

STATE OF NEW YORK

1981

2019-2020 Regular Sessions

IN ASSEMBLY

January 18, 2019

Introduced by M. of A. NOLAN -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to school climate and codes of conduct on school property and disciplinary action following violation of such codes of conduct; and to amend the education law, in relation to making conforming amendments

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

1 Section 1. Section 2801 of the education law, as added by chapter 181
2 of the laws of 2000, subdivision 1 as amended by chapter 402 of the laws
3 of 2005, the opening paragraph, paragraph a and paragraph c of subdivi-
4 sion 2 and paragraph a of subdivision 5 as amended by chapter 380 of the
5 laws of 2001, paragraphs l and m as amended and paragraph n of subdivi-
6 sion 2 as added by chapter 482 of the laws of 2010, and subdivision 3 as
7 amended by chapter 123 of the laws of 2003, is amended to read as
8 follows:

9 § 2801. [~~Codes~~] School climate and codes of conduct on school proper-
10 ty. 1. a. The board of education or board of trustees of every school
11 district or the chancellor of the city school district in the case of
12 the city school district of the city of New York, and every board of
13 cooperative educational services and charter school shall promote and
14 sustain a safe, inclusive, civil, and respectful school environment for
15 school personnel, students, and visitors on school property and at
16 school functions through prevention, intervention, and discipline that
17 supports education and learning; promotes positive behaviors; reduces
18 the disparate impact of discipline; holds students accountable for their
19 behavior; and keeps students in school and class.

20 b. (1) Every school shall establish prevention programs and services
21 that may include school-based initiatives and individual interventions
22 that promote a safe and secure environment for all persons on school
23 property or at school functions, and restorative practices designed to

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

LBD02878-01-9

1 promote social and emotional learning, resolve student behavioral
2 issues, and keep students in school and in class.

3 (2) Every school shall use interventions and supports that assist
4 students in developing social and emotional competencies such as self-
5 management, self-awareness, responsible decision-making, conflict resol-
6 ution, and refocusing on learning.

7 (3) Every school shall have, and support teachers in maintaining,
8 classrooms and classroom practices that support each student's opportu-
9 nity to obtain an education, that develop each student's social-emotion-
10 al skills, and that are healthy, safe, and inclusive.

11 (4) Every school shall ensure pre-service and annual training in
12 accordance with this section for all school personnel, law enforcement
13 and public or private security personnel employed, retained or
14 contracted with a school district or charter school regarding the code
15 of conduct, and the use of interventions, positive school climate prac-
16 tices, graduated and proportionate discipline, and disparities that
17 exist in discipline.

18 (5) Every school shall define the roles and areas of responsibility of
19 school personnel, security personnel and law enforcement in response to
20 student misconduct that violates the code of conduct. A school district
21 or charter school that employs, contracts with, or otherwise retains law
22 enforcement or public or private security personnel, including school
23 resource officers, shall establish a written contract or memorandum of
24 understanding that is developed with stakeholder input including but not
25 limited to: parents, students, school administrators, teachers, collec-
26 tive bargaining units, parent and student organizations, community
27 members, as well as probation officers, prosecutors, defense counsels
28 and courts that are familiar with school discipline. Such written
29 contract or memorandum of understanding shall define the relationship
30 between a school district or charter school, school personnel, students,
31 visitors, law enforcement, and public or private security personnel.
32 Such contract or memorandum of understanding shall be consistent with
33 the code of conduct, limit law enforcement or security personnel's
34 involvement when a student's behavior does not threaten the safety of
35 the school, define which behaviors should not result in an arrest or
36 summons, require law enforcement or security personnel to receive train-
37 ing as required by subparagraph four of this subdivision, and clearly
38 delegate the role of school discipline to the school administration.
39 Such written contract or memorandum of understanding shall be incorpo-
40 rated into and published as part of the code of conduct.

41 c. Every school shall use graduated and proportionate discipline,
42 which shall mean a disciplinary approach that requires school personnel
43 to use the least severe action necessary to respond to inappropriate
44 behavior and requires the use of appropriate prevention programs and
45 interventions prior to and in conjunction with the use of any discipline
46 that prevents students from receiving their in-classroom education.
47 Discipline such as removals, suspensions and expulsions that prevent
48 students from receiving their in-classroom education shall be used as a
49 discipline of last resort and may only be imposed as provided in this
50 section and section thirty-two hundred fourteen of this chapter.

51 d. (1) Restorative approaches to school climate and discipline include
52 the use of restorative practices in classrooms and schools to proactive-
53 ly build a school community based upon cooperation, mutual understand-
54 ing, acceptance of responsibility, trust and respect. Restorative prac-
55 tices may address misbehavior and harm in a way that strengthens

1 relationships between school staff and students and among students and
2 addresses the root causes of discipline problems.

3 (2) Restorative discipline allows students who may have violated the
4 code of conduct to take full responsibility for their behavior by
5 addressing any individuals affected by the behavior. The purpose of such
6 discipline is to help students understand why a specific behavior is
7 wrong and to help them choose a better behavior in the future. Restora-
8 tive practices and discipline may include class meetings, facilitated
9 circles, conferences, peer mediation and other restorative interventions
10 that can effectively address student misconduct, hold students account-
11 able for their behavior, repair harm to persons and property caused by
12 misconduct and foster healthy relationships within the school community.
13 Consistent with this section and section thirty-two hundred fourteen of
14 this chapter, school personnel may use restorative discipline to respond
15 to student behavior.

16 (3) No student shall be required to participate in a restorative prac-
17 tice without their consent. In addition, in the case of an incident
18 where a student has been physically injured, no student shall be
19 required to participate in restorative practices if their parent or
20 person in parental relation affirmatively objects upon notice. If a
21 student chooses not to participate in a restorative practice, the school
22 may use other approaches to respond to a code of conduct violation.

23 2. For purposes of this section, school property [~~means in or within~~]
24 shall mean real, personal or other property owned, leased or occupied by
25 a public school including a charter school. Such property shall include
26 but not be limited to any building, structure, athletic playing field,
27 playground, parking lot or land contained within the real property boun-
28 dary line of a public elementary or secondary school; or in or on a
29 school bus, as defined in section one hundred forty-two of the vehicle
30 and traffic law; or electronic files and databases and a school function
31 shall mean a school-sponsored or school-authorized extra-curricular
32 event or activity regardless of where or when such event or activity
33 takes place, including any event or activity that may take place in
34 another state.

35 [2-] 3. The board of education or [~~the trustees~~] board of trustees of
36 every school district or the chancellor of the city school district in
37 the case of the city school district of the city of New York, [~~as~~
38 ~~defined in section two of this chapter, of every school district within~~
39 ~~the state, however created,~~ and every board of cooperative educational
40 services and [~~county vocational extension board~~] charter school, shall
41 adopt and amend, as appropriate, a code of conduct [~~for the maintenance~~
42 ~~of order on school property, including a school function, which shall~~
43 ~~govern the conduct of students, teachers and other school personnel as~~
44 ~~well as visitors]~~ which shall govern the conduct of students, school
45 employees and visitors in order to promote a safe, respectful and
46 supportive learning and teaching environment on school property and at
47 school functions and shall provide for the enforcement thereof. [~~Such~~
48 ~~policy may be adopted by the school board or trustees only after at~~
49 ~~least one public hearing that provides for the participation of school~~
50 ~~personnel, parents, students and any other interested parties.~~] Such
51 code of conduct shall apply to all students, school employees, school
52 board members, independent contractors and visitors and shall include,
53 at a minimum provisions that:

54 a. [~~provisions regarding conduct, dress and language deemed appropri-~~
55 ate and acceptable on school property, including a school function, and
56 conduct, dress and language deemed unacceptable and inappropriate on

~~school property, including a school function, and provisions regarding acceptable civil and respectful treatment of teachers, school administrators, other school personnel, students and visitors on school property, including a school function, including the appropriate range of disciplinary measures which may be imposed for violation of such code, and the roles of teachers, administrators, other school personnel, the board of education and parents;~~

~~b. standards and procedures to assure security and safety of students and school personnel;~~

~~c. provisions for the removal from the classroom and from school property, including a school function, of students and other persons who violate the code;~~

~~d. disciplinary measures to be taken in incidents involving the possession or use of illegal substances or weapons, the use of physical force, vandalism, violation of another student's civil rights and threats of violence;~~

~~e. provisions for detention, suspension and removal from the classroom of students, consistent with section thirty-two hundred fourteen of this chapter and other applicable federal, state and local laws including provisions for the school authorities to establish policies and procedures to ensure the provision of continued educational programming and activities for students removed from the classroom, placed in detention, or suspended from school;~~

~~f. procedures by which violations are reported, determined, discipline measures imposed and discipline measures carried out;~~

~~g. provisions ensuring]~~ establish standards and procedures to assure security and safety of students and school personnel;

b. require age-appropriate, graduated and proportionate interventions and discipline, including restorative discipline, that respond to student misconduct, hold students accountable for their behavior and maximize the ability of students to attend class and school;

c. set out clear expectations for student conduct at school and school functions, using specific and objective criteria, and define violations of the code of conduct;

d. establish the range of graduated and proportionate interventions and consequences including restorative discipline for student behaviors that violate the code of conduct; provided that removal of a student from class or classes, school property or school functions, including classroom removal or suspension, for a specific period of time shall not be used to respond to tardiness, unexcused absence from class or school, leaving school without permission, violation of school dress code, and lack of identification upon request of school personnel. The range of graduated and proportionate interventions for initial or repeated acts of willful disobedience shall not include suspension. "Willful disobedience" shall mean disruptive, insubordinate, or rowdy behavior, including behaviors such as the use of foul or inappropriate language, gestures, comments, or refusal to follow directions;

e. where available, require the consideration of the use of restorative practices and discipline in response to violations of the code of conduct;

f. establish procedures by which violations of the code of conduct are reported to the appropriate school personnel, the facts are investigated and determined, and intervention and discipline measures, including restorative discipline, are decided and implemented. Such provisions shall ensure that procedures established are consistent with this

1 section, section thirty-two hundred fourteen of this chapter, and other
2 federal and state law;

