

8396

2015-2016 Regular Sessions

I N A S S E M B L Y

October 2, 2015

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 the development of
school codes of conduct and to the treatment of students subject to
certain disciplinary actions

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, 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 1 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 S 2801. Codes of conduct on school property. 1. For purposes of this
10 section, school property [means in or within] SHALL MEAN REAL, PERSONAL
11 OR INTELLECTUAL PROPERTY OWNED, LEASED OR OCCUPIED BY A PUBLIC SCHOOL
12 INCLUDING A CHARTER SCHOOL. SUCH PROPERTY SHALL INCLUDE BUT NOT BE
13 LIMITED TO any building, structure, athletic playing field, playground,
14 parking lot or land contained within the real property boundary line of
15 a public elementary or secondary school; or in or on a school bus, as
16 defined in section one hundred forty-two of the vehicle and traffic law;
17 OR ELECTRONIC FILES AND DATABASES; and a school function shall mean a
18 school-sponsored or school-authorized extra-curricular event or activity
19 regardless of where OR WHEN such event or activity takes place, includ-
20 ing any event or activity that may take place in another state.

21 2. The board of education or the trustees, as defined in section two
22 of this chapter, of every school district within the state, however
23 created, and every board of cooperative educational services and county
24 vocational extension board, shall adopt and amend, as appropriate, a

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

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1 code of conduct [for the maintenance of order on school property,
2 including a school function, which shall govern the conduct of students,
3 teachers and other school personnel as well as visitors] WHICH SHALL
4 GOVERN THE CONDUCT OF STUDENTS, SCHOOL EMPLOYEES AND VISITORS IN ORDER
5 TO PROMOTE A SAFE, RESPECTFUL AND SUPPORTIVE LEARNING AND TEACHING ENVI-
6 RONMENT ON SCHOOL PROPERTY AND AT SCHOOL FUNCTIONS and shall provide for
7 the enforcement thereof. [Such policy may be adopted by the school board
8 or trustees only after at least one public hearing that provides for the
9 participation of school personnel, parents, students and any other
10 interested parties.] Such code of conduct shall APPLY TO ALL STUDENTS,
11 SCHOOL EMPLOYEES, SCHOOL BOARD MEMBERS, INDEPENDENT CONTRACTORS AND
12 VISITORS AND include, at a minimum, PROVISIONS THAT:

13 a. [provisions regarding conduct, dress and language deemed appropri-
14 ate and acceptable on school property, including a school function, and
15 conduct, dress and language deemed unacceptable and inappropriate on
16 school property, including a school function, and provisions regarding
17 acceptable civil and respectful treatment of teachers, school adminis-
18 trators, other school personnel, students and visitors on school proper-
19 ty, including a school function, including the appropriate range of
20 disciplinary measures which may be imposed for violation of such code,
21 and the roles of teachers, administrators, other school personnel, the
22 board of education and parents;

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

25 c. provisions for the removal from the classroom and from school prop-
26 erty, including a school function, of students and other persons who
27 violate the code;

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

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

39 f.] ESTABLISH STANDARDS AND PROCEDURES TO ASSURE SECURITY AND SAFETY
40 OF STUDENTS AND SCHOOL PERSONNEL;

41 B. ESTABLISH A SCHOOL CLIMATE THAT PROMOTES AND SUSTAINS A SAFE,
42 INCLUSIVE, CIVIL AND RESPECTFUL SCHOOL ENVIRONMENT FOR SCHOOL PERSONNEL,
43 STUDENTS AND VISITORS ON SCHOOL PROPERTY AND AT SCHOOL FUNCTIONS THROUGH
44 PREVENTION, INTERVENTION AND DISCIPLINE THAT SUPPORT EDUCATION AND
45 LEARNING, PROMOTES POSITIVE STUDENT BEHAVIORS, HOLDS STUDENTS ACCOUNT-
46 ABLE FOR THEIR BEHAVIOR AND KEEPS STUDENTS IN SCHOOL AND CLASS;

47 C. SET OUT CLEAR EXPECTATIONS FOR STUDENT CONDUCT AT SCHOOL AND SCHOOL
48 FUNCTIONS, USING SPECIFIC AND OBJECTIVE CRITERIA, AND DEFINE VIOLATIONS
49 OF THE CODE OF CONDUCT;

50 D. REQUIRE AGE-APPROPRIATE, GRADUATED AND PROPORTIONATE INTERVENTIONS
51 AND DISCIPLINE THAT RESPOND TO STUDENT MISCONDUCT AND HOLD STUDENTS
52 ACCOUNTABLE FOR THEIR BEHAVIOR THROUGH A PROCESS THAT REQUIRES SCHOOL
53 PERSONNEL TO USE THE INTERVENTION OR RESPONSE THAT INTERFERES THE LEAST
54 WITH A STUDENT'S ABILITY TO ATTEND CLASS AND SCHOOL;

55 E. REQUIRE THE STANDARD USE OF SCHOOL-WIDE AND INDIVIDUAL POSITIVE
56 INTERVENTIONS AND SUPPORTS THAT ASSIST STUDENTS IN DEVELOPING SOCIAL AND

1 EMOTIONAL COMPETENCIES SUCH AS SELF-MANAGEMENT, RESILIENCE, SELF-AWARE-
2 NESS, RESPONSIBLE DECISION-MAKING, AVOIDING CONFLICT, AND REFOCUS ON
3 LEARNING, BEFORE A CHILD MAY BE SUSPENDED;

4 F. ESTABLISH PROCEDURES FOR THE REMOVAL FROM THE CLASSROOM AND FROM
5 SCHOOL PROPERTY, INCLUDING A SCHOOL FUNCTION, OF STUDENTS AND OTHER
6 PERSONS WHO VIOLATE THE CODE;

7 G. ESTABLISH THE RANGE OF INTERVENTIONS FOR STUDENT BEHAVIORS THAT
8 VIOLATE THE CODE OF CONDUCT INCLUDING GRADUATED INTERVENTIONS FOR
9 REPEATED VIOLATIONS OF THE CODE OF CONDUCT; PROVIDED, HOWEVER, THAT
10 REMOVAL OF A STUDENT FROM CLASS OR CLASSES, SCHOOL OR SCHOOL FUNCTIONS
11 FOR A SPECIFIC PERIOD OF TIME SHALL NOT BE USED TO RESPOND TO TARDINESS,
12 UNEXCUSED ABSENCE FROM CLASS OR SCHOOL, LEAVING SCHOOL WITHOUT PERMIS-
13 SION OR INSUBORDINATE BEHAVIOR INCLUDING BUT NOT LIMITED TO THE USE OF
14 INAPPROPRIATE LANGUAGE OR GESTURES, LACK OF IDENTIFICATION UPON REQUEST
15 BY SCHOOL PERSONNEL OR VIOLATION OF A SCHOOL DRESS CODE. SUSPENSION OF
16 STUDENTS IN KINDERGARTEN THROUGH GRADE THREE SHALL BE PROHIBITED, EXCEPT
17 IN SITUATIONS OF SERIOUS PHYSICAL HARM TO STUDENTS, STAFF, OR OTHERS
18 WHILE TAKING INTO ACCOUNT THE TOTALITY OF THE CIRCUMSTANCES. PERMANENT
19 SUSPENSION FROM SCHOOL SHALL BE PROHIBITED AS A RESPONSE TO STUDENT
20 MISCONDUCT;

21 H. ESTABLISH PREVENTION PROGRAMS AND SERVICES THAT INCLUDE
22 SCHOOL-BASED INITIATIVES THAT PROMOTE A SAFE AND SECURE ENVIRONMENT FOR
23 ALL PERSONS IN SCHOOL OR AT SCHOOL FUNCTIONS INCLUDING BUT NOT LIMITED
24 TO: COMPREHENSIVE, SCHOOL-BASED MODELS APPROVED BY THE COMMISSIONER
25 THAT IMPROVE SAFETY OF PERSON AND PROPERTY, PROMOTE LEARNING AND COLLAB-
26 ORATION; INTERDISCIPLINARY ACADEMIC AND SUPPORT SERVICES PROVIDED BY OR
27 AT THE SCHOOL; AND INVOLVEMENT OF ADMINISTRATORS, TEACHERS, PARENTS AND
28 STUDENTS IN IDENTIFYING SPECIFIC PERFORMANCE GOALS AND ASSESSMENT METH-
29 ODS;

30 I. REQUIRE THE CONSIDERATION OF THE USE OF RESTORATIVE PRACTICES SUCH
31 AS CONFLICT RESOLUTION, MEDIATION, PEER COUNSELING, FACILITATED
32 DISCUSSION AND OTHER RESTORATIVE INTERVENTIONS THAT CAN EFFECTIVELY
33 ADDRESS STUDENT MISCONDUCT, HOLD STUDENTS ACCOUNTABLE FOR THEIR BEHAV-
34 IOR, REPAIR HARM TO PERSONS AND PROPERTY CAUSED BY MISCONDUCT AND FOSTER
35 HEALTHY RELATIONSHIPS WITHIN THE SCHOOL COMMUNITY. RESTORATIVE PRACTICES
36 MAY BE USED ONLY WITH THE CONSENT OF ANY PERSON IMMEDIATELY AFFECTED BY
37 A STUDENT'S ALLEGED MISCONDUCT, INCLUDING STAFF, AND, IN THE CASE OF AN
38 INCIDENT WHERE ANOTHER STUDENT HAS BEEN INJURED, THAT STUDENT'S PARENT
39 OR PERSON IN PARENTAL RELATIONSHIP TO THE STUDENT AND THE CONSENT OF THE
40 STUDENT WHO IS ALLEGED TO HAVE BEHAVED INAPPROPRIATELY AND THAT
41 STUDENT'S PARENT;

42 J. COMPLY WITH THE FEDERAL GUN-FREE SCHOOLS ACT;

43 K. ESTABLISH THE CIRCUMSTANCES UNDER AND PROCEDURES BY WHICH A SCHOOL
44 MAY RESPOND IMMEDIATELY TO STUDENT BEHAVIOR THAT: (I) PHYSICALLY INJURES
45 OR POSES AN IMMEDIATE THREAT OF SERIOUS PHYSICAL INJURY TO THE STUDENT
46 OR OTHER PERSON OR PERSONS; OR (II) DAMAGES PROPERTY AND SUCH DAMAGE
47 INJURES OR POSES AN IMMEDIATE THREAT OF SERIOUS PHYSICAL INJURY TO THE
48 STUDENT OR OTHER PERSON OR PERSONS;

49 L. ESTABLISH procedures by which violations OF THE CODE OF CONDUCT are
50 reported TO THE APPROPRIATE SCHOOL PERSONNEL, THE FACTS ARE INVESTI-
51 GATED, determined[, discipline] AND INTERVENTION measures [imposed and
52 discipline measures carried out] DECIDED AND IMPLEMENTED. SUCH
53 PROVISIONS SHALL ENSURE THAT PROCEDURES ESTABLISHED ARE CONSISTENT WITH
54 THIS SECTION, SECTION THIRTY-TWO HUNDRED FOURTEEN OF THIS CHAPTER AND
55 OTHER FEDERAL, STATE AND LOCAL LAWS;

1 [g. provisions ensuring] M. ENSURE such code and [the] ITS enforcement
2 [thereof are in compliance] COMPLY with state and federal laws relating
3 to students with disabilities;

