims and concerns, which include the following: the proposal does not set a maximum number of committee members or establish their qualifications; principals already have the right to interview candidates; teachers have no recourse if they are treated unfairly or denied a position based upon favoritism or other non-objective criteria; and the district historically provides short notice for holding interviews and fails to clearly articulate selection criteria.

Initially, I note that the schools that have been designated as Persistently Struggling are those that have been in the most severe accountability status since the 2006-2007 school year. In such schools, the superintendent receiver is

given an initial one-year period to use the enhanced authority of a receiver to make demonstrable improvement in student performance. Education Law §211-f established the receivership program to provide such enhanced authority to the superintendent in the first instance in order to maintain local control while facilitating rapid improvement in student outcomes. Providing the superintendent receiver with the authority to negotiate receivership collective bargaining agreements will enable the superintendent to more effectively utilize and deploy effective teachers, extend the school day and/or school year and make changes to programs and teaching assignments - all of which will ensure that students in these struggling schools are provided with increased educational opportunities.

In this case, I find that the superintendent receiver's proposal must be imposed in part. Affording the superintendent receiver with the discretion to fill vacancies in these programs with the most qualified teachers, regardless of seniority or whether, for example, such teachers are "contract," "probationary" or "temporary," will ensure that the students in these schools have access to teachers who are most qualified to deliver instruction in these programs and settings. Moreover, the seniority rights of teachers will not be affected as this proposal relates only to vacancies and not to the abolition or

excessing of positions, and I have modified the proposal to preserve employees' rights to appointment from a preferred eligibility list pursuant to Education Law §2585, where applicable. In addition, after considering the BTF's position in accordance with collective bargaining principles and the various versions of the parties' proposals in the record before me, I find that the size of the committee should be limited to 3 or 5 members, rather than 4 as proposed by the BFT to avoid the possibility of a deadlock if an even number is used, and that the rubric for the vacant position should be based on objective criteria. Accordingly, I impose the following with respect to Proposal 1:

In filling vacancies at any summer school, after school, recreational or part time program at any of the persistently struggling schools, the Receiver or his/her designee shall have the discretion and ability to fill the vacancy with the teacher that is most qualified to fill the vacancy, regardless of seniority, provided that if a preferred eligibility list exists pursuant to Education Law §2585, to the

extent such statute is applicable, the Receiver or his/her designee shall select from that list the most qualified individual with a record of faithful, competent service in the office or position he or she has filled. In filling vacancies with the most qualified candidate, there will be a committee formed to interview all candidates for the position. The number of committee members will be determined by the Receiver, provided that such number will be either three (3) or five (5), and the committee will be comprised of those whom the Receiver deems necessary, but the BTF shall have the ability to appoint one (1) member to each committee. For each position, the persistently struggling school will work with the Department of Human Resources to develop an appropriate rubric for the qualifications of the position based on objective criteria.

Proposal 2: Filling Vacancies Through the Transfer Process

As described above, the superintendent receiver proposes to modify Article XIV of the CBA to provide for a process to fill vacancies through the transfer process with teachers that are most qualified to fill the vacancies, regardless of seniority. As discussed with respect to Proposal 1, this constitutes a modification to the "programs, assignments, and teaching conditions in the school in receivership," and is therefore the proper subject of a receivership collective bargaining agreement pursuant to Education Law §211-f(8)(a). In any event, the BTF has not objected to the superintendent receiver's proposal on this ground.

Article XIV of the existing CBA establishes a process for voluntary and involuntary teacher transfers. The superintendent receiver appears to propose that, where a vacancy exists in a Persistently Struggling School and there are teachers who seek a transfer to such vacant position through the existing teacher transfer process in Article XIV, the vacancy will be filled with the teacher who is most qualified to fill the position, regardless of seniority and regardless of the following considerations which are specified in Article XIV(E): length of teaching experience in the school system and date of request for

transfer. Similar to Proposal 1, the superintendent receiver's Proposal 2 would allow the filling of vacancies through the transfer process with "the teacher that is most qualified to fill the vacancy, regardless of seniority." To fill vacancies, the superintendent receiver would establish a committee to interview all candidates and the BTF would be able to appoint one member to each such committee. For each position, the school would work with the district's human resources department to develop an appropriate rubric for the position.

Based on the considerations discussed in Proposal 1 above, I find that the superintendent receiver's Proposal 2 must be imposed in part. Affording the superintendent receiver the discretion to fill vacancies in Persistently Struggling Schools with the most qualified teachers, regardless of seniority, length of teaching experience in the district or the date of the teacher's transfer request, will ensure that the students in these schools have access to teachers who are qualified to deliver instruction in these programs and settings. Moreover, the seniority rights of teachers will not be affected as this proposal relates only to vacancies and not to the abolition or excessing of positions, and I have modified the proposal to preserve employees' rights to appointment from a preferred eligibility list pursuant to Education Law §2585, where

applicable. After considering the BTF's position in accordance with collective bargaining principles and the various versions of the parties' proposals in the record before me, I again find that the number of committee members should be limited and the rubric for the vacant position should be based on objective criteria. Accordingly, I impose the following with respect to Proposal 2:

In filling vacancies through the transfer process at the persistently struggling schools, the Receiver shall have the right to fill such vacancies with the teacher that is most qualified to fill the position, regardless of seniority, provided that if a preferred eligibility list exists pursuant to Education Law §2585, to the extent such statute is applicable, the Receiver or his/her designee shall select from that list the most qualified individual with a record of faithful, competent service in the office or position he or she has filled. In filling vacancies with the most qualified candidate, there will be

a committee formed to interview all candidates for the position. The number of committee members will be determined by the Receiver, provided that such number will be either three (3) or five (5), and the committee will be comprised of those whom the Receiver deems necessary, but the BTF shall have the ability to appoint one (1) member to each committee. For each position, the persistently struggling school will work with the Department of Human Resources to develop an appropriate rubric for the qualifications of the position based on objective criteria.

**Proposal 3: Process for Submitting Requests for Transfers
From Persistently Struggling Schools**

The superintendent also proposes that Article XIV of the CBA be modified to require teachers who seek to transfer from a Persistently Struggling School to another school in the district to submit such request by March 23 to the superintendent receiver or his/her designee, rather than to the Associate

Superintendent for Instructional Services, as is currently required by Article XIV(A).

The superintendent receiver also proposes that the receiver or his/her designee shall have the discretion and ability to deny the request on or before July 1. In the event that a teacher wishes to appeal the refusal based on extenuating circumstances, he/she may request a meeting with the receiver. This constitutes a modification to the "programs, assignments, and teaching conditions in the school in receivership," and is therefore the proper subject of a receivership agreement pursuant to Education Law §211-f(8)(a). In any event, the BTF has not objected to the superintendent receiver's proposal on this ground.

I note that the existing CBA does not appear to address the denial of transfer requests and specifically requires that, when a transfer request is evaluated, the teacher's wishes be honored wherever possible (Article XIV[A][3]). However, the existing CBA also requires consideration of the fact that a "balanced staff be maintained at each school" (Article XIV[A][1]).

Accordingly, while I find that the superintendent receiver's Proposal 3 must be imposed in part in order to ensure

that effective and highly effective teachers at Persistently Struggling Schools continue to teach at those schools wherever possible, I also find that such proposal must be modified. I recognize the critical need for a consistent staff of high quality teachers to serve the students in Persistently Struggling Schools and the negative impact on student learning that can occur where a receiver is unable to immediately find qualified teachers to fill the vacancies created by teacher transfers. However, I also recognize that, as the BTF points out, in making a decision on a teacher's transfer request, the receiver should consider the individual teacher's particular situation and the best interests of the students who attend the Persistently Struggling School. Accordingly, after considering the BTF's position in light of collective bargaining principles and the various versions of the parties' proposals in the record before me, I find that Proposal 3 must be modified as indicated below:

A teacher at any of the persistently struggling schools may request a transfer to another school by submitting a written request directly to the Receiver or his/her designee. Such application shall be made by March

23. The Receiver or his/her designee shall have the discretion and ability to deny the request on or before July 1, but shall consider the wishes of the individual teacher and the best interests of the students attending the Persistently Struggling School in evaluating all such requests. Notice of any such denial shall be provided in writing, which shall include a description of the constitutionally and statutorily permissible reason(s) therefor; provided that where the Receiver denies a transfer request on the basis that there are not readily available other persons who are qualified to perform the duties to be assigned, the Receiver must maintain documentation on file that the district has undertaken a good faith recruitment search for a certified and qualified candidate and determined that there are no available persons qualified to perform the duties of such position.

Where a request is denied, nothing herein shall prohibit the teacher from making a subsequent request for transfer from the Persistently Struggling School consistent with the Contract. Notwithstanding this modification to Article XIV, the provisions of Article XIV(D) relating to transfer requests based on hardship remain applicable. In the event that a teacher wishes to appeal the refusal based on extenuating circumstances, he/she may request a meeting with the Receiver.

Proposal 4: Faculty Meetings

In Proposal 4, the superintendent receiver proposes modification of Article XXI of the CBA to authorize the receiver to mandate that faculty meetings be held twice per month in Persistently Struggling Schools. Such meetings may be held either before or after school hours and will last no more than 60 minutes and teachers attending will receive their hourly rate of pay in accordance with the CBA. This proposal addresses

professional development as well as the "programs, assignments, and teaching conditions in the school in receivership," and is therefore the proper subject of a receivership collective bargaining agreement pursuant to Education Law §211-f(8)(a). In any event, the BTF has not objected to the superintendent receiver's proposal on this ground.

