STATE OF NEW YORK

1981--B

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, COOK, McDONALD, LIFTON, WILLIAMS, GRIFFIN, GALEF, STIRPE, RYAN, QUART, FRONTUS, ROMEO, BARRON, L. ROSENTHAL, SANTABARBARA, RAMOS, DARLING, OTIS, WEPRIN -- 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

Section 1. This act shall be known and may be cited as the "Judith Kaye School Solutions not Suspensions Act."

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

§ 2801. Codes of conduct on school property. 1. For purposes of this section, school property means in or within any building, structure,

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

LBD02878-10-9

athletic playing field, playground, parking lot or land contained within the real property boundary line of a public elementary or secondary school, including a charter school; or in or on a school bus, as defined in section one hundred forty-two of the vehicle and traffic law; [~~and a~~] or a school's electronic files and databases. A school function shall mean a school-sponsored or school-authorized extra-curricular event or activity regardless of where such event or activity takes place, including any event or activity that may take place in another state.

2. The board of education or the trustees[~~, as defined in section two of this chapter,~~] of every school district [~~within the state, however created, and every~~] or the chancellor of the city school district in the case of the city school district of the city of New York, and every board of cooperative educational services and [~~county vocational extension board~~] charter school, shall adopt and amend, as appropriate, a code of conduct for the maintenance of order on school property, including a school function, which shall promote and sustain a safe, respectful, and supportive school environment and govern the conduct of students, teachers and other school personnel as well as visitors and shall provide for the enforcement thereof. Such policy may be adopted by the [~~school~~] board of education or trustees, or the chancellor of the city school district in the case of the city school district of the city of New York, or other governing body only after at least one public hearing that provides for the participation of school personnel, parents, students and any other interested parties before its adoption. The school district, board of cooperative educational services, or charter school shall notify the school community and general public about the hearing at least fifteen 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, board of cooperative educational services, or charter school. The school district, board of cooperative educational services, or charter school shall take necessary steps to notify families who do not speak English and whose children attend a school in the district, a board of cooperative educational services, or a charter school. Such code of conduct shall define violations of the code of conduct and set clear expectations for student conduct on school property, including at school functions, and shall include, at a minimum:

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

b. provisions regarding acceptable civil and respectful treatment of teachers, school administrators, other school personnel, students and visitors on school property[~~, including a~~] and at school [~~function~~] functions, including [~~the appropriate~~] a range of age-appropriate graduated and proportionate disciplinary measures which [~~may be imposed for violation of such~~] must be considered in responding to a code violation, and the roles of teachers, administrators, other school personnel, the board of education or trustees, or the chancellor of the city school district in the case of the city school district of the city of New York, or other governing body, and parents.

b-1. provisions that require schools to use the least severe action necessary to respond to any violation of the code of conduct before imposing a removal or suspension. Such options may include restorative practices, social and emotional supports, and other interventions.

Restorative practices may include class meetings, facilitated circles, conferences, peer mediation, and other interventions that can effectively address student misconduct, hold students accountable for their behavior, and foster healthy relationships within the school community. No student, however, shall be required to participate in a restorative practice without their consent. Reasonable attempts shall also be made to obtain the consent of their parents or persons in parental relations;

[~~b.~~] b-2. provisions that prohibit classroom removals and suspensions to respond to tardiness, unexcused absence from class or school, leaving school without permission, violation of school dress code, and lack of identification upon request of school personnel;

b-3. provisions that prohibit suspensions for initial or repeated acts of willful disobedience. "Willful disobedience" shall mean disruptive, insubordinate, or rowdy behavior, including behaviors such as the use of foul or inappropriate language, gestures, comments, or refusal to follow directions;

c. provisions that prohibit the suspension of students in pre-kindergarten through grade three, except if suspension is necessary to comply with applicable federal laws;

