

STATE OF NEW YORK

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2019-2020 Regular Sessions

IN ASSEMBLY

January 18, 2019

Introduced by M. of A. NOLAN, DICKENS, O'DONNELL, PERRY, HYNDMAN, JEAN-PIERRE, PRETLOW, WRIGHT, CAHILL, ORTIZ, GANTT, TITUS, SAYEGH, DE LA ROSA, SIMOTAS, WALKER, JAFFEE, RODRIGUEZ, BICHOTTE, FERNANDEZ, AUBRY, EPSTEIN, REYES, TAYLOR, PHEFFER AMATO, JOYNER, GLICK, CRUZ, SIMON, BRONSON, RIVERA, NIOU, CRESPO, WALLACE, ARROYO, MOSLEY, BLAKE, GOTTFRIED, RAMOS, COOK, McDONALD, LIFTON, WILLIAMS, GRIFFIN, GALEF, STIRPE, RYAN, QUART, FRONTUS, ROMEO, BARRON, L. ROSENTHAL, SANTABARBARA -- Multi-Sponsored by -- M. of A. BUCHWALD, DenDEKKER, WEINSTEIN -- read once and referred to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to school codes of conduct and disciplinary action following violations of such codes of conduct and 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 of conduct on school property. 1. For purposes of this
10 section, school property means in or within any building, structure,
11 athletic playing field, playground, parking lot or land contained within
12 the real property boundary line of a public elementary or secondary
13 school, including charter schools; or in or on a school bus, as defined
14 in section one hundred forty-two of the vehicle and traffic law; or
15 electronic files and databases; and a school function shall mean a

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

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1 school-sponsored or school-authorized extra-curricular event or activity
2 regardless of where such event or activity takes place, including any
3 event or activity that may take place in another state.

4 2. The board of education or the trustees [~~as defined in section two~~
5 ~~of this chapter,~~] of every school district [~~within the state, however~~
6 ~~created, and every~~] or the chancellor of the city school district in the
7 case of the city school district of the city of New York, and every
8 board of cooperative educational services and [~~county vocational exten-~~
9 ~~sion board~~] charter school, shall adopt and amend, as appropriate, a
10 code of conduct for the maintenance of order on school property, includ-
11 ing a school function, which shall promote and sustain a safe, respect-
12 ful, and supportive school environment and govern the conduct of
13 students, teachers and other school personnel as well as visitors and
14 shall provide for the enforcement thereof. Such policy may be adopted by
15 the [~~school~~] board of education or trustees, or the chancellor of the
16 city school district in the case of the city school district of the city
17 of New York, or other governing body only after at least one public
18 hearing that provides for the participation of school personnel,
19 parents, students and any other interested parties before its adoption.
20 The school district, board of cooperative educational services, or char-
21 ter school shall notify the school community and general public about
22 the hearing at least fifteen days prior to the date of the hearing. Such
23 notice shall include the date, time, and place of the hearing, the agen-
24 da, a copy of the proposed code of conduct, and information about a
25 public comment period as determined by the school district, board of
26 cooperative educational services, or charter school. The school
27 district, board of cooperative educational services, or charter school
28 shall take necessary steps to notify families who do not speak English
29 and whose children attend a school in the district, a board of cooper-
30 ative educational services, or a charter school. Such code of conduct
31 shall define violations of the code of conduct and set clear expecta-
32 tions for student conduct on school property, including at school func-
33 tions, and shall include, at a minimum:

34 a. provisions regarding conduct, dress and language deemed appropriate
35 and acceptable on school property, including a school function, and
36 conduct, dress and language deemed unacceptable and inappropriate on
37 school property, including a school function [~~and~~];

38 a-1. provisions regarding acceptable civil and respectful treatment of
39 teachers, school administrators, other school personnel, students and
40 visitors on school property [~~including a~~] and at school [~~function~~
41 functions, including [~~the appropriate~~] a range of age-appropriate gradu-
42 ated disciplinary measures which may be imposed for [~~violation of~~
43 violating such code, and the roles of teachers, administrators, other
44 school personnel, the board of education or trustees, or the chancellor
45 of the city school district in the case of the city school district of
46 the city of New York, or other governing body, and parents. Schools may
47 use restorative discipline practices and other interventions to respond
48 to student behavior that violates the code of conduct. Restorative
49 discipline may include class meetings, facilitated circles, conferences,
50 peer mediation, and other interventions that can effectively address
51 student misconduct, hold students accountable for their behavior, and
52 foster healthy relationships within the school community. No student,
53 however, shall be required to participate in a restorative practice
54 without their consent and the consent of their parents or persons in
55 parental relations;

1 a-2. provisions that prohibit the suspension of students in pre-kin-
2 dergarten through grade three, except a student may be suspended if the
3 student is defined as a violent student pursuant to subparagraphs one,
4 two, three, four, and five of paragraph a of subdivision two-a of
5 section thirty-two hundred fourteen of this chapter or if suspension is
6 necessary to comply with applicable federal laws;