As the BTF points out, Article XXI currently requires that such meetings shall be limited to 10 and shall not, except in emergencies, exceed 60 minutes after school. Under the BTF's proposal, the receiver would only be able to increase the number of faculty meetings by a maximum of three. The BTF also objects to compensation for such meetings at the hourly rate of pay and proposes that the superintendent receiver be required to provide three weeks' notice of the time, date and purpose of such meetings. The BTF also proposes that such faculty meetings will not be scheduled on a Friday or before a non-school day and that there will be no adverse consequences if a teacher cannot attend.

Under the circumstances present in the district's Persistently Struggling Schools, where the superintendent receiver is charged with improving student achievement in just one school year, I find that an increased number of faculty

meetings is reasonable to ensure that the superintendent receiver, administrators, and teachers at these schools are afforded sufficient opportunities to engage in consistent, regular interaction in order to maximize the rapid achievement of students in these schools. While the BTF argues that the CBA "already" provides for 10 faculty meetings per year, the BTF does not refute the superintendent receiver's position that this proposal will ensure opportunities for communication between faculty and administrators at receivership schools. Providing the superintendent receiver with the flexibility to call such meetings twice per month, without restrictions as to specific days of the week, as proposed by the BTF, will enable the superintendent receiver and the faculty at these schools to respond to and address issues impacting students as they arise. I also find that compensating teachers based on their hourly rate of pay in accordance with the CBA constitutes a "proportionate increase in compensation" as contemplated by Education Law §211-f(8)(a).

After considering the BTF's position in light of collective bargaining principles and the various versions of the parties' proposals in the record before me, I find that the superintendent receiver's Proposal 4 must be imposed in part as follows:

The Receiver shall have the right to mandate that faculty meetings be held twice per month at the persistently struggling schools. Wherever practicable, notice will be given to the faculty at least one (1) week in advance of the meeting, except in the case of emergencies. Faculty meetings may be held either before or after school hours at these schools. The faculty meetings will be no more than sixty (60) minutes, and attending teachers will receive a proportionate increase in compensation which shall be based on the hourly rate of pay in accordance with the Contract.

Proposal 5: Involuntary Transfers

In Proposal 5, the superintendent receiver requests modifications to Article XIV of the CBA that would provide the "discretion and ability at any time and for any reason to involuntarily transfer" teachers from the Persistently

Struggling Schools, regardless of seniority or union-delegate status. As discussed above, the issue of transfers addresses the "programs, assignments, and teaching conditions in the school in receivership," and is therefore the proper subject of a receivership collective bargaining agreement pursuant to Education Law §211-f(8)(a). In any case, the BTF has not objected to the superintendent receiver's proposal on this ground.

Article XIV(G) addresses the issue of involuntary transfers and provides, in pertinent part, as follows:

It is desirable that transfers and changes in assignments be on a voluntary basis whenever possible. In making involuntary transfers and/or changes in assignments, the preference of the individual teachers shall be honored whenever feasible. [Discussion of transfers resulting from school closings and reductions-in-force omitted.] Except for transfers and/or changes in assignments to take effect in the first six weeks of school,

notice of involuntary transfers and/or changes in assignments and the reasons therefor shall be given to the affected teacher as far in advance as practicable which shall be at least fifteen (15) days prior to the effective date of the transfer and/or change in assignment....

Except in cases of school closings as set forth above, a Federation delegate, alternate, building committee member or executive committee member shall not be involuntarily transferred unless there is a reduction-in-force at such teacher's school....

The superintendent receiver's proposal with respect to involuntary transfers is not limited to closings or reductions-in-force at Persistently Struggling Schools. Rather, the superintendent receiver seeks the ability to involuntarily transfer teachers from Persistently Struggling Schools "at any time and for any reason" and without regard to seniority or union-delegate status. Proposal 5 further states:

If the Principal requests an involuntary transfer, a meeting will be held with the teacher and the Receiver or his/her designee with the final decision resting with the Receiver. Teachers involuntarily transferred will be placed in a similar position in another school selected by the Receiver. A similar position means the same subject area the teacher taught at the building he/she is being transferred [sic] and for which he/she is certified. It shall also be a position of the same FTE allotment.

As discussed above, the schools that have been designated as Persistently Struggling are those that have been in the most severe accountability status since the 2006-2007 school year. In such schools, the superintendent is given an initial one-year period to use the enhanced authority of a receiver to make demonstrable improvement in student performance. Education Law §211-f established the receivership program to provide such enhanced authority to the superintendent in the first instance

in order to maintain local control while facilitating rapid improvement in student outcomes. Providing the superintendent receiver with the authority to transfer teachers involuntarily from Persistently Struggling Schools under certain circumstances will enable the superintendent to ensure that the most qualified staff are in those schools in order to maximize student achievement quickly.

Although not entirely clear, it appears that the BTF's proposal on this issue is included in Appendices H and J of its responsive materials, in which the BTF proposes that teachers subject to involuntary transfer be placed on "the involuntary transfer list for a similar position in another school." I note that neither party cites to any provision in the existing CBA dealing with an "involuntary transfer list," though the BFT asserts that the use of such a list is current practice, and while, as noted above, Article XIV(G) addresses the priorities to be applied in cases of transfers resulting from school closings and reductions-in-force, it does not reference an "involuntary transfer list."

However, Article XIV(E) states as follows with respect to teachers who request transfers:

If the request for transfer is approved, the teacher's name shall be placed on a transfer list, which shall be kept confidential, and the teacher shall be advised by direct mail. In such cases, every reasonable effort shall be made to transfer the teacher as soon as possible in accordance with the teacher's wishes. In selecting teachers to be transferred, the following shall be considered in implementing the provisions of Paragraph A above¹³:

(1) Length of teaching experience in the school system. This factor shall be controlling where all other factors are substantially equal.

(2) Date of request for transfer.

¹³ Article XIV(A) provides that, in evaluating a teacher's transfer request, the following factors must be considered: that a balanced staff be maintained at each school; that the probationary teachers be expected to complete the probationary period in the school originally assigned, except where conditions seem to indicate that a transfer is desirable; and that the wishes of the individual teacher be honored wherever possible.

The BTF objects to Proposal 5 on the grounds that it may impact a teacher's income and contains no "restrictions, delineation of academic concerns, prevention from abuse and vindictiveness nor infringement upon academic freedom." The BTF also asserts that the ability to involuntarily transfer a building union delegate under these circumstances undermines the spirit and intent of all labor laws.

After considering the BTF's position in light of collective bargaining principles and the various versions of the parties' proposals in the record before me, I find that the superintendent receiver's Proposal 5 must be imposed in part. Proposal 5 as modified will ensure that the students in these schools have access to teachers who are the most qualified to deliver instruction in these programs and settings. Moreover, the tenure and seniority rights of teachers will not be affected by the proposal as modified, which ensures that transferred teachers are placed on the "transfer list" pursuant to the existing CBA. The modifications to Proposal 5 in this regard also reflect my disagreement with the superintendent receiver's proposal that teachers who are involuntarily transferred will be placed in another school "selected by the Receiver." While the receiver has the powers and authority specified in Education Law §211-f over schools in receivership status, the superintendent

receiver's proposal as written would permit the receiver to impact staffing decisions at other schools in a school district, thereby exceeding the powers and authorities enumerated in the statute.

In addition, as the BTF's positions illustrate, the interest in accomplishing rapid improvement in student achievement must be balanced against considerations of fairness to teachers as employees of the district. Accordingly, after considering the parties' positions in light of collective bargaining principles and the various versions of the parties' proposals in the record before me, I find that Proposal 5 must be imposed as modified below:

The Receiver shall have the discretion and ability at any time and for any constitutionally or statutorily permissible reason to involuntarily transfer teachers at the persistently struggling schools regardless of seniority or status as the building union delegate. Notice of involuntary transfers shall be given to the affected teacher as far in advance as

practicable which shall be at least
fifteen (15) days prior to the
effective date of the transfer and
shall include a description of the
constitutionally and statutorily
permissible reason(s) therefor. In the
case of a building union delegate, such
reason(s) shall not relate to the
employee's lawful action(s) in his/her
capacity as the building union
delegate. With respect to involuntary
transfers which take effect during the
school year after the first two weeks
of school, the teacher shall be allowed
up to two (2) days in which to make the
move to the new building and to become
acquainted with the new position. If
the Principal requests an involuntary
transfer, a meeting will be held with
the teacher and the Receiver or his/her
designee to discuss such transfer
before it becomes final, with the final
decision resting with the Receiver.
Teachers involuntarily transferred will

be placed on a transfer list, consistent with Article XIV(E), for placement in a similar position in the teacher's tenure area in another school. A similar position means the same subject and tenure area the teacher taught at the building he/she is being transferred from and for which he/she is certified. It shall also be a position of the same FTE allotment with no loss of compensation. The provisions of Article XIV(E), (I) and (L) of the CBA continue to apply to teachers subject to involuntary transfers.

