

STATE OF NEW YORK

5197

2021-2022 Regular Sessions

IN ASSEMBLY

February 11, 2021

Introduced by M. of A. NOLAN -- read once and referred to the Committee on Education

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
18 mean a school-sponsored or school-authorized extra-curricular event or
19 activity regardless of where such event or activity takes place, includ-
20 ing any event or activity that may take place in another state.
21 2. The board of education or the trustees [~~, as defined in section two~~
22 ~~of this chapter,~~] of every school district [~~within the state, however~~
23 ~~created, and every~~] or the chancellor of the city school district in the

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

LBD06645-01-1

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

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

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

42 b-1. provisions that require schools to use the least severe action
43 necessary to respond to any violation of the code of conduct before
44 imposing a removal or suspension. Such options may include restorative
45 practices, social and emotional supports, and other interventions.
46 Restorative practices may include class meetings, facilitated circles,
47 conferences, peer mediation, and other interventions that can effec-
48 tively address student misconduct, hold students accountable for their
49 behavior, and foster healthy relationships within the school community.
50 No student, however, shall be required to participate in a restorative
51 practice without their consent. Reasonable attempts shall also be made
52 to obtain the consent of their parents or persons in parental relations;

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

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

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

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

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

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

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

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

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

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

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

52 [~~i-~~] k. provisions setting forth the circumstances under and procedures
53 by which parents or persons in parental relation to the student accused
54 of violating the code of conduct shall be notified of such code of
55 conduct violations including notice that any statement by the student,
56 written or oral, may be used against the student in a criminal, immi-

1 gration, or juvenile delinquency investigation and/or proceeding and/or
2 in a court of law;

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

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

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

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

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

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

40 3-a. The board of education or trustees, chancellor of the city school
41 district in the case of the city school district of the city of New
42 York, or other governing body shall provide professional development in
43 accordance with this section for school personnel, law enforcement and
44 public or private security personnel employed, retained or contracted
45 with a school district or charter school regarding the code of conduct,
46 the use of interventions, and graduated and proportionate discipline.

47 4. [~~The~~] At the beginning of each school year, the board of education
48 or trustees, chancellor of the city school district in the case of the
49 city school district of the city of New York, or other governing body
50 shall: translate the code of conduct into at least the three most
51 commonly spoken languages of the children attending the school district,
52 board of cooperative educational services, or charter school, post the
53 code of conduct on the school district's, charter school's or board of
54 cooperative educational services website, provide copies of a summary of
55 the code of conduct to all students at a general assembly [~~held at the~~
56 ~~beginning of the school year and shall make copies of the code available~~

1 ~~to persons in parental relation to students at the beginning of each~~
 2 ~~school year, and shall]~~ or classroom lesson, mail a plain language
 3 summary of such code to all parents or persons in parental relation to
 4 students before the beginning of each school year, and make it available
 5 thereafter upon request. The board of education or trustees, the chan-
 6 cellor of the city school district in the case of the city school
 7 district of the city of New York, or other governing body shall take
 8 reasonable steps to ensure community awareness of the code of conduct's
 9 provisions.

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

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

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

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

44 § 4. Section 3214 of the education law, as amended by chapter 181 of
 45 the laws of 2000, subparagraph 1 of paragraph c of subdivision 3 as
 46 amended by chapter 430 of the laws of 2006, paragraphs d and f of subdivi-
 47 sion 3 as amended by chapter 425 of the laws of 2002, paragraph e of
 48 subdivision 3 as amended by chapter 170 of the laws of 2006, paragraph g
 49 of subdivision 3 as amended by chapter 352 of the laws of 2005, clause
 50 (v) of subparagraph 3 of paragraph g of subdivision 3 as amended by
 51 chapter 378 of the laws of 2007, paragraphs a, b and c of subdivision
 52 3-a as amended by chapter 147 of the laws of 2001 and subdivision 7 as
 53 amended by section 9 of part YYY of chapter 59 of the laws of 2017, is
 54 amended to read as follows:

