

STATE OF NEW YORK

3873

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IN ASSEMBLY

January 30, 2017

Introduced by M. of A. NOLAN, WALKER, TITONE, FAHY, SIMON, LUPARDO, JAFFEE, BRINDISI, WEINSTEIN, CAHILL, GALEF, O'DONNELL, PAULIN, JOYNER, PERRY, PRETLOW, PICHARDO, COOK, CRESPO, SEPULVEDA, KIM, ROSENTHAL, HYNDMAN, MAYER -- Multi-Sponsored by -- M. of A. BUCHWALD, CYMBROWITZ -- 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 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, paragraphs a and c of subdivision 2 and
4 paragraph a of subdivision 5 as amended by chapter 380 of the laws of
5 2001, paragraphs 1 and m as amended and paragraph n of subdivision 2 as
6 added by chapter 482 of the laws of 2010, and subdivision 3 as amended
7 by chapter 123 of the laws of 2003, is amended to read as follows:

8 § 2801. Codes of conduct on school property. 1. For purposes of this
9 section, school property [~~means in or within~~] shall mean real, personal
10 or intellectual property owned, leased or occupied by a public school
11 including a charter school. Such property shall include but not be
12 limited to any building, structure, athletic playing field, playground,
13 parking lot or land contained within the real property boundary line of
14 a public elementary or secondary school; or in or on a school bus, as
15 defined in section one hundred forty-two of the vehicle and traffic law;
16 or electronic files and databases; and a school function shall mean a
17 school-sponsored or school-authorized extra-curricular event or activity
18 regardless of where or when such event or activity takes place, includ-
19 ing any event or activity that may take place in another state.

20 2. The board of education or the trustees, as defined in section two
21 of this chapter, of every school district within the state, however

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

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1 created, and every board of cooperative educational services and county
2 vocational extension board, shall adopt and amend, as appropriate, a
3 code of conduct [~~for the maintenance of order on school property,~~
4 ~~including a school function, which shall govern the conduct of students,~~
5 ~~teachers and other school personnel as well as visitors~~] which shall
6 govern the conduct of students, school employees and visitors in order
7 to promote a safe, respectful and supportive learning and teaching envi-
8 ronment on school property and at school functions and shall provide for
9 the enforcement thereof. [~~Such policy may be adopted by the school board~~
10 ~~or trustees only after at least one public hearing that provides for the~~
11 ~~participation of school personnel, parents, students and any other~~
12 ~~interested parties.~~] Such code of conduct shall apply to all students,
13 school employees, school board members, independent contractors and
14 visitors and include, at a minimum, provisions that:

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

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

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

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

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

41 ~~f.]~~ establish standards and procedures to assure security and safety
42 of students and school personnel;

43 b. establish a school climate that promotes and sustains a safe,
44 inclusive, civil and respectful school environment for school personnel,
45 students and visitors on school property and at school functions through
46 prevention, intervention and discipline that support education and
47 learning, promotes positive student behaviors, holds students account-
48 able for their behavior and keeps students in school and class;

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

52 d. require age-appropriate, graduated and proportionate interventions
53 and discipline that respond to student misconduct and hold students
54 accountable for their behavior through a process that requires school
55 personnel to use the intervention or response that interferes the least
56 with a student's ability to attend class and school;

1 e. require the standard use of school-wide and individual positive
2 interventions and supports that assist students in developing social and
3 emotional competencies such as self-management, resilience, self-aware-
4 ness, responsible decision-making, avoiding conflict, and refocus on
5 learning, before a child may be suspended;

6 f. establish procedures for the removal from the classroom and from
7 school property, including a school function, of students and other
8 persons who violate the code;