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

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

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

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

h. provisions for the school authorities to establish policies and procedures to ensure the provision of continued educational programming and activities for students removed from the classroom, placed in detention, or suspended from school. When a student is suspended from school or removed from the classroom, the principal, or the principal's designee, in consultation with the student's teachers, shall, within twenty-four hours, create an education plan for the student for each class in which the student is enrolled, provided that if such twenty-four hour period does not end on a school day, it shall be extended to the corresponding time on the next school day. The education plan shall make provisions for a student's on-going academic instruction during the removal or suspension and shall include the steps the school will take to provide the student with a successful re-entry to school. The student shall have the opportunity to earn all academic credit he or she would have been eligible to earn had he or she been in class, including the opportunity to complete any missed assignments or take any missed examinations or assessments during the student's removal or suspension. If an examination or assessment cannot be rescheduled, the student shall be allowed on school property to take such assessment or examination on the day and time that the assessment or examination is given;

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

[~~g.~~] j. provisions ensuring such code and the enforcement thereof are in compliance with state and federal laws relating to students with disabilities;

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

~~i.~~] k. provisions setting forth the circumstances under and procedures by which parents or persons in parental relation to the student accused of violating the code of conduct shall be notified of such code of conduct violations including notice that any statement by the student, written or oral, may be used against the student in a criminal, immigration, or juvenile delinquency investigation and/or proceeding and/or in a court of law;

[~~j.~~] l. provisions setting forth the circumstances under and procedures by which a [~~complaint in criminal court, a juvenile delinquency petition~~] student may be referred to law enforcement, consistent with the provisions of section twenty-eight hundred one-a of this article, or referred for a person in need of supervision petition as defined in articles three and seven of the family court act will be filed;

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

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

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

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

3. The [~~district~~] code of conduct shall be developed in collaboration with [~~student, teacher, administrator, and parent organizations~~] representatives from interested stakeholders including, but not limited to, students, teachers, administrators, parents, school safety personnel, collective bargaining units, and other school personnel and shall be approved by the board of education or trustees, [~~or~~] 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 the city district's district-wide code of conduct, to reflect the individual needs of each community school district provided that such additional policies shall require the approval of the chancellor.

3-a. The board of education or trustees, chancellor of the city school district in the case of the city school district of the city of New York, or other governing body shall provide professional development in accordance with this section for school personnel, law enforcement and public or private security personnel employed, retained or contracted

with a school district or charter school regarding the code of conduct, the use of interventions, and graduated and proportionate discipline.

4. [~~The~~] At the beginning of each school year, the board of education or trustees, chancellor of the city school district in the case of the city school district of the city of New York, or other governing body shall: translate the code of conduct into at least the three most commonly spoken languages of the children attending the school district, board of cooperative educational services, or charter school, post the code of conduct on the school district's, charter school's or board of cooperative educational services website, 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~~] or classroom lesson, mail a plain language summary of such code to all parents or persons in parental relation to students before the beginning of each school year, and make it available thereafter upon request. The board of education or trustees, the chancellor of the city school district in the case of the city school district of the city of New York, or other governing body shall take reasonable steps to ensure community awareness of the code of conduct's provisions.

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

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

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

3. The [~~district~~] code of conduct shall be developed in collaboration with [~~student, teacher, administrator, and parent organizations~~] representatives from interested stakeholders including, but not limited to, students, teachers, administrators, parents, school safety personnel, collective bargaining units, and other school personnel and shall be approved by the board of education or trustees, [~~or~~] other governing body, or by the chancellor of the city school district in the case of the city school district of the city of New York. In the city school district of the city of New York, each community school district board shall be authorized to adopt and implement additional policies, which are consistent with 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. Section 3214 of the education law, as amended by chapter 181 of the laws of 2000, subparagraph 1 of paragraph c of subdivision 3 as amended by chapter 430 of the laws of 2006, paragraphs d and f of subdivision 3 as amended by chapter 425 of the laws of 2002, paragraph e of subdivision 3 as amended by chapter 170 of the laws of 2006, paragraph g of subdivision 3 as amended by chapter 352 of the laws of 2005, clause (v) of subparagraph 3 of paragraph g of subdivision 3 as amended by chapter 378 of the laws of 2007, paragraphs a, b and c of subdivision 3-a as amended by chapter 147 of the laws of 2001 and subdivision 7 as amended by section 9 of part YYY of chapter 59 of the laws of 2017, is amended to read as follows:

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

~~2. Special day schools~~] **Alternative learning schools**. The school authorities of any city [~~or~~]**,** school district**, board of cooperative educational services, or charter school** may establish schools or set apart rooms in [~~public~~] school buildings **or properties** for the instruction of [~~school delinquents~~] **students removed or suspended for violations of the code of conduct**, and fix the number of days per week and the hours per day of required attendance **and instruction**, which shall not be less than is required of minors attending the full time day schools.