3 g. establish procedures for removal from the classroom, school proper-
4 ty or a school function, of students who violate the code of conduct,
5 including procedures by which a school may respond immediately to
6 student behavior that (i) physically injures or poses an immediate
7 threat of physical injury to the student or other person or persons; or
8 (ii) damages property and such damage injures or poses an immediate
9 threat of serious physical injury to the student or other person or
10 persons, consistent with section thirty-two hundred fourteen of this
11 chapter and other federal and state laws;

12 h. prohibit the suspension of students in kindergarten through grade
13 three, except in situations of serious physical injury as defined in
14 subdivision ten of section 10.00 of the penal law to students, staff, or
15 others while taking into account the totality of the circumstances;

16 i. comply with the federal Gun-Free Schools Act;

17 j. set forth the circumstances under and procedures by which a parent
18 or persons in parental relation to a student accused of and affected by
19 student behavior that violates the code of conduct shall be notified of
20 code of conduct violations, including notice that any statement by the
21 student, written or oral, might be used against the student in a crimi-
22 nal, immigration, or juvenile delinquency investigation and/or proceed-
23 ing and/or in a court of law;

24 k. set forth the circumstances under and procedures by which a student
25 may be referred to law enforcement or a person in need of supervision
26 petition as defined in article seven of the family court act will be
27 filed consistent with subparagraph five of paragraph b of subdivision
28 one of this section;

29 l. set out the circumstances under and procedures by which students
30 who are suspended from school may also be referred to academic services,
31 school-based support services, or to appropriate human services agen-
32 cies;

33 m. ensure the continued educational programming and activities for
34 students removed from the classroom or suspended from school. Students
35 who have been removed from the classroom or suspended from school shall
36 have the right to continue their education and receive instruction while
37 they are excluded from the classroom regardless of the reason for or
38 type of exclusion as follows:

39 (1) when a student is removed from a classroom, the teacher, principal
40 or the principal's designee shall provide the student with all missed
41 classroom work within twenty-four hours of the removal and the student
42 shall have the opportunity to earn all academic credit including the
43 opportunity to complete any missed assignments and take any missed exam-
44 inations or assessments;

45 (2) when a student is suspended from class or school, the principal or
46 the principal's designee, in consultation with the student's teachers,
47 shall create an education plan for the student for each subject or class
48 in which the student is enrolled. The education plan shall make
49 provisions for a student's on-going academic instruction during the
50 suspension. The student shall have the opportunity to earn all academic
51 credit including the opportunity to complete any assignments and take
52 any assessment or examination missed during the student's suspension and
53 if an assessment or examination cannot be rescheduled, the student shall
54 be allowed on school property to take such assessment or examination on
55 the day that the assessment or examination is given;

1 (3) the education plan pursuant to subparagraph two of this paragraph
2 may include placement of the suspended student at an alternative learn-
3 ing site including the student's home if an alternative site is not
4 available and appropriate for the student's education. The principal or
5 the principal's designee at the school in which the student is enrolled
6 shall consult with the administrator of an alternative site or, in the
7 case of the student's home, with the teacher overseeing home instruc-
8 tion, to make arrangements for the student's continued instruction;

9 (4) every school district and charter school shall provide to students
10 with disabilities all services and educational programming protections
11 set forth in this section, section thirty-two hundred fourteen of this
12 chapter and all other applicable federal and state laws;

13 (5) schools shall schedule a conference with the parent or person in
14 parental relation and student within five school days from a student's
15 return to school after any short term or long term suspension and
16 provide notice of the conference to the parent or person in parental
17 relation and the student. The failure of the parent or person in
18 parental relation or student to attend shall not delay re-entry follow-
19 ing suspension. The conference shall include a discussion of the follow-
20 ing:

21 (A) a file of the student's educational activities while on suspension
22 that can be counted toward credit accumulation. This file shall include
23 the student's test scores, grades, completed assignments, and total
24 credits earned while suspended. The student's existing academic record
25 may be used for these purposes, if the academic record provides all
26 required information set forth in this clause;

27 (B) the steps the student will take to follow all school rules;

28 (C) the supports the school will provide for the student to success-
29 fully re-enter school;

30 (D) a discussion of when the record of suspension will be expunged;
31 and

32 (E) any other pertinent circumstances.

33 n. ensure such code and [the] its enforcement [thereof] are in compli-
34 ance with state and federal laws relating to students with disabilities;

35 ~~[h. provisions setting forth the procedures by which local law~~
36 ~~enforcement agencies shall be notified of code violations which consti-~~
37 ~~tute a crime;~~

38 ~~i. provisions setting forth the circumstances under and procedures by~~
39 ~~which persons in parental relation to the student shall be notified of~~
40 ~~code violations;~~

41 ~~j. provisions setting forth the circumstances under and procedures by~~
42 ~~which a complaint in criminal court, a juvenile delinquency petition or~~
43 ~~person in need of supervision petition as defined in articles three and~~
44 ~~seven of the family court act will be filed;~~

45 ~~k. circumstances under and procedures by which referral to appropriate~~
46 ~~human service agencies shall be made;~~

47 ~~l. a minimum suspension period, for students who repeatedly are~~
48 ~~substantially disruptive of the educational process or substantially~~
49 ~~interfere with the teacher's authority over the classroom, provided that~~
50 ~~the suspending authority may reduce such period on a case by case basis~~
51 ~~to be consistent with any other state and federal law. For purposes of~~
52 ~~this section, the definition of "repeatedly are substantially disrupt-~~
53 ~~ive" shall be determined in accordance with the regulations of the~~
54 ~~commissioner;~~

55 ~~m. a minimum suspension period for acts that would qualify the pupil~~
56 ~~to be defined as a violent pupil pursuant to paragraph a of subdivision~~

~~two a of section thirty two hundred fourteen of this chapter, provided that the suspending authority may reduce such period on a case by case basis to be consistent with any other state and federal law;~~ and

~~[n.]~~ o. provisions to comply with article two of this chapter.

~~[3.]~~ 4. The ~~[district]~~ code of conduct shall be developed in collaboration with ~~[student, teacher, administrator, and parent organizations, school safety personnel and other school personnel]~~ representatives from all interested stakeholders including students, teachers, administrators, parents, school safety personnel, support services personnel, parent and student organizations, collective bargaining units, and others as identified by the school district or charter school and shall be approved by the board of education, ~~[or]~~ board of trustees, other governing body, or by the chancellor of the city school district in the case of the city school district of the city of New York. In the city school district of the city of New York, each community district education council shall be authorized to adopt and implement additional policies, which are consistent with and no more restrictive than the city district's district-wide code of conduct, to reflect the individual needs of each community school district provided that such additional policies shall require the approval of the chancellor.

~~[4. The board of education, chancellor or other governing body shall provide copies of a summary of the code of conduct to all students at a general assembly held at the beginning of the school year and shall make copies of the code available to persons in parental relation to students at the beginning of each school year, and shall mail a plain language summary of such code to all persons in parental relation to students before the beginning of each school year, and make it available thereafter upon request. The board of education, chancellor or other governing body shall take reasonable steps to ensure community awareness of the code provisions.]~~

5. [a.] The board of education, board of trustees, other governing body, or the chancellor of the city school district in the case of the city school district of the city of New York shall hold at least one public hearing about the proposed code of conduct before its adoption or amendment. The school district or charter school shall notify the school community and general public about the hearing at least thirty days prior to the date of the hearing. Such notice shall include the date, time and place of the hearing, the agenda, a copy of the proposed code of conduct and information about a public comment period as determined by the school district or charter school. The school district or charter school shall take necessary steps to notify families who do not speak English and whose children attend a school in the district or a charter school.

6. Upon adoption or amendment of the code of conduct, the school district or charter school shall:

a. file a copy of its code of conduct and any amendments to such code with the commissioner no later than thirty days after their adoption;

b. translate the code of conduct into those languages spoken by three percent or more of the families whose children attend a school in the school district or a charter school;

c. at the beginning of each school year, post the code of conduct on the school district or charter school's website and school web site, if any, and provide a copy of the code of conduct to parents or persons in parental relation to students in the district's schools or charter school;

1 d. distribute the code of conduct to all students in school at one or
2 more general assemblies or other classroom level lessons dedicated to
3 the provisions of the code of conduct; and

4 e. at the beginning of each school year, each school shall explain its
5 code of conduct to students in one or more general assemblies or class-
6 room level lessons.

7 7. The board of education, board of trustees, chancellor or other
8 governing body shall annually review and update the district's [codes]
9 or charter school's code of conduct if necessary, taking into consider-
10 ation the effectiveness of the code of conduct's provisions and the
11 fairness and consistency of its administration. Each school district and
12 charter school is authorized to establish a committee and to facilitate
13 the review of the code of conduct and the district's or charter school's
14 response to code of conduct violations. Any such committee shall be
15 comprised of similar individuals described in subdivision [three] four
16 of this section. [The school board, chancellor, or other governing body
17 shall reapprove any such updated code only after at least one public
18 hearing that provides for the participation of school personnel,
19 parents, students and any other interested parties.

20 ~~b. Each district shall file a copy of its codes of conduct with the~~
21 ~~commissioner and all amendments to such code shall be filed with the~~
22 ~~commissioner no later than thirty days after their adoption.]~~

23 8. a. The commissioner shall promulgate regulations in accordance
24 with this section, which shall address the development, implementation
25 and evaluation of a school district's or charter school's code of
26 conduct and shall include but not be limited to:

27 (1) one or more model codes of conduct designed to reduce the use of
28 suspensions that meet the requirements of this section and section thir-
29 ty-two hundred fourteen of this chapter;

30 (2) best practices for age-appropriate, graduated and proportionate
31 discipline as set out in this section;

32 (3) a matrix of student misconduct and the interventions and discipli-
33 nary measures that provide age appropriate, graduated and proportionate
34 intervention designed to reduce reliance on suspensions and referrals to
35 law enforcement;

36 (4) guidelines for appropriate school-wide implementation of restora-
37 tive practices; and

38 (5) forms necessary to implement student notification and due process
39 requirements of this section and section thirty-two hundred fourteen of
40 this chapter.