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

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

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

16 e. provisions for detention, suspension and removal from the classroom
17 of students, consistent with section thirty-two hundred fourteen of this
18 chapter and other applicable federal, state and local laws [~~including~~];

19 e-1. provisions for the school authorities to establish policies and
20 procedures to ensure the provision of continued educational programming
21 and activities for students removed from the classroom, placed in
22 detention, or suspended from school. Provided however when a student is
23 suspended from school or removed from the classroom, the principal, or
24 the principal's designee, in consultation with the student's teachers,
25 shall create an education plan for the student for each class in which
26 the student is enrolled within twenty-four hours, provided that if such
27 twenty-four hour period does not end on a school day, it shall be
28 extended to the corresponding time on the next school day. The education
29 plan shall make provisions for a student's on-going academic instruction
30 during the removal or suspension. The student shall have the opportunity
31 to earn all academic credit he or she would have been eligible to earn
32 had they been in class including the opportunity to complete any missed
33 assignments or take any missed examinations or assessments during the
34 student's removal or suspension. If an examination or assessment cannot
35 be rescheduled, the student shall be allowed on school property to take
36 such assessment or examination on the day and time that the assessment
37 or examination is given;

38 f. procedures by which violations of the code of conduct are reported
39 to the appropriate school personnel, the facts are investigated and
40 determined, and discipline measures [~~imposed and discipline measures~~
41 ~~carried out~~] are decided and implemented;

42 g. provisions ensuring such code and the enforcement thereof are in
43 compliance with state and federal laws relating to students with disa-
44 bilities;

45 h. provisions setting forth the procedures by which local law enforce-
46 ment agencies shall be notified of [~~code~~] violations of the code of
47 conduct which constitute a crime;

48 i. provisions setting forth the circumstances under and procedures by
49 which parents or persons in parental relation to the student accused of
50 violating the code of conduct and students affected by the student
51 behavior that violates the code of conduct shall be notified of such
52 code of conduct violations including notice that any statement by the
53 student, written or oral, may be used against the student in a criminal,
54 immigration, or juvenile delinquency investigation and/or proceeding
55 and/or in a court of law;

1 j. provisions setting forth the circumstances under and procedures by
2 which a [~~complaint in criminal court,~~] student may be referred to law
3 enforcement or a juvenile delinquency petition or person in need of
4 supervision petition as defined in articles three and seven of the fami-
5 ly court act will be filed;

6 k. circumstances under and procedures by which [~~referral to~~] a student
7 may be referred to academic services, school-based support services, or
8 appropriate human service agencies [~~shall be made~~];

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

17 m. a minimum suspension period for acts that would qualify the [~~pupil~~]
18 student to be defined as a violent [~~pupil~~] student pursuant to paragraph
19 a of subdivision two-a of section thirty-two hundred fourteen of this
20 chapter, provided that the suspending authority may reduce such period
21 on a case by case basis to be consistent with any other state and feder-
22 al law; and

23 n. provisions to comply with article two of this chapter.

24 3. The [~~district~~] code of conduct shall be developed in collaboration
25 with [~~student, teacher, administrator, and~~] representatives from inter-
26 ested stakeholders including, but not limited to, students, teachers,
27 administrators, parent organizations, school safety personnel, collec-
28 tive bargaining units, and other school personnel and shall be approved
29 by the board of education or trustees, [~~or~~] other governing body, or by
30 the chancellor of the city school district in the case of the city
31 school district of the city of New York. In the city school district of
32 the city of New York, each community district education council shall be
33 authorized to adopt and implement additional policies, which are
34 consistent with the city district's district-wide code of conduct, to
35 reflect the individual needs of each community school district provided
36 that such additional policies shall require the approval of the chancel-
37 lor.

38 4. [~~The~~] At the beginning of each school year, the board of education
39 or trustees, chancellor of the city school district in the case of the
40 city school district of the city of New York, or other governing body
41 shall: translate the code of conduct into the three most commonly
42 spoken languages of the children attending the school district, board of
43 cooperative educational services, or charter school, post the code of
44 conduct on the school district's, charter school's or board of cooper-
45 ative educational services website, provide copies of a summary of the
46 code of conduct to all students at a general assembly [~~held at the~~
47 ~~beginning of the school year and shall make copies of the code available~~
48 ~~to persons in parental relation to students at the beginning of each~~
49 ~~school year, and shall~~] or classroom lesson, mail a plain language
50 summary of such code to all parents or persons in parental relation to
51 students before the beginning of each school year, and make it available
52 thereafter upon request. The board of education or trustees, the chan-
53 cellor of the city school district in the case of the city school
54 district of the city of New York, or other governing body shall take
55 reasonable steps to ensure community awareness of the code of conduct's
56 provisions.