4 [h. provisions setting forth the procedures by which local law
5 enforcement agencies shall be notified of code violations which consti-
6 tute a crime] N. DEFINE THE ROLES AND AREAS OF RESPONSIBILITY OF SCHOOL
7 PERSONNEL, SECURITY SERVICES AND LAW ENFORCEMENT FOR RESPONSE TO STUDENT
8 MISCONDUCT THAT VIOLATES THE DISCIPLINE CODE. A SCHOOL DISTRICT THAT
9 EMPLOYS, CONTRACTS WITH OR OTHERWISE RETAINS PUBLIC LAW ENFORCEMENT OR
10 PUBLIC OR PRIVATE SECURITY INCLUDING SCHOOL RESOURCE OFFICERS FOR DAILY
11 SERVICES AT THE SCHOOL SHALL, BY CONTRACT OR MEMORANDUM OF UNDERSTANDING
12 IN WRITING AND CONSISTENT WITH THE CODE OF CONDUCT AND WITH STAKEHOLDER
13 INPUT, INCLUDING PARENTS, STUDENTS, SCHOOL ADMINISTRATORS, TEACHERS,
14 PROBATION OFFICERS, PROSECUTORS, DEFENSE COUNSEL, COURTS, PARENT AND
15 STUDENT ORGANIZATIONS, AND COMMUNITY MEMBERS, ESTABLISH PROTOCOLS THAT
16 DEFINE THE RELATIONSHIP BETWEEN THE SCHOOL DISTRICT, ITS PERSONNEL,
17 STUDENTS AND VISITORS, AND LAW ENFORCEMENT, AND PUBLIC OR PRIVATE SECU-
18 RITY. SUCH CONTRACT OR MEMORANDUM OF UNDERSTANDING SHALL LIMIT LAW
19 ENFORCEMENT OR SECURITY PERSONNEL INVOLVEMENT WHEN A STUDENT'S BEHAVIOR
20 DOES NOT THREATEN THE SAFETY OF THE SCHOOL, DEFINE WHICH BEHAVIORS
21 SHOULD NOT RESULT IN AN ARREST OR SUMMONS, REQUIRE LAW ENFORCEMENT OR
22 SECURITY PERSONNEL TO RECEIVE TRAINING AS REQUIRED BY PARAGRAPH T OF
23 THIS SECTION, AND CLEARLY DELEGATE THE ROLE OF SCHOOL DISCIPLINE TO THE
24 SCHOOL ADMINISTRATION. SUCH CONTRACT OR MEMORANDUM OF UNDERSTANDING
25 SHALL BE INCORPORATED INTO AND PUBLISHED AS PART OF THE CODE OF CONDUCT;

26 [i. provisions setting] O. SET forth the circumstances under and
27 procedures by which persons in parental relation to [the student]
28 STUDENTS ACCUSED OF AND AFFECTED BY STUDENT BEHAVIOR THAT VIOLATES THE
29 DISCIPLINE CODE shall be notified of code violations;

30 [j. provisions setting] P. SET forth the circumstances under and
31 procedures by which a complaint in criminal court, a juvenile delinquen-
32 cy petition or person in need of supervision petition as defined in
33 articles three and seven of the family court act will be filed;

34 [k.] Q. SET OUT THE circumstances under and procedures by which
35 [referral] STUDENTS WHO ARE SUSPENDED FROM SCHOOL MAY ALSO BE REFERRED
36 TO ACADEMIC SERVICES, SCHOOL-BASED SUPPORT SERVICES OR to appropriate
37 human service agencies [shall be made];

38 [l. a minimum suspension period, for students who repeatedly are
39 substantially disruptive of the educational process or substantially
40 interfere with the teacher's authority over the classroom, provided that
41 the suspending authority may reduce such period on a case by case basis
42 to be consistent with any other state and federal law. For purposes of
43 this section, the definition of "repeatedly are substantially disrupt-
44 tive" shall be determined in accordance with the regulations of the
45 commissioner;

46 m. a minimum suspension period for acts that would qualify the pupil
47 to be defined as a violent pupil pursuant to paragraph a of subdivision
48 two-a of section thirty-two hundred fourteen of this chapter, provided
49 that the suspending authority may reduce such period on a case by case
50 basis to be consistent with any other state and federal law; and

51 n. provisions to comply with article two of this chapter.]

52 R. ENSURE THE CONTINUED EDUCATIONAL PROGRAMMING AND ACTIVITIES FOR
53 STUDENTS REMOVED FROM THE CLASSROOM OR SUSPENDED FROM SCHOOL. STUDENTS
54 WHO HAVE BEEN REMOVED FROM THE CLASSROOM OR SUSPENDED FROM SCHOOL SHALL
55 HAVE THE RIGHT TO CONTINUE THEIR EDUCATION WHEN THEY ARE EXCLUDED FROM

1 THE CLASSROOM REGARDLESS OF THE REASON FOR OR TYPE OF EXCLUSION AS
2 FOLLOWS:

3 (I) WHEN A STUDENT IS REMOVED FROM A CLASSROOM, THE TEACHER, PRINCIPAL
4 OR THE PRINCIPAL'S DESIGNEE SHALL PROVIDE THE STUDENT WITH ALL MISSED
5 CLASSROOM WORK WITHIN TWENTY-FOUR HOURS OF THE REMOVAL AND THE STUDENT
6 SHALL HAVE THE OPPORTUNITY TO EARN ALL ACADEMIC CREDIT INCLUDING THE
7 OPPORTUNITY TO COMPLETE ANY MISSED ASSIGNMENTS AND TAKE ANY MISSED EXAM-
8 INATIONS OR TESTS.

9 (II) WHEN A STUDENT IS SUSPENDED FROM CLASS OR SCHOOL, THE PRINCIPAL
10 OR THE PRINCIPAL'S DESIGNEE, IN CONSULTATION WITH THE STUDENT'S TEACH-
11 ERS, SHALL CREATE FOR THE STUDENT AN EDUCATION PLAN FOR EACH SUBJECT OF
12 CLASS IN WHICH THE STUDENT IS ENROLLED. THE EDUCATION PLAN SHALL MAKE
13 PROVISIONS FOR A STUDENT'S ON-GOING ACADEMIC INSTRUCTION DURING THE
14 SUSPENSION. THE STUDENT SHALL HAVE THE OPPORTUNITY TO EARN ALL ACADEMIC
15 CREDIT INCLUDING THE OPPORTUNITY TO COMPLETE ANY ASSIGNMENTS AND TAKE
16 ANY EXAMINATIONS OR TESTS MISSED DURING THE STUDENT'S SUSPENSION AND IF
17 AN ASSESSMENT OR EXAMINATION CANNOT BE RESCHEDULED, THE STUDENT SHALL BE
18 ALLOWED ON SCHOOL PROPERTY TO TAKE SUCH ASSESSMENT OR EXAMINATION ON THE
19 DAY THAT THE ASSESSMENT OR EXAMINATION IS GIVEN.

20 (III) THE EDUCATION PLAN PURSUANT TO SUBPARAGRAPH (II) OF THIS PARA-
21 GRAPH MAY INCLUDE PLACEMENT OF THE SUSPENDED STUDENT AT AN ALTERNATIVE
22 LEARNING SITE INCLUDING THE STUDENT'S HOME IF SUCH ALTERNATIVE IS AVAIL-
23 ABLE AND APPROPRIATE FOR THE STUDENT'S EDUCATION. THE PRINCIPAL OR THE
24 PRINCIPAL'S DESIGNEE AT THE SCHOOL IN WHICH THE STUDENT IS ENROLLED
25 SHALL CONSULT WITH THE ADMINISTRATOR OF AN ALTERNATIVE SITE OR, IN THE
26 CASE OF THE STUDENT'S HOME, WITH THE TEACHER OVERSEEING HOME INSTRU-
27 CTION, TO MAKE ARRANGEMENTS FOR THE STUDENT'S CONTINUED INSTRUCTION.

28 (IV) SCHOOL DISTRICTS MUST PROVIDE TO STUDENTS WITH DISABILITIES ALL
29 SERVICES AND EDUCATIONAL PROGRAMMING PROTECTIONS SET FORTH IN THIS
30 SECTION AND IN APPLICABLE FEDERAL AND STATE LAWS.

31 (V) SCHOOLS MUST SCHEDULE A CONFERENCE WITHIN FIVE SCHOOL DAYS AFTER A
32 STUDENT'S RETURN TO SCHOOL AFTER ANY SHORT TERM OR LONG TERM SUSPENSION
33 AND PROVIDE NOTICE OF THE CONFERENCE TO THE PARENT AND THE STUDENT. THE
34 FAILURE OF THE PARENT OR STUDENT TO ATTEND SHALL NOT DELAY RE-ENTRY
35 FOLLOWING SUSPENSION, NOR SHALL A PRINCIPAL BE HELD RESPONSIBLE IF HE OR
36 SHE MAKES A GOOD FAITH EFFORT TO MAKE THE PARENT OR STUDENT ATTEND AND
37 IS UNSUCCESSFUL. THE CONFERENCE MUST INCLUDE A DISCUSSION OF THE FOLLOW-
38 ING:

39 (A) A RECORD OF THE STUDENT'S EDUCATIONAL ACTIVITIES WHILE ON SUSPEN-
40 SION THAT CAN BE COUNTED TOWARD CREDIT ACCUMULATION. THIS RECORD SHALL
41 INCLUDE THE STUDENT'S TEST SCORES, GRADES, COMPLETED ASSIGNMENTS, AND
42 TOTAL CREDITS EARNED WHILE SUSPENDED, AND THE STUDENT'S EXISTING ACADEM-
43 IC RECORD CAN BE USED FOR THESE PURPOSES, GIVEN THE RECORD PROVIDES THIS
44 INFORMATION FOR THE PERIOD OF THE SUSPENSION;

45 (B) THE STEPS THE STUDENT AND THE SCHOOL WILL TAKE TO FOLLOW ALL
46 SCHOOL RULES;

47 (C) THE SUPPORTS THE SCHOOL WILL PROVIDE FOR THE STUDENT TO SUCCESS-
48 FULLY RE-ENTER SCHOOL;

49 (D) A DISCUSSION OF WHEN A STUDENT'S PERMANENT RECORD WILL BE
50 EXPUNGED, GIVEN THERE ARE NO FURTHER INCIDENTS; AND

51 (E) ANY OTHER PERTINENT CIRCUMSTANCES;

52 S. REQUIRE THE SCHOOL TO MAINTAIN IN THE STUDENT'S PERMANENT RECORD
53 DOCUMENTATION OF INTERVENTIONS DETERMINED FOR STUDENT MISCONDUCT, THE
54 INTERVENTION OR DISCIPLINE IMPOSED AND REINSTATEMENT. DISCIPLINE THAT
55 WAS PROPOSED BUT WAS NOT IMPLEMENTED, WAS DISMISSED OR WAS OVERTURNED ON
56 APPEAL SHALL NOT APPEAR IN THE STUDENT'S PERMANENT RECORD. WHEN A

