

STATE OF NEW YORK

5523

2023-2024 Regular Sessions

IN ASSEMBLY

March 16, 2023

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

AN ACT to amend the education law, in relation to allowing a suspending authority to condition the early return of a student on such student's voluntary participation in counseling or certain classes

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

1 Section 1. Subparagraph 1 of paragraph b of subdivision 3 of section
2 3214 of the education law, as amended by chapter 181 of the laws of
3 2000, is amended to read as follows:
4 (1) The board of education, board of trustees, or sole trustee, super-
5 intendent of schools, district superintendent of schools and the princi-
6 pal of the school where the pupil attends shall have the power to
7 suspend a pupil for a period not to exceed five school days. [~~In the~~
8 ~~case of such a suspension, the~~] The suspending authority may condition a
9 student's early return to school on the pupil's voluntary participation
10 in counseling or specialized classes, including anger management or
11 dispute resolution, where applicable. The suspending authority shall
12 provide the pupil with notice of the charged misconduct. If the pupil
13 denies the misconduct, the suspending authority shall provide an expla-
14 nation of the basis for the suspension. The pupil and the person in
15 parental relation to the pupil shall, on request, be given an opportu-
16 nity for an informal conference with the principal at which the pupil
17 and/or person in parental relation shall be authorized to present the
18 pupil's version of the event and to ask questions of the complaining
19 witnesses. The aforesaid notice and opportunity for an informal confer-
20 ence shall take place prior to suspension of the pupil unless the
21 pupil's presence in the school poses a continuing danger to persons or
22 property or an ongoing threat of disruption to the academic process, in
23 which case the pupil's notice and opportunity for an informal conference

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

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1 shall take place as soon after the suspension as is reasonably practica-
2 ble.

3 § 2. Subparagraph 1 of paragraph c of subdivision 3 of section 3214 of
4 the education law, as amended by chapter 430 of the laws of 2006, is
5 amended to read as follows:

6 (1) No pupil may be suspended for a period in excess of five school
7 days unless such pupil and the person in parental relation to such pupil
8 shall have had an opportunity for a fair hearing, upon reasonable
9 notice, at which such pupil shall have the right of representation by
10 counsel, with the right to question witnesses against such pupil and to
11 present witnesses and other evidence on his or her behalf. Where the
12 pupil is a student with a disability or a student presumed to have a
13 disability, the provisions of paragraph g of this subdivision shall also
14 apply. Where a pupil has been suspended in accordance with this subpara-
15 graph by a superintendent of schools, district superintendent of
16 schools, or community superintendent, the superintendent shall
17 personally hear and determine the proceeding or may, in his or her
18 discretion, designate a hearing officer to conduct the hearing. The
19 hearing officer shall be authorized to administer oaths and to issue
20 subpoenas in conjunction with the proceeding before him or her. A record
21 of the hearing shall be maintained, but no stenographic transcript shall
22 be required and a tape recording shall be deemed a satisfactory record.
23 The hearing officer shall make findings of fact and recommendations as
24 to the appropriate measure of discipline to the superintendent. The
25 report of the hearing officer shall be advisory only, and the super-
26 intendent may accept all or any part thereof. An appeal will lie from
27 the decision of the superintendent to the board of education who shall
28 make its decision solely upon the record before it. The board may adopt
29 in whole or in part the decision of the superintendent of schools. The
30 suspending authority may condition a student's early return to school on
31 the pupil's voluntary participation in counseling or specialized class-
32 es, including anger management or dispute resolution, where applicable.
33 Where the basis for the suspension is, in whole or in part, the
34 possession on school grounds or school property by the student of any
35 firearm, rifle, shotgun, dagger, dangerous knife, dirk, razor, stiletto
36 or any of the weapons, instruments or appliances specified in subdivi-
37 sion one of section 265.01 of the penal law, the hearing officer or
38 superintendent shall not be barred from considering the admissibility of
39 such weapon, instrument or appliance as evidence, notwithstanding a
40 determination by a court in a criminal or juvenile delinquency proceed-
41 ing that the recovery of such weapon, instrument or appliance was the
42 result of an unlawful search or seizure.

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

46 (1) No pupil may be suspended for a period in excess of five school
47 days unless such pupil and the person in parental relation to such pupil
48 shall have had an opportunity for a fair hearing, upon reasonable
49 notice, at which such pupil shall have the right of representation by
50 counsel, with the right to question witnesses against such pupil and to
51 present witnesses and other evidence on his behalf. Where a pupil has
52 been suspended in accordance with this subdivision by a superintendent
53 of schools, district superintendent of schools, or community superinten-
54 dent, the superintendent shall personally hear and determine the
55 proceeding or may, in his discretion, designate a hearing officer to
56 conduct the hearing. The hearing officer shall be authorized to adminis-

1 ter oaths and to issue subpoenas in conjunction with the proceeding
2 before him. A record of the hearing shall be maintained, but no steno-
3 graphic transcript shall be required and a tape recording shall be
4 deemed a satisfactory record. The hearing officer shall make findings of
5 fact and recommendations as to the appropriate measure of discipline to
6 the superintendent. The report of the hearing officer shall be advisory
7 only, and the superintendent may accept all or any part thereof. An
8 appeal will lie from the decision of the superintendent to the board of
9 education who shall make its decision solely upon the record before it.
10 The board may adopt in whole or in part the decision of the superinten-
11 dent of schools. The suspending authority may condition a student's
12 early return to school on the pupil's voluntary participation in coun-
13 seling or specialized classes, including anger management or dispute
14 resolution, where applicable. Where the basis for the suspension is, in
15 whole or in part, the possession on school grounds or school property by
16 the student of any firearm, rifle, shotgun, dagger, dangerous knife,
17 dirk, razor, stiletto or any of the weapons, instruments or appliances
18 specified in subdivision one of section 265.01 of the penal law, the
19 hearing officer or superintendent shall not be barred from considering
20 the admissibility of such weapon, instrument or appliance as evidence,
21 notwithstanding a determination by a court in a criminal or juvenile
22 delinquency proceeding that the recovery of such weapon, instrument or
23 appliance was the result of an unlawful search or seizure.

24 § 4. This act shall take effect immediately, provided that the amend-
25 ments to subparagraph 1 of paragraph c of subdivision 3 of section 3214
26 of the education law made by section two of this act shall be subject to
27 the expiration and reversion of such subparagraph pursuant to subdivi-
28 sion (a) of section 8 of chapter 430 of the laws of 2006, as amended,
29 when upon such date the provisions of section three of this act shall
30 take effect.