S T A T E O F N E W Y O R K

4921

2015-2016 Regular Sessions

I N S E N A T E

April 23, 2015

Introduced by Sens. FARLEY, FLANAGAN -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to the takeover and restructuring of struggling schools

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 211-f of the education law, as added by section 1 of subpart H of part EE of chapter 56 of the laws of 2015, is amended to read as follows:

S 211-f. Takeover and restructuring [failing] OF STRUGGLING schools. 1. Eligibility for appointment of an external receiver. (a) [Failing] STRUGGLING schools. The commissioner shall designate as [failing] STRUGGLING each of the schools that has been identified under the state's accountability system to be among the lowest achieving five percent of public schools in the state (priority schools) for at least three consecutive school years, or identified as a "priority school" in each applicable year of such period except one school year in which the school was not identified because of an approved closure plan that was not implemented, based upon measures of student achievement and outcomes and a methodology prescribed in the regulations of the commissioner, provided that this list shall not include schools within a special act school district as defined in subdivision eight of section four thousand one of this chapter or schools chartered pursuant to article fifty-six of this chapter. Except as otherwise provided in paragraph (c) of this subdivision, and pursuant to regulations promulgated by the commissioner, a school designated as [failing] STRUGGLING under this paragraph shall be eligible for receivership under this section upon a determination by the commissioner.

(b) Persistently [failing] STRUGGLING schools. Based upon measures of student achievement and outcomes and a methodology prescribed in the regulations of the commissioner, the commissioner shall designate as

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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persistently [failing] STRUGGLING each of the schools that have been identified under the state's accountability system to be among the lowest achieving public schools in the state for ten consecutive school years, based upon identification of the school by the commissioner as: a "priority school" for each applicable year from the two thousand twelve--two thousand thirteen school year to the current school year, or identified as a "priority school" in each applicable year of such period except one year in which the school was not identified because of an approved closure plan that was not implemented; and as a "School Requiring Academic Progress Year 5", "School Requiring Academic Progress Year 6", "School Requiring Academic Progress Year 7" and/or a "School in Restructuring," for each applicable year from the two thousand six--two thousand seven school year to the two thousand eleven--two thousand twelve school year. This designation shall not include schools within a special act school district as defined in subdivision eight of section four thousand one of this chapter or schools chartered pursuant to article fifty-six of this chapter.

(c) Specific provisions. (i) For schools designated as persistently [failing] STRUGGLING pursuant to paragraph (b) of this subdivision, the local district shall continue to operate the school for an additional school year provided that there is a department-approved intervention model or comprehensive education plan in place that includes rigorous performance metrics and goals, including but not limited to measures of student academic achievement and outcomes including those set forth in subdivision six of this section. Notwithstanding any other provision of law, rule or regulation to the contrary, the superintendent shall be vested with all powers granted to a receiver appointed pursuant to this section for such time period; provided, however that such superintendent shall not be allowed to override any decision of the board of education with respect to his or her employment status. At the end of such year, the department shall conduct a performance review in consultation and cooperation with the district and school staff to determine, based on the performance metrics in the school's model or plan, whether (1) the designation of persistently [failing] STRUGGLING should be removed; (2) the school should remain under continued school district operation with the superintendent vested with the powers of a receiver; or (3) the school should be placed into receivership; provided, however, that a school that makes demonstrable improvement based on the performance metrics and goals herein shall remain under district operation for an additional school year and if such school remains under district operation, it shall continue to be subject to annual review by the department, in consultation and cooperation with the district, under the same terms and conditions.

(ii) For schools designated as [failing] STRUGGLING, but not persistently [failing] STRUGGLING, the local district shall continue to operate the school for two additional school years provided that there is a department-approved intervention model or comprehensive education plan in place that includes rigorous performance metrics and goals, including but not limited to measures of student academic achievement and outcomes including those set forth in subdivision six of this section. Notwithstanding any other provision of law, rule or regulation to the contrary, the superintendent shall be vested with all powers granted to a receiver appointed pursuant to this section; provided, however that such superintendent shall not be allowed to override any decision of the board of education with respect to his or her employment status. At the end of such two years, the department shall conduct a school performance review

in consultation and cooperation with the district and school staff to determine, based on the performance metrics in the school's model or plan, whether (1) the designation of [failing] STRUGGLING should be removed; (2) the school should remain under continued school district operation with the superintendent vested with the powers of a receiver; or (3) the school should be placed into receivership; provided, however, that a school that makes demonstrable improvement based on the performance metrics and goals herein shall remain under district operation for an additional school year and if such school remains under district operation, it shall continue to be subject to such annual review by the department under the same terms and conditions. For schools newly designated as [failing] STRUGGLING after the two thousand sixteen--two thousand seventeen school year, the school shall be immediately eligible for receivership upon such designation.