55 § 3214. Student placement, suspensions and transfers. 1. [~~School~~
 56 ~~delinquent. A minor under seventeen years of age, required by any of the~~

~~provisions of part one of this article to attend upon instruction, who is an habitual truant from such instruction or is irregular in such attendance or insubordinate or disorderly or disruptive or violent during such attendance, is a school delinquent.~~

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

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

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

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

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

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

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

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

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

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

~~3.]~~ 2. Suspension of a [~~pupil~~] student. a. (1) The board of education[, ~~board of~~] or trustees [~~or sole trustee~~], the chancellor of the city school district in the case of the city school district of the city of New York, other governing body, the superintendent of schools, district superintendent of schools or principal of a school may suspend [~~the following pupils~~] students from required attendance upon instruction[+]

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

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

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

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

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

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

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

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

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

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

27 (6) other factors determined to be relevant.

28 c. The board of education~~, board of~~ or trustees, ~~or sole trustee,~~
29 the chancellor of the city school district in the case of the city
30 school district of the city of New York, other governing body, super-
31 intendent of schools, district superintendent of schools and the princi-
32 pal of the school where the ~~pupil~~ student attends shall have the power
33 to suspend a ~~pupil~~ student for a period not to exceed five school days
34 provided that the suspension of such student is not prohibited by
35 section twenty-eight hundred one of this chapter. In the case of such a
36 suspension, the suspending authority shall provide the ~~pupil~~ student
37 with written notice of the charged misconduct including a brief explana-
38 tion of the basis for the suspension and a description of the alleged
39 behavior that violated the code of conduct that includes the date, time,
40 and place of the scheduled informal conference with the principal, the
41 right to appeal a suspension, and the procedures for appeal. ~~[If the~~
42 ~~pupil denies the misconduct, the suspending authority shall provide an~~
43 ~~explanation of the basis for the suspension.~~ The ~~pupil~~ student and
44 the parent or person in parental relation to the ~~pupil~~ student shall~~,~~
45 ~~on request,~~ be given an opportunity for an informal conference with the
46 principal ~~[at which]. At the conference,~~ the ~~[pupil and/or] student and~~
47 parent or person in parental relation shall be authorized to review all
48 evidence of the alleged misconduct, present the ~~[pupil's] student's~~
49 version of the event ~~[and],~~ to ask questions of the complaining
50 witnesses, and to be represented by an attorney or advocate. The afore-
51 said notice and opportunity for an informal conference shall take place
52 prior to suspension of the ~~[pupil] student~~ unless the ~~[pupil's]~~
53 student's presence in the school poses a continuing danger to persons or
54 property or an ongoing threat of disruption to the academic process, in
55 which case the ~~[pupil's] student's~~ notice and opportunity for an

1 informal conference shall take place as soon after the suspension begins
2 as is reasonably practicable.

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

7 ~~e.-(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 question witnesses against such [pupil] student and to
29 request the presence of and present witnesses and other evidence on his
30 or her behalf. Where the [pupil] student is a student with a disability
31 or a student presumed to have a disability, the provisions of paragraph
32 [g] h of this subdivision shall also apply. Where a [pupil] student has
33 been suspended in accordance with this ~~[subparagraph by a]~~ paragraph,
34 the board of education or trustees, the chancellor of the city school
35 district in the case of the city school district of the city of New
36 York, other governing body, superintendent of schools, district super-
37 intendent of schools, or community superintendent[~~, the superintendent~~]
38 shall personally hear and determine the proceeding or may, in his or her
39 discretion, designate a hearing officer to conduct the hearing. The
40 entity or individual that conducts the hearing [officer] shall be
41 authorized to administer oaths and to issue subpoenas in conjunction
42 with the proceeding [before him or her]. A record of the hearing shall
43 be maintained, but no stenographic transcript shall be required and [a
44 tape] an audio recording shall be deemed a satisfactory record. The
45 entity or individual that conducts the hearing [officer] shall make
46 written findings of fact based on a preponderance of the evidence and
47 shall make recommendations as to the appropriate measure of discipline
48 ~~[to the superintendent]~~ if any. The report of the hearing officer shall
49 be advisory only, and the board of education or trustees, the chancellor
50 of the city school district in the case of the city school district of
51 the city of New York, other governing body, superintendent of schools or
52 district superintendent of schools may accept all or any part thereof.
53 ~~[An appeal will lie from the decision of the superintendent to the board~~
54 ~~of education who shall make its decision solely upon the record before~~
55 ~~it. The board may adopt in whole or in part the decision of the super-~~
56 ~~intendent of schools]~~ The board of education or trustees, the chancellor