Proposal 6: Extending the School Day and/or School Year

Proposal 6 would modify Article VIII of the CBA to allow the superintendent receiver to extend the school day and/or school year at any Persistently Struggling School. Under Proposal 6, teachers would receive a proportionate increase in compensation (e.g., if the school day is increased by 10 percent for student instruction, the teacher's salary will also increase

by 10 percent). As this proposal addresses the length of the school day and/or school year, it is therefore the proper subject of a receivership collective bargaining agreement pursuant to Education Law §211-f(8)(a). In any event, I note that the BTF does not object to the superintendent receiver's proposal on this ground.

Beginning with the Department's identification of Priority Schools for the 2012-2013 school year pursuant to its approved federal ESEA Waiver, the Board of Regents approved policies relating to the standards for Expanded Learning Time in Priority Schools.¹⁴ These standards included a requirement that Priority Schools expand learning time by a minimum of 200 student contact hours per year.¹⁵ Such policies are based on research showing that high-quality expanded learning time positively affects students' behavior, school attendance, and academic achievement: "[B]oth research and practice indicate that adding time to the school day and/or year can have a meaningfully positive impact on student proficiency and, indeed, upon a child's entire educational experience."¹⁶ In line with such research, Education

¹⁴ <http://www.regents.nysed.gov/common/regents/files/documents/meetings/2012Meetings/April2012/412bra5.pdf>

¹⁵ <http://www.regents.nysed.gov/common/regents/files/documents/meetings/2012Meetings/April2012/412bra5.pdf>

¹⁶ Farbman, David A., Ph.D. "The Case for Improving and Expanding Time in School: A Review of Key Research and Practice, Updated and Revised February 2015." <http://www.timeandlearning.org/sites/default/files/resources/casformorelearningtime.pdf>

Law §211-f(8) specifically includes a longer school day and school year as among the proper subjects of a receivership collective bargaining agreement.

The BTF argues that Proposal 6 lacks a rationale for how the time will be used. I disagree. In the superintendent receiver's request for resolution, he explains that this proposal is intended to "increase student exposure to enriched curriculum, provide additional opportunities to increase student achievement, and to increase targeted professional development opportunities for teachers."

I am also not persuaded that the BTF's proposal on this issue, which limits extension of a school day to 30 minutes for "common planning time" and extension of the school year to two professional development days, is in the best interests of students or aimed at ensuring the rapid improvement of student achievement.

With respect to the BTF's argument that Proposal 6 constitutes an "unacceptable unlimited extension" of the school day and/or school year, I note that Article VIII of the existing CBA is highly specific and sets forth the daily hours of service for teachers (a maximum of 6 hours and 50 minutes) and

prescribes a maximum school year of 42 weeks, with a maximum of 186 days of required teacher attendance. This provision also states that teachers requested to return to school beyond the 42nd week will be paid for each working day of four or more hours at the daily rate of 1/200th of their annual salary; those teachers who work less than four clock hours per day shall be paid at the prevailing hourly rate. In light of this specificity in the existing CBA, the fact that Priority Schools are required to expand learning time by a minimum of 200 student contact hours per year, and the lack of detail in Proposal 6 as drafted, I find that such proposal must be modified to provide clarification on expanded learning time. Such modifications also reflect, in part, the BTF's proposal that written notice of schedule changes be provided to teachers by February 1 for the following school year.

As described above, I have considered the parties' positions in light of collective bargaining principles and, in order to maximize student achievement in the district's Persistently Struggling Schools, I find that Proposal 6 must be imposed with the following modifications:

The Receiver shall have the right to
extend the school day and/or school

year at any of the persistently
struggling schools by expanding student
learning time by a minimum of 200
student contact hours per year;
provided that if the Receiver decides
to lengthen the school day and/or
school year by more than 200 student
contact hours per year teachers shall
be so notified, in writing, by February
1 for the following school year. If
the Receiver decides to lengthen the
school day at any of the persistently
struggling schools in receivership, the
teachers at such school where the
school day is lengthened will receive a
proportionate increase in compensation
which shall be based on the hourly rate
of pay in accordance with the Contract.
If the Receiver decides to lengthen the
school year at any of the persistently
struggling schools in receivership, the
teachers at such school where the
school year is lengthened will receive
a proportionate increase in

compensation which shall be 1/200th of
their annual salary as set forth in
Article VIII(B)(2) of the Contract and
Education Law §3101(2). If the
Receiver decides to lengthen both the
school day and the school year at any
of the persistently struggling schools
in receivership, the teachers at such
school where the school day and school
year are lengthened will receive a
proportionate increase in compensation
which shall comprise both the hourly
rate of pay for the extended school day
in accordance with the Contract and
1/200th of their annual salary for the
extended school year as set forth in
Article VIII(B)(2) of the Contract and
Education Law §3101(2).

Proposal 7: Changing School Day Starting and Ending Times

Proposal 7 would modify Article VIII¹⁷ of the CBA to permit the superintendent receiver to change the starting and ending times of the school day from the previous year, with notice to teachers by March 1. This proposal addresses the "programs, assignments, and teaching conditions in the school in receivership," and is therefore the proper subject of a receivership collective bargaining agreement pursuant to Education Law §211-f(8)(a). In any case, the BTF has not objected to the superintendent receiver's proposal on this ground.

Pursuant to Article VIII, the starting and ending times of the school day shall be no earlier than 7:50 a.m. and no later than 3:40 p.m. Proposal 7 would give the superintendent receiver the discretion to modify such hours in order to ensure that the school day starting and ending times "contribute to increased student achievement." On this record, I disagree with the BTF's contention that "[j]ust changing the starting and ending times does nothing to improve the education of students." For example, research shows that, among middle and high school students, modifications to the starting times of school days can

¹⁷ See footnote 11, infra.

have a significant impact on attendance and academic performance.¹⁸

Accordingly, for the reasons described above, I find that Proposal 7 must be imposed. However, I find that the proposal must be modified as indicated below to ensure consistency with Proposal 6, as modified, which establishes a February 1 date for notice to be provided to teachers in the case of an increase in the school day and/or school year by more than 200 student contact hours per year:

Prior to the commencement of the school year, the Receiver shall have the discretion and ability to change the starting and ending times of the school day from the previous year. The District will be responsible for notifying teachers by February 1 of the change.

¹⁸ "Impact of School Start Time on Student Learning." Hanover Research. Feb. 2013. http://www.shorewoodschoools.org/uploaded/Family_Resources/general/Impact_of_School_Start_Time.pdf

**Proposal 8: Use of Technological Tools to Communicate With
Students and Parents**

Under Proposal 8, the superintendent receiver would be authorized to require teachers in Persistently Struggling Schools to use all technological tools necessary and appropriate to more effectively communicate with students and parents. The district would be required to provide training to teachers with respect to technological tools on which they have not previously been trained. This proposal addresses professional development as well as the "programs, assignments, and teaching conditions in the school in receivership," and is therefore the proper subject of a receivership collective bargaining agreement pursuant to Education Law §211-f(8)(a). In any event, the BTF does not object to the superintendent receiver's proposal on this ground.

In recognition of the critical role parents play in their children's classroom success, Education Law §211-f and §100.19 of the Commissioner's regulations contain several provisions relating to parent engagement. The purpose of such provisions is to ensure that parents are informed about schools' designation as Persistently Struggling and are deeply engaged in the plans for improving student outcomes in those schools. I also note that the record before me indicates that the parties

may have been close to reaching agreement on this issue and the BTF has not raised any specific objections to Proposal 8 or submitted any proposed alternative language with respect thereto. Accordingly, I find that Proposal 8 must be imposed in its entirety as follows:

The Receiver shall have the discretion and ability to require teachers at the persistently struggling schools to use all technological tools necessary and appropriate to more effectively communicate with students and parents. The District will be required to provide training for the use of the technological tools for which they have not been previously trained.

Proposal 9: Additional Common Planning Time

In Proposal 9, the superintendent receiver would have the discretion and ability to modify the schedule at any time for the purpose of adding more common planning time. This proposal would modify Articles VIII and X of the CBA, which govern "Teaching Schedules" and "Teaching Load and Assignments,"

respectively. This proposal addresses professional development as well as the "programs, assignments, and teaching conditions in the school in receivership," and is therefore the proper subject of a receivership collective bargaining agreement pursuant to Education Law §211-f(8)(a). In any event, the BTF does not object to the superintendent receiver's proposal on this ground.

Under the circumstances present in the district's Persistently Struggling Schools, where the superintendent receiver is charged with improving student achievement in one school year, I find that affording the superintendent receiver the flexibility to modify the schedule to add more common planning time is reasonable to ensure that the superintendent receiver, administrators, and teachers at such schools are afforded the opportunity to engage in cohesive planning in order to maximize the rapid achievement of students in these schools. As a result, I find that the superintendent receiver's Proposal 9 must be imposed in its entirety. However, because, as noted by the BTF, the superintendent receiver's proposal does not specify the way in which the schedule would be modified in order to add common planning time, I remind the superintendent receiver that all existing provisions of the CBA, including

those regarding notice of schedule changes and additional compensation, where necessary, remain in effect.