(iii) Nothing in this paragraph shall be construed to limit (1) a school district's ability to modify, subject to approval by the department, such department approved intervention model or comprehensive education plan, or (2) the commissioner's ability to require a school district to modify such department approved intervention model or comprehensive education plan and require his or her approval of such modifications.

(iv) The district shall provide notice to parents and guardians of the students of the school which may be placed into receivership pursuant to this subdivision and provided further that the district or the commissioner shall hold a public meeting or hearing for purposes of discussing the performance of the school and the construct of receivership.

1-a. Community engagement team. Upon designation as [failing] STRUGGLING or persistently [failing] STRUGGLING pursuant to subdivision one of this section, the district shall establish a community engagement team which shall include community stakeholders, including but not limited to the school principal, parents and guardians, teachers and other school staff and students. Membership of such team may be modified at any time. Such team shall develop recommendations for improvement of the school and shall solicit input through public engagement. The team shall present its recommendations periodically to the school leadership and, as applicable, the receiver.

2. Appointment of a receiver. (a) Upon a determination by the commissioner that a school shall be placed into receivership, the applicable school district shall appoint an independent receiver, subject to the approval of the commissioner, to manage and operate all aspects of the school and to develop and implement a school intervention plan for the school that shall consider the recommendations developed by the community engagement team when creating such plan. The independent receiver may be a non-profit entity, another school district, or an individual. If the school district fails to appoint an independent receiver that meets with the commissioner's approval within sixty days of such determination, the commissioner shall appoint the receiver.

(b) The receiver shall be authorized to manage and operate the [failing] STRUGGLING or persistently [failing] STRUGGLING school and shall have the power to supersede any decision, policy or regulation of the superintendent of schools or chief school officer, or of the board of education or another school officer or the building principal that in the sole judgment of the receiver conflicts with the school intervention plan; provided however that the receiver may not supersede decisions that are not directly linked to the school intervention plan, including but not limited to building usage plans, co-location decisions and

transportation of students. The receiver shall have authority to review proposed school district budgets prior to presentation to the district voters, or in the case of a city school district in a city having a population of one hundred twenty-five thousand or more, of the adoption of a contingency budget, prior to approval by the board of education, and to modify the proposed budget to conform to the school intervention plan provided that such modifications shall be limited in scope and effect to the [failing] STRUGGLING or persistently [failing] STRUGGLING school and may not unduly impact other schools in the district. A school under receivership shall operate in accordance with laws regulating other public schools, except as such provisions may conflict with this section.

(c) The commissioner shall contract with the receiver, and the compensation and other costs of the receiver appointed by the commissioner shall be paid from a state appropriation for such purpose, or by the school district, as determined by the commissioner, provided that costs shall be paid by the school district 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. Notwithstanding any other provision of law to the contrary, the receiver and any of its employees providing services in the receivership shall be entitled to defense and indemnification by the school district to the same extent as a school district employee. The receiver's contract may be terminated by the commissioner for a violation of law or the commissioner's regulations or for neglect of duty. A receiver appointed to operate a district under this section shall have full managerial and operational control over such school; provided, however, that the board of education shall remain the employer of record, and provided further that any employment decisions of the board of education may be superseded by the receiver. It shall be the duty of the board of education and the superintendent of schools to fully cooperate with the receiver and willful failure to cooperate or interference with the functions of the receiver shall constitute willful neglect of duty for purposes of section three hundred six of this title. The receiver or the receiver's designee shall be an ex officio non-voting member of the board of education entitled to attend all meetings of the board of education.

3. Before developing the school intervention plan, the receiver shall consult with local stakeholders such as: (a) the board of education; (b) the superintendent of schools; (c) the building principal; (d) teachers assigned to the school and their collective bargaining representative; (e) school administrators assigned to the school and their collective bargaining representative; (f) parents and guardians of students attending the school or their representatives; (g) representatives of applicable state and local social service, health and mental health agencies; (h) as appropriate, representatives of local career education providers, state and local workforce development agencies and the local business community; (i) for elementary schools, representatives of local [prekindergarten] PRE-KINDERGARTEN programs; (j) students attending the school as appropriate; (k) as needed for middle schools, junior high schools, central schools or high schools, representatives of local higher education institutions; and (l) the school stakeholder team set forth in subdivision one-a of this section.

