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IN ASSEMBLY

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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:

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

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

11 § 2801. Codes of conduct on school property. 1. For purposes of this
12 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 3. The ~~[district]~~ code of conduct shall be developed in collaboration
38 with ~~[student, teacher, administrator, and parent organizations]~~ repre-
39 sentatives from interested stakeholders including, but not limited to,
40 students, teachers, administrators, parents, school safety personnel,
41 collective bargaining units, and other school personnel and shall be
42 approved by the board of education or trustees, ~~[or]~~ other governing
43 body, or by the chancellor of the city school district in the case of
44 the city school district of the city of New York. In the city school
45 district of the city of New York, each community district education
46 council shall be authorized to adopt and implement additional policies,
47 which are consistent with the city district's district-wide code of
48 conduct, to reflect the individual needs of each community school
49 district provided that such additional policies shall require the
50 approval of the chancellor.

51 3-a. The board of education or trustees, chancellor of the city school
52 district in the case of the city school district of the city of New
53 York, or other governing body shall provide professional development in
54 accordance with this section for school personnel, law enforcement and
55 public or private security personnel employed, retained or contracted

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

3 4. ~~[The]~~ At the beginning of each school year, the board of education
4 or trustees, chancellor of the city school district in the case of the
5 city school district of the city of New York, or other governing body
6 shall: translate the code of conduct into at least the three most
7 commonly spoken languages of the children attending the school district,
8 board of cooperative educational services, or charter school, post the
9 code of conduct on the school district's, charter school's or board of
10 cooperative educational services website, provide copies of a summary of
11 the code of conduct to all students at a general assembly ~~[held at the~~
12 ~~beginning of the school year and shall make copies of the code available~~
13 ~~to persons in parental relation to students at the beginning of each~~
14 ~~school year, and shall]~~ or classroom lesson, mail a plain language
15 summary of such code to all parents or persons in parental relation to
16 students before the beginning of each school year, and make it available
17 thereafter upon request. The board of education or trustees, the chan-
18 cellor of the city school district in the case of the city school
19 district of the city of New York, or other governing body shall take
20 reasonable steps to ensure community awareness of the code of conduct's
21 provisions.

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

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

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

42 3. The ~~[district]~~ code of conduct shall be developed in collaboration
43 with ~~[student, teacher, administrator, and parent organizations]~~ repre-
44 sentatives from interested stakeholders including, but not limited to,
45 students, teachers, administrators, parents, school safety personnel,
46 collective bargaining units, and other school personnel and shall be
47 approved by the board of education or trustees, ~~[or]~~ other governing
48 body, or by the chancellor of the city school district in the case of
49 the city school district of the city of New York. In the city school
50 district of the city of New York, each community school district board
51 shall be authorized to adopt and implement additional policies, which
52 are consistent with the city district's district-wide code of conduct,
53 to reflect the individual needs of each community school district
54 provided that such additional policies shall require the approval of the
55 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

1 ~~[the following pupils]~~ students from required attendance upon instruc-
2 tion[+]

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

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

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

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

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

26 (1) the nature and impact of the student's alleged misconduct, includ-
27 ing but not limited to the harm to the student or other persons, damage
28 to personal or school property or threat to the safety and welfare of
29 the school community;

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

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

35 (4) the student's prior conduct, the appropriateness of prior inter-
36 ventions, and the effectiveness of any prior interventions;

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

39 (6) other factors determined to be relevant.

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

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

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

18 ~~e. (1)]~~ d. The board of education or trustees, the chancellor of the
19 city school district in the case of the city school district of the city
20 of New York, other governing body, superintendent of schools, or
21 district superintendent of schools, shall have the power to suspend a
22 student for a period not to exceed twenty school days, provided that the
23 suspension of such student is not prohibited by paragraph c of subdivi-
24 sion two of section twenty-eight hundred one of this chapter. No ~~[pupil]~~
25 student may be suspended for a period in excess of five school days
26 unless such ~~[pupil]~~ student and the parent or person in parental
27 relation to such ~~[pupil]~~ student shall have had an opportunity for a
28 fair hearing, upon reasonable written notice, ~~[at]~~ which shall include a
29 brief description of the facts upon which the alleged violations of the
30 code of conduct are based, the section of the code of conduct that the
31 student is alleged to have violated, and the date, time and place of the
32 hearing. Prior to the hearing, copies of all evidence regarding the
33 alleged incident shall be provided to the student and parent or person
34 in parental relation to the student. The hearing shall be convened with-
35 in five days of the written notice, unless the parent or person in
36 parental relation to the student or student requests a later date. At
37 the hearing, such ~~[pupil]~~ student shall have the right of representation
38 by ~~[counsel]~~ an attorney or advocate, with the right to request the
39 presence of and question witnesses against such ~~[pupil]~~ student and to
40 request the presence of and present witnesses and other evidence on his
41 or her behalf. Where the ~~[pupil]~~ student is a student with a disability
42 or a student presumed to have a disability, the provisions of paragraph
43 ~~[g]~~ h of this subdivision shall also apply. Where a ~~[pupil]~~ student has
44 been suspended in accordance with this ~~[subparagraph by a]~~ paragraph,
45 the board of education or trustees, the chancellor of the city school
46 district in the case of the city school district of the city of New
47 York, other governing body, superintendent of schools, district super-
48 intendent of schools, or community superintendent, ~~[the superintendent]~~
49 shall personally hear and determine the proceeding or may, in his or her
50 discretion, designate a hearing officer to conduct the hearing. The
51 entity or individual that conducts the hearing ~~[officer]~~ shall be
52 authorized to administer oaths and to issue subpoenas in conjunction
53 with the proceeding ~~[before him or her]~~. A record of the hearing shall
54 be maintained, but no stenographic transcript shall be required and ~~[a~~
55 ~~tape]~~ an audio recording shall be deemed a satisfactory record. The
56 entity or individual that conducts the hearing ~~[officer]~~ shall make

