

# School Receivership for 2023–2024 to 2025–2026: Frequently Asked Questions

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**A. Commissioner’s Regulation §100.19**

**A.1. How are schools identified as Schools under Receivership?**

[Commissioner’s Regulations §100.19](#) was adopted by the Board of Regents at their June 2015 meeting as an emergency action. The regulations took effect on June 23, 2015. On September 21, 2015, the Board adopted §100.19 as a permanent regulation after assessing public comments. Districts with schools identified as Schools under Receivership were required to implement the provisions of Commissioner’s Regulation §100.19 beginning on July 15, 2015, the date the Commissioner formally identified schools as being Schools under Receivership. The first cohort of Schools under Receivership were identified on July 15, 2015. The second cohort of Schools under Receivership were identified on January 17, 2019.

Pursuant to [Education Law § 211-f](#) and [Commissioner’s Regulations §100.19](#), Commissioner may place a school under superintendent Receivership if it has been identified for the Comprehensive Support and Improvement (CSI) support model under the New York State ESSA accountability system for at least three consecutive school years. Superintendent Receivers exercise enhanced authority to manage and operate the school to achieve demonstrable improvement in student

performance. Schools are removed from Receivership at the end of the school year in which the school is not identified for the CSI support model.

Schools under Receivership are provided with targeted technical assistance and comprehensive support to work towards demonstrable improvement on performance indicators jointly selected by NYSED and their districts and are also eligible for supplemental financial support to facilitate turnaround efforts.

Prior to 2018–2019, schools were placed in Receivership status as a result of repeat designation as Priority Schools under the state’s ESEA (Elementary and Secondary Education Act) Waiver accountability system. Beginning with the 2018–2019 school year, a school was identified for Receivership in 2018–2019 if it was in Priority School status for the 2017–2018 school year and was identified for Comprehensive Support and Improvement for the 2018–2019 school year.

#### A.2. What is the difference between Cohort 1 and Cohort 2 Schools under Receivership?

The difference between Cohort 1 and Cohort 2 schools is that Cohort 1 Schools were under Receivership during the 2017–2018 school year and then were re-identified as Schools under Receivership in the 2018–2019 school year based on 2017–2018 school year results, while Cohort 2 schools were newly identified as Schools under Receivership in the 2018–2019 school year.

#### A.3. How many schools are in Receivership?

Forty schools were designated as Schools under Receivership in 2018–2019, including 14 Cohort 1 schools and 26 Cohort 2 schools. As a result of subsequent restructuring and closures as of the 2022–2023 school year there were 37 Schools under Receivership, including 14 Cohort 1 and 23 Cohort 2 schools.

At the end of the 2022–2023 school year, 9 schools exited Receivership due to exiting the CSI support model based on 2021–2022 school year results, however, no schools were newly identified at that time due to post-pandemic policies enacted to restart the Accountability system. As a result, during the 2023–2024 school year, there were 28 Schools under Receivership, including 10 Cohort 1 schools and 18 Cohort 2 schools.

A current list of the Schools under Receivership is available on the New York State Education Department’s (NYSED, or “the Department”) Office of Innovation and School Reform [webpage](#).

#### A.4. How can a school exit Receivership?

Making DI does not determine whether a school is placed into or exits Receivership, but rather determines whether a school continues under Superintendent Receivership or is placed under Independent Receivership. Schools will exit Receivership at the end of the school year in which the school is not identified for Comprehensive Support and Improvement (CSI).

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## **B. Receivership Powers and Responsibilities**

### **B.1. What is required of the Superintendent Receiver when a school is newly identified as a School under Receivership, and by when must these requirements be completed?**

As specified in Commissioner's Regulation §100.19(c), no later than 30 calendar days after a school has been identified as a School under Receivership, the district is required to notify parents or guardians of students attending the school informing them of the school's new designation. The notification must be made in writing and explain why it was designated as a School under Receivership. 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<sup>th</sup>.