41 b. The department shall collect and every school district and charter
42 school shall report to the department data about the implementation of
43 student codes of conduct as required by federal law. On or before Novem-
44 ber first of each year, the department shall make available to the
45 public, by school district and charter school, the data regarding
46 student discipline from the preceding year. On or before December first
47 of each year the department shall submit to the governor, the temporary
48 president of the senate, the speaker of the assembly and the chairs of
49 the assembly and senate education committees a report that summarizes
50 and analyzes the data collected about student discipline including but
51 not limited to a review and evaluation of school application of codes of
52 conduct for fair and consistent application, recommendations about poli-
53 cies and practices for school codes of conduct, and the technical
54 assistance the department is providing regarding student discipline.

55 § 2. Subdivision 3 of section 2801 of the education law, as added by
56 chapter 181 of the laws of 2000, is amended to read as follows:

1 ~~[3-]~~ 4. The ~~[district]~~ code of conduct shall be developed in collaboration with ~~[student, teacher, administrator, and parent organizations, school safety personnel and other school personnel]~~ representatives from all interested stakeholders including students, teachers, administrators, parents, school safety personnel, support services personnel, parent and student organizations, collective bargaining units, and others as identified by the school district or charter school and shall be approved by the board of education, ~~[or]~~ board of trustees, other governing body, or by the chancellor of the city school district in the case of the city school district of the city of New York. In the city school district of the city of New York, each community school district board shall be authorized to adopt and implement additional policies, which are consistent with and no more restrictive than the city district's district-wide code of conduct, to reflect the individual needs of each community school district provided that such additional policies shall require the approval of the chancellor.

17 § 3. Section 3214 of the education law, as amended by chapter 181 of the laws of 2000, subparagraph 1 of paragraph c of subdivision 3 as amended by chapter 430 of the laws of 2006, paragraphs d and f of subdivision 3 as amended by chapter 425 of the laws of 2002, paragraph e of subdivision 3 as amended by chapter 170 of the laws of 2006, paragraph g of subdivision 3 as amended by chapter 352 of the laws of 2005, clause (v) of subparagraph 3 of paragraph g of subdivision 3 as amended by chapter 378 of the laws of 2007, paragraphs a, b and c of subdivision 3-a as amended by chapter 147 of the laws of 2001 and subdivision 7 as amended by section 9 of part YYY of chapter 59 of the laws of 2017, is amended to read as follows:

28 § 3214. Student interventions, placement, suspensions and transfers.

29 1. ~~[School delinquent. A minor under seventeen years of age, required by any of the provisions of part one of this article to attend upon instruction, who is an habitual truant from such instruction or is irregular in such attendance or insubordinate or disorderly or disruptive or violent during such attendance, is a school delinquent.~~

34 ~~2. Special day schools.]~~ Alternative learning sites. The school authorities of any city ~~[or]~~, school district or charter school may establish schools or set apart rooms in ~~[public]~~ school buildings or properties for the instruction of ~~[school delinquents]~~ students removed or suspended for violations of the code of conduct in accordance with this section and section twenty-eight hundred one of this chapter, and fix the number of days per week and the hours per day of required attendance and instruction, which shall not be less than is required of minors attending the full time day schools.

43 ~~[2-a. a. Violent pupil. For the purposes of this section, a violent pupil is an elementary or secondary student under twenty-one years of age who:~~

46 ~~(1) commits an act of violence upon a teacher, administrator or other school employee;~~

48 ~~(2) commits, while on school district property, an act of violence upon another student or any other person lawfully upon said property;~~

50 ~~(3) possesses, while on school district property, a gun, knife, explosive or incendiary bomb, or other dangerous instrument capable of causing physical injury or death;~~

53 ~~(4) displays, while on school district property, what appears to be a gun, knife, explosive or incendiary bomb or other dangerous instrument capable of causing death or physical injury;~~

~~(5) threatens, while on school district property, to use any instrument that appears capable of causing physical injury or death;~~

~~(6) knowingly and intentionally damages or destroys the personal property of a teacher, administrator, other school district employee or any person lawfully upon school district property; or~~

~~(7) knowingly and intentionally damages or destroys school district property.~~

~~b. Disruptive pupil. For the purposes of this section, a disruptive pupil is an elementary or secondary student under twenty-one years of age who is substantially disruptive of the educational process or substantially interferes with the teacher's authority over the classroom.~~

~~3. Suspension] 2. Discipline of a [pupil] student. a. [The board of education, board of trustees or sole trustee, the superintendent of schools, district superintendent of schools or principal of a school may suspend the following pupils] (1) Students may be suspended from~~

~~required attendance [upon instruction: A pupil who is insubordinate or disorderly or violent or disruptive, or whose conduct otherwise endangers the safety, morals, health or welfare of others.] in accordance with paragraphs b and c of this subdivision; provided, however, that decisions about appropriate discipline and interventions in response to student behavior that has been determined to violate a school's code of conduct shall weigh the likelihood that a lesser intervention or discipline would adequately address the student's misconduct, redress any harm or damage, and prevent future violations of the code of conduct. Suspensions should only be used as a last resort.~~

~~(2) The school shall conduct an investigation of any report of a violation of the code of conduct. Such investigation shall include an interview of the alleged victim and the witnesses to the incident; a request for signed, written statements from the alleged victim and witnesses; and identification and review of documentary, photographic, video and other evidence. The school shall inform any student that submission of a written statement is voluntary.~~

~~(3) If a student has been arrested or if the school is considering referring the student to law enforcement, the school shall not request a statement from such student, except when there is imminent risk of serious physical injury to the student or other person or persons.~~

~~(4) The school shall determine whether appropriate interventions, including restorative discipline, can address the alleged violation of the code of conduct without suspension. The school should evaluate the effectiveness of the intervention and use multiple types of intervention where appropriate and available.~~

~~(5) Disciplinary determinations shall be based on the facts of each case including, but not limited to:~~

~~(i) the nature and impact of the student's alleged misconduct, including but not limited to the harm to the student or other persons, damage to personal or school property, or threat to the safety and welfare of the school community;~~

~~(ii) the student's age, ability to speak or understand English, physical health, mental health, disabilities and provisions of an individualized education program, as it relates to his or her behavior;~~

~~(iii) the student's willingness to resolve the conflict and repair any harm or damage;~~

~~(iv) the student's prior conduct, appropriateness of prior interventions and the student's response to prior interventions; and~~

1 (v) other factors as determined by school personnel and the student to
2 be relevant including the circumstances surrounding the student's
3 actions and a review of the student's academic placement and program for
4 its relationship, if any, to the student's behavior and alleged
5 violation of the code of conduct.

6 b. ~~[(1)]~~ Short term suspension. The board of education, board of trus-
7 tees, ~~[or sole trustee]~~ other governing body, the chancellor of the city
8 school district in the case of the city school district of the city of
9 New York, superintendent of schools, district superintendent of schools
10 and the principal of the school where the [pupil] student attends shall
11 have the power to suspend [a pupil] for a period not to exceed five
12 school days[. ~~— In the case of~~] any student who engages in behavior that
13 results in serious physical injury to students, staff, or others or any
14 student who is in grades four to twelve, if a determination is made that
15 the student engaged in behavior that violated the code of conduct for
16 which short term suspension may be warranted. Except as set forth below,
17 prior to such a suspension, the [suspending authority] student, parent
18 or person in parental relation shall [provide the pupil] be provided
19 with written notice of the charged misconduct, including a brief expla-
20 nation of the basis for the suspension and description of the alleged
21 behavior that violated the code of conduct, that includes the date, time
22 and place of the scheduled informal conference with the principal. [If
23 the pupil denies the misconduct, the suspending authority shall provide
24 an explanation of the basis for the suspension.] The [pupil] student and
25 the parent or person in parental relation to the [pupil] student shall~~[,~~
26 ~~on request,~~] be given an opportunity for an informal conference with the
27 principal ~~[at which]~~. At the conference, the [pupil and/or] student and
28 parent or person in parental relation shall be authorized to review all
29 evidence of the alleged misconduct, present the [pupil's] student's
30 version of the event [and to], ask questions of the complaining
31 witnesses, and be represented by an attorney or advocate. The aforesaid
32 notice and opportunity for an informal conference shall take place prior
33 to suspension of the [pupil] student unless the ~~[pupil's presence in the~~
34 ~~school poses a continuing danger to persons or property or an ongoing~~
35 ~~threat of disruption to the academic process,]~~ student's misconduct
36 physically injures or poses an immediate threat of serious physical
37 injury to the student or other person or persons, in which case the
38 [pupil's] student's notice and opportunity for an informal conference
39 shall take place as soon after the suspension as is reasonably practica-
40 ble but in no case more than forty-eight hours after such removal;
41 provided that if such forty-eight hour period does not end on a school
42 day, it shall be extended to the corresponding time on the second school
43 day next following the student's removal. If suspension is imposed, the
44 principal or his or her designee shall create an education plan for the
45 student consistent with section twenty-eight hundred one of this chap-
46 ter, and a plan for the student's reinstatement to school. The principal
47 shall issue a written decision to the parent or person in parental
48 relation to the student about any disciplinary action within two days of
49 the conference. If the principal determines that a suspension of five
50 school days or less is warranted, the written decision shall state the
51 length of the suspension, findings of fact, reasons for the determi-
52 nation, the procedures for an appeal and the date by which an appeal
53 shall be filed. A student suspended for violating the code of conduct
54 may appeal a suspension of five days or less to the school district
55 superintendent, board of education, board of trustees, other governing
56 body or chancellor of the city school district in the case of the city

1 school district of the city of New York as designated in the school code
2 of conduct within thirty days. A written decision on the appeal shall be
3 sent to the parent or person in parental relation and the student within
4 thirty days.