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

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

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

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

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

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

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

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

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

~~3.~~] **2.** Suspension of a [~~pupil~~] **student**. a. **(1)** The board of education[~~, board of~~] **or** trustees [~~or sole trustee~~], **the chancellor of the city school district in the case of the city school district of the city of New York, other governing body,** the superintendent of schools, district superintendent of schools or principal of a school may suspend

[~~the following pupils~~] students from required attendance upon instruction[~~:~~

~~A pupil who is insubordinate or disorderly or violent or disruptive, or whose conduct otherwise endangers the safety, morals, health or welfare of others~~] as provided in paragraphs b, c, and d of this subdivision, in accordance with the code of conduct, provided that the suspension of such student is not prohibited by section twenty-eight hundred one of this chapter.

(2) School officials shall weigh the likelihood that a lesser intervention or discipline would adequately address the student's misconduct, redress any harm or damage, and prevent future violations of the code of conduct. Suspensions shall only be used as a last resort.

(3) The school shall conduct an investigation of any report of a violation of the code of conduct.

(4) The school shall inform any student that submission of a written statement is voluntary and that any statement by the student, written or oral, may be used against the student in a criminal, immigration, or juvenile delinquency investigation and/or proceeding and/or in a court of law. If a student has been arrested or if the school is considering referring the student to law enforcement, the school shall not request a statement from such student, except where there is imminent risk of serious physical injury to the student or other person or persons.

b. [~~(1)~~] In considering appropriate discipline measures, school authorities shall consider the facts of each case, including, but not limited to:

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

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

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

(4) the student's prior conduct, the appropriateness of prior interventions, and the effectiveness of any prior interventions;

(5) the relationship, if any, between the student's academic placement and program and the alleged violation of the code of conduct; and

(6) other factors determined to be relevant.

c. The board of education[~~, board of~~] or trustees, [~~or sole trustee,~~] the chancellor of the city school district in the case of the city school district of the city of New York, other governing body, superintendent of schools, district superintendent of schools and the principal of the school where the [~~pupil~~] student attends shall have the power to suspend a [~~pupil~~] student for a period not to exceed five school days provided that the suspension of such student is not prohibited by section twenty-eight hundred one of this chapter. In the case of such a suspension, the suspending authority shall provide the [~~pupil~~] student with written notice of the charged misconduct including a brief explanation of the basis for the suspension and a description of the alleged behavior that violated the code of conduct that includes the date, time, and place of the scheduled informal conference with the principal, the right to appeal a suspension, and the procedures for appeal. [~~If the pupil denies the misconduct, the suspending authority shall provide an explanation of the basis for the suspension.~~] The [~~pupil~~] student and the parent or person in parental relation to the [~~pupil~~] student shall[~~,~~

~~on request,~~] be given an opportunity for an informal conference with the principal [~~at which~~]. At the conference, the [~~pupil and/or~~] student and parent or person in parental relation shall be authorized to review all evidence of the alleged misconduct, present the [~~pupil's~~] student's version of the event [~~and~~], to ask questions of the complaining witnesses, and to be represented by an attorney or advocate. The aforesaid notice and opportunity for an informal conference shall take place prior to suspension of the [~~pupil~~] student unless the [~~pupil's~~] student's presence in the school poses a continuing danger to persons or property or an ongoing threat of disruption to the academic process, in which case the [~~pupil's~~] student's notice and opportunity for an informal conference shall take place as soon after the suspension begins as is reasonably practicable.