1 5. a. The board of education or trustees, the chancellor of the city
2 school district in the case of the city of New York or other governing
3 body shall annually review and update the district's codes of conduct if
4 necessary, taking into consideration the effectiveness of code of
5 conduct provisions and the fairness and consistency of its adminis-
6 tration. Each school district is authorized to establish a committee and
7 to facilitate the review of the code of conduct and the district's
8 response to code of conduct violations. Any such committee shall be
9 comprised of similar individuals described in subdivision three of this
10 section. The [~~school~~] board of education or trustees, the chancellor of
11 the city school district in the case of the city of New York, or other
12 governing body shall reapprove any such updated code only after at least
13 one public hearing that provides for the participation of school person-
14 nel, parents, students and any other interested parties.

15 b. Each district, board of cooperative educational services, and char-
16 ter school shall file a copy of its codes of conduct with the commis-
17 sioner and [~~all~~] any amendments to such code shall be filed with the
18 commissioner no later than thirty days after their adoption.

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

21 3. The [~~district~~] code of conduct shall be developed in collaboration
22 with [~~student, teacher, administrator, and~~] representatives from inter-
23 ested stakeholders including, but not limited to, students, teachers,
24 administrators, parent organizations, school safety personnel, collec-
25 tive bargaining units, and other school personnel and shall be approved
26 by the board of education or trustees, [~~or~~] other governing body, or by
27 the chancellor of the city school district in the case of the city
28 school district of the city of New York. In the city school district of
29 the city of New York, each community school district board shall be
30 authorized to adopt and implement additional policies, which are
31 consistent with the city district's district-wide code of conduct, to
32 reflect the individual needs of each community school district provided
33 that such additional policies shall require the approval of the chancel-
34 lor.

35 § 3. Section 3214 of the education law, as amended by chapter 181 of
36 the laws of 2000, subparagraph 1 of paragraph c of subdivision 3 as
37 amended by chapter 430 of the laws of 2006, paragraphs d and f of subdivi-
38 sion 3 as amended by chapter 425 of the laws of 2002, paragraph e of
39 subdivision 3 as amended by chapter 170 of the laws of 2006, paragraph g
40 of subdivision 3 as amended by chapter 352 of the laws of 2005, clause
41 (v) of subparagraph 3 of paragraph g of subdivision 3 as amended by
42 chapter 378 of the laws of 2007, paragraphs a, b and c of subdivision
43 3-a as amended by chapter 147 of the laws of 2001 and subdivision 7 as
44 amended by section 9 of part YYY of chapter 59 of the laws of 2017, is
45 amended to read as follows:

46 § 3214. Student placement, suspensions and transfers. 1. School delin-
47 quent. A minor under seventeen years of age, required by any of the
48 provisions of part one of this article to attend upon instruction, who
49 is an habitual truant from such instruction or is irregular in such
50 attendance or insubordinate or disorderly or disruptive or violent
51 during such attendance, is a school delinquent.

52 2. Special day schools. The school authorities of any city [~~or~~],
53 school district, board of cooperative educational services, or charter
54 school may establish schools or set apart rooms in [~~public~~] school
55 buildings or properties for the instruction of school delinquents, and
56 fix the number of days per week and the hours per day of required

1 attendance and instruction, which shall not be less than is required of
2 minors attending the full time day schools.

3 2-a. a. Violent [~~pupil~~] student. For the purposes of this section, a
4 violent [~~pupil~~] student is an elementary or secondary student under
5 twenty-one years of age who:

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

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

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

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

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

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

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

23 b. Disruptive [~~pupil~~] student. For the purposes of this section, a
24 disruptive [~~pupil~~] student is an elementary or secondary student under
25 twenty-one years of age who is substantially disruptive of the educa-
26 tional process or substantially interferes with the teacher's authority
27 over the classroom.

28 3. Suspension of a [~~pupil~~] student. a. The board of education[~~, board~~
29 ~~of~~] or trustees [~~or sole trustee~~], the chancellor of the city school
30 district in the case of the city school district of New York, other
31 governing body, the superintendent of schools, district superintendent
32 of schools or principal of a school may suspend the following [~~pupils~~]
33 students from required attendance upon instruction provided that the
34 suspension of such student is not prohibited by section twenty-eight
35 hundred one of this chapter:

36 A [~~pupil~~] student who is insubordinate or disorderly or violent or
37 disruptive, or whose conduct otherwise endangers the safety, morals,
38 health or welfare of others.