In addition, the Superintendent Receiver is responsible for the following:

- Forming a Community Engagement Team (CET) for each identified school as soon as practicable but no later than 20 business days following designation of a school as being under Receivership.
- Ensuring, for each school under Receivership, that at least one public meeting or hearing is conducted for the purpose of discussing the performance of the designated school and the construct of Receivership. Such initial meeting or hearing shall be held as soon as practicable, but in no case later than 30 calendar days following such designation. Subsequent annual hearings shall be held within 30 calendar days of the first day of student attendance in September of each school year. These meetings must be held in-person, but this does not preclude a district from also offering, but not holding in singular form, simultaneous online access to the same in-person/live meeting or hearing. If such a hybrid option is hosted by the school/district, equitable access to the receipt and exchange of information must be afforded to both in-person and online participants the opportunity to share their voice in real-time.
- The annual Receivership/Continuation Plan, Quarterly Reports, [Community Engagement Plan Template](#), the [Public Notification and Hearing Requirements Template](#) must be submitted for each school.
- Within 60 days of the Department's provisional approval of the school's plan or by September 30<sup>th</sup>, whichever is later, in order to continue to be vested with the power of a Receiver, the superintendent must submit a revised Continuation Plan that has been reviewed by the CET and incorporates the recommendations of the CET or provides a rationale as to why the recommendations were not incorporated.

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

- Submitting quarterly reports to the local board of education regarding the progress made in implementing the approved Continuation Plan. These reports must also be made public (for example, by posting them on the district's website), and submitted to the Department.

- Participating in a minimum of four meetings annually with the Department to discuss the progress made in implementing the approved plan, as well as the data collected regarding improvements in school culture, student achievement, and teacher professional development and practices.
- Working collaboratively with the Community Engagement Team to review the progress of implementation at the school and determine any necessary next steps or revisions to the plan.

The [Community Engagement Plan Template](#) and related artifacts including but not limited to agendas, the [Public Notification and Hearing Requirements Template](#) and related evidence of same, must be submitted annually within 30 days of the first day of school for all identified schools, regardless of the type of school improvement plan submitted to the Department. These documents equally provide guidance regarding the additional public notification and hearing requirements that must be met by the district.

## B.2. What are the powers that a Receiver can exercise after Department approval of the Continuation Plan?

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

- Review and if necessary, expand, alter, or replace the curriculum and program offerings of the school, including the implementation of research-based early literacy programs, early interventions for struggling readers and the teaching of advanced placement courses or other rigorous nationally or internationally recognized courses, if the school does not already have such programs or courses.
- Replace teachers and administrators, including school leadership, who are not appropriately certified or licensed.
- Increase salaries of current or prospective teachers and administrators to attract and retain high-performing teachers and administrators.
- Establish steps to improve hiring, induction, teacher evaluation, professional development, teacher advancement, school culture and organizational structure (e.g., instructional coaches or research-based instructional plans).
- Reallocate the uses of the existing budget of the school.
- Expand the school day or school year or both, which may include establishing partnerships with community-based organizations and youth development programs that offer appropriate programs and services in expanded learning time settings.
- For a school that offers first grade, add pre-kindergarten and full-day kindergarten classes if the school does not already have such classes.
- Include a provision of a job-embedded professional development for teachers at the school with an emphasis on strategies that involve teacher input and feedback.

- Establish a plan for professional development for administrators at the school, with an emphasis on strategies that develop leadership skills and use the principles of distributive leadership.
- Order the conversion of a School under Receivership that has been designated pursuant to this section into a charter school; provided that such conversion shall be subject to Article 56 of the Education Law (including the requirement of a vote by parents of students attending the school) and that such conversion charter school shall operate pursuant to such article, and shall operate consistent with a Community Schools Model, and shall be subject to the provisions of subdivisions (3), (4), (5), (6), (9), (10), (11), (12) and (13) of Education Law section 211-f.

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

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### **C. Public Hearing and Notification Requirements**

#### **C.1. What are the public hearing and notification requirements for districts with schools that remain under Receivership in subsequent years after being identified?**

Each year that a school remains under Receivership, the district must hold a public meeting or hearing to discuss the performance of the designated school and the concept of Receivership no later than 30 calendar days after the first day students are in attendance for the new school year, unless the district has been approved for an extension by the Department. These public meetings or hearings must be offered in the form of a documentable, advertised, in-person format where constituent/community engagement affords input and information exchange.