1 STUDENT HAS BEEN SUSPENDED AND REINSTATED TO SCHOOL, THE RECORD OF THE
2 SUSPENSION SHALL BE AUTOMATICALLY EXPUNGED AT THE TIME AGREED UPON IN
3 THE CONFERENCE UPON RETURN FROM SUSPENSION. THE STUDENT MAY REQUEST THAT
4 THE SCHOOL EXPUNGE PERMANENTLY THE STUDENT'S RECORD OF DISCIPLINE SOON-
5 ER, AND THE SCHOOL SHALL NOT REFUSE TO EXPUNGE A RECORD EXCEPT UPON A
6 SHOWING OF GOOD CAUSE. RECORDS OF SUSPENSIONS AND REMOVALS SHALL BE
7 MAINTAINED AS NECESSARY FOR PURPOSES OF EVALUATING THE REQUIREMENT FOR A
8 MANIFESTATION DETERMINATION REVIEW, BUT THESE RECORDS SHALL NOT BE PART
9 OF THE STUDENT'S PERMANENT RECORD. STUDENT DISCIPLINARY RECORDS SHALL
10 BE SUBJECT TO ARTICLE TWO OF THIS CHAPTER AND OTHER APPLICABLE FEDERAL
11 AND STATE LAWS; AND

12 T. REQUIRE PRE-SERVICE AND ANNUAL TRAINING REGARDING THE CODE OF
13 CONDUCT AND THE INTERVENTION AND POSITIVE SCHOOL CLIMATE PRACTICES
14 ADOPTED PURSUANT TO THIS SECTION FOR MAINTAINING ORDER, ADDRESSING
15 STUDENT CONDUCT AND MISBEHAVIOR, MINIMIZING THE USE OF SUSPENSION, AND
16 ADDRESSING DISPARITIES IN DISCIPLINE. TRAINING SHALL ALSO ENSURE THAT
17 RELEVANT POLICIES AND PROCEDURES ARE EQUITABLY APPLIED, AND THAT ALTER-
18 NATIVE INTERVENTIONS, SUCH AS RESTORATIVE PRACTICES AND GRADUATED AND
19 PROPORTIONATE DISCIPLINE ARE UTILIZED IN ACCORDANCE WITH THIS SECTION
20 FOR ALL SCHOOL PERSONNEL, STUDENTS AND LAW ENFORCEMENT, PUBLIC OR
21 PRIVATE SECURITY PERSONNEL EMPLOYED, RETAINED OR USED BY THE SCHOOL
22 DISTRICT. A SCHOOL DISTRICT MAY USE TRAINING PROGRAMS INCLUDING IN
23 PERSON AND ON-LINE PROGRAMS APPROVED BY THE COMMISSIONER; PROVIDED,
24 HOWEVER, THAT SUCH TRAINING INCLUDES THE SCHOOL DISTRICT'S OWN CODE OF
25 CONDUCT. AT THE BEGINNING OF EACH SCHOOL YEAR, EACH SCHOOL SHALL
26 DISTRIBUTE AND EXPLAIN ITS CODE OF CONDUCT TO STUDENTS IN ONE OR MORE
27 GENERAL ASSEMBLIES.

28 3. The district code of conduct shall be developed in collaboration
29 with [student, teacher, administrator, and parent organizations, school
30 safety personnel and other school personnel] REPRESENTATIVES FROM ALL
31 SEGMENTS OF THE SCHOOL COMMUNITY INCLUDING STUDENTS, TEACHERS, ADMINIS-
32 TRATORS, PARENTS, SCHOOL SAFETY PERSONNEL, SUPPORT SERVICES PERSONNEL,
33 PARENT AND STUDENT ORGANIZATIONS, AND OTHERS AS IDENTIFIED BY THE SCHOOL
34 DISTRICT and shall be approved by the board of education, or other
35 governing body, or by the chancellor of the city school district in the
36 case of the city school district of the city of New York. In the city
37 school district of the city of New York, each community district educa-
38 tion council shall be authorized to adopt and implement additional poli-
39 cies, which are consistent with AND NO MORE RESTRICTIVE THAN the city
40 district's district-wide code of conduct, to reflect the individual
41 needs of each community school district provided that such additional
42 policies shall require the approval of the chancellor.

43 4. [The board of education, chancellor or other governing body shall
44 provide copies of a summary of the code of conduct to all students at a
45 general assembly held at the beginning of the school year and shall make
46 copies of the code available to persons in parental relation to students
47 at the beginning of each school year, and shall mail a plain language
48 summary of such code to all persons in parental relation to students
49 before the beginning of each school year, and make it available there-
50 after upon request. The board of education, chancellor or other govern-
51 ing body shall take reasonable steps to ensure community awareness of
52 the code provisions.

53 5. a.] THE BOARD OF EDUCATION, BOARD OF DIRECTORS OR OTHER GOVERNING
54 BODY, OR THE CHANCELLOR OF THE CITY SCHOOL DISTRICT IN THE CASE OF THE
55 CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK SHALL HOLD AT LEAST ONE
56 PUBLIC HEARING ABOUT THE PROPOSED CODE OF CONDUCT BEFORE ITS ADOPTION OR

1 AMENDMENT. THE SCHOOL DISTRICT SHALL NOTIFY THE SCHOOL COMMUNITY AND
2 GENERAL PUBLIC ABOUT THE HEARING AT LEAST THIRTY DAYS PRIOR TO THE DATE
3 OF THE HEARING. SUCH NOTICE SHALL INCLUDE THE DATE, TIME AND PLACE OF
4 THE HEARING, THE AGENDA, A COPY OF THE PROPOSED CODE OF CONDUCT AND
5 INFORMATION ABOUT AN OPPORTUNITY, AS DETERMINED BY THE SCHOOL DISTRICT,
6 FOR COMMENT FROM THE SCHOOL COMMUNITY AND THE GENERAL PUBLIC ABOUT THE
7 PROPOSED CODE OF CONDUCT. THE SCHOOL DISTRICT SHALL TAKE NECESSARY STEPS
8 TO NOTIFY FAMILIES WHO DO NOT SPEAK ENGLISH AND WHOSE CHILDREN ATTEND
9 SCHOOLS IN THE DISTRICT.

10 5. UPON ADOPTION OR AMENDMENT OF THE CODE OF CONDUCT, THE SCHOOL
11 DISTRICT SHALL: (I) FILE A COPY OF ITS CODE OF CONDUCT AND ANY AMEND-
12 MENTS TO SUCH CODE WITH THE COMMISSIONER NO LATER THAN THIRTY DAYS AFTER
13 THEIR ADOPTION; (II) TRANSLATE THE CODE OF CONDUCT INTO THOSE LANGUAGES
14 SPOKEN BY THREE PERCENT OR MORE OF THE FAMILIES WHOSE CHILDREN ATTEND
15 SCHOOLS IN THE SCHOOL DISTRICT; (III) AT THE BEGINNING OF EACH SCHOOL
16 YEAR, POST THE CODE OF CONDUCT ON THE SCHOOL DISTRICT AND SCHOOL WEB
17 SITES, IF ANY AND MAIL A COPY OF THE CODE TO PERSONS IN PARENTAL
18 RELATIONSHIP TO STUDENTS IN THE DISTRICT'S SCHOOLS; AND (IV) DISTRIBUTE
19 THE CODE TO ALL STUDENTS IN SCHOOL AT ONE OR MORE GENERAL ASSEMBLIES
20 DEDICATED TO THE PROVISIONS OF THE CODE OF CONDUCT. THE SCHOOL DISTRICT
21 SHALL ALSO MAKE THE CODE OF CONDUCT AVAILABLE UPON REQUEST.

22 6. The board of education, chancellor or other governing body shall
23 annually review and update the district's codes of conduct if necessary,
24 taking into consideration the effectiveness of code provisions and the
25 fairness and consistency of its administration. Each school district is
26 authorized to establish a committee and to facilitate the review of the
27 code of conduct and the district's response to code of conduct
28 violations. Any such committee shall be comprised of similar individuals
29 described in subdivision three of this section. [The school board, chan-
30 cellor, or other governing body shall reapprove any such updated code
31 only after at least one public hearing that provides for the partic-
32 ipation of school personnel, parents, students and any other interested
33 parties.

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

37 7. THE DEPARTMENT SHALL COLLECT AND SCHOOL DISTRICTS SHALL REPORT TO
38 THE DEPARTMENT DATA ABOUT THE IMPLEMENTATION OF STUDENT CODES OF CONDUCT
39 AS REQUIRED BY FEDERAL LAW. ON OR BEFORE NOVEMBER FIRST OF EACH YEAR,
40 THE DEPARTMENT SHALL MAKE AVAILABLE TO THE PUBLIC BY SCHOOL DISTRICT THE
41 DATA REGARDING STUDENT DISCIPLINE FROM THE PRECEDING YEAR. ON OR BEFORE
42 DECEMBER FIRST OF EACH YEAR THE DEPARTMENT SHALL SUBMIT TO THE GOVERNOR,
43 THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY AND
44 THE CHAIRS OF THE ASSEMBLY AND SENATE EDUCATION COMMITTEES A REPORT THAT
45 SUMMARIZES AND ANALYZES THE DATA COLLECTED ABOUT STUDENT DISCIPLINE
46 INCLUDING A REVIEW AND EVALUATION OF SCHOOL APPLICATION OF CODES OF
47 CONDUCT FOR FAIR AND CONSISTENT APPLICATION AND OTHER ACCOUNTABILITY
48 CRITERIA AS DETERMINED BY THE DEPARTMENT AND MAKE RECOMMENDATIONS ABOUT
49 POLICY AND PRACTICES FOR SCHOOL CODES OF CONDUCT AND THE DEPARTMENT'S
50 TECHNICAL ASSISTANCE ABOUT STUDENT DISCIPLINE.

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

53 3. The district code of conduct shall be developed in collaboration
54 with [student, teacher, administrator, and parent organizations, school
55 safety personnel and other school personnel] REPRESENTATIVES FROM ALL
56 SEGMENTS OF THE SCHOOL COMMUNITY INCLUDING STUDENTS, TEACHERS, ADMINIS-

1 TRATORS, PARENTS, SCHOOL SAFETY PERSONNEL, SUPPORT SERVICES PERSONNEL,
2 PARENT AND STUDENT ORGANIZATIONS, AND OTHERS AS IDENTIFIED BY THE SCHOOL
3 DISTRICT and shall be approved by the board of education, or other
4 governing body, or by the chancellor of the city school district in the
5 case of the city school district of the city of New York. In the city
6 school district of the city of New York, each community school district
7 board shall be authorized to adopt and implement additional policies,
8 which are consistent with the city district's district-wide code of
9 conduct, to reflect the individual needs of each community school
10 district provided that such additional policies shall require the
11 approval of the chancellor.

12 S 3. Section 3214 of the education law, as amended by chapter 181 of
13 the laws of 2000, subparagraph 1 of paragraph c of subdivision 3 as
14 amended by chapter 430 of the laws of 2006, paragraphs d and f of subdivi-
15 sion 3 as amended by chapter 425 of the laws of 2002, paragraph e of
16 subdivision 3 as amended by chapter 170 of the laws of 2006, paragraph g
17 of subdivision 3 as amended by chapter 352 of the laws of 2005, clause
18 (v) of subparagraph 3 of paragraph g of subdivision 3 as amended by
19 chapter 378 of the laws of 2007, paragraphs a, b and c of subdivision
20 3-a as amended by chapter 147 of the laws of 2001, and subdivision 7 as
21 added by chapter 101 of the laws of 2003, is amended to read as follows:

22 S 3214. Student INTERVENTIONS, placement, suspensions and transfers.
23 1. [School delinquent. A minor under seventeen years of age, required by
24 any of the provisions of part one of this article to attend upon
25 instruction, who is an habitual truant from such instruction or is
26 irregular in such attendance or insubordinate or disorderly or disruptive
27 or violent during such attendance, is a school delinquent.