39 b. (1) The board of education[~~, board of~~] or trustees, [~~or sole trus-~~
40 tee], the chancellor of the city school district in the case of the city
41 school district of the city of New York, other governing body, super-
42 intendent of schools, district superintendent of schools and the princi-
43 pal of the school where the [~~pupil~~] student attends shall have the power
44 to suspend a [~~pupil~~] student for a period not to exceed five school days
45 provided that the suspension of such student is not prohibited by
46 section twenty-eight hundred one of this chapter. In the case of such a
47 suspension, the suspending authority shall provide the [~~pupil~~] student
48 with written notice of the charged misconduct including a brief explana-
49 tion of the basis for the suspension and a description of the alleged
50 behavior that violated the code of conduct that includes the date, time,
51 and place of the scheduled informal conference with the principal. [~~If~~
52 ~~the pupil denies the misconduct, the suspending authority shall provide~~
53 ~~an explanation of the basis for the suspension.~~] The [~~pupil~~] student and
54 the parent or person in parental relation to the [~~pupil~~] student shall[~~,~~
55 ~~on request~~], be given an opportunity for an informal conference with the
56 principal [~~at which~~]. At the conference, the [~~pupil and/or~~] student and

1 parent or person in parental relation shall be authorized to present the
2 [~~pupil's~~] student's version of the event and to ask questions of the
3 complaining witnesses. The aforesaid notice and opportunity for an
4 informal conference shall take place prior to suspension of the [~~pupil~~]
5 student unless the [~~pupil's~~] student's presence in the school poses a
6 continuing danger to persons or property or an ongoing threat of
7 disruption to the academic process, in which case the [~~pupil's~~]
8 student's notice and opportunity for an informal conference shall take
9 place as soon after the suspension as is reasonably practicable.

10 (2) A teacher shall immediately report and refer a violent [~~pupil~~]
11 student to the principal or superintendent for a violation of the code
12 of conduct and a minimum suspension period pursuant to section twenty-
13 eight hundred one of this chapter, provided that the suspension of such
14 student is not prohibited by such section.

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

50 (2) Where a [~~pupil~~] student has been suspended in accordance with this
51 section by a board of education, the board may in its discretion hear
52 and determine the proceeding or appoint a hearing officer who shall have
53 the same powers and duties with respect to the board that a hearing
54 officer has with respect to a superintendent where the suspension was
55 ordered by him or her. The findings and recommendations of the hearing
56 officer conducting the proceeding shall be advisory and subject to final

1 action by the board of education, each member of which shall before
2 voting review the testimony and acquaint himself or herself with the
3 evidence in the case. The board may reject, confirm or modify the
4 conclusions of the hearing officer.

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

39 (2) Nothing in this paragraph shall be deemed to mandate such action
40 by a school district pursuant to subdivision one of this section where
41 such weapon or firearm is possessed or brought to school with the writ-
42 ten authorization of such educational institution in a manner authorized
43 by article two hundred sixty-five of the penal law for activities
44 approved and authorized by the trustees or board of education or other
45 governing body of the public school and such governing body adopts
46 appropriate safeguards to ensure student safety.

47 (3) As used in this paragraph:

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

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

53 e. Procedure after suspension. Where a [~~pupil~~] student has been
54 suspended pursuant to this subdivision and said [~~pupil~~] student is of
55 compulsory attendance age, immediate steps shall be taken for his or her
56 attendance upon instruction elsewhere or for supervision or detention of

1 said [~~pupil~~] student pursuant to the provisions of article seven of the
2 family court act. Where a [~~pupil~~] student has been suspended for cause,
3 the suspension may be revoked by the board of education whenever it
4 appears to be for the best interest of the school and the [~~pupil~~]
5 student to do so. The board of education may or trustees, the chancellor
6 of the city school district in the case of the city school district for
7 the city of New York, or other governing body, also condition a
8 student's early return to school and suspension revocation on the
9 [~~pupil's~~] student's voluntary participation in counseling or specialized
10 classes, including anger management or dispute resolution, where appli-
11 cable.

12 f. Whenever the term "board of education or superintendent of schools"
13 is used in this subdivision, it shall be deemed to include board of
14 trustees, other governing body, the chancellor of the city school
15 district in the case of the city school district for the city of New
16 York, community boards of education and community superintendents
17 governing community districts in accordance with the provisions of arti-
18 cle fifty-two-A of this chapter.

19 g. Discipline of students with disabilities and students presumed to
20 have a disability for discipline purposes. (1) Notwithstanding any other
21 provision of this subdivision to the contrary, a student with a disabili-
22 ty as such term is defined in section forty-four hundred one of this
23 chapter and a student presumed to have a disability for discipline
24 purposes, may be suspended or removed from his or her current educa-
25 tional placement, provided that the suspension of such student is not
26 prohibited by section twenty-eight hundred one of this chapter, for
27 violation of school rules only in accordance with the procedures estab-
28 lished in this section, the regulations of the commissioner implementing
29 this paragraph, and subsection (k) of section fourteen hundred fifteen
30 of title twenty of the United States code and the federal regulations
31 implementing such statute, as such federal law and regulations are from
32 time to time amended. Nothing in this paragraph shall be construed to
33 confer greater rights on such students than are conferred under applica-
34 ble federal law and regulations, or to limit the ability of a school
35 district to change the educational placement of a student with a disa-
36 bility in accordance with the procedures in article eighty-nine of this
37 chapter.