Proposal 10: Professional Development

Proposal 10 would allow the superintendent receiver to require that teachers at the Persistently Struggling Schools attend professional development ("PD") activities the superintendent receiver deems necessary. Such activities will be based on the needs of the school and will be school-specific. Teachers will be provided notice of such activities at least 30 days in advance and, if the activity occurs after the school day or regular school year, it will be offered more than once. If a PD activity occurs after the regular school day and/or year, teachers will be compensated at their hourly rate of pay. If the PD activity is after the regular school year and is longer than four hours, teachers will be compensated at the daily rate of 1/200th. This proposal addresses professional development as well as the "programs, assignments, and teaching conditions in the school in receivership," and is therefore the proper subject of a receivership collective bargaining agreement pursuant to Education Law §211-f(8)(a). In any case, the BTF does not object to the superintendent receiver's proposal on this ground.

After considering the BTF's position in light of collective bargaining principles and the various versions of the parties' proposals in the record before me, including Appendices I and J to the BTF's submission, which indicate that the parties conducted negotiations on this issue, I find that the superintendent receiver's Proposal 10 must be imposed with the following modifications:

The Receiver shall have the right to require that the teachers at the persistently struggling schools attend professional development activities the Receiver deems necessary. The professional development opportunities will be based on the needs of the school and will be school specific. Teachers will be notified of these opportunities at least thirty (30) days in advance and the professional development offering will be offered more than once if it is after the school day or regular school year. Consistent with Article X(O) of the CBA, to the extent possible, such

professional development activities shall be held during student release time and, to the extent possible, shall be held at the school or within the district. For professional development opportunities that are after the regular school day, teachers shall be compensated at a proportionate increase in compensation which shall be based on the hourly rate of pay in accordance with the Contract. If the professional development opportunity is after the regular school year and is less than four clock hours, teachers shall be compensated at a proportionate increase in compensation which shall be based on the hourly rate of pay as set forth in Article VIII(B)(2) of the Contract. If the professional development opportunity is after the regular school year and is four clock hours or longer, teachers shall be compensated at 1/200th of their annual salary as set forth in

Article VIII(B)(2) of the Contract and
Education Law §3101(2).

CONCLUSION

As described above, I have considered all of the positions and the evidence presented by the parties and all relevant factors, including applicable collective bargaining principles and the best interests of the students in the five Persistently Struggling Schools at issue herein. Accordingly, I find that the superintendent receiver's proposals, as described and/or modified herein, constitute the receivership collective bargaining agreement applicable to the following schools in the district: West Hertel Elementary School; South Park High School; Marva J. Daniel Futures Prep School; Burgard Vocational High School; and Buffalo Elementary School of Technology.

Because all unresolved issues presented to me for resolution have been resolved by my imposition of the receivership collective bargaining agreement as described herein, such receivership collective bargaining agreement is effective immediately and need not be submitted to the collective bargaining unit members for ratification (see 8 NYCRR §100.19[g][5][iii][c] and [d]). The receivership collective

bargaining agreement imposed herein shall remain effective for as long as each such school remains in receivership status, provided that such agreement may be further modified pursuant to Education Law §211-f(8) and 8 NYCRR §100.19(g)(5).

While the receivership collective bargaining agreement in this case is being imposed by the Commissioner of Education as the result of an impasse, the agreement does provide for proportionate increases in compensation for teachers under certain circumstances and may result in costs to the district. While the parties do not specifically address the issue of cost in their proposals or submissions, I note that, with respect to the five schools at issue in this matter, the district is eligible for up to \$15,219,602 in Persistently Struggling Schools Grant funds through March 31, 2017.¹⁹ However, to the extent that any of the provisions contained in the receivership collective bargaining agreement imposed by this decision and order result in costs that would require the appropriation of funds by the district's board of education, the district must comply with any applicable requirements related to approval of changes to the school district budget, including the

¹⁹ I take administrative notice of the application published by the Department through which certain districts may apply for a Persistently Struggling Schools Grant, which is available on the Department's official website at: <http://www.p12.nysed.gov/funding/persistently-struggling-schools/pssg-grant-application.pdf>

appropriation of funds by the board of education (see Education Law §2576[7]), subject to the authority of the receiver to supersede board actions which conflict with the appropriate Department-approved plan and/or to modify proposed budgets pursuant to Education Law §211-f(2)(b).

Although the issue is not before me, I note for the benefit of the parties that my resolution of the collective bargaining issues herein does not absolve the school district from complying with applicable legal requirements related to school district budgeting.²⁰ While, as noted above, Education Law §211-f(2)(b) gives a receiver the authority to make modifications to a proposed school district budget to conform to the appropriate Department-approved plan, such authority is not unlimited. The receiver must, for example, provide an explanation of the way(s) in which the such modifications are limited in scope and effect to the schools under receivership and provide a description of how such modifications will not unduly impact other schools in the district (see 8 NYCRR §100.19[g][8][ii]). I further note that, where invoked, the receiver's supersession authority is

²⁰ I also note for the benefit of the parties that Civil Service Law §204-a(1) generally requires as follows: "Any written agreement between a public employer and an employee organization determining the terms and conditions of employment of public employees shall contain the following notice in type not smaller than the largest type used elsewhere in such agreement: 'It is agreed by and between the parties that any provision of this agreement requiring legislative action to permit its implementation by amendment of law or by providing the additional funds therefor, shall not become effective until the appropriate legislative body has given approval.'"

likewise not unlimited - while the receiver may supersede decisions, policies or regulations that conflict with the Department-approved plan, he or she may not supersede decisions, policies or regulations that are not directly linked to such approved plan, including those related to the transportation of students to the extent such transportation impacts other schools in the district (Education Law §211-f[2][b]; 8 NYCRR §100.19[g][6]).

I have considered the parties' remaining contentions and find them to be without merit.

THE REQUEST FOR RESOLUTION SUBMITTED BY THE SUPERINTENDENT RECEIVER IS SUSTAINED TO THE EXTENT INDICATED.

IT IS ORDERED that the receivership collective bargaining agreement imposed herein is applicable, effective immediately, only with respect to the following Persistently Struggling Schools: West Hertel Elementary School; South Park High School; Marva J. Daniel Futures Prep School; Burgard Vocational High School; and Buffalo Elementary School of Technology; and

IT IS FURTHER ORDERED that the receivership collective bargaining agreement imposed herein shall remain in effect during the period that each such school remains in receivership status, provided that such agreement may be further modified pursuant to Education Law §211-f(8) and 8 NYCRR §100.19(g)(5); and

IT IS FURTHER ORDERED that, unless modified as described herein, the receivership collective bargaining agreement imposed herein constitutes the entire receivership collective bargaining agreement applicable to these schools, and that any provisions of the parties' existing collective bargaining agreement that conflict with the receivership collective bargaining agreement or in any way modify the receivership collective bargaining agreement are hereby superseded; and

IT IS FURTHER ORDERED that all provisions of the parties' existing collective bargaining agreement that do not conflict with or modify the receivership collective bargaining agreement imposed herein remain applicable to such schools.



IN WITNESS WHEREOF, I, MaryEllen Elia, Commissioner of Education of the State of New York, for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 8th day of November 2015.

MaryEllen Elia

Commissioner of Education

Appendix A



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK

Commissioner of Education
President of the University of the State of New York
89 Washington Avenue, Room 111
Albany, New York 12234

E-mail: commissioner@nysed.gov
Twitter: @NYSEDNews
Tel: (518) 474-5844
Fax: (518) 473-4909

July 15, 2015

Darren Brown, Superintendent
Buffalo Public Schools
712 City Hall
Buffalo, NY 14202

Dear Mr. Brown:

At its June 2015 meeting, the Board of Regents approved the addition of section 100.19 to Commissioner's Regulations pertaining to School Receivership. These regulations were necessary to fulfill the requirements outlined in state statute, Education Law section 211-f, as added by Part EE, Subpart H of Chapter 56 of the Laws of 2015. The new regulations require that current Priority Schools that have been in the most severe accountability status since the 2006-07 school year be designated as Persistently Struggling Schools and those that were in Priority status for the 2012-13, 2013-14 and 2014-15 school years be designated as Struggling Schools. Schools that have ceased operation at the end of the 2014-15 school year or schools that the Commissioner has determined to have extenuating or extraordinary circumstances will not be identified as Persistently Struggling or Struggling Schools. The June 2015 Board of Regents item and the text of Commissioner's Regulation §100.19 can be found on the New York State Education Department (NYSED or "the Department") website at: <http://www.regents.nysed.gov/common/regents/files/meetings//Revised%20Receivership%20100.19.pdf>.

This letter is to inform you that one or more schools in your district have been identified as Persistently Struggling or Struggling Schools. Please see Attachment A for the list of school(s) with their final identification status. This list reflects the Department's decision regarding your appeals for the following schools: Dr. Martin Luther King Jr. Multicultural Institute, Bennett High School, Lafayette High School, East High School, and Riverside Institute of Technology. The appeal to remove Dr. Martin Luther King Jr. Multicultural Institute from the Struggling School designation was approved contingent upon the district fully implementing the Department-approved phase-out plans for this school. Buffalo Public Schools must ensure that students and teachers within the phase-out school are receiving the required services and professional development. The appeals to remove Bennett High School, Lafayette High School, East High School, and Riverside Institute of Technology from Struggling School status were denied since these schools will continue to serve students beyond the 2015-16 school year. Only Struggling Schools that will close prior to the 2016-17 school year may be removed from designation.