1 of the city school district in the case of the city school district of
2 the city of New York, other governing body, superintendent of schools,
3 or district superintendent of schools shall issue a written decision to
4 the school and parent or person in parental relation to the student
5 within three days of the hearing. The written decision shall state the
6 length of suspension, if any, findings of fact, reasons for determi-
7 nation, length of suspension, if any, procedures for appeal, and the
8 date by which the appeal shall be filed. Where the basis for the

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

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

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

1 qualifies for juvenile offender status under subdivision forty-two of
2 section 1.20 of the criminal procedure law. A superintendent shall refer
3 any [~~pupil~~] student sixteen years of age or older or a student fourteen
4 or fifteen years of age who qualifies for juvenile offender status under
5 subdivision forty-two of section 1.20 of the criminal procedure law, who
6 has been determined to have brought a weapon or firearm to school in
7 violation of this subdivision to the appropriate law enforcement offi-
8 cials.

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

17 (3) As used in this paragraph:

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

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

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

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

47 [~~g-~~] h. Discipline of students with disabilities and students presumed
48 to have a disability for discipline purposes. (1) Notwithstanding any
49 other provision of this subdivision to the contrary, a student with a
50 disability as such term is defined in section forty-four hundred one of
51 this chapter and a student presumed to have a disability for discipline
52 purposes, may be suspended or removed from his or her current educa-
53 tional placement, provided that the suspension of such student is not
54 prohibited by section twenty-eight hundred one of this chapter, for
55 violation of [~~school rules~~] the code of conduct only in accordance with
56 the procedures established in this section, the regulations of the

1 commissioner implementing this paragraph, and subsection (k) of section
2 fourteen hundred fifteen of title twenty of the United States code and
3 the federal regulations implementing such statute, as such federal law
4 and regulations are from time to time amended. Nothing in this paragraph
5 shall be construed to confer greater rights on such students than are
6 conferred under applicable federal law and regulations, or to limit the
7 ability of a school district to change the educational placement of a
8 student with a disability in accordance with the procedures in article
9 eighty-nine of this chapter.

10 (2) As used in this paragraph:

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

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

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

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

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

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

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

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

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

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

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

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

52 [~~3-a~~] i. When a student is suspended from school consistent with
53 this section and section twenty-eight hundred one of this chapter, the
54 principal, or the principal's designee, in consultation with the
55 student's teachers, shall within twenty-four hours create an education
56 plan for the student for each class in which the student is enrolled,

1 provided that if such twenty-four hour period does not end on a school
2 day, it shall be extended to the corresponding time on the next school
3 day. The education plan shall make provisions for a student's on-going
4 academic instruction during the suspension and shall include the steps
5 the school will take to provide the student with a successful re-entry
6 to school. The student shall have the opportunity to earn all academic
7 credit he or she would have been eligible to earn had he or she been in
8 class, including the opportunity to complete any missed assignments or
9 take any missed examination or assessments during the student's suspen-
10 sion. If an examination or assessment cannot be rescheduled, the student
11 shall be allowed on school property to take such assessment or examina-
12 tion on the day and time that the assessment or examination is given.

