STATE OF NEW YORK

3036--A

2017-2018 Regular Sessions

IN SENATE

January 19, 2017

Introduced by Sens. MONTGOMERY, HAMILTON, PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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

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

b. (1) Every school shall establish prevention programs and services that may include school-based initiatives and individual interventions

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

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that promote a safe and secure environment for all persons on school property or at school functions, and restorative practices designed to promote social and emotional learning, resolve student behavioral issues, and keep students in school and in class.

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

(3) Every school shall have, and support teachers in maintaining, classrooms and classroom practices that support each student's opportunity to obtain an education, that develop each student's social-emotional skills, and that are healthy, safe, and inclusive.

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

(5) Every school shall define the roles and areas of responsibility of school personnel, security personnel and law enforcement in response to student misconduct that violates the code of conduct. A school district or charter school that employs, contracts with, or otherwise retains law enforcement or public or private security personnel, including school resource officers, shall establish a written contract or memorandum of understanding that is developed with stakeholder input including but not limited to: parents, students, school administrators, teachers, collective bargaining units, parent and student organizations, community members, as well as probation officers, prosecutors, defense counsels and courts that are familiar with school discipline. Such written contract or memorandum of understanding shall define the relationship between a school district or charter school, school personnel, students, visitors, law enforcement, and public or private security personnel. Such contract or memorandum of understanding shall be consistent with the code of conduct, limit law enforcement or security personnel's involvement when a student's behavior does not threaten the safety of the school, define which behaviors should not result in an arrest or summons, require law enforcement or security personnel to receive training as required by subparagraph four of this subdivision, and clearly delegate the role of school discipline to the school administration. Such written contract or memorandum of understanding shall be incorporated into and published as part of the code of conduct.

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

d. (1) Restorative approaches to school climate and discipline include the use of restorative practices in classrooms and schools to proactively build a school community based upon cooperation, mutual understanding, acceptance of responsibility, trust and respect. Restorative prac-

tices may address misbehavior and harm in a way that strengthens relationships between school staff and students and among students and addresses the root causes of discipline problems.

(2) Restorative discipline allows students who may have violated the code of conduct to take full responsibility for their behavior by addressing any individuals affected by the behavior. The purpose of such discipline is to help students understand why a specific behavior is wrong and to help them choose a better behavior in the future. Restorative practices and discipline may include class meetings, facilitated circles, conferences, peer mediation 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. Consistent with this section and section thirty-two hundred fourteen of this chapter, school personnel may use restorative discipline to respond to student behavior.

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

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

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

a. [~~provisions regarding conduct, dress and language deemed appropriate and acceptable on school property, including a school function, and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

j. set forth the circumstances under and procedures by which a parent or persons in parental relation to a student accused of and affected by student behavior that violates the code of conduct shall be notified of code of conduct violations, including notice that any statement by the student, written or oral, might be used against the student in a criminal, immigration, or juvenile delinquency investigation and/or proceeding and/or in a court of law;

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

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

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

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

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

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

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

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

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

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

(C) the supports the school will provide for the student to successfully re-enter school;

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

(E) any other pertinent circumstances.

n. ensure such code and [~~the~~] its enforcement [~~thereof~~] are in compliance with state and federal laws relating to students with disabilities;

[~~h. provisions setting forth the procedures by which local law enforcement agencies shall be notified of code violations which constitute a crime;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

e. at the beginning of each school year, each school shall explain its code of conduct to students in one or more general assemblies or classroom level lessons.

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

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

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

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

(2) best practices for age-appropriate, graduated and proportionate discipline as set out in section twenty-eight hundred one of this chapter;

(3) a matrix of student misconduct and the interventions and disciplinary measures that provide age appropriate, graduated and proportionate intervention designed to reduce reliance on suspensions and referrals to law enforcement;

(4) guidelines for appropriate school-wide implementation of restorative practices; and

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

b. The department shall collect and every school district and charter school shall report to the department data about the implementation of student codes of conduct as required by federal law. On or before November first of each year, the department shall make available to the public, by school district and charter school, the data regarding student discipline from the preceding year. On or before December first of each year the department shall submit to the governor, the temporary president of the senate, the speaker of the assembly and the chairs of the assembly and senate education committees a report that summarizes and analyzes the data collected about student discipline including but not limited to a review and evaluation of school application of codes of conduct for fair and consistent application, recommendations about policies and practices for school codes of conduct, and the technical assistance the department is providing regarding student discipline.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~3. Suspension~~] 2. Discipline of a [~~pupil~~] student. a. [~~The board of education, board of trustees or sole trustee, the superintendent of schools, district superintendent of schools or principal of a school may suspend the following pupils~~] (1) Students may be suspended from required attendance [~~upon instruction:~~] in accordance with paragraphs b and c of this subdivision; provided, however, that decisions about appropriate discipline and interventions in response to student behavior that has been determined to violate a school's code of conduct shall weigh the likelihood that a lesser intervention or discipline would adequately address the student's misconduct, redress any harm or damage, and prevent future violations of the code of conduct. Suspensions should only be used as a last resort.