5 ~~[(2) A teacher shall immediately report and refer a violent pupil to~~
6 ~~the principal or superintendent for a violation of the code of conduct~~
7 ~~and a minimum suspension period pursuant to section twenty-eight hundred~~
8 ~~one of this chapter.]~~

9 c. (1) ~~[No pupil may be suspended for a period in excess of five~~
10 ~~school days]~~ Long term suspension. The board of education, board of
11 trustees, other governing body, the chancellor of the city school
12 district in the case of the city school district of the city of New
13 York, superintendent of schools or district superintendent of schools
14 where the student attends shall have the power to suspend for a period
15 not to exceed twenty school days any student who engages in behavior
16 that results in serious physical injury to students, staff, or others or
17 any student who is in grades four to twelve, if a determination is made
18 that the student engaged in behavior that violated the code of conduct
19 for which long term suspension may be warranted. Such suspension shall
20 not be imposed unless such ~~[pupil]~~ student and the parent or person in
21 parental relation to such ~~[pupil]~~ student shall have had an opportunity
22 for a fair hearing~~[, upon reasonable]~~. Once a decision has been made to
23 seek a long term suspension, written notice shall be provided to the
24 student and the parent or person in parental relation to the student.
25 Such written notice, ~~[at which such pupil]~~ shall include a description
26 of the facts and circumstances upon which the alleged violations of the
27 code of conduct are based, the section of the code of conduct that the
28 student is charged to have violated and the disciplinary action that may
29 be warranted, the length of a possible suspension, copies of all
30 evidence regarding the alleged incident, and the date, time and place
31 scheduled for the hearing. Such hearing shall be convened within five
32 days of the written notice, unless the parent or person in parental
33 relation or student requests a later date. At the hearing, the student
34 shall have the right of representation by counsel, with the right to
35 request the presence of and question witnesses against such ~~[pupil]~~
36 student and to request the presence of and present witnesses and other
37 evidence on his or her behalf. Where the ~~[pupil]~~ student is a student
38 with a disability or a student presumed to have a disability, the
39 provisions of ~~[paragraph g of this]~~ subdivision six of this section
40 shall also apply. ~~[Where a pupil has been suspended in accordance with~~
41 ~~this subparagraph by a superintendent of schools, district superinten-~~
42 ~~dent of schools, or community superintendent, the superintendent shall~~
43 ~~personally hear and determine the proceeding or may, in his or her~~
44 ~~discretion, designate a hearing officer to conduct the hearing. The~~
45 ~~hearing officer]~~ The board of education, board of trustees, other
46 governing body, the chancellor of the city school district in the case
47 of the city school district of the city of New York, superintendent of
48 schools or district superintendent shall conduct the hearing and issue a
49 decision, or may designate a hearing officer to do so. The entity or
50 individual that conducts the hearing shall be authorized to administer
51 oaths and to issue subpoenas in conjunction with the proceeding ~~[before~~
52 ~~him or her]~~. A record of the hearing shall be maintained, but no steno-
53 graphic transcript shall be required and ~~[a tape]~~ an audio recording
54 shall be deemed a satisfactory record. The entity or individual conduct-
55 ing such hearing shall consider only the evidence presented at the hear-
56 ing, determine whether the charge has been established by a preponder-

1 ance of the evidence and may uphold, reduce or dismiss the proposed
2 charge. The ~~[hearing officer]~~ entity or individual conducting such hear-
3 ing shall make written findings of fact and ~~[recommendations as to]~~
4 shall decide the appropriate measure of discipline ~~[to the superinten-~~
5 ~~dent. The report of the hearing officer shall be advisory only, and the~~
6 ~~superintendent may accept all or any part thereof. An appeal will lie~~
7 ~~from the decision of the superintendent to the board of education who~~
8 ~~shall make its decision solely upon the record before it. The board may~~
9 ~~adopt in whole or in part the decision of the superintendent of~~
10 ~~schools.], if any.~~ The entity or individual conducting such hearing
11 shall issue a written decision to the school and the parent or person in
12 parental relation to the student within three days of the hearing. If
13 the entity or individual conducting the hearing determines that a
14 suspension of six to twenty days is warranted, the written decision
15 shall state the length of the suspension, findings of fact, reasons for
16 the determination, procedures for appeal, and the date by which the
17 appeal shall be filed. Where the basis for the suspension is, in whole
18 or in part, the possession on school grounds or school property by the
19 student of any firearm, rifle, shotgun, dagger, dangerous knife, dirk,
20 razor, stiletto or any of the weapons, instruments or appliances speci-
21 fied in subdivision one of section 265.01 of the penal law, the hearing
22 officer or superintendent shall not be barred from considering the
23 admissibility of such weapon, instrument or appliance as evidence,
24 notwithstanding a determination by a court in a criminal or juvenile
25 delinquency proceeding that the recovery of such weapon, instrument or
26 appliance was the result of an unlawful search or seizure. If suspension
27 is imposed, the school district or charter school shall establish an
28 education plan for the student consistent with the requirements in
29 section twenty-eight hundred one of this chapter, including academic and
30 support services, and a plan for the student's reinstatement to school.

31 (2) ~~[Where a pupil has been suspended in accordance with this section~~
32 ~~by a board of education, the board may in its discretion hear and deter-~~
33 ~~mine the proceeding or appoint a hearing officer who shall have the same~~
34 ~~powers and duties with respect to the board that a hearing officer has~~
35 ~~with respect to a superintendent where the suspension was ordered by~~
36 ~~him. The findings and recommendations of the hearing officer conducting~~
37 ~~the proceeding shall be advisory and subject to final action by the~~
38 ~~board of education, each member of which shall before voting review the~~
39 ~~testimony and acquaint himself with the evidence in the case. The board~~
40 ~~may reject, confirm or modify the conclusions of the hearing officer.]~~

41 Appeal. The student or parent or person in parental relation to the
42 student shall have a right to appeal the decision of the hearing offi-
43 cer, superintendent of school or district superintendent to the board of
44 education, board of trustees, other governing body, or the chancellor of
45 the city school district in the case of the city school district of the
46 city of New York. The appeal shall be heard only by an entity or indi-
47 vidual who was not involved in the initial determination or hearing
48 regarding the suspension of the student. The entity or individual hear-
49 ing the appeal shall issue a written decision within twenty days of the
50 filing of the appeal. The suspension may be upheld, reduced or
51 dismissed. The student or parent or person in parental relation to the
52 student may appeal any adverse determination by the board of education,
53 board of trustees, other governing body, or the chancellor of the city
54 school district in the case of the city school district of the city of
55 New York to the commissioner pursuant to the regulations of the commis-
56 sioner. The student or parent or person in parental relation to the

1 student may appeal an adverse decision of the commissioner to the state
2 supreme court within four months of receipt of the decision by the
3 commissioner.

4 ~~[d.-(1)]~~ 3. Firearms. a. Consistent with the federal gun-free schools
5 act, any public school ~~[pupil]~~ student who is determined under ~~[this]~~
6 subdivision two of this section to have brought a firearm to or
7 possessed a firearm at a public school shall be suspended for a period
8 of not less than one calendar year and any nonpublic school ~~[pupil]~~
9 student participating in a program operated by a public school district
10 using funds from the elementary and secondary education act of nineteen
11 hundred sixty-five who is determined under ~~[this]~~ subdivision two of
12 this section to have brought a firearm to or possessed a firearm at a
13 public school or other premises used by the school district to provide
14 such programs shall be suspended for a period of not less than one
15 calendar year from participation in such program. The procedures of this
16 subdivision shall apply to such a suspension of a nonpublic school
17 ~~[pupil]~~ student. A superintendent of schools, district superintendent of
18 schools or community superintendent shall have the authority to modify
19 this suspension requirement for each student on a case-by-case basis.
20 The determination of a superintendent shall be subject to review by the
21 board of education, board of trustees, other governing body or the chan-
22 cellor of the city school district in the case of the city school
23 district of the city of New York, pursuant to paragraph c of ~~[this]~~
24 subdivision two of this section and the commissioner pursuant to section
25 three hundred ten of this chapter. Nothing in this subdivision shall be
26 deemed to authorize the suspension of a student with a disability in
27 violation of the individuals with disabilities education act or article
28 eighty-nine of this chapter. A superintendent shall refer the ~~[pupil]~~
29 student under the age of sixteen who has been determined to have brought
30 a weapon or firearm to school in violation of ~~[this]~~ subdivision two of
31 this section to a presentment agency for a juvenile delinquency proceed-
32 ing consistent with article three of the family court act except a
33 student fourteen or fifteen years of age who qualifies for juvenile
34 offender status under subdivision forty-two of section 1.20 of the crim-
35 inal procedure law. A superintendent shall refer any ~~[pupil]~~ student
36 sixteen years of age or older or a student fourteen or fifteen years of
37 age who qualifies for juvenile offender status under subdivision forty-
38 two of section 1.20 of the criminal procedure law, who has been deter-
39 mined to have brought a weapon or firearm to school in violation of
40 ~~[this]~~ subdivision two of this section to the appropriate law enforce-
41 ment officials.

42 ~~[(2)]~~ b. Nothing in this paragraph shall be deemed to mandate such
43 action by a school district pursuant to subdivision ~~[one]~~ two of this
44 section where such weapon or firearm is possessed or brought to school
45 with the written authorization of such educational institution in a
46 manner authorized by article two hundred sixty-five of the penal law for
47 activities approved and authorized by the board of trustees ~~[or]~~, board
48 of education ~~[or]~~, other governing body ~~[of the public school]~~, or the
49 chancellor of the city school district in the case of the city school
50 district of the city of New York and such governing body adopts appro-
51 priate safeguards to ensure student safety.

52 ~~[(3)]~~ c. As used in this paragraph:

53 (i) "firearm" shall mean a firearm as defined in subsection a of
54 section nine hundred twenty-one of title eighteen of the United States
55 Code; and

(ii) "weapon" shall be as defined in paragraph 2 of subsection g of section nine hundred thirty of title eighteen of the United States Code.

~~[e-]~~ 4. Procedure after suspension. Where a ~~[pupil]~~ student has been suspended pursuant to ~~[this]~~ two of this section and said ~~[pupil is of compulsory attendance age]~~ student has the legal right to attend school, immediate steps shall be taken ~~[for]~~ to ensure his or her attendance upon instruction elsewhere ~~[or for supervision or detention of said pupil pursuant to the provisions of article seven of the family court act]~~ consistent with the requirements of paragraph m of subdivision three of section twenty-eight hundred one of this chapter. Where a ~~[pupil]~~ student has been suspended for cause, the suspension may be revoked by the board of education, board of trustees, other governing body or the chancellor of the city school district in the case of the city school district of the city of New York, whenever it appears to be ~~[for]~~ in the best interest of the school and the ~~[pupil]~~ student to do so. The ~~[board of education may also condition a]~~ student's early return to school and suspension revocation may be conditioned on the ~~[pupil's]~~ student's voluntary participation in counseling or specialized classes, including anger management or dispute resolution, where applicable.