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

~~c. (1)~~] d. The board of education or trustees, the chancellor of the city school district in the case of the city school district of the city of New York, other governing body, superintendent of schools, or district superintendent of schools, shall have the power to suspend a student for a period not to exceed twenty school days, provided that the suspension of such student is not prohibited by paragraph c of subdivision two of section twenty-eight hundred one of this chapter. No [~~pupil~~] student may be suspended for a period in excess of five school days unless such [~~pupil~~] student and the parent or person in parental relation to such [~~pupil~~] student shall have had an opportunity for a fair hearing, upon reasonable written notice, [~~at~~] which shall include a brief description of the facts upon which the alleged violations of the code of conduct are based, the section of the code of conduct that the student is alleged to have violated, and the date, time and place of the hearing. Prior to the hearing, copies of all evidence regarding the alleged incident shall be provided to the student and parent or person in parental relation to the student. The hearing shall be convened within five days of the written notice, unless the parent or person in parental relation to the student or student requests a later date. At the hearing, such [~~pupil~~] student shall have the right of representation by [~~counsel~~] an attorney or advocate, with the right to request the presence of and question witnesses against such [~~pupil~~] student and to request the presence of and present witnesses and other evidence on his or her behalf. Where the [~~pupil~~] student is a student with a disability or a student presumed to have a disability, the provisions of paragraph [~~g~~] h of this subdivision shall also apply. Where a [~~pupil~~] student has been suspended in accordance with this [~~subparagraph by a~~] paragraph, the board of education or trustees, the chancellor of the city school district in the case of the city school district of the city of New York, other governing body, superintendent of schools, district superintendent of schools, or community superintendent[~~, the superintendent~~] shall personally hear and determine the proceeding or may, in his or her discretion, designate a hearing officer to conduct the hearing. The entity or individual that conducts the hearing [~~officer~~] shall be authorized to administer oaths and to issue subpoenas in conjunction with the proceeding [~~before him or her~~]. A record of the hearing shall be maintained, but no stenographic transcript shall be required and [~~a tape~~] an audio recording shall be deemed a satisfactory record. The entity or individual that conducts the hearing [~~officer~~] shall make

written findings of fact based on a preponderance of the evidence and shall make recommendations as to the appropriate measure of discipline [~~to the superintendent~~] if any. The report of the hearing officer shall be advisory only, and the board of education or trustees, the chancellor of the city school district in the case of the city school district of the city of New York, other governing body, superintendent of schools or district superintendent of schools may accept all or any part thereof. [~~An appeal will lie from the decision of the superintendent to the board of education who shall make its decision solely upon the record before it. The board may adopt in whole or in part the decision of the super-intendent of schools~~] The board of education or trustees, the chancellor of the city school district in the case of the city school district of the city of New York, other governing body, superintendent of schools, or district superintendent of schools shall issue a written decision to the school and parent or person in parental relation to the student within three days of the hearing. The written decision shall state the length of suspension, if any, findings of fact, reasons for determination, length of suspension, if any, procedures for appeal, and the date by which the appeal shall be filed. Where the basis for the suspension is, in whole or in part, the possession on school grounds or school property by the student of any firearm, rifle, shotgun, dagger, dangerous knife, dirk, razor, stiletto or any of the weapons, instruments or appliances specified in subdivision one of section 265.01 of the penal law, the hearing officer or superintendent shall not be barred from considering the admissibility of such weapon, instrument or appliance as evidence, notwithstanding a determination by a court in a criminal or juvenile delinquency proceeding that the recovery of such weapon, instrument or appliance was the result of an unlawful search or seizure.

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

d.] e. (1) Consistent with the federal gun-free schools act, any public school [~~pupil~~] student who is determined under this subdivision to have brought a firearm to or possessed a firearm at a public school shall be suspended for a period of not less than one calendar year and any nonpublic school pupil participating in a program operated by a public school district using funds from the elementary and secondary education act of nineteen hundred sixty-five who is determined under this subdivision to have brought a firearm to or possessed a firearm at a public school or other premises used by the school district to provide such programs shall be suspended for a period of not less than one calendar year from participation in such program. The procedures of this subdivision shall apply to such a suspension of a nonpublic school [~~pupil~~] student. A superintendent of schools, district superintendent of schools or community superintendent shall have the authority to modify this suspension requirement for each student on a case-by-case basis. The determination of a superintendent shall be subject to review by the board of education or trustees, other governing body, or the chancellor