28 2.] Special day schools. The school authorities of any city or school
29 district may establish schools or set apart rooms in public school
30 buildings for the instruction of [school delinquents] STUDENTS DISCIPLINED IN VIOLATION OF THE CODE OF CONDUCT, and fix the number of days
31 per week and the hours per day of required attendance, which shall not
32 be less than is required of minors attending the full time day schools.

34 [2-a. a. Violent pupil. For the purposes of this section, a violent
35 pupil is an elementary or secondary student under twenty-one years of
36 age who:

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

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

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

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

47 (5) threatens, while on school district property, to use any instru-
48 ment that appears capable of causing physical injury or death;

49 (6) knowingly and intentionally damages or destroys the personal prop-
50 erty of a teacher, administrator, other school district employee or any
51 person lawfully upon school district property; or

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

54 b. Disruptive pupil. For the purposes of this section, a disruptive
55 pupil is an elementary or secondary student under twenty-one years of
56 age who is substantially disruptive of the educational process or

substantially interferes with the teacher's authority over the classroom.

3.] 2. DETERMINATION OF STUDENT MISCONDUCT. DECISIONS ABOUT APPROPRIATE DISCIPLINE AND INTERVENTIONS IN RESPONSE TO STUDENT BEHAVIOR THAT VIOLATES A SCHOOL'S CODE OF CONDUCT SHALL BE BASED ON THE LIKELIHOOD THAT A LESSER INTERVENTION WOULD ADEQUATELY ADDRESS THE STUDENT'S MISCONDUCT, REDRESS ANY HARM OR DAMAGE, AND PREVENT FUTURE BEHAVIOR THAT VIOLATES THE CODE OF CONDUCT. FURTHERMORE, DISCIPLINARY RESPONSES SHALL BE BASED ON THE FACTS OF EACH CASE AS DETERMINED INCLUDING, BUT NOT LIMITED TO:

A. THE NATURE OF THE STUDENT'S ALLEGED MISCONDUCT;

B. THE 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; AND THREAT TO THE SAFETY AND WELFARE OF THE SCHOOL COMMUNITY;

C. THE ABILITY OF THE STUDENT TO UNDERSTAND AND PARTICIPATE IN THE STUDENT'S DISCIPLINARY PROCESS INCLUDING, BUT NOT LIMITED TO, CONSIDERATION OF THE STUDENT'S AGE, ABILITY TO SPEAK ENGLISH, PHYSICAL HEALTH, MENTAL HEALTH, DISABILITIES AND PROVISIONS OF AN INDIVIDUAL EDUCATION PROGRAM;

D. THE STUDENT'S WILLINGNESS TO RESOLVE THE CONFLICT AND REPAIR THE HARM OR DAMAGE;

E. THE STUDENT'S RECORD OF BEHAVIOR AND DISCIPLINE; AND

F. SUCH OTHER FACTORS AS DETERMINED BY SCHOOL PERSONNEL AND THE STUDENT TO BE RELEVANT INCLUDING A REVIEW OF THE STUDENT'S ACADEMIC PLACEMENT AND PROGRAM FOR ITS RELATIONSHIP, IF ANY, TO THE STUDENT'S BEHAVIOR AND ALLEGED VIOLATION OF THE CODE OF CONDUCT.

3. UNLESS PROHIBITED BY LAW, RESTORATIVE PRACTICES SUCH AS CONFLICT RESOLUTION, MEDIATION, PEER COUNSELING, FACILITATED DISCUSSION AND OTHER RESTORATIVE INTERVENTIONS THAT CAN EFFECTIVELY ADDRESS STUDENT MISCONDUCT, HOLD STUDENTS ACCOUNTABLE FOR THEIR BEHAVIOR, REPAIR HARM TO PERSONS AND PROPERTY CAUSED BY MISCONDUCT AND FOSTER HEALTHY RELATIONSHIPS WITHIN THE SCHOOL COMMUNITY, MAY BE USED AT THE DISCRETION OF THE SCHOOL TO RESPOND TO STUDENT MISCONDUCT PURSUANT TO THE CODE OF CONDUCT.

A. RESTORATIVE PRACTICES THAT REQUIRE THE PARTICIPATION OF A PERSON OR PERSONS AFFECTED BY A STUDENT'S ALLEGED MISCONDUCT MAY BE USED ONLY WITH THE CONSENT OF SUCH PERSON OR PERSONS. IN THE CASE OF AN INCIDENT WHERE ANOTHER STUDENT HAS BEEN INJURED, RESTORATIVE PRACTICES THAT REQUIRE THE PARTICIPATION OF A PERSON OR PERSONS INJURED BY A STUDENT'S ALLEGED MISCONDUCT MAY BE USED ONLY WITH THE CONSENT OF SUCH STUDENT'S PARENT OR PERSON IN PARENTAL RELATIONSHIP TO THE STUDENT AND THE CONSENT OF THE STUDENT WHO IS ALLEGED TO HAVE BEHAVED INAPPROPRIATELY AND SUCH STUDENT'S PARENT.

B. THE COMMISSIONER SHALL ISSUE RULES AND REGULATIONS AND IDENTIFY BEST PRACTICES ABOUT THE PROCESS AND PROCEDURES FOR THE USE OF RESTORATIVE PRACTICES IN RESPONSE TO STUDENT BEHAVIOR THAT ALLEGEDLY VIOLATES THE CODE OF CONDUCT.

4. Suspension of a pupil FOR A PERIOD NOT TO EXCEED FIVE SCHOOL DAYS. [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 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.

1 b. (1)] The board of education, board of trustees, or sole trustee,
2 superintendent of schools, district superintendent of schools and the
3 principal of the school where the pupil attends shall have the [power]
4 AUTHORITY to suspend a pupil for a period not to exceed five school days
5 IF A PUPIL ENGAGES IN BEHAVIOR THAT VIOLATES THE CODE OF CONDUCT FOR
6 WHICH SUCH SUSPENSION MAY BE WARRANTED AND NO ALTERNATIVE INTERVENTION
7 IS APPROPRIATE TO ADDRESS THE ALLEGED MISCONDUCT. In the case of such a
8 suspension, the suspending authority shall [provide the pupil with
9 notice of the charged misconduct. If the pupil denies the misconduct,
10 the suspending authority shall provide an explanation of the basis for
11 the suspension. The pupil and the person in parental relation to the
12 pupil shall, on request, be given an opportunity for an informal confer-
13 ence with the principal at which the pupil and/or person in parental
14 relation shall be authorized to present the pupil's version of the event
15 and to ask questions of the complaining witnesses. The aforesaid notice
16 and opportunity for an informal conference shall take place prior to
17 suspension of the pupil unless the pupil's presence in the school poses
18 a continuing danger to persons or property or an ongoing threat of
19 disruption to the academic process, in which case the pupil's notice and
20 opportunity for an informal conference shall take place as soon after
21 the suspension as is reasonably practicable.]INTERVIEW ANY ALLEGED
22 VICTIM AND THE WITNESSES TO THE INCIDENT AND OBTAIN THEIR SIGNED, WRIT-
23 TEN STATEMENTS; IDENTIFY AND REVIEW DOCUMENTARY, PHOTOGRAPHIC, VIDEO AND
24 OTHER EVIDENCE, AND MAKE A DETERMINATION WHETHER THE STUDENT VIOLATED
25 THE CODE OF CONDUCT AND, IF SO, POSSIBLE DISCIPLINE INCLUDING SUSPENSION
26 OF FIVE OR FEWER SCHOOL DAYS IS WARRANTED. THE PRINCIPAL OR THE PRINCI-
27 PAL'S DESIGNEE SHALL TAKE INTO ACCOUNT ALL OF THE FACTORS LISTED IN
28 SUBDIVISION TWO OF THIS SECTION. THE SUSPENDING AUTHORITY SHALL ALSO:

29 A. INFORM THE PUPIL ACCUSED OF MISCONDUCT AND A PERSON IN PARENTAL
30 RELATIONSHIP TO THE PUPIL IN WRITING ABOUT THE DETERMINATION TO SEEK A
31 SUSPENSION ON THE SAME DAY AS SUCH DETERMINATION, DESCRIBE THE MISCON-
32 DUCT OF WHICH THE STUDENT IS ACCUSED, AND PROVIDE AN EXPLANATION OF THE
33 EVIDENCE;

34 B. PROVIDE THE PUPIL AND THE PERSON IN PARENTAL RELATION TO THE PUPIL
35 AN OPPORTUNITY FOR AN INFORMAL CONFERENCE WITH THE PRINCIPAL AT WHICH
36 THE PUPIL OR PERSON IN PARENTAL RELATIONSHIP SHALL BE AUTHORIZED TO
37 PRESENT THE PUPIL'S VERSION OF THE EVENT. THE AFORESAID NOTICE AND
38 OPPORTUNITY FOR AN INFORMAL CONFERENCE SHALL TAKE PLACE PRIOR TO THE
39 SUSPENSION OF THE PUPIL. THE STUDENT SHALL BE ALLOWED TO ATTEND CLASSES
40 AND OTHERWISE REMAIN IN SCHOOL, PENDING THE OUTCOME OF THE INFORMAL
41 CONFERENCE WITH THE PRINCIPAL, UNLESS PARAGRAPH G OF THIS SUBDIVISION
42 APPLIES. THE SUSPENDING AUTHORITY SHALL TAKE REASONABLE STEPS TO
43 PROVIDE THE WRITTEN NOTICE DESCRIBED IN PARAGRAPH A OF THIS SUBDIVISION
44 IN THE FIRST LANGUAGE OF A PARENT OR PERSON IN PARENTAL RELATION WHO
45 DOES NOT READ OR SPEAK ENGLISH. THE WRITTEN NOTICE SHALL INCLUDE:

46 (1) A DESCRIPTION OF THE CIRCUMSTANCES UPON WHICH ALLEGATIONS OF
47 MISCONDUCT ARE BASED, INCLUDING THE DATE, TIME AND LOCATION OF THE
48 ALLEGED INCIDENT, THE SECTION OF THE CODE OF CONDUCT THAT THE PUPIL
49 ALLEGEDLY VIOLATED AND DISCIPLINARY ACTION THAT MAY BE WARRANTED,
50 INCLUDING THE LENGTH OF A POSSIBLE SUSPENSION;

51 (2) THE DATE, TIME AND PLACE FOR THE INFORMAL CONFERENCE;

52 (3) A STATEMENT INCLUDING THE POSITIVE INTERVENTIONS AND PRACTICE
53 USED, OR IF NONE WERE USED, WHY THEY WERE NOT, AND EXPLAINING WHY THE
54 USE OF EXCLUSIONARY DISCIPLINE MAY BE JUSTIFIED;

55 (4) A COPY OF ALL DOCUMENTARY EVIDENCE RELATED TO THE INCIDENT OF
56 BEHAVIOR THAT ALLEGEDLY VIOLATES THE CODE OF CONDUCT INCLUDING, BUT NOT