9 g. establish the range of interventions for student behaviors that
10 violate the code of conduct including graduated interventions for
11 repeated violations of the code of conduct; provided, however, that
12 removal of a student from class or classes, school or school functions
13 for a specific period of time shall not be used to respond to tardiness,
14 unexcused absence from class or school, leaving school without permis-
15 sion or insubordinate behavior including but not limited to the use of
16 inappropriate language or gestures, lack of identification upon request
17 by school personnel or violation of a school dress code. Suspension of
18 students in kindergarten through grade three shall be prohibited, except
19 in situations of serious physical harm to students, staff, or others
20 while taking into account the totality of the circumstances. Permanent
21 suspension from school shall be prohibited as a response to student
22 misconduct;

23 h. establish prevention programs and services that include school-
24 based initiatives that promote a safe and secure environment for all
25 persons in school or at school functions including but not limited to:
26 comprehensive, school-based models approved by the commissioner that
27 improve safety of person and property, promote learning and collab-
28 oration; interdisciplinary academic and support services provided by or
29 at the school; and involvement of administrators, teachers, parents and
30 students in identifying specific performance goals and assessment meth-
31 ods;

32 i. require the consideration of the use of restorative practices such
33 as conflict resolution, mediation, peer counseling, facilitated
34 discussion and other restorative interventions that can effectively
35 address student misconduct, hold students accountable for their behav-
36 ior, repair harm to persons and property caused by misconduct and foster
37 healthy relationships within the school community. Restorative practices
38 may be used only with the consent of any person immediately affected by
39 a student's alleged misconduct, including staff, and, in the case of an
40 incident where another student has been injured, that student's parent
41 or person in parental relationship to the student and the consent of the
42 student who is alleged to have behaved inappropriately and that
43 student's parent;

44 j. comply with the federal Gun-Free Schools Act;

45 k. establish the circumstances under and procedures by which a school
46 may respond immediately to student behavior that: (i) physically injures
47 or poses an immediate threat of serious physical injury to the student
48 or other person or persons; or (ii) damages property and such damage
49 injures or poses an immediate threat of serious physical injury to the
50 student or other person or persons;

51 l. establish procedures by which violations of the code of conduct are
52 reported to the appropriate school personnel, the facts are investi-
53 gated, determined[~~, discipline~~] and intervention measures [~~imposed and~~
54 ~~discipline measures carried out~~] decided and implemented. Such
55 provisions shall ensure that procedures established are consistent with

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

3 ~~[g. provisions ensuring]~~ m. ensure such code and ~~[the]~~ its enforcement
4 ~~[thereof are in compliance]~~ comply with state and federal laws relating
5 to students with disabilities;

6 ~~[h. provisions setting forth the procedures by which local law~~
7 ~~enforcement agencies shall be notified of code violations which consti-~~
8 ~~tute a crime]~~ n. define the roles and areas of responsibility of school
9 personnel, security services and law enforcement for response to student
10 misconduct that violates the discipline code. A school district that
11 employs, contracts with or otherwise retains public law enforcement or
12 public or private security including school resource officers for daily
13 services at the school shall, by contract or memorandum of understanding
14 in writing and consistent with the code of conduct and with stakeholder
15 input, including parents, students, school administrators, teachers,
16 probation officers, prosecutors, defense counsel, courts, parent and
17 student organizations, and community members, establish protocols that
18 define the relationship between the school district, its personnel,
19 students and visitors, and law enforcement, and public or private secu-
20 rity. Such contract or memorandum of understanding shall limit law
21 enforcement or security personnel involvement when a student's behavior
22 does not threaten the safety of the school, define which behaviors
23 should not result in an arrest or summons, require law enforcement or
24 security personnel to receive training as required by paragraph t of
25 this section, and clearly delegate the role of school discipline to the
26 school administration. Such contract or memorandum of understanding
27 shall be incorporated into and published as part of the code of conduct;

28 ~~[i. provisions setting]~~ o. set forth the circumstances under and
29 procedures by which persons in parental relation to ~~[the student]~~
30 students accused of and affected by student behavior that violates the
31 discipline code shall be notified of code violations;