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

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

50 b. The principal shall inform the parent or person in parental
51 relation to such [~~pupil~~] student of the removal and the reasons therefor
52 within twenty-four hours of the [~~pupil's~~] student's removal, provided
53 that if such twenty-four hour period does not end on a school day, it
54 shall be extended to the corresponding time on the next school day. The
55 [~~pupil~~] student and the parent or person in parental relation shall,
56 upon request, be given an opportunity for an informal conference with

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

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

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

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

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

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

41 a. The board of education [~~, board of~~] or trustees [~~or sole trustee,~~],
42 the chancellor of the city school district in the case of the city
43 school district of New York, other governing body, the superintendent of
44 schools, or district superintendent of schools may transfer a [~~pupil~~]
45 student who has not been determined to be a student with a disability as
46 defined in section forty-four hundred one of this chapter, or a student
47 presumed to have a disability for discipline purposes as defined in
48 paragraph [~~g~~] h of subdivision [~~three~~] two of this section from regular
49 classroom instruction to an appropriate educational setting in another
50 school upon the written recommendation of the school principal and
51 following independent review thereof. For purposes of this section of
52 the law, "involuntary transfer" does not include a transfer made by a
53 school district as part of a plan to reduce racial imbalance within the
54 schools or as a change in school attendance zones or geographical bound-
55 aries.

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

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

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

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

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

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

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

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

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

1 of fact, reasons for determination, length of suspension, if any, proce-
2 dures for appeal, and the date by which the appeal shall be filed.

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

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

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

51 [~~f~~] g. Whenever the term "board of education or superintendent of
52 schools" is used in this subdivision, it shall be deemed to include
53 board of trustees, other governing body, the chancellor of the city
54 school district in the case of the city school district for the city of
55 New York, community boards of education and community superintendents
56 governing community districts in accordance with the provisions of arti-

1 cle fifty-two-A of this chapter. For the purpose of this subdivision,
2 the term "weapon" means a firearm as such term is defined in section
3 nine hundred twenty-one of title eighteen of the United States code.

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

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

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

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

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

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

52 (iii) the superintendent of schools of a school district, either
53 directly or upon recommendation of a hearing officer designated pursuant
54 to paragraph c of this subdivision, may order the placement of a student
55 with a disability into an interim alternative educational setting,
56 another setting or suspension for up to ten consecutive school days,

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

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

21 (v) the terms "day," "business day," and "school day" shall be as
22 defined in section 300.9 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 the committee on special education
26 that the behavior of a student with a disability was not a manifestation
27 of the student's disability, such student may be disciplined pursuant to
28 this section in the same manner as a nondisabled student, except that
29 such student shall continue to receive services to the extent required
30 under federal law and regulations, provided that the suspension of such
31 student is not prohibited by section twenty-eight hundred one of this
32 chapter.

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

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

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

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

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

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

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

37 § 9. This act shall take effect September 1, 2022; provided, however
38 that:

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

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

50 c. the amendments to paragraphs d and f of subdivision 3 of section
51 3214 of the education law made by section four of this act shall be
52 subject to the expiration and reversion of such paragraphs pursuant to
53 section 4 of chapter 425 of the laws of 2002, as amended, when upon such
54 date the provisions of section six of this act shall take effect;

55 d. the amendments to paragraph g of subdivision 3 of section 3214 of
56 the education law made by section four of this act shall be subject to

1 the expiration and reversion of such paragraph pursuant to section 22 of
2 chapter 352 of the laws of 2005, as amended, when upon such date the
3 provisions of section seven of this act shall take effect;

4 d-1. the amendments to clause (v) of subparagraph 3 of paragraph g of
5 subdivision 3 of section 3214 of the education law made by section four
6 of this act shall be subject to the expiration and reversion of such
7 clause pursuant to subdivision d of section 27 of chapter 378 of the
8 laws of 2007, as amended, when upon such date the provisions of section
9 seven of this act shall take effect;

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

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