1 LIMITED TO, INCIDENT REPORTS AND AUDIO OR VIDEO RECORDINGS THAT THE
2 SCHOOL POSSESSES REGARDING THE INCIDENT AND A LIST OF WITNESSES AND
3 THEIR STATEMENTS. IF ANY OF THE DOCUMENTARY EVIDENCE REQUIRED BY THIS
4 SUBPARAGRAPH IS NOT AVAILABLE AT THE TIME THE NOTICE IS PROVIDED, THE
5 NOTICE MUST INCLUDE A LIST OF THE MISSING DOCUMENTARY EVIDENCE. ANY
6 MISSING DOCUMENTARY EVIDENCE MUST BE PROVIDED NO LATER THAN TWENTY-FOUR
7 HOURS BEFORE THE CONFERENCE;

8 (5) A STATEMENT OF PUPIL AND PARENT RIGHTS PURSUANT TO THE CODE OF
9 CONDUCT INCLUDING THE RIGHT TO CALL AND QUESTION WITNESSES, THE RIGHT TO
10 LEGAL REPRESENTATION OR AN ADVOCATE, THE RIGHT TO INTERPRETATION AT THE
11 CONFERENCE BY A QUALIFIED INTERPRETER AND THE RIGHT TO APPEAL ANY
12 SUSPENSION IMPOSED TO THE SUPERINTENDENT, THE SCHOOL BOARD OR THE
13 COMMISSIONER AND THE PROCEDURES FOR SUCH AN APPEAL;

14 (6) A STATEMENT THAT ONCE THE LENGTH OF TIME OF THE STUDENT'S SUSPEN-
15 SION CONCLUDES, THE STUDENT IS AUTOMATICALLY REINSTATED TO SCHOOL;

16 (7) THE NOTICE SHALL ALSO STATE TO THE PERSON IN PARENTAL RELATIONSHIP
17 TO THE PUPIL THAT IF THE CHILD HAS BEEN ARRESTED OR IF A CRIMINAL INVES-
18 TIGATION IS PENDING, A PUPIL MAY CHOOSE NOT TO MAKE A WRITTEN OR ORAL
19 STATEMENT CONCERNING THE INCIDENT, AND ANY STATEMENT MADE BY THE PUPIL,
20 WRITTEN OR ORAL, MIGHT BE USED AGAINST THE PUPIL IN A CRIMINAL, IMMI-
21 GRATION, OR JUVENILE DELINQUENCY INVESTIGATION AND/OR PROCEEDING, AND/OR
22 IN A COURT OF LAW.

23 C. AT THE INFORMAL CONFERENCE, THE PUPIL AND PERSON IN PARENTAL
24 RELATION TO THE PUPIL SHALL HAVE THE RIGHT TO REQUEST THE PRESENCE OF
25 WITNESSES, INCLUDING WITNESSES WHO ARE STUDENTS, SCHOOL EMPLOYEES, OR
26 SAFETY OR LAW ENFORCEMENT PERSONNEL ON CAMPUS. THE SCHOOL SHALL TAKE ALL
27 REASONABLE STEPS TO ENSURE THE PRESENCE OF SUCH WITNESSES, WITH THE
28 UNDERSTANDING THAT THE PRINCIPAL CANNOT CONTROL THE ACTIONS OF THOSE
29 OUTSIDE HIS OR HER SCHOOL COMMUNITY.

30 D. AT THE INFORMAL CONFERENCE PARTICIPANTS SHALL ASSESS THE FACTS OF
31 THE INCIDENT OF ALLEGED MISCONDUCT, DETERMINE WHETHER THE STUDENT
32 VIOLATED THE CODE OF CONDUCT AND, IF SO, WHETHER SUSPENSION IS
33 WARRANTED, ESTABLISH AN EDUCATION PLAN FOR THE PUPIL, INCLUDING ACADEMIC
34 AND SUPPORT SERVICES, AND A PLAN FOR THE PUPIL'S REINSTATEMENT TO
35 SCHOOL.

36 E. THE SUSPENDING AUTHORITY SHALL ISSUE A WRITTEN DECISION ABOUT ANY
37 DISCIPLINARY ACTION WITHIN TWO DAYS OF THE CONFERENCE. IF THE PRINCIPAL
38 DETERMINES THAT A SUSPENSION OF FIVE SCHOOL DAYS OR LESS IS WARRANTED,
39 THE WRITTEN DECISION SHALL STATE THE LENGTH OF THE SUSPENSION, FINDINGS
40 OF FACT, REASONS FOR THE DETERMINATION, THE PROCEDURES FOR AN APPEAL AND
41 THE DATE BY WHICH AN APPEAL MUST BE FILED. THE WRITTEN DECISION SHALL
42 BE PROVIDED TO THE PERSON IN PARENTAL RELATION TO THE PUPIL.

43 F. A PUPIL SUSPENDED FOR INAPPROPRIATE BEHAVIOR AND PERSON IN PARENTAL
44 RELATIONSHIP MAY APPEAL A SUSPENSION OF FIVE DAYS OR LESS TO THE SCHOOL
45 DISTRICT SUPERINTENDENT. IF THE SUPERINTENDENT PARTICIPATED IN THE DECI-
46 SION TO SUSPEND THE PUPIL, THE PUPIL OR PERSON IN PARENTAL RELATIONSHIP
47 TO THE PUPIL MAY APPEAL TO THE SCHOOL BOARD, BOARD OF TRUSTEES, OR IN
48 THE CITY OF NEW YORK, TO THE CHANCELLOR. AN APPEAL OF A SUSPENSION OF
49 FIVE OR FEWER DAYS MUST BE DECIDED WITHIN TEN DAYS OF RECEIVING THE
50 APPEAL. THE PERSON DECIDING THE APPEAL MAY UPHOLD OR REVERSE THE SUSPEN-
51 SION BUT CANNOT IMPOSE A LONGER SUSPENSION OR ADDITIONAL DISCIPLINARY
52 TERMS OR CONDITIONS. THE PERSON DECIDING THE APPEAL MUST REVERSE AND
53 EXPUNGE THE SUSPENSION IF: (1) THE SUSPENSION WAS IMPOSED FOR BEHAVIOR
54 FOR WHICH SUSPENSION IS PROHIBITED BY LAW OR NOT AUTHORIZED BY THE
55 SCHOOL'S CODE OF CONDUCT; (2) THE SCHOOL DID NOT PRESENT SUFFICIENT
56 EVIDENCE TO ESTABLISH THAT THE STUDENT VIOLATED THE CODE OF CONDUCT AND

1 THAT A SUSPENSION WAS WARRANTED FOR THAT VIOLATION; (3) THE SCHOOL
2 FAILED TO SHOW THAT A LESSER EXCLUSIONARY INTERVENTION COULD NOT ADDRESS
3 THE STUDENT MISCONDUCT; (4) THE SCHOOL DID NOT FOLLOW DUE PROCESS PROCE-
4 DURES; OR (5) THE FACTS AND CONSIDERATIONS REQUIRED BY THE SCHOOL'S CODE
5 OF CONDUCT DO NOT SUPPORT THE DECISION TO SUSPEND THE PUPIL. THE SUPER-
6 INTENDENT OR SCHOOL BOARD MAY REVERSE AND EXPUNGE THE SUSPENSION IF THE
7 SCHOOL DID NOT IMPOSE GRADUATED AND PROPORTIONATE DISCIPLINE OR THE
8 SUSPENSION WAS NOT APPROPRIATE GIVEN THE FACTS AS PRESENTED AT THE
9 CONFERENCE.

10 G. A PUPIL WHOSE MISCONDUCT PHYSICALLY INJURES OR POSES AN IMMEDIATE
11 THREAT OF SERIOUS PHYSICAL INJURY TO THE PUPIL OR OTHER PERSON OR
12 PERSONS OR WHO DAMAGES PROPERTY AND SUCH DAMAGE INJURES OR POSES AN
13 IMMEDIATE THREAT OF SERIOUS PHYSICAL INJURY TO THE PUPIL OR OTHER PERSON
14 OR PERSONS, THE PUPIL MAY BE REMOVED IMMEDIATELY AND THE INFORMAL
15 CONFERENCE SHALL FOLLOW AS SOON AFTER THE PUPIL'S REMOVAL AS PRACTICA-
16 BLE, BUT IN NO CASE MORE THAN FORTY-EIGHT HOURS AFTER SUCH REMOVAL. IF
17 IMMEDIATE REMOVAL FROM SCHOOL IS NECESSARY, THE SCHOOL SHALL IMMEDIATELY
18 NOTIFY A PERSON IN PARENTAL RELATIONSHIP TO THE PUPIL TO DETERMINE HOW
19 TO TRANSFER THE PUPIL TO THE PERSON IN PARENTAL RELATIONSHIP TO THE
20 PUPIL.

21 [(2) A teacher shall immediately report and refer a violent pupil to
22 the principal or superintendent for a violation of the code of conduct
23 and a minimum suspension period pursuant to section twenty-eight hundred
24 one of this chapter.

25 c. (1) No pupil may be suspended for a period in excess of five school
26 days unless such pupil and the person in parental relation to such pupil
27 shall have had an opportunity for a fair hearing, upon reasonable
28 notice, at which such pupil shall have the right of representation by
29 counsel, with the right to question witnesses against such pupil and to
30 present witnesses and other evidence on his or her behalf. Where the
31 pupil is a student with a disability or a student presumed to have a
32 disability, the provisions of paragraph g of this subdivision shall also
33 apply. Where a pupil has been suspended in accordance with this subpara-
34 graph by a superintendent of schools, district superintendent of
35 schools, or community superintendent, the superintendent shall
36 personally hear and determine the proceeding or may, in his or her
37 discretion, designate a hearing officer to conduct the hearing. The
38 hearing officer shall be authorized to administer oaths and to issue
39 subpoenas in conjunction with the proceeding before him or her. A record
40 of the hearing shall be maintained, but no stenographic transcript shall
41 be required and a tape recording shall be deemed a satisfactory record.
42 The hearing officer shall make findings of fact and recommendations as
43 to the appropriate measure of discipline to the superintendent. The
44 report of the hearing officer shall be advisory only, and the super-
45 intendent may accept all or any part thereof. An appeal will lie from
46 the decision of the superintendent to the board of education who shall
47 make its decision solely upon the record before it. The board may adopt
48 in whole or in part the decision of the superintendent of schools.
49 Where the basis for the suspension is, in whole or in part, the
50 possession on school grounds or school property by the student of any
51 firearm, rifle, shotgun, dagger, dangerous knife, dirk, razor, stiletto
52 or any of the weapons, instruments or appliances specified in subdivi-
53 sion one of section 265.01 of the penal law, the hearing officer or
54 superintendent shall not be barred from considering the admissibility of
55 such weapon, instrument or appliance as evidence, notwithstanding a
56 determination by a court in a criminal or juvenile delinquency proceed-

ing that the recovery of such weapon, instrument or appliance was the result of an unlawful search or seizure.