During the 2020–2021 and 2021–2022 school years, due to the COVID-19 pandemic, the Department waived the 30-day timeline requirement for holding the public meetings or hearings and granted extensions until December 1 to discuss the performance of the designated schools. Beginning with the 2022–2023 school year, the 30-day timeline requirement was reinstated, with in-person meetings required. However, moving forward, this does not preclude a district from offering, but not holding in singular form, simultaneous online access to the same in-person/live meeting or hearing. If such a hybrid option is hosted by the school/district, equitable access to the receipt and exchange of information must be afforded to both in-person and online participants, along with the opportunity to share their voice in real-time.

There are additional public notification and hearing requirements that must be met by the district. The [Community Engagement Plan Template](#) and the [Public Notification and Hearing Requirements Template](#) have been developed by the Department as guidance for fulfilling these requirements, as well as for districts to use when providing information about how the required

public notification requirements have been met and must be submitted annually within 30 days of the first day of school for all identified schools.

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

No. A separate public hearing must be held for each school. Further, the regulation specifies that 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. However, this does not preclude a district from offering, but not holding in singular form, simultaneous online access to the same in-person/live meeting or hearing. If such a hybrid option is hosted by the school/district, equitable access to the receipt and exchange of information must be afforded to both in-person and online participants, along with the opportunity to share their voice in real-time.

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## **D. Community Engagement Team and Plan**

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

No later than 20 business days following the identification of a school as being under Receivership, 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 includes, at all times, the school principal; parents of (or persons in parental relation to) students attending the school; teachers and other school staff assigned to the school; and students attending the school, as required based upon the school's grade configuration.

The Superintendent Receiver must develop a Community Engagement Plan describing how the district will establish the CET and the process by which the CET will be consulted. The Community Engagement Plan must be submitted as an addendum to the school's Continuation Plan. The Department has created the [Community Engagement Plan Template](#), which is posted on the OISR [webpage](#).

D.2. What is the role of the Community Engagement Team?

The Community Engagement Team (CET) 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 limited to, public hearings or meetings and surveys. The CET will work with the Superintendent Receiver to review the



Continuation Plan submitted to the Department for the school year and determine whether revisions are necessary. After the plan receives Department approval, the CET will work to assess the degree to which the school's Comprehensive Education Plan or Department-approved intervention plan is being successfully implemented and provide on-going recommendations at least twice annually to school leadership. All such recommendations and the efforts made to incorporate them, including a description of which recommendations were incorporated and how they were incorporated, and which recommendations were not incorporated and why they were not incorporated, must be included as an attachment to the Department-approved Continuation Plan. Such plan must be agreed upon and signed by a representative CET member other than the members of the school leadership team.

[D.3. How many parents can the Community Engagement Team have? The regulations specify the process by which the representatives will be elected, but not the number of representatives.](#)

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

[D.4. In the case that the public notice process for the Community Engagement Team creation as well as the Receivership hearing \(where parents are informed that the school has been placed in Receivership and for what reason\) is not followed, what recourse do parents have? Can they appeal to the Commissioner in the regular appeals process?](#)

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

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## **E. Staffing**

[E.1. What is the process or format for conducting the required needs assessment for re-staffing?](#)

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

- An analysis of the professional development provided for the staff during the preceding two school years;
- An analysis of how the planned abolition will result in improved student performance; and
- A complete and thorough analysis of the results of the school needs assessment.

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

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

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

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

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

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

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

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

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

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

Education Law §211-f(7)(c) indicates that the Receiver "*may* abolish all positions" but does not indicate she or he "*must* abolish all positions." The statute is interpreted to authorize the Receiver to abolish some or all positions in the school. Accordingly, §100.19(g)(4)(ii)(a) says that before the abolition, the receiver has to provide notice of "the specific positions to be abolished."

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## **F. Supersession**

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

Not fewer than 10 business days prior to the effective date of the supersession action the School Receiver must notify the Superintendent (if an independent receiver is in place), the school board, or the school principal, of the specific decision, policy or regulation that the Receiver plans to supersede. The Receiver must also include in the notification the reasons for supersession; the specific decision, policy or regulation that will replace the one being superseded; and the time period during which the supersession will remain in effect.

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

At any point prior to the supersession of a decision, policy or regulation, the Superintendent (if an independent receiver is in place) or the board of education can request in writing that the School Receiver terminate the supersession. Within 15 business days of the request, the School Receiver

must respond in writing with the School Receiver's decision and rationale for either accepting or rejecting the request.

