

STATE OF NEW YORK

767--A

2019-2020 Regular Sessions

IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sens. MONTGOMERY, BAILEY, BENJAMIN, BIAGGI, CARLUCCI, COMRIE, GIANARIS, HARCKHAM, HOYLMAN, JACKSON, KAVANAGH, LIU, MYRIE, PARKER, PERSAUD, RAMOS, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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,
13 athletic playing field, playground, parking lot or land contained within
14 the real property boundary line of a public elementary or secondary
15 school, including a charter school; or in or on a school bus, as defined
16 in section one hundred forty-two of the vehicle and traffic law; [~~and a~~]
17 or a school's electronic files and databases. A school function shall

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

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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

1 practice without their consent. Reasonable attempts shall also be made
2 to obtain the consent of their parents or persons in parental relations;

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

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

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

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

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

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

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

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

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

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

~~h. provisions setting forth the procedures by which local law enforcement agencies shall be notified of code violations which constitute 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 disruptive" shall be determined in accordance with the regulations of the commissioner;~~

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

n. 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

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

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

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

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

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

52 § 4. Section 3214 of the education law, as amended by chapter 181 of
53 the laws of 2000, subparagraph 1 of paragraph c of subdivision 3 as
54 amended by chapter 430 of the laws of 2006, paragraphs d and f of subdi-
55 vision 3 as amended by chapter 425 of the laws of 2002, paragraph e of
56 subdivision 3 as amended by chapter 170 of the laws of 2006, paragraph g

1 of subdivision 3 as amended by chapter 352 of the laws of 2005, clause
2 (v) of subparagraph 3 of paragraph g of subdivision 3 as amended by
3 chapter 378 of the laws of 2007, paragraphs a, b and c of subdivision
4 3-a as amended by chapter 147 of the laws of 2001 and subdivision 7 as
5 amended by section 9 of part YY of chapter 59 of the laws of 2017, is
6 amended to read as follows:

7 § 3214. Student placement, suspensions and transfers. 1. [~~School~~
8 ~~delinquent. A minor under seventeen years of age, required by any of the~~
9 ~~provisions of part one of this article to attend upon instruction, who~~
10 ~~is an habitual truant from such instruction or is irregular in such~~
11 ~~attendance or insubordinate or disorderly or disruptive or violent~~
12 ~~during such attendance, is a school delinquent.~~

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

22 [~~2-a. a. Violent pupil. For the purposes of this section, a violent~~
23 ~~pupil is an elementary or secondary student under twenty-one years of~~
24 ~~age who:~~

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

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

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

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

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

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

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

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

47 3.] 2. Suspension of a [~~pupil~~] student. a. (1) The board of educa-
48 tion[, ~~board of~~] or trustees [~~or sole trustee~~], the chancellor of the
49 city school district in the case of the city school district of the city
50 of New York, other governing body, the superintendent of schools,
51 district superintendent of schools or principal of a school may suspend
52 [~~the following pupils~~] students from required attendance upon instruc-
53 tion[+]

54 ~~A pupil who is insubordinate or disorderly or violent or disruptive,~~
55 ~~or whose conduct otherwise endangers the safety, morals, health or~~
56 ~~welfare of others]~~ as provided in paragraphs b, c, and d of this subdi-

1 vision, in accordance with the code of conduct, provided that the
2 suspension of such student is not prohibited by section twenty-eight
3 hundred one of this chapter.

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

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

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

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

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

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

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

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

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

34 (6) other factors determined to be relevant.

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

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

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

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

35 d.] e. (1) Consistent with the federal gun-free schools act, any
36 public school ~~[pupil]~~ student who is determined under this subdivision
37 to have brought a firearm to or possessed a firearm at a public school
38 shall be suspended for a period of not less than one calendar year and
39 any nonpublic school pupil participating in a program operated by a
40 public school district using funds from the elementary and secondary
41 education act of nineteen hundred sixty-five who is determined under
42 this subdivision to have brought a firearm to or possessed a firearm at
43 a public school or other premises used by the school district to provide
44 such programs shall be suspended for a period of not less than one
45 calendar year from participation in such program. The procedures of this
46 subdivision shall apply to such a suspension of a nonpublic school
47 ~~[pupil]~~ student. A superintendent of schools, district superintendent of
48 schools or community superintendent shall have the authority to modify
49 this suspension requirement for each student on a case-by-case basis.
50 The determination of a superintendent shall be subject to review by the
51 board of education or trustees, other governing body, or the chancellor
52 of the city school district in the case of the city school district of
53 the city of New York, pursuant to paragraph ~~[e]~~ d of this subdivision
54 and the commissioner pursuant to section three hundred ten of this chap-
55 ter. Nothing in this subdivision shall be deemed to authorize the
56 suspension of a student with a disability in violation of the individ-

uals 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

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

16 (2) As used in this paragraph:

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

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

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

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

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

47 (iii) the superintendent of schools of a school district, either
48 directly or upon recommendation of a hearing officer designated pursuant
49 to paragraph c of this subdivision, may order the placement of a student
50 with a disability into an interim alternative educational setting,
51 another setting or suspension, provided that the suspension of such
52 student is not prohibited by section twenty-eight hundred one of this
53 chapter, for up to ten consecutive school days, inclusive of any period
54 in which the student is placed in an appropriate interim alternative
55 educational setting, another setting or suspension pursuant to clause
56 (ii) of this subparagraph for the behavior, where the superintendent

1 determines in accordance with the procedures set forth in this subdivi-
2 sion that the student has engaged in behavior that warrants a suspen-
3 sion, and, except as otherwise provided in clause (vi) of this subpara-
4 graph, the suspension does not result in a change in placement under
5 federal law.

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

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

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

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

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

50 (ix) the commissioner shall implement this paragraph by adopting regu-
51 lations which coordinate the procedures required for discipline of
52 students with disabilities, and students presumed to have a disability
53 for discipline purposes, pursuant to subsection (k) of section fourteen
54 hundred fifteen of title twenty of the United States code and the feder-
55 al regulations implementing such statute, with the general procedures
56 for student discipline under this section.

1 ~~[3-a.]~~ i. When a student is suspended from school consistent with
2 this section and section twenty-eight hundred one of this chapter, the
3 principal, or the principal's designee, in consultation with the
4 student's teachers, shall within twenty-four hours create an education
5 plan for the student for each class in which the student is enrolled,
6 provided that if such twenty-four hour period does not end on a school
7 day, it shall be extended to the corresponding time on the next school
8 day. The education plan shall make provisions for a student's on-going
9 academic instruction during the suspension and shall include the steps
10 the school will take to provide the student with a successful re-entry
11 to school. The student shall have the opportunity to earn all academic
12 credit he or she would have been eligible to earn had he or she been in
13 class, including the opportunity to complete any missed assignments or
14 take any missed examination or assessments during the student's suspen-
15 sion. If an examination or assessment cannot be rescheduled, the student
16 shall be allowed on school property to take such assessment or examina-
17 tion on the day and time that the assessment or examination is given.

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

41 a. Such teacher shall inform the ~~[pupil]~~ student and the school prin-
42 cipal of the reasons for the removal. If the teacher finds that the
43 ~~[pupil's]~~ student's continued presence in the classroom does not pose a
44 continuing danger to persons or property and does not present an ongoing
45 threat of disruption to the academic process, the teacher shall, prior
46 to removing the student from the classroom, provide the student with an
47 explanation of the basis for the removal and allow the ~~[pupil]~~ student
48 to informally present the ~~[pupil's]~~ student's version of relevant
49 events. In all other cases, the teacher shall provide the ~~[pupil]~~
50 student with an explanation of the basis for the removal and an informal
51 opportunity to be heard within twenty-four hours of the ~~[pupil's]~~
52 student's removal, provided that if such twenty-four hour period does
53 not end on a school day, it shall be extended to the corresponding time
54 on the next school day.

55 b. The principal shall inform the parent or person in parental
56 relation to such ~~[pupil]~~ student of the removal and the reasons therefor

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

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

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

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

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

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

46 a. The board of education~~[, board of]~~ or trustees ~~[or sole trustee,]~~,
47 the chancellor of the city school district in the case of the city
48 school district of New York, other governing body, the superintendent of
49 schools, or district superintendent of schools may transfer a ~~[pupil]~~
50 student who has not been determined to be a student with a disability as
51 defined in section forty-four hundred one of this chapter, or a student
52 presumed to have a disability for discipline purposes as defined in
53 paragraph g of subdivision three of this section from regular classroom
54 instruction to an appropriate educational setting in another school upon
55 the written recommendation of the school principal and following inde-
56 pendent review thereof. For purposes of this section of the law, "invol-

1 untary transfer" does not include a transfer made by a school district
2 as part of a plan to reduce racial imbalance within the schools or as a
3 change in school attendance zones or geographical boundaries.

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

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

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

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

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

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

49 7. Transfer of disciplinary records. Notwithstanding any other
50 provision of law to the contrary, each local educational agency, as such
51 term is defined in subsection thirty of section eighty-one hundred one
52 of the Elementary and Secondary Education Act of 1965, as amended, shall
53 establish procedures in accordance with section eighty-five hundred
54 thirty-seven of the Elementary and Secondary Education Act of 1965, as
55 amended, and the Family Educational Rights and Privacy Act of 1974, to
56 facilitate the transfer of disciplinary records relating to the suspen-

1 sion or expulsion of a student to any public or nonpublic elementary or
2 secondary school in which such student enrolls or seeks, intends or is
3 instructed to enroll, on a full-time or part-time basis.