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

5. SUSPENSION OF A PUPIL FOR SIX TO TWENTY DAYS. THE BOARD OF EDUCATION, BOARD OF TRUSTEES, OR SOLE TRUSTEE, SUPERINTENDENT OF SCHOOLS, DISTRICT SUPERINTENDENT OF SCHOOLS AND THE PRINCIPAL OF THE SCHOOL WHERE THE PUPIL ATTENDS SHALL HAVE THE AUTHORITY TO SUSPEND A PUPIL FOR A PERIOD OF BETWEEN SIX TO TWENTY DAYS IF A PUPIL VIOLATES THE CODE OF CONDUCT FOR WHICH SUCH SUSPENSION MAY BE WARRANTED, NO RESTORATIVE PRACTICE IS ADEQUATE TO ADDRESS THE MISCONDUCT, AND A SUSPENSION OF FEWER THAN SIX DAYS CANNOT ADDRESS THE MISCONDUCT. THE SUSPENDING AUTHORITY SHALL TAKE THE FOLLOWING STEPS BEFORE DETERMINING THAT A SUSPENSION FOR A PERIOD OF BETWEEN SIX TO TWENTY DAYS IS PROPOSED:

A. INTERVIEW ANY ALLEGED VICTIM AND WITNESSES TO THE INCIDENT AND OBTAIN THEIR SIGNED, WRITTEN STATEMENTS; IDENTIFY AND REVIEW DOCUMENTARY PHOTOGRAPHIC, VIDEO, AND OTHER EVIDENCE; DETERMINE WHETHER APPROPRIATE INTERVENTIONS, INCLUDING RESTORATIVE PRACTICES CAN ADDRESS THE ALLEGED VIOLATION OF THE CODE OF CONDUCT; AND IF NOT, MAKE A DETERMINATION ABOUT POSSIBLE DISCIPLINE INCLUDING SUSPENSION FOR A PERIOD OF BETWEEN SIX TO TWENTY SCHOOL DAYS IF WARRANTED. THE PRINCIPAL OR THE PRINCIPAL'S DESIGNEE SHALL TAKE INTO ACCOUNT ALL OF THE FACTORS LISTED IN SUBDIVISION TWO OF THIS SECTION;

B. SHALL SEND IMMEDIATE WRITTEN NOTICE TO THE PUPIL AND THE PERSON IN PARENTAL RELATIONSHIP TO THE PUPIL ABOUT THE DETERMINATION TO SUSPEND THE PUPIL AND THE HEARING. THE SUSPENDING AUTHORITY SHALL TAKE REASONABLE STEPS TO PROVIDE SUCH WRITTEN NOTICE IN THE FIRST LANGUAGE OF A PARENT OR PERSON IN PARENTAL RELATION WHO DOES NOT READ OR SPEAK ENGLISH. THE WRITTEN NOTICE SHALL INCLUDE:

(1) 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 PUPIL ALLEGEDLY VIOLATED AND DISCIPLINARY ACTION THAT MAY BE WARRANTED INCLUDING THE LENGTH OF A POSSIBLE SUSPENSION;

(2) THE DATE, TIME AND PLACE FOR THE HEARING TO DETERMINE WHETHER THE PROPOSED SUSPENSION IS WARRANTED;

(3) A STATEMENT INCLUDING THE POSITIVE INTERVENTIONS AND PRACTICES USED, OR IF NONE WERE USED, WHY THEY WERE NOT, AND EXPLAINING WHY THE USE OF EXCLUSIONARY DISCIPLINE MAY BE JUSTIFIED.

(4) A COPY OF ALL DOCUMENTARY EVIDENCE RELATED TO THE INCIDENT OF THE BEHAVIOR THAT IS ALLEGED TO VIOLATE THE CODE OF CONDUCT INCLUDING BUT NOT LIMITED TO INCIDENT REPORTS, WITNESS STATEMENTS, AND AUDIO OR VIDEO RECORDINGS THAT THE SCHOOL POSSESSES REGARDING THE INCIDENT AND A LIST OF WITNESSES WHO MAY APPEAR AT THE HEARING. IF ANY OF THE DOCUMENTARY EVIDENCE REQUIRED BY THIS PARAGRAPH IS NOT AVAILABLE AT THE TIME THE NOTICE IS PROVIDED, THE NOTICE MUST INCLUDE A LIST OF THE MISSING DOCUMENTARY EVIDENCE. ANY MISSING DOCUMENTARY EVIDENCE MUST BE PROVIDED NO LATER THAN TWENTY-FOUR HOURS BEFORE THE HEARING;

(5) A STATEMENT OF PUPIL AND PARENT RIGHTS PURSUANT TO THE CODE OF CONDUCT INCLUDING THE RIGHT TO CALL AND QUESTION WITNESSES AT THE HEARING, THE RIGHT TO LEGAL REPRESENTATION OR AN ADVOCATE DURING THE SUSPENSION PROCESS, THE RIGHT TO INTERPRETATION AT THE HEARING BY A QUALIFIED INTERPRETER AND THE RIGHT TO APPEAL TO THE SUPERINTENDENT, THE BOARD OF TRUSTEES, THE SCHOOL BOARD OR THE COMMISSIONER AND THE PROCEDURES FOR SUCH AN APPEAL;

(6) THE NOTICE SHALL ALSO STATE TO THE PERSON IN PARENTAL RELATIONSHIP TO THE PUPIL THAT ANY STATEMENT BY THE PUPIL, WRITTEN OR ORAL, MIGHT BE USED AGAINST THE PUPIL IN A CRIMINAL, IMMIGRATION, OR JUVENILE DELINQUENCY INVESTIGATION AND/OR PROCEEDING, AND/OR IN A COURT OF LAW.

C. HEARING. THE SUSPENDING AUTHORITY SHALL CONVENE A HEARING WITHIN FIVE DAYS OF THE WRITTEN NOTICE TO THE PUPIL AND PERSON IN PARENTAL RELATIONSHIP TO THE PUPIL ABOUT THE SUSPENSION UNLESS THE PERSON IN PARENTAL RELATIONSHIP TO THE PUPIL REQUESTS A LATER DATE. THE SUSPENDING AUTHORITY SHALL CONFIRM THE DATE, TIME AND PLACE OF THE HEARING WITH ALL HEARING PARTICIPANTS AND DOCUMENT SUCH CONFIRMATION. IF IT IS REQUESTED, THE SCHOOL BOARD SHALL APPOINT A HEARING OFFICER WHO IS INDEPENDENT OF THE SUSPENDING AUTHORITY, TO HEAR THE CASE. THE HEARING SHALL BE CONDUCTED AS FOLLOWS:

(1) THE HEARING OFFICER IS AUTHORIZED TO ADMINISTER OATHS AND ISSUE SUBPOENAS IN CONJUNCTION WITH THE PROCEEDINGS;

(2) THE SCHOOL MUST PROVE THAT THE PUPIL VIOLATED THE CODE OF CONDUCT BY A PREPONDERANCE OF THE EVIDENCE;

(3) THE SCHOOL CANNOT RELY EXCLUSIVELY ON HEARSAY EVIDENCE TO MEET ITS BURDEN OF PROOF.

(4) THE PUPIL AND PERSON IN PARENTAL RELATIONSHIP TO THE PUPIL SHALL HAVE THE RIGHT TO REQUEST THE PRESENCE AND TESTIMONY OF THE FOLLOWING PERSONS AND SUBJECT SUCH TESTIMONY TO QUESTION AND THE SCHOOL SHALL TAKE REASONABLE STEPS TO SECURE THE ATTENDANCE OF SUCH PERSONS:

(I) WITNESSES INCLUDING PUPILS AND VISITORS;

(II) SCHOOL EMPLOYEES AND THE SCHOOL SHALL MAKE THE REQUESTED SCHOOL EMPLOYEES AVAILABLE AT THE HEARING; AND

(III) LAW ENFORCEMENT AND PRIVATE OR PUBLIC SECURITY RETAINED BY THE SCHOOL DISTRICT PURSUANT TO CONTRACT OR MEMORANDUM OF UNDERSTANDING REQUIRED BY SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER.

(5) THE PUPIL AND PERSON IN PARENTAL RELATIONSHIP TO THE PUPIL SHALL HAVE THE RIGHT TO PRESENT DOCUMENTARY EVIDENCE INCLUDING, BUT NOT LIMITED TO, WITNESS STATEMENTS, INCIDENT REPORTS, AND AUDIO AND VIDEO RECORDINGS;

(6) THE PUPIL AND PERSON IN PARENTAL RELATIONSHIP TO THE PUPIL SHALL HAVE THE RIGHT TO REPRESENTATION BY AN ATTORNEY OR AN ADVOCATE;

(7) THE HEARING OFFICER SHALL CONSIDER ONLY THE EVIDENCE PRESENTED AT THE HEARING AND MAY UPHOLD, REDUCE OR DISMISS THE PROPOSED SUSPENSION. THE HEARING OFFICER MUST DISMISS THE PROPOSED SUSPENSION IF THE HEARING OFFICER DETERMINES THAT:

(I) THE SUSPENSION WAS IMPOSED FOR A BEHAVIOR FOR WHICH SUSPENSION IS NOT AUTHORIZED OR PROHIBITED BY LAW OR THE SCHOOL'S CODE OF CONDUCT;

(II) THE SCHOOL DID NOT MEET ITS BURDEN OF PROOF THAT A SUSPENSION FOR A PERIOD OF BETWEEN SIX TO TWENTY DAYS IS WARRANTED;

(III) THE SCHOOL DID NOT FOLLOW THE DUE PROCESS PROCEDURES IN THIS SUBSECTION; OR

(IV) FACTS AND CONSIDERATIONS REQUIRED BY THE SCHOOL'S CODE OF CONDUCT DO NOT SUPPORT THE DECISION TO SUSPEND THE PUPIL.

(8) THE HEARING OFFICER MAY DISMISS OR REDUCE THE PROPOSED SUSPENSION IF THE HEARING OFFICER DETERMINES:

(I) THE SCHOOL DID NOT IMPOSE GRADUATED AND PROPORTIONATE DISCIPLINE;
OR

(II) THE SUSPENSION WAS NOT APPROPRIATE GIVEN THE FACTS AS PRESENTED
AT THE HEARING.

(9) UPON REQUEST OF THE PUPIL OR PERSON IN PARENTAL RELATIONSHIP TO
THE PUPIL, THE SCHOOL SHALL PROVIDE INTERPRETATION SERVICES IN THE FIRST
LANGUAGE OF THE PUPIL OR PERSON IN PARENTAL RELATIONSHIP TO THE PUPIL;

(10) AN ACCURATE AND COMPLETE RECORD OF THE HEARING SHALL BE MAIN-
TAINED BY THE SCHOOL, BUT NO STENOGRAPHIC RECORD SHALL BE REQUIRED AND
AN AUDIO OR VIDEO RECORDING SHALL BE DEEMED A SATISFACTORY RECORD. WHEN
REQUESTED, THE SUSPENDING AUTHORITY SHALL PROVIDE TO THE PUPIL OR PERSON
IN PARENTAL RELATIONSHIP THIS RECORD AS WELL AS ANY TRANSCRIPT OF THE
RECORD AT NO COST;

(11) THE HEARING OFFICER SHALL ISSUE A WRITTEN DECISION TO THE SCHOOL
AND THE PUPIL AND PERSON IN PARENTAL RELATIONSHIP TO THE PUPIL ABOUT ANY
DISCIPLINARY ACTION WITHIN THREE DAYS OF THE HEARING. IF THE HEARING
OFFICER DETERMINES THAT A SUSPENSION OF BETWEEN SIX TO TWENTY SCHOOL
DAYS IS WARRANTED, THE WRITTEN DECISION SHALL STATE THE LENGTH OF THE
SUSPENSION, FINDINGS OF FACT, REASONS FOR THE DETERMINATION, THE PROCE-
DURES FOR AN APPEAL AND THE DATE BY WHICH AN APPEAL MUST BE FILED.