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

36 ~~[k.]~~ q. set out the circumstances under and procedures by which
37 ~~[referral]~~ students who are suspended from school may also be referred
38 to academic services, school-based support services or to appropriate
39 human service agencies ~~[shall be made];~~

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

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

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

54 r. ensure the continued educational programming and activities for
55 students removed from the classroom or suspended from school. Students
56 who have been removed from the classroom or suspended from school shall

1 have the right to continue their education when they are excluded from
2 the classroom regardless of the reason for or type of exclusion as
3 follows:

4 (i) when a student is removed from a classroom, the teacher, principal
5 or the principal's designee shall provide the student with all missed
6 classroom work within twenty-four hours of the removal and the student
7 shall have the opportunity to earn all academic credit including the
8 opportunity to complete any missed assignments and take any missed exam-
9 inations or tests.

10 (ii) when a student is suspended from class or school, the principal
11 or the principal's designee, in consultation with the student's teach-
12 ers, shall create for the student an education plan for each subject of
13 class in which the student is enrolled. The education plan shall make
14 provisions for a student's on-going academic instruction during the
15 suspension. The student shall have the opportunity to earn all academic
16 credit including the opportunity to complete any assignments and take
17 any examinations or tests missed during the student's suspension and if
18 an assessment or examination cannot be rescheduled, the student shall be
19 allowed on school property to take such assessment or examination on the
20 day that the assessment or examination is given.

21 (iii) the education plan pursuant to subparagraph (ii) of this para-
22 graph may include placement of the suspended student at an alternative
23 learning site including the student's home if such alternative is avail-
24 able and appropriate for the student's education. The principal or the
25 principal's designee at the school in which the student is enrolled
26 shall consult with the administrator of an alternative site or, in the
27 case of the student's home, with the teacher overseeing home instruc-
28 tion, to make arrangements for the student's continued instruction.

29 (iv) school districts must provide to students with disabilities all
30 services and educational programming protections set forth in this
31 section and in applicable federal and state laws.

32 (v) schools must schedule a conference within five school days after a
33 student's return to school after any short term or long term suspension
34 and provide notice of the conference to the parent and the student. The
35 failure of the parent or student to attend shall not delay re-entry
36 following suspension, nor shall a principal be held responsible if he or
37 she makes a good faith effort to make the parent or student attend and
38 is unsuccessful. The conference must include a discussion of the follow-
39 ing:

40 (A) a record of the student's educational activities while on suspen-
41 sion that can be counted toward credit accumulation. This record shall
42 include the student's test scores, grades, completed assignments, and
43 total credits earned while suspended, and the student's existing academ-
44 ic record can be used for these purposes, given the record provides this
45 information for the period of the suspension;

46 (B) the steps the student and the school will take to follow all
47 school rules;

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

50 (D) a discussion of when a student's permanent record will be
51 expunged, given there are no further incidents; and

52 (E) any other pertinent circumstances;

53 s. require the school to maintain in the student's permanent record
54 documentation of interventions determined for student misconduct, the
55 intervention or discipline imposed and reinstatement. Discipline that
56 was proposed but was not implemented, was dismissed or was overturned on

1 appeal shall not appear in the student's permanent record. When a
2 student has been suspended and reinstated to school, the record of the
3 suspension shall be automatically expunged at the time agreed upon in
4 the conference upon return from suspension. The student may request that
5 the school expunge permanently the student's record of discipline soon-
6 er, and the school shall not refuse to expunge a record except upon a
7 showing of good cause. Records of suspensions and removals shall be
8 maintained as necessary for purposes of evaluating the requirement for a
9 manifestation determination review, but these records shall not be part
10 of the student's permanent record. Student disciplinary records shall
11 be subject to article two of this chapter and other applicable federal
12 and state laws; and

