

SCHOOL RECEIVERSHIP



Fact Sheet No. 15-14 (UPDATED -- new text is in bold and underscored) February 2016

BACKGROUND

This Fact Sheet provides an overview of the school receivership law adopted by the Legislature and the corresponding regulations, adopted by the Board of Regents as an emergency action at the June meeting, and again at the September meeting. Following another public comment period final action is expected by the Board of Regents at their November meeting. The regulations adopted by the Regents include a number of provisions relating to receiver powers that were not contained in the original draft regulations. Included in these changes is the requirement for a receiver to undertake a needs assessment and provide a rationale before abolishing staff positions and 90 school days’ notice to the employee and union before any abolition may occur. NYSUT will continue to advocate for changes to the law and regulations. NYSUT’s public comments appear at the end of this document with the response from the State Education Department (SED).

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RECEIVERSHIP LAW

In April 2015, Subpart E of Part EE of Chapter 56 of the Laws of 2015 added a new section, 211-f, to Education Law.

This law establishes a process for the appointment of a receiver for “Priority Schools” that fail to make demonstrable progress within a prescribed time frame. Priority Schools are the five percent lowest performing school buildings in the state, as identified based on student performance measures. This designation is required to comply with the state’s federal ESEA waiver. The Priority Schools list was created once at the beginning of the approved waiver period in 2012. No new schools will be added to the Priority School list until 2016, but the list is updated annually to remove schools if student performance goals are met or schools are closed/reconfigured. Schools can be removed from the Priority School list if they make sufficient academic improvement in two consecutive years. SED updated the Priority School list in July 2015 and there are 144 Priority schools in 17 districts that are currently governed by this new statute.

All Priority schools will be designated as one of two types of receivership schools:

- “Persistently Struggling” schools – 20 schools that have been on an accountability list for 10 or more years.

- “Struggling” schools – 124 schools that have been Priority Schools for three years.
- A new list will be produced by SED in February 2016 based on Spring 2015 test results.

SCHOOL (SUPERINTENDENT) RECEIVERS VS. INDEPENDENT RECEIVERS

The statute provides for the appointment of a receiver who is vested with the authority to manage and operate all aspects of a school under receivership based on an intervention plan. It is the particular school, not the entire district that is placed into receivership. Superintendents in districts with receivership schools will become “school receivers” beginning with the 2015-16 school year. School receivers are vested with the powers of independent receivers with some important differences. School receivers are not required to create or implement a school intervention plan or to convert a school to a community school, though they may. School receivers cannot supersede decisions of the Board of Education (BOE) related to his/her employment.

The Regents instructed SED to require the intervention plan include research-based components such as strategies to provide professional development and other supports to the staff that will increase staff capacity to sustain components of the plan after the period of the school receivership has ended. The Regents also added a provision that the commissioner conduct an evaluation of the school receivership program.

DISTRICT REQUIREMENTS

Once designated as a school under receivership, the district is required to take steps to notify parents and the community and to establish a Community Engagement Team (CET) for each school designated for receivership to make recommendations for improvement.

- The district is required to conduct at least one public meeting within 30 days, and at least once annually as long as the school is designated.
- The CET must be formed no later than 20 business days after the school is identified.
- The superintendent or receiver must submit a local stakeholder consultation plan, to inform the development of the school intervention plan, to the commissioner for approval.
- Intervention plans must be approved by the commissioner and will be limited to no more than three years.
- Before the superintendents can become vested with the powers of a receiver, the commissioner must approve a school intervention plan, or a comprehensive education plan, or transformation model as required by the current NYS ESEA waiver for all Priority Schools in the district. Schools that had an existing plan were able to receive preliminary approval.
- The district must submit quarterly reports to the commissioner. These must be available to the public.

A receivership school must make “demonstrable improvement” to avoid the appointment of an independent receiver. The commissioner is required to inform districts of the annual progress targets by September 1, 2015 (and by September 1st of each school year in which a school is under receivership) that must be met in order for a school to make demonstrable improvement.

