

# STATE OF NEW YORK

1981

2019-2020 Regular Sessions

## IN ASSEMBLY

January 18, 2019

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

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

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

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

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

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

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

LBD02878-01-9

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~school property, including a school function, and provisions regarding~~  
2 ~~acceptable civil and respectful treatment of teachers, school adminis-~~  
3 ~~trators, other school personnel, students and visitors on school proper-~~  
4 ~~ty, including a school function, including the appropriate range of~~  
5 ~~disciplinary measures which may be imposed for violation of such code,~~  
6 ~~and the roles of teachers, administrators, other school personnel, the~~  
7 ~~board of education and parents;~~

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

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

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

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

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

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

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

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

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

48 e. where available, require the consideration of the use of restora-  
49 tive practices and discipline in response to violations of the code of  
50 conduct;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (E) any other pertinent circumstances.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 § 3. Section 3214 of the education law, as amended by chapter 181 of  
 18 the laws of 2000, subparagraph 1 of paragraph c of subdivision 3 as  
 19 amended by chapter 430 of the laws of 2006, paragraphs d and f of subdivi-  
 20 sion 3 as amended by chapter 425 of the laws of 2002, paragraph e of  
 21 subdivision 3 as amended by chapter 170 of the laws of 2006, paragraph g  
 22 of subdivision 3 as amended by chapter 352 of the laws of 2005, clause  
 23 (v) of subparagraph 3 of paragraph g of subdivision 3 as amended by  
 24 chapter 378 of the laws of 2007, paragraphs a, b and c of subdivision  
 25 3-a as amended by chapter 147 of the laws of 2001 and subdivision 7 as  
 26 amended by section 9 of part YYY of chapter 59 of the laws of 2017, is  
 27 amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (i) the nature and impact of the student's alleged misconduct, includ-  
46 ing but not limited to the harm to the student or other persons, damage  
47 to personal or school property, or threat to the safety and welfare of  
48 the school community;

49 (ii) the student's age, ability to speak or understand English, phys-  
50 ical health, mental health, disabilities and provisions of an individ-  
51 ualized education program, as it relates to his or her behavior;

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

54 (iv) the student's prior conduct, appropriateness of prior inter-  
55 ventions and the student's response to prior interventions; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~1 the student from the classroom, provide the student with an explanation  
2 of the basis for the removal and allow the pupil to informally present  
3 the pupil's version of relevant events. In all other cases, the teacher  
4 shall provide the pupil with an explanation of the basis for the removal  
5 and an informal opportunity to be heard within twenty-four hours of the  
6 pupil's removal, provided that if such twenty-four hour period does not  
7 end on a school day, it shall be extended to the corresponding time on  
8 the next school day.~~

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

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

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

44 [~~4.]~~ 8. Expense. a. The expense attending the commitment and costs of  
45 maintenance of [~~any school delinquent]~~ a student placed as a result of a  
46 finding related to school or educational issues shall be a charge  
47 against the city or district where he or she resides, if such city or  
48 district employs a superintendent of schools; otherwise it shall be a  
49 county charge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 § 5. Paragraphs d and f of subdivision 3 of section 3214 of the educa-  
 26 tion law, as amended by chapter 181 of the laws of 2000, are amended to  
 27 read as follows:

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

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

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

19 c. As used in this paragraph:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 b. For students with disabilities placed in an interim alternative  
5 educational setting pursuant to [~~clause (iv) or (vii) of subparagraph~~  
6 ~~three of paragraph g~~] paragraphs d or g of subdivision [~~three~~] six of  
7 section thirty-two hundred fourteen of this chapter, during the pendency  
8 of proceedings conducted pursuant to this section in which the parents  
9 or persons in parental relationship challenge the interim alternative  
10 educational setting or a manifestation determination, the student shall  
11 remain in the interim alternative educational setting pending the deci-  
12 sion of the hearing officer or until expiration of the time period of  
13 the student's interim alternative placement, whichever comes first,  
14 unless the local school district and the parents or persons in parental  
15 relationship otherwise agree. After the expiration of such interim  
16 alternative educational placement, if the school district proposes to  
17 change the student's placement, during the pendency of any proceedings  
18 to challenge the proposed change in placement, the student shall return  
19 to and remain in the current educational placement, which shall be the  
20 student's placement prior to the interim alternative educational  
21 setting, unless the local school district and the parents or persons in  
22 parental relationship otherwise agree or unless as a result of a deci-  
23 sion by an impartial hearing officer in an expedited hearing, the inter-  
24 im alternative educational setting is extended or another appropriate  
25 placement is ordered for a period not to exceed forty-five days based on  
26 a determination that maintaining the current educational placement of  
27 the student is substantially likely to result in injury to the student  
28 or to others. Such procedure for extension of an interim alternative  
29 educational setting may be repeated as necessary.

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

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

36 b. the amendments to subparagraph 1 of paragraph c of subdivision 3 of  
37 section 3214 of the education law made by section three of this act  
38 shall be subject to the expiration and reversion of such subparagraph  
39 pursuant to subdivision (a) of section 8 of chapter 430 of the laws of  
40 2006, as amended, when upon such date the provisions of section four of  
41 this act shall take effect;

42 c. the amendments to paragraphs d and f of subdivision 3 of section  
43 3214 of the education law made by section three of this act shall be  
44 subject to the expiration and reversion of such paragraphs pursuant to  
45 section 4 of chapter 425 of the laws of 2002, as amended, when upon such  
46 date the provisions of section five of this act shall take effect;

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

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

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

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

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

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