1 written findings of fact based on a preponderance of the evidence and
2 shall make recommendations as to the appropriate measure of discipline
3 ~~[to the superintendent] if any~~. The report of the hearing officer shall
4 be advisory only, and the board of education or trustees, the chancellor
5 of the city school district in the case of the city school district of
6 the city of New York, other governing body, superintendent of schools or
7 district superintendent of schools may accept all or any part thereof.
8 ~~[An appeal will lie from the decision of the superintendent to the board~~
9 ~~of education who shall make its decision solely upon the record before~~
10 ~~it. The board may adopt in whole or in part the decision of the super-~~
11 ~~intendent of schools]~~ The board of education or trustees, the chancellor
12 of the city school district in the case of the city school district of
13 the city of New York, other governing body, superintendent of schools,
14 or district superintendent of schools shall issue a written decision to
15 the school and parent or person in parental relation to the student
16 within three days of the hearing. The written decision shall state the
17 length of suspension, if any, findings of fact, reasons for determi-
18 nation, length of suspension, if any, procedures for appeal, and the
19 date by which the appeal shall be filed. Where the basis for the

20 suspension is, in whole or in part, the possession on school grounds or
21 school property by the student of any firearm, rifle, shotgun, dagger,
22 dangerous knife, dirk, razor, stiletto or any of the weapons, instru-
23 ments or appliances specified in subdivision one of section 265.01 of
24 the penal law, the hearing officer or superintendent shall not be barred
25 from considering the admissibility of such weapon, instrument or appli-
26 ance as evidence, notwithstanding a determination by a court in a crimi-
27 nal or juvenile delinquency proceeding that the recovery of such weapon,
28 instrument or appliance was the result of an unlawful search or seizure.

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

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

1 of the city school district in the case of the city school district of
2 the city of New York, pursuant to paragraph ~~[e]~~ d of this subdivision
3 and the commissioner pursuant to section three hundred ten of this chap-
4 ter. Nothing in this subdivision shall be deemed to authorize the
5 suspension of a student with a disability in violation of the individ-
6 uals with disabilities education act or article eighty-nine of this
7 chapter. A superintendent shall refer the ~~[pupil]~~ student under the age
8 of sixteen who has been determined to have brought a weapon or firearm
9 to school in violation of this subdivision to a presentment agency for a
10 juvenile delinquency proceeding consistent with article three of the
11 family court act except a student fourteen or fifteen years of age who
12 qualifies for juvenile offender status under subdivision forty-two of
13 section 1.20 of the criminal procedure law. A superintendent shall refer
14 any ~~[pupil]~~ student sixteen years of age or older or a student fourteen
15 or fifteen years of age who qualifies for juvenile offender status under
16 subdivision forty-two of section 1.20 of the criminal procedure law, who
17 has been determined to have brought a weapon or firearm to school in
18 violation of this subdivision to the appropriate law enforcement offi-
19 cials.

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

28 (3) As used in this paragraph:

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

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

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

51 ~~[f-]~~ g. Whenever the term "board of education or superintendent of
52 schools" is used in this subdivision, it shall be deemed to include
53 board of trustees, other governing body, the chancellor of the city
54 school district in the case of the city school district for the city of
55 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:

[~~(i)~~] (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,

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

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

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

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

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

50 (viii) nothing in this section shall be construed to authorize the
51 suspension or removal of a student with a disability from his or her
52 current educational placement for violation of school rules following a
53 determination by a manifestation team that the behavior is a manifesta-
54 tion of the student's disability, except as authorized under federal law
55 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]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 6. Transfer of a [~~pupil~~] student. Where a suspended [~~pupil~~] student
47 is to be transferred pursuant to subdivision five of this section, he or
48 she shall remain on the register of the original school for two school
49 days following transmittal of his or her records to the school to which
50 he or she is to be transferred. The receiving school shall immediately
51 upon receiving those records transmitted by the original school, review
52 them to insure proper placement of the [~~pupil~~] student. Staff members
53 who are involved in the [~~pupil's~~] student's education must be provided
54 with pertinent records and information relating to the background and
55 problems of the [~~pupil~~] student before the [~~pupil~~] student is placed in
56 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,

1 superintendent of schools or district superintendent of schools may
2 accept all or any part thereof. [~~An appeal will lie from the decision of~~
3 ~~the superintendent to the board of education who shall make its decision~~
4 ~~solely upon the record before it. The board may adopt in whole or in~~
5 ~~part the decision of the superintendent of schools~~] The board of educa-
6 tion or trustees, the chancellor of the city school district in the case
7 of the city school district of the city of New York, other governing
8 body, superintendent of schools, or district superintendent of schools
9 shall issue a written decision to the school and parent or person in
10 parental relation to the student within three days of the hearing. The
11 written decision shall state the length of suspension, if any, findings
12 of fact, reasons for determination, length of suspension, if any, proce-
13 dures for appeal, and the date by which the appeal shall be filed.

14 Where the basis for the suspension is, in whole or in part, the
15 possession on school grounds or school property by the student of any
16 firearm, rifle, shotgun, dagger, dangerous knife, dirk, razor, stiletto
17 or any of the weapons, instruments or appliances specified in subdivi-
18 sion one of section 265.01 of the penal law, the hearing officer or
19 superintendent shall not be barred from considering the admissibility of
20 such weapon, instrument or appliance as evidence, notwithstanding a
21 determination by a court in a criminal or juvenile delinquency proceed-
22 ing that the recovery of such weapon, instrument or appliance was the
23 result of an unlawful search or seizure.

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

27 [~~d.~~] e. Consistent with the federal gun-free schools act of nineteen
28 hundred ninety-four, any public school [~~pupil~~] student who is determined
29 under this subdivision to have brought a weapon to school shall be
30 suspended for a period of not less than one calendar year and any
31 nonpublic school [~~pupil~~] student participating in a program operated by
32 a public school district using funds from the elementary and secondary
33 education act of nineteen hundred sixty-five who is determined under
34 this subdivision to have brought a weapon to a public school or other
35 premises used by the school district to provide such programs shall be
36 suspended for a period of not less than one calendar year from partic-
37 ipation in such program. The procedures of this subdivision shall apply
38 to such a suspension of a nonpublic school [~~pupil~~] student. A super-
39 intendent of schools, district superintendent of schools or community
40 superintendent shall have the authority to modify this suspension
41 requirement for each student on a case-by-case basis. The determination
42 of a superintendent shall be subject to review by the board of education
43 or trustees, other governing body, or the chancellor of the city school
44 district in the case of the city school district of the city of New
45 York, pursuant to paragraph c of this subdivision and the commissioner
46 pursuant to section three hundred ten of this chapter. Nothing in this
47 subdivision shall be deemed to authorize the suspension of a student
48 with a disability in violation of the individuals with disabilities
49 education act or article eighty-nine of this chapter. A superintendent
50 shall refer the [~~pupil~~] student under the age of sixteen who has been
51 determined to have brought a weapon to school in violation of this
52 subdivision to a presentment agency for a juvenile delinquency proceed-
53 ing consistent with article three of the family court act except a
54 student fourteen or fifteen years of age who qualifies for juvenile
55 offender status under subdivision forty-two of section 1.20 of the crim-
56 inal procedure law. A superintendent shall refer any [~~pupil~~] student

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

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

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

19 ~~[g.]~~ h. Discipline of students with disabilities and students presumed
20 to have a disability for discipline purposes. (1) Notwithstanding any
21 other provision of this subdivision to the contrary, a student with a
22 disability as such term is defined in section forty-four hundred one of
23 this 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, a "student presumed to have a disabili-
39 ty for discipline purposes" shall mean a student who the school district
40 is deemed to have knowledge was a student with a disability before the
41 behavior that precipitated disciplinary action under the criteria in
42 subsection (k)(8) of section fourteen hundred fifteen of title twenty of
43 the United States code and the federal regulations implementing such
44 statute.

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

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

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

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

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

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

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

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

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

54 (viii) nothing in this section shall be construed to authorize the
55 suspension or removal of a student with a disability from his or her
56 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

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

4 c. the amendments to paragraphs d and f of subdivision 3 of section
5 3214 of the education law made by section four of this act shall be
6 subject to the expiration and reversion of such paragraphs pursuant to
7 section 4 of chapter 425 of the laws of 2002, as amended, when upon such
8 date the provisions of section six of this act shall take effect;

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

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

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