~~[f-]~~ 5. Definition. Whenever the term "board of education, board of trustees, other governing body, the chancellor of the city school district in the case of the city school district of the city of New York, or superintendent of schools" is used in this ~~[subdivision]~~ section, it shall be deemed to include charter schools, community boards of education and community superintendents governing community districts in accordance with the provisions of article fifty-two-A of this chapter.

~~[g-]~~ 6. Discipline of students with disabilities and students presumed to have a disability for discipline purposes. ~~[(1)]~~ a. Notwithstanding any other provision of this ~~[subdivision]~~ section to the contrary, a student with a disability as such term is defined in section forty-four hundred one of this chapter and a student presumed to have a disability for discipline purposes, may be suspended or removed from his or her current educational placement for violation of ~~[school rules only]~~ the code of conduct in accordance with the procedures established in this section, the regulations of the commissioner implementing this ~~[paragraph]~~ section, and subsection (k) of section fourteen hundred fifteen of title twenty of the United States code and the federal regulations implementing such statute, as such federal law and regulations are from time to time amended. Nothing in this ~~[paragraph]~~ section shall be construed to confer greater rights on such students than are conferred under applicable federal law and regulations, or to limit the ability of a school district to change the educational placement of a student with a disability in accordance with the procedures in article eighty-nine of this chapter.

~~[(2)]~~ b. As used in this ~~[paragraph]~~ subdivision:

(1) a "student presumed to have a disability for discipline purposes" shall mean a student who the school district is deemed to have knowledge was a student with a disability before the behavior that precipitated disciplinary action under the criteria in subsection (k) (5) of section fourteen hundred fifteen of title twenty of the United States code and the federal regulations implementing such statute; and

~~[(ii)]~~ (2) a "manifestation team" means a representative of the school district, the parent or person in parental relation, and relevant members of the committee on special education, as determined by the parent or person in parental relation and the district.

1 ~~[(3)]~~ c. In applying the federal law consistent with this section:

2 ~~[(i)]~~ (1) in the event of a conflict between the procedures estab-
3 lished in this section and those established in subsection (k) of
4 section fourteen hundred fifteen of title twenty of the United States
5 code and the federal regulations implementing such statute, such federal
6 statute and regulations shall govern.

7 ~~[(ii)]~~ (2) the board of trustees or board of education of any school
8 district or other governing body or the chancellor of the city school
9 district in the case of the city school district of the city of New
10 York, a district superintendent of schools or a building principal shall
11 have authority to order the placement of a student with a disability
12 into an appropriate interim alternative educational setting, another
13 setting or suspension for a period not to exceed five consecutive school
14 days where such student is suspended pursuant to this subdivision and,
15 except as otherwise provided in ~~[clause (vi)]~~ paragraph f of this
16 ~~[subparagraph]~~ subdivision, the suspension does not result in a change
17 in placement under federal law.

18 ~~[(iii)]~~ (3) the superintendent of schools of a school district, either
19 directly or upon recommendation of a hearing officer designated pursuant
20 to paragraph c of ~~[this]~~ two of this section, may order the
21 placement of a student with a disability into an interim alternative
22 educational setting, another setting or suspension for up to ten consec-
23 utive school days, inclusive of any period in which the student is
24 placed in an appropriate interim alternative educational setting, another
25 setting or suspension pursuant to clause ~~[(ii)]~~ two of this subpara-
26 graph for the behavior, where the superintendent determines in accord-
27 ance with the procedures set forth in this subdivision that the student
28 has engaged in behavior that violates the code of conduct and warrants a
29 suspension, and, except as otherwise provided in ~~[clause (vi)]~~ paragraph
30 f of this ~~[subparagraph]~~ subdivision, the suspension does not result in
31 a change in placement under federal law.

32 ~~[(iv)]~~ d. the superintendent of schools of a school district, either
33 directly or upon recommendation of a hearing officer designated pursuant
34 to paragraph c of ~~[this]~~ two of this section, may order the
35 change in placement of a student with a disability to an interim alter-
36 native educational setting for up to forty-five school days under the
37 circumstances specified in subsection (k)(1)(G) of section fourteen
38 hundred fifteen of title twenty of the United States code and the feder-
39 al regulations implementing such statute or a longer period where
40 authorized by federal law under the circumstances specified in
41 subsection (k)(1)(C) of section fourteen hundred fifteen of title twenty
42 of the United States code and the federal regulations implementing such
43 statute, but in neither case shall such period exceed the period of
44 suspension ordered by a superintendent in accordance with this subdivi-
45 sion.

46 ~~[(v)]~~ e. the terms "day," "business day," and "school day" shall be as
47 defined in section 300.11 of title thirty-four of the code of federal
48 regulations.

49 ~~[(vi)]~~ f. notwithstanding any other provision of this subdivision to
50 the contrary, upon a determination by a manifestation team that the
51 behavior of a student with a disability was not a manifestation of the
52 student's disability, such student may be disciplined pursuant to this
53 section in the same manner and for the same duration as a nondisabled
54 student, except that such student shall continue to receive services to
55 the extent required under federal law and regulations, and such services
56 may be provided in an interim alternative educational setting.

1 ~~[(vii)]~~ g. an impartial hearing officer appointed pursuant to subdivi-
2 sion one of section forty-four hundred four of this chapter may order a
3 change in placement of a student with a disability to an appropriate
4 interim alternative educational setting for not more than forty-five
5 school days under the circumstances specified in subsections (k)(3) and
6 (k)(4) of section fourteen hundred fifteen of title twenty of the United
7 States code and the federal regulations implementing such statutes,
8 provided that such procedure may be repeated, as necessary.

9 ~~[(viii)]~~ h. nothing in this section shall be construed to authorize
10 the suspension or removal of a student with a disability from his or her
11 current educational placement ~~[for violation of school rules]~~ following
12 a determination by a manifestation team that the behavior is a manifes-
13 tation of the student's disability, except as authorized under federal
14 law and regulations.

15 ~~[(ix)]~~ i. the commissioner shall implement this paragraph by adopting
16 regulations which coordinate the procedures required for discipline of
17 students with disabilities, and students presumed to have a disability
18 for discipline purposes, pursuant to subsection (k) of section fourteen
19 hundred fifteen of title twenty of the United States code and the feder-
20 al regulations implementing such statute, with the general procedures
21 for student discipline under this section.

22 ~~[3-a.] [Teacher removal of a disruptive pupil. In addition, any]~~ 7.
23 Classroom management. A teacher shall have the power and authority to
24 ~~[remove a disruptive pupil, as defined in subdivision two-a of this~~
25 ~~section,]~~ manage their classrooms consistent with the code of conduct,
26 this section and section twenty-eight hundred one of this chapter.
27 Teachers may remove a student from such teacher's classroom consistent
28 with discipline and intervention measures contained in the code of
29 conduct adopted ~~[by the board]~~ pursuant to section twenty-eight hundred
30 one of this chapter when a student's behavior violates a provision of
31 the code of conduct for which removal may be warranted and no alterna-
32 tive intervention alone is appropriate to address the alleged behavior.
33 Such classroom removal may not exceed one half school day on the same
34 school day. The ~~[school authorities of any]~~ school district or charter
35 school shall establish policies and procedures to ensure the provision
36 of continued educational programming and activities for students removed
37 from the classroom pursuant to this subdivision and to section twenty-
38 eight hundred one of this chapter, and provided further that nothing in
39 this subdivision shall authorize the removal of a ~~[pupil]~~ student in
40 violation of any state or federal law or regulation. No ~~[pupil]~~ student
41 shall return to the classroom until the principal makes a final determi-
42 nation pursuant to paragraph ~~[e]~~ d of this subdivision, or the period of
43 removal expires, whichever is less.

44 a. When a student is removed from the classroom, the school shall
45 provide the appropriate services, interventions, or restorative disci-
46 pline to enable the student to return to the classroom as expeditiously
47 as possible, and in no case no longer than one half day on the same
48 school day as the removal. After a student's third removal in a school
49 year, the school shall create a plan to provide appropriate inter-
50 ventions, supports, and services that address the behavior and circum-
51 stances that led to the removals.

52 b. Such teacher shall inform the ~~[pupil]~~ student and the school prin-
53 cipal of the reasons for the removal. ~~[If the teacher finds that the~~
54 ~~pupil's continued presence in the classroom does not pose a continuing~~
55 ~~danger to persons or property and does not present an ongoing threat of~~
56 ~~disruption to the academic process, the teacher shall, prior to removing~~

~~the student from the classroom, provide the student with an explanation of the basis for the removal and allow the pupil to informally present the pupil's version of relevant events. In all other cases, the teacher shall provide the pupil with an explanation of the basis for the removal and an informal opportunity to be heard within twenty-four hours of the pupil's removal, provided that if such twenty-four hour period does not end on a school day, it shall be extended to the corresponding time on the next school day.~~

~~b.] c.~~ The principal shall inform the parent or person in parental relation to such ~~[pupil]~~ student of the removal and the reasons therefor within twenty-four hours of the ~~[pupil's]~~ student's removal, provided that if such twenty-four hour period does not end on a school day, it shall be extended to the corresponding time on the next school day. The ~~[pupil]~~ student and the parent or person in parental relation shall, upon request, be given an opportunity for an informal conference with the principal to discuss the reasons for the removal. ~~[If the pupil denies the charges, the]~~ The principal shall provide an explanation of the basis for the removal and allow the ~~[pupil]~~ student and/or parent or person in parental relation to the ~~[pupil]~~ student an opportunity to present the ~~[pupil's]~~ student's version of relevant events. Such informal ~~[hearing]~~ conference shall be held within forty-eight hours of the ~~[pupil's]~~ student's removal, provided that if such forty-eight hour period does not end on a school day, it shall be extended to the corresponding time on the second school day next following the ~~[pupil's]~~ student's removal. A parent or person in parental relation to the student may request that the informal conference take place later than forty-eight hours after the student's removal. For purposes of this subdivision, "school day" shall mean a school day as defined pursuant to ~~[clause (v) of subparagraph three of]~~ paragraph ~~[g]~~ e of subdivision ~~[three]~~ six of this section.