13 t. require pre-service and annual training regarding the code of
14 conduct and the intervention and positive school climate practices
15 adopted pursuant to this section for maintaining order, addressing
16 student conduct and misbehavior, minimizing the use of suspension, and
17 addressing disparities in discipline. Training shall also ensure that
18 relevant policies and procedures are equitably applied, and that alter-
19 native interventions, such as restorative practices and graduated and
20 proportionate discipline are utilized in accordance with this section
21 for all school personnel, students and law enforcement, public or
22 private security personnel employed, retained or used by the school
23 district. A school district may use training programs including in
24 person and on-line programs approved by the commissioner; provided,
25 however, that such training includes the school district's own code of
26 conduct. At the beginning of each school year, each school shall
27 distribute and explain its code of conduct to students in one or more
28 general assemblies.

29 3. The district code of conduct shall be developed in collaboration
30 with [~~student, teacher, administrator, and parent organizations, school~~
31 ~~safety personnel and other school personnel~~] representatives from all
32 segments of the school community including students, teachers, adminis-
33 trators, parents, school safety personnel, support services personnel,
34 parent and student organizations, and others as identified by the school
35 district and shall be approved by the board of education, or other
36 governing body, or by the chancellor of the city school district in the
37 case of the city school district of the city of New York. In the city
38 school district of the city of New York, each community district educa-
39 tion council shall be authorized to adopt and implement additional poli-
40 cies, which are consistent with and no more restrictive than the city
41 district's district-wide code of conduct, to reflect the individual
42 needs of each community school district provided that such additional
43 policies shall require the approval of the chancellor.

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

54 5. a.] The board of education, board of directors or other governing
55 body, or the chancellor of the city school district in the case of the
56 city school district of the city of New York shall hold at least one

1 public hearing about the proposed code of conduct before its adoption or
2 amendment. The school district shall notify the school community and
3 general public about the hearing at least thirty days prior to the date
4 of the hearing. Such notice shall include the date, time and place of
5 the hearing, the agenda, a copy of the proposed code of conduct and
6 information about an opportunity, as determined by the school district,
7 for comment from the school community and the general public about the
8 proposed code of conduct. The school district shall take necessary steps
9 to notify families who do not speak English and whose children attend
10 schools in the district.

11 5. Upon adoption or amendment of the code of conduct, the school
12 district shall: (i) file a copy of its code of conduct and any amend-
13 ments to such code with the commissioner no later than thirty days after
14 their adoption; (ii) translate the code of conduct into those languages
15 spoken by three percent or more of the families whose children attend
16 schools in the school district; (iii) at the beginning of each school
17 year, post the code of conduct on the school district and school web
18 sites, if any and mail a copy of the code to persons in parental
19 relationship to students in the district's schools; and (iv) distribute
20 the code to all students in school at one or more general assemblies
21 dedicated to the provisions of the code of conduct. The school district
22 shall also make the code of conduct available upon request.

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

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

38 7. The department shall collect and school districts shall report to
39 the department data about the implementation of student codes of conduct
40 as required by federal law. On or before November first of each year,
41 the department shall make available to the public by school district the
42 data regarding student discipline from the preceding year. On or before
43 December first of each year the department shall submit to the governor,
44 the temporary president of the senate, the speaker of the assembly and
45 the chairs of the assembly and senate education committees a report that
46 summarizes and analyzes the data collected about student discipline
47 including a review and evaluation of school application of codes of
48 conduct for fair and consistent application and other accountability
49 criteria as determined by the department and make recommendations about
50 policy and practices for school codes of conduct and the department's
51 technical assistance about student discipline.

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

54 3. The district code of conduct shall be developed in collaboration
55 with [~~student, teacher, administrator, and parent organizations, school~~
56 ~~safety personnel and other school personnel]~~ representatives from all

1 segments of the school community including students, teachers, adminis-
2 trators, parents, school safety personnel, support services personnel,
3 parent and student organizations, and others as identified by the school
4 district and shall be approved by the board of education, or other
5 governing body, or by the chancellor of the city school district in the
6 case of the city school district of the city of New York. In the city
7 school district of the city of New York, each community school district
8 board shall be authorized to adopt and implement additional policies,
9 which are consistent with the city district's district-wide code of
10 conduct, to reflect the individual needs of each community school
11 district provided that such additional policies shall require the
12 approval of the chancellor.