of the city school district in the case of the city school district of the city of New York, pursuant to paragraph [~~c~~] d of this subdivision and the commissioner pursuant to section three hundred ten of this chapter. Nothing in this subdivision shall be deemed to authorize the suspension of a student with a disability in violation of the individuals with disabilities education act or article eighty-nine of this chapter. A superintendent shall refer the [~~pupil~~] student under the age of sixteen who has been determined to have brought a weapon or firearm to school in violation of this subdivision to a presentment agency for a juvenile delinquency proceeding consistent with article three of the family court act except a student fourteen or fifteen years of age who qualifies for juvenile offender status under subdivision forty-two of section 1.20 of the criminal procedure law. A superintendent shall refer any [~~pupil~~] student sixteen years of age or older or a student fourteen or fifteen years of age who qualifies for juvenile offender status under subdivision forty-two of section 1.20 of the criminal procedure law, who has been determined to have brought a weapon or firearm to school in violation of this subdivision to the appropriate law enforcement officials.

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

(3) As used in this paragraph:

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

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

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

[~~f.~~] g. Whenever the term "board of education or superintendent of schools" is used in this subdivision, it shall be deemed to include board of trustees, other governing body, the chancellor of the city school district in the case of the city school district for the city of New York, community boards of education and community superintendents

governing community districts in accordance with the provisions of article fifty-two-A of this chapter.

[~~g.~~] h. Discipline of students with disabilities and students presumed to have a disability for discipline purposes. (1) Notwithstanding any other provision of this subdivision to the contrary, a student with a disability as such term is defined in section forty-four hundred one of this chapter and a student presumed to have a disability for discipline purposes, may be suspended or removed from his or her current educational placement, provided that the suspension of such student is not prohibited by section twenty-eight hundred one of this chapter, for violation of [~~school rules~~] the code of conduct only in accordance with the procedures established in this section, the regulations of the commissioner implementing this paragraph, and subsection (k) of section fourteen hundred fifteen of title twenty of the United States code and the federal regulations implementing such statute, as such federal law and regulations are from time to time amended. Nothing in this paragraph shall be construed to confer greater rights on such students than are conferred under applicable federal law and regulations, or to limit the ability of a school district to change the educational placement of a student with a disability in accordance with the procedures in article eighty-nine of this chapter.

(2) As used in this paragraph:

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

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

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

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

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

(iii) the superintendent of schools of a school district, either directly or upon recommendation of a hearing officer designated pursuant to paragraph c of this subdivision, may order the placement of a student with a disability into an interim alternative educational setting,

another setting or suspension, provided that the suspension of such student is not prohibited by section twenty-eight hundred one of this chapter, for up to ten consecutive school days, inclusive of any period in which the student is placed in an appropriate interim alternative educational setting, another setting or suspension pursuant to clause (ii) of this subparagraph for the behavior, where the superintendent determines in accordance with the procedures set forth in this subdivision that the student has engaged in behavior that warrants a suspension, and, except as otherwise provided in clause (vi) of this subparagraph, the suspension does not result in a change in placement under federal law.

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

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

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

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

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

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

[~~3-a.~~] i. When a student is suspended from school consistent with this section and section twenty-eight hundred one of this chapter, the principal, or the principal's designee, in consultation with the student's teachers, shall within twenty-four hours create an education plan for the student for each class in which the student is enrolled, provided that if such twenty-four hour period does not end on a school day, it shall be extended to the corresponding time on the next school day. The education plan shall make provisions for a student's on-going academic instruction during the suspension and shall include the steps the school will take to provide the student with a successful re-entry to school. The student shall have the opportunity to earn all academic credit he or she would have been eligible to earn had he or she been in class, including the opportunity to complete any missed assignments or take any missed examination or assessments during the student's suspension. If an examination or assessment cannot be rescheduled, the student shall be allowed on school property to take such assessment or examination on the day and time that the assessment or examination is given.