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

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

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

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

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

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

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

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

(v) other factors as determined by school personnel and the student to be relevant including the circumstances surrounding the student's actions and 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.

[~~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)~~] Short term suspension. The board of education, board of trustees, [~~or sole trustee~~] other governing body, the chancellor of the city school district in the case of the city school district of the city of New York, superintendent of schools, district superintendent of schools and the principal of the school where the [~~pupil~~] attends shall have the power to suspend [~~a pupil~~] for a period not to exceed five school days[~~. In the case of~~] any student who engages in behavior that results in serious physical injury to students, staff, or others or any student who is in grades four to twelve, if a determination is made that the student engaged in behavior that violated the code of conduct for which short term suspension may be warranted. Except as set forth below, prior to such a suspension, the [~~suspending authority~~] student, parent or person in parental relation shall [~~provide the pupil~~] be provided with written notice of the charged misconduct, including a brief explanation of the basis for the suspension and description of the alleged behavior that violated the code of conduct, that includes the date, time and place of the scheduled informal conference with the principal. [~~If the pupil denies the misconduct, the suspending authority shall provide an explanation of the basis for the suspension.~~] The [~~pupil~~] student and the parent or person in parental relation to the [~~pupil~~] student shall[~~, on request,~~] be given an opportunity for an informal conference with the principal [~~at which~~]. At the conference, the [~~pupil and/or~~] student and parent or person in parental relation shall be authorized to review all evidence of the alleged misconduct, present the [~~pupil's~~] student's version of the event [~~and to~~], ask questions of the complaining witnesses, and be represented by an attorney or advocate. The aforesaid notice and opportunity for an informal conference shall take place prior to suspension of the [~~pupil~~] student 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,~~] student's misconduct physically injures or poses an immediate threat of serious physical injury to the student or other person or persons, in which case the [~~pupil's~~] student's notice and opportunity for an informal conference shall take place as soon after the suspension as is reasonably practicable but in no case more than forty-eight hours after such 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 student's removal. If suspension is imposed, the principal or his or her designee shall create an education plan for the student consistent with section twenty-eight hundred one of this chapter, and a plan for the student's reinstatement to school. The principal shall issue a written decision to the parent or person in parental relation to the student about any disciplinary action within two days of the conference. If the principal determines that a suspension of five school days or less is warranted, the written decision shall state the length of the suspension, findings of fact, reasons for the determination, the procedures for an appeal and the date by which an appeal shall be filed. A student suspended for violating the code of conduct

may appeal a suspension of five days or less to the school district superintendent, board of education, board of trustees, other governing body or chancellor of the city school district in the case of the city school district of the city of New York as designated in the school code of conduct within thirty days. A written decision on the appeal shall be sent to the parent or person in parental relation and the student within thirty days.

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

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

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

(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.**~~] **Appeal. The student or parent or person in parental relation to the student shall have a right to appeal the decision of the hearing officer, superintendent of school or district superintendent to the board of education, board of trustees, other governing body, or the chancellor of the city school district in the case of the city school district of the city of New York. The appeal shall be heard only by an entity or individual who was not involved in the initial determination or hearing regarding the suspension of the student. The entity or individual hearing the appeal shall issue a written decision within twenty days of the filing of the appeal. The suspension may be upheld, reduced or dismissed. The student or parent or person in parental relation to the student may appeal any adverse determination by the board of education, board of trustees, other governing body, or the chancellor of the city**

school district in the case of the city school district of the city of New York to the commissioner pursuant to the regulations of the commissioner. The student or parent or person in parental relation to the student may appeal an adverse decision of the commissioner to the state supreme court within four months of receipt of the decision by the commissioner.