~~[c.] d.~~ The principal shall not set aside the discipline imposed by the teacher unless the principal finds that the charges against the ~~[pupil]~~ student are not supported by substantial evidence or that the ~~[pupil's]~~ student's removal is otherwise in violation of law or that the conduct warrants suspension from school pursuant to this section and a suspension will be imposed. The principal's determination made pursuant to this paragraph shall be made by the close of business on the school day next succeeding the end of the forty-eight hour period for an informal ~~[hearing]~~ conference contained in paragraph ~~[b]~~ c of this subdivision.

~~[d.] e.~~ The principal may, in his or her discretion, designate a school district administrator, to carry out the functions required of the principal under this subdivision.

~~[4.] 8.~~ Expense. a. The expense attending the commitment and costs of maintenance of ~~[any school delinquent]~~ a student placed as a result of a finding related to school or educational issues shall be a charge against the city or district where he or she resides, if such city or district employs a superintendent of schools; otherwise it shall be a county charge.

b. The school authorities may institute proceedings before a court having jurisdiction to determine the liability of a parent or person in parental relation to contribute towards the maintenance of a ~~[school delinquent]~~ student under sixteen years of age ordered to attend upon instruction under confinement. If the court shall find the parent or person in parental relation able to contribute towards the maintenance

1 of such a minor, it may issue an order fixing the amount to be paid
2 weekly.

3 ~~[5-]~~ 9. Involuntary transfers of ~~[pupils]~~ students who have not been
4 determined to be a student with a disability or a student presumed to
5 have a disability for discipline purposes.

6 a. The board of education, board of trustees ~~[or sole trustee]~~, other
7 governing body, the chancellor in the case of the city school district
8 of the city of New York, the superintendent of schools, or district
9 superintendent of schools may transfer a ~~[pupil]~~ student who has not
10 been determined to be a student with a disability as defined in section
11 forty-four hundred one of this chapter, or a student presumed to have a
12 disability for discipline purposes as defined in ~~[paragraph g of]~~ subdivi-
13 sion ~~[three]~~ six of this section from regular classroom instruction to
14 an appropriate educational setting in another school upon the written
15 recommendation of the school principal and following independent review
16 thereof. For purposes of this section of the law, "involuntary transfer"
17 does not include a transfer made by a school district as part of a plan
18 to reduce racial imbalance within the schools or as a change in school
19 attendance zones or geographical boundaries.

20 b. A school principal may initiate a non-requested transfer where it
21 is believed that such a ~~[pupil]~~ student would benefit from the transfer
22 ~~[,or]~~ and when the ~~[pupil]~~ student would receive an adequate and appro-
23 priate education in another school program or facility.

24 No recommendation for ~~[pupil]~~ student transfer shall be initiated by
25 the principal until such ~~[pupil]~~ student and a parent or person in
26 parental relation has been sent written notification of the consider-
27 ation of transfer recommendation which shall include a description of
28 the facts and circumstances upon which the transfer is based and copies
29 of all relevant documentary evidence. Such notice shall set a time and
30 place of an informal conference with the principal and shall inform such
31 parent or person in parental relation and such ~~[pupil]~~ student of their
32 right to be accompanied by counsel or an individual of their choice.

33 c. After the conference and if the principal concludes that the
34 ~~[pupil]~~ student would benefit from a transfer ~~[or]~~ and that the ~~[pupil]~~
35 student would receive an adequate and appropriate education in another
36 school program or facility, the principal may issue a recommendation of
37 transfer to the superintendent. Such recommendation shall include a
38 description of behavior and/or academic problems indicative of the need
39 for transfer; a description of alternatives explored and prior action
40 taken to resolve the problem. A copy of that letter shall be sent to the
41 parent or person in parental relation and to the ~~[pupil]~~ student.

42 d. Upon receipt of the principal's recommendation for transfer and a
43 determination to consider that recommendation, the superintendent shall
44 notify the parent or person in parental relation and the ~~[pupil]~~ student
45 of the proposed transfer and of their right to a fair hearing as
46 provided in paragraph c of subdivision ~~[three]~~ two of this section and
47 shall list community agencies and free legal assistance which may be of
48 assistance. The written notice shall include a statement that the
49 ~~[pupil]~~ student or parent or person in parental relation has ten days to
50 request a hearing and that the proposed transfer shall not take effect,
51 except upon written parental consent, until the ten day period has
52 elapsed, or, if a fair hearing is requested, until after a formal deci-
53 sion following the hearing is rendered, whichever is later.

54 Parental consent to a transfer shall not constitute a waiver of the
55 right to a fair hearing.

1 ~~[6-]~~ 10. Transfer of a ~~[pupil]~~ student. Where a suspended ~~[pupil]~~
2 student is to be transferred pursuant to subdivision ~~[five]~~ nine of this
3 section, he or she shall remain on the register of the original school
4 for two school days following transmittal of his or her records to the
5 school to which he or she is to be transferred. The receiving school
6 shall immediately upon receiving those records transmitted by the
7 original school, review them to insure proper placement of the ~~[pupil]~~
8 student. Staff members who are involved in the ~~[pupil's]~~ student's
9 education must be provided with pertinent records and information relat-
10 ing to the background and problems of the ~~[pupil]~~ student before the
11 ~~[pupil]~~ student is placed in a classroom.

12 ~~[7-]~~ 11. Transfer of disciplinary records. Notwithstanding any other
13 provision of law to the contrary, each local educational agency, as such
14 term is defined in subsection thirty of section eighty-one hundred one
15 of the Elementary and Secondary Education Act of 1965, as amended, shall
16 establish procedures in accordance with section eighty-five hundred
17 thirty-seven of the Elementary and Secondary Education Act of 1965, as
18 amended, and the Family Educational Rights and Privacy Act of 1974, to
19 facilitate the transfer of disciplinary records relating to the suspen-
20 sion ~~[or-expulsion]~~ of a student to any public or nonpublic elementary
21 or secondary school in which such student enrolls or seeks, intends or
22 is instructed to enroll, on a full-time or part-time basis unless such
23 record has been expunged pursuant to section twenty-eight hundred one of
24 this chapter.

25 § 3-a. Section 305 of the education law is amended by adding three new
26 subdivisions 57, 59 and 60 to read as follows:

27 57. The commissioner shall provide technical assistance to school
28 districts, boards of cooperative educational services, and charter
29 schools about the development, implementation and evaluation of a school
30 district's or charter school's code of conduct including:

31 (a) one or more model codes of conduct, designed to reduce the use of
32 suspensions, that meet the requirements of sections twenty-eight hundred
33 one and thirty-two hundred fourteen of this chapter;

34 (b) best practices for age-appropriate, graduated and proportionate
35 discipline as set out in section twenty-eight hundred one of this chap-
36 ter;

37 (c) a matrix of student misconduct and the interventions and discipli-
38 nary measures that provide age-appropriate, graduated and proportionate
39 intervention designed to reduce reliance on suspensions and referrals to
40 law enforcement;

41 (d) guidelines for appropriate and school-wide implementation of
42 restorative practices; and

43 (e) forms necessary to implement student notification and due process
44 requirements of section twenty-eight hundred one and thirty-two hundred
45 fourteen of this chapter.

46 59. The commissioner shall, pursuant to an appropriation in the state
47 budget, provide funds to school districts for implementation of a
48 school's code of conduct including mandatory pre-service and in-service
49 training of school personnel about prevention, restorative practices and
50 other interventions and disciplinary measures to respond to student
51 misconduct as required by section twenty-eight hundred one of this chap-
52 ter.

53 60. The commissioner shall be authorized to provide funds for training
54 school personnel included in section twenty-eight hundred one of this
55 chapter only to the extent that the state budget includes an appropri-
56 ation for such training.

§ 4. Subparagraph 1 of paragraph c of subdivision 3 of section 3214 of the education law, as amended by chapter 380 of the laws of 2001, is amended to read as follows:

(1) ~~[No pupil may be suspended for a period in excess of five school days]~~ Long term suspension. The board of education, board of trustees, other governing body, the chancellor of the city school district in the case of the city school district of the city of New York, superintendent of schools or district superintendent of schools where the student attends shall have the power to suspend for a period not to exceed twenty school days any student who engages in behavior that results in serious physical injury to students, staff, or others or any student who is in grades four through twelve, if a determination is made that the student engaged in behavior that violated the code of conduct for which long term suspension may be warranted. Such suspension shall not be imposed unless such ~~[pupil]~~ student and the parent or person in parental relation to such ~~[pupil]~~ student shall have had an opportunity for a fair hearing~~[, upon reasonable]~~. Once a decision has been made to seek a long term suspension, written notice shall be provided to the student and the parent or person in parental relation to the student. Such written notice, ~~[at which such pupil]~~ shall include a description of the facts and circumstances upon which the alleged violations of the code of conduct are based, the section of the code of conduct that the student is charged to have violated, the disciplinary action that may be warranted, the length of a possible suspension, copies of all evidence regarding the alleged incident, and the date, time and place scheduled for the hearing. Such hearing shall be convened within five days of the written notice, unless the parent or person in parental relation or student requests a later date. At the hearing, the student shall have the right of representation by counsel, with the right to request the presence of and question witnesses against such ~~[pupil]~~ student and to request the presence of and present witnesses and other evidence on his or her behalf. Where ~~[a pupil has been suspended in accordance with this subdivision by a superintendent of schools, district superintendent of schools, or community superintendent, the superintendent shall personally hear and determine the proceeding or may, in his discretion, designate a hearing officer to conduct the hearing]~~ the student is a student with a disability or a student presumed to have a disability, the provisions of subdivision six of this section shall also apply. ~~[The hearing officer]~~ The board of education, board of trustees, other governing body, the chancellor of the city school district in the case of the city school district of the city of New York, superintendent of schools or district superintendent shall conduct the hearing and issue a decision, or may designate a hearing officer to do so. The entity or individual that conducts the hearing shall be authorized to administer oaths and to issue subpoenas in conjunction with the proceeding ~~[before him]~~. A record of the hearing shall be maintained, but no stenographic transcript shall be required and ~~[a tape]~~ an audio recording shall be deemed a satisfactory record. The entity or individual conducting the hearing shall consider only the evidence presented at the hearing, determine whether the charge has been established by a preponderance of the evidence and may uphold, reduce or dismiss the proposed charge. The ~~[hearing officer]~~ entity or individual conducting the hearing shall make written findings of fact and ~~[recommendations as to]~~ shall decide the appropriate measure of discipline ~~[to the superintendent. The report of the hearing officer shall be advisory only, and the superintendent may accept all or any part thereof. An appeal will lie from the decision of]~~