38 (2) As used in this paragraph:

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

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

49 (3) In applying the federal law consistent with this section:

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

55 (ii) the trustees or board of education of any school district, a
56 district superintendent of schools or a building principal shall have

1 authority to order the placement of a student with a disability into an
2 appropriate interim alternative educational setting, another setting or
3 suspension, provided that the suspension of such student is not prohib-
4 ited by section twenty-eight hundred one of this chapter, for a period
5 not to exceed five consecutive school days where such student is
6 suspended pursuant to this subdivision and, except as otherwise provided
7 in clause (vi) of this subparagraph, the suspension does not result in a
8 change in placement under federal law.

9 (iii) the superintendent of schools of a school district, either
10 directly or upon recommendation of a hearing officer designated pursuant
11 to paragraph c of this subdivision, may order the placement of a student
12 with a disability into an interim alternative educational setting,
13 another setting or suspension, provided that the suspension of such
14 student is not prohibited by section twenty-eight hundred one of this
15 chapter, for up to ten consecutive school days, inclusive of any period
16 in which the student is placed in an appropriate interim alternative
17 educational setting, another setting or suspension pursuant to clause
18 (ii) of this subparagraph for the behavior, where the superintendent
19 determines in accordance with the procedures set forth in this subdivi-
20 sion that the student has engaged in behavior that warrants a suspen-
21 sion, and, except as otherwise provided in clause (vi) of this subpara-
22 graph, the suspension does not result in a change in placement under
23 federal law.

24 (iv) the superintendent of schools of a school district, either
25 directly or upon recommendation of a hearing officer designated pursuant
26 to paragraph c of this subdivision, may order the change in placement of
27 a student with a disability to an interim alternative educational
28 setting for up to forty-five school days under the circumstances speci-
29 fied in subsection (k)(1)(G) of section fourteen hundred fifteen of
30 title twenty of the United States code and the federal regulations
31 implementing such statute or a longer period where authorized by federal
32 law under the circumstances specified in subsection (k)(1)(C) of section
33 fourteen hundred fifteen of title twenty of the United States code and
34 the federal regulations implementing such statute, but in neither case
35 shall such period exceed the period of suspension ordered by a super-
36 intendent in accordance with this subdivision, provided that the suspen-
37 sion of such student is not prohibited by section twenty-eight hundred
38 one of this chapter.

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

42 (vi) notwithstanding any other provision of this subdivision to the
43 contrary, upon a determination by a manifestation team that the behavior
44 of a student with a disability was not a manifestation of the student's
45 disability, such student may be disciplined pursuant to this section in
46 the same manner and for the same duration as a nondisabled student,
47 except that such student shall continue to receive services to the
48 extent required under federal law and regulations, and such services may
49 be provided in an interim alternative educational setting, provided that
50 the suspension of such student is not prohibited by section twenty-eight
51 hundred one of this chapter.

52 (vii) an impartial hearing officer appointed pursuant to subdivision
53 one of section forty-four hundred four of this chapter may order a
54 change in placement of a student with a disability to an appropriate
55 interim alternative educational setting for not more than forty-five
56 school days under the circumstances specified in subsections (k)(3) and

1 (k)(4) of section fourteen hundred fifteen of title twenty of the United
2 States code and the federal regulations implementing such statutes,
3 provided that such procedure may be repeated, as necessary, provided
4 that the suspension of such student is not prohibited by section twen-
5 ty-eight hundred one of this chapter.

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

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

19 h. When a student is suspended from school consistent with this
20 section and section twenty-eight hundred one of this chapter, the prin-
21 cipal, or the principal's designee, in consultation with the student's
22 teachers, shall create an education plan for the student for each class
23 in which the student is enrolled within twenty-four hours, provided that
24 if such twenty-four hours period does not end on a school day, it shall
25 be extended to the corresponding time on the next school day. The educa-
26 tion plan shall make provisions for a student's on-going academic
27 instruction during the suspension. The student shall have the opportu-
28 nity to earn all academic credit he or she would have been eligible to
29 earn had they been in class including the opportunity to complete any
30 missed assignments or take any missed examination or assessments during
31 the student's suspension. If an examination or assessment cannot be
32 rescheduled, the student shall be allowed on school property to take
33 such assessment or examination on the day and time that the assessment
34 or examination is given.