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

23 § 3214. Student interventions, placement, suspensions and transfers.

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

29 ~~2-]~~ Special day schools. The school authorities of any city or school
30 district may establish schools or set apart rooms in public school
31 buildings for the instruction of ~~[school delinquents]~~ students disci-
32 plined in violation of the code of conduct, and fix the number of days
33 per week and the hours per day of required attendance, which shall not
34 be less than is required of minors attending the full time day schools.

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

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

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

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

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

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

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

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

55 ~~b. Disruptive pupil. For the purposes of this section, a disruptive~~
56 ~~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.]~~ 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.~~

~~b. (1)~~ 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 ~~[power]~~ authority to suspend a pupil for a period not to exceed five school days if a pupil engages in behavior that violates the code of conduct for which such suspension may be warranted and no alternative intervention is appropriate to address the alleged misconduct. In the case of such a suspension, the suspending authority shall ~~[provide the pupil with notice of the charged misconduct. If the pupil denies the misconduct, the suspending authority shall provide an explanation of the basis for the suspension. The pupil and the person in parental relation to the pupil shall, on request, be given an opportunity for an informal conference with the principal at which the pupil and/or person in parental relation shall be authorized to present the pupil's version of the event and to ask questions of the complaining witnesses. The aforesaid notice and opportunity for an informal conference shall take place prior to suspension of the pupil unless the pupil's presence in the school poses a continuing danger to persons or property or an ongoing threat of disruption to the academic process, in which case the pupil's notice and opportunity for an informal conference shall take place as soon after the suspension as is reasonably practicable.]~~ interview any alleged

victim and the witnesses to the incident and obtain their signed, written statements; identify and review documentary, photographic, video and other evidence, and make a determination whether the student violated the code of conduct and, if so, possible discipline including suspension of five or fewer school days is warranted. The principal or the principal's designee shall take into account all of the factors listed in subdivision two of this section. The suspending authority shall also:

a. inform the pupil accused of misconduct and a person in parental relationship to the pupil in writing about the determination to seek a suspension on the same day as such determination, describe the misconduct of which the student is accused, and provide an explanation of the evidence;

b. provide the pupil and the person in parental relation to the pupil an opportunity for an informal conference with the principal at which the pupil or person in parental relationship shall be authorized to present the pupil's version of the event. The aforesaid notice and opportunity for an informal conference shall take place prior to the suspension of the pupil. The student shall be allowed to attend classes and otherwise remain in school, pending the outcome of the informal conference with the principal, unless paragraph g of this subdivision applies. The suspending authority shall take reasonable steps to provide the written notice described in paragraph a of this subdivision 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 circumstances upon which allegations of misconduct are based, including the date, time and location of the alleged incident, 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 informal conference;

(3) a statement including the positive interventions and practice 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 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 ~~e. (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;

1 (5) a statement of pupil and parent rights pursuant to the code of
2 conduct including the right to call and question witnesses at the hear-
3 ing, the right to legal representation or an advocate during the suspen-
4 sion process, the right to interpretation at the hearing by a qualified
5 interpreter, and the right to appeal to the superintendent, the board of
6 trustees, the school board or the commissioner and the procedures for
7 such an appeal;

8 (6) The notice shall also state to the person in parental relationship
9 to the pupil that any statement by the pupil, written or oral, might be
10 used against the pupil in a criminal, immigration, or juvenile delin-
11 quency investigation and/or proceeding, and/or in a court of law.