#### [F.2. What process must the Superintendent follow to supersede the school board regarding employment decisions?](#)

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

The School Receiver has no more than 10 business days from the date of notification to inform the school board, Superintendent (if there is an independent receiver in place), impacted staff and their collective bargaining unit of any changes to the employment decision that the school board must make in order to receive approval from the School Receiver. Within this notification, the School Receiver must identify the specific changes that must be made; the rationale for the changes; an explanation of the way(s) in which the impact of the changes is limited only to the school(s) designated as a School under Receivership; and a description of how the changes will not unduly impact other schools in the district.

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

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

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

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### **G. School Receiver Review of School Budgets**

#### [G.1. How can the School Receiver review and modify budget decisions made by the local school board?](#)

The local school board must provide a copy of the proposed district budget no later than 30 business days prior to the presentation to the district voters of a school budget at the budget hearing, or by no later than five business days prior to the date that the superintendent in a city school district in a city having a population of one hundred twenty-five thousand inhabitants (or more) submits the budget to the school board. The school board shall provide the School Receiver with a copy of the proposed district budget, including any school-based budget, which shall include a

specific delineation of all funds and resources that the School Receiver shall have available to manage and operate the school and the services and resources that the school district shall provide to the school.

No later than five business days after receiving the proposed budget, the School Receiver shall inform the school board and superintendent or chief school officer of any modification to the proposed budget that the school board must make in order for the receiver to implement the approved school intervention plan or intervention model or comprehensive education plan, provided that such modification(s) shall not require the school board seek voter approval of a budget that exceeds the tax levy limit pursuant to Education Law section 2023-a. The School Receiver shall identify the specific modifications that must be made, the rationale for the modifications, an explanation of the way(s) in which the modifications are limited in scope and effect to the school(s) designated as School(s) under Receivership, and a description of how such modifications will not unduly impact other schools in the district.

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

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

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

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## **H. Collaboration with School Board, Unions, Parents, and Local Stakeholders and Resolution of Disputes**

H.1. In a case where the relationship between the superintendent and the school board is not collaborative, what recourse does the school board have if they are not provided with information in a timely manner?

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

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

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

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

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

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

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

Yes, the Department interprets the provisions of Education Law §211-f(8) as establishing a new form of impasse procedure intended to empower a receiver to achieve prompt resolution of collective bargaining issues consistent with standard collective bargaining principles. The parties may mutually agree that the 30-day period should be extended to allow them to complete negotiations — the goal of the process is to secure agreement, not to impose terms when the parties are close to agreement. Alternatively, the receiver could at any time withdraw the request for negotiations and then make a new request for negotiations, which would trigger a new 30-day period. If the parties mutually agree to extend the 30-day period or if the receiver withdraws a request for negotiations, they must send notice to the Commissioner by electronic mail to [OISR@nysed.gov](mailto:OISR@nysed.gov).

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

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

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

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

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

Yes. With respect to Schools under Receivership, if a party fails to negotiate during the 30-day period, declines to submit or has not yet submitted unresolved issues to the Commissioner, either party may initiate the resolution process.

After the 30-day period for completion or the 10-business day period for ratification, either party may submit the unresolved issues to the American Arbitration Association for appointment of a conciliator. After the five-day period for the conciliator to resolve any outstanding issues, either party may initiate the resolution process by submitting its unresolved issues to the Commissioner, and the other party must be provided notice and an opportunity to respond (see also H.8, H.11, H.12). Ideally, however, the parties will agree on what issues are unresolved and jointly submit requests for resolution.

#### H.8. What procedures must be followed to submit a request for resolution of collective bargaining issues through conciliation/arbitration by American Arbitration Association for a School under Receivership?

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

Frank Binda, Assistant Vice President  
American Arbitration Association  
International Centre for Dispute Resolution  
1301 Atwood Ave, Suite 211N  
Johnston, RI 02919

[BindaF@adr.org](mailto:BindaF@adr.org)

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

#### H.9. What will happen after a request for resolution is submitted to American Arbitration Association?

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

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

AAA Customer Service can be reached at 800.778.7879.

#### H.10. What needs to be submitted with the request for resolution of unresolved issues by the Commissioner?

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

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



#### H.11. Where should the submission for resolution by the Commissioner and supporting documentation be filed?

An electronic copy of the submission for resolution must be filed with the Commissioner at [Legal@nysed.gov](mailto:Legal@nysed.gov). The original of the submission for resolution by the Commissioner must be filed through express mail, next day delivery or the equivalent with the Office of Counsel, New York State Education Department, State Education Building, 89 Washington Avenue, Albany, N.Y. 12234. Filing is complete upon the Commissioner's receipt of the original submission and the electronic copy.

#### H.12. What is the process by which the other party may respond to a submission by the submitting party?

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

#### H.13. Once the respondent has served the responding papers, can the submitting party reply?

Yes. The submitting party may submit reply papers within two days of its receipt of the responding papers. If the two-day period ends on a weekend or holiday, the time to file reply papers is extended to the next business day pursuant to General Construction Law §25-a. The reply papers shall be limited to a response to the position of the respondent, its proposed contract language and any legal arguments made by the respondent. If the parties jointly submit their requests for resolution, no reply papers may be submitted; however, responding papers may be submitted as described in H.11.

#### H.14. Can a party submit additional papers beyond the responding papers or reply papers?

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

#### H.15. How are responding papers and reply papers filed with the Commissioner?

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

An electronic copy must be filed with the Commissioner at [Legal@nysed.gov](mailto:Legal@nysed.gov).

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

#### H.16. When must the Commissioner resolve the unresolved issues?

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 of the reply papers, or the responding papers in the case of a joint submission. The five-day period commences upon such filing.

#### H.17. After the Commissioner has resolved the unresolved issues submitted to her/him, must the agreement be submitted to the members of the collective bargaining members for ratification?

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

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### **I. Determination of Demonstrable Improvement**

#### I.1. How will the Commissioner make the 2023–2024 determination regarding Demonstrable Improvement?

For the 2023–2024 school year, the Commissioner will use Demonstrable Improvement (DI) Indices to make DI determinations for Cohort 1 and Cohort 2 schools. Schools that achieve a DI Index of 67 percent or higher will make Demonstrable Improvement. Schools that achieves a DI Index of less than 40% will preliminarily not make Demonstrable Improvement, unless the district provided evidence that extenuating or extraordinary circumstances prevented the school from achieving a higher DI Index. For any schools that achieve a DI Index of at least 40% but less than 67%, the Commissioner will review the entirety of the school's performance, including the degree to which the Continuation Plan for the school has been implemented with fidelity, and determine whether the school made DI.

## I.2. How and when is the Demonstrable Improvement Index calculated?

The Demonstrable Improvement (DI) Index is calculated annually by the Department using the DI indicators for each School under Receivership. More information on the calculation of the DI Index is available on the Office of Accountability's School Receivership [webpage](#).

## I.3. Will DI determinations be made for both Cohort 1 schools and for Cohort 2 schools?

Yes. The Department anticipates making the annual Demonstrable Improvement determinations for Cohort 1 and Cohort 2 Schools under Receivership for the 2023–2024, 2024–2025, and 2025–2026 school years.

## I.4. What is the process for making final Demonstrable Improvement determinations?

The Department will provide preliminary Demonstrable Improvement (DI) determinations to superintendents in fall of the school year following the year whose results are used to make DI determinations. For example, preliminary DI determinations based on 2023–2024 school year results will be provided in fall 2024. Preliminary DI determinations will be also shared with the Board of Education president, school principal, teacher and support staff representative/leader of the school's Collective Bargaining Unit, and chairperson of the Community Engagement Team (CET). Superintendents, principals, representatives of the school staff, and the chairpersons of CETs will have the opportunity to submit a Demonstrable Improvement Determination Consultation and Collaboration Form either agreeing or disagreeing with the Commissioner regarding the preliminary DI determinations. Districts with schools that received a DI Index of less than 67% will be directed to review the performance of their schools and identify reasons that these schools were not able to achieve the targets for at least two-thirds of their measures. The districts will be also instructed to take additional steps to intensively monitor and support these schools during the 2024–2025 school year. Superintendents, Board Presidents, and CETs will be provided final DI determinations in late fall.

## I.5. How are the indicators assigned or selected?

Some indicators (referred to as Level 1 indicators) are assigned by the Department based upon the performance of all students in the school. Level 1 indicators are mostly performance-based (e.g., ELA/Math Performance Indices, student growth, and graduation rate). These indicators are based upon the All-Students group (not demographic subgroups) and are assigned if the school's performance for the baseline year is below the state baseline. A school must have a minimum of five Level 1 indicators (seven for schools serving Elementary-Middle and High School grades). Schools are assigned all Level 1 indicators for which they fall below the state baseline. If a school has fewer than the required minimum number of indicators with results below the state baseline, then it may select Level 2 indicators (see below) up to the minimum number.

Other indicators (referred to as Level 2 indicators) are selected by schools in consultation and collaboration with their Community Engagement Teams from a list of indicators provided by the Department. Level 2 indicators are mostly based on results for accountability demographic subgroups (e.g., Students with Disabilities, English Language Learners, Economically

Disadvantaged, and racial/ethnic groups). These indicators are available for selection if the school's baseline performance is below the state baseline. Schools must select a minimum of five Level 2 indicators (seven for schools serving Middle and High School grades), up to a maximum of 10 Level 2 indicators.

Additionally, subject to Department approval, schools have the option to propose Level 1 or Level 2 Local indicators that are unique to their local context and strategic goals.

#### I.6. What factors are used by the Commissioner to determine Demonstrable Improvement when a school's Demonstrable Improvement Index is below 67%?

The Commissioner uses the performance of the school on all indicators for which data is available, the results of any Department visits conducted to the school while under Receivership, the degree to which the school has implemented its Continuation Plan with fidelity, and any additional information provided by the district about the school that the district wishes the Commissioner to consider, including extenuating or extraordinary circumstances. Extenuating or extraordinary circumstances are ones where it can be demonstrated that the results on a particular accountability measure were adversely affected by circumstances beyond the control of the school. For example, the COVID-19 pandemic brought about circumstances that impacted school communities and provided be the basis for appealing the preliminary Demonstrable Improvement determinations in some cases.

#### I.7. How should a district choose the Level 2 indicators for each of its schools?

The district should choose indicators in consultation with the school leader and the Community Engagement Team. In general Level 2 indicators should be those on which the school is focused upon making improvement as reflected in the school's Department approved-intervention plan or Continuation Plan. When selecting Level 2 indicators or "Level 2 as Level 1" indicators, districts must ensure that the resulting list of indicators do *not*:

- Only focus on one type of indicator (e.g., only Performance Index) or indicators for the same subject (e.g., only ELA).
- Only focus on one subgroup (e.g., only ELLs).
- Only apply to a small percentage of the school's students.

#### I.8. How does a district go about proposing and receiving approval to use Local indicators?

The district must use the template provided by the Department to submit each Local indicator. For the indicator to be approved, the district must demonstrate that:

- There is a clear and unambiguous definition of the indicator as well as a clear and precise methodology and business rules for its calculation.
- There is a compelling educational rationale for the use of the indicator.
- There is a logical rationale for the progress targets and/or goals established for the school on the indicator and the school is currently performing below the goal.

- Performance on the indicator can be measured, and the results provided to the department in the prescribed timeframe.
- The district currently reports results on the indicator or will pledge to do so, including all data necessary to calculate performance on the indicator.
- There is a means by which the Department can audit the application of the methodology and the business rules to determine if they have been applied correctly.

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## **J. Additional Technical Assistance and Resources for School Communities**

### J.1. Where can districts find resources and technical assistance for implementing Receivership?

The Department will continue to post resources on the Office of Accountability's [School Receivership webpage](#) and the [OISR webpage](#).

- Questions regarding additional support the Department provides to Schools under Receivership should be sent to [OISR@nysed.gov](mailto:OISR@nysed.gov).
- Questions regarding the Demonstrable Improvement process for Schools under Receivership should be sent to [ACCOUNTINFO@nysed.gov](mailto:ACCOUNTINFO@nysed.gov).
- Questions concerning Student Information Repository System (SIRS) annual reporting requirements should be sent to the Office of Information Reporting Services (IRS) at [DATASUPPORT@nysed.gov](mailto:DATASUPPORT@nysed.gov).
- As questions that are relevant to multiple districts are received, the answers will be added to this FAQ (Frequently Asked Questions).

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