- In “Persistently Struggling” schools that improvement must come in one year.
- In “Struggling” schools that improvement must occur in two years.
- Schools identified after the 2016-17 school year are immediately eligible for receivership.

At the end of the period under a school receiver, the commissioner must decide:

- Whether to remove the school from the list of receivership schools;
- To continue to operate the school under the superintendent school receiver; or

- Place the school under an independent receiver. The independent receiver must be appointed by the District within 60 calendar days of the commissioner’s determination. This period is shortened to 45 calendar days if for some reason SED revokes approval for a previously approved plan or model.

COMMUNITY ENGAGEMENT TEAM

The district must establish a CET to solicit input and develop recommendations for the intervention plan and to provide periodic feedback as the plan is implemented. The district must produce a community engagement plan, which details: how members of the CET are selected, how changes to the membership will be addressed, the manner and extent of the involvement of all parties, how meetings will be conducted, how recommendations will be made, and how the CET will coordinate with other shared-decision making/school-based management teams. This must be submitted to the commissioner for approval before the school improvement plan receives final approval.

Members must be stakeholders with direct ties to the school and must include at a minimum: the principal, parents or persons in parental relationships to students, teachers and other staff, and students (optional for schools that serve students below grade 7 and required for schools that serve students in grade 7 or above). The selection process for the membership must be done via the shared decision-making process, which provides that the collective bargaining unit will select the teachers on the CET. The CET cannot be the same membership of any existing team/school-based management team, though there may be overlap between these various groups. The members may change at any time but the representation of the different stakeholder groups must remain intact. The CET is expected to solicit input from the community through various methods such as public hearings, meetings, and surveys. All recommendations must be addressed in the intervention plan, including a description of how they were incorporated or why they were not.

POWERS AND DUTIES OF SCHOOL RECEIVERS AND INDEPENDENT RECEIVERS

Receivers are an ex-officio member of the BOE, vested with the authority to supersede any decision, policy or regulation of the BOE related to the school’s intervention plan. Receivers are given considerable autonomy to make changes to the receivership school. Receivers may in the receivership schools:

- Make curriculum changes;
- Replace teachers and administrators;
- Increase salaries of teachers and administrators;
- Improve hiring, induction, evaluation, professional development and organizational structure;
- Reallocate the uses of the school budget;
- Expand the school day and/or year;
- In a school that offers first grade, add pre-kindergarten and full-day kindergarten;
- Order conversion to a charter school. This conversion would still require parental approval.
- Require the collective bargaining unit negotiate a “receivership agreement” that modifies specific elements of the collective bargaining agreement for staff in the receivership school.
- Convert the school to a Community School. An independent receiver must convert a receiver school into a community school. A school (superintendent) receiver has the option to do so.

Abolishing Positions

A receiver has the authority to abolish the positions of all teaching and administrative staff assigned to the school and require staff to reapply for their positions. The receiver may abolish all positions, but also may select specific positions for abolishment. However, there are procedures the receiver must follow and there must be a justification for abolishment of any positions.

- The receiver must first conduct a comprehensive needs analysis, which must include: an analysis of the professional development provided to the staff during the preceding two school years and an analysis of how the planned abolition will result in improved student performance.
- Affected staff and their collective bargaining representatives, the superintendent (if not the receiver) and the BOE, must be given 90 school days' notice of the specific positions to be abolished, the timeline, rehiring process and the results and analysis of the needs assessment that is the basis for the decision, the expected impact and a description of the efforts that will be made to minimize disruption to the educational program.
- A notified party will have 14 **school** days to submit a request in writing to the receiver for reconsideration.
- The receiver will inform the BOE of their final determination within 30 **school** days.
- All correspondence will be provided to the commissioner.
- No further abolition of positions will occur without prior approval of the commissioner once this process has been undertaken in a receivership school.