3. Teacher removal of a [~~disruptive pupil~~] student. In addition, any teacher shall have the power and authority to remove a [~~disruptive pupil as defined in subdivision two-a of this section,~~] student from such teacher's classroom consistent with discipline measures contained in the code of conduct adopted by the board pursuant to section twenty-eight hundred one of this chapter. Such classroom removal shall not exceed one-half school day on the same school day. The school authorities of any school district, board of cooperative educational services, or charter school shall establish policies and procedures to ensure the provision of continued educational programming and activities for students removed from the classroom pursuant to this subdivision [~~and provided further that nothing~~]. When a student is removed from the classroom, the student shall have the opportunity to earn all academic credit including the opportunity to complete any missed assignments or take any missed examinations or assessments during the student's removal. If an examination or assessment cannot be rescheduled, the student shall be allowed on school property to take such assessment or examination on the day and time that the assessment or examination is given. Nothing in this subdivision shall authorize the removal of a [~~pupil~~] student in violation of any state or federal law or regulation. No [~~pupil~~] student shall return to the classroom until the principal makes a final determination pursuant to paragraph c of this subdivision, or the period of removal expires, whichever is less.

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

student with an explanation of the basis for the removal and an informal opportunity to be heard within twenty-four hours of the [~~pupil's~~] student's removal, provided that if such twenty-four hour period does not end on a school day, it shall be extended to the corresponding time on the next school day.

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

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

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

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

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

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

a. The board of education[~~, board of~~] or trustees [~~or sole trustee,~~], the chancellor of the city school district in the case of the city school district of New York, other governing body, the superintendent of schools, or district superintendent of schools may transfer a [~~pupil~~]

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

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

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

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

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

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

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

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

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

[~~(1)~~] **d. The board of education or trustees, the chancellor of the city school district in the case of the city school district of the city of New York, other governing body, superintendent of schools, or district superintendent of schools, shall have the power to suspend a student for a period not to exceed twenty school days, provided that the suspension of such student is not prohibited by paragraph c of subdivision two of section twenty-eight hundred one of this chapter.** No [~~pupil~~] **student** may be suspended for a period in excess of five school days unless such [~~pupil~~] **student** and the **parent or** person in parental relation to such [~~pupil~~] **student** shall have had an opportunity for a fair hearing, upon reasonable **written** notice[~~, at which~~] **shall include a brief description of the facts upon which the alleged violations of the code of conduct are based, the section of the code of conduct that the student is alleged to have violated, and the date, time and place of the hearing. Prior to the hearing, copies of all evidence regarding the alleged incident shall be provided to the student and parent or person in parental relation to the student. The hearing shall be convened within five days of the written notice, unless the parent or person in parental relation to the student or student requests a later date. At the hearing,** such [~~pupil~~] **student** shall have the right of representation by [~~counsel~~] **an attorney or advocate**, with the right to **request the presence of and to** question witnesses against such [~~pupil~~] **student** and to **request the presence of and** present witnesses and other evidence on his **or her** behalf. Where a [~~pupil~~] **student** has been suspended in accordance with this subdivision [~~by a~~]**, the board of education or trustees, the chancellor of the city school district in the case of the city school district of the city of New York, other governing body,** superintendent of schools, district superintendent of schools, or community superintendent[~~, the superintendent~~] shall personally hear and determine the proceeding or may, in his **or her** discretion, designate a hearing officer to conduct the hearing. The **entity or individual that conducts the** hearing [~~officer~~] shall be authorized to administer oaths and to issue subpoenas in conjunction with the proceeding [~~before him~~]. A record of the hearing shall be maintained, but no stenographic transcript shall be required and [~~a tape~~] **an audio** recording shall be deemed a satisfactory record. The **entity or individual that conducts the** hearing [~~officer~~] shall make **written** findings of fact **based on a preponderance of the evidence** and **shall make** recommendations as to the appropriate measure of discipline [~~to the superintendent~~] **if any**. The report of the hearing officer shall be advisory only, and the **board of education or trustees, the chancellor of the city school district in the case of the city school district of the city of New York, other governing body,**

superintendent of schools or district superintendent of schools may accept all or any part thereof. [~~An appeal will lie from the decision of the superintendent to the board of education who shall make its decision solely upon the record before it. The board may adopt in whole or in part the decision of the superintendent of schools~~] The board of education or trustees, the chancellor of the city school district in the case of the city school district of the city of New York, other governing body, superintendent of schools, or district superintendent of schools shall issue a written decision to the school and parent or person in parental relation to the student within three days of the hearing. The written decision shall state the length of suspension, if any, findings of fact, reasons for determination, length of suspension, if any, procedures for appeal, and the date by which the appeal shall be filed. Where the basis for the suspension is, in whole or in part, the possession on school grounds or school property by the student of any firearm, rifle, shotgun, dagger, dangerous knife, dirk, razor, stiletto or any of the weapons, instruments or appliances specified in subdivision one of section 265.01 of the penal law, the hearing officer or superintendent shall not be barred from considering the admissibility of such weapon, instrument or appliance as evidence, notwithstanding a determination by a court in a criminal or juvenile delinquency proceeding that the recovery of such weapon, instrument or appliance was the result of an unlawful search or seizure.