35 3-a. Teacher removal of a disruptive [~~pupil~~] student. In addition,
36 any teacher shall have the power and authority to remove a disruptive
37 [~~pupil~~] student, as defined in subdivision two-a of this section, from
38 such teacher's classroom consistent with discipline measures contained
39 in the code of conduct adopted by the board pursuant to section twenty-
40 eight hundred one of this chapter. The school authorities of any school
41 district, board of cooperative educational services, or charter school
42 shall establish policies and procedures to ensure the provision of
43 continued educational programming and activities for students removed
44 from the classroom pursuant to this subdivision [~~and provided further~~
45 ~~that nothing~~]. When a student is removed from the classroom, the princi-
46 pal, or the principal's designee, in consultation with the student's
47 teachers, shall create an education plan for the student for each class
48 in which the student is enrolled within twenty-four hours, provided that
49 if such twenty-four hour period does not end on a school day, it shall
50 be extended to the corresponding time on the next school day. The educa-
51 tion plan shall make provisions for a student's on-going academic
52 instruction during the removal. The student shall have the opportunity
53 to earn all academic credit including the opportunity to complete any
54 missed assignments or take any missed examinations or assessments during
55 the student's removal. If an examination or assessment cannot be
56 rescheduled, the student shall be allowed on school property to take

1 such assessment or examination on the day and time that the assessment
2 or examination is given. Nothing in this subdivision shall authorize the
3 removal of a [~~pupil~~] student in violation of any state or federal law or
4 regulation. No [~~pupil~~] student shall return to the classroom until the
5 principal makes a final determination pursuant to paragraph c of this
6 subdivision, or the period of removal expires, whichever is less.

7 a. Such teacher shall inform the [~~pupil~~] student and the school prin-
8 cipal of the reasons for the removal. If the teacher finds that the
9 [~~pupil's~~] student's continued presence in the classroom does not pose a
10 continuing danger to persons or property and does not present an ongoing
11 threat of disruption to the academic process, the teacher shall, prior
12 to removing the student from the classroom, provide the student with an
13 explanation of the basis for the removal and allow the [~~pupil~~] student
14 to informally present the [~~pupil's~~] student's version of relevant
15 events. In all other cases, the teacher shall provide the [~~pupil~~]
16 student with an explanation of the basis for the removal and an informal
17 opportunity to be heard within twenty-four hours of the [~~pupil's~~]
18 student's removal, provided that if such twenty-four hour period does
19 not end on a school day, it shall be extended to the corresponding time
20 on the next school day.

21 b. The principal shall inform the parent or person in parental
22 relation to such [~~pupil~~] student of the removal and the reasons therefor
23 within twenty-four hours of the [~~pupil's~~] student's removal, provided
24 that if such twenty-four hour period does not end on a school day, it
25 shall be extended to the corresponding time on the next school day. The
26 [~~pupil~~] student and the parent or person in parental relation shall,
27 upon request, be given an opportunity for an informal conference with
28 the principal to discuss the reasons for the removal. If the [~~pupil~~]
29 student denies the charges, the principal shall provide an explanation
30 of the basis for the removal and allow the [~~pupil~~] student and/or person
31 in parental relation to the [~~pupil~~] student an opportunity to present
32 the [~~pupil's~~] student's version of relevant events. Such informal hear-
33 ing shall be held within forty-eight hours of the [~~pupil's~~] student's
34 removal, provided that if such forty-eight hour period does not end on a
35 school day, it shall be extended to the corresponding time on the second
36 school day next following the [~~pupil's~~] student's removal. For purposes
37 of this subdivision, "school day" shall mean a school day as defined
38 pursuant to clause (v) of subparagraph three of paragraph g of subdivi-
39 sion three of this section.

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

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

52 4. Expense. a. The expense attending the commitment and costs of main-
53 tenance of any school delinquent shall be a charge against the city or
54 district where he or she resides, if such city or district employs a
55 superintendent of schools; otherwise it shall be a county charge.

1 b. The school authorities may institute proceedings before a court
2 having jurisdiction to determine the liability of a parent or person in
3 parental relation to contribute towards the maintenance of a school
4 delinquent under sixteen years of age ordered to attend upon instruction
5 under confinement. If the court shall find the parent or person in
6 parental relation able to contribute towards the maintenance of such a
7 minor, it may issue an order fixing the amount to be paid weekly.

8 5. Involuntary transfers of [~~pupils~~] students who have not been deter-
9 mined to be a student with a disability or a student presumed to have a
10 disability for discipline purposes.

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

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

29 No recommendation for [~~pupil~~] student transfer shall be initiated by
30 the principal until such [~~pupil~~] student and a parent or person in
31 parental relation has been sent written notification of the consider-
32 ation of transfer recommendation. Such notice shall set a time and place
33 of an informal conference with the principal and shall inform such
34 parent or person in parental relation and such [~~pupil~~] student of their
35 right to be accompanied by counsel or an individual of their choice.

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

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

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

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

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

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

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

1 or appliance as evidence, notwithstanding a determination by a court in
2 a criminal or juvenile delinquency proceeding that the recovery of such
3 weapon, instrument or appliance was the result of an unlawful search or
4 seizure.