12 c. Hearing. The suspending authority shall convene a hearing within
13 five days of the written notice to the pupil and person in parental
14 relationship to the pupil about the suspension unless the person in
15 parental relationship to the pupil requests a later date. The suspend-
16 ing authority shall confirm the date, time and place of the hearing with
17 all hearing participants and document such confirmation. If it is
18 requested, the school board shall appoint a hearing officer who is inde-
19 pendent of the suspending authority, to hear the case. The hearing
20 shall be conducted as follows:

21 (1) The hearing officer is authorized to administer oaths and issue
22 subpoenas in conjunction with the proceedings;

23 (2) The school must prove that the pupil violated the code of conduct
24 by a preponderance of the evidence;

25 (3) The school cannot rely exclusively on hearsay evidence to meet its
26 burden of proof.

27 (4) The pupil and person in parental relationship to the pupil shall
28 have the right to request the presence and testimony of the following
29 persons and subject such testimony to question and the school shall take
30 reasonable steps to secure the attendance of such persons:

31 (i) witnesses including pupils and visitors;

32 (ii) school employees and the school shall make the requested school
33 employees available at the hearing; and

34 (iii) law enforcement and private or public security retained by the
35 school district pursuant to contract or memorandum of understanding
36 required by section twenty-eight hundred one of this chapter.

37 (5) The pupil and person in parental relationship to the pupil shall
38 have the right to present documentary evidence including, but not limit-
39 ed to, witness statements, incident reports, and audio and video
40 recordings;

41 (6) The pupil and person in parental relationship to the pupil shall
42 have the right to representation by an attorney or an advocate;

43 (7) The hearing officer shall consider only the evidence presented at
44 the hearing and may uphold, reduce or dismiss the proposed suspension.
45 The hearing officer must dismiss the proposed suspension if the hearing
46 officer determines that:

47 (i) the suspension was imposed for a behavior for which suspension is
48 not authorized or prohibited by law or the school's code of conduct;

49 (ii) the school did not meet its burden of proof that a suspension for
50 a period of between six to twenty days is warranted;

51 (iii) the school did not follow the due process procedures in this
52 subsection; or

53 (iv) facts and considerations required by the school's code of conduct
54 do not support the decision to suspend the pupil.

55 (8) The hearing officer may dismiss or reduce the proposed suspension
56 if the hearing officer determines:

1 (i) the school did not impose graduated and proportionate discipline;
2 or

3 (ii) the suspension was not appropriate given the facts as presented
4 at the hearing.

5 (9) Upon request of the pupil or person in parental relationship to
6 the pupil, the school shall provide interpretation services in the first
7 language of the pupil or person in parental relationship to the pupil;

8 (10) An accurate and complete record of the hearing shall be main-
9 tained by the school, but no stenographic record shall be required and
10 an audio or video recording shall be deemed a satisfactory record. When
11 requested, the suspending authority shall provide to the pupil or person
12 in parental relationship this record as well as any transcript of the
13 record at no cost;

14 (11) The hearing officer shall issue a written decision to the school
15 and the pupil and person in parental relationship to the pupil about any
16 disciplinary action within three days of the hearing. If the hearing
17 officer determines that a suspension of between six to twenty school
18 days is warranted, the written decision shall state the length of the
19 suspension, findings of fact, reasons for the determination, the proce-
20 dures for an appeal and the date by which an appeal must be filed.

21 d. Appeal. The pupil or person in parental relationship to the pupil
22 shall have a right to appeal the decision of the hearing officer as
23 follows:

24 (1) the appeal shall be filed within thirty days of the date when the
25 pupil and person in parental relationship to the pupil receive the deci-
26 sion about a suspension of six or more school days;

27 (2) the school's code of conduct must identify the procedures for
28 appeal of suspensions for periods of more than twenty days. The appeal
29 shall be heard only by a person who was not involved in the initial
30 determination or hearing about the suspension of the pupil;

31 (3) the decision on appeal must be based solely on the hearing record
32 except to the extent that the pupil's rights were violated during the
33 investigation, hearing, or appeal process;