E. APPEAL. THE PUPIL OR PERSON IN PARENTAL RELATIONSHIP TO THE PUPIL
SHALL HAVE A RIGHT TO APPEAL THE DECISION OF THE HEARING OFFICER AS
FOLLOWS:

(1) THE APPEAL SHALL BE FILED WITHIN THIRTY DAYS OF THE DATE WHEN THE
PUPIL AND PERSON IN PARENTAL RELATIONSHIP TO THE PUPIL RECEIVE THE DECI-
SION ABOUT A SUSPENSION OF SIX OR MORE SCHOOL DAYS;

(2) THE SCHOOL'S CODE OF CONDUCT MUST IDENTIFY THE PROCEDURES FOR
APPEAL OF SUSPENSIONS FOR PERIODS OF MORE THAN TWENTY DAYS. THE APPEAL
SHALL BE HEARD ONLY BY A PERSON WHO WAS NOT INVOLVED IN THE INITIAL
DETERMINATION OR HEARING ABOUT THE SUSPENSION OF THE PUPIL;

(3) THE DECISION ON APPEAL MUST BE BASED SOLELY ON THE HEARING RECORD
EXCEPT TO THE EXTENT THAT THE PUPIL'S RIGHTS WERE VIOLATED DURING THE
INVESTIGATION, HEARING, OR APPEAL PROCESS;

(4) THE PERSON HEARING THE APPEAL SHALL ISSUE A WRITTEN DECISION WITH-
IN TEN DAYS OF THE FILING OF THE APPEAL. THE SUSPENSION MAY BE UPHeld,
REDUCED OR OVERTURNED. THE PERSON DECIDING THE APPEAL MUST REVERSE THE
SUSPENSION IF: (I) THE SUSPENSION WAS IMPOSED FOR BEHAVIOR FOR WHICH
SUSPENSION IS PROHIBITED BY LAW OR NOT AUTHORIZED BY THE CODE OF
CONDUCT; (II) THE SCHOOL DID NOT PRESENT SUFFICIENT EVIDENCE TO MEET ITS
BURDEN OF PROOF; (III) THE SCHOOL DID NOT FOLLOW DUE PROCESS PROCEDURES;
OR (IV) THE FACTS AND CONSIDERATIONS REQUIRED BY THE SCHOOL'S CODE OF
CONDUCT DO NOT SUPPORT THE DECISION TO SUSPEND THE PUPIL FOR A PERIOD
BETWEEN SIX TO TWENTY DAYS. THE PERSON DECIDING THE APPEAL MAY OVERTURN
OR REDUCE THE SUSPENSION IF THE SCHOOL DID NOT IMPOSE GRADUATED AND
PROPORTIONATE DISCIPLINE OR THE SUSPENSION WAS NOT APPROPRIATE GIVEN THE
FACTS AS PRESENTED AT THE HEARING;

(5) THE PUPIL OR PERSON IN PARENTAL RELATIONSHIP TO THE STUDENT MAY
APPEAL ANY ADVERSE DETERMINATION ON THE APPEAL TO THE COMMISSIONER
PURSUANT TO THE REGULATIONS OF THE COMMISSIONER; AND

(6) THE PUPIL OR PERSON IN PARENTAL RELATIONSHIP TO THE PUPIL MAY
APPEAL AN ADVERSE DECISION OF THE COMMISSIONER TO THE STATE SUPREME
COURT WITHIN NINETY DAYS OF RECEIPT OF THE DECISION BY THE COMMISSIONER.

[d. (1)] 6. A. Consistent with the federal gun-free schools act, any
public school pupil who is determined under this subdivision to have
brought a firearm to or possessed a firearm at a public school shall be
suspended for a period of not less than one calendar year and any

1 nonpublic school pupil participating in a program operated by a public
2 school district using funds from the elementary and secondary education
3 act of nineteen hundred sixty-five who is determined under this subdivi-
4 sion to have brought a firearm to or possessed a firearm at a public
5 school or other premises used by the school district to provide such
6 programs shall be suspended for a period of not less than one calendar
7 year from participation in such program. The procedures of this subdivi-
8 sion shall apply to such a suspension of a nonpublic school pupil. A
9 superintendent of schools, district superintendent of schools or commu-
10 nity superintendent shall have the authority to modify this suspension
11 requirement for each student on a case-by-case basis. The determination
12 of a superintendent shall be subject to review by the board of education
13 pursuant to [paragraph c of this] subdivision FIVE OF THIS SECTION and
14 the commissioner pursuant to section three hundred ten of this chapter.
15 Nothing in this subdivision shall be deemed to authorize the suspension
16 of a student with a disability in violation of the individuals with
17 disabilities education act or article eighty-nine of this chapter. A
18 superintendent shall refer the pupil under the age of sixteen who has
19 been determined to have brought a weapon or firearm to school in
20 violation of this subdivision to a presentment agency for a juvenile
21 delinquency proceeding consistent with article three of the family court
22 act except a student fourteen or fifteen years of age who qualifies for
23 juvenile offender status under subdivision forty-two of section 1.20 of
24 the criminal procedure law. A superintendent shall refer any pupil
25 sixteen years of age or older or a student fourteen or fifteen years of
26 age who qualifies for juvenile offender status under subdivision forty-
27 two of section 1.20 of the criminal procedure law, who has been deter-
28 mined to have brought a weapon or firearm to school in violation of this
29 subdivision to the appropriate law enforcement officials.

30 [(2)] B. Nothing in this paragraph shall be deemed to mandate such
31 action by a school district pursuant to PARAGRAPH A OF THIS subdivision
32 [one of this section] where such weapon or firearm is possessed or
33 brought to school with the written authorization of such educational
34 institution in a manner authorized by article two hundred sixty-five of
35 the penal law for activities approved and authorized by the trustees or
36 board of education or other governing body of the public school and such
37 governing body adopts appropriate safeguards to ensure student safety.

38 [(3)] C. As used in this paragraph:

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

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

44 [e.] 7. Procedure after suspension. Where a pupil has been suspended
45 pursuant to this subdivision and said pupil [is of compulsory attendance
46 age] HAS THE RIGHT TO ATTEND SCHOOL, immediate steps shall be taken for
47 his or her attendance upon instruction elsewhere [or for supervision or
48 detention of said pupil pursuant to the provisions of article seven of
49 the family court act]. Where a pupil has been suspended for cause, the
50 suspension may be revoked by the board of education whenever it appears
51 to be for the best interest of the school and the pupil to do so. The
52 board of education may also condition a student's early return to school
53 and suspension revocation on the pupil's voluntary participation in
54 counseling or specialized classes, including anger management or dispute
55 resolution, where applicable.

1 [f.] 8. Whenever the term "board of education or superintendent of
2 schools" is used in this subdivision, it shall be deemed to include
3 community boards of education and community superintendents governing
4 community districts in accordance with the provisions of article fifty-
5 two-A of this chapter.

6 [g.] 9. Discipline of students with disabilities and students presumed
7 to have a disability for discipline purposes. [(1)] A. Notwithstanding
8 any other provision of this subdivision to the contrary, a student with
9 a disability as such term is defined in section forty-four hundred one
10 of this chapter and a student presumed to have a disability for disci-
11 pline purposes, may be suspended or removed from his or her current
12 educational placement for violation of [school rules] THE CODE OF
13 CONDUCT only in accordance with the procedures established in this
14 section, the regulations of the commissioner implementing this para-
15 graph, and subsection (k) of section fourteen hundred fifteen of title
16 twenty of the United States code and the federal regulations implement-
17 ing such statute, as such federal law and regulations are from time to
18 time amended. Nothing in this paragraph shall be construed to confer
19 greater rights on such students than are conferred under applicable
20 federal law and regulations, or to limit the ability of a school
21 district to change the educational placement of a student with a disa-
22 bility in accordance with the procedures in article eighty-nine of this
23 chapter.

24 [(2)] B. As used in this paragraph:

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

31 (ii) a "manifestation team" means a representative of the school
32 district, the parent or person in parental relation, and relevant
33 members of the committee on special education, as determined by the
34 parent or person in parental relation and the district.

35 [(3)] C. In applying the federal law consistent with this section:

36 (i) in the event of a conflict between the procedures established in
37 this section and those established in subsection (k) of section fourteen
38 hundred fifteen of title twenty of the United States code and the feder-
39 al regulations implementing such statute, such federal statute and regu-
40 lations shall govern.

41 (ii) the trustees or board of education of any school district, a
42 district superintendent of schools or a building principal shall have
43 authority to order the placement of a student with a disability into an
44 appropriate interim alternative educational setting, another setting or
45 suspension for a period not to exceed five consecutive school days where
46 such student is suspended pursuant to this subdivision and, except as
47 otherwise provided in [clause (vi)] PARAGRAPH F of this [subparagraph]
48 SUBDIVISION, the suspension does not result in a change in placement
49 under federal law.

50 (iii) the superintendent of schools of a school district, either
51 directly or upon recommendation of a hearing officer designated pursuant
52 to paragraph [c] D of [this] subdivision FIVE OF THIS SECTION, may order
53 the placement of a student with a disability into an interim alternative
54 educational setting, another setting or suspension for up to ten consec-
55 utive school days, inclusive of any period in which the student is
56 placed in an appropriate interim alternative educational setting, anoth-

er setting or suspension pursuant to clause (ii) of this subparagraph for the behavior, where the superintendent determines in accordance with the procedures set forth in this subdivision that the student has engaged in behavior that VIOLATES THE CODE OF CONDUCT AND warrants a suspension, and, except as otherwise provided in [clause (vi) of this subparagraph] PARAGRAPH D OF THIS SUBPARAGRAPH, the suspension does not result in a change in placement under federal law.

[(iv)] D. the superintendent of schools of a school district, either directly or upon recommendation of a hearing officer designated pursuant to paragraph c of [this] subdivision FIVE OF THIS SECTION, may order the change in placement of a student with a disability to an interim alternative educational setting for up to forty-five school days under the circumstances specified in subsection (k)(1)(G) of section fourteen hundred fifteen of title twenty of the United States code and the federal regulations implementing such statute or a longer period where authorized by federal law under the circumstances specified in subsection (k)(1)(C) of section fourteen hundred fifteen of title twenty of the United States code and the federal regulations implementing such statute, but in neither case shall such period exceed the period of suspension ordered by a superintendent in accordance with this subdivision.

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

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

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

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

[(ix)] I. the commissioner shall implement this paragraph by adopting regulations which coordinate the procedures required for discipline of students with disabilities, and students presumed to have a disability for discipline purposes, pursuant to subsection (k) of section fourteen hundred fifteen of title twenty of the United States code and the federal regulations implementing such statute, with the general procedures for student discipline under this section.