Rehiring Process

The receiver is required to form a staffing committee to determine if staff who chose to re-apply are qualified. The committee must be comprised of the receiver, two members appointed by the receiver and two members appointed by the collective bargaining unit.

- Any teacher with two ineffective ratings is not qualified to be re-hired. The law does not specify that these need to be consecutive years.
- At least 50 percent of abolished positions must be filled with the most senior, qualified, staff from the receiver school.
- Teachers and staff not re-hired at the receiver school do not have "bumping" rights in the district that they would otherwise have pursuant to current regulations (they may have other rights under the collective bargaining agreement).
- Teachers and staff not re-hired at the receiver school are placed on a Preferred Eligibility List (PEL). The PEL rights and benefits are consistent with existing PEL statutory requirements.

Receivership Agreement

The receiver may ask teachers and administrators collective bargaining units to negotiate a new bargaining agreement specific to the receivership school during the period of receivership. The scope of bargaining includes these subjects:

- Length of day;
- Length of year;
- Professional development for teachers and administrators;
- Class size;
- Changes in program, assignments and teaching conditions, and
- The agreement must provide for a proportionate increase in compensation where the day or year is extended.

The regulations require that the receiver make a written request to the union to negotiate a receivership agreement and that bargaining over that receivership agreement be completed within 30 calendar days of that request. This period for bargaining may be extended by joint agreement of the union and the receiver. The new agreement must then be ratified by unit members in the affected school(s) within 10 business days. If an agreement is not reached, or not approved by the unit, then ultimately the commissioner is empowered by the law to impose changes to the collective bargaining agreement in affected schools. In persistently struggling schools, if an agreement is not reached, the parties shall

submit any remaining unresolved issues to the commissioner who shall within five days; “in accordance with standard collective bargaining principles” resolve such issues. In schools designated as struggling, the process is slightly different. A conciliator will be selected to help resolve any outstanding issues, but if these are not resolved, the commissioner is given final authority to impose changes to the collective bargaining agreement in the respective school(s).

Appointment and Qualifications of Independent Receivers

If the commissioner determines that a receivership school has not made “demonstrable improvement” and orders the appointment of an independent receiver, the district appoints the independent receiver with the approval of the commissioner. The initial term for an independent receiver shall not exceed three years. The employment contract is with the commissioner, not the district. An independent receiver may be a non-profit, another school district or an individual with experience in improving school performance. SED will maintain a list of approved independent receivers; but districts may submit their own choice for approval. Districts may have more than one receiver in districts with multiple schools under receivership.

Qualifications for independent receivers include a proven track record of at least five years of successful experience in improving academic performance in low performing schools and/or raising achievement of high needs students in moderate to high performing schools; successful experience with at risk student populations; a demonstrated record of success forming collaborative relationships with school stakeholders, including teachers and their unions; ability to convert a school to a community school; if another school, be in good standing under the accountability system; if a non-profit, the individual designated to oversee the implementation must have NYS certification as a school district administrator or equivalent. A district submitting an independent receiver that is not on the list must submit their request within 40 days. Failure to meet the department’s deadlines or qualifications will result in a direct appointment by the commissioner.

It remains unclear how independent receivers will be compensated. According to the law, either the commissioner will pay the receivers from a state appropriation for such purpose (and no such appropriations have been made yet) or, as determined by the commissioner, the school district will pay the receiver, but only if there is an open administrative staffing line available for the receiver and the receiver will be taking on the responsibilities of such open line. Neither the law nor the regulations address the amount of compensation or benefits for the receiver, other than to specify that the receiver is entitled to defense and indemnification by the school district.

Receiver’s Power to Supersede

Receivers (both school and independent) have the authority to supersede decisions, policies and district regulations that the receiver believes conflict with the approved plan for turning around the school. The receiver also has the authority to override employment decisions, such as new appointments, transfers and tenure decisions. There are some limitations to this authority. Receivers cannot override building usage plans, co-locations of other programs, or transportation of students that may impact other schools in the district. There are procedures the receiver must use to exercise this authority. All correspondence related to supersession must be provided to the commissioner.