~~the superintendent to the board of education who shall make its decision solely upon the record before it. The board may adopt in whole or in part the decision of the superintendent of schools.], if any. The entity or individual conducting the hearing shall issue a written decision to the school and the parent or person in parental relation to the student within three days of the hearing. If the entity or individual conducting the hearing determines that a suspension of six to twenty days is warranted, the written decision shall state the length of the suspension, findings of fact, reasons for the determination, procedures for appeal, and the date by which the appeal shall be filed.~~ Where the basis for the suspension is, in whole or in part, the possession on school grounds or school property by the student of any firearm, rifle, shotgun, dagger, dangerous knife, dirk, razor, stiletto or any of the weapons, instruments or appliances specified in subdivision one of section 265.01 of the penal law, the hearing officer or superintendent shall not be barred from considering the admissibility of such weapon, instrument or appliance as evidence, notwithstanding a determination by a court in a criminal or juvenile delinquency proceeding that the recovery of such weapon, instrument or appliance was the result of an unlawful search or seizure. If suspension is imposed, the school district or charter school shall establish an education plan for the student consistent with the requirements in section twenty-eight hundred one of this chapter, including academic and support services, and a plan for the student's reinstatement to school.

§ 5. Paragraphs d and f of subdivision 3 of section 3214 of the education law, as amended by chapter 181 of the laws of 2000, are amended to read as follows:

~~[d.]~~ 3. a. Consistent with the federal gun-free schools act of nineteen hundred ninety-four, any public school ~~[pupil]~~ student who is determined under ~~[this]~~ two of this section to have brought a weapon to school shall be suspended for a period of not less than one calendar year and any nonpublic school ~~[pupil]~~ student participating in a program operated by a public school district using funds from the elementary and secondary education act of nineteen hundred sixty-five who is determined under ~~[this]~~ two of this section to have brought a weapon to a public school or other premises used by the school district to provide such programs shall be suspended for a period of not less than one calendar year from participation in such program. The procedures of this subdivision shall apply to such a suspension of a nonpublic school ~~[pupil]~~ student. A superintendent of schools, district superintendent of schools or community superintendent shall have the authority to modify this suspension requirement for each student on a case-by-case basis. The determination of a superintendent shall be subject to review by the board of education, board of trustees, other governing body or the chancellor of the city school district in the case of the city school district of the city of New York, pursuant to paragraph c of ~~[this]~~ two of this section and the commissioner pursuant to section three hundred ten of this chapter. Nothing in this subdivision shall be deemed to authorize the suspension of a student with a disability in violation of the individuals with disabilities education act or article eighty-nine of this chapter. A superintendent shall refer the ~~[pupil]~~ student under the age of sixteen who has been determined to have brought a weapon to school in violation of ~~[this]~~ subdivision two of this section to a presentment agency for a juvenile delinquency proceeding consistent with article three of the family court act except a student fourteen or fifteen years of age who qualifies for

1 juvenile offender status under subdivision forty-two of section 1.20 of
2 the criminal procedure law. A superintendent shall refer any ~~[pupil]~~
3 student sixteen years of age or older or a student fourteen or fifteen
4 years of age who qualifies for juvenile offender status under subdivi-
5 sion forty-two of section 1.20 of the criminal procedure law, who has
6 been determined to have brought a weapon to school in violation of
7 ~~[this]~~ subdivision two of this section to the appropriate law enforce-
8 ment officials.

9 b. Nothing in this paragraph shall be deemed to mandate such action by
10 a school district or charter school pursuant to subdivision two of this
11 section where such weapon or firearm is possessed or brought to school
12 with the written authorization of such educational institution in a
13 manner authorized by article two hundred sixty-five of the penal law for
14 activities approved and authorized by the board of trustees, board of
15 education, other governing body or the chancellor of the city school
16 district in the case of the city school district of the city of New York
17 and such governing body adopts appropriate safeguards to ensure student
18 safety.

19 c. As used in this paragraph:

20 (1) "firearm" shall mean a firearm as defined in subsection a of
21 section nine hundred twenty-one of title eighteen of the United States
22 Code; and

23 (2) "weapon" shall be as defined in paragraph 2 of subsection g of
24 section nine hundred thirty of title eighteen of the United States Code.

25 ~~[f.]~~ 5. Definition. Whenever the term "board of education, board of
26 trustees, other governing body, the chancellor of the city school
27 district in the case of the city school district of the city of New
28 York, or superintendent of schools" is used in this ~~[subdivision]~~
29 section, it shall be deemed to include charter schools, community boards
30 of education and community superintendents governing community districts
31 in accordance with the provisions of article fifty-two-A of this chap-
32 ter. ~~[For the purpose of this subdivision, the term "weapon" means a~~
33 ~~firearm as such term is defined in section nine hundred twenty-one of~~
34 ~~title eighteen of the United States code.]~~

35 § 6. Paragraph g of subdivision 3 of section 3214 of the education
36 law, as amended by chapter 181 of the laws of 2000, clause (ii) of
37 subparagraph 3 as amended by chapter 380 of the laws of 2001, is amended
38 to read as follows:

39 ~~[g.]~~ 6. Discipline of students with disabilities and students presumed
40 to have a disability for discipline purposes. ~~(1)~~ a. Notwithstanding
41 any other provision of this ~~[subdivision]~~ section to the contrary, a
42 student with a disability as such term is defined in section forty-four
43 hundred one of this chapter and a student presumed to have a disability
44 for discipline purposes, may be suspended or removed from his or her
45 current educational placement for violation of ~~[school rules only]~~ the
46 code of conduct in accordance with the procedures established in this
47 section, the regulations of the commissioner implementing this ~~[para-~~
48 ~~graph]~~ section, and subsection (k) of section fourteen hundred fifteen
49 of title twenty of the United States code and the federal regulations
50 implementing such statute, as such federal law and regulations are from
51 time to time amended. Nothing in this ~~[paragraph]~~ section shall be
52 construed to confer greater rights on such students than are conferred
53 under applicable federal law and regulations, or to limit the ability of
54 a school district to change the educational placement of a student with
55 a disability in accordance with the procedures in article eighty-nine of
56 this chapter.

1 ~~[(2)]~~ b. As used in this ~~[paragraph]~~ subdivision:

2 (1) a "student presumed to have a disability for discipline purposes"
3 shall mean a student who the school district is deemed to have knowledge
4 was a student with a disability before the behavior that precipitated
5 disciplinary action under the criteria in subsection (k)(8) of section
6 fourteen hundred fifteen of title twenty of the United States code and
7 the federal regulations implementing such statute~~[-]~~; and

8 (2) a "manifestation team" means a representative of the school
9 district, the parent or person in parental relation, and relevant
10 members of the committee on special education, as determined by the
11 parent or person in parental relation and the district.

12 ~~[(3)]~~ c. In applying the federal law consistent with this section:

13 ~~[(i)]~~ (1) in the event of a conflict between the procedures estab-
14 lished in this section and those established in subsection (k) of
15 section fourteen hundred fifteen of title twenty of the United States
16 code and the federal regulations implementing such statute, such federal
17 statute and regulations shall govern.

18 ~~[(ii)]~~ (2) the board of trustees or board of education of any school
19 district, a district superintendent of schools or a building principal
20 shall have authority to order the placement of a student with a disabil-
21 ity into an appropriate interim alternative educational setting, another
22 setting or suspension for a period not to exceed five consecutive school
23 days where such student is suspended pursuant to this subdivision and,
24 except as otherwise provided in ~~[clause (vi)]~~ paragraph f of this
25 ~~[subparagraph]~~ subdivision, the suspension does not result in a change
26 in placement under federal law.

27 ~~[(iii)]~~ (3) the superintendent of schools of a school district, either
28 directly or upon recommendation of a hearing officer designated pursuant
29 to paragraph c of ~~[this]~~ subdivision two of this section, may order the
30 placement of a student with a disability into an interim alternative
31 educational setting, another setting or suspension for up to ten consec-
32 utive school days, inclusive of any period in which the student is
33 placed in an appropriate interim alternative educational placement,
34 another setting or suspension pursuant to clause ~~[(ii)]~~ two of this
35 subparagraph for the behavior, where the superintendent determines in
36 accordance with the procedures set forth in this subdivision that the
37 student has engaged in behavior that violates the code of conduct and
38 warrants a suspension, and, except as otherwise provided in ~~[clause~~
39 ~~(vi)]~~ paragraph f of this ~~[subparagraph]~~ subdivision, the suspension
40 does not result in a change in placement under federal law.

41 ~~[(iv)]~~ d. the superintendent of schools of a school district, either
42 directly or upon recommendation of a hearing officer designated pursuant
43 to paragraph c of ~~[this]~~ subdivision two of this section, may order the
44 change in placement of a student with a disability to an interim alter-
45 native educational setting for up to forty-five days, but not to exceed
46 the period of suspension ordered by a superintendent in accordance with
47 this subdivision, under the circumstances specified in subsection (k)(1)
48 of section fourteen hundred fifteen of title twenty of the United States
49 code and the federal regulations implementing such statute.

50 ~~[(v)]~~ e. the terms "day," "business day," and "school day" shall be as
51 defined in section 300.9 of title thirty-four of the code of federal
52 regulations.

53 ~~[(vi)]~~ f. notwithstanding any other provision of this subdivision to
54 the contrary, upon a determination by the committee on special education
55 that the behavior of a student with a disability was not a manifestation
56 of the student's disability, such student may be disciplined pursuant to

1 this section in the same manner as a nondisabled student, except that
2 such student shall continue to receive services to the extent required
3 under federal law and regulations.