[3-a.] 10. Teacher removal of a [disruptive pupil. In addition, any] STUDENT FOR MISCONDUCT IN VIOLATION OF THE CODE OF CONDUCT. A teacher shall have the power and authority to remove a [disruptive] pupil[, as

1 defined in subdivision two-a of this section,] from such teacher's
2 classroom consistent with discipline AND INTERVENTION measures contained
3 in the code of conduct adopted by the board pursuant to section twenty-
4 eight hundred one of this chapter. SUCH CLASSROOM REMOVAL MAY NOT
5 EXCEED HALF OF ONE SCHOOL DAY. The school authorities of any school
6 district shall establish policies and procedures to ensure the provision
7 of continued educational programming and activities for students removed
8 from the classroom pursuant to this subdivision and provided further
9 that nothing in this subdivision shall authorize the removal of a pupil
10 in violation of any state or federal law or regulation. No pupil shall
11 return to the classroom until the principal makes a final determination
12 pursuant to paragraph c of this subdivision, or the period of removal
13 expires, whichever is less.

14 a. Such teacher shall inform the pupil and THE PERSON IN PARENTAL
15 RELATION AND the school principal of the reasons for the removal. If the
16 teacher finds that the pupil's continued presence in the classroom does
17 not pose a continuing danger to persons or property and does not present
18 an ongoing threat of disruption to the academic process, the teacher
19 shall, prior to removing the student from the classroom, provide the
20 student with an explanation of the basis for the removal and allow the
21 pupil to informally present the pupil's version of relevant events. In
22 all other cases, the teacher shall provide the pupil with an explanation
23 of the basis for the removal and an informal opportunity to be heard
24 within twenty-four hours of the pupil's removal, provided that if such
25 twenty-four hour period does not end on a school day, it shall be
26 extended to the corresponding time on the next school day.

27 b. The principal shall inform the person in parental relation to such
28 pupil of the removal and the reasons therefor within twenty-four hours
29 of the pupil's removal, provided that if such twenty-four hour period
30 does not end on a school day, it shall be extended to the corresponding
31 time on the next school day. The pupil and the person in parental
32 relation shall, upon request, be given an opportunity for an informal
33 conference with the principal to discuss the reasons for the removal.
34 [If the pupil denies the charges, the] THE principal shall provide an
35 explanation of the basis for the removal and allow the pupil and/or
36 person in parental relation to the pupil an opportunity to present the
37 pupil's version of relevant events. Such informal [hearing] CONFERENCE
38 shall be held within forty-eight hours of the pupil's removal, provided
39 that if such forty-eight hour period does not end on a school day, it
40 shall be extended to the corresponding time on the second school day
41 next following the pupil's removal. A PERSON IN PARENTAL RELATIONSHIP TO
42 THE STUDENT MAY REQUEST THAT THE INFORMAL CONFERENCE TAKE PLACE LATER
43 THAN FORTY-EIGHT HOURS AFTER THE STUDENT'S REMOVAL. For purposes of this
44 subdivision, "school day" shall mean a school day as defined pursuant to
45 [clause (v) of subparagraph three of paragraph g of subdivision three]
46 PARAGRAPH E OF SUBDIVISION NINE of this section.

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

1 d. The principal may, in his or her discretion, designate a school
2 district administrator, to carry out the functions required of the prin-
3 cipal under this subdivision.

4 [4.] 11. Expense. a. The expense attending the commitment and costs of
5 maintenance of [any school delinquent] A STUDENT DISCIPLINED FOR
6 VIOLATION OF THE CODE OF CONDUCT shall be a charge against the city or
7 district where he resides, if such city or district employs a super-
8 intendent of schools; otherwise it shall be a county charge.

9 b. The school authorities may institute proceedings before a court
10 having jurisdiction to determine the liability of a person in parental
11 relation to contribute towards the maintenance of a [school delinquent]
12 STUDENT under sixteen years of age ordered to attend upon instruction
13 under confinement. If the court shall find the person in parental
14 relation able to contribute towards the maintenance of such a minor, it
15 may issue an order fixing the amount to be paid weekly.

16 [5.] 12. Involuntary transfers of pupils who have not been determined
17 to be a student with a disability or a student presumed to have a disa-
18 bility for discipline purposes.

19 a. The board of education, board of trustees or sole trustee, the
20 superintendent of schools, or district superintendent of schools may
21 transfer a pupil who has not been determined to be a student with a
22 disability as defined in section forty-four hundred one of this chapter,
23 or a student presumed to have a disability for discipline purposes as
24 defined in [paragraph g of] subdivision [three] NINE of this section
25 from regular classroom instruction to an appropriate educational setting
26 in another school upon the written recommendation of the school princi-
27 pal and following independent review thereof. For purposes of this
28 section of the law, "involuntary transfer" does not include a transfer
29 made by a school district as part of a plan to reduce racial imbalance
30 within the schools or as a change in school attendance zones or
31 geographical boundaries.

32 b. A school principal may initiate a non-requested transfer where it
33 is believed that such a pupil would benefit from the transfer, or when
34 the pupil would receive an adequate and appropriate education in another
35 school program or facility.

36 No recommendation for pupil transfer shall be initiated by the princi-
37 pal until such pupil and a person in parental relation has been sent
38 written notification of the consideration of transfer recommendation.
39 Such notice shall set a time and place of an informal conference with
40 the principal and shall inform such person in parental relation and such
41 pupil of their right to be accompanied by counsel or an individual of
42 their choice.

43 c. After the conference and if the principal concludes that the pupil
44 would benefit from a transfer or that the pupil would receive an
45 adequate and appropriate education in another school program or facili-
46 ty, the principal may issue a recommendation of transfer to the super-
47 intendent. Such recommendation shall include a description of behavior
48 and/or academic problems indicative of the need for transfer; a
49 description of alternatives explored and prior action taken to resolve
50 the problem. A copy of that letter shall be sent to the person in
51 parental relation and to the pupil.

52 d. Upon receipt of the principal's recommendation for transfer and a
53 determination to consider that recommendation, the superintendent shall
54 notify the person in parental relation and the pupil of the proposed
55 transfer and of their right to a fair hearing as provided in paragraph c
56 of subdivision [three] FIVE of this section and shall list community

1 agencies and free legal assistance which may be of assistance. The writ-
2 ten notice shall include a statement that the pupil or person in
3 parental relation has ten days to request a hearing and that the
4 proposed transfer shall not take effect, except upon written parental
5 consent, until the ten day period has elapsed, or, if a fair hearing is
6 requested, until after a formal decision following the hearing is
7 rendered, whichever is later.

8 Parental consent to a transfer shall not constitute a waiver of the
9 right to a fair hearing.

10 [6.] 13. Transfer of a pupil. Where a suspended pupil is to be trans-
11 ferred pursuant to subdivision [five] TWELVE of this section, he or she
12 shall remain on the register of the original school for two school days
13 following transmittal of his or her records to the school to which he or
14 she is to be transferred. The receiving school shall immediately upon
15 receiving those records transmitted by the original school, review them
16 to insure proper placement of the pupil. Staff members who are involved
17 in the pupil's education must be provided with pertinent records and
18 information relating to the background and problems of the pupil before
19 the pupil is placed in a classroom.

20 [7.] 14. Transfer of disciplinary records. Notwithstanding any other
21 provision of law to the contrary, each local educational agency, as such
22 term is defined in subsection twenty-six of section ninety-one hundred
23 one of the Elementary and Secondary Education Act of 1965, as amended,
24 shall establish procedures in accordance with section forty-one hundred
25 fifty-five of the Elementary and Secondary Education Act of 1965, as
26 amended, and the Family Educational Rights and Privacy Act of 1974, to
27 facilitate the transfer of disciplinary records relating to the suspen-
28 sion [or expulsion] of a student to any public or nonpublic elementary
29 or secondary school in which such student enrolls or seeks, intends or
30 is instructed to enroll, on a full-time or part-time basis.

31 S 4. Section 305 of the education law is amended by adding three new
32 subdivisions 55, 56 and 57 to read as follows:

33 55. THE COMMISSIONER SHALL PROVIDE TECHNICAL ASSISTANCE TO SCHOOL
34 DISTRICTS ABOUT THE DEVELOPMENT, IMPLEMENTATION AND EVALUATION OF SCHOOL
35 DISTRICT CODES OF CONDUCT INCLUDING:

36 (A) ONE OR MORE MODEL CODES OF CONDUCT, DESIGNED TO REDUCE THE USE OF
37 SUSPENSIONS, THAT MEET THE REQUIREMENTS OF SECTIONS TWENTY-EIGHT HUNDRED
38 ONE AND THIRTY-TWO HUNDRED FOURTEEN OF THIS CHAPTER;

39 (B) BEST PRACTICES FOR AGE-APPROPRIATE, GRADUATED AND PROPORTIONATE
40 DISCIPLINE AS SET OUT IN SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAP-
41 TER;

42 (C) A MATRIX OF STUDENT MISCONDUCT AND THE INTERVENTIONS AND DISCIPLI-
43 NARY MEASURES THAT PROVIDE AGE APPROPRIATE, GRADUATED AND PROPORTIONATE
44 INTERVENTION DESIGNED TO REDUCE RELIANCE ON SUSPENSIONS AND REFERRALS TO
45 LAW ENFORCEMENT;

46 (D) GUIDELINES FOR APPROPRIATE AND SCHOOL-WIDE IMPLEMENTATION OF
47 RESTORATIVE PRACTICES;

48 (E) FORMS NECESSARY TO IMPLEMENT STUDENT NOTIFICATION AND DUE PROCESS
49 REQUIREMENTS OF SECTION TWENTY-EIGHT HUNDRED ONE AND THIRTY-TWO HUNDRED
50 FOURTEEN OF THIS CHAPTER.

51 56. THE COMMISSIONER SHALL, PURSUANT TO AN APPROPRIATION IN THE STATE
52 BUDGET, PROVIDE FUNDS TO LOCAL SCHOOL DISTRICTS FOR IMPLEMENTATION OF A
53 SCHOOL'S CODE OF CONDUCT INCLUDING MANDATORY PRE-SERVICE AND IN-SERVICE
54 TRAINING OF SCHOOL PERSONNEL ABOUT PREVENTION, RESTORATIVE PRACTICES AND
55 OTHER INTERVENTION AND DISCIPLINARY MEASURES TO RESPOND TO STUDENT

1 MISCONDUCT AS REQUIRED BY SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAP-
2 TER.

3 57. THE COMMISSIONER SHALL BE AUTHORIZED TO PROVIDE FUNDS FOR TRAINING
4 SCHOOL PERSONNEL INCLUDED IN SECTION TWENTY-EIGHT HUNDRED ONE OF THIS
5 CHAPTER ONLY TO THE EXTENT THAT THE STATE BUDGET INCLUDES AN APPROPRI-
6 ATION FOR SUCH TRAINING.

7 S 5. This act shall take effect immediately; provided, however, that
8 the amendments to subdivision 3 of section 2801 of the education law
9 made by section one of this act shall be subject to the expiration and
10 reversion of such subdivision pursuant to section 34 of chapter 91 of
11 the laws of 2002, as amended, when upon such date the provisions of
12 section two of this act shall take effect; provided further, however,
13 that the amendments to subdivisions 3 and 3-a of section 3214 of the
14 education law made by section three of this act shall be subject to the
15 expiration of such subdivisions and shall be deemed expired therewith;
16 and provided further, however, that the amendments to subdivision 7 of
17 section 3214 of the education law made by section three of this act
18 shall not affect the repeal of such subdivision and shall be deemed
19 repealed therewith.