

# STATE OF NEW YORK

767--B

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, MAY, 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 -- 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~~]

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

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1 or a school's electronic files and databases. A school function shall  
2 mean a school-sponsored or school-authorized extra-curricular event or  
3 activity regardless of where such event or activity takes place, includ-  
4 ing any event or activity that may take place in another state.

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

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

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

49 b-1. provisions that require schools to use the least severe action  
50 necessary to respond to any violation of the code of conduct before  
51 imposing a removal or suspension. Such options may include restorative  
52 practices, social and emotional supports, and other interventions.  
53 Restorative practices may include class meetings, facilitated circles,  
54 conferences, peer mediation, and other interventions that can effec-  
55 tively address student misconduct, hold students accountable for their  
56 behavior, and foster healthy relationships within the school community.

1 No student, however, shall be required to participate in a restorative  
2 practice without their consent. Reasonable attempts shall also be made  
3 to obtain the consent of their parents or persons in parental relations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48 3-a. The board of education or trustees, chancellor of the city school  
 49 district in the case of the city school district of the city of New  
 50 York, or other governing body shall provide professional development in  
 51 accordance with this section for school personnel, law enforcement and  
 52 public or private security personnel employed, retained or contracted  
 53 with a school district or charter school regarding the code of conduct,  
 54 the use of interventions, and graduated and proportionate discipline.

55 4. ~~[The]~~ At the beginning of each school year, the board of education  
 56 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 YYY 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 pal 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

1 witnesses, and to be represented by an attorney or advocate. The afore-  
2 said notice and opportunity for an informal conference shall take place  
3 prior to suspension of the [~~pupil~~] student unless the [~~pupil's~~]  
4 student's presence in the school poses a continuing danger to persons or  
5 property or an ongoing threat of disruption to the academic process, in  
6 which case the [~~pupil's~~] student's notice and opportunity for an  
7 informal conference shall take place as soon after the suspension begins  
8 as is reasonably practicable.

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

13 ~~e. (1)]~~ d. The board of education or trustees, the chancellor of the  
14 city school district in the case of the city school district of the city  
15 of New York, other governing body, superintendent of schools, or  
16 district superintendent of schools, shall have the power to suspend a  
17 student for a period not to exceed twenty school days, provided that the  
18 suspension of such student is not prohibited by paragraph c of subdivi-  
19 sion two of section twenty-eight hundred one of this chapter. No [~~pupil~~]  
20 student may be suspended for a period in excess of five school days  
21 unless such [~~pupil~~] student and the parent or person in parental  
22 relation to such [~~pupil~~] student shall have had an opportunity for a  
23 fair hearing, upon reasonable written notice, [~~at~~] which shall include a  
24 brief description of the facts upon which the alleged violations of the  
25 code of conduct are based, the section of the code of conduct that the  
26 student is alleged to have violated, and the date, time and place of the  
27 hearing. Prior to the hearing, copies of all evidence regarding the  
28 alleged incident shall be provided to the student and parent or person  
29 in parental relation to the student. The hearing shall be convened with-  
30 in five days of the written notice, unless the parent or person in  
31 parental relation to the student or student requests a later date. At  
32 the hearing, such [~~pupil~~] student shall have the right of representation  
33 by [~~counsel~~] an attorney or advocate, with the right to request the  
34 presence of and question witnesses against such [~~pupil~~] student and to  
35 request the presence of and present witnesses and other evidence on his  
36 or her behalf. Where the [~~pupil~~] student is a student with a disability  
37 or a student presumed to have a disability, the provisions of paragraph  
38 [~~g~~] h of this subdivision shall also apply. Where a [~~pupil~~] student has  
39 been suspended in accordance with this [~~subparagraph by a~~] paragraph,  
40 the board of education or trustees, the chancellor of the city school  
41 district in the case of the city school district of the city of New  
42 York, other governing body, superintendent of schools, district super-  
43 intendent of schools, or community superintendent[~~, the superintendent~~]  
44 shall personally hear and determine the proceeding or may, in his or her  
45 discretion, designate a hearing officer to conduct the hearing. The  
46 entity or individual that conducts the hearing [~~officer~~] shall be  
47 authorized to administer oaths and to issue subpoenas in conjunction  
48 with the proceeding [~~before him or her~~]. A record of the hearing shall  
49 be maintained, but no stenographic transcript shall be required and [~~a~~  
50 tape] an audio recording shall be deemed a satisfactory record. The  
51 entity or individual that conducts the hearing [~~officer~~] shall make  
52 written findings of fact based on a preponderance of the evidence and  
53 shall make recommendations as to the appropriate measure of discipline  
54 [~~to the superintendent~~] if any. The report of the hearing officer shall  
55 be advisory only, and the board of education or trustees, the chancellor  
56 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 suspension is, in whole or in part, the possession on school grounds or school property by the student of any firearm, rifle, shotgun, dagger, dangerous knife, dirk, razor, stiletto or any of the weapons, instruments or appliances specified in subdivision one of section 265.01 of the penal law, the hearing officer or superintendent shall not be barred from considering the admissibility of such weapon, instrument or appliance as evidence, notwithstanding a determination by a court in a criminal or juvenile delinquency proceeding that the recovery of such weapon, instrument or appliance was the result of an unlawful search or seizure.

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

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

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

23 (3) As used in this paragraph:

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

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

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

46 [~~f-~~ g. Whenever the term "board of education or superintendent of  
47 schools" is used in this subdivision, it shall be deemed to include  
48 board of trustees, other governing body, the chancellor of the city  
49 school district in the case of the city school district for the city of  
50 New York, community boards of education and community superintendents  
51 governing community districts in accordance with the provisions of arti-  
52 cle fifty-two-A of this chapter.

53 [~~g-~~ h. Discipline of students with disabilities and students presumed  
54 to have a disability for discipline purposes. (1) Notwithstanding any  
55 other provision of this subdivision to the contrary, a student with a  
56 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~~] h of subdivision [~~three~~] two of this section from regular  
54 classroom instruction to an appropriate educational setting in another  
55 school upon the written recommendation of the school principal and  
56 following independent review thereof. For purposes of this section of

1 the law, "involuntary transfer" does not include a transfer made by a  
2 school district as part of a plan to reduce racial imbalance within the  
3 schools or as a change in school attendance zones or geographical bound-  
4 aries.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 (ix) the commissioner shall implement this paragraph by adopting regu-  
55 lations which coordinate the procedures required for discipline of  
56 students with disabilities, and students presumed to have a disability

1 for discipline purposes, pursuant to subsection (k) of section fourteen  
2 hundred fifteen of title twenty of the United States code and the feder-  
3 al regulations implementing such statute, with the general procedures  
4 for student discipline under this section.

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

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

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

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

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

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

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

54 c. the amendments to paragraphs d and f of subdivision 3 of section  
55 3214 of the education law made by section four of this act shall be  
56 subject to the expiration and reversion of such paragraphs pursuant to

1 section 4 of chapter 425 of the laws of 2002, as amended, when upon such  
2 date the provisions of section six of this act shall take effect;

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

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

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