4. In creating the school intervention plan, the receiver shall (i) consider the recommendations developed by the community engagement team set forth in subdivision one-a of this section; (ii) include provisions intended to maximize the rapid academic achievement of students at the

school; and (iii) ensure that the plan addresses school leadership and capacity, school leader practices and decisions, curriculum development and support, teacher practices and decisions, student social and emotional developmental health, and family and community engagement. The receiver shall, to the extent practicable, base the plan on the findings of any recent diagnostic review or assessment of the school that has been conducted and, as applied to the school, student outcome data including, but not limited to: (a) student achievement growth data based on state measures; (b) other measures of student achievement; (c) student promotion and graduation rates; (d) achievement and growth data for the subgroups of students used in the state's accountability system; (e) student attendance; and (f) long-term and short-term suspension rates.

5. (a) The receiver shall include the following in the school intervention plan: (i) measures to address social service, health and mental health needs of students in the school and their families in order to help students arrive and remain at school ready to learn; provided that this may include mental health and substance abuse screening; (ii) measures to improve or expand access to child welfare services and, as appropriate, services in the school community to promote a safe and secure learning environment; (iii) as applicable, measures to provide greater access to career and technical education and workforce development services provided to students in the school and their families in order to provide students and families with meaningful employment skills and opportunities; (iv) measures to address achievement gaps for English language learners, students with disabilities and economically disadvantaged students, as applicable; (v) measures to address school climate and positive behavior support, including mentoring and other youth development programs; and (vi) a budget for the school intervention plan.

(b) As necessary, the commissioner and the commissioners of the department of health, the office of children and family services, the department of labor and other applicable state and local social service, health, mental health and child welfare officials shall coordinate regarding the implementation of the measures described in subparagraphs (i) through (iii) of paragraph (a) of this subdivision that are included in the school intervention plan and shall, subject to appropriation, reasonably support such implementation consistent with the requirements of state and federal law applicable to the relevant programs that each such official is responsible for administering, and grant [failing] STRUGGLING schools priority in competitive grants, as allowable before and during the period of receivership.

6. In order to assess the school across multiple measures of school performance and student success, the school intervention plan shall include measurable annual goals including, but not limited to, the following: (a) student attendance; (b) student discipline including but not limited to short-term and long-term suspension rates; (c) student safety; (d) student promotion and graduation and drop-out rates; (e) student achievement and growth on state measures; (f) progress in areas of academic underperformance; (g) progress among the subgroups of students used in the state's accountability system; (h) reduction of achievement gaps among specific groups of students; (i) development of college and career readiness, including at the elementary and middle school levels; (j) parent and family engagement; (k) building a culture of academic success among students; (l) building a culture of student support and success among faculty and staff; (m) using developmentally

appropriate child assessments from pre-kindergarten through third grade, if applicable, that are tailored to the needs of the school; and (n) measures of student learning.

7. (a) Notwithstanding any general or special law to the contrary, in creating and implementing the school intervention plan, the receiver shall, after consulting with stakeholders and the community engagement team, convert schools to community schools to provide expanded health, mental health and other services to the students and their families. In addition, the receiver may: (i) 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; (ii) replace teachers and administrators, including school leadership who are not appropriately certified or licensed; (iii) increase salaries of current or prospective teachers and administrators to attract and retain high-performing teachers and administrators; (iv) establish steps to improve hiring, induction, teacher evaluation, professional development, teacher advancement, school culture and organizational structure; (v) reallocate the uses of the existing budget of the school; (vi) expand the school day or school year or both of the school; (vii) for a school that offers the first grade, add pre-kindergarten and full-day kindergarten classes, if the school does not already have such classes; (viii) in accordance with paragraphs (b) and (c) of this subdivision, to abolish the positions of all members of the teaching and administrative and supervisory staff assigned to the [failing] STRUGGLING or persistently [failing] STRUGGLING school and terminate the employment of any building principal assigned to such a school, and require such staff members to reapply for their positions in the school if they so choose; (ix) 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; (x) 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; and/or (xi) order the conversion of a school in receivership that has been designated as [failing] STRUGGLING or persistently [failing] STRUGGLING pursuant to this section into a charter school, provided that such conversion shall be subject to article fifty-six of this chapter and provided further that such charter conversion school shall operate pursuant to such article and provided further that such charter conversion school shall operate consistent with a community schools model and provided further that such conversion charter school shall be subject to the provisions in subdivisions three, four, five, six, nine, ten, eleven, twelve and thirteen of this section.

