STATE OF NEW YORK

5602

2019-2020 Regular Sessions

IN SENATE

May 8, 2019

Introduced by Sen. MAYER -- 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 failing schools

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraphs (b) and (c) of subdivision 2 and subdivisions 7 and 8 of 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, are amended to read as follows:

(b) The receiver shall be authorized to manage and operate the failing or persistently failing 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 *employment decisions,* 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 or persistently failing 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.

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

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(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~~] **shall not** 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.

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~~] **all schools identified by the commissioner pursuant to paragraphs (a) and (b) of subdivision one of this section shall be converted** to community schools to provide expanded health, mental health and other services to the students and their families.

[~~In addition,~~] **(a-1) Notwithstanding any general or special law to the contrary, in creating and implementing the school intervention plan** 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)~~] **(iii)** establish steps to improve hiring, induction, teacher evaluation, professional development, teacher advancement, school culture and organizational structure; [~~(v)~~] **(iv)** reallocate the uses of the existing budget of the school; [~~(vi)~~] **(v)** expand the school day or school year or both of the school; [~~(vii)~~] **(vi)** 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,~~] **(vii)** to abolish the positions of all members of the teaching and administrative and supervisory staff assigned to the failing or persistently failing 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)~~] **(viii)** include a provision of a job-embedded professional devel-

opment for teachers at the school, with an emphasis on strategies that involve teacher input and feedback; [~~(x)~~] (ix) 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)~~] (x) order the conversion of a school in receivership that has been designated as failing or persistently failing 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 or persistently failing 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 or persistently failing 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)~~] **(b)** For a school with English language learners, the professional development and planning time for teachers and administrators identified in clauses **(v) and** (vi) [~~and (vii) of the closing paragraph~~] of paragraph [~~(a)~~] **(a-1)** 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 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 **a** ratification **vote** 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 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 **a** ratification **vote** 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.~~]

§ 2. This act shall take effect July 1, 2020.