34 (4) the person hearing the appeal shall issue a written decision with-
35 in ten days of the filing of the appeal. The suspension may be upheld,
36 reduced or overturned. The person deciding the appeal must reverse the
37 suspension if: (i) the suspension was imposed for behavior for which
38 suspension is prohibited by law or not authorized by the code of
39 conduct; (ii) the school did not present sufficient evidence to meet its
40 burden of proof; (iii) the school did not follow due process procedures;
41 or (iv) the facts and considerations required by the school's code of
42 conduct do not support the decision to suspend the pupil for a period
43 between six to twenty days. The person deciding the appeal may overturn
44 or reduce the suspension if the school did not impose graduated and
45 proportionate discipline or the suspension was not appropriate given the
46 facts as presented at the hearing;

47 (5) The pupil or person in parental relationship to the student may
48 appeal any adverse determination on the appeal to the commissioner
49 pursuant to the regulations of the commissioner; and

50 (6) The pupil or person in parental relationship to the pupil may
51 appeal an adverse decision of the commissioner to the state supreme
52 court within ninety days of receipt of the decision by the commissioner.

53 [~~d.-(1)~~] 6. a. Consistent with the federal gun-free schools act, any
54 public school pupil who is determined under this subdivision to have
55 brought a firearm to or possessed a firearm at a public school shall be
56 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 ~~[e]~~ 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~~

~~defined in subdivision two a of this section,~~ from such teacher's classroom consistent with discipline and intervention measures contained in the code of conduct adopted by the board pursuant to section twenty-eight hundred one of this chapter. Such classroom removal may not exceed half of one school day. The school authorities of any school district shall establish policies and procedures to ensure the provision of continued educational programming and activities for students removed from the classroom pursuant to this subdivision and provided further that nothing in this subdivision shall authorize the removal of a pupil in violation of any state or federal law or regulation. No pupil shall return to the classroom until the principal makes a final determination pursuant to paragraph c of this subdivision, or the period of removal expires, whichever is less.

a. Such teacher shall inform the pupil and the person in parental relation and the school principal of the reasons for the removal. If the teacher finds that the pupil's continued presence in the classroom does not pose a continuing danger to persons or property and does not present an ongoing threat of 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. The principal shall inform the person in parental relation to such pupil of the removal and the reasons therefor 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. The pupil and the 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 and/or person in parental relation to the pupil an opportunity to present the pupil's version of relevant events. Such informal ~~[hearing]~~ conference shall be held within forty-eight hours of the pupil'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 removal. A person in parental relationship 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 of subdivision three]~~ paragraph e of subdivision nine of this section.

c. The principal shall not set aside the discipline imposed by the teacher unless the principal finds that the charges against the pupil are not supported by substantial evidence or that the pupil'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 of this subdivision.

d. 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-] 11. Expense. a. The expense attending the commitment and costs of maintenance of [~~any school delinquent~~] a student disciplined for violation of the code of conduct shall be a charge against the city or district where he 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 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 person in parental relation able to contribute towards the maintenance of such a minor, it may issue an order fixing the amount to be paid weekly.

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

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

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

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

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

d. Upon receipt of the principal's recommendation for transfer and a determination to consider that recommendation, the superintendent shall notify the person in parental relation and the pupil of the proposed transfer and of their right to a fair hearing as provided in paragraph c 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 § 4. Section 305 of the education law is amended by adding three new
32 subdivisions 56, 57 and 58 to read as follows:

33 56. 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 57. 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 58. 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 § 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 subparagraph (1) of paragraph c, paragraphs d, e,
14 f and g of subdivision 3 and paragraphs a, b and c of subdivision 3-a of
15 section 3214 of the education law made by section three of this act
16 shall be subject to the expiration of such subparagraph and paragraphs
17 and shall be deemed expired therewith; and provided further, however,
18 that the amendments to subdivision 7 of section 3214 of the education
19 law made by section three of this act shall not affect the repeal of
20 such subdivision and shall be deemed repealed therewith.