(b) Notwithstanding any other provision of law, rule or regulation to the contrary, upon designation of any school of the school district as a [failing] STRUGGLING or persistently [failing] STRUGGLING school pursuant to this section, the abolition of positions of members of the teaching and administrative and supervisory staff of the school shall thereafter be governed by the applicable provisions of section twenty-five hundred ten, twenty-five hundred eighty-five, twenty-five hundred eighty-eight or three thousand thirteen of this chapter as modified by this paragraph. A classroom teacher or building principal who has received two or more composite ratings of ineffective on an annual professional performance review shall be deemed not to have rendered faithful and

competent service within the meaning of section twenty-five hundred ten, twenty-five hundred eighty-five, twenty-five hundred eighty-eight or three thousand thirteen of this chapter. When a position of a classroom teacher or building principal is abolished, the services of the teacher or administrator or supervisor within the tenure area of the position with the lowest rating on the most recent annual professional performance review shall be discontinued, provided that seniority within the tenure area of the position shall be used solely to determine which position should be discontinued in the event of a tie.

(c) The receiver may abolish the positions of all teachers and pedagogical support staff, administrators and pupil personnel service providers assigned to a school designated as [failing] STRUGGLING or persistently [failing] STRUGGLING pursuant to this section and require such staff members to reapply for new positions if they so choose. The receiver shall define new positions for the school aligned with the school intervention plan, including selection criteria and expected duties and responsibilities for each position. For administrators and pupil personnel service providers, the receiver shall have full discretion over all such rehiring decisions. For teachers and pedagogical support staff, the receiver shall convene a staffing committee including the receiver, two appointees of the receiver and two appointees selected by the school staff or their collective bargaining unit. The staffing committee will determine whether former school staff reapplying for positions are qualified for the new positions. The receiver shall have full discretion regarding hiring decisions but must fill at least fifty percent of the newly defined positions with the most senior former school staff who are determined by the staffing committee to be qualified. Any remaining vacancies shall be filled by the receiver in consultation with the staffing committee. Notwithstanding any other provision of law to the contrary, a member of the teaching and pedagogical support, administrative, or pupil personnel service staff who is not rehired pursuant to this paragraph shall not have any right to bump or displace any other person employed by the district, but shall be placed on a preferred eligibility list in accordance with the applicable provisions of section twenty-five hundred ten, twenty-five hundred eighty-five, twenty-five hundred eighty-eight or three thousand thirteen of this chapter. Teachers rehired pursuant to this paragraph shall maintain their prior status as tenured or probationary, and a probationary teacher's probation period shall not be changed.

(d) For a school with English language learners, the professional development and planning time for teachers and administrators identified in clauses (vi) and (vii) of the closing paragraph of paragraph (a) of this subdivision, shall include specific strategies and content designed to maximize the rapid academic achievement of the English language learners.

8. (a) In order to maximize the rapid achievement of students at the applicable school, the receiver may request that the collective bargaining unit or units representing teachers and administrators and the receiver, on behalf of the board of education, negotiate a receivership agreement that modifies the applicable collective bargaining agreement or agreements with respect to any [failing] STRUGGLING schools in receivership applicable during the period of receivership. The receivership agreement may address the following subjects: 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 in receivership. The

receivership agreement shall not provide for any reduction in compensation unless there shall also be a proportionate reduction in hours and shall provide for a proportionate increase in compensation where the length of the school day or school year is extended. The receivership agreement shall not alter the remaining terms of the existing/underlying collective bargaining agreement which shall remain in effect.

(b) The bargaining shall be conducted between the receiver and the collective bargaining unit in good faith and completed not later than thirty days from the point at which the receiver requested that the bargaining commence. The agreement shall be subject to ratification within ten business days by the bargaining unit members in the school. If the parties are unable to reach an agreement within thirty days or if the agreement is not ratified within ten business days by the bargaining unit members of the school, the parties shall submit any remaining unresolved issues to the commissioner who shall resolve any unresolved issues within five days, in accordance with standard collective bargaining principles.