[~~d. (1)~~] 3. Firearms. a. Consistent with the federal gun-free schools act, any public school [~~pupil~~] student who is determined under [~~this~~] subdivision two of this section 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 nonpublic school [~~pupil~~] student participating in a program operated by a public school district using funds from the elementary and secondary education act of nineteen hundred sixty-five who is determined under [~~this~~] subdivision two of this section to have brought a firearm to or possessed a firearm at a public school or other premises used by the school district to provide such programs shall be suspended for a period of not less than one calendar year from participation in such program. The procedures of this subdivision shall apply to such a suspension of a nonpublic school [~~pupil~~] student. A superintendent of schools, district superintendent of schools or community superintendent shall have the authority to modify this suspension requirement for each student on a case-by-case basis. The determination of a superintendent shall be subject to review by the board of education, board of trustees, other governing body or the chancellor of the city school district in the case of the city school district of the city of New York, pursuant to paragraph c of [~~this~~] subdivision two of this section and the commissioner pursuant to section three hundred ten of this chapter. Nothing in this subdivision shall be deemed to authorize the suspension of a student with a disability in violation of the individuals with disabilities education act or article eighty-nine of this chapter. A superintendent shall refer the [~~pupil~~] student under the age of sixteen who has been determined to have brought a weapon or firearm to school in violation of [~~this~~] subdivision two of this section to a presentment agency for a juvenile delinquency proceeding consistent with article three of the family court act except a student fourteen or fifteen years of age who qualifies for juvenile offender status under subdivision forty-two of section 1.20 of the criminal procedure law. A superintendent shall refer any [~~pupil~~] student sixteen years of age or older or a student fourteen or fifteen years of age who qualifies for juvenile offender status under subdivision forty-two of section 1.20 of the criminal procedure law, who has been determined to have brought a weapon or firearm to school in violation of [~~this~~] subdivision two of this section to the appropriate law enforcement officials.

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

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

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

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

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

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

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

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

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

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

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

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

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

[~~(iii)~~] (3) 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 two of this section, may order the placement of a student with a disability into an interim alternative educational setting, another setting or suspension for up to ten consecutive school days, inclusive of any period in which the student is placed in an appropriate interim alternative educational setting, another setting or suspension pursuant to clause [~~(ii)~~] two 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)~~] paragraph f of this [~~subparagraph~~] subdivision, 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 two 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.~~] [~~Teacher removal of a disruptive pupil. In addition, any~~] 7. Classroom management. A teacher shall have the power and authority to [~~remove a disruptive pupil, as defined in subdivision two-a of this section,~~] manage their classrooms consistent with the code of conduct, this section and section twenty-eight hundred one of this chapter. Teachers may remove a student 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 when a student's behavior violates a provision of the code of conduct for which removal may be warranted and no alternative intervention alone is appropriate to address the alleged behavior. Such classroom removal may not exceed one half school day on the same school day. The [~~school authorities of any~~] school district or charter school 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 to section twenty-eight hundred one of this chapter, and provided further that nothing in this subdivision shall authorize the removal of a [~~pupil~~] student in violation of any state or federal law or regulation. No [~~pupil~~] student shall return to the classroom until the principal makes a final determination pursuant to paragraph [~~c~~] d of this subdivision, or the period of removal expires, whichever is less.

a. When a student is removed from the classroom, the school shall provide the appropriate services, interventions, or restorative discipline to enable the student to return to the classroom as expeditiously as possible, and in no case no longer than one half day on the same school day as the removal. After a student's third removal in a school year, the school shall create a plan to provide appropriate interventions, supports, and services that address the behavior and circumstances that led to the removals.

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

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

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

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

b. The school authorities may institute proceedings before a court having jurisdiction to determine the liability of a parent or person in

parental relation to contribute towards the maintenance of a [~~school delinquent~~] student under sixteen years of age ordered to attend upon instruction under confinement. If the court shall find the parent or person in parental relation able to contribute towards the maintenance of such a minor, it may issue an order fixing the amount to be paid weekly.

[~~5.~~] 9. Involuntary transfers of [~~pupils~~] students 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~~], other governing body, the chancellor in the case of the city school district of the city of New York, the superintendent of schools, or district superintendent of schools may transfer a [~~pupil~~] student 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~~] six 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~~] student would benefit from the transfer [~~, or~~] and when the [~~pupil~~] student would receive an adequate and appropriate education in another school program or facility.

No recommendation for [~~pupil~~] student transfer shall be initiated by the principal until such [~~pupil~~] student and a parent or person in parental relation has been sent written notification of the consideration of transfer recommendation which shall include a description of the facts and circumstances upon which the transfer is based and copies of all relevant documentary evidence. Such notice shall set a time and place of an informal conference with the principal and shall inform such parent or person in parental relation and such [~~pupil~~] student 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~~] student would benefit from a transfer [~~or~~] and that the [~~pupil~~] student 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 parent or person in parental relation and to the [~~pupil~~] student.

d. Upon receipt of the principal's recommendation for transfer and a determination to consider that recommendation, the superintendent shall notify the parent or person in parental relation and the [~~pupil~~] student of the proposed transfer and of their right to a fair hearing as provided in paragraph c of subdivision [~~three~~] two of this section and shall list community agencies and free legal assistance which may be of assistance. The written notice shall include a statement that the [~~pupil~~] student or parent or person in parental relation has ten days to request a hearing and that the proposed transfer shall not take effect, except upon written parental consent, until the ten day period has

elapsed, or, if a fair hearing is requested, until after a formal decision following the hearing is rendered, whichever is later.

