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I N S E N A T E

May 2, 2012

Introduced by Sen. 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 certain information to be provided prior to hearings held for certain pupils being suspended from school

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

1 Section 1. Subparagraph 1 of paragraph c of subdivision 3 of section
2 3214 of the education law, as amended by chapter 430 of the laws of
3 2006, is amended to read as follows:
4 (1) No pupil may be suspended for a period in excess of five school
5 days unless such pupil and the person in parental relation to such pupil
6 shall have had an opportunity for a fair hearing, upon reasonable
7 notice, at which such pupil shall have the right of representation by
8 counsel, with the right to question witnesses against such pupil and to
9 present witnesses and other evidence on his or her behalf. PRIOR TO
10 SUCH HEARING, SUCH PUPIL AND SUCH PERSON IN PARENTAL RELATION TO SUCH
11 PUPIL SHALL BE PROVIDED WITH AN INFORMATIONAL DOCUMENT BY THE SCHOOL
12 DISTRICT WITH THE NAME AND CONTACT INFORMATION FOR THE CHAIRPERSON OF
13 THE SCHOOL DISTRICT'S COMMITTEE ON SPECIAL EDUCATION OR OTHER INDIVIDUAL
14 WHO IS CHARGED WITH PROCESSING REFERRALS TO THE COMMITTEE IN THE
15 DISTRICT, AND THE MANNER IN WHICH A PARENT MAY REFER THEIR CHILD FOR
16 EVALUATION IF THEY BELIEVE THE STUDENT'S BEHAVIOR IS THE MANIFESTATION
17 OF A DISABILITY. Where the pupil is a student with a disability or a
18 student presumed to have a disability, the provisions of paragraph g of
19 this subdivision shall also apply. Where a pupil has been suspended in
20 accordance with this subparagraph by a superintendent of schools,
21 district superintendent of schools, or community superintendent, the
22 superintendent shall personally hear and determine the proceeding or
23 may, in his or her discretion, designate a hearing officer to conduct
24 the hearing. The hearing officer shall be authorized to administer oaths
25 and to issue subpoenas in conjunction with the proceeding before him or
26 her. A record of the hearing shall be maintained, but no stenographic
27 transcript shall be required and a tape recording shall be deemed a

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

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1 satisfactory record. The hearing officer shall make findings of fact
2 and recommendations as to the appropriate measure of discipline to the
3 superintendent. The report of the hearing officer shall be advisory
4 only, and the superintendent may accept all or any part thereof. An
5 appeal will lie from the decision of the superintendent to the board of
6 education who shall make its decision solely upon the record before it.
7 The board may adopt in whole or in part the decision of the superinten-
8 dent of schools. Where the basis for the suspension is, in whole or in
9 part, the possession on school grounds or school property by the student
10 of any firearm, rifle, shotgun, dagger, dangerous knife, dirk, razor,
11 stiletto or any of the weapons, instruments or appliances specified in
12 subdivision one of section 265.01 of the penal law, the hearing officer
13 or superintendent shall not be barred from considering the admissibility
14 of such weapon, instrument or appliance as evidence, notwithstanding a
15 determination by a court in a criminal or juvenile delinquency proceed-
16 ing that the recovery of such weapon, instrument or appliance was the
17 result of an unlawful search or seizure.

18 S 2. Subparagraph 1 of paragraph c of subdivision 3 of section 3214 of
19 the education law, as amended by chapter 380 of the laws of 2001, is
20 amended to read as follows:

21 (1) No pupil may be suspended for a period in excess of five school
22 days unless such pupil and the person in parental relation to such pupil
23 shall have had an opportunity for a fair hearing, upon reasonable
24 notice, at which such pupil shall have the right of representation by
25 counsel, with the right to question witnesses against such pupil and to
26 present witnesses and other evidence on his behalf. PRIOR TO SUCH HEAR-
27 ING, SUCH PUPIL AND SUCH PERSON IN PARENTAL RELATION TO SUCH PUPIL SHALL
28 BE PROVIDED WITH AN INFORMATIONAL DOCUMENT BY THE SCHOOL DISTRICT WITH
29 THE NAME AND CONTACT INFORMATION FOR THE CHAIRPERSON OF THE SCHOOL
30 DISTRICT'S COMMITTEE ON SPECIAL EDUCATION OR OTHER INDIVIDUAL WHO IS
31 CHARGED WITH PROCESSING REFERRALS TO THE COMMITTEE IN THE DISTRICT, AND
32 THE MANNER IN WHICH A PARENT MAY REFER THEIR CHILD FOR EVALUATION IF
33 THEY BELIEVE THE STUDENT'S BEHAVIOR IS THE MANIFESTATION OF A DISABILI-
34 TY. Where a pupil has been suspended in accordance with this subdivision
35 by a superintendent of schools, district superintendent of schools, or
36 community superintendent, the superintendent shall personally hear and
37 determine the proceeding or may, in his discretion, designate a hearing
38 officer to conduct the hearing. The hearing officer shall be authorized
39 to administer oaths and to issue subpoenas in conjunction with the
40 proceeding before him. A record of the hearing shall be maintained, but
41 no stenographic transcript shall be required and a tape recording shall
42 be deemed a satisfactory record. The hearing officer shall make findings
43 of fact and recommendations as to the appropriate measure of discipline
44 to the superintendent. The report of the hearing officer shall be advi-
45 sory only, and the superintendent may accept all or any part thereof. An
46 appeal will lie from the decision of the superintendent to the board of
47 education who shall make its decision solely upon the record before it.
48 The board may adopt in whole or in part the decision of the superinten-
49 dent of schools. Where the basis for the suspension is, in whole or in
50 part, the possession on school grounds or school property by the student
51 of any firearm, rifle, shotgun, dagger, dangerous knife, dirk, razor,
52 stiletto or any of the weapons, instruments or appliances specified in
53 subdivision one of section 265.01 of the penal law, the hearing officer
54 or superintendent shall not be barred from considering the admissibility
55 of such weapon, instrument or appliance as evidence, notwithstanding a
56 determination by a court in a criminal or juvenile delinquency proceed-

1 ing that the recovery of such weapon, instrument or appliance was the
2 result of an unlawful search or seizure.
3 S 3. This act shall take effect July 1, 2013; provided, however, that
4 the amendments to subparagraph 1 of paragraph c of subdivision 3 of
5 section 3214 of the education law made by section one of this act shall
6 be subject to the expiration and reversion of such subparagraph pursuant
7 to subdivision (a) of section 8 of chapter 430 of the laws of 2006, as
8 amended, when upon such date the provisions of section two of this act
9 shall take effect. Effective immediately, the addition, amendment and/or
10 repeal of any rule or regulation necessary for the implementation of
11 this act on its effective date is authorized to be made on or before
12 such date.