4 ~~[(vii)]~~ g. an impartial hearing officer appointed pursuant to subdivi-
5 sion one of section forty-four hundred four of this chapter may order a
6 change in placement of a student with a disability to an appropriate
7 interim alternative educational setting for not more than forty-five
8 days under the circumstances specified in subsections (k)(2) and (k)(7)
9 of section fourteen hundred fifteen of title twenty of the United States
10 code and the federal regulations implementing such statutes, provided
11 that such procedure may be repeated, as necessary.

12 ~~[(viii)]~~ h. nothing in this section shall be construed to authorize
13 the suspension or removal of a student with a disability from his or her
14 current educational placement ~~[for violation of school rules]~~ following
15 a determination by the committee on special education that the behavior
16 is a manifestation of the student's disability, except as authorized
17 under federal law and regulations.

18 ~~[(ix)]~~ i. the commissioner shall implement this paragraph by adopting
19 regulations which coordinate the procedures required for discipline of
20 students with disabilities, and students presumed to have a disability
21 for discipline purposes, pursuant to subsection (k) of section fourteen
22 hundred fifteen of title twenty of the United States code and the feder-
23 al regulations implementing such statute, with the general procedures
24 for student discipline under this section.

25 § 7. Paragraphs a, b and c of subdivision 3-a of section 3214 of the
26 education law, as added by chapter 181 of the laws of 2000, are amended
27 to read as follows:

28 ~~[a-]~~ b. Such teacher shall inform the ~~[pupil]~~ student, the parent or
29 person in parental relation to the student and the school principal of
30 the reasons for the removal. ~~[If the teacher finds that the pupil's~~
31 ~~continued presence in the classroom does not pose a continuing danger to~~
32 ~~persons or property and does not present an ongoing threat of disruption~~
33 ~~to the academic process, the teacher shall, prior to removing the~~
34 ~~student from the classroom, provide the student with an explanation of~~
35 ~~the basis for the removal and allow the pupil to informally present the~~
36 ~~pupil's version of relevant events. In all other cases, the teacher~~
37 ~~shall provide the pupil with an explanation of the basis for the removal~~
38 ~~and an informal opportunity to be heard within twenty-four hours of the~~
39 ~~pupil's removal.~~

40 ~~b-]~~ c. The principal shall inform the parent or person in parental
41 relation to such ~~[pupil]~~ student of the removal and the reasons therefor
42 within twenty-four hours of the ~~[pupil's]~~ student's removal. The
43 ~~[pupil]~~ student and the parent or person in parental relation shall,
44 upon request, be given an opportunity for an informal conference with
45 the principal to discuss the reasons for the removal. ~~[If the pupil~~
46 ~~denies the charges, the]~~ The principal shall provide an explanation of
47 the basis for the removal and allow the ~~[pupil]~~ student and/or parent or
48 person in parental relation to the ~~[pupil]~~ student an opportunity to
49 present the ~~[pupil's]~~ student's version of relevant events. Such
50 informal ~~[hearing]~~ conference shall be held within forty-eight hours of
51 the ~~[pupil's]~~ student's removal, provided that if such forty-eight hour
52 period does not end on a school day, it shall be extended to the corre-
53 sponding time on the second school day next following the pupil's
54 student's removal. A parent or person in parental relation to the
55 student may request that the informal conference take place later than
56 forty-eight hours after the student's removal. For purposes of this

1 subdivision, "school day" shall mean a school day as defined pursuant to
2 paragraph e of subdivision six of this section.

3 ~~[c]~~ d. The principal shall not set aside the discipline imposed by
4 the teacher unless the principal finds that the charges against the
5 ~~[pupil]~~ student are not supported by substantial evidence or that the
6 ~~[pupil's]~~ student's removal is otherwise in violation of law or that the
7 conduct warrants suspension from school pursuant to this section and a
8 suspension will be imposed. The principal's determination made pursuant
9 to this paragraph shall be made by the close of business on the day
10 succeeding the forty-eight hour period for an informal ~~[hearing]~~ confer-
11 ence contained in paragraph ~~[b]~~ c of this subdivision.

12 § 8. Clause (j) of subparagraph 3 of paragraph b of subdivision 1 of
13 section 4402 of the education law, as added by chapter 311 of the laws
14 of 1999, is amended to read as follows:

15 (j) In accordance with the regulations of the commissioner and
16 subsection (k) of section fourteen hundred fifteen of title twenty of
17 the United States code and the implementing federal regulations, to
18 conduct a review to determine whether behavior of a student with a disa-
19 bility which violates the applicable school rules or code of conduct and
20 results in a change in placement under federal law, including but not
21 limited to placement in an interim alternative educational setting
22 pursuant to ~~[clause (iv) or (vii) of subparagraph three of paragraph g]~~
23 paragraphs d or g of subdivision ~~[three]~~ six of section thirty-two
24 hundred fourteen of this chapter, was a manifestation of the student's
25 disability, provided that other qualified school district personnel may
26 participate in such review.

27 § 9. Paragraph b of subdivision 4 of section 4404 of the education
28 law, as amended by chapter 378 of the laws of 2007, is amended to read
29 as follows:

30 b. For students with disabilities placed in an interim alternative
31 educational setting pursuant to ~~[clause (iv) or (vii) of subparagraph~~
32 ~~three of paragraph g]~~ paragraphs d or g of subdivision ~~[three]~~ six of
33 section thirty-two hundred fourteen of this chapter, during the pendency
34 of proceedings conducted pursuant to this section in which the parents
35 or persons in parental relation challenge the interim alternative educa-
36 tional setting or a manifestation determination, the student shall
37 remain in the interim alternative educational setting pending the deci-
38 sion of the impartial hearing officer or until expiration of the time
39 period of the student's placement in an interim alternative educational
40 setting, whichever comes first, unless the local school district and the
41 parents or persons in parental relation otherwise agree. After the expi-
42 ration of such placement in an interim alternative educational setting,
43 if the school district proposes to change the student's placement,
44 during the pendency of any proceedings to challenge the proposed change
45 in placement, the student shall return to and remain in the current
46 educational placement, which shall be the student's placement prior to
47 the interim alternative educational setting, unless the local school
48 district and the parents or persons in parental relation otherwise agree
49 or unless as a result of a decision by an impartial hearing officer in
50 an expedited hearing, the interim alternative educational setting is
51 extended for a period not to exceed forty-five school days based on a
52 determination that maintaining the current educational placement of the
53 student is substantially likely to result in injury to the student or to
54 others. Such procedure for extension of an interim alternative educa-
55 tional setting may be repeated as necessary.

§ 10. Paragraph b of subdivision 4 of section 4404 of the education law, as amended by chapter 311 of the laws of 1999, is amended to read as follows:

b. For students with disabilities placed in an interim alternative educational setting pursuant to ~~[clause (iv) or (vii) of subparagraph three of paragraph g]~~ paragraphs d or g of subdivision ~~[three]~~ six of section thirty-two hundred fourteen of this chapter, during the pendency of proceedings conducted pursuant to this section in which the parents or persons in parental relationship challenge the interim alternative educational setting or a manifestation determination, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until expiration of the time period of the student's interim alternative placement, whichever comes first, unless the local school district and the parents or persons in parental relationship otherwise agree. After the expiration of such interim alternative educational placement, if the school district proposes to change the student's placement, during the pendency of any proceedings to challenge the proposed change in placement, the student shall return to and remain in the current educational placement, which shall be the student's placement prior to the interim alternative educational setting, unless the local school district and the parents or persons in parental relationship otherwise agree or unless as a result of a decision by an impartial hearing officer in an expedited hearing, the interim alternative educational setting is extended or another appropriate placement is ordered for a period not to exceed forty-five days based on a determination that maintaining the current educational placement of the student is substantially likely to result in injury to the student or to others. Such procedure for extension of an interim alternative educational setting may be repeated as necessary.

§ 11. This act shall take effect immediately; provided, however that: a. the amendments to subdivision 3 of section 2801 of the education law made by section one of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 34 of chapter 91 of the laws of 2002, as amended, when upon such date the provisions of section two of this act shall take effect;

b. the amendments to subparagraph 1 of paragraph c of subdivision 3 of section 3214 of the education law made by section three of this act shall be subject to the expiration and reversion of such subparagraph pursuant to subdivision (a) of section 8 of chapter 430 of the laws of 2006, as amended, when upon such date the provisions of section four of this act shall take effect;

c. the amendments to paragraphs d and f of subdivision 3 of section 3214 of the education law made by section three of this act shall be subject to the expiration and reversion of such paragraphs pursuant to section 4 of chapter 425 of the laws of 2002, as amended, when upon such date the provisions of section five of this act shall take effect;

d. the amendments to paragraph g of subdivision 3 of section 3214 of the education law made by section three of this act shall be subject to the expiration and reversion of such paragraph pursuant to section 22 of chapter 352 of the laws of 2005, as amended, and shall be subject to the expiration and reversion of clause (v) of subparagraph 3 of such paragraph pursuant to subdivision d of section 27 of chapter 378 of the laws of 2007, as amended, when upon such date the provisions of section six of this act shall take effect;

e. the amendments to paragraphs a, b and c of subdivision 3-a of section 3214 of the education law made by section three of this act

1 shall be subject to the expiration and reversion of such paragraphs
2 pursuant to section 12 of chapter 147 of the laws of 2001, as amended,
3 when upon such date the provisions of section seven of this act shall
4 take effect;

5 f. the amendments to subdivision 7 of section 3214 of the education
6 law, made by section three of this act, shall not affect the repeal of
7 such subdivision and shall be deemed repealed therewith;

8 g. the amendments to clause (j) of subparagraph 3 of paragraph b of
9 subdivision 1 of section 4402 of the education law made by section eight
10 of this act shall take effect on the same date as the reversion of
11 clause (j) of subparagraph 3 of paragraph b of subdivision 1 of section
12 4402 of the education law as provided in section 22 of chapter 352 of
13 the laws of 2005, as amended and section 27 of chapter 378 of the laws
14 of 2007, as amended; and

15 h. the amendments to paragraph b of subdivision 4 of section 4404 of
16 the education law made by section nine of this act shall be subject to
17 the expiration and reversion of such paragraph pursuant to section 22 of
18 chapter 352 of the laws of 2005, as amended, and subdivision d of
19 section 27 of chapter 378 of the laws of 2007, as amended, when upon
20 such date the provisions of section ten of this act shall take effect.