Title I Priority Schools must continue to implement all federal and state mandated requirements as outlined in my letter to you dated April 20, 2015. The template of this letter is available for review on the NYSED website at the following link: <http://www.p12.nysed.gov/accountability/documents/FocusDistrictMemo2015-16-Template.pdf>.

Attachment A-1 is intended for you and your Director of School Improvement and provides detailed information on next steps for districts with Persistently Struggling and Struggling Schools. The United States Department of Education has approved New York State's Elementary and Secondary Education Act Renewal Waiver for 2015-2019, contingent upon the creation of a new list of Priority Schools in February 2016. Once a new list of Priority Schools has been created, any Struggling or Persistently Struggling School not on that list will end its Receivership in June 2016.

The Department is fully aware of the extensive work involved in meeting the new school intervention requirements described in Commissioner's Regulation §100.19 and intends to provide districts with technical assistance to assist with implementation. For your reference, a timeline of the required activities and submission due dates is provided in Attachment F. The Department is holding a Receivership Conference for all districts with identified schools on July 22 - 23, 2015 in Albany, New York. The conference will be an opportunity for the Department to provide technical assistance to districts, as well as for districts to begin planning and discussing how the new Receivership powers can assist them with increasing student achievement at identified schools. In addition, the Department is creating a Frequently Asked Questions (FAQ) page on the NYSED website in order to address the numerous questions and concerns that may be raised as implementation begins. Districts will be notified via e-mail when the FAQ has been posted to the Department's website.

If you have any questions regarding the identification of schools or the information provided in this letter, please forward them to Receivership@nysed.gov. We look forward to working with your district to improve academic achievement in these schools.

Sincerely,



MaryEllen Elia
Commissioner

Attachments

c: Elizabeth Berlin
Charles Szuberla
Ira Schwartz
Stephen Earley
Maxine Meadows-Shuford
Lisa Long
Lynda Quick
James Sampson

Attachment A

Persistently Struggling and/or Struggling Schools as of July 1, 2015

District	BEDS Code	School Name	Identification Status
BUFFALO CITY SD	140600010006	BUFFALO ELEM SCH OF TECHNOLOGY	Persistently Struggling
BUFFALO CITY SD	140600010101	BURGARD VOC HIGH SCHOOL	Persistently Struggling
BUFFALO CITY SD	140600010037	MARVA J DANIEL FUTURES PREP SCHOOL	Persistently Struggling
BUFFALO CITY SD	140600010110	SOUTH PARK HIGH SCHOOL	Persistently Struggling
BUFFALO CITY SD	140600010118	WEST HERTEL ELEMENTARY SCHOOL	Persistently Struggling
BUFFALO CITY SD	140600010099	BENNETT HIGH SCHOOL	Struggling
BUFFALO CITY SD	140600010033	BILINGUAL CENTER	Struggling
BUFFALO CITY SD	140600010032	BUILD ACADEMY	Struggling
BUFFALO CITY SD	140600010094	DR LYDIA T WRIGHT SCH OF EXCELLENCE	Struggling
BUFFALO CITY SD	140600010003	D'YOUVILLE-PORTER CAMPUS	Struggling
BUFFALO CITY SD	140600010307	EAST HIGH SCHOOL	Struggling
BUFFALO CITY SD	140600010130	FRANK A SEDITA SCHOOL #30	Struggling
BUFFALO CITY SD	140600010031	HARRIET ROSS TUBMAN ACADEMY	Struggling
BUFFALO CITY SD	140600010197	HARVEY AUSTIN SCHOOL #97	Struggling
BUFFALO CITY SD	140600010076	HERMAN BADILLO COMMUNITY SCHOOL	Struggling
BUFFALO CITY SD	140600010080	HIGHGATE HEIGHTS	Struggling
BUFFALO CITY SD	140600010308	INTER PREP SCH-GROVER CLEVELAND #187	Struggling
BUFFALO CITY SD	140600010107	LAFAYETTE HIGH SCHOOL	Struggling
BUFFALO CITY SD	140600010098	MCKINLEY VOC HIGH SCHOOL	Struggling
BUFFALO CITY	140600010017	PS 17	Struggling

District	BEDS Code	School Name	Identification Status
SD			
BUFFALO CITY SD	140600010059	PS 59 DR CHARLES DREW SCI MAGNET	Struggling
BUFFALO CITY SD	140600010066	PS 66 NORTH PARK ACADEMY	Struggling
BUFFALO CITY SD	140600010074	PS 74 HAMLIN PARK ELEMENTARY SCHOOL	Struggling
BUFFALO CITY SD	140600010108	RIVERSIDE INSTITUTE OF TECHNOLOGY	Struggling
BUFFALO CITY SD	140600010119	WATERFRONT SCHOOL	Struggling

Attachment A-1: Next Steps for Districts with Persistently Struggling and Struggling Schools

Education Law 211-f and Commissioner's Regulation §100.19 require that Persistently Struggling and Struggling Schools initially be placed under the authority of a Superintendent Receiver. Under statute, the Superintendent is provided with enhanced powers and responsibilities of a School Receiver to support dramatic changes in the identified schools that will lead to increased student achievement. These powers include, but are not limited to, redesign of the school program, re-staffing of the school, and modification of the school budget. For a complete list of the powers and responsibilities of a Receiver, please see Attachment B. The Superintendent Receiver is given an initial period (one year for Persistently Struggling Schools and two years for Struggling Schools) to use his/her enhanced authority to make demonstrable improvement in student performance at the identified school. If the identified school fails to make demonstrable improvement after this initial period, the Commissioner will direct that the district appoint an Independent Receiver for the school and submit the appointment for approval to the Commissioner. Additionally, Persistently Struggling Schools will be eligible for a portion of \$75 million in state aid to support and implement its turnaround efforts over a two-year period.

Establishment of a Community Engagement Team

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. The Superintendent Receiver must develop a Community Engagement Plan describing how the district will establish the CET and the process by which CET will be consulted. The Community Engagement Plan must be submitted as an addendum to the school's 2015-16 School Comprehensive Education Plan (SCEP) or intervention model plan (i.e., a 1003(g) School Improvement Grant or a School Innovation Fund Grant). The Department has created a template for submission of the Community Engagement Plan, found in Attachment C.

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, the 1003(g) School Improvement Grant (SIG), or School Innovation Fund (SIF) plan for the 2015-16 school year, submitted to the Department and to 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 the 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, SIG, or SIF plan.

Public Notification and Hearing Requirements

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 in writing regarding the designation of the school(s) and 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 30. 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. There are additional public notification and hearing requirements that must be met by the district. The Department has created a template (see Attachment D) 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 2015-16 SCEP, SIG, or SIF plan.

Department Approved School Comprehensive Education Plan or Intervention Model Plan

In order to become vested with the powers of a School Receiver, the Superintendent Receiver must have, at minimum, a provisionally Department-approved School Comprehensive Education Plan (SCEP) or intervention model plan (i.e., a 1003(g) School Improvement Grant or a School Innovation Fund Grant) for the 2015-16 school year. After a review of the SCEP, SIG, or SIF plan for each identified school, the Department will provisionally approve the plan for a 90-day period. In order to receive provisional approval, the SCEP, SIG, or SIF plan must meet the existing standards set by the Department for approval of these plans. Without provisional approval, the Superintendent may not invoke the powers of the Receiver.

After receiving provisional approval of the plan, the Superintendent will have the powers of Receiver for 90 days, and is responsible for the following:

- Working with the Community Engagement Team to develop the Community Engagement Plan and reviewing the submitted SCEP, SIF, or SIG plan to determine if the plan needs revisions;
- Meeting the public notification and hearing requirements as outlined in Commissioner's Regulation §100.19(c) and providing evidence of meeting the requirements using the Public Notification and Hearing Requirements Template (Attachment D); and
- Submitting any locally developed metrics for assessing demonstrable improvement.

By no later than September 30, 2015, the Superintendent Receiver must submit the Community Engagement Plan (Attachment C), the Public Notice and Hearing Requirements Template (Attachment D), any locally developed metrics for demonstrable improvement, and any revisions to the previously submitted SCEP, SIG, or SIF plan in order to obtain final Department approval of the plan and continue to have the powers of a Receiver. The Community Engagement Plan and Public Notice and Hearing Requirements Template and proposed locally developed metrics will be reviewed prior to end of the 90-day provisional approval period and final Department approval of the plan.

By September 1, or as soon as practicable thereafter, of each school year in which a school is identified as Persistently Struggling or Struggling, the Commissioner shall provide the school district and Superintendent with annual goals that must be met in order for the school to make demonstrable improvement. Education Law 211-f requires that the Department make a judgement regarding

demonstrable improvement using an extensive list of performance metrics. These metrics can be found in Attachment E. In making a determination regarding whether a school has made demonstrable improvement, the Commissioner shall consider the number of years that a school has been identified as a Struggling or Persistently Struggling school and the degree to which the superintendent has successfully utilized the powers of a School Receiver to implement the school's approved Comprehensive Education Plan or Department-approved intervention plan.