Policy and regulations

- A written request must be given to the BOE, superintendent, and school principal not less than 10 business days prior to the effective date of the change. This must specify the reason, the specific policy/regulation that will replace what will be superseded, and the timeframe it will cover.
- The notified parties must have at least five business days to respond in writing.
- At any time subsequent to the supersession, the notified parties may request the receiver not to implement the change. The receiver will have 15 business days to respond with a decision and rationale.

Employment decisions

- The BOE must provide the receiver notice of employment decisions within 10 business days of the action taken. The receiver must notify the BOE, the superintendent, impacted staff and the collective bargaining representative within 10 business days if he/she wants to modify or dispute the action. The receiver must explain the reasons for the modification, and justify how the modification will not unduly impact other schools. The BOE can accept the modification or return it to the receiver within 10 school days for reconsideration. Ultimately, the receiver can withdraw the modification, revise it or overturn the decision by resubmitting the modification.

Review of School Budgets

The receiver has the authority to review the district budget at least 30 business days prior to the public budget vote, or five days prior to the date that a superintendent in a Big 5 city school district presents the budget to the school board. The information provided must include all funds and resources that the receiver has available to manage and operate the school and services and resources that the district will provide. The receiver has five business days to respond with any modifications that must be made to implement the approved plan. However, the receiver cannot ask for a modification that would increase the tax levy beyond the tax cap. The BOE can accept the changes, or return it to the receiver for reconsideration. The receiver can withdraw, revise or overturn the BOE by resubmitting the modification.

SCHOOL INTERVENTION PLAN

The school intervention plan must be based upon a recent comprehensive school and community needs assessment. The intent of the plan is to move the school to a community school. A school receiver is not required to pursue a community school but an independent receiver must do so. The plan must include research-based components to ensure continued improvement in student achievement after the period of the school receivership has ended. A superintendent school receiver will not be vested with the powers of a receiver without an approved plan. An independent receiver must issue a final school intervention plan, approved by the commissioner, within six months of his/her appointment.

In creating and implementing the school intervention plan, both short term strategies to improve student learning should be addressed, as well as a three-year strategy for establishing a sustainable Community School. The SED defines Community Schools as a school that partners with one or more agencies with an integrated focus on academics and the fostering of a supportive learning environment that links a range of school-based and community programs and services. In developing the plan, the receiver must consult with all school-based stakeholders (not just CET members); state and local agencies, community based organizations, career and technical education providers, higher education, workforce development agencies, the local business community, prekindergarten programs, and include recommendations from the CET.

The district must appoint a full-time person responsible for coordinating the implementation of the conversion to a community school. At least three community school program elements must be implemented in the first year of program implementation. There must be a plan for evaluating/reviewing program implementation and progress.

Areas the plan must address include:

- Provisions to maximize rapid academic achievement and reduce achievement gaps;
- The tenets of the Diagnostic Tool For School and District Effectiveness (DTSDE);
- Student outcome data including: student achievement/growth data based on state assessments, other measures of student achievement, student promotion and graduation rates, student attendance, long-term and short-term suspension rates.

- Strategies to address the social, health and mental health needs of students and families, such as through development of collaborative partnerships with the local school community that are designed to develop and sustain the capacity of the local school community;
- As applicable, access to early childhood education and/or access to career and technical education and workforce development;
- Providing a safe and secure learning environment, including strategies to address school climate and positive behavior support, such as mentoring and other youth development programs, these may be measured through climate surveys;
- The budget for the intervention plan, including a grant application strategy, a plan for sustainability and assurances that any grants received will not be used to supplant district funding for existing programs;
- Strategies to provide professional development and other supports to the staff of the school to ensure that they have the capacity to successfully implement the plan;
- Expanded learning opportunities (afterschool, summer, STEM and mentoring and other youth development);
- Measureable annual goals must include: student attendance, student discipline, school safety, student promotion and graduation rates, dropout rates, academic achievement and growth, progress of subgroups, college and career readiness (including elementary and middle schools), parent and family engagement, building a culture of academic success for students, and a culture of student support among faculty and staff, and if applicable, use of developmentally appropriate assessments from pre-kindergarten through third grade. Additional locally-selected measures may be submitted to the commissioner for approval.