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

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

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

§ 3-a. Section 305 of the education law is amended by adding three new subdivisions 56, 57 and 58 to read as follows:

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

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

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

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

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

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

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

58. The commissioner shall be authorized to provide funds for training school personnel included in section twenty-eight hundred one of this chapter only to the extent that the state budget includes an appropriation for such training.

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

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

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

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

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

determined to have brought a weapon to school in violation of [~~this~~] subdivision two of this section to a presentment agency for a juvenile delinquency proceeding consistent with article three of the family court act except a student fourteen or fifteen years of age who qualifies for juvenile offender status under subdivision forty-two of section 1.20 of the criminal procedure law. A superintendent shall refer any [~~pupil~~] student sixteen years of age or older or a student fourteen or fifteen years of age who qualifies for juvenile offender status under subdivision forty-two of section 1.20 of the criminal procedure law, who has been determined to have brought a weapon to school in violation of [~~this~~] subdivision two of this section to the appropriate law enforcement officials.

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

c. As used in this paragraph:

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

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

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

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

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

under applicable federal law and regulations, or to limit the ability of a school district to change the educational placement of a student with a disability in accordance with the procedures in article eighty-nine of this chapter.

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

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

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

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

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

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

[~~(iii)~~] **(3)** 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 **two of this section**, may order the placement of a student with a disability into an interim alternative educational setting, another setting or suspension for up to ten consecutive school days, inclusive of any period in which the student is placed in an appropriate interim alternative educational placement, another setting or suspension pursuant to clause [~~(ii)~~] **two** 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)~~] **paragraph f** of this [~~subparagraph~~] **subdivision**, 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 **two 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 days, but not to exceed the period of suspension ordered by a superintendent in accordance with this subdivision, under the circumstances specified in subsection (k)(1) of section fourteen hundred fifteen of title twenty of the United States code and the federal regulations implementing such statute.

[~~(v)~~] **e.** the terms "day," "business day," and "school day" shall be as defined in section 300.9 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 the committee on special education 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 as a nondisabled student, except that such student shall continue to receive services to the extent required under federal law and regulations.

[~~(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 days under the circumstances specified in subsections (k)(2) and (k)(7) 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 the committee on special education 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.

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

[~~a.~~] b. Such teacher shall inform the [~~pupil~~] student, the parent or person in parental relation to the student 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.~~

~~b.~~] c. The principal shall inform the parent or person in parental relation to such [~~pupil~~] student of the removal and the reasons therefor within twenty-four hours of the [~~pupil's~~] student's removal. The [~~pupil~~] student and the parent or person in parental relation shall, upon request, be given an opportunity for an informal conference with the principal to discuss the reasons for the removal. [~~If the pupil denies the charges, the~~] The principal shall provide an explanation of the basis for the removal and allow the [~~pupil~~] student and/or parent or person in parental relation to the [~~pupil~~] student an opportunity to present the [~~pupil's~~] student's version of relevant events. Such informal [~~hearing~~] conference shall be held within forty-eight hours of the [~~pupil's~~] student's removal, provided that if such forty-eight hour period does not end on a school day, it shall be extended to the corre-

sponding time on the second school day next following the pupil's student's removal. A parent or person in parental relation to the student may request that the informal conference take place later than forty-eight hours after the student's removal. For purposes of this subdivision, "school day" shall mean a school day as defined pursuant to paragraph e of subdivision six of this section.

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

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

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

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

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

student is substantially likely to result in injury to the student or to others. Such procedure for extension of an interim alternative educational setting may be repeated as necessary.

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

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

§ 11. This act shall take effect immediately; provided, however that:

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

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

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

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

of 2007, as amended, when upon such date the provisions of section six of this act shall take effect;

e. the amendments to paragraphs a, b and c of subdivision 3-a of section 3214 of the education law made by section three of this act shall be subject to the expiration and reversion of such paragraphs pursuant to section 12 of chapter 147 of the laws of 2001, as amended, when upon such date the provisions of section seven of this act shall take effect;

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

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

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