Prior to the start of the school year, the Department will be providing districts with each school's performance targets and goals that must be met on the demonstrable improvement performance metrics. At that time, districts will also have the opportunity to propose, for Commissioner approval, any locally developed metrics for assessing demonstrable improvement. The demonstrable improvement performance targets and goals required by the receivership statute will supersede any district-set targets created for SIG or SIF schools prior to identification as Persistently Struggling or Struggling Schools.

Following Department approval of the SCEP, SIG, or SIF, and the Receivership Addendum, the Superintendent Receiver will be required to provide quarterly written reports regarding implementation of the plan. Districts and schools currently involved in the New York State Education Department School Turnaround Office's SIG or SIF performance management processes will not have to submit a separate report in addition to the quarterly report. Receivership quarterly reports will replace SIG or SIF progress reports. The Department will continue to maintain the established performance management framework including conducting a review of quarterly reports, regular conference calls, and on-site visits. The quarterly report, together with a plain-language summary of the report, must be made publicly available and submitted to the Department electronically to Receivership@nysed.gov. The Superintendent Receiver is also required to notify the Department when s/he implements the receivership powers related to re-staffing of the school, supersession of local school board decisions on employment or budget, and/or any modifications made to the plan. The template for quarterly reports will be provided to districts prior to the start of the school year.

At the end of the respective one- or two-year period in which a school designated as Persistently Struggling or as Struggling remains under the Superintendent Receiver, and annually thereafter, the Commissioner must determine whether the school should be removed from such designation; allowed to continue to be operated by the Superintendent Receiver; or be placed under an Independent Receiver who shall be appointed by the school board and shall have sole responsibility to manage and operate the school. Schools operating under an Independent Receiver must also be annually evaluated by the Commissioner to determine whether the school intervention plan should be continued or modified. At the end of the Independent Receivership period, the Commissioner must decide whether to end the Receivership, continue it, or appoint a new Receiver. Additionally, the Commissioner may order the closure of a failing school and the Board of Regents may revoke the registration of a Struggling or Persistently Struggling School.

Attachment B
Powers and Duties of a Receiver
Commissioner's Regulation §100.19(g)

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:

1. 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.
2. Replace teachers and administrators, including school leadership who are not appropriately certified or licensed.
3. Increase salaries of current or prospective teachers and administrators to attract and retain high-performing teachers and administrators.
4. 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).
5. Reallocate the uses of the existing budget of the school.
6. Expand the school day or school year or both of the school, which may include establishing partnerships with community based organizations and youth development programs that offer appropriate programs and services in expanded learning time settings.
7. For a school that offers first grade, add pre-kindergarten and full-day kindergarten classes, if the school does not already have such classes.
8. 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.
9. 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.
10. 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 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 the following: 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>.

Attachment C

Community Engagement Plan Template

Directions: Please answer the following questions to meet the requirements of Commissioner's Regulation §100.19 (c)(3).

1. How were stakeholders consulted in the development of the Community Engagement Plan?
2. How are members of the Community Engagement Team selected? What is the process for modifying the membership of the Community Engagement Team or filling vacancies? Please note: the administrator, teacher, and parent members of the Community Engagement Team must be selected through the process established in Commissioner's Regulation 100.11(b).
3. What is the manner and extent of the expected involvement of all parties in developing recommendations regarding implementation of school receivership (i.e., the Community Engagement Team, Superintendent Receiver, the district, the school based leadership team)?
4. How will the Community Engagement Team conduct meetings and formulate recommendations?

5. How will the Community Engagement Team solicit public input?
6. How will the Community Engagement Team make public its recommendations?
7. How will the Community Engagement Team be provided with the information necessary to assess the implementation of the comprehensive education plan or department-approved intervention model?
8. How will the Community Engagement Team coordinate its work with any school based management/shared decision making team or school building leadership team that is operating in the school?

Attachment D
Public Notification and Hearing Requirements Template

Directions: Please provide a brief description of how the district has met each requirement listed and list the evidence that the district has attached to this template proving that the requirement has been met. Examples of evidence can include, but are not limited to notification letters sent to parents/guardians translated into several languages, flyers announcing the hearing, sign in sheets, links to the page on the district website where the notification was posted, etc.

Requirement within Commissioner's Regulation §100.19(c)	How has the district met this requirement? Please provide a brief description.	List of evidence attached to this form for each requirement.
The initial meeting or hearing must be held no later than 30 calendar days following the designation of the school. Subsequent annual hearings shall be held within 30 calendar days of the first day of student attendance in September of each school year that the school remains identified as Struggling or Persistently Struggling.		
At least ten calendar days prior to the meeting or hearing, the school district must provide written notice of the meeting time and location to parents or guardians of students attending the identified school.		
The district is required to provide translators at the public meeting, as well as translations of the written notice into languages most commonly spoken in the school district and when appropriate, into the recipient's native language or mode of communication.		
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.		
The district must provide reasonable notice to the public of such public meeting or hearing by		

Requirement within Commissioner's Regulation §100.19(c)	How has the district met this requirement? Please provide a brief description.	List of evidence attached to this form for each requirement.
posting the notice on a school district website, if one exists, posting the notice in schools and school district offices in conspicuous locations, publishing the notice in local newspapers or other local publications, and/or including the notice in school district mailings and distributions.		
A school district shall also provide translations of the notice into the languages other than English that are most commonly spoken in the school district.		
At least one week prior to the meeting, the district must provide public notice of the time and place of a public meeting or hearing scheduled and give such notice to the news media and conspicuously post the information in one or more designated public locations at least 72 hours before such hearing.		
The district must provide members of the public who are not able to attend such public hearing with the opportunity to provide written comments and feedback in writing and/or electronically.		

Attachment E

Demonstrable Improvement Performance Metrics for Persistently Struggling and Struggling Schools, as listed in Education Law 211-f

- (i) student attendance;
- (ii) student discipline, including but not limited to, short-term and long-term suspension rates;
- (iii) student safety;
- (iv) student promotion and graduation and drop-out rates;
- (v) student achievement and growth on state measures;
- (vi) progress in areas of academic underperformance;
- (vii) progress among the subgroups of students used in the state's accountability system;
- (viii) reduction of achievement gaps among specific groups of students;
- (ix) development of college- and career- readiness, including at the elementary and middle school levels;
- (x) parent and family engagement;
- (xi) building a culture of academic success among students;
- (xii) building a culture of student support and success among faculty and staff;
- (xiii) using developmentally appropriate child assessments from pre-kindergarten through third grade, if applicable, that are tailored to the needs of the school; and
- (xiv) measures of student learning.

The school intervention plan may also include measurable annual goals on locally-selected measures, provided that such locally-determined measures shall be submitted to the commissioner for approval in such form and format as may be prescribed by the commissioner.

Attachment F

Timeline for First Year of Superintendent Receivership, 2015-16

Event	Regulation Requirement /Notes	Approximate Date
NYSED formally identifies Persistently Struggling and Struggling Schools.		July 16, 2015
Districts may attend the NYSED Receivership Conference.		July 22-23, 2015
School Comprehensive Education Plans due to NYSED Office of Accountability. Identified schools with SIG or SIF grants have already submitted their Continuation plans to the NYSED School Turnaround Office.		July 31, 2015
Identified schools with SIG or SIF grants will be informed by the NYSED School Turnaround Office in July if their Continuation plans meet the standards for approval, therefore starting the 90-day provisional period for Superintendent Receivership. NYSED Office of Accountability determines whether SCEPs submitted for identified schools meet the existing standards set for approval and informs districts of provisional approval, therefore starting the 90-day provisional period for Superintendent Receivership. Without provisional approval, the Superintendent may not invoke the powers of the Receiver.	90-day provisional approval period begins.	For identified schools with SIG or SIF grants - July 16, 2015 For identified schools with SCEP plans - August 28, 2015
District establishment of Community Engagement Team.	Within 20 business days.	No later than August 12, 2015.
District notification to parents regarding school identification.	Within 30 calendar days.	No later than August 14, 2015.
District Public Hearing on identification and Receivership.	Within 30 calendar days.	No later than August 11, 2015.
District must submit Community Engagement Plan (Attachment C) and Public Notification and Hearing Template (Attachment D) as addendum to SCEP, SIG or SIF plan for 2015-16. <i>The district must also submit any revisions to the previously submitted SCEP, SIG,</i>		Within 60 days after commencement of the provisional approval period.

Event	Regulation Requirement /Notes	Approximate Date
<i>or SIF plan that have occurred based on work with the CET.</i>		
Demonstrable Improvement Baseline Visit by NYSED to Persistently Struggling Schools.		September/October 2015
The Superintendent will cease to have the powers of a Receiver, if the required Community Engagement Plan and Public Notification and Hearing Template, and any district proposed locally developed performance metrics have not been submitted and approved by the Department.		90 days after notice of the provisional approval of the SCEP, SIG, or SIF plan from the Department.
Superintendent Receiver submits 1 st Quarterly Report.		October 30, 2015
NYSED identifies new list of Priority Schools.		January 2016
Superintendent Receiver submits 2 nd Quarterly Report.		January 29, 2016
Superintendent Receiver submits 3 rd Quarterly Report.		April 29, 2016
NYSED conducts Demonstrable Improvement Visit to Persistently Struggling Schools.		April/May 2016
Superintendent Receiver submits 4 th Quarterly Report.		July 29, 2016
NYSED makes demonstrable improvement determination for Persistently Struggling Schools.		Summer 2016

Appendix B



School Turnaround Office
5N EB Mezzanine
Telephone: (518)473-8852
Fax: (518)473-4502

July 3, 2015

Darren Brown
Interim Superintendent
Buffalo Public Schools
419 City Hall
Buffalo, NY 14202

**Re: Award Notice for 2015-2016 Continuation Plan
1003(g) School Improvement Grant (SIG)**

Dear Superintendent:

This letter serves to inform you that the Department has preliminarily approved 2015-16 Continuation Plans for the Buffalo Public Schools SIG schools listed below. The approved schools and their budgets are as follows:

SCHOOL	STATUS	MODEL	COHORT	BUDGET
BURGARD VOC HIGH SCHOOL	Priority	TR	2	\$250,000

As referenced above, this is a preliminary award letter. In April 2015, Education Law §211-f was created, which established a new intervention authority to turn around Struggling and Persistently Struggling schools through receivership. In light of the new receivership legislation, additional review and revision of preliminarily approved SIG intervention plans may be necessary.