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

8 d. Consistent with the federal gun-free schools act of nineteen
9 hundred ninety-four, any public school [~~pupil~~] student who is determined
10 under this subdivision to have brought a weapon to school shall be
11 suspended for a period of not less than one calendar year and any
12 nonpublic school [~~pupil~~] student participating in a program operated by
13 a public school district using funds from the elementary and secondary
14 education act of nineteen hundred sixty-five who is determined under
15 this subdivision to have brought a weapon to a public school or other
16 premises used by the school district to provide such programs shall be
17 suspended for a period of not less than one calendar year from partic-
18 ipation in such program. The procedures of this subdivision shall apply
19 to such a suspension of a nonpublic school [~~pupil~~] student. A super-
20 intendent of schools, district superintendent of schools or community
21 superintendent shall have the authority to modify this suspension
22 requirement for each student on a case-by-case basis. The determination
23 of a superintendent shall be subject to review by the board of education
24 pursuant to paragraph c of this subdivision and the commissioner pursu-
25 ant to section three hundred ten of this chapter. Nothing in this subdi-
26 vision shall be deemed to authorize the suspension of a student with a
27 disability in violation of the individuals with disabilities education
28 act or article eighty-nine of this chapter. A superintendent shall refer
29 the [~~pupil~~] student under the age of sixteen who has been determined to
30 have brought a weapon to school in violation of this subdivision to a
31 presentment agency for a juvenile delinquency proceeding consistent with
32 article three of the family court act except a student fourteen or
33 fifteen years of age who qualifies for juvenile offender status under
34 subdivision forty-two of section 1.20 of the criminal procedure law. A
35 superintendent shall refer any [~~pupil~~] student sixteen years of age or
36 older or a student fourteen or fifteen years of age who qualifies for
37 juvenile offender status under subdivision forty-two of section 1.20 of
38 the criminal procedure law, who has been determined to have brought a
39 weapon to school in violation of this subdivision to the appropriate law
40 enforcement officials.

41 f. Whenever the term "board of education or superintendent of schools"
42 is used in this subdivision, it shall be deemed to include board of
43 trustees, other governing body, the chancellor of the city school
44 district in the case of the city school district for the city of New
45 York, community boards of education and community superintendents
46 governing community districts in accordance with the provisions of arti-
47 cle fifty-two-A of this chapter. For the purpose of this subdivision,
48 the term "weapon" means a firearm as such term is defined in section
49 nine hundred twenty-one of title eighteen of the United States code.

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

54 g. Discipline of students with disabilities and students presumed to
55 have a disability for discipline purposes. (1) Notwithstanding any other
56 provision of this subdivision to the contrary, a student with a disabil-

1 ity as such term is defined in section forty-four hundred one of this
2 chapter and a student presumed to have a disability for discipline
3 purposes, may be suspended or removed from his or her current educa-
4 tional placement, provided that the suspension of such student is not
5 prohibited by section twenty-eight hundred one of this chapter, for
6 violation of school rules only in accordance with the procedures estab-
7 lished in this section, the regulations of the commissioner implementing
8 this paragraph, and subsection (k) of section fourteen hundred fifteen
9 of title twenty of the United States code and the federal regulations
10 implementing such statute, as such federal law and regulations are from
11 time to time amended. Nothing in this paragraph shall be construed to
12 confer greater rights on such students than are conferred under applica-
13 ble federal law and regulations, or to limit the ability of a school
14 district to change the educational placement of a student with a disa-
15 bility in accordance with the procedures in article eighty-nine of this
16 chapter.

17 (2) As used in this paragraph, a "student presumed to have a disabili-
18 ty for discipline purposes" shall mean a student who the school district
19 is deemed to have knowledge was a student with a disability before the
20 behavior that precipitated disciplinary action under the criteria in
21 subsection (k)(8) of section fourteen hundred fifteen of title twenty of
22 the United States code and the federal regulations implementing such
23 statute.

24 (3) In applying the federal law consistent with this section:

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

30 (ii) the trustees or board of education of any school district, a
31 district superintendent of schools or a building principal shall have
32 authority, provided that the suspension of such student is not prohibit-
33 ed by section twenty-eight hundred one of this chapter, to order the
34 placement of a student with a disability into an appropriate interim
35 alternative educational setting, another setting or suspension for a
36 period not to exceed five consecutive school days where such student is
37 suspended pursuant to this subdivision and, except as otherwise provided
38 in clause (vi) of this subparagraph, the suspension does not result in a
39 change in placement under federal law.

40 (iii) the superintendent of schools of a school district, either
41 directly or upon recommendation of a hearing officer designated pursuant
42 to paragraph c of this subdivision, may order the placement of a student
43 with a disability into an interim alternative educational setting,
44 another setting or suspension for up to ten consecutive school days,
45 inclusive of any period in which the student is placed in an appropriate
46 interim alternative educational placement, another setting or suspension
47 pursuant to clause (ii) of this subparagraph for the behavior, where the
48 superintendent determines in accordance with the procedures set forth in
49 this subdivision that the student has engaged in behavior that warrants
50 a suspension, and, except as otherwise provided in clause (vi) of this
51 subparagraph, the suspension does not result in a change in placement
52 under federal law, provided that the suspension of such student is not
53 prohibited by section twenty-eight hundred one of this chapter.