ANNUAL REVIEW

The commissioner will provide the district with annual goals by September 1st for each school year that a school is under receivership, that must be met for the school to make demonstrable improvement. These goals will take into consideration the number of years a school has been identified as struggling or persistently struggling and the degree to which the school receiver (if applicable) has utilized the powers of a receiver to implement the school's approved plan.

The commissioner will review the schools progress annually. The process will include consulting the school staff, the CET and the receiver. A written evaluation will be provided to the superintendent and the BOE by no later than September 1st each year. If the commissioner determines that the school has met the annual goals, the implementation of the approved plan will continue. If it has not, modifications may be required.

School intervention plans in schools with an independent receiver, are approved for a three year period. Once that period expires, the commissioner will conduct an evaluation to determine whether the intervention plan with the independent receiver should be renewed for up to three years, terminate the contract with the independent receiver and appoint a new one, or remove the school from receivership.

FUNDING

“Persistently Struggling” schools are eligible for grants, which will be allocated from a \$75 million appropriation to assist in their improvement efforts. “Struggling” schools are not eligible for these funds pursuant to the appropriation language. The grant amount for each persistently struggling school has not yet been determined by SED. However, SED has indicated that the grants will likely be spread out over two years.

NYSUT POSITION

NYSUT submitted comments on the emergency regulations during the public period. SED did not accept our recommendations; they believe that there is flexibility within the Regulations that address most of our concerns. NYSUT will continue to advocate for changes to the law through the legislature and will hold SED to their word when issues arise. NYSUT's comments and SED's response follow.

Issue: Define Demonstrable Improvement

The draft regulations contain a provision requiring the commissioner to inform districts of the annual progress targets that must be met in order to make demonstrable improvement. However, there is no defined methodology for determining those targets.

- SED regulations should allow each school building to determine what demonstrable improvement comprises in their locally developed improvement plan. Each building should set its own annual goals, which may be different for each year of the plan, and submitted them for approval by the commissioner. In addition to academic goals, these should include measures of teaching and learning conditions, such as: student attendance; student discipline; student safety; parent and family engagement; building a culture of academic success among students; building a culture of student support and success among faculty and staff. All of these measures should be taken into account when determining demonstrable improvement.
- Districts should also be required to ensure the provision of resources and services detailed in the improvement plan. The failure of the district to properly carry out the plan should not be held against the receivership school in the SED evaluation of performance.

SED's position is that there is enough flexibility in the methodology for schools to submit locally developed metrics related to conditions of learning and that requirement for periodic checks will ensure that the school interventions are adequately funded.

Issue: Abolishment of Positions

The statute provides that it is possible for the receiver to abolish all of the positions and rehire at least half of the staff.

- SED draft regulations (Part 110.19(g)(4)) provide that the superintendent acting as school receiver may abolish all positions but does not specify that at least 50 percent must be rehired. This should be clearly stated in the regulations.
- SED regulations should make it clear that the release of staff may only happen once and cannot occur multiple times in one building. Current regulations allow the receiver to undertake this process once and again at a later date with prior approval from the commissioner. This approach undercuts the upper limit of 50 percent staff removal that the law specifically put in place and would appear to be contrary to the intent of the statute.

SED disagrees that it is necessary reaffirm what is in statute. They also rejected our recommendation that re-staffing should only happen once, as they want an independent receiver to have that opportunity but believe that by requiring a needs assessment and permission from SED it will not to be abused.

