

# SCHOOL RECEIVERSHIP



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## BACKGROUND

**T**his Fact Sheet provides an overview of the school receivership law adopted by the Legislature in 2015 and the corresponding regulations adopted by the Board of Regents. NYSUT is on record opposing receivership as an assault on local control and collective bargaining and is working to repeal the law.

In April 2015, 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 the state’s lowest performing schools that fail to make demonstrable progress within a prescribed time frame. These low-performing schools are identified through the State accountability system once every three years. No new schools are added to the list during the interim years but it is updated annually to remove schools if student performance goals are met or schools are closed/reconfigured. There are two categories of receivership schools:

- Schools that have been previously in the receivership program in 2017-18 and were re-identified as low performing (a Comprehensive Support and Improvement [CSI] school) under the new 2018-19 ESSA accountability list. These schools will continue in the program as before and will still have to make “demonstrable improvement” annually to prevent an external “independent receiver” from being appointed to run the school.
- Schools that were Priority Schools under the former NCLB accountability based system in 2017-18 and are identified as CSI schools under the new ESSA accountability system. These schools have been deemed to have been amongst the lowest five percent performing schools in the state for at least four years. These are new schools to the receivership program and the school superintendent will be the receiver for these buildings for the next two years. These new receivership schools will have two years in which to demonstrate “demonstrable improvement” to avoid having an external “independent receiver” appointed to run the district.

A school can exit receivership in one of three ways: the school can be closed and restructured, the school is not identified as a CSI school on the next state accountability list in 2021-22, or the school meets certain performance benchmarks set by SED for two consecutive years.

## NEW RECEIVERSHIP LIST

The State Education Department released a new list of receivership schools January 17, 2019, based on the new ESSA state accountability system. There are 31 schools in receivership in 10 school districts outside of

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New York City. Of these, 14 were previously identified as receivership schools, 17 schools were newly identified. There were also 23 schools that were removed from the list. Of these, 2 closed and 21 were not re-identified as CSI. Those that were not re-identified will be released from receivership at the end of the 2018-19 school year. New schools fall under receivership immediately. The next list will be generated in the 2021-22 school year.

## **RECEIVERSHIP AND ESSA/ PRIORITY SCHOOLS vs. CSI SCHOOLS**

The Elementary and Secondary Education Act of 1965 (ESEA)<sup>1</sup> was reauthorized as amended by the Every Student Succeeds Act (ESSA) and enacted in December 2015. Under the old State accountability system, the lowest performing five percent of schools were identified as Priority schools. Beginning in 2015, schools that remained in Priority status for at least three years were subject to receivership. There is no requirement in ESSA to have a receivership law. ESSA continues the requirement that states identify the lowest performing schools and increase interventions if these schools do not improve. There were significant changes made in the accountability system, including the indicators and methodologies used to identify the lowest performing schools. However, the state ESSA plan also does not change the receivership law, which is a state law. SED will now identify schools subject to receivership based on CSI status. The state will align the indicators for demonstrable improvement required to exit receivership status with the ESSA indicators but this does not require a change to the receivership statute.

## **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 become “school receivers” when a school is identified. 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.

An independent receiver is an individual or non-profit entity approved by the Commissioner to manage and operate all aspect of the school. Independent receivers must have a proven track record of improving school performance.

## **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.
- Parents must be notified by June 30<sup>th</sup> of each school year that a school remains identified.
- 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 a superintendent can become vested with the powers of a receiver, the Commissioner must approve a school intervention plan, or a comprehensive education plan.

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<sup>1</sup> Please see NYSUT Every Student Succeeds Act (ESSA) Overview Fact Sheet for more information about ESSA

- 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<sup>st</sup> of each school year that a school is under receivership that must be met in order for a school to make demonstrable improvement. Meeting demonstrable improvement does not cause the school to exit 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.

### Demonstrable Improvement

All schools in receivership have a series of improvement goals that must be met and are measured by a series of indicators. If the school meets 67% or higher of the indicators, the school is preliminarily determined to have made demonstrable improvement. If the school achieves below 40%, the school is preliminarily determined to have not made demonstrable improvement. This designation can be revised if the school can demonstrate it would have achieved 67% of its goals absent extenuating or extraordinary circumstances.

These outcomes have a direct impact on the governance structure of the school. If a school meets less than 40% of the indicators (and therefore has not made Demonstrable Improvement) then the Superintendent receivership is ended and an external (independent) receiver is appointed. If a school meets between 40% and 67% of the indicator goals then the Commissioner makes a determination if the Superintendent receiver continues or if an independent receiver must be appointed. If a school meets more than 67% of their demonstrable improvement indicators then the school stays under the control of the Superintendent receiver for an additional year.

The Commissioner will make these determinations about newly identified receivership schools after two school years.