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

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

sixteen years of age or older or a student fourteen or fifteen years of age who qualifies for juvenile offender status under subdivision forty-two of section 1.20 of the criminal procedure law, who has been determined to have brought a weapon to school in violation of this subdivision to the appropriate law enforcement officials.

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

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

[~~g.~~] **h.** Discipline of students with disabilities and students presumed to have a disability for discipline purposes. (1) Notwithstanding any other provision of this subdivision to the contrary, a student with a disability as such term is defined in section forty-four hundred one of this chapter and a student presumed to have a disability for discipline purposes, may be suspended or removed from his or her current educational placement**, provided that the suspension of such student is not prohibited by section twenty-eight hundred one of this chapter,** for violation of school rules only in accordance with the procedures established in this section, the regulations of the commissioner implementing this paragraph, and subsection (k) of section fourteen hundred fifteen of title twenty of the United States code and the federal regulations implementing such statute, as such federal law and regulations are from time to time amended. Nothing in this paragraph shall be construed to confer greater rights on such students than are conferred under applicable federal law and regulations, or to limit the ability of a school district to change the educational placement of a student with a disability in accordance with the procedures in article eighty-nine of this chapter.

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

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

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

(ii) the **board of** trustees or board of education of any school district, **other governing body, the chancellor of the city school district in the case of the city school district of the city of New York,** a district superintendent of schools or a building principal shall have authority**, provided that the suspension of such student is not prohibited by section twenty-eight hundred one of this chapter,** to order

the placement of a student with a disability into an appropriate interim alternative educational setting, another setting or suspension for a period not to exceed five consecutive school days where such student is suspended pursuant to this subdivision and, except as otherwise provided in clause (vi) of this subparagraph, the suspension does not result in a change in placement under federal law.

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

(iv) the superintendent of schools of a school district, either directly or upon recommendation of a hearing officer designated pursuant to paragraph c of this subdivision, may order the change in placement of a student with a disability to an interim alternative educational setting for up to forty-five days, but not to exceed the period of suspension ordered by a superintendent in accordance with this subdivision, under the circumstances specified in subsection (k)(1) of section fourteen hundred fifteen of title twenty of the United States code and the federal regulations implementing such statute**, provided that the suspension of such student is not prohibited by section twenty-eight hundred one of this chapter**.

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

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

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

(viii) nothing in this section shall be construed to authorize the suspension or removal of a student with a disability from his or her current educational placement for violation of school rules following a

determination by the committee on special education that the behavior is a manifestation of the student's disability, except as authorized under federal law and regulations.

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

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

a. Such teacher shall inform the [~~pupil~~] **student** and the school principal of the reasons for the removal. If the teacher finds that the [~~pupil's~~] **student's** continued presence in the classroom does not pose a continuing danger to persons or property and does not present an ongoing threat of disruption to the academic process, the teacher shall, prior to removing the student from the classroom, provide the student with an explanation of the basis for the removal and allow the [~~pupil~~] **student** to informally present the [~~pupil's~~] **student's** version of relevant events. In all other cases, the teacher shall provide the [~~pupil~~] **student** with an explanation of the basis for the removal and an informal opportunity to be heard within twenty-four hours of the [~~pupil's~~] **student's** removal.

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

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

§ 9. This act shall take effect September 1, 2020; provided, however that:

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

b. the amendments to subparagraph 1 of paragraph c of subdivision 3 of section 3214 of the education law made by section four of this act shall be subject to the expiration and reversion of such subparagraph pursuant

to subdivision (a) of section 8 of chapter 430 of the laws of 2006, as amended, when upon such date the provisions of section five of this act shall take effect;

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

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

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

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