Commissioner's Regulations §100.19(d)(1) requires that districts with schools identified as Struggling and Persistently Struggling must have a department-approved intervention model or comprehensive education plan in place that includes rigorous performance metrics and goals, and a community engagement plan. The performance metrics and goals will be provided by the Department to districts and superintendents by September 1, 2015, or as soon as practicable thereafter. These metrics will be used to ensure that Struggling and Persistently Struggling Schools are making demonstrable improvement as required by the statute and regulation. The district is also required to meet specific public notification and hearing requirements related to the identification of Struggling and Persistently Struggling Schools. Further information on receivership and its requirements can be found at:

[http://www.regents.nysed.gov/common/regents/files/meetings/Revised%20Receivership%20100.19 0.pdf](http://www.regents.nysed.gov/common/regents/files/meetings/Revised%20Receivership%20100.19%200.pdf)

In the coming weeks, you will receive a final notice of award from our Grants Finance Unit. All grants, regardless of type or dollar amount are subject to further review, monitoring and audit to ensure compliance. NYSED has the right to recoup funds if the approved activities are not performed and/or the funds are expended inappropriately.

The New York State Education Department's (NYSED) School Turnaround Office (STO) will serve as your lead program office for SIG project oversight, assistance, monitoring and reporting. As a part of the NYSED STO efforts to hold schools and districts accountable for the results to be achieved in these SIG schools, the STO will release additional SIG performance management information in the coming weeks.

Should you have any questions or require additional assistance please contact our office at (518) 473-8852.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Jarrett", with a stylized flourish at the end.

Karonne Jarrett, Esq.
Assistant Counsel
School Turnaround Office

cc: J. Elliott
D. Mauricio
L. Cimusz
A. McGrath



School Turnaround Office
5N EB Mezzanine
Telephone: (518)473-8852
Fax: (518)473-4502

July 3, 2015

Darren Brown
Interim Superintendent
Buffalo Public Schools
419 City Hall
Buffalo, NY 14202

**Re: Award Notice for 2015-2016 Continuation Plan
1003(g) School Improvement Grant (SIG)**

Dear Superintendent:

This letter serves to inform you that the Department has preliminarily approved 2015-16 Continuation Plans for the Buffalo Public Schools SIG schools listed below. The approved schools and their budgets are as follows:

SCHOOL	STATUS	MODEL	COHORT	BUDGET
BILINGUAL CENTER PS 33	Priority	TU	3	
FUTURES ACADEMY PS 37	Priority	TU	3	
DR. CHARLES DREW PS 59	Priority	TU	3	
TOTAL				\$1,500,000

As referenced above, this is a preliminary award letter. In April 2015, Education Law §211-f was created, which established a new intervention authority to turn around Struggling and Persistently Struggling schools through receivership. In light of the new receivership legislation, additional review and revision of preliminarily approved SIG intervention plans may be necessary.

Commissioner's Regulations §100.19(d)(1) requires that districts with schools identified as Struggling and Persistently Struggling must have a department-approved intervention model or comprehensive education plan in place that includes rigorous performance metrics and goals, and a community engagement plan. The performance metrics and goals will be provided by the Department to districts and superintendents by September 1, 2015, or as soon as practicable thereafter. These metrics will be used to ensure that Struggling and Persistently Struggling Schools are making demonstrable improvement as required by the statute and regulation. The district is also required to meet specific public notification and hearing requirements related to the identification of Struggling and Persistently Struggling Schools. Further information on receivership and its requirements can be found at:

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Should you have any questions or require additional assistance please contact our office at (518) 473-8852.

Sincerely,

A handwritten signature in black ink, appearing to read "Jarrett", with a stylized flourish at the end.

Karonne Jarrett, Esq.
Assistant Counsel
School Turnaround Office

cc: J. Elliott
D. Mauricio
L. Cimusz
A. McGrath



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July 3, 2015

Darren Brown
Interim Superintendent
Buffalo Public Schools
419 City Hall
Buffalo, NY 14202

**Re: Award Notice for 2015-2016 Continuation Plan
1003(g) School Improvement Grant (SIG)**

Dear Superintendent:

This letter serves to inform you that the Department has preliminarily approved 2015-16 Continuation Plans for the Buffalo Public Schools SIG schools listed below. The approved schools and their budgets are as follows:

SCHOOL	STATUS	MODEL	COHORT	BUDGET
HARRIET ROSS TUBMAN ACADEMY 31	Priority	TR	4	\$1,000,000
BUILD ACADEMY 91	Priority	TR	4	\$1,000,000
DR LYDIA T WRIGHT SCH OF EXC 89	Priority	TR	4	\$1,000,000
INTER PREP SCH-GROVER CLEVELAND	Priority	TR	4	\$1,000,000
76 HERMAN BADILLO COMMUNITY SCH	Priority	TR	4	\$1,000,000
WATERFRONT SCHOOL 95	Priority	TR	4	\$1,000,000
NORTH PARK 66	Priority	TR	4	\$1,000,000

As referenced above, this is a preliminary award letter. In April 2015, Education Law §211-f was created, which established a new intervention authority to turn around Struggling and Persistently Struggling schools through receivership. In light of the new receivership legislation, additional review and revision of preliminarily approved SIG intervention plans may be necessary.

Commissioner's Regulations §100.19(d)(1) requires that districts with schools identified as Struggling and Persistently Struggling must have a department-approved intervention model or comprehensive education plan in place that includes rigorous performance metrics and goals, and a community engagement plan. The performance metrics and goals will be provided by the Department to districts and superintendents by September 1, 2015, or as soon as practicable thereafter. These metrics will be used to ensure that Struggling and Persistently Struggling Schools are making demonstrable improvement as required by the statute and regulation. The district is also required to meet

specific public notification and hearing requirements related to the identification of Struggling and Persistently Struggling Schools. Further information on receivership and its requirements can be found at:

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The New York State Education Department's (NYSED) School Turnaround Office (STO) will serve as your lead program office for SIG project oversight, assistance, monitoring and reporting. As a part of the NYSED STO efforts to hold schools and districts accountable for the results to be achieved in these SIG schools, the STO will release additional SIG performance management information in the coming weeks.

Should you have any questions or require additional assistance please contact our office at (518) 473-8852.

Sincerely,

A handwritten signature in black ink, appearing to read "Jarrett", with a stylized flourish at the end.

Karonne Jarrett, Esq.
Assistant Counsel
School Turnaround Office

cc: J. Elliott
D. Mauricio
L. Cimusz
A. McGrath



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July 3, 2015

Darren Brown
Interim Superintendent
Buffalo Public Schools
419 City Hall
Buffalo, NY 14202

**Re: Award Notice for 2015-2016 Continuation Plan
1003(g) School Improvement Grant (SIG)**

Dear Superintendent:

This letter serves to inform you that the Department has preliminarily approved 2015-16 Continuation Plans for the Buffalo Public Schools SIG schools listed below. The approved schools and their budgets are as follows:

SCHOOL	STATUS	MODEL	COHORT	BUDGET
D'YOUVILLE-PORTER CAMPUS PS 3	Priority	TR	5	\$500,000
EARLY CHILDHOOD CENTER PS 17	Priority	TF	5	\$500,000
WEST HERTEL ELEMENTARY SCHOOL	Priority	TR	5	\$500,000
STANLEY MAKOWSKI EARLY CHLD CTR	Priority	TR	5	\$500,000
FRANK SEDITA PS 30	Priority	TR	5	\$500,000

As referenced above, this is a preliminary award letter. In April 2015, Education Law §211-f was created, which established a new intervention authority to turn around Struggling and Persistently Struggling schools through receivership. In light of the new receivership legislation, additional review and revision of preliminarily approved SIG intervention plans may be necessary.

Commissioner's Regulations §100.19(d)(1) requires that districts with schools identified as Struggling and Persistently Struggling must have a department-approved intervention model or comprehensive education plan in place that includes rigorous performance metrics and goals, and a community engagement plan. The performance metrics and goals will be provided by the Department to districts and superintendents by September 1, 2015, or as soon as practicable thereafter. These metrics will be used to ensure that Struggling and Persistently Struggling Schools are making demonstrable improvement as required by the statute and regulation. The district is also required to meet specific public notification and hearing requirements related to the identification of

Struggling and Persistently Struggling Schools. Further information on receivership and its requirements can be found at:

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In the coming weeks, you will receive a final notice of award from our Grants Finance Unit. All grants, regardless of type or dollar amount are subject to further review, monitoring and audit to ensure compliance. NYSED has the right to recoup funds if the approved activities are not performed and/or the funds are expended inappropriately.