(c) For purposes only for schools designated as [failing] STRUGGLING pursuant to subparagraph (ii) of paragraph (c) of subdivision one of this section, bargaining shall be conducted between the receiver and the collective bargaining unit in good faith and completed not later than thirty days from the point at which the receiver requested that the bargaining commence. The agreement shall be subject to ratification within ten business days by the bargaining unit members of the school. If the parties are unable to reach an agreement within thirty days or if the agreement is not ratified within ten business days by the bargaining unit members of the school, a conciliator shall be selected through the American Arbitration Association, who shall forthwith forward to the parties a list of three conciliators, each of whom shall have professional experience in elementary and secondary education, from which the parties may agree upon a single conciliator provided, however, that if the parties cannot select a conciliator from among the three within three business days, the American Arbitration Association shall select a conciliator from the list of names within one business day, and the conciliator shall resolve all outstanding issues within five days. After such five days, if any unresolved issues remain, the parties shall submit such issues to the commissioner who shall resolve such issues within five days, in accordance with standard collective bargaining principles.

9. A final school intervention plan shall be submitted to the commissioner for approval and, upon approval, shall be issued by the receiver within six months of the receiver's appointment. A copy of such plan shall be provided to the board of education, the superintendent of schools and the collective bargaining representatives of teachers and administrators of the school district. The plan shall be publicly available and shall be posted on the department's website and the school district's website, and the school district shall provide notice to parents of such school intervention plan and its availability.

10. Each school intervention plan shall be authorized for a period of not more than three years. The receiver may develop additional components of the plan and shall develop annual goals for each component of the plan in a manner consistent with this section, all of which must be approved by the commissioner. The receiver shall be responsible for meeting the goals of the school intervention plan.

11. The receiver shall provide a written report to the board of education, the commissioner, and the board of regents on a quarterly basis to

provide specific information about the progress being made on the implementation of the school intervention plan. One of the quarterly reports shall be the annual evaluation of the intervention plan under subdivision twelve of this section.

12. (a) The commissioner shall, in consultation and cooperation with the district and the school staff, evaluate each school with an appointed receiver at least annually. The purpose of the evaluation shall be to determine whether the school has met the annual goals in its school intervention plan and to assess the implementation of the plan at the school. The evaluation shall be in writing and shall be submitted to the superintendent and the board of education not later than September first for the preceding school year. The evaluation shall be submitted in a format determined by the commissioner.

(b) If the commissioner determines that the school has met the annual performance goals stated in the school intervention plan, the evaluation shall be considered sufficient and the implementation of the school intervention plan shall continue. If the commissioner determines that the school has not met one or more goals in the plan, the commissioner may require modification of the plan.

13. Upon the expiration of a school intervention plan for a school with an appointed receiver, the commissioner, in consultation and cooperation with the district, shall conduct an evaluation of the school to determine whether the school has improved sufficiently, requires further improvement or has failed to improve. On the basis of such review, the commissioner, in consultation and cooperation with the district, may: (a) renew the plan with the receiver for an additional period of not more than three years; (b) if the [failing] STRUGGLING or persistently [failing] STRUGGLING school remains [failing] STRUGGLING and the terms of the plan have not been substantially met, terminate the contract with the receiver and appoint a new receiver; or (c) determine that the school has improved sufficiently for the designation of [failing] STRUGGLING or persistently [failing] STRUGGLING to be removed.

14. Nothing in this section shall prohibit the commissioner or a local district from closing a school pursuant to the regulations of the commissioner.

15. The commissioner shall be authorized to adopt regulations to carry out the provisions of this section.

16. The commissioner shall report annually to the governor and the legislature on the implementation and fiscal impact of this section. The report shall include, but not be limited to, a list of all schools currently designated as [failing] STRUGGLING or persistently [failing] STRUGGLING and the strategies used in each of the schools to maximize the rapid academic achievement of students.

17. The commissioner shall provide any relevant data that is needed to implement and comply with the requirements of the chapter of the laws of two thousand fifteen which added this section to any school district that has a school or schools designated as [failing] STRUGGLING or persistently [failing] STRUGGLING pursuant to this section by August fifteenth of each year, to the fullest extent practicable. Provided that the commissioner shall provide guidance to districts and may establish a model intervention plan. And provided further, that the commissioner shall make available to the public any school intervention plan, or other department-approved intervention model or comprehensive education plan of a school or district provided that such measures are consistent with all federal and state privacy laws.

S 2. This act shall take effect immediately.