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

7 ~~[(1)]~~ d. The board of education or trustees, the chancellor of the
8 city school district in the case of the city school district of the city
9 of New York, other governing body, superintendent of schools, or
10 district superintendent of schools, shall have the power to suspend a
11 student for a period not to exceed twenty school days, provided that the
12 suspension of such student is not prohibited by paragraph c of subdivi-
13 sion two of section twenty-eight hundred one of this chapter. No ~~[pupil]~~
14 student may be suspended for a period in excess of five school days
15 unless such ~~[pupil]~~ student and the parent or person in parental
16 relation to such ~~[pupil]~~ student shall have had an opportunity for a
17 fair hearing, upon reasonable written notice~~[-at which]~~ shall include a
18 brief description of the facts upon which the alleged violations of the
19 code of conduct are based, the section of the code of conduct that the
20 student is alleged to have violated, and the date, time and place of the
21 hearing. Prior to the hearing, copies of all evidence regarding the
22 alleged incident shall be provided to the student and parent or person
23 in parental relation to the student. The hearing shall be convened with-
24 in five days of the written notice, unless the parent or person in
25 parental relation to the student or student requests a later date. At
26 the hearing, such ~~[pupil]~~ student shall have the right of representation
27 by ~~[counsel]~~ an attorney or advocate, with the right to request the
28 presence of and to question witnesses against such ~~[pupil]~~ student and
29 to request the presence of and present witnesses and other evidence on
30 his or her behalf. Where a ~~[pupil]~~ student has been suspended in accord-
31 ance with this subdivision ~~[by a]~~, the board of education or trustees,
32 the chancellor of the city school district in the case of the city
33 school district of the city of New York, other governing body, super-
34 intendent of schools, district superintendent of schools, or community
35 superintendent~~[-the superintendent]~~ shall personally hear and determine
36 the proceeding or may, in his or her discretion, designate a hearing
37 officer to conduct the hearing. The entity or individual that conducts
38 the hearing ~~[officer]~~ shall be authorized to administer oaths and to
39 issue subpoenas in conjunction with the proceeding ~~[before him]~~. A
40 record of the hearing shall be maintained, but no stenographic tran-
41 script shall be required and ~~[a tape]~~ an audio recording shall be deemed
42 a satisfactory record. The entity or individual that conducts the hear-
43 ing ~~[officer]~~ shall make written findings of fact based on a preponder-
44 ance of the evidence and shall make recommendations as to the appropri-
45 ate measure of discipline ~~[to the superintendent]~~ if any. The report of
46 the hearing officer shall be advisory only, and the board of education
47 or trustees, the chancellor of the city school district in the case of
48 the city school district of the city of New York, other governing body,
49 superintendent of schools or district superintendent of schools may
50 accept all or any part thereof. ~~[An appeal will lie from the decision of~~
51 ~~the superintendent to the board of education who shall make its decision~~
52 ~~solely upon the record before it. The board may adopt in whole or in~~
53 ~~part the decision of the superintendent of schools]~~ The board of educa-
54 tion or trustees, the chancellor of the city school district in the case
55 of the city school district of the city of New York, other governing
56 body, superintendent of schools, or district superintendent of schools

1 shall issue a written decision to the school and parent or person in
2 parental relation to the student within three days of the hearing. The
3 written decision shall state the length of suspension, if any, findings
4 of fact, reasons for determination, length of suspension, if any, proce-
5 dures for appeal, and the date by which the appeal shall be filed.

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

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

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

54 [~~f.~~] g. Whenever the term "board of education or superintendent of
55 schools" is used in this subdivision, it shall be deemed to include
56 board of trustees, other governing body, the chancellor of the city

1 school district in the case of the city school district for the city of
2 New York, community boards of education and community superintendents
3 governing community districts in accordance with the provisions of arti-
4 cle fifty-two-A of this chapter. For the purpose of this subdivision,
5 the term "weapon" means a firearm as such term is defined in section
6 nine hundred twenty-one of title eighteen of the United States code.

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

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

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

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

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

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

55 (iii) the superintendent of schools of a school district, either
56 directly or upon recommendation of a hearing officer designated pursuant

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

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

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

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

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

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

52 (ix) the commissioner shall implement this paragraph by adopting regu-
53 lations which coordinate the procedures required for discipline of
54 students with disabilities, and students presumed to have a disability
55 for discipline purposes, pursuant to subsection (k) of section fourteen
56 hundred fifteen of title twenty of the United States code and the feder-

1 al regulations implementing such statute, with the general procedures
2 for student discipline under this section.

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

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

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

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

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

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

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

52 c. the amendments to paragraphs d and f of subdivision 3 of section
53 3214 of the education law made by section four of this act shall be
54 subject to the expiration and reversion of such paragraphs pursuant to
55 section 4 of chapter 425 of the laws of 2002, as amended, when upon such
56 date the provisions of section six of this act shall take effect;

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

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

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