

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

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### **A. Commissioner's Regulation §100.19**

#### **A.1. When did these regulations become effective?**

A: Commissioner's Regulation §100.19 was adopted by the Board of Regents at their June 2015 meeting as an emergency action. The regulations took effect on June 23, 2015. On September 21, 2015, the Board adopted

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



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

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

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

A: No later than 30 calendar days after a school has been identified as a Persistently Struggling or



A: The number of parents or any stakeholder group on the CET is determined by the receiver. However, the number could be influenced by how the district's Part 100.11 plan requires that representatives be selected. For example, if the

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

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

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

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

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

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

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

A: Education Law §211-f (7)(a)(viii) refers to the receiver's authority to "terminate the employment of any building principal assigned to such a school," in addition to the authority to abolish the positions of members of the board of education.

## F. Supersession

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**F.1. What process must the School Receiver follow to supersede the decisions, policies, or**

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

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

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

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



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

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

**I.2. If a receiver requests the collective bargaining representatives of teachers or**



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

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

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

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

Lauren Wilson, Labor Supervisor

American Arbitration Association

120 Broadway, 21st Floor

New York, NY 10271

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

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

AAA Customer Service can be reached at 800.778.7879.

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

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

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

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

An electronic copy of the submission for resolution must be filed with the Commissioner at [Legal@nysed.gov](mailto:Legal@nysed.gov). The original of the submission for resolution by the Commissioner must be filed



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

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

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

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

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

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

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

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

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**J. Determination of Demonstrable Improvement (DI)**

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

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

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

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

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

In 2018-19, the Department developed a new system to determine DI for schools in Receivership. Cohort 2 Schools were identified for Receivership in January 2019, when the Department released the accountability determinations based on the state's new accountability plan under the ESSA. Prior to the identification of the new Receivership schools, the Department revised the DI indicators to align

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DI Determinations were made for Cohort 1 schools based on the old methodology and indicators that

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

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

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

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

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

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

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

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

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

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