The New York State Education Department's (NYSED) School Turnaround Office (STO) will serve as your lead program office for SIG project oversight, assistance, monitoring and reporting. As a part of the NYSED STO efforts to hold schools and districts accountable for the results to be achieved in these SIG schools, the STO will release additional SIG performance management information in the coming weeks.

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Sincerely,

A handwritten signature in black ink, appearing to read "K. Jarrett", with a stylized flourish at the end.

Karonne Jarrett, Esq.
Assistant Counsel
School Turnaround Office

cc: J. Elliott
D. Mauricio
L. Cimusz
A. McGrath

Appendix C



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234
Office of P-12

Ira Schwartz, Assistant Commissioner
Office of Accountability
55 Hanson Place, Room 400
Brooklyn, New York 11217
Tel: (718) 722-2796 / Fax: (718) 722-4559

September 15, 2015

Dr. Kriner Cash
Superintendent
Buffalo City SD
712 City Hall
Buffalo, NY 14202

Dear Superintendent Cash:

The New York State Education Department (NYSED or "the Department") has reviewed the School Comprehensive Education Plans for the Persistently Struggling and/or Struggling Schools in your district. The results of the review(s) follow.

Pursuant to Commissioner's Regulations §100.19, superintendents are required to have a Department-approved School Comprehensive Education Plan (SCEP), 1003(g) School Improvement Grant (SIG) or School Innovation Fund (SIF) grant for the 2015-16 school year in order to be vested with the powers of Receiver.

Enclosed please find the following materials for each Persistently Struggling and/or Struggling School for which the district has submitted an SCEP:

- A Persistently Struggling School/Struggling School Checklist for Provisional Approval of 2015-16 Plan ("the checklist"), which shows how the SCEP was rated on the review criteria and also provides notes to guide superintendents as they prepare, in consultation with the school's Community Engagement Team (CET), to submit the final SCEP for Department approval. The checkboxes at the end of the checklist indicate whether the plan has received provisional approval or further revisions are necessary.
- A copy of the SCEP with embedded NYSED Reviewer Feedback, which provides detailed comments aligned to the Needs Assessments, SMART goals, Leading Indicators, and Action Plans for each Tenet.

Please note that each school's CET must be provided with the checklist and the SCEP with embedded NYSED Reviewer Feedback to facilitate their review of the plan.

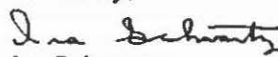
Next Steps for Districts with Provisionally Approved Plans: If a plan has received provisional approval, the superintendent must use the feedback in the "Notes" column and any NYSED reviewer feedback, along with input from the CET to revise and strengthen the SCEP that was originally submitted. Revised SCEPs are due no later than Monday, November 16, 2015 and should be e-mailed to fdip@nysed.gov with the subject line "DISTRICT NAME – Receivership Revisions." Revised SCEPs will be reviewed by the Department and final approval will be granted or a technical assistance call will be scheduled to discuss necessary revisions and next steps. Based on the Department's provisional approval of the SCEP, the superintendent is immediately vested with power of a Receiver for the school.

Next Steps for Districts with Plans that have not been Provisionally Approved: If the plan has not received provisional approval and further revisions are necessary, the superintendent or his or her designee(s) must participate in a technical assistance call with the Department that will focus on how to use the feedback provided to revise the SCEP. A revised SCEP that incorporates the feedback from the checklist will be due to the Department no later than seven (7) business days from the date of the technical assistance call. Revised SCEPs should be e-mailed to fdip@nysed.gov. The revised plan will be reviewed and either provisional approval will be granted or a subsequent technical assistance call will be scheduled. If provisional approval is granted, the district will be informed of the timeline by which the district must make any additional changes to the document in order to receive final approval. A Superintendent will not be able to act as Receiver in a Persistently Struggling or Struggling School until such time as the school's plan has been provisionally approved.

To verify the date of approval of your district's school improvement plan (SCEP, SIG or SIF), and the date by which the provisional approval expires, please visit the following website:
<http://www.p12.nysed.gov/accountability/de/CopyofPSSandSSListwithSIGandSIFoverlap.xlsx>.

If you have any additional questions or concerns regarding implementation of School Receivership, please do not hesitate to contact the Office of Accountability via e-mail at receivership@nysed.gov. We look forward to working with you to provide the students of New York State the best education possible.

Sincerely,


Ira Schwartz

Enclosures

cc: David Mauricio
Maxine Meadows-Shuford
Alexandra Pressley
Jason Harmon
Erica Meaker

PERSISTENTLY STRUGGLING SCHOOL / STRUGGLING SCHOOL CHECKLIST FOR PROVISIONAL APPROVAL OF 2015-2016 PLAN

School Name: South Park High School

BEDS Code: 140600010110

Review Criteria	Substantially Demonstrated	Minimally Demonstrated	Not Yet Demonstrated	Notes
The SCEP includes affirmation of all applicable assurances.	X			
The SCEP has been developed in consultation with parents, school staff, and others pursuant to §100.11 of Commissioner's Regulations. Participants who are regularly involved in the school improvement initiatives, such as community organizations or institutes of higher education, were included in the planning process.	X			
The SCEP has a completed School Information Sheet.		X		The school information sheet is partially blank.
The SCEP Overview describes the development of the plan, the degree to which the previous school year's SCEP was successfully implemented, overall improvement mission or guiding principles and the core of the strategy for executing the mission/guiding principles, the key design elements of the SCEP, and other unique characteristics of the plan (if any), and provide evidence of the school's capacity to effectively oversee and manage the improvement plan.	X			
The SCEP includes full responses to each of the narrative questions related to the plan for implementation of a whole school reform model.		X		The whole school reform model is partially complete. Full responses to each narrative question are required.
The SCEP includes full responses to each of the narrative questions related to the plan for implementation of an Expanded Learning Time program.	X			
The SCEP documents each of the common leading indicators that will be used to monitor progress toward plan goals.		X		Leading indicators are identified for each tenet but are not consistently aligned to the need or SMART goal.
Tenet 2 is fully addressed, including: <ul style="list-style-type: none"> - The most recent HEDI Rating, Rating Source, and Rating Date - A clear and concise Needs Statement - A SMART goal that addresses the identified need - Leading Indicators that will be used for monitoring progress - A detailed Action Plan 			X	<ul style="list-style-type: none"> • The intended impact of the goal is not clear. There are multiple activities embedded within the goal. The goal is missing a method of measure. • Leading indicators are not aligned to the identified goal. • Activities require more detail to convey a plan of action towards goal achievement. • Activities require more specific time lines for implementation.

NYSED Reviewer: Erica Meaker

PERSISTENTLY STRUGGLING SCHOOL / STRUGGLING SCHOOL CHECKLIST FOR PROVISIONAL APPROVAL OF 2015-2016 PLAN

School Name: South Park High School

BEDS Code: 140600010110

Review Criteria	Substantially Demonstrated	Minimally Demonstrated	Not Yet Demonstrated	Notes
Tenet 3 is fully addressed, including: <ul style="list-style-type: none"> - The most recent HEDI Rating, Rating Source, and Rating Date - A clear and concise Needs Statement - A SMART goal that addresses the identified need - Leading Indicators that will be used for monitoring progress - A detailed Action Plan 		X		<ul style="list-style-type: none"> • The need was not clearly identified. • Leading indicators are not aligned to the identified goal. • Activities require more specific time lines for implementation.
Tenet 4 is fully addressed, including: <ul style="list-style-type: none"> - The most recent HEDI Rating, Rating Source, and Rating Date - A clear and concise Needs Statement - A SMART goal that addresses the identified need - Leading Indicators that will be used for monitoring progress - A detailed Action Plan 			X	<ul style="list-style-type: none"> • The need was not clearly identified. • The intended impact of the goal is not clear. There are multiple activities embedded within the goal. The goal is missing a method of measure. • Activities require more detail to convey a plan of action towards goal achievement.
Tenet 5 is fully addressed, including: <ul style="list-style-type: none"> - The most recent HEDI Rating, Rating Source, and Rating Date - A clear and concise Needs Statement - A SMART goal that addresses the identified need - Leading Indicators that will be used for monitoring progress - A detailed Action Plan 		X		<ul style="list-style-type: none"> • A need was not clearly identified. • A SMART goal was not identified.
Tenet 6 is fully addressed, including: <ul style="list-style-type: none"> - The most recent HEDI Rating, Rating Source, and Rating Date - A clear and concise Needs Statement - A SMART goal that addresses the identified need - Leading Indicators that will be used for monitoring progress - A detailed Action Plan 		X		<ul style="list-style-type: none"> • The need was not clearly identified. • The goal lacks specificity as to how the usage will be doubled. • Activities require more detail to convey a plan of action towards goal achievement.

NEXT STEPS:

- ☒ This plan is provisionally approved for 60 days.
☐ This plan needs revisions before it can be conditionally approved.

NYSED Reviewer: Erica Meaker