54 (iv) the superintendent of schools of a school district, either
55 directly or upon recommendation of a hearing officer designated pursuant
56 to paragraph c of this subdivision, may order the change in placement of

1 a student with a disability to an interim alternative educational
2 setting for up to forty-five days, but not to exceed the period of
3 suspension ordered by a superintendent in accordance with this subdivi-
4 sion, under the circumstances specified in subsection (k)(1) of section
5 fourteen hundred fifteen of title twenty of the United States code and
6 the federal regulations implementing such statute, provided that the
7 suspension of such student is not prohibited by section twenty-eight
8 hundred one of this chapter.

9 (v) the terms "day," "business day," and "school day" shall be as
10 defined in section 300.9 of title thirty-four of the code of federal
11 regulations.

12 (vi) notwithstanding any other provision of this subdivision to the
13 contrary, upon a determination by the committee on special education
14 that the behavior of a student with a disability was not a manifestation
15 of the student's disability, such student may be disciplined pursuant to
16 this section in the same manner as a nondisabled student, except that
17 such student shall continue to receive services to the extent required
18 under federal law and regulations, provided that the suspension of such
19 student is not prohibited by section twenty-eight hundred one of this
20 chapter.

21 (vii) an impartial hearing officer appointed pursuant to subdivision
22 one of section forty-four hundred four of this chapter may order a
23 change in placement of a student with a disability to an appropriate
24 interim alternative educational setting for not more than forty-five
25 days under the circumstances specified in subsections (k)(2) and (k)(7)
26 of section fourteen hundred fifteen of title twenty of the United States
27 code and the federal regulations implementing such statutes, provided
28 that such procedure may be repeated, as necessary, provided that the
29 suspension of such student is not prohibited by section twenty-eight
30 hundred one of this chapter.

31 (viii) nothing in this section shall be construed to authorize the
32 suspension or removal of a student with a disability from his or her
33 current educational placement for violation of school rules following a
34 determination by the committee on special education that the behavior is
35 a manifestation of the student's disability, except as authorized under
36 federal law and regulations.

37 (ix) the commissioner shall implement this paragraph by adopting regu-
38 lations which coordinate the procedures required for discipline of
39 students with disabilities, and students presumed to have a disability
40 for discipline purposes, pursuant to subsection (k) of section fourteen
41 hundred fifteen of title twenty of the United States code and the feder-
42 al regulations implementing such statute, with the general procedures
43 for student discipline under this section.

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

47 a. Such teacher shall inform the [~~pupil~~] student and the school prin-
48 cipal of the reasons for the removal. If the teacher finds that the
49 [~~pupil's~~] student's continued presence in the classroom does not pose a
50 continuing danger to persons or property and does not present an ongoing
51 threat of disruption to the academic process, the teacher shall, prior
52 to removing the student from the classroom, provide the student with an
53 explanation of the basis for the removal and allow the [~~pupil~~] student
54 to informally present the [~~pupil's~~] student's version of relevant
55 events. In all other cases, the teacher shall provide the [~~pupil~~]
56 student with an explanation of the basis for the removal and an informal

1 opportunity to be heard within twenty-four hours of the [~~pupil's~~
2 student's] removal.

3 b. The principal shall inform the parent or person in parental
4 relation to such [~~pupil~~] student of the removal and the reasons therefor
5 within twenty-four hours of the [~~pupil's~~] student's removal. The [~~pupil~~]
6 student and the parent or person in parental relation shall, upon
7 request, be given an opportunity for an informal conference with the
8 principal to discuss the reasons for the removal. If the [~~pupil~~] student
9 denies the charges, the principal shall provide an explanation of the
10 basis for the removal and allow the [~~pupil~~] student and/or parent or
11 person in parental relation to the [~~pupil~~] student an opportunity to
12 present the [~~pupil's~~] student's version of relevant events. Such
13 informal hearing shall be held within forty-eight hours of the [~~pupil's~~]
14 student's removal.

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

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

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

30 b. the amendments to subparagraph 1 of paragraph c of subdivision 3 of
31 section 3214 of the education law made by section three of this act
32 shall be subject to the expiration and reversion of such subparagraph
33 pursuant to subdivision (a) of section 8 of chapter 430 of the laws of
34 2006, as amended, when upon such date the provisions of section four of
35 this act shall take effect;

36 c. the amendments to paragraphs d and f of subdivision 3 of section
37 3214 of the education law made by section three of this act shall be
38 subject to the expiration and reversion of such paragraphs pursuant to
39 section 4 of chapter 425 of the laws of 2002, as amended, when upon such
40 date the provisions of section five of this act shall take effect;

41 d. the amendments to paragraph g of subdivision 3 of section 3214 of
42 the education law made by section three of this act shall be subject to
43 the expiration and reversion of such paragraph pursuant to section 22 of
44 chapter 352 of the laws of 2005, as amended, when upon such date the
45 provisions of section six of this act shall take effect;

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

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