## **COMMUNITY ENGAGEMENT TEAM**

The district must establish a community engagement team (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 Board of Education (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 receivership schools:

- Make curriculum changes.
- Replace teachers and administrators.
- Increase salaries of teachers and administrators.
- Approve hiring decisions.
- Make changes to induction and professional development plans 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 also select specific positions for abolishment. However, the regulations provide that there are 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 calendar 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 calendar days to submit a request in writing to the receiver for reconsideration.
- The receiver will inform the BOE of their final determination within 30 calendar 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, at any time in their career, 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.
- The agreement must provide for a proportionate increase in compensation where the day or year is extended. The receivership agreement shall not provide for any reduction in compensation unless there shall also be a proportionate reduction in hours.

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. The agreement must then be ratified by the union within 10 business days. 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 calendar days settle such issues by unilaterally determining if changes in the collective bargaining agreement will be imposed. 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 in a manner consistent with the persistently struggling schools provisions.

### 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 state 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 calendar days.

Failure to meet the department’s deadlines or qualifications will result in a direct appointment by the Commissioner.

According to the receivership law, either the Commissioner will pay the receivers from a state appropriation for such purpose 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 business days for reconsideration. Ultimately, the receiver can withdraw the modification, revise it or overturn the decision by resubmitting the modification. The school receiver and Board of Education must provide a copy of all correspondence related to employment decisions to the Commissioner.

### 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 business 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 State Education Department (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.

## **SCHOOLS UNDER REGISTRATION REVIEW (SURR) AND RECEIVERSHIP**

Any public school that is identified as being among those that are among the lowest performing or identified by the Commissioner or as being a poor learning environment may be designated as a SURR. In July 2015, the Board of Regents adjusted the SURR provisions to incorporate the receivership law. As a result, any school identified as under receivership is also identified as SURR. A school that fails to make demonstrable improvement while under receivership, could have its registration revoked.

## **ANNUAL REVIEW**

The Commissioner will provide the district with annual goals by September 1<sup>st</sup> for each school year that a school in 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 1<sup>st</sup> 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.

## **TIME LINE FOR RECEIVERSHIP SCHOOLS**

A new school receivership list will be produced by SED every three years concurrently with the new list of Comprehensive Support and Improvement Schools (CSI), beginning in 2018-19.

### **Initial Identification November/December**

- The Commissioner preliminarily identifies CSI and receivership schools.
- Districts are given the opportunity to provide evidence to dispute the designation.

### **January**

SED formally designates schools under receivership.

### **Within first 30 days of designation**

- Districts are required to hold a public hearing on the performance of the school and the receivership process.
- Parents of student must be provided a written notice within 20 calendar days of designation and within ten days of the public hearing. Parents must be notified of the designation and the reasons why the school has been designated.
- Within 20 business days the school must establish a Community Engagement Team.



**Annually after initial designation**

- By June 30<sup>th</sup> each year the school is identified, provide written notification to parents.
- September 1st The Commissioner completes the annual review and informs districts of the annual progress targets.
- Conduct a public meeting within 30 calendar days of the first day of school.
- October 30/January 31/April 30/June 30, the receiver must provide a progress report to the Board of Education and the Commissioner.
- SED conducts annual site visits and quarterly phone check-ins.

**Timeline for bargaining a Receivership agreement**

- The receiver must make a written request. The bargaining shall be conducted in good faith as set forth in Education Law section 211-f(8)(b) and (c).
- Bargaining must be completed within 30 calendar days of the request.
- The 30 days may be extended an additional 30 days by mutual consent.
- If extended or if the receiver withdraws the request, the parties must send notice to the Commissioner.
- If agreement is reached, the agreement must be ratified by the union within 10 business days.
- If an agreement is not reached:
  - In persistently struggling schools any unresolved issues are submitted to the Commissioner. The Commissioner shall unilaterally determine what changes will be imposed within 5 calendar days.
  - In struggling schools unresolved issues must first be submitted to a conciliator. The conciliator will resolve any remaining issues within 5 calendar days of his/her selection. If any issues still remain unresolved, they must be submitted to the Commissioner who will respond with a resolution within 5 calendar days.

**ADDITIONAL RESOURCES**

- RA Resolution #17: <https://www.nysut.org/resources/all-listing/filtered-resources/topic/receivership?topic=Receivership>
- Receivership Law and Regulations: <https://www.nysut.org/resources/all-listing/2015/july/resources-receivership-schools-for-success>
- SED Resources: <http://p12.nysed.gov/accountability/de/SchoolReceivership.html>
- NYSUT ESSA Fact Sheets:
  - ESSA Local Leaders' Guide to Accountability Measures and Requirements <https://www.nysut.org/resources/all-listing/research/fact-sheets/fact-sheet-essa-local-leader-guide-to-accountability>
  - Every Student Succeeds Act (ESSA) Overview <https://www.nysut.org/resources/all-listing/research/fact-sheets/fact-sheet-essa-overview>