Issue: Shared staff between buildings

School buildings regularly share staff for a variety of purposes. The regulations do not address what impact the staffing changes that a receiver can undertake will have on shared staff. The regulations should make clear that that teacher's employment with the district continues and that the affected teacher retains their seniority rights since they are employed by other buildings in the district that are not impacted by Section 211-f of the Education Law.

SED has issued a FAQ that covers this and thought covering it through Regulation would be complicated because every school has unique situations.

Issue: Schools which are removed from the Priority School list

A new Priority School list will be released in **February** 2016 to comply with New York state's pending ESEA waiver. It is expected that a number of schools will have met their 2014-15 goals and come off the list at that point. The draft regulations do not address what happens if a staff person is not rehired for their position under the school receiver powers in the 2015-16 school year before this new list is released and the respective school building is removed from the Priority School list. The SED regulations should specify that these teachers regain their seniority rights since their school building is no longer covered by Section 211-f of the Education Law.

SED claims that because the statute is silent regarding seniority rights of teachers not rehired as part of re-staffing, attempting to address seniority issues would require new legislation.

Issue: Qualifications for Independent Receivers

Independent receivers are required to convert a receivership school into a community school pursuant to the receivership statute and regulations. SED should ensure that all independent receivers have experience and knowledge on the development and management of a community school before they are approved receivers.

SED asserts that the qualifications they have identified, including proven experience to convert a school to a community school, are comprehensive and cover our concerns.

Issue: Professional Development

High quality professional development is key to improving low performing schools. All school improvement plans should be required to include professional development plans. These plans should be required to ensure that the professional development provided in these schools is job embedded and that educators are provided comprehensive, coordinated, on-going support throughout the school year. These sustained, intensive, differentiated, and classroom-focused professional development plans must have a positive and lasting impact on classroom instruction.

SED contends that the intervention plans ensure that professional development is job-imbedded, comprehensive, coordinated and on-going.

TIMELINE FOR RECEIVERSHIP SCHOOLS

- Early July** SED formally designated “struggling” and “persistently struggling” schools.
- July 31st** Improvement plans due.
However, extensions were allowed and most districts took advantage of this option. Districts now have 60 days from the date of SED’s provisional approval of the improvement plan, or until 9/30, whichever is later, to provide evidence that the Community Engagement Team (CET) has reviewed the plan and provided recommendations.
- Late July / Early August** Within 30 calendar days of the designation, districts were required to hold a public hearing for the purpose of discussion the performance of the school and receivership process. Parents of students who attend the affected school must be provided a written notice within 20 calendar days after designation and within ten days of the public hearing.
- Within 30 calendar days of the designation a written notice must be given to parents of children who attend the school of the designation and the reasons why the school has been designated.
- Within 20 business days following the designation the school district must establish a Community Engagement Team for each designated school building.
- September/October** SED will provide the school district which contains a receivership school the annual goals that must be met and guidance on indicators the district-selects from in order for the school to make demonstrable improvement that year. Superintendents will submit their Demonstrable Improvement indicators by October 2, 2015.
- October 30** The superintendent shall provide a quarterly report to the Board of Education (BOE) on the progress made on implementation of the SED approved plan or model. A plain language summary of this report shall be made available and posted on the district’s website.
- January 31** The superintendent shall provide a quarterly report to the BOE on the progress made on implementing the SED approved plan or model. A plain language summary of this report shall be made available and posted on the district’s website.
- April 30** The superintendent shall provide a quarterly report to the BOE on the progress made on implementing the SED approved plan or model. A plain language summary of this report shall be made available and posted on the district’s website.
- June 30** By this date if the school remains designated the district must provide written notification to parents whose children attend the designated building that the

building remains designated and may be placed into the hands of an independent receiver.

July 31

The superintendent shall provide a quarterly report to the BOE on the progress made on implementing the SED approved plan or model. A plain language summary of